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FEDERAL COMMUNICATIONS COMMISSION REPORTS

DECISIONS AND REPORTS OF THE
FEDERAL COMMUNICATIONS COMMISSION
OF THE UNITED STATES

January 12, 1962, to June 29, 1962

VOLUME 32



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WILMER E. HUFFMAN ET AL., DOCKETS Nos. 13469, 13470, AND 13471:

Application of Wilmer E. Huffman for a new standard broadcast station construction permit granted; competing applications of Francis C. Morgan, Jr., and Pier San, Inc.; denied.

Section 307(b).—Considered.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON 25, D.C.

In re Applications of
WILMER E. HUFFMAN, PRATT, KANS.

FRANCIS C. MORGAN, JR., LARNED, KANS.

PIER SAN, INC., LARNED, KANS.

For Construction Permits

} Docket No. 13469
File No. BP-12021
Docket No. 13470
File No. BP-12749
Docket No. 13471
File No. BP-12750

APPEARANCES

Messrs. Francis X. McDonough and Thomas S. Sullivan, for Wilmer E. Huffman; Mr. A. L. Stein, for Francis C. Morgan, Jr.; Messrs. Arthur H. Schroeder and John B. Kenkel, for Pier San, Inc.; and Messrs. Robert J. Rawson and Ray R. Paul, for the Chief, Broadcast Bureau, Federal Communications Commission.

DECISION

(Adopted January 3, 1962)

BY THE COMMISSION: CHAIRMAN MINOW ABSENT; COMMISSIONER BARTLEY ABSTAINING FROM VOTING; COMMISSIONER LEE DISSENTING; COMMISSIONER CROSS DISSENTING AND ISSUING A STATEMENT.

1. This proceeding involves three mutually exclusive applications for class III facilities. Wilmer E. Huffman (Huffman) has applied for a new broadcast station construction permit at Pratt, Kans. He would operate on 1290 kc, 5 kw, day, and 500 w, night, unlimited time. He would use a directional antenna with different patterns for day and night. Francis C. Morgan, Jr. (Morgan), and Pier San, Inc. (Pier San), have each applied for construction permits at Larned, Kans. Each seeks to operate on 1290 kc, 500 w, daytime only.

2. The Commission's designation order (FCC 60-386, released April 18, 1960) found each applicant legally, technically, financially, and otherwise qualified. Such order specified, among others, an issue under section 307(b) of the Communications Act of 1934, as amended. It also contained a contingent comparative issue (if Larned was favored under such 307(b) issue) as to which Larned proposal would

better serve the public interest, convenience, and necessity. Hearing Examiner Sharfman's initial decision (FCC 61D-36, released March 29, 1961) proposed to grant the Pier San application. The examiner favored Larned on the 307(b) issue, and preferred (on the basis of the standard comparative criteria) Pier San's application over that of Morgan.

3. Huffman, Morgan, and the Broadcast Bureau filed exceptions to the initial decision. Essentially, Pier San supports that decision. The Commission, en banc, heard oral argument on September 15, 1961. The Commission's rulings on the filed exceptions are in the attached appendix. The Commission has also considered the initial decision's findings of fact in the light of the filed exceptions. They are adopted as modified in the appendix. The Commission disagrees with the examiner's conclusions.

4. The essential 307(b) findings are recapitulated. Larned, Kans., has a population of 4,447 (1950 U.S. census). It is located in south-central Kansas, in the midst of farm country, and is the county seat of Pawnee County. Grain, livestock, gas and oil are important factors in the area's economy. Larned has a daily newspaper. It supports the usual civic, fraternal, social, and educational organizations. As far as daytime radio service is concerned, Larned has no local transmission service; i.e., no outlet for local self-expression. It has two primary daytime reception services (2 mv/m or greater). One is KFRM, Concordia, Kans.; the other, KVGB, Great Bend, Kans. The rural area surrounding Larned presently receives primary service (0.5 mv/m or greater) in any one part from a minimum of 7 to a maximum of 23 stations.

5. The Larned proposal¹ would provide interference-free service (0.5 mv/m or greater) to 127,353 people in an area of 11,959 square miles. It would provide a first daytime outlet for local self-expression for Larned, as well as a third primary daytime reception service. It would also provide a new service (2 mv/m or greater) to Great Bend and Hoisington, Kans.

6. Pratt, Kans., located 50 road-miles southeast of Larned, is the county seat of Pratt County. It has a population of 7,523 (1950 U.S. census). The economic factors important to Pratt (and its surrounding area) are similar to those supporting Larned's economy. Pratt, too, supports the usual civic, fraternal, and social organizations. In addition to the standard educational facilities, a junior college is located there. Pratt has a daily newspaper. The Hutchinson (Kans.) News Agent also maintains an agency there. As far as daytime radio service is concerned, Pratt has one local transmission service. Station KWSK (1570 kc, 250 w, D), established in 1952, serves the community in that regard. Pratt presently receives primary daytime service from KFRM, Concordia, Kans.; KFBI, Wichita, Kans.; and from KWSK (the local station). Part of the city also receives primary daytime service from KVGB, Great Bend, Kans. The rural

¹ The small mileage separation between the Morgan and Pier San proposed transmitter sites is not significant in terms of coverage or interference considerations. Accordingly, when we refer to "the Larned proposal," we are referring equally to both the Pier San and Morgan proposals.

area surrounding Pratt presently has other primary service (0.5 mv/m or greater) available in any one part from a minimum of 4 to a maximum of 23 stations. Looking at nighttime radio service, Pratt is without either a primary reception service or a nighttime outlet for local self-expression.

7. Huffman's daytime proposal would provide interference-free service (0.5 mv/m or greater) to 160,857 persons in an area of 20,796 square miles. It would provide a primary daytime service (2 mv/m or greater) to both Larned and Dodge City, Kans. It would bring a second competitive daytime transmission service to Pratt. Huffman's 500-w nighttime proposal has a normally protected 4.0-mv/m contour containing 16,099 people. He would serve within his interference-free 14-mv/m contour 9,204 of these people; i.e., 57.2 percent of the normally protected population.² Of the 9,204 people, 128 already receive primary nighttime service from station KOMA, Oklahoma City. The other 9,076 (including the entire city of Pratt) would receive their first nighttime primary service. Huffman's 500-w proposal would also serve as a first nighttime outlet for the Pratt community.

8. Both the Pratt and the Larned proposals merit serious consideration. On the one hand, the Larned proposal would provide that community with a first outlet for local self-expression. Important and desirable as it is for every community to have such a transmission facility, this consideration is not an absolute in light of the mandate of section 307(b) that the Commission endeavor to provide the most widespread and effective broadcast service possible. *Nick J. Chaconas*, 29 FCC 1226, 19 R.R. 100 (1960). On the other hand, while Huffman's proposal would not provide Pratt with a first outlet for local self-expression during the daytime, it would provide Pratt with a second competitive daytime station and a first transmission facility during the nighttime hours. Most important, it would bring a first primary nighttime service to over 9,000 persons, including the population of Pratt. Thus, a substantial white area would be removed.³ These are the crucial matters for evaluation. Both applicants submit that the Commission has never decided a case involving the exact combination of factors involved here.

9. We have compared the resulting benefits each proposal offers. As far as the "fair and equitable" aspects of section 307(b) are concerned, it is our composite judgment that Pratt (the larger community) and the contiguous rural area thereto demonstrates a need greater than that of Larned and its rural area. Taken together, the need for a second competitive daytime transmission service, a first nighttime outlet for local self-expression, and the removal of a "substantial" white area of over 9,000 persons (including the entire city of Pratt) outweighs in relative importance Larned's need for a first outlet for local self-expression.

² Huffman's class III nighttime proposal comes within one of the exceptions to sec. 3.23(d) of our rules (10-percent rule).

³ Conversely, on occasions the Commission has permitted a nighttime white area to be recreated, *Vidalia Broadcasting Co.*, 8 R.R. 1 (1952); *Gillespie Broadcasting Co.*, 26 FCC 1, 15 R.R. 882a, affirmed *sub. nom. Red River Valley Broadcasting Co. v. FCC*, 106 U.S. App. D.C. 333, 272 F. 2d 562, 19 R.R. 2028 (1959); and *John K. Rogers*, 30 FCC 785, 20 R.R. 522 (1961). But each of these cases involved the abandonment of nighttime operations in favor of expanded daytime operations on different frequencies, a situation not present here.

10. We have also weighed in the other factors urged by the parties. For examples, the fact that Huffman's proposal would bring a fourth primary daytime reception service to all of Pratt and a fifth such service to part of Pratt was considered; the fact that the Larned proposal would bring a third primary daytime reception service to that community was considered; and the fact that the Pratt proposal would provide Larned (the competing community) with a third primary daytime reception service was also considered. However, these benefits played a lesser role in our comparative judgment here. Thus, we hold that the "fair and equitable" considerations of section 307(b) can best be served by granting the Pratt applicant.

11. Looking at the "efficiency" aspects of section 307(b), we see that the Larned 500-w daytime proposal would provide interference-free service (0.5 mv/m or greater) to 127,353 people in an area of 11,959 square miles. Huffman's 5-kw daytime proposal would provide interference-free service (0.5 mv/m or greater) to 160,857 persons in an area of 20,796 square miles. Thus, the Pratt proposal will not only serve 33,000 more people over a greater area, but will also make full use of the power (at 5 kw) authorized class III stations under the Commission's rules. In addition, Huffman will use the frequency at night with the previously described results (see par. 7). Thus, we conclude that the "efficiency" aspects of section 307(b) also favor Huffman. We have considered the examiner's conclusion that the Pratt proposal has a substandard nighttime service population. It does not change our views regarding the efficiency aspects herein. Huffman's class III proposal comes within an exception to section 3.28(d) of our rules and will eliminate a substantial nighttime white area. This more than justifies the loss in nighttime potential.

12. Thus, although both proposals are meritorious, it is apparent that a grant of the Pratt application will best result in a fair, efficient, and equitable distribution of the radio service involved; and that such a grant will thereby serve the public interest, convenience, and necessity.

Accordingly, *It is ordered*, This 3d day of January 1962, that Wilmer E. Huffman's application for a new standard broadcast station construction permit (BP-12021) at Pratt, Kans., *Is granted*; and that the applications of Francis C. Morgan, Jr. (BP-12749), and Pier San, Inc. (BP-12750), for construction permits at Larned, Kans., *Are denied*.

APPENDIX

COMMISSION'S RULINGS ON EXCEPTIONS TO THE INITIAL DECISION

Exceptions of Wilmer E. Huffman

<i>Exception No.</i>	<i>Ruling</i>
1-----	Denied, except for reference to the junior college located in Pratt (exception ID). Otherwise, the examiner's findings are adequate.
2-----	Granted insofar as the conclusions in par. 65 are deleted. Denied insofar as the proposed substitute language is not accepted. See the decision herein.

- 3----- Granted insofar as the conclusions in par. 66 are deleted. Denied insofar as the proposed substitute language is not accepted. See the decision herein.
- 4----- Partially granted in substance. See par. 11 of the decision herein. Remainder denied in view of our ruling on exception 1 and our decision.
- 5----- Denied. See the decision herein.
- 6----- Granted. See the ordering clause of the decision herein.

Exceptions of Francis C. Morgan, Jr.

- 1-2----- Denied. No decisional significance.
- 3----- Granted. See par. 5 of the decision herein.
- 4----- Denied. While not "critical," that fact is an important "efficiency" consideration.
- 5-28----- Denied. Not relevant to the holding herein.

Exceptions of Pier San, Inc.

- 1-22----- Denied. Not relevant to the holding herein.
- 23----- Denied. Unnecessary in view of our holding herein.
- 24----- Denied. Unnecessary in view of our holding herein. (Also note that the objection refers to p. 3 of exhibit 2. Exhibit is a 1-page exhibit.)

Exceptions of the Broadcast Bureau

- 1----- Granted insofar as the conclusions in pars. 65 and 66 are deleted. See rulings on Pier San exceptions Nos. 2 and 3. Denied insofar as the substitute language is not accepted. See the decision herein.
- 2----- Granted.
- 3----- Granted. See ruling on Huffman exception No. 6.

DISSENTING STATEMENT OF COMMISSIONER CROSS

I dissent. I would affirm the examiner and grant the Pier San, Inc., application for Larned, Kans. Under the provisions of section 307(b) of the Communications Act, it is my view that Larned, which has no local station, should receive its first broadcast facility before Pratt, Kans., acquires its second. This view is buttressed by the fact that Pawnee County, of which Larned is the county seat, also has no local transmission facility.

As between the two Larned applicants, I agree with the examiner that a weighing of the relative merits of each on the basis of the Commission's oft-stated comparative criteria indicates a marked preference for Pier San, Inc.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON 25, D.C.

In re Applications of
WILMER E. HUFFMAN, PRATT, KANS.

FRANCIS C. MORGAN, JR., LARNED, KANS.

PIER SAN, INC., LARNED, KANS.

For Construction Permits

Docket No. 13469
File No. BP-12021
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Docket No. 13471
File No. BP-12750

APPEARANCES

Messrs. Francis X. McDonough and Thomas S. Sullivan, for Wilmer E. Huffman; Mr. A. L. Stein, for Francis C. Morgan, Jr.; Messrs. Arthur H. Schroeder and John B. Kenkel, for Pier San, Inc.; and Messrs. Robert J. Rawson and Ray R. Paul, for the Commission's Broadcast Bureau.

INITIAL DECISION OF HEARING EXAMINER HERBERT SHARFMAN
(Adopted March 27, 1961)

PRELIMINARY STATEMENT

1. This proceeding involves the mutually exclusive applications of (1) Huffman for a construction permit for a new standard broadcast station at Pratt, Kans., to operate on 1290 kc, with 5 kw power, day, and 500 w, night, using a directional antenna with different patterns for day and night, unlimited time; and (2) Morgan and (3) Pier San for a construction permit for a new station at Larned, Kans., to operate on 1290 kc, with 500 w power, daytime only. By order released April 18, 1960, the Commission, finding each applicant legally, technically, financially, and otherwise qualified except as may be indicated by the issues, designated the applications for hearing on the following issues:

1. To determine the areas and populations which would receive primary service from each of the instant proposals, and the availability of other primary service to such areas and populations.

2. To determine the nature and extent of the interference, if any, that each of the instant proposals would cause to and receive from each other and all other existing standard broadcast stations, the areas and populations affected thereby, and the availability of other primary service to the areas and populations affected by interference from any of the instant proposals.

3. To determine whether the instant proposals of BP-12749 and BP-12750 would involve objectionable interference with station KSOK, Arkansas City, Ark., or any other existing standard broadcast stations, and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other primary service to such areas and populations.

32 F.C.C.

4. To determine, in the light of section 307(b) of the Communications Act of 1934, as amended, whether the proposal for Pratt, Kans., or one of the proposals for Larned, Kans., would better provide a fair, efficient, and equitable distribution of radio service.

5. To determine, in the event it is concluded pursuant to the foregoing issue that one of the proposals for Larned, Kans., should be favored, which of the proposals of BP-12749 or BP-12750 would better serve the public interest, convenience, and necessity in the light of the evidence adduced under the issues herein and the record made with respect to the significant difference between the said applicants as to—

(a) The background and experience of each having a bearing on the applicant's ability to own and operate the proposed standard broadcast station.

(b) The proposals of each of the applicants with respect to the management and operation of the proposed station.

(c) The programming service proposed in each of the said applications.

6. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which, if any, of the instant applications should be granted.

2. Prehearing conferences were held on May 10, September 12, and September 30, 1960. The applicants' exhibits were exchanged on August 17. Hearings were held on September 14 and October 17, 1960, when the record was closed. Proposed findings of fact and conclusions were filed, as directed, by applicants Huffman, Morgan, and Pier San on February 1, 1961, as well as by the Broadcast Bureau. Replies were filed by applicants on February 17, 1961.¹

FINDINGS OF FACT

3. *The communities.*—Pratt is the county seat of Pratt County and Larned of Pawnee County. The cities, in south-central Kansas, are 40 air- and 50 road-miles apart. The 1950 population of Pratt was 7,523, and of Pratt County, 12,156; of Larned 4,447, and of Pawnee County, 11,041. Pratt and Larned are in the midst of farm country, with grain and livestock significant, though gas and oil wells are also important factors in their economy; in addition, Pratt is a railroad center, and there is some manufacturing in Larned. Pratt has one radio station, KWSK, established in 1952 (1570 kc, 250 w, D), and one daily newspaper published in the city; in addition, the Hutchinson (Kans.) News Agent maintains an agency there. Larned has no radio station, the nearest station being at Great Bend, 22 air-miles to the northeast. A daily (weekday evening) newspaper is published in Larned. Both cities support the usual civic, fraternal, and social organizations.

4. *The service to be rendered.*—Morgan's proposed transmitter site is about 2 miles west, and Pier San's about 3 miles northwest, of the center of Larned. Since both Morgan's and Pier San's engineering consultants assumed the same antenna radiation (125 mv/m), the same ground conductivity for the area as shown by figure M-3 of the rules, determined the same distance from transmitter site to pertinent contours (63-mile radius to the proposed 0.5-mv/m contour), and agreed upon the population served and interference received within the 0.5-mv/m contour, the small separation between the proposed

¹ As ordered by the hearing examiner, Morgan and Pier San each submitted, on Mar. 20, 1961, a supplemental brief on diversification of control of communication media.

transmitter sites is not significant in terms of coverage or interference considerations. Accordingly, only one tabular showing follows for the Larned proposal.

5. Huffman's Pratt station would provide the following coverage:

Contour (mv/m)	Popula- tion	Area (sq. miles)
Day:		
2.0.....	72, 814	6, 980
0.5 (normally protected).....	166, 064	21, 730
Existing interference.....	5, 207	934
0.5 (interference free).....	160, 857	20, 796
Night:		
2.5.....	23, 466	1, 980
4.0 (normally protected).....	16, 099	1, 108
14 (interference free).....	19, 204	175

¹ 57.2 percent of normally protected.

Huffman's proposed station would (as of the date of the hearing) provide a second primary service (2 mv/m or greater) daytime to Dodge City (population 11,262)² and a third such service to Larned. In addition to service from KWSK, the present Pratt station, Pratt also receives primary service from KFRM, Concordia, Kans.; KFBI, Wichita, Kans.; and in part from KVGB, Great Bend, Kans. Consequently, the new station would provide a fourth daytime service to a portion of Pratt and a fifth service to the remainder of the city. The rural area within which Huffman's station would furnish a new primary service daytime has other primary service (0.5 mv/m or greater) available in any one part from a minimum of 4 to a maximum of 23 stations; the total number of stations serving the area is 42. Of the 9,204 persons in 175 square miles which the proposed station would serve nighttime, only 128 persons in a rural area of 16 square miles now receive a primary service from an existing station (KOMA, Oklahoma City, Okla.). The remainder of the population and area, including the city of Pratt, a total of 9,076 persons in 159 square miles, will receive their only primary service from the proposed Pratt station.

6. The Pratt station would not cause interference either day or night to the operation of any existing station.

7. The Larned daytime-only station would provide service as follows:

Contour (mv/m)	Population	Area (sq. miles)
2.0.....	49, 361	2, 884
0.5 (normally protected).....	132, 579	12, 469
Existing interference.....	15, 226	510
0.5 (interference free).....	127, 353	11, 959

¹ 3.9 percent.

² On Nov. 16, 1960, however, the Commission granted an application for a second station at Dodge City (BP-13039). Official notice is taken of this action, which took place after the close of the record.

Larned now receives primary service (2 mv/m or greater) daytime from KFRM, Concordia, Kans., and KVGB, Great Bend, Kans.; the latter, as previously indicated, being the closer of the two. The rural area which would gain a new service from the proposed Larned station receives other service in any one part from a minimum of 7 and a maximum of 23 stations.

8. The only existing station which would receive interference from a new Larned station is KSOK, Arkansas City, Kans., operating on the adjacent 1280-kc frequency. That interference would be from Morgan's proposal; Pier San's would cause no interference to any existing station. But for interference from existing stations, KSOK would provide a primary service to 318,801 persons in 17,597 square miles within its 0.5-mv/m normally protected contour. Interference from existing stations deprives 31,245 persons in 2,574 square miles of KSOK's service, representing 9.8 percent of the population and 14.6 percent of the area within KSOK's normally protected primary service area; as now operating, primary service from KSOK is available to 287,556 persons in 15,023 square miles. Should Morgan's new Larned station be authorized, its operation would cause additional interference to KSOK involving 101 persons in 18 square miles, thereby further reducing KSOK's service population to 287,455 in 15,005 square miles. Interference from Morgan's station would increase the KSOK population loss from 9.8 percent to 9.83 percent, and the area loss from 14.6 percent to 14.7 percent. No part of the expected new interference area receives less than 19 services. KSOK did not participate in this case, though named a party.

9. *The Larned applicants.*—Francis C. Morgan, Jr., was born in Garden City, Kans., in 1932. His family moved to Great Bend, Kans., 23 miles from Larned, in 1939, when his father ("Clem" Morgan) became the manager of station KVGB. In 1948 his parents moved to Hays, Kans., 49 miles from Larned, where his father supervised the installation of KAYS and was general manager of that station. In 1951 Morgan was graduated from Hays High School, and in 1952 moved with his parents to Pratt, Kans., where, among other things, he helped his father install the latter's own radio station KWSK, which is still Pratt's only station. After KWSK went on the air in October 1952, Morgan attended Pratt Junior College for 1 year and worked as an announcer-operator at his father's station.

10. Morgan was in the military service from 1953 to 1955, when he returned to KWSK as an announcer-operator and salesman until 1958; from 1958 to July 1960 he was an announcer-operator, salesman, and chief engineer at the station. In the service Morgan had started a correspondence course in radio electronics. In July 1958 he enrolled in a radio school in Dallas, Tex., and received his first-class radiotelephone operator license. In addition to his other work at KWSK, he had experience in copywriting, news gathering, news-writing, and newscasting, and assisted in some "public service" programs.

11. Morgan is a member of the All Saints Episcopal Church, the Junior Chamber of Commerce (Jaycees), the Elks, and was a charter

member of the Pratt Kiwanis Club. When the Kiwanis Club was organized he became chairman of the Boys and Girls Committee and helped to organize the Kiwanis Kids Day, now an annual event in Pratt. In 1955 he aided in the formation of radio production classes at Pratt Junior College and Senior High School. He also helped establish the annual American Education Week program in the schools, the radio production classes of the Junior College and Senior High School being given all open time on KWSK for 1 day during American Education Week. Morgan has given a talk to preengineering students of the high school and junior college on the basics of broadcasting, and has worked with the chairman of the Jaycee Road-E-O, a teenage driving contest, in preparing radio publicity. During the past 4 years he helped set up radio interviews with contestants in the annual Miss Kansas pageant sponsored by the Pratt Jaycees. He also helped (a) Boy Scout officials to publicize the Boy Scout Fund Drive and the Scout Circus; (b) the Rotary Club in the March of Dimes; (c) the Lions Club in the sale of brooms for the blind; (d) in outlining the broadcasts from the county fair grounds, where KWSK set up a booth from which it broadcast full time; (e) 4-H leaders in preparing tape broadcasts each Saturday morning when material was available; (f) in promoting the TB Clinic's free chest X-rays; and (g) the local Bloodmobile chairman in soliciting blood donors for the Red Cross.

12. Morgan's radio background is primarily technical.³ Although when his father was away he would act as general manager of KWSK, he had no authority to hire or fire employees, to sign checks, or to sign contracts except for advertising time. After the present applications were designated for hearing, Morgan, on July 1, 1960, severed his connection with his father's station and took a job as a salesman for the National Press of North Chicago, selling advertising specialties like ballpoint pens and calendars. His territory includes the Pratt and Larned areas. Morgan left KWSK and got another job because of a family conflict. Even if his application is denied, Morgan will not stay in Pratt nor return to KWSK. He will not have authority to sell time on KWSK if he receives a grant. Morgan's father has no business interests other than KWSK, and the son none other than his present job of selling advertising specialties. There is no common ownership of real estate by father and son, there are no loans between them, and Morgan will not finance the station with his father's funds. The son has never had any ownership interest in a radio or television station, newspaper, or theater. If he is successful in the present application, Morgan and his family will move to Larned, where he will devote his entire time to the station; his wife will assist him at the station.

³ Morgan testified that he had not read the Commission's "Report and Statement of Ruling on Programing Inquiry" (Tr. 111), and did not know what the "Blue Book" was (Tr. 112).

13. While Morgan was in the military service, he talked with his father about the possibility of filing an application for Larned (this was before the Huffman application for Pratt was filed), but nothing was done then because neither Morgan, his father, nor his wife had the money. About April 1958 Morgan learned from a story in the Hutchinson News Herald that an application was in process of being filed for Larned. In May 1958 Huffman filed his Pratt application. Some time in the middle of 1958 Morgan and his wife decided to file an application for Larned. His father, at his request, engaged an engineering consultant and counsel for him, but he prepared the proposed program schedule attached to the application unaided. Morgan's application was filed about 6 months after Huffman's Pratt application, specifying the same frequency; it was filed on the same day as the Pier San application for Larned. Two frequencies were available at Larned, according to Morgan's consulting engineer, 1310 kc and 1290 kc, but he also reported that greater interference could be expected on 1310 kc. Morgan and his father were both aware that by applying for 1290 kc, the Huffman application on the same frequency for Pratt could not be granted without a hearing.⁴ There will be no joint rates, programing, or common employees of Morgan's proposed Larned station and his father's station in Pratt.

14. *Pier San, Inc.*, is a Kansas corporation formed for the purpose of applying for and operating a Larned station. Its authorized capital consists of 100 shares of common stock of \$100 par value. Ten of the shares have been issued, two to each of the five stockholders. Three of the stockholders live in Wichita, Kans., and two in Nashville, Tenn. Each is on the board of directors of applicant. None of them are related to each other, but among them are several longtime friendships and common interests in other broadcasting activities.

15. The three principals from Wichita and their offices are: John Bozeman (known professionally as Mack Sanders), vice president; K. W. Pyle, vice president; and Port Early, secretary. The Nashville residents and their offices are: Webb Pierce, president, and Jim Denny, treasurer. Denny and Pierce agreed to lend applicant \$20,000, of which they have already paid \$3,000, while as an agreed-upon equivalent, the three Wichita principals would render services in connection with the application and in the construction of the station.

16. The other broadcast interests of the five Pier San principals are (percentages shown are of stock interests in respective corporations):

⁴In its proposed findings of fact and conclusions, Pier San suggests that the real party in interest in Morgan's application was Clem Morgan. The hearing examiner feels that it is unprofitable to pursue these implications. In any event, the fact that invoices and engineering exhibits originally bore the name "Clem Morgan" instead of the applicant may be ground for suspicion by a vigorous advocate, but is hardly the basis for a holding that the father was not really acting as his son's agent in engaging professional assistance, or that the engineer had done more than designate on the documents the name of the person—Clem—who had directly hired him; in short, no finding or conclusion is possible on this record that Francis C. Morgan, Jr., is not the real party in interest, or that his application is not filed in good faith. Pier San did not call as witnesses applicant's father or the engineering consultant.

Applicant, Larned, Kans. (Pier Sun)	KSIR, Wichita, Kans.	KOOO, ¹ Omaha, Nebr.	WJAT, Swainsboro, Ga.	WBRO, Waynesboro, Ga.	WSNT, ² Sandersville, Ga.
W. Pierce, 20 percent.	-----	20 percent; president and director.	50 percent; officer and director.	50 percent; officer and director.	50 percent; vice president and director.
J. Denny, 20 percent.	-----	20 percent; treasurer and director.	50 percent; president and director.	50 percent; president and director.	50 percent; president and director.
J. Bozeman, 20 percent.	100 percent; president and director.	20 percent; vice president and director.	-----	-----	-----
J. Early, 20 percent.	Officer, director, and salesman.	20 percent; secretary and director.	-----	-----	-----
K. W. Pyle, 20 percent.	Officer, director, and general manager.	20 percent; vice president and director.	-----	-----	-----

¹ The percentages shown for KOOO are as of the time of the hearing. Pierce and Denny are no longer members of the KOOO licensee corporation, having transferred their stock to the 3 remaining members, Bozeman, Pyle, and Early, who now own 33 $\frac{1}{3}$ percent each.

² Acquired since record closed. See BAL-4001 and ownership report.

17. *John Bozeman* was born in 1923 in Alabama, but now lives in Wichita. He has been associated with radiobroadcasting (except for 3 years in the Army) since 1938, when he became a part-time employee at WSGN, Birmingham, Ala. After his Army service he joined station KMA, Shenandoah, Iowa, as an announcer and talent manager. In 1951 he came to KFBI, Wichita, and stayed there for 6 years; he served as talent manager and announcer, and was in charge of live talent, and had his own program on the air. From 1957 to 1959 he was at KFH, Wichita, where he "was more or less a freelance operator, freelance program stylist," and "did one program per day, 2 hours a day" (Tr. 216). As already indicated, Mr. Bozeman is an entertainer under the professional name Mack Sanders. At present he has a weekly ½-hour show on the Hutchinson, Kans., television station, as well as a 2-hour program on his Wichita station (KSIR) when he is in town.

18. Bozeman's 100-percent stockownership and presidency of KSIR, Wichita, dates from May 1958, and, as already noted, Pyle and Early are also directors of the KSIR licensee corporation. In mid-1960 he and the four other members of Pier San acquired KOOO, Omaha, Nebr., each then having a 20-percent interest in the licensee corporation (see p. 8).

19. After Bozeman appeared at a charity show in Larned, in June 1958, residents of the community "encouraged" him to file an application for a station there. He was first joined in the proposed venture by Early and Pyle, and then by Pierce and Denny; and Pier San, Inc., was organized.

20. Bozeman is a member of the Wichita Independent Businessmen's Association and the Appliance Dealers Association. A member also of the Wichita Chamber of Commerce, he has participated in good will tours throughout Kansas. He is also a member of the Wichita Ad Club.

21. Bozeman will probably spend 1 day a week at the proposed station, helping in sales and promotion especially, and to "work out any problems" that Pyle, who will be full-time manager, thinks "he can help on" (Tr. 186).

22. *K. W. Pyle* was born in Iowa in 1904, and now lives in Wichita. He attended primary and high school in Webster City, Iowa, and Iowa State College, Ames, Iowa, in 1921 and 1922. In 1923 he was graduated from the Dodge Radio Institute. Pyle's broadcast experience began more than 35 years ago. He started as a radio operator in 1924, and in 1926 was engineer and manager of portable stations for the Carrell Broadcasting Co. In 1929 he became the installation engineer for stations WIBW, Topeka, Kans., and WCLO, Janesville, Wis. In 1930 he joined the staff of station KFBI, then at Milford, Kans., as chief engineer and assistant manager; in 1931 he was general manager of KFBI at Abilene and Salina, Kans.; and in 1940 moved KFBI to Wichita, where he supervised the first directional antenna installation in Kansas and acted as technical supervisor and assistant manager of KFBI until 1958. In 1958 Pyle joined the staff of KSIR, Wichita, as general manager and chief engineer. During his stay in Wichita he has financed and acted in an advisory capacity for three retail outlets—

a clothing store, a jewelry store, and a decorating firm. He has also operated two farms, and retains a 20-percent interest in the clothing store and one of the farms. Since July 1960 he has made four trips to Omaha in behalf of station KOOO, "primarily on engineering matters and movement of studio" (Tr. 174).

23. At KSIR Pyle works with Bozeman in the programing of the station. He is vice president and a director of KSIR, Inc., but as noted above, owns no stock in that corporation. From 1949 to 1958 he was treasurer and 5-percent stockholder of KFBI, Inc. His 20-percent (now 33 $\frac{1}{2}$ percent) ownership interest in the licensee of KOOO, Omaha, dates from 1960.

24. Pyle is a registered professional engineer in Kansas and a past member of the NAB National Engineering Committee. He is State chairman of the State Industry Advisory Committee (FCC) and a member of the National Defense Executive Reserve (FCC). He has been a member of the Downtown Kiwanis Club with a record of 16 years' perfect attendance; and is a Shriner and for 15 years served on the directors' staff of the Midian Shrine and helped organize the Midian Shrine Oriental Band. He is past chairman of the Salvation Army Advisory Board, and has served on the board for 15 years. A member of the Wichita Chamber of Commerce, he is active on its retail trade committee. He is active in the Community Chest and Red Cross.

25. Together with Bozeman and Early, Pyle prepared Pier San's application. Pyle will be general manager of the proposed Larned station, as well as chief engineer. He will organize the station staff. He proposes to move his home to Larned and will devote full time to the operation of the station. He also proposes to participate in Larned activities. Upon a grant of the Larned application, Pyle will sever all connection with KSIR. He testified that he looks forward to moving to the small community of Larned and running a station there because he has reached an age at which a slower pace of living is attractive.

26. *Port Early* was born in Kingman, Kans., in 1917, and now lives in Wichita. He is a graduate of the University of Kansas School of Business and School of Law, and since 1950 has practiced law in Wichita. From 1940 to 1941 he was a field collector for the John Deere Plow Co., and from 1941 to 1943 head of the expediting department of the Glenn L. Martin Co., Omaha. From 1943 to 1946 he was in military service. He is a Mason and Shriner, and member of St. James Episcopal Church. He occasionally sells time for KSIR, and as a member of the board of KSIR, Inc., participates in frequent discussions with Bozeman and Pyle on the programing and policy of the station. The exhibit submitted in his behalf declares that he "will be making frequent trips to Larned to assist in the operation and actively participate in the activities of the station as far as it is desirable and necessary. It is estimated that 1 day a week, on an average, will be spent in Larned."

27. *Webb Pierce* was born in Louisiana in 1921, and has lived in Nashville, Tenn., since 1952. He is vice president of Cedarwood Publishing Co., Inc., and a director of American Investors, both of

Nashville. He is president of Statue Records, a recording company promoting young talent. Pierce also records for Decca Records and makes personal appearances. Pierce will, if requested, lend his "professional services" (as an entertainer) on occasion to the proposed station, but he will not participate in the actual operation of the station.

28. *Jim Denny* was born in 1911 and lives in Nashville. From 1929 to 1956 he was employed by the National Life & Accident Insurance Co. and station WSM, Nashville. He owns and operates two businesses in Nashville: Cedarwood Publishing Co., Inc., and the Jim Denny Artists Bureau, Inc. His participation in the Larned station would be of the same limited scope as is contemplated for Pierce.

29. *Past broadcast record.*—As above indicated, the five Pier San principals have or have had various broadcast interests. Before the hearing, counsel for Morgan indicated that he wanted to explore the records of the stations involved (KSIR, KOOO, WBRO, and WJAT). The hearing examiner ordered the production of their logs for stated periods, and they were delivered to counsel for Morgan. Morgan's counsel did not introduce any of the logs or an analysis of them into evidence, though at the hearing and in his proposed findings he raised some question about the operations of KSIR, which will be discussed below. As to the stations other than KSIR, therefore, it can be assumed without further discussion, in view of Morgan's opportunity and failure to show anything detrimental in their records, that nothing contrary to the public interest is apparent in the record of their operations. So far as KSIR is concerned, specific consideration will be given to its record, both because of Morgan's criticism and because Pier San relies upon KSIR's operations as a point in its favor.

30. KSIR, Wichita, had been operating for about 2 years at the time of the hearing. An analysis, by type and source, of KSIR's programs during the 1960 composite week, follows:

<i>By type</i>	<i>Percent</i>
Entertainment -----	79.85
Religious -----	5.78
Agricultural -----	1.79
Educational -----	2.19
News -----	9.2
Discussion -----	1.19
	100

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By source

	8 a.m.- 6 p.m.	6-11 p.m.	All other hours	Total
	<i>Percent</i>	<i>Percent</i>	<i>Percent</i>	<i>Percent</i>
Recorded commercial (RC).....	81.4	80.75	78.1	81.1
Recorded sustaining (RS).....	4.08	8.75	7.86	4.76
Wire commercial (WC).....	.72		.88	.19
Wire sustaining (WS).....	7.2	10.5	1.8	6.7
Live commercial (LC).....	3		7.86	3.4
Live sustaining (LS).....	4.2		3.5	3.85
Total commercial.....	84.52	80.75	86.84	84.69
Total sustaining.....	15.48	19.25	13.16	15.31
Complete total.....	100	100	100	100
Actual broadcast-hours (per week).....	69.25	4.75	9.5	83.5
Number of spot announcements (SA) (per week).....	578	17	79	674
Number of noncommercial spot announcements (NCSA) (per week).....	51	9	5	65

31. In its original application, KSIR proposed an educational program percentage of 6.82 percent. As noted in paragraph 30, in the 1960 composite week the percentage so classified by the station was considerably less; but to support its contention that KSIR is substantially living up to its representations, Pier San relies, with little documentation, on program activity for the benefit of schools and other "educational" material not expressly meeting the Commission's definition. It points especially, however, to a program called "Great Works in Music," which KSIR classifies "Educational" and which will be considered at length below. In fact, it seems that "Great Works" is the only program now regularly carried specifically classified as "Educational" (Tr. 257). Bozeman testified, however, to having on occasion carried "interviews" over KSIR with Wichita University and Friends University, though no information was vouchsafed as to their contents. During the school year KSIR constantly makes announcements on behalf of the public schools. School closings caused by the weather are announced, and students frequently interviewed about school activities. KSIR was working on the mechanics of securing daily announcements from Wichita schools for regular broadcast during the coming season.

32. "Great Works in Music," a recorded program, is carried throughout the year, for 2 hours each Sunday afternoon. It is the only program during the week presenting "classical" music. The program is prepared and announced by Mr. Bart (whose first name does not appear in the record), an educated musician especially engaged for this purpose. He visits the schools and produces the program on the basis of the teachers' suggestions, keying his selections of works or artists to material being studied in the schools. Bart often invites school music instructors to appear with their pupils on the program. The conductor of the Wichita Symphony Orchestra appears from time to time to explain works the orchestra has scheduled. Bart prepares for the program during the week preceding the Sunday broadcast. Monthly, the station publishes a printed schedule of "Great Works in Music" programs planned for the next 4 weeks, and

distributes them to schools and listeners requesting them. Some 2,000 are distributed monthly, with 200 sent to the Wichita Superintendent of Schools, at his request, for use in music classes. Although the program is sponsored, KSIR's latest audit by Early shows that it loses \$10 a week on the program because of the heavy printing and distribution costs of the schedules.

33. KSIR's original application proposed a once-a-week 1/2-hour discussion program there entitled "Problem of the Week" (Civic Problem Discussion). For this program apparently a studio discussion was envisaged, but the station at present has no program with such a format. Instead, a 15-minute daily on-the-street program is carried, with the announcer-moderator generally asking questions of passers-by on various topics. Occasionally—arranged though also *al fresco*—interviews are scheduled with "experts" on public subjects. During election campaigns KSIR invites candidates to appear on the program, at no cost. Pier San concedes (proposed findings, par. 57) that questions of cosmic interest are not asked every day on the program, the implication apparently being that the questions are pretty trivial, if interesting, at times. The original program proposal also specified a 30-minute program called "Our Home" for announcements of club activities. After the station started operating, however, Bozeman felt that it would serve housewives better if club news was broadcast throughout the day rather than if it was compressed in a single program; the announcements are now made every day on Bozeman's morning program and during the afternoon. An average of 65 noncommercial spot announcements are carried each week, or about 3,400 a year. KOOO now limits these announcements to a single period, and Bozeman feels that KSIR's all-day method is so much better that KOOO is thinking of changing its practice. Originally proposed religious programming has similarly undergone some change, as actual operating conditions required. The scheduled times for two religious programs were shifted, but otherwise carried as proposed. A proposed 30-minute Catholic program is not being presented, although the station has often attempted to get the cooperation of the local church. A Jewish program, originally proposed, is not being carried, although "earlier they [the Jewish congregation] had indicated perhaps they would be interested in this" (Tr. 283), because the congregation does not want their religious services broadcast; they prefer to have announcements made, and KSIR cooperates. KSIR Sunday-morning programming is entirely religious, live and recorded, except for news interruptions. A 15-minute program of Sunday school readings and recorded religious music is carried at 7:30 a.m. for Grace Methodist Church. A 1-hour program for Gideon Baptist Church is carried at 11 a.m. It originates live at the church; the station does not charge for time, but the church pays all live charges and remote expenses, so the program is logged as commercial. The program is not rotated among other churches because of the line charges involved in making changes every week. KSIR investigated the possibility of rotating by taping programs, but the station did not have the equipment and the churches would not share the recording equipment and tape expenses.

34. KSIR's agricultural programming consists mainly of farm news and market reports, carried daily except Sunday from 6:45 to 7 a.m. Pyle testified that although the calculated 0.5-mv/m contour of KSIR includes some rural area in the South, actual listeners there are few because there are many other stations to which they turn.

35. Newscasts on KSIR are classified both live and wire, some being sustaining and others commercial. The wire service is the basis of national news, but for local news the station has a news director, stringers, and other services. The station tries to broadcast local news as fast as it breaks.

36. KSIR's entertainment programs include the "Ranch Boys," a 30-minute program which is the only live musical program carried by a Wichita station. A variety of other simple recorded music—western, "popular," and "album" music—presided over by "personalities"—rounds out the entertainment schedule (as previously noted, "Great Works in Music," featuring "classical" music, is logged Educational). Bozeman took pride in the fact that KSIR is "the only station in Wichita that is playing any western music at all" (Tr. 231).

37. *Location of other stations in which Pier San principals have interests, and other related pertinent facts.*—KSIR, Wichita, operates on 900 kc, 250 w, daytime only. KOOO, Omaha, operates on 1420 kc, 500 w, daytime, directional, and holds a construction permit to increase power to 1 kw, directional. WBRO, Waynesboro, Ga., is on 1310 kc, 1 kw, daytime; WJAT, Swainsboro, Ga., is on 300 kc, 1 kw, daytime; and WSNT is on 1490 kc, 250 w, unlimited. KSIR, at Wichita, is about 105 miles from Larned; and KOOO, at Omaha, about 257 miles from Larned. Wichita is 253 air-miles from Omaha. The Georgia stations are more than 800 miles from Larned and Wichita, and 1,000 miles from Omaha. None of the stations serve Larned, nor would the Larned proposal serve Wichita, Omaha, or the Georgia towns. There is no overlap of the 2-mv/m contours of KSIR and the proposed Larned station; the 0.5-mv/m contours would overlap, however, with about 35 percent of the area within the Larned 0.5-mv/m contour included, but in this overlap area there are a minimum of 15 other services at any one point and a maximum of 24. The population in the overlap area was not calculated on the record, but inspection of maps and exhibits indicates that it is a sparsely settled rural area some 45 to 88 miles from Wichita and 5 to 55 miles from Larned. There is no other overlap of any grade service between the other stations in which Pier San principals are interested.

38. *Preparation for programming.*—After the application was filed, Morgan called upon, personally or by telephone, individuals and representatives of associations and community organizations in Larned, to discuss participation in his station's proposed programs. He (and in one instance his father) spoke to representatives of the county attorney's office, chamber of commerce, local business houses, Red Cross, sheriff's office, city manager's office, Garden Club, Music Clubs, Ministerial Alliance, Kiwanis, Rotary, farm agents, school superintendent, Fort Hays Kansas State College, and State game commission, among others. Contacts, some duplication of previous contacts, were made on the following dates: April 8, 1959, 4; April 18,

1959, 1; July 29, 1959, 2; August 1959, 2; March 15, 1960, 4; March 30, 1960, 1; April 28, 1960, 1; July 25, 1960, 2; July 26, 1960, 5; July 27, 1960, 7; July 28, 1960, 1; August 2, 1960, 3; August 3, 1960, 1; August 8, 1960, 2; August 10, 1960, 1; August 11, 1960, 1. In all, Morgan spoke to about 28 persons. In general, the persons spoken to expressed interest in the proposed programing and a willingness to cooperate. Contacts of a similar nature (all personal, however) and with similar result, with the Larned High School principal, county home demonstration agent, U.S. Soil Conservation agent, mayor of Larned, chamber of commerce representatives, county school superintendent, Ministerial Alliance, and Rotary president, were made by Pyle for Pier San on May 2, 1960. Pyle made six or seven trips to Larned from the time work was started on the Pier San application, two being after May 2, 1960.

39. *Proposed programs.*—Morgan proposes to operate 70 hours a week, daily from 8 a.m. to 6 p.m. Morgan's analysis, by type and source, of his typical week's proposal follows:

By type

	<i>Percent</i>
Entertainment -----	45. 82
Religious -----	1. 83
Agricultural -----	14. 7
Educational -----	1. 83
News -----	20. 7
Discussion -----	8. 10
Talks -----	7. 85

By source

	8 a.m.-6 p.m.	All other hours	Total
Network commercial (NC)			
Network sustaining (NS)			
Recorded commercial (RC)	46		46
Recorded sustaining (RS)	9		9
Wire commercial (WC)	12		12
Wire sustaining (WS)	2		2
Live commercial (LC)	1		1
Live sustaining (LS)	30		30
Total commercial	59		59
Total sustaining	41		41
Spot announcements (per week)	500		500
Noncommercial announcements (per week)	50		50

40. *Entertainment.*—Morgan's entertainment program will be primarily of recorded music, the types proposed being the simpler categories like western, popular, instrumental, and martial, but ignoring the more complex and sophisticated genres. "Kiddies Hour," a recorded musical program, will include safety tips for children. Morgan believed that Larned listeners want a "better class" of music than rock-and-roll. By "better class," he testified, he meant "the big bands and orchestra music" (Tr. 144).

41. *Agricultural.*—A 5-minute "Opening Markets" broadcast will be heard each morning at 8:55 a.m. Another 5-minute market report will be made at 10:55 a.m. daily, and at 1 p.m. a 5-minute program will give

the closing market reports, including livestock prices for the day from the major midwest terminals, the news to be obtained from the wire facilities. Local market reports, if available, will be used at this time also. On Sunday, farm news will be carried, for 5 minutes each, at 8:55 a.m. and 10:55 a.m., and for 30 minutes at 1 p.m. During a late-afternoon "western" musical program, material from the Kansas State Agricultural College on fertilizing, new sprays, planting time, and the like, will be broadcast.

42. Morgan has scheduled the "Farm Hour" at 3 p.m. weekdays. It will carry livestock, implement, and farm sale descriptions, and national and regional farm news from the wire. The program will also include news from the county agent, 4-H, and HDU activities, and local produce and grain prices. The whole will be interspersed with popular and western music. The scheduling of this program in the middle of the afternoon opens up a time-honored controversy as to the best time to reach farmers. Morgan testified that the program "was designed for the rural area" (Tr. 107), but he went on to say that he did not know how many farmers and farmworkers would be able to listen to a farm program at 3 p.m., and he agreed that most of them would be in the fields away from a radio.

43. *Educational.*—On Saturday and Sunday, for 40 minutes beginning at 10:15 a.m., Morgan will offer time to Larned and other area schools on a rotating basis. He will try to present high school speech and drama classes and debating teams. When local material is not available, he will use programs furnished by the National Association of Educational Broadcasters and State universities.

44. *News.*—There will be 15 minutes of news, civic topics, and weather at 8 a.m. every day, some of the material from the wire but most of it local. The 15-minute 9 a.m. "World News" every day will carry a daily summary of national, State, and international news, and weather. At 10 a.m. every day there will be another one-quarter hour of news and weather, "consisting of 5 minutes [each] of national, State news, and weather for State of Kansas and some forecast for Larned area" (Morgan exhibit No. 6, p. 1). The 5-minute 11 a.m. local newscast each day will feature police reports and a summary of Kansas news from the leased wire. News will also be carried at 12:30, 4, and 5:50 p.m. daily, and 12:30, 4, and 5:50 p.m. Sunday. Daily at 5:45 p.m. and Sunday at 5 p.m. there will be 5 minutes of sports news from the wire or the staff. Daily, at 29 minutes past the hour, there will be a 1-minute weather forecast for Larned and the area, and at 5:55 each evening national, State, and local weather news will be furnished.

45. Morgan will have one full-time news director, who will also be an announcer; and he may be a continuity writer and salesman as well, though Morgan said, "If it can be avoided, he won't" (Tr. 105).

46. *Discussion.*—"Open for Discussion" is the title of a 1-hour daily (except Sunday, when it is 15 minutes) program. According to the

description in Morgan's exhibit No. 6, page 3, it "Schedules for discussion of local civic club activities, Red Cross, and other organizations operating in the public interest. Also school problems, traffic problems, necessity for expansion or improvement of public utilities, problems facing the city council, etc. Material for discussion programs is also available from the Manion Forum, South Bend, Ind., and other sources. The National Association of Educational Broadcasters can also provide some programs relating to civil rights and court decisions. The Broadcasting Foundation of America (National Educational Television and Radio Center, New York City) has various programs of good music from abroad. These will be carried some days. When adequate discussion material is not available for this program, it will be classed as RS (1) and feature music of the big bands such as Tommy Dorsey, Ray Anthony, and Glenn Miller."

47. Morgan would editorialize over his station, and would seek out opposing views. He testified that he would permit a broadcast by one who might be espousing unpopular views, if he felt his talk was in the public interest.

48. *Talk*.—"Party Line," a 1/2-hour program Monday through Saturday, will feature telephone conversations over a beeper-equipped telephone between the announcer and listeners. Birthday and anniversary greetings would be announced, and the subjects of the greetings called and asked questions about the number of people in the family, how long they have been married, and the like. At 9:15 a.m., Sunday, "Housekeepers Chat" would run for one-half hour. A woman staff member will talk on topics like fashion and family care, and interview women in the area chosen for their prominence in various fields. "The Old Book Shelf," a 15-minute program at 1:30 p.m., Sunday, will consist of verse reading with background organ music.

49. *Religious*.—Morgan proposes a local live 15-minute religious broadcast each morning, including Sunday. Ministers from the Ministerial Alliance will be assigned the program each week on a rotating basis. "Hymn Time" will be one-quarter hour each day, including Sunday, of recorded hymns and Larned church announcements. No additional Sunday religious programs are proposed.

50. *Pier San* would operate 83 hours a week, from 6 a.m. to 6 p.m., Monday through Saturday, and from 7 a.m. to 6 p.m., Sunday. Its analysis, by type and source, of a typical week's program follows:

<i>By type</i>	<i>Percent</i>
Entertainment -----	59.60
Religious -----	2.53
Agricultural -----	13.83
Educational -----	4.23
News -----	8.21
Discussion -----	11.60
	32 F.C.C.

By source

	8 a.m.-6 p.m.	All other hours	Total
	<i>Percent</i>	<i>Percent</i>	<i>Percent</i>
	No network proposed	No network proposed	
Network commercial (NC).....	59.7	34.6	55.5
Network sustaining (NS).....	9.9	7.15	9.48
Recorded commercial (RC).....	4.8	15.5	6.58
Recorded sustaining (RS).....	4.05	.65	3.58
Wire commercial (WC).....	2.05	34.6	7.16
Wire sustaining (WS).....			
Live commercial (LC).....			
Total commercial.....	66.55	84.7	69.44
Total sustaining.....	33.45	15.3	30.56
Proposed broadcast-hours (per week).....	70	13	83
Spot announcements (per week).....	356	66	422
Noncommercial spot announcements (NCSA).....	84	18	102

51. *Entertainment.*—The entertainment programs will primarily consist of recorded music, some, however, with narration or comments. The applicant proposes to bring a variety of music to listeners, and to use block programming for its musical programs where possible, keeping religious music, popular music, “classical” music, and western music in various segments of the broadcast day. Its musical programs are scheduled throughout the day. Typical “blocks” of music are “Town and Western Music,” “Breakfast-Time Music” (light recorded music), “Religious Music,” “With the Classics” (55 minutes of “better type” music with narration on the orchestra or artist), “Teatime Tunes” (from 2:35 p.m. to 3 p.m., light recorded versions of popular, present and past Broadway musicals), “Popular Music,” “Polka Time” on Saturday afternoons, “Dance Party” on Saturday afternoons with popular recordings for teenage dance groups, and “Music Box” with records of old popular recordings.

52. *Agricultural.*—From 6 to 7 a.m., Monday through Friday, Pier San will carry a farm program, consisting of releases gathered and edited by the station’s staff from the county farm agent’s office, Soil Conservation office, and local agricultural markets and grain elevators. The program will be interspersed with music, and of the 1-hour program it is anticipated that about 15 minutes of material will come from the news wire services in the form of market reports and other information.

53. At 12:10 p.m., for 10 minutes, there will be a complete breakdown of the Kansas City, Wichita, St. Joseph, and Omaha markets for livestock and grain. Again at 2 p.m., for 5 minutes, local news and closing market reports from the U.S. Department of Agriculture will be furnished. Time and temperature reports will be broadcast throughout the day, with accurate thermometer, wind direction and velocity meter readings. Storm alerts from the nearest Weather Bureau will be broadcast.

54. On Saturday from 8 to 9 a.m., notices of farm sales and county news and meetings of various organizations will be included in a recorded western music program. For 15 minutes on Saturday afternoon, beginning at 1:05 p.m., farm news and farm highlights from

experimental stations conducted by the Kansas State College will be broadcast, dealing primarily with new farming developments.

55. Pier San's program proposal contemplates operation during the warmer months before local sunrise. One farm program is scheduled in the early morning, but Pyle testified that consideration had been given to moving the program if the station, because of a change in the Commission's rule or because of some objection by another regional station, would not be authorized to operate before local sunrise. It then would be placed in the earliest possible hour in the schedule. For example, if the station signed on at 7 a.m., the farm program would run from 7 to 8 a.m. Pyle believes that during months when the program might begin at 7 a.m. rather than earlier, farmers do not go to the fields as early because of later sunrise.

56. *Educational*.—"KU Classroom" is a recorded program, prepared by the University of Kansas, with specific subjects featured each day in the week (for instance, mathematics on Monday, English on Tuesday, etc.). The courses are prepared by the university, to help smaller schools, with outstanding authorities on various subjects. It will be carried on weekday afternoons, from 2:05 to 2:35 p.m. (This proposed program was described by Pyle, who testified that some years ago Emporia State Teachers' College, Emporia, Kans., presented a similar program over what was at that time a reversible wire of the Mutual Network serving Kansas. The program was carried by nearly all the member stations and was well received. When Mutual revamped its system so that the wires could not be reversed, the Emporia program had to be discontinued and Kansas University developed the program now proposed by Pier San, offering it to stations on a taped basis.) The program is designed for in-school listening. Pyle talked to the county superintendent of schools, who expressed great interest in the program, but Pyle did not know whether there would actually be in-school participation, though he is "in hopes" there will be.

57. Already mentioned under "Entertainment," but also claimed as "Educational" by Pier San because it *can* be used in conjunction with music appreciation courses (though no details are given) is "With the Classics," the 55-minute weekday afternoon recorded musical program. Another "Educational" program is "Teacher's Desk," 15 minutes on Saturday morning, featuring school news and coming events of county and city schools.

58. *News*.—Headline overnight developments, including items on local news and sports, will be carried for 5 minutes at 7 a.m. A 5-minute news summary on overnight stories from the press wire will be broadcast at 8 a.m. Five minutes of news, generally from the wires, each hour thereafter, will be given, and at noon the news period will be increased by 5 minutes for a complete summary of weather for the entire region as an aid to travelers. The 2 p.m. news will include information from closing markets, furnished by the Department of Agriculture. At 5 p.m. a résumé of sports scores will be included with the news.

59. Pier San will establish a regular local news beat. Stringers will be used for the surrounding area. State and national news will

come from a wire service, and initial discussions have already been held with UPI for this purpose. As there is no weather bureau in Larned, Pier San will buy an accurate thermometer, a wind direction and velocity meter, and a barometer, for local broadcasts of basic data (see par. 53, above). General weather forecasts will be furnished as released by the nearest Weather Bureau office. The station will use portable tape to cover events on the scene when landlines are not practicable.

60. *Discussion.*—"This Is My Opinion" will be carried each weekday from 4:20 to 5 p.m. and from 5:05 to 6 p.m. It will consist of telephone conversations with listeners who call in and have opinions on subjects they wish to discuss. Topics will include references to local civic activities and issues, but it is not expected that all conversations will be limited to controversial issues, and when not so limited that portion of the program would be classified as "Talk" rather than "Discussion." On Saturday "This Is My Opinion" will run from 5:05 to 6 p.m., and will be directed to teenager participation. On "The Editorial Page," a 25-minute program on Sunday afternoons, an announcer will read letters sent in by listeners. Pier San "anticipates" that city and county officials will participate in this program.

61. "Talk" programs apparently include "Kitchen Chatter," a 10-minute Monday-Friday morning program, with news on home economics, recipes, and other information for women, including material from the county home demonstration office. Saturday afternoon programming will be changed seasonally to present high school games, either on a live or tape-delayed basis; if the games are played during the week, they will be covered at that time.

62. *Religious.*—Each morning, for 10 minutes, at 7:05 a.m., a prayer for the day and religious music will be carried. The prayer will be taped by a local minister, and the schedule of ministers will be rotated on a weekly basis among the different faiths. On Sunday morning, 55 minutes of religious music will be broadcast at 7:05 a.m. Music of various faiths will be included. A 15-minute program, "Billboard of Church Services," will be broadcast on Sunday at 8:05 a.m., giving a complete résumé of church services scheduled in Larned and Pawnee County. A 20-minute "Sunday School Lesson" will be broadcast at 11:05 a.m. on Sunday. This program will include Bible readings and a Sunday school lesson, together with religious music. A 55-minute religious program will be carried on Sunday evening, from 5:05 to 6 p.m. It will be a rebroadcast of a morning church service from one of the churches in the area. It is proposed that each Sunday morning a different church service will be taped during the regular church service. Rotation among the churches will be made so that all may have equal representation. The religious programs will include members in the Ministerial Alliance, as well as nonmembers on occasion.

63. *Management and staffing.*—As noted above, Morgan will move to Larned and devote his entire time to his station as general manager and chief engineer. His wife will be bookkeeper. In addition, he will hire two full-time engineer-announcers, one news director, one

full-time salesman, and a receptionist who will also handle women's programs and continuity. For Pier San, Pyle, also as previously mentioned, will move to Larned to serve full time as the station's general manager and chief engineer, severing his connection with KSIR. The station will employ a news editor, three announcers, and one administrative employee. Part-time employees will be added as needed. In addition, Pier San proposes to use available outside talent for occasional appearances, or, if they merit it, more often. KSIR and the proposed Larned station will be operated with separate staffs, and except for the participation of Early and Bozeman to the extent already described, with separate managements.

CONCLUSIONS

64. *Section 307 (b) choice.*—First to be decided is the section 307 (b) issue whether Pratt or Larned is entitled to the one frequency allocation possible in this case. That section directs that—

In considering applications for licenses, and modifications and renewals thereof, when and insofar as there is demand for the same, the Commission shall make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same.

Huffman contends that an unlimited time grant to Pratt (Pratt's first *nighttime* and second *daytime* station) would be more "fair, efficient, and equitable"⁵ than a daytime-only grant to Larned because (a) Huffman would bring a new daytime primary service to 33,504 more persons than either of the Larned proposals; (b) it would eliminate a daytime gray area in Dodge City, Kans. (see, however, par. 5, above, footnote); and (c) it would eliminate a substantial white area nighttime to more than 9,000 persons. The Broadcast Bureau, for similar reasons, declares that a first *nighttime* station for Pratt should be preferred over a first station for Larned. The Larned applicants stress the Commission's policy of providing every community of substantial size, where possible, an "outlet for local self-expression." They note that Larned is a substantial community without a station. Also, they say, Huffman's nighttime operation would be inefficient because of high population loss within its nighttime normally protected contour,⁶ and so he should not, for this additional reason, be favored, though his application is for unlimited and theirs is for daytime-only operation.

65. Larned is unquestionably a "substantial community," if only somewhat over half the size of Pratt; it now *receives* only two daytime primary services, the closer of the stations being 23 miles away. Larned and Pratt both are county seats. The counties are only about a thousand apart in population. Unless there is a good reason for a different course, Larned should have its first local outlet, daytime only though it is, before Pratt gets its second daytime and first night-

⁵ Huffman argues that the three words should be considered in combination, and not separately.

⁶ They realize that as a first nighttime station it would fall within an express exception of rule 3.28 (c) (3). Morgan, however, notes in his reply (par. 8), that the Commission is now designating for hearing applications which are within an exception to the 10-percent rule.

time station: *Lawton-Fort Sill Broadcasting Co.*, 7 R.R. 1216, 1234. The chief question is whether the eradication of the nighttime white area by Huffman dictates a grant to Pratt; put to one side may be such subsidiary considerations as the greater number to be served daytime by Huffman than by the Larned proposals; and, cutting the other way, Pratt's substandard nighttime service population.

66. Huffman has cited no case in which the factors he relies upon, including the elimination of a white area, have prevailed over an application for a first local station. Moreover, it is highly doubtful that a white area, as such, is now to be given the respectful attention Huffman advocates: See *Vidalia Broadcasting Co.*, 8 R.R. 1; *Gillespie Broadcasting Co.*, 15 R.R. 878; 15 R.R. 828a, *affd.* by court of appeals sub nom. *Red River Broadcasting Corp. v. FCC*, 19 R.R. 2028.⁷ It must be concluded that Huffman has not overcome Larned's claim to its first station, and that the section 307 (b) issue must be decided in favor of one of the Larned applicants. The additional interference Morgan would impose upon KSOK, to which that named respondent has not indicated any objection (it did not participate in the case), is so small as not to disqualify Morgan from the comparative determination which must now be made between him and Pier San.

67. *Comparison of Larned applicants.*—Larned being the preferred community, a choice must be made, under issue No. 5, between Morgan and Pier San. Pier San contends it is superior to Morgan under the following standard criteria: Local residence; civic participation; diversification of business interests; broadcast experience; integration of ownership and management; past record of operations; preparation of program proposals; and the program proposals themselves. It concedes a factual, though, it says, not controlling preference to Morgan in respect of diversification of ownership of communication media; and claims no preference for staff. Morgan, on the other hand, asserts that *he* should be favored because of local residence; integration of ownership and management; civic participation; diversification of ownership of communication media; broadcast experience; and program preparation; he realizes that since he has no prior ownership of a station, he has no past operation record to compare with "Bozeman or others at KSIR" (proposed conclusions, par. 5), but argues that "the discrepancies between Bozeman's proposals [for KSIR] and actual performance do not reflect too favorably upon him" (par. 6).

68. *Local residence.*—Both Morgan and Pyle propose to move to Larned. Neither has ever lived there. Morgan spent his youth in two towns 23 and 49 miles from Larned, and then in Pratt, 50 miles away. Pyle has lived in Wichita, 105 miles from Larned, since 1940, and before that lived and worked in Milford, Abilene, and Salina, Kans. Bozeman has lived and worked in Wichita since 1951, and has appeared in Larned as an entertainer. Port Early also lives in Wichita.

69. Future residence is not "entitled to the same weight as that given for present, and, particularly, demonstrated long-term residence": *Triad Television Corp.*, 16 R.R. 501, 664d. To the extent

⁷ Cf. report and order released Sept. 19, 1958 (daytime standard broadcast stations), 17 R.R. 1669, 1694.

that Morgan and Pyle are future residents of Larned, they are individually on a par; insofar as some superiority is claimed by Morgan because of his residence in small towns near Larned, the record does not permit an inference to be drawn that knowledge of the other communities would be useful in Larned. Since Morgan has a 100-percent interest in his proposed station, and Pyle's interest in Pier San is only 20 percent, it might be held that Morgan's future local residence, discounted though its value may be, tends more heavily in his favor than Pyle's for Pier San. And Pier San's claim that it is to be favored on local residence because of Pyle's general competence to be demonstrated in running the station must be rejected. But it appears to the hearing examiner, and he concludes, that it would be an unrealistic refinement upon the usual evaluation under the present criterion, to attempt a meaningful appraisal of one-fifth of a *future* local residence [Pyle's] against the monad Morgan's. No points are awarded in this class.

70. *Civic participation.*—Having never lived in Larned, the civic activities of the principals have all been in other communities; traditionally, less weight has been given to participation outside the city to be served than to local activity, but it is not to be ignored. Seizing upon the possibility of a preference by reason of outside activity, Pier San calls Morgan's civic record "slight" (proposed conclusions, par. 137), apparently either considered alone or in comparison with the Pier San principals'. Morgan's record suffers only when matched against Pyle's the only one of Pier San's principals who has shown a fairly substantial list of civic activities (and even it hardly qualifies Pyle as one who has been in the forefront of a multitude of civic movements). Yet the fact that Morgan is far younger than Pyle must also be taken into account. It can be expected that both Morgan and Pyle would be active in Larned's civic life. In this category again, such distinctions as may be derived from the facts are not sharp enough to permit one of the Larned applicants to be preferred over the other.

71. *Integration of ownership and management.*—With 100 percent integration, Morgan enjoys (though Pier San only at first grudgingly concedes it, then calls the difference too small for preference, proposed conclusions, par. 143) a quantitative superiority over Pier San. Only Pyle will devote full time to the Pier San station, and Bozeman and Early plan to spend on the average 1 day a week there. But Pier San contends that its integration will qualitatively be more meaningful because of "the more extensive broadcast experience of its principals who will be integrated" (proposed conclusions, par. 143). With all due allowance, however, for the greater experience of Pyle, not to mention Bozeman and Early, it cannot be said that Morgan has demonstrated such a lack of experience as to prompt the suspicion that his proposals will not be translated into reality merely because of any alleged shortcoming on this score. The cardinal feature of integration as a criterion is its assurance that the policies of an owner will more readily be effectuated if he directly operates the station than if he is removed from the scene and acts through employees.

With this in mind, it is evident that Morgan's showing on integration is definitely superior to Pier San's.

72. *Diversification of business interests.*—On this minor element in the comparison complex, Pier San is unquestionably preferred over Morgan. Pier San's principals have been in the following businesses in Kansas and elsewhere: broadcasting, professional entertaining, retail consulting, farming, haberdashery, law practice, music publishing, and recording. Morgan's experience, on the other hand, is limited to employment at his father's Pratt station and his current job of selling advertising specialties.

73. *Broadcast experience.*—Early has some experience as a time salesman for KSIR and as a member of its board in the discussion of programing and policy; Pierce and Denny have ownership interests in stations, but the record is barren of any evidence as to their actual broadcast experience; Bozeman has been associated with broadcasting since 1938 in various capacities. Pyle is a pioneer in the broadcast industry, having started in 1924 as a radio operator. Though his experience and background have been primarily technical, they are by no means limited to that phase of operations, and he is now general manager and chief engineer of KSIR, working with Bozeman in the programing of the station. Morgan helped his father install KWSK at Pratt and worked as an announcer-operator there before he went into the service. He returned to KWSK in 1958 and for the next 22 months worked there as an announcer-operator, salesman, and chief engineer. Although he ran the station when his father was away, he could not hire or fire employees, execute contracts except for the sale of time, or sign any checks. On balance, Pier San must be awarded a substantial preference here because of the long experience in varied aspects of station operation, technical and programing, of Pyle and Bozeman. Morgan's experience has been considerably shorter, and although at a station serving a market similar in many respects to Larned, has been of a more subordinate and less responsible nature.

74. *Broadcast record.*—Neither applicant as such has been the licensee of a broadcast station, but each of Pier San's principals has an interest in one or more existing stations. Morgan has had no ownership interest in a station.

75. Attention will first be directed to Pier San's proposed conclusion (par. 145) that because the logs of KOOO, WBRO, and WJAT were made available to Morgan's counsel, and he raised no question about their operations nor introduced the logs into evidence, it must be held "that they have been programed in a manner meeting the needs of their respective communities and the requirements of the Commission." This, however, would be an inadmissible inference from the mere fact that Morgan's counsel did not question the programing; the limits of the permissible deduction from his silence have been stated in paragraph 29, above. To go as far as Pier San proposes would be to constitute Morgan's counsel the final judge of the stations' operations. It is noteworthy that Pier San itself did not introduce the logs of these stations to indicate their meritorious operation, but seeks instead to rely on Morgan's apparent inability to find

anything *detrimental* in the logs as a basis for a wide-ranging *affirmative* conclusion. While it will be assumed, therefore, as already stated, that there has been nothing prejudicial to Pier San's qualifications in the operation of the stations, their undisclosed record as such cannot affirmatively be used here in its favor. The only one of the Pier San-identified stations whose record is in evidence is KSIR, and it is that station's operations to which the discussion now turns.

76. KSIR had been on the air for only about 2 years at the time of the hearing. Its especial pride is "Great Works in Music," an admirable program described in some detail in paragraph 32, above. Whether it is rightfully classified as "Educational" because of the tie-in with the Wichita schools is not important. Whatever the proper classification, the program evinces a concern for tastes of the community not satisfied by ordinary music offerings. The program is carefully prepared and produced by a musician engaged for the purpose, and 2,000 copies of a printed schedule of forthcoming programs are distributed monthly. Perhaps Pier San can be accused of trying to exaggerate the significance of "Great Works in Music" to divert attention from its inability to itemize and describe particularly other KSIR "educational" programs to justify an approximation to the percentage proposed in the original KSIR application, but there is no denying the value of the program, both in itself and as a demonstration, in one instance at least, of KSIR's praiseworthy assumption of a licensee's responsibilities.

77. (a) It is not apparent from the record that, beyond some problematical loss of dignity in conducting the program outdoors rather than in a studio, there has been a condemnable departure from the discussion program policy KSIR projected in its original application. On occasion "experts" do appear on the program, as they might also in a panel studio discussion program. During election campaigns KSIR has invited candidates to appear on the program at no charge. (b) KSIR has a praiseworthy record of cooperation with churches in producing religious programs. (c) In addition to subscribing to a wire service for national news, it employs a news director and stringers for local news, and attempts to broadcast local news as it breaks. (d) The station's entertainment programs are limited to live and recorded music programs (see par. 36, above). (e) Some agricultural programs are carried (see par. 34, above). (f) The 1960 composite-week analysis shows no "Talk" programs, and 85 percent of all programs during the 1960 composite week were commercial.

78. The hearing examiner has not been carried away by Pier San's encomiums upon KSIR's record, but has tried to make a sober appraisal. While obviously capable of improvement in several respects—among others, by a greater diversity of "Entertainment" programs; by the production of more true "Educational" programs; by the presentation of "Talk" programs; and by a more consistently serious presentation of "Discussion" programs rather than resting content with trivialities occasionally, and apparently haphazardly, relieved by more important content—KSIR's record nevertheless tends in Pier San's favor for reasons apparent in these conclusions.

79. *Program preparation.*—Bozeman was “encouraged” to apply for a Larned station by local residents who liked him as an entertainer. Apart from some visits by its principals to Larned, the direct program preparation of Pier San was compressed within a 1-day campaign on May 2, 1960, after its application was filed, when Pyle made some eight contacts. Morgan’s direct preparations were also made after his application was filed; his contacts, by phone and in person, total considerably more than Pier San’s. But in this nebulous area it is difficult to assess the relative value of preparatory efforts merely by the frequency of contacts. Beyond concluding that both applicants made earnest efforts to sound out community sentiment, no ruling will be made.

80. *Proposed programs.*—Pier San proposes to operate 83 hours a week; Morgan, 70. Morgan explains the difference “on the fact that Morgan was not certain whether the station would be able to operate presurprise under section 3.87 of the rules” (reply, par. 16). There are differences in the percentages devoted to each program category by the two applicants, but the variations appear within the area of licensee discretion, all interests subsumed under the standard classifications being represented in the formal analysis to a greater or lesser degree except for “Talks” by Pier San, where no percentage is shown (Pier San, as already noted, does propose “Talk” programs, however). In the following paragraphs brief observations will be made of pertinent features of the two proposed program schedules, in an attempt to determine which applicant has demonstrated the greater ability to ascertain, meet, and even elevate, the needs, interests, and tastes of Larned. It should be emphasized that the hearing examiner’s aim has been to judge not the quality of the programs, as such, but the qualifications of the applicants.⁸

81. Morgan’s “Entertainment” programs appear limited by Morgan’s own uneducated musical tastes (see par. 40, above). The only reference in his proposal to “good music” is hidden away in the “Discussion” program, “Open for Discussion” (par. 46, above), but this is at best a vague promise.⁹ Pier San’s “Entertainment” programs, though restricted to music, are not afraid to tread into regions which Morgan has shied away from. “Classical” music, already played over KSIR, is proposed for Larned. To the extent that Pier San has indicated that it does not hesitate to recognize interests above the popular level, and will attempt to raise the cultural level of Larned, if only homeopathically, its entertainment programs are to be accorded some preference.

82. “Agricultural” proposals of both applicants indicate a careful attempt to meet the demands of farmers. To this, one reservation may be made. Morgan’s 3 p.m. “Farm Hour,” though a commendable program, seems awkwardly timed. Pier San’s timing appears better suited to the usual hours of farmers. While an indication that Morgan overlooked an important feature of a good farm lineup, the timing of

⁸ It is believed that the present treatment is consonant with the discussion in “Commission Policy on Programing,” issued July 29, 1960, 20 R.R. 1901.

⁹ A ½-hour Sunday afternoon program, “Salon Orchestra Music,” proposes “Music by the Hollywood Salon Orchestra, and other large string orchestras,” but there is no indication that the music would be different from the usual Morgan fare.

programs is so readily changed in actual operation that the demerit is minimal. It is held that both applicants have demonstrated, in the content of their proposed farm programs, an approximately equal understanding of an ability to meet the needs of their rural audiences.

83. Only Pier San has described an actual *teaching* "Educational" program, "KU Classroom," designed for in-school listening. Attractive though the prospect of this program is, it is problematical whether the county schools can cooperate. The hearing examiner has not forgotten Morgan's observation that a similar program was not offered by KSIR in Wichita, nor Morgan's suspicion that "KU Classroom" is only a comparative case bait; nor, in addition, the fact that 6.82 percent of "Educational" programs had been promised for KSIR, a level never reached by that station. Another Pier San "Educational" program, "With the Classics" (par. 57, above), is similar to KSIR's "Great Works in Music." Morgan's proposed local "Educational" programs have only been generally described, and represent more a hope than a well-planned project. If it could confidently be expected that Pier San's "Educational" proposals would actually be fulfilled, it would be entitled to a very definite preference over Morgan's proposals. But because of the strong possibility that in practice the Pier San "Educational" offerings will be whittled down to approximate those now heard over KSIR, the paper preference for Pier San is considerably diminished if it does not entirely vanish.

84. News programs of both applicants appear to take care of this area of interest with fairly equal adequacy, though Morgan's greater percentage of newscast time has not been overlooked.

85. Morgan's proposed "Discussion" program, "Open for Discussion," is long enough and has a paper format adapted to the consideration of local issues. He does not appear overly sanguine, however, that there will be sufficient material every day for discussion. In addition, Morgan would editorialize on his station. Except for the possible participation by officials on "On the Editorial Page," Pier San's discussion programs, as is most often the case with the KSIR "Discussion" program, would consist largely of listeners' comments and chit-chat. It is not apparent from the description of Morgan's program whether he plans local panel-type discussions of the type usually associated with this category, but there is no indication that he has been content, as Pier San generally has been, to sacrifice the opportunity to furnish a dignified forum for Larned to supposed audience appeal. It is felt that the applicants are on a par in this area: Morgan's proposal is more attractive on paper, but lacks details of implementation; Pier San's is more explicit, but is aimed too low, though the criticism on this score is substantially tempered by the realization that Larned is a small town and a limited source of controversial problems, so that Pier San's proposal is probably, day in and day out, realistically adjusted to the area's capacities.

86. In Morgan's proposed "Talk" programs, he conceivably could score a cultural advantage over Pier San comparable to the one enjoyed by the latter by reason of its promise to broadcast "classical" music. One of his programs would consist of verse reading, but because the nature of the verse is not disclosed, it is impossible to know

the level of taste to which the program would appeal. Pier San has no similar program, but it proposes sportscasts and Morgan does not, thus achieving a physical offset to Morgan's at least quasi-intellectual verse reading. No preference is awarded.

87. Pier San's religious programing would be more extensive than Morgan's. Morgan, however, though he has not been lavish, has not been remiss in this category. He recognizes religion as a matter of listener interest, and proposes to devote appreciable time to it, if less than Pier San. No choice is expressed in this delicate area. Both applicants have indicated an awareness of an important audience concern and have reasonably attempted to meet it.

88. From the foregoing discussion of program proposals, it is apparent that only with respect to "Entertainment" programs does Pier San enjoy a preference, to any appreciable degree, over Morgan's proposals. The greater number of hours Pier San proposes is a minor consideration, though obviously one by which it benefits in a comparison.

89. *Staff.*—The hearing examiner agrees with Pier San (proposed conclusions, par. 150) that the projected staffs are adequate to effectuate the respective proposals. Consequently, no choice is made.

90. Before considering the impact of the media diversification criterion,¹⁰ which must be considered in a comparison along with the others, another look at the foregoing conclusions will be helpful. Evidently Pier San hoped to build up such a commanding lead on the other criteria that its admitted inferiority in media diversification could not conceivably have affected its claim. It conceded nothing to Morgan, even in an area like integration. Pier San has not succeeded, however, in planting its flag upon every strip of visible territory. Nonetheless, it must be held that its advantage over Morgan is sufficiently wide under the other criteria to survive further scrutiny.

91. If in assessing the parties' cases the hearing examiner has been compelled to discount Pier San's bland assumptions of superiority in practically every field, he has also not been blinded to Morgan's limitations. Certainly if this were a head-to-head struggle between Morgan, on the one hand, and Pyle and Bozeman, on the other, free of any question of media diversification on either side, but with Pyle's and Bozeman's record and experience credited to them, Morgan would finish second. Pyle for 2 years has managed a Bozeman station with a fairly good though by no means outstanding general operating record (in the case of one program, however, it is entitled to particular commendation), and their experience surpasses Morgan's. Morgan, with what appears to be an almost unrelieved (except for military service) smalltown background, has some broadcasting but little managerial experience. Never having owned a station, he cannot offer a record of operations. He betrayed gaps in his professional knowledge by confessing ignorance of an important Commission report and of the contents of the Blue Book. Only by an overemphasis of the integration criterion would Pier San's lead be affected. It is true that

¹⁰ As noted in the preliminary statement, the hearing examiner asked and was furnished additional briefs on this subject by Morgan and Pier San.

Morgan's operation would be more integrated than Pier San's, but the beneficial effect of integration is restricted by the qualifications of the owner-manager;¹¹ it is not a situation which through its own magic produces inspired programs.

92. In the majority of cases the Commission has not held a policy of media diversification to be so demanding a factor as to offset the immediate benefits of good programming assured a community by a better qualified applicant. It seems undeniable to the hearing examiner that the experience and the record (though the latter is not unimpeachable) of the Pier San principals are an augury of a continuation of more imaginative, less pedestrian, programming, than Larned could expect from Morgan, and that this is the determinative consideration here.

93. Bozeman is 100 percent owner of KSIR and has a 33 $\frac{1}{3}$ -percent interest in KOOO, Omaha. Pyle and Early are on the board of directors of the licensee corporation of KSIR and have each now a 33 $\frac{1}{3}$ -percent interest in KOOO. Pierce and Denny, the moneymen in the present Kansas application and Tennessee residents, have each a 50-percent interest in WBRO, WJAT, and WSNT (the last acquired since the present record was closed), all in Georgia. Pyle, the proposed general manager of the Larned station, will sever his present association with KSIR if the Pier San application is granted. There is no overlap of the service contours of any of these existing stations. However, about 35 percent of the area within the Larned proposal's 0.5-mv/m contour would be overlapped by the 0.5-mv/m contour of KSIR; this overlap area is sparsely settled and much closer to Larned than to Wichita; and there are from 15 to 24 services available at any one point in the area. KSIR would not serve Larned, nor the Larned proposal Wichita. While this overlap would not in itself be a disqualifying factor under rule 3.35, it is unquestionably a matter to be considered in a comparison. In this connection, however, it should be noted that it was not covered by a special issue, and, indeed, seems to have become an item of concern only because Pier San first raised it in its proposed findings.

94. Morgan has never owned, and does not now own, an interest in a broadcast station. Only one of the Pier San-identified stations encroaches upon the Larned area; the others are far away, and their programming would have no conceivable influence upon the thought and cultural outlook of the Larned area. Apart from the possible effect of the KSIR-Larned proposal overlap—and there the Wichita station does not serve Larned and the overlap area has numerous other services—there would be no concentration of Pier San interests within the Larned service area. The question, then, is whether it is in the public interest to award an additional facility to a group of entrepreneurial principals among whom there are five widely distributed stations, only one, however, in the same State as the proposal. There is no reasonable ground for belief that Pier San will not attempt to meet the program requirements of Larned and the surrounding area; on the contrary, there is a substantial ground for belief that it would

¹¹ The present observation must be distinguished from the conclusion drawn in the section awarding Morgan preference for integration.

operate meritoriously. Under the circumstances it is concluded that the acquisition of another station by the Pier San principals would not result in an injurious concentration of broadcast facilities; and that Larned should not be deprived of programing from an applicant which has demonstrated qualifications superior to its opponent, merely to vindicate the virtues of a policy of diversification. To hold otherwise would be to elevate diversification to a level of precedence which the Commission does not accord it.¹²

95. Accordingly, because public interest, convenience, and necessity will be served thereby, *It is ordered*, This 27th day of March 1961, that unless an appeal from this initial decision is taken by a party to the Commission, or the Commission reviews the initial decision on its own motion in accordance with the provisions of section 1.153 of the rules, the application of Pier San, Inc., for a construction permit for a new standard broadcast station at Larned, Kans., to operate on 1290 kc, with 500 w power, daytime only, *Is granted*; and that the competing applications of Wilmer E. Huffman and Francis C. Morgan, Jr., *Are denied*.

¹² The hearing examiner has decided this case by the application of what he understands is the prevailing Commission policy in consideration of the significance of diversification in the comparison complex. See, however, 66 Yale Law Journal, 365, 377.

WAYNE M. NELSON ET AL., DOCKETS NOS. 12095 AND 12096:

Supplemental decision affirming the examiner and granting the application of Fred H. Whitley for a construction permit for a new standard broadcast station at Dallas, N.C.; and denying the application of Wayne N. Nelson for a similar facility at Concord, N.C.

Need for the proposed service weighed against the need for the service to be lost to station WSPA, Spartanburg, S.C.

Limited extent of inquiry under remand issues does not permit redetermination or reevaluation under 307(b).

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON 25, D.C.

In re Applications of
WAYNE M. NELSON, CONCORD, N.C.

FRED H. WHITLEY, DALLAS, N.C.
For Construction Permits

}

Docket No. 12095
File No. BP-10936
Docket No. 12096
File No. BP-10987

APPEARANCES

Marcus Cohn and *Stanley S. Neustadt*, on behalf of Wayne M. Nelson; *Arthur W. Scharfeld* and *Theodore Baron*, on behalf of Fred H. Whitley; *Harry J. Ockershausen*, on behalf of Spartan Broadcasting Co.; and *Kenneth A. Finch*, on behalf of the Chief, Broadcast Bureau, Federal Communications Commission.

SUPPLEMENTAL DECISION

(Adopted January 3, 1962)

BY THE COMMISSION: CHAIRMAN MINOW ABSENT; COMMISSIONERS BARTLEY AND FORD NOT PARTICIPATING.

1. On May 25, 1959, the Commission released a decision¹ in the above-captioned proceeding in which it granted the application of Fred H. Whitley for a construction permit for a new standard broadcast station at Dallas, N.C.; and denied the application of Wayne M. Nelson for a similar facility at Concord, N.C. The ultimate conclusion therein was that in carrying out the mandate of section 307(b) of the Communications Act of 1934, as amended, the Whitley proposal should be preferred over the Nelson proposal.

2. Upon consideration of petitions for reconsideration and rehearing of its decision, the Commission for the limited purpose of taking evidence on three specified issues rescinded and set aside the decision, reopened the proceeding, and remanded it to the hearing examiner

¹ 26 FCC 539, 17 R.R. 356.

to take evidence on three specified issues, and thereafter to issue a supplemental initial decision.² Because Whitley's proposal would involve adjacent-channel interference with station WSPA, Spartanburg, S.C. (of which Spartan Radiocasting Co. is the licensee), the issues were designed to inquire into programing considerations, and in light of such considerations, to permit determination of whether the examiner's previous award to Whitley should be affirmed or reversed in favor of Nelson. The burden of proof and the burden of proceeding with the introduction of evidence insofar as the determination of the type and character of WSPA's programing service and its suitability for the WSPA-Whitley interference area is concerned was placed upon WSPA. The remainder of the burden of proof and proceeding with the introduction of evidence (i.e., with regard to the extent to which the programing of other existing standard broadcast stations meets the requirements of the interference area, the type and character of Whitley's proposed service, its suitability for the populations and areas to gain service, and the extent to which the programing of other existing standard broadcast stations meets the requirements of the areas thus gained) was placed upon Whitley.

3. A supplemental initial decision (FCC 61D-47) was released by Hearing Examiner Elizabeth C. Smith on April 14, 1961, in which she reinstated and affirmed the grant of a construction permit to Whitley and denied the application of Nelson. Nelson and WSPA filed joint exceptions, and a brief in support thereof, to the supplemental initial decision. Oral argument on the exceptions was held before the Commission, en banc, on September 28, 1961. The Commission's rulings on the exceptions are set forth in the appendix attached hereto. Subject to the modifications and comments contained herein and in the appendix, the supplemental initial decision is adopted.

4. One question should be discussed at the outset. The joint acceptors advance the proposition that the 307(b) determination with respect to the greater need for a regional class III station should be Concord, N.C., vis-a-vis Gastonia-Dallas, N.C. They state that there is a greater need in Concord than in Gastonia-Dallas for a local transmission facility. These matters were determined in our earlier decision wherein Dallas was preferred over Concord in the 307(b) comparison, and are not proper areas of inquiry in the instant proceeding. Indeed, the limited extent of the inquiry under the remand issues is highlighted by the fact that the portion of Nelson's petition for reconsideration and rehearing alternatively asking that the present record be reevaluated in the light of section 307(b) and award made of the construction permit to Nelson was denied in our order (FCC 60-438), released May 2, 1960.

5. It will be helpful to set down the pertinent facts relating to the area and population which receives service from WSPA. In the event of a grant of the Whitley application, Whitley's proposed service would be substituted for that of WSPA in substantially all of the interference area. The interference area encompasses 161 square

² Memorandum opinion and order (FCC 60-438), released May 2, 1960.

miles with a population of 13,819 persons, representing 3.3 percent of the persons (419,606) and 3.2 percent of the area (5,085 square miles) now served by WSPA within its normally protected contour. The area is rural in character and principally devoted to agricultural pursuits. It is crescent shaped and extends northwest and southeast for 34 miles, with a maximum width of about 7 miles. The area extends from a point north of Shelby, N.C., down to a point a few miles west of York, S.C. The interference area is at a distance ranging from 13 to 24 miles to Dallas and about 28 to 37 miles to Spartanburg. About 60 to 70 percent of the area is within Cherokee County in South Carolina, with a small portion in York County, S.C. Of the population residing within the interference area, 11,057 persons reside in Cleveland County, N.C., with the remainder divided almost equally between the two South Carolina counties. A number of stations provide primary service to all or portions of the interference area.³

6. The issues specified for further hearing contemplate an ultimate determination of whether the needs of the entire gain area proposed by Whitley outweigh the needs of the populations and areas within the area of interference Whitley would cause to WSPA. The issues make it clear that even should it be developed that WSPA programs especially for the demonstrated needs of the populations within the interference area, a question would then arise as to whether the needs of the entire area to gain service from Whitley are such that those needs would outweigh the loss of service from WSPA occasioned by the interference. On the other hand, if no special needs are shown as being met by the interfered-with station in the interference area, the ultimate determination referred to above may be made without detailed consideration of the broad range of evidence adduced in response to the issue directed to the applicant's proposal.

7. Turning to the showing which WSPA made of its programming service and its suitability for the interference area, we agree with the examiner's findings and her conclusions that WSPA's programming service is not especially suited to the needs of the proposed interference area. Indeed, it is shown that WSPA's programming places particular emphasis upon Spartanburg and Spartanburg County, with but limited attention to any area outside of South Carolina. As the findings show, approximately 80 percent of the population within the interference area reside outside of South Carolina and at some distance from Spartanburg. There was no showing that these persons would have an interest in either local Spartanburg organizations and their activities, or in South Carolina State problems, campaigns, or legislative activities.

8. Absent a showing that special needs of the population in the interference area are being met by WSPA, it follows that the substitution of Whitley's proposed service to such population will not deprive those persons in the interference area of programs in which they have a vital interest. As noted earlier, were this to be the case, upon a proper showing the public interest might nonetheless require

³ WBT, Charlotte, N.C.; WKMT, Kings Mountain, N.C.; and WOHS, Shelby, N.C., provide primary service (0.5 mv/m or greater) to all of the interference area. Seven other stations provide primary service to varying portions of such area. A minimum of four and a maximum of nine such services are available to all parts of the area.

such substitution because of stronger needs of the public for service in the entire gain area. But this question we, of course, do not reach, for this record does not clearly present the problem.

9. The record shows that Whitley's proposal offers a well-balanced programing schedule, and although no greater attention is given to those persons in the interference area who would receive substituted service from Whitley than to other persons in the proposed service area, the Whitley proposal will adequately serve the interests and needs of those persons who will lose the WSPA service. As the findings show, the population in the interference area resides largely in North Carolina and at distances somewhat closer to Dallas than to Spartanburg. As noted, the interference area is rural in character and principally devoted to agricultural pursuits—in this connection, Whitley proposes to allot a slightly higher percentage of broadcast time to agricultural programing than has WSPA (3.0 percent as against 1.6 percent). We agree with the examiner's conclusion that Whitley's proposed programing would better serve the interference area from an overall standpoint than that now rendered thereto by WSPA. Further considerations supporting the view that the need for the service proposed by Whitley outweighs the loss to be occasioned are that there are available in the interference area a minimum of four and a maximum of nine primary services, that Whitley's proposal would be substituted for that of WSPA in substantially all of the interference area, and that grant of the Whitley application would provide a first transmission facility to Dallas.

10. In view of the foregoing, it is concluded, in the language of issue (9), that the examiner's previous award to Whitley should be affirmed.

Accordingly, *It is ordered*, This 3d day of January 1962, that the application of Fred H. Whitley for a construction permit for a new standard broadcast station to operate on 960 kc, with 1 kw power, daytime only, at Dallas, N.C., *Is granted*; and the mutually exclusive application of Wayne M. Nelson for a construction permit for a new standard broadcast station to operate on the same frequency, with 500 w power, daytime only, at Concord, N.C., *Is denied*.

APPENDIX

RULINGS ON EXCEPTIONS TO THE INITIAL DECISION

Exceptions of Nelson and WSPA

<i>Exception No.</i>	<i>Ruling</i>
1-----	Granted. Finding 6 identifies the area as "rural in character and principally devoted to agricultural pursuits." The last sentence in finding 3 is therefore deleted.
2 through 13-----	Denied. The additional findings are without decisional significance since they would not in any way alter the conclusion that WSPA's programing is not primarily geared to meet the needs and requirements of the interference area, or that it would any more meet it generally than would Whitley's programing. (See supplemental decision, par. 9.)

<i>Exception No.</i>	<i>Ruling</i>
14-----	Granted. Finding 6 is altered to indicate that although station WBT is a CBS affiliate, the record does not indicate which CBS programs are actually aired by station WBT.
15-----	Denied. The finding complained of properly reflects the record. The additional findings are of no decisional significance.
16, 17-----	Denied. The record does not substantiate all of the allegations set forth in these exceptions. Further, the inclusions sought are of no decisional significance.
18-----	Denied. Sufficient information is contained in finding 11, ¹ and the addition of the information sought would not alter the conclusion that Dallas is in fact a community unto itself and not a suburb of Gastonia. In any event, no leave was granted for the reopening of the 307(b) issue.
19-----	Denied. The examiner's findings adequately reflect the record.
20, 21, 22, 24, 25, 26, 27, 36.	Denied. Of no decisional significance in light of the conclusions reached in the instant supplemental decision.
23-----	Granted. Finding 12(c) does not imply that station WLTC does not serve the public interest generally.
28, 29-----	Denied. See par. 7 of the instant supplemental decision.
30-----	Granted in part. This conclusion is altered to indicate that since WBT is a CBS affiliate, the interference area will not lose those CBS programs which WBT will air.
31-----	Denied. Failure on WSPA's part in the first instance to show that it programed especially for the needs and requirements of the interference area lessened Whitley's burden considerably with respect to other services in the interference area.
32-----	Denied. See par. 9 of the instant supplemental decision.
33-----	Granted only insofar as reflected in the supplemental decision herein, and denied in all other respects.
34, 35-----	Denied. Irrelevant and immaterial.
37-----	Denied. See par. 4 herein.
38, 39, 40-----	Denied, in view of the decision herein.
41-----	Granted.

¹Exception 18 erroneously refers to the examiner's failure to make certain findings in "6" instead of "11."

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C.

In re Applications of
WAYNE M. NELSON, CONCORD, N.C.

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Docket No. 12095
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APPEARANCES

Marcus Cohn and *Stanley S. Neustadt*, on behalf of Wayne M. Nelson; *Arthur W. Scharfeld* and *Theodore Baron*, on behalf of Fred H. Whitley; *Harry J. Ockershausen*, on behalf of Spartan Radiocasting Co.; and *Richard E. Ely*, on behalf of the Broadcast Bureau.

SUPPLEMENTAL INITIAL DECISION OF HEARING EXAMINER ELIZABETH C.
SMITH

(Adopted April 12, 1961)

PRELIMINARY STATEMENT

1. This proceeding involves the mutually exclusive applications of Wayne M. Nelson and Fred H. Whitley, each for a new standard broadcast station to operate on 960 kc at Concord and Dallas, N.C., respectively. A decision,¹ after hearing upon specified issues, was released in this proceeding on May 25, 1959, which granted the Whitley application and denied the Nelson application. Thereafter, petitions for reconsideration and/or rehearing were filed by Wayne M. Nelson, Spartan Radiocasting Co., and the Broadcast Bureau. The May 1959 decision was stayed by the Commission, on July 30, 1959, pending action on the petitions for reconsideration. By memorandum opinion and order² released May 2, 1960, the May 1959 decision was rescinded and set aside, and the proceeding was reopened and remanded to the hearing examiner to take evidence upon the following additional issues and to render a supplemental initial decision on the basis thereof, to wit:

(7) To determine the type and character of program service rendered by station WSPA; whether such program service meets the requirements of the population and area which would lose such service as a result of interference from the proposal of Fred H. Whitley herein; and the extent

¹ Hearing was held and record closed in January 1958; initial decision issued in May 1958; oral argument on exceptions heard in February 1959; and decision issued in May 1959.

² In this memorandum opinion and order it was ordered that: "[T]he petition of Nelson to the extent that it requests reopening of the record for reception of further evidence *is granted*, and in all other respects *Denied*; the petition of Spartan Radiocasting Company *is granted*; and the petition of the Broadcast Bureau *is denied*."

to which the programing of other existing standard broadcast stations meets the requirements of the interference area.

(8) To determine the type and character of the program service proposed to be rendered by Fred H. Whitley; whether such program service would meet the requirements of the populations and areas which would gain service upon grant of such proposal; and the extent to which the programing of other existing standard broadcast stations meets the requirements of the areas thus gained.

(9) To determine, in the light of the evidence adduced pursuant to additional issues 7 and 8, whether the examiner's previous award to Whitley should be affirmed or reversed in favor of Nelson.

The Commission placed "the burden of proof and the burden of proceeding with the introduction of evidence insofar as the determination of the type and character of station WSPA's programing service and its suitability for the WSPA-Whitley interference area is concerned," on Spartan Radiocasting Co., and placed "the remainder of the burden of proof and proceeding with the introduction of evidence" upon Fred H. Whitley.

2. A further hearing conference was held on June 2, 1960, and hearing sessions were held on October 11, 12, and November 16, 1960; the record being again closed on the last-mentioned date. All parties filed proposed findings of fact and conclusions of law with respect to the further hearing, and all parties, except the Broadcast Bureau, filed reply findings and conclusions, the last of which were filed on January 23, 1961.

FINDINGS OF FACT

Type and character of WSPA's programing service

3. Standard broadcast station WSPA operates on 950 kc with a power of 5 kw, unlimited time, employing a directional antenna at night, at Spartanburg, S.C., which is located within Spartanburg County. The station broadcasts 131 hours a week and is affiliated with the CBS radio network. Special requirements, if any, of the population in the area wherein the WSPA signal would be replaced by that of the proposed station are not shown.

4. An analysis of the consecutive week of August 14 through August 20, 1960, which was submitted, pursuant to Commission instruction, in lieu of the 1958-59 composite week (records for the composite week having been destroyed by fire) shows that the following programs, by type and source, were broadcast by station WSPA:

<i>Type</i>	<i>Percent</i>	<i>Source</i>	<i>Percent</i>
Entertainment -----	72.0	Network sustaining-----	15.6
Religious -----	4.9	Recorded commercial-----	41.3
Agricultural -----	1.6	Recorded sustaining-----	7.6
Educational -----	.7	Wire commercial-----	2.0
News -----	18.7	Wire sustaining-----	2.0
Discussion -----	1.4	Live commercial-----	3.4
Talks -----	.6	Live sustaining-----	2.7
Miscellaneous -----	.1		
Network commercial-----	25.4	Total commercial-----	72.1
		Total sustaining-----	27.9
		Actual hours-----	131
		Spot announcements-----	792
		Noncommercial spots-----	193

The foregoing analysis is fairly typical of the station's program operation and is substantially in accord with what station WSPA now broadcasts. It is, thus, seen that, in addition to the time (41 percent) devoted to network programs, 52.9 percent of the broadcast time is devoted to the broadcast of either wire news or recorded music, leaving a total of 6.1 percent of the broadcast time devoted to live programming.

(a) WSPA conceives itself to be a "personality" station. It retains the "block" or program segment concept of operation, with public service features being aired as programs as well as a part of its disk-jockey shows.³ It has retained what it considers to be the best of CBS public service programs and airs them by delayed tape reproduction at times when it feels they will most benefit the overall program structure. The station has three air personalities (a woman and two men) who do several hours of programming daily. The regular daily devotional program is handled through the cooperation of the Spartanburg Ministerial Association, which sets the schedule for the ministers who are to do this program. The station also carries the Sunday worship service on a rotating basis in cooperation with the Spartanburg Ministerial Association and also carries another Spartanburg church service on a delayed basis. Its agricultural programs include an early-morning program by one of its diskjockeys, which consists of music, farm reports, news, commodity prices and weather, and general information of interest to farmers in the WSPA service area. It also carries a 5-minute program at noontime, Monday-Friday, direct from the State Farmers Market in Columbia, S.C. A half-hour program (12:30 to 1 p.m.) which features hog, cattle, and grain market reports; a talk or interview from Clemson College, South Carolina State Agricultural Institution; weather forecasts; a report or talk by the Spartanburg County, Cherokee County, both in South Carolina, or the Polk County, N.C., farm agents each day; and a Spartanburg County home demonstration agent at least once a week. The educational programs appear to be limited to the colleges and secondary schools located in South Carolina. While WSPA refers to institutions of higher learning in its coverage area, no reference is made to any college outside of South Carolina and no high school outside of Spartanburg itself. WSPA intersperses news throughout the day, beginning at 6:30 a.m. In addition to network news, other news reports are heard seven times each day, all but one of which are local or regional newscasts. Tape recordings of the members of the South Carolina congressional delegation are aired in newscasts, as well as tape-recorded interviews with people in the news on the local level. A discussion program, "Spartanburg Speaks," is a simulcast in cooperation with WSPA-TV. Mention is also made of discussion programs on such local matters as the new Spartanburg library and fluoridation of water in Spartanburg. Legislation pending before the South Carolina Legislature was also the subject of a discussion program, as was the annexation program of Spartanburg. Safety programs have been put on in cooperation with Spartanburg and city police. Talks, it is said, have run the gamut from remarks by the president of The Citadel (Charleston,

³ Some of the programs are aired thrice : on WSPA-AM, TV, and FM.

S.C.), a local college leader, remarks on the library situation, a school official on the plans for the new high school, and an international officer of a civic club. It has also been the practice of WSPA to air speeches of statewide political candidates when they made their stops in Spartanburg. Spartanburg County candidates are also afforded an opportunity to air their views. WSPA has carried radio reports of the member of the North Carolina congressional delegation whose district includes the interference area. Sports programs have included broadcasts of local golf tournaments, Wofford College's (Spartanburg) football and basketball games, and Spartanburg High School football games. Besides play by play of such local football games, it has also aired college games, which included colleges in North Carolina located outside of the interference area.

5. The station employs full-time reporters who ordinarily confine their news-gathering activities to such places as the local county courthouse, city hall, hospital, and such news sources, but who have occasionally sought news beyond the limits of both Spartanburg and Spartanburg County. In addition, "stringer" news gatherers are employed by the station in different counties throughout its coverage area. These are paid on a per-item-furnished basis. One of these "stringers" is located in Shelby, N.C., which is located in the general area wherein WSPA would be subjected to interference under Whitley's proposed operation. Shelby does not, however, receive a 2-mv/m signal and, thus, does not itself receive primary service from WSPA. As already indicated, the evidence as to current entertainment programs over WSPA indicates that much of such programming is broadcast by "air personalities," or diskjockeys, and involves a pot-pourri of music of different types, physical exercises, beauty tips, household hints, the appearance of national and local figures, and noncommercial spot announcements interwoven throughout the programs. To the extent the evidence supports a finding that this programming is designed for any particular area, it must be found that it is designed to appeal to local Spartanburg groups. The religious programming is either affirmatively shown to be produced by local Spartanburg groups or elsewhere outside of the interference area, or a finding cannot be made as to the origin of the program. The agricultural programs are related primarily to South Carolina counties or institutions such as Clemson College (South Carolina); or, where a North Carolina county is involved, it is one other than the one wherein WSPA would receive interference from the proposed operations.⁴ However, programs have been carried featuring talks by a county farm agent in a South Carolina county wherein the proposed operation would cause interference to WSPA. The education, discussion, talk, and sports programming appear predominantly to involve institutions, organizations, or subjects related to or of interest to local residents of Spartanburg or Spartanburg County. Similarly, so-called "local" public-interest broadcasts carried from January 1959 through July of 1960 are heavily laden with subjects or speakers of primary

⁴ The interference to WSPA in North Carolina falls in Cleveland County; whereas the only North Carolina county farm agent mentioned as participating in a WSPA agricultural program is from Polk County. The counties are not adjacent.

interest to the local Spartanburg residents and/or the residents of South Carolina.

Interference area and other existing programing services

6. The interference area encompasses 161 square miles with a population of 13,819 persons and extends from South Carolina, the home State of WSPA, into North Carolina. The area is rural in character and principally devoted to agricultural pursuits. About 60 percent to 70 percent of the area is within Cleveland County, N.C., with almost all of the remainder being located within Cherokee County in South Carolina, with a small portion in York County, S.C. Of the population residing within the interference area, 11,057 persons reside in Cleveland County, with the remainder being divided almost equally between the two South Carolina counties. A number of stations⁵ provide primary service to all or portions of the area, including stations WBT at Charlotte; WOHS, Shelby; and WKMT, Kings Mountain, N.C., which serve all of it. Such evidence as the record contains with respect to the programing of other stations in the interference area relates primarily to the programing of station WBT, Charlotte, N.C., which serves all of such area. Station WBT is affiliated with the CBS radio network, as is station WSPA. Aside from the programing provided by station WSPA and a diskjockey type of program slanted toward the farm listener which is carried for several hours a day at least 5 days a week over WBT, the record is barren of evidence as to what is currently available to the interference area from other stations which provide primary service thereto.

Proposed programing by Whitley

7. Mr. Whitley was born in Concord, but has spent most of his life in Kannapolis, N.C., where he now resides. He does not propose to move to Dallas. Kannapolis is about 7 miles from Concord and 50 to 55 miles from Dallas by highway.⁶ He is and, since 1947, has been the licensee of standard broadcast station WGTL at Kannapolis. In the spring of 1957 Mr. Whitley visited Dallas and talked with representatives of civic, religious, educational and agricultural organizations to obtain information as to the program format he desired to propose for the Dallas station. Included among those so contacted were the farm agent for Gaston County, a representative of the Ministerial Association, the head of the Dallas schools, and the mayor of Dallas. About a month prior to hearing upon the additional issues, he contacted the same or similar individuals again and was reassured of their cooperation. However, in some instances, the persons contacted did not discuss specific programs with him, although all of these parties, who appeared and testified at the further hearing, expressed the belief that there was a need in Dallas for the type of programing proposed by Whitley. The proposed entertainment program is patterned generally on what he does at Kannapolis because he believes that the Kannapolis residents like such programing and both they and Dallas residents are engaged in the textile industry and

⁵ See pars. 20-21 of the May 1959 decision.

⁶ Compare par. 3 of the May 1959 decision.

are similar in tastes. A network affiliation is not proposed for the Dallas station and the bulk of the entertainment programing will consist of recorded music of different types.

8. Analyzed according to type and source and expressed in percentages of total broadcast time of 83 hours per week, the breakdown of Whitley's proposed programing is as follows:

Type	Percent	Source	Percent
Entertainment -----	61.1	Network commercial-----	0
Religious -----	8.9	Network sustaining-----	0
Agricultural -----	3.0	Recorded commercial-----	33.1
Educational -----	3.7	Recorded sustaining-----	29.8
News -----	9.4	Wire commercial-----	8.3
Discussion -----	3.7	Wire sustaining-----	1.7
Talks -----	10.2	Live commercial-----	8.7
		Live sustaining-----	18.4

It is thus shown that of the total broadcast time, 8.7 percent will be "live commercial" and 18.4 percent will be "live sustaining," so that an aggregate of 27.1 percent of total time falls within the "live" classification.

(a) A nonnetwork operation is proposed. The program schedule for a typical week contains descriptions of proposed programs. The entertainment programs proposed consist largely of recorded music, except for one 15-minute program, Monday through Saturday, consisting of local area quartets, either taped or live from the studio. The religious programs proposed include, on a daily weekday basis, a prayer taped by pastors of regularly established and organized churches in Dallas; morning devotions by representatives of local churches on a rotating basis, and recorded songs of religious inspiration, all on a sustaining basis. In addition, a number of other religious programs are to be carried on Sunday, including a program of recorded hymns; a "Church Calendar" of announcements of church and Sunday school activities; a program, "Sunday School of the Air," conducted, on a rotating basis, by churches of the community; church services of local churches, on a rotating basis; and a half-hour program entitled "Religious Hour." All of the religious programs on Sunday, except the program "Religious Hour," are scheduled on a sustaining basis. The agricultural programs (Monday-Saturday) consist of livestock and farm market reports, taped messages from county agricultural agents, with bulletins from North Carolina and Federal agricultural offices, and livestock and farm market reports and weather reports of interest to farmers in the service area. An educational program (2 to 2:30 p.m.) is scheduled daily (Monday-Saturday) utilizing material prepared by U.S. Office of Education, local teachers, and public schools. News programs are scheduled at intervals throughout the day, including world news roundup and local news of the community, plus weather conditions and sports. A 5-minute daily program entitled "Dallas News" is scheduled for coverage of news items from Dallas and surrounding areas. A 30-minute discussion program called the "Dallas Forum" is scheduled Monday-Saturday for discussion and interviews of local leaders and organizations on local public issues. A 15-minute (Monday-Saturday) talk program entitled "Dallas Speaks" consists of reports by the mayor,

police chief, city manager, fire chief, school superintendent, and other civic leaders of Dallas.

9. It is noted that the composite week submitted in connection with the application for renewal of license filed in September of 1960 by WGTL, Mr. Whitley's station in Kannapolis, discloses that the station carried only 5.6 percent "live" programing in the aggregate for that week. Furthermore, he proposes a staff of only 7 people for his Dallas station, while at WGTL he has a staff of 10, including himself and a maid. Whitley's explanation of how he proposes to accomplish so much live programing with such a limited staff is that tape recordings of many programs will be made and that the station will rely upon listeners to write and phone in items of news interest. The farm agent for Gaston County testified in corroboration of Whitley and stated, in substance, that while it might be time consuming, agricultural programs would be taped. The president of the Dallas Ministerial Association testified that he would personally deliver religious programs or employ tape, although he believes that it would be feasible for him to do the programs personally and that in his opinion this was more effective than tape.⁷

10. Whitley's application as originally filed in this proceeding on December 21, 1956, discloses that the various proportions of time he then proposed to devote to different types of programing were identical to the proportions of time he had devoted to the same types of programs specified in the composite week which was submitted in connection with WGTL's application for renewal of license filed in August 1954. When he initially was asked as to whether he took the programs he was using at Kannapolis, the percentages, etc., and inserted them in his application for Dallas as initially filed, Whitley testified he had not. Subsequently, however, after comparing the percentages attributed to different types of programs in the Dallas application prior to amendment and the 1954 renewal application for WGTL, he conceded they were identical. He further testified he didn't remember going to his files to copy the information in the Kannapolis application and that he had no intention to deceive by his earlier testimony, which was due to lapse of memory. Whitley's application was amended on June 12, 1957, prior to designation for hearing, to change the programing therein proposed.⁸

Dallas and existing program service available thereto

11. As the Commission has heretofore found, Dallas is in Gaston County, about 3 miles north of Gastonia, the county seat. The city

⁷ A local live program is defined by the Commission as follows: "A local live program (L) is any local program which uses live talent exclusively, whether originating in the station's studios or by remote control. * * * A recorded program which is a local live program produced by the station and recorded for later broadcasting by the station shall be considered a local live program."

⁸ In the June 1957 amendment to his application, Mr. Whitley stated that the new programing exhibits contained in the amendment "have been prepared by me in view of the fact that a continuing survey of the Dallas, N.C., area and contacts with various groups and organizations reveal that my former program logs did not meet this need. I have therefore revised my program schedule to conform to the schedule of existing needs. This survey and contacts are continuing, but I am certain that the new program logs are sufficiently elastic to embody the needs of the listeners in this area. This new program log includes the ideas and suggestions from individuals and organizations given representation in the schedule." (Official notice has been taken of the amended application of Whitley in this respect, sec. IV thereof.)

had a population, in December 1957, of about 3,000 persons⁹ and it has its own city government composed of a mayor and five council members, a police department, fire department, municipally owned power, water distribution and sewage disposal systems. There are some 30 retail stores in the city and 2 manufacturing plants. Eight civic, educational, or philanthropic organizations are situated in Dallas, including a Lions Club, Masonic Order, Eastern Star, American Legion, Women's Clubs, and parent-teachers' organizations. There are, at least, nine regularly organized churches¹⁰ and four public schools (maintained by the State and county) located in the city, which has no daily or weekly newspaper. Seven stations, including WGAS at South Gastonia, WBT at Charlotte, WCGC at Belmont, and WLTC and WGNC at Gastonia (all in North Carolina), provide primary service to Dallas. However, there is no standard broadcast station currently authorized in the community of Dallas, and that proposed by Whitley would provide a first local outlet to Dallas and primary service to all of Gaston County, except a portion of Cherryville Township and a small portion of Mountain and River Bend Townships. There are a number of cotton mills located in Dallas and Gaston County, and they are, accordingly, identified to a substantial extent with the textile industry. However, many residents of Dallas and Gaston County have agricultural interests also. Some 700 members of the 4-H Club are scattered throughout the county, the Agricultural Center near Dallas (approximately one-quarter mile) has about 1,000 home demonstration members, and the farmers' organization, the Farm Bureau, which is based at such Center, has about 400 members. The driving time between the center of Gastonia and from within the city limits of Dallas is about 15 minutes. Bus service between the cities is available once an hour, except Sunday.

12. As heretofore found, station WLTC provides primary service to Dallas. The station has a working arrangement with a staff member of the Gastonia Gazette who does a local news program 5 days a week (Monday through Friday) 15 minutes a day on WLTC. These newscasts are not limited to Gastonia, but cover Gaston County in its entirety, including Dallas. The Gazette facilities are available to this Gazette staff member who, in addition to his regular program, may call in news items via beep-a-phone which go directly on the air. Although dependent primarily upon the Gazette staff member for local news, the station also employs a "stringer" who is active with the Gastonia Fire Department and who monitors police calls over shortwave and furnishes the station news leads which it generally has to follow up. Stations WGNC and WCGC, which also provide primary service to Dallas, also have regularly scheduled newscasts which are founded upon similar working arrangements with staff members of the Gazette—each station employing a different Gazette staff member. The Gazette sends a reporter daily to Dallas.

(a) Station WLTC has not carried election returns from Dallas on a current basis, since it is a daytime station and the returns are

⁹ Official notice has been taken of the fact that the population of Dallas, N.C., according to the 1960 U.S. census, is 3,270 persons.

¹⁰ Testifying at the further hearing, the president of the Dallas Ministerial Association placed the number of individual churches within the confines of Dallas at 15.

generally not available until after it leaves the air. Such returns have been carried, however, for the last two elections in Dallas by station WGNC. Station WLTC, on an average of at least once a day, requests listeners, no matter where they may be, to send in items of a civic non-commercial nature, such as PTA meetings, barbecues, and rallies, for announcement on a regularly scheduled program from 9 to 10 a.m. On two occasions the station has cooperated with the Dallas High School Band in a drive for new uniforms. In March of 1960, WLTC broadcast announcements advising which schools in the area, including those in Dallas, would be open or closed in the light of inclement weather conditions. WLTC has carried programs sponsored by Dallas advertisers, although it was not doing so at the time of the further hearing. At that time the station was carrying announcements on behalf of the Dallas PTA sponsoring a cake sale.

(b) From time to time, station WLTC has maintained auxiliary studios in Belmont, Lincolnton, and Dallas, N.C. The studios in Lincolnton and Belmont were given up because broadcast stations of their own were authorized in these communities. Broadcasts were made from the studio in Dallas 2 days a week for about a year from November 1957 to October 1958. The station lost money upon the operation and eventually abandoned it. Moreover, it was the management's opinion that the Dallas citizens did not care whether the broadcasts from Dallas were continued or not. However, WLTC's sales staff covers Dallas on a regular basis two or three times a week.

(c) In the composite week submitted in connection with its application of August 1960 for renewal of license, WLTC did not carry any agricultural, educational, or discussion programs. The time devoted to talk programs was only 0.7 percent of total broadcast time.

13. Station WGNC at Gastonia has, as previously noted, an arrangement with a staff member of the Gazette similar to that of WLTC. The local news program now runs for 10 minutes daily and the station also employs stringers to obtain news leads. The station has on occasion given coverage to events in Dallas, including local elections, the dedication of a historical marker by the president of the University of North Carolina, and at least one high school football game in October of 1960. WGNC also broadcasts announcements on behalf of civic and social organizations in its service area, including some in Dallas, and participated in a drive to raise funds for lighting the Dallas High School athletic field. It cooperates with the schools in the same manner as WLTC on announcements of closings because of weather conditions. Three Dallas sponsors purchase time on WGNC with reasonable consistency and the station carries announcements sporadically purchased by others in Dallas.

(a) During the composite week submitted in connection with its 1960 application for renewal of license, WGNC did not carry any agricultural discussion or talk programs. Only 0.19 percent of the broadcast time during that week was devoted to educational programming. Station WGNC currently broadcasts an agricultural program of 15 minutes once a week.¹¹ At one time the station broadcast an agri-

¹¹ This program is carried at 11 a.m. on Tuesday and is put on by an employee of the Agriculture Stabilization Commission.

cultural program in collaboration with the Gaston County farm agent and his office, but about 2 years ago the station changed the program time to one when the county agent believed farmers would be in the field and thus would not hear it. The program was, therefore, dropped.

14. Stations WBT, Charlotte; WCGC, Belmont; and WGAS, South Gastonia, all have programs which include grain and livestock prices and tips on crop planting and livestock care.¹² However, these programs are essentially diskjockey programs which are slanted to some extent toward farm listeners. The only religious program originating in Dallas carried by WLTC is a half-hour program on Sunday morning, which is commercial. Immediately prior to the further hearing, this station was carrying another half-hour commercial religious program which was done by a Dallas minister. However, this program is no longer carried because of financial problems encountered by the sponsoring minister. WGNC has a 10-minute morning devotions program which is rotated among the ministers of the Greater Gastonia Ministerial Association, which includes members from Dallas.¹³ The station's Sunday religious programs are sustaining, but these programs are restricted to rotation among the uptown churches in Gastonia and time thereupon has never been offered to Dallas ministers.

15. Since station WGNC dropped the program done by the Gaston County farm agent some 2 years ago, neither the latter, his staff, or office have been offered time by any broadcast station. Aside from the time to do this program, the farm agent has not requested time from any other station which can be heard in the Dallas area. The mayor of Dallas or members of his staff have never been offered time on broadcast stations for the purpose of putting civic programs on the air, nor has such time been requested by the mayor. The principal of the Dallas district schools has never been approached by any station with respect to educational programs, nor are the schools currently employing broadcast facilities for such programing. The current president of the Dallas Ministerial Association has never asked for time on behalf of his church or the association during the 3 years he has been in Dallas. All of the foregoing individuals appeared and testified at the further hearing. Each of these witnesses when testifying in substance expressed the view that there was a need in the Dallas area for programing in his particular field (e.g., agriculture, religion) such as proposed by Whitley, and each indicated an intention to participate and cooperate in the production of such programing.

16. The record is silent as to what, if any, affirmative efforts the management of station WGNC may have made to ascertain the needs of its service area. Station WLTC has had several surveys run to determine listener preference as to station and programing. Although since it has been on the air the station has offered time to the schools in Gastonia, time has not specifically been proffered to those in Dallas. It was said such offer had not been made, since these schools are a part of the Gaston County public school system. The president of WLTC testified on cross-examination that aside from schools and

¹² Station WGAS has, once a week, a taped program from the North Carolina State College in Raleigh, or from the South Carolina Agricultural College at Clemson, S.C. Market reports, prices, etc., are also carried at 12:15 p.m. over station WBT.

¹³ Dallas also has its own ministerial association.

churches, he had never initiated an approach to any other organizations in Dallas with an offer of time, although on redirect he testified that the representative of the station who operated the remote studios in Dallas did initiate such contacts during the time the auxiliary studio was maintained there.

17. WLTC's salesmen do not cover Belmont regularly since the community obtained its own station, because it was found the salesmen's time could be more profitably expended elsewhere. Nevertheless WLTC would continue to provide sales coverage to Dallas, even if a station were authorized there. The local stations in Lincolnton and Belmont give more time of a "public service nature" to organizations of a civic, religious, educational, and fraternal nature than was theretofore accorded such organizations by stations located elsewhere. However, the president of WLTC expressed the view that more time of such a nature would not be accorded Dallas organizations by a station authorized there because "There is not that much going on in Dallas." Dallas residents who testified did not so downgrade the activities of their community.

CONCLUSIONS

1. The ultimate question which the Commission directed the hearing examiner in this remand proceeding to determine, in this supplemental initial decision, is whether or not, in the light of the evidence adduced under issues 7 and 8,¹⁴ the "previous award to Whitley should be affirmed or reversed in favor of Nelson." Issue 7 relates to the type and character of program service rendered by WSPA, its suitability to the needs of the interference area, and the extent to which the programing of other existing stations meets the requirements of the interference area. Issue 8 relates to the type and character of the program service proposed by Whitley, and its suitability to the requirements of the population and areas which would gain service upon a grant of such proposal and the extent to which other stations meet the requirements of the proposed service area.¹⁵

2. The evidence does not support a conclusion that WSPA's programing is especially suited to the needs of the proposed interference area, or any particular area outside of South Carolina, with particular emphasis upon Spartanburg and Spartanburg County. The record shows this to be the fact. Furthermore, approximately 80 percent of the population within the interference area reside outside of South Carolina—some distance from Spartanburg—and would have little, if any, interest in either local Spartanburg organizations and their activities or South Carolina State problems, campaigns, or legislative activities. Whitley proposes a well-balanced program schedule generally, including a reasonable amount of agricultural programing, and in view of the fact that the area is rural and agricultural in character, it is concluded that his programing would better serve the interference area from an overall standpoint than that now

¹⁴ The text of issues 7 and 8 is set forth on p. 2 of the findings.

¹⁵ It is to be noted that there is no issue in this case which permits inquiry into the programing of Wayne M. Nelson and the programing of other stations rendering primary service to Nelson's proposed service area.

rendered thereto by WSPA. In this connection it may be noted that WBT, which serves all of the area, is affiliated with the CBS network, as is WSPA, and thus the population of the area would continue to receive the network's programs.

3. Whitley's proposed programing in his application, as initially filed, followed percentage-wise programing carried by WGTL in the composite week submitted with its application for renewal of license in August 1954. Prior to designation for hearing, Whitley, however, amended his application to reflect programing. In preparing his programing proposals as reflected in his application as amended in 1957, Whitley consulted with representatives of educational, agricultural, religious, and civic organizations in and/or near Dallas and with Gaston County agricultural agents. A number of these representatives testified they would cooperate and actively participate in the production of Whitley's programing for which, in their view, a need in the Dallas area exists. In the light of such testimony, any doubt which might exist that the staff proposed by Whitley for the Dallas station will find it impossible to effectuate, via previously made tape recordings and public cooperation, substantially the amount of live programs he has proposed, is dispelled.

4. During the composite week submitted by stations WLTC and WGNC, respectively, in connection with their applications for renewals of licenses in 1960, either no time at all, or virtually none, was devoted to either educational, agricultural, talk, or discussion programs. Moreover, witnesses who may be presumed, because of their employment or profession, to have firsthand knowledge of the situation have testified that there is a need in Dallas for educational, religious, civic, and agricultural programing, and that this need will be met, at least in part, by the programing proposed by Whitley. Station WLTC has recently dropped one of the only two religious programs it carried for Dallas churches or ministers because the sponsoring minister found it inexpedient to continue paying for it. About 2 years ago an agricultural program carried by station WGNC in collaboration with the farm agent for Gaston County was dropped because the station shifted the time to an undesirable hour for farmers. It is also noted that while station WGNC, Gastonia, broadcasts, on a sustaining basis, local church services, it limits such broadcasts to the uptown churches in Gastonia and does not give any of this time to the churches in Dallas. No other station broadcasts local services of Dallas churches. Whitley proposes to broadcast local church services in rotation among the Dallas churches, on a sustaining basis.

5. Both stations WLTC and WGNC either have broadcast, or are now broadcasting, announcements or programs paid for by Dallas sponsors, and it would be ignoring realities to attribute to the average businessman, including a broadcaster, an attitude of welcome for new competition. Thus, the testimony of the president of the licensee of station WLTC as to the insignificance of Dallas is weighed in that light, especially in view of his other testimony that he regularly covers the community with his sales force now and would continue to do so even though a station was authorized in Dallas.

6. Not only does the evidence warrant a conclusion that there is a greater need in the interference area for the programing of the proposed station at Dallas than for the programing of WSPA, it also clearly warrants the ultimate conclusion that the overall need for the proposed service is greater than the need for the existing service to be lost.¹⁶

7. Accordingly, in view of the foregoing findings and conclusions, the Commission's previous determination that, as between the proposals for a new standard broadcast station at Concord and Dallas, N.C., the conclusion that the Dallas proposal should be preferred over that for Concord in carrying out the mandate of section 307(b) of the Communications Act, as amended, should be affirmed and, thus, the Whitley application should be granted.

It is, therefore, ordered, This 12th day of April 1961, that unless an appeal to the Commission from this initial decision is taken by one of the parties, or the Commission reviews it on its own motion in accordance with the provisions of section 1.153 of the rules, the construction permit for a new standard broadcast station in Dallas, N.C., granted by the Commission on May 25, 1959, to Fred H. Whitley, is hereby reinstated and affirmed; and that the application of Wayne M. Nelson for construction permit for a new standard broadcast station in Concord, N.C., is, accordingly, denied.

¹⁶ Cf. *Mustoal Heights, Inc.*, 19 R.R. 40, 50a-50b (1960).

TELEVISION CORP. OF MICHIGAN, INC., DOCKET No. 14077:

Initial decision granting application for construction permit for new standard broadcast station in Jackson, Mich.; made effective.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON 25, D.C.

In re Application of
TELEVISION CORP. OF MICHIGAN, INC.,
JACKSON, MICH.
For Construction Permit

} Docket No. 14077
File No. BP-13783

ORDER

(Adopted January 3, 1962)

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 3d day of January 1962;

The Commission having under consideration: (1) its order adopted November 21, 1961, staying the effectiveness of the initial decision herein; and (2) its memorandum opinion and order adopted this date in re: Community Service Broadcasters, Inc., Ypsilanti, Mich., et al. (dockets Nos. 14085 et al.), denying certain petitions filed in that proceeding;

It appearing that the stay order in this proceeding was for the purpose of affording the Commission time to consider the said petitions in the Ypsilanti proceeding, and that the denial of the said petitions renders them devoid of significance with respect to this proceeding;

It is ordered, That the stay imposed by our order adopted November 21, 1961, herein *Is lifted*, and the initial decision *Is made effective*.

32 F.C.C.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON 25, D.C.

In re Application of TELEVISION CORP. OF MICHIGAN, INC., JACK- SON, MICH. For Construction Permit	}	Docket No. 14077 File No. BP-13783
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APPEARANCES

Leo Resnick, for Television Corp. of Michigan, Inc.; and *Earl C. Walck* and *Richard E. Ely*, for Chief, Broadcast Bureau, Federal Communications Commission.

INITIAL DECISION OF HEARING EXAMINER ANNIE NEAL HUNTING

(Adopted September 29, 1961)

PRELIMINARY STATEMENT

1. The above-entitled application of Television Corp. of Michigan, Inc. (Michigan), for a new standard broadcast station to operate on 1510 kc, 500 w., daytime only, using a directional antenna, at Jackson, Mich., was designated for hearing, by order released April 25, 1961 (FCC 61-533), with 13 other applications, on issues, insofar as pertinent to applicant, relating to areas and populations to be served, interference to and from existing stations and pending applications, compliance with section 3.28(c) of the Commission's rules, and a choice under section 307(b) of the Communications Act of 1934, as amended.

2. Gerity Broadcasting Co., the licensee of station WABJ, Adrian, Mich., was made a party to the proceeding in connection with Michigan's application. However, no appearance was filed by Gerity Broadcasting Co.; and it did not participate in the proceeding. Official notice was taken of a letter from counsel for Gerity Broadcasting Co., dated April 20, 1961, advising the Commission that Gerity Broadcasting Co. withdrew its opposition and consented to a grant of Michigan's application.

3. Hearing was held on this application and two others¹ on July 18, 1961; and the record was closed. On petition of applicant, the hearing examiner, by order released July 18, 1961 (FCC 61M-1234), severed this application from the others in the proceeding. Proposed findings of fact and conclusions were filed by the applicant. The Commission's Broadcast Bureau filed a statement in lieu of proposed findings and conclusions; and the applicant filed a reply.

¹ Community Service Broadcasters, Inc., Ypsilanti, Mich. (file No. BP-13846; docket No. 14085); and Joseph F. Butler, Ralph E. Fatterson, Robert M. Shumaker, and Douglas Bullock, d/b as Voice of Three Rivers (file No. BP-13813; docket No. 14078).

4. The Bureau urged that the hearing examiner withhold the issuance of an initial decision with respect to the subject proposal until the Commission has acted upon the now pending Williams County Broadcasting Co. "Petition for Reconsideration," filed on June 16, 1961.² That request is denied in view of the fact that good cause has not been shown for a stay at this point of the proceeding. The Commission, en banc, may stay the effectiveness of the initial decision if it should desire to pass upon the above-mentioned petition for reconsideration prior to final decision in this proceeding.

FINDINGS OF FACT

5. Michigan seeks a construction permit for a new standard broadcast station at Jackson, Mich., to operate on 1510 kc, with a power of 5 kw, daytime only, using a directional antenna.

6. Jackson (population 50,720)³ is part of the Jackson standard metropolitan statistical area, consisting of Jackson County. Jackson has two standard broadcast stations, WIBM and WHKM. It receives a 2-mv/m service from these two stations and from two other stations, WKAR at East Lansing, Mich., and WJR at Detroit. All of the area, outside of Jackson, which is included within the 0.5-mv/m contour of the Jackson proposal receives primary service from at least five existing stations.

7. Data as to areas and populations to be served are as follows:

Contour mv/m	Area (sq. miles)	Population
2.....	563	125, 299
0.5.....	2, 452	249, 406
Interference from proposed Three Rivers, Mich. (BP-13813).....	30.2	2, 108
Interference from proposed Oakwood-Kettering, Ohio (BP-13834).....	111.0	8, 697
Interference from proposed Ypsilanti, Mich. (BP-13846).....	10.0	¹ 3, 551
Total interference received.....	118.0	² 10, 054
Percent of interference.....	4. 8	4. 0
Proposed interference free.....	2, 334	239, 352

¹ This interference falls entirely within the interference area created by the Oakwood-Kettering, Ohio, proposal.

² Mutual interference area between Three Rivers and Oakwood-Kettering has been considered.

8. Michigan's application was not timely filed for comparative consideration with the application by Gerity Broadcasting Co. (BP-13068) for increase in daytime power of WABJ, Adrian, Mich., to 1 kw. Interference to WABJ from the Jackson proposal would affect an area of 2.5 square miles, which falls entirely within the interference area created by the licensed operation of WMDN, Midland, Mich., and would create no new interference. Gerity has withdrawn its opposition and consented to a grant of Michigan's application.

³ If this petition is granted in view of the decision of the U.S. Court of Appeals for the District of Columbia in the *Ridge Radio* case (No. 15946), on June 8, 1961, it may be necessary for the Commission to consolidate an application (BP-14379) filed on Sept. 28, 1960, by Williams County Broadcasting Co., for a new standard broadcast facility on 1520 kc, in Bryan, Ohio, with some or all of the applications in the original consolidated proceeding. The Bureau states that the Williams County application is mutually exclusive with the application of Community Service Broadcasters, Inc., for Ypsilanti, Mich. (docket No. 14085), and points out that some mutual interference exists between the Michigan and Community Service applications.

⁴ Population figures throughout are based on the 1960 U.S. census.

9. Aside from the interference to station WABJ referred to above, Michigan's proposal will not interfere with any authorized broadcast station and will interfere with only one proposed operation; namely, the operation proposed by Community Service Broadcasters, Inc., for Ypsilanti, Mich.⁴ The interference to the Ypsilanti proposal for 500-w operation during noncritical hours would affect 17 square miles and 690 people, representing 0.87 percent of the area (1,959) and 0.17 percent of the population (409,499) within its normally protected 0.5-mv/m contour. Community has agreed to accept this interference from Michigan's proposal. There would be no interference from Michigan's proposal to the operation by the Ypsilanti station with 250 w during critical hours. The area of 17 square miles referred to above receives service from at least 10 existing stations.

CONCLUSIONS

1. A grant of Michigan's proposal would bring a new standard broadcast service to at least 239,352 persons and would provide Jackson a third local transmission outlet.

2. The proposed operation will receive interference to less than 10 percent of the population within its proposed 0.5-mv/m contour, in compliance with section 3.28(c)⁵ of the Commission's rules.

3. No new interference would be caused to station WABJ. Interference to this station would occur only in an area of 2.5 square miles. This area is, in turn, part of an area in which service from WABJ already receives objectionable interference from station WMDN. Station WABJ has withdrawn its opposition and consented to a grant of Michigan's proposal.

4. Michigan's proposal will cause a small amount of interference to one pending application, affecting less than 1 percent of the population within the proposed 0.5-mv/m contour of the pending application. In view of the minor nature of the interference, the two applications are not mutually exclusive, and this interference does not preclude a grant. Since the proposed operation is not mutually exclusive with any other pending application originally in the proceeding from which it was severed, a selection under section 307(b) of the act need not be made.

5. In view of the foregoing, it is concluded that public interest, convenience, and necessity will be served by a grant of the application.

ORDER

Accordingly, *It is ordered*, This 29th day of September 1961, that unless an appeal to the Commission from this initial decision is taken by any of the parties, or the Commission reviews the initial decision on its own motion in accordance with the provisions of section 1.153 of the rules, the application of Television Corp. of Michigan, Inc., for a construction permit for a new standard broadcast station to be operated on 1510 kc, with a power of 500 w, daytime only, using a directional antenna, at Jackson, Mich., *Is granted*.

⁴ See footnote 1, *supra*.

⁵ This former sec. 3.28(c) was redesignated as sec. 3.28(d), effective July 5, 1961.

WMRC, INC., DOCKETS NOS. 13097 ET AL.:

Initial decision granting the applications of WMRC, Inc. (WBIR); WINN Broadcasting Corp. (WINN); Scripps-Howard Radio, Inc. (WCPO); Southeastern Broadcasting Co., Inc. (WSFC); Standard Tobacco Co. (WFTM); Southeastern Ohio Broadcasting System, Inc. (WHIZ); Anderson Broadcasting Corp. (WHBU); and Air Trails, Inc. (WCOL) (all class IV stations), for increase in power to 1 kw; made effective.

Section 307(b) of the act.—Fair, efficient, and equitable distribution of broadcast facilities.

Section 3.24(b) of the rules.—Interference to existing stations.

Section 3.24(g) of the rules (formerly 3.24(b)(7)).—Population within 1-mv/m contour.

Section 3.28(d)(3) of the rules (formerly 3.28(c)(3)).—The 10-percent rule; exemption as to certain class IV stations.

Section 3.35(a) of the rules.—Multiple ownership of standard broadcast stations.

Section 3.37 of the rules.—Minimum separation between standard broadcast stations.

Section 3.188(d) of the rules.—Prohibition re rooftop antennas.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON 25, D.C.

In re Applications of
WMRC, INC. (WBIR), KNOXVILLE, TENN.
WINN BROADCASTING CORP. (WINN), LOUISVILLE, KY.
SCRIPPS-HOWARD RADIO, INC. (WCPO), CINCINNATI, OHIO.
SOUTHEASTERN BROADCASTING Co., INC. (WSFC), SOMERSET, KY.
STANDARD TOBACCO Co. (WFTM), MAYSVILLE, KY.
SOUTHEASTERN OHIO BROADCASTING SYSTEM, INC. (WHIZ), ZANESVILLE, OHIO.
ANDERSON BROADCASTING CORP. (WHBU), ANDERSON, IND.
AIR TRAILS, INC. (WCOL), COLUMBUS, OHIO.
For Construction Permits

}	Docket No. 13097
	File No. BP-12176
}	Docket No. 13098
	File No. BP-12204
}	Docket No. 13110
	File No. BP-12490
}	Docket No. 13127
	File No. BP-12772
}	Docket No. 13136
	File No. BP-12986
}	Docket No. 13137
	File No. BP-13029
}	Docket No. 13140
	File No. BP-13089
}	Docket No. 13147
	File No. BP-13155

ORDER

(Adopted January 3, 1962)

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 3d day of January 1962;

The Commission having under consideration Examiner Charles J. Frederick's initial decision in the captioned proceeding (FCC 61D-93,

released June 21, 1961); exceptions of Court House Broadcasting Co. (WCHO), filed July 20, 1961; limited exception of Community Broadcasting Co. (WTOL), filed July 20, 1961; limited exceptions of Air Trails, Inc. (WCOL), filed July 21, 1961; WCOL's reply to WCHO's exceptions, filed July 31, 1961; a letter filed jointly December 13, 1961, by WCHO, WTOL, and WCOL withdrawing their respective exceptions and requests for oral argument; the Commission's order canceling the oral argument scheduled for December 15, 1961 (FCC 61-1483, released December 14, 1961); and all other matters of record herein;

It appearing that the joint letter filed December 13, 1961, by WCHO, WTOL, and WCOL (wherein they withdraw their respective exceptions and requests for oral argument) presents no substantial public interest problems; and

It further appearing that no other exceptions to the initial decision have been filed within the prescribed time period; and

It further appearing that a review of the record herein indicates that one arithmetical correction in the initial decision should be made; and

It further appearing that, after due consideration, a grant of the eight captioned applications would serve the public interest, convenience, and necessity;

It is ordered, That in paragraph 63 (p. 30) of the findings of fact of the initial decision, the figure "89.5%" *Is deleted*, and the figure "92.1%" *Is substituted* therefor; and

It is further ordered, That Examiner Charles J. Frederick's initial decision in the captioned proceeding (FCC 61D-93, released June 21, 1961), as modified above, *Is made effective*.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON 25, D.C.

<p>In re Applications of WMRC, INC. (WBIR), KNOXVILLE, TENN.</p> <p>WINN BROADCASTING CORP. (WINN), LOUISVILLE, KY.</p> <p>SCRIPPS-HOWARD RADIO, INC. (WCPO), CINCINNATI, OHIO</p> <p>SOUTHEASTERN BROADCASTING Co., INC. (WSFC), SOMERSET, KY.</p> <p>STANDARD TOBACCO Co. (WFTM), MAYSVILLE, KY.</p> <p>SOUTHEASTERN OHIO BROADCASTING SYSTEM, INC. (WHIZ), ZANESVILLE, OHIO</p> <p>ANDERSON BROADCASTING CORP. (WHBU), ANDERSON, IND.</p> <p>AIR TRAILS, INC. (WCOL), COLUMBUS, OHIO For Construction Permits</p>	<p>} Docket No. 13097 File No. BP-12176 Docket No. 13098 File No. BP-12204 Docket No. 13110 File No. BP-12490 Docket No. 13127 File No. BP-12772 Docket No. 13136 File No. BP-12986 Docket No. 13137 File No. BP-13029 Docket No. 13140 File No. BP-13089 Docket No. 13147 File No. BP-13155</p>
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APPEARANCES

Harry G. Sells and William P. Sims, Jr. (Dow, Lohnes & Albertson), for WMRC, Inc.; *Philip Loucks and Maurice M. Jansky*, for WINN Broadcasting Corp. and Southeastern Broadcasting Co., Inc.; *Harry J. Ockershausen* (Dempsey & Koplovitz), for Scripps-Howard Radio, Inc., and Southeastern Broadcasting Co., Inc.; *Harry J. Daly, Lenore G. Ehrig, and Leonard S. Joyce* (Daly & Ehrig), for Standard Tobacco Co. and Tell City Broadcasting Co.; *Robert F. Jones, Warren C. Zwicky, and James T. Sharkey*, for Southeastern Ohio Broadcasting System, Inc., and Valley Broadcasters, Inc.; *George S. Smith and Edwin S. Nail* (Smith, Hennessey & McDonald), for Anderson Broadcasting Corp., Mahoning Valley Broadcasting Corp., and WBVP, Inc.; *Harrison T. Slaughter* (Pierson, Ball & Dowd), for Air Trails, Inc., Twin City Broadcasting, Inc., and Community Broadcasting Co.; *Stanley S. Neustadt*, for WSBC Broadcasting Co.; *Berge, Fox & Arent*, for WHIR, Inc.; *Mark E. Fields*, for Claiborne Broadcasting Co.; *Haley, Wollenberg & Bader*, for Iron City Broadcasting Co., Inc.; *E. Theodore Mallyck* (Mallyck & Bernton), for Court House Broadcasting Co.; *Robert M. Booth, Jr.*, for Logansport Broadcasting Corp.; *Alan Y. Naftalin*, for station WTOL; *Smith & Pepper*, for WBEJ, Inc.; and *P. W. Valicenti*, for Chief, Broadcast Bureau, Federal Communications Commission.

32 F.C.C.

INITIAL DECISION OF HEARING EXAMINER CHARLES J. FREDERICK

(Adopted June 16, 1961)

PRELIMINARY STATEMENT

This proceeding commenced with 59 applicants and an equally large number of respondents. The applications were designated for a consolidated hearing on August 14, 1959. As a result of a series of pre-hearing conferences held on October 6, 9, 14, and 27, 1959, the applications in the consolidated proceeding were assigned to groups in order to facilitate the administrative handling of the large number. The applications in the instant proceeding comprise Group III and a further prehearing conference was held on January 27, 1960.

Hearing sessions were held on the above-entitled (Group III) applications on March 9, May 3, 19, July 13-14, September 27, 1960, and at a final hearing session held on March 16, 1961, the said applications were severed from the consolidated proceeding and from two other applications that were formerly a part of Group III. The record was thereupon closed on March 16, 1961.

All of the above-styled applications request power increases for existing stations now operating on class IV frequencies. Each of the applicants was found to be legally, technically, financially, and otherwise qualified to construct and operate its instant proposal.

The renumbered issue insofar as they relate to the above-styled applications are as follows:

1. To determine the areas and populations which would receive *new* primary service from each of the instant proposals for a broadcast station, and the availability of other primary service to such areas and populations.
2. To determine the areas and populations which may be expected to gain or lose primary service from each of the instant proposals for a change in the facilities of an *existing* broadcast station, and the availability of other primary service to such areas and populations.
3. To determine the nature and extent of the interference, if any, that each of the instant proposals would cause to and receive from each other and all other existing standard broadcast stations, the areas and populations affected thereby, and the availability of other primary service to the areas and populations involved in the interference between the proposals.
4. To determine whether the interference received from any of the other proposals herein and any existing stations would affect more than 10 percent of the population within the normally protected primary service area of any one of the instant proposals in contravention of section 3.28(c) (3) of the Commission rules, and, if so, whether circumstances exist which would warrant a waiver of said section.
5. To determine whether the following proposals would involve objectionable interference with the existing stations indicated below, or any other existing standard broadcast stations, and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other primary service to such areas and populations.

<i>Proposals</i>	<i>Existing stations</i>
BP-12176-----	WSFC, Somerset, Ky. WBEJ, Elizabethton, Tenn. WPNF, Brevard, N.C.
BP-12204-----	WFTM, Maysville, Ky. WHBU, Anderson, Ind. WSLM, Salem, Ind. WSFC, Somerset, Ky.

- BP-12490----- WFTM, Maysville, Ky.
WCOL, Columbus, Ohio
WHIR, Danville, Ky.
WTCJ, Tell City, Ind.
WSAL, Logansport, Ind.
- BP-12772----- WBIR, Knoxville, Tenn.
WFTM, Maysville, Ky.
WHIR, Danville, Ky.
WINN, Louisville, Ky.
- BP-12986----- WCPO, Cincinnati, Ohio
WCHO, Washington Court House, Ohio
WINN, Louisville, Ky.
WSFC, Somerset, Ky.
WHBU, Anderson, Ind.
- BP-13029----- WBBW, Youngstown, Ohio
WCOL, Columbus, Ohio
WFTM, Maysville, Ky.
- BP-13089----- WINN, Louisville, Ky.
WSAL, Logansport, Ind.
WGL, Fort Wayne, Ind.
WFBM, Indianapolis, Ind.
WFTM, Maysville, Ky.
- BP-13155----- WBVP, Beaver Falls, Pa.
WCHO, Washington Court House, Ohio
WCOM, Parkersburg, W. Va.
WCPO, Cincinnati, Ohio
WHIZ, Zanesville, Ohio
WIRO, Ironton, Ohio
WSAL, Logansport, Ind.
WTOL, Toledo, Ohio

8. To determine whether the transmitter site proposed by the following applicant is satisfactory with particular regard to any conditions that may exist in the vicinity of the antenna system which would distort the proposed antenna radiation pattern:

WBIR, Inc. (BP-12176)

9. To determine whether each of the following proposals would involve overlap of the field intensity contours with the station indicated below, as prohibited by section 3.37 of Commission rules:

<i>Proposal</i>	<i>Existing station</i>
BP-13089-----	WFBM, Indianapolis, Ind.

11. To determine whether the rooftop antenna system proposed by the following applicants is in compliance with section 3.188(d) of the rules, and, if not, whether circumstances exist which would warrant a waiver of said section:

Scripps-Howard Radio, Inc. (BP-12490)
Anderson Broadcasting Corp. (BP-13089)

13. To determine whether each of the following proposals is in compliance with section 3.35(a) of the Commission rules concerning multiple ownership of standard broadcast stations:

Anderson Broadcasting Corp. (BP-13089)

14. To determine whether the instant proposal of Anderson Broadcasting Corp. (BP-13089) is in compliance with section 3.24(b) (7) of the Commission rules concerning population within the 1,000-mv/m contour, and, if not, whether circumstances exist which would warrant a waiver of said section.

15. To determine whether transmitter site proposed by each of the following applicants is satisfactory with particular respect to any conditions that may exist in the vicinity of the antenna system which would distort the proposed antenna radiation pattern:

Standard Tobacco Co. (BP-12986)

18. To determine, in the light of section 307(b) of the Communications Act of 1934, as amended, which of the instant proposals would best provide a fair, efficient, and equitable distribution of radio service.

20. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which, if any, of the instant applications should be granted.

FINDINGS OF FACT

WMRC, Inc. (WBIR), Docket No. 13097

1. The application of WMRC, Inc., is for an increase in daytime power of station WBIR, Knoxville, Tenn., on the frequency of 1240 kc from 250 w to 1 kw. The issues in the order of designation concerning this applicant raised questions concerning interference from the proposed operation of radio station WBIR to the existing operations of stations WSFC, Somerset, Ky., and WBEJ, Elizabethton, Tenn. (both cochannel stations). There would be no objectionable interference caused to any other existing radio station. In addition, questions were raised concerning mutual interference with the proposed operation of radio station WSFC, Somerset, Ky.

2. Issue 6 in the aforementioned order of designation raised a question as to the transmitter site of radio station WBIR "with particular regard to any conditions that may exist in the vicinity of the antenna system which would distort the proposed antenna radiation pattern." There is a water tower northwest of station WBIR's antenna. There were admitted into evidence in this proceeding certain field intensity measurements for seven radials with the appropriate analysis that sufficiently establish that the water tower does not adversely affect the antenna system of radio station WBIR. The seven measured radials all indicate that a constant field is radiated over a 158° arc (N. 327° E. through N. 125° E.). Furthermore, the N. 327° E. radial is in the direction of the water tower from the antenna of station WBIR and measurements along this radial do not indicate any peculiar variations as a result of the presence of the water tower. It can, therefore, be concluded that the antenna system of station WBIR is functioning in accordance with its license and that the operation of this antenna system with 1 kw of power will not be adversely affected by the water tower.

3. Petitioner, WMRC, Inc., and each of the licensee applicants in Group III of this proceeding have agreed to the acceptance of the mutual interference created by their respective proposals. WMRC, Inc., further agrees to accept such interference as may be imposed by other existing class IV stations in the event they are subsequently authorized to increase power to 1,000 w, daytime hours. This agreement includes the proposed operation of radio station WBEJ, with power of 1,000 w, daytime only, at Elizabethton, Tenn., presently on file with the Commission (file No. BP-14274).

4. WMRC, Inc., contends that a grant of the instant application would be in the public interest, convenience, and necessity. WBIR now furnishes primary service to 261,335 persons in 888 square miles. Assuming grant of all the proposals herein, proposed WBIR would provide service to 303,231 persons in 1,541 square miles. By the pro-

posed power increase, WBIR would not only continue to provide service to all of its present service area but, in addition, would provide a new service to 41,896 persons in 653 square miles.

WINN Broadcasting Corp. (WINN), Docket No. 13098

5. WINN Broadcasting Corp. (formerly WBC, Inc.) is the licensee of station WINN, Louisville, Ky., which presently operates as a class IV station on a frequency of 1240 kc with a power of 250 w and unlimited hours of operation. The instant application of WINN seeks a construction permit to increase the daytime power of WINN to 1,000 w.

6. Under its present operation, the 0.5-mv/m contour of station WINN encompasses an area of 1,563 square miles containing a total population (1950 census) of 604,652. Station WINN receives interference within its 0.5-mv/m contour, however, from station WFTM, Maysville, Ky., which causes a loss of service in an area of 75 square miles and to a population of 3,604. Accordingly, the present interference-free primary service area of WINN includes an area of 1,488 square miles and a population of 601,048.

7. Under its proposed operation, the 0.5-mv/m contour of station WINN would encompass a primary service area of 3,011.6 square miles containing a total population of 656,124. However, stations WHBU, WFTM, and WSFC, whose applications are consolidated in this proceeding, also propose to operate their facilities with 1 kw. If the applications of these three stations and that of station WINN are granted, station WINN will receive some interference from these three stations to its proposed operation. Station WINN will also receive interference from the present operation of station WSLM, Salem, Ind., which operates on the frequency of 1220 kc with a power of 1 kw and daytime hours of operations, but such interference would be wholly contained within the area of interference from the proposed operation of stations WHBU and WFTM.

8. Assuming a grant of the applications of WHBU, WFTM, and WSFC, the combined interference which would be caused to station WINN by the proposed operations of these three applicants, and the present operation of station WSLM, Salem, Ind., would affect a total area of 1,113.5 square miles and a population of 38,636 within station WINN's proposed 0.5-mv/m contour. At the same time, however, station WINN will be able to serve with at least an 0.5-mv/m signal an interference-free area of 1,898.1 square miles and a population of 617,488. Thus, if its application is granted, station WINN will realize a net gain within the interference-free parts of its primary service area of 16,440 persons and 410.1 square miles over its present operation. Also, the population receiving a signal of 2 mv/m or better from WINN will be increased from 529,463 to 571,604, a factor of significance in a heavily populated area like Louisville, Ky.

9. Under station WINN's proposed operation, and assuming a grant of the applications of stations WHBU, WFTM, and WSFC, there would be available within any one portion of the WINN gain area, including that part of its primary service area subject to interference, a maximum of 19 and a minimum of 8 other radio services.

10. The proposed operation of station WINN will cause some interference to the proposals of stations WHBU, WFTM, and WSFC, which is delineated in the findings of those applicants herein. Each of these applicants, together with WINN, has mutually agreed with each other to accept the interference which would result from a grant of all four applications.

11. The proposed operation of WINN will also cause a loss of 1,240 persons within the present interference-free primary service area of WSLM. The present interference-free primary service area of WSLM includes a population of 170,949 persons, and the increased interference is less than 1 percent of the population presently served by WSLM. There are, moreover, a maximum of 13 and a minimum of 11 other radio services in this part of WSLM's 0.5-mv/m contour area which would receive interference from WINN's proposed operation. Also, by letter dated July 22, 1959, filed as an amendment to the WINN application by a letter of amendment dated July 24, 1959, Don H. Martin, licensee of WSLM, advised that he would accept any interference that would result from the proposed 1-kw operation of WINN.

Scripps-Howard Radio, Inc. (WCPO), Docket No. 13110

12. Scripps-Howard Radio, Inc., is the licensee of standard broadcast station WCPO, a class IV station, operating in Cincinnati, Ohio, on 1230 kc with 250 w unlimited time. Cincinnati is the second largest city in Ohio. According to the 1960 U.S. census, the city of Cincinnati has a population of 502,550 and the Cincinnati standard metropolitan statistical area (which encompasses Howard County, Ohio, and Kenton and Campbell Counties in Kentucky), has a population of 1,071,624. According to the 1950 U.S. census, which is used throughout these findings, the city of Cincinnati had a population of 503,998 and there were 813,292 people in the Cincinnati urbanized area (substantially the same as the so-called metropolitan statistical area). WCPO is one of seven standard broadcast stations in Cincinnati. The others operate with the following facilities: WKRC, 550 kc, 5 kw day, 1 kw night; WLW, 700 kc, 50 kw, unlimited time; WZIP, 1050 kc, 1 kw daytime only; WSAI, 1360 kc, 5 kw unlimited time; WCIN, 1480 kc, 1 kw daytime only; WCKY, 1530 kc, 50 kw, unlimited time.

13. WCPO's application in this proceeding proposes operation with 1 kw power during daytime hours. There would be no change in its authorized nighttime facilities.

14. As presently operated, WCPO's 0.5-mv/m contour encompasses an area of 2,020 square miles and a population of 1,019,566. WCPO now receives interference from cochannel stations WCOL, Columbus, Ohio; WSAL, Logansport, Ind.; WHIR, Danville, Ky.; and adjacent-channel (1240 kc) station WFTM, Maysville, Ky. Said interference causes a loss of 690 square miles and a population of 52,049. Thus, WCPO, as presently operated, furnishes an interference-free service to a population of 967,517 in an area of 1,330 square miles. Within its present 2.0-mv/m contour, WCPO serves a population of 891,888.

15. Of the stations affected by WCPO's proposed operation (no

pending applications for new stations are involved), WCOL and WFTM are parties to this proceeding, and WSAL, WHIR, and WTCJ, Tell City, Ind., are respondents. WSAL and WHIR also have pending applications requesting increase to 1 kw daytime which are not included in this proceeding

16. On the assumption that all of the other applications which are the subject of this proceeding will be granted, the following are the pertinent facts regarding the interference conditions involved and the populations that would gain or lose service should WCPO's application be granted:

A. Operating as proposed, the daytime 0.5-mv/m contour of WCPO would encompass an area of 4,170 square miles and a population of 1,118,860. Any interference from WFTM would be masked by interference from WCOL. WCOL would cause interference in an area of 2,059 square miles and to a population of 114,018, leaving an interference-free service to an area of 2,111 square miles and a population of 1,004,842. This represents a net gain to WCPO of 781 square miles of area and a population of 37,325. The loss to WCPO represents 10.2 percent of its total proposed 0.5-mv/m contour. None of the areas and populations now served by WCPO would lose service by virtue of a grant of WCPO's application. WCPO's proposed 2.0-mv/m contour will encompass 1,020 square miles and a population of 949,069, representing a net gain of 2.0-mv/m service to 475 square miles and a population of 57,181. There are at least 10 other services to the areas gained. The interference which the WCPO proposal would cause to the existing and proposed operations of WCOL and WFTM are shown elsewhere in these findings.

B. As presently operated, WCPO causes interference to station WHIR, Danville, Ky., in an area of 11 square miles and to a population of 664 persons. Operating as proposed, WCPO would increase the interference to WHIR's 250-w operation in an area of 250 square miles and to a population of 9,535. Factored against a population of 78,745 within WHIR's existing 0.5-mv/m contour, the interference loss from WCPO operating as proposed would be 12.1 percent. Four stations serve 100 percent of the area of interference, and a maximum of 11 services and a minimum of 4 services are available to this entire area. WHIR would also receive interference to an additional 3,117 persons, or 4.0 percent from the proposed operation of station WSFC, an applicant in this proceeding.

C. WCPO, operating as proposed, would cause interference to the present operation of WSAL, Logansport, Ind., in an area of 35 square miles and to a population of 3,001. Factored against the population within WSAL's present 0.5-mv/m contour, this will be 2.4 percent of interference from proposed WCPO. At least 10 other services are available in the entire interference area.¹

D. WTCJ, Tell City, Ind., operating as at present with 250 w, will receive some interference from WCPO operating as proposed, but said interference is masked by interference from the present operation of station WBOW.

17. On the assumption that all the applications in this proceeding, as well as the pending applications of WHIR and WSAL, are granted, the following are the pertinent facts regarding the interference conditions and the populations that would gain or lose service from WCPO operating as proposed:²

¹ The interference from WCPO to WSAL will be completely masked by the proposed operation of WHBU, Anderson, Ind., an applicant in this proceeding.

² Evidence in support of the facts set out in this paragraph, giving effect to the grant of the pending applications of WSAL and WHIR, is contained in WCPO exhibit 1A. This evidence was rejected by the examiner because of objections by the Commission's Broadcast Bureau. Counsel for WHIR supported WCPO's proffer of this evidence, and WSAL did not object. The evidence was then tendered under an offer of proof. The WHIR and WSAL applications were not made a party to this proceeding because of the Commission's cutoff rule. In the meanwhile, the WHIR and WSAL applications have progressed

A. WCPO's 1 kw daytime 0.5-mv/m contour would encompass an area of 4,170 square miles and a population of 1,118,860. Interference would be received from WCOL, WFTM, WSAL, and WHIR, operating as proposed. The WFTM and WSAL interference would be masked by WCOL's interference, but WHIR would cause additional interference. WCPO and WHIR, operating as proposed, would create interference in an area of 2,308 square miles and cause the loss of a population of 121,585, representing 10.9 percent of the total 0.5-mv/m service of WCPO, operating as proposed. This would leave WCPO, however, an interference-free service to 997,275 in an area of 1,862 square miles, or a net gain of 29,758 persons and 532 square miles. None of the areas and populations presently receiving service from WCPO will lose service from a grant of its 1-kw proposal. Within its 2.0-mv/m contour, WCPO would increase its service to the same extent mentioned hereinabove. As heretofore noted, there are at least 10 services available to the entire gain area.

B. The grant of WHIR's 1-kw application will extend its 0.5-mv/m coverage from an area of 1,285 square miles and a population of 78,745 to an area of 2,300 square miles and a population of 111,967. WCPO's proposed operation will reduce said coverage by 587 square miles and a population of 25,938, representing 23.2 percent of WHIR's proposed 0.5-mv/m contour coverage. The proposal of WSFC, if granted, would further reduce said proposed 0.5-mv/m coverage by 134 square miles and a population of 7,857, for an additional 7.0 percent reduction. The grant of WCPO and WSFC would cause no loss of areas or populations now served by WHIR's 250-w operation. Moreover, WHIR's 2.0-mv/m contour will be greatly expanded and the signal throughout its service area improved. In the area which would not be added by WHIR because of WCPO's proposed operation, there are 4 stations which render service to 100 percent of said area, and a maximum of 11 services and a minimum of 4 services to the entire area.

C. The grant of WSAL's pending application will increase its 0.5-mv/m contour from 2,430 square miles and a population of 124,671 to an area of 4,940 square miles and a population of 282,996. With WCPO operating as proposed, this area would be reduced by 454 square miles and a population of 15,440, representing a 5.5-percent loss in WSAL's total proposed 0.5-mv/m contour. The grant of WCPO would cause no loss of areas and populations now served by WSAL's 250-w operation. There are at least 10 services available to 100 percent of the area which would not be added by WSAL because of WCPO's 1-kw operation.

18. Should WCPO's application be denied, and should it be required to remain at 250 w daytime power, it would receive substantial interference from the grant of other proposals in this proceeding. The most severe loss would come from the grant of the pending proposal of WCOL, Columbus, also a party to this proceeding. Said WCOL interference would mask the interference from all other pending proposals and, accordingly, WCPO's present operation would lose an additional 55,943 persons in an area of 780 square miles. WCPO's interference-free service would thus be curtailed to a popu-

through the Commission's processing line, and it is probable that they are about to be acted upon by the Commission. Since the applications in question will probably be granted before a decision in the instant case, WCPO's proffered evidence as to the effect that the grant of these applications will have upon WCPO's proposal is included so that the Commission will have a complete picture of matters as they now stand.

lation of 911,574, a loss of 10.6 percent of the population in its 0.5-mv/m coverage. Assuming the denial of WCOL and a grant to WFTM, the resulting interference to WCPO would be in an area of 41 square miles and to a population of 1,003 persons.³

Agreements or understandings re interference

19. WCPO has entered into formal written agreements with WCOL and WHIR, whereby these applicants and WCPO have agreed not to object to a grant of the application of the other and have consented to accept interference which would be caused by a grant of their respective 1-kw proposals. Said agreements also provide that each of the applicants (WCPO, WCOL, and WHIR) will refrain from commencing operations with 1 kw daytime power until the other is ready for the start of 1-kw operation. WCPO has a formal written contract with WFTM whereby each party agrees to accept such interference as may result from a grant of their respective applications. WSAL filed appearance as a respondent, but did not actively participate in this proceeding. It is believed that WSAL will interpose no objection to the grant of WCPO's application, provided its application is also granted.

WCPO's rooftop site

20. Section 3.188(d) of the Commission's rules precludes the use of a rooftop antenna with power in excess of 500 w. WCPO has operated from a rooftop site for many years, and proposes the continued utilization of said antenna system for 1-kw operation and it has requested a waiver of the rule.

21. WCPO's consulting engineer made an on-the-spot investigation of WCPO's rooftop antenna facilities and presented the following facts in support of WCPO's request for waiver: The self-supporting antenna of WCPO is located atop a warehouse-type reinforced concrete building in the industrial district of downtown Cincinnati. The building has maximum dimensions of approximately 100 feet by 286 feet. On the roof of the building are approximately 12,000 square feet of expanded copper-mesh ground screen. One hundred and eighty radials are laid on the roof to its extremities. In addition to this ground screen and the radials, copper wires have been run vertically into the water mains on the east and west sides of the building. The installation was inspected by WCPO's consultant, and it was found to be carefully bonded at all connections and to conform with the best electrical wiring practices. Moreover, the inspection revealed that the entire system is carefully maintained. The general character of the neighborhood in which the WCPO antenna is located is heavily industrialized and the extent to which there are any homes or residences in the neighborhood appears to be on the decline rather than on the increase. Those dwellings that have not been removed to make way for industrial plants are being removed to create parking facilities to take care of the industrial development of the neighborhood. It was found that the wiring in the immediate area of WCPO's

³ Assuming a grant of WHIR's application, and denial of WCPO, WCOL, and WFTM applications, WHIR will cause interference to WCPO's present operation in an area of 330 square miles and a loss of 12,219 persons, or 6.3 percent.

transmitter is extremely heavy duty, normally found in industrialized area, and, moreover, is exceptionally well maintained. Rather extensive field test measurements were made throughout the neighborhood in an effort to detect the possibility of external cross-modulation. Involved in these checks were several 50-kw stations and all the local Cincinnati standard broadcast stations. No external cross-modulation was noticed in the near vicinity of the transmitter. Such external cross-modulation as was observed was sporadic. It is the opinion of WCPO's engineering consultant that no significant problems will be caused by permitting WCPO to utilize its rooftop site for 1-kw operation. Moreover, since the applicant has guaranteed to take care of all reasonable complaints of blanketing or external cross-modulation, any problems which might be encountered will be corrected.

22. WCPO's chief executive, who has occupied that post for more than 22 years, offered the following testimony bearing on this issue: In all the years WCPO has operated with the rooftop antenna, to the best of his knowledge there has never been any complaint of blanket interference resulting from cross-modulation. WCPO on several occasions in the past investigated the possibility of moving its transmitter from the rooftop site, but has never succeeded in locating a ground site anywhere in the Cincinnati area from which it could operate station WCPO in compliance with the Commission's rules for coverage of the community. Through this witness, evidence was presented indicating that a recent survey for an appropriate ground site for WCPO had been undertaken by real estate experts, and that said experts were unable to locate a suitable site. The work in this connection was coordinated with WCPO's engineering consultant, and the results appear conclusive that a ground site is not to be found from which WCPO could operate within the Commission's rules. Finally, the chief executive of WCPO testified that over the years, WCPO had undertaken through various consultants to find another frequency which would permit WCPO to improve its facilities, but that such efforts have been without avail. Thus, the witness was of the opinion that WCPO, operating with 1 kw from its rooftop site, afforded the sole means of improving these facilities in the immediate future so as to enable WCPO to continue to compete economically on an equal basis with other Cincinnati standard broadcast stations.

Southeastern Broadcasting Co., Inc. (WSFC), Docket No. 13127

23. Southeastern Broadcasting Co., Inc., is the licensee of station WSFC, Somerset, Ky., which presently operates as a class IV station on a frequency of 1240 kc with a power of 250 w, unlimited time. The instant application of WSFC seeks a construction permit to increase daytime power to 1,000 w.

24. Under its present operation, the 0.5-mv/m contour of station WSFC encompasses an area of 594 square miles containing a population of 36,465, all of which is presently served by at least an 0.5-mv/m signal daytime.

25. Under its proposed operation, the 0.5-mv/m contour of station WSFC would encompass a primary service area of 1,304 square miles

containing a total population of 56,483 persons. However, stations WBIR (Knoxville, Tenn.), WINN (Louisville, Ky.), and WFTM (Maysville, Ky.), whose applications are consolidated in this proceeding, also propose to operate their facilities with 1 kw daytime. If the applications of these three stations and that of station WSFC are granted, WSFC will receive some cochannel interference from these three stations to its proposed operation. Station WSFC would also receive slight interference from the present operation of station WHIR, Danville, Ky., which operates on the frequency of 1230 kc, unlimited time, with a power of 250 w.

26. Assuming a grant of the applications of WBIR, WINN, and WFTM, the combined interference which would be caused to station WSFC's proposed operation by the proposed operations of these three applicants, and the present operation of station WHIR, would affect 518 square miles and a population of 15,837 within WSFC's proposed 0.5-mv/m contour. Under its proposed operation, however, WSFC would have an interference-free primary service area of 786 square miles with a population of 40,646 persons. This represents a net gain to WSFC of 192 square miles and a net gain in population within its primary service area of 4,181 persons, or 11.4 percent over its present operation.

27. Within that part of WSFC's proposed 0.5-mv/m contour area which would be subject to interference, there are a minimum of three and a maximum of six other radio services.

28. The proposed operation of WSFC will cause adjacent-channel interference to station WHIR in an area of 11.8 square miles with a population of 405 persons. Since WHIR has a total of 1,218 square miles and a population of 66,459 persons within its 0.5-mv/m contour, the loss of both area and population to WHIR which would be attributable to WSFC's proposal when granted would be less than 1 percent in each case. The area of 11.8 square miles where the WSFC signal will be substituted for the WHIR signal presently receives 100 percent service from five other radio stations. Moreover, a written agreement was entered into on December 22, 1960, between Southeastern Broadcasting Co., Inc., as licensee of WSFC, and WHIR, Inc., under which WHIR, Inc., has agreed not to object to a grant of WSFC's instant application, and Southeastern has agreed not to oppose WHIR's application now pending before the Commission (file No. BP-13870) to increase its power to 1 kw.

29. The proposed operation of WSFC would also cause some cochannel interference to stations WFTM, WINN, and WBIR, which is delineated in the findings of those applicants, *infra*. These applicants have mutually agreed each with the other to accept the interference which would be caused to each if all such applications are granted.

Standard Tobacco Co. (WFTM), Docket No. 13136

30. Standard Tobacco Co. is licensee of radio station WFTM, Maysville, Ky., which presently operates a class IV station on a frequency of 1240 kc with a power of 250 w, unlimited time. Its instant application requests an increase in daytime power from 250 w to 1 kw, re-

maining on 1240 kc and retaining its power of 250 w, nighttime. Official notice is taken of the fact that WFTM is the only standard broadcast station located at Maysville, Ky.

Characteristics of the Maysville area

31. Maysville, Ky., is located in Mason County; the 1950 population of Maysville was 8,632 persons, while the 1950 population of Mason County was 18,486 persons. Maysville, the seventh largest wholesale distribution point within the State of Kentucky, is the world's second largest burley tobacco market. During the 1959-60 season, Maysville sold 29,800,000 pounds of burley tobacco, for a total of \$19,090,000. This tobacco comes to Maysville from more than 25 counties within Kentucky and Ohio. The three banks located in Maysville have total deposits in excess of \$21,800,000. Its yearly retail sales are in excess of \$20 million.

32. Geographically, Maysville is situated at a considerable distance from markets of comparable or large size; i.e., West: Cincinnati, Ohio (62 miles); North: Columbus, Ohio (98 miles); East: Portsmouth, Ohio (55 miles); and South: Lexington, Kentucky (68 miles).

33. The increased service which would result from a grant of WFTM's instant proposal would fall within areas relatively close to Maysville, and immediately adjacent to Mason County; in Kentucky the counties of Louis and Fleming, and in Ohio, the counties of Adams and Brown. Moreover, within WFTM's proposed interference-free primary service area, at distances of from 17 to 31 miles, there are numerous small communities. In Kentucky there are the communities of Rome, Clarksburg, Charters, Crum, Petersville, Plummers Mill, Grange City, Queens, Ringo Mills, Ryan, and Muses Mills; within Ohio, the communities of Stout, Lynx, Jacksonville, Belfast, Mowrytown, Cedar Falls, Fairfax, May Hill, Sugar Tree, Ridge, Buford, Taylorsville, and Mount Orb.

Technical considerations

34. Present WFTM daytime operation.

Contour (mv/m) ¹	Area (sq. miles) ²	Population ³	Percentage of population outside normally protected contour
2.....	585	32, 235	-----
0.5.....	1, 912	93, 021	-----
Interference received.....	168	5, 532	5. 9
Interference free.....	1, 744	87, 489	-----

¹ The contours herein were computed based upon soil conductivities taken from fig. M-3 of the Commission's rules; measurements, as applicable, taken from the WHIZ site for their license application (BL-5757) and application for approval of site (BP-8194); and proofs of performances for existing directional operations, where applicable. The equivalent distance method of computation was employed.

² Areas were determined by P1 R² or planimeter, as required by Shape.

³ Populations were based on the 1950 U.S. census, minor civil division maps were employed, and where only a part of the MCD fell within a contour, uniform rural distribution of population within the MCD was assumed. Cities and towns over 2,500 population, and other urbanized areas as designated by the 1950 U.S. census, which fell outside the 2-mv/m contour were excluded.

35. *Combination of interference to the present WFTM operation from other proposals in this proceeding.*

Condition	Area (sq. miles)	Population	Percentage			
WINN, only.....	749	25,918	27.9			
WSFC, only.....	378	12,158	13.1			
WHBU, only.....	181	6,004	6.4			
WHIZ, only.....	248	7,143	7.7			
WCPO, only.....	227	7,310	7.8			
WINN and WSFC.....	757	26,015	28.0			
WINN and WCPO.....	749	25,918	27.9			
WINN and WHIZ.....						
WINN and WHBU.....						
WINN, WCPO, WHIZ, WHBU.....						
WINN, WSFC, and WCPO.....						
WINN, WSFC, and WHIZ.....	757	26,015	28.0			
WINN, WSFC, and WHBU.....	425	13,548	14.6			
WSFC and WCPO.....						
WSFC and WHBU.....						
WSFC and WHIZ.....						
WHIZ and WCPO.....						
WCPO and WHBU.....						
WHIZ and WHBU.....						
WSFC, WCPO, WHBU.....						
All proposals herein granted.....				757	26,015	28.0

36. *Proposed WFTM daytime operation.*

Contour mv/m	Area (sq. miles)	Population	Percentage of population outside normally protected contour
2.....	1,067	64,718	-----
0.5.....	3,341	164,365	-----
Interference from existing WINN, WSFC, and WCPO.....	395	16,460	-----
Interference from WCHO, Washington Court House, Ohio (respondent herein).....	11	242	-----
Interference from all existing stations, including WCHO.....	53	1,424	-----
	406	16,702	10.8
Interference free, if WFTM, only, is granted.....	448	17,884	11.59
	2,935	137,663	-----
Net gain in service, if WFTM, only, is granted.....	2,893	136,481	-----
	1,191	50,174	-----
	1,149	48,992	-----

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37. *Combination of interference to the proposed WFTM operation from the other proposals herein.*

Contour mv/m	Area (sq. miles)	Population	Percentage of population outside normally protected contour
WINN, only.....	1,097	49,672	-----
WSFC, only.....	586	21,590	-----
WCPO, only.....	281	20,020	-----
WHBU, only.....	102	4,192	-----
WHIZ, only.....	166	3,703	-----
WINN and WSFC, only.....	1,102	50,033	32.3
WINN and WCPO, only.....	1,097	49,672	32.1
WINN and WHBU, only.....	1,097	49,672	32.1
WINN and WHIZ, only.....	1,176	51,288	33.2
WINN, WSFC, and WHIZ, only.....	1,212	51,616	33.5
WINN, WSFC, and WCPO, only.....	1,102	50,033	32.3
WINN, WSFC, and WHBU, only.....	1,102	50,033	32.3
WINN, WHBU, and WHIZ, only.....	1,176	51,288	33.2
WSFC, and WCPO, only.....	852	40,990	26.5
WSFC and WHIZ, only.....	857	32,895	21.3
WHBU and WCPO, only.....	492	28,262	18.3
WCPO and WHIZ, only.....	581	30,520	19.7
Total combined interference from all existing stations, together with a grant of all proposals herein.....	1,212	51,616	33.5
Proposed interference free, assuming all proposals herein are granted.....	1,254	52,798	-----
Net gain of proposed WFTM over existing WFTM, assuming all proposals in this proceeding are granted.....	2,129	102,749	-----
	2,087	101,567	-----
	385	15,260	-----
	343	14,078	-----

38. All areas or populations within WFTM's existing interference-free primary service area would continue to receive service if WFTM's instant proposal is granted. Within WFTM's gain area, there are a minimum of 4 and a maximum of 18 other broadcast services available. Likewise, the areas within WFTM's proposed 0.5-mv/m normally protected contour which would fail to receive service due to interferences caused by the other proposals herein have a minimum of 4 and a maximum of 18 other services available. If WFTM's proposal is denied, and the other proposals herein granted, the additional areas of interference to WFTM's existing operation would lie in areas which receive a minimum of 6 and a maximum of 18 other standard broadcast services.

39. WFTM's proposal would cause interference to only one existing station that is not an applicant herein, that is, WCHO, Washington Court House, Ohio (1250 kc, 500 w, day), within an area of 43 square miles, wherein 1,309 persons reside. This adjacent channel interference represents less than one-half of 1 percent of the population within WCHO's normally protected 0.5-mv/m contour. At present, WCHO provides an interference-free service to an area of 3,950 square miles, wherein 250,068 persons reside. At present, WCHO receives objectionable interference in an area of 307 square miles, wherein 23,292 persons reside, representing 8.52 percent of the population within its normally protected contour. If the proposals of WCOL and WFTM are granted, WCHO's interference-free service would be in an area of 3,894 square miles, wherein 236,513 persons reside.⁴ The total interference which WCHO would receive, if the proposals of

⁴ WFTM does not cause or receive interference to or from the proposal of WCOL; however, WCOL does have mutual interference problems with two other proposals in this proceeding, WHIZ and WCPO.

WCOL and WFTM are granted, would fall in an area of 363 square miles, wherein 36,847 persons reside, representing 13.48 percent of the population within its normally protected contour. Accordingly, the increased interference to WCHO that would result from a grant of all of the proposals in this proceeding (WCOL and WFTM being the only two proposals which would cause additional interference to WCHO), would fall in an area of 56 square miles, wherein 13,555 persons reside. WCHO's exhibit 1 does not set forth the other services available to this interference area; however, the interference area caused by WFTM's proposal would fall within the same general area in which the WHIZ proposal would cause interference to WFTM's proposal. Within such area of interference there are a minimum of 4 and a maximum of 18 other broadcast services available.

40. With respect to issue 13, concerning the determination of whether WFTM's transmitter site is satisfactory, with particular respect to any condition that may exist in the vicinity of the antenna system which would destroy the proposed antenna radiation pattern, the undisputed engineering testimony on behalf of WFTM discloses the following: WFTM's tower is located at a site on the south side of a large tobacco warehouse; it is not a "rooftop" radiator, although the WFTM ground system does consist in part of 41 parallel copper straps of a length of 200 feet each, laid over the roof of the warehouse, together with 58 equally spaced copper wire radials laid on the ground south of the warehouse (each of a length of 200 feet, except where limited by the boundaries of the property). The WFTM ground system would be considered comparable to 90 buried copper radials of length of 150 feet and using supplementary charts for less than quarter wave ground systems, unofficially used by the Federal Communications Commission, WFTM's engineer computed that the WFTM radiator has an efficiency of 171 mv/m for 1,000 w input. WFTM's engineer has practiced before the Federal Communications Commission for many years, and has often completed nondirectional proofs of performance that have been accepted for filing by the Commission. At pages 34 and 35 of WFTM's exhibit I, the present and proposed 1,000-mv/m contours of WFTM are set forth, and an inspection of those pages discloses that the entire area within the proposed 1,000-mv/m contour consists primarily of tobacco warehouses. These tobacco warehouses are of wood beam construction and would not encourage the conditions for cross-modulation. Likewise, the buildings within that contour, other than tobacco warehouses, are also without steel beam construction, and since WFTM went on the air (July 1, 1948) with its present operation, there have never been any problems from cross-modulation. There are no structures in the vicinity of the WFTM radiator that would present any problems from reradiation. There is only one structure of any size in the vicinity of the WFTM radiator, and that is a water tower approximately 100 feet in height (0.12 wave), located approximately 500 feet east of WFTM's tower (0.63 wave separation). Said water tower is poorly grounded and would be a very poor reradiator due to its short electrical height and the fact that there is over a half wavelength separation which is not considered a problem.

Southeastern Ohio Broadcasting System (WHIZ), Docket No. 13137

41. Southeastern Ohio Broadcasting System (WHIZ) is the licensee of standard broadcast station WHIZ at Zanesville, Ohio. The station now operates unlimited hours on 1240 kc with 250 w power, nondirectional antenna. By its instant application, WHIZ requests authority to increase its daytime power to 1 kw, operating from its present antenna site.

42. The population of the city of Zanesville, based on the 1950 U.S. census, is 40,517. Zanesville is located in Muskingum County, Ohio, which has a population of 74,535. There are no other standard broadcast stations located in Zanesville or in Muskingum County. All of Muskingum County would receive primary service from the proposed WHIZ operation.

43. With the exception of WHIZ, all contours were based on conductivity values taken from figure M-3 of the Commission's rules. The WHIZ contours were based partially upon conductivity values determined by measurements made by WHIZ and filed with the Commission in 1951 and 1955. In directions where measurements were not available and for distances beyond the measurements, the conductivity values shown in figure M-3 were used.

44. The population and areas served by the present 250-w WHIZ operation are as follows:

Contour (mv/m)	Population	Area
2.0.....	74,080	510
0.5 (normally protected).....	119,130	1,730
0.5 (interference free).....	114,490	1,610
Interference from existing station (WBBW) ¹	4,640	120
Percentage of normally protected receiving interference.....	3.9	6.9

¹ An existing class IV station in Youngstown, Ohio.

45. Assuming the proposed operation of WHIZ is not granted, the present operation of WHIZ would receive the following:

Contour (mv/m)	Population	Area
Additional interference from proposed WBBW ¹	11,100	330
Additional interference from proposed WCOL.....	4,400	120
Combined additional interference from proposed WBBW and WCOL.....	13,480	400
Interference free if only WBBW granted.....	103,390	1,280
Interference free if only WCOL granted.....	110,090	1,490
Interference free if WBBW and WCOL granted.....	101,010	1,210
Percentage of normally protected receiving interference if WBBW and WCOL granted.....	15.2	30

¹ An existing class IV station in Youngstown, Ohio.

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46. Assuming all applications in the proceeding are granted, the coverage data for the proposed WHIZ operation are as follows:

Contour (mv/m)	Population	Area
2.0.....	93,890	995
0.5 (normally protected).....	195,010	3,310
Total interference from existing stations (WBBW, WCOL).....	16,100	495
Additional interference from pertinent proposals ¹	40,690	830
Total interference to WHIZ.....	56,790	1,325
Resulting WHIZ interference free.....	138,220	1,985

¹ The proposed operation of WHIZ would receive interference from the proposed 1-kw operations of stations WBBW, Youngstown, Ohio, and WCOL, Columbus, Ohio, affecting 33,540 and 11,140 persons, respectively. However, 3,990 of these persons reside in an area where the WBBW and WCOL interfering contours overlap, so that the combined interference from the proposed operations of WBBW and WCOL affects 40,690 persons as shown above. In addition, interference from the proposed operation of Malrite Broadcasting Co. (BP-12316, docket No. 13101) affecting 3,540 persons within an area of 140 square miles, would fall completely within the area where WHIZ will receive interference from the proposed operation of WBBW.

47. If all the applications in this proceeding are granted, WHIZ would receive interference involving 29.1 percent of the population within its normally protected contour. However, WHIZ will serve an additional population of 23,730 persons and an area of 375 square miles. The proposed operation of WHIZ will bring the second primary service (2 mv/m) to New Lexington, Ohio, a community of 4,233 persons (1950 U.S. census) located 18 miles from Zanesville. All other portions of the WHIZ gain area receive service from a minimum of 3 and a maximum of 16 existing stations. No area now receiving primary service from WHIZ will lose such service by granting all applications in this proceeding.

48. The proposed operation of WHIZ will cause objectionable interference to the proposed 1-kw operation of WCOL, 1230 kc, Columbus, Ohio; WBBW, 1240 kc, Youngstown, Ohio; and WFTM, 1240 kc, Maysville, Ky., all of which are applicants in this proceeding. WHIZ has reached separate agreements with the licensees of WCOL, WBBW, and WFTM whereby each agrees to accept the interference which will be caused within the proposed service area of its station by the proposed operation of WHIZ, and WHIZ agrees to accept the interference which will be caused within its proposed service area by the proposed operation of each of these stations.

49. The proposed operation of WHIZ will not cause any objectionable interference to any other existing station. Furthermore, WHIZ will accept a grant of its application subject to a condition that it shall accept such interference as may be imposed by existing class IV stations in the event these stations are subsequently authorized to increase power to 1 kw.

Anderson Broadcasting Corp. (WHBU), Docket No. 13140

50. Anderson Broadcasting Corp. is the licensee of standard broadcast station WHBU, a class IV station operating in Anderson, Ind., on 1240 kc with 250 w power, unlimited time. Its application in this proceeding proposes operation of WHBU during its daytime hours

with 1 kw power. There is one other station in Anderson, namely, WCBS, which is operated on 1470 kc with power of 1 kw during daytime hours. The population of Anderson is 46,820 and the population of Madison County (in which Anderson is located) is 103,911 (1950 census).

51. Station WHBU now provides service as follows:

Contour (mv/m)	Population	Area (sq. miles)
Present.....	132,943	725
Present 0.5.....	266,300	3,016
Interference from existing operations.....	19,160	216
Present interference-free service.....	247,140	2,800

52. If all the applications herein, including WHBU, are granted, then WHBU's service contours and the population and area therein would be as follows:

Contour (mv/m)	Population	Area (sq. miles)
Proposed 2.....	248,420	1,544
Proposed 0.5.....	439,200	5,160
Proposed 1 interference free if WINN and WFTM are also granted.....	355,422	3,887
Proposed 1 interference free if WSAL's pending application is ultimately granted.....	344,907	3,651

Thus, assuming a grant of the applications of WHBU, WINN, and WFTM, the gain to WHBU would be to 108,282 persons in an area of 1,087 square miles. If WSAL's pending application should ultimately be granted by the Commission, WHBU would then have a net gain service to 97,767 persons in an area of 851 square miles. In the net gain area of WHBU of 851 square miles, there is a maximum of 22 and a minimum of 10 services. WHBU's proposal would create interference to WSAL, as it is presently operated, in an area of 122 square miles containing 6,508 persons. This area is served in its entirety by 16 other stations.

53. The granting of WHBU's application involves slight adjacent-channel interference to WGL, Fort Wayne, Ind., which would affect an area of 67 square miles containing 2,252 persons, or less than 1 percent of the total population of 344,868 that now receive interference-free service from WGL. The small area that WGL would thus lose has a minimum of 15 and a maximum of 21 other services. Although WGL was made a respondent in this proceeding, it has not interposed an objection to a grant of WHBU's application.

54. Issue 9 seeks to determine whether the proposal of WHBU would involve overlap of field strength contours with WFBM, Indianapolis, Ind., prohibited by the provisions of section 3.37 of the Commission's rules. Station WFBM is operated on 1260 kc with power of 5 kw, unlimited time, and it has within its normally protected 0.5-mv/m contour an area of 11,440 square miles containing population of 1,164,855. It now suffers interference in an area of 306 square miles containing 11,770 persons, thereby leaving it with a net inter-

ference-free service area of 11,134 square miles with a population of 1,153,085. Rule 3.182(w) sets forth the ratio of desired to undesired signal (1 to 30) for determining the extent of interference between stations operating on frequencies 20 kc apart. On this basis, the present interference to WFBM operating at Indianapolis, Ind., on 1260 kc, was computed to occur within a small area around the WHBU site in the city of Anderson. The fact that the present 25-mv/m contour of WHBU is contained completely within the 2-mv/m contour of WFBM was incidental in this determination. The proposed 2-mv/m contour of WHBU will overlap the 25-mv/m contour of WFBM for the first time to a distance of 3 miles. The overlap of these contours has caused no significant interference to WFBM and neither has it been a deterrent to the satisfactory operation of the two stations through many years. WFBM and WHBU have been operating on their assigned frequencies with the same separation since 1928. Historically, the overlap of the 25-mv/m contour of WHBU by the 2-mv/m contour of WFBM did not occur until WFBM was authorized to use power of 5 kw. The proposed increase in power of WHBU will in reality have no adverse effect on the daytime service of WFBM. While there will be potential interference within an area of 2 square miles immediately around WHBU's antenna in downtown Anderson, the population affected consists of 4,301 persons, which is less than 0.3 percent of the total served by WFBM. Since the area affected is entirely within the city of Anderson, a 2 mv/m or greater signal is required for service. There are six stations, other than WFBM, supplying such service. Again the relative positions of the respective 2- and 25-mv/m contours of WHBU and WFBM are related to the determination of interference between these stations, but the magnitude of the interference area is still controlled by the prescribed 1-to-30 ratio. Although the 2-25-mv/m rule is defined under section 3.37, its purpose can be drawn from section 3.182(w). It is apparent that it was designed as an allocation device to prevent stations on channels 10 and 20 kc apart from being constructed side by side or otherwise in proximity to each other. The intent of this rule is effectively met since WHBU and WFBM are separated by approximately 26 miles. This separation has been adequate under the existing operations of WFBM and WHBU and should be sufficient for the satisfactory operations of the two stations with WHBU operating at higher power. Since it appears that WHBU and WFBM are now operating satisfactorily and WHBU's proposed operation will not substantially change the interference situation as it presently exists between the two stations, a continuing waiver of section 3.37 of the Commission's rules would seem to be justified in this instance. The licensee of WFBM has filed a statement to the effect that it does not oppose the granting of any application herein and neither does it intend to participate further in this proceeding.

55. Issue 11 concerns whether the rooftop antenna system proposed by WHBU is in compliance with section 3.188(d) of the rules and, if not, whether circumstances exist which would warrant a waiver of said section. Station WHBU, from its site essentially in the center of the major business area of Anderson, is able to deliver the required

25- to 50-mv/m signal (per: sec. 3.188(b)(1)) to this area. A change in site as hypothetically contemplated above would make it difficult, if not impossible, for WHBU to provide the necessary strong signal over these areas while at the same time delivering an interference-free nighttime service to the city of Anderson. Only by being located in or near the heart of the business area is it possible to meet the requirements of service to the business area as well as to other areas of the city. The limitation of rooftop antenna power to 500 w was intended to prevent or to minimize the effect of cross-modulation interference in the vicinity of the antenna site. In view of the history of relatively few complaints concerning interference in the vicinity of the antenna site, it is anticipated that an increase in signal by approximately 40 percent above the limiting values set forth in the rules would not produce any serious cross-modulation problems. In view of the foregoing, a requirement for WHBU to utilize other than its existing site would place on WHBU an undue technical burden, in an effort to meet adequately the requirements of the FCC rules concerning proper service to all areas of the community. Therefore, it is obvious that the provisions of section 3.188 produce conflicting requirements insofar as WHBU is concerned. It is believed that the present rooftop site of WHBU affords the best compromise to this situation.

56. Issue 13 is to determine whether the proposal of WHBU is in compliance with section 3.35(a) of the Commission's rules concerning multiple ownership of broadcast stations. This issue arose from the fact that Mr. C. Bruce McConnell, president of Anderson Broadcasting Corp., is a director of Indiana Broadcasting Corp., licensee of WISH, Indianapolis, Ind. Although a director in the aforesaid corporation, Mr. McConnell is not now and never has been a stockholder of the said corporation and he neither directly nor indirectly owns, operates, or controls any standard broadcast station in Indianapolis, Ind., or elsewhere, except WHBU in Anderson, Ind. Based on these facts, there appears to be no contravention of section 3.35(a) of the Commission's rules.

57. Issue 14 is to determine whether WHBU's proposal is in compliance with section 3.24(b)(7) of the Commission's rules concerning population within the 1,000 mv/m and, if not, whether circumstances exist which would warrant a waiver of said section. The population within the proposed 1,000-mv/m blanketing contour exceeds the permissible 1 percent value by 0.22 percent, or 126 more people than would be permitted under this rule. The station has reported a history of relatively few complaints from the present operation. Furthermore, the station is prepared to satisfy all legitimate complaints resulting from blanketing interference effects.

58. Should WHBU's application be denied and the applications of WINN and WFTM be granted, WHBU would suffer interference to 212 square miles containing 11,320 persons. If WSAL's pending application should ultimately be granted (in addition to WINN and WFTM), WHBU would receive objectionable interference in a combined area of 425 square miles containing 21,950 persons. There would be a maximum of 13 services and a minimum of 6 services available to the area that WHBU would lose under the foregoing circum-

stances. As shown above, if the applications of WHBU, WINN, and WFTM are granted, and if the application of WSAL is ultimately granted, station WHBU would have a net gain of 97,767 persons in an area of 851 square miles. Stations WHBU, WINN, and WFTM are in agreement with respect to the acceptance of the mutual interference created by their respective proposals. WHBU further agrees to accept such interference as may be imposed by the granting of WSAL's pending application.

Air Trails, Inc. (WCOL), Docket No. 13147

59. Air Trails, Inc., is the licensee of standard broadcast station WCOL, Columbus, Ohio; and is authorized to operate unlimited time on 1230 kc with 250 w power, unlimited time. Its instant application is for a construction permit to increase the station's daytime power on the frequency to 1 kw.

60. Columbus, Ohio, has a population of 375,901, according to the 1950 U.S. census. There are six other broadcast stations licensed to operate in the Columbus area; viz, WTVN, WOSU, WRFD,⁵ WMNI, WBNS, and WVKO. All of said stations operate with at least 1 kw power, except WMNI which operates on 920 kc with 0.5 kw, employing a directional antenna.

Service and interference considerations

61. On the assumption that all of the other applications in this proceeding will be granted, the pertinent facts regarding interference conditions resulting from the operation proposed herein by WCOL are hereinafter shown.

62. As presently operated with 250 w power, WCOL serves an area of 930 square miles and a population of 527,853 with a signal intensity of 2 mv/m, or better; and provides interference-free service to 2,458 of the 3,266 square miles in area, and to 596,601 of the 622,467 population residing within the station's normally protected 0.5-mv/m contour, or to approximately 96 percent thereof.

63. The other proposals in this proceeding with which the present operation of WCOL would be concerned are those of WHIZ, Zanesville, Ohio (docket No. 13137), and WCPO, Cincinnati, Ohio (docket No. 13110), each requesting operation with 1 kw power during daytime hours on 1240 and 1230 kc, respectively. With WHIZ operating as proposed, a population of 3,186, in an area of 98 square miles, would be affected by adjacent-channel interference and lose service from WCOL. Service from WHIZ would be substituted for that which would be lost from WCOL. At least 10 other stations serve said area. With WCPO also granted, a total population of 23,114 in an area of 658 square miles within the WCOL present daytime 0.5-mv/m contour would be affected by interference and lose service from WCOL. Thus, the WCOL service to the population within its normally protected 0.5-mv/m contour would be reduced from approximately 96 percent to 89.5 percent. All portions of the area over which WCPO, operating as proposed, would cause increased interference to WCOL have serv-

⁵ Licensed to operate in Columbus-Worthington.

ice available from 7 to 18 other stations, 6 of which serve the entire area.

64. With all pending applications involved in this proceeding, including those of WCOL, WHIZ, and WCPO granted, WCOL would provide service as follows:

Contour (mv/m)	Population	Area	Gain over present operation	
			Population	Area
2.....	581, 687	1, 795	53, 834	865
0.5.....	793, 468	6, 013	171, 001	2, 747
Interference received.....	159, 024	2, 899	-----	-----
Interference free.....	1 634, 444	1 3, 114	1 37, 843	1 656

¹ Stations WTOL, Toledo, Ohio, and WTAP, Parkersburg, W. Va., have pending applications to increase daytime power to 1 kw on 1230 kc (files Nos. BP-13496 and 14020, respectively, neither of which is involved in this proceeding). However, as will be shown later herein, the licensee of WCOL and the licensees of WTOL and WTAP have mutually agreed to accept the interference that would result between the proposed 1-kw operation of WCOL and WTOL and between WCOL and WTAP. With WTOL and WTAP operating with 1 kw power, WCOL would provide interference-free service to a population of 613,001 and an area of 2,515 square miles, a gain of 16,400 in population and 57 square miles in area over that now served.

No area now receiving service from WCOL would lose such service as a result of the operations proposed herein by WCOL and other stations.⁶ An area of 69.4 square miles and a population of 209,424 in the Columbus area, some of which is classed as industrial, would gain a 25-mv/m signal from WCOL, operating as proposed; and an area of 865 square miles and a population of 53,834 would gain a 2-mv/m service from WCOL. These gains are significant not only from the standpoint of the 11,353 persons residing in London, Ohio, and portions of Circleville and Delaware, Ohio, that would gain service from WCOL, but also from the standpoint of improvement of the station's signal-to-noise ratio in its service area, which is an important requirement for service to the expanding suburbs of Columbus.⁷ These communities have primary service available from five or six other stations. The total population and area that would gain service from WCOL, operating as proposed, have service available from at least six other stations.

65. WCOL, operating as proposed, would cause interference to the service of other stations to the extent hereinafter shown.

66. The interference WCOL would cause to the service of WBVP, Beaver Falls, Pa., is completely masked by the interference the station receives from two existing stations. Station WBVP has pending an application (file No. BP-12443, docket No. 13106) to increase its daytime power on 1230 kc.

67. WCOL, operating as proposed, would cause increased objectionable interference to the service of station WTAP (formerly WCOM), Parkersburg, W. Va., affecting a population of 6,568. All of the population that would be subjected to the increased interference have pri-

⁶ This would be true also with WTOL and WTAP operating with 1 kw as proposed by their pending applications.

⁷ Evidenced by the fact that the 1960 U.S. census shows a population of 471,316 for Columbus City, a gain of 25.4 percent over the 1950 population.

mary service available from two to six other stations. The licensees of WCOL and WTAP have entered into agreements under which (1) the latter has agreed to accept the interference which would be caused to its service by the operation proposed herein by the former; and (2) the former has agreed to accept such interference as may be caused to its service by the 1 kw power operation that the latter may propose within 5 years. Such application by WTAP (file No. BP-14020) was filed after the commencement of the hearing and is pending.

68. The proposed operation of WCOL would cause increased co-channel interference to the service of station WIRO, Ironton, Ohio, which operates with 250 w power. Such increased interference would occur over an area of 84 square miles, and a population of 3,070 would be affected thereby. WIRO's service is now subjected to interference over an area of 35 square miles, and a population of 3,261 is affected thereby. A population of 77,037 resides within the WIRO normally protected 0.5-mv/m contour, and the proposed operation of WCOL will increase the percentage of the population within said contour subjected to interference from approximately 4.2 percent to 8.2 percent. The area over which WIRO would suffer increased interference has service available from six to nine other stations.

69. The proposed operation of WCOL would cause increased co-channel interference to the service of station WSAL, Logansport, Ind., over an area of 15 square miles, and a population of 991 would be affected thereby. The area of increased interference to the present operation of WSAL has service available from a minimum of 18 and a maximum of 25 other stations. The licensee of station WSAL has pending an application (file No. BP-13364) to increase daytime power to 1 kw, which is not involved in this proceeding. The area over which the proposed operation of WCOL would cause additional interference to the service of WSAL would be almost completely masked by the additional adjacent-channel interference that the station would receive from the 1-kw operation of station WHBU, Anderson, Ind., proposed herein.

70. The proposed operation of WCOL would cause increased co-channel interference to the service of station WTOL, Toledo, Ohio, over an area of 518 square miles, and a population of 37,798 would be affected thereby. WTOL presently suffers interference over an area of 944 square miles of the 2,262-square-mile area within its normally protected 0.5-mv/m contour, and a population of 52,919 of the total 540,079 within said contour is affected. All of the population that would be affected by the increased interference from the proposed operation of WCOL has service available from 12 to 20 other stations. WTOL has pending an application to increase daytime power to 1 kw (file No. BP-13496) which is not involved in the instant proceeding.* The licensees of WCOL and WTOL have mutually agreed that neither will commence construction of any facilities in connection with increasing their power to 1 kw until the other has received authorization from the Commission to construct its 1-kw facilities, and neither

* WTOL operating with 1 kw as proposed, with WCOL operating as proposed, would provide interference-free service to 528,356 persons, a gain of 41,196 in population over that now served (offer of proof on behalf of WTOL).

will commence operation with said power until the other has received authorization to "operate" its station with 1 kw power.

71. The proposed WCOL operation would cause increased adjacent-channel interference to the service of WCHO, Washington Court House, Ohio, which operates with 500 w power on 1250 kc, a frequency 20 kc removed from 1230 kc, upon which WCOL operates. At present WCHO provides interference-free service to a population of 250,068 residing in an area of 3,950 square miles, which constitutes 91.48 percent of the total population and 92.79 percent of the area within the station's normally protected 0.5-mv/m contour. The proposed operation of WCOL would cause increased interference to the service of WCHO over an area of 13 square miles, and 12,246 additional population would be affected thereby; and, as a result, the population within the 0.5-mv/m contour subjected to interference would be increased from 8.52 percent to 13 percent. The area over which WCHO would suffer increased interference would occur in the vicinity of Columbus, approximately 29 to 42 miles from WCHO; and 11 other stations serve all of said increased interference area.

72. WCOL, operating as proposed, would cause adjacent-channel interference to the service of WHIZ, Zanessville, Ohio, as presently operated or operating as proposed. As presently operated, station WHIZ suffers interference only from station WBBW, Youngstown, Ohio, and renders interference-free service to an area of 1,610 square miles and to a population of 114,490. With WCOL alone granted, a population of 4,400 in a 120-square-mile area would be affected by interference and lose service from WHIZ. With WHIZ operating as proposed, its service would be subjected to interference from the present 250-w power operations of WCOL and WBBW; and with these stations operating with 1 kw power, WHIZ would suffer additional interference from WCOL over an area of 250 square miles having a population of 11,140, and combined additional interference from both over an area of 830 square miles with a population of 40,690. With the three stations operating with 1 kw power as proposed, a population of 23,730 in an area of 375 square miles would gain service from WHIZ, which has service available from 3 to 16 other stations. The licensees of WCOL and WHIZ have each agreed to accept the interference to the service of its station caused by the proposed operation of the other.

73. As presently operated, station WCPO, Cincinnati, receives interference from the present operations of WCOL, Columbus; WFTM, Maysville, Ky.; and WHIR, Danville, Ky., and provides interference-free service to a population of 967,517 over an area of 1,330 square miles. With WCOL operating as proposed, WCPO would lose an additional 55,943 potential listeners and an area of 780 square miles. With WCOL and WFTM operating as proposed, and with WHIR operating as presently authorized, the proposed operation of WCPO would be subjected to interference over an area of 2,059 square miles and a population of 114,018, or 10.2 percent of the total within the predicted 0.5-mv/m contour, would be affected thereby. The interference the proposed operation of WCPO would receive from the proposed operation of WFTM would be

completely masked by the interference which would be received from the proposed operation of WCOL; and substantially all of that which would be received from the present operation of WHIR would be masked by the WCOL interference. Even with this interference, a population of 37,325⁹ and an area of 781 square miles would gain service from WCPO over that now served. Ten other stations serve 100 percent of the WCPO service area. The licensees of WCOL and WCPO have each agreed not to oppose the proposal of the other and not to commence operation with 1 kw power until and unless there has been a grant of the application of the other.

CONCLUSIONS

1. This proceeding involves eight applications for increase in daytime power of existing standard broadcast stations. Based on the foregoing findings of fact and for the reasons set forth in the following conclusions, it is concluded that no two or more of the applications are mutually exclusive. It is also concluded that a grant of each of the applications would be in the public interest.

2. Each of the applicants herein seeks an increase in power for class IV stations.¹⁰ In each instance a grant of the application will provide improved service resulting from increased signal strength, fulfilling an important objective of the Commission with respect to class IV stations.¹¹ In addition, in each instance, new service will be provided to additional areas and populations. A grant of all of these applications will result in new service to a combined population in excess of 280,000. Conversely, to deny one of these applications would have an adverse chain reaction, creating obstacles to the grant of the others—in frustration of the Commission's policies with respect to increased power for class IV stations. Each of the instant proposals will be discussed in turn.

WMRC, Inc. (WBIR), Docket No. 13097

3. The findings of fact in docket No. 13097 indicate that there are no objects or obstructions in the vicinity of the station WBIR antenna which would tend to cause variation or distortion in the radiation characteristics for its proposed 1-kw operation different from those with its present 250-w operation.

4. Having in mind the Commission's policy of encouraging the raising of all class IV stations to maximum daytime power, and its action in amending rule 3.28(c) as it relates to class IV stations, and weighing the need for additional service proposed by the applicants against the service that would be lost because of interference, it is concluded that public interest, convenience, and necessity would

⁹ With WHIR also operating as proposed by its pending application, the gain to WCPO would be 29,758 potential listeners.

¹⁰ By order released Dec. 19, 1960, in docket No. 13756, the Commission amended sec. 3.28(c)(3) of the rules and regulations to exempt such applications from the so-called "10-percent rule" in said section. Accordingly, findings and conclusions with respect thereto have not been made.

¹¹ Report and order released June 2, 1958, in docket No. 12064 (17 R.R. 1541). See also report and order released Dec. 19, 1960, in docket No. 13756 (20 R.R. 1661).

be served by a grant of the application of WMRC, Inc. (WBIR), for construction permit to increase the daytime power of station WBIR to 1 kw.

WINN Broadcasting Corp. (WINN), Docket No. 13098

5. A grant of WINN's application, and considering the interference that will result from a grant of the other applications in this proceeding, will result in an increase of the interference-free primary service area of WINN in the amount of 410.1 square miles and a population of 16,440 persons. WINN operates in Louisville, Ky., and thus serves a large metropolitan area. Of particular importance in this situation is the large increase in the population that will receive a signal of 2 mv/m or better from the proposed operation of WINN. This population will be increased from 529,463 to 571,604. This is an increase of 42,141.

6. None of the area and population presently served by WINN will lose the service of WINN, but rather all areas and populations presently served will receive a stronger signal and thus a better technical service.

7. While the operation of WINN as proposed will result in a very minor (less than 1 percent) increase in the interference to station WSLM, Salem, Ind., that station has agreed to accept this interference and consequently this small amount of interference cannot be considered prejudicial to the grant of the WINN application.

8. It is concluded that a grant of the application of WINN would serve the public interest.

Scripps-Howard Radio, Inc. (WCPO), Docket No. 13110

9. WCPO has been found legally, financially, technically, and otherwise qualified to receive a grant of its application. The Commission's hearing order raises questions which fall into two categories. These relate to issues concerning WCPO's antenna site and interference considerations. The evidence establishes that WCPO's proposal meets the test of public interest in both respects.

10. Section 3.188(d) of the Commission's rules prohibits the use of a rooftop antenna for operation in excess of 500 w or in short with 1 kw as proposed by WCPO. However, WCPO has requested a waiver of said rule and the evidence is conclusive that a waiver is warranted. In brief, the record discloses that WCPO currently operates with an adequate, efficient, and well-maintained rooftop antenna system; that it has operated said system for many years without having received any complaints of interference of the type which might be expected to occur from 1-kw operation; that despite diligent efforts to find a suitable ground site over the years, and most recently during the course of this hearing, such efforts have shown that no such site is available and therefore WCPO has no choice except to locate its 1-kw operation at its present site. Other evidence indicates that WCPO's consulting engineer made field test measurements and exhaustive studies of the WCPO antenna system and the neighborhood in which it is located, and as the result thereof it is his opinion that

no significant problems will be encountered from WCPO's proposed operation. Finally, WCPO will undertake to satisfy all legitimate complaints of blanketing interference which might result from the use of its rooftop antenna. Under the circumstances of this case, therefore, a waiver of the provisions of section 3.188(d) is justified.¹²

11. It is clear that the public interest would be served by a grant of the WCPO proposal as well as the other applications involved in this proceeding. All of the applicants are the licensees of existing class IV stations who have submitted their applications in accordance with the change in the Commission's rules, which permits 1-kw operation by class IV stations (17 R.R. 1541). Since the allocations policies of the Commission for so many years limited class IV stations to 250 w, it is not at all unreasonable that an increase in the power proposed by the applicants will precipitate mutual interference conditions between them. However, and most significantly, if all of the applications involved in this proceeding are granted, no person presently receiving service from the stations involved will lose that service. On the contrary, a grant of all the applications involved will collectively result in a new primary service to a substantial number of persons. Moreover, the increase to 1 kw of power will double the field strength of the primary service of each of the stations involved herein, and will aid immeasurably in overcoming on behalf of the listener, much of the effect of manmade disturbances now encountered, particularly in the larger cities and metropolitan areas under consideration in this proceeding. Also important in the overall consideration of these cases is the fact that operation with 1 kw of power will enhance the ability of each class IV station involved to compete on a fairer basis with other broadcast stations having greater power than 250 w. WCPO's case illustrates the soundness of this latter proposition. Cincinnati is the second largest city in the densely populated State of Ohio. The Cincinnati metropolitan area is among the largest in the country. This community obviously should have the best in radio facilities for adequate service. All of WCPO's competitors have at least 4 times the power of WCPO, and 2 of its competitors have 200 times its power. A grant of WCPO's application will help to offset the present competitive disadvantage under which it labors. Also, as will be shown below, operation with 1 kw will improve WCPO's facilities and the service to the city of Cincinnati by the increase in intensity of its 2.0-mv/m service and the extension of its service to new populations.

12. In addition to furthering the overall allocations policy, a grant of WCPO's application will provide interference-free service to a population of 1,004,842, and will provide a new service to 37,325 persons. Equally significant, WCPO will greatly improve the intensity of its signal in the city of Cincinnati, and within its 2.0-mv/m contour will provide a new service to a population of 57,181. None of the populations it now serves will lose WCPO's service. WCOL, Columbus, will cause interference to WCPO operating as proposed, but

¹² In regard to applications for class IV stations going to 1 kw, the Commission has recently relaxed the requirements of rule 3.188(d). It has granted waivers in a number of such cases. *In re Application WRAW, Inc. (WRAW), Reading, Pennsylvania*, FCC 61-235-490, and *Application of WBTH, Williamson, West Virginia*, BP-12605, granted without hearing Oct. 20, 1960. FCC Public Notice BP-95651.

this amounts to only 10.2 percent of WCPO's total of 0.5-mv/m service area. There are at least 10 other services in this area. WCPO, in turn, operating as proposed, will cause interference only to station WHIR, Danville, Ky. Said interference would affect 9,535 persons, or 12.1 percent of WHIR's service area. Four stations serve 100 percent, and there are a maximum of 4 and minimum of 11 services in the area lost by WHIR. In this connection it should be noted that WHIR has an application pending to increase its power to 1 kw, which will have the effect of erasing any interference from WCPO. Moreover, WCPO has an agreement with WHIR under which WHIR has agreed that it will not object to the grant of WCPO's application. In view of the foregoing, it is concluded that the operation proposed by WCPO would serve the public interest, convenience, and necessity and should be granted, subject to the following condition:

(a) Permittee shall not commence operation with 1 kw daytime until the Commission has granted the application of station WHIR, Danville, Ky., file No. BP-13890, and station WHIR is ready for operation with 1 kw daytime power; nor shall permittee commence such operation until station WCOL is ready to commence 1 kw daytime operation.

Southeastern Broadcasting Co., Inc. (WSFC), Docket No. 13127

13. A grant of the application of Southeastern Broadcasting Co., Inc. (WSFC), along with those of the other applicants in this proceeding, would result in an increase of the primary interference-free service area of WSFC in the amount of 192 square miles and a population of 4,181 persons. None of the area and population presently served by WSFC would lose its service. Rather, this area and population would receive a signal from WSFC greater in strength than that now received.

14. The only station not an applicant in this proceeding that would receive interference from WSFC if operated as proposed is WHIR in Danville, Ky. The interference would affect less than 1 percent of the population now being served by WHIR. Moreover, WSFC and WHIR have agreed each with the other to accept the interference that would result from their mutual operations with 1,000 w. WHIR has such an application pending and, accordingly, this small amount of interference cannot be considered an impediment to the grant of the WSFC application.

15. It is concluded that a grant of the application of WSFC would serve the public interest.

Standard Tobacco Co. (WFTM), Docket No. 13136

16. Radio Station WFTM, Maysville, Ky., is an existing class IV station and, as such, is "designed to render service primarily to a city or town in the suburban and rural areas contiguous thereto" (Commission rule, sec. 3.22(d)). The city of Maysville, in 1950, had a population of 8,632 persons, while Mason County, within which Maysville is located, had a 1950 population of 18,486. Radio station WFTM is Maysville's only standard broadcast station. Maysville is an im-

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portant city in Kentucky. It is the seventh largest wholesale distribution point within the State of Kentucky, and the world's second largest distributor of burley tobacco. Its wholesale and retail sales are substantial.

17. The present operation of WFTM provides interference-free service to an area of 1,744 square miles wherein 87,489 persons reside. A grant of its instant proposal would improve the quality of its signal to all those interference-free areas, and, in addition, provide additional interference-free broadcast service to an area of 343 square miles wherein 14,078 persons reside, assuming that all other proposals in this proceeding are granted. Accordingly, a grant of its proposal would provide a total interference-free service to an area of 2,087 square miles wherein 101,567 persons reside. There are a minimum of 4 and a maximum of 18 other broadcast services available to WFTM's gained areas. The service which WFTM's proposal would render, should one or more of the other proposals herein not be granted, is set forth, in detail, in findings re WFTM, supra. At present, WFTM receives interference within its normally protected 0.5 mv/m in an area of 168 square miles wherein 5,532 persons reside, representing 5.9 percent of the population within that contour. As proposed, and assuming all the other proposals herein are granted, the total interference which WFTM would receive would fall within an area of 1,254 square miles wherein 52,798 persons reside, representing approximately 34.2 percent of the population within 0.5-mv/m normally protected contour. There are a minimum of 6 and a maximum of 18 other broadcast services available to WFTM's proposed interference area. WFTM agrees to accept such interference as a condition upon the grant of its proposal, and has no objection to the grant of any of the proposals in this proceeding; however, should one or more of the other proposals herein be denied, the amount of interference which would be received by WFTM is set forth, in detail, in findings re WFTM, supra.

18. WFTM's proposal would cause interference to the instant proposals of WINN, WSFC, WCPO, WHBU, and WHIZ (as well as the existing operations of those stations). However, if each of those proposals is granted, along with the proposal of WFTM, each would provide a net increase in service over and above its existing operation and, also, each would provide an improved signal to its present service area. WFTM's proposal also would cause de minimis interference to one other existing station, WCHO, Washington Court House, Ohio, in an area of 53 square miles, wherein 1,424 persons reside, representing less than one-half of 1 percent of the population within WCHO's normally protected 0.5-mv/m contour. There are a minimum of 4 and a maximum of 18 other broadcast services available to that area. At present, WCHO provides an interference-free service to an area of 3,950 square miles wherein 250,068 persons reside; at present, the interference which it receives represents 8.52 percent of the population within its normally protected contour. A grant of WFTM's proposal would increase the percentage of such interference to 9.0 percent. The total interference which WCHO would receive from a grant of all of the proposals herein (WFTM and

WCOL) would affect 13.48 percent of the population within the WCHO 0.5-mv/m normally protected contour, thereby reducing its interference-free service to an area of 3,894 square miles wherein 236,513 persons reside. When the relatively slight amount of service which would be lost to WCHO is weighed against the substantial overall gain in service to be afforded the public by a grant of all the proposals herein, and in view of the fact that a denial of any one proposal herein would give rise to a chain reaction of interference which would compel the denial of all of the proposals herein, it must be concluded that the benefits to be gained from a grant of the proposals herein far outweigh the minor loss which would result to WCHO.

19. Based upon findings re WFTM, *supra*, with respect to issue 13, it must be concluded that the proposed transmitter site of WFTM is satisfactory, and that no conditions exist in the vicinity of WFTM's antenna system which would destroy the proposed antenna radiation pattern. The efficiency of WFTM's radiator was computed by an experienced consulting engineer who has prepared and filed numerous engineering data with the Commission over a span of many years. His testimony stands on this record unchallenged; it is concluded, therefore, that the proposed system of WFTM would not encounter problems of reradiation or cross-modulation.

20. In view of the foregoing findings of fact and conclusions of law re WFTM, and in view of all of the evidence upon the record in this proceeding with respect to WFTM's proposal, it is concluded that a grant of its proposal, and all other proposals herein, would further the Commission's policy with respect to improving service by class IV stations; provide for a fair, equitable, and efficient distribution of broadcast service in accordance with section 307(b) of the Communications Act of 1934; and, otherwise, serve the public interest, convenience, and necessity.

*Southeastern Ohio Broadcasting System, Inc. (WHIZ),
Docket No. 13137*

21. A grant of the application of Southeastern Ohio Broadcasting System, Inc. (WHIZ), Zanesville, Ohio, simultaneously with the other applications in this proceeding will bring the second primary service (2 mv/m) to New Lexington, Ohio. It will also provide new 0.5-mv/m service to an additional 23,730 people in an area of 375 square miles, and will provide an improved service to the 114,490 persons in an area of 1,610 square miles presently receiving a signal from WHIZ. No persons presently served by WHIZ would lose service if its application is granted. In addition, 93,890 persons, an increase of 19,810, will receive a 2-mv/m-or-better signal from the station.

22. Conversely, a denial of WHIZ's application simultaneously with the grant of the other applications in this proceeding would severely decrease WHIZ's existing service area. The 1-kw operations of WBBW and WCOL would cause a loss of WHIZ's service to an area of 520 square miles with a population of 18,120. This would constitute a loss of 30 percent of the area and 15.2 percent of the population in the existing normally protected contour of WHIZ. More-

over, WHIZ would be relegated to a power which the Commission has recognized as insufficient to overcome ever-increasing manmade interference while its neighboring class IV stations would operate with increased power.

23. The licensees of WCOL, Columbus, Ohio; WBBW, Youngstown, Ohio; and WFTM, Maysville, Ky., have each agreed with the licensee of WHIZ to accept the mutual interference resulting from a grant of their respective proposals. No other existing station will receive interference from the proposed operation of WHIZ. Moreover, WHIZ will accept a grant of its application subject to the following condition:

Permittee shall accept such interference as may be imposed by existing class IV stations in the event these stations are subsequently authorized to increase power to 1 kw.

It is concluded that the public interest, convenience, and necessity would be served by a grant of the WHIZ application.

Anderson Broadcasting Corp. (WHBU), Docket No. 13140

24. Station WHBU is a class IV station providing service to 247,140 persons in and about the city of Anderson, Ind. Under its proposal and assuming that all other applications in this proceeding are granted, new and improved service will be provided to a total of 355,422 persons. WHBU's proposal would create interference to WSAL, Logansport, Ind., as presently operated in an area of 122 square miles containing 6,508 persons. However, WSAL (a respondent herein) has a pending application for the use of 1 kw. Therefore, if WSAL's application is ultimately granted and if the applications herein are granted, WHBU would render an interference-free service to 344,907 persons. Thus, WHBU would have a net gain in new service to 97,767 persons in a new area of 851 square miles. Within the gain area there is a maximum of 22 and a minimum of 10 services.

25. WHBU's proposal would involve additional interference to WGL, Fort Wayne, Ind., in an area of 67 square miles containing 2,252 persons. Within this small area there is a minimum of 15 and a maximum of 21 other services. WGL has not interposed any objections to WHBU's proposal and it is concluded that such interference is de minimis and does not warrant a denial of WHBU's application.

26. The proposed 25-mv/m contour of WHBU would overlap the 2-mv/m contour of WFBM, Indianapolis, Ind., in an area of approximately 2 square miles in the immediate vicinity of WHBU's antenna in downtown Anderson. Stations WHBU and WFBM have been operating with the same frequency separation since 1928 and, historically, the overlap of WHBU's present 25-mv/m contour by the 2-mv/m contour of WFBM first occurred when WFBM was authorized to use power of 5 kw. The two stations are separated by approximately 26 miles. This separation has proved adequate under the existing operations of the two stations and is considered sufficient for the satisfactory operation of the two stations with WHBU operating

at 1 kw as proposed. No serious cross-modulation problems are expected by the increase in signal proposed for WHBU, and WHBU's proposal is not otherwise expected to have any adverse effect on the service of WFBM. Under the circumstances a waiver of section 3.37 of the Commission's rules would be justified. This justification is also supported by the fact that the increase in power ceiling of class IV stations and the benefits flowing therefrom can and should be accomplished on a nationwide basis. To deny applications such as WHBU's would undoubtedly involve the denial of other class IV proposals which would thus undermine the Commission's policy encouraging daytime power increase of class IV stations.

27. It is apparent that station WHBU must be operated from a site located essentially in the center of the major business area of Anderson. On the showing made by Anderson, a waiver of section 3.188(d) of the rules is warranted.

28. From the findings of fact set forth hereinbefore, it is concluded that the proposal of WHBU is not in contravention of section 3.35(a) of the Commission's rules.

29. The population within the proposed 1,000-mv/m blanketing contour of WHBU as proposed exceeds the permissible 1 percent value by only 0.22 percent. The station has a history of relatively few complaints from the present operation, and furthermore it is prepared to satisfy all legitimate complaints resulting from blanketing interference effects. Accordingly, it is concluded that circumstances exist which would warrant a waiver of section 3.24(b) (7) of the Commission's rules.

30. In view of the foregoing, it is concluded that the grant of the application of WHBU would serve the public interest.

Air Trails, Inc. (WCOL), Docket No. 13147

31. The applicant, Air Trails, Inc., is legally, technically, financially, and otherwise qualified to effect the proposed construction and operation.

32. The issue to determine which of the instant proposals would best provide a fair, efficient, and equitable distribution of radio service, in light of section 307(b) of the Communications Act of 1934, as amended, is not applicable to the proposal of Air Trails, Inc. The operation proposed for WCOL would not involve the curing of any "white" or "gray" area populations, nor would it create any such areas. However, the proposal herein for station WHIZ, Zanesville, which presents an interference question with WCOL, would cure a "gray" area, in that the station would provide a second primary service to the city of New Lexington, Ohio, which has a population of 4,233.

33. The remaining question to be resolved is under section 3.24(b) of the rules. This section requires a determination of whether the need for the additional or improved service which would result outweighs the need for the service that would be lost to the public as a result of the interference that would be caused to existing services. As previously shown, the WCOL application is in direct conflict with the applications of WHIZ and WCPO, which request 1 kw power operation on 1240 and 1230 kc, respectively. It is, therefore, neces-

sary to determine the instant application of WCOL in light of the overall public benefits which would be derived from a grant of all three proposals as against the overall detriments to the public which would result from such operations.

34. With the applications of WCOL, WHIZ, and WCPO all granted, 98,898¹³ persons would gain service, all of whom have service available from 3 to a much larger number of stations, except for 4,233 persons who would gain a second primary service. This must be weighed against the total population of 59,682¹⁴ that would be affected by interference and lose service, all of whom have from 2 to a much larger number of other services available. Also of significance is the substantial improvement of the signal-to-noise ratio of WCOL in the Columbus area.¹⁵ Moreover, the proposed operation would place WCOL on a more equal footing powerwise with other competing stations in Columbus.

35. From the foregoing, it must be concluded that the overall benefits to be derived from a grant outweigh the detriments that will result to the public within the meaning of section 3.24(b) of the rules. The soundness of this conclusion is further demonstrated by consideration of the fact that the loss in service to WTOL that would result from the proposed 1-kw operation of WCOL will not actually occur because, under the agreement between WCOL and WTOL, the former will not be placed in operation until WTOL is also authorized to so operate. Also, in the event of an ultimate grant of WTOL and WTAP, the only interference losses from the proposed operation of WCOL would be to cochannel interference to 3,070 persons in the WIRO, Ironton, Ohio, area and 20 kc removed adjacent-channel interference to 12,246 persons residing in the vicinity of Columbus, Ohio, in the WCHO, Washington Court House, Ohio, service area. In this record, under an offer of proof, it has been shown that with the pending applications of WTOL and WTAP also granted, the gain in service to WCOL would be reduced to 16,400 persons. Even on this basis, the loss in service from WCHO and WIRO would be justified under section 3.24(b) of the rules in that the gain to WCOL would outweigh the loss to WCHO and WIRO. Moreover, the loss which would be suffered by the latter could be restored by that station's operation with 1 kw power. It must also be borne in mind that a grant of the other applications herein and the denial of the WCOL proposal would result in a loss in present service from the station to 23,114 persons in an area of 658 square miles.

36. In view of the foregoing, it must be concluded that the operation proposed by Air Trails, Inc., would serve the public interest,

¹³ Consists of 37,843 which would be gained by WCOL; 23,730 to be gained by WHIZ; and 37,325 by WCPO.

¹⁴ Consists of following losses: 37,798 to present WTOL operation; 3,070 to present WIRO operation; 6,568 to present WTAP operation; and 12,246 to present WCHO operation.

¹⁵ Report and order released Dec. 19, 1960, in docket No. 13756 (20 R.R. 1661).

convenience, or necessity and should be granted, subject to the following conditions:

(a) Permittee shall accept such interference as may be imposed by other existing 250 w class IV stations in the event they are subsequently authorized to increase power to 1,000 w.

(b) Permittee shall not commence operation with 1 kw daytime until the Commission has granted the application of station WTOL, file No. BP-13496, and station WTOL is ready for operation with 1 kw daytime power; nor shall permittee commence such operation until station WCPO is ready to commence 1 kw daytime operation.

Accordingly, *It is ordered*, This 16th day of June 1961, that unless an appeal from this initial decision is taken by a party, or the Commission reviews the initial decision on its own motion in accordance with the provisions of section 1.153 of the rules, the following applications for changes in facilities *Be and they hereby are granted*:

WMRC, Inc. (WBIR), Knoxville, Tenn., from 1240 kc, 250 w, U, to 1240 kc, 250 w, 1 kw-LS, U; WINN Broadcasting Corp. (WINN), Louisville, Ky., from 1240 kc, 250 w, U, to 1240 kc, 250 w, 1 kw-LS, U; Scripps-Howard Radio, Inc. (WCPO), Cincinnati, Ohio, from 1230 kc, 250 w, U, to 1230 kc, 250 w, 1 kw-LS, U; Southeastern Broadcasting Co., Inc. (WSFC), Somerset, Ky., from 1240 kc, 250 w, U, to 1240 kc, 250 w, 1 kw-LS, U; Standard Tobacco Co. (WFTM), Maysville, Ky., from 1240 kc, 250 w, U, to 1240 kc, 250 w, 1 kw-LS, U; Southeastern Ohio Broadcasting System, Inc. (WHIZ), Zanesville, Ohio, from 1240 kc, 250 w, U, to 1240 kc, 250 w, 1 kw-LS, U; Anderson Broadcasting Corp. (WHBU), Anderson, Ind., from 1240 kc, 250 w, U, to 1240 kc, 250 w, 1 kw-LS, U; Air Trails, Inc. (WCOL), Columbus, Ohio, from 1230 kc, 250 w, U, to 1230 kc, 250 w, 1 kw-LS, U; and

It is further ordered, That the construction permit of each of said applicants shall be subject to the following condition:

Permittee shall accept such interference as may be imposed by other existing 250 w class IV stations in the event they are subsequently authorized to increase power to 1,000 w.

It is further ordered, That the grant of the WHIZ application is made subject to the condition that a complete nondirectional proof of performance shall be submitted before the issuance of program test authorization to prove that the effective radiation at 1 mile is essentially 206 mv/m for 1 kw, as proposed.

WBUD, Inc.; CONCERT NETWORK, Inc., DOCKETS Nos. 12952 AND 12953:

Application of WBUD, Inc., for construction permit for new class B FM station; granted. Competing application of Concert Network, Inc.; denied.

Standard comparative issue.—Broadcast experience, staff, integration of ownership and management, planning and preparation, programing and diversification of business interests; discussed.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON 25, D.C.

In re Applications of
WBUD, INC., TRENTON, N.J.

CONCERT NETWORK, INC., TRENTON, N.J.
For Construction Permits for New FM
Broadcast Stations

Docket No. 12952
File No. BPH-2600
Docket No. 12953
File No. BPH-2619

APPEARANCES

Philip Bergson, for WBUD, Inc.; *Edward F. Kenehan*, for Concert Network, Inc.; *Thomas B. Fitzpatrick*, *Earl Walck*, and *Joseph D. Greene*, for Chief, Broadcast Bureau, Federal Communications Commission.

DECISION

(Adopted January 10, 1962)

BY THE COMMISSION: COMMISSIONERS BARTLEY AND FORD NOT PARTICIPATING; COMMISSIONER LEE DISSENTING.

1. This proceeding involves the question of which of the above two mutually exclusive applications should be granted. Each proposes to operate a new class B, FM broadcast station in Trenton, N.J., with a radiated power of 20 kw on 101.5 Mc (channel 268). In its order designating the applications for hearing, the Commission found the applicants to be legally, technically, financially, and otherwise qualified to construct and operate their proposed stations, except as otherwise appears from the specified issues as follows: (1) an areas and populations issue; (2) an interference issue; (3) a standard comparative issue involving (a) the background and experience of each applicant, (b) the management and operation of the proposed stations, and (c) programing service; and (4) an issue to determine whether WBUD, Inc. (hereinafter WBUD), is financially qualified. Hearing Examiner Jay A. Kyle, in an initial decision released February 24, 1961 (FCC 61D-20), proposes to grant the application of Concert Network, Inc. (hereinafter Concert), and deny that of WBUD.

WBUD and the Broadcast Bureau filed exceptions to the initial decision, seeking reversal of the examiner. Oral argument was held before the Commission, en banc, on October 16, 1961. The Commission's rulings on the exceptions are contained in the appendix attached hereto.

2. The initial decision sets forth the background and history of the proceeding, and this information need not be repeated here. The findings of fact in the initial decision have been considered in light of the exceptions filed, and, with the modifications, corrections, and deletions noted herein and in the appendix, are adopted.

3. The Commission has also carefully reviewed the examiner's conclusions, and inasmuch as we disagree with the basic result reached therein, we feel that certain conclusions and the exceptions taken thereto warrant additional comment, as set forth below. However, except to the extent that the examiner reasons that the grant should be awarded to Concert, and subject to the modifications, corrections, and deletions noted herein and in the appendix, we adopt the conclusions of the initial decision.

4. The examiner gives Concert a distinct preference in areas and populations to be served. Interference to WFIL-FM was found to be negligible and not a decisional factor. Concert received a decisional preference in broadcast experience, a slight preference in programing, and a strong preference in diversification of business interests. On the financial issue, WBUD was found to have sufficient funds. WBUD received a definite preference in both local residence and civic participation, and a slight preference on staffing.

5. The decisional preference to Concert in the field of broadcast experience is not warranted. Rather, it is our opinion that there is no basis for awarding a preference to either party in this area. We agree with the Broadcast Bureau that experience in the AM field is at least equal to that earned in the FM field. Concert presently has four FM stations, acquired individually between 1955 and 1958. WBUD, on the other hand, has been operating its AM station since 1947. While Concert has operated a specialized broadcasting service, with substantially the same program on all of its stations, it has allegedly done so because it felt that it could in that manner best capitalize on the unique properties of FM service. In the relatively short time that it has operated, it gives assurance that it will effectuate its proposal. But WBUD, by its longer period of operating its AM station, with balanced programing, equally gives such assurance.

6. It is our opinion that Concert has not earned a preference in the area of programing; rather, a slight preference should be awarded to WBUD in this area. WBUD, by its years of experience in Trenton, indicates that it is aware of and responsive to Trenton's local needs, and indeed this has been reinforced by our renewal of WBUD's license from time to time. The record reflects a greater degree of responsiveness to local needs on the part of WBUD's proposed programing, and it is in this sense much superior to Concert's showing. (See par. 10, *infra*.) Apart from this, the very difference in program formats of the two applicants is such that there is no further ground for comparison. For the reasons set forth in our prior decisions, the greater num-

ber of hours of operation proposed by Concert has no decisional significance; there is no indication that WBUD's schedule is inadequate.

7. We also agree with the Broadcast Bureau that both applicants will have an adequate staff to carry out their proposals, and, for this reason, we do not believe that either party merits a preference in this area of comparative evaluation.

8. WBUD should have been given a preference in the comparative area of integration of ownership and management. None of Concert's officers, directors, or stockholders actively participate in the daily management and operation of their present stations except for T. Mitchell Hastings, Jr. Two of WBUD's three officers and directors actively participate in operating its existing AM station and will also operate the FM station; Richard M. Hardin, president, director, and 48.9 percent stockholder, will be general manager, devoting full time to the AM and FM stations. He has no other interests that will interfere with his broadcast activities. Hardin's wife, who is vice president, director, and 50.8 percent stockholder, does not and will not participate in WBUD's broadcast activities. The Hardins, between them, own almost all of WBUD's stock; it is a family operation. On the other hand, Hastings is actively associated with the General Communications Co., which makes electronic equipment. He is the only officer or director directly involved with operating Concert's stations. Concert's largest stockholder, John N. Brown (33.85 percent), is inactive and has no broadcast experience. In fact, it does not appear that any of Concert's other officers, directors, or stockholders has had any prior broadcast experience; nor does it appear that they will participate actively in the administrative or operational phases of the proposed station; nor do any of them reside in the Trenton area.

9. Concert's stock is widely held by many people of wide interests. While this might ordinarily present an impressive showing in the area of diversification of business interests, a factor of secondary importance, Concert's showing is weakened because "its showing is completely non-local." *WHDH, Inc.*, 22 FCC 767, 13 R.R. 507, 569 (1957).¹ This is especially significant in the absence of any meaningful integration of ownership with management on the part of Concert. Therefore, we revise the strong preference granted Concert in this area, and instead award a slight preference therefor to Concert.

10. WBUD should also have been given a preference on planning and preparation. Concert has made no effort to investigate and ascertain the program needs or tastes of the Trenton area, and has had no discussions or conferences with residents of the area to ascertain their program needs and desires. The only relevant finding is that in furtherance of its "plans to tap the talents and cultural resources of the Trenton-Philadelphia area and to bring programs originated there to the listeners it now serves," it explored this possibility with the management of the Philadelphia Orchestra conducted

¹ It should also be noted that of the 18 professional, social, and civic organizations with which Hastings is associated, most are located in Massachusetts, at least 3 are college undergraduate clubs, and none are in any way identified with Trenton.

by Eugene Ormandy (initial decision, findings of fact, par. 53).² However, its proposal is not based on a showing of such interests and needs. On the other hand, in addition to the weight that may be attached to WBUD's principals having lived and worked in the Trenton community since 1947, WBUD proposes programs, inter alia, which have been proposed pursuant to arrangements with the Trenton Symphony Orchestra, the Delaware Valley Philharmonic, and corresponding organizations in Princeton and Bucks County; WBUD has also determined that colleges and other local musical groups will supply programs during the week when no symphony or philharmonic concerts are available. In the educational program area a program will be produced in conjunction with Trenton Junior College, Rider College, and the various public and parochial schools in the Trenton area. WBUD's planning and preparation is not only greater in scope than Concert's, but of greater importance, it demonstrates a broader understanding of the community's programming needs. WBUD merits, therefore, a slight preference over Concert in this factor.

11. There remains for consideration an argument strongly pressed by Concert—the question of duplicated programming by FM and AM. Concert has argued that the time has come to recognize FM as a broadcasting service in its own right, entirely capable of competing with the AM service. FM service, claims Concert, will never achieve its full public-interest potential if its principal function is merely to serve as an adjunct of the AM service for the purpose of duplicating the programs of companion AM stations. This question of duplication of AM programming is one which has already been brought to the attention of the Commission, and indeed, is before the Commission. In the matter of *Revision of FM Broadcast Rules, Particularly as to Allocation and Technical Standards*, docket No. 14185, par. 66 at p. 29 (FCC 61-833). As we pointed out there, “the Commission has up to now permitted FM stations to duplicate—without limitation—the programming of AM stations, usually AM stations under common ownership. * * * [A] question exists as to whether duplication * * * is an appropriate use of FM facilities or amounts to waste of a valuable frequency band.” But we need not, and do not, decide this important policy question in this adjudicatory case without regard to the comments and views expressed in our much broader “legislative” proceeding. For, even assuming that Concert is entitled to a preference because its programming will not duplicate that of any other aural broadcast station in Trenton, that preference is not a determinative one on the facts of this case. The record shows that WBUD will not duplicate its entire AM format or, indeed, even a majority of the programs on that format. On the contrary, approximately two-thirds of its programming will be nonduplicative; it will be new programming designed

² The examiner also found (initial decision, findings of fact, par. 54): “Wherever possible special programs will be produced which are of particular interest to Trenton and vicinity and efforts will be made to utilize local talent in connection with these programs. Concert recognizes that such programming is difficult to do with the limited financial resources available to FM stations at the present time, but its policy will be to make its Trenton facilities available for use by Trenton organizations, groups, and individuals in the interest of the community.” This is a laudable statement of intentions, but there is no showing that Concert's proposed programming originates in such a manner.

especially for the FM audience. In short, WBUD has blended a number of its meritorious AM programs into an essentially new FM format; the result may well be to gain a new audience even for the duplicated AM programs. But in any case, any preference which could be awarded Concert, assuming, arguendo, a change in our policy, is not a determinative one, for, as shown in the next paragraph, it would be outweighed by the preferences given WBUD on other factors.

12. We thus affirm the distinct preference given to Concert with respect to areas and populations; and Concert is also given a slight preference in diversification of business interests, and, for the reasons set forth in paragraph 11, supra, is assumed to be entitled to a preference because of its wholly nonduplicative FM format. Both applicants have adequate staffs and are equal in broadcast experience. WBUD has met the financial issue; it has definite preferences in local residence and civic participation; a slight preference in programming; a slight preference in planning and preparation; and a preference in integration of ownership and management. In our judgment, the preferences awarded to WBUD outweigh in importance those awarded to Concert—from WBUD's preferences we find a greater responsiveness to community needs and a greater likelihood of effectuation of program proposals. It is therefore our conclusion that the public interest, convenience, and necessity would be best served by a grant of WBUD's application.

In view of the foregoing, *It is ordered*, This 10th day of January 1962, that the application of WBUD, Inc., for a construction permit for a new class B FM broadcast station to operate with a radiated power of 20 kw on 101.5 mc (channel 268) in the city of Trenton, N.J., *Is granted*; and the application of Concert Network, Inc., for the same facility *Is denied*.

APPENDIX

Rulings on Exceptions of Concert Network, Inc.

<i>Exception No.</i>	<i>Ruling</i>
1-----	See initial decision, p. 3, note 3.

Rulings on Exceptions of the Broadcast Bureau

<i>Exception No.</i>	<i>Ruling</i>
1, 2, 4-----	Granted. The last 5 lines of findings of fact (F.F.), par. 7, are hereby deleted. Par. 8 of the conclusions is also deleted. The second line of the tabulated data in par. 11 of F.F. is hereby deleted.
3-----	Granted. See WBUD Exception No. 1, p. 6. Par. 6, line 10, of the conclusions is hereby amended by substituting "six" for "ten."
5-----	Granted to the extent that the last sentence of par. 12 of the conclusions is deleted. The record does not warrant a decisional preference for either party. Denied in other respects.
6-----	Granted. Par. 13 of the conclusions is deleted. The record establishes that both applicants will have an adequate staff to carry out their respective proposals and, for this reason, we do not believe that either party merits a preference in this area of comparative evaluation.

<i>Exception No.</i>	<i>Ruling</i>
7 & 8-----	Granted to the extent that all of par. 14 and the last 5 sentences of par. 15 of the conclusions are deleted. See decision, pars. 6 and 11.
9-----	Granted. The last 2 sentences in par. 16 of the conclusions are hereby deleted. The record does not disclose any meaningful integration of ownership on the part of Concert.
10-----	Granted. See decision, par. 8.
11-----	Granted. Pars. 18 and 19 of the conclusions and the decretal clause are hereby deleted. See decision, par. 12.

Rulings on Exceptions of WBUD, Inc.

<i>Exception No.</i>	<i>Ruling</i>
1, 2, 5, 6, 7, 13, 14, 16, 18, 19, 21, 23, 24, 25, 26, 27, 35.	Denied, as of no material or decisional significance.
3-----	Granted. The last sentence of F.F., par. 9, is amended by deleting "fifteen" and substituting "sixteen."
4-----	Denied. There is a variance between the requested finding and the cited reference. Also, it is of no decisional significance.
8-----	Granted. See decision, par. 9.
9-----	Granted. See decision, par. 8.
10-----	Do.
11-----	Denied, as of no material or decisional significance.
12-----	Denied. The record shows that there were 900 spot announcements in February 1960, the last time a count was made. Tr. 57-58.
15-----	Denied. The civic activities of WBUD's officers and stockholders are a matter of record. F.F. 14-18. The Commission has held that weight cannot be given to civic activities of staff members who hold no office or stock interests. <i>Radio Associates, Inc.</i> , 23 FCC 217, 244, 10 R.R. 1073, 1104 (1957), rev'd on other grounds <i>sub nom. WLOX Broadcasting Co. v. FCC</i> , 104 U.S. App. D.C. 194, 260 F. 2d 712, 17 R.R. 2120 (1958); <i>WPTF Radio Company</i> , 12 R.R. 609, 658 (1957).
17, 20-----	Granted to the extent indicated in par. 10 of the decision.
22-----	Denied, as contrary to the record.
28-----	Granted. The last sentence of par. 3 of the conclusions is amended by deleting "fifteen" and substituting therefor "sixteen."
29, 30-----	Granted. See disposition of Broadcast Bureau's exception No. 5.
31-----	Granted. See disposition of Broadcast Bureau's exception No. 6.
32-----	Denied for the reason stated in exception 15, <i>supra</i> .
33, 34-----	Denied in part and granted in part. The conclusion does not incorrectly reflect Commission policy nor discuss valueless and immaterial theories. See disposition of Broadcast Bureau's exception No. 6, deleting par. 13 of the conclusions.
36-----	Granted to the extent indicated in par. 11 of the decision.
37-----	Denied, as not being supported by the record.

Exception No.

Ruling

- 38, 39, 40, 41, 42, 43, 44. Denied. The conclusions do not incorrectly reflect Commission policy nor discuss valueless and immaterial theories, nor are the requested findings adequately supported by the record. Further, the proposed finding in exception 38 is at variance with the application. See also our ruling on Bureau's exceptions 7 and 8.
- 45.----- Granted to the extent indicated in our disposition of Broadcast Bureau's exception No. 9.
- 46.----- Denied. See *Petersburg Television Corporation*, 10 R.R. 567, 584i-584k (1954) (licensee has the duty to serve all of the people in the range of its service area or signal).
- 47, 48.----- Granted in accordance with par. 12 of our decision.

32 F.C.C.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON 25, D.C.

In re Applications of
WBUD, INC., TRENTON, N.J.

CONCERT NETWORK, INC., TRENTON, N.J.
For Construction Permits for New FM
Broadcast Stations

Docket No. 12952
File No. BPH-2600

Docket No. 12953
File No. BPH-2619

APPEARANCES

Philip Bergson, Esq., for WBUD, Inc.; *Edward F. Kenehan, Esq.*, for Concert Network, Inc.; *Thomas B. Fitzpatrick, Esq.*, *Earl Walck, Esq.*, and *Joseph D. Greene, Esq.*, for Chief, Broadcast Bureau, Federal Communications Commission.

INITIAL DECISION OF HEARING EXAMINER JAY A. KYLE

(Adopted February 23, 1961)

PRELIMINARY STATEMENT

1. This proceeding involves the mutually exclusive applications of WBUD, Inc. (WBUD), docket No. 12952, file No. BPH-2600, and Concert Network, Inc. (Concert), docket No. 12953, file No. BPH-2619, each for a construction permit for a new class B FM broadcast station to operate with a radiated power of 20 kw on 101.5 Mc (channel 268) in the city of Trenton, N.J. The antenna height above average terrain proposed by WBUD is 132 feet and that of Concert 500 feet.

2. The applications were designated for hearing by Commission order dated July 22, 1959 (released July 27, 1959), which order found the applicants to be legally, technically, financially, and otherwise qualified to construct and operate their proposed stations, except as otherwise appears from the specified issues listed as follows:

1. To determine the areas and populations within the 50-uv/m and 1-mv/m contour of the operations proposed, respectively, by WBUD, Inc., and Concert Network, Inc., and the availability of other such FM broadcast service to the said areas and populations.

2. To determine whether the instant proposals would involve objectionable interference with station WFIL-FM, Philadelphia, Pa.,¹ or any other existing FM broadcast stations, and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other service to such areas and populations.

3. To determine whether WBUD, Inc., is financially qualified to construct and operate its proposed station.

¹ On Aug. 10, 1959, WFIL-FM advised the Commission that it did not desire to participate in the proceeding.

4. To determine, on a comparative basis, which of the instant proposals would better serve the public interest, convenience, and necessity in light of the evidence adduced pursuant to the foregoing issues and the record made with respect to the significant differences between the applicants as to—

a. The background and experience of each having a bearing on the applicant's ability to own and operate its proposed station.

b. The proposals of each of the applicants with respect to the management and operation of the proposed station.

c. The programing service proposed in each of the said applications.

5. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which, if either, of the instant applications should be granted.

The order of designation provided that in the event of a grant of the application of WBUD, the construction permit shall contain a condition requiring that station WBUD request permission from the Commission to determine power of WBUD by the indirect method; that during the installation period of the FM antenna, WBUD shall maintain the directional antenna system as closely as possible to values appearing in the license; and that upon completion of the installation, WBUD shall submit sufficient data to show that the directional antenna pattern remains substantially unchanged, but if there is any change in the antenna or common point resistance, WBUD shall submit forms 302 to report the change.

3. A prehearing conference was held on February 11, 1960, and the hearing held on June 7 and 8, 1960. The record, however, was not closed until August 18, 1960, following the review of a Concert exhibit by an engineering witness for WBUD. Proposed findings of fact and conclusions were filed by WBUD, Concert, and the Broadcast Bureau on December 28, 1960, and Concert filed reply findings and conclusions on January 30, 1961.

FINDINGS OF FACT

4. The city of Trenton is the principal city of the Trenton urbanized area. It is the State capital of New Jersey and located in the western part of the State about 25 miles northeast from the center of the city of Philadelphia, Pa. The Trenton urbanized area has a population of 189,321 persons and the city of Trenton has a population of 128,009 persons.² The only FM station now licensed to operate in the city of Trenton is station WTOA-FM.

5. The proposed transmitter sites are approximately 15.5 miles apart. WBUD's proposed site is located 2.5 miles northwest of Trenton and 30 miles from Philadelphia. Concert's proposed site is 12 miles southwest of Trenton and 18.5 miles northeast of Philadelphia. The WBUD proposed 1-mv/m normally protected contour falls at the following distances from the transmitter site: north, 18 miles; east, 22.5 miles; south, 24.5 miles; west, 17.5 miles. Within the proposed 1-mv/m contour, WBUD will furnish service to 671,589 persons in 1,290 square miles.³ No interference will be received within the proposed 1-mv/m normally protected contour from any existing station.

² All population figures shown herein are taken from the 1950 U.S. census.

³ Service beyond the 1-mv/m normally protected contour is not considered inasmuch as the Commission's rules do not afford protection from interference outside this contour and it has been recent Commission policy to specify issues which relate only to the population and area within the 1-mv/m contour. (See order, *In re Independent Broadcasting Company, Inc.*, D-13423, FCC 60-215, released Mar. 14, 1960.)

6. The area within WBUD's proposed 1-mv/m contour receives a signal of at least 1 mv/m from a total of 24 FM broadcast stations.⁴ Of these, station WTOA-FM, Trenton, serves the entire area. The remaining stations serve the area in the indicated proportions: 1, 50-74 percent; 8, 25-49 percent; 14, less than 25 percent. No portion of the area receives less than 1 or more than 16 other signals of at least 1 mv/m. The area wherein the proposal would provide a second signal of at least 1 mv/m contains 208 square miles and 23,125 persons. Stations WTOA-FM, Trenton; WQAL, WFLN-FM, WFIL-FM, WCAU-FM, WHYI, all located in Philadelphia; and WPRB, Princeton, each provide a signal of at least 1 mv/m to the entire city of Trenton, while stations WIP-FM and WPEN-FM, Philadelphia, provide such a signal to about 80 percent and 40 percent, respectively, of the area of the city.

7. The WBUD proposal would cause adjacent-channel interference to station WFIL-FM, Philadelphia (channel 271, 102.1 Mc), within its 1-mv/m contour in an area of 11 square miles containing 11,733 persons, representing 0.33 percent of the area (3,310 square miles) and 0.28 percent of the population (4,176,013) within the station WFIL-FM 1-mv/m contour. This interference area occurs in the form of an irregular semicircle, with a radius of about 2 miles from the WBUD transmitter site and some 30 miles from the center of Philadelphia. Six stations provide a signal of at least 1 mv/m to this entire area lost by station WFIL-FM as a result of interference received from the WBUD proposed station. The WBUD proposal would not cause interference to any other existing station. The populations and areas within the specified contours of the proposed WBUD-FM operation are as follows:

Contour	Population	Area (sq. miles)
1.0 mv/m.....	671, 589	1, 290
50 uv/m.....	1, 536, 958	7, 450
Interference from WGBI-FM, WGAL-FM, WCBS-FM, and WFIL-FM.....	256, 629	1, 585
Interference free.....	1, 280, 329	5, 865

8. The Concert proposed 1-mv/m normally protected contour is almost circular in shape and occurs at a distance of approximately 29 miles in all directions from the transmitter site.

9. Within its proposed 1-mv/m contour, Concert will provide a first signal of at least 1 mv/m to 9,587 persons in 338 square miles, and a second such signal to 32,066 persons in 315 square miles. Elsewhere within the proposed 1-mv/m contour, other service of 1 mv/m or greater is available in the different parts from up to a maximum of 15 other stations.

⁴WBUD and Concert submitted evidence as to the other signals of a value of at least 50 uv/m available to the area between its proposed 1-mv/m and 50-uv/m contours. As Commission rules do not provide for protection for an FM station beyond its 1-mv/m contour, such showing is of no decisional significance. See Commission memorandum opinions and orders, *Suburban Broadcasting Co.*, Mimeo 82535, and *Independent Broadcasting Company*, Mimeo 90857. Commission's current orders of designation in FM hearing cases do not call for a showing as to the areas and populations within the 50-uv/m contours of proposed stations.

10. The Concert proposed station would cause adjacent-channel interference to station WFIL-FM, Philadelphia, Pa. (channel 271, 102.1 Mc), within its 1-mv/m contour in an area of 23.76 square miles containing 15,310 persons, representing 0.71 percent of the area (3,310 square miles) and 0.36 percent of the population (4,176,013) within the station WFIL-FM 1-mv/m contour. This interference area takes the form of a circle, with a radius of about 2.5 miles from the Concert proposed site and is located about 16 miles from the center of Philadelphia, Pa. Ten or more stations provide a signal of at least 1 mv/m to this entire area lost by station WFIL-FM as a result of interference received from the Concert proposed station. The proposal would not cause interference to any other existing FM station.

11. The populations and areas within the pertinent contours of Concert's proposed FM facility are as follows:

Contour	Population	Area (sq. miles)
1.0 mv/m	3,237,931	2,870
50 uv/m	4,208,405	11,160
Interference from WFIL-FM	186,305	21.24
Interference free	3,051,626	2,848.76

12. WBUD is a New Jersey corporation having an authorized capital of 1,000 shares of common voting stock with a par value of \$100 per share. There are three officers, directors, and stockholders of the corporation; namely, Richard M. Hardin, Morrisville, Pa., president and director, who holds 48.9 percent of the issued shares; his wife, Verna S. Hardin, vice president and director, owns 50.8 percent of the shares; and one share representing 0.3 percent of the issued shares is held by Theresa M. Rose, secretary and treasurer. The Rose share is a qualified share only and the beneficial interest is owned by Mrs. Hardin. The foregoing represents 360 total shares issued and outstanding, and the present unissued shares number 640, making the grand total of 1,000 shares authorized. The Hardins as well as Theresa Rose are residents of the Trenton, N.J., area.

13. WBUD was first licensed on June 13, 1947. It has been owned continuously since its inception by the present owners. Morrisville Broadcasting Co., a copartnership comprised of Hardin and Mrs. Hardin, was the original licensee. The license was assigned to the applicant corporation following the receipt of the Commission's consent as of September 12, 1956. No change in ownership or control of the licensee was involved. The Hardins and Miss Rose are the only officers, directors, and stockholders of the corporation.

14. Hardin has been associated with WBUD as an engineer (he holds a first-class radiotelephone operator's license), salesman, program producer, and general manager since 1947. He entered radio at WNOX as transmitter operator in 1943. His responsibility is the establishment of station policies and the direction of its overall operations. He is a member of National Association of Broadcasters, Greater Trenton Chamber of Commerce, Heart of Trenton Businessmen's Association, and Radio Advertising Bureau, and belongs to the

following organizations: Rotary Club (Morrisville and Trenton Rotary Clubs—has served on board of directors of both); Police Athletic League (served on board of governors); Central Jersey Pilots Association and Flying Shriners; Morrisville Community Swimming Pool (director);⁵ Morrisville School Authority (served as vice president);⁵ Bucks County Technical School Authority (served as treasurer);⁵ N.J. Broadcasters Association (currently member of board of directors).

15. William Garry, sales manager, has been a member of the staff at WBUD since 1947. He holds a first-class radiotelephone operator's license. Garry was born in New Brunswick, N.J.; attended public schools in Hamilton and Lawrence Townships; graduated from Trenton High School and Rider College. He is a resident of Trenton and an active participant in the following organizations in the capacities noted: division captain, Division VI, 3d C.G.D. (S.A.), U.S. Coast Guard Auxiliary; chairman, Trenton Chamber of Commerce, National Essay Contest; and a member of the executive board, Morrisville Community Pool. He has served as president, Morrisville Lions Club, and as a member of the Trenton Fair Rent Committee, Trenton War Housing Advisory Board, and the Municipal Annexation Committee.

16. Louis Wagner is the station's news director and was born and raised in Freehold, N.J. He is currently a resident of Lawrenceville, N.J. Wagner attended public schools and graduated from Freehold High School in 1948. He enlisted in the U.S. Air Force in August 1948 and saw service during the Berlin airlift and Korean war. During the 3 years and 11 months of active duty, Wagner served in various activities ranging from radio operator, correspondent to broadcaster. He served in the Philippines, Japan, Korea, Germany, and briefly in the United States. He was honorably discharged as sergeant in 1952. Following his discharge from the Air Force, he entered commercial radio at station KLOU, a CBS affiliate, in Lake Charles, La., where he was announcer-newsman for 1 year. Wagner returned to New Jersey the following year to study journalism at Rutgers University College. In 1956 he left school to accept a job as news editor at WTTM in Trenton. Seven months later he accepted a job at WTNJ to organize local news coverage. In 1957 he returned to Rutgers University as a member of the administration in the public relations department to write and produce educational radio programs at the university's radio center. Among the programs written and produced by Wagner were: "Rutgers University Forum," "Rutgers Report on World Affairs," "Rutgers Dateline," and "Report From Rutgers." In September of 1959, he returned to commercial radio at WBUD to reorganize the WBUD Trenton News Bureau which is his current assignment. His newspaper career included service on the following papers: Lake Charles American Press (daily); Freehold (N.J.) Transcript (weekly); Trentonian (daily), suburban. He is currently a member of the New Jersey Press Association, the Bucks County Pennsylvania Press Association, and the Shore Press Association.

⁵ Service was terminated when residence was transferred in October 1958 from Morrisville to nearby Lower Makefield Township, Pa.

17. As related, Mrs. Hardin is the majority stockholder, but she is not engaged in the day-to-day operations of the AM station of WBUD. Nor is it contemplated that she will participate in the active management of the proposed FM station.

18. Theresa Rose, secretary-treasurer, a director and station manager of WBUD since 1958, has been employed at WBUD for the past 13 years and was born and educated in the public schools of nearby Morrisville and at Rider College. She has direct supervision of all station operations day by day and, also, of the station's extensive public service activities, including the annual March of Dimes Radiothon in which WBUD's studio facilities were moved to a local center-of-the-city store window and exposed to public view during a week-long campaign; the yearly Summer Traffic Bulletin Campaign in conjunction with the New Jersey State Police and the AAA to promote road safety in New Jersey during the summer vacation months; on-the-spot broadcasting from the Trenton Auto Show to raise funds for the new building for the Delaware Valley Rehabilitation Center; and the Radio Auction Show by means of which funds were raised for the Trenton General Hospital.

19. Concert is a Rhode Island corporation and the licensee of FM broadcast stations WBCN, Boston, Mass.; WXCN, Providence, R.I.; WHCN, Hartford, Conn.; and WNCN, New York, N.Y. It is authorized to issue 200,000 shares of preferred and 1 million shares of common stock, all having voting rights. All of the preferred shares and 393,000 shares of common are issued and outstanding.

20. Originally organized as General Broadcasting Corp. in Rhode Island on March 30, 1955, Concert realized its present name by an amendment to its articles of incorporation on April 1, 1957. The company first commenced with the purchase of an inactive Providence station. This first station of the planned network was called WTMH, but in order that all Concert stations have the call letters "CN" at the end, it was subsequently changed to WXCN. From its inception, WXCN specialized in the transmission of concert music, with the ultimate plan that this type of broadcast service would be made available to millions of listeners throughout the densely populated New England States, in New York, and along the eastern seaboard.

21. In May of 1956, the second station of the network was purchased. This station, WHCN, Hartford, Conn., provided the important link between Providence and New York.

22. Later that same year, in December, the network again expanded with the acquisition of WNCN, New York, N.Y., and in June of 1958, the Boston station of Concert, WBCN, commenced operations. Since 1958, WBCN has been the principal originator of programming for the entire network. Concert also has an affiliation arrangement with station WMTW-FM, situated on top of Mount Washington in New Hampshire. WMTW, which operates with maximum power, and only recently increased its effective radiated power to 48,100 w, provides Concert programs to substantially all of the New England area not covered by Concert owned and operated stations.

23. The stock of Concert is widely held, and outside of two stockholders no other individual stockholder owns more than 2 percent of

the stock. T. Mitchell Hastings, Jr., president, treasurer, director, and with 15.94 percent of the stock, is the founder of Concert. More information about the activities of Hastings will be found in paragraphs 25 and 26, infra. The other officers, directors, and stockholders owning more than 1 percent of the Concert network are here set out.

Name and residence	Office held	Number of shares	Percent of stock held
Leslie A. Cooper, 403 Terrace Ave., Garden City, N. Y.	Vice president and director.	10,340	1.74
C. Comstock Clayton, 21 Warwick Rd., Brookline, Mass.	Director	10,000	1.68
Robert MacLaughlin, Punch Bowl Trail, Richmond, R. I.	do.	2,000	.34
Jerome B. Weisner, 61 Shattuck Rd., Watertown, Mass.	do.	7,250	1.22
Paul Roberts, 12 East 86th St., New York, N. Y.	do.		
Richard A. Holman, 130 Daisy Farms Dr., New Rochelle, N. Y.	do.		
Edward Winsor, 237 Irving Ave., Providence, R. I.	Secretary		
Morlyn L. Brown, Box 691, 2604 Hidden Valley Rd., La Jolla, Calif.		10,000	1.68
Eugene N. Foss II, 26 Wampatch Rd., Dedham, Mass.		7,500	1.26
Richard C. Paine, 325 Heath St., Chestnut Hill, Mass.		10,000	1.68
J. Davidson Rider, 66 Lincoln St., North Easton, Mass.		7,940	1.66
Oliver H. Strauss, 51 Pinckney St., Boston, Mass.		9,480	1.62
Robert S. Swain, Boston Fund, Inc., 111 Devonshire St., Boston, Mass.		10,000	1.68
Valentine H. Zahn, 195 Broadway, New York 7, N. Y.		10,000	1.68
John Nicholas Brown, 50 South Main St., Providence, R. I.		1,000 common 200,000 preferred.	33.85

¹ The computations herewith reflected are determined to be slightly inaccurate, but of no materiality to the grant total.

24. In addition to the foregoing, more than 1 percent of Concert stock is held by Clayton Securities Corp. (10,800 shares), Gotham Broadcasting Corp. (10,000 shares), Robert Edelstein Co. (14,400 shares), and Kidder, Peabody & Co. (12,050 shares). The last two companies are stockbrokers and Gotham Broadcasting Corp. is the licensee of station WINS,⁶ New York, N. Y., and the sole stockholder of KTVR-TV, Denver, Colo.

25. T. Mitchell Hastings, Jr., the founder of Concert, was born April 24, 1910, in Haverford, Pa. He received his formal education at Harvard University, graduating in 1936 with a B.E. degree, having majored in communications engineering and metallurgy. His education also includes graduate courses in law and business administration. He is president, treasurer, director, 15.94 percent stockholder, and principal executive officer of this applicant. The professional, social, and civic organizations of which Hastings is a member are as follows:

Institute of Radio Engineers
Harvard Engineering Society

⁶ An application for consent to the assignment of the WINS license (file No. BAL-4038) is currently pending before the Commission.

Massachusetts Society Professional Engineers
 Audio Engineering Society
 American Ordnance Association
 Navy League of the United States
 Harvard Club of Boston
 Harvard Club, New York City
 St. Botolph Club
 Dedham Polo and Country Club
 Society of Cincinnati
 Fox Club, Harvard University
 Speakers Club, Harvard University
 Hasty Pudding Institute 1770, Harvard University
 Newcomen Society
 Edgartown Yacht Club
 Museum of Science
 Museum of Fine Arts

26. In 1937, Hastings founded and organized the General Communications Co. in which he has continued to be active and now serves as a director. In addition to executive and administrative functions, his activities with the company have included the supervision of design, development, and tooling of company products, including marine and aircraft radio and radar equipment and other types of electronic equipment for government and commercial use. Other past business activities include sales engineer with Electrical Apparatus Co. and General Control Co. (1936-37), president of Press Wireless Manufacturing Co. (1948-51), president of Hastings Sales Engineering Co. (1946-47), and president and treasurer of Hastings Products, Inc. (1953-56). He was president and treasurer of General Broadcasting Corp. before it was renamed "Concert Network, Inc." (1955-57), and director of Jansky & Baily, Washington, D.C. (1957-59).

27. The largest stockholder of Concert is John Nicholas Brown who holds 33.85 percent of the stock. He was born in New York on February 21, 1900, and now resides in Providence, R.I. He is the holder of both the A.B. and A.M. degrees from Harvard University, in addition to being the recipient of four honorary doctor of laws degrees. He has served as chief adviser on monuments, fine arts, and archives for the U.S. Control Council in Germany, arranging for the restitution of art objects stolen by the Nazis (1945), and as Assistant Secretary of the Navy for Air (1946-49). He is an officer, trustee, and fellow of numerous educational and cultural organizations and societies. Brown's business activities include the Counting House Corp., Providence, R.I., of which he is president. He is a director of Sealol Corp., Warwick, R.I.; trustee of the Providence Institution for Savings; director of Black, Starr & Gorham, New York City, and Gorham Manufacturing Co., Providence, R.I. He is also a member of the Mount Hope Bridge Authority.

28. It is not deemed necessary to here detail the backgrounds of the other 14 officers, directors, or stockholders holding more than 1 percent of the applicant's stock, except to state that they constitute a significant outstanding and successful group of professional and businessmen from several States. None of these men hold 2 percent of the company stock, and none reside in the Trenton area.

29. WBUD proposes to broadcast 74 hours each week only, of

32 F.C.C.

which 48.25 would be unduplicated from the programs of its AM station. Concert here proposes to broadcast approximately 125.6 hours weekly.

30. As WBUD generally expects to have duplicated programing with its AM station in Trenton and Concert does not contemplate immediately local programing at Trenton, it is considered advisable to review the past operation of both applicants. WBUD, in Trenton, operates on 1260 kc, with a daytime power of 5 kw and a nighttime power of 1 kw, using different directional antenna patterns for daytime and nighttime operations. Hardin testified that the AM operation was 18 hours a day for 6 days a week and on Sunday 16 hours, making a total weekly operation of 124 hours. The noncommercial spot announcements weekly total approximately 900.

31. During the 1959 composite year, according to its most recent application for renewal of license,⁷ WBUD's schedule was comprised of the following types of programs: entertainment (77.25 percent), religious (4.03 percent), educational (0.27 percent), news (8.20 percent), discussion (0.62 percent), and talks (9.63 percent).

32. WBUD has participated in and supported various community civic and charitable organizations, particularly fund drives for Community Fund, American Red Cross, American Cancer Society, and various State and local health and safety campaigns. Among these regularly scheduled public service programs, many of which are carried currently, and their objectives are briefly the following: *Religious*: "Chapel of Cheer," which for the past 8 years has featured a local minister with words of inspiration and cheer; the "First Presbyterian Church Program" and the "First Methodist Church Program" provide to those unable to attend church an opportunity to share in the devotions. Both are live remote programs for which WBUD pays the entire cost. Other religious programs are "The Hour of St. Francis," produced by members of the Third Order of Franciscans, and "Spiritual Cavalcade," an hour of spiritual music for the Negro community. *Educational*: "Speaking of Schools," a 5-minute daily program produced by the New Jersey Education Association, includes direct reports from the National Congress of Parents & Teachers in Washington, D.C., as a regular feature; "Speaking Acquaintance," a general informational program, and "Report on Rutgers," providing complete coverage of the university's activities, are both produced by Rutgers and broadcast every Sunday. "Medical Milestones" is a weekly series of dramatizations of man's greatest medical achievements. "The World of 1960," produced by the United Nations radio staff, offers an international panorama of the United Nations at work. *News*: With minor variations, news programs totaling about 10 hours per week are broadcast regularly either on the hour (a.m.) or on the half-hour (p.m.). *Talks*: "The Added Years" deals with the problems of old age and senior citizens; "Home and Gardens," an agricultural program produced by Rutgers University Department of Agriculture and designed for the gardening suburbanite and gentleman farmer; and "How New Jersey Grows," pro-

⁷ File No. BR-1554, granted May 25, 1960. Official notice of Section IV of this application was taken at the request of Broadcast Bureau counsel.

duced by the New Jersey Department of Conservation, are regular Saturday and Sunday programs. "Humanity in Perspective," a program conceived and created by WBUD, is a regular weekly feature directed to foreign born and first-generation Americans residing in the station's service area. *Special programs*: Include broadcasts of the "Bucks County Music Festival" (for high schools), participation games played by the Trenton Pal's Baseball Team in the 1959 "Connie Mack World Series" at St. Joseph, Mo. WBUD absorbed the complete expenses and costs of these broadcasts. "Mission Detection" featured a step-by-step re-creation of the last voyage of the U.S.S. *McClelland*, the Naval Reserve destroyer escort serving the Trenton area; the infamous Duck Island murder case was reinvestigated in "Legacy of Doubt." WBUD broadcast 138 spot announcements and donated 6 free hours of broadcast time for "Radio Auction" as part of a fund raising for the benefit of the Trenton General Hospital; and 108 broadcast-hours were devoted to the 1960 "March of Dimes Radiothon."

33. During the past year, WBUD provided complete statewide and local election coverage, emergency snowstorm coverage, and a weekend traffic watch during the summer holiday months. Free public-service spot announcements are provided on "The Calendar of Events," a daily 5-minute program which provides a concise listing of all area church, civic, social, and school activities. Personal interviews with members of various Trenton civic organizations are broadcast regularly; and special spot campaigns for worthy causes located in Trenton and its surrounding communities are handled by WBUD's policy of taped "Local Voice" plugs, a procedure which allows the station to tape appeals by the organizations' representatives and then broadcast them on a continuing basis. This system has been used effectively during the past year for "March of Dimes," "Mental Health," "Toys for Tots," "American Cancer Society," and "Mercer County Medical Association," to mention a few.

34. From May 3, 1959, to May 2, 1960 (the 12 months immediately preceding this hearing), WBUD provided free public-service announcements to 649 clubs, organizations, churches, and campaigns. In addition, WBUD sent 500 postcards to various organizations in its service area inviting them to submit public-service information for broadcast. And at its own expense, WBUD devoted 147 hours during this period to remote broadcasts in behalf of local civic organizations. At the request of "The Voice of America," WBUD is preparing a special program series on American folk music and folklore.

35. WBUD has received unsolicited awards and commendations from: the U.S. Air Force, Delaware Valley United Fund, Mercer County Medical Association, National Safety Council, American Automobile Association (the first award presented to a local radio station for a series of broadcast editorials on local issues), the New March of Dimes, Alfred P. Sloane Award (1951), Toys for Tots, Trenton Educational Association, Conelrad Appreciation Award, Continental Air Command Appreciation Certificate, Young Men's Christian Association, and the United Service Organization.

36. Concert Network, Inc., is strictly an FM operation and as its

name indicates operates on a network basis. It began operations with the purchase of an inactive FM station (now WXCN) located 20 miles from Providence, R.I. In May 1956, it purchased its second station, WHCN, Hartford, Conn.; and in December of that same year it purchased WNCN, New York, N.Y. WBCN, Boston, Mass., began operations in June 1958, and since that date has been the principal originator of programing for the entire network.

37. Hastings devotes substantially all of his time to the affairs, including the day-to-day operation, of all Concert stations, and the management and operation of the Trenton station will be included as a part of his full-time activities with Concert. Concert will employ a station manager, a chief engineer, an announcer-engineer, an announcer-salesman, and a secretary specifically for the Trenton station. In addition to these persons, Hastings, who has personal responsibility for the day-to-day activities of all the Concert stations and exercises general supervisory control over all phases of their operations, and the following other key Concert staff members, will be available to the Trenton station:

a. J. P. Kuklin, operations manager of station WNCN.—Kuklin is a graduate of Memorial High School, Pelham, N.Y., and holds an A.B. degree from Columbia University.

b. Richard Gurner, network traffic manager.—He was educated at Boston College and belongs to the National Council of Teachers of English.

c. Hamilton Benz, New England sales manager.—Benz is a graduate of the Choir School of the Cathedral of St. John the Divine in New York City (1925), and of Trinity School, New York (1928).

d. John Q. Adams, Jr., network program director.—He holds B.A. and M.A. degrees from Emerson College, Boston, Mass.

e. David W. Passell, station WNCN, New York, N.Y.—He attended the University of Southern California (1953-56), majoring in telecommunications, and holds a B.A. degree from that university. His courses and activities included radio-television production, writing, station management, camera operation, and audio board and transmitter control. Mr. Passell is a member of Alpha Epsilon Rho, an honorary radio-TV fraternity.

Other key staff personnel of Concert who will be utilized in connection with the Trenton station are H. Stillwell Brown, network general manager; James MacLaughlin, director of public relations; John Thornton, new programs consultant; and William Meola, Kim Kirchway, and Will Hlavaz, chief engineers of WHCN, WBCN, and WXCN, respectively. None of the other officers, directors, or stockholders⁸ of Concert is a resident of either Trenton or Philadelphia or their environs. None has any prior broadcast experience; and none will participate actively in the administrative or operational phases of the proposed station.

38. All four of Concert's stations carry virtually the same programs. The programs of its stations WBCN (Boston), WXCN (Providence), and WHCN (Hartford) are identical, while WNCN (New York) carries the same programs between 9 a.m. and 5 p.m., and also during selected evening hours. WNCN is individually programmed after 5 p.m. and on weekend afternoons. This system is arranged through a station-to-station FM relay network wherein programs originated in Boston are picked up and rebroadcast by

⁸ See par. 23, p. 7, supra.

Providence and in turn by Hartford. Occasionally the programs are relayed in similar fashion to New York, but WNCN uses Boston-originated programs mainly by means of tape recordings.

39. These programs consist almost exclusively of classical music presentations in the form of operas, symphonies, concerts, and chamber music. Examination of a sample 7-day week from Wednesday, June 1, 1960, through Tuesday, June 7, 1960, shows that "Music From the Theater" is broadcast 4 days at 5 p.m. exclusively over WMTW, a Concert affiliate serving Vermont and New Hampshire; "Sound of Modern America," a jazz program, is aired daily from 10 p.m. to 3 a.m. over WNCN, New York; and "Music of the Theater" is broadcast network-wide from 6:05 p.m. to 7 p.m. on Saturday; an hourly 5-minute newscast together with an exclusive WMTW news presentation 5 days at 6:30 p.m. and a 10-minute network presentation 5 days at 7 p.m. constitute the sum total of Concert's nonclassical music programming for an average week.

40. WBUD-FM will be actively operated by the same staff that is currently operating station WBUD. The executives and departmental heads include: Hardin, president and general manager; Miss Rose, secretary-treasurer and station manager; Garry, sales manager; and Wagner, news director. Robert Houston, WBUD's chief engineer, will be chief engineer of both stations. Thus, the proposed WBUD-FM's staff, including executives and departmental heads, would be as follows:

General and administrative (7) :

General manager.
Station manager.
Traffic.
Copywriter.
Bookkeeper.
Secretary.
Janitor.

Program department (7) :

Announcers/operators (6).
Sports director.¹

News department (7) :

News director.
Night news editors (2).
Day news editor (1).
Reporters (3).¹

Sales department (3) :

Sales manager.
Salesmen (2).

Engineering department (2) :

Chief engineer.
Engineer (1).

Total staff (including 4 part time), 26.

41. WBUD-FM proposes a program schedule that is designed to provide good music and news to the residents of Trenton and its environs. In the interests of community programming, WBUD-FM has scheduled religious, educational, sports, and special events programs on a regular weekly basis; and certain musical, religious, and news programs currently carried by WBUD. At its inception, WBUD-FM

¹ Part-time employees.

proposes to broadcast 74 hours each week. However, only 48.25 hours weekly would be broadcast from its FM facility, while the balance would be duplicated from its AM operation in Trenton.

42. The duplicated programs include all WBUD news programs; a musical program "Pops in Hi-Fi" which is broadcast on weekdays from 2 p.m. to 4 p.m.; and various religious, discussion, and musical programs totaling about 8 hours that are broadcast on Sundays. The remaining 50 hours, representing more than two-thirds of the proposed 74-hour weekly schedule, will be devoted to unduplicated programs that are broadcast exclusively over WBUD-FM. The most significant of these will be the programs "Trenton Symphony" and "Community Concerts." Both are 2-hour-long programs which will be prerecorded on electronic tape by WBUD-FM's staff pursuant to arrangements with the Trenton Symphony Orchestra, the Delaware Valley Philharmonic, and corresponding organizations in Princeton and Bucks County. At least 21 concerts of the Trenton Symphony and Delaware Valley Philharmonic are available for rebroadcast annually. Colleges and other local musical groups will supply programs during the weeks when no symphony or philharmonic concerts are available. Another outstanding program that will be broadcast by WBUD-FM only is "Trenton Hi-Lites," a 30-minute educational program to be broadcast each weekday at 8 p.m. and which will be produced by WBUD-FM in conjunction with Trenton Junior College, Rider College, and the various public and parochial schools in the Trenton area. This program has been the subject of discussions during the past 2 years between Mr. Hardin and representatives of these institutions.

43. The analysis of WBUD-FM's proposed program schedule by types shows the following percentage distribution:

Program type:	Percentage
Entertainment.....	81.2
Religious.....	4.7
Agricultural.....	.0
Educational.....	4.1
News.....	9.4
Discussion.....	.6
Talks.....	.0
Total.....	100.0

The analysis of the proposed schedule by program class (or source) shows the following distribution:

Program class:	Percentage
Network commercial.....	0.0
Network sustaining.....	.0
Recorded commercial.....	21.2
Recorded sustaining.....	57.4
Wire commercial.....	.0
Wire sustaining.....	.0
Live commercial.....	9.3
Live sustaining.....	12.1
Total commercial.....	30.5
Total sustaining.....	69.5
Proposed broadcast-hours.....	74
Number of spot announcements.....	405
Number of noncommercial spot announcements.....	515

44. Entertainment programs to be carried on a live basis include "Trenton Symphony," "Community Concert," and "Trenton Hi-Lites," discussed above. Recorded entertainment programs include "Pops in Hi-Fi," discussed above, and "Music for Memories" (popular tunes of the past and light classical works, Monday through Saturday, 4 p.m. to 4:30 p.m., 4:35 p.m. to 5:45 p.m.); "Show Tunes" (Monday through Saturday, 6 p.m. to 6:55 p.m. and 7 p.m. to 8 p.m.); "Music for Dreaming" (soft, instrumental music, Monday through Saturday, 8:35 p.m. to 9:30 p.m., 9:35 p.m. to 10:30 p.m., and 10:35 p.m. to 11:45 p.m.); "Organ Moods" (Sunday, 12 noon to 12:30 p.m.); "Sunday Serenade" (album-type music, Sunday, 12:35 p.m. to 1:30 p.m., 1:35 p.m. to 2:30 p.m., 2:35 p.m. to 3:30 p.m., 3:35 p.m. to 4:30 p.m., and 4:35 p.m. to 5 p.m.); and "Operatic Arias" (Sunday, 10 p.m. to 11 p.m.). All but "Pops in Hi-Fi," "Organ Moods," and "Sunday Serenade" will be original WBUD-FM programs.

45. Religious programs to be carried on a live basis include "Morning Worship Services," presently broadcast over WBUD on Sundays at 9 a.m. to 10 a.m. and 11 a.m. to 12 noon. The first hour, 9 a.m. to 10 a.m., will originate from the First Presbyterian Church in Trenton. The second hour, 11 a.m. to 12 noon, is a remote broadcast from the First Methodist Church of Trenton. Scheduled between these, 10 a.m. to 11 a.m., is the recorded program "Hymns for All People." Sunday evening offers the recorded "Hymns From Harding College," 9 p.m. to 9:15 p.m., and "The Hour of Saint Francis," 9:15 p.m. to 9:30 p.m. All are sustaining programs.

46. WBUD-FM proposes to carry no agricultural programs because of the declining need for such programs due to the transformation of its service area from an area of small, individually owned farms to an area of large commercialized farms. The programs "Home and Gardens" and "How New Jersey Grows," which are currently broadcast by WBUD, provide adequate agricultural program service to the area.

47. Educational programing will be supplied on "Trenton Hi-Lites," a live 30-minute program produced by WBUD-FM's staff in conjunction with the faculties of the various colleges, public and parochial schools in the Trenton area. It will be broadcast on Mondays through Saturdays from 8 p.m. to 8:30 p.m.

48. No "Talks" programs have been scheduled on the proposed WBUD-FM, principally because of the station's lack of a properly qualified person to conduct programs of this type. Nor does the proposed WBUD-FM presently have specific plans for any unduplicated discussion programs. Although such programing might become desirable at some future time, applicant's present intention is to duplicate the program "Report From Rutgers" which is carried by WBUD as a regular Sunday feature between 9:35 p.m. and 10 p.m. Hardin expressed a desire to broadcast different discussion programs simultaneously over both WBUD and WBUD-FM.

49. No new news programs are planned for broadcast by WBUD-FM on an unduplicated basis. All WBUD-FM's proposed news programs will be duplicates of WBUD's live newscasts. These include, on Monday through Saturday, 5-minute newscasts presented at 2:30

p.m., 3:30 p.m., 4:30 p.m., 6:55 p.m., 8:30 p.m., 9:30 p.m., and 10:30 p.m., with complete 15-minute news programs at 5:45 p.m. and 11:45 p.m. On Sundays 5-minute newscasts will be broadcast at 12:30 p.m., 1:30 p.m., 2:30 p.m., 3:30 p.m., 4:30 p.m., and 9:30 p.m. As explained in the testimony of Wagner, WBUD news director, the FM station contemplates the same type of news department as is currently maintained by the AM station. This includes a local news department with a staff of three local reporters and two editors, a United Press news wire, and a Radio Press International voice news service. Other additional news sources are: mailed releases and handouts; a working arrangement with the local daily newspaper; trade publications; and tips from the public. The mainstay of WBUD's reporting is person-to-person beat work conducted by the news director and his "stringers" who daily cover police headquarters, various offices within the municipal and county governments, and the New Jersey State House. In this manner, all local news stories are originated by WBUD. The staff on the news desk telephones three times a day to police departments, hospitals, fire departments, State police, and public relations personnel in industries which have a continuous flow of news.

50. Once gathered the news is then separated into five categories of importance: (1) national and world news events; (2) governmental and municipal affairs: taxation, water, sewers, streets; (3) judicial affairs: court decisions affecting large numbers of people; (4) economic news: strikes, labor disputes; and (5) public safety: crime. Depending upon this order of importance and the urgency of public dissemination, the news is broadcast in the form of immediate bulletins, quarter-hour bulletins, 5-minute local newscasts, and 15-minute major newscasts containing local and national stories. In addition, it is a firm station policy that all local newscasts will contain at least two local stories.

51. WBUD proposes to operate its Trenton FM station 74 hours per week commencing at 2 p.m. on weekdays and 9 a.m. Sundays. Signoff would be at 12 midnight during the week and 11 p.m. on Sunday. On the basis of these 74 hours of broadcasting, 25 hours and 15 minutes of which would be the duplicated programs of AM station WBUD, the WBUD-FM programming would be 81.2 percent entertainment, 4.7 percent religious, 4.1 percent educational, 9.4 percent news, and 0.6 percent discussion. On the same basis, the proposed weekly schedule of WBUD, analyzed as to origin or source, is as follows:

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	8 a.m.- 6 p.m.	6-11 p.m.	All other hours	Total
	<i>Percent</i>	<i>Percent</i>	<i>Percent</i>	<i>Percent</i>
Network commercial (NC).....				
Network sustaining (NS).....				
Recorded commercial (RC).....	47.5			21.2
Recorded sustaining (RS).....	33.3	68.5	75.0	57.4
Wire commercial (WC).....				
Wire sustaining (WS).....				
Live commercial (LC).....	10.1	6.0	25.0	9.3
Live sustaining (LS).....	9.1	25.7		12.1
Total commercial.....	57.6	6.0	25.0	30.5
Total sustaining.....	42.4	94.0	75.0	69.5
Complete total.....	100.0	100.0	100.0	100.0
Proposed broadcast-hours.....	33:00	35:00	6:00	74:00
Number of spot announcements (SA).....	245	140	20	405
Number of noncommercial spot announcements (NCSA).....	140	330	45	515

52. Concert proposes to operate its Trenton station as an additional outlet for its present operation and, in connection therewith, to serve the general Trenton-Philadelphia metropolitan complex. Hastings categorically stated that in its present proposal it had no definite plan for originating any programs in Trenton. What Concert proposes to do is have its programs first broadcast in Boston and simultaneously taped. The programs are also simultaneously rebroadcast over its Providence and Hartford stations. It is the result of an off-the-air pickup which the northern affiliate WMTW-FM also picks up. The tapes are mailed to New York, and 1 week later to the minute the program is broadcast in New York. The proposed point here is that Concert's Trenton station would receive these taped programs and carry them 2 weeks later from the original broadcast. Concert would follow this technique until such time as it takes to develop the equipment to permit off-the-air pickup between all stations of its network including Trenton. Currently the development of such equipment is underway and Hastings testified that "we are encouraged to think it can be done within a year's time." Concert proposes to broadcast 125.6 hours per week at Trenton. If and when suitable equipment is developed, for simultaneous broadcast in New York and Trenton, the programs may be broadcast in the Trenton-Philadelphia area at the same time they are broadcast in New York.

53. The tape recordings are high-quality, maximum-fidelity reproductions of the original programs on WBCN and will be played back in Trenton on machines of duplicate quality to those on which they are recorded. Concert's principal goal is to bring to the vast population complex of the Trenton-Philadelphia area the programs now broadcast to the New York City and New England areas. In addition, however, it plans to tap the talents and cultural resources of the Trenton-Philadelphia area and to bring programs originated there to the listeners it now serves. Concert also plans to extend its stereophonic coverage by cooperating with other FM stations in the Trenton-Philadelphia area and to produce stereophonic programs in cooperation with orchestral organizations in that area. This possi-

bility has been explored with the management of the Philadelphia Orchestra conducted by Eugene Ormandy.

54. Whenever possible, special programs will be produced which are of particular interest to Trenton and vicinity, and efforts will be made to utilize local talent in connection with these programs. Concert recognizes that such programing is difficult to do with the limited financial resources available to FM stations at the present time, but its policy will be to make its Trenton facilities available for use by Trenton organizations, groups, and individuals in the interest of the community. In this connection, Hastings expressed his opinion that, to date, FM stations have not been able to make significant contributions as local outlets of expression because the mass audiences that must be reached for the promotion of community and civic projects, the successful conduct of political campaigning, etc., are still basically AM listeners. However, the Trenton station would carry many local announcements for local groups as do the stations now operated by Concert. Hastings testified that there are only two stations now serving the area with programs "generally known as good music stations" or "other type of programing that can be classified as good music."

55. Concert proposes to operate its Trenton station 125.6 hours per week commencing at 6:55 a.m. on weekdays and 7:55 a.m. on Sundays, and signing off at 1 a.m. each day. By type, its programing would be 92.3 percent entertainment, 3.5 percent religious, and 4.2 percent news. Hastings testified that as in the case of Concert's present operations, agricultural programing will be avoided because of the nature of the Concert program format and because so many other stations serve the agricultural interests. He also testified that while many of the programs to be broadcast by the Trenton station would be educational in nature, such programs, like programs with discussion continuity, would not be the type that could be so classified under the Commission's definitions.

56. The following represents the proposed weekly schedule of Concert analyzed by source:

	8 a.m.- 6 p.m.	6-11 p.m.	All other hours	Total
	<i>Percent</i>	<i>Percent</i>	<i>Percent</i>	<i>Percent</i>
Network commercial (NC).....	48.6	77.1	19.2	51.0
Network sustaining (NS).....	39.6	17.9	52.1	36.0
Recorded commercial (RC).....				
Recorded sustaining (RS).....				
Wire commercial (WC).....	5.0	5.0	2.1	4.5
Wire sustaining (WS).....	6.8	0	11.7	5.8
Live commercial (LC).....				
Live sustaining (LS).....			14.9	2.7
Total commercial.....	53.6	82.1	21.3	55.5
Total sustaining.....	46.4	17.9	78.7	44.5
Complete total.....	100.0	100.0	100.0	100.0
Proposed broadcast-hours (per week).....	70	35	20.6	125.6
Number of spot announcements (SA) (per week).....	110	150	75	335
Number of noncommercial spot announcements (NCSA) (per week).....	50	47	23	112

57. Programs proposed to be broadcast by Concert's Trenton station include the following :

"Concert in Miniature" (8:05-9 a.m., Sunday; 7:05-9 a.m., Monday through Saturday)—Works of a generally light nature ranging from baroque, classical, and ballet, to orchestral arrangements of traditional songs of all countries. Modern classical music and music of a serious nature will be omitted. Time checks, news, and weather breaks will be given during this program.

"Morning Concert" (Sunday through Saturday, 9:05-12 noon)—All types of symphonic music, featuring the famous symphonies, concerti, and tone poems of composers of all schools will be presented on this program. From time to time complete ballet scores will be performed as well as rarely presented works of the symphonic repertoire. On Sunday mornings, the program will be devoted to the presentation of the great choral masterpieces of a religious nature, including such compositions as the "Passion According to St. John," the "St. Matthew Passion," and the "Mass in b Minor," all by Johann Sebastian Bach; the great requiems and other masses of Verdi, Brahms, Cherubini, Mozart, Brahms and Beethoven, Haydn and Schubert; and the numerous cantatas of Bach and oratorios of Handel and Haydn.

"Symphonic Variations" (Sunday through Saturday, 12:05-1 p.m.)—This program will offer the standard lighter works for symphony orchestra. Scores from ballet, operetta, and oftentimes orchestrated versions of well-known operas will be featured.

"Chamber Music" (Sunday through Friday, 1-2 p.m.)—To be devoted to string quartets, quintets, octets, divertimenti, serenades, and early symphonies and chamber works of Bach, Handel, Mozart, Vivaldi, Boyce, Corelli, Geminiani, Tartini, and others. Emphasis will be placed on the smaller chamber scores such as the quartets of Haydn, Mozart, Beethoven, Boccherini, Mendelssohn, Schubert, Brahms, and solo instrument compositions of these composers.

"Afternoon Concert" (2-3 p.m., Sunday; 2-4 p.m., Tuesday through Friday)—The broadcasting of works of unusual length which are seldom heard on the concert stage; i.e., the symphonies of Mahler, Bruckner, and other long works featuring diverse combinations of soloists, instruments, and orchestra. Standard concert music fare also will be featured on this program.

"Divertimento" (Monday through Friday, 4:05-5 p.m.)—This program will feature music of unusual interest not heard on a regular basis, but appreciated by a large, though not total, section of the audience. Educational in many respects, it will expose the listener to new types of music, composers, and compositions, with attention focused on the playing of concerti featuring solo instruments, or combinations of solo instruments, not usually heard on the concert stage or radio program; i.e., concerti for bass violin, cello, percussion, guitar, harpsichord, mandolin, trumpet, trombone, harp, celesta, bassoon, oboe, and other varied instruments.

"Adventures in Music" (Monday through Friday, 5:05-6 p.m. and 6:05-7 p.m.)—"Adventures in Music" will be an "omnibus" type program bringing to the listener a kaleidoscopic showcasing of classical music. It will present all types of music from solo instruments to large symphonic ensembles and operatic areas. Theater music, featuring original cast recordings from Broadway shows, will also be an integral part of the program. On Mondays, Wednesdays, and Fridays, popular music from other lands will be a featured section of the program. The program will be made available to local organizations as a sort of local "bulletin board" for events of culture in and around Trenton and Philadelphia.

"Music From Other Lands" (Wednesday, 10-11 p.m.)—Each week this program will feature prominent orchestral music written by the best known composers of a selected country. Typical will be music by such world-respected American composers as Howard Hanson, Aaron Copland, George Gershwin, Walter Piston, Samuel Barber, and Roy Harris.

"Scores and Encores" (11:05 p.m.-1 a.m., Sunday through Friday; 12 midnight-1 a.m., Saturday)—"Scores and Encores" will be a program featuring music in the orchestral category, but from time to time will include sonatas

for violin, cello, piano, and guitar. Because the program will be presented late in the evening and early in the morning, music with a fairly quiet dynamic range will be scheduled as appropriate to the hour. It is planned to supplement this program on Friday evenings with a 2-hour program of contemporary jazz with Fred Grady as host. During this extended portion of the program, instrumental recordings in contemporary jazz will be featured. Record introductions will be brief but informative, and there will be interviews with personalities of the jazz world.

"Evening Concert" (8-11 p.m., Sunday and Monday; 8-10 p.m., Wednesday; 8-9 p.m., Friday; 8-11 p.m., Saturday)—"Evening Concert" will concentrate on showcasing the standard works of the orchestral repertoire, such as the 9 symphonies of Beethoven; the 4 symphonies of Brahms; the 6 symphonies of Tchaikovsky; the last 10 symphonies of Mozart; and the most popular symphonies of Schubert, Haydn, Dvorak, Schumann, Mendelssohn, and others through to the modern school. The program will also feature the standard concerti for violin and piano by these great masters. The most famous tone poems for orchestra as well as ballet scores and other orchestral works will also be prominent features. During the last Sunday each month, as an addition to the regular "Evening Concert" program, Concert will include during this time period, "Great Works of the Theater," which will feature outstanding works of music and drama designed specifically for performance in the theater. Included will be plays by Shakespeare, Marlowe, Oscar Wilde, Bernard Shaw, Christopher Fry, Thomas Eliot, and others. The program also will present such dramatic oratorios as "Jeanne D'Arc Au Boucher," by Honegger, or Lord Byron's "Manfred" with spoken text and original music by Schumann. All of these works will be performed in their entirety. Frequently this program will broadcast premier performances of recordings before their release to the general public.

"New Releases" (Monday through Friday, 7:10-8 p.m.)—This will be a program designed to interest high-fidelity fans in particular, and good-music lovers, in general. It will feature the most recent releases from all major recording companies in the United States and abroad.

"Announcer's Choice" (Tuesday, 10-11 p.m.)—"Announcer's Choice" will feature Kim Kirchwey, chief engineer of WBCN, the Boston station of Concert. This program will present musical selections that are highly varied, unusual, and provocative. Choice of music on this program will generally feature compositions in the baroque or modern schools of the art. However, from time to time, the program will also include selections from the so-called "romantic" period in music.

"Aspects of Music" (Friday, 9-10 p.m.)—"Aspects of Music" will feature musicologist Leonard Altman and will be an educational type of presentation. Mr. Altman's comments stem from years of experience as one of the country's foremost teachers of music. He will thoroughly discuss each composition played, telling its place and importance in musical history, giving anecdotes concerning its composer and the artists who have performed it, and unusual events relative to past performances of the work.

"Recital" (Thursday, 10-11 p.m.)—"Recital" will be a program designed to showcase the virtuosic talents of the many instrumental and vocal artists in concert music. It will be a program conceived as a solo concert such as might be heard in Carnegie Hall or Symphony Hall, or in any concert hall, large or small, throughout the country. The program will generally consist of music from all periods, and oftentimes different types of music, both instrumental and vocal, will appear on one program. At times, an entire program may be dedicated to displaying the talent of a single artist or to the music of one composer.

"Music Miscellania" (Friday, 10-11 p.m.)—This program will provide the evening listener with an opportunity to hear the unusual and interesting in music. The program will specialize in the music of the great masters, but differs from the usual format inasmuch as it will offer the seldom heard orchestral compositions of these composers. It will present diverse works such as interesting orchestral works ranging from tone poems to overtures, divertimenti and serenades. Concerti of unusual, and oftentimes humorous

content are selected. A program similar to this one on WNCN is entitled "Orchestras of Europe," appearing Monday through Friday.

"Request Program" (Monday, 2-4 p.m.)—"Request Program" will feature Mme. Nirmal Daniere announcing and acknowledging requests for music of all kinds. Listeners will be invited to send in requests for their favorite classic, semi-classic, folk or other selections.

"Preview" (Sunday, 5:05-7 p.m.)—This will be similar to "New Releases," scheduled for the time period 7:10-8 p.m., Monday through Friday. The program occupying that time section, due to the brief period allowed for daily broadcast, must play the recent releases that are of a comparatively short-time duration. "Preview" will specialize in the showcasing of the longer, more solid works in the concert music field.

"The Opera" (Saturday, 2-5 p.m.)—"The Opera" will be a weekly presentation which features a complete, recorded operatic performance. It will present operas of all schools ranging from the Italian operas of Verdi and Puccini to the German operas of Wagner and Gluck. Wagner operas, which generally run to lengths exceeding the time period allotted on this program, will be split up, and one act will be played each week until the performance has been completed. The operas of Mozart, transcending all schools, will be prominent features on the program. Brief comments and résumés of each act will be given on the program by John Adams who has had 5 years' experience in broadcasting and commenting on complete operatic performances. The program will be scheduled in advance, but 1 week will be left unscheduled each month for the presentation of a new recording in the complete operatic catalog, very important to opera collectors, who have insatiable demands for new performances of their favorite operatic works. From time to time, complete performances of rare operatic works, such as those by Handel, Gluck, and Purcell, will be presented.

"Keyboard" (Saturday, 5:05-6 p.m.)—This program will display performances of virtuoso pianists, organists, and harpsichordists. High-caliber artists such as Vladimir Horowitz, Robert Casadesus, Artur Schnabel, E. Power Biggs, Alfred Schweitzer, Anton Heiler, and Wanda Landowska will be presented in solo recitals of the many works for these instruments by the great composers. Sometimes, a single artist will be featured on the program.

"Behind the Scenes" (Sunday, 3-5 p.m.)—"Behind the Scenes" with John Thornton, music and high-fidelity reviewer and longtime broadcast commentator as host, has been, in the past, one of the most interesting and informative programs yet to appear on Concert. The program, which will also be presented in Trenton, consists of tape-recorded rehearsals of the world's great conductors, actually at work, in the process of drilling their orchestras in the exacting task of preparation for a recording session. The program has already featured the late maestro Arturo Toscanini rehearsing his NBC Symphony Orchestra. Other notable conductors that have appeared on "Behind the Scenes" have been Bruno Walter, Herbert von Karajan, Tullio Serafin, Sir Thomas Beecham, Howard Hanson, and Frederick Fennell. Some great vocal artists that have appeared are Giulietta Simionato, Renata Tebaldi, Cornell MacNeil, and Mac Morgan. The program has featured interviews as well as actual rehearsals with Pierre Monteux and William Steinberg. The first part of the program will be occupied with an explanation of, and the playing of, the rehearsal tape. Then the complete, finished recording product will be played in its entirety, so that the listener may actually hear the result of the exacting rehearsals. Musical content of the program generally features the concert masterpieces.

"Ballet Theatre" (Sunday, 7:05-8 p.m.)—"Ballet Theatre" will be, as the title implies, a program featuring the world's most popular ballets. Complete and excerpted scores of the ballets of Tchaikovsky, Adam, Prokofiev, Stravinsky, Delibes, and many others will provide the groundwork for a program that is oftentimes varied but always colorful. From time to time, ballet arrangements of scores of many composers will be featured on this program. These may include "Carnaval," a ballet based on piano music by Schumann; "La Boutique Fantasque," based on the music of Rossini; and "Aurora's Wedding," based on music from another ballet, "Swan Lake," by Tchaikovsky.

"Favorite Classics" (Saturday, 1-2 p.m.)—"Favorite Classics" will be a concert program presenting the most popular symphonies, concerti, tone poems, and other orchestral works of the master composers. WNCN has a similar program on Saturday, entitled "Symphonic Repertoire."

"Music of the Preclassics" (Saturday, 7:05-7:30 p.m.)—This program will offer music written prior to the time of Haydn and Mozart, generally stopping after the music composed by Bach. It will highlight music such as the concerto grossi of Vivaldi, Geminiani, Handel, Corelli, Torelli, and many others. It will also feature virtuoso concerti, written in the style of the period for such varied instruments as harpsichord, oboe, English horn, bassoon, clarinet, mandolin, lute, and French horn. This program will be aimed at acquainting the initiate in good-music listening with some of the early beginnings of music.

"Music of the Theater" (Saturday, 6:05-7 p.m.)—"Music of the Theater" will be a program featuring highlights and original cast recordings of the standard Broadway shows such as "South Pacific," "My Fair Lady," "Oklahoma," "Carousel," etc. Complete or excerpted performances of operettas such as Gilbert and Sullivan, Lehar, or Johann Strauss will also be scheduled. The program will offer original sound track recordings from the movies. An interesting feature of the program is that it will often present artists with a penchant for the type of humor consistent with Concert program standards. These would be such artists as Anna Russell, Flanders and Swann in their two-man show "At the Drop of a Hat," Victor Borge, and the Huffnug Music Festival which spoofs concert music.

"Variations on a Theme" (Tuesday and Thursday, 8-10 p.m.)—"Variations on a Theme" will also feature John Thornton who has been a member of the good-music broadcasting scene in New England for 12 years. The program is fundamentally a "program of new releases and a guide for record collectors." In particular, Mr. Thornton exposes the listeners to the "seldom heard" or the "unusual" in concert music broadcasting. Consequently, he will regularly schedule chamber music, vocal music in the form of German lieder, and other related music.

"A Festival of Folk Music" (Saturday, 7:30-8 p.m.)—This program will feature folk music of all lands as sung by the many artists whose specific talent it is to present this interesting musical form.

"The Chorus" (Saturday, 11:05 p.m.-12 midnight)—"The Chorus" is a program which will present the shorter choral works of the master composers. It will consist of music of a religious nature and highlight the shorter masses such as the requiems of Mozart, Fauré, and Cherubini. Gregorian chant will be prominently featured on this program as will shorter church compositions by Lully, Monteverdi, and Pergolesi.

58. WBUD proposes to broadcast 74 hours each week, while the proposal contained in the Concert application is to broadcast 125.6 hours a week; however, WBUD would only broadcast 48.25 hours not broadcast on its AM station in Trenton each week. By way of comparison, the following tabulation is significant:

	Concert	WBUD (74 hours)	WBUD (unduplicated hours)
	<i>Percent</i>	<i>Percent</i>	<i>Percent</i>
Entertainment.....	92.3	81.2	91.28
Religious.....	3.5	4.7	2.57
Agricultural.....	None	None	None
Educational.....	None	4.1	6.15
News.....	4.2	9.4	None
Discussion.....	None	.6	None
Talks.....	None	None	None
Total commercial.....	55.5	30.5	None
Total sustaining.....	44.5	59.5	100
Total broadcast-hours per week.....	125.6	74	48.25

59. One issue in this proceeding, namely No. 3, is whether WBUD is financially qualified to construct and operate its proposed FM station. The balance sheet of this applicant as of January 31, 1960, is as follows:

WBUD, Inc., Balance Sheet, Jan. 31, 1960

ASSETS		
Current assets:		
Cash in bank.....		\$577.04
Accounts receivable.....		29,795.25
Loans and advances.....		3,518.78
Total current assets.....		\$33,891.07
Fixed assets:		
	<i>Reserve</i>	<i>Cost</i>
Lease improvements.....	\$27,118.70	\$20,690.24
Transmitter equipment.....	29,051.46	17,092.24
Radiating equipment.....	28,776.71	21,384.61
Studio technical equipment.....	48,587.87	26,879.73
Studio furniture.....	2,255.18	2,154.18
Office furniture.....	8,083.57	4,439.40
Automobiles.....	16,534.91	10,140.23
	160,408.40	102,780.63
Total fixed assets, net.....		57,627.77
Cash value, life insurance.....		10,612.00
Prepaid insurance.....		915.98
Total assets.....		103,046.82
LIABILITIES		
Current liabilities:		
Accrued taxes.....		\$3,269.27
Accrued expenses.....		7,612.81
Accounts payable.....		20,359.72
Total current liabilities.....		\$31,241.80
Loans, Connecticut General Life.....		7,277.00
Total.....		38,518.80
Total liabilities.....		38,518.80
Common stock.....		\$36,000.00
Surplus.....		28,528.02
Total capital.....		64,528.02
Total.....		103,046.82

60. At the hearing on June 7, 1960, the applicant's president, Hardin, testified that the proposed cost of its FM station is estimated to be \$20,050. This includes transmitter, antenna system, frequency and modulation monitors, and insurance. The estimated cost of its operation would be only \$3,000 for the first year, including the power, replacement tubes which are included in an RCA contract, and few additional tapes. The FM program costs will be assumed by the applicant's AM station. WBUD has a commitment from the Broad Street National Bank of Trenton, N.J., for a \$20,000 loan, and coupled with the \$577.04 on hand as reflected in its balance sheet in paragraph 59, supra, sufficient funds will be available to construct the proposed FM station and absorb the cost of the first year's operation

of \$3,000. As heretofore related, the WBUD-AM operation will assume the cost of programing.

CONCLUSIONS

1. This proceeding involves the mutually exclusive applications of WBUD, Inc., and Concert Network, Inc., each for a construction permit for a new class B FM broadcast station to operate with a radiated power of 20 kw on 101.5 Mc (channel 268) in the city of Trenton, N.J. The proposed transmitter sites are approximately 15.5 miles apart. WBUD's proposed site is located 2.5 miles northwest of Trenton and 30 miles from Philadelphia. Concert's proposed site is 12 miles southwest of Trenton and 18.5 miles northeast of Philadelphia.

2. In the order of designation, both applicants were found legally, technically, and otherwise qualified and Concert to be financially qualified, but an issue designated was whether WBUD is financially qualified to construct and operate its proposed station.

3. The WBUD proposal would bring a new service within its 1-mv/m contour to an area of 1,290 square miles and 671,589 persons, but on the other hand, Concert would accord a new service within its 1-mv/m interference-free contour to an area of 2,849 square miles containing 3,051,626 persons. Thus, it is readily discernible that Concert would bring a new FM service within its 1-mv/m contour to an area of 1,559 square miles with 2,380,037 persons more than would the WBUD proposal. Within WBUD's proposed service area there is one portion containing 208 square miles and 23,125 persons wherein a second signal of at least 1-mv/m would be provided. Other portions of the proposed service area receive up to a maximum of 16 such services. Concert would provide a first signal of at least 1-mv/m to 338 square miles and 9,587 persons, and a second such signal to 315 square miles and 32,066 persons. A grant to Concert would provide a second service to 32,066 persons as against 23,125 for WBUD. In other portions of Concert's proposed service area, signals of at least 1 mv/m are available from up to a maximum of 15 stations.

4. Each proposal would cause adjacent-channel interference to WFIL-FM, Philadelphia, Pa., within that station's 1-mv/m normally protected contour. The interference from proposed WBUD would affect 11,733 persons in 11 square miles, and that from Concert would affect 15,310 persons in 24 square miles. In each instance the interference would develop in the vicinity of the proposed transmitter site and would represent less than 1 percent of population and area, respectively, now served by WFIL-FM within its 1-mv/m normally protected contour. A multiplicity of other FM services are available in each of the proposed interference areas.

5. Since each proposal will cause interference to WFIL-FM, consideration must be given to the relative need for the proposed new service as against the service which would be lost by the Philadelphia station. As the evidence demonstrates, each of the proposals for Trenton will provide a new service to sizable populations. Furthermore, and of considerable significance, WBUD will furnish a second

service of 1 mv/m or greater to 23,125 persons, and Concert a first such service to 9,587 persons and a second to 32,066 persons.

6. Neither proposal will cause interference to any FM station except station WFIL-FM within its 1-mv/m contour. Interference from Concert to WFIL-FM would affect 15,310 persons in 23.76 square miles, of a total of 4,176,013 persons in a 3,310-square-mile area. Percentagewise 0.36 percent of the population and 0.71 percent of the area within the WFIL-FM 1-mv/m contour would be involved, and all of the affected area is served (100 percent) by 10 or more existing stations. The WBUD proposal will cause interference to 11,733 persons in an 11-square-mile area within the WFIL-FM 1-mv/m contour, or less than 0.3 percent of the population and 0.4 percent of the area presently served by WFIL-FM. This area is also 100 percent served by at least 10 existing FM stations.

7. There are up to a maximum of 16 other 1-mv/m or better FM services available to portions of the areas within both the WBUD and the Concert 1-mv/m contours.

8. As for the 50-uv/m contour, the WBUD proposal will extend to a population totaling 1,536,958 in an area of 7,450 square miles. On the other hand, the 50-uv/m contour of Concert will reach a population of 4,208,405 persons in an area of 11,160 square miles.

9. Since the interference to WFIL-FM would be negligible from either proposal, and the service lost to WFIL-FM would be replaced by the successful applicant in this proceeding, and as WFIL-FM has not seen fit to oppose either proposal, the interference should not be a decisional factor in connection with a grant of either of the two applications.

10. By any measure of a comparative coverage of the two instant proposals, as set out above, Concert is entitled to a distinct preference over WBUD on the element of comparative engineering coverage. This includes both population and area.

11. None of the officers or directors of Concert live in the Trenton, N.J., area. On the other hand, the Hardins, who hold all of the stock of WBUD along with Theresa M. Rose, William J. Garry, sales manager, and Louis N. Wagner, its news director, have lived in the Trenton area for a considerable time and have all been active and participated in civic affairs in this community. On the basis of this, a definite preference is to be accorded WBUD on local residence and civic participation.

12. The record unquestionably demonstrates that Concert has had substantial experience in the field of FM broadcasting, and more particularly its managing officer, Hastings. Concert presently is operating FM stations in Boston, Mass., Providence, R.I., Hartford, Conn., and New York City. WBUD has operated its AM station in Trenton since 1947. This includes the corporate as well as partnership entities. Neither the officers nor employees of WBUD have had experience in the operation of an FM station. From this record, Concert is entitled to a decisional preference in this respect which is to a degree mitigated because of the experience of WBUD in the AM field at Trenton.

13. A slight preference is given WBUD on its staff because of the fact that the staff of WBUD is now in being, and as to who will comprise the staff of Concert is still in the conjectural stage. The foregoing, however, does not disregard the managing officer of Concert, T. Mitchell Hastings, Jr., who is highly experienced and has an extensive background in FM broadcasting and related techniques such as stereophonic broadcasting. Hastings is by far better qualified than any officer or employee of WBUD, and while he will be available to the new station herein at all times, he will not be on the "ground floor" at Trenton. While this point is not particularly significant, it is an element that goes into consideration as to which applicant is the best qualified in order to resolve issue No. 5.

14. The factor here is that the Concert proposal will provide a new broadcast service and a greater one than WBUD to the Trenton-Philadelphia area. This is more pointed up when it is recognized that a substantial portion of the WBUD programing will be duplicated. The FM station is an independent outlet and in this instance Concert will give an expanded coverage as a "good music station" to an area that it is designed to serve. The record discloses that there are only two stations now serving the area with programs "generally known as good music programs" or "with the type of programing that can be classified as good music." Because of the greater number of hours of independent broadcasting as compared to fewer hours with some duplicated broadcast from the WBUD-AM station, Concert is accorded slight preference on this measure.

15. WBUD proposes to broadcast 74 hours each week, while the proposal contained in the Concert application is to broadcast 125.6 hours a week; however, WBUD would only broadcast 48.25 hours not broadcast on its AM station in Trenton each week. By way of comparison, the following tabulation is significant:

	Concert	WBUD (74 hours)	WBUD (unduplicated hours)
	<i>Percent</i>	<i>Percent</i>	<i>Percent</i>
Entertainment.....	92.3	81.2	91.28
Religious.....	3.5	4.7	2.57
Agricultural.....	None	None	None
Educational.....	None	4.1	6.15
News.....	4.2	9.4	None
Discussion.....	None	.6	None
Talks.....	None	None	None
Total commercial.....	55.5	30.5	None
Total sustaining.....	44.5	59.5	100
Total broadcast-hours per week.....	125.6	74	48.25

WBUD's entire proposal is grounded on the concept of local programing including the duplicated portions of its programs which are substantial. Concert does not plan any substantial local programing at Trenton at this time. Its proposed station is designed to provide "good music" service to the Trenton-Philadelphia area rather than to be a strictly local Trenton station. Concert, however, will provide substantially more new programing, and its programing as set out in the findings heretofore reflected thoughtful planning and designing.

Its success in its network program heretofore bespeaks of its ability to bring to Trenton a pattern of successful FM broadcasting primarily good music. While WBUD has no background in FM broadcasting, its proposed programing here is not particularly impressive and more particularly because almost one-third of its entire programing will be duplicated programs from its AM station. As noted, Concert will bring to the public 51.6 more hours per week than it is presently receiving which will give the Trenton-Philadelphia area another source of broadcasting. The program submitted by Concert is here regarded as superior to the one presented by WBUD.

16. WBUD has but two stockholders except for one qualifying share. Hardin owns 48.9 percent of the issued shares, while his wife, Verna S. Hardin, owns 50.8 percent of the shares and the one qualifying share representing 0.3 percent is held by Theresa M. Rose with the beneficial interest being owned by Mrs. Hardin. On the other hand, the stock of Concert is widely held by a large number of persons. Outside of John Nicholas Brown and T. Mitchell Hastings, no individual holds as much as 2 percent of the stock. All of the officers and directors of this applicant constitute an imposing array of public and professional men with diversified interests. In this connection, Concert is here given a strong preference of diversification of business interests, and more particularly since no diversification of business interests has been disclosed of the two principal stockholders of WBUD.

17. Respecting issue No. 3, relating to determine whether WBUD is financially qualified to construct and operate its proposed station, this applicant has met the issue squarely. Its current financial position is reflected by its balance sheet of January 31, 1960, which is set out herewith in paragraph 59 of the findings, supra. The record reflects that the proposed cost of this FM station is \$20,050, which includes transmitter, antenna system, frequency and modulation monitors, and insurance. The estimated cost of its operation would be \$3,000 for the first year, including power, replacing tubes which were included in an RCA contract, and a few additional tapes. The cost of programing will be assumed by the applicant's AM station in Trenton. WBUD has a commitment from the Broad Street National Bank of Trenton, N.J., for a \$20,000 loan, and along with the \$577.04 on hand it is apparent sufficient funds will be available to construct its proposed station and absorb the cost of the first year's operation.

18. From the evidence in this proceeding as between the two applicants it is concluded that Concert should be granted the facility which it seeks.

19. In view of the foregoing findings of fact and conclusions, and upon consideration of the entire record and proceeding, it is concluded that a grant of the application of Concert Network, Inc., for a construction permit for a new class B FM broadcast station to operate with a radiated power of 20 kw on 101.5 Mc (channel 268) in the city of Trenton, N.J., would serve the public interest, convenience, and necessity.

Accordingly, *It is ordered*, This 23d day of February 1961, that unless an appeal to the Commission from this initial decision is taken by a party, or the Commission reviews the initial decision on its own

motion in accordance with the provisions of section 1.153 of the Commission's rules, the application of Concert Network, Inc., for a construction permit for a new class B FM broadcast station to operate with a radiated power of 20 kc on 101.5 Mc (channel 268) in the city of Trenton, N.J., *Is granted*; and the application of WBUD, Inc., for the same facility *Is denied*.

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WASHINGTON STATE UNIVERSITY, DOCKETS NOS. 13442, 13443, AND 13444:

Applications of Washington State University for renewal of license of station KWSC (and aux.) at Pullman, Wash., and for modification thereof to provide for unlimited time operation; granted subject to the condition that the applicant be permitted to operate unlimited time except from 11:15 p.m. to 6:30 a.m. Application of the First Presbyterian Church of Seattle, Wash., for renewal of license of station KTW; granted to the extent that its license be renewed but limited to daytime-only operation, except that it be permitted to operate during nighttime hours after 11:15 p.m. and before 6:30 a.m.

Section 307(b) of the act.—Comparative showings considered.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON 25, D.C.

In re Applications of WASHINGTON STATE UNIVERSITY, PULLMAN, WASH. For Renewal of License of Station KWSC (and Aux.) For Modification of License of Station KWSC THE FIRST PRESBYTERIAN CHURCH OF SEATTLE, WASH., SEATTLE, WASH. For Renewal of License of Station KTW	}	Docket No. 13442 File No. BR-58 Docket No. 13443 File No. BML-1789 Docket No. 13444 File No. BR-64
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APPEARANCES

Messrs. Leonard H. Marks and Stanley S. Neustadt, on behalf of Washington State University; *Messrs. Frank S. Ketcham and Arthur Scheiner*, on behalf of The First Presbyterian Church of Seattle, Wash.; and *Messrs. Joseph D. Greene and Robert B. Jacobi*, on behalf of the Chief, Broadcast Bureau, Federal Communications Commission.

DECISION

(Adopted January 10, 1962)

BY THE COMMISSION: COMMISSIONER CROSS CONCURRING IN THE RESULT.

1. Washington State University, licensee of class III station KWSC (and aux.), Pullman, Wash. (1250 kc, 5 kw, S-KTW-night), seeks renewal of its license and modification thereof to permit unlimited time operation with its present facilities. The First Presbyterian Church of Seattle, Wash., licensee of class III station KTW, Seattle (1250 kc, 5 kw D, 1 kw N, S-KWSC-night), seeks renewal of its license and authority to operate additional nighttime hours. The initial decision of Hearing Examiner Walther W. Guenther (FCC 61D-33), released March 22, 1961, would grant both of University's applications and would grant Church's renewal application, but would

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limit Church to daytime-only operation. Exceptions to the initial decision were filed by Church and the Commission's Broadcast Bureau. The rulings on these exceptions are set forth in the appendix hereto. The Commission, en banc, heard oral argument on September 28, 1961; participating in oral argument were counsel for Church, the Broadcast Bureau, and University.

2. The hearing examiner's findings and conclusions have been considered in light of the exceptions filed, and they are adopted except as indicated herein and in our rulings on the exceptions, which are set forth in the appendix hereto. The facts concerning the applicants' prior operations and the history of the instant proceeding are set forth in paragraphs 1, 3, 4, and 5 of the examiner's findings and will not be repeated here. Under present arrangements, KTW is authorized to operate daytime from 4-4:45 a.m. to sunset, Monday through Saturday; daytime and to midnight on Sundays and holidays; and 7:30-10:30 p.m., Thursday. It requests authorization to operate from midnight to sunrise in addition to its present nighttime hours. KWSC is authorized to operate from 6:30 a.m. to 11:15 p.m., Monday through Saturday, except Thursday when it signs off at 7:30 p.m.; and on holidays and Sunday from 8 a.m. to sunset. It requests unlimited time authorization, and it plans to operate daily from 6:30 a.m. to 11:15 p.m., and on Sunday from 8 a.m. to 11:10 p.m. Insofar as nighttime operation is concerned, the applications are mutually exclusive. The primary question presented for decision is whether, in light of section 307(b) of the act, a fair, efficient, and equitable distribution of radio service would be provided to a greater extent by continuing the share-time operations of stations KWSC and KTW during nighttime hours, or by authorizing station KWSC to operate unlimited time, and limiting the operation of station KTW to daytime-only hours.

3. The first matter which requires our attention is the manner in which the parties are to be treated under the 307(b) issue. It was the hearing examiner's view that since the applications are mutually exclusive and for different communities, effectuation of 307(b) requires that they be regarded as applicants for new facilities without regard to their past share-time arrangements and that a determination should rest on which community has a greater need for additional service. Both Church and the Broadcast Bureau take exception to the hearing examiner's approach. In essence, Church argues that in previous cases involving the revision of share-time arrangements, the Commission has always considered the parties' share-time history, their objectives and past operations, and where the records of share-time stations have been meritorious, the Commission has refused to "authorize an attempt by one * * * to destroy the established service of * * * another. * * *" The principal cases relied upon by Church are *The Pulitzer Publishing Company (KSD)*, 5 FCC 188 (1938); *Voice of Brooklyn Corporation (WMBQ)*, 8 FCC 230 (1940); and *Metropolitan Broadcasting Corporation*, 8 FCC 557, 577 (1941). Similarly, the Bureau contends that the primary question presented for decision is whether the share-time contract should be continued or terminated. The Bureau argues that where service has existed

for many years under a share-time arrangement, such service should be given great weight in determining the 307(b) needs of the areas in question, and in the absence of some compelling reasons, such service should not be disrupted.

4. We agree with the Bureau that the existence of a service such as that provided by Church for many years is evidence of a need for that service. It does not, however, follow that the need thus established compels a continuance of that service without regard to the needs of a community which a mutually exclusive applicant proposes to serve; the logic of such a view would serve to immunize any existing station from comparative consideration under section 307(b) with a new mutually exclusive service proposed for another community. The mandate of section 307(b) is clear: The Commission is required "to provide a fair, efficient, and equitable distribution of radio service," and to do so "among the several States and communities." The act does not except from this mandate proposals of existing stations whether they operate on a share-time basis or not.¹ Nor are we concerned with the relative merits of the programming proposals of the two applicants in making a 307(b) choice. See *Federal Communications Commission v. Allentown Broadcasting Corporation*, 349 U.S. 358 (1955). The choice between the mutually exclusive applications before us turns solely upon the question of which of the two principal communities and service areas has the greater need for the service proposed, and upon the relative efficiency of the two proposals.

5. The city of Pullman has a 1950 population of 12,022. It has one standard broadcast station (daytime only) in addition to University's KWSC. University provides nighttime service (except on Thursdays, Sundays, and holidays) to 59,950 persons in an area of 1,820 square miles within its interference-free 2.5-mv/m normally protected contour. Of the foregoing persons, 17,834 (29.8 percent) in 521 square miles (28.6 percent) receive primary service from no other station, and 11,743 persons (19.6 percent) in 455 square miles (25 percent) receive only one other service. The maximum number of services in any one part of University's service area is three. The city of Pullman is included within the area which is without nighttime primary service when KWSC is not operating. Seattle has a 1950 population of 467,591. It is the principal city in the Seattle urbanized area (population, 621,509) and the Seattle standard metropolitan area (population, 732,992). Seattle has 11 standard broadcast stations (including KTW), 8 of which are licensed to operate unlimited time. Church serves 803,648 persons in 434 square miles within its interference-free 2.5-mv/m contour. From 6 to 10 other stations serve any one part of this area.

6. We agree with the hearing examiner's view that although KTW serves more persons and a larger area than KWSC, these facts are more than offset by the disparity in the number of nighttime primary services available within their respective service areas. The fact that a substantial number of persons in KWSC's service area receive

¹ To the extent that the cases cited by Church may be construed as presenting a contrary view, they are overruled.

no service when KWSC is not operating while KTW's service area is served by from 6 to 10 other stations establishes a presumptive and greater need for the reception service provided by KWSC. Since Pullman is within this white area, there also exists a presumptive need for the transmission service which KWSC would provide at night. No such need exists for the transmission service which KTW would provide, since six Seattle stations serve all of its service area. Both Church and the Bureau in effect suggest that because the hours gained by KWSC could be as few as five or six, the presumptive need of Pullman and KWSC's service area is not sufficiently substantial to warrant a departure from the share-time arrangement. We disagree. We deem it more important that the city of Pullman be provided with its first local nighttime service 2 nights (in addition to the present 5) a week and/or holidays, than that Seattle which already has a multiplicity of full-time stations retains Church's service 2 nights a week and nighttimes on holidays. Also of considerable significance is the fact that in permitting University to operate unlimited time, we are serving the important end of eliminating white and gray areas—a purpose inherent in section 307(b) of the act.

7. Church has asserted that there is a need for the cultural and religious programing of the type it has been providing nighttime, and that such need is not being met by existing Seattle stations. Since the specific issues were interpreted as properly encompassing the adduction of such evidence, we will consider it.² We are in accord with the hearing examiner's careful and persuasive analysis and conclusion that Church has failed to establish that the programing needs of Seattle are not being adequately met by existing stations. Even if it were conceded that there is a need for Church's specialized programing, assuming that some programing gaps do exist, we are not persuaded that such need is sufficiently significant to outweigh the need for a first service in Pullman.

8. It is our conclusion that, subject to the condition set forth below, a grant of University's application for unlimited-time operation would provide a more fair, efficient, and equitable distribution of radio service than would a continuance of the present division of the nighttime hours between stations KWSC and KTW. Since University does not propose to operate during the hours between 11:15 p.m. and 6:30 a.m. the following day, its application for unlimited time will be granted subject to the condition that Church will be permitted to operate after 11:15 p.m. and before 6:30 a.m.

Accordingly, *It is ordered*, This 10th day of January 1962, that the application of Washington State University for renewal of its license of station KWSC (and aux.) filed October 26, 1956, *Is granted*; and that its application for modification of license, filed November 10, 1958, *Is granted*, subject to the condition that it will be permitted to operate unlimited time except from 11:15 p.m. to 6:30 a.m.; and

² Ordinarily, the adduction of evidence as to existing programing for purposes of determining community need will be admitted only under a special issue, and such issue will be added only upon a threshold showing that such programing evidence might be of decisional significance. *Cookeville Broadcasting Company*, 19 R.R. 897 (1960).

It is further ordered, That the application of The First Presbyterian Church of Seattle, Wash., for renewal of license, filed November 5, 1956, as amended November 3, 1959, *Is granted* to the extent that the license of station KTW be renewed, limiting it, however, to daytime-only operation except that it will be permitted to operate during nighttime hours after 11:15 p.m. and before 6:30 a.m.

APPENDIX

RULINGS ON EXCEPTIONS TO THE INITIAL DECISION

Exceptions of the First Presbyterian Church of Seattle, Wash.

<i>Exception No.</i>	<i>Ruling</i>
1-----	Denied. Virtually all of the requested findings are contained in the initial decision. Those which are not relate to the provisions of the share-time agreement and to the attitude of the applicants with respect to renewal of such agreements, and are not supported by the record. (See findings in pars. 3-5.)
2-----	Denied. The finding complained of is accurate and not misleading, and the facts upon which Church bases its exception are noted in the initial decision.
3-----	Denied. All or part of each county listed lies within KWSC's interference-free primary service contour.
4-----	Denied. The record establishes that all of Clarkston and Lewiston and virtually all of Lewiston Orchards are located within KWSC's primary service contour, and the existence of the Lewiston stations is noted in the findings in par. 6.
5-----	Denied. The findings are relevant and supported by the record.
6-----	Denied. The examiner's findings are adequate.
7-----	Denied. The finding is accurate. However, par. 22 is completed with the additional finding that it was stipulated that KTW is the only station in Seattle licensed to a church which operates on a nonprofit basis.
8-----	Granted, and the finding in footnote 11 is deleted.
9-----	Denied. The challenged findings are supported by the record.
10-----	Denied. The challenged finding relates to the period prior to December 1959, and is accurate with respect to that period. The next to the last sentence in par. 25 contains the requested finding.
11-----	Denied. The finding is accurate.
12-----	Denied. However, footnote 12 is completed with the additional finding that although persons associated with profit-making enterprises could appear, they could not appear on behalf of profit-making enterprises.
13-----	Denied. The requested findings are essentially cumulative in nature.
14-----	Denied. Par. 45 of the findings indicates that the Lecture Artists Series is irregularly scheduled.
15-----	Denied. The examiner's findings are adequate and not misleading. University's present budget is sufficient for its proposed operation.
16-----	Denied. (See ruling on exception No. 14.)
17-----	Denied. The requested finding appears in the initial decision. (See pars. 33, 43-46 of the initial decision.)
18-----	Denied. The challenged findings are adequate and not misleading.
19-----	Denied. The examiner's findings are adequate.
20-----	Denied. The challenged finding is supported by the record.

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<i>Exception No.</i>	<i>Ruling</i>
21-----	Denied. The finding challenged in subsec. (1) is only one of several bearing on need, is accurate, and was properly included since Church attempted to establish this point. The findings challenged in subsec. (2) are supported by the record. The finding challenged in subsec. (3) is supported by the record, and the requested finding appears in par. 56 in the initial decision.
22-----	Denied. The challenged finding is adequate and the requested finding is immaterial.
23-----	Denied. The challenged findings are accurate, and the requested findings would not add materiality thereto.
24-----	Denied. <i>Easton Publishing Co. v. FCC</i> , 85 U.S. App. D.C. 33, 175 F. 2d 344 (1949), establishes that FM service is relevant in cases of this kind.
25-----	Denied. The challenged finding is accurate and does not contradict the preceding finding. The former relates to actual arts programs; the latter to information about cultural events.
26-----	Denied for the reasons set forth in the initial decision and footnote 3 to the conclusions.
27-----	Denied. The record supports the challenged finding.
28, 29-----	Denied. Interference during nighttime hours is to be determined on the basis of the skywave propagation curves contained in fig. 2 of sec. 3.190 of the rules. <i>Skywave Measurements</i> , 18 R.R. 1683 (1959), and <i>Reese Broadcasting Corp.</i> , 20 R.R. 1136 (1961).
30-----	Denied. In light of the decision herein, it is unnecessary to deal with the questions thus raised.
31-----	Granted, and footnote 4 of the conclusions in the initial decision is deleted.
32-----	Denied. Subsec. (1) is denied for the reasons set forth in the final decision. (See pars. 2-4.) Subsec. (2) is denied for the reasons set forth in our ruling on exception No. 28. Subsec. (3) is denied on the ground that Church's pending application to increase nighttime power has no bearing on the instant proceeding.
33-----	Denied. Subsecs. (1) and (2) are denied for the reasons set forth in the final decision. (See par. 2-6.)
34-----	Denied. Subsecs. (1), (2), and (4) are based on Church's erroneous assumption that a finding that its programing is meritorious establishes a need for such programing. (See par. 7 of the final decision.) With respect to subsec. (3), see rulings on exceptions Nos. 21 and 24.
35-----	Denied. However, see pars. 6, 7, and 8 of the final decision.
36-----	Denied. While Church's objectives and expenditures to improve the facilities are laudable, they are not entitled to consideration for purposes of establishing a need for KTW's nighttime service. Any need for KTW's nighttime service and Church's use of its facilities are outweighed by the needs of Pullman for a first nighttime service on the nights in question. (See par. 7 of the final decision.) With respect to that portion of the exception relating to KWSC's ability to operate as proposed, see ruling on exception No. 15.
37-----	Denied as reflected in the final decision.
38-----	Denied. See pars. 2-4 of the final decision.
39-----	Denied. See par. 4 of the final decision.
40-----	Denied as reflected in the final decision.

Exceptions of the Commission's Broadcast Bureau

<i>Exception No.</i>	<i>Ruling</i>
1-----	Denied. See ruling on Church's exception No. 21 (1).
2-----	Denied for the reasons set forth in the decision.
3-----	Denied in light of the final decision.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON 25, D.C.

<p>In re Applications of WASHINGTON STATE UNIVERSITY, PULLMAN, WASH. For Renewal of License of Station KWSC (and Aux.) For Modification of License of Station KWSC THE FIRST PRESBYTERIAN CHURCH OF SEATTLE, WASH., SEATTLE, WASH. For Renewal of License of Station KTW</p>	}	<p>Docket No. 13442 File No. BR-58 Docket No. 13443 File No. BML-1789 Docket No. 13444 File No. BR-64</p>
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APPEARANCES

Messrs. Leonard H. Marks and Stanley S. Neustadt, on behalf of Washington State University; *Messrs. Frank S. Ketcham and Arthur Scheiner*, on behalf of the First Presbyterian Church of Seattle, Wash.; and *Messrs. Joseph D. Greene and Robert B. Jacobi*, on behalf of the Chief, Broadcast Bureau, Federal Communications Commission.

INITIAL DECISION OF HEARING EXAMINER WALTHER W. GUENTHER

(Adopted March 17, 1961)

PRELIMINARY STATEMENT

1. This proceeding arises under 47 CFR 3.78 which concerns itself with resolution of disputes arising from share-time agreements. The applicants herein, Washington State University (hereinafter also referred to as University and KWSC) and the First Presbyterian Church of Seattle, Wash. (hereinafter also referred to as Church and KTW), operated standard broadcast stations on a share-time basis on 1220 kc from July 1931 to March 1941,¹ and since then have been operating on 1250 kc at Pullman, Wash., and Seattle, Wash., respectively. The applications which are the subject of this proceeding are:

¹ Station KTW commenced operation in 1920, and from November 1928 to July 1931 operated on a share-time basis on the same frequency of 1270 kc with station KOL (Seattle). KTW then had one-fourth of the broadcasting time and exclusive use of Sunday. That day was reserved for KTW in order that Church could broadcast church services, particularly at night. Thursday night was also reserved for KTW because it was customary and traditional to have a midweek service which was broadcast only by that station. Because of their religious significance, holidays were also reserved. In July 1931, KTW shifted frequency from 1270 kc to 1220 kc and commenced operation under time-sharing arrangements with KWSC. As a result of the Commission's major frequency allocation throughout the United States, KTW and KWSC were reassigned to 1250 kc in March of 1941. The time-sharing agreement of 1931 continued in effect pursuant to renewals thereof from 1931 to 1956.

(1) for renewal of license of station KWSC (and aux.), licensed to University, which operates on 1250 kc, 5 kw, D, S-KTW, night, which was filed on October 26, 1956; (2) for modification of license of station KWSC so as to provide for unlimited-time operation (exclusive nighttime service) on the same frequency and with the same power currently utilized, filed on November 10, 1958;² and (3) for renewal of license of station KTW, licensed to Church, which operates on 1250 kc with 5 kw power daytime,³ and 1 kw nighttime, sharing time at night with KWSC, filed on November 5, 1956, as amended on November 3, 1959. The amendment proposes (sec. IV thereof) operation Monday through Saturday from midnight to sundown; 7:30 to 10:30 p.m. on Thursday; and 24 hours on Sunday and all legal holidays.

2. In an order released on March 30, 1960 (FCC 60-265),⁴ the Commission designated the instant applications for hearing on the following issues:

1. To determine the areas and populations which receive primary service from nighttime operations of stations KWSC and KTW, and the availability of other primary service to such areas and populations.

2. To determine whether the proposed unlimited nighttime operation of station KWSC would involve objectionable interference with station KTW and any other existing standard broadcast stations, and, if so, the nature and extent thereof, the areas and populations affected thereby, and the other primary service to such area and population.

3. To determine, in light of section 307(b) of the Communications Act of 1934, as amended, whether a fair, efficient, and equitable distribution of radio service would be provided to a greater extent by (a) continuing in some manner the share-time operation of stations KWSC and KTW during nighttime hours, or (b) by permitting station KWSC to operate unlimited time and limiting the operation of station KTW to daytime-only hours.

4. If share-time operation is to be continued, to determine what nighttime hours are to be specified for each station.

5. To determine, in light of the evidence adduced with respect to the foregoing issues, the extent to which the above-captioned applications may be granted, consistent with the public interest, convenience, or necessity.

A prehearing conference was held on May 13, 1960, and hearings were held on September 15 and 16 and October 19, 1960. The record was closed on the latter date. Proposed findings of fact and conclusions of law were timely filed on behalf of University and Church, and, as to engineering matters only, on behalf of the Chief of the Broadcast

² By memorandum opinion and order (FCC 61-279) released Mar. 3, 1961, the Commission denied Church's petition to dismiss said application.

³ Until November 1959, KTW was operating with 1 kw power daytime; Church's outstanding license, *inter alia*, so provides. A construction permit for 5 kw daytime operation has been outstanding since September 1959. Church has an application pending, file No. BP-14382 filed September 28, 1960, to increase its nighttime power from 1 kw to 5 kw and continue to operate (nondirectionally) on 1250 kw, sharing time with KWSC. A petition filed on the same date requested that said application be designated for hearing in the instant proceeding. As a result of a letter request of Oct. 24, 1960, for withdrawal of said petition, the Commission, by letter dated Feb. 14, 1961, advised Church of its grant of said request and that the identified application will be processed pursuant to 47 CFR 1.354(c). (See letter of the Commission's Acting Secretary, dated Feb. 14, 1961 (No. 8831), of which official notice is herewith taken.)

⁴ Bureau states that the Commission "found that with respect to the proposed nighttime hours of operation, the above-mentioned applications are mutually exclusive by virtue of the destructive interference that would ensue if both stations were to operate simultaneously." It should be noted, however, that in its first appearing clause the Commission stated that "with respect to the proposed nighttime hours of operation, the above-captioned applications are mutually exclusive by reason of a proposal by one of the applicants not to renew a share-time agreement under which the said applicants have shared a common frequency since 1931; and that operation by both stations as proposed *may* result in destructive interference during nighttime hours." [Emphatics added.]

Bureau (hereinafter also referred to as Bureau). A timely reply to these proposed findings was filed by University.

FINDINGS OF FACT

The Share-Time Agreement

3. The last agreement concerning the sharing of time between Church and University was executed on October 12, 1953, and provides:

TIME DIVISION AGREEMENT

Whereas radio station KWSC of Pullman, Wash., owned and operated by the State College of Washington, and station KTW, owned and operated by the First Presbyterian Church of Seattle, are sharing time on 1250 kc; and

Whereas to comply with general order No. 155 it is necessary to file with the Federal Communications Commission a division of time agreement, it is hereby mutually agreed that

Radio station KTW shall have for its exclusive use all day each Sunday and holidays and each Thursday from 7:30 p.m. to 10:30 p.m. and such other time as is mutually agreed upon and with the consent of the Federal Communications Commission, and that radio station KWSC may operate at all other times.

4. At the time this agreement was entered into, it governed the operation of the two stations involved. Earlier, in letters dated November 17, 1952, and February 18, 1953, and thereafter on March 22, 1955, and May 20, 1955, Church notified University of its intention to operate during experimental hours and requested the latter to advise it whether it had any objection. University did not object and consented to these requests. The respective periods involved in these requests were December 22, 1952, 12:01-2 a.m.; February 24, 1953, 12 midnight-2 a.m.; March 22, 1955, extending Sunday's broadcasting schedule from 12 midnight to 3 a.m. on Monday; and May 31, 1955, 12 midnight-2 a.m. In a letter dated June 24, 1955, the following request was made of University by Church:

We have had excellent listener response to our after-midnight programming on the weekends and would like to extend our present broadcasting schedule to include from midnight to 6 a.m., Monday through Saturday mornings.

If this is agreeable with you, will you kindly so indicate by signing below and return two copies of this letter to us. The third copy is for your files.

The request was denied by letter of August 2, 1955, on the ground that—

There are occasions on which we broadcast beyond midnight at the present time, and it does not seem advisable to close the door to a morning schedule starting earlier than our current custom.

In a letter dated August 29, 1955, Church notified University of its intention to operate until 3 a.m. on September 6, 1955, following its holiday broadcast on September 5, 1955. University consented to this broadcast. On February 21, 1956, Church applied for authorization to increase its hours of operation so that it could operate with 1 kw power during daytime hours and the hours available to it under the share-time agreement (BP-10390).⁵ On April 26, 1956, Uni-

⁵ Official notice has been taken thereof. In sec. V-A, Church also stated that it wished to operate with its present schedule, plus sunrise to sunset, Monday through Saturday.

versity filed an application requesting permission for KWSC to operate unlimited hours (5 kw) (BML-1667).⁶ On September 25, 1957, the Commission, holding that simultaneous daytime operation as proposed could be conducted without objectionable interference between the two stations, granted Church's application for daytime authorization and granted University's application for unlimited time to the extent that KWSC was authorized to operate simultaneously during daytime.⁷ As stated (see par. 1, supra), University had filed its renewal of license application on October 26, 1956, and filed its modification application (5 kw unlimited time operation) on November 10, 1958, while Church had filed its renewal of license application on November 5, 1956, which it amended on November 3, 1959. In a letter dated November 14, 1958, Church advised the Commission as follows:

This letter is to inform the Commission that radio station KTW has now increased its after-midnight programing from 2 nights per week to 7 nights a week.

KTW is now regularly scheduling programs from 12 midnight to 4 a.m., Pacific standard time. This is 7 days per week during the experimental period.

KTW's regular daytime schedule begins at 4 a.m.

A year later, in a letter dated November 6, 1959, University's general manager, Allen Miller, advised Church's chief engineer, James Ross, as follows:

This will confirm our discussion of yesterday to the effect that KWSC has not given KTW permission to operate on weekdays after midnight. No request has reached KWSC seeking permission since 1955 to which President C. Clement French [of University] sent a written refusal on August 2, 1955.

I have asked our attorney to notify the FCC that your current late-night schedule is without our permission.

In a letter from the Commission to Church dated December 14, 1959, reference was made to the complaint from University and the Commission stated:

Inasmuch as the outstanding licenses of the stations involved do not specify a time division for operation during the experimental period, it will, in accordance with section 3.76 of the Commission's rules, be necessary that an appropriate agreement be reached with radio station KWSC, with which the frequency 1250 kc is shared. Unless and until such agreement is reached, the transmission of regular programs during the above-mentioned period is forbidden.

In a telegram dated December 27, 1959, Church advised the Commission that—

Complying with your letter * * * KTW has ceased broadcasting during experimental period except Sunday, Monday, and holidays. Approval for these periods covered by FCC telegram February 1, 1957, and letter from Washington State University March 22, 1955, filed under application BR64, October 22, 1956.

⁶ Exhibit 1 to University's application set forth the fact that the two stations had been operating under a share-time agreement and that Church had filed an application to increase its hours of operation. It appears that the proper procedure would have been for University to submit with its application for renewal of license the matter of disagreement over share-time hours, instead of submitting its application for modification of license for unlimited-time operation.

⁷ Official notice has been taken thereof.

5. Following the grant of the full daytime authorization on September 25, 1957, Church had commenced its daytime broadcast schedule at 5:30 a.m., and for approximately 2½ years until the present has commenced at 4 a.m. or 4:45 a.m. Consequently, the share-time agreement set forth above at the present time governs only the operations of KWSC and KTW during other than daytime hours. As required by 47 CFR 3.78, the two stations are currently operating in accordance with the agreement set forth above during other than daytime hours. KTW utilizes all the time allowed on the air; KWSC operates Monday through Saturday from 6:30 a.m. to 11:10 or 11:15 p.m. (except Thursday night when it signs off at 7:30 p.m.) and Sunday from 8 a.m. to 7:45 p.m., unless sunset occurs after that time. (See par. 42, *infra*.)

Engineering Considerations

KWSC

6. It was stipulated by the parties that KWSC currently serves at night to its 2.5-mv/m normally protected contour without objectionable interference. Within the area of 1,820 square miles enclosed by this contour, there reside 59,950 persons.⁵ Six other existing standard broadcast stations provide primary service to portions of the area within the KWSC nighttime normally protected and interference-free 2.5-mv/m contour. These stations and the proportion of the population (59,950 persons) and area (1,820 square miles) served within KWSC's nighttime primary service area are shown in the following table:

Station ¹	Population	Percentage	Area (sq. miles)	Percentage
KHQ, Spokane, Wash. (2.5)-----	13,371	22.3	750	41.2
KGA, Spokane, Wash. (0.5)-----	7,470	12.5	855	47.0
KOZE, Lewiston, Idaho (6.38)-----	20,400	32.5	134	7.4
KRLC, Lewiston, Idaho (4.0)-----	20,605	29.4	280	15.4
KRPL, Moscow, Idaho (8.5)-----	11,545	19.2	95.4	5.2
KCLX, Colfax, Wash. (9.7)-----	4,013	6.7	85	4.7

¹ Parenthetical figures are nighttime limitation contours in millivolts per meter.

The availability of other services in the KWSC nighttime primary service area is reflected in the following table:

Number of other services	Population	Percentage ¹	Area (sq. miles)	Percentage ¹
0-----	17,834	29.8	521	28.6
1-----	11,743	19.6	455	25.0
2-----	29,009	48.3	801	44.1
3-----	956	1.6	84	4.6

¹ Portion of the population and area served by KWSC.

The maximum number of other services in any one part of the area is three. No part of the area which receives primary service from KWSC receives primary service from KTW (or vice versa).

⁵ All population data are based on the 1950 U.S. census unless otherwise indicated.

7. It was stipulated by the parties that if KWSC and KTW were to operate simultaneously nighttime with their currently authorized nighttime facilities, KWSC would provide interference-free primary service to approximately its 7.2-mv/m contour, which includes an area of 719 square miles with a population of 32,473.⁹ Such simultaneous operation would thus result in objectionable interference affecting 1,101 square miles with a population of 27,477, or 60.5 percent of the area and 45.9 percent of the population within its otherwise interference-free normally protected nighttime contour. Portions of this loss area currently receive primary service from other broadcast stations as reflected in the following table:

Station	Portion of population served	Percentage ¹	Portion of area served (sq. miles)	Percentage ¹
KHQ.....	4,730	17.2	412	37.4
KOZE.....	20,352	74.0	125	11.3
KRLC.....	20,538	74.6	260	23.6
KCLX.....	349	1.3	31	2.8
KGA.....	3,844	14.0	470	42.6

¹ Proportion of the population and area subject to interference from KTW.

Although there are two areas where no other primary service is available, there is one portion of the loss area wherein a maximum of three services is available. Of the area subject to interference, the following populations and areas receive no service or only one service:

Number of services	Population	Percentage ¹	Area (sq. miles)	Percentage ¹
0.....	3,515	12.8	315	28.6
1.....	4,920	17.9	190.5	17.3

¹ Proportion of the population and area subject to interference from KTW.

Thus, over 45 percent of the area and over 30 percent of the population in the interference area would constitute a gray or white area if the two applicants were allowed to operate simultaneously at night.

KTW

8. The only engineering evidence submitted by Church concerns the nighttime service which it provides with its currently authorized facilities utilizing 1 kw power. Its nighttime interference-free contour is approximately its normally protected 2.5-mv/m contour, which encloses 434 square miles within which reside 803,648 persons. Thirteen existing standard broadcast stations serve all or part of this area. Six stations (KVI, KIRO, KJR, KOMO, KAYO, and KOL, all of Seattle, Wash.) serve all of this area; station KING (Seattle) serves 75-99 percent thereof; station KUDY (Renton, Wash.) serves 50-74 percent thereof; station KMO (Tacoma, Wash.) serves 25-49 percent thereof; and stations KTAC and KTNT (Tacoma), KRKO

⁹ The effect of simultaneous operation on the service of KTW is discussed, *infra*, in connection with the KTW engineering considerations.

(Everett, Wash.), and KBRO (Bremerton, Wash.) serve less than 25 percent thereof.¹⁰ The maximum number of other primary services available to various portions of the area is 10 and the minimum is 6.

9. If KTW and KWSC were to operate simultaneously nighttime, KTW would receive objectionable interference from KWSC which would result in KTW providing interference-free service to approximately its 16-mv/m contour, which encloses 54 square miles within which reside 329,271 persons. The objectionable interference received would thus affect an area of 380 square miles within which reside 474,377 persons, or 87.5 percent of the area and 59 percent of the population which currently receive primary service from KTW at night. As stipulated, 13 other existing standard broadcast stations currently provide primary service to this area of interference. Six stations (KVI, KIRO, KJR, KOMO, KAYO, and KOL) serve 100 percent of this area; one station (KING) serves 75-99 percent thereof; two stations (KUDY and KMO) serve 25-49 percent thereof; and four stations (KRKO, KTNT, KTAC, and KBRO) serve less than 25 percent thereof. The maximum number of such services available to various portions of this interference area is 10 and the minimum is 6.

Communities and Areas Involved

University

10. Pullman, Wash., has a population of 12,022 (12,934 according to the 1960 U.S. census preliminary report). It is not located in an urbanized area. It has two standard broadcast stations, KWSC and KOFE (1150 kc, 1 kw, daytime only). It is located approximately 65 air-miles, or 78 miles by road, south of Spokane, Wash. Pullman is an educational center, as the home of University, which employs 1,500 full-time and 1,900 part-time employees, most of whom reside in Pullman, and a farm marketing center for the Palouse grain-raising area in which it is located.

11. Moscow, Idaho, is located 7 miles east of Pullman. It has a population of 10,593 (11,129 according to the 1960 U.S. census preliminary report). Like Pullman, it is an educational center, for it is the site of the University of Idaho, and it is also a marketing center for the grain and lumbering area in which it is located. It is approximately the same distance from Spokane as is Pullman.

12. KWSC provides primary service nighttime to portions of Asotin, Garfield, and Whitman Counties in Washington, and portions of Benewah, Clearwater, Latah, Lewis, and Nez Perce Counties in Idaho. The area is overwhelmingly agricultural, except for its eastern fringes which are mountainous and are largely pine forested. The farms are generally large and are mostly prosperous, and the typical farmer has a heavy investment in large farm machinery. The farm popula-

¹⁰ According to table 29 of University's exhibit 5 (see p. 10 thereof), the six stations listed above provide primary service to all of the population which receives nighttime primary service from KTW; station KING serves 98.3 percent thereof; station KUDY serves 57.4 percent thereof; station KMO serves 31.3 percent thereof; and stations KTAC, KBRO, KTNT, and KRKO serve less than 25 percent thereof. Areawise the following proportions (see table 29) apply as to those stations serving less than 100 percent of the area: KING, 89.4 percent; KUDY, 41.4 percent; KMO, 33.1 percent; and stations KTAC, KBRO, KTNT, and KRKO, less than 25 percent.

tion is extremely stable; ownership changes take place mainly through inheritance. There is little industry in the area; about 5,000 workers are employed in lumbering in the eastern portion of the area, and most of these are employed by a single large pulpmill in Lewiston, Idaho, which conducts extensive logging and sawmill operations.

13. The population of the entire area is divided almost equally by the U.S. Census Bureau among urban, rural-nonfarm and rural-farm classifications, but the bulk of the population is engaged either in agriculture itself or in services for the agricultural population, or in education. The urban population is principally concentrated in the Pullman-Moscow area and in the Lewiston-Orchards-Clarkston area, 33 miles south of Pullman, which has a combined population of 23,096.

14. The entire area is geographically isolated. The road between Spokane and Pullman and Moscow is a twisting, two-lane highway, not designed for rapid travel. Lewiston-Orchards-Clarkston are located in the Snake River Gorge at the foot of Hells Canyon, and are accessible by a spectacular highway which descends the 2,000-foot canyon wall in 10 miles. No roads lead out of the area to the east, and only secondary roads traverse a distance of 85 miles to the west of Pullman. The Hells Canyon area contains a number of residents whose only contact with outside is by radio and a weekly mail launch which navigates the Snake Rapids.

15. The only two daily newspapers published in the area are a morning paper in Lewiston, which circulates largely within the Lewiston-Clarkston area, and an afternoon paper published in Moscow whose circulation is limited almost entirely to the city of Moscow. Two daily newspapers published in Spokane are widely circulated in the area and carry Pullman features, but, especially in more remote regions of the area, this circulation is slow and the newspapers are received at a late date. With the exception of those provided by University and the University of Idaho, the entire area is lacking in cultural resources, largely because of its isolated character.

Church

16. Seattle, Wash., is the principal city of the Seattle urbanized area and the Seattle standard metropolitan area. The population of Seattle is 467,591 (551,539 according to the 1960 U.S. census preliminary report), the population of the Seattle urbanized area is 621,509, and the population of the Seattle standard metropolitan area is 732,992 (1,096,778 according to the 1960 U.S. census preliminary report). Seattle has a large number of civic and cultural organizations. Three institutions of higher learning—the University of Washington, Seattle University, and Seattle Pacific College—are located in the city. There is also an airplane manufacturing plant which employs thousands of people working in three shifts. Establishments, such as airports, hospitals, and some restaurants, remain open all night. Seattle has 11 standard broadcast stations. This number includes KTW and KUDY, presently still licensed as a Renton, Wash., station, but on December 7, 1960, having been granted a construction permit to change antenna-transmitter, studio, and station location to Seattle. Of the 10 stations, besides KTW, 8 operate unlimited time as follows: KVI

32 F.C.C.

(570 kc, 5 kw, U); KIRO (710 kc, 50 kw, DA-N, U); KJR (950 kc, 5 kw, DA-N, U); KOMO (1000 kc, 50 kw, DA-N, U); KING (1090 kc, 50 kw, DA-1, U); KAYO (1150 kc, 5 kw-D, 1 kw-N, U); KOL (1300 kc, 5 kw, DA-N, U); and KUDY (CP) (910 kc, 1 kw, DA-1, U). Stations KXA (770 kc, 1 kw, L-WABC) and KTIX (1590 kc, 5 kw, D) operate limited time.

The Applicants—General Background

University

17. University is the land-grant university of the State of Washington, with special responsibility in agriculture, engineering, and home economics. It also has faculties in all other recognized educational areas other than human medicine, law, and divinity. In the academic year commencing in the fall of 1959, the enrollment at University was 6,434 students, and it was anticipated that during the current year the enrollment would reach 6,850. The faculty of University consists of the equivalent (counting part-time faculty) of 500 full-time faculty members. It is officially anticipated that by 1970 the student population at University will increase to approximately 10,000.

18. KWSC was originally licensed for operation in June 1922, and has been in continuous operation since that time. During this entire period, and at the present time, KWSC has been and is operated on a noncommercial basis. The station draws on the facilities of all of the departments or schools of University, especially the School of Agriculture, the Agricultural Extension Service, and the agricultural experiment stations, and programs are regularly broadcast in cooperation with the departments of science, music, the humanities, social science, and physical education. The station maintains a transcription service under which programs which it produces are offered to all other radio stations located in the State of Washington, and to stations in Portland, Oreg., and Lewiston, Idaho. At the present time some 73 stations are receiving programs thus produced by KWSC. The station, which features the service of the National Association of Educational Broadcasters, has made a series of programs available to the NAEB which was distributed to the latter's network. KWSC maintains a record library of almost 90,000 cataloged musical selections; it also maintains 3 regular remote pickup points on the campus of University for the live pickup of special talk, musical, and athletic events.

19. KWSC is also utilized to provide training for students at University who are either majors in radio-television or particularly interested in this type of training. (See pars. 26 and 28, *infra*.) At the present time there are 100 to 125 students participating in this training program. The evidence makes it clear, however, that the training of students is secondary in the station's provision of broadcast service to its area.

Church

20. Church was established in 1869, the year in which the city of Seattle was incorporated. Under the ministry of Rev. Dr. Mark A.

Matthews from 1902-40, it was the largest Presbyterian church in the United States with 8,000 members and 27 branches. It has established 27 branches throughout Metropolitan Seattle, and 17 of these churches are now autonomous Presbyterian churches as a result of the population movement to the suburbs. Church's present membership is approximately 1,300. Its ruling body is the session of the First Presbyterian Church, which consists of three ruling ordained elders, one of whom, Dr. Ernest Campbell, was a principal witness at this proceeding on behalf of Church. The session, in turn, has a radio department, sometimes referred to as the session radio committee, of which Dr. Campbell is also chairman, which has a continuing responsibility of oversight in the administration of KTW.

21. As stated, KTW was authorized to Church in 1920; it then operated with 10 w power. By 1922 its power was increased to 1 kw, and, in all, between its inception and the present time the station has been rebuilt six times.

22. Between 1920 and 1940, KTW was operated on a noncommercial basis, but since 1940 it has been operated as a commercial station. The evidence is unclear concerning whether the station operates at a profit or is intended to operate at a profit, but it appears that any profit which might result would "go back to the church," and presumably any profit would be small.

23. The original purpose of Church in creating KTW was to preach, expound, teach, and defend the gospel; to bring sermons to those in remote or isolated places who were unable to attend church; and by bringing the word of God by radio, to provide guidance, comfort, and cheer. In other words, the sole purpose of KTW, as originally conceived, was a religious one. This purpose persisted as essentially the sole purpose of KTW until 1954. Shortly after Rev. Dr. Ralph G. Turnbull assumed the pastorate in April of 1954, the decision was made that KTW should not only serve the religious life of the community but the total cultural life as well in terms of music, the arts, and education. The decision which reflected the conviction of Dr. Turnbull was made by the governing body of Church. It was largely based on the fact that building developments in the area in which the station and church are located made the physical facilities of the station undesirable. The decision was made that the station would be abandoned or that a substantial amount of capital would have to be invested (approximately \$65,000 or \$75,000 were needed) in order to acquire the necessary site and other physical facilities for moving the station. Such an investment could only be justified by broadcasting in a more expanded form.¹¹

24. In 1956, both University and Church filed applications with the Commission for an increase in operating time. (See par. 4, supra.) Church requested full time day in addition to the time KTW has always had. University requested full time day and night 7 days a week. As stated above, in response to these applications, on September 25, 1957, the Commission granted both stations authority to operate simultaneously full time daytime every day, including holidays and

¹¹ Apparently, Church treats KTW differently from certain other aspects of its operation; it is now engaged in a \$750,000 building program, presumably from donations.

Sundays, and share time at night. No change was made in nighttime hours, and consequently nighttime hours have remained unchanged. In 1958, Church moved its broadcasting facilities to new studios at 710 Madison Street, adjacent to the church. In December 1959, KTW installed a 5,000-w transmitter and increased its power output from 1,000 w to 5,000 w daytime (still remaining 1,000 w while broadcasting nighttime). The present overall objective of KTW is to provide its listeners with an outstanding program service as the leading cultural and inspirational station of the Puget Sound area.

25. Until December 1959, the licensee of KTW had adopted no formal rules or policies concerning the manner in which the station was to be operated. Although Dr. Campbell testified that prior to December 1959 there were policies for the operation of the station, they were not formalized and were left essentially for the radio committee of the session to be applied. Such matters as the number, frequency, or length of spot announcements in a particular time segment or to the percentage of the station's total time which should be devoted to commercial programs had previously not been considered. Matters dealing with the religious programming of the station, including religious programs of other organizations than Church, are and were left to the supervision of Dr. Turnbull, the minister of Church and a member of its radio committee, and the station is said to have had a policy against direct solicitation of funds on religious programming. The station was also stated to have a policy of choosing its religious programs so as to provide a medium of expression for a wide range of Protestant faiths, as well as Catholic and Jewish religious programming. The record establishes, however, that in November 1956, after Dr. Turnbull assumed his pastorate, the station broadcast some religious programs, including network programs in which funds were directly solicited for religious purposes by religious organizations other than Church, and other programs in which uninterrupted commercial continuity exceeded 5 minutes in length. Both of these practices were deemed undesirable by Dr. Campbell, the head of the radio committee. KTW's present policy and practice is not to accept religious programs which solicit funds. In view of the difficulties in effectuating this policy, the station schedules religious programs on behalf of established churches only. It was not shown that any Catholic or Jewish religious programs have been broadcast on a regular basis for at least the past 5 years. Since December 1959, when a new manager was hired for KTW, a set of more specific policies was adopted by the licensee.¹² Except for the choice of religious programs, the operation of the station is left in the hands of the management of the station.

Staff

University

26. Although much use is made by University of the students in its training program, its operations are controlled and directed by a

¹² It should be noted that the new policy of KTW with respect to discussion programs is self-contradictory in that it provides, on the one hand, that all significant points of view on a controversial matter will receive an adequate opportunity of expression, and, on the other hand, that it will only allow such time for nonprofit organizations or institutions.

professional staff. Allen Miller, University's director of information services, is the general manager of KWSC, and devotes approximately one-third of his time to the affairs of the station. He has been active in the field of educational radio since 1926, at which time he became radio director of the University of Chicago, where he remained until 1939. Since then, with one interruption, he has been associated with University. The station manager is Burt Harrison, who is also an associate professor of journalism at University. Mr. Harrison has been actively engaged in broadcasting since 1938, at which time he was employed by a commercial station in Emporia, Kans. He remained with that station, with interruption for military service, until 1947, at which time he taught at the University of Denver on its radio staff and took courses himself for a master's degree in radio. He became general manager of two commercial stations in Colorado, and in 1949 became program manager of KWSC. He has been station manager for the last 5 or 6 years. He devotes at least 50 or 55 hours per week of his time to his duties as station manager, and, in addition, he teaches one course per semester, actually conducted in the station's studio building which is directly related to the work of the station.

27. In addition to those discussed above, the professional staff of KWSC consists of four members of its teaching staff, each of whom devotes at least 40 hours per week directly to the operation of KWSC; four full-time engineers; one full-time traffic manager; one full-time music librarian; one full-time secretary-bookkeeper; one full-time writer-producer (who has no teaching functions); and a young person who handles miscellaneous chores.

28. In addition to the professional staff described above, KWSC relies to a large degree on the services of students enrolled in its training program. The students who participate in the operation of the station are supervised by the station's professional teaching staff. The purpose of the training program is to develop well-trained professionals who will make broadcasting their permanent careers. With the exception of two or three students who are paid \$25 monthly (apprentice pay), the student trainees are not paid. All jobs which are held by students in the operation of the radio station are awarded on a competitive basis, which includes consideration of the student's experience and capabilities. Ordinarily each student will remain in a particular position for at least one semester, although on occasion, if a student has a particular interest, he will remain in one department for a longer period. No student is actually accepted on the staff of the station and given on-the-air experience unless, after a period of training, he has demonstrated both ability and dependability.

Church

29. The professional staff of Church consists of nine full-time members, one part-time member, and one student apprentice, including a general manager, chief engineer, assistant engineer, chief announcer, announcer-news chief, two announcer-sales executives, traffic manager-secretary, and bookkeeper. Each of these persons is qualified for the position he holds. No question is raised concerning the ability of this staff to present the programs proposed by KTW. It is fur-

ther implemented by volunteers from members of Church, students from the University of Washington, Seattle University, and Seattle Pacific College and students on fellowships from the Department of Radio and Television of the United Presbyterian Church in the United States. In addition, Dr. Turnbull, minister of Church, actively participates in the overall administration of the station, and particularly its religious programing, over which he exercises a very close surveillance. Dr. Campbell, as chairman of the radio committee of the session, advises the station with regard to governmental conferences and political broadcasts. He has also given lectures over the station and participated as president of the choir in the presentation of various musical productions.

Programing—University

30. A statistical analysis of the program¹³ schedule of KWSC for June 1960 is as follows:

By source

	8 a.m.- 6 p.m.	6-11 p.m.	All other hours	Total
	Percent	Percent	Percent	Percent
Network commercial (NC).....	15.2	29.7		17.6
Network sustaining (NS).....				
Recorded commercial (RC).....	63.5	41.0	76.3	58.9
Recorded sustaining (RS).....				
Wire commercial (WC).....	9.7	9.9	19.5	10.6
Wire sustaining (WS).....				
Live commercial (LC).....	11.6	19.4	4.2	12.9
Live sustaining (LS).....				
Total commercial.....	100.0	100.0	100.0	100.0
Total sustaining.....				
Complete total.....	100.0	100.0	100.0	100.0
Total broadcast-hours.....	70.0	28.25	9.8	108.08

	By type	Percent
Entertainment.....		22.2
Religious.....		0
Agricultural.....		2.5
Educational.....		11.8
News.....		13.3
Discussion.....		5.1
Talks.....		4.0
Cultural ¹		41.1
Total.....		² 100.0

¹ All broadcasts of classical, concert, and serious music, serious drama, and serial dramatizations of great novels.

² The latter analysis was not made in full accordance with the Commission's definitions because KWSC is operated by an educational institution and presents a very great number of programs either produced by it or other educational institutions, so that if the Commission's definitions were literally applied, almost 90 percent of the programs in a composite or typical week would be classified as educational. Such a classification would not greatly enlighten the Commission concerning the actual content of the programs presented. Consequently, for the purpose of the analysis set forth above, only those programs were classified as educational which were not only prepared by or on behalf of educational organizations, but which also are regarded by educators on the University campus as having educational content. Other programs which might technically be classified as "educational" were classified by their content as entertainment, agricultural, news, talks, or cultural. It should further be noted that as a division of a State institution of the State of Washington, KWSC is prohibited by the State constitution from broadcasting religious programs as such. It does broadcast programs concerning the ethical and moral responsibilities of mankind, but these are classified as discussion or talk programs.

¹³ At the prehearing conference counsel for the parties (including Bureau) stipulated

31. Reference to the application of University for unlimited-time operation, which was filed on November 10, 1958, and to the analyses of past programming and the program logs submitted with University's application for renewal of license, filed October 26, 1956,¹⁴ indicates that the June 1960 analyses set forth above are essentially the same as the analyses of past programming submitted by University almost 2 years previously, and that many of the programs, particularly the live programs, broadcast on KWSC in June 1960 have been presented by the station for many years.

News programs

32. In view of the limited and slow newspaper circulation in the University service area described supra, and the fact that other standard broadcast stations in Pullman and Moscow operate with staff personnel which make it difficult for them to cover news events, except on a limited basis, KWSC maintains a comprehensive news service. Its news department is headed by a professional faculty member who is the news and special events director and who divides his time between the station and his teaching assignments. The department utilizes the services of a part-time student weather editor and 12 to 16 part-time student reporter-editors, each of whom is an advanced student. The department is equipped with full Associated Press and United Press International radio wire services, three telephone circuits, tape recorders, telephone beeper-tape equipment, and similar modern utilities. The department broadcasts five (Monday-Saturday), one (Sunday), and two (Monday-Sunday) full 15-minute newscasts, including six general news summaries and two devoted to local and regional information. In addition, it prepares one (Monday-Saturday) and one (Monday-Wednesday, Friday, and Saturday) 10-minute and one (Monday-Saturday) and one (Monday-Wednesday, Friday, and Saturday) 5-minute news summaries, seven 5-minute weather summaries per week, and news briefs every hour on the hour. University's faculty members are called upon for background and interpretation of news events. The news department is also responsible for many special events news programs, more fully discussed infra. The local news presented by KWSC refers not only to news of Pullman but also of Moscow, Idaho, and so far as possible, Lewiston, Clarkston, and smaller communities in the KWSC service area. The local news is not taken from a wire service but is gathered by the news staff of the station personally or by telephone, and it is prepared for presentation on the air either by the station's news director or by one of its student editors. In the early morning newscasts

that since under the issues as specified consideration must be given to a division of hours during the stations' nighttime operations (Issue 4), necessary examination of the stations' overall operations embraced consideration of their daytime programming, and that a showing of the latter would also be made. The hearing examiner accepted the stipulation to enable the Commission, should it deem it appropriate or necessary, to take such programming into consideration in its ultimate determination herein under the specified 307(b) issue.

¹⁴ Official notice thereof is herewith taken.

approximately one-fifth to one-fourth of each program is devoted to live news of the type just described.¹⁵

Agricultural programs

33. The agricultural programs presented by KWSC are intended as a link between the farm operators in the area served and the agricultural divisions of University, which, as a land-grant institution, has special responsibilities in this area. Its live daily farm broadcasts are prepared under the direct supervision of University's editor for the Agricultural Extension Service and Institute of Agricultural Sciences, an experienced farm broadcaster, and are presented by three members of his staff, the KWSC Farm Facts editor, the radio and visual aids specialist for the Agricultural Extension Service, and the radio homemaker reporter for the Extension Service. These staff members utilize the services of the agricultural research and information specialists on University's staff for information and interviews. Regularly presented agricultural programs (a total of 165 minutes weekly, of which 115 minutes are devoted to strictly agricultural subjects) include "Farm Facts" (Monday through Saturday, 12:35-12:50 p.m.), which includes each day a 10-minute interview with an agricultural researcher, information specialist, or instructor on the staff of University's Institute of Agricultural Sciences, emphasizing specific information of practical value to farmers in the station's service area, and general information on agriculture, including local and regional market information; "WSU Farm Reporter" (Monday, Wednesday, and Friday, 12:50-12:55 p.m.), a program of news pertaining specifically to agriculture, prepared by the extension radio and television specialist for University's Agricultural Extension Service; "Grange Dateline" (Tuesday, 12:50-12:55 p.m.), a recorded program of State and national Grange news presented by the Washington State Grange; "Grange Forum" (Saturday, 12:50-12:55 p.m.), a 5-minute recorded interview on Grange and agricultural topics conducted by the Washington State radio director for the Washington State Grange; "Homemaker Reporter" (Monday, Wednesday, and Friday for 5 minutes between 9:45 and 10 a.m.), a report on farm homemaking ideas and information developed by the research staff of University's College of Home Economics and University's Institute of Agricultural Sciences; "Inland Empire Weather" (Monday through Saturday, 12:30-12:35 p.m.), a weather summary prepared by the KWSC weather editor based on information from U.S. weather offices in Lewiston and Spokane, the Soil Conservation Service, Associated Press, United Press International, and KWSC's own meteorological equipment;¹⁶ and "Weekend Weather" (Friday, 6:55-7:00 p.m.), a 5-minute summary of the weather outlook. Both the amount of agricultural programing presented over KWSC and the times at which this programing is presented were determined by the station on the basis of the advice of University's agricultural experts, and were determined on the basis of the kinds of agriculture which are engaged

¹⁵ These news programs, as well as all others listed in KWSC's exhibits 3 and 4, have been classified as wire programs when more than 50 percent of the news presented was derived from a wire source.

¹⁶ KWSC broadcasts weather information throughout the day, usually in conjunction with its news broadcasts.

in the KWSC service area and on the basis of the most suitable time to present information of this kind for the farm population.

Other programs

34. In order to gage the character, substance, and quality of a station's programing, it is not necessary to set forth in detail the content of each program it presents. The Commission has, on the contrary, tended to make judgments in this area by giving careful consideration principally to a station's locally produced live programs. University's news and agricultural programs have been discussed more fully because of the nature of the area in which KWSC is located. Discussion of other categories of programing herein will deal principally with local live presentations.

35. Regularly scheduled local live discussion programs broadcast by KWSC include: "WSU Forum" (Monday, 8-9 p.m.), a program of panel discussions, debates, lectures, and addresses broadcast from various points on University's campus, originating in conferences, student convocations, seminars, and special institutes with topics ranging from agriculture, zoology, economics, and genetics to nuclear research and international relations; "WSU Student Forum" (Thursday, 2-2:30 p.m.), a discussion program on current local and national issues produced in cooperation with classes on discussion techniques in the University Department of Speech, with student panel and a guest authority from the University faculty on the subject discussed; and "Faculty Forum" (Friday, 7:30-8:30 p.m.), a program broadcast from the weekly faculty forums held on University's campus under the sponsorship of the campus Religious Directors Association, which program consists of a presentation by a selected faculty member followed by a give-and-take discussion with members of the invited faculty audience.

36. Regularly scheduled local live educational programs broadcast by KWSC include: "The Abe Lincoln Story" (Tuesday, 9:30-9:45 a.m.), a program of talks concerned with the life and times of Lincoln presented by a member of University's faculty based on materials by Lincoln authorities; "John Elwood" (Thursday, 12:50-12:55 p.m.), a talk by a member of the English faculty about a book considered to be of special interest to residents of the area; "Literary Scrapbook" (Friday, 3:15-3:30 p.m.), a weekly commentary on current books by John Elwood; "Mr. Record Man and the Story Lady" (Monday to Friday, 5-5:30 p.m.), a program of stories, music, and activities for children 4 through 8 years old produced in cooperation with the Pullman chapter of the American Asssociation of University Women with live stories, riddles, etc. (17 minutes), and recorded material (12 minutes); and "Science in the News" (Friday, 9:30-9:45 p.m.; 7:30-7:45 p.m. in KWSC's proposed schedule), a weekly review by a faculty member of University's physics department of worldwide developments in science, with special emphasis on research in the Pacific Northwest.

37. Regularly scheduled local live cultural programs during June 1960 by KWSC include: "WSU Concert" (Monday, 10-11 p.m.; Sat-

urday, 5-5:30 p.m.), which consists of live concerts produced in cooperation with University's School of Music, including various types of solo, chamber, ensemble, and orchestral presentations by students, faculty, and guest artists; "The Wandering Ballad Singer" (Monday, 9:30-9:45 p.m.), a program of folk ballads collected and performed by a University faculty member who has made nationwide concert tours and numerous ballad collection trips.

38. Regularly scheduled live talk programs during June 1960 consisted of programs devoted to sports news (with emphasis on local sports events), results, interviews, etc. (Monday through Saturday, 6:15-6:30 p.m.; Monday, Tuesday, Wednesday, Friday, and Saturday, 9:55-10 p.m. and 11:05-11:10 p.m.). The record further establishes that in the recent past, KWSC has presented series of locally produced live talk programs and special individual talk programs ranging from 84 play-by-play sports broadcasts during the 1959-60 school year of area college and high school football and basketball games and track meets (an average of over 2 per week for a 40-week school year), to a series of thirteen 15-minute talks on Russian writers and the Russian cultural tradition written and presented by a University faculty member, or to annual coverage of the addresses of the 3-day University World Affairs Institute and of various meetings and conferences on varied subjects held on University's campus or in the general area, or to 114 daily live reports from the Washington State Legislature during the 1959 legislative session by members of the legislative delegation from University's home county.

39. Although none of the entertainment programs which appear in the June 1960 program schedule are classified as live, evidence was developed concerning "Coffee Pot Parade" (Monday through Saturday, 6:30-8 a.m.) which has live features although it is classified as recorded. This program has been broadcast continuously by KWSC since 1936, and, in addition to a 10-minute and 5-minute news program contained therein, it provides popular music, time and weather reports, and a wide variety of announcements concerning civic and other events in communities in the KWSC service area. The announcements range from such material as the military order of the day on University's campus, or announcements about the activities of social and civic organizations, to emergency announcements and announcements made as part of formal agreements which University has with school districts in a nine-county area¹⁷ to convey information on weather or other emergencies concerning schoolbus operation and matters of that kind. In a normal period this program will present approximately three announcements of the various kinds set forth above in each 15-minute segment; in weather emergencies it carries many more.

Other related matters

40. The June 1960 regular program schedule cannot portray adequately the nature of the program service rendered by KWSC in light of the fact that neither it nor the proposed program scheduled discussed *infra* set forth any irregularly scheduled or special events programming. Thus, KWSC attempts to extend the cultural activities

¹⁷ Station KOFE makes school announcements only for the Pullman schools.

of University and, to a lesser extent, of the University of Idaho, by broadcasting as many available concerts, lectures, and guest-artist appearances as possible, and numerous programs prepared especially for broadcast over the station which utilize the University's resources. In addition, the station has presented and does present cultural broadcast materials obtained through the NAEB tape network, foreign broadcasting systems, and the Broadcasting Foundation of America. These presentations, ranging from specially prepared single broadcasts to more lengthy series of broadcasts, encompass subject matter such as classical music festivals, discussions, interviews, and lectures concerning literature, science, education, music, art, politics, economics, and international affairs.

41. University has received letters of appreciation from listeners in many parts of its service area concerning each of the various categories of programs which it presents.

42. As stated, it has been the practice of KWSC to commence broadcast operation at 6:30 a.m., Monday through Saturday, and 8 a.m. on Sunday, and to signoff on Monday, Tuesday, Wednesday, Friday, and Saturday at 11:10 to 11:15 p.m., and at 7:30 p.m. on Thursday and 7:45 p.m. on Sunday, unless sunset occurs after that time. The signoff time (except Thursday and Sunday) is irregular in that more lengthy presentations of dramatic and other events from the BBC and similar sources are of variable length, and are programed at the end of the day so that they can be presented in their entirety; this sometimes requires a later signoff, but rarely, if ever, does the station remain on the air after midnight for this purpose. It does remain on the air after midnight to cover elections, including primaries. The reasons ascribed for KWSC's failure to broadcast more hours in the past are that heretofore the station's budget has not permitted lengthier operation, and that it believes that the number of listeners is smaller after midnight than at other times.

Proposed Programing—University

43. The need of KWSC for an unlimited-time authorization with its current facilities was stated to derive essentially from the need of that station for continuity of service. This was stated to be of particular significance because of the isolated nature of the area which the station serves, a part of which contains a substantial population which receives no other primary standard broadcast service at night. In addition, the station desires to have flexibility for the handling of special programs, such as election coverage or variable length programs acquired from such sources as the NAEB or the BBC. Furthermore, it is felt there will be a need in the future for increased air time for the seasoning of the increasing number of students anticipated in the training program.¹⁸ Examples were given of alleged

¹⁸ The station has found it necessary to reduce the average number of on-the-air training hours per student from 12 to 14 per week to 7 to 10 per week, which in the opinion of its management is the practical minimum. When the number of student trainees increases, it is University's intention to increase the broadcasting hours of KWSC, first in the late evening and then in the early-morning hours. Admittedly, no provision has been made in the station's budget for the coming year for an expansion of its broadcasting hours; provision for such future requirements will still have to be made.

harmful effects of, and the difficulties engendered by, the present service of KWSC. Thus, Thursday evening, when KWSC is precluded from broadcasting between 7:30 and 10:30 p.m., is one of the two times set aside for major cultural offerings on the University campus, such as the "Lecture Artist Series," which presents prominent speakers on various subjects and musical artists. Although it was conceded that some of these events could be transcribed for later rebroadcast, so broadcast they would, on the other hand, lose their sense of immediacy. In addition, basketball games are frequently held on Thursday evening, including, in the past, the quarter-final game of a basketball tournament. Not all of these programs are susceptible of transcription. On Sunday, the station would carry "vesper" musical programs. Such programs would consist of classical music, would not be selected because of any religious content, and admittedly could be carried on any other day. On holidays, although it would carry the same programming which is broadcast in other periods, such programming would be consistent with the season. Mr. Miller, general manager of KWSC, admitted that it was appropriate to broadcast religious programs on holidays such as Christmas and Easter, and that if he were in a position to do so he would. He recognized, however, that University was barred from carrying such programs.

44. Another factor of significance in this regard is the presunrise operation of KWSC during those months when sunrise occurs after 6:30 a.m. As has been indicated, the station has arrangements with communities throughout its service area to broadcast emergency school-closing announcements. In late 1957, these arrangements were discontinued with Pomeroy, Wash., and Garfield, Wash., communities located close to the outer limits of the KWSC interference-free contour. When KWSC is not in operation, Pomeroy does not receive nighttime primary service from any station, and Garfield receives service only from two stations in Spokane.

45. If its instant proposal is granted, KWSC will regularize its service so that it will operate between 6:30 a.m. and 11:10 p.m., Monday through Saturday, and 8 a.m. to 11 p.m. on Sunday, and that it will present during the additional hours essentially the same programming it carries throughout the remainder of the week. In addition, KWSC will present the types of irregularly scheduled programming which it is now unable to present during those hours, such as the "Lecture Artist Series," basketball games, and other sporting events, and on Sundays and holidays programming of the same credible character as its overall programming, however, suited particularly to the mood of the day.

46. In this connection it must be kept in mind that as discussed under "Engineering Considerations," supra, in the area in which no other station besides KWSC renders a primary service nighttime, there is located the city of Pullman.¹⁹ Consequently, during those nighttime hours when KWSC is not in operation, Pullman receives not only no

¹⁹ Although Pullman is located within the measured 0.5-mv/m contour of station KGA, Spokane, a signal of this intensity is not sufficient to constitute primary service, and consequently neither KGA nor any other station besides KWSC renders a primary service to Pullman at night.

local radio service but no primary nighttime service from any station located anywhere.

Past Programming—Church

47. The following are the analyses by type (in percentages) of the KTW programming for the composite weeks of 1956 and 1959:

	1956	1959
Entertainment -----	37.0	65.6
Religious -----	57.0	18.7
Agricultural -----	0	0
Educational -----	6.0	0.7
News -----	0	8.9
Discussion -----	0	4.3
Talks -----	0	1.8
Total -----	100.0	100.0

The following are the analyses by source (in percentages) of the KTW programming for the composite weeks of 1956 and 1959:

	1956				1959			
	8 a.m.- 6 p.m.	6-11 p.m.	All other hours	Total	8 a.m.- 6 p.m.	6-11 p.m.	All other hours	Total
Network commercial (NC)-----	20.0	0	0	7.3	3.1	3.8	1.3	2.6
Network sustaining (NS)-----	0	0	0	0	0	0	0	0
Recorded commercial (RC)-----	25.0	3.1	0	10.0	67.4	35.8	65.4	63.8
Recorded sustaining (RS)-----	2.5	31.2	86.7	40.0	0.7	13.2	20.6	10.0
Wire commercial (WC)-----	0	0	0	0	1.7	0	0	.05
Wire sustaining (WS)-----	0	0	0	0	2.2	3.8	3.1	2.8
Live commercial (LC)-----	40.0	28.2	0	22.7	19.6	13.2	5.7	13.5
Live sustaining (LS)-----	12.5	37.5	13.3	20.0	5.3	30.2	3.9	7.25
Total commercial-----	85.0	31.3	0	40.0	91.8	52.8	72.4	79.95
Total sustaining-----	15.0	68.7	100.0	60.0	8.2	47.2	27.6	20.05
Complete total-----	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.00
Actual broadcast-hours (per week) ..	10	8	9.5	27.5	69.5	13.25	57	139.75
Number of spot announcements (SA) (per week)-----	1	2	23	26	594	47	324	965
Number of noncommercial spot announcements (NCSA) (per week)-----	8	15	12	35	33	1	85	119

Church also submitted analyses by type and source (in percentages) of KTW's program schedule for the first week of May 1960, which are as follows:

By type

Entertainment -----	16.13
Religious -----	26.26
Agricultural -----	.65
Educational -----	4.53
News -----	7.72
Discussion -----	1.12
Talks -----	.28
Cultural ¹ -----	43.31
Total-----	100.00

¹ Classic music, opera, light classics.

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By source

	8 a.m.- 6 p.m.	6-11 p.m.	All other hours	Total
Network commercial (NC).....	1.4	2.6		1.2
Network sustaining (NS).....				
Recorded commercial (RC).....	47.4	25.7	39.3	42.6
Recorded sustaining (RS).....	32.3	45.2	42.4	34.8
Wire commercial (WC).....	1.4			1.0
Wire sustaining (WS).....	5.7	5.2	3.9	5.2
Live commercial (LC).....	9.7	7.8	7.4	10.1
Live sustaining (LS).....	2.1	13.5	7.0	5.1
Total commercial.....	59.9	36.1	46.7	54.9
Total sustaining.....	40.1	63.9	53.3	45.1
Complete total.....	100.0	100.0	100.0	100.0
Actual broadcast-hours (per week) (May).....	70	18 $\frac{1}{4}$	32 $\frac{1}{4}$	120 $\frac{1}{4}$
Number of spot announcements (SA) (per week).....	251	14	101	366
Number of noncommercial spot announcements (NCSA) (per week).....	157	37	119	313

It should be noted that the total percentage of programs classified as commercial rose from 40 in the 1956 composite week to about 80 in the 1959 composite week, a factor attributed by Dr. Campbell not to the increase in total hours broadcast with its consequent decrease in the total percentage devoted to religious programs, but rather to the fact that the station had acquired more efficient salesmen during the intervening period. Between the 1959 composite week and the first week of May 1960, although the total broadcast-hours decreased only from 139.75 to 120.5, the number of spot announcements per week decreased from 965 to 366, with a consequent decrease in the total percentage of programs classified as commercial from almost 80 to almost 55, which was attributed by the station's new manager to the adoption of a policy governing commercials during the past year.

48. The analyses set forth above cannot be considered typical of the broadcast operation of KTW, which has been demonstrated in this record to be changing almost from week to week, in part apparently as the result of its recent employment (December 1959) of a dedicated manager. Church submitted three different descriptions of its programming—KTW exhibit 5, which gives the schedule for the first week of May 1960; KTW exhibit 6 (entitled "Present KTW Program Service"), which sets forth its schedule for June 1960; and KTW exhibit 3, which describes its programming by categories and which refers to programs as being "presently" broadcast sometime after July 1960. With few exceptions (e.g., the religious programs, and "Clifford & Clark," Monday, 7:30-8:30 a.m.; and Tuesday through Friday, 7:30-8 a.m. and 8:05-8:30 a.m.), not only are the programs not classified by source, but the cryptic program descriptions make it impossible to determine which programs are live, so that no analysis similar to that made for University may be made for Church. In addition, it is impossible from these exhibits to ascertain which of the programs are commercial. Moreover, it cannot be ascertained which programs are still being broadcast (see, e.g., KTW exhibit 3, pp. 3 and 4, in which some programs are not identified by time at all,

and others, such as "Light for Today," do not appear on either of the actual program schedules submitted at the time indicated).

49. Almost all of the educational programs presented by Church have been put in its schedule since May 1960. Thus, for example, "Spotlight on Science News" does not appear in the May 1960 schedule; in the June 1960 schedule it appears at a time different from that testified to by KTW's program manager. Similarly, "Seattle Art Museum," presented once a month in the May 1960 schedule, appears weekly, at a different hour, in the June 1960 schedule. "Book of the Day," allegedly a daily book review program, does not appear in either the May or June schedules and is not listed in the "July" exhibit. "Book Review," in June a weekly 10-minute program, is scheduled in May only as a 5-minute weekly program.

50. Although the analysis by type for the program schedule of May 1960 sets forth that 1.12 percent of the total time of KTW was devoted to discussion programs, none of the program descriptions contained in Church's exhibit 5 (pp. 7-9) indicates any program which contains material which might properly be classified as discussion. The program descriptions appended to the June 1960 program schedule likewise fail to indicate any discussion material. The past program broadcast during the unauthorized period between midnight and 4 a.m., in which a radio personality received and broadcast random telephone calls from members of the listening audience on subjects of interest, cannot be classified as discussion.²⁰ Other than this program, which was discontinued in December 1959 (see par. 4, supra), Church's evidence with respect to discussion and talk programs, assuming their being properly classified,²¹ is limited to programs which apparently commenced subsequent to June 1960, since they do not appear in KTW's exhibits 5 or 6.

51. Among the volunteers now²² engaged in preparing educational presentations at KTW are: from the University of Washington, Ken Kager, who, along with Lloyd W. Schram, director of public services and university relations, assigns student reporters and arranges for tape recordings of discussions and other material; from Seattle University, Father Francis Green, head of the journalism department, and John Taglievich, public relations director, who arrange the hour-long Seattle University show, assign a student reporter, Gregg Lowe, and send tape recordings, etc., to KTW; and from Seattle Pacific College, Mendall Miller, director of public relations, who assigns a student reporter, Gene Marr at present, and sends tape recordings, etc. KTW is now broadcasting a program in which State candidates for public office are interviewed by the Young Democrats and Young Republicans of the University of Washington. Another discussion program now being broadcast concerns art in the

²⁰ Broadcast for many months in the afternoon, it was moved to the midnight period to avoid the 3-hour limitation. The subjects involved related to such matters as electronics, medicine, science, taxation, political issues, world affairs, etc. Participation included professional and business people, as well as laymen, inter alia, physicists, scientists, doctors, etc.

²¹ Compare the statement at p. 8 of KTW's exhibit 3 that several discussion programs originating at the University of Washington are heard on KTW three times per week with the KTW manager's description of the "University Hour" at Tr. 347-348.

²² Covering the period after July 1960.

Northwest; it is prepared by the staff of the Seattle Art Museum. A third program, a discussion of world affairs, originates at Seattle Pacific College. Several discussion programs originating at the University of Washington are now heard on KTW three times a week. In addition, pastors and musical directors from various churches send KTW tape recordings of outstanding musical presentations and inform KTW of outstanding speakers who will be visiting their church to enable KTW to program these talks. Among the volunteers now engaged in preparing these programs are: Millard Rogers, associate director of the Seattle Art Museum, who provides the Art Museum show each week, using interviews, discussion, and educational talks with noted artists, members of the Museum Guild and staff, etc.; Stephen S. Sanislo of the Seattle Fire Department, who prepares a daily 5-minute talk on fire prevention; Allison Ross of the Seattle Office of the British Consulate, who advises on and makes available to KTW British Information Service tapes; and Bruce Calhoun, a business executive, who has worked for years in radio and who writes, produces, and narrates, exclusively for KTW, the Red Shield program.

52. Despite the inability to make precise findings concerning a typical past program schedule for KTW, Church's exhibits 3, 5, and 6 do, in their totality, establish that KTW is presenting a desirable program service with special emphasis on classical music and religious broadcasting and with attention now being paid to the areas of discussion, talk, and education. The station's staff, which is augmented by many volunteers who are prominent and active in public life in the Seattle area, broadcast programs and announcements on behalf of local civic groups in the Seattle area. Among the local organizations for whom KTW has broadcast programs are the following: World Affairs Council of Seattle, Seattle Art Museum, British Information Service, Seattle Symphony, University of Washington, Seattle University, Seattle Pacific College, Seattle Fire Department, Washington State University, Salvation Army, and Church Calendar. The musical offerings of the station are not limited to classical music either serious or light; many of its programs are described as featuring "light, bright" music or show tunes and standard favorites. It should be noted that since they fall within the hours at issue in the instant proceeding, the Thursday night programming and the Sunday night programming of KTW have consisted almost entirely of religious programs and programs of religious music, and that the programming for Washington's Birthday, the only holiday for which a program schedule was supplied, consisted essentially of concerts and news, though it was indicated that the content of such programs would be adapted to the particular holiday involved.

53. Church has received letters of commendation from many organizations—local, regional and national—expressing appreciation for cooperation given by the station or for the broadcasting of particular programs.

54. Church has utilized fully all of the broadcast time available to it under its authorization and the share-time agreement with University. Indeed, there have been occasions when it needed or desired

to utilize hours not available to it under the share-time agreement, and it requested from University and was granted permission to operate during those hours. (See pars. 4 and 5, supra.) As noted, as the result of a complaint from University, on December 15, 1959, the Commission advised Church to cease operating between midnight and 4 a.m., and KTW's programing during the experimental period (except Sunday, Monday, and holidays) ceased in December 1959.

Proposed Programing—Church

55. Church attempted to establish that a need exists for its after-sunset proposed programing by trying to establish that there is a need for so-called "cultural" programing of the type it proposes in Seattle during that period, and by trying to establish that no other station currently in operation in Seattle meets that need. Church did not establish either the number of persons who are awake all night in Seattle or even the fact that the number is large, not to mention the number of those persons who would listen to radio. More significantly, Church has failed to establish either the needs or the requirements of any such population for the type of programs proposed to be offered by KTW at the times it proposes to broadcast them. Admittedly, its station manager asserted his own opinion that there is a need for cultural programing in Seattle; however, neither the basis for that opinion nor his qualifications as an expert in this area were established.²³ The only concrete evidence offered by Church on this subject is that on the 2 nights each week, when KTW operates after sunset, it receives dozens of phone calls each night from persons who are awake after midnight. In addition, it must be recognized that the programing of KTW on those 2 nights (which programing takes place before midnight) is almost entirely religious programing; not even Church contends that there is a paucity of religious programing in Seattle.

56. Church's claim to unique program service among Seattle stations rests essentially on the assertions that, between sunset and 4 a.m. : (a) only one other standard broadcast station programs classical music; (b) no other standard broadcast station presents religious programs during the week (religious programs are broadcast by other stations on Sunday evening); (c) no other standard broadcast station consistently programs educational features from educational institutions; and (d) no other standard broadcast station presents programs about the arts. The record establishes that there are, however, FM stations in operation after sunset in Seattle which program both classical music and other cultural features as defined by the KTW station manager. Moreover, as has been shown, the record does not support any finding that Church has in the past consistently broadcast educational programs. On the basis of this record, it can be found

²³ When asked what "cultural" means to him, he testified: "When a thing is cultural, it is above and beyond just being enjoyable. It has the ethereal quality of being near perfect within its realm * * * [including] such endeavors as pure art, music, literature, poetry, the dance and * * * a great many factors of religion * * *". Subsequently, he classified as "cultural" all of KTW's Thursday evening religious programs, and also testified that the civic problems presently facing the Seattle area are to a large extent centered around cultural endeavors.

only that no other station in Seattle presents programs between sunset and 4 a.m. dealing with the arts.

57. A percentage breakdown of the proposed broadcasting schedule set forth in Church's renewal application is as follows:

Entertainment -----	65.6
Religious -----	18.7
Educational -----	0.7
News -----	8.9
Discussion -----	4.3
Talk -----	1.8

No specific findings can be made concerning the proposed future programming of KTW, particularly as regards those programs scheduled for the hours which it would acquire if its instant proposal were granted. Most of those programs are not described anywhere, and they are not classified by either type or source.²⁴ Apparently, the hours after midnight will generally carry forward the type of programming which has recently been adopted by KTW and which is described supra. Nowhere during the after-sunset hours does there appear in Church's exhibit 8 any program which either by its title or from a description contained anywhere else in the record might be considered to fall within the Commission's classification of educational programs. The hours between midnight and 4 a.m. do contain a constantly repeated program entitled "Request Classics and Cultural Calendar," which presumably provides information about cultural events. No program about the arts themselves during those hours is apparent from Church's exhibit 8.

Other Matters—Church

58. During the course of his oral testimony, Dr. Campbell stated that KTW could carry out its objectives if the time-sharing arrangement with KWSC was modified in any one of the following respects: (1) a trial period of simultaneous operation daytime and nighttime by KTW and KWSC, each operating with 1 kw power nighttime, to be made permanent if destructive interference does not occur; (2) the stations would operate simultaneously daytime, and at night KTW would operate during the hours it currently operates, plus 10:30 p.m. to midnight on Thursday and midnight to 4 a.m. daily; and (3) retain the status quo,²⁵ except that when sunrise occurs after 6:30 a.m., KTW would, except on Sunday (in the months of November, December, January, and February when local sunrise is after 6:30 a.m.), reduce its power to 1 kw during the period between 6:30 a.m. and sunrise. With respect to alternatives (1) and (3) set forth supra, there is no evidence in the record which bears upon the engineering aspects of these proposals. Nor, indeed, is there any evidence in the record concerning the use that would be made of the time which would accrue to Church under alternative (2) over and above that which it seeks in the renewal application, the subject of this proceeding. It should be noted that Dr. Campbell, who testified orally on

²⁴ To mention only a few, the record contains no description of "International Almanac" (Monday, 1:05-1:30 a.m.) or "Associated Press Commentary" (Monday, 3:05-3:10 a.m.) or "Commentary on Education" (Tuesday, 3:05-3:10 a.m.).

²⁵ Dr. Campbell testified that KTW would "very reluctantly" be prepared to make this third proposal "as a concession to KWSC to resolve this controversy."

this matter and who was responsible for Church's exhibit 2, testified both that Church does not want to renew the share-time agreement with University and that it has at all times been willing to renew the time-sharing agreement with University.

CONCLUSIONS

1. Issues 1 and 2 herein require an examination of pertinent engineering considerations, and against that background issue 3 requires that it be determined, in light of the provisions of section 307(b) of the Communications Act for "a fair, efficient, and equitable distribution of radio service," (a) whether the share-time operations of KWSC and KTW during nighttime hours should be continued in some manner, and, if so, (issue 4) what nighttime hours are to be specified for each station; or (b) whether KWSC should be permitted to operate unlimited time and KTW limited to daytime hours. The threshold question to be answered is therefore whether, on the basis of established section 307(b) concepts governing fair, equitable, and efficient allocation of radio facilities, the continued sharing of nighttime hours "in some manner" would serve the public interest, convenience, and necessity.²⁶

2. The engineering evidence herein requires the conclusion that insofar as nighttime operation is concerned, the applications of University and Church are mutually exclusive, simultaneous operation at nighttime by both resulting in mutually destructive interference. The mutual objectionable interference which would result from simultaneous operation of the two stations during nighttime hours would limit KWSC to its 7.2-mv/m contour, and would affect a population of 27,477 persons in an area of 1,101 square miles, or 45.9 percent of the population and 60.5 percent of the area within the otherwise interference-free normally protected KWSC nighttime contour. The effect on KTW would be even more severe. KTW would be limited to its 16-mv/m contour, and the objectionable interference would affect 474,377 persons in an area of 380 square miles, or 59 percent of the population and 87.5 percent of the area within the KTW interference-free normally protected nighttime contour. The amounts of interference, both absolute and proportionately, are of such magnitude as to render simultaneous operation unconscionably inefficient. A minimum of 6 and a maximum of 10 stations provide primary service to any one part of the KTW interference area, and from none to a maximum of 3 stations provide such service to the KWSC interference area. KWSC's area of interference receiving no primary service amounts to 315 square miles including 3,515 persons, representing approximately 44 percent of the area which would remain interference free.

²⁶ Since the Commission on Sept. 25, 1957, granted KTW's application for daytime hours of operation (BP-10390) and partially granted KWSC's application for unlimited time (BML-1667) (see par. 4 of findings of fact), the determination in this proceeding, which, as Church properly points out in its proposed conclusions, relates only to nighttime operation on Sunday and Thursday nights and specified legal holidays, and thus involves only a limited portion of the broadcast schedule, is part of the overall question of the proper allocation of broadcast facilities as between the two contending applicants throughout the entire day.

3. As Bureau properly points out, under the condition of simultaneous nighttime operations KWSC would comply with 47 CFR 3.28(c)—the 10-percent rule—even though the population loss due to interference would exceed 10 percent. This is achieved by comporting with a proviso to that rule in that more than 25 percent of the remaining area within its nighttime primary service area is without such service. KTW would not comply with 47 CFR 3.28(c), since the loss it would suffer due to interference from KWSC would far exceed 10 percent, and since it would not meet any exception to that rule because it is not a first nighttime broadcast facility in Seattle and no areas are without primary service within its remaining nighttime service area.

4. University strongly urges that it be authorized unlimited time, in which event it would “regularize” its broadcast service so that it will operate between 6:30 a.m. and 11:10 p.m., Monday through Saturday, and 8 a.m. to 11 p.m. on Sunday. Church strongly urges that, in addition to daytime-only hours, its license specifically authorize KTW to operate Monday through Saturday from midnight to local sunrise (time which University has not used in the past); Thursday from 7:30–10:30 p.m., and 24 hours on Sunday and all legal holidays. Church concedes that, based upon engineering calculations (see pars. 6–9 of findings of fact), simultaneous operation at night of KTW and KWSC would, within the area lost to KWSC, result in 3,515 persons losing their only broadcast service and 4,920 persons losing their second such service, and that although KTW would serve more than 13 times the number of persons who would be served by KWSC, KWSC would render service to white and gray areas of limited size. Church adjudges the latter circumstances²⁷ the only possible basis upon which KWSC could rely in support of its application for modification. However, in relying upon *The Pulitzer Publishing Company (KSD)*, 5 FCC 188; *Voice of Brooklyn, Inc. (WLTH)*, 8 FCC 230; and *Metropolitan Broadcasting Corporation (WMBQ)*, 8 FCC 557, 577, Church argues that such circumstances are “without support in Commission precedent.” Church characterizes University’s unlimited-time proposal “an unprecedented and unwarranted destruction of a service” rendered by Church for 40 years. The additional reasons advanced by University in support of its full-time operation, to wit, “continuity of service,” “flexibility,” and “seasoning increasing numbers of students,” are adjudged by Church as being “tenuous and unsubstantial” matters. In urging a grant in its favor, Church weighs these factors, inter alia, against the fact that KTW “has consistently made use of all the hours which are available to it under the share-time agreement, and has attempted to make use of such additional time which might be available to it in view of the nonuse of such hours by KWSC,” and that insofar as Thursday and Sunday nights and specified legal holidays were reserved for Church to bring religious and inspirational programs to its listeners within the Seattle community, it has devoted itself to this end. With regard to the allocation of specific periods of time, Church suggests, (1) in relying

²⁷ It should be noted, however, that when KTW operates on Thursday and Sunday evenings, KWSC does not operate at all.

upon *Music Broadcasting Co. (WGRD)*, 15 R.R. 547, allegedly pointing to the limited value of curves for accurate predictions of propagation conditions and resulting nighttime interference on regional channels, and (2) in view of the fact that there are involved constructed facilities in operation, that it be afforded (over a reasonable period of time to be specified by the Commission) an opportunity to determine, as a matter of actual fact, "whether simultaneous operation of both stations at night with reduced power of 1 kw is feasible."²⁸ Absent acceptance of this recommendation, Church urges grant of both applications for renewal, provided, in addition to daytime only hours, KTW's license authorizes operation as set forth above in this paragraph.

5. Bureau, in concluding that the hours to be gained by KWSC for its nighttime operation could "be as few as 5 or 6," urges that the "share-time arrangement, which apparently satisfied both parties for such an extended period of time, should not be disrupted."²⁹ Recognizing that a grant of University's request to abrogate the arrangement would result in "a grant of a needed service in certain areas," Bureau nevertheless does not adjudge this factor "of sufficient significance to justify terminating the share-time arrangement," in the alleged absence of evidence establishing "any compelling reason which would warrant disrupting the broadcast service * * * [rendered] * * * over the past 30 years." Bureau urges, however, that since KWSC discontinues broadcasting at 11:10 p.m. and proposes to continue this schedule, "it would be equitable to permit KTW to broadcast from midnight to 4 a.m. for so long a time as KWSC does not utilize these nighttime broadcast hours * * * the license of both stations [to be] modified to specify that KTW shall operate for 24 hour periods on Sundays and nine holidays (New Year's Day, Lincoln's Birthday, Washington's Birthday, Memorial Day, Fourth of July, Labor Day, Veterans Day, Thanksgiving, Christmas) and each Thursday from 7:30 p.m. to 10:30 p.m. and during such other nighttime hours as KWSC is not operating * * * KWSC [to] give KTW not less than 10 days notice prior to changing its nighttime hours."

6. Since the stations cannot operate simultaneously at night, it is necessary to determine whether section 307(b) requires that their sharing of nighttime be eliminated or in what manner the continued sharing of nighttime hours would best serve the public interest, convenience, and necessity. To comport with these allocation principles, it is necessary (see also par. 12, *infra*) to look to the needs of the areas served by the respective stations and the communities in which they are located for the reception and transmission services which they provide during nighttime hours, and to the efficiency of the proposed operations. A determination as to need under 307(b) is not necessarily

²⁸ To take into consideration a proposal such as this in the ultimate determination of the issues specified herein on the basis of Church's proposal for the sharing of time with University in its subject renewal application (1956), and its amendment thereto (1959) reflecting substantial changes (see par. 1 of findings of fact), raises serious questions as to procedural safeguards accorded the parties in adjudicatory proceedings. In view of the ultimate disposition herein, it is deemed unnecessary to deal with the problems thus presented.

²⁹ It should be noted that Bureau's proposed findings of fact only deal with engineering matters, and that under the share-time agreement KTW was not allowed to operate during daytime hours except on Sundays and specified legal holidays.

confined to engineering considerations alone. (*Star of The Plains Broadcasting Company v. Federal Communications Commission*, 105 U.S. App. D.C. 352, 267 F. 2d 629.) As found, KTW presently provides nighttime service to a smaller area (434 as against 1,820 square miles), but a much larger population (803,648 as against 59,950 persons) than does KWSC. The population of Seattle, moreover, is much greater than that of Pullman. In the limited sense that it serves more persons, KTW operates more efficiently. However, such consideration may only be accorded slight weight in view of the fact that the entire area served by KTW is served by a minimum of 6 and a maximum of 10 other standard broadcast stations.

7. The need for the reception of the service provided by KWSC is greater than that for KTW. Whereas the minimum number of other services in the area served by KTW is 6, 17,834 persons in an area of 521 square miles receive nighttime primary service from no other station than KWSC; in addition, 11,743 persons residing in an area of 455 square miles receive primary service from only 1 other station. At no point in the KWSC service area is service rendered by more than three other stations. A similar result follows from comparison of the other primary services currently available nighttime to the cities of Seattle and Pullman. Pullman receives no other primary service nighttime than that provided by KWSC, while six Seattle standard broadcast stations serve all of the area served by KTW, and a seventh serves over 75 percent of the area served by KTW. This last analysis is also pertinent to consideration of the relative needs of Pullman and Seattle for the transmission service (or outlet for local self-expression) which will be provided by the respective applicants at night. The *Plains* case holds unequivocally that the Commission may validly presume a need for transmission service where no other local stations are shown to exist, so that an important need for the service of KWSC has validly been established. A valid need may be presumed for the reception service provided by KWSC, since a substantial number of persons within its service area receive service from no other station, and the elimination of such "white" areas has been accorded high priority by the Commission in its application of the section 307(b) allocation principles. For a more recent general statement by the Commission, which points to the importance that has been attached to "white" areas, see *Report and Order* released September 19, 1958 (Daytime Standard Broadcast Stations), 17 R.R. 1669, 1694. On the other hand, the engineering considerations herein (see pars. 6-9 of findings of fact) do not, in this context, establish any need whatsoever for either the reception or transmission service rendered or proposed by KTW. For the *Plains* case holds that absent a valid "section 307(b) presumption," present and proposed programs are an essential element in testing comparative community needs.

8. In considering the record as to the needs of Seattle and Pullman for the programing proposed by the respective applicants, it is apparent that Church has failed to establish a need for its service sufficient to outweigh the presumptive need for the University service; indeed, the programing evidence itself establishes a greater need for the programing of KWSC. In the *Plains* case, need of a community

or area which already has service cannot be determined without reference to the service already available. Prior to the commencement of the instant hearing, the Commission suggested the manner in which it believed that licensees (or prospective licensees) should attempt to ascertain the programing needs and tastes of the populations to be served. (*Commission Policy on Programing*, issued July 29, 1960, 20 R.R. 1901.) Accordingly, a proper showing of need for the KTW service would require (1) establishing the need in accordance with that policy, and (2) establishing that the need is not already being adequately served by other stations in accordance with the holding in the *Plains* case. KTW has failed to do either. The only evidence that there is a need for the after-sunset service of KTW is the assertion of opinion by its new station manager, and the opinion of one of its ruling elders, that its religious programs are of benefit to members of its congregations. Such a showing cannot satisfy the Commission's criteria. Moreover, Church has failed to establish that the service which it proposes is not, for the most part, already being rendered by other Seattle stations. It admits that there is some after-sunset classical music and religious programing being presented by other standard broadcast stations in Seattle. It asserts that no other such standard broadcast station broadcasts consistently scheduled educational programs, but neither does Church propose to do so, and no other such station presents programs about the arts. However, cultural programs of all kinds are presented by FM stations in Seattle, a pertinent consideration in cases of this kind. (See *Easton Publishing Co. v. Federal Communications Commission*, 85 U.S. App. D.C. 33, 175 F. 2d 344, 349, 351.) Thus, it must be concluded that although the existing and proposed program service of KTW is meritorious, no particular need therefor has been shown.

9. KWSC, on the other hand, is located in an isolated area which, to a large extent, must rely on that station for news, emergency announcements, late weather forecasts, and urgent matters of all kinds. No newspapers are published in Pullman, and large parts of the KWSC service area are so isolated that newspaper delivery from other communities is slow and rather late. The entire area suffers from a paucity of cultural offerings; it is essentially devoted to agricultural and supporting services and education. The needs of all these groups and interests are served by KWSC. When it is not operating in the evening hours there is no medium for conveying to the population of Pullman, or to large parts of the KWSC service area, late news, weather, emergency announcements, coverage of athletic events, and the cultural offerings which are provided in the entire area only by University and the University of Idaho.

10. Does the need for the KWSC service outweigh that for the service of KTW after sunset? Church has contended that University's failure to utilize the hours after midnight on a regular basis derogates from a conclusion of greater need for the KWSC service. Whatever weight should be accorded that consideration, it is concluded that even without regular after-midnight broadcasting by KWSC, it is deemed more important that that station be in a position to broadcast because of the isolated nature of the area in which it is

located and the paucity of other media of communication therein, and that the possibility for further expansion of its regular hours of operation be preserved rather than that another broadcast station, authorized to operate during the early hours of the morning, be allocated to Seattle. That city already has a multiplicity of full-time stations. Insofar as the Thursday and Sunday night religious programming of KTW is concerned, it should be noted that, with all due regard to those of Church's 1,300 members of its congregation which cannot attend the church service itself, no particular need for this programming has been established. Although no other church in Seattle broadcasts a religious service on Thursday night, and although this particular service is of admitted religious significance to Church, there is otherwise no shortage of religious programming in Seattle on Sunday, and it has not been established on this record that there is any particular need for religious programming on Thursday evening.

11. It thus appears that effectuation of section 307(b) requires the conclusion that KWSC be authorized to operate unlimited time and that the operation of KTW be limited to daytime-only hours. In view thereof, no comparison is necessary of the program proposals of the two applicants, as might be the case if they served essentially the same area. (*Federal Communications Commission v. Allentown Broadcasting Corp.*, 349 U.S. 358; cf. *WOAX, Inc. (WTNJ)*, 4 R.R. 344, with *Foulkrod Radio Engineering Co. (WTEL)*, 4 R.R. 1061.)³⁰

12. The discussion of the effectuation of section 307(b), set forth supra, treats the applicants as though they were applying for new facilities without regard to the fact that the Commission is here considering a revision of a share-time arrangement which has existed for many years. However, examination of past Commission determinations with respect to share-time arrangements demonstrates that this approach is appropriate. Relatively recently (1958), the Commission had occasion to state that although its rules provide for share-time operations, it has in the past asserted that share-time operations do not represent a healthy situation and are not to be encouraged. (*WHEC, Inc.*, 14 R.R. 150, 181, and cases there cited.)³¹ In the cases in which the Commission has consistently stated its general disapproval of share-time arrangements, it appears that despite such disapproval the Commission in several instances permitted share-time arrangements to continue. However, careful analysis of these cases demonstrates that the Commission's ultimate determinations therein

³⁰ The reallocation proposed in the show cause order dated Feb. 5, 1947 (docket No. 5893-4511 corrected), on which the *WOAX* proceeding was based (official notice thereof is herewith taken), was ultimately adopted by the Commission (4 R.R. 392b, 392c); in that situation the only station in Asbury Park and the only station in Camden shared time with the second station in Trenton. The Commission determined that sec. 307(b) required that the sole stations in Asbury Park and Camden be awarded unlimited-time operation, and the second station in Trenton be awarded daytime only. Even with respect to the two Philadelphia stations involved in the *Foulkrod* case, the Commission ultimately required one of the stations to operate full time and the other daytime only even though they were located in the same community. In the *WOAX* case, where the Commission considered revision of share-time arrangements among stations located at the indicated communities, it did not compare the proposals or qualifications of the applicants, whereas in the *Foulkrod* case, which involved revision of a share-time arrangement between two stations in the same community, it did make such a comparison (see also the *Pulitzer* case, *supra*).

³¹ It should be noted that the *WHEC* case, *supra*, involved a request for share-time operation in the television service at a time when television service was scarce, and that the Commission did authorize such an arrangement. The factors which led the Commission to that result have no applicability in the instant case.

were based on facts not present here. Thus, in the *Pulitzer* case, *supra*, the Commission refused to grant an application by one of two share-time stations in which it sought unlimited-time operation because "sound reasons in the public interest must exist as a basis for the deletion of a station," and in that case no such reasons were found present.³² Similarly, in the *Voice of Brooklyn* case, *supra*, which ultimately involved three share-time stations which served the same area, the Commission refused to assign the time of two of them to the third because none of the stations had rendered a service which could be deemed highly meritorious, and the station seeking additional time had not shown that it was qualified to render a service more efficient than the others. The Commission did, however, suggest that a decided improvement was needed in the broadcast service rendered to Brooklyn on the frequency involved, and it invited the applicants to form a single organization to supplant the existing stations with a single one. Again, in the *Metropolitan* case, *supra*, the Commission refused to award the time of one share-time station to its share-time partner, stating:

* * * the Commission is not to be construed as departing from its position that time-sharing stations do not represent a healthy situation and are not to be encouraged. The Commission does feel, however, that there is nothing in the record to warrant the economic death penalty on either station at the instance of the other.

13. It thus appears that the cases in which the Commission refused at the instance of one share-time station to award it the time utilized by another involved (1) situations where the stations were serving the same community, and thus the entire matter was not the subject of a 307(b) determination; and (2) situations where, if the request were granted, the second station would have been eliminated. The instant case does not fall in these categories. The applicants herein serve different areas and the Commission has ordered a determination on the basis of section 307(b) considerations. Moreover, this is the last phase of an overall consideration of the share-time arrangement between University and Church under which both stations have been already awarded authorizations to operate during daytime hours. A grant of University's request will neither bring about KTW's demise on economic grounds³³ nor the deletion of that station. As found, during the first 25 years that these applicants were sharing time, University did at no time request authority to utilize time allotted to Church. Only when Church applied for a daytime authorization, the grant of which increased its hours of operation over those which it has previously utilized under the share-time agreement, did University request use of the nighttime hours. University has never sought the deletion of KTW; it urges only that with the acquisition by KTW of daytime hours of operation, fair and efficient allocation on this frequency requires that KWSC be awarded an unlimited time authorization.

³² Though the *Pulitzer* case, *supra*, involved stations in St. Louis and Clayton, Mo., both stations were located in or near and served the same community [St. Louis]; in that case the Commission compared their operations and found no sufficiently significant distinctions between them as to warrant a clear preference for one over the other.

³³ No evidence whatsoever was introduced concerning the economic effects on KTW of a grant of University's proposal.

14. In light of all the foregoing, it is concluded that KWSC and KTW may not operate simultaneously at night; that the needs of the respective communities, areas, and populations involved establish that under section 307(b) the share-time arrangement between KWSC and KTW should be abandoned in favor of an arrangement under which KWSC operates unlimited time and KTW operates daytime only; and that consequently the public interest requires the grant of the subject applications of University and the partial grant of the application for renewal of license of Church to the extent that its license be renewed, but that it be limited to daytime-only operation.

Accordingly, *It is ordered*, This 17th day of March 1961, that unless an appeal to the Commission from this initial decision is taken by any of the parties, or the Commission reviews the initial decision on its own motion in accordance with the provisions of 47 CFR 1.153, the applications of Washington State University (1) for renewal of license of station KWSC (and aux.), filed October 26, 1956, and (2) for modification thereof, filed November 10, 1958, *Are granted*; and that the application of the First Presbyterian Church of Seattle, Wash., for renewal of license of station KTW, filed November 5, 1956, as amended November 3, 1959, *Is granted* to the extent that its license of station KTW be renewed, limiting it, however, to daytime-only operation.

32 F.C.C.

RADIO ASSOCIATES, INC., DOCKETS Nos. 10844 AND 10845:

Grant by the Commission on August 6, 1957, to Radio Associates, Inc., for a new commercial TV station (channel 13), Biloxi, Miss.; set aside. Application of WLOX Broadcasting Co. for a new commercial TV station at Biloxi, Miss.; granted. Competing application of Radio Associates, Inc.; denied.

Standard comparative issue.—Showings as to broadcast experience, integration of ownership and management, local residence, civic participation, diversification of business interests, staff, studio, equipment, programing, and past performance.

Financial qualification.—Financial proposal; considered.

Principals.—Status of major creditor as.

BEFORE THE**FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON 25, D.C.

In re Applications of
RADIO ASSOCIATES, INC., BILOXI, MISS.

WLOX BROADCASTING Co., BILOXI, MISS.
For Construction Permits for New Commercial Television Broadcast Stations (Channel 13)

Docket No. 10844
File No. BPCT-1150
Docket No. 10845
File No. BPCT-1157

APPEARANCES

Maurice R. Barnes and *Dwight E. Rorer*, of Washington, D.C., on behalf of Radio Associates, Inc.; *Eliot C. Lovett*, of Washington, D.C., and *Howard A. McDonnell*, of Biloxi, Miss., on behalf of WLOX Broadcasting Co.; *Robert J. Rawson*, *Thomas B. Fitzpatrick*, *P. W. Valicenti*, and *John A. Cooper*, on behalf of the Chief, Broadcast Bureau, Federal Communications Commission.

DECISION

(Adopted January 10, 1962)

BY THE COMMISSION: CHAIRMAN MINOW CONCURRING AND ISSUING A STATEMENT; COMMISSIONER HYDE DISSENTING AND ISSUING A STATEMENT; COMMISSIONERS BARTLEY AND LEE NOT PARTICIPATING; COMMISSIONER CRAVEN ABSENT.

PRELIMINARY STATEMENT

1. This is a comparative proceeding involving competing applications by Radio Associates, Inc. (Radio Associates), and WLOX Broadcasting Co. (WLOX) for a new television station at Biloxi, Miss. It is on remand from the court of appeals and from the Commission for determination of further issues.

2. The following precis outlines the long history of this proceeding and brings it to its current stage of development: an initial decision (FCC 54D-50) released July 7, 1954, preferred Radio Associates; the Commission on review reopened and remanded the proceeding (10 R.R. 1118(a)) for inquiry inter alia, into a proposed loan to Radio Associates by Edward Ball (Ball), a 1½ percent shareholder; a second initial decision released June 5, 1956 (FCC 56D-43), and subsequent Commission decision released August 6, 1957 (23 FCC 217), still favored Radio Associates. The Commission decision was appealed to the court of appeals which reversed and remanded with instructions (*WLOX Broadcasting v. FCC*, 260 F. 2d 712, 17 R.R. 2120 (1958)); The Commission again reopened the proceeding and remanded it for further hearing and issuance of a supplemental initial decision on the issues specified in paragraph 4, infra (FCC 59-422). The supplemental initial decision (FCC 60D-155) released December 8, 1960, proposed affirmance of the grant to Radio Associates.

3. WLOX, Radio Associates, and the Commission's Broadcast Bureau (Bureau) filed exceptions and supporting briefs to the supplemental initial decision. Oral argument thereon was held before the Commission, en banc, on May 18, 1961. Our rulings on the exceptions are set forth in the appendix to this decision.

4. The following issues were designated for the further hearing herein:

(1) To determine the terms and conditions of the existing loan agreement between Edward Ball and Radio Associates;

(2) To determine in the light of any additional evidence which may be introduced whether Edward Ball should be treated as a principal of Radio Associates;

(3) To determine whether Radio Associates is financially qualified to construct, own, and operate the facilities applied for; and

(4) To conclude on the basis of the foregoing determinations whether the Commission's grant to Radio Associates hereinbefore made should be affirmed or otherwise disposed of.

Correspondingly, the examiner found (1) the Ball-Radio Associates agreement clear in its terms and conditions; (2) that Ball is a principal of Radio Associates because of the magnitude of his position in the financial proposal, but that his proposed relationship and, as the examiner found, his nonprominence with respect to that applicant's operational and managerial authority, does not justify his being treated as such for comparative purposes; (3) that Radio Associates is financially qualified; and (4) that the previous grant to Radio Associates should be sustained.

5. The findings have been examined in light of the exceptions, and with the changes and modifications noted in this decision and the appendix, they are adopted. In addition, we find on the basis of the information before us, that the applicant WLOX is financially qualified to construct and operate its proposed station.

6. The conclusions have also been reviewed in light of the exceptions; however, since we are in disagreement with some of the ultimate determinations and the ultimate determination reached, they are adopted only to the extent reflected in the ensuing opinion.

7. As a basis for determining Radio Associates' financial qualification and Ball's participation as a principal, it would conduce to an orderly approach to summarize briefly the pertinent features of the loan agreement insofar as they can be ascertained from the record. By verbal agreement Ball would lend either Radio Associates or Odes E. Robinson,¹ president, director, and primary shareholder (approximately 62 percent) of Radio Associates, up to \$300,000 for construction and operation of the proposed station, the funds to be advanced in installments as the situation develops and the need for the money, as determined by Ball and Robinson, should arise. A note executed by Radio Associates and endorsed by Robinson with interest accruing at 4 percent per annum would be given to Ball. Repayment thereon would be due 2 years from the date of the last advance. As security Robinson would pledge shares he owns in Radio Associates equaling 55 percent of the outstanding stock. As legal owner of the stock applied as collateral, Robinson would vote it. Payment on the loan would be from station earnings, although a promised loan of \$40,000 to Radio Associates by Robinson could be used to help repay Ball. No understanding exists should it happen that the indebtedness to Ball be not satisfied at maturity.²

8. WLOX and the Bureau claim that Radio Associates' financial proposal constitutes Ball a principal and dominant force in Radio Associates, and that he should be so treated in the standard comparative consideration of the applicants. They contend that upon a re-evaluation, taking Ball into account, the preferences formerly awarded to Radio Associates in the comparative areas of broadcast experience and integration of ownership with management would be so watered down by Ball's inexperience and nonintegration that the overall advantage accredited to Radio Associates would be largely dissipated and a reversal of the outcome and grant in favor of WLOX would be required.

9. We adopt the supplemental initial decision insofar as it finds that Radio Associates will be bound directly or indirectly to Ball to the extent of the amount of the loan. Certain aspects of the loan arrangement have not been clearly established (footnote 1, supra), and, therefore, the Commission does not agree with the examiner that

¹ There is some confusion as to the parties to the loan. Finding 7 of the supplemental initial decision quotes a written statement by Ball agreeing to lend money to Radio Associates; finding 8 paraphrases Ball as denying such an arrangement, and finds in the sixth sentence thereof that Ball is lending the money directly to Robinson with Radio Associates as beneficiary; footnote 3 quotes Ball as testifying, "I would loan it [the money promised] to Mr. Robinson, who, in turn, I understand, would loan it to Radio Associates." It appears from the third sentence of finding 8 that Radio Associates will execute a note (presumably to Ball) endorsed by Robinson, thereby creating the somewhat peculiar situation of a debtor [Radio Associates] executing a note to a lender [Ball] with whom it is not in privity while not executing a note to its lender [Robinson]. Ball's testimony on the matter does not clarify the proposed loan arrangement in this respect (Tr. 1315-1318). All that definitely may be deduced from the foregoing is that Ball will formally lend money for use by Radio Associates and hold a note (endorsed by Robinson) from Radio Associates.

² Ball expressed at one point a willingness to negotiate with Robinson an extension on the loan "that would be mutually satisfactory" (Tr. 1318) in the event of Radio Associates' inability to repay at maturity. On the other hand, when asked whether he intended to "see that he [Robinson] gets another loan," Ball testified, "No, not me; I thought he could arrange it because of his experience in the radio field, and by that time in the TV field, and with his wide acquaintance, to refinance himself" (Tr. 693). Moreover, Ball testified that if Robinson could not refinance the loan, he [Ball] would not surrender his right to foreclose thereon (Tr. 694).

all the terms of the loan agreement are definite. For the purpose of this decision, however, greater precision in the details is not essential, it being sufficiently clear from the record that some manner of obligation in the form of the contemplated loan would run from Radio Associates to Ball.³

10. In addition to having a financial interest in Radio Associates, Ball would be in a position enabling him to participate in and exert influence over the proposed operation. Thus, (a) he would be entitled to render business and financial advice on the conduct of station affairs (a fact which standing alone is not too meaningful, but which gains importance since Ball has not foreclosed the possibility of extending the loan should that be necessary (see footnote 2, supra)); (b) he would be entitled to receive monthly financial reports on the station which, if unfavorable, would prompt him to increase his business advice and, more significantly, to undertake to advise on programing if he viewed existing programing policies as contributing to any dearth of revenue or as not being in the public interest;⁴ and (c) he, jointly with Robinson, would determine when the funds made available by the loan are to be advanced to the applicant. With these prerogatives reposing in Ball, it is clear that he will be in a position to and can be expected to influence station operation, particularly in the areas of programing and business management.

11. On the basis of the foregoing, the Commission does not agree with the examiner that Ball's status is parallel to that of a bank (conclusions 28-33, inclusive of the supplemental initial decision). We find and conclude instead that Ball represents in the fullest sense of operational control the type of principal who is a significant factor of great importance in the comparative assessment of the applicants.⁵ Issue (2) herein is thus resolved in the affirmative. There is sufficient evidence in the record and findings in the initial decisions and the supplemental initial decision relative to Ball upon which to base an appraisal of his merits and demerits as they affect Radio Associates vis-a-vis WLOX.

12. The conclusion in the Commission's decision of August 6, 1957 (10 R.R. 1073), founded upon a comparison of the applicants and their proposals without treating Ball as a principal, may be recapitulated as follows: WLOX won advantages, all of which were slight, in *local residence* (due to virtually complete proprietary local residence over a great number of years against a decidedly shorter duration of local residence for the majority of Radio Associates' principals); *civic participation* (greater number and percent of WLOX principals in local civic activities); and *diversification of*

³ We are in agreement with the examiner's comment in footnote 9 of the supplemental initial decision to the extent that notwithstanding its oral character, there is for our purpose a loan agreement of which we may take cognizance.

⁴ Ball testified at Tr. 629-630 that "If I found that the programing was not in the public interest, I would immediately give advice to change it to where in my opinion it would be in the public interest." Responding to a question as to whether he would call the station's failure to produce revenue an appropriate time to increase his business advice, Ball stated "Yes" (Tr. 627-628).

⁵ It should be emphasized that this conclusion is arrived at solely on the grounds of the financial arrangement and the special powers and authority bestowed upon Ball due thereto (par. 10, supra) and altogether independent of Ball's minuscule stock interest in Radio Associates. None of the influence Ball will be in a position to exert arises from his very small stockownership participation in the applicant.

business interests (WLOX composed of dentist, attorney, physician, and automotive, hotel, and broadcast interests against Radio Associates' hotel and broadcast interests). Conversely, Radio Associates was deemed decisively superior in *broadcast experience* (on basis of more extensive experience of Robinson and his wife (shareholder and officer) over that of the WLOX management) and *integration of ownership and management* (approximately 65 percent of the Radio Associates' ownership represented in management, whereas approximately 2 percent of the WLOX ownership is so represented). In the remaining criteria considered—past performance, programing, and staffs, studios, and equipment—no palpable distinctions were found and thus neither applicant prevailed thereon.

13. In view of the determination that Ball should be treated as a principal, several areas of comparison must be reexamined; these are integration of ownership and management, broadcast experience, local residence, civic participation, and diversification of business interests.⁶ In the remaining areas of comparison the presence of Ball as a principal would have no perceptible bearing and the previous evaluations are left intact.

14. There will be no change in the comparative advantage previously awarded to WLOX for diversification of business interests, for Ball's activities as a hotelman were weighed in making that comparison.

15. The preference granted Radio Associates, in our earlier decision, for superior integration of ownership with management was based primarily upon the participation of Robinson, president and 62.8 percent stockholder. He intends to devote his full time to the television station as its general manager. There is nothing in the record now before us to indicate that the scope and nature of Robinson's intended activities have changed, but there are facts which show that in certain major respects the control which Robinson, as owner of the station, would be expected to exercise will be diluted, or possibly eliminated, by intervention of Ball, the major creditor. The facts found in paragraph 10, *supra*, demonstrate this beyond question.

16. With Ball and Robinson determining jointly when funds made available by the loan are to be advanced, and with Ball being entitled to receive monthly financial reports and to give business and financial advice (and to increase this advice should the financial reports be unfavorable), there can be no doubt that the control over expenditure and use of funds for the construction and early operation of the station will be divided between the two men and that no major activity in any way affecting the fiscal status of the station during the loan period can be undertaken without the tacit, if not the express, approval of Ball. Ball's intention to increase his business advice should the monthly financial reports not strike him as favorable, to advise on programing

⁶ The examiner confined his determination of whether circumstances warranted treatment of Ball as a principal to the criteria of integration of ownership and management and broadcast experience, the two areas wherein Radio Associates formerly was preferred. WLOX and the Bureau did not urge that a broader consideration of the impact of Ball's participation was required under the comparative issue. Apart from the ultimate answer to the question, we regard this limitation as incorrect. It is relevant and necessary to decide also whether Ball should be treated as a principal for the other criteria where principals are important, since the overall comparative qualities of the applicants and the outcome in the proceeding could possibly thereby be changed.

if he views existing program policies as contributing to the financial situation and, where he finds that programing is not in the public interest, to advise changes to where it would in his opinion be in the public interest, show that Ball's role can be expected to be active rather than passive. His control over the financial resources and the fact that he has not foreclosed the possibility of extending the loan should that be necessary are persuasive assurances that his advice and recommendations will be followed.

17. In the face of these considerations we think it plain that Ball's influence upon and control over the management of the proposed station during its early operation and for the duration of the loan would be substantial and in many situations direct rather than indirect. Robinson, though ostensibly the owner-manager responsible for day-to-day operation of the station, would be under the supervision and direction of Ball to a substantial degree. Thus, while Robinson will continue to participate full time as manager of the station, the significance of his integration in terms of the licensee responsibility that it will insure is materially lessened. Applying this conclusion to the comparison of the two applicants on the integration factor, the substantial superiority previously accorded Radio Associates must be revised. WLOX has only one stock subscriber (1.5 percent) participating full time in the daily management of its proposed station. The president, with 44.6 percent of the stock, will limit his participation to decisions on policy matters. Since Radio Associates' majority stockholder, Robinson, will participate full time in the day-to-day management of that proposal, even though the significance of his managerial activities is reduced by the control exercised by Ball, it is still entitled to a preference in this area, but the preference is small.

18. The previous evaluation of the two applicants with regard to the broadcast experience of the principals must also be revised. In the earlier decision, Radio Associates was found substantially superior⁷ upon consideration of stockownership, quality and quantity of experience, and the application thereof to station policy and operation.⁸ However, this evaluation did not take into account the experience of Ball who, we have decided above, must be treated as a principal. He has no broadcast experience. The degree of control he will exercise makes his lack of experience in the field of particular significance and to a large extent dilutes the effect Robinson's experience would otherwise be expected to have in the construction and operation of the station. Although Mr. Love, the largest stockholder and the president of WLOX, will not engage full time in the day-to-day operation and management of the proposed station, he will participate on the policy and advisory level and bring to this the experience he has acquired in the operation of the WLOX standard broadcast station. Combining the experience of Love and Butterfield, the proposed full-time manager, and weighing it against the experience of Robinson and the inexperience of Ball, we conclude that the preference previously given to Radio Associates must be withdrawn and the two applicants held equal in broadcast experience.

⁷ 23 FCC 217, p. 250; 10 R.R. 1073, p. 1110.

⁸ 23 FCC 217, p. 248; 10 R.R. 1073, p. 1107.

19. The former preferences for WLOX respecting local residence and civic participation are strengthened, for Ball will not reside in Biloxi and has no record, apart from participation in the chamber of commerce, of civic activity in that city.

20. WLOX emerges from the new comparison with pronounced gains in local residence and civic participation (important because of the presumptive assurance that these factors afford that there will be an awareness and responsiveness to local needs), and in addition to the now rather considerable edges it has in these areas, there are very definite gains by WLOX in broadcast experience (to the point where the applicants must be regarded as equal) and integration of ownership and management. The WLOX gains are not counterbalanced by any gain for Radio Associates. In fact, elimination of Radio Associates' preference in broadcast experience leaves that applicant possessing a very modest advantage only in integration of ownership and management. In the comparative areas unaffected by the recomparison, WLOX retains its advantage in diversification of business interests and there is equality of the applicants in the remaining areas. Upon an overall weighing of the cumulative consequence in the new perspective and the realigned comparative criteria, we conclude that WLOX gives greater assurance of the effectuation of its proposal and that a grant of its application would better serve the public interest.

21. Turning next to the Radio Associates' financial qualification, we note that drawing upon comments by the court as to the financial stress to which Radio Associates would be put in repaying the loan, WLOX insists that the applicant is not financially qualified. We read the court's opinion to hold merely that the question should have been considered in the hearing and that there were insufficient basic financial findings made to justify the Commission's prehearing finding of financial qualification. A financial issue was included to conform to the court's opinion.⁹ The supplemental initial decision contains basic findings on this matter (findings 16-21). We adopt these and the conclusions drawn therefrom (conclusions 15-24) as modified by our ruling on the exceptions. On the basis thereof, we hold Radio Associates to be financially qualified.

22. There is proof that the necessary money to construct and operate the station for the initial period (approximately 90 days) before the income of supporting revenues can reasonably be expected is available. It may be said that Radio Associates' ability to repay the loan within the time specified without arranging refinancing is very dubious because of the large sum (maximum of \$300,000) that could be involved. However, the existence of this possibility does not require the conclusion that Radio Associates is not financially qualified, for the Commission's policy has long been to require only that an applicant show sufficient funds to construct and operate for a reasonable period of approximately 90 days. Beyond this, the success and progress of the

⁹ It is noted that the court referred specifically to an issue looking into " * * * whether the funds available to the applicant give reasonable assurance that the proposals * * * will be effectuated." This issue contemplates the reality of the financial proposal; i.e., assuming the proposed funds are available, are they adequate to accomplish the proposal? The financial issue added on remand by the Commission was not limited to the sufficiency question.

station in obtaining revenues becomes the significant factor bearing upon long-range financial stability of a station, and the question becomes one of financial success as an operating station rather than one of financial qualification. Moreover, to predict in this area with any degree of accuracy is virtually impossible, for the outcome depends upon such factors as the business acumen of the managers and owners, the competitive and business climate, the network situation, and the like.

23. The court directed that the Commission reexamine the financial qualifications of Radio Associates, making basic and ultimate findings with respect thereto. This has been done. It was further directed that Edward Ball be considered a principal unless additional evidence showed otherwise. We have concluded that he must be treated as a principal for comparative purposes to the extent indicated herein, and that on the basis thereof the Commission's order granting the construction permit to Radio Associates and denying it to WLOX should be and is set aside and the application of WLOX should be granted.

Accordingly, *It is ordered*, This 10th day of January 1962, that the grant heretofore made by the Commission on August 6, 1957, to Radio Associates for a construction permit for a new television station to be operated on channel 13 in Biloxi, Miss., *Is set aside*; and that the application of WLOX Broadcasting Co. for those facilities *Is granted*, and the competing application of Radio Associates therefor *Is denied*.

APPENDIX

RULINGS ON EXCEPTIONS

Exceptions of WLOX

<i>Exception No.</i>	<i>Ruling</i>
1, 7, 12-----	Denied, of no decisional significance and argumentative in nature.
2a-----	Denied. Finding 16 adequately sets forth the facts and findings contended for.
2b, 2c-----	Granted to the extent consistent with par. 7 and footnote 2 of this decision. Finding 9 of the supplemental initial decision is modified to include findings: "No understanding exists as to any refinancing or loan extension; Ball expressed at one point a willingness to negotiate with Robinson an extension on the loan, yet on the other hand he felt that Robinson could arrange it himself because of his experience in radio and television and his wide acquaintances" (Tr. 1318 and 693, respectively).
3-----	Denied as reflected in footnote 3 of this decision, and in other particulars on the grounds that Ball's past contractual experiences as a reason or explanation for there being no written agreement herein have some bearing.
4-----	Denied. Having heard the testimony of Ball and having noticed his manner and demeanor, the examiner is permitted to set forth his observations with respect to particular statements by that witness, especially where WLOX raised in its proposed findings and conclusions a question with respect thereto. WLOX in reference to the subject testimony in its proposed findings and conclusions admits, contrary to its exception, that some

Exception No.

Ruling

- ambiguity may exist regarding said testimony. The examiner felt called upon, therefore, to venture his assessment of the testimony in question.
- 5a----- Granted to the extent that the contradicting testimony by Ball in the record (not alluded to by the examiner) revealing that Ball reserves some voice in programing (Tr. 629-630) should also be included in finding 13. Finding 13 of the supplemental initial decision is therefore modified by including after the reference to Ball's statement that "He will have no voice in programing" the following: "However, he indicated that should the programing in his estimation be not in the public interest or be contributing to unsatisfactory station income, he would immediately give advice on programing."
- 5b----- Granted to the extent shown in par. 10 of this decision, and by the following modifications of the examiner's findings: in par. 13, strike sentences 8, 10, 11, and substitute the following: "The proposed station would be built at Biloxi near the Edgewater Hotel, currently owned by Ball. Ball does not expect to spend any time at the station, but would render business and financial advice to Robinson on station affairs."
- 6----- Granted to the extent that after the first sentence of par. 14 of the findings, insert the following: "As noted hereinbefore, Ball particularly would increase his business and financial advice and would undertake to advise on programing should he regard existing programing policies as causing unsatisfactory revenue or as not being in the public interest"; denied as to the remainder since Ball's personal understanding of the agreement is material insofar as it may evidence the existence of a contract. This does not, however, vary our opinion expressed in pars. 10 and 11 of this decision that the legal effect of the prerogatives resting in Ball under the agreement vest him with some degree of control over the station.
- 8----- Granted by striking all of par. 20 of the findings, and substituting therefor the following: "The financial picture of the Radio Associates' second year's operation was projected by using estimates for revenue and expenses identical to those of the first year of operation. On this basis, such factors as increase in income, effect of the Robinson loan, curtailment of expenses, success of operation, amount of the \$300,000 Ball loan needed, or like things are not provided for. It would entail speculating on presently immeasurable elements beyond the requirements of this proceeding and the financial issue to predict Radio Associates' financial fare and fiscal responsibility during and at the end of the second year of operation. No separate calculation for the second year is provided on the record. The Commission must rely upon the financing proposal set forth in the Radio Associates' application from which the findings in the initial decision have been drawn and upon which our subsequent conclusions are founded."
- 9----- Granted. "Would be solvent" in finding 21 is stricken.
- 10----- Granted. The 4th sentence, et seq., of conclusion 2 is deleted. The following is substituted: "Except for the written statement by Ball that he would lend \$300,000 to Radio Associates (Radio Associates exhibit III-D), there is no written memorandum of the

Exception No.

Ruling

- agreement. We construe the statement by the court that 'the * * * loan agreement should be in writing, with terms and conditions fully expressed, as admonishing that in view of the complexity of the loan arrangement and in order to permit a more thorough understanding and interpretation of the arrangement, a written memorandum thereof would be advisable and desirable. In accordance therewith, our remand order similarly regarded a written memorandum of the agreement. Notwithstanding these persuasions and the Mississippi Statute of Frauds (sec. 264, Mississippi Code Annotated, 1942), Radio Associates submitted no documentary evidence of the agreement in the further hearing. This fact does not disqualify the applicant but, insofar as our consideration of the issues of financial qualification and Ball's status as a principal are concerned, any ambiguities or uncertainties regarding the agreement must be resolved against Radio Associates."
- 11----- Granted by including the words "according to the joint determination of Robinson and Ball" at the end of the 3d sentence of conclusion 3.
- 13----- Denied. The court's opinion is clear and a verbatim reproduction of its observations respecting Ball as a principal is not necessary.
- 14----- Granted. See par. 11 hereof.
- 15, 16----- Denied. See par. 21 hereof.
- 17----- Granted to the extent that any conjecture or speculation concerning renewal of the loan and predictability of success in VHF operations is deleted from pars. 21, 22, and 23 of the conclusions; denied in other particulars in accordance with par. 21 hereof.
- 18----- Denied. The Commission agrees with such conclusions.
- 19, 20, 22----- Granted to extent reflected in this decision.
- 21----- Granted insofar as concerns the question of Ball's status as a principal and recomparison of the applicants (rulings on WLOX exceptions Nos. 19 and 20, and in accordance with this decision); denied to the extent that the proposed conclusions on the financial issue are inconsistent with this decision and the rulings on exceptions, supra.

Exceptions of the Broadcast Bureau

Exception No.

Ruling

- 1----- Denied. Supplemental initial decision adequately reflects record.
- 18, 19----- Denied. Argumentative and of no decisional significance.
- 2, 14----- Granted. The following is added as the last sentence of finding 8 and as the 8th sentence of conclusion 7: "Robinson, however, will give Ball a power of attorney over the stock. The stock is transferable thereby or by endorsement on the company books."
- 3----- Denied. No materiality or relevancy is alleged.
- 4, 5, 9, 10, 11, 15, 29----- Granted.
- 6, 7----- Granted. "Depreciation" is not an "expense." Finding 16 is corrected to the extent that depreciation as an expense item is eliminated and "balance before taxes" corrected to "\$36,000," and "balance after expenses and taxes" corrected to "\$33,434.90."
- 8----- Denied. While the cited case ultimately involved the adequacy of funds (so-called "Evansville Issue") and not an availability of funds, the particular proposi-

Exception No.

Ruling

- tion referred to is pertinent to the question of whether Radio Associates can rely upon Robinson's proposed loan of \$40,000 in its financial scheme.
- 12----- Granted. The 2d sentence of finding 21 is deleted and the following substituted therefor: "The Ball loan of \$300,000 plus the first year revenue exclusive of that earned during the initial period of operation (approximately first 3 months) are sufficient to meet anticipated expenses."
- 13----- Granted. Delete conclusion 1 down to the recitation of the issues, and substitute therefor the following: "The order of remand contemplates that if it is determined that Ball should be treated as a principal, the necessary reexamination of the relative qualities of the applicants in light of the standard comparative criteria and redetermination of the ultimate issues in question should be undertaken. In essence, the issues inquire into three matters specifically:"
- 16, 17----- Granted as reflected in this decision.
- 20----- Granted. Strike the words "first few weeks of operation" in conclusion 18, sentence 3, and substitute therefor the following: "period of approximately the first 3 months of operation."
- 20a, 21, 22----- Granted in accordance with pars. 10 and 21 of this decision (see also the ruling on WLOX exception No. 17).
- 23----- Granted.
- 24, 25, 26----- Granted as reflected in this decision.
- 27, 28----- Granted. Strike conclusions 32 and 33 to the extent that they are inconsistent with pars. 10 through 16, inclusive, of this decision.

Exception of Radio Associates

The Radio Associates' exception goes solely to the question of the examiner's concluding that Ball is a principal. It is denied. As our decision and the foregoing rulings on the exceptions illustrate, we concur in that conclusion by the examiner except that with Ball as a principal, Radio Associates' comparative qualifications are so reduced that WLOX's proposal is to be preferred.

CONCURRING STATEMENT OF CHAIRMAN NEWTON N. MINOW

I concur fully in the order granting the application of WLOX and denying the application of Radio Associates, with the exception of paragraphs 21 through 23, which conclude that Radio Associates is financially qualified. When the court of appeals remanded this proceeding to the Commission, it stated that the existing loan agreement between Mr. Ball and Radio Associates "* * * should be in writing, with terms and conditions fully expressed." The record before us contains no such written agreement. The court also stated that "A finding that a small struggling corporation with impaired capital is financially qualified to construct and operate a television broadcast station because one of its stockholders has agreed, largely orally, to lend it \$300,000 to construct the station and operate it for 1 year, when there is no reasonable probability of repaying the loan at its 2-year maturity, strains credulity, to say the least." The record before us shows no greater probability that the loan will be repaid at its 2-year maturity (or that it will be refinanced at that time) than did the record before the court.

I cannot construe the court's direction that the agreement be reduced to writing, with its terms and conditions fully expressed, as a mere

expression of judicial preference. Moreover, whatever the standards of financial qualifications applicable in an ordinary case, the court's ruling and the factors on which it was based render this case unique. Under the controlling terms of the court's mandate, I think there is no alternative to a finding that Radio Associates has not shown itself financially qualified. Accordingly, while I agree that the application of Radio Associates must be denied on comparative grounds, I would also deny that application on this additional noncomparative ground.

DISSENTING OPINION OF COMMISSIONER HYDE

I disagree with the decision in this case in which the Commission reverses the initial decision rendered by the examiner who conducted the original hearing, reverses a second initial decision rendered by another examiner, reverses a supplemental initial decision rendered by still another examiner after a further hearing, and reverses its own prior decision.

In the Commission's prior decision, as recited in the current majority opinion, Radio Associates was deemed decisively superior in broadcast experience and integration of ownership and management by reason of the more extensive experience of Robinson and wife and the 65 percent ownership by management in their proposal as against an ownership interest of approximately 2 percent in the case of the other applicant.

In the current opinion, the preference previously given Radio Associates as substantially superior upon consideration of stockownership, quality and quantity of experience is withdrawn because of the recognition given Ball as a principal. This is error. Robinson's superior experience remains as an asset of Radio Associates. If we assume that Ball, contrary to his testimony, would also participate in operational activities of the projected station, this would not detract from its qualifications but rather would add the experience of an eminently successful individual.

In the current opinion, the preference formerly accorded Radio Associates in respect to integration of ownership and management is reduced to a small preference because of the recognition given Edward Ball as a principal and the expectation that he would use his position as creditor to participate in management. On the basis of the record, this is clearly in error. Ball testified that he would have nothing whatever to do with day-to-day operation of the proposed station (Tr. 1310), that he did not expect to have anything to do with the daily programming of the station (Tr. 1311), that he did not expect to have anything to do with the hiring and firing of employees, or with the daily operating policies of the station (Tr. 1311). If we disregard this direct testimony and assume that Ball would participate in management as a principal because of his financial interest, then Ball would be integrated in management to the same extent that he displaced Robinson. The degree of integration of financial interest and management would not be decreased; hence the preference previously accorded Radio Associates should not be decreased.

There is attached to the application of Radio Associates, Inc., as exhibit III-D a sworn statement dated December 7, 1953, of Edward

Ball whereby he agreed "to loan to Radio Associates, Inc., applicant for new television station, sufficient money for the purpose of construction and operation of the proposed television outlet should Radio Associates, Inc., receive authority from the Federal Communications Commission to construct and operate the proposed TV station." This representation was supported by statements showing net worth in excess of \$2,500,000, cash on hand in excess of \$750,000, and income for 1 year in excess of \$70,000 after taxes. The Commission, in accordance with its policy of trying to limit hearing records to useful purposes, did not make an issue as to the applicant's financial ability; rather, it found the applicant to be qualified on the basis of its showing. The reviewing court found this to be error. At the further hearing held pursuant to the remand, Ball appeared and under oath committed himself to advance moneys up to \$300,000 and produced proof of his ability to do so from cash on hand. This more than satisfies the test by which the Commission has traditionally found applicants qualified—showing that funds are available to construct and operate until a station can reasonably be expected to produce revenue.

I would also dissent to the rationale under which Ball is treated as a principal for the purposes of the experience comparison between applicants, but rejected insofar as his participation gives financial support.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON 25, D.C.

<p>In re Applications of RADIO ASSOCIATES, INC., BILOXI, MISS.</p> <p>WLOX BROADCASTING Co., BILOXI, MISS. For Construction Permits for New Commercial Television Broadcast Stations (Channel 13)</p>	}	<p>Docket No. 10844 File No. BPCT-1150 Docket No. 10845 File No. BPCT-1157</p>
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APPEARANCES

Maurice R. Barnes and *Dwight E. Rorer*, of Washington, D.C., on behalf of Radio Associates, Inc.; *Eliot C. Lovett*, of Washington, D.C., and *Howard A. McDonnell*, of Biloxi, Miss., on behalf of WLOX Broadcasting Co.; *John A. Cooper*, *P. W. Valicenti*, and *Robert J. Rawson*, on behalf of the Broadcast Bureau, Federal Communications Commission.

SUPPLEMENTAL INITIAL DECISION OF HEARING EXAMINER H. GIFFORD
IRION

(Adopted December 6, 1960)

PRELIMINARY STATEMENT

1. This proceeding commenced as and remains a comparative hearing between the above-entitled applicants, each seeking to construct a television broadcast station on channel 13 at Biloxi, Miss. The history of the proceeding except for the very last stages was contained both in the Commission's order of remand, 10 R.R. 1073, and in a decision of the U.S. Court of Appeals for the District of Columbia Circuit, *WLOX Broadcasting v. FCC*, 260 F. 2d 712. As a consequence, only the barest recital need be given at this time.

2. Originally both applicants were found to be legally, technically, and financially qualified, and the first hearing was held before an examiner on the standard comparative issues. On July 7, 1954, that examiner issued an initial decision favoring the application of Radio Associates, Inc., and proposing a denial of the WLOX Broadcasting Co. application. The Commission, reviewing this decision on exceptions, reopened the record and remanded the case for the reception of evidence on, inter alia, "the details and conditions of the proposed loan by Edward Ball to Radio Associates." Inasmuch as the original examiner had by that time left the Commission's employment, a second examiner was appointed and he held a hearing on the supplemental

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issues. The second initial decision was released on June 5, 1956, and it likewise favored a grant of the Radio Associates' application. The Commission on August 6, 1957, sustained this result and the case was thereafter appealed by WLOX to the courts. The court of appeals reversed and remanded the case with instructions. *WLOX Broadcasting v. FCC, supra.*

3. Following this action the Commission, on May 6, 1959, again reopened the record and remanded the case for further hearing on the following issues:

(1) To determine the terms and conditions of the existing loan agreement between Edward Ball and Radio Associates;

(2) To determine in the light of any additional evidence which may be introduced whether Edward Ball should be treated as a principal of Radio Associates;

(3) To determine whether Radio Associates is financially qualified to construct, own, and operate the facilities applied for; and

(4) To conclude on the basis of the foregoing determinations whether the Commission's grant to Radio Associates hereinbefore made should be affirmed or otherwise disposed of.

The order further calls for the preparation of a supplemental initial decision.

4. A prehearing conference was held on March 9, 1960, and the hearing was to commence on June 22. On that date, however, the second examiner announced that he would shortly be leaving the Commission and the hearing was therefore held in abeyance pending appointment of a third examiner. The matter eventually went to hearing on September 20, 1960, on which date the record was closed.¹ Proposed findings of fact and conclusions were filed by Radio Associates, Inc., and WLOX Broadcasting Co. Reply findings were filed by each applicant on November 15, 1960.

FINDINGS OF FACT

5. It must be reiterated that this is a supplemental initial decision and that the numerous findings of fact contained in the Commission's decision of August 6, 1957, 10 R.R. 1073, remain in force except, of course, as the opinion of the court of appeals has directed otherwise. Thus the findings of fact and the conclusions contained herein are strictly limited to the issues contained in the last order of remand. While there is unquestionably a relationship between facts under the several issues, they will be set down, for convenience, under the issue to which they primarily apply.

Terms and conditions of loan agreement between Mr. Edward Ball and Radio Associates, Inc.

6. The testimony adduced at the hearing on remand did not in any way vary from that previously given, but instead confirmed the facts contained in the Commission's decision (see 10 R.R. at pp. 1080

¹ Solely to complete the recent history of the case, it may be noted that Radio Associates filed a petition for leave to amend on June 13, 1960. The substance of the amendment need not be described except to say that it related to the financing proposal. An opposition to the petition was filed by WLOX but, prior to oral argument on the questions presented, Radio Associates withdrew its petition, stating in substance that it did not wish to prolong the case by introducing a new controversial matter which might involve time-consuming appeals.

through 1084). For the sake of clarity, however, the salient facts will be repeated here. It may be noted that they are relatively simple and that any dispute among the parties concerning them arises from a difference in emphasis.

7. The loan agreement was verbal² and has always been so except for a written statement signed by Mr. Ball which was appended to the amended application of Radio Associates filed on December 11, 1953, which reads as follows:

I, Edward Ball, do hereby agree to loan Radio Associates, Inc., applicant for new television station, sufficient money for the purpose of construction and operation of proposed television outlet should Radio Associates, Inc., receive authority from the Federal Communications Commission to construct and operate proposed TV station. This amount will belong to Radio Associates, Inc., Biloxi, Miss., and I am to receive as security for the loan 55 percent of the issue of outstanding stock of Radio Associates, Inc. (See transcript, p. 595.)

8. Ball stated that he did not consider the foregoing statement to constitute the agreement between Radio Associates and himself so that the terms of that agreement must be gleaned from his testimony under oath. Ball has agreed to lend up to \$300,000 for the construction and initial operation of the station proposed by Radio Associates. This money will be advanced in installments as needed and with each installment the corporation will execute a note which will be endorsed by Robinson. Annual interest at the rate of 4 percent is to be paid quarterly and the loan is to mature at 2 years from the date of the last advance of money. Thus the payment of principal on the earliest note would not be due until 2 years from the date of the last one. While Ball is lending the money directly to Robinson because of the personal trust he entertains for that individual, there is no question that the corporation will be the beneficiary and will use the money for construction.³ As security for the loan, Robinson will personally put up shares owned by him amounting to 55 percent of the issued and outstanding stock in Radio Associates. Robinson owns 62.8 percent of the stock and Ball owns 1.5 percent. Robinson also has an option to purchase 150 unissued shares of the authorized 5,000 shares and should he do so he would increase the collateral held by Ball so that it would at all times constitute 55 percent of the issued and outstanding stock. The stock which will serve as collateral will continue to be owned and voted by Robinson.

² As noted in the preliminary statement, Radio Associates filed a petition to amend its application on June 13, 1960. This was strenuously opposed by WLOX and on the date set for oral argument (Sept. 8, 1960), counsel for Radio Associates withdrew the petition. His reason for doing so, in essence, was that his client did not wish to introduce a new controversial matter which might entail further appeals to the courts and thus delay the establishment of a television station in Biloxi. While the petition and the papers constituting the proposed amendment are not part of the record, the hearing examiner is forced to take notice of the fact that one of the papers was a written agreement embodying the same terms and conditions which were enunciated in the testimony of Ball and Robinson. The agreement submitted with the petition was not signed by either party and so far as the examiner is aware it was never executed or even called to Ball's attention. No inferences of any sort have been drawn by the examiner from this document, but its existence should be noted for the information of any reviewing body.

³ Ball testified: "I would loan it [the \$300,000] to Mr. Robinson who, in turn, I understand, would loan it to Radio Associates." He also characterized his regard for Robinson in this language: "I have known Mr. Robinson for some years. Mr. Robinson impresses me as being an honorable gentleman, and I have made many commitments much larger than this without reducing them to writing."

9. Under the terms of the verbal agreement, Ball will advance money by checks drawn on his personal accounts "as the situation develops and the need for the money arises."⁴ The amount of each installment will be determined by Ball and Robinson acting jointly and, presumably, in harmony. Ball expects repayment to be made out of station earnings, but there is also a commitment from Robinson to lend the corporation \$40,000 if it is needed and this could be used toward paying off the notes. According to Ball's testimony, there has been no understanding or agreement as to what would happen if the money could not be repaid at the date of the loan's maturity, but he disclosed his own thinking in the following language:

I assume that at the end of that period that if Mr. Robinson can't pay it off, and I have observed that recently he sold a radio station for \$100,000, and I know about a number of other properties that he has that might be worth a very substantial sum of money, but if he weren't in a position to pay it off, I would be glad to get with Mr. Robinson and we would work out an extension that would be mutually satisfactory.

10. Ball was questioned closely as to the reason why no written agreement had been drafted. He stated that he had not been asked by Robinson or any one else to sign one with the conditions fully expressed.⁵ He was then more specifically asked whether there was some reason why the arrangements between himself and Robinson could not be set forth in writing, and he replied: "Well, I don't suppose there is any reason, but I have had a lot of dealings, considerable dealings, in my limited experience with different people, and most of my dealings have never been reduced to written contracts. I have tried to deal with honest and honorable men, and an oral agreement, as I understand it, is just as binding as a written agreement." At this point the hearing examiner asked Ball whether he had ever been deceived by any of the "honest and honorable men" with whom he had made such informal agreements, and the following took place:

WITNESS. Mr. Examiner, I am happy to say that up to now I don't believe I have. I may add that several differences of opinion have come up where the other chap and I had both had lawyers and drawn up formal contracts, and later on the lawyers themselves disagreed on the meaning of those contracts, and they are about the only ones that I recall that I have ever had any difficulties with.

PRESIDING EXAMINER. I was referring, of course, to your oral understandings.

WITNESS. No, sir. On my oral understandings, I have never had any difficulties.

11. WLOX, however, has attempted to cast doubt upon the honesty of Ball and in that attempt has repeatedly referred to an answer which was given during cross-examination. The following colloquy took place (Tr. 1321):

Q. When you testified previously in this case, you did so truthfully, did you not?

A. I try to be truthful, usually.

⁴ No question exists as to Ball's ability to advance the money since he has bank deposits vastly in excess of \$300,000. It may also be noted in connection with a pledge which Robinson has made to lend \$40,000 to Radio Associates that the record shows him qualified to do so.

⁵ See footnote 2, supra.

To one who was present at that portion of the hearing and who heard the testimony and observed the witness, the effort to interpret this statement as an indication of dishonesty is strained indeed. Doubtless the witness gave an inept answer, motivated by some imprudent desire to be facetious. However that may be, his general demeanor gave no indication whatsoever of an unwillingness to be perfectly truthful and there are no other circumstances which would suggest that Mr. Ball was in any way attempting to mislead the Commission. His answers with regard to the loan were forthright and he is not to be disbelieved simply because he expressed himself in a style of rhetoric which, though racy, was clear. On the basis of Ball's testimony and of the hearing examiner's own observation of him at the hearing, it must be found as a fact that he acted in good faith, that he considered the loan agreement with Robinson to be valid and binding, and that he was satisfied to have the arrangement embodied in a verbal understanding because he trusted Robinson's honesty. There is no evidence in the record to refute these natural deductions from the testimony and they are therefore recorded as facts in the case.

Whether Mr. Edward Ball should be treated as a principal of Radio Associates

12. In the concluding paragraph of its opinion, the court of appeals stated that "Edward Ball will be considered to be a principal of Radio Associates unless additional evidence shows otherwise."⁶ Pursuant to this mandate the Commission in its order of remand set forth the following issue: "To determine in the light of any additional evidence which may be introduced whether Edward Ball should be treated as a principal of Radio Associates."

13. Again the evidence is succinct and the basic facts are not disputed, although the conclusions to be drawn from such facts have created a sharp controversy. Mr. Ball is distinctly a minority stockholder with five shares, or 1.5 percent, of the outstanding stock. He is neither an officer nor director in Radio Associates, nor does he have any agreement or desire to become an officer or director. He does not have an option agreement or an intention to purchase additional stock. He has no agreement to accept stock in payment of the loan which he is going to make. Ball has had no experience in television operations and does not intend to play a part in the day-to-day operation of the station. Specifically, he stated that he will have no voice in programming, selection of staff, or operating policies. The proposed station would be built in Biloxi near where Ball has heretofore owned a hotel, the Edgewater Park. During the past 12 months his visits to that hotel have amounted cumulatively to about 1 week, but he expects to spend less time there from now on since he has an agreement to sell the hotel. Although he does not expect to spend any time at the station, he stated he would render advice on financial or other matters if requested by Robinson. There is, however, no agreement which would compel Robinson to follow this advice. Ball resides and has his principal place of business in Florida. He plans to receive

⁶ 260 F. (2d) 718.

a weekly report from Robinson covering the television operation. When asked what he expected to do with this report, he replied: "Mr. Examiner, I get weekly reports at the present time on some 24 banks and several other operations and I read them, and if they are running good and making money, I just file them. If one comes in and it shows that there are some losses, didn't make any money for that period, I pick up the phone and inquire what the trouble is. Now, that is what I would anticipate doing with the reports from the TV station."

14. If it developed that the station was not yielding a profit, Ball said he would inquire of Robinson whether he [Ball] might be helpful. Even if the loan were not repaid and Robinson could not obtain refinancing, Ball testified that he would not participate in the operation of the station and definitely would not move to Biloxi. Ball also testified that his personal understanding of the verbal agreement is that it would not give him any control over the station or put him in a position to exercise control.

Financial qualifications of Radio Associates, Inc.

15. The issue inquiring into the financial qualifications of Radio Associates was injected into this proceeding for the first time in the last order of remand from the Commission pursuant to instructions from the court of appeals. There was, however, testimony at preceding sessions of the hearing which has bearing on the subject and there is also, of course, the data contained in the amended application of Radio Associates. The only available figures in the entire record as to cost of construction, cost of operation, and expected revenue are estimates, none of which is more recent than 1953. The parties, however, have apparently accepted these estimates as accurate.

16. The cost of construction as shown in the amended application is \$248,648. It is expected that the first year's operating expenses would total \$150,000, and revenue for the same period would be \$198,000. According to the proposed findings of WLOX, the following sums would become obligations of Radio Associates in addition to its operating expenses. Depreciation would be based upon a life of 5 years for one-fourth of the assets, 10 years for one-half, and 20 years for the remaining one-fourth (Tr. 1106). Calculated upon the round figure of \$248,000, which is the approximate construction cost, depreciation would, therefore, amount to \$27,900 for each of the first 5 years. WLOX also assumed interest on the loan from Ball to be \$12,000 for the first year's operation. This assumption is based upon the full amount of \$300,000 being advanced at 4 percent. WLOX then has calculated the State and Federal income taxes in order to arrive at the balance after expenses and taxes. The detailed calculations are shown as follows:

First year's operation

Cash income.....		\$198,000.00
Expenses:		
Operating.....	\$150,000.00	
Depreciation.....	27,900.00	
Interest at 4 percent on \$300,000.....	12,000.00	189,900.00
		<hr/>
Balance before taxes.....		8,100.00
State tax (Mississippi Income Tax Act of 1952, sec. 9220-03):		
First \$5,000 at 2 percent.....	\$100.00	
Next \$5,000 (\$3,000 here) at 3 percent.....	93.00	
Next \$5,000 at 4 percent.....		
Next \$10,000 at 5 percent.....		
Balance at 6 percent.....		193.00
		<hr/>
Balance subject to Federal tax.....		7,907.00
Federal tax (Internal Revenue Code of 1954, pt. II, sec. 11):		
First \$25,000 (\$7,907 here) at 30 percent.....	\$2,372.10	
Balance at 52 percent.....		2,372.10
		<hr/>
Balance after expenses and taxes.....		5,534.90

17. The foregoing estimate cannot be accepted exactly as fact because it is not known whether the interest figure would be as high as \$12,000. Under the terms of the loan agreement, Ball would advance sums of money during construction and early operation as they were needed, taking a note in return. It cannot be assumed, therefore, that interest would be payable upon the full amount during the first year, although this is possible. Nevertheless the variations in the interest figure would not be sufficiently great to have much bearing on the ultimate question of financial qualifications so that the WLOX calculations can be accepted as approximately correct, especially in view of the fact that the reply findings of Radio Associates did not dispute them.

18. The Radio Associates' amended application also shows that Mr. Robinson (who, it will be remembered, is the principal stockholder) has agreed to advance \$40,000 to the corporation if it is needed. WLOX argues that Radio Associates had abandoned this part of its financing scheme, but the proposition is too technical to warrant acceptance. At the last hearing session, Robinson clearly testified that it had always been his intention to lend the corporation \$40,000 if need be and this sum must be considered available to Radio Associates.⁷ As the Commission said in *Superior Television, Inc.*, 10 R.R. 438 (1954):

If funds are available, even though not expressly allocated to particular functions in a proposal, the applicant should be permitted to show their availability to cover unexpected contingencies or mistakes in judgment. Of course, a party who can point out these errors in the allocation of funds, may enjoy an advantage for whatever it may be deemed to be worth in the total picture. But an applicant must be permitted to show all funds available if we are to arrive at a sensible and meaningful judgment on the question of financial qualifications.

⁷ He also testified to having assets from the sale of radio station WVMJ amounting to between \$75,000 and \$100,000. Inasmuch, however, as the application shows no specific agreement to lend an amount in excess of \$40,000, the corporation has no assurance of getting more than that from Robinson.

19. As heretofore noted, the principal of the loan from Ball would not become due until 2 years after the last advance was made, and this date would obviously occur considerably after the commencement of operations.

20. WLOX has also projected the financial picture of the second year's operation, using the same annual estimates for expenses and revenue. As will be explained in paragraph 20 of the conclusions, this estimate for the second year is irrelevant under Commission decisions, but it must also be noted that it is too highly speculative to be reliable. Certain facts, well known in the television industry, must be borne in mind. In the first place, there is nothing static about a plan for financing construction and operation of a station. Even the most recent estimates have to be revised as a normal course of procedure. The estimates in this case, as has been seen, are by no means recent and while they have apparently been accepted by the parties, the hearing examiner cannot overlook the strong probability that this was to obviate injecting an additional controversy into this proceeding which would most certainly have arisen if Radio Associates attempted to amend its application to reflect a more current plan of financing. Furthermore, official notice must be taken of the fact that the holder of a VHF television construction permit in a market the size of Biloxi will normally realize a return on his investment well in excess of that which may be typical for other types of business. While the record does not permit findings of an income for the first year in excess of that which was shown by the Radio Associates' application, realism compels a certain measure of optimism in resolving any doubts that may arise as to the future capacity of this applicant to meet its obligations. There has been no contention here that the Biloxi market will make this venture hazardous and, indeed, the continued effort of WLOX to obtain this franchise is a potent indication that the establishment of a VHF station in the Biloxi area is highly desirable from a financial viewpoint.

21. Bearing in mind the foregoing observations, it must be found that Radio Associates can construct its proposed station and survive a year of operation. The Ball loan of \$300,000 plus the expected revenue of \$198,000 for that year are sufficient to cover all known expenses, and there is also available the loan of \$40,000 from Robinson. Thus at the end of 1 year's operation Radio Associates would be solvent. The ultimate finding as to whether this applicant has made a satisfactory showing of its financial qualifications is one which involves mixed questions of law and fact. It is, therefore, deemed appropriate to discuss it in the conclusions which will hereafter follow. (See pars. 15-24 of the conclusions.)

CONCLUSIONS

1. In this stage of the proceeding the inquiry is strictly limited to those matters mentioned in the issues set forth in the Commission's order of May 6, 1959. That order contains no direction for any findings or conclusions on the comparative aspects of the case, and the two applicants, in recognition of this, have confined their proposed

findings and conclusions to the new issues. In essence, these issues pose inquiries into three matters:

(1) To determine the terms and conditions of the existing loan agreement between Edward Ball and Radio Associates.

(2) To determine in the light of any additional evidence which may be introduced whether Edward Ball should be treated as a principal of Radio Associates.

(3) To determine whether Radio Associates is financially qualified to construct, own, and operate the facilities applied for.

A fourth issue inquires as to whether, on the basis of the foregoing determinations, the grant to Radio Associates hereinbefore made should be affirmed or otherwise disposed of.

Terms and conditions of the loan agreement

2. WLOX has drawn attention to the fact that the court of appeals in the concluding sentence of its opinion stated that "the presently existing loan agreement between him [Ball] and Radio Associates should be in writing, with terms and conditions fully expressed."⁸ Language to the same effect was contained in the Commission's order of remand. As stated in the findings of fact, however, the parties presented no written document in evidence, but the terms and conditions of the agreement were stated under oath by the witnesses Ball and Robinson. Since this testimony is recorded on the transcript, it is, to that extent, in writing. While it is customary, perhaps for lawyers and businessmen to insist upon written contracts as a matter of prudence, there is no requirement in law that this must always be done. Leaving aside possible questions under the statute of frauds (a question which was not so much as suggested in the pleadings), an oral contract is as valid as a written one.⁹ Messrs. Ball and Robinson have elected to trust one another's word and it would be presumptuous for the hearing examiner to impugn such human charity. The Commission could doubtless require that all loan agreements be reduced to a formal writing, but no rule or declaration of policy to this effect was cited. Obviously it is not a duty of the examiner to inaugurate such policies on his own initiative.

3. Notwithstanding its oral character, the terms of the agreement are clear. Ball has committed himself to lend up to \$300,000 for the construction of the television station.¹⁰ Not all the money will be loaned at one time, but advances will be made as needed for construction. The loan will bear an annual interest rate of not more than 4 percent which is to be paid quarterly, and the entire loan is to mature 2 years after the date of the last advance. Collateral for the loan will be furnished by Robinson, who is the principal stockholder in Radio Associates with 62.8 percent of its issued stock. This

⁸ 260 F. (2d) 718.

⁹ The Commission has not heretofore required written loan agreements, nor has it even insisted upon legally binding contracts. *Atlantic Coast Broadcasting Corp. of Charleston*, 26 FCC 222, 17 R.R. 531 (1959); *American Southern Broadcasters*, 13 R.R. 927 (1957). Absence of legal recourse against the party promising to lend money is not controlling where he has indicated he would make the loan and has adequate resources to do so. *Triad Television Corp.*, 11 R.R. 1307, 1313 (1955).

¹⁰ As shown in par. 8 of the findings of fact, the loan agreement is actually between Ball and Robinson, but the latter's testimony leaves no question that the beneficiary is to be Radio Associates, even though the collateral will be supplied by Robinson himself.

collateral is to consist of shares owned by Robinson and amounting to 55 percent of the issued stock. Robinson will continue to own this stock, however, and will also vote it. If Robinson should purchase additional shares in the corporation, he will add to the collateral so that it will at all times represent 55 percent of the stock outstanding. There is no existing agreement between Ball and Robinson or Ball and the applicant for refinancing if Radio Associates should not be able to repay the loan at maturity, although Ball testified in a general way that he and Robinson could "get together" and make satisfactory arrangements at that time. This, of course, does not constitute a legally enforceable promise to do anything.

4. Having established the terms of the agreement, it is apparent that the remaining issues are concerned with whatever consequences which may flow from it. All conclusions relating to those consequences should therefore be expressed under the ensuing subdivisions of this opinion. Before turning to them, however, the hearing examiner feels obliged to make certain comments because circumstances render this case exceptional.

5. First, it is essential to understand the margins within which any conclusions may be reached in the present opinion. As the third of a series of examiners who have held hearings in this proceeding, the present one is not, of course, at liberty to superimpose his judgment on the holdings of the others except insofar as the court's opinion and Commission's order of remand direct him to do so. This means that he is not to venture beyond the specific problems placed in issue. The court has, in two respects, charted the course which must be followed. It has declared that Edward Ball is to be considered a principal unless additional evidence shows otherwise, and it has also expressed grave doubt as to the financial qualifications of Radio Associates. Further hearing was ordered on these matters and the opinion of the court clearly anticipates the adduction of new evidence. All this would be fruitless, however, if the examiner were merely to compile a record as presiding officer. There is nothing in the court's opinion to suggest that the examiner is relieved of his judicial task. On the contrary, the court has directed that these questions be opened for reexamination, a procedure which could only mean that the examiner would perform his normal adjudicatory role.

6. These observations would not be stated were it not for the position apparently taken by WLOX that any independent judgment is foreclosed because Ball's status as a principal and the question of financial qualifications have been settled with finality by the court. Neither the principles of administrative law nor the plain language of the court could permit such a dogmatic interpretation. Instead, the court in its appellate capacity has set aside certain conclusions of law and ordered further hearing to determine whether the facts would justify those conclusions or not. It is, therefore, the belief of the hearing examiner that he is obligated by law to form conclusions on the evidence before him, and not limit his role to that of fact finder. But the task of forming conclusions is obviously not the same as if it were being done in the first instance because it must be performed within those limits laid down by the court as set forth above. It is

nonetheless independent to the extent that any officer presiding in a judicial capacity must be independent if he is not to act in an arbitrary manner.

Is Edward Ball a principal in Radio Associates?

7. There is no precise formula for determining who is a principal in an applicant or for measuring the significance which should attach to a principal. These questions naturally arise within different contexts and the word, therefore, is necessarily subject to certain variations.

8. In the Commission's application form for a new broadcast station or for changes in an existing broadcast station (form 301, March 1960), there is an instruction describing the meaning of the words "party to this application" and the pertinent language reads as follows: "In case of a corporate applicant, all officers, directors, stockholders of record, persons owning the beneficial interest in any stock, subscribers to any stock, and persons who voted any of the voting stock at the last stockholders meeting." The Commission has not, however, regarded all such parties as principals as discussion of the cases will illustrate.

9. Section 1.128(b) of the rules prohibits the admission into evidence of a principal's deposition¹¹ unless exceptional circumstances exist and there are two reported instances where this rule was interpreted by hearing examiners. On one occasion it was held that a stock interest of 11.57 percent was "substantial" within the meaning of the rule,¹² whereas an interest of as little as 4 percent was not considered substantial.¹³

10. For the most part, nonstockholders have never been regarded as principals, although the Commission has considered the possible exercise of control by nonstockholders where circumstances indicated some measure of control might exist. See *The Yankee Network*, 5 R.R. 216 (1949); *Town and Country Radio, Inc.*, 15 R.R. 1035 (1960). In another type of case the question was raised as to whether the lender of funds was to be considered as a principal even though she was not a stockholder.¹⁴ In this instance the proposed lender was the mother of two of the three stockholders and she had obligated herself to furnish sums up to \$180,000. In response to a charge that she was a principal whose other business interests ought to be reported on the application form, the Commission said:

The failure to supply certain information relating to the business interests of Bessie Hancock, who would make a substantial loan to the applicant, is without significance in this proceeding in that protestant failed to adduce any evidence tending to show that Mrs. Hancock, in fact, had any interests which were required to be reported in the application. Further, Mrs. Hancock is not a principal or stockholder of this applicant. Therefore, failure to show such interest, if any, would be purely technical.

¹¹ Sec. 1.128(b) (formerly sec. 1.826) does not actually use the word "principal" but refers to persons having "a substantial interest" or "holding positions of responsibility" in a party to a hearing. Such persons have always, however, been treated as principals so that the two descriptions are synonymous.

¹² *The Enterprise Co.*, 8 R.R. 811 (1953) (Examiner Huntting).

¹³ *St. Louis Telecast, Inc.*, 11 R.R. 492 (1954) (Examiner Donahue).

¹⁴ *Midland Empire Broadcasting Co.*, 22 FCC 753; 14 R.R. 201 (1957).

11. Turning to comparative cases, such as the one now under consideration, the Commission has uniformly looked to the principals of each applicant in making determinations under the various criteria, but the decisions show that a principal may have importance in one connection but be relatively unimportant in another. An examination of some of the cases is worth while to illustrate this variability. Under the local residence criterion, the percentage of locally owned stock is of course a primary factor. *Radio Station WSOC, Inc.*, 12 R.R. 953 (1956). In that connection the accumulated holdings of a group of relatively small stockholders who are local residents can bring such individuals into play as principals where, taken together, they own a substantial block of the outstanding stock. *Southland Television Co.*, 10 R.R. 699 (1955); *WKRG-TV*, 10 R.R. 225 (1955). A principal may of course be a minority stockholder.¹⁵ The significance which attaches to such a principal depends upon other factors in the case so that he may assume considerable importance under the integration criterion if he is also, for example, a local resident or a person with wide broadcast experience, whereas lacking such other qualifications his importance may be greatly diminished. Apart from the amount of stock held, an individual may become a principal if he is an officer, director, or the occupant of some important position in operational management. *Biscayne Television Corp.*, 11 R.R. 1113 (1956); *Sangamon Valley Television Corp.*, 11 R.R. 783 (1956); *Superior Television, Inc.*, 11 R.R. 1173 (1956).

12. Thus, regardless of the context, any substantial stockholder would qualify as a principal and so would an officer or director. *WDOB Broadcasting Corp.*, 10 R.R. 1119 (1956); *Appalachian Broadcasting Co.*, 11 R.R. 1327, 1389 (1956); *Scripps-Howard Radio, Inc.*, 11 R.R. 985 (1956). For the purpose of deciding a preference in such areas as local ownership, civic activity, and broadcast experience, it would appear that the principals are those stockholders who will actually participate in the station's operation. *Radio Station KFH Co.*, 11 R.R. 1, 107, 112 (1955). Stockholders with smaller holdings (on the order of 5 percent) have also been considered in applying these criteria, but much less weight has been given to them. *WKRG TV, Inc.*, 10 R.R. 225, 268e-269h (1955).

13. In ruling on a petition for rehearing, the Commission had occasion to describe the process of evaluating local ownership. *Travelers Broadcasting Service Corp.*, 15 R.R. at page 304 (1957). It said it had considered all "stockholders or principals of the applicants in reposable positions." [Emphasis supplied.] "It is these individuals to whom the Commission would look primarily in the control and operation of the facility proposed and who are in a position to bring to bear on the operation their knowledge of local needs and desires of the area to be served. Stockholders have such power through the voting right that goes with stockownership. Officers and directors have such power through the responsibilities involved in the positions held. The conclusions made here are in accord with other

¹⁵ See *Sucession Luis Pirallo-Castellanos*, 26 FCC 109; 16 R.R. 113 (1959).

decisions. See *Loyola University et al.*, 12 R.R. 1017; *Richmond Newspapers, Inc.*, 11 R.R. 1234.”

14. In the present case Mr. Ball is a 1.5-percent stockholder in Radio Associates and he is neither an officer or director. Under previous Commission holdings there seems very little question that he would not be termed a “principal” as that word has been used in communications law, a conclusion which is, of course, borne out by the previous decision in this case.¹⁶ Nevertheless the particular circumstances surrounding Ball’s connection with Radio Associates have been adjudicated by the court and he has been declared a principal “unless additional evidence shows otherwise.” The only additional evidence offered at the further hearing simply confirmed the facts previously found; it was actually cumulative in character and added nothing. In view of this the examiner has no alternative but to hold that Edward Ball is a principal of Radio Associates because of the magnitude of his position in the financing proposal.

Financial issue

15. In approaching the financial qualifications issue it is advisable to examine with some care the standards and yardsticks heretofore used by the Commission.¹⁷ The burden of proof in the present instance is upon the applicant, and such proof must be clear and convincing. “Specific plans for financing a broadcasting enterprise must be shown and they must be shown upon the record. The Commission may not indulge mere assumptions about the matter.” *All-Oklahoma Broadcasting Co.*, 13 FCC 691 (1949).

16. It may be officially noticed that reliance upon loans is not uncommon in plans for financing television stations. The loan is often for a major part of the cost of construction or even for virtually all of it. *WKRK-TV, Inc.*, 9 R.R. 965 (1953); *McClatchy Broadcasting Co.*, 9 R.R. 1190 (1954); *WSAV, Inc.*, 10 R.R. 402, 430f (1955); *Sacramento Broadcasters, Inc.*, 10 R.R. 615 (1955). The plan adopted by Radio Associates, therefore, is not unique. It must also be noticed that financing of television stations is normally subject to shifts and changes, depending upon a multitude of variables such as price changes for equipment. Furthermore, it should be observed that the financial qualifications issue is not comparative. *Scripps-Howard Radio, Inc. v. FCC*, 189 F. (2d) 677, 680 (1951); cert. den. 342 U.S. 830, 7 R.R. 2001.

17. One consequence of this last point has been a somewhat less stringent attitude toward allowing amendments of financial proposals where a change in conditions has occurred for which the applicant was not responsible. *Great Lakes Television, Inc.*, 25 FCC 470, 514; 13 R.R. 669 (1958) (the amendment having been granted in 16 R.R. 494). The question of qualifications is most definitely one affecting the public interest as distinguished from the private interest of an adversary. WLOX has acquired no vested right in maintaining the status quo with respect to the financing of Radio Associates, and any comparative

¹⁶ See also *Beacon Broadcasting System, Inc.*, 19 R.R. 927 (1960).

¹⁷ In addition to directives from the courts and the Commission, a hearing examiner is also bound by precedent where precedent exists. No cases were cited by Radio Associates, but the examiner felt obliged to perform independent research in order to discover some guidelines.

advantage which has accrued is purely fortuitous.¹⁸ This is important in considering certain aspects of the WLOX argument, as, for example, in connection with the availability of the promised loan from Robinson in the sum of \$40,000. The amended application showed this loan as part of the plan many years and many pages of the record ago; the incidental fact that it had not recently been mentioned—not until Robinson testified that it was still part of his proposal—can certainly not be allowed to foreclose its use by Radio Associates.

18. Perhaps there is no substantive point in radio law more firmly established than the criterion which requires an applicant to show funds available for construction and operation during the initial period when revenues would not be expected to come in. *Atlantic Coast Broadcasting Corp. of Charleston*, 26 FCC 222, 17 R.R. 531 (1959); *Sanford A. Schafitz*, 24 FCC 363, 14 R.R. 852 (1958); *Cherokee Broadcasting Co.*, 25 FCC 92, 13 R.R. 725 (1958); *Peninsula Broadcasting Corp.*, 17 R.R. 875; *Manchester Broadcasting Co.*, 13 R.R. 857d (1956); *Mission Telecasting Corp.*, 12 R.R. 496 (1956); *WKAT, Inc.*, 10 R.R. 1273 (1954). The purpose behind this standard is clear. An applicant must be able to establish a “going concern” before it can create any revenues and it is, therefore, not allowed to include expected advertising revenue as part of its financial plan during the first few weeks of operation. *Mission Telecasting Corp.*, *supra*, at page 508b. On the other hand, a new broadcast operation is not expected to rely upon its original capital indefinitely. “Thus, there is a sufficient showing that the station can be constructed and its operation commenced, and that is all that we require. The concept of public interest is not so exacting that it demands a licensee capable of sustaining great losses for long periods and pledged to do so. Were this not so, it is doubtful that many of the standard broadcast stations now authorized could have passed this test.” *Southeastern Enterprises*, 13 R.R. 139 (1957); *Iredell Broadcasting Co.*, 13 R.R. 996 (1957).¹⁹

19. The period of initial operations has not been explicitly defined, but has sometimes been referred to as a “reasonable period of time.” *Great Lakes Television, Inc.*, 25 FCC 470, 512, 514; 13 R.R. 669 (1958). As has already been seen, it is a period when the applicant would not expect advertising revenue and some cases have indicated that this might last for about 3 months. *Sanford A. Schafitz, supra*; *Iredell Broadcasting Co., supra*; *Atlantic Coast Broadcasting Corp. of Charleston, supra*.

20. WLOX does not appear to challenge the ability of its rival to construct the station and commence operations. Indeed, the fell event of economic collapse is not predicted until the second year of operations. The argument of WLOX based on this collapse must be rejected, however, because, to begin with, it is irrelevant under the principles announced by the decisions just cited. Nevertheless it is worth going further since there are other reasons, founded in ex-

¹⁸ See *Great Lakes Television, Inc.*, 16 R.R. at p. 494b.

¹⁹ It is noted that the *Southeastern* and *Iredell* decisions arose out of protests based on the “economic injury” doctrine, and that the subsequent decision of the court of appeals in *Carroll County Broadcasting Co. v. FCC*, 258 F. (2d) 440 (1958), has overruled the position taken by the Commission in earlier cases. Nevertheless the *Carroll* case did not affect the rulings previously made on financial qualifications.

perience and commonsense, for taking a more optimistic view of the chances for survival by Radio Associates.

21. The WLOX contention assumes, of course, that Ball will not renew his loan but will demand prompt payment. It must be conceded that there is no definite evidence to support a finding that he will renew the loan or that other sources of financing can be found. On the other hand, the realities of the situation cannot be ignored. In short, the hearing examiner is forced to do what WLOX itself has done; that is, to attempt an estimate of the future which will be as sound and reasonable as the circumstances permit. This estimate is that there is every likelihood of the loan being renewed.

22. In the first place, if Ball should choose to demand repayment and if Radio Associates could not repay, he would adopt a course of action which would compel him to apply for the Commission's consent to a transfer of control and would also jeopardize the very life of the corporation. Be it remembered that the stock of Radio Associates would be almost worthless if it lost its license (for whatever reason) and it seems incredible that Ball would place his money in peril by deliberately forcing the station into an impossible financial position.²⁰

23. But there is also reason for taking a more sanguine attitude toward the chances of Radio Associates to survive. No one can make an exact prediction of revenue for a period extending months, perhaps years, into the future, but the normal experience of VHF operations is such as to justify a prudent assumption that a station in Biloxi, if properly managed, will return an increasing yield.²¹ Indeed, it has not been uncommon for VHF stations to be sold for several times their cost of construction. Whether Radio Associates would enjoy this kind of success is not important, however, and need form no basis for the conclusions reached herein. The important thing is that the general experience of VHF television operations does not indicate a likelihood of the dismal collapse which WLOX professes to expect.

24. Speculation as to the ultimate probability of survival is not necessary, however, for the decision that Radio Associates is financially qualified can rest on the basis of well-established principles shown by the foregoing citations. There will be sufficient funds available to complete construction and to operate the station before advertising revenue commences to come in. Beyond that time the estimates of both revenue or expense become a matter of such extreme conjecture that the argument of WLOX must be rejected. The finding of future facts is sufficiently difficult without venturing into a period 2 years hence, a period which in the television industry may well be termed "the remote future."

Should the grant to Radio Associates be affirmed or otherwise disposed of?

25. In approaching this last and most crucial issue, it is vital to bear in mind the preceding discussion of the other issues in order to

²⁰ Cf. *The Enterprise Co.*, 24 FCC 271, 285; 17 R.R. 48 (1958).

²¹ There is no evidence in the record to indicate that the Biloxi market will involve unusual hazards. On the contrary, it must be supposed that the market is desirable else WLOX itself would not have continued its avid quest for channel 13.

understand the interrelation of facts affecting Mr. Ball and his connection with Radio Associates. The financial qualifications of that applicant have been found acceptable and this disposes of a basic matter, but Ball's position as a principal opens up the question of whether Radio Associates should prevail in a comparative sense. First, it must be clearly understood why the question of Ball's status ever arose at all. As a stockholder his basic qualifications had to be passed upon whether he was a principal or not. But in weighing the applicants under the comparative criteria, little importance would attach to Ball with respect to either his merits or faults unless he were a principal. Having now decided that he is a principal, the next question is to what extent and in what manner this will affect the preferences heretofore given to Radio Associates. In the Commission's decision of August 7, 1956, there was the following language:

We agree, as stated, with both examiners that the record in the instant proceeding demonstrates the substantial superiority of Radio Associates over WLOX Broadcasting Co. in the matter of integration of ownership with management and that the experience of the principals of Radio Associates is greater than that of the principals of WLOX. Upon the greater strength of these last-mentioned factors in the present proceeding, and Radio Associates' clear preferences with respect thereto, this case is decided. 10 R.R. 1110.

26. Over a period of many years the Commission has developed a number of criteria for evaluating the relative merits (or demerits) of applicants in comparative proceedings. Underlying all the criteria is, of course, the omnipresent standard of the public interest. The weight given to any one criterion naturally varies from case to case because of the almost infinite combinations of circumstances presented by broadcast applications. The ultimate result, however, should flow logically from use of the criteria so that it reveals why one party is believed to be superior to another. In the present case, as has been seen, Radio Associates was chosen because of the "clear preferences" under two criteria which were deemed to control in this case.

27. Turning first to the criterion of integration, it is difficult to see why the conclusion previously reached by the Commission should be changed because, whatever Mr. Ball may be, he is not a substantial "owner" of Radio Associates. Even assuming that a financial disaster should overtake the company so that the loan could not be repaid at its date of maturity, Ball still could not become the principal stockholder unless the Commission gave its consent. But he is nevertheless a principal as we have seen. The question, however, which has not been answered—nor even asked—is what kind of principal is he? Lest there be any inclination to treat this as legalistic quibbling, it must be pointed out that the significance of principals varies considerably from one situation to another. This variability is not confined to communications law. For example, the word "principal" has different meanings in agency, taxation, and criminal law, and no one of those meanings is really applicable to the present context. Reference to the preceding discussion under issue No. 2 will show how emphasis toward a particular principal may shift from one area

of comparison to another. Even in making a comparison among applicants under a single criterion, there may be a certain variation as to the type of principal considered owing to special circumstances.²²

28. Both Ball and Robinson testified that the former would play no active role in the station's operation, so that it is clear his importance arises from the loan rather than from a managerial function. His is the kind of potential influence which is inherent in any lender of money. In short, his position is not unlike that of a bank which will supply to an applicant the major portion of needed funds. It will hardly be asserted that the Commission has ever looked or should look at the radio experience and managerial integration of a banking institution in evaluating applicants. But Ball is also a stockholder and the mere percentage of his interest is not necessarily the predominant factor. The Commission has never limited itself to the bare facts of stockownership.²³

29. Reduced to its simplest terms, the question is whether Ball's position as creditor will invest him with a degree of control disproportionate to his stockownership. The key word, therefore, is *control*. If the role of lending money augments the power of a minority stockholder, it could very well be that his qualifications in such areas as broadcast experience and integration should be given increased weight. A question almost identical to this was presented several years ago to the hearing examiner and, while he has never made a practice of citing his own rulings, the language used in that instance expresses so nearly his present views that it may bear reiteration:

The question, viewed in full perspective, * * * presents the ultimate proposition that control of Mobile Television must be measured by factors beyond the percentages of issued stock or the relative number of votes possessed by the several stockholders. Control of a corporation is certainly not bound by the simple arithmetic of adding numbers of shares issued and comparing the sums in terms of percentages. Circumstances may exist which compel an inference that one or more minority stockholders will exert a dynamic and irresistible influence in the company's affairs. But the elements cited by WKRG-TV in this case are too frail to support the burden of the inference I am asked to draw. Some additional factor, something less conjectural, such as a specific right in the lender to name one or more directors, would be needed to translate a mere possibility into a likelihood, much less a certainty. *WKRG-TV, Inc.*, 9 R.R. 965.

30. There are no specific facts in the present record to compel the conclusion that Ball will actually control Radio Associates or that he will at any time become involved with station operations to the extent that his broadcast experience would be a factor worthy of consideration. He will offer advice of a financial or business character, but will not participate beyond that. Under these circumstances it can hardly be said that his experience—or lack of it—should form any basis for the decision. Much the same thing is true with respect to the integration factor where it has been found that Ball's role will

²² See *Triad Television Corp.*, 25 FCC 848; 16 R.R. 501 (1958). An illustration of this with reference to the awarding of preferences with respect to integration of ownership and management is to be found in the discussion appearing on pp. 1019 through 1022 of 25 FCC.

²³ In weighing the integration factor, the amount of stock owned by an individual may be of less consequence than his degree of activity. However, stockholders participating only in business and policy matters afford less weight than those engaged in full-time operational management. *Television Broadcasters, Inc.*, 27 FCC 727; 17 R.R. 1169 (1959).

be negligible insofar as daily operations are concerned. Quite the contrary might be true if he were proposed for some important operational function, since his power as the chief financier would then achieve a greatly increased importance. If that were so he would be the kind of principal whom the Commission considers in applying these criteria, but that is not the case.

31. WLOX has tried to translate Ball's position so that he would meet the foregoing conditions. It has ventured the prediction that Ball will ultimately dominate the corporation, but it would seem wise in this connection to distinguish between the probability of an event and its mere possibility. Insofar as it is possible to make any prediction on the basis of the testimony and all other known facts, the most that can be said is that there is a possibility of Ball eventually assuming an increased degree of control. This, however, could be said with respect to any lender of large sums and if such a possibility required the assessment of the lender under all the criteria, the administrative process would be inflicted with an almost intolerable burden.

32. As has been stated many times, the criteria are not rigid techniques to be applied by slide rule nor do they lend themselves to mathematical measurement. Were it otherwise, a perplexing problem would at once arise: What is the percentage of Mr. Ball's interest? He can not be said to have a 55 percent interest since that would eliminate Mr. Robinson from the picture, a proposition which not even WLOX has advanced. This dilemma is not a real one, however, for the simple reason that Ball should not be viewed as a mere arithmetical statistic but rather as a minor stockholder who will play an important part in the original financial arrangements. It is true that he looms as a figure of some power, but this power is potential or, at best, incipient rather than full blown. Seen in this light it would seem as pointless to weigh his radio experience—or lack of it—as to weigh that of a bank. The inescapable conclusion is that Ball is not the kind of principal whose role involves him with the criteria of experience or integration.

33. The Commission has directed the Hearing Examiner to prepare a supplemental initial decision on the issues heretofore discussed. As has just been shown, there was nothing developed at the further hearing to indicate that Ball's role as a principal of Radio Associates ought to affect the preferences previously given to that applicant in the areas of broadcast experience and integration of ownership with management. This being so, there is no reason for not affirming the grant of construction permit to that applicant. No other question was presented in this portion of the proceedings.

It is therefore ordered, This 6th day of December 1960, that unless an appeal from this supplemental initial decision is taken to the Commission by any of the parties, or unless the Commission reviews the supplemental initial decision on its own motion in accordance with the provisions of section 1.153 of the rules, the grant (as conditioned by the Commission's order) heretofore made by the Commission on August 6, 1957, to Radio Associates, Inc., for a construction permit for a new television station to be operated on channel 13 in Biloxi, Miss., *Is affirmed*.

FLORIDA GULF COAST BROADCASTERS, INC., ET AL. DOCKETS NOS. 12445, 12446, 12447, 12448, AND 12450.

Application of WTSP-TV, Inc., for construction permit for new commercial television station; granted. Competing applications of Florida Gulfcoast Broadcasters, Inc.; City of St. Petersburg, Fla.; Suncoast Cities Broadcasting Corp.; Tampa Telecasters, Inc.; and Bay Area Telecasting Corp.; denied.

Standard comparative issue.—Comparative criteria discussed.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON 25, D.C.

<p>In re Applications of FLORIDA GULF COAST BROADCASTERS, INC., LARGO, FLA. CITY OF ST. PETERSBURG, FLA. (WSUN-TV), LARGO, FLA. SUNCOAST CITIES BROADCASTING CORP., LARGO, FLA. TAMPA TELECASTERS, INC., LARGO, FLA. WTSP-TV, INC., LARGO, FLA. BAY AREA TELECASTING CORP., LARGO, FLA.</p> <p>For Construction Permits for Television Broadcast Stations</p>	}	<p>Docket No. 12445 File No. BPCT-2371 Docket No. 12446 File No. BPCT-2373 Docket No. 12447 File No. BPCT-2389 Docket No. 12448 File No. BPCT-2432 Docket No. 12449 File No. BPCT-2437 Docket No. 12450 File No. BPCT-2445</p>
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APPEARANCES

Neville Miller and John P. Bankson, Jr., for Florida Gulfcoast Broadcasters, Inc.; *Philip G. Loucks, Joseph Zias, Maurice M. Jansky, Lewis T. Wray, and Frank D. McDevitt*, for City of St. Petersburg, Fla.; *Benito Gaguine, Lauren A. Colby, Jack P. Blume, and Herbert M. Schulkind*, for Suncoast Cities Broadcasting Corp.; *David S. Stevens and James A. McKenna, Jr.*, for Tampa Telecasters, Inc.; *Reed T. Rollo, Percy H. Russell, and Aloysius B. McCabe*, for WTSP-TV, Inc.; *Frank U. Fletcher, Robert L. Heald, and Russell Rowell*, for Bay Area Telecasting Corp.; and *P. W. Valicenti, David I. Kraushaar, and Robert J. Rawson*, for Broadcast Bureau, Federal Communications Commission.

32 F.C.C.

DECISION

(Adopted January 17, 1962)

BY THE COMMISSION: COMMISSIONERS HYDE AND FORD NOT PARTICIPATING; COMMISSIONER BARTLEY DISSENTING AND ISSUING A STATEMENT IN WHICH CHAIRMAN MINOW JOINS; COMMISSIONER LEE CONCURRING AND ISSUING A STATEMENT.

1. This proceeding involves the question of which of these competing applications for a new television station to operate on channel 10 at Largo, Fla., shall be granted. Hearing Examiner Millard French, in an initial decision released February 1, 1961 (FCC 61D-12), proposes to grant the application of WTSP-TV, Inc. Each of the applicants excepted to the initial decision, and oral argument before the Commission, en banc was held on July 13, 1961.¹

2. The initial decision adequately sets forth the background and history of this proceeding, and this information need not be repeated here. The Commission has carefully considered the exceptions in light of the record, and our rulings thereon are contained in the appendix. The findings of fact contained in the initial decision are considered to be substantially accurate and complete, and, with the modifications, corrections, and deletions noted in the appendix, they are adopted. Although we agree with the examiner's ultimate result, we are of the view that his ultimate findings and conclusions require some comment, which is set forth below. A brief description of each applicant will aid in placing our ultimate conclusions in their proper context.

a. *Florida Gulfcoast Broadcasters, Inc.* (hereinafter Gulfcoast): Nelson Poynter, owner of St. Petersburg Times and former (1939-56) owner of the licensee of station WTSP, will own 66 percent of Gulfcoast, the remaining shares to be owned in various amounts by 14 persons, 12 of whom are local residents and 6 of whom are senior staff members of the Times. Five shareholders, representing 21 percent of the ownership, will devote 100 percent of their time to managerial duties of the proposed station; a sixth, owning 2 percent, will devote 50 percent of his time in a similar capacity; and a seventh, owning 2 percent, will devote 25 percent of his time. Mr. Poynter proposes to spend 25 percent of his time in a supervisory capacity, and seven persons owning the remaining 9 percent of the stock will spend 10 percent of their time in various duties. Eight of the 15 shareholders, including the 5 to be wholly integrated, have had experience in some phase of radio or television broadcasting.

¹ On Aug. 3, 1961, the Commission released a notice of proposed rulemaking (FCC 61-1001) in docket No. 14235 proposing the allocation of channel 10 at Jacksonville, Fla., at less than the minimum cochannel separation from the transmitter sites proposed by the applicants herein. The Commission further proposed that a Jacksonville station on channel 10 "not be required to suppress radiation in the direction of Largo, but that the cochannel stations in both cities be free to radiate the maximum permissible energy in the direction of each other and accept such interference as may result from such operation." Accordingly, the instant grant will be conditioned upon the permittee's acceptance of any interference which might result to its operation from a cochannel Jacksonville station operating with maximum facilities at a site less than the minimum mileage separation from permittee's site, in the event the Commission determines, in docket 14235, to allocate channel 10 to Jacksonville, Fla.

b. *City of St. Petersburg, Fla. (WSUN-TV)* (hereinafter City): City is governed by an elected seven-member council, and a council-appointed city manager. The council's authority is limited by the city charter to policy questions, while administration of the various city departments is the responsibility of the city manager. The city manager appoints and directs the department heads, including the station manager, and the latter is given wide discretion in the operation of the station, normally making all decisions relating to programing and advertising. The city manager is removable by the council only for cause. The present city manager, George K. Armes, has occupied that position since April 1, 1959. The "policy questions" relating to broadcasting which the city council decides are limited to questions of whether to apply for a license, whether to sell a station, and whether to approve the budget. From 1927 to 1940, City was a share-time owner of station WSUN, and since 1940 it has been the sole owner. It has operated WSUN-TV on channel 38 since 1953.

c. *Suncoast Cities Broadcasting Corp.* (hereinafter Suncoast): The owned and subscribed stock of Suncoast is divided among 15 local residents of diverse business interests and commendable civic records. Three of these stockholders—Hurley W. Holland, Ed C. Wright, and Harry R. Playford—will own 77 percent of the common (voting) stock in roughly equal amounts, and none of the remaining 12 stockholders will own more than a 3.1-percent interest. Although Holland, Wright, and Playford have ownership interests in other broadcast facilities, they have chosen not to rely on the records thereof in this proceeding, on the grounds that the operation of such stations had been placed in the hands of capable and experienced broadcasters. It appears that their interest in these operations is limited to that of an investment nature, and cannot be credited as "broadcast experience." Daniel H. Smith, a 3.1-percent shareholder, does have considerable radio and television broadcast experience, and is the proposed general manager of the station. Aside from Smith, no Suncoast shareholder has demonstrated broadcast experience, and none has proposed to be meaningfully integrated into the management of the proposed operation.

d. *Tampa Telecasters, Inc.* (hereinafter Tampa): Kenneth R. Giddens, president and 75 percent owner of Tampa, is a resident of Mobile, Ala., and is president and 50 percent owner of station WKRG-TV, Mobile. C. P. Persons, Jr., 10 percent owner of Tampa, is also a Mobile resident and is the general manager of WKRG-TV. He proposes to move to Tampa and to be the general manager of the proposed station in the event of a grant. A. E. Ellis, 15 percent shareholder of Tampa, is a local resident with diverse business and civic interests.

e. *WTSP-TV, Inc.* (hereinafter WTSP-TV): WTSP-TV has 28 shareholders; however, as is the case with Suncoast, 3 men dominate the applicant. Sam G. Rahall owns 26.3 percent; N. Joe Rahall, 23.3 percent; and Farris E. Rahall, 23 percent. The Rahalls are brothers, and have been engaged in the broadcasting business since 1946, presently owning the licensees of five standard broadcast stations including WTSP, Inc., licensee of station WLCY in St. Petersburg.

WLCY was formerly station WTSP, and was purchased from Nelson Poynter's Pinellas Broadcasting Co. in 1956. Sam Rahall has been a St. Petersburg resident since 1957, and the other brothers lived elsewhere at the time of the hearing. With the exception of O. R. Davies, a 1-percent stock subscriber, the remaining principals of WTSP-TV are local residents representing diverse business interests and civic activities. Marshall Cleaver, the proposed general manager of the station, is not a stockowner or subscriber and cannot be credited as an integrated owner. However, Sam Rahall, as president, will devote 90 percent of his time to supervising the day-to-day operation of the station. Farris and Joe Rahall propose to spend some time in the St. Petersburg area assisting in some areas of station operation, but neither proposes to move permanently to the area, although Farris Rahall expressed the desire to do so. Several of the minor shareholders propose to spend from 1 to 6 hours per week in the development of programming of various types.

f. Bay Area Telecasting Corp. (hereinafter Bay Area): The stock of Bay Area is to be divided among 23 shareholders, including 2 corporations, a partnership, and the estate of a deceased subscriber. A "management group" consisting of seven persons who will own collectively 56.34 percent of the stock. Of these 7, only 2, owning 12.78 percent, are local residents, and of the remaining 12 individual shareholders, all but one are local residents. The corporate shareholders are owned by local residents, while the partnership shareholder is not locally resident. Each of the six nonresident shareholders has experience in broadcasting or the closely related fields of network operations and advertising, and three of these individuals propose full-time integration into the operation of the proposed station. Jack Van Volkenburg, the proposed general manager and 9.9 percent owner, has held positions ranging from sales manager of a standard broadcast station to president of the CBS television network. He is a resident of Englewood, Fla., which lies outside the proposed grade B contour, and cannot be considered a local resident. John S. Houseknecht, 7.13 percent owner and the proposed operations manager, is a Connecticut resident. His experience in broadcasting dates back to 1937, primarily in the advertising and sales field, although he was station manager of a standard broadcast station for a little over a year, and was a sound effects technician for 6 years. Charles T. Ayres, proposed sales manager and 1.26 percent owner, is a New York resident with network and advertising experience dating back to 1935. Val A. Schmitz, 1.26 percent owner and proposed promotion and merchandising manager, has been a Clearwater resident since 1957 and has advertising experience not particularly related to broadcasting. Three other residents propose part-time integration; none have prior broadcast experience.

3. The showings of the applicants under the various comparative criteria will be discussed in the following sequence: (A) Proposed programming, policy and planning; (B) Equipment, studios, and staff; (C) Likelihood of effectuation, including area familiarity (local residence, civic participation, and diversity of business interests), integration of ownership with management, broadcast experience, and past

broadcast record; and (D) Diversification of ownership of mass communications media.

A. *Proposed Programing, Planning, and Policy*

4. In the area of policy, no preference was awarded by the examiner, and, as each applicant's statement of policy appears to be commendable, there is no basis for disturbing his conclusion. The examiner favored WTSP-TV in the area of planning, ranking Gulfcoast, Bay Area, Suncoast, City, and Tampa in that order. We have generally awarded no preference in this criterion where it has appeared that the planning of each applicant was sufficient to lend reasonable assurance that its program proposals could be carried out. See *Loyola University*, 12 R.R. 1017 at 1104 (1956). The examiner found that WTSP-TV's planning consisted of approximately 500 contacts with individuals and organizations within the service area, advice of and consultation with a program advisory committee of local citizens, and suggestions of both resident and nonresident stockholders, and was augmented by its experience in operating WLCY since 1956. However, as noted in the appendix hereto, many of the programing contacts were duplicative, and the program advisory committee suffered from lack of attendance at its occasional meetings. Gulfcoast's planning included monitoring of the other area television stations, Mr. Crago's visiting other stations and working at one for 6 weeks, and 276 contacts with area citizens and organizations. Its principals' experience in operating WTSP from 1939 to 1956 was also drawn upon in the planning process. City's planning was based principally upon its experience in operating WSUN-TV since 1953 and WSUN since 1927, and, to some extent, upon local contacts and consideration of the programing of the other local television stations. Suncoast's final proposal was based upon 106 local contacts, and Bay Area's, upon 133 contacts and the 1952 channel 8 application of its predecessor. Tampa's proposal was based principally on Gidden's and Persons' experience in Tampa, as augmented slightly by 21 contacts in the St. Petersburg-Tampa area. As found by the examiner, Tampa made no effort to discover the interest or availability of certain organizations relied upon as a source for programing. In view of the foregoing, we can conclude that only Tampa's planning has failed to lend assurance that its programing proposals will be effectuated; the other five applicants will be deemed equal in this area.

5. Considering the program proposals, the examiner awarded WTSP-TV a substantial preference over the others, whom he rated in the following order: Gulfcoast, Tampa, Suncoast, Bay Area, and City. Quantitatively, each applicant proposes a well-balanced format, with suitable attention devoted to the nonentertainment categories, and such differences as exist among the proposals may be attributed to the inevitably varying interpretations of the needs of the area to be served. Qualitatively, the Commission is somewhat reluctant to characterize one applicant's programs as better than another's, particularly where, as here, each proposal contains a num-

ber of meritorious programs. Without detracting from WTSP-TV's admirable proposals, the Commission is of the view that all should be considered equal in this category of comparison. Our reluctance to award a preference in this important area should not be construed as indifference. We continue to be highly concerned with programming, and will follow with great interest the performance of the winning applicant in comparison to the promises it has made herein.

B. Equipment, Studios, and Staff

6. The examiner awarded no preference for the staff and equipment proposals, those of each being adequate to effectuate its program proposals. We concur in that judgment. He considered equally meritorious the studio arrangements of WTSP-TV, City, Suncoast, and Bay Area, each of which proposes main studios in St. Petersburg and an auxiliary studio in Tampa, and disfavored Gulfcoast, with a Largo studio, and Tampa, with a Tampa studio. In so doing, he noted that the existing commercial VHF stations in St. Petersburg-Tampa have their main studios in Tampa, and reasoned that the four preferred applicants would give the citizens of Clearwater and St. Petersburg an opportunity for a local television outlet. We do not agree with the examiner in this regard. It would be paradoxical to downgrade the only applicant proposing to locate its studio in Largo, the principal community specified by the applicants. Moreover, the channel under consideration here, no less than those on which existing stations are operating in the area, was allocated to Tampa-St. Petersburg with a view toward serving the local transmission needs of both communities, as well as those nearby such as Clearwater. The studios proposed by each applicant are accessible to each of these communities, and the Commission is unable to discern any real basis for preference. Accordingly, each is held to be equal in this regard.²

C. Likelihood of Effectuation

(1) Area familiarity

7. In ascertaining an applicant's familiarity with the area to be served, the Commission inquires first into the extent to which its principals are local residents, for such residence carries with it a presumption of knowledgeability. This presumption is strengthened or weakened depending on the degree of participation by such principals in the civic and business life of the community. Nonlocal civic and business interests have little, if any, relevance to the question of area familiarity; at best, they furnish a clue to the prospects of gaining area familiarity by nonresidents proposing to move to the community in question. While the Commission has frequently awarded separate preferences for local residence, civic participation, and diversity of business interests, in essence they are but facets of one criterion: area familiarity.

²In this regard, sec. 3.613 of the Commission's rules, which requires location of the main studio in the principal community to be served, is complied with only by Gulfcoast. However, the studios proposed by the other applicants are readily accessible to Largo, and good cause has been shown for waiver of that rule, which is hereby granted.

8. Application of the foregoing principles to the instant case requires some adjustment in the examiner's conclusions. As to local residence, he considered all applicants to be equal save Tampa, which was downgraded by virtue of having only one locally resident stockholder owning 15 percent. Sufficient differences exist, however, to warrant distinguishing among the remaining applicants. Both City and Suncoast are 100 percent locally resident, and 93 percent of Gulfcoast's stock was locally owned at the time of the hearing. Local residents own 52.7 percent of WTSP-TV, and only 43.9 percent of Bay Area.

9. The findings demonstrate that the locally resident principals of each applicant have participated actively in civic affairs in varying degrees, and represent diverse local business interests, and there appears to be no firm basis for distinguishing among them. We reject, as unwarranted, the examiner's downgrading City by virtue of the uncertainty of the business interests of its future council members, and we find some merit in Gulfcoast's contention that "newspaper business is by its very nature a diverse business involving all facets of community life."

10. In summary of the foregoing, City and Suncoast have earned high marks, but are only slightly preferred over Gulfcoast. WTSP-TV, Bay Area, and Tampa are ranked fourth, fifth, and sixth, respectively.

(2) *Integration of ownership with management*

11. In the area of integration, the examiner ranked the applicants as follows: WTSP-TV, Gulfcoast, Suncoast, Bay Area, Tampa, and City. In so doing, he drew no distinction among operation, supervision, and irregular participation in unspecified duties, and he awarded greater credit for number of shareholders integrated than for percentage of ownership represented thereby. The Commission customarily credits as integrated only those owners who propose to participate in the day-to-day operation of the station in specified duties, and application of this standard necessitates an adjustment of the examiner's assignment of preferences. Gulfcoast, with 5 of its 15 owners, representing 21 percent of the ownership and possessing extensive experience, active in full-time day-to-day operation, a sixth spending 50 percent of his time in such operation, and Mr. Poynter devoting 25 percent of his time in a supervisory capacity, is entitled to a clear preference. WTSP-TV's general manager, Mr. Cleaver, is not a stockholder and cannot be considered in this area of comparison. However, Sam Rahall's proposal to spend 90 percent of his time in a supervisory capacity as president is meaningful, and, in view of his 26.3 percent ownership interest and his local residence and broadcast experience, entitles WTSP-TV to be ranked second. Bay Area, with four stockholders (three of whom are nonresident) representing 19.55 percent of the ownership with considerable broadcast experience active in the day-to-day operation, is to be preferred to Tampa, with but one principal owning a 10-percent interest participating in such manner. Suncoast shows only a 3.1-percent principal active in day-to-day operation, and, despite Holland's proposal

to devote a "substantial amount of time" in supervisory activities—a promise difficult to assess due both to its vagueness and to Holland's total lack of similar experience—Suncoast can be rated no higher than fifth. As for City, we concur in the examiner's conclusion that neither the council nor the city manager is, or will be, active in the day-to-day operation of the broadcast properties, although the latter will devote a limited amount of his time to supervision, and accordingly City must be rated last in this criterion.

12. Before passing from consideration of this area, we would be remiss if we did not state fully our reasons for downgrading City. City contends that the position taken by the examiner and adopted herein renders it impossible for a nonstock corporation to succeed in a comparative hearing against stock companies. Citing a number of Commission decisions in which such comparisons have been made, City urges correctly that in the evaluation of nonstock corporate applicants, "those officers holding comparable relationships of personal interest and responsibility may be considered the equivalent of principals." The difficulty in City's position, however, lies in the fact that those officers holding positions of responsibility, to whom both the Commission and the St. Petersburg electorate must look, are the elected members of the city council, and the city manager appointed thereby. The city council has little control over the city manager (whom it can only remove for cause) and none over the station manager. While it is claimed that the council makes policy decisions affecting the broadcast properties, such decisions are limited to questions of selling a station, applying for a new station, and approving the budget. The council is precluded by law from engaging in administration or operation of the station. The city manager may be considered a principal, but, in view of his many municipal responsibilities, is able to devote but a small portion of his time to overseeing the City's broadcast operations, and has in fact delegated to the station manager the responsibility for decisions in the critical areas of advertising and programming. It is apparently City's interpretation of the language quoted above that those individuals actually operating the station on behalf of the City must be deemed principals for the purpose of the hearing. The Commission cannot accept this interpretation, since it begs the question of what part the principals will play in the proposed operation. Neither can we accept the view that the position taken here prejudices a nonstock corporation in a comparative proceeding. It is the same position as was taken by the Commission with respect to State Board of Agriculture, a successful applicant in *Triad Television Corp.*, 16 R.R. 501 (1958), and in other proceedings.

(3) *Broadcast experience and past broadcast record*

13. As to broadcast experience, the examiner preferred WTSP-TV, Gulfcoast, and Bay Area as equals, ranking Tampa, Suncoast, and City in descending order. His low ranking of the City was based on his view that "the experience of the staff is not the experience of the applicant, and cannot be allocated to the City * * *." The experience of City's principals in relation to the past operation of its stand-

ard broadcast and television stations has been in the same positions which they propose to occupy with respect to the new station. In our discussion of the integration factor, we noted the lack of day-to-day operational responsibilities of council members and the city manager. As their experience in the past in no way exceeds their proposed integration, they can expect to fare no better under this criterion, and City is accordingly rated last. Aside from City, two other applicants have broadcast experience in St. Petersburg: (1) WTSP-TV, whose major principals have operated station WTSP (WLCY) since 1956; and (2) Gulfcoast, whose major principals operated WTSP from 1939 to 1956. WTSP-TV's principals also have acquired both radio and television experience elsewhere, and, since they are currently operating in the community, are to be preferred slightly to Gulfcoast, which is rated second. Tampa, whose principals have television ownership and management experience in Mobile, Ala., rates over Bay Area, whose principals' experience is limited primarily to the associated fields of advertising and network operations. Suncoast is ranked fifth in this category: Aside from a 3-percent stockholder with actual broadcast experience, its principals' experience is limited to nonparticipating ownership of an investment nature.

14. Neither Bay Area nor Suncoast relied upon the past broadcast records of stations in which their principals have been associated, and this fact confirms, particularly as to Suncoast, the low marks given these applicants for experience. Suncoast's Holland, Playford, and Wright together owned 49½ percent of the stock of the licensee of station WNEW, New York City, from 1951 to 1955; each was a director, Wright and Holland were vice presidents, and Playford was chairman of the board. Wright and Playford together own 75 percent of station WGGG, Gainesville, Fla., and both are officers and directors. The three of them own 75 percent of station WNVY, Pensacola, Fla.; each is a director, and Wright and Playford are officers. Their reluctance to accept responsibility for these operations in the instant proceeding raises serious questions as to their general responsibility, and detracts from Holland's claim to integration into the proposed operation. (See par. 11, supra.)

15. Each of the remaining four applicants relies on the past broadcast records of stations owned by it or its principals: Gulfcoast, upon WTSP's 1939-1956 record; City, upon WSUN's and WSUN-TV's records; WTSP-TV, upon the records of WFEA, WWNR, WNAR, WKAP, and WLCY since 1956; and Tampa, upon WKRQ-TV's record. The examiner found that the operation of WLCY since 1956 "has been more responsive to the St. Petersburg local programming interests and needs, and has more nearly adhered to its representations to the Commission * * *," and preferred WTSP-TV, ranking Tampa second, and City and Gulfcoast equally third.

16. WTSP-TV's major principals, the Rahalls, have received considerable criticism from the other applicants herein for loose logging and commercial practices at several of their stations. The more serious allegations with respect to logging discrepancies are that (1) at each of three Rahall stations (WLCY, WFEA, and WWNR), five programs were misclassified or ambiguously classified; (2) at several

Rahall stations, the logs show 4- to 5-minute "sponsored programs," typically consisting of an opening commercial, a record, and a closing commercial, the effect of which is to remove such commercials from the category of "spot announcements" and thus to reduce materially the number of such announcements appearing in the log; (3) the WTSP-TV analysis of noncommercial spot announcements includes, as to WFEA, 80 such announcements added to the composite-week logs by the program director at the time of his analysis thereof based upon his estimate and general knowledge of the operation, and at the direction of Farris Rahall, and, as to WKAP, 76 such announcements identified in the log only as "C/PS," defined by the licensee as "announced as commercial" and "public service"; and (4) the use of pretyped logs, and the failure of such logs to reflect the actual time that spots were broadcast or the actual length of the so-called "sponsored segments."

17. Our study of the record evidence convinces us that none of these criticisms seriously detracts from WTSP-TV's generally good past record. Specifically, the misclassification or ambiguous classification of programs appears to be due principally to the fact that some programs overlap several classification definitions, and there is no evidence of an attempt to mislead the Commission as to the true nature of the licensee's performance. The logging of commercial programs, regardless of their length and the commercial content thereof, as "sponsored programs" and the resulting nonapplicability of the "spot announcement" definition to commercials contained therein appears to be wholly compliant with the Commission's program classification instructions contained in section IV, page 4, of the broadcast application.³ It is charged that WFEA's addition of noncommercial spot announcements to the logs was with the intent to mislead the Commission. Such an intent is directly refuted by reference to the WTSP-TV exhibit in question, where, in its analysis of the composite week, it shows only 62 noncommercial spots and, in a footnote thereto, notes that it is the practice of its announcers to insert additional public-service announcements in recorded music programs, and that approximately 80 such announcements were carried during the 1957 composite week but not entered on the logs. The failure of the logs in some instances to reflect the actual time of broadcast of spot announcements or the length of "sponsored segments" of participating programs, and the failure to initial corrections and additions to the logs, while violative of our rules, tend to lose significance in view of similar failures on the part of competitors in this proceeding. (See pars. 96, 100, and 102 of the examiner's findings of fact.)

18. Our consideration of the past broadcast records of the four applicants relying on such convices us that the examiner properly concluded that WTSP-TV's was the best. Tampa's WKRQ-TV 1957 composite-week analysis reveals a serious lack of balance, with nearly 90 percent of the week devoted to entertainment programming, and religious, agricultural, educational, and discussion programming together accounting for only 9.95 percent. In view of the similarity between its 1953 Mobile proposal and its instant proposal, and its

³ Those instructions, in pertinent part, are as follows: "Commercial continuity on sponsored programs is not classified as spot announcements."

demonstrated inability or unwillingness to effectuate the Mobile proposal, it is difficult to find reasonable assurance that Tampa will perform as proposed in St. Petersburg-Tampa.

19. Consideration of Poynter's (Gulfcoast) operation of WTSP in its last 3 years of his ownership indicates a steadily declining operation rendering decreasing service to the public. For example, in the 1953 composite week only 62.3 percent was devoted to entertainment programing, and, while agricultural, educational, and discussion programs accounted for less than 2 percent each, the overall programing was not seriously out of balance. In 1954's composite week, entertainment had climbed to 66.5 percent and agricultural programing had dropped to 0.8 percent. In 1955's composite week, entertainment accounted for 73.4 percent of the programing, and *no* time was devoted to agricultural or educational matter, and only 0.9 percent to discussion. In the same period, spot announcements had steadily increased from 456 in 1953 to 704 in 1955, and live programing had dropped from 11.2 percent in 1953 to 6 percent in 1955. It is recognized that in the 1953 week, 121.5 hours were broadcast, compared to 161.5 hours in the 1955 composite week. This increase in broadcast-hours by a factor of 33 percent justifies the spot announcement gain, but does not excuse elimination of agricultural and educational programing.

20. As to the City's operation of WSUN-TV, while performance, as reflected in the 1957-58 composite week, generally exceeded that proposed in the 1957 renewal, such is due to the fact that its proposal lacked balance. For example, no agricultural programing was proposed, and none was broadcast. Inasmuch as the operation on UHF channel 38 was unprofitable during this period due to VHF competition (although its lack of educational programing cannot be attributed to the operation of an educational station, WEDU-TV, which did not commence until after the WSUN-TV 1958 composite week), more meaningful would be a consideration of the record of City's standard broadcast station, WSUN. Analysis of that station's 1957-58 composite week reveals no educational or discussion programs, and only 5.8 percent live programing compared to the 12.5 percent promised in the 1957 renewal application.

21. Of the various Rahall operations, the operation of WLCY should be considered the most significant to our purposes here since it is in the community with which we are concerned. Such operation, when compared with Poynter's former operation of the same facility and with City's operation of WSUN, leaves little doubt that it has best served the public interest. Its 1958 composite week revealed a greater percentage of religious, agricultural, educational, news, and discussion programs than broadcast by WTSP under Poynter, and no categories were completely ignored as was the case with both WSUN and Poynter's WTSP. Particularly noteworthy was WLCY's broadcast of 22.7 percent local live programing⁴ during the composite week.

⁴ WTSP-TV's original analysis showed 25.8 percent live programing. The record reveals disagreement between WTSP-TV and the other parties as to the classification of several programs taped for the station, but not at its studios, which WTSP-TV classified as "live." Resolving each disputed classification against WTSP-TV, 4 hours and 10 minutes, or 3.1 percent of WLCY's total time, would shift from "live" to "recorded."

22. One further matter requires comment. The Rahall's self-styled "management team" is the object of contentions by the other applicants that the responsibilities vested in the board of directors of each licensee have been abdicated in favor of the management team, which in turn has vested the power of decision in its general manager, Ogden R. Davies. However, the examiner found, and we agree, that the management team is merely "an attempt to correlate and coordinate the operation of the various Rahall stations" and does not involve an abdication of licensee responsibility as urged by the other applicants.

23. In summary of the foregoing, the Commission concludes that of the applicants relying upon past broadcast records, WTSP-TV is entitled to a significant preference. Although the examiner rated Tampa second, we can find nothing which warrants it being preferred to City and Gulfcoast, and therefore rank each equally second to WTSP-TV.

D. Diversification of Ownership of Mass Communications Media

24. Aside from attempting to discern which of several comparative applicants offers the best proposal and demonstrates the greatest likelihood of effectuating its proposal, the Commission is also concerned with diversifying the ownership of mass communications media. This policy has two obvious bases: (1) to permit a greater number of citizens to participate in the ownership of communications media; and (2) to insure that the public has a freedom of choice, and may thus obtain information from a variety of sources and viewpoints. The policy is not inflexible, and its application depends upon the facts of each case.

25. The examiner rated the applicants in the following order under this criterion: Bay Area, Suncoast, Tampa, City, WTSP-TV, and Gulfcoast. Principals of each have broadcast interests with the exception of Gulfcoast's, whose major principal controls the St. Petersburg Times, the leading newspaper in St. Petersburg and Pinellas County, and one of the three major newspapers in the Tampa-St. Petersburg market. Of these three, the St. Petersburg Times' circulation of 89,891 in the counties within the proposed grade B contour ranks second to the 111,631 circulation of the Tampa Tribune, and is more than twice the 41,954 circulation of the third-place Tampa Times. In our view, the examiner's treatment of this subject is essentially correct. Neither Bay Area, Suncoast, nor Tampa is identified with communications media in the area to be served, and little exists to warrant distinguishing among them. City, with only a standard broadcast station (its UHF television station will apparently be abandoned regardless of the outcome here), is to be preferred to WTSP-TV, whose major principals own several stations. Twelve standard broadcast stations are licensed in the St. Petersburg-Tampa area, and the greater competition in the field of radio in this area indicates that the evils of concentration of ownership would be less likely to occur if the channel under consideration were to be awarded to 1 of 12 radio licensees rather than to the owner of the area's second leading newspaper, and accordingly, Gulfcoast must be ranked lowest in this category. See *WHDH, Inc.*, 22 FCC 767, 877; 13 R.R. 507, 582 (1957).

SUMMARY

26. It has been demonstrated that (a) Tampa suffers from poor planning, lack of area familiarity, slight integration, and a mediocre broadcast record; (b) Suncoast lacks broadcast experience and integration; (c) Bay Area is comparatively deficient in area familiarity and broadcast experience; and (d) City falls short in broadcast experience and integration, and its past record leaves something to be desired. It is recognized that City's failure in the areas of integration and experience is due largely to its unique organization, and that it thereby was confronted with a difficult task in this comparative proceeding. While the Commission might have been disposed to minimize these deficiencies had City demonstrated a superior past broadcast record, its failure to do so tends to reinforce, rather than rebut, the presumptions normally flowing from poor integration and experience.

27. In those areas bearing on the likelihood of the applicant's effecting its proposal, Bay Area and Tampa ranked no higher than third (with the exception of Tampa's three-way tie for second as to past broadcast record), and although City and Suncoast excel in area familiarity, this factor does not offset their deficiencies. The liabilities of these applicants render each decidedly inferior to Gulfcoast and WTSP-TV, and further discussion as to their comparative standings would be nonproductive.

28. Gulfcoast has rated no worse than third in each of the areas of comparison except diversification, and WTSP-TV, no worse than fourth. WTSP-TV has surpassed Gulfcoast in the areas of broadcast experience, diversification, and past broadcast record, while Gulfcoast has demonstrated greater area familiarity and integration. Were we to apply equal weight to each of these factors, WTSP-TV's better numerical position would compel a grant of its application. However, a proceeding of this complexity cannot be so simply resolved, and the weight to be given the various factors must be determined. The factors of integration, area familiarity, and broadcast experience, as to which the differences between Gulfcoast and WTSP-TV are not substantial, become less significant where each has a past broadcast record in the area sought to be served. See *The Tribune Co.*, 9 R.R. 719 at 770b and 9 R.R. 770m at 770o (1954); affirmed sub nom. *Pinellas Broadcasting Co. v. FCC*, 97 U.S. App. D.C. 236, 230 F. 2d 204, 13 R.R. 2058 (1956); cert. denied, 350 U.S. 1007, 76 S. Ct. 650 (1956).

29. Here the examiner concluded, and we agree, that the Rahall's operation of station WLCY since 1956 better served the needs of St. Petersburg than the operation of station WTSP under the ownership of Poynter. This factor, taken together with WTSP-TV's more extensive broadcast experience, outweighs Gulfcoast's preferences for somewhat greater area familiarity and integration, and convinces us that WTSP-TV will more likely effectuate its proposal. WTSP-TV's slightly better position with respect to diversification of ownership of mass communications media merely strengthens our conclusion that a grant of its application would best serve the public interest, convenience, and necessity.

Accordingly, *It is ordered*, This 17th day of January 1962, that the application of WTSP-TV, Inc., for a construction permit for a new television station to be operated on channel 10 in Largo, Fla., *Is granted*, subject to the following condition:

Permittee shall accept any interference which might result to its operation from a cochannel Jacksonville, Fla., station operating with maximum facilities at a site less than the minimum mileage separation from permittee's site, in the event the Commission determines, in docket No. 14235, to allocate channel 10 to Jacksonville, Fla.

It is further ordered, That the applications of Florida Gulfcoast Broadcasters, Inc.; City of St. Petersburg, Fla.; Suncoast Cities Broadcasting Corp.; Tampa Telecasters, Inc.; and Bay Area Telecasting Corp. for similar facilities *Are denied*.

APPENDIX

RULINGS ON EXCEPTIONS TO THE INITIAL DECISION

Exceptions of Florida Gulfcoast Broadcasters, Inc.

<i>Exception No.</i>	<i>Ruling</i>
1 -----	Granted, and finding 1 is corrected to reflect that Largo is the principal community specified by the applicants because of their inability to place a city-grade signal over Tampa and St. Petersburg from the reduced tower heights made necessary through their inability to obtain air space clearance for taller towers.
2 -----	Denied, as lacking decisional significance.
3, 4 -----	Granted to the extent that findings 6 and 7 are corrected to show the date of the founding of Congressional Quarterly as 1944, and that the St. Petersburg Committee of 100 is not a club; and denied in the remainder as cumulative.
5-9 -----	Denied in substance as lacking decisional significance; however, finding 16 is corrected to show that Pierce was educational director of CBS from 1928 to 1931.
10-12, 19, 27, 28, 34- 38, 42, 43, 46, 53.	Denied, as lacking significance in view of the decision herein.
13-18, 21-23 -----	Denied, as repetitious, cumulative, or reasonably inferrible from the findings.
20 -----	Granted to the extent that it is found that in the counties within the grade B contour of the proposed station, the St. Petersburg Times circulation of 89,891 is second only to the 111,631 circulation of the Tampa Tribune, and more than twice the 41,954 circulation of the third-place Tampa Times.
24 -----	Denied. See par. 22 of the decision.
25 -----	Denied. The language excepted to, while conclusionary, is correct, and is a permissible explanation of the examiner's refusal to make findings on irrelevancies.
26 -----	Denied. The Commission does not award preferences on the basis of number or percentage of principals appearing at the hearing.
29 -----	Granted to the extent that it is found that of WTSP-TV's stockholders, only Sam Rahall will be integrated into management on a day-to-day basis.

<i>Exception No.</i>	<i>Ruling</i>
30-----	Granted to the extent that finding 93 is expanded to reflect that WTSP, when owned by Pinellas, broadcast 121.5 hours in 1953's composite week, 128 hours in 1954's, and 161.5 hours in 1955's. Denied as to the remainder for lack of record citation supporting finding that WTSP's 1955 programing was affected by new VHF television stations.
31-33, 41, 45, 49-----	Denied. The paragraphs excepted to adequately detail the facts.
39-----	Denied as irrelevant. There is no evidence that the action was intended to influence the Commission in the instant case, and all other applicants have been afforded, and have taken full advantage of the opportunity to respond to the matters contained in the brochure. The matter appears to be no more than a case of overzealous public relations activity.
40, 52, 54-----	Denied in substance. See pars. 16-17 of the decision.
44-----	Granted to the extent that finding 116 is corrected to show Mr. Witwer's first name as "Stanford," and that Mr. Bryan will be public service director; and denied as to the remainder for the reason stated in the ruling on exception 26.
47-----	Granted to the extent that finding 127 is modified to reflect that each of the 6 meetings of the program advisory committee was a luncheon or dinner, that the largest attendance was 7 of the 12 members, and that only 3 members attended more than half of the meetings.
48-----	Granted to the extent that finding 128 is modified to reflect that the bulk of the contacts were by WTSP employees, and that many were duplicative.
50, 51, 63-----	Granted to the extent reflected in par. 6 of the decision.
55-----	Denied, as amounting to an untimely petition for reconsideration of Commission action.
56, 57-----	Denied in substance as lacking in specificity.
58-----	Granted to the extent reflected in par. 7 of the decision herein.
59-----	Granted to the extent reflected in par. 8 of the decision herein.
60-----	Granted to the extent reflected in par. 9 of the decision herein.
61, 62-----	Denied in substance. See par. 25 of the decision herein.
64, 65-----	Granted to the extent reflected in par. 11 of the decision herein.
66, 67-----	Granted to the extent reflected in par. 4 of the decision.
68-76-----	Granted to the extent reflected in par. 5 of the decision.
77-80-----	Denied in substance. See par. 13 of the decision.
81-83-----	Denied in substance. See ruling on exception 30 and pars. 16-23 of the decision.
84-----	Granted to the extent reflected in pars. 6-9 of the decision.
85-92-----	Denied in substance, in view of the decision.
93-----	Denied. The excluded material is largely irrelevant, inasmuch as the Times is not an applicant here and does not own stock in an applicant. The past record of the principals of Gulfcoast is adequately set forth in the findings.
94-97-----	Denied. The excluded matter is immaterial.

Exceptions of City of St. Petersburg, Fla. (WSUN-TV)

Exception No.	Ruling
1, 5	Denied. The findings of the examiner accurately and adequately reflect the relationships between the city council, the city manager, and the station manager.
2	Granted, and finding 22 is corrected to reflect that the mayor is elected as such rather than designated by the council.
3	Denied as immaterial, in view of City receiving first preference for area familiarity.
4	Denied. City, no less than the other applicants, is precluded from improving upon its comparative position during the proceeding. See ruling on WTSP-TV exception to conclusion 1.
6-20	Denied. The examiner's findings adequately reflect the record of City's past broadcast activities, personnel plans, and program planning.
21-26	Denied. The examiner's findings adequately reflect the City's proposed programing.
27-35, 39, 41, 61-65	Denied. The examiner's findings concerning the Rahall "management team" accurately and adequately reflect the record. See par. 22 of the decision.
36-38, 59	Denied. The requested findings are not decisionally significant.
40, 42	Granted to the extent reflected in par. 11 of the decision.
43-46, 54, 67	Denied in substance. See pars. 16-17 of the decision.
47-49	Denied. To the extent that the requested findings are material, they are adequately discussed in the examiner's findings.
50, 66	Denied as immaterial, in the absence of evidence that WTSP had reason to believe that such ownership in fact motivated the editorial position of the Times.
51, 52	Denied as irrelevant. See ruling on Gulfcoast exception 39.
53	Denied as immaterial. See <i>Fisher Broadcasting Co.</i> , 30 FCC 177, 181 (1961).
55, 86	Denied, as lacking in decisional significance.
56	Granted to the extent reflected in the ruling on Gulfcoast exception 47.
57	Denied. The finding excepted to is adequate; however, see par. 4 of the decision for the weight assigned thereto.
58	Granted. See ruling on Gulfcoast exception 48.
60	Granted, and the last sentence of finding 144 is deleted.
68, 69	Denied. The effect of the sale of WFEA and the acquisition of WQTY was to adversely affect WTSP-TV's case under the criterion of diversification, and City was not prejudiced by official notice of these changes.
70	Granted to the extent reflected in the decision.
71, 90-92, 95	Denied. See par. 12 of the decision.
72	Denied. City misconstrues Commission policy with respect to awarding new VHF channels in communities with failing UHF stations.
73-84	Granted in substance. See pars. 7-10 of the decision.
85	Granted. See par. 25 of the decision.
87	Denied. See par. 25 of the decision.
88-89	Denied. The Commission presumes that the successful applicant will be able to employ qualified personnel.
93, 94	Granted to extent reflected in par. 11 of the decision.
96-102	Granted to the extent reflected in par. 4 of the decision.
103-134	Granted to the extent reflected in par. 5 of the decision.
135-149	Denied in substance. See par. 13 of the decision.

<i>Exception No.</i>	<i>Ruling</i>
150-164-----	Granted to the extent reflected in pars. 14-23 of the decision.
165, 166-----	Granted to the extent reflected in the decision.
167, 168-----	Denied in view of the decision.

Exceptions of Suncoast Cities Broadcasting Corp.

<i>Exception No.</i>	<i>Ruling</i>
1-4, 20-22, 27-43, 53-60, 62, 64-86, 88, 89, 101-106, 110-113, 115, 116, 118, 127, 130, 132, 135, 138, 140, 141, 143, 145.	Denied, as lacking significance in view of the decision herein.
5-19, 23-26, 44-52, 61, 87, 99, 107.	Denied, as largely repetitious of, or inferrible from, the examiner's findings, and insignificant in the remainder.
63, 128-----	Granted to the extent reflected in par. 11 of the decision.
90-----	Denied. See ruling on Gulfcoast exception 39.
91-97, 100, 119, 144, 146.	Denied in substance. See pars. 16, 17, and 21 of the decision.
98-----	Denied. See ruling on City's exception 53.
108-----	Granted to the extent reflected in the ruling on Gulfcoast exception 47.
109-----	Granted to the extent reflected in the ruling on Gulfcoast exception 48.
114-----	Denied. The record as a whole supports the examiner's findings. That the applicant will only grant time for presentation of opposing views to qualified persons is not adverse to it but is to its credit.
117, 126-----	Denied. See par. 21 of the decision.
120-122-----	Granted to the extent reflected in pars. 7-10 of the decision.
123-----	Denied in substance. See par. 25 of the decision.
124, 125-----	Denied. See par. 6 of the decision.
129, 131-----	Granted to the extent reflected in par. 4 of the decision.
133, 134-----	Granted to the extent reflected in par. 5 of the decision.
136, 137, 139-----	Granted to the extent reflected in par. 13 of the decision.
142-----	Denied. See pars. 13 and 14 of the decision.
147-149-----	Denied in substance, in view of the decision.

Exceptions of Tampa Telecasters, Inc.

<i>Exception No.</i>	<i>Ruling</i>
1, 2-----	Denied, as amounting to an untimely petition for reconsideration of Commission action.
3-7, 10-19, 26, 27, 30-33, 35, 38.	Denied, as lacking significance in view of the decision herein.
8, 9, 20, 21-----	Denied. The examiner's findings accurately and adequately detail the facts.
22, 23, 36-----	Denied in substance. See pars. 16 and 17 of the decision.
24-----	Denied in substance. See rulings on City exceptions 48-50.
25-----	Granted, and reference in finding 120 to manning tables is deleted.
28, 29, 49-----	Granted. See rulings on Gulfcoast exceptions 47 and 48.
34-----	Denied. See par. 22 of the decision.
37-----	Denied as lacking in decisional significance, since the exceptor urges no conclusion based thereon.
39-----	Denied. The Commission is primarily concerned with prehearing local residence lending assurance of area familiarity.

<i>Exception No.</i>	<i>Ruling</i>
40-43-----	Granted to extent reflected in pars. 7-10 of the decision.
44-----	Granted. See par. 25 of the decision.
45-----	Granted. See par. 6 of the decision.
46, 47-----	Denied in substance. See par. 11 of the decision.
48-----	Denied as unintelligible, there being no such reference.
50-----	Granted. See par. 4 of the decision.
51-56-----	Granted. See par. 5 of the decision.
57-----	Denied in substance. See par. 13 of the decision.
58, 59-----	Denied. See pars. 16-23 of the decision.
60, 61-----	Denied in view of the decision herein.

Exceptions of WTSP-TV, Inc., to Findings of Fact

<i>Exception No.</i>	<i>Ruling</i>
1-5, 7-12, 14-22-----	Denied, as lacking significance in view of the decision herein.
6-----	Denied, as unsupported by the record as a whole.
13-----	Granted, and it is officially noted that WEDU-TV commenced operation after the last day of the WSUN-TV 1958 composite week.

To conclusions

1-----	Denied as to the first part, as an attempt to improve comparatively during hearing. See ruling on City exception 4. Granted as to the second part. See par. 3f of the decision.
2-----	Denied, as an improper statement of policy.
3-----	Denied. See par. 25 of the decision.
4-6-----	Denied. See par. 6 of the decision.
7-----	Denied. See par. 4 of the decision.
8, 9-----	Denied as lacking significance in view of our decision.
10-----	Granted. See par. 21 of the decision.
11-----	Denied as immaterial.

Exceptions of Bay Area Telecasting Corp.

<i>Exception No.</i>	<i>Ruling</i>
1-4, 20, 21, 24-26, 28-31, 38, 39, 42-50, 52-----	Denied as lacking significance in view of the decision herein.
5-----	Granted, and sentence 8 of finding 53 is corrected to reflect that Farris Rahall expressed the desire to move to Florida, rather than that he intends to do so.
6, 7, 9-17, 19, 22, 23, 27, 32, 41-----	Denied. The examiner's findings adequately and accurately reflect the record.
8, 18-----	Granted, and in finding 61 "Louis Fried" is deleted and "Estate of Louis Fried" is substituted therefor, and the reference in sentence 3 of finding 74 to Mr. Fried is deleted.
33, 97-----	Denied as irrelevant. See ruling on Gulfcoast exception 39.
34-36, 51-----	Denied in substance. See pars. 16 and 17 of the decision.
37-----	Denied. See ruling on City exceptions 48-50.
40-----	Granted to extent reflected in ruling on Gulfcoast exception 47.
53, 54-----	Denied. See pars. 24 and 25 of the decision.
55-65-----	Granted to the extent reflected in par. 11 of the decision.
66-71-----	Granted to the extent reflected in par. 4 of the decision.
72-81-----	Granted. See par. 5 of the decision.
82-85-----	Denied in substance. See par. 13 of the decision.
86-92-----	Denied in substance. See pars. 16-23 of the decision.
93-96, 98-105-----	Granted to the extent reflected in the decision, and otherwise denied for the reasons stated therein.

DISSENTING STATEMENT OF COMMISSIONER R. T. BARTLEY IN WHICH
CHAIRMAN MINOW CONCURS

I dissent and vote to grant the application of City of St. Petersburg, Fla.

City has operated WSUN-TV, St. Petersburg, on UHF channel 38 since 1953 and now seeks operation on VHF channel 10. The record evidence shows that WSUN-TV has maintained a good standard of service to the public, even in face of such adversities as loss of network affiliations and advertisers to new VHF stations in the intermixed market. Also, City has operated WSUN-AM, St. Petersburg, in the public interest since 1927.

In its evaluation of the instant applicants under comparative criteria, the majority of the Commissioners rate City last in the categories of broadcast experience and integration of ownership with management on the ground that "principals" of City; i.e., the city council and city manager, do not participate in the day-to-day operation of the station.

Concerning experience, City is the only applicant here which shows actual operation of a television station in the community to be served (7 years). City also shows over 30 years' operation of standard broadcast station WSUN in St. Petersburg. The majority of the Commissioners ignore actual operation and give first preference in experience to WTSP-TV, Inc., whose only operation in the community to be served is that of standard broadcast station WLCY for approximately a year.

Concerning integration of ownership with management, City is in a unique position as a municipality. The people of St. Petersburg own WSUN-TV. They elect officials—the city council—to carry out their wishes regarding, among other things, operation of the station. The city council appoints a city manager. He employs on behalf of the City a manager for WSUN-TV and WSUN-AM. Although the city council, or city manager (except for general supervision and regular contacts), do not participate in the day-to-day operation of the station, they are responsible to the people in their elective positions. As a city councilman testified, "We are subject to their likes and criticisms and dislikes, and our only recourse is to go to the city manager" and "we can certainly fire him." Also, the city manager can discharge the station manager. In the democratic elective process, the people of St. Petersburg have an effective voice in the operation of their station. Thus, the purpose of considering integration of ownership with management, i.e., likelihood of response to the needs of the people, is fulfilled by City. Instead of straining at technicalities of "principals," we should look to the best evidence. The best evidence of what can be expected of WSUN-TV is what it has done in the past. The record evidence shows that WSUN-TV has been, indeed, responsive to the needs of the people.

The majority of the Commissioners rate WTSP-TV, Inc., first in past broadcast record. They state that, "Of the various Rahall operations, the operation of WLCY should be considered the most significant to our purposes here since it is in the community with which

we are concerned." WLCY, a standard broadcast station, had been operated by this applicant for approximately a year at the time of the hearing. The composite week of programing presented in evidence was for 1956-57. The Rahalls did not buy WLCY until October 1956 (only a few months before they applied for a television permit). The majority thus compare the Rahalls' few months' operation of a standard broadcast station to WSUN-TV's 7 years' operation of its television station in this market.

In considering the past broadcast records of other stations in which the Rahalls have ownership interests, I note record evidence of many errors in logging and classification of programs.¹ In my opinion, these errors, as contrasted to those of other applicants herein, are so extensive and reflective of the principals' lack of concern for or of familiarity with Commission logging and classification policies that a substantial question is raised as to the reliability of their past program representations as a basis for present analysis.

Analysis of the WTSP-TV proposal indicates several areas in which substantial questions of doubt prevail as to the manner in which integration of the ownership of WTSP-TV into the day-to-day operation will be effectuated; 72.6 percent of the voting stock of WTSP-TV is vested in the three Rahalls, 26.3 percent thereof being owned by Sam G. Rahall, a recent resident of St. Petersburg. His stock, together with 24 other stockholders totaling 52.7 percent, is, presently, locally owned. It is represented that Sam Rahall, as president and director, will devote 90 percent of his time in a supervisory capacity to the day-to-day operation of the station. However, the meaning and significance of his participation, as well as the participation of the other two Rahalls, must be considered in light of other evidence of record. In the operation of their stations, the Rahalls have organized a "management team" (see par. 84 of the initial decision), consisting of eight members. Mr. Davies, the general manager of the team, and also general manager of WKAP, Allentown, Pa., resides at Emmaus, Pa. Insofar as the record reveals, Mr. Davies, through either delegation, lack of any real concern, or abrogation of responsibility by the other members of the team, particularly the Rahalls, appears to be the one who exercises any realistic control over the Rahall group of stations. Mr. Farris Rahall, vice president-secretary of the management team and president of WFEA, Manchester, N.H., testified that "Mr. Davies has the authority to make decisions on a day-to-day basis that pertain to the policy we have established in our stations"; and that he could not recall that it had ever been considered necessary for a decision concerning programing to be submitted by Davies to the "management team" before the activity was carried out. Mr. Davies described his duties as follows:

¹ At the time of the hearing, the Rahalls (Joe, Sam, and Farris Rahall) had interests in: WKAP, Allentown, Pa.; WNAR, Norristown, Pa.; WFEA, Manchester, N.H.; WWNR, Beckley, W. Va.; and WLCY, St. Petersburg. (Since the hearing, WFEA has been sold, and WQTY, Arlington, Fla., has been acquired.) Cross-examination revealed numerous instances in which recorded programs were logged as "live"; network commercial programs were classified partly as "sustaining"; programs were logged as "sustaining," although interrupted by commercial announcements or announcements for commercial programs; talk programs were logged as "discussion"; and portions of participating programs were logged as sponsored but not shown to have been sold as sponsored. Also, 80 noncommercial spot announcements were added to 1957 logs for the composite week; i.e., an "estimate" of such spots which were allegedly broadcast but not logged previously.

My duties as general manager in the management team of the Rahall stations is one of complete overseeing of the different stations, general administration, programing, program departments, technical end with the help of Mr. Frank Cordaro, our technical adviser. He advises me with regard to the technical end.

The three Rahall brothers displayed a woeful lack of knowledge concerning the operation of their stations. Farris Rahall, of Manchester, was unable to explain what his functions as president of WFEA were, or how much time he devoted to the station, even though he is the only member of the management team residing in Manchester; and he could not explain the nature of any problems which would go to him as president of the licensee corporation as opposed to Ogden Davies, general manager of the management team, except to say "I don't recall of giving a station manager a decision on anything he asked."

Joe Rahall of West Virginia, president of the management team, knew the team had instructed the station managers to abide by FCC rules and the NAB Code in connection with editorializing, but he himself, nevertheless, was unfamiliar with either, explaining "I don't have time to spend reading television codes," and further explaining that his function as head of the Rahall stations was to take care of wages and employee benefits of station employees and that "I am mostly a philanthropist, if you want to know the exact title of what is in my mind."

The record shows that the so-called management team will be "applicable" to the Rahall television station in St. Petersburg; and that Marshall Cleaver, proposed general manager for WTSP-TV, admits that as manager of WTSP-AM, he reported "basically to Mr. Davies."

In view of the above, it is my judgment that WTSP-TV should not be ranked second in the overall evaluation of the applicants in this area of comparison for the reason that there is no reasonable assurance that the participation of the Rahalls in the operation of the television station will be either significant or meaningful; and that, in actuality, the management of the station will be vested principally in Mr. Davies, an absentee 1 percent stockholder and director. I believe the record evidence demonstrates that the ownership of City's station would be integrated into the operation of the station in a far more significant and meaningful way than the type of integration which will result from the operation of a station by the Rahalls.

In view of the foregoing, I conclude that preferences given WTSP-TV, Inc., in experience and past broadcast record, and integration of ownership with management are misplaced and that City rates first preference in these categories as well as in the category of area familiarity (which the majority awarded to City).

I fear that the majority of the Commissioners have utilized a "slide rule" approach and let themselves become entangled in "criteria" pronounced under different sets of circumstances in differing cases. Their downgrading of City in the aforementioned categories appears to me to have resulted from straining at technicalities of "principals"

and not looking realistically to the years of service rendered to the public by WSUN-TV.

I believe that, in light of the reasons given above, the application of City of St. Petersburg, Fla., should be granted.

CONCURRING STATEMENT OF COMMISSIONER ROBERT E. LEE

I concur in the result herein and what is said in the opinion. However, I would add a further factor which influenced my decision. I am reluctant, absent some compelling considerations (not present in this case), in a comparative situation, to prefer a municipal, State, school, or church applicant, over a private applicant, for a *Commercial* facility. To do so is, in my opinion, to afford such municipal, State, school, or church grantee unusual and unwarranted competitive advantages which could pervade all its broadcast activities. Such advantages may include, for example, subsidization of operations, freedom from some or all tax liability, accessibility to program sources not generally, or as freely, available to others.

32 F.C.C.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON 25, D.C.

In re Applications of FLORIDA GULFCOAST BROADCASTERS, INC., LARGO, FLA. CITY OF ST. PETERSBURG, FLA. (WSUN-TV), LARGO, FLA. SUNCOAST CITIES BROADCASTING CORP., LARGO, FLA. TAMPA TELECASTERS, INC., LARGO, FLA. WTSP-TV, INC., LARGO, FLA. BAY AREA TELECASTING CORP., LARGO, FLA. For Construction Permits for Television Broadcast Stations	}	Docket No. 12445 File No. BPCT-2371 Docket No. 12446 File No. BPCT-2373 Docket No. 12447 File No. BPCT-2389 Docket No. 12448 File No. BPCT-2432 Docket No. 12449 File No. BPCT-2437 Docket No. 12450 File No. BPCT-2445
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APPEARANCES

Neville Miller and John P. Bankson, Jr. (Miller & Schroeder), for Florida Gulfcoast Broadcasters, Inc.; *Philip G. Loucks, Joseph Zias, Maurice M. Jansky, Lewis T. Wray, and Frank D. McDevitt* (Loucks, Zias, & Jansky), for City of St. Petersburg, Fla.; *Benito Gaguine, Lauren A. Colby, Jack P. Blume, and Herbert M. Schulkind* (Fly, Schuebruk, Blume & Gaguine), for Suncoast Cities Broadcasting Corp.; *David S. Stevens and James A. McKenna, Jr.* (McKenna & Wilkinson), for Tampa Telecasters, Inc.; *Reed T. Rollo, Percy H. Russell, and Aloysius B. McCabe* (Kirkland, Ellis, Hodson, Chaffetz & Masters), for WTSP-TV, Inc.; *Frank U. Fletcher, Robert L. Heald, and Russell Rowell* (Spearman & Roberson), for Bay Area Telecasting Corp.; and *P. W. Valicenti, David I. Kraushaar, and Robert J. Rawson*, for Broadcast Bureau, Federal Communications Commission.

INITIAL DECISION OF HEARING EXAMINER MILLARD F. FRENCH

(Adopted January 31, 1961)

PRELIMINARY STATEMENT

1. This proceeding involves the six mutually exclusive applications of the above-captioned applicants (hereinafter sometimes referred to as Gulfcoast, WSUN-TV, Suncoast, Tampa, WTSP-TV, and Bay Area) for construction permits for a television station on channel 10 at Largo, Fla. As a result of rulemaking proceedings, the Commis-

sion "dropped in" channel 10 in the Tampa-St. Petersburg area and the above applicants applied for that channel. Originally, at the time of the Commission's order of designation dated May 23, 1958, one applicant applied for Largo, Fla.; one applicant applied for operation in St. Petersburg on channel 10 in lieu of channel 38; one applied for Tampa, Fla.; and the remaining three applied for permits to operate in St. Petersburg, Fla. Because of separation requirements in zone 3, neither Tampa nor St. Petersburg met the required mileage separation for cochannel operation. Consequently, on June 30, 1958, the latter five applicants set forth in the caption filed a "Joint Petition for Leave To Amend" their applications to specify Largo, Fla., as the site of their transmitters and designated a common transmitter site. This "Joint Petition for Leave To Amend" was granted on July 22, 1958, and, as a result thereof, all six applicants now specify Largo as the site of their proposed transmitters. In the Commission's order of designation of May 23, 1958, the following issues were specified:

1. To determine whether the antenna systems and sites proposed by the City of St. Petersburg, Fla.; Suncoast Cities Broadcasting Corp.; Tampa Telecasters, Inc.; WTSP-TV, Inc.; and Bay Area Telecasting Corp. would constitute a hazard to air navigation.

2. To determine on a comparative basis which of the operations proposed in the above-captioned applications would best serve the public interest, convenience, and necessity in the light of the record made with respect to the significant differences among the applicants as to—

(a) The background and experience of each having a bearing on its ability to own and operate the proposed television broadcast stations.

(b) The proposals of each with respect to the management and operation of the proposed television broadcast stations.

(c) The programming service proposed in each of the above-captioned applications.

3. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

After exhibits prepared by all parties had been duly exchanged in accordance with the agreement reached at prehearing conferences, the evidentiary hearing began on January 5, 1959. Sixty-one days were consumed by the taking of testimony and the record was closed on May 16, 1960. Proposed findings of fact and conclusions of law were filed by all six applicants.

FINDINGS OF FACT

Area To Be Served

2. St. Petersburg and Tampa, Fla., the two principal cities in the Tampa-St. Petersburg metropolitan area, are located on the west coast of Florida about halfway down the Florida Peninsula, about 20 miles apart. The most direct route from St. Petersburg to Tampa is over the Gandy Bridge, which crosses the mouth of Old Tampa Bay above Port Tampa City. It is approximately 45 minutes traveltime by automobile from downtown St. Petersburg to downtown Tampa. Clearwater is the county seat of Pinellas County, and Tampa is the county seat of Hillsborough County. St. Petersburg, which had a 1950 population of 96,738, is one of the fastest growing communities in the

United States, and has numerous manufacturing plants making various types of products. Tampa, which had a 1950 population of 124,681, is the largest industrial city in Florida and its port handles more tonnage than any other port located between New Orleans and Norfolk, Va. Among Tampa's business activities are shipping, processing of citrus fruits, food, fertilizers, lumber, the manufacture of handmade cigars, household equipment, trailers, boats, and other articles. There are approximately 4,500 farms within Hillsborough and Pinellas Counties, and the latter has the largest farm population of any county in Florida and leads the State in dairy and fruit production. The 1950 population of the Tampa-St. Petersburg standard metropolitan area was 409,143. Within this area there is a Latin-American population in excess of 40,000, concentrated for the most part in the section of Tampa known as "Ybor City." The Negro population in the Tampa-St. Petersburg area numbers approximately 45,000 persons. The foregoing figures do not reflect an estimated 300,000 tourists who each year visit the area for its climate, fishing, hunting, and other resort recreational activities. St. Petersburg is well known as a retirement and resort community, and as a home to permanent and semipermanent retirees. Other cities in the Tampa-St. Petersburg area include Clearwater, Dunedin, Tarpon Springs, New Port Richey, Bradenton, Sarasota, and Largo. Largo is located near the Gulf of Mexico, approximately 10 miles northwest of St. Petersburg.

3. The Commission's files show that there are presently operating in the Tampa-St. Petersburg area, three commercial and one noncommercial educational television stations, as follows: WFLA-TV (channel 8), WTVT (channel 13), WSUN-TV (channel 38), and WEDU (channel 3). WFLA-TV and WTVT have their studios in Tampa, and WSUN-TV has its studios in St. Petersburg. WEDU maintains studios in both Tampa and North St. Petersburg. In addition, the Tampa-St. Petersburg area receives local service from more than a dozen standard broadcast stations and several FM broadcast stations.

Background and Qualifications

Applicant, Florida Gulfcoast Broadcasters, Inc.

4. This applicant is a Florida corporation organized for the purpose of constructing and operating a television station. It has an authorized capital of 10,000 shares of common voting stock. Of these, 250 shares have been issued and an additional 8,900 have been subscribed. The remaining 850 shares will be held for purchase by future employees. The corporation is also authorized to issue preferred stock, but none has been issued. With the exception of Mr. and Mrs. Poynter, all of the stockholders and stock subscribers have executed "subscription and repurchase agreements" which provide (a) that the corporation agrees to take a demand note secured by a pledge of the stock in the event any of the subscribers elect not to pay cash for his subscription; (b) if the subscriber should die or cease to be an employee, the corporation has an absolute right to repurchase the stock at book value; and (c) the Florida Gulfcoast stock is nontransferable.

5. The officers, directors, and stockholders of Gulfcoast are as follows:

Name	Shares held	Shares subscribed	Percent of total shares now issued or subscribed
Nelson Poynter, president, director.....	150	5,850	65.57
Henrietta M. Poynter, vice president, director.....	50	-----	.55
Richard L. Crago, executive vice president, director.....	20	880	9.84
Dorothy McConnie, secretary, director.....	10	190	2.19
John B. Olson, treasurer, director.....	20	180	2.19
James J. Sharp.....	-----	300	3.27
William H. Moore.....	-----	300	3.27
Stanford B. Witwer.....	-----	200	2.19
Nancy Osgood.....	-----	200	2.19
Bart E. Bryan.....	-----	200	2.19
Warren H. Pierce.....	-----	200	2.19
Henry S. Baynard.....	-----	100	1.09
Byron B. Harless.....	-----	100	1.09
Theodore H. Blau.....	-----	100	1.09
James J. Kirkpatrick.....	-----	100	1.09
Total.....	250	8,900	100.00

6. *Nelson Poynter*, president, director, and majority stockholder of Gulfcoast, is a resident of St. Petersburg. He was born in Sullivan, Ind., and graduated from Indiana University with a B.A. degree in 1924. He received his M.A. from Yale University in 1927. After working as a reporter for the Washington Daily News, the Indianapolis Star, and the Tokyo Times, he became the editor and publisher of the Clearwater Sun, Clearwater, Fla., in 1928. Later he held the position of editor and publisher of the Kokomo Dispatch in Kokomo, Ind.; advertising and business manager for the Washington Daily News; editor and publisher of the Columbus (Ohio) Citizen, and business manager of the Annapolis Star. In 1938 he returned to Florida as editor and president of the St. Petersburg Times. In 1934 Mr. Poynter and his wife founded the Congressional Quarterly, Inc., in Washington, D.C., and since that date he has been president and director of the corporation and coeditor and publisher of the Congressional Quarterly. From 1940 to the end of 1956, Mr. Poynter was president, director, and majority stockholder of Pinellas Broadcasting Co., the licensee of stations WTSP and WTSP-FM in St. Petersburg. He was a member of the Coast Guard Reserve in 1940-41 and a lieutenant colonel on Governor Holland's personal staff in 1941. During World War II, he was a codirector of the Press Section of the Communications Bureau and later was Deputy in the Office of Coordinator of Information. Mr. Poynter served on the Everglades National Park Commission from 1946 to 1950; the Citizens Flood Control Committee in 1948; in 1949 he participated in the Defense Orientation Conference; in 1950 he served on the Citizens Committee on Retirement in Florida; in 1951 he was a member of the Spans Across the Bay Committee; and in 1952 he was one of the organizers of the Southern Conference on Aging. Mr. Poynter received the American Heritage Award for his Congressional Quarterly's "Get Out the Vote" campaign in 1952. He has been a member of the National Sponsoring Committee of the Theodore Roosevelt Centennial; has participated

in the International Press Institute Seminar; the American Political Scientists Seminar; and the White House Conference on Foreign Aspects of U.S. National Security. In 1957 he was made an honorary member of the Florida Blue Key by the University of Florida in recognition of his contributions to public service, and was given the Distinguished Alumni Award of the University of Indiana. In 1958 he was presented the American Bar Association Gold Gavel Award and in 1959 was nominated for the Man of the South Award. His membership in professional groups include the National Conference of Editorial Writers, the American Newspaper Publishers Association, and the American Society of Newspaper Editors. His club memberships include the St. Petersburg Yacht Club and the St. Petersburg Committee of 100.

7. *Henrietta M. Poynter*, wife of Nelson Poynter, is vice president, director, and stockholder of Gulfcoast, and has been a resident of St. Petersburg since 1942. She was born in New York City and received her education at Columbia University. Mrs. Poynter started her business experience as a feature writer for *Musical Digest* and *Musical America*, and later was editor of *Vogue* and *Vanity Fair*. In 1928 she served as theater, musical, and movie commentator on the Gimbel Bros. radio station, which later became station WOR. Between the years 1931 and 1940, Mrs. Poynter was a writer and literary agent, and in the latter year she became associated with the Office of Coordinator of Inter-American Affairs, in charge of women's activities, and in 1941 she joined the Office of Coordinator of Information, serving as Assistant Chief of the Program Division. In the latter position she was in charge of shortwave broadcasting, and produced several programs including the "News From Home" which was continued throughout the war. She has served as coeditor of *Congressional Quarterly* since she and her husband founded that publication in 1934. Mrs. Poynter was first vice president and director of Pinellas Broadcasting Co., licensee of WTSP and WTSP-FM in St. Petersburg from 1951 until the company was dissolved after the radio station was sold in 1956. Since 1953 she has been associate editor of the *St. Petersburg Times* and has worked with the women's department of that newspaper on matters of fashion, home economics, and political news coverage. "Be Your Own Traffic Engineer" was a news feature that she originated. In 1952 she was given the American Heritage Award for her part in the *Congressional Quarterly's* "Get Out the Vote" campaign. She is a member of the National Conference of Editorial Writers, the Women's National Press Club, the International Press Institute, and participates in the Citizenship Clearing House Florida State Conference, the Foreign Policy Association, the League of Women Voters, and Conference of University Women. She was appointed to the Governor's Committee for the Ringling Museum, and directs the annual meetings of the presidents and secretaries of the women's clubs in Pinellas County.

8. *Richard L. Crago*, executive vice president, director, stockholder, and proposed general manager of Gulfcoast, has been a resident of St. Petersburg since 1955. He was born in Lincoln, Nebr., and educated in the public schools of Gainesville, Fla. He graduated from

the University of Florida in 1948 and was active in fraternity work, debating, dramatics, and journalist activities. In 1936 he served as an amateur actor for station WRUF, Gainesville, Fla., and joined the staff of that station as an announcer in 1943. During the war, Mr. Crago served as an Infantry radio operator. Between the years 1948 and 1955, he was sports and special events announcer at WCBI, Columbus, Miss. In May of 1955 he entered the employ of radio station WTSP, which was then owned by Pinellas Broadcasting Co., and was general manager of that station until October 1, 1956, when the station was sold to the Rahalls. After the sale of WTSP in 1956, Mr. Crago became assistant to the president (Mr. Poynter) of the St. Petersburg Times. At the present time, he is also director of the Suncoast Civic Workshop of the St. Petersburg Times. Mr. Crago was president of the Little Theater of Columbus in 1954-55. Since his arrival in St. Petersburg, he has served as publicity chairman of the St. Petersburg Community Chest Drive in 1955, as a member of the board of directors of South Pinellas United Givers in 1957-58, Public Relations Committee of United Fund Drive in 1958, and is a vice president of the United Fund of Lower Pinellas County. Since 1957 Mr. Crago has been chairman of the Public Relations Committee of the Pinellas Area Council, Boy Scouts of America, and a member of the executive board of that group. He is on the Project Screening Committee of St. Petersburg Committee of 100 and belongs to the Chamber of Commerce and Red Carpet Club. Since 1955 he has been a member of the Advertising Club and the Kiwanis Club, and has participated in PTA activities in St. Petersburg.

9. *Dorothy McConnie*, secretary, director, and stockholder of Gulfcoast has resided in St. Petersburg since 1937. She was educated in public schools in Brooklyn, N.Y., and St. Petersburg, Fla. She is secretary and director of the Times Publishing Co. and secretary of The Poynter Fund. She has been an officer and trustee of the Times Publishing Co. pension plan, and from 1955 to 1957 she was secretary and treasurer of Pinellas Broadcasting Co. and a member of its board of directors when that company operated radio station WTSP. Miss McConnie is also a director and secretary of Congressional Quarterly and a member of the Advisory Board of the Times Publishing Co.'s profit sharing fund. Miss McConnie was a member of the Business and Professional Women's Club and formerly belonged to the National Security Association. She had had no experience in the day-to-day operation of a television station, and expects to spend about 10 percent of her time in performing duties in connection with Gulfcoast.

10. *John B. Olson* is treasurer, director, and stockholder of Gulfcoast and has lived in St. Petersburg since 1953. He was educated in the public schools of Chicago and attended Carroll College in Waukesha, Wis., and the University of Chicago. He is an accountant and since 1953 has been treasurer, business manager, and director of the Times Publishing Co., and since 1957 has been treasurer of Congressional Quarterly. From 1955 he was vice president and director of Pinellas Broadcasting Co. during the time it operated WTSP. Mr. Olson is a member of the Advisory Committee of the Times Publishing Co.'s pension plan and of the Advisory Committee of the

Times Publishing Co.'s profit sharing fund. He has been active in Boy Scout work as scoutmaster and committeeman. He is presently on the Pinellas Area Boy Scout Council. He served on the Chamber of Commerce Santa Claus Parade Committee in 1957, and as program chairman of the Exchange Club. In 1957 his service was recognized by the Exchange Club's Outstanding Service Award. Mr. Olson has been a member of the Institute of Newspaper Comptrollers & Finance Officers, the Florida Daily Newspaper Association, the Southern Newspaper Publications Association, the American Newspaper Publishers Association, the Sales Executive Club of St. Petersburg, the National Association of Accountants, the St. Petersburg Yacht Club, Bath Club, and Quarterback Club. He expects to spend about 10 percent of his time with the affairs of Gulfcoast and his duties will be those usually associated with the position of treasurer of the company.

11. *James W. Sharp* is a stock subscriber and the proposed program manager for Gulfcoast. He was born in Jacksonville, Fla., and received his primary schooling in the public schools there. He is presently a resident of Atlanta, Ga., but states that he will move to St. Petersburg if Gulfcoast is granted the construction permit in this case. He has a B.A. degree in radio speech from the University of Florida, and while there, he was an actor, producer, and director of the Radio Guild. From 1938 through 1942 he was an actor at stations WJAX, WMBR, WJHP, all of Jacksonville, Fla. In 1946-47 he served as an announcer with the Armed Forces Radio Service station, KLGH, in San Francisco, Calif., and for station WJVB, Jacksonville, Fla. From 1947 to 1949 he was announcer, writer, producer, and program director at WRUF, Gainesville, Fla. In 1951-52 he served as an announcer-producer at WMBR-TV, Jacksonville, Fla. Since 1952 he has been employed at WLWA-TV, Atlanta, Ga., as director, production manager, assistant program director, and is now operations director for that station. Mr. Sharp has devoted time and effort to educational and religious programing. He has acted as coordinator of daily television programing for the Georgia State Board of Education since 1953, and annually has planned and coordinated broadcasts of religious services and patriotic celebrations. He is a member of the Georgia Association of Broadcasters, and his civic activities include participation as a committee member in drives for the Atlanta Cerebral Palsy School and the Georgia Society for Crippled Children and Adults, as well as annual promotion for Girl Scouts, Junior Chamber of Commerce, YMCA, Red Cross, and the Ground Observers' Corps.

12. *William H. Moore* is a stock subscriber of Gulfcoast and the proposed chief engineer. He was born in Tallassee, Ala., and educated in the public schools of Montgomery, Ala. His radio and television training includes military service schools and the RCA Institute Home Study Course in television. He is a graduate of the radio course offered by the Port Arthur College, Port Arthur, Tex., and of the advanced course in UHF, FM, and TV offered by the Central Radio and Television Schools of Kansas City, Mo. He served as a radio operator in the Army and in the Army Air Corps. He was first

employed as chief engineer in 1947-48 at WMGR, Bainbridge, Ga., and WMGA, Moultrie, Ga. Since 1952 he has been employed by station WSB-TV in Atlanta, Ga., as a transmitter engineer, studio maintenance engineer, and technical director. He is not identified in the record with any civic activities in Atlanta or elsewhere.

13. *Stanford B. Witwer*, a stock subscriber and proposed news director of Gulfcoast, was born in Toledo, Ohio, and received his primary education in the public schools of that city and Dayton, Ohio. He attended St. Petersburg Junior College and took college extension courses from Wittenburg College. He was a sports writer for the Dayton Herald and served as publicity director for a Dayton baseball team for 1 year. In 1939 he came to St. Petersburg, Fla., as sports editor for the St. Petersburg Times and 3 years later was made city editor for that paper, a position he presently holds. Since 1953 Mr. Witwer has also been a correspondent for the New York Times in the St. Petersburg area and since 1956 he has been the correspondent for Newsweek Magazine. His civic and professional activities include membership on the National Committee of Sports Writers to pick all-star teams for the East-West Shrine football game. He served as publicity chairman for the March of Dimes campaign during 1 year, and since 1955 has been a director of the Florida Citizenship Clearing House. In 1956 he was appointed by Governor Collins as vice chairman of the Florida Committee on Educational Television to assist in drafting legislation to set up the Florida Education Television Commission. Such legislation was passed in 1957 and he was elected vice chairman of the commission for a 4-year term. He is also chairman of the Florida Educational Television Commission's Microwave Committee and a member of the Commission's Network Site Committee. He assisted in the development of WEDU, the St. Petersburg educational station. Mr. Witwer has also belonged to the St. Petersburg Junior Chamber of Commerce and the Chamber of Commerce for a number of years.

14. *Nancy Osgood*, stock subscriber and proposed women's director of Gulfcoast, was born in Boston, Mass. Her educational background includes public and private schools in the United States and abroad, and she presently lives in Gulfport, Fla. She entered the entertainment field in 1927 as a broadcaster, producer, and actress with the Shepard Broadcasting Co., operators of stations WHIS and WNAC. Thereafter, she served as codirector of program at WGLC in Hudson Falls and as program consultant for Muzak franchise in Lakewood, Ohio. Between 1933 and 1940, she was an actress in commercial films and on network and radio, and thereafter served for 1 year as a troubleshooter for a national advertising agency. From 1942 to 1954 she was director of women's activities for NBC radio and television in Washington, D.C. In the year 1955 Miss Osgood moved to St. Petersburg and became society editor and feature writer of the St. Petersburg Times. During the 12-year period from 1942 to 1954, she served with the American Red Cross and with the U.S. Treasury Department's war finance program as a volunteer worker, and was awarded a certificate for meritorious service by the Red Cross and a silver medal by the U.S. Treasury Department. While in Washing-

ton, D.C., she was a member of the Women's Committee of the National Symphony Orchestra and a past officer of the Women's National Press Club and the Women's Advertising Club. She was charter president of American Women in Radio and Television in Washington, and a member of the Radio and Television Correspondents Association.

15. *Bart E. Bryan*, a stock subscriber and proposed public service director for Gulfcoast, was born in Johnstown, Pa., and attended Massachusetts and Cornell Universities. He has been in the advertising business since 1923. In 1925 he moved to St. Petersburg, Fla., and became display salesman for the St. Petersburg Times in 1927. Between that time and 1944, he served as advertising salesman and advertising manager for the Times and is presently director of public relations. He was vice president of the Floridian, a subsidiary of the St. Petersburg Times, for a period of 3 years, and during a 2-year period in the 1940's, he published the Visitors' News. Mr. Bryan has been a member and officer of both the Optimist and Advertising Clubs of St. Petersburg, and has been a member of the St. Petersburg Intercivic Council, the St. Petersburg Symphony Society, the Pinellas Committee of the American Red Cross, the Chamber of Commerce, the American Legion, the Veterans of Foreign Wars, and the Community Welfare Council. He was awarded a Mr. Citizen Award for his activities on behalf of St. Petersburg civic organizations. Since 1929 he has been active in Boy Scout activities in the Pinellas Area Council and has been awarded the "Silver Beaver." Mr. Bryan proposes to devote 50 percent of his time to his position as public service director for the Gulfcoast station.

16. *Warren H. Pierce* is a stock subscriber and proposed educational director of the Gulfcoast organization. He was born in Clinton, Ind., and attended Wabash College and the University of Chicago. In 1926 he began work as a reporter with the St. Petersburg Times in St. Petersburg, Fla., and 1 year later went to New York as an employee of NBC. From 1928 to 1937 he served as educational director for the Columbia Broadcasting System and was a member of the Central Advisory Commission on Education by Radio in 1930 and 1931. Subsequently, he was editor of the Daily Clintonian at Clinton, Ind., and chief editorial writer for the Columbus (Ohio) Citizen, and held the position of chief editorial writer for the Chicago Sun-Times for a period of 9 years. He returned to St. Petersburg in 1948 and assumed his present position as chief editorial writer for the St. Petersburg Times, with a hiatus of 3 years during which he served as editor of Sunrise, Florida Speaks, and Travel Cuba Magazines. Mr. Pierce assisted in promoting the establishment of educational station WEDU at St. Petersburg and worked with the University of Florida in getting educational channels in Florida activated. In 1953 he participated in the Southern Regional Conference on educational television and is presently a consultant to Pinellas and Hillsborough County schools on educational television. Since 1948 he has been a member of the Council on Human Relations and of the Pinellas Adult and Vocational Education Advisory Board, having served as chairman and vice chairman at various times. He is also a member and

past officer of the Pinellas County Park Board and of the St. Petersburg Friends of the Library.

17. *Harry S. Baynard* is a stock subscriber and proposed counsel for Gulfcoast. He has resided in St. Petersburg since 1919, and was educated in the public schools of Landrum, S.C., and St. Petersburg, and received an LL.B. degree from the University of Florida. Mr. Baynard has been engaged in the practice of law in St. Petersburg since 1929. From 1933 to 1941 he served as prosecuting attorney for Pinellas County. He served as attorney for the Florida State Racing Commission from 1941 to 1943, and from 1943 to 1945 he was secretary to that commission. From 1945 to 1953 he was State senator from Pinellas County. He is chairman of the board, a director, and attorney for the Gulf Beach Bank at St. Petersburg Beach, and director and attorney for the Madeira Beach Bank and the St. Petersburg Federal Savings & Loan Association. He is a past president of the St. Petersburg Bar Association and belongs to the Florida and American Bar Associations. He has been a director of the Children's Service Bureau, and was appointed by Governor Caldwell in 1951 as a member of the Citizens' Tax Committee. In 1956 he was appointed by Governor Collins to the Florida Constitution Advisory Commission and served on the State Campaign Expense Committee. Mr. Baynard was also city attorney for the town of Pass-a-Grille. He was one of the organizers of the St. Petersburg Junior Chamber of Commerce and is now a member of the Senior Group. He is also a member of the Boca Ciega Kiwanis Club of St. Petersburg.

18. *Byron B. Harless* is a stock subscriber of Gulfcoast and has been a resident of Tampa, Fla., for 13 years. He was born in Virginia and was educated in the public schools of Roanoke and New Smyrna Beach, Fla. He has a B.A. and M.A. degree in education from the University of Florida and took graduate work at Columbia University. Mr. Harless is a consulting psychologist and has offices in Tampa and Miami. He is a member of the board and of the executive council of the Anclote Manor Psychiatric Hospital at Tarpon Springs. His business experience includes employment as a research associate and psychologist at the Guidance Center of the University of Florida. He was an aviation psychologist with the Air Force during World War II. He belongs to the Family Service organization and has served on its board. He is a member, director, and past president of the Hillsborough County Mental Health Association. He served on the Advisory Board of the Tampa Boys Club, the Curtis Hixon Rehabilitation Center, and on the committee appointed by the mayor of Tampa on youth behavior in Hillsborough County. He is a past member of the Tampa Philharmonic Society, and past president and board member of the Tampa Bay Psychological Association. He belongs to the Tampa Rotary Club and the Tampa Executives Club.

19. *Theodore H. Blau* is a stock subscriber of Gulfcoast and has resided in Tampa since 1953. He was educated in the public schools of New York and Pennsylvania, and received his bachelor, master's, and Ph. D. degrees from Pennsylvania State University. Dr. Blau is a psychologist and was psychological assistant at the Elmira Penitentiary for 1 year, and served as research associate for 1 year for the

instructional film research program at Pennsylvania State University. He was a research fellow in the aeromedical research program at Penn State, and a resident clinical psychologist at the Veterans' Administration at Perry Point. Dr. Blau is director of research for the Anclote Manor Psychiatric Hospital, a consultant psychologist to the alcoholic rehabilitation program of Florida, and a diplomat of the board of the American Board of Commerce in Professional Psychology. His civic and professional activities include membership on the board of the Child Guidance Center of Hillsborough County, membership on the Community Coordinating Council of that county, and a member of the Mayor's Fact Finding Committee on Juvenile Behavior in Hillsborough County. Since 1957 he has served on the board of advisors of the McDonald Training Foundation. He is past president of the Tampa Bay Psychological Association and is now president of the Florida Psychological Association. He is a fellow of the American Psychological Association, a charter member of the Southeastern Psychological Association, a member of the Eastern and Florida Psychological Associations.

20. *James J. Kirkpatrick* is a stock subscriber and has resided in Tampa since 1954. He was born in Washington, D.C., and received a B.A. and M.A. degree from the University of Tennessee. He took his doctorate at Syracuse University. Dr. Kirkpatrick is a psychologist and has offices in Tampa and Miami. He was a research assistant at the University of Tennessee and Syracuse University, and a lecturer in industrial psychology and project supervisor in the Psychological Services Center at Syracuse. He served for 2 years as project director for the American Institute for Research at Pittsburgh. Dr. Kirkpatrick was appointed to the Florida Board of Examiners of Psychology by Governor Collins. He is a member of the Florida Psychological Association, chairman of the Study Committee of the Florida Foundation for Future Scientists, and is a member of the Tampa Kiwanis Club and the Greater Tampa Chamber of Commerce. He has participated in the American Psychological Association's Industrial Division Workshops.

Applicant, City of St. Petersburg, Fla.

21. This applicant is a municipal corporation, and is the licensee of radio station WSUN and television station WSUN-TV in St. Petersburg, Fla. The city derives its authority to own, construct, and operate its radio and television stations from a special act of the legislature of the State of Florida which was approved by the Governor on May 22, 1937.

22. The affairs of the city of St. Petersburg are governed by a seven-member city council, elected by popular vote, with one of the members designated as mayor. This body determines policy for the operation of all city departments, but, under the terms of the city charter, the administration of these departments is delegated to the city manager who is appointed for an indefinite term by majority vote of the council. The city manager, in turn, appoints and directs the various department heads, and the members of the city council are expressly prohibited by the charter from interfering with their activities. The

radio and television activities of the city, as one of the 26 separate municipal functions, are under the direct supervision of the city manager, and he is responsible for the hiring and firing of the manager of these stations. The station manager reports to the city manager on all phases of operation, including personnel, operating costs, equipment needs, etc. Advertising and programing fall largely within the discretion of the station manager.

23. The St. Petersburg Chamber of Commerce, acting as official agent for the city of St. Petersburg, was granted a standard radio broadcast station license on November 1, 1927, by the Federal Radio Commission on a share-time basis with the city of Clearwater, Fla. When Clearwater sold its half interest to the Tampa Tribune, the city of St. Petersburg in 1940 appropriated \$125,000, purchased the Tribune's interest, and received approval for the complete ownership of the station on a full-time basis. From its inception, WSUN has been supported by funds made available by the city, and the city council regularly appropriated money to cover WSUN's operating costs. Originally licensed for 500 w, subsequent power increases were granted, and by July 1940 the station was operating with 5 kw power, day and night. During its first 2½ years of operation, WSUN was an independent station and provided 8 hours of news, weather, educational, and entertainment service each day. On May 15, 1930, WSUN became affiliated with a network (now ABC) and extended its broadcast service to 16½ hours daily. It now operates 24 hours each day, except for a maintenance period of 4 hours weekly.

24. The city of St. Petersburg filed its first application for television on October 19, 1950, requesting VHF channel 7, but this application was caught in the "freeze." This application was amended on June 30, 1952, to request UHF channel 38 which was granted by the Commission on October 8, 1952. This permit was amended in January 1953 to specify increased visual and aural power, and WSUN-TV began operation on May 31, 1953. From its inception, WSUN-TV had affiliation with the CBS, NBC, ABC, and DuMont Television Networks. Set circulation and revenue increased until 1955 when WFLA-TV began operation in Tampa on VHF channel 8 and the NBC affiliation was transferred from WSUN-TV to WFLA-TV. A few months later, when WTVT began operation in Tampa on VHF channel 13, WSUN-TV lost its CBS affiliation to that station. As a result, WSUN-TV suffered a sharp drop in network revenues and a reduction in national spot sales as many sponsors canceled their schedules and moved with NBC and CBS to the VHF channels in Tampa. Local revenues also decreased after the advent of VHF competition in the area, and the city's financial experience followed the economic pattern which developed nationally in areas of VHF-UHF intermixture. Consequently, when the Commission "dropped in" channel 10 in the Tampa-St. Petersburg area, the city council unanimously adopted a resolution authorizing the city manager to prepare, file, and prosecute before the Federal Communications Commission all applications necessary to secure modification of WSUN-TV's license to operate on VHF channel 10 instead of the city's present

UHF channel 38, and the current application was filed on July 30, 1957.

25. At the time of the hearing, the city council consisted of the following members: John D. Burroughs, mayor; William E. Carroll, J. Gerald Murphy, Ray C. Chase, Auldon B. Dugan, Daisy K. Edwards, and Edward F. Brantley. All are longtime residents of the city of St. Petersburg, and their participation in civic activities, taken collectively, includes service with many organizations. While biographies of all council members were placed in evidence, it is not necessary to detail the information contained therein because no member will take part in the day-to-day operation of the proposed facility, and the city charter expressly proscribes the council, or any of its members, from giving orders to any administrative official.

26. The city manager is George K. Armes, who was appointed on April 1, 1959. He was born in Alabama, and attended the Georgia School of Technology in Atlanta, and Mercer University in Macon, Ga. In 1946 he entered municipal work in the city of Fort Pierce, Fla., where he was in charge of streets, parks, water and sewage facilities, drainage and garage operations. From 1948 to September 1950, Mr. Armes was clerk and general superintendent of the town of Chattahoochee, Fla., where his functions included engineering, revaluation, tax assessing and collecting, bookkeeping, and other allied work. From September 1950 through March 31, 1959, he was director of public utilities for the city of St. Petersburg, in charge of its water, gas, and transit divisions and, for the first 4 years, of electricity. Mr. Armes' civic activities consist of directorships in the St. Petersburg Rotary Club, St. Petersburg Symphony Society, Civic Music Association, and the Utilities Division of Civil Defense. He is a member of the board of stewards of the Pasadena Community Church, disaster vice chairman of the Red Cross, and a member of various associations in connection with his municipal position. Mr. Armes' radiobroadcast experience has been confined to appearances as a performer at various times between 1924 and 1930, and to checking the electrical facilities for station WSUN during its expansion program in 1951 and 1952.

27. *Fred Shawn*, general manager of WSUN and WSUN-TV, has been connected with radio and television for more than 25 years, and since May 14, 1956, has been in charge of the day-to-day operation of the city's radio and television stations under appointment by and supervision of the city manager. He entered the broadcasting field in 1932 as a performer-announcer at WLW after 5 years as a performer in the professional theater. He was associated with NBC in Washington, D.C., and New York City for some 20 years in various capacities, including: Director of radio station relations; director of television program administration; director for television program production operations; and assistant to the vice president in charge of programs. For 12 years he was assistant manager and program manager of NBC's Washington division and later was director of operations for the Washington Evening Star stations WMAL, TV, AM, and FM. While in Washington, Mr. Shawn originated the "Mile O' Dimes" campaign which spread nationwide. He produced and staged

productions for the White House Correspondents Association banquet for the President, and for the World Telecommunications Convention. Immediately prior to joining WSUN and WSUN-TV, he was executive assistant to the president of the licensee of stations WABT and WAPI in Birmingham, Ala. Mr. Shawn is a charter member of the Society of Television Pioneers, director of the Florida Association of Broadcasters and the St. Petersburg Advertising Club; a member of the St. Petersburg Rotary Club, St. Petersburg Sales Executive Club, St. Petersburg Chamber of Commerce, St. Petersburg Civic Center Volunteers, Radio-Television Executives Society, and the Pass-a-Grille Yacht Club. While not an officer of the Rotary Club or the Chamber of Commerce, Mr. Shawn has served on their various committees, such as the program committee, and the publicity and information committee.

Applicant, Suncoast Cities Broadcasting Corp.

28. This applicant is a Florida corporation formed originally for the purpose of obtaining a VHF television channel for the St. Petersburg area. After channel 10 was assigned to the Tampa-St. Petersburg area, it was felt that the group should be enlarged. Under Florida law, stock in the original corporation could not be subscribed by persons other than the charter members without selling the stock to the general public, so a new corporation was formed including the original group and the new principals. The board of directors of the new corporation authorized the payment of \$5,000 and 1,000 shares of common stock for the assets of the original group. Suncoast is authorized to issue 10,000 shares of preferred nonvoting stock (\$100 par value) and 4,000 shares of common stock, 1 vote per share (\$5 par value). Of this, 1,000 shares of common stock have been issued and 2,250 subscribed; and 5,250 shares of preferred stock have been subscribed.

29. The officers, directors, and stockholders of Suncoast Cities Broadcasting Corp. are as follows:

Name	Preferred stock ¹ subscribed	Common stock		Percent (issued and subscribed)
		Issued	Subscribed	
Hurley W. Holland, president and director.....	1,500	334	500	25.7
Daniel H. Smith, executive vice president and director....	100	100	100	3.1
Ed C. Wright, vice president and director.....	1,500	333	500	25.6
Harry R. Playford, chairman of the board.....	1,500	333	500	25.6
Clementine Japour, secretary and director.....	20	20	20	.6
E. Russell Sheldon, treasurer and director.....	100	100	100	3.1
William K. Zewadski, director.....	100	100	100	3.1
Floyd T. Christian, director.....	100	100	100	3.1
William H. Mills, director.....	100	100	100	3.1
T. Frank Hobson, Sr.....	100	100	100	3.1
Weyman T. Willingham, director.....	20	20	20	.6
Lawrence W. Baynard.....	50	50	50	1.5
Henry M. Douglass.....	20	20	20	.6
Edward B. Porter, Jr.....	20	20	20	.6
Bruce W. Watters.....	20	20	20	.6
Total.....	5,250	1,000	2,250	100.0

¹ No preferred stock has been issued.

29. *Hurley W. Holland*, a stockholder, president, and director of Suncoast, was born in Milton, Fla., in 1897. He received an LL.B. degree from the University of Florida and has practiced law in St. Petersburg since 1922. He holds controlling interest in the First National Bank in St. Petersburg with his two sons and Harry R. Playford. Mr. Holland owns or controls several business properties, including the Royal Palm Hotel, a parking lot, and a cemetery, and is on the board of the Coastal State Life Insurance Co. of Atlanta. From 1951 to 1955 he was vice president, director, and a minority stockholder in radio station WNEW in New York City. On December 13, 1957, he acquired a 25-percent interest in station WNVY in Pensacola, Fla., and is a director of the station. For the past 5 years he has served on an advisory committee of the St. Petersburg Junior College, appointed by the Governor to advise school officials on budget matters, personnel problems, etc. His civic activities include membership in the Chamber of Commerce in St. Petersburg, the Florida Chamber of Commerce, the Committee of 100, the St. Petersburg Quarterback Club, the American Legion, the Gridiron Club of Tampa, and the Florida and American Bar Associations. He also belongs to several social clubs.

30. *Daniel H. Smith*, stockholder, executive vice president, and director of Suncoast, was born in Charlotte, N.C., in 1910. He received a B.S. degree in electrical engineering from the Virginia Polytechnic Institute in 1932. He has been an engineer for the Virginia Electric & Power Co., taught radio at Norfolk College, was a civilian radio engineer for the Navy, consultant engineer for several broadcast stations, and engaged in sales engineering activities. He participated in supervising the first radar-guided-missile efforts for Western Electric Co. Mr. Smith has been technical director of the Maine Broadcasting System, which operates radio stations WCSH in Portland, WRDO in Augusta, and WLBZ in Bangor, and operations manager for WCSH-TV. In 1954 Mr. Smith moved to Tampa and became assistant manager and vice president in charge of technical operations at WTVT. He later became operations manager of WFLA (TV and AM) until he joined Suncoast. In 1957 his services were contributed by Suncoast to WEDU, the educational station in the area, and in 1958 he became manager of that station. At the time of the hearing he had agreed to take temporary employment in New York. Mr. Smith is a senior member of the Institute of Radio Engineers, a member of the Kiwanis Club, Executives Club, Rock Point Golf Club, Winterset, Hiram Lodge, and St. Mary's Episcopal Church.

31. *Ed C. Wright*, stockholder, vice president, and director of Suncoast, was born in Georgia, and has resided in St. Petersburg since high school days. During the First World War, he served as personnel officer at Kelly Field and as assistant to the director of the Bureau of Aircraft Production in Washington. After the war, he worked with General Motors and later became a real estate broker in St. Petersburg. In 1930 he established Ed C. Wright & Co., an investment business specializing in Florida municipal bonds. In 1944 he retired from the securities business and now devotes his time to management of his investments, and to his position as director of Sea-

board Air Line Railroad. From 1951 to 1955, he was vice president, director, and minority stockholder in station WNEW, New York City; and is now vice president, director, and 37½ percent stockholder in station WGGG, Gainesville, Fla., and secretary-treasurer, director, and 25 percent stockholder in station WNVY, Pensacola, Fla. He is a director of the Pinellas County Taxpayers Association; a member of St. Petersburg, Clearwater, and Florida Chambers of Commerce, Committee of 100, First Methodist Church, Belle Aire and Hillsborough County Property Owners Associations, Quarterback Club, Bankers Club of America, St. Petersburg Yacht Club, and Lakewood Country Club. He has contributed his services and advice to the officials of the cities, counties, and school boards of the area on financial problems.

32. *Harry R. Playford*, stockholder and chairman of the board of Suncoast, has been active in St. Petersburg financial affairs since 1936. At the beginning of World War II, he helped to organize the Civilian Air Patrol and served as national executive. Later he directed the operation of the Air Transport Command transitional flight training program at Jacksonville, and supervised the CAA indoctrinational program in the training of air cadets at the University of Tennessee and Maryville College. Mr. Playford is one of the organizers and principal stockholders of Madden & Playford Aircraft, Inc.; and has been a director and stockholder in U.S. Air Lines, Inc., and a director of National Air Lines. He organized the First National Bank in St. Petersburg and is chairman of the board. From 1951 to 1955 he was chairman of the board and minority stockholder in station WNEW, New York City. Currently, he is secretary-treasurer, director, and owner of 37½ percent of station WGGG, Gainesville, Fla., and is vice president, director, and 25 percent owner of station WNVY, Pensacola, Fla. Mr. Playford is a member of the Committee of 100, St. Petersburg (Aviation Committee) and Florida (Aviation Division) Chambers of Commerce, Downtown Progress, Inc., chairman of the Pinellas County Airport Advisory Committee. He is a member of several aviation organizations.

33. *Clementine Japour*, stockholder, secretary, and director of Suncoast, came to St. Petersburg in 1921. She attended St. Petersburg High School and St. Petersburg Junior College for one semester. For the past 25 years, she has been Mr. H. W. Holland's personal secretary and office manager, and has served as a corporate officer of a number of his business projects. She and her sister own an exclusive dress shop in St. Petersburg. She was named "Woman of the Week" by the St. Petersburg Independent for her activity in civic and cultural affairs. She has served with the Community Chest, and as a volunteer worker for the Heart Fund, polio, cancer, and other fund-raising drives. Miss Japour is a patron of the St. Petersburg Symphony Society, and helped bring the Civic Music Association to the city. She is a member and former officer and director of the St. Petersburg Little Theater group. She has been treasurer and director of the Women's Auxiliary of St. Anthony's Hospital and Treasurer of St. Anthony's Jubilee, and has served as secretary of the Charity Ball Committee for the American Legion Hospital for Crippled Children.

34. *E. Russell Sheldon*, stockholder, treasurer, and director of Sun-coast, is a certified public accountant and has lived in St. Petersburg since 1925. He is senior partner in an accounting firm; a director of First Federal Savings & Loan Association; secretary and treasurer of Capri Isle, Inc., a land development enterprise; and director of the Willson-Chase Co., a department store in St. Petersburg. He is a member of both the American and Florida (past president) Institute of CPA's. In St. Petersburg his civic activities include: chairman and budget committee chairman for the Community Chest; chairman of the South Pinellas United Givers Fund; board member and past treasurer of the Florida Heart Association; chairman of the War Fund Drive for the Red Cross; and a member of the Chamber of Commerce, the St. Petersburg Merchants Association, and the Citizens' Sanitary Sewer Finance Committee. He also helped organize, and is a director of, the Community Blood Bank. In 1956, he was named St. Petersburg's Outstanding Citizen by the Junior Chamber of Commerce. He has served as director, president, and treasurer of the St. Petersburg Baseball Corp.; has been chairman of the St. Petersburg Open Golf Tournament; and has served on several committees to bring sports to the City. He is a member and officer of the Lakewood Country Club, the St. Petersburg Quarterback Club, and the Trinity Lutheran Church.

35. *William K. Zewadski*, stockholder and director, is a native of Tampa and has practiced law in St. Petersburg since 1945. He is a member of the St. Petersburg, Florida State, and American Bar Associations. He is president of the Citizens Charter Group of St. Petersburg; has served as president of the Honor Court for the Boy Scouts and is now merit badge counselor and examiner; was chairman of the "Get Out the Vote Committee" for the Junior Chamber of Commerce; organized and was president of the 8 o'Clock Investment Club; helped organize the St. Petersburg unit of the Air Reserves Association; and is a member of the Kiwanis Club and Chamber of Commerce. He is a director of the YMCA and has participated in United Givers, Red Cross, and Community Chest activities. He is an honorary member of the Polish-American Society, and is active in the First Baptist Church.

36. *Floyd T. Christian*, stockholder and director, has resided in St. Petersburg since 1926. He has an A.B. degree in education and an M.A. degree in school administration and supervision from the University of Florida. After the war, he was appointed administrator in charge of the Florida Department of Veteran Affairs, and in 1948 was elected superintendent of schools for Pinellas County, a position he now holds. Mr. Christian has been president of the Florida Association of County Superintendents, president of the Florida Education Association, a member of the American Association of School Administrators, and a life member of the National Education Association. He was recently appointed by the Governor a member of the Florida Educational Television Commission and became its first chairman. He is now on the board supervising the educational TV station in the area. In 1958, he received the J. C. Award for Good Government for the St. Petersburg Area, and the American Legion

award for distinguished service on behalf of Pinellas County. He has been designated outstanding citizen in Pinellas County by the Negro Citizens of St. Petersburg, and "Boss of the Year" by the American Business and Professional Women's Club. He is a director of the Pinellas County Juvenile Welfare Board, and a member of the Pinellas County Licensing Board, Rotary Club, Masonic Lodge, Florida University Alumni Association, and the Pasadena Community Church in St. Petersburg.

37. *William H. Mills*, stockholder and director, is the senior partner in a St. Petersburg construction firm. He is president of the Fifth Avenue Investment Co., Inc.; a director of the First National Bank in St. Petersburg; and an officer or director of several investment corporations. He is vice chairman of the St. Petersburg Port Authority; a member of the Pinellas County Airport Advisory Committee; past president of the Greater St. Petersburg Chamber of Commerce; director of the American Legion Hospital for Crippled Children and of the Pinellas County Society for Crippled Children and Adults; a member of the Committee of 100; and belongs to several social clubs.

38. *T. Frank Hobson, Sr.*, a stockholder, started practicing law in St. Petersburg in 1925, after receiving an LL.B. degree from John B. Stetson University. He also was granted an LL.D degree in 1948 and a Distinguished Service Award in 1954 by Stetson University. In 1926 he became a member of the State board of law examiners. In 1927 he was appointed Pinellas County judge and served in that position until 1948 when he became a justice of the Supreme Court of Florida. He is an officer and director of the Haven Insurance Co. in St. Petersburg; a trustee and deacon of the Hobson Memorial Baptist Church; and a member of the Children's Advisory Board of Juvenile Court. He is a member of the St. Petersburg, Clearwater, Pasco County, and American Bar Associations; and has been an officer of Stetson University Alumni Association, Lions Club, Dragons, and Pasadena Men's Club, as well as a member of several social clubs.

39. *Weyman T. Willingham*, stockholder and director, has resided in St. Petersburg since 1925. He is president of an insurance, real estate, mortgage loan, and property management firm, and a director of the Peninsular Telephone Co. and the First National Bank in St. Petersburg. He is a member and past chairman of the Civil Service Commission and the Board of Public Instruction of Pinellas County. He is president of the Citizens Advisory Committee of Pinellas County; was president of the St. Petersburg Community Chest for 2 years; is a member and past officer of the St. Petersburg Chamber of Commerce, Committee of 100, St. Petersburg Kiwanis Club, St. Petersburg Insurers Exchange, St. Petersburg Board of Realtors, St. Petersburg Yacht Club; and is a member of the Bath Club, Sunset County Club, Masonic Lodge, and the First Methodist Church.

40. *Lawrence W. Baynard*, a stockholder, came to St. Petersburg in 1920, and engaged in the real estate business for 10 years and the funeral business for more than 25. Mr. Baynard has retired, and now is president and director of the Guarantee Abstract Co. in St. Petersburg, director of the Gulf Beach Bank in St. Petersburg Beach, and vice president and director of the Madeira Beach Bank. His civic

activities include: assistance in organizing the YMCA and Boy Scout Troop No. 13; and the establishment of the St. Petersburg Methodist Home for the Aged, of which he is chairman and director. He has served as chairman of the St. Petersburg Civil Service Commission, president of the Civitan Club, a member of the Pinellas County Utility Board, and chairman of the board of the Pinellas County Taxpayers' Association. He is a member of several social clubs.

41. *Henry M. Douglass*, a stockholder, has been general manager of the Pinellas Cigar Co. in St. Petersburg since 1945. His civic activities include service as division head of the United Givers Fund, and directorships in the Pinellas County Taxpayers' Association, Community Welfare Council, Florida State Mental Health Association, Goodwill Industries, and the Rotary Club. His club memberships include the Lakewood Country Club, Drifters Club, St. Petersburg Quarterback Club, National Sales Executive Club, and St. Petersburg Yacht Club.

42. *Edward B. Porter, Jr.*, a stockholder, has been in the fuel oil business in the St. Petersburg area since 1948. He is president of the City Fuel Oil Co. in St. Petersburg and Clearwater, and holds 100 percent of the stock. His civic and social activities include work with schoolboys in the Rotary Club's 4-Square Program, service as captain in Community Chest and Red Cross Drives, and the St. Petersburg Inter-Racial Council. He is vice president and director of the St. Petersburg Quarterback Club; director of the Florida Petroleum Marketers Association and St. Petersburg Yacht Club; and a member of the Committee of 100, and St. Peters Episcopal Church.

43. *Bruce W. Watters*, a stockholder, has been in the jewelry business in St. Petersburg for more than 30 years. He is president and sole owner of a jewelry firm in St. Petersburg, a member of the St. Petersburg Merchants Association, and a member of the Florida Retail Jewelers Association. In 1937 he was appointed by the city council to the Municipal Civil Service Commission where he served for 12 years, with 2 terms as president. He has served on the board and as president of the Florida Assembly of Civil Service and Personnel Directors; on the board of trustees of the Mound Park Hospital Foundation, Inc.; and has participated in Red Cross, Community Chest, Chamber of Commerce, and Rotary Club activities.

Applicant, Tampa Telecasters, Inc.

44. Tampa Telecasters, Inc., is a Florida corporation organized for the purpose of constructing and operating a television station. It has an authorized capital stock of \$400,000 divided into 4,000 shares of voting common stock of the par value of \$100 per share. Forty shares have been issued and 3,000 shares are subscribed. Based upon his experience in Mobile with a large number of stockholders, Mr. Giddens decided to form Tampa Telecasters with a small number of stockholders, each of whom would have a sufficient ownership in the station to give him an interest in the station as a business and civic enterprise, rather than an investment to be sold for capital gain.

45. The officers, directors, and stockholders of Tampa Telecasters are as follows:

Name	Office held	Number of shares		Percentage of voting stock
		Held	Subscribed	
Kenneth R. Giddens.....	President, treasurer, and director.....	30	2,250	75
A. L. Ellis.....	Vice president and director.....	6	450	15
C. P. Persons, Jr.....	Secretary and director.....	4	300	10

46. *Kenneth R. Giddens*, officer, director, and 75-percent owner of Tampa, was born in Alabama and has been a resident of Mobile since 1924. He graduated from the Alabama Polytechnic Institute, Auburn, Ala., with a degree of bachelor of architecture, and worked for the Durham Construction Co. as a draftsman, estimator, and in other capacities until 1932. In 1933 he served as architect for the city of Mobile. In 1934-35 he was manager of the National Reemployment Service for five counties in Alabama. He then returned to the Durham Construction Co. as a draftsman, designer, and superintendent until 1939. He entered private architectural practice for a year, and subsequently engaged in a general construction business until 1943. Mr. Giddens has had a 50-percent interest in the partnership of Giddens and Rester since 1943, which partnership is engaged in the operation of theaters in the Mobile area. In 1946 this partnership applied for a standard broadcast station and operated WKRG-AM until 1951, when Mr. Rester withdrew and assigned his 50 percent interest to his children. In 1952 Mr. Giddens became a 20-percent stockholder and president of WKRG-TV, Inc. Since this station went on the air in September 1955, he has been president and general manager, and has increased his holdings to 50 percent. He presently devotes 100 percent of his time to the radio and television operation. Mr. Giddens' civic activities have included holding office in the following organizations: Junior Chamber of Commerce; Mobile County Chapter, American Red Cross; Child Daycare Association; Citizens Advisory Committee for Education; Mobile Community Chest; Town Meeting Association; Joe Jefferson Players (Little Theater); Tuberculosis and Health Association of Mobile County; Auburn Alumni Association of Mobile; PTA Committee for Establishing a Junior College in Mobile; Finance Chairman for Freedom Train; and chairman of a drive to secure funds for building a new dormitory for the YWCA. He has membership in various social, fraternal, and business organizations in the Mobile area. He belongs to the U.S. Society of Editors & Commentators, and in this capacity has visited some 30 nations and interviewed leaders of foreign states in cooperation with the U.S. Department of State. He has made commentaries on his trips on WKRG and lectured throughout the gulf coast area. Mr. Giddens proposes to supervise all aspects of the proposed operation in Tampa, and to devote about 50 percent of his time to such duties.

47. *A. E. Ellis*, stockholder, vice president, and director, is a resident of Tarpon Springs, Fla. Mr. Ellis entered the banking business in 1925 on a full-time basis, and from that date to 1931 he was employed with a bank in Winter Haven, Fla., and in bank receivership work. Between 1931 and 1936 he was associated with the Florida

National Bank at Lakeland, Fla. In 1936 he was elected cashier of the Wauchula State Bank, Wauchula, Fla., and was made chairman of the board and president of that bank in 1938. In 1943 he became president of the Sarasota Bank & Trust Company, Sarasota, Fla., and is presently a substantial stockholder and member of their board of directors. Since 1941 he has been majority stockholder, chairman of the board, president, and director of the First National Bank in Tarpon Springs, Fla. In 1943 he purchased controlling interest in the Central Baldwin Bank, Robertsedale, Ala., and since that time has been a member and chairman of the board of directors. In 1952 Mr. Ellis organized Gulf State Bank, New Port Richey, Fla., and at present is the majority stockholder and chairman of the board of directors. Also in 1952 he purchased controlling interest in the First National Bank of Bradenton, Fla., and is now chairman of the board of directors. Mr. Ellis has also served as national banker and State banker chairman of Group 1 of the Florida Bankers Association. He is president and a director of General Discount Corp., Tarpon Springs, Fla.; president, treasurer, and director of Carlen Realty Co., Tarpon Springs, Fla.; a member of the board of directors of Union Finance Corp., Tampa, Fla.; and president and director of Baldwin Investors Co., Robertsedale, Ala. His social and civic activities include: past president of the Tarpon Springs Rotary Club; director of the Tarpon Springs Chamber of Commerce; a member of the Tarpon Springs Yacht Club, Kiwanis Club, Elks, Masons, Shriners, Jesters, Knights of Pythias, and Theta Chi Fraternity. He is also a member of the State board of directors of the Children's Home Society of Florida, Jacksonville, Fla.; and a director of the Clearwater Concert Association, Clearwater, Fla., and Pinellas chapter, American Cancer Society. He has served as a member of the city advisory board of the city of Sarasota, Fla.; a member of the Citizens Committee of Sarasota, Fla.; president for 2 years of the Community Chest of Sarasota; a charter member of the board of directors of the YMCA; chairman of the Sarasota County used clothing drives; treasurer of the Hardee County National Infantile Paralysis Foundation and Hardee County Health and Tuberculosis Association; and a member of the State board of directors of the Florida Health and Tuberculosis Association. He will devote about 10 percent of his time to the station.

48. *C. P. Persons, Jr.*, stockholder, secretary, and director of Tampa, was born in Atlanta, Ga., in 1912, and graduated from the University of Alabama with an A.B. degree in 1935. From 1935-36 he was employed by the Etna Life Insurance Co., and from 1937 to 1938 by the General Electric Co. In September 1939 he became sales representative for station WAPI, Birmingham, Ala. He subsequently became local sales manager, national sales representative, and sales manager for that station. In 1949 he became manager of television operations for WAFM-TV in Birmingham. In 1952 he became vice president of television operations at WABT in Birmingham, and in 1954, general manager of KOTV, Tulsa, Okla. Since 1955 he has been vice president and general manager of WKRG-TV, Mobile, Ala. His civic activities include: member of the Junior Chamber of Commerce, Birmingham, Ala., 1939-46; member of the Alabama Alumni Association, German

Club of Birmingham, Birmingham Chamber of Commerce, Birmingham Symphonic Society, and Mobile Rotary Club.

Applicant, WTSP-TV, Inc.

49. WTSP-TV, Inc., is a Florida corporation organized for the purpose of constructing and operating a television station. The organization is authorized to issue 1 million shares of voting common stock at a par value of \$1 a share; 800,000 shares have been subscribed by 28 prospective shareholders.

50. The officers, directors, and stockholders of WTSP-TV, Inc., are as follows:

Name	Office	Shares subscribed	Percent of voting stock
Sam G. Rahall	President and director	210,666	26.3
N. Joe Rahall	Vice president and director	186,667	23.3
Farris E. Rahall	Treasurer and director	183,667	23.0
Marshall Cleaver	Secretary and director	None	None
Sam H. Mann	Vice president and director	24,000	3.0
C. C. Vega, Jr.	Director	16,000	2.0
O. R. Davies	do	8,000	1.0
Courtney Campbell	do	4,000	.5
Paul B. Barnes	None	16,000	2.0
W. H. Lester, Jr.	None	16,000	2.0
J. B. Weissman	None	16,000	2.0
K. E. Fenderson	None	16,000	2.0
William A. Durden	None	8,000	1.0
Frank C. Parker	None	8,000	1.0
S. R. Kirby	None	8,000	1.0
Donald R. Kirby, Jr.	None	8,000	1.0
Edward K. Maloof	None	8,000	1.0
Joseph W. Pilkington, M.D.	None	8,000	1.0
Joseph C. Bonsey	None	8,000	1.0
Hubert Rutland	None	8,000	1.0
M. O. Lester	None	8,000	1.0
J. Howard Gould	None	4,000	.5
J. Norman Romoser	None	4,000	.5
Howard W. Reeves	None	4,000	.5
A. G. McEachern	None	4,000	.5
Sam H. Mann, Jr.	None	4,000	.5
N. R. Farrar	None	4,000	.5
Niel W. Upham (deceased)	None	4,000	.5
Howard G. Abt	None	3,000	.4

51. *Sam G. Rahall*, stock subscriber, president, and director of WTSP-TV, was born in Beckley, W. Va., and graduated from Ohio State University in 1940. He has resided in St. Petersburg since 1957. From 1940 to 1944 he was associated with Carlson, Inc., clothiers, in Beckley. From 1942 to date he has participated in several business ventures with his brothers, N. Joe Rahall and Farris Rahall. He has been a partner in Raleigh Transit Co. and Rahall Bros. Realty Co.; president of Rahall Motor Sales and director of the Beckley Industrial Corp., all of Beckley; and treasurer of Rahall Motors, Inc., of Charleston, W. Va. In 1946 and 1947 he and his brothers received authorization to construct radio stations WWNR (Beckley), WNAR (Norristown), and WKAP (Allentown). Mr. Rahall is vice president and treasurer of these stations; was treasurer of station WFEA at Manchester, N.H., from 1954 to 1959; and has been secretary-treasurer of WTSP, Inc., licensee of standard broadcast station WTSP in St. Petersburg since 1956. In 1954 he became president of Capital Television, Inc.; a 40-percent owner of television station WCHS-TV at Charleston, W. Va.; and was secretary and member of the board

of directors of WCHS-TV, Inc., the licensee corporation, until 1957 when Capital sold its interest. At present he is general manager of station WTSP. His membership in civic, professional, and fraternal organizations include: Pinellas County Mental Health Society, St. Petersburg Chamber of Commerce, North Shore Elementary PTA Association, and the Committee of 100. He is on the board of directors of the American Lebanese-Syrian Associated Charities of St. Petersburg.

52. *N. Joe Rahall*, a stock subscriber, vice president, and director of WTSP-TV, was born in Beckley, W. Va., and educated in their public schools. He received a B.S. degree from Duke University in 1935. Since 1937 he has been owner of Rahall's Dress Shop in Beckley and has other ownership interests in that city. From 1941 to 1957 he and his brother, Sam Rahall, operated the Raleigh Transit Co. in Beckley. He is president of the licensee corporations of four Rahall radio stations and vice president of a fifth, and held a minority interest in station WCHS-TV from 1954 to 1957. His civic activities include: Service as president of the Greek Orthodox Church, Beckley, W. Va.; president of the Beckley Better Business Bureau; chairman of the Christmas Activities for the city of Beckley; area chairman of Duke University's Loyalty Fund Drive in West Virginia; charter member and radio and television director of the St. Jude Hospital for Children's Diseases at Memphis, Tenn.; and, with his brothers, established a scholarship at Woodrow Wilson High School in Beckley to assist high school students in obtaining a college education. At the invitation of the Department of Defense, he has participated in a joint civilian orientation conference to study defense bases in the Eastern United States. Mr. Rahall has visited St. Petersburg from 6 to 8 weeks each year for the past 10 years.

53. *Farris Rahall*, a stock subscriber, treasurer, and director of WTSP-TV, was born in Beckley, W. Va., and educated in their public schools. He graduated from the Carnegie Institute of Technology as management engineer in 1939. From 1939 to 1941 he was engineer for Armco Steel Corp. in Butler, Pa. From 1941 to 1943 he was an engineer for Carnegie Illinois Corp., and from 1943 to 1945 he was plant manager for Aluminum Castings Co. in Cleveland, Ohio. In 1945 he joined his brothers in forming the Rahall Motors Corp., Charleston, W. Va.; the Rahall Broadcasting Co., Beckley, W. Va., licensee of WWNR, and the Norristown Broadcasting Co., Norristown, Pa., licensee of WNAR. He has also participated in the ownership of station WFEA, Manchester, N.H.; WKAP, Allentown, Pa.; and WTSP, St. Petersburg, Fla. In addition to membership in a number of social and business organizations, Mr. Rahall has served as director of the Junior Achievement Corp. and the YMCA in Butler, Pa.; director of the Kiwanis Club and the 1949 Red Cross Drive in Norristown, Pa.; member of the board of governors of the Carnegie Alumni Association, and member of the board of trustees and chairman of the Finance Committee for the Westminster Presbyterian Church, Manchester, N.H. Mr. Rahall has been a frequent visitor in St. Petersburg in recent years and intends to move to that area.

54. *Sam H. Mann*, a stock subscriber, vice president, and director

of WTSP-TV, was born in Arkansas, and has been a resident of St. Petersburg since 1925. In 1914 he received an LL.B. degree from Vanderbilt University, and since that time has been engaged in the practice of law. He is president and principal owner of the Princess Martha Hotel Co., St. Petersburg, Fla.; chairman of the board of a St. Petersburg bank; secretary of the American Glass Co.; and secretary of Colonial Hotel Properties, Inc. He was president and principal owner of Pinellas Broadcasting Co., licensee of WTSP, which was later sold to Nelson Poynter of the St. Petersburg Times, and later acquired by WTSP, Inc., the present owners. He is an elder of the First Presbyterian Church of St. Petersburg; secretary of the St. Petersburg Community Blood Bank; trustee and secretary of the board of the American Legion Hospital for Crippled Children; and active in several other civic, professional, and fraternal organizations in the St. Petersburg area.

55. *Marshall S. Cleaver*, secretary and director of WTSP-TV, was born in 1922 at Trevoise, Pa., and was educated at the Emilie Crider Norris School of Dramatic Arts in Philadelphia and the Dale Carnegie Institute. After the war, he worked for brief periods for the Veterans' Administration and for station WIP in Philadelphia. He joined the Rahall radio stations in 1947 as an announcer at station WKAP in Allentown, and subsequently held the positions of chief announcer, program director, and public service director of the station. He moved to the St. Petersburg area in 1956, and in 1957 was made station manager of WTSP. He presently holds the positions of vice president in charge of programing and assistant manager of that station. Mr. Cleaver is active in numerous civic, professional, and fraternal organizations in the St. Petersburg area, and has worked closely with the Pinellas County School District and other local educational and public service organizations, in connection with his activities at WTSP.

56. *C. C. Vega, Jr.*, stock subscriber and director, was educated in the public schools of Tampa, Fla., and Mobile, Ala. He received his college and law degrees from Georgetown University, Washington, D.C., and the University of Florida. Mr. Vega has practiced law in Tampa since 1930. He has been active in the civic, professional, and fraternal affairs of Tampa and was voted Outstanding Young Man of Tampa in 1937. Since 1936 he has been a trustee of the University of Tampa. He has served as chairman of the Boys Club Drive that built the Ybor City Boys Club; is a former vice president of the Centro Espanol de Tampa; and is recipient of the highest award the Republic of Cuba gives to nonresidents.

57. *Courtney Campbell*, a stock subscriber and director, has resided in Clearwater, Fla., for the past 32 years. He graduated from the University of Missouri, and engaged in the private practice of law in Missouri and Florida for 7 years. Since 1927 he has been vice president and member of the board of directors of the Food Machinery & Chemical Corp. From 1942 to 1958 he was a director of the Florida Chamber of Commerce and active in the State road and park development as a member of the Florida State Road Board. He is

active in numerous civic, professional, and fraternal organizations in St. Petersburg, Tampa, and Clearwater.

58. *Ogden R. Davies*, a stock subscriber and director, graduated from the Erie Conservatory of Music in 1930, and majored in business administration at Duke University from 1931 to 1935. From 1935 to 1942 he was manager of the Johnny Long orchestra and engaged in the stage production of films, recording and general show business. Following World War II, he produced and directed the Third Armored Division Road Show throughout Germany and France. For a brief period he worked for the transcription departments of the Frank Hummert and World Broadcasting System organizations. In 1947 he became manager of Rahall radio stations WKAP at Allentown, and WNAR at Norristown, Pa. In 1955 he was named general manager of all the Rahall radio stations. From 1956 to 1957 he served on the board of directors of television station WCHS-TV, Charleston, W. Va. Mr. Davies resides in Emmaus, Pa., and is active in numerous civic, professional, and fraternal organizations in the Allentown area.

59. The remaining 21 stock subscribers of WTSP-TV have been residents of the St. Petersburg area for more than 20 years, and are representative of its business, professional, and civic life. This representation ranges from the legal and medical professions to the real estate, insurance, banking, brokerage, industrial supplies, soft drink, furniture, and bakery businesses. A brief résumé of some of the activities of stockholders who propose to devote from 1 to 6 hours per week to the station's operation follows. Mr. Barnes is a former member of the St. Petersburg City Council and has been chairman of the board of the St. Petersburg Salvation Army for a number of years. Mr. Weissman is president of the Jewish Community Center of Tampa and a member of the Tampa Committee of 100. Mr. Parker has worked actively in the development of Little League baseball and other athletic programs sponsored by the local service clubs. Dr. Pilkington is a former member of the board of directors of the Children's Service Bureau. Mr. Bonsey served as chairman of the Mayor's Committee on Urban Renewal. Mr. Rutland is a trustee of the St. Petersburg YMCA and a member of the St. Petersburg Committee of 100. Mr. Gould is a member of the St. Petersburg Committee of 100 and vice president of the American Legion Hospital for Crippled Children. Mr. McEachern organized the citizens' committee of 50 business and civic leaders which drafted the St. Petersburg civil service act, and served for 9 years as chairman of the St. Petersburg Civil Service Commission. He is past president of the Florida Association of Civil Service Boards, has twice been a member of the board of directors of the St. Petersburg Chamber of Commerce, and is a former chairman of the Sarasota County School Board. Mr. Sam Mann, Jr., is active in bar association matters in the St. Petersburg area; is president of Family and Children's Service, Inc.; and has served as chairman of fund-raising drives for the Pinellas Association for Retarded Children.

Applicant, Bay Area Telecasting Corp.

60. Bay Area Telecasting Corp. is a Florida corporation authorized to construct and operate a television station. It is authorized to issue 100,000 shares of voting common stock and 51,700 shares of 7 percent cumulative nonvoting preferred stock, both at par value of 10 cents per share. The preferred stock is callable at the discretion of the corporation 5 years from the date of incorporation; 51,700 shares of the common stock, and all the preferred stock were subscribed at the time of incorporation by 24 prospective stockholders. An additional 27,840 shares of the common stock were optioned to 7 of the original stock subscribers, denominated as the "management group." The remaining 20,460 shares of authorized common stock are to be held in the corporate treasury subject to the condition that if they are subsequently issued, "the original subscribers shall have the right to purchase them in a proportionate manner to preserve the original percentage of ownership of the stock of the corporation."

61. The following list of stockholders, officers, and directors of Bay Area indicates the percentage of ownership now and the percentage of ownership when the "optioned" shares are purchased by the management group:

Name	Office held	Percent of ownership	
		Present	Future
J. L. Van Volkenburg	President, general manager, director.	9.85	9.90
John S. Houseknecht	Vice president, director	2.12	7.13
Frederic M. Waring	Vice president	1.94	8.51
Robert A. James	Treasurer, director	5.03	9.01
Lloyd M. Phillips	Secretary, director	3.88	3.77
Harry W. Bennett, Jr.	Director	5.03	9.01
Hal James	do	5.03	9.01
Charles G. Egerton	Vice president, director	None	None
David E. Edmunds	Director	7.72	5.03
Charles T. Ayres	None	1.94	1.26
Curtis W. Bowman	None .....	.98	.63
W. E. Crown, Jr.	None	1.94	1.26
Curtis & Gross, Inc.	None	13.53	8.80
Ray B. Curtis, president, 1/4 owner. J. R. Curtis, secretary-treasurer, 1/4 owner. George C. Gross, vice president, 1/4 owner.			
Egerton & Moore, Inc., of St. Petersburg, Fla.	None	7.15	4.65
Charles G. Egerton, president, 50 percent owner. George K. Moore, vice president, 49 percent owner. Virginia Y. Moore, secretary-treasurer, 1 percent owner.			
Walter A. Evers	None	1.94	1.26
Glenn E. Fargo	None	2.90	1.89
Louis Fried	None	15.44	10.06
William J. Grant	None .....	.98	.63
Harmon's	None	1.94	1.26
James D. Harmon, 50 percent owner. William M. Harmon, 50 percent owner.			
Frederick C. Hutchinson	None	3.86	2.52
W. H. Phillips	None	1.94	1.26
Richard F. Schmid	None	1.94	1.26
Val A. Schmitz	None	1.94	1.26
J. J. Willson	None .....	.98	.63

The first seven named persons comprise the "management group."

62. *Jack L. Van Volkenburg*, stockholder, director, president, and general manager of Bay Area, presently resides in Los Angeles, Calif.,

but his legal residence is Englewood, Fla. In 1928 Mr. Van Volkenburg began his business career with an advertising agency. In 1932 he joined the Columbia Broadcasting System as sales manager for station KMOX in St. Louis, Mo. From 1932 to his retirement in 1956, he was employed in various executive positions with CBS in Chicago and New York, and became vice president and director of CBS television operations in 1948, vice president in charge of network sales in 1950, and president of CBS television network in 1951. In 1952 he became a member of the CBS Board of Directors, but retired in 1956, and moved to Englewood, Fla. In August 1958, he became president and general manager of Pacific Ocean Park, Inc., an amusement center in Los Angeles, Calif. In addition to his position with Pacific Ocean Park, Mr. Van Volkenburg is employed by CBS as a consultant. Both of these contracts can be canceled in the event the Bay Area application is granted. His civic activities include being chairman and a member of the Television Committee, Brotherhood Week, National Conference of Christians and Jews, from 1952 to 1955 in New York City. In 1952 he was also chairman of the radio branch of the Visiting Nurse Service Campaign in New York City. In 1956 he received the University of Minnesota Achievement Award. He is also a member of the Broadcast Pioneers, the Radio and Television Executives' Society, and a charter member in the Television Pioneers and the Venice Yacht Club of Venice, Fla. He has also been on the board of directors of the Advertising Federation of America and the Advertising Council, Inc., and was chairman of National Advertising Week in 1955.

63. *John S. Houseknecht*, stockholder, vice president, and director, presently resides in Rowayton, Conn. He graduated from the University of Rochester in 1934. In 1937 Mr. Houseknecht became sound effects technician for NBC where he worked in the production of daytime serials and variety shows. In 1941 he joined Compton Advertising, Inc., as program supervisor, and later became business manager and traffic manager of the radio department. In 1946 he was vice president of a group that applied for and was granted a radio station in Rochester, N.Y., of which he was station manager. In 1949 he became eastern television sales manager with United Artists Corp. In the next 6 years, he was employed by the William Esty Advertising Agency as TV station clearance man and a member of the program advisory board on television accounts. In 1956 he was employed by Screen Gems as network salesman and has held a similar position with NTA. Since 1958 Mr. Houseknecht has been advertising manager with the Taylor-Reed Co. dealing with local television stations rather than network sales. His civic activities include membership in the Fund Drive of the United Church, Rowayton, Conn.; membership in the United Church Fair Committee in Rowayton; and a member of the U.S. Naval Reserve Public Relations Co. 3-3, Stamford, Conn. He was committee chairman and adviser of the Rowayton Boy Scouts of America from 1954 to 1958, and Explorer adviser to this group in 1957 and 1958. He is a 4.13-percent owner of Veterans Broadcasting Co., Inc., licensee of radio station WVET and permittee of television station WVET-TV, Rochester, N.Y.

64. *C. Gray Egerton*, stockholder, vice president, and director, has been a resident of St. Petersburg since 1934. In 1929 he became a salesman with Gimbel Bros. in New York City, and held a similar position with the Knox Hat Co. From 1930 to 1934, he was store supervisor for A. Schapp & Sons, New York. In 1935, he formed Egerton & Moore, Inc., of St. Petersburg, Fla., a retail men's apparel store, of which he is 50 percent owner and president. He is also vice president and one-third owner of the MEC Co. in St. Petersburg, and secretary-treasurer and one-third owner of Egerton & Moore, Inc., of St. Petersburg Beach. His civic, professional, and fraternal activities include memberships in the St. Petersburg Junior Chamber of Commerce from 1936 to 1948, the Lions Club of St. Petersburg, and a member of the board of directors of the St. Petersburg Merchants Association. He is president of the board of directors of the YMCA, a member of the St. Petersburg Chamber of Commerce since 1947 and president from 1954 to 1955. From 1938 to 1957 he participated in the Red Cross and Community Chest Drives. He is vice president of Suncoasters, chairman of the 1958 and 1959 Sunshine Festival Parades, and general activities chairman.

65. *Frederic M. Waring*, stockholder and vice president, is a nationally known band leader, and his orchestra and chorus have appeared on numerous occasions on radio and television. Since 1952 he has been president, director, and 65 percent owner of Waring Enterprises, Inc., Delaware Water Gap, Pa., which is a holding company for: Fred Waring's Pennsylvanians, Inc.; Shawnee Inn, Inc.; Shawnee Press, Inc.; Manwalamink Water Co.; and Music Journal, Inc. Also, since 1952, he has been president, director, and 100 percent owner of Arrowhead Realty, Inc., and Manwalamink, Inc., at Delaware Water Gap, Pa. He is a member of the Shawnee Country Club, New York Athletic Club, Cherry Hills Country Club, Augusta National Golf Club, the National Council of Boy Scouts, and an honorary member of the National Cartoonists Society. From 1948 to 1956 he was a trustee of Pennsylvania State University and received their Distinguished Alumnus Award in 1957. In 1956 he was chairman of the Pennsylvania division of the American Cancer Society; in 1958, chairman of the Pennsylvania Society for Crippled Children & Adults, Inc.; and a trustee of the Institute of Logopedics, Wichita, Kans. Since 1953 he has been a trustee of the Eisenhower Fellowship Exchange, Inc.

66. *Robert A. James*, stockholder, treasurer, and director, has resided in St. Petersburg since 1945. He received his degree from Harvard University in 1941. From 1941 to 1943 he was secretary-treasurer of Lake Erie Construction Co., Sandusky, Ohio, and Lakewood Homes, Inc., in Lima, Ohio. From 1944 to 1946 he was in the military service. Between 1946 and 1953 he was president of James Construction Co., Inc.; president of Florida Commercial Trailer Corp.; secretary-treasurer of Gulf Lumber, Inc.; director of Azalea Land Corp.; and director of Lakeland Truck & Trailer Sales, Inc. He is now president and 30 percent owner of Jobin & James Investments, Inc.; secretary-treasurer and 50 percent owner of Bay Point Builders, Inc.; director and vice president of Florida Mutual Fund; vice president,

secretary, and director of Investment Management & Research Corp.; and president and director of Bay Colony Estates, all in St. Petersburg. Mr. James' civic, professional, and fraternal activities include membership in the Masonic Order, Egypt Temple, Tampa; Lakewood Country Club, St. Petersburg; St. Petersburg Yacht Club; and the Harvard Club of St. Petersburg. He is chairman of the school committee of the Harvard Club for St. Petersburg, and president of the Driftwood Home Owners Association of St. Petersburg. He has been director of the St. Petersburg Heart Fund and president of the Harvard Club of the West Coast of Florida.

67. *Lloyd M. Phillips*, stockholder, secretary, and director, was born in Clearwater, Fla., and has resided in that city all of his life. He is a practicing attorney in Clearwater, and is secretary and director of Drew Investors & Results Corp. of Pinellas, Inc., in Clearwater. From 1948 to 1952 Mr. Phillips was prosecuting attorney of Pinellas County, and also president of the Clearwater Junior Chamber of Commerce. Other civic, fraternal, and professional activities include: past vice president of the University of Florida Alumni Association, and past president of the university's Clearwater Club. He has participated in the Polio Drive; is a member of the Baptist Brotherhood, Kiwanis Club, Clearwater Quarterback Club, Clearwater Power Squadron, Clearwater Outboard Club; and is legal adviser to the Clearwater Symphony Orchestra.

68. *Harry W. Bennett, Jr.*, a stockholder and director, was born in New York and resides there. Since 1932, when he was employed by the National Biscuit Co., his business experience has included: sales for Beech-Nut Packing Co.; account executive and supervisor of Compton Advertising; consultant and director of Veterans Broadcasting Co., Inc., Rochester, N.Y.; director of advertising, Lever Bros.; vice president and supervisor of Sherman & Marquette, Inc.; executive vice president and director of Bryan Houston, Inc.; and, in 1958, senior vice president and administrative officer of the Joseph Katz Co. of New York. His civic, fraternal, and professional activities include: membership in the Center Spot Players, Inc., of Bronxville; the board of governors of "Center Spot Cues"; the Manhattanville College of the Sacred Heart Building Fund Committee; The Rear Guards; Zeta Psi Educational Foundation; Sales Executive Club of New York; Radio & Television Executive Society of New York City; The Players, New York; American Marketing Association; American Institute of Management; Cornell Clubs of New York and Westchester; and the civilian police force of Bronxville. He has been a member of the Community Chest and American Red Cross. Mr. Bennett is a director and 4.88 percent owner of Veterans Broadcasting Co., Inc.

69. *Hal James*, a stockholder and director, resides at Westport, Conn. He graduated from the University of Chicago in 1935, and began his business career with Needham, Louis & Brorby Advertising Co. Subsequently, he was an actor in New York City; radio program supervisor, editor, and buyer for Compton Advertising, Inc.; director of radio, H. W. Kastor & Sons; director of radio and vice president in charge of radio and television for Ellington & Co.; vice president

and director of radio and television for Doherty, Clifford, Steers & Shenfield, an advertising agency; and is presently director of national sales for Independent Television Corp. of New York. His civic, professional, and fraternal activities include: past memberships in American Heart Association, American Cancer Society, Actors Equity Association, and Radio Directors Guild; and present memberships in the Westport Parent-Teachers Association, Westport Citizens Planning Association, Saugatuck Congregational Church, The Players (New York City), Broadcast Pioneers, Academy of Television Arts & Sciences, Radio & Television Executives Society, University of Chicago Alumni Society, and the Fishing Club of America. Mr. James is a director and 4.88 percent stockholder of Veterans Broadcasting Co., Inc.

70. *Charles T. Ayres*, a stockholder and proposed sales manager, is a resident of New York City and a graduate of Cornell University. His business experience includes a sales position with National Carbon Co., and a space-time buyer for Buchanan, Inc., of New York City. From 1935 to 1948 he was vice president of radio and television for Ruthrauff & Ryan, Inc. He has also been vice president in charge of radio network for American Broadcasting Co., and later held the same position with National Broadcasting Co. Mr. Ayres is now sales manager, Eastern Division, Television Network, for American Broadcasting Co. Mr. Ayres will move to the St. Petersburg area in the event of a grant to Bay Area.

71. *W. E. Crown, Jr.*, a stockholder and proposed auditor of Bay Area, has resided in Clearwater since 1948. He is a graduate of the University of Florida and Northwestern University. He is a member of the firm of Crown & McCrillus, certified public accountants, in Clearwater. From 1952 to 1954 he was a city commissioner of Clearwater, and prior to that he was chairman of the city's zoning and planning board. He is presently a member of the Clearwater Chamber of Commerce.

72. *Frederick C. Hutchinson*, a stockholder, has been a resident of Bradenton, Fla., since 1949. From 1938 to 1952 he was a major league baseball player and since then has been a manager of baseball teams. His civic, professional, and fraternal activities include: the Lions Club, the Anna Maria Island Citizens League, the Association of Professional Baseball Players, and the Holmes Beach Yacht Club. He was a teacher at the Sarasota Baseball School and an instructor for USAFE. In 1956 he was a member of the selection board for the Hearst All-American Baseball Team.

73. *Val A. Schmitz*, a stockholder and proposed promotion and merchandising manager, has resided in Clearwater since 1957. His business experience dates from 1929, and has been in the advertising, merchandising, and public relations fields. He has been director of these activities for Stanco, Inc.; The F. & M. Schaefer Brewing Co.; the Blatz Brewing Co.; and the American Distilling Co. At present, he is general sales manager of Co-operative Apartment Developers, Inc., Clearwater, Fla. His civic, professional, and fraternal activities include: the March of Dimes, American Legion, Alpha Kappa Psi, Alpha Delta Sigma, Pelican Golf Club, Bath Club, Belleair Civic

Association, St. Philomena R. C. Church. He has been a member of advertising associations, a special lecturer at New York University, and chairman of a committee to promote the conservation of tin during World War II.

74. The remaining 11 stock subscribers of Bay Area do not propose to take any active part in the day-to-day operation of the station, and it is not deemed necessary to detail their biographies as has been done hereinabove. Ten of these stock subscribers reside in the area and the length of such residence ranges from 8 years to 46 years. One stock subscriber, Mr. Louis Fried, is a resident of Miami Beach. These 11 stock subscribers include representatives of the medical and accounting professions, real estate, construction, insurance, automobile, retail department store, banking, and professional baseball businesses. Most of these stock subscribers have been members of various local civic, charitable, or fraternal organizations in the St. Petersburg area.

Identification With Other Media

Gulfcoast

75. None of the stockholders of Gulfcoast have any radio or television ownership interests; however, several of them are connected with the Times Publishing Co. which publishes the daily St. Petersburg Times. Mr. Poynter is president of the company and editor of its newspaper. Mrs. Poynter is a minority preferred stockholder and is associate editor of the paper. Thus Mr. Poynter by virtue of his 65 percent stockownership of Gulfcoast and his 60 percent stockownership of the Times Publishing Co. will be vested with control of both companies.

76. The following members of Gulfcoast are also connected with the Times Publishing Co.: Mr. Olson, treasurer and business manager; Miss McConnie, secretary and director; Mr. Witwer, city editor; Miss Osgood, society editor; Mr. Bryan, public relations director; and Mr. Pierce, chief editorial writer. Mr. Crago has the title of assistant to the president, but his duties have consisted of working on the Gulfcoast application and related matters. Mr. Witwer and Miss Osgood will sever their connections with the Times in the event of a grant to Gulfcoast.

77. The Times Publishing Co. has agreed to subscribe to 6,000 shares of preferred stock of Gulfcoast or, in the alternative, at the option of Gulfcoast, to take debenture bonds of that corporation with a face value of \$600,000. The publishing company has agreed to pay par value for such preferred stock or debenture bonds as such may be tendered to it by Gulfcoast from time to time.

78. The St. Petersburg Times was acquired by Mr. Poynter's father in 1912 and Mr. Poynter became its editor in 1932, and later assumed the presidency of the publishing company. An audit showing the circulation of the St. Petersburg Times, in relation to other newspapers in counties within the service area, discloses that the St. Petersburg Times is the dominant newspaper in Pinellas County with a daily circulation of 84,111 as of March 31, 1958, but that it has no circulation in 2 counties of the 9-county proposed television service area, and a circulation of less than 1,000 in 5 other counties. Outside

of Pinellas County, the circulation of the Tampa Tribune is larger in the service area than that of the Times, and in seven of the nine counties, the Tampa Times newspaper exceeds the St. Petersburg Times circulation. Five daily newspapers have circulation in Pinellas County. In 1947 Mr. Poynter promulgated "Standards of Ownership," for a newspaper or a radio enterprise, and states that these same standards will be followed and applied by Gulfcoast in the operation of the television station.

79. Mr. and Mrs. Poynter are also coeditors and owners of Congressional Quarterly which is published in Washington, D.C., three times a week, primarily for newspapers, editors, schools, and libraries. It relates principally to congressional activities and has a limited circulation.

WSUN-TV

80. Neither the city of St. Petersburg nor any member of the city council nor the city manager is identified with any other media of mass communication.

Suncoast

81. None of the officers, directors, and stockholders of Suncoast were shown to have been identified with any mass media of communication, other than broadcasting, in the St. Petersburg area or elsewhere. However, Messrs. Wright and Playford each own a 37½-percent interest in station WGGG, Gainesville, Fla. These two gentlemen and Mr. Holland each own a 25-percent interest in station WNVY, Pensacola, Fla., and between the years 1951 and 1955 collectively owned a 49½-percent interest in station WNEW, New York City.

Tampa

82. Mr. Giddens is a 50-percent owner of WKRG-AM, FM, and TV, and is active head of these stations. Mr. Persons is presently the general manager of WKRG-TV. Mr. Ellis is not identified with any other media of mass communication.

WTSP-TV

83. WTSP-TV has no ownership interest in any broadcast station or other medium of communication. However, the three Rahall brothers have been associated in the ownership and operation of five standard broadcast stations since about 1946. Between 1954 and 1957, they also owned a minority stock interest in a television station at Charleston, W. Va. At the time of the hearing, the Rahall brothers owned WTSP in St. Petersburg, Fla. (1380 kc, 5 kw-U); WWNR, Beckley, W. Va. (620 kc, 1 kw-L.S. 500 w-N); WKAP, Allentown, Pa. (1320 kc, 1 kw-U); WNAR, Norristown, Pa. (1110 kc, 500 w-D); and WFEA, Manchester, N.H. (1370 kc, 5 kw-U). While the hearing in this case was in progress, the Commission approved the sale of the Manchester, N.H., station. All of the above individual radio stations are licensed to separate corporations, with the three Rahall brothers being the principal stockholders in each. In addition to the three Rahall brothers, the estate of Deem Rahall, another brother, owns stock in three of the stations. Also, Mr. Davies holds stock

interests in WKAP and WNAR, and was a stockholder in station WFEA before its sale. A small stock interest in WWNR is owned by the general manager of that station; a small interest in WKAP is owned by Mr. Cordaro, director of engineering for the Rahall stations; Clyde Fry, comptroller of the Rahall stations, formerly owned a 20-percent interest in WFEA. It is also disclosed that WKAP, Inc., purchased from Queen City Television, Inc., a construction permit for a UHF television station in Allentown, Pa., but such station was never constructed. Sam H. Mann, Sr., a vice president and director of WTSP-TV, was, for a brief period of time, principal owner of Pinellas Broadcasting Co., licensee of radio station WTSP, but disposed of his interest to Mr. Poynter.

84. The operation of the radio stations controlled by the Rahalls is informally reviewed by a committee known as the "management team." This "team" is composed of the principal officers and directors of the corporate entity that is the licensee of each individual station. The members of such management team are: the three Rahall brothers; Mr. Davies, who is designated as general manager of the team; and four vice presidents who are in charge of engineering, general programing, religious programing, and a comptroller. This management team concept has been in existence since approximately 1950, and meets at frequent intervals, either in person or by telephone conference calls, to informally discuss general problems affecting the Rahall stations. The meetings or conference calls are usually held toward the last of each month. Inasmuch as the members of the management team are officers and directors of the individual corporate licensees of the station, the informal action of the management team is, in effect, the action of such licensee's board of directors, and is not an abrogation of the control vested in the board of directors. All of the general managers of the individual stations report to Mr. Davies as "general manager" of the management team on a weekly basis, and any questions relative to the problems of such stations are discussed during management team meetings or conference calls. The "management team" is an attempt to correlate and coordinate the operation of the various Rahall stations, and it is proposed that this team will function in the same way with respect to the television station in the event of a grant to WTSP-TV.

Bay Area

85. Bay Area has no interest in any other radio or television station or application or other media of communication. However, several of the stockholders have had, or presently hold, interests in radio and television stations. Messrs. Hal James, Bennett, and Houseknecht have been associated since 1946 with Veterans Broadcasting Co., Inc., which is the licensee of radio station WVET and television station WVET-TV at Rochester, N.Y. These three stockholders, holding 25.15 percent of the Bay Area stock, hold 13.89 percent of the stock of Veterans. All three were directors of the corporation. Mr. Houseknecht was also an officer; however, he resigned as an officer and director in February 1949 and has not been active in the management of the affairs of WVET since that date. Messrs. James and Bennett are still directors, but take no active part in its operation. These three stockholders were also associated with three

other applications for stations that have been filed with this Commission, and as stated hereinbefore, these three and Robert James comprised a part of the "management group" that filed an application for channel 8 at St. Petersburg in 1952. Mr. Van Volkenburg, the president and general manager of the proposed station, was employed by the Columbia Broadcasting System continuously from 1932 to December 31, 1956, in varying executive capacities, including president and chief executive officer of the CBS television network. Since his retirement in 1956, he has been under contract with CBS as a consultant; however, this consultancy agreement was amended in 1957 to provide for its termination in the event of a grant to Bay Area. Mr. Van Volkenburg's stockholding in CBS is 9,000 shares out of a total of 8 million shares outstanding.

86. Bay Area's "management group" idea for its corporate structure is an outgrowth of a similar corporate structure involving four of the present management group and two other individuals in a predecessor application for channel 8 in approximately 1952. Basically, the idea is that the management group shall receive a majority of the voting common stock of the company, and thus exercise control of its operation, in return for services in connection with the application. Much testimony was elicited at the hearing as to the basis for allocating the various percentages of stock to the group, and the contention was made that the uncertainty surrounding such unequal distribution of the stock reflected adversely upon Bay Area. However, it is found that the amount of stock to be held by each stockholder of a corporation who is an applicant is a matter within its own discretion, and that the manner of allocation and the amounts thereof can have no decisional significance in this case.

Integration

Gulfcoast

87. All of the stockholders of Gulfcoast will devote time to the operation of the proposed television station. Mr. Crago as general manager, Mr. Sharp as program manager, Mr. Moore as chief engineer, Mr. Witwer as news director, and Miss Osgood as women's director will devote their full time to the station. These five stockholders own a total of 20.76 percent of the common stock. Mr. Poynter as president and majority stockholder will devote 25 percent of his time to the station in exercising supervisory control over the operation and participating in the allocation of time for programs, particularly in the news and public service fields. Mr. Bryan, the proposed public service director, will devote 50 percent of his time to the station, while Mr. Pierce as educational director plans to devote 25 percent of his time to the station. The remaining seven stockholders will devote 10 percent of their time to the operation in various capacities.

WSUN-TV

88. The city of St. Petersburg is the applicant in this proceeding and its application has been prepared and prosecuted by the city manager at the direction of the city council. The city council will be responsible for the operation of the station, and as stated by the

Commission in the *City of Jacksonville*, 12 R.R. 113, "it is reasonable to make a determination of City's integration by looking to the role the city commissioners propose to play in the operation of the facility here sought, even though they, themselves, are not the owners." The record discloses that none of the city council has, in the past, played any part in the day-to-day operation of the radio or television station licensed to the city, nor do any of the council members propose to take any such part in the future. The city council is the governing body which determines policy for the operation of all city departments, but under the terms of the city charter the administration of these departments is delegated to the city manager. Even if it is considered that the city manager is one of the city officials, the city stands in no better stead because the city manager does not propose to take any part in the day-to-day operation of the station, but delegates the operation thereof to the station manager.

Suncoast

89. With the exception of Mr. Smith, a 3.1-percent stockholder, who will devote his full time to the proposed station, no other stockholder proposes to devote any specific amount of time to the station. Mr. Smith, as general manager of the station, will report to the board of directors and be under its supervision, and will be responsible for the entire operation of the station. Mr. Holland proposes to devote a "substantial" part of his time to the general supervision of the station's operation in his capacity as president and director of the company. Toward this end, he has disposed of a number of his business holdings and is retiring from his law firm. Mr. Wright and Mr. Playford, who together with Mr. Holland own approximately 77 percent of the total stock, will participate in major policy matters, especially in the field of finance. Mr. Sheldon will supervise the station's accounting and bookkeeping matters, and will also advise on sports programing. Mr. Zewadski will be local legal counsel for the station. Miss Japour will serve as a consultant on women's programing and provide liaison with certain civic organizations, particularly in the field of music. Mr. Willingham and Mr. Douglass will work with the public service director in coordinating service programs. Mr. Christian will assist in coordinating the station's educational programing. Mr. Porter and Mr. Baynard will assist in the station's youth programing. Judge Hobson will assist in the station's discussion programing to the extent of selection of issues, moderators, and proponents, and will also, as a member of the Children's Advisory Board of the Juvenile Court, take part in the planning and production of programs for young people.

Tampa

90. Mr. Giddens as president of the company will supervise all aspects of the proposed operation and will devote 50 percent of his time to the station. He states that he will establish a residence in the Tampa area for use as a winter vacation home and to facilitate trips to Tampa at other times. Mr. Persons who holds 10 percent of the stock will move to Tampa and devote his full time to the station as

its general manager. Mr. Ellis, the other stockholder, is a resident of Tarpon Springs and will devote approximately 10 percent of his time to the proposed station, but the record does not disclose what duties he will perform.

WTSP-TV

91. Twenty-one of the stockholders, including all eight directors, of WTSP-TV propose to devote various amounts of their time to the operation of the proposed television station. Marshall Cleaver will devote all of his time to his duties as general manager of the station. Sam Rahall will devote 90 percent of his time to the day-to-day operation of the station as its president. Joe Rahall will spend 6 months of each year in the area, and during the remainder of the year will make at least one visit a month to St. Petersburg to confer with area community leaders and concern himself with general station programing and progress. In addition, he will confer with other board members and station executives on general policy and operational matters by periodic telephone conference calls. Farris Rahall proposes to devote at least 45 hours a month to the station's affairs, principally financial matters and working with the station's national sales representative. O. R. Davies will make monthly visits to St. Petersburg as "general manager" of the Rahall radio stations, and will devote a minimum of 20 hours a month to the station's operations, rendering assistance when necessary in the local and national sales field and the purchase of film. Courtney Campbell will devote 10 percent of his time to public service and news programing, editorial policies, and in the development of agricultural and discussion presentations. Mr. Vega will devote 5 hours each week to assisting in the development of Tampa programing, to serving on the station's editorial board, and to an occasional appearance on the programs. Mr. Weissman will devote an undisclosed amount of time to assisting in the selection of program material originating in Tampa in conjunction with Mr. Vega. Paul Barnes will devote 6 hours a week to station operation, particularly in the presentation of programs from the Huntington Hotel. Frank Parker will spend at least 2 hours a week as adviser in the area of sports and fund-raising activities. Ten other stockholders have pledged to devote at least 1 hour a week to the development of agricultural, discussion, educational, and news presentations.

Bay Area

92. The following Bay Area stockholders will devote their full time to the operation of the proposed television station: Jack Van Volkenburg, president and general manager; John S. Houseknecht, operations manager; Charles Ayres, sales manager; and Val Schmitz, promotion and merchandising manager. These four stockholders represent a total of 19.55 percent of the stockholdings. Mr. Hutchinson will devote full time to the station during 4 months of the year as sports director and handling public relations. Mr. Egerton will devote 50 percent of his time to the development of public service programing. Robert James will spend 20 percent of his time on fiscal affairs and development of public service programing. Messrs. Hal

James and Harry Bennett will each spend at least 2 days per month at the station and 3 hours per week in New York City on program sources and developing national sales. Mr. Fred Waring will spend 1 week every 3 months in Florida as a consultant on programing, and will appear personally in August or September to supervise the final competition of Bay Area's proposed "School Music Hour" program. Mr. Lloyd Phillips will devote 10 percent of his time as local counsel, and Mr. Crown will serve as auditor.

Past Broadcast Record

Gulfcoast

93. As stated hereinabove, some of the members of Gulfcoast were stockholders in Pinellas Broadcasting Co. while it was the operator of stations WTSP and WTSP-FM. It appears that the radio station first went on the air in 1939 with a power of 100 w, and subsequently increased that power to 5,000 w with an operating schedule of 24 hours a day. The company obtained a permit for an FM station in 1948, and such FM station partially duplicated the AM programing. These two stations were sold to the Rahall interests and the sale was consummated on October 1, 1956. In connection with the renewal of station WTSP in 1953 and 1955, Gulfcoast filed analyses of the composite weeks for 1951-52 and 1953-54. The analysis of each composite week's past programing was carried forward in the renewal application as the proposed programing of the station for the next license period, and thus on each renewal application the past programing and the proposed programing percentages are identical. Comparison of the programing in the two renewal applications and the analysis of the composite week of 1955 that was filed with the assignment application at the time of the sale to the Rahalls shows the following:

	Renewal, 1953	Renewal, 1954	Assignment, 1955
Type:	Percent	Percent	Percent
Entertainment.....	62.3	66.5	73.4
Religious.....	4.9	6.0	5.6
Agricultural.....	1.6	.8	.0
Educational.....	1.2	1.6	.0
News.....	10.3	10.8	8.6
Discussion.....	1.6	1.8	.9
Talks.....	18.1	12.5	11.5
Total.....	100.0	100.0	100.0
Source:			
Network commercial.....	20.0	21.4	14.9
Network sustaining.....	33.5	10.6	5.7
Recorded commercial.....	18.5	41.5	58.4
Recorded sustaining.....	10.4	10.0	7.8
Wire commercial.....	5.1	6.7	6.5
Wire sustaining.....	1.3	1.5	.7
Live commercial.....	9.1	5.6	4.3
Live sustaining.....	2.1	2.7	1.7
Total commercial.....	52.7	75.2	84.1
Total sustaining.....	47.3	24.8	15.9
Complete total.....	100.0	100.0	100.0
Number of spot announcements.....	456	587	704
Number of noncommercial spot announcements.....	38	59	72

The complete analysis submitted by Gulfcoast shows that from 6 p.m. to 11 p.m. during its 1954 composite week, 7.9 percent of its broadcast time was devoted to live sustaining programs.

94. As an illustration of the character, location, and type of public service organizations served by WTSP during the 17-year period of ownership by Pinellas, Gulfcoast submitted a list of organizations to whom time had been made available. Gulfcoast contended that this was only a partial list, and intended for illustration only, because the station had been transferred to the Rahall interests in 1956 and the files of the station had either been transferred to the new owners or were no longer maintained as current. The list, as submitted, shows that Pinellas made broadcast time available to many educational, religious, agricultural, civic, cultural, health and welfare, fraternal and patriotic organizations, government, political, and other groups within the station's service area.

95. The record discloses that the St. Petersburg Times supplied spot news about twice a day for local news programming over WTSP while it was operated by Pinellas, and made available its sports editor, real estate editor, and its city hall reporter for programs on the radio station. Testimony further shows that station WTSP was, on occasion, identified at station breaks as the "Voice of the Times." It was also disclosed that the radio station and the newspaper had an agreement under which promotion of the station was exchanged for promotion of the St. Petersburg Times. Under this agreement, the station carried spot promotional announcements for the Times, and the newspaper published stories and advertisements for the station's sports program, political conventions, and other broadcasts. During the year 1951 the promotional lineage appearing in the Times was valued at \$5,838.25, while the station broadcast promotional announcements for the newspaper with a value of \$2,244.75. This reciprocal arrangement for promotional purposes appears to have been a legitimate tradeout agreement.

96. Upon cross-examination, Mr. Crago admitted that during the time he was general manager of WTSP while it was operated by Pinellas Broadcasting Co., the station broadcast 1-minute transcribed spot announcements for 2 publications that were classified as "per inquiry" announcements; that on one date, viz, May 3, 1956, the logs showed that during the two 15-minute segments from 12 noon to 12:30 p.m., there were 9 and 13 commercial spot announcements, respectively; that the station had carried commercial spot announcements for "package stores," but that the continuity for those announcements was devoted to beer, wine, and package goods, and not to "hard liquor"; that the station did not log the ending time for commercial spot announcements and, from the logs, it could not be ascertained

whether any spot announcements in excess of 60 seconds had been presented in violation of the station policy to limit commercial spots to 1 minute in length; that there had been instances when the station policy of not presenting spot announcements back to back had been violated; and that there had been occasions when WTSP carried so-called "pitch programs."

WSUN-TV

97. As shown hereinabove, the city of St. Petersburg has been the licensee of a standard broadcast station since the latter part of 1927 on a share-time basis with, at first, the city of Clearwater, and later with the Tampa Tribune, and since 1940 has been the sole operator of station WSUN. The city also has been the licensee of WSUN-TV operating on UHF channel 38 since 1953. Type and source analyses of both the radio and television stations were submitted at the hearing and, in addition, an exhibit detailing many of the public service and special programs and accomplishments of both stations was admitted into evidence. The analysis of the television station programming for the 1958 composite week as compared with its proposed programming as shown in its 1957 renewal application is as follows:

	WSUN-TV renewal ap- plication, Oct. 29, 1957	WSUN-TV composite week, 1957-58
Type:	<i>Percent</i>	<i>Percent</i>
Entertainment.....	83.63	82.6
Religious.....	1.88	2.1
Agricultural.....		
Educational.....	.63	2.4
News.....	2.34	2.7
Discussion.....	2.52	2.4
Talks.....	3.96	7.5
Miscellaneous public service.....	3.15	
Miscellaneous.....	1.89	.3
Total.....	100.00	100.0
Source:		
Network commercial.....	32.27	39.8
Network sustaining.....	7.54	9.8
Recorded commercial.....	26.48	10.3
Recorded sustaining.....	23.75	25.9
Wire commercial.....	.90	.8
Wire sustaining.....	2.14	2.2
Live commercial.....	3.81	7.0
Live sustaining.....	3.21	4.2
Total commercial.....	63.36	57.9
Total sustaining.....	36.64	42.1
Complete total.....	100.00	100.0
Actual broadcast-hours per week.....	79.5	82.9

98. A similar analysis of standard broadcast station WSUN reveals the following:

	WSUN radio renew- al applica- tion Oct. 28, 1957	WSUN radio com- posite week, 1957-58
Type:	Percent	Percent
Entertainment.....	59.70	67.3
Religious.....	11.60	9.5
Agricultural.....	1.50	1.4
Educational.....	.04	.....
News.....	11.52	12.6
Discussion.....	.04	.....
Talks.....	15.60	9.2
Miscellaneous.....	.....	.....
Total	100.00	100.0
Source:		
Network commercial.....	19.3	15.9
Network sustaining.....	20.2	5.3
Recorded commercial.....	33.2	40.2
Recorded sustaining.....	6.4	25.2
Wire commercial.....	3.7	3.8
Wire sustaining.....	4.7	3.8
Live commercial.....	9.0	4.7
Live sustaining.....	3.5	1.1
Total commercial	65.2	64.6
Total sustaining	34.8	35.4
Complete total	100.0	100.0
Actual broadcast-hours per week.....	127	149.9

99. The information submitted by WSUN-TV discloses that the radio and television stations have made time available to a wide variety of civic, educational, governmental, and other organizations and groups within their respective service areas.

100. The performance of WSUN and WSUN-TV was the subject of much testimony during the hearing, and in an effort to show that the City had not lived up to its promises, one of the applicants presented an analysis of the various percentages of programs in each type category that the City promised to provide in its 1954 renewal application, and compared it with the promises and performances set forth in the 1957 renewal application and the performance analysis contained in the 1958 composite week. The opposing parties also placed in record the proposed programing percentages that had been set forth in WSUN-TV's application for channel 38 in 1952, and compared such percentages with those set forth in the renewal application in 1957 and the composite week analysis for 1958. With respect to the comparison of the radio station programing between 1954 and 1958, the percentage changes are not of major significance because of the changing art of broadcasting and the time lapse between the two years. With respect to the wide differences between the types of programs proposed in the 1952 application of WSUN-TV for channel 38, and the percentages set forth in its 1957 renewal application and the analysis of its 1958 composite week, the record shows that there

were some errors in the type classification of certain programs, when the proposed programing shown in the application was reanalyzed at the hearing. Also, while the 1952 application proposed 21 percent educational programs and the composite week 1958 disclosed only 2.4 percent, it must be remembered that WEDU, the noncommercial educational station on channel 3, began operating during this interval, and the operation of such educational station will have a marked affect upon the educational programing efforts of any licensee of channel 10. It is found that a more reasonable, logical, and factual picture of the operation of the two stations can be secured by a comparison of the promise and performance in 1957 and 1958 as set forth hereinabove.

101. The other applicants questioned some of the programing practices that had been engaged in by WSUN and WSUN-TV. Among such was a sports program carrying dogracing information that was being carried by the station when Mr. Shawn became station manager in May 1956 and which continued for approximately a year after his arrival. The dogracing information portion was dropped when the station was advised that the manner of presenting the information was of "borderline propriety." Similarly, the contention is made that the two stations carried spot announcements for "package stores," and thus violated its policy of "no hard liquor advertising." The record shows that the stations did carry beer and wine advertising, but the program indicated that the sponsor was strictly a package goods store, and there was no mention of the word "liquor" or "liquor stores." The television station also admitted carrying programs for "Charles Antell" and "Chop-O-Matic," which were commonly designated as "pitch shows." The City also stated that two programs entitled "Tarnow" and "Copeland Prize Man" were removed from the air when their program content became questionable. The contentions of the adverse parties with respect to the Boca Ciega Bay landfill, the Pinson controversy, the Jenkins controversy, and the Webb trouble slide matter are not supported by the record in this case, and no finding can be made that the station's actions were not justified.

102. Upon cross-examination, the station manager admitted: that on occasion the policy of WSUN and WSUN-TV of not more than 3 minutes of commercial advertising in each 14½-minute segment, and the policy of limiting the length of spot announcements to 60 seconds, had not been adhered to; that only the starting times of spot announcements were indicated on the logs; that the stations regularly scheduled spot announcements in pairs back to back, and that there may have been occasions of triple spotting; that certain promotional spot announcements on behalf of commercial programs were not included in the total number of spot announcements reported during the composite week on behalf of WSUN-TV; that in certain instances, a program had been logged as "sustaining" when it was interrupted by a commercial spot announcement and thus should have been classified as "commercial"; that there had been instances of careless logging practices at the stations, but stated that such practices, insofar as the television station was concerned, might have been attributable to the fact that a new form of television log was being set up, and that the

July 25, 1958, log in question was a radio log form being used for television until the new form could be finalized.

103. Two other matters require evaluation in connection with the operating history of WSUN-TV. As hereinbefore pointed out, WSUN was the first television station in the Tampa-St. Petersburg area, and until about 1955 it enjoyed affiliation with four television networks and had developed a sizable viewing audience. In the latter mentioned year, two Tampa VHF stations were established and WSUN-TV lost its CBS and NBC affiliations. As a result thereof, it suffered a sharp drop in revenue in fiscal year 1956, and has continued to experience increasing losses to the present time. The availability of channel 10 gave the City an opportunity to acquire a comparative and competitive status with the VHF stations in the area, and the city council is now in favor of continuing operation on channel 38, even at a financial loss, pending the outcome of this hearing. It developed during the course of the hearing that in 1957 the City attempted to acquire channel 3 in exchange for channel 38. Channel 3 had been reserved for educational use and the City proposed to give the educational station all of the technical facilities it had, as a gift, if the educators would join in rulemaking to accomplish the reallocation or exchange. However, this effort failed. In view of the facts concerning the financial situation that faced the City, and, in fact, that faces any UHF station which is competing with VHF channels, no adverse findings can be made concerning the City or its council in attempting to have the educational channel reallocated.

104. The record further discloses that several officials of the city of St. Petersburg have expressed the view that the City should not be in the radio and television business in competition with private enterprise. It was particularly the view of the former city manager, Mr. Windom, that the operation of broadcast stations was not a function of local government, and he suggested to the city council between August and October 1953 that the stations be sold since they had reached a maximum value. The recommendation of Mr. Windom was accepted, and the city council passed a resolution on October 6, 1953, expressing the view that both the City's radio and television stations should be sold outright, or leased to a private concern. The City later, on April 6, 1954, unanimously passed a resolution calling for the sale of the City's stations and requested bids from prospective purchasers. Two such bids were received, but after discussion at meetings, the city council rejected both offers. Subsequently, on May 6, 1954, the city council adopted a resolution instructing the city manager to expedite all means to put WSUN and WSUN-TV on the strongest possible competitive basis, and further resolving that the City stay in the radio and television business until such time as some other council might find it necessary to make some other change. This former city manager stated that at the time he recommended a sale of the stations the curve of profit was at its highest level, and that now the reverse has happened he would not make such a recommendation until the profit curve got up to where it ought to be. The council views channel 10 as a means of survival because it is certain that it will lose its one remaining network affiliation to the licensee

of the VHF channel. It was the consensus of opinion that the application for channel 10 had to be made in order to take the City "out of the loss picture" and "out of a bad hole financially." To that end the council agreed to prosecute the channel 10 application and to continue operation of the UHF channel even though such operation meant further loss in revenue to the City. It was admitted at the hearing that if the City failed to be the successful applicant for channel 10, the UHF operation on channel 38 would be abandoned. Upon the basis of the foregoing testimony, it was the contention of the other applicants to this proceeding that if the City should be the successful applicant, "there is likelihood that the station will be sold shortly thereafter," especially if the profit curve raises to a higher level. It was further contended that even if the station is not a financial success, several members of the council indicated they would give serious consideration to selling out, while other council members indicated that the size of any deficit that existed would have a great deal to do with their position on selling the station. The present city manager testified that he would not be in favor of selling the stations if and when they should become high paying operations, nor would he recommend a sale if a loss operation should occur in the event of a channel 10 grant, but the decision would be that of the city council. On the basis of the record, the above contentions of the other applicants is speculative, and it is found that the City would be in no different position in this regard than any other applicant who might be granted a construction permit for channel 10 in this proceeding.

Suncoast

105. The applicant has not engaged in the business of broadcasting but, as stated hereinabove, three of its stockholders, holding 76.9 percent of its stock, own controlling interest in two radio stations. Suncoast did not choose to rely on the performance of these two radio stations in support of its television application, and did not present any program details on their operation. Suncoast contended that the daily operation of these stations in which Messrs. Holland, Wright, and Playford had controlling interest has been placed in the hands of capable experienced broadcasters at the scene. Messrs. Playford and Wright acquired their 37½ percent interest in WGGG, the Gainesville station, on condition that the prior owner retain a 25-percent interest in the station and remain there as station manager. With respect to WNVY, the Pensacola station, the three stockholders acquired their interest on the proviso that Mr. Oberly, an experienced Jacksonville broadcaster, would become a stockholder in the company and would supervise the operation. Similarly, during the time these three persons held stock in WNEW in New York City, the daily operation was entrusted to Mr. Buckley under the guidance of Washington radio counsel. While Messrs. Holland, Wright, and Playford did not participate in the day-to-day operation of these stations, they did provide instructions on their operation in the form of broad general policies to be followed, and transmitted instructions concerning these policies either by phone or when the persons in charge of the operation of the various stations came to St. Peters-

burg. Neither Mr. Holland nor Mr. Wright had any knowledge of the exact nature of the programing, the present distribution of programs, or the number of public spot announcements being presented at either station.

Tampa

106. The findings hereinbefore set forth show that Mr. Giddens is a 50-percent stockholder, president, and general manager of stations WKRK-AM, FM, and TV, in Mobile, Ala. The television station went on the air in September 1955, after a competitive hearing, and in 1957 was granted permission to change its transmitter site and to construct a new tower. An analysis of the program log for WKRK-TV for the 1957 composite week, as to type and source, and a list of organizations, individuals, and special events that had been presented over the station between 1956 and 1958, were submitted by Tampa to show the station's programing. The opposing applicants presented the promises set forth in the application for its construction permit that had been filed by WKRK-TV in the early part of 1953, and urged that a comparison of promises and performances revealed a great discrepancy between the two. The comparison is as follows:

	1953 application	1957 composite week
Type:	<i>Percent</i>	<i>Percent</i>
Entertainment.....	68.98	89.42
Religious.....	2.73	.65
Agricultural.....	3.47	.36
Educational.....	3.98	.65
News.....	7.69	4.61
Discussion.....	2.97	1.29
Talks.....	10.18	3.02
Total.....	100.00	100.00
Source:		
Network commercial (NC).....	26.36	51
Network sustaining (NS).....	9.61	8
Recorded commercial (RC).....	17.49	11
Recorded sustaining (RS).....	12.57	19
Wire commercial (WC).....	2.21	-----
Wire sustaining (WS).....	-----	-----
Live commercial (LC).....	17.48	6
Live sustaining (LS).....	14.28	5
Total commercial.....	63.54	68
Total sustaining.....	36.46	32
Complete total.....	100.00	100
Actual broadcast-hours (per week).....	99	115¾
Number of spot announcements (SA) (per week).....	311	453
Number of noncommercial spot announcements (NCSA) (per week).....	95	83

107. Tampa stated that the increase in network programing had resulted from popular demand, and from the fact that more such programing was available in 1957 than in 1952. The applicant also presented testimony to the effect that its efforts to present regularly scheduled educational programs in conjunction with the schools and colleges of the area had been hampered by the lack of personnel and money on the part of those institutions, and that the station's discussion programing had been disrupted by the disbanding of the Mobile Town Meeting Association that had participated in such programs. Some time elapsed before a similar program, entitled "The

Great Books," could be gotten together in conjunction with the Mobile Public Library. The applicant also pointed to the increase in broadcast-hours between the amount contemplated in 1952 and the actual hours telecast in 1957.

108. Because of the time lapse between 1952, when the proposed programing in the application was prepared, and 1957, when the actual programing of the station was analyzed, the percentage differences lost major significance. The list of organizations, individuals, and events that had been presented over the station shows that time had been made available to a wide variety of organizations and that a wide range of subjects had been covered.

109. It was brought out on cross-examination that the station had "clipped" 10 seconds from network time in several instances, contrary to network requirements. The station's general manager stated that clipping was standard practice at the station in certain instances, but that the 10-second periods that were clipped contained network promotional material for shows that had not been ordered by the station.

WTSP-TV

110. At present the Rahall brothers are principal stockholders in four radio stations, and at the time of the hearing were controlling stockholders in a fifth station. Type and source analyses of the programing carried by these five stations were submitted at the hearing, and, in addition thereto, a document entitled "Selected and Outstanding Public Service Accomplishments for the Year 1957 by the Rahall Stations" was presented. The last-mentioned document was prepared by the individual station managers at the request of Mr. Davies as general manager of the management team, and resulted from a suggestion at the 1956 convention of the National Association of Broadcasters that stations keep records of their public service activities so the Commission could be informed of their activities in this respect. In January 1958 copies of this document were distributed to the national representatives of the stations, to members of the Commission, to the individual managers of the stations, and to the applicant's Washington counsel. The analyses of the 1958 composite week for station WTSP and the 1957 composite week for the other four Rahall stations with respect to the programing proposed in the respective renewal applications filed with the Commission, and their past programing as exemplified in the composite weeks, are as follows:

Program Analyses by Type

[By percent]

Type	WTSP		WFEA		WWNR		WNAR		WKAP	
	Proposed	Per- form- ance	Proposed	Per- form- ance	Proposed	Per- form- ance	Proposed	Per- form- ance	Proposed	Per- form- ance
Entertainment.....	67.4	60.1	76.0	68.7	70.9	62.9	74.8	74.4	77.0	66.9
Religious.....	6.2	7.6	3.0	3.4	6.0	5.9	9.8	8.5	7.0	8.1
Agricultural.....	1.7	.6	1.0	1.2	1.7	1.6	.8	1.1	.5	1.1
Educational.....	2.4	1.0		.4		.6	.9	.6	.5	.9
News.....	10.0	10.0	12.0	10.5	9.6	8.4	8.1	8.9	7.0	7.3
Discussion.....	5.1	5.3	3.0	3.8	.8	9.9	3.6	3.0	5.0	6.5
Talks.....	7.3	15.6	5.0	11.8	11.4	10.7	2.0	3.5	3.0	9.2

Program Analyses by Source

[By percent]

Source	WTSP		WFEA		WWNR		WNAR		WKAP	
	Proposed	Per- formance	Proposed	Per- formance	Proposed	Per- formance	Proposed	Per- formance	Proposed	Per- formance
Network commercial (NC)---	8.3	11.3	18.6	16.2	7.1	9.3	2.4	1.6	3.2	5.5
Network sustaining (NS)---	1.6	1.6	11.0	6.6						
Recorded commercial (RC)---	51.0	42.6	44.6	40.7	49.1	50.1	52.8	54.0	48.2	50.8
Recorded sustaining (RS)---	15.8	16.4	10.4	12.7	18.1	18.2	22.1	25.6	18.0	19.2
Wire commercial (WC)---	3.7	1.3			3.5	3.2	4.8	6.6	3.8	5.5
Wire sustaining (WS)---	1.8	.9			2.3	5.8	5.4	4.7	2.3	2.5
Live commercial (LC)---	13.8	16.0	11.0	15.2	13.6	10.9	6.8	3.9	22.1	14.7
Live sustaining (LS)---	4.0	9.8	4.1	8.6	6.3	2.5	5.9	3.6	2.4	1.8
Total commercial-----	76.8	71.2	74.2	72.1	73.3	73.5	66.8	66.1	77.3	76.5
Total sustaining-----	23.2	28.8	25.8	27.9	26.7	26.5	33.2	33.9	22.7	23.5
Actual broadcast-hours-----	136:05	133:05	122	124:3	125	128:5	83:5	83	124:5	124:2
Number of spot announce- ments (SA) (per week)---	654	799	814	961	747	806	405	486	444	714
Number of noncommercial spot announcements (NCSA) (per week)-----	175	184	82	62	268	180	85	148	73	142

111. The information submitted by WTSP as to the public service programing of the various Rahall stations reveals that these stations have made broadcast time available to a wide variety of civic, cultural, educational, religious, agricultural, governmental, fraternal, welfare, and political organizations and groups within their various service areas.

112. The analyses of these various Rahall stations was the subject of much testimony during the hearing, and cross-examination revealed certain errors in both log keeping and classification. A complete reanalysis of the program logs for two of the Rahall stations was made during the hearing, at the request of the opposing applicants, and revealed some areas of disagreement as to the proper classification of certain programs broadcast by those stations. While such reanalysis revealed certain discrepancies, the overall programing under the various categories was not changed in any major respect, and the analyses contained herein above are fair representations of the past broadcast records of the Rahall stations.

113. The responsible officials of the various Rahall stations admitted, upon cross-examination, that in certain instances programs had been misclassified; that a program segment that was interrupted by commercial spot announcements was classified as "sustaining"; that a program segment in one instance was classified as "sustaining," although it was interrupted by a promotional spot announcement for another commercial program; that, at one of the stations, news programs were classified "L/W," although it was impossible to ascertain from the logs which of the two classifications was appropriate; that only the beginning time, and not the ending time, of spot announcements are logged; that one station broadcast a foreign-language program that was not monitored by any station employee, and that on one occasion such program carried 59 spot announcements in a 2½-hour period; and that certain log-keeping practices might be characterized as questionable, such as spot announcements being indicated on the

pretyped log as being within a given program, but that the announcer was at liberty to scatter them where he pleased, and no notation was made as to the time the spot was actually broadcast, and that there was no way to tell whether changes were made on the logs at the time of broadcast or later. It was brought out that in the WFEA 1957 composite-week analysis showing 142 NCSA's, the logs had originally shown only 62 such announcements and that an additional 80 had been added upon reanalysis of the week in order to show the number actually broadcast, and that such additions had been made by the program director who had been associated with the station for many years and had personal knowledge of the station's broadcasts, and were made at the direction of Farris Rahall.

Bay Area

114. As stated hereinbefore, Bay Area has not engaged in the business of broadcasting, and although three of its stockholders had been connected with Veterans Broadcasting Co., Inc., and one with the Columbia Broadcasting System, it did not rely upon any affirmative showing in relation to past performance of these licensees. However, the opposing applicants devoted considerable time to the past performance record of stations WVET and WVET-TV in Rochester, N.Y. In view of the fact that Mr. Houseknecht, Mr. James, and Mr. Bennett do not have control of Veterans Broadcasting Co., nor a significant voice in the programing or policy of WVET-TV; that station WVET-TV is a share-time television station operating under different circumstances than would a station in Largo, Fla.; that conditions affecting programing in Rochester, N.Y., and in the Tampa-St. Petersburg proposed area are not shown to be similar; and that the Commission has already considered the performance of WVET in the *Tribune Company* case, 9 R.R. 719, in which it recognized that due to the competitive situation that developed in Rochester, WVET changed the format of its programs during the first 2 or 3 years of operation, and stated that the "facts found in our basic findings are not intended as a reprimand," the record of the radio station can have little decisional significance in the instant proceeding. Nor is it considered to be of decisional significance that the Commission addressed a letter to CBS in 1958 concerning certain activities of CBS during the period 1952 and 1953 during the time that Mr. Van Volkenburg was president of the network. The Commission's letter concluded that "no further action against CBS is contemplated at this time, since the conduct in question occurred some time ago, there is no evidence of present violation, and CBS statements of current and future practices and policies in these areas, if adhered to, should prevent future CBS conduct contrary to the rules." The record in this case fails to connect Mr. Van Volkenburg to the matters set forth in the Commission's letter in any manner or capacity except his being president of CBS during that time.

Personnel Plans

Gulfcoast

115. Gulfcoast proposes a staff of 56 persons divided as follows: Administrative department, 7; program department, 34; engineering

department, 10; and sales department, 5. In addition, the applicant has made arrangements to utilize certain Times personnel on a part-time basis, particularly in the area of news programing. The evidence disclosed that it will have adequate personnel to effectuate its program proposals. The personnel policies of the applicant will be virtually the same as those of the St. Petersburg Times. In preparing for the hearing, Gulfcoast drew up a table of organization, an assignment of operating personnel to the proposed program schedule, and a schedule of availability of personnel to perform their assigned duties.

116. A number of individuals have already been selected by Gulfcoast for certain positions in its proposed operations. Richard Crago will be general manager; James Sharp will be program manager; William H. Moore, chief engineer; Sanford Witwer, news director; Nancy Osgood, women's director; Richard A. Morgan, assistant news editor. All the above personnel will devote 100 percent of their time to their positions. Bart Bryan will be public relations director on a half-time basis, and Warren Pierce, educational director, will work 10 hours per week.

WSUN-TV

117. The city of St. Petersburg is operating its present radio and television stations with a staff of 73 persons. Thirty-four are full-time TV employees, 12 are full-time radio employees, and 27 are integrated into both operations. If granted a permit to operate on channel 10, the proposed TV staff will be increased to 77 full-time employees and 30 integrated into the television and radio operations. This proposed staff is as follows:

	Full-time TV	Integrated
Administration.....	6	11
TV sales.....	7	
TV program.....	29	
News and special events.....	7	4
Announcers.....	3	5
Promotion-research.....	1	3
Engineering.....	23	2
Community service.....	1	5
Group total.....	77	30
Total.....	107	

118. In preparing for the hearing, WSUN-TV drew up a table of organization and a comparative analysis of its present and its proposed operation. There are 16 key positions, in addition to the general manager, for which specific full-time employees have been selected, and who were, at the time of the hearing, employed by WSUN-TV. Biographies for such key personnel were submitted as a part of the record, and a list of the specific duties for each key position was also set forth as an exhibit. The station has encouraged and trained its radio personnel in television through a weekly orientation class in TV production, and the present broadcast experience of 15 persons occupying key positions totals 253 man-years of TV experience.

Suncoast

119. Suncoast proposes a staff of 79 persons divided as follows: General department, 14; program department, 37; technical department, 21; and commercial department, 7. A table of organization and job descriptions for the entire proposed staff were submitted by the applicant, and the evidence reveals that Suncoast will have adequate personnel to execute its program proposals. In addition to Mr. Smith as general manager, Suncoast has selected specific persons to fill five positions in its proposed operation, and presented biographies of these staff members. They are: John A. Buning, promotion director-national sales manager; Walter K. Rhoads, production manager; Richard S. Zinn, Jr., program director; C. Jack King, chief engineer; and Patrick McLaughlin, studio technical supervisor. These staff members are qualified for the positions they will hold.

Tampa

120. Tampa proposes a staff of 65 full-time personnel divided as follows: Administrative, 9; programing, 30; technical, 22; and commercial, 4. No job descriptions, work schedules, or manning tables were supplied by this applicant, and the record shows that in addition to Mr. Persons who will be general manager, the applicant has only selected one specific person to fill any of the personnel vacancies. This one person is Mr. Charles G. Baskerville who will be station manager. Mr. Baskerville has had several years' experience in radio and television, and will devote 100 percent of his time to the station.

WTSP-TV

121. WTSP-TV proposes a staff of 119 persons divided as follows: Administrative department, 13; program department, 72; engineering department, 27; and sales department, 7. In addition to the president, Sam Rahall, and the general manager, Marshall Cleaver, the following key personnel have been selected: Harry Wagner, program manager; Vincent Meloy, Jr., sports director; Beth McNeely, women's director; Henry Lohse, Jr., farm director; Neil Spencer, chief engineer; and Leona Leslie, sales manager. All of these proposed employees have had experience in the broadcast field, either television or radio, or both, and much of that experience has been in the Tampa-St. Petersburg area.

Bay Area

122. Bay Area proposes a staff of 80 persons, exclusive of persons who will participate on an unsalaried basis. This staff is divided into 4 categories: Administrative department, 8; program department, 24; sales department, 7; and technical department, 41. The record reveals that the applicant will have adequate personnel to execute its program proposals, and that four of the positions will be filled by stockholders as noted hereinbefore.

*Program Planning**Gulfcoast*

123. The Gulfcoast proposals were formulated by Mr. Crago with the advice and assistance of Mr. and Mrs. Poynter and several of the stockholders. In planning these proposals, Mr. Crago also visited

stations in Ohio, South Carolina, Mississippi, and Georgia; attended a BMI programing clinic; monitored the programing of the three television stations in the area; and made, or caused to be made, numerous contacts with persons in the area. A total of 276 contacts were made with individuals and organizations in the area, and the information obtained through such contacts was utilized in the finalization of the proposed program schedule. The contacts generally were made twice: first, to determine the needs of the various groups; and second, to discuss a specific program designed to meet those needs. These contacts were made under Mr. Crago's direction and supervision, and for the most part were made by Mr. Crago or Mr. Bryan and were all of a personal nature. The list of contacts submitted by the applicant at the hearing reveals a wide sampling of organizations and individuals connected with public service endeavors.

WSUN-TV

124. The proposed programing plans for WSUN-TV were prepared by the general manager, Fred Shawn, with the assistance of members of the staff of its present station. Such program plans are based primarily upon the city's experience in the operation of its UHF television station in the St. Petersburg-Tampa area, and will be an expansion of the station's past programing practice. Many of the proposed programs are either presently on the air, on hiatus, or have been presented in the past under another title and will be resumed. Most of the regular programing proposed by WSUN-TV will originate from the St. Petersburg studios; however, it will televise a number of regular programs from its Tampa studio.

Suncoast

125. The Suncoast program proposal was formulated by Mr. Smith with the advice and assistance of several of the stockholders. Rough drafts were first prepared by Mr. Smith and then were distributed to the stockholders for discussion at subsequent meetings. After revision, as a result of discussions during the organizational meeting, the program schedule was submitted with the original application in August 1957. Subsequently, numerous contacts were made with civic, religious, cultural, governmental, educational, and other groups to ascertain, first, whether the program would fit the needs of the area and such service groups; and second, whether the applicant would receive cooperation from such agencies in executing its proposal. Such contacts were made by Mr. Smith, Mr. Rhoads, Mr. Baynard, Mr. Zewadski, Mr. Porter, and Mr. Christian. As a result of information gained from these contacts, a revised programing schedule was submitted in December 1957. The list of approximately 106 contacts submitted by the applicant at the hearing shows a wide sampling of organizations and individuals connected with public-service endeavors.

Tampa

126. Tampa's program proposals were initially prepared by Mr. Giddens and Mr. Persons, and were principally based upon their experience in Mobile. Although Mr. Giddens made several trips to the

Tampa-St. Petersburg area in connection with the preparation of the program proposals, he did not make any program contacts during these trips since he considered that he had sufficient background knowledge, as a result of having lived in Florida as a boy and having visited the area frequently, to prepare a program schedule that would meet the needs of the area. The detailed program proposals presented at the hearing were prepared by Mr. Giddens and Mr. Persons in collaboration with Mr. Baskerville and Mr. Johns. In order to supplement the knowledge that he had gained as a broadcaster in the Tampa area, Mr. Baskerville held about 21 interviews with persons and organizations whose participation in the station's proposed programming would be sought. However, it must be kept in mind that the station had planned to use video tape recorders in its programming at the time these contacts were made, but that its use of such recorders was later denied during the hearing as a variance from its application and no contacts were made after the revised equipment plans and program descriptions were submitted.

WTSP-TV

127. The program proposal of WTSP-TV was based upon: experience gained in the operation of radio station WTSP; the advice of a program advisory committee of local citizens; interviews with organizations and individuals residing in the service area; and stockholders' and officers' knowledge of the area. In June 1957 Sam Rahall made preliminary contacts and drew up tentative notes for a program proposal. Thereafter, he held conferences with officials of WTSP radio and discussed the desirability of forming a program advisory committee of community leaders to advise in the formulation of a program proposal and to act as consultants after the station had been constructed. Such a committee was selected by Mr. Rahall after consultation with Messrs. Mann, Wagner, Cleaver, and Allen, and is composed of 12 persons representing various civic, religious, educational, and other organizations. The membership of this program advisory committee was approved by the WTSP-TV, Inc., stockholders at their first formal meeting in November 1957. Between November 20, 1957, and July 2, 1958, this program advisory committee held 6 formal meetings with officials of the proposed station to discuss the program proposal, and the record reveals 13 specific suggestions of this committee that were adopted and incorporated into the program as finally formalized. In addition to these suggestions of the committee, other contributions were made by officers, directors, and stockholders of the applicant, as well as members of the Rahall management team. The applicant proposes to schedule a meeting with the program advisory committee on a regular basis once each month and to have informal discussions with individual members of the committee between formal meetings.

128. Approximately 500 contacts with residents of the proposed coverage area were made between June 1957 and the middle of 1958 to ascertain the program needs of the area and to discuss programs which would fill those needs. These contacts were made by various executives of the proposed television station and by staff members

of radio station WTSP. Approximately 300 were made in person, and the remainder by telephone and letter. The proposed programing was discussed at meetings of the directors, stockholders, and program advisory committee in January and February 1958, and on March 12, 1958, the final revisions were discussed prior to the filing of the final program amendment on March 19, 1958. Subsequently, two rough drafts of the program descriptions were drawn up by Mr. Rahall, Mr. Cleaver, and Mr. Wagner, and were submitted to all officers and stockholders prior to their finalization. The list of contacts submitted by the applicant reveals that approximately half of such contacts was made with persons and organizations in St. Petersburg; that about 100 contacts represented Tampa organizations and individuals; and that the remainder were made with representatives of communities and rural areas in surrounding areas, including 25 contacts with Clearwater groups and individuals. In addition, Mr. Wagner, the program manager, and Mr. Spencer, the chief engineer, made individual surveys of each proposed remote location of nonrecurring and special events to determine that such event could be telecast, and prepared a series of maps showing the location of each of the proposed remotes. Specific contacts were also made with the persons or organizations involved to confirm that permission could be obtained to carry the events as proposed.

Bay Area

129. The programing proposal of Bay Area was prepared by Hal James with the assistance of Mr. Houseknecht and Mr. Bennett. Mr. James drafted the original program schedule based on his personal experience, after studying a previous proposal presented in an application for channel 8 in the Tampa-St. Petersburg area by a group of which he was a member, and a survey of the St. Petersburg area that had been prepared by Mr. Bennett for that same earlier proceeding. Between December 1957 and the final amendment to the program schedule that was filed on March 20, 1958, Mr. James reviewed the proposed programing schedule in the light of a series of program contacts that had been made by various Bay Area representatives to obtain information on the programing needs of the community and to establish the existence of certain sources of program material. Mr. Bennett had, in the meantime, revised his original survey of the area, and this revised survey was also used in finalizing the actual programs to be presented. These program descriptions were distributed to the stockholders, and a second series of contacts with various individuals and groups in the area was made in an effort to obtain approval of the program proposed and a commitment of willingness to cooperate in its presentation. The final program descriptions were prepared by Mr. James after receipt of the results of the second group of contacts. The survey made by Mr. Bennett reflected data on population, industry, and the economic status of persons residing in the A and B contours of the service area. It included an overall analysis of distribution of population; economic information with respect to income classification; occupation and industry groups of the area; retail trade statistics relating to food, apparel, household furnishings, and appli-

ances; general merchandising; eating and drinking establishments; gasoline stations; automotive supplies; and many other statistics. This information was used as a supplement to the information obtained from the 133 contacts that were made. After the amendment of June 1958, which decreased the tower height, Mr. Bennett again revised his survey to conform to the new coverage contours supplied by the applicant's consultant engineer. The contacts were made under the direction of Mr. Hal James; however, he made none of them personally. Approximately half of the total contacts were made by Mr. Van Volkenburg, the proposed general manager, and Mr. Schmitz, the proposed promotion and merchandising manager. The list of contacts submitted by the applicant at the hearing reveals a diverse sampling of civic, religious, and other organizations and individuals connected with public service in the area.

Policies

Gulfcoast

130. Gulfcoast adopted and presented a written policy statement which had been prepared by Mr. Crago with the collaboration of Mr. Poynter. This policy statement proposes to seek out, affirmatively, agencies, organizations, and individuals to contribute to the advancement of education and culture, and to cooperate with the colleges and institutions of higher learning in the area in dealing with educational and cultural problems not presently dealt with adequately. The applicant proposes to make a certain amount of free time available to candidates for public office, and to sell additional time if necessary or desirable. In this field, its program the "Winners-Losers Party" will be its contribution to the healing of election campaign wounds. Gulfcoast proposes approximately 5 hours of free time each week to all religious faiths in the area, and will make additional time available on a commercial basis if a need exists. It proposes to seek and communicate information concerning markets, weather conditions, and methods relating to agriculture. In the field of controversial public issues, the criterion will be the importance of the question to the people in the area. A factual summary of pertinent information will be presented, and responsible people of representative groups of the various views will be urged to speak, so that all sides of the question are presented. Gulfcoast proposes to be guardian of the morals of youth and a source of good influence. News and public events will be covered accurately and fairly, and when editorial comment would serve a useful purpose, "editorializing" will be used, but will be so identified. The applicant further proposes to be guided by the standards and general criteria contained in the NAB television code.

WSUN-TV

131. The record states that as far back as 1938, certain policies were set up to serve as guides to the operation of WSUN, and later to the operation of WSUN-TV. However, the background of this policy statement is obscure, and there is nothing in the record to show whether it had ever been ratified by any city council. The policy statement

pledges adherence to the program policies of NAB; cooperation with the local ministerial association in the planning and execution of religious broadcasts; no wholesaling of time; no hard liquor advertising; all programs must be in good taste, and no program content to be broadcast which is offensive to any religion or group; recommendations of the FCC and the FTC will serve as strict guides on the acceptability of programs and advertising; and to operate the station for the general welfare of the city of St. Petersburg and in the interest of neighboring communities. In addition to this policy that allegedly dates back to 1938, the city has been a member of the National Association of Broadcasters since 1937, and also has subscribed to the NAB television code since WSUN-TV started operation in 1953. The City proposes to continue operating under such codes of good practice. The application filed by the City for channel 10 further defines the proposed station's operating policy with the following additional details: to provide full and equal opportunity to all qualified parties in the discussion of public issues; to be alert to current public issues; to make effective use of network programs, such as "College Press Conference," "Open Hearing," "Press Conference," etc.; to maintain active participation in Bay Area community interests; to enlist the talents of area educational, civic, and religious leaders as participants in locally produced discussion programs, and to provide staff and facilities for the preparation and presentation of these public issue programs to insure adequate coverage; to provide full and effective coverage of news, subjects, and issues of interest and concern to the area population; and to implement its basic public-service policy by placing emphasis and concentration upon local live programing.

Suncoast

132. Suncoast presented a detailed written policy statement which had been prepared by Mr. Smith after discussions with Messrs. Holland, Playford, and Wright. This policy statement was modeled after a policy statement of a Tampa station with which Mr. Smith had been associated. Prospective stockholders were interviewed, and after obtaining their views and suggestions, a rough draft was prepared and circulated to each of the stockholders, and this draft was discussed and revised at the organizational meeting. The policy statement proposes to affirmatively seek out the needs of the area; to provide time to all organized major faiths and denominations on a sustaining basis; to cover public issues in all of the counties within the service area, and to make time available for discussion thereof, both on a regular and special program basis; controversial issues will be sought out and presented in a fair manner with equal time to proponents of both sides; to make time available, without charge, to campaigns for funds and membership of responsible national and local charities; not to accept "pitch" programs; to cooperate with the educational television station in the area to the fullest extent practicable; and to reserve a minimum of 25 percent of the availabilities for spot announcements and 20 percent of the program time for announcements and programs on behalf of worthy causes, the production of programs not appropriate for sponsorship, and the development of new programs and ideas. The

applicant proposes to "editorialize," and in such cases will afford opportunity for the presentation of opposing views. The applicant further proposes to be guided by the standards and general criteria of the NAB television code, and to limit commercial and spot announcements to 1 minute in length, with not more than three spot announcements in any 14½-minute period.

Tampa

133. Tampa Telecasters submitted a written policy statement which had been prepared by Mr. Johns, a television consultant, who does not propose to be connected with the proposed operation in any way. The applicant proposes to provide a programming service which "will be of interest to its entire service area," and, to that end, says it will provide a "balanced program service." The station operation will be guided by the NAB television code with respect to programming, advertising standards, and number and length of spot announcements. It proposes to provide a suitable overall balance between commercial and sustaining programming, as well as between network and locally originated programs. Time will be made available for civic and charitable projects as well as for educational and similar organizations and agencies. The station will endeavor to provide full coverage of news, current affairs, and special events, with emphasis upon local and regional news. Religious programs will be presented respectfully on a sustaining basis without prejudice or ridicule, with additional time available for sale to religious groups at regular rates. Time for political broadcasts may be purchased by duly qualified candidates or their representatives at regular commercial rates. The station will seek out and develop programs relating to controversial issues in the area, and a fair representation to all sides of such issues will be given. The station has no present plans to "editorialize," but if an editorial position should be taken on any issue, it will be clearly labeled as such, and equal time will be made available to responsible parties desiring to present a different view.

WTSP-TV

134. WTSP-TV adopted and presented a written policy statement proposing to operate its station in conformity with all Federal and State regulatory provisions, and in compliance with the recommendations of the NAB television code. The applicant states that it will not accept advertising relating to racing publications, fortunetelling, matrimonial agencies, funeral homes, or liquor, but that beer and wine advertising will be accepted if it conforms to Federal, State, and local laws. The station will affirmatively seek out expressions of both sides of all controversial issues discussed on the station. The policy statement further states that the station will carry local religious programs on a regular basis, and it will present a live remote telecast of a church service each Sunday. Local and area news will be given complete coverage, and to that end a news department will be set up which will consist of five mobile units equipped with two-way equipment and portable cameras, in addition to a system of "stringer" correspondents, and news tips from viewers. In the field of educational programming, the applicant proposes to cooperate with the non-

commercial educational station. The station will "editorialize" and take a definite stand on issues of local importance, and in that connection has established an editorial board which will meet at least once a month and will approve the position to be taken on controversial issues. The applicant proposes to mail copies of all editorials to persons requesting them, and to all persons or organizations that might be affected by the position taken in such editorials, giving proponents of the opposite view an opportunity to respond to such editorials.

Bay Area

135. Bay Area adopted and presented a written policy statement that had been prepared by Mr. Van Volkenburg with the advice and assistance of various members of the management group. This policy proposes to present programs that will best serve the public interest in the St. Petersburg-Tampa area, and to be guided by good taste and the "mores, customs, and practices of the St. Petersburg-Tampa area" in determining program acceptability. No racing results, lotteries, or programs relating to such matters as palm reading will be telecast, and, as a general rule, no mystery- or horror-type program will be broadcast between 4 and 9 p.m. when children would normally be viewing television. The applicant proposes to make time available for the discussion of public issues, and to work with local educational groups in the development and production of educational television programs, although it realizes that the scheduling of specific shows may be difficult since the area has a noncommercial educational television station. The station will "editorialize" when worthwhile opportunity appears, but will clearly identify such broadcasts as editorials and will make them subject to rebuttal by opposing viewpoints. The station reserves the right to preempt all or part of any network program when it deems such action to be in the public interest. Political broadcasts will be presented and will normally be on a commercial basis. While sustaining time will be made available to all recognized religious groups on a proportionate basis, the station will schedule outstanding commercial programs. The applicant proposes to abide by all applicable Commission rules and regulations, and to become a member and subscriber to the television code of the National Association of Broadcasters.

Proposed Facilities

Gulfcoast

136. A two-story studio and office building at the intersection of Ridge Road and 4th Avenue in Largo, Fla., will be constructed by Gulfcoast. A patio constructed adjacent to the building will be used as a studio for the origination of some programs, while the building itself will have two studios—studio A with dimensions of 53 feet by 48 feet, and studio B, 24 feet by 24 feet. Studio A will be equipped with vehicle doors and have a hydraulic turntable 16 feet in diameter which will be used for automobile, farm machinery, furniture, and other displays, and setting up back-to-back stage sets for dramatic sequences. The Largo studio building is approximately 20 miles from downtown Tampa and 12 miles from downtown St. Petersburg. There is bus

service between St. Petersburg and Largo five times a day each way, and a bridge connecting Tampa and the area east of Largo was expected to be completed and open for traffic by the summer of 1959. Gulfcoast does not propose to have studios in either Tampa or St. Petersburg on the theory that its video tape recorder will do more to encourage civic leaders to appear and participate in its programming than will studios in either or both of these cities.

137. Gulfcoast proposes to obtain equipment for the control room, film room, film editing, live studio, and studio lighting from RCA. Some lighting equipment will be made available to this applicant by the St. Petersburg Times. A video tape recorder is also proposed which will be designed for later conversion to full color recording when live color cameras are placed in service. Remote broadcasting equipment will include a truck equipped with a two-camera field system and other equipment to constitute a mobile studio; a portable microwave system, with transmitter; a 75-foot transmitting antenna; a 100-foot receiving antenna; and associated receivers and reflectors.

WSUN-TV

138. On Bay Shore Drive in St. Petersburg, the city of St. Petersburg proposes to construct a broadcast plant to house the administrative offices and studio facilities of stations WSUN-TV and WSUN. Television studio A will be 50 feet by 70 feet, and studio B will be 30 feet by 40 feet. The location is within walking distance of downtown St. Petersburg and is convenient to public transportation. WSUN-TV also proposes to construct a television studio approximately 30 feet by 34 feet in the Quednau Building at 404 13th Street in Tampa, with storage area approximately 20 feet by 22 feet. The Quednau Building was originally designed to accommodate a film production studio, and has a reception-display room, film shooting studios, audition rooms, and complete art and film processing facilities. Tampa programs will originate via the mobile unit—microwave to the Thomas Jefferson Hotel roof, Tampa—to the WSUN-TV St. Petersburg studios.

139. WSUN-TV proposes to use a two-hop microwave system, employing frequencies in the 2 kilo-megacycle, and 7 kilo-megacycle bands. The studio will feed a passive reflector mounted on a 150-foot tower located adjacent to the studio building. Receiving and transmitting reflectors at the repeater station will be mounted on the north tower of the WSUN antenna system with the receiver and transmitter in the WSUN transmitter building. The reflector for reception at the end of the second hop will be mounted on the tower supporting the channel 10 antenna, and the receiver will be in the transmitter building. The city proposes to have four studio cameras for monochrome telecasting, and a live color camera, which will operate out of the mobile unit, for color shows.

Suncoast

140. Suncoast proposes to locate its main studio at 94th Avenue and 4th Street in St. Petersburg. This location is convenient to Tampa and Clearwater, as well as to downtown St. Petersburg. The building will contain two studios, approximately 41 feet by 51 feet,

plus ample space for control rooms, announcer booths, offices, film storage and projection, film processing, photo lab and darkroom, public and client viewing and waiting rooms, and an adjoining outdoor studio. A sundeck, snackbar, and lounge for employees will be provided. An auxiliary studio will also be maintained in the Marine Bank Building on Franklin Street in Tampa with adequate space for a 34 feet by 30 feet studio, storage space, control room, announcer booth, reception and waiting rooms, and office space.

141. Equipment will include four black-and-white cameras, a studio color camera, a black-and-white film camera, and a color film camera with associated projection equipment. The station will use a TV truck with facilities for four cameras for remote telecasts. Three microwave units will be available; one will be installed as an STL between the main studio and the transmitter, one between the Tampa auxiliary studio and the main studio, and the third will be used in the TV remote truck. Suncoast proposes a 50-kw transmitter, equipped and designed for color, and a 12-bay antenna. Other major equipment will include: four complete studio switching systems, two mounted in the main studio, one in the remote unit, and the fourth in the Tampa auxiliary studio; a field switcher mounted in the TV truck; facilities for rear screen projection; station wagons or automobiles equipped with two-way radios for the use of newsmen and the farm director; a 16-mm automatic film processor and developing equipment; and cameras. Suncoast proposes to be equipped to telecast network and film programs in color, and will add live color programs when the staff gains experience.

Tampa

142. Tampa Telecasters proposes to locate its studios and offices off Dale Mabry Highway on Jetton Avenue in Tampa. The building will contain two studios, one 70 feet by 56 feet, and the other, 22 feet by 29 feet, both with a 20-foot ceiling. The studios will be equipped with a double track for cycloramas and curtain sections. This applicant will also use a mobile truck with two live cameras and an audio tape recorder. The studios in Tampa will have sufficient indoor parking facilities so that the mobile live cameras can be "patched in" to provide additional studio camera coverage. Equipment in the studios will include two image orthicon camera chains, two microwave units, and other equipment necessary to produce the proposed programs. When network color programs are available, equipment will be provided. A 16-mm processing machine will also be provided to develop film for early showing.

143. A transmitter building and tower will be located 2.6 miles northwest of Tarpon Springs, Fla. The building will be 37 feet by 45 feet with a tower 536 feet above ground. A 50-kw transmitter and a 12-bay antenna system, along with the necessary controls, monitors, amplifiers, demodulator, power supply, diplexer, coaxial line, patch panels, conelrad receiver, standby generator, and other equipment, will be provided.

WTSP-TV

144. WTSP-TV, Inc., proposes to construct its main studios on Gandy Boulevard at the St. Petersburg end of Gandy Bridge. This location will be approximately the same distance from each of the cities of St. Petersburg, Tampa, and Clearwater. The building will contain a main television studio, 50 feet by 70 feet, and a second studio, 40 feet by 49 feet, with a large fireproof prop storage area 35 feet by 106 feet. It will have fireproof film projection, editing, and developing rooms; office space; and will contain clients' viewing and audition rooms, as well as a public viewing room. Adjacent to the building on Gandy Boulevard will be a large private parking lot for station employees and guests. WTSP-TV will also maintain an auxiliary studio on the mezzanine floor in the Hillsboro Hotel in downtown Tampa. The studio will be 22 feet 6 inches by 23 feet 8 inches with a control room 10 feet by 18 feet 8 inches. Should the Commission require WTSP-TV to locate a separate studio in Largo, it has prepared plans for a separate building containing a main studio 30 feet by 30 feet, a prop room 15 feet by 15 feet, and other necessary office and control space.

145. WTSP-TV proposes to purchase eight full monochrome camera chains and associated equipment, two complete live color camera chains, and accessories necessary to enable it to telecast live, network, and film color programs. For films and slide projection, WTSP-TV proposes a three-vidicon color film camera chain and four auricon 16-mm sound-on-film cameras. It will have three complete portable microwave systems and a mobile television truck to cover area remote special nonrecurring events either on a live or film basis.

Bay Area

146. Bay Area proposes its main studio location in the Palais Royal Building, Second Street and Second Avenue North, in St. Petersburg, Fla. The building is located in the business district of St. Petersburg and is convenient to public transportation and parking. The main studio building will house two studios, 56 feet by 60 feet and 40 feet by 40 feet, with necessary dressing rooms, office space, storage space, and control rooms. A 50-foot tower will be located on top of the main studio building to act as a receiving point for remote relays and a transmitting point for the studio transmitter link. An auxiliary studio will be established in Tampa at 415 Tyler Street which will contain a studio 30 feet by 40 feet, control room, offices, and dressing rooms, together with areas for prop storage and reception. On the site of the proposed auxiliary studio there is a 250-foot tower which will be used in transmitting remote telecasts from the Tampa area. Public transportation to all parts of Tampa is available within one block of the proposed studio.

147. Bay Area proposes a 50-kw transmitter with a 12-bay antenna mounted on a 460-foot supporting structure. Other major equipment proposed by this applicant include two complete color cameras with accessories, and two portable black-and-white camera chains, together

with a film lab at the St. Petersburg studio. Two additional black-and-white portable camera chains, the remote truck, and miscellaneous equipment, including microwave relays, are to be located in the Tampa auxiliary studio. This applicant will be equipped to televise local live, film, and network programs in color, and will also have equipment to film events in color, as well as black and white, for later presentation with sound.

Proposed Programing

Gulfcoast

148. The board of directors of Gulfcoast adopted a resolution stating that it would not accept affiliation with the ABC network as long as the city of St. Petersburg continued to operate station WSUN-TV on channel 38, or for a period of 4 years from the commencement of operation of the Gulfcoast station, whichever is earlier. Because of this resolution, Gulfcoast submitted a proposed program schedule specifying both network and nonnetwork operation. In view of the statements of the city of St. Petersburg during the course of the hearing that it would cease operations if it did not receive a grant of channel 10, only the network programing proposal is discussed herein. The station proposes to operate a total of 101 hours 25 minutes each week.

149. The Gulfcoast proposed program schedule for a typical week as to type, source, and spot announcements is as follows:

<i>Type</i>	<i>Percent</i>	<i>Source—Continued</i>	<i>Percent</i>
Entertainment.....	63.43	Recorded sustaining.....	10.60
Religious.....	5.34	Wire commercial.....	-----
Agricultural.....	3.29	Wire sustaining.....	-----
Educational.....	5.43	Live commercial.....	21.45
News.....	6.98	Live sustaining.....	15.04
Discussion.....	3.45		-----
Talks.....	12.08	Total commercial.....	71.65
	-----	Total sustaining.....	28.35
Total.....	100.00		-----
		Complete total.....	100.00

		Number of spot announce-	
		ments (per week).....	564
		Number of noncommercial spot	
		announcements (per week).....	133

WSUN-TV

150. WSUN-TV is now affiliated with the American Broadcasting Co. network, and the City of St. Petersburg proposes to continue such affiliation if it is granted a construction permit for channel 10.

151. The City of St. Petersburg proposes to operate from 9 a.m. to 1 a.m. daily for a total of 112 hours weekly. Its proposed program schedule for a typical week as to type, source, and spot announcements is as follows:

<i>Type</i>		<i>Source—Continued</i>	
	<i>Percent</i>		<i>Percent</i>
Entertainment.....	69.27	Recorded sustaining.....	7.89
Religious.....	2.98	Wire commercial.....	7.81
Agricultural.....	1.56	Wire sustaining.....	1.86
Educational.....	7.37	Live commercial.....	9.82
News.....	7.66	Live sustaining.....	14.51
Discussion.....	4.69		
Talk.....	6.47	Total commercial.....	65.04
		Total sustaining.....	34.96
Total.....	100.00		
		Number of spot announce- ments (SA) (per week)---	370
<i>Source</i>		Number of noncommercial spot announcements (NCSA) (per week)-----	204
Network commercial.....	26.79		
Network sustaining.....	10.70		
Recorded commercial.....	20.62		

Suncoast

152. Suncoast anticipates an affiliation with the American Broadcasting Co. television network and will operate 100 hours per week.

153. The distribution of the Suncoast proposed programming for a typical week as to type, source, and commercial announcements is as follows:

<i>Type</i>		<i>Source—Continued</i>	
	<i>Percent</i>		<i>Percent</i>
Entertainment.....	58.81	Recorded commercial.....	22.00
Religious.....	5.44	Recorded sustaining.....	3.50
Agriculture.....	3.00	Live commercial.....	15.00
Educational.....	5.50	Live sustaining.....	16.75
News.....	12.25		
Discussion.....	3.50	Total commercial.....	72.00
Talks.....	11.50	Total sustaining.....	28.00
Total.....	100.00		
		Number of spot announce- ments (per week)-----	320
<i>Source</i>		Number of noncommercial spot announcements (per week)-----	347
Network commercial.....	35.00		
Network sustaining.....	7.75		

154. Suncoast plans to employ what it calls a "flexible format" in four of its programs, and defines such term as programs specifically designed to serve as carriers for series, special programs, and program inserts of varying length and frequency. It is this applicant's view that the needs of service groups in the area can best be presented by either very short series of programs or special programs and program inserts of varying duration.

Tampa

155. Tampa proposes an affiliation with the American Broadcasting Co. television network, and presented a proposed program based upon such an affiliation. No independent (nonnetwork) program schedule was submitted by this applicant. The program proposal entails a total of 113½ hours of broadcasting each week.

156. A typical week's proposed program schedule of this applicant as to type, source, and spot announcements is as follows:

<i>Type</i>		<i>Source—Continued</i>	
	<i>Percent</i>		<i>Percent</i>
Entertainment.....	68.23	Recorded sustaining.....	5.5
Religious.....	4.40	Wire commercial.....	0
Agricultural.....	2.64	Wire sustaining.....	0
Educational.....	5.29	Live commercial.....	23.0
News.....	7.05	Live sustaining.....	16.0
Discussion.....	4.63		
Talks.....	7.71	Total commercial.....	78.0
		Total sustaining.....	22.0
Total.....	100.00		
<i>Source</i>		Number of spot announce-	
Network commercial.....	34.0	ments (SA) (per week)...	321
Network sustaining.....	.5	Number of noncommercial spot	
Recorded commercial.....	21.0	announcements (NCSA)	
		(per week).....	100

157. Some question was raised as to the classification of four of the programs proposed by Tampa; however, the change that would result from the alleged misclassification of these programs as to type would not greatly affect the percentages devoted to the various categories proposed by the applicant.

WTSP-TV

158. WTSP-TV proposes an affiliation with the American Broadcasting Co. network, and presented a proposed program based upon such an affiliation. This applicant proposes to broadcast a total of 123 hours and 57 minutes each week.

159. A typical week's program schedule as to type, source, and spot announcements is as follows:

<i>Type</i>		<i>Source—Continued</i>	
	<i>Percent</i>		<i>Percent</i>
Entertainment.....	61.35	Recorded sustaining.....	10.17
Religious.....	4.77	Wire commercial.....	-----
Agricultural.....	2.48	Wire sustaining.....	-----
Educational.....	5.87	Live commercial.....	17.42
News.....	9.80	Live sustaining.....	23.80
Discussion.....	6.19		
Talks.....	9.54	Total commercial.....	65.22
		Total sustaining.....	34.78
Total.....	100.00		
<i>Source</i>		Number of spot announcements	
Network commercial.....	29.45	(per week).....	390
Network sustaining.....	.81	Number of noncommercial	
Recorded commercial.....	18.35	spot announcements (per	
		week).....	271

Bay Area

160. Bay Area proposes to be affiliated with the ABC television network. However, it submitted program schedules both on the basis of an independent operation and the network affiliation. In view of the situation that exists in this case, only the proposed program with the network affiliation has been considered in this decision. The schedule calls for a total of 110½ hours of telecasting each week.

161. The typical week's proposed program schedule as to type, source, and spot announcements is as follows:

Type	Percent	Source—Continued	Percent
Entertainment-----	72.1	Recorded commercial-----	22.3
Religious-----	3.9	Recorded sustaining-----	9.9
Agricultural-----	2.9	Wire commercial-----	-----
Educational-----	5.0	Wire sustaining-----	-----
News-----	4.4	Live commercial-----	15.4
Discussion-----	4.2	Live sustaining-----	16.8
Talks-----	7.5		
		Total commercial-----	72.2
Total-----	100.0	Total sustaining-----	27.8
		Number of spot announce-	
		ments (per week)-----	560
Source		Number of noncommercial spot	
Network commercial-----	34.5	announcements (per week) -	225
Network sustaining-----	1.1		

Entertainment Programs

Gulfcoast

162. The following live entertainment programs are proposed by Gulfcoast: "Sunny Side of the Street" will occupy various segments between 10:35 a.m. and 12 noon, Monday through Friday. It will be a live studio origination and will feature a master of ceremonies, the women's director, and a three-man musical group. Guests will consist of government officials, members of school boards, and representatives of civic and charitable groups. At times, tape-recorded segments of such celebrations as the Halloween Festival, the Santa Claus Parade, and the Science Fair will be included in this program, as well as publicity for projects such as the Times Snapshot Contest, Suncoast Spelling Bee, etc. "Party Time" will be presented between 4:30 and 5 p.m. Monday, Wednesday, and Friday, and will feature a teenage dance party with record music. "Evening Echoes," presented between 6:30 and 6:45 p.m., Monday through Friday, will consist of popular music designed for adults and will feature a piano or organ and a girl vocalist. On Saturday between 5:30 and 6 p.m., "On the Town" will present a program of professional musical talent appearing in the area. The program "Leprechaun's Lair" will be a 1-hour presentation Monday through Friday at 12:15 p.m., and will be a children's program with live participation on the set. Portions of the program are recorded and it carries the latter classification in the Gulfcoast proposal. Gulfcoast also schedules various films and syndicated programs.

WSUN-TV

163. The following live entertainment programs are proposed by WSUN-TV: "Water Front Varieties," Monday through Friday, 1:30 to 2:55 p.m., is an entertainment and public-service program currently being broadcast by WSUN-TV under the direction of Fran Ratteree, director of women's activities. It proposes a variety of program material such as: interesting people, hobbies, audience participation games, sports, musical and variety acts, and others. "Captain Mac's Adventure Trails," presented from 6 to 6:30 p.m., Monday through Friday, is a children's participating program. This program was created by WSUN-TV in June 1953 and has been presented by the

station since that time. On Saturday from 2 to 2:55 p.m., "Suncoast Holiday" will have as one of its objectives the development of local amateur talent, some of which will be utilized in future programs over the station. "Teen Time Rally," Saturday from 5 to 6 p.m., is designed for the teenage group and will include student-adult discussions of such subjects as vocational guidance, local civic problems, and study habits. Local high schools will participate on a rotating basis and a student will serve as master of ceremonies. WSUN-TV also proposes several recorded programs in this category. One such program is presented from 12:30 to 1 p.m., Monday through Friday, and is entitled "Fire House Frolics." It has as its primary purpose the teaching of small children fundamental safety habits within the framework of light entertainment and a portion of the program consists of film.

Suncoast

164. Two live presentations are proposed by Suncoast in this category. The program, "Story Lady," 9:05 to 9:15 a.m., Monday through Friday, is designed for preschool children and will present a group of children in the studio, grouped around the teacher, listening to a story. "Teen Group," Saturday from 5 to 6 p.m., is presented for teenagers and will be an informal record and dancing party. A staff announcer will serve as master of ceremonies, and teenagers from various junior and senior high schools in the area will be presented in rotation. Suncoast's other nonnetwork entertainment-type programs during the weekdays consist mainly of movies from 10 to 11:30 a.m., and 1 to 2:30 p.m.

Tampa

165. Tampa proposes the following live locally produced programs in the category of entertainment: "Dateline Sunshine," from 7 to 8:30 a.m., Monday through Saturday, will be a variety program conducted by a master of ceremonies assisted by a news, sports, and weather personality. The first 15 minutes of the program will be devoted to international, national, and local news; sports and weather; and the remaining 1 hour and 15 minutes will present interviews, discussions, demonstrations of hobbies and sports, area events, music, and other locally produced entertainment features; the program entitled "Kiddie Kollege," Monday through Friday from 9 to 10 a.m., will present the activities of local kindergarten, first- and second-grade schools. One-half of this program, classified as educational, will consist of the instruction given by the schoolteacher to the participating children, while the other activities of the children will make up the entertainment portion. This program will originate live from the Tampa studio. From 5:30 to 6:30 p.m. on Saturday, "Amateur Hour" will present local amateur and semiprofessional talent of all types, including orchestras, bands, solo acts, singers, comedians, and other talent, to be produced live from the studio and by prefilmed material. In addition to the above live programs, the applicant proposes to produce various recorded programs of an entertainment nature, such as "Casey Jones," "Badge 714," and other syndicated films.

WTSP-TV

166. "Breakfast Time," Monday through Friday from 7:15 to 7:25 a.m., 7:30 to 8 a.m., and 8:15 to 8:55 a.m., will be a "wakeup" show featuring music, guests, activities of the Suncoast area, and special features. An orchestra will provide music for the program and the Emcee will interview studio guests, introduce specialty numbers, and provide information of area activities. Brief weather reports, fishing information, correct time, news flashes, and public service messages will also be carried. "Miss Sun's Kindergarten" will be presented Monday through Friday from 9:15 to 9:45 a.m. for the preschool children. The program will be under the supervision of the Pinellas County Board of Education and will encourage preschool children to participate either at home or as students in the studio-conducted classes. The course will consist of finger painting, storytelling, clay modeling, songfests, group dancing, good manners, and other activities. From 10:30 to 11:30 a.m. on Saturday, the program "Bar 10 Ranch" will act as host for a children's weekly party. "Saturday Dancing Party," 5:15 to 6 p.m., will feature students from area schools, and music for dancing will be provided by a jukebox or a live dance band. Weekly dance contests will be staged, and winners will receive prizes. "Open House," Saturday from 7 to 8 p.m., will alternate on a remote basis between the Huntington Hotel at St. Petersburg and the Cuban Club in Tampa. Celebrities at the various area clubs will be invited to appear, and audience participation will also be included. The fourth program of each month will be an all-Spanish production from the Cuban Club.

Bay Area

167. Bay Area proposes seven live locally produced programs in this category as well as several recorded or filmed programs. Monday through Friday, "Country Show," 11 to 11:30 a.m., will feature country music by musicians, singers, and choral groups. It will be hosted by a singing personality and will be presented before a limited studio audience in the St. Petersburg studio 3 days per week, and in the Tampa studio 2 days per week. "Fun in Florida," Monday through Friday from 2:30 to 3 p.m., is planned as a remote broadcast 4 days a week, and will originate from the St. Petersburg studio on Thursday. The program will originate from such places as the Pinellas County Fair, the Tampa Gasparilla Festival, Clearwater's Sun 'N Fun Festival, and other similar events in the area, and there will be audience participation. "Sense and Nonsense" will be presented Monday, Wednesday, and Friday from 7 to 7:30 p.m. This program is basically a game which involves two preselected teams of three members to compete against each other for a nominal prize. Monday from 7:30 to 8 p.m., and Saturday from 7 to 7:30 p.m., "Fiesta Time" will feature Spanish and Latin-American music and dancers. The Monday program will originate from St. Petersburg, while the Saturday program will be a remote telecast from one of Ybor City's ballrooms. From 2:30 to 3 p.m., Saturday, "Window on Florida, Part IV" will feature the music, talent, and personalities of the same remote location from which the part III segment originates. Two programs

will be presented on Sunday. "Barber Shop Songs," from 2:30 to 3 p.m., will feature two barbershop quartets in a contest to be decided by audience applause. The other program entitled "Theater Work Shop," 10 to 10:30 p.m., will present the various Little Theater groups in the area.

Religious Programs

Gulfcoast

168. "I Believe," a live sustaining religious program of 5 minutes, will be presented following the sign-on and preceding the sign off each day of the week. All religious faiths will be presented, and lay people and clergy will relate their religious and ethical beliefs on the program. The program "Morning Service," 11 a.m. to 12 noon on Sunday, will be a sustaining religious program originating from the churches in the area on a rotating basis and will be a remote telecast. On Sunday between 12:15 and 12:30 p.m., Gulfcoast proposes a program entitled "Reverie" which will consist of video-tape-recorded sacred organ music. Camera shots of the organist will be interspersed by shots of religious scenes relating to the selection being played. From 12:30 to 1 p.m., Sunday, the program "Pastor's Study" will feature two pastors selected by the program department with the advice and counsel of ministerial groups in the area. A discussion of problems propounded through the mail and selected by the participants for consideration and answer on this program will be prerecorded on tape. Sunday evening between 6:30 and 7 p.m., "Music for Sunday" will feature the various church choirs within the coverage area in a program of sacred music. A 5-minute program entitled "Bowed Heads" will be presented Monday through Friday at 11:40 a.m. The pastors of the several religious faiths will be invited to appear on the program to define and promote religion in secular life. At 11 p.m. on Saturday evening, Gulfcoast proposes a 5-minute program, "Your Church Tomorrow," which will report notable events that have taken place or are scheduled at churches in the area. The Church News, tabloid supplement of the St. Petersburg Times, will be used as basic source material, with supplementary help from the ministerial associations and churches.

WSUN-TV

169. "Look to This Day," 9 to 9:05 a.m., opens each weekday broadcast. All live religious programs will be under the general supervision of the United Churches of Greater St. Petersburg, which will establish the rotation cycle among the various faiths. "Chapel on the Bay," Sunday from 9 to 9:30 a.m., will bring Protestant church services to the aged and infirm. Each program, on a rotation basis, will feature a sermon by a minister and music by a choir. On Saturday, from 9:15 to 9:30 a.m., "TV Sunday School" will present a preview of the Sunday school lesson for the following day. A bulletin board of upcoming special events, announcements concerning church highlights, and special church activities in the area will be presented on the "Church Calendar" from 12:15 to 12:30 p.m., Saturday. Selection of the items to be used will be coordinated with the United Churches office. In addition to the above live programs, WSUN-TV proposes

various recorded religious programs on behalf of independent representative groups in the area. The recorded program "Devotions," from 12:55 to 1 a.m., will close the station's operation for the day. This will consist of a prayer or devotional message delivered by a minister, priest, or rabbi from the station's coverage area.

Suncoast

170. The religious programs to be offered by this applicant will include "Church Services," Sunday from 11 a.m. to 12 noon, and will feature Sunday-morning church services by means of remote telecasts from churches in St. Petersburg and from other communities in the area. A 5-minute program entitled "Devotions" at 9 a.m., Monday through Saturday, will open the broadcast day, and will consist of 3 minutes of talk followed by a short closing prayer, and will feature a background of religious music. Sunday from 12 noon to 2 p.m., the applicant proposes four successive half-hour "religious films." Films will be selected for these programs so that the major faiths and sects will be represented, and will be supplied by such religious groups as the National Council of the Churches of Christ, the Christophers, the Jewish Chautauqua Society, and the national offices of other denominations. The program "Bible Stories," 2 to 2:30 p.m., Sunday, will present a film dramatizing Bible stories designed to appeal to all age levels. "The Pastor's Study," Wednesday from 11:15 to 11:30 p.m., will present a minister of a different faith each week. In this program, the pastor will request listeners to telephone him while on the air with questions concerning spiritual guidance, advice and counseling and appropriate questions will be answered on the air. Saturday from 9:05 to 9:15 a.m. the applicant will present "Church Billboard," which will be a schedule of the next day's services in the churches of all faiths in the area. The station will close each broadcast day, Monday through Saturday, with a period of meditation and prayer entitled "Meditations" from 11:35 to 11:40 p.m. The applicant will produce an entire week's programs on film in one recording session and the program will be varied weekly.

Tampa

171. The program entitled "Thought for the Day" will be produced from 8:30 to 8:45 a.m., Monday through Saturday, in cooperation with the Tampa Ministerial Association. The various denominations will be rotated on a weekly basis and most of the programs will be filmed in advance. Each will consist of an inspirational message accompanied on occasion by a religious ceremony. On Sunday between 11 a.m. and 12 noon, "Sunday Service" will be a remote telecast of a religious service which will be produced in cooperation with churches and religious organizations of the area on an equitable basis. From 12 noon until 2 p.m., as well as from 2:30 to 3 p.m. each Sunday, the station will present various syndicated films dealing with religious subjects. The selection of these films will be done in cooperation with the ministerial association.

WTSP-TV

172. Each broadcast day will begin and end with a 5-minute religious program produced locally utilizing sound-on-film, and will feature the various religious denominations on a rotating basis. The morning program is entitled "The Pastor's Study," and the evening program is called "Evening Meditations." A 15-minute program entitled "Mid-Day Chapel" will be presented at 12:15 p.m., Monday through Friday, as a noon day devotional period. The program will be rotated among the various denominations. Saturday from 2:30 to 2:45 p.m., "Church Bulletin Board" will announce the activities of the churches in the area for the following day. Sunday the station will carry a live remote "Church Service" between 11 a.m. and 12 noon from area churches on a rotating basis. Also on Sunday from 1 to 1:30 p.m., "Songs of Faith" will present a program of religious music featuring the various area religious choir groups, musical organizations, and the Religious Music Department of Florida Christian College. Sunday from 6:15 to 6:30 p.m., "Corridor of Time" will portray the role of the church and clergy in everyday life. This program will portray events such as baptism, confirmation, church memberships, marriage rites, and burial. Members of the clergy will explain the various events as they are portrayed.

Bay Area

173. At 9 a.m. daily the station will open its broadcast day with a 5-minute program entitled "Morning Prayer" which will present a message of faith and devotion and a prayer for the day. The program will be rotated among the various churches of the area. On "Part III" of "Window on Florida," Monday through Friday from 1:50 to 2 p.m., a clergyman will present his views on the religious significance of the events and activities televised in parts I and II of the program. The Saturday program entitled "Window on Florida" is a 2-hour program divided into four 30-minute segments and "Part I" will present various religious ceremonies throughout the area at 1 p.m. Normally, the program will be filmed in advance and edited for broadcast from the St. Petersburg studio. Five programs are proposed for Sunday. From 9:05 to 9:10 a.m. and from 9:25 to 9:30 a.m., "Church Calendar" will serve as a bulletin board for church activities in the area. From 9:30 to 10 a.m., "Hymns and Religious Music" will present the various choral groups and soloists throughout the area. For viewers who cannot attend regular church services, the program "Sermon" will be presented from 10 to 10:30 a.m. and will be delivered by a different minister each Sunday. "Church Door," from 6:15 to 7 p.m., will present the social and young people's activities of church life and will be partially filmed in advance at a different church each week.

*Agricultural Programs**Gulfcoast*

174. At 1 p.m. on Saturday afternoon, the 60-minute program entitled "Friendly Call" will present a weekly report by the county agricultural agent on agriculture news, problems which may need consideration by the community, and activities of agriculture youth

groups. "Suncoast Grower" is scheduled for Mondays through Fridays from 12:15 to 12:30 p.m. It will be produced by the farm director with the aid of the county agricultural agents. The subject material will be designed to interest both commercial and noncommercial agriculturalists. Also on Monday through Friday, the station will present "Agriculture News and Market Reports" from 12:05 to 12:15 p.m. It will feature a summarization of market prices on crops being shipped from or sold in the area, and will present weather information as it applies to agriculture.

WSUN-TV

175. The program "Florida Gardener" from 11:30 a.m. to 12 noon on Sunday will present information concerning urban gardening and landscaping. It will be under the direction and supervision of the station's garden editor. One feature of the program will be the "Garden Question Box" which answers questions submitted by viewers about their gardening problems. The other agricultural program proposed by WSUN-TV is "Town and Farm," Monday through Friday from 12:15 to 12:30 p.m. This program will be conducted by the farm director of the station and is designed for local farmers and consumers. It will also feature farm news and weather information.

Suncoast

176. A program entitled "Suncoast Farmer" between 12:30 and 1 p.m., Monday through Saturday, will provide agricultural information concerning such subjects as market prices, bulletins from State and Federal agricultural agencies, and information to guide consumers in the purchase of agricultural products. This program will be presented on occasion on a remote basis.

Tampa

177. Tampa proposes to present "Gulf Greenhouse" from 12 noon to 12:30 p.m. each weekday, Monday through Friday, which will present information of interest to gardeners and farmers. About three-fourths of the programs will be devoted to flowers and other plants grown for home beautification, shrubs, trees, lawns, and similar subjects, while the remainder will be devoted to other noncommercial aspects of farming. On Saturday from 1 to 1:30, the program "The Florida Farmer" will concern the commercial farmer and his problems, and will utilize, by film or remote coverage, field demonstrations as well as interviews with local, State, and Federal agricultural representatives, and county demonstration agents.

WTSP-TV

178. Monday through Friday from 7:25 to 7:30 a.m., "Down on the Farm" will contain current market information, crop and livestock reports, long-range weather forecasts, and other agricultural information. From 12:30 to 12:45 p.m., Monday through Friday, "Rural Report" will give the reports from livestock, citrus, and vegetable centers, and from the Agricultural Extension Service of the University of Florida. At 6:25 p.m., Monday through Friday, the station's

farm director will present a 5-minute summary of various agricultural citrus and livestock market reports of the day, and discuss market trends on a program entitled "Farm Facts." Saturday, the station will carry two special live agricultural programs. The first, entitled "4-H'ers," 10 to 10:30 a.m., will be produced in cooperation with area 4-H chapters and the Future Farmers of America, and will demonstrate various farming, agricultural, and homemaking activities. The other Saturday program entitled "R.F.D. 10," 12:30 to 1 p.m., will present a typical farm family which will be interviewed and presented a gift for being selected as the farm family of the week.

Bay Area

179. Bay Area proposes to present the program "Farm-Citrus-Markets" Monday through Saturday three times daily: 9:05-9:10 a.m., 11:55-12 noon, and 6:10-6:15 p.m. to provide commodity and price reports, and to give weather and temperature information to the agricultural communities within the area. Monday through Friday from 10 to 10:15 a.m., "Flower and Garden Time" will present demonstrations by garden club hobbyists, authorities, and lecturers to provide instruction in raising flowers, caring for gardens, planting, and similar activities. It will also cover the horticultural and agricultural activities of the 4-H Clubs. It will originate from Tampa on Thursdays. "Part III" of the Saturday program, "Window on Florida," from 2 to 2:30 p.m., will be devoted to matters of an agricultural nature, such as the events at the area fairs, demonstrations of farm equipment, citrus processing, and similar events.

Educational Programs

Gulfcoast

180. From 4 to 4:30 p.m. on Monday, Wednesday, and Friday, the program "Topics" will be produced by the station's educational director with the advice of school officials and two of Gulfcoast's stock subscribers, Mr. Harless and Dr. Blau. This program is designed to contribute to the teenagers informed adjustment to his environment and will utilize a panel of students who will discuss a preselected problem. Between 10 and 10:30 p.m. on Sunday, "Higher Learning" will utilize source materials from the institutions of higher learning in the area, and the subject material and manner of presentation will be determined by the educational institution involved with the advice and counsel of Gulfcoast's educational director. On Wednesday, a program entitled "Toward Tomorrow" will be presented at the public-service strip period, 6-6:30 p.m. It will be a career guidance program produced by the educational director, primarily aimed at high school and college-age viewers. Dr. Kirkpatrick, a Gulfcoast stock subscriber, will be the moderator and regular participant, and the panel will be completed by a person engaged in the specific vocation under consideration. On Wednesday from 10 to 10:30 a.m., "Parent and Pupil" will present current events written and edited under the supervision of the educational director, graded into four different age groups, and each age group will thus participate in viewing the pro-

gram every fourth week. The other 4 days of the week will use educational films selected for home and in-school viewing.

WSUN-TV

181. "Campus Report," Sunday from 2 to 2:30 p.m., will be devoted to campus activities and will have the president of St. Petersburg Junior College as host. The program will be developed in collaboration with the colleges within the station service area. "Magic Lantern Kindergarten," 9:15 to 10 a.m., Monday through Friday, is a live studio kindergarten class presented in cooperation with the Pinellas County Board of Public Instruction. A similar series was presented by the station during 1955-56. A teacher conducts a class of 12 students, and the projects are designed to permit children at home to watch and participate. "Classroom Camera," Monday through Friday from 10 to 10:30 a.m., is now on the station under the title "World Wide Classroom." This series of programs will be produced by the Pinellas County School System as a supplementary aid to education. Many elementary schools throughout the county are equipped with television sets and this program will be directed to classroom groups. On Saturday from 10 to 10:30 a.m., the program "Teen Topics" will cover subjects of interest to teenagers. The usual format will consist of discussions with a moderator, student guests from the various schools, and faculty representatives from the three school levels. "School for Parents," presented from 3:30 to 4 p.m. on Saturday, is an open-forum program concerning problems facing educators, students, and parents. The program will be produced in cooperation with the Pinellas and Hillsborough County School Systems and the area parent-teachers associations.

Suncoast

182. Suncoast states that since WEDU, the area's educational station, is providing in-classroom teaching programs, it feels that such programing needs are adequately served and it does not contemplate programs for in-school viewing. The specific educational programs proposed by this applicant are: "College Choir," Sunday from 2:30 to 3 p.m., which will present the Florida Christian College Choir; Monday through Friday between 2:30 and 3 p.m., "Mr. Fixit" will provide information to the retired "Do-It-Yourself" viewers on such subjects as simple home repairs, woodworking projects, repair of powered tools, etc. It will be presented with the cooperation of the vocational schools of Pinellas and Hillsborough Counties, and occasionally remote pickup facilities will be used. A program entitled "Pinellas County Schools" will be presented on Saturday from 9:30 to 10 a.m. by the students of the Pinellas County schools with a view toward informing the area viewers as to classwork, recreational activities, and talent-developing efforts undertaken by the school. "Hillsborough County Schools" will be presented on Saturday between 10:30 and 11 a.m. from the Tampa studio and will be a counterpart of the above Pinellas County school program. On Saturday between 11:30 and 12 noon, "University Dramatic Club" will be presented by the University of Tampa Dramatic Club. It will present

both original and well-known plays, with the entire responsibility for the production resting on the students. Saturday from 1 to 1:30 p.m., the Trinity College Choir of Clearwater will present a program entitled "Trinity College Choir."

Tampa

183. As noted hereinbefore a 30-minute portion of the 1-hour program beginning at 9 a.m. entitled "Kiddie Kollege" will present elementary school activities in the area, Monday through Friday. Two Saturday programs, the first entitled "School Days" from 9 to 10 a.m., and the other entitled "Board of Education" from 1:30 to 2:30 p.m., will be presented. The former will be devoted to the local grade schools and will be a presentation of the instruction and other activities of the students and teachers as they are being conducted in the classroom. The latter Saturday program will be designed to interpret the work of the schools and will consist of demonstrations, talks, and discussions of subjects that are being taught, modern teaching methods, and other aspects of the curriculum. Between 2 and 2:30 p.m. on Sunday, the program "Campus" will be similar to "School Days" but it will be at the high school level, while from 3 to 3:30 p.m. on Sunday, a program at the college level and similar to the last two named programs entitled "College Time" will be presented.

WTSP-TV

184. "Conversational Spanish," Monday through Friday from 10:15 to 10:30 a.m., produced under the supervision of the Hillsborough and Pinellas County Boards of Public Instruction, will be a program of Spanish instruction beginning at the most elementary stage and carrying through advanced Spanish. It will be similar in format to a program which was broadcast each weekday morning over WTSP radio during 1957-58. "Video Classroom," Monday through Friday, 6:30 to 7 p.m., will be produced in cooperation with the educational institutions in the area. Two of the junior colleges in the area will present two college courses for credit each year, one in the fall and the other in the spring. Each such course will be presented on Tuesday, Wednesday, and Thursday for a 13-week period. The Friday program will be a class in adult education, and the Monday program will highlight discussion groups, debate, fraternity and sorority activities, and typical classroom instructions. Saturday from 11:30 a.m. to 12 noon, the program "School Time" will acquaint the public with the Negro schools, their educational teaching activities, and their extracurricular events. A program entitled "Do-It-Yourself," Sunday from 12:30 to 1 p.m., will be produced in cooperation with the vocational education department of the board of public instruction and will acquaint the public with the subjects taught at the vocational schools in the St. Petersburg area.

Bay Area

185. "TV Classroom," Monday through Friday from 11:30 to 11:45 a.m., will present short daily lessons on such subjects as reading improvement and building your vocabulary, under the auspices of the Adult Education Department of the Pinellas and Hillsborough public

schools. The Saturday portion of "Window on Florida, Part II," from 1:30 to 2 p.m., will normally originate in the studio and will present a facet of college life or activity under the auspices of one of the Bay Area universities. From 3 to 4 p.m. on Saturday, "Teen Canteen" will present the educational work of the YMCA with televised interludes of the platter parties regularly scheduled by the St. Petersburg YMCA. "School Music Hour," 5 to 6 p.m. on Saturday, will have as its objective the formation, construction, and development of music students and the methods by which they are taught by the area public schools. Sunday from 4:30 to 5 p.m., "High School Opinions" will provide a platform for discussion of teenage interests, attitudes, and opinions, and will be conducted by a faculty representative from an area high school. The final live Sunday program will be televised from 7 to 7:30 p.m., and is entitled "Challenge to Parents." It will be under the supervision and guidance of the parent-teachers councils of the Bay Area and will have as its objective the enlightenment of parents on the work of the public schools.

News Programs

Gulfcoast

186. On Monday through Friday, 5-minute newscasts will be presented at 10:30 a.m., 11 a.m., 11:30 a.m., and 12 noon. They will also include information about weather and sports, and will be prepared and presented by a news editor from leased wire reports and from the St. Petersburg Times' city desk. Two 30-minute programs will be presented Monday through Saturday, usually at 6:45 p.m. and 10:30 p.m., entitled "News-Weather-Sports." The program will be known as "Assignment Suncoast" during the early evening segment, and "Suncoast Final" during the later time period. The major portion of each program will be written locally and will normally consist of 15 minutes of news, 5 minutes of weather, and 10 minutes of sport items. The facilities and personnel of the St. Petersburg Times will be used for obtaining coverage of local news and sports for this program. "Suncoast News in Review," Sunday afternoon from 4 to 4:30 p.m., will summarize the big stories of the week and will utilize film clips, still photographs, and video tape material. Also on Sunday, "News-Weather-Sports" will be presented from 12 to 12:15 p.m., 6 to 6:15 p.m., and 10:30 to 11 p.m. This program will give coverage to international, national, regional, and local items of news, sports, and weather.

WSUN-TV

187. The station's news-special events department functions as an integrated operation for WSUN-TV and WSUN. It is administered by the director of news-special events and the assignment editor. The staff consists of three photographers, four newscasters-editors, the sports director, and the weatherman-announcer. Twenty-seven professional news stringers throughout the State are included in the news department. Two additional news units will be equipped with cameras, two-way communication installations, police radio monitor, and associated gear. "Early News" from 9:05 to 9:15 a.m., Monday

through Saturday, will feature the day's first news roundup of overnight developments and will use film taken the night before by the station's news unit. Monday through Friday from 12 noon to 12:15 p.m., "Noon Edition" will present a newscast of local, national, and international happenings, and will also include sports items and other information. A program entitled "News" from 2:55 to 3 p.m., Monday through Saturday, is designed as a summary to keep abreast of the day's news developments. Daily from 6:30 to 6:45 p.m., "Suncoast Byline" will present a roundup of the happenings that made news today. Two programs entitled "News" will also be presented daily from 11 to 11:15 p.m. and 12:50 to 12:55 a.m. These newscasts will finish the station's news coverage for the day and will include the stories that will make the next day's headlines. On Sunday from 12 to 12:15 p.m., "News Review" will present events of the weekend and will include sports headlines and a weathercast.

Suncoast

188. Suncoast proposes to use two full-time newsmen equipped with automobiles containing two-way radios, recording facilities, and photographic accessories for coverage of local and area events. These newsmen will be supplemented as necessary by staff photographers. Area news and film will also be obtained from stringers throughout the service area. The station also states that it will editorialize on occasion, either through commentators or other personnel. From 9:15 to 9:30 a.m., Monday through Saturday, the program "News Headlines" will review new developments and highlights at the beginning of the day. The "Noon News," Monday through Saturday from 12 noon to 12:30 p.m., will offer coverage of local area and national news as well as sports and weather. Weather information will be obtained through a wire line to the U.S. Weather Bureau, Weather Service, as well as from the weather station in St. Petersburg. The program "Evening News," 6:30 to 7 p.m., Monday through Saturday, will be similar to the "Noon News." "Night News," presented from 10:30 to 11 p.m. on Monday, Tuesday, Thursday, and Friday, and from 10:45 to 11:15 p.m. on Wednesday, will stress stories of local interest and will include special reports on public issues. On occasions, it will feature a 5- to 10-minute film report, commentary, or editorial on the subject of general interest. Just prior to signoff on Monday through Saturday, from 11:30 to 11:35 p.m., "Late Headlines" will present brief coverage of the principal news of the day as well as ball scores and weather. Sunday, a 30-minute program beginning at 10:30 p.m. entitled "News in Review" will provide a review of the news highlights of the week and, when interest warrants, an editorial or commentary will be carried.

Tampa

189. As stated hereinbefore, the first 15 minutes of the program "Dateline Sunshine," Monday through Saturday, will be devoted to a rundown of international, national, and local news, sports, and weather. Other programs entitled "Views on the Noon News," from 12:30 to 12:45 p.m., Monday through Saturday; "Home Edition," from 7 to 7:15 p.m., Monday through Friday; "11th Hour News" on

Sunday through Friday from 11 to 11:15 p.m.; and "News Review" on Sunday from 6 to 6:30 p.m., will seek to provide a complete résumé of news, sports, and weather. The program "Home Edition" will be limited to local and regional news. Some of these news programs will use filmstrips and, on occasion, the remote unit.

WTSP-TV

190. On Monday through Friday, the applicant proposes 15-minute news periods at 7 a.m., 8 a.m., 12 noon, 6 p.m., 7 p.m., and 11 p.m. These news programs, will cover local, regional, national, and international news, as well as a weather report. The news for these programs will be provided by stringer reporters throughout the area, and listener news tips, as well as by International News Service. On weekdays, 5-minute news reports will be telecast at 8:55 a.m., 12:25 p.m., and 12:45 a.m. These will be news reports in capsule form of the day's news, sports, and weather. On Saturday, a 10-minute program entitled "Morning Edition" will be presented at 7:45 a.m.; a 15-minute "Noon Edition" at 12 noon; and an "Evening Edition" from 6 to 6:15 p.m. The "11th Hour Report" on Saturday will be presented from 11 to 11:10 p.m., and the "Nightcap Roundup" from 12:40 to 12:45 a.m. A special program entitled "Date Line Tallahassee," Saturday from 6:15 to 6:30 p.m., will be a sound-on-film report on news and special events in the State capitol. On Sunday, the applicant proposes a 5-minute "News and Weather" summary at 9 a.m., a "Noon Edition" from 12 to 12:10 p.m., the "Evening Edition" from 6 to 6:10 p.m., the "11th Hour Report" from 11 to 11:10 p.m., and the "Nightcap Roundup" from 12:50 to 12:55 a.m. The news program presented from 7 to 7:15 p.m., Monday through Friday, is entitled "Suncoast Commentary," and will present a commentary on news and events of interest to the people of the area.

Bay Area

191. Bay Area proposes five series of local news programs. Ten-minute programs will be telecast 7 days a week at 9:15 a.m., 11:45 a.m., and 10:50 p.m. There will be a 10-minute newscast Monday through Saturday at 6 p.m., and a 15-minute news summary on Sunday at 6 p.m. The 9:15 a.m. report will primarily cover State, national, and international news events, with most local news being limited to headline brevity. The 11:45 "News Beat" will emphasize local and regional news from the area, with State, national, and international events being covered with headline brevity. The 6 p.m. news report is entitled "News Desk," and will present a summary of the day's latest developments in the news and will conclude with a weather forecast. This program will feature news film gathered by the station's staff. The "10:50 News" nightly will give a summary of news as prepared, edited, and evaluated by the news director, and will conclude with the next day's weather forecast.

Discussion Programs

Gulfcoast

192. Gulfcoast proposes a program called "Public Service Strip" each weekday. The Monday program, 7:30 to 8 p.m., will be known

as "The Big Question" and will examine controversial public questions of importance in the area. The Tuesday public service program, 6 to 6:30 p.m., will feature the League of Women Voters and the participants will be rotated between the St. Petersburg and Clearwater groups of the league, and other such groups in the coverage area. The Thursday program, 7:30 to 8 p.m., will relate to mental health and will be produced by Dr. Theodore Blau, a Gulfcoast stock subscriber. It will include as participants the moderator, a minister, and a social worker. The Friday public service program, 10 to 10:30 p.m., will be conducted by forums of professional groups on a rotation basis. It will include such programs as "Legal Forum" and "Medical Forum" which were presented over WTSP under Pinellas ownership. The Wednesday public-service program has been discussed hereinbefore under the educational program category and is entitled "Toward Tomorrow." A program entitled "Topics," scheduled for Tuesday and Thursday from 3 to 3:30 p.m., will be devoted to discussions of gerontological problems and demonstrations of successful solutions. The program will be produced by the public service director under the direction of Mr. Harless, with the counsel and participation of organizations devoted to problems of gerontology. On Sunday afternoon from 2:30 to 3 p.m., the program entitled "New Directions" will utilize a panel of participants for discussions of new problems arising in the area, or a proposed new solution to a recurring problem. A roster of participants will be developed by the public service director and the participants will be selected from such roster.

WSUN-TV

193. The program "Home Town Story," 2:30 to 3 p.m., Sunday, is designed to reflect the character, accomplishments, and future plans of each neighboring community. It will be produced in cooperation with each chamber of commerce, and the assistant to the secretary of the St. Petersburg Chamber of Commerce will serve as host. "Bay Window," Sunday from 10:30 to 11 p.m., will present a discussion of national or State news stories and their effect on the Tampa Bay area. The moderator will be the managing editor of the St. Petersburg Independent. The program will consist of a review of the background and action causing the story, an interview or panel discussion by guest experts, and a summation by the moderator. A program entitled "Feature Stories" between 7 and 7:15 p.m., Monday through Friday, will be a day-to-day mirror on people and events in the Bay Area. It has no set format and will present such topics as the city council meetings, presentation of Miss Florida, the Interstate Highway routing, Tampa urban renewal plans, and similar events. "Sunny Days," Tuesday from 11:30 a.m. to 12 noon, is designed specifically for the senior citizens of the area and has been a feature on the Fran Ratteree television series since October 1956. A program designed to afford an opportunity for the charitable organizations of the area to acquaint the public with their particular work is entitled "Helping Hands," and will be presented on Thursday from 11:30 to 12 noon. It will originate from Tampa on alternate weeks. "It's Your Welfare," 11:30 to 12 noon on Saturday, has been on the station since

January 1956 and is designed to explore the services of community welfare that are available in the Tampa Bay area. The program is a joint effort of the station and the Community Welfare Council, and its objective is to acquaint the people with available resources in the fields of health, welfare, education, and recreation. The program "For the People," 6 to 6:30 p.m., Saturday, has been presented over the station since January 1957. It is a public information feature that covers important topics on the local, national, and State level, and controversial subjects are treated factually and impartially.

Suncoast

194. Suncoast proposes two discussion-type programs, and states that it will actively seek out issues and proponents identified with varying points of view so that each such different view will receive equal and fair treatment. On Monday, Wednesday, and Friday from 6 to 6:30 p.m., the program "Suncoast Forum" will be presented. On Monday, the program will emanate from the St. Petersburg studio and will cover problems of particular interest to the Pinellas County area. On Wednesday, the program will deal with material of interest to Tampa and Hillsborough County, and will originate from the Tampa studio. On Friday, the program will originate from one of the smaller communities in the area by remote facilities. On "Junior Press Panel," Saturday from 6 to 6:30 p.m., a panel of high school students will question an editor from an area newspaper on local and national events, and the significance of such happenings will be discussed.

Tampa

195. Two nonnetwork discussion programs are proposed, and one other program will be part discussion and part talk. The latter, entitled "Petticoat Party Line," has been set forth hereinafter. The program "Tampa Talks," Monday through Friday from 6 to 6:30 p.m., is a forum for discussion of civic, social, and governmental problems and other public issues, and will allow fair and equal presentation of opposing views on material of a controversial nature. The other proposed program, "Views on the Noon News" from 12:45 to 1 p.m., Monday through Saturday, will present discussions of current news subjects, with special interest on stories of area interest.

WTSP-TV

196. "Senior Citizens," 12:45 to 1 p.m., Monday through Friday, will be directed to the elderly residents of the area and will present State society features, songfests, orchestra numbers, bridge, shuffleboard games, and discussion groups. On Monday at 4:30 p.m., a half-hour program entitled "Teen Topics" will be moderated by Miss Marion Kline, who is presently hostess on a teenage program broadcast by WTSP radio. It will concern itself with teenagers, their activities, problems, likes and dislikes, and will occasionally feature interschool debates and discussions of school activities and social events. A weekly feature will be a brief skit depicting good and bad manners among teenagers. Also on Monday from 7:30 to 8 p.m., "PTA Roundtable" will be produced in conjunction with the parent-

teachers associations of Pinellas and Hillsborough Counties. "Open Mike Forum," Monday and Friday from 10:30 to 11 p.m., and Wednesday from 10:45 to 11 p.m., will present a current issue of the day. The station will seek out proponents and opponents of various public issues of importance to appear on the program. For 10 minutes on Monday and 5 minutes on Wednesday, a "beep" telephone will be used by viewers to express their opinions on the issue of the day, and such views will be broadcast along with the moderator's comments. The activities of open county commission meetings will be filmed for presentation on the program "County Commission in Action," Tuesday from 10:30 to 11 p.m. Thursday from 10:30 to 11 p.m., "Civic Forum" will be made available to public service, community, civic, and service clubs on a rotating basis for forum and roundtable discussions. "Your Armed Services" will be produced by the recruiting services of the various armed service organizations in the area on Friday from 4:30 to 4:45 p.m., directed primarily to the teenage audience. Saturday, the applicant proposes four discussion programs as follows: "Flower and Garden Roundtable," 9:30 to 10 a.m., which will be produced by the women's director and will present guests, members of the flower and garden clubs, and horticulturists of the area who will acquaint the viewers with proper flower and garden planting procedures; "Social Security and You," 12:20 to 12:30 p.m., will be a panel discussion and question-and-answer program relating to social security; "Gulfcoast Progress," 2 to 2:30 p.m., will present experts in real estate and building to acquaint the audience with various aspects of real estate activities and development in the area; and "Veterans Roundtable," 2:45 to 3 p.m., during which typical veterans' problems will be discussed by a member of the Veterans' Administration. In addition to personal appearances, questions from veterans will be received by telephone and answered on the air. The applicant's Sunday programing includes: "Your Chamber in Action," 6:30 to 6:45 p.m., which will feature, on a rotating basis, the current activities of the various area chambers of commerce; on alternate Sundays from 6:45 to 7 p.m., the programs "Medical Forum" and "Legal Forum," presenting discussions devoted to legal, medical, and dental problems, will be rotated between the medical and dental societies and the bar associations of Pinellas and Hillsborough Counties; and "Suncoast Town Forum" from 7 to 7:30 p.m. will present speakers from governmental, civic, professional, and community organizations with various viewpoints on controversial subjects of current interest in the service area.

Bay Area

197. The program entitled "Window on Florida," Monday through Friday, will have its first segment from 1:30 to 1:40 p.m. feature a discussion panel, moderated by an announcer-host, presenting two or more observers of the event chosen to be televised. From 10:30 to 10:50 p.m., "Round Table" will present on Monday, Tuesday, Thursday, and Friday three panelists and a guest moderator who will present their views on the chosen subject, followed by an open discussion and a short summary. "Skippers Round Table," Saturday from

6:30 to 7 p.m., will present a program of discussion with well-known fishermen and sportsmen of the Bay Area. The program "Green Bench Party" will present the senior citizens of the area from 2 to 2:30 p.m. on Sunday. Six persons will be selected and become a panel that discusses subjects of local interest with the master of ceremonies.

Talk Programs

Gulfcoast

198. "Yesteryear" will be a 5-minute program presented Monday through Friday at 11:15 a.m. The subject matter will be events and developments of the day 20 years before the date of the broadcast, and the microfilm library and files of the St. Petersburg Times will be utilized in its presentation. From 1:30 to 2 p.m., Monday through Friday, "Florida Features" will be produced by the women's director, Nancy Osgood, who will be featured on the program. It will be primarily a woman's program. Monday, Thursday, and Friday between 6 and 6:30 p.m., a program entitled "Florida Fun" will promote participation in activities that are prevalent in the station's service area. "Suncoast Slants" will be a broadcast of a sporting event each Saturday from 11 a.m. to 12 noon. It will usually have a remote origin, and, on occasion, will be tape recorded in advance. The program "Hot Spot," Sunday between 7 and 7:30 p.m., will be an interview type of program in which officials of government, and officials of organizations depending upon public support, will be interrogated on issues of public interest.

WSUN-TV

199. The program "Washington Calling" will provide a weekly contact between Florida's Senators and Congressmen and their constituents, and will be presented on Sunday from 12:15 to 12:30 p.m. Two programs entitled "Sports-Weather Today," daily from 6:45 to 7 p.m. and 11:15 to 11:30 p.m., will present the station's sports director and a weatherman working from the U.S. Weather Bureau direct wire and the station's radarscope. On Thursdays between 10:30 and 11 p.m., the program "Waterways" will cover all phases of water sport from fishing to skindiving.

Suncoast

200. The program "Suncoast Hostess," Monday through Friday from 9:30 to 10 a.m., will normally feature food preparation, but will also include household hints, party ideas, decorating, flower arrangements, etc. "Florida Living," Monday through Friday from 11:30 to 12 noon, will present advice and instructions on such subjects as gardening, home decorating, hobbies, music, the theater, etc. This program will be moderated by the director of women's programs, but authorities on the subjects covered will actually present the program material. The program "This is Florida" on Saturday between 3:30 and 4 p.m. is designed to portray the various activities in the area and will originate from a different location each week on a remote basis. When live pickup is not feasible, the program will be filmed for telecasting at a later date. On Tuesday and Thursday from 6 to 6:30 p.m.,

the program "Suncoast Fishing" will present instructions, tips on fishing, and weather information. The Tuesday program will review the previous weekend's fishing, while the Thursday show will offer suggestions for the coming weekend, the weather outlook, tidal information, and similar data.

Tampa

201. Three programs in the category of talk, and one program with part talk and part discussion, are proposed by this applicant. "Woman's World," 8:45 a.m. to 9 a.m., Monday through Saturday, will present talks and demonstrations of interest to women. It will include home planning, improvement, decoration, health and recreational activities, home economics, and similar information. "Market Memos" from 11 to 11:30 a.m., Monday through Saturday, will be devoted to the commercial aspects of the Tampa-St. Petersburg-Clearwater area and will portray the development of the area in its economic aspects, and a portion of the program will be devoted to reports of the stock market. The program "Florida Fun," 11:30 a.m. to 12 noon, Monday through Saturday, will be devoted to the recreational activities available in the area. Talks dealing with these various activities will be presented live or by remote or by sound on film. One-half of the 30-minute program beginning at 2:30 p.m., Monday through Friday, entitled "Petticoat Party Line" will be talks dealing principally with the activities and meetings of women's clubs, civic groups, and other local women's organizations. A program on Saturday from 10:30 until 12 midnight has been classified by the applicant as "entertainment." This program, entitled "Live Sports," should probably be classified as "talk," and it will cover local sporting events of all kinds such as swimming and track meets, boat races, fishing contests, competitive games, and similar events. The applicant proposes to present the competition visually, and to limit commentary and talk to a minimum and, therefore, felt that the classification of "entertainment" should be selected for the program.

WTSP-TV

202. "Women's World," Monday through Friday from 10:30 to 11:30 a.m., will be conducted by the women's director, and will provide items of interest to the female audience, such as fashion tips, sewing, club activities, recipes, etc. Tuesday and Thursday from 4:30 to 5 p.m. "The Story Hour" will present a group of grade school children and a master of ceremonies who will read to them selected books, short stories, and poems. Wednesday from 4:30 to 5 p.m., "Scout Time" will present various scouting activities of Girl Scouts, Boy Scouts, Cub Scouts, and Brownie Scouts, with a different Scout troop appearing each week. On Friday, a 15-minute program entitled "Weekend Wandering" at 4:45 p.m. will provide information for persons planning weekend trips and activities in the Suncoast area. Local, State, and national sports activities, with occasional interviews of sport celebrities, will be presented on "Sportscope" Monday through Friday from 6:15 to 6:20 p.m., Saturday from 6:15 to 6:25 p.m., and Sunday from 6:10 to 6:15 p.m. "Fishing the Suncoast," Monday

through Friday from 6:20 to 6:25 p.m., will be devoted to fishing activities in the area, and will include reports of catches of the day, weather forecast for the following day, discussion of proper equipment and baits to use, and similar items. Saturday, "Let's Go Fishing," from 7:55 to 8 a.m., will give a weekend report on tides, fishing information, weather forecasts, and boating tips. Also on Saturday from 12:15 to 12:20 p.m., the program "At the Beaches" is designed for viewers planning beach activities during the weekend. Pictures of the various beaches in the area will be shown, and the officials, publicity directors, and lifeguards will be interviewed concerning beach activities. "Sports Final," devoted primarily to the scores and results of sporting events, will be presented Monday through Friday from 11:15 to 11:20 p.m., and Saturday from 11:10 to 11:15 p.m. A golf clinic "Tee to Green" will be presented Saturday from 5:10 to 5:15 p.m. during which persons will be invited to appear on the program to receive instructions from a golf professional. The program "Scoreboard," Saturday from 6:25 to 6:30 p.m., will give the results and scores of the day's local, regional, and national games. From 6:30 to 6:45 p.m. on Saturday, "Suncoast Mariner" will present talks on boating maintenance and repairs. Boat owners will be invited to bring their boats to the outside patio of the St. Petersburg studio in one format of this program, and sound-on-film visits to various boats docked in St. Petersburg will be another format. There will be occasional trips into open water for safety demonstrations. On Sunday, the applicant proposes to present the program entitled "Situations Wanted" between 1:30 and 1:45 p.m. on which job applicants will be interviewed. The program will also include demonstrations of the activities of the Florida Industrial Commission and Employment Service. 4 to 4:30 p.m., Sunday, "Spotlight" will be a film tour of a designated town in the area. Members of the chamber of commerce, city officials, and civic organizations will be invited to appear. "Personal Profile," 11:10 to 11:25 p.m., Sunday, will present a film program produced in Washington, D.C., featuring interviews with Senators, Congressmen, and top Government officials.

Bay Area

203. Bay Area proposes to present 13 series of talk programs. Daily at 9:10 a.m. the program "Weather" will present a 5-minute forecast of local, regional, and national weather. "Community Calendar," presented 6 days a week from 9:25 to 9:30 a.m. and on Sunday from 11:55 a.m. to 12 noon, will report events of interest to the communities throughout the area such as lectures, sports events, civic ceremonies, flower shows, and similar items. Three programs are proposed Monday through Friday between 10:15 and 10:30 a.m., 1:40 and 1:50 p.m., and 6:15 and 6:30 p.m. The first of these programs entitled "Community Shopping Snooper" will be from St. Petersburg Monday, Thursday, and Friday, and from Tampa on Tuesday and Wednesday, and will present a shopping news roundup of merchandise featured in area stores and shopping centers. A second weekly program entitled "Window on Florida, Part II," from 1:40 to 1:50 p.m., will feature a descriptive narration of the event

being televised in this related 30-minute segment, and will originate by remote except on Thursday. The third weekly program entitled "The Skipper" will be a fishing program reporting fishing news and conditions during the first part of the program, and sports news and scores during the second part. On Tuesday from St. Petersburg and on Thursday from Tampa, "Mayor's Report," from 7 to 7:15 p.m., will present the mayors of the various communities in the area giving a report to his city and to the other cities in the Bay Area. Immediately following "Mayor's Report," at 7:15 p.m. the program "Our Town Government" will be a 15-minute presentation by three city officials and the mayors of various cities on some aspect of that city's municipal problems. On Saturday, from 10 to 11 a.m., various troops of the Boy Scouts of America will present a program of their scouting achievements entitled "Scouting." This program will originate alternately from St. Petersburg and Tampa. Also on Saturday, "Safety Control Report" will be a 5-minute telecast at 6:10 p.m. on traffic conditions, the trend of traffic accidents, and road construction. "Power Squadron," Saturday from 6:15 to 6:30 p.m., will feature boating rules and etiquette, and will be conducted by area power squadrons and Coast Guard officials. Saturday from 10:30 to 10:50 p.m., the "Man-of-the-Week" will present a person chosen for some current and newsworthy accomplishment or for recognition of civic contributions. The person selected will be chosen by a committee of the presidents of the chambers of commerce. Sunday from 10:30 to 10:50 p.m., "Bay Area Report" will feature a topic and make a report on the status, program, and trends of the subject in relation to the various communities in the area. Guests each week will be four authorities in the subject field.

Special Events

Gulfcoast

204. Gulfcoast proposes to cover various happenings throughout the service area. These include: "Know Your Candidate," which will be presented prior to the primary and general elections; "The Winners-Losers Party," on election night; "The Suncoast Spelling Bee," an annual event sponsored by the St. Petersburg Times; the Sunshine Festival Parade in St. Petersburg; The Sun 'N Fun Parade in Clearwater; the Gasparilla Parade in Tampa; the Chasco Fiesta in New Port Richey; the Florida State Fair in Tampa; the Pinellas County Fair; and special religious services, including those of both the Catholic and Protestant churches. Gulfcoast proposes to utilize the facilities of the St. Petersburg Times' library or "Morgue" in presenting this coverage and to supply background material for some of its programs. The applicant has also made a working arrangement with the Times so that the latter's photographers and reporters will be available to the proposed television operation.

WSUN-TV

205. WSUN-TV proposes to use its mobile unit to broadcast special events such as the Gasparilla Festival, Sun 'N Fun Parade, the State fair, Havana Yacht Race, Blessing of the Fleet, Home Town Story,

Sunshine Festival, Shuffleboard Tournament, sports events, and many others. A study has been made to determine the feasibility of the sites from which remote broadcasts are proposed.

Suncoast

206. Suncoast proposes to telecast various special events that occur in the area. Among such telecasts are the Suncoast Festival, the Florida State Fair, the Pinellas County Fair, the Gasparilla Festival, Latin-American ceremonies in Ybor City, the Epiphany Rites of the Greek Orthodox Church in Tarpon Springs, events at MacDill Air Force Base, the Clearwater Sun 'N Fun Festival, various sporting events such as major league baseball spring training, golf tournaments, and little league championship playoffs, and others.

Tampa

207. Tampa Telecasters proposes to cover all area events of significance through the year, either on film or by means of its remote unit. Among the coverage contemplated by this applicant are the various area fairs, conventions, regattas, and parades, as well as football, basketball, and other sports events if clearance for the same can be obtained.

WTSP-TV

208. The applicant proposes to cover special and nonrecurring events live and by film on a year-round basis, and submitted a list of about 30 local special events of such a nature. These include the various annual fairs, pageants, and similar special events that take place in the St. Petersburg and surrounding area.

Bay Area

209. Bay Area presented a long list of special activities in the area which it proposes to cover by remote telecast or by film. These events take place in the St. Petersburg and Tampa area, as well as the surrounding communities.

Miscellaneous Other Matters

210. It has not been deemed necessary to make detailed findings of fact upon the remainder of the matters, contentions, and implications that have been set forth in the proposed findings of the parties to this proceeding, because they are considered to be of trivial importance, lack decisional significance, or are not supported by the record. A few illustrations of the matters that have been considered and found wanting, upon the basis of the entire record in this case, are set forth hereinafter.

211. It is contended by several of the applicants that some of the principals of the other applicants are "mere window dressing" designed to catch the eye of the Commission and to enhance the position of such applicant in the hearing. The extent of the stockownership of the various parties and the positions they will hold, as well as the duties they propose to perform, in the proposed operation are set forth in the findings. The important thing for the purpose of this proceeding is that their ownership interest and the character and de-

gree of their participation in the station operation will be as represented. There is nothing in this record that would tend to indicate that the stockholders do not, in fact, intend to perform the functions which they have assumed or that they were brought into the applicant solely for the purpose of influencing the Commission in this competitive proceeding.

212. The contention was made that the site proposed by the city of St. Petersburg for its studios and offices was not available because the land upon which it was proposed to be built had been reserved for park purposes. However, the record shows that the site had been approved by the city council, and that the reservation thereof for park purposes could be changed.

213. While the record shows that 59 commercial announcements were carried by station WFEA during a 2-hour-and-30-minute period, it is further disclosed that these announcements consisted mostly of short Christmas greetings to various sponsors of the program, and were made on December 16, 1956, during the course of a program that was broadcast in the Greek language and which was monitored by the in-laws of Farris Rahall, president of the licensee corporation, who speak and understand the Greek language. Much testimony was elicited relative to the role of the Rahall management team in the operation of the five AM stations of which the Rahall brothers are principal stockholders, and many adverse contentions were made concerning the same. The findings hereinabove set forth contain the pertinent facts concerning this management team, and they do not support the numerous adverse findings propounded by the other applicants. It is true that four members of the board of directors of WTSP-TV, Inc., are also members of the management team, and, to this extent, their participation in the overall direction of the proposed station may be said to be participation by the management team, but the record does not support the contention that the responsibility for the operation of the TV station reposes in the management team rather than in the board of directors of this applicant. It must be remembered that there are only three persons, besides the Rahalls, who own stock in the individual licensee corporations of their radio stations. One such person owns a 1.5-percent interest in WWNR, and is the general manager of the station; the second person owns a 1.8-percent interest in WKAP, and is the station's chief engineer; and the third other stockholder is Ogden R. Davies who has a 4.8-percent interest in WNAR and a 4.6-percent interest in WKAP. Thus, when the Rahalls participate in the management team conferences and meetings, they represent all of the stock in two of their stations and a vast majority of such stock in the three others. When Mr. Davies participates in such conferences, all except 1.5 percent of the stock of WWNR is represented, and all except 1.8 of WKAP is present. The contention of the opposing applicants that the board of directors of the individual corporate licensees of the Rahall stations meets only two to three times a year is technically correct; however, with the stockholdings shown above, any meeting of the management team participated in by the Rahall brothers and Mr. Davies is, in effect, a stockholders' or directors' meeting of those station licensees. The

attempt to discredit station WTSP by bringing out that one retraction had been made by the station for material broadcast over the "Open Mike" program is not regarded as being of decisional significance, in view of the testimony of the witness who requested the retraction that the matter had been satisfactorily handled.

214. The many pages of testimony in the record, and the suggested adverse findings relative to the allocation of the option stock to the members of the management group of Bay Area, are not deemed to be of decisional value. This is a matter of internal corporate organization that was agreed to by the stockholders, and the Commission was duly informed concerning the disposition of such stock.

215. The opposing applicants contend that the proposal of Mr. Houseknecht to resign his present position in New York and move to St. Petersburg as full-time operations manager for Bay Area cannot be given credence because he made a similar proposal in Veterans Broadcasting Co. which they allege he did not honor. The record shows that Mr. Houseknecht did move to Rochester, N.Y., in the middle part of 1947 and assumed the managership of station WVET. He operated the station from the time it received program test authorization on November 21, 1947, until December 1948, when he resigned as manager. He resigned as officer and director of the corporation in February 1949. Thus, it is felt that Mr. Houseknecht did honor his commitment in the WVET case.

216. Findings have been made relative to alleged discrepancies of each applicant in the maintenance of program logs in its past operation. While the record indicates that the figures shown for the composite weeks may not be entirely accurate, there is no acceptable evidence definitely establishing the exact amount of such inaccuracies. The failure to log the ending time of spot announcements, while not involving a violation of the Commission's rules, does make it impossible to accurately compile the information required in the Commission's renewal applications. There is no requirement that the noncommercial spot announcements be logged, but if they are broadcast they must be logged for these announcements to redound to the licensee's credit. All of the WFEA announcements should have been logged at the time they were broadcast, whether commercial or non-commercial spots, and not added upon reanalysis at a later date. In the area of maintenance of program logs, each applicant has only partially sustained its charges against the others. While they are of concern, none appear to be of a critical nature, and on a comparative basis the discrepancies of one are no more serious than are those of its competitors. The errors appear to be the result of carelessness and misunderstanding of the Commission's definitions rather than a deliberate attempt to mislead the Commission.

217. Official notice has been taken that the Rahalls owned station WFEA in Manchester, N.H., but disposed of such station during the course of the hearing. Also, official notice has been taken of the fact that the Commission records disclose the three Rahall brothers purchased WQTY (formerly WTTT) in Arlington, Fla., and took over that station on August 12, 1960.

218. Official notice has been taken of the Bay Area amendment that was filed on November 28, 1960, and accepted into the record on December 6, 1960, which concerned the death of Louis Fried, a stockholder, on September 30, 1960, and the substitution of his estate in his stead. Notice is also taken of the information therein, including the appointment and qualifications of the executors, the legal qualification of the estate, and the fact that the executors recognize the stock subscription of Mr. Fried as a legal obligation of the estate and their intention to adhere to that agreement.

219. The original notice of hearing contained an issued requiring determination as to whether the antenna systems and sites proposed by WSUN-TV and Bay Area would constitute a hazard to air navigation. However, this issue became moot when the five applicants filed amendments to their applications specifying a transmitter site at Largo, Fla., that had been approved by the Airspace Panel of the Air Coordinating Committee, and no testimony was submitted on this issue and no findings or conclusions are made thereon.

ULTIMATE FINDINGS AND CONCLUSIONS

1. In this proceeding each of the six applicants seeks a construction permit for a new television station to operate on channel 10 which has been assigned to the Tampa-St. Petersburg area. For technical reasons the station locations of all applicants are specified as Largo, Fla. The Commission has found each of the applicants to be legally, financially, and technically qualified to construct and operate the proposed stations. The applicants are mutually exclusive and accordingly must be evaluated in the light of the evidence adduced by the parties under the Commission's general comparative criteria. Numerous Commission decisions have established and extensively discussed the relevant criteria for selecting the applicant who will best serve the public interest, convenience, and necessity. However, these decisions have emphasized that not all of the factors comprising such criteria are entitled to equal weight, and the significance to be attached to each will vary with the circumstances of each case.

2. The foregoing findings of fact are based upon the entire record and the proposed findings filed by the parties, and encompass all matters shown to be of material significance in deciding under the issues which applicant will best serve the public interest. In the areas of program content and format, intermediate determinations upon some competitive factors have been made. The conclusions that follow have given careful consideration and evaluation to the intermediate and ultimate contentions of the applicants.

3. Preliminarily, it must be pointed out that one of the applicants herein, the city of St. Petersburg, is a municipal corporation. However, considering the status of a city in a competitive proceeding such as this, the Commission held, in the case of the *City of Jacksonville*, 12 R.R. 113, that a municipality functioning as a private broadcaster is not acting as a municipal corporation but as a corporate legal entity, and consequently the applications of municipalities "will be accorded the same consideration given any other 'corporate legal individual.'"

Local Residence

4. The likelihood of maintaining a broadcast service that will be responsive to the needs and interests of the area is greater where the owners are established residents of the service area. The following evaluation of the factor of local residence makes no distinction on account of residences in Tampa, St. Petersburg, Clearwater, or nearby communities, because all are embraced within the Tampa-St. Petersburg area to which channel 10 has been assigned. *Gulfcoast* is 93.46 percent owned by the 13 residents of the area, and will be 100 percent locally owned when the two Georgia stockholders move to the area to take part in the operation of the station. Eight of these stockholders have lived in the area from 10 years to more than 20 years, while the other five have been area residents from 4 years to 10 years. The *City's* station will be owned by the citizens of St. Petersburg and, at least from a policy standpoint, its operation will be supervised by their duly elected representatives as personified by the seven-member city council. All have been residents of the city for varying periods of time and thus this applicant can be said to be 100 percent locally owned. All of the stockholders of *Suncoast*, with the exception of Daniel Smith, a 3.1-percent stockholder, are residents of the area. Mr. Smith is a former resident who accepted employment in New York during the hearing and will return to the area in the event of a grant. Eleven of the stockholders have been area residents for over 20 years, while two others have resided there since 1945 and 1948, respectively. *Tampa* has one 15-percent stockholder who is a longtime resident of the area, while another stockholder with a 10-percent interest presently residing in Mobile, Ala., will move to the area in the event of a grant. The third stockholder, holding 75 percent of the stock, is a resident of Mobile, and if *Tampa* is successful he will establish a winter vacation home in the area and will make trips to the area at other times. Twenty-five of the 28 stockholders of *WTSP-TV*, holding 52.7 percent of its stock, are residents of the area. Twenty-four of these are longtime residents, and the other one, Sam Rahall, moved to St. Petersburg in 1957. The three remaining stockholders are residents of West Virginia, New Hampshire, and Pennsylvania, and one of these, Joe Rahall, plans to establish a winter home in the area and spend 6 months a year there. *Bay Area's* stock is held by 20 individuals, 2 corporations, and 1 partnership. Of these 20 individuals, 6, holding 44.98 percent of the stock, are nonresidents of the area, but 2 of these nonresidents, Messrs. Houseknecht and Ayres, holding 8.39 percent, will move to the area in the event of a grant to this applicant. The remaining 14 individuals, 2 corporations, and the partnership, holding 55.02 percent of the stock, are residents of the area for varying periods of time; however, one of the individuals, Mr. Van Volkenburg, is presently employed in California, but plans to return to his home in Englewood, Fla., if this applicant is successful. In summary, the applicants, with the exception of *Tampa*, show many years of local residence for persons holding a majority of their stock. The high percentage of ownership by local citizens of *Gulfcoast*, *Suncoast*, and *City* (93 percent to 100 percent), and the large number of

local stockholders of WTSP-TV (25 out of the 28 stockholders) and Bay Area (14 out of the 20 individual stockholders) are persuasive that the factor of local residence justifies no significant preference among the 5 last-named applicants, but disfavors Tampa with its 1 local resident holding 15 percent of its stock.

Civic Participation

5. Each applicant asserts that its principals have extensive backgrounds of participation in the civic affairs of the area, and thus will have a greater awareness of its interests and needs. The biographies set forth in some detail the civic records of the principals of all the applicants. In evaluating the civic participation of the officers, directors, and stockholders of each applicant, some consideration has been given to the record compiled by those who are nonresidents of the area, if such nonresident proposes to move to the area in the event of a grant, because of the pattern such civic participation establishes. *Gulfcoast's* major stockholder, Mr. Poynter, has been the recipient of several awards in recognition of his activities, not only in the local area but also on the State and national scenes. Mrs. Poynter and seven of the other stockholders have likewise been very active in civic affairs, while two more stockholders have been moderately active in community activities and organizations. The two nonresident stockholders will move to the area in the event of a grant, and one of them has been active in Georgia civic affairs, but the record is silent as to similar activity of the other stockholder. The members of the *City* Council participate actively in community functions, not only as members of that elective body but also as private individuals in numerous civic, fraternal, and other community organizations in the area. *Suncoast's* officers, directors, and stockholders have played active parts in the civic life of the St. Petersburg community, and have held numerous offices and directorships in a wide variety of civic, charitable, educational, religious, and social organizations. *Tampa's* majority stockholder, Mr. Giddens, has had extensive civic participation in numerous organizations in the Mobile area, while Mr. Ellis has taken an active part in the civic activities of Sarasota and Tarpon Springs within the Bay area. While Mr. Giddens will establish a winter home in the area in the event of a grant, his civic activities will necessarily be limited by reason of his part-time residency. Mr. Persons has been only moderately active in civic activities in the Mobile area. The showing made by Tampa in this comparative category, as well as in some of the others, has been limited by the fact that it has only three stockholders. *WTSP* has a number of officers, directors, and stockholders that have participated actively in civic and community affairs, not only in St. Petersburg but in the other two major population centers of the area, Tampa and Clearwater, as well as elsewhere. Farris Rahall, who proposes to move to the area, has been active in the civic affairs of Manchester, N.H. Joe Rahall has been very active in community affairs in West Virginia and will build a winter home in the area and spend 6 months of the year there, but, as with Mr. Giddens of Tampa Telecasters, his civic activities

will of necessity be limited by his part-time residency. *Bay Area* has a number of stockholders that have actively participated in civic affairs in the St. Petersburg-Tampa area or in other communities in varying degrees; however, since Messrs. Bennett, Waring, and Hal James will continue to live in New York, Pennsylvania, and Connecticut, their civic activities do not add to the stature of this applicant. Messrs. Van Volkenburg and Houseknecht have records of active civic participation, and will live in the area. Mr. Robert James has not been active in civic affairs in the area in recent years. In summary, while individual differences are discernible in assessing the civic activities of the principals of all of the applicants, it is concluded that each has a number of principals who have given generously of their time and efforts to the activities of various civic, religious, fraternal, and other organizations in St. Petersburg and elsewhere, and no purpose would be served by comparison of the number of activities represented. The showing made by the applicants slightly disfavors Tampa, but justifies no preference among the other five applicants.

Diversity of Business Interests

6. The responsiveness of a proposed broadcast service to the needs of the area may sometimes be inferred from an evaluation of the occupations and business interests of the stockholders of the applicant. The differences to be found in this proceeding justify a discussion of such business and occupational backgrounds, particularly since claims for preferences have been made by some of the parties. The principal business background of *Gulfcoast* stockholders is related to the newspaper business and the publication of the *St. Petersburg Times*. The principal stockholder, Mr. Poynter, and 8 of the remaining 14 stockholders are connected with the newspaper, either as owners or employees. Four of the remaining stockholders represent the legal and medical professions, while the nonresident stockholders who will move to the area are employed by television stations in Georgia. The members of the *City Council* of St. Petersburg, at the time of the hearing, represented diverse business interests, but the membership of the council changes each 2 years and the record shows that four of its members were not seeking reelection, and there is no information as to the business background or occupational interests of the new members of the council. The principal stockholders of *Suncoast* have a background in law, real estate, and financial matters, and in the ownership of two radio stations in Florida, while the remainder of the stockholders represent a wide variety of business occupations and professions in the St. Petersburg area, such as law, accounting, ladies dress shop, education, construction, insurance, real estate, funeral business, minerals, and jewelry. The principals in *Tampa Telecasters* represent the businesses of radio, television, real estate, theaters, and banking. The business interests of the *WTSP-TV* stockholders include radio station ownership, law, banking, printing, furniture, bakery, stockbrokerage, men's retail store, industrial supplies, and insurance. Among the businesses and professions represented by the stockholders of *Bay Area* are advertising, real estate, investments,

insurance, baseball, restaurant, retailing, and music. In summation, the closely held corporations of Gulfcoast and Tampa have made comparatively weak showings in this category because the predominant interests of their principal stockholders in newspaper publishing and broadcasting have not been greatly diversified by the occupational pursuits of the few other stockholders in the legal and medical professions and in the banking and real estate businesses. The diverse business interests of its council members entitles the City to a preference over Gulfcoast and Tampa, but its changing membership renders this applicant inferior to the other three applicants. The stockholders of Suncoast, Bay Area, and WTSP-TV represent a broad cross section of business and professional interests in the Tampa-St. Petersburg area. Each applicant has shown substantial diversification, and while the aggregate business backgrounds and interests of WTSP-TV's 28 stockholders may quantitatively exceed the substantial diversification interests that are combined in the Suncoast and Bay Area owners, the difference is not a preferential distinction because of the great diversification shown by each applicant. It is concluded that in the factor of diversification of business interests of the officers, directors, and stockholders, Suncoast, Bay Area, and WTSP-TV equally show a clear superiority over City, Gulfcoast, and Tampa, who are to be preferred in that order.

Diversification of the Media of Mass Communication

7. With the exception of the City of St. Petersburg, none of the applicants to this proceeding has any direct ownership interest in any medium of mass communication either in the St. Petersburg area or elsewhere. However, each of the other five corporate entities is connected through its stockholders with other communication media. In evaluating this factor of diversification, an applicant's comparative status is effected by its ownership interests not only in the area involved, but elsewhere, although not in the same degree. *Gulfcoast's* majority stockholder is also the majority stockholder of the Times Publishing Co. which publishes the St. Petersburg Times, and he is the newspaper's editor and his wife is an associate editor. Several other Gulfcoast stockholders are also associated with the newspaper. The St. Petersburg Times is the dominant daily newspaper in St. Petersburg; however, its circulation outside of Pinellas County is exceeded by other newspapers published in the area. The Times Publishing Co. has also agreed to provide up to \$600,000 in financing the Gulfcoast application, but this financial arrangement is a business proposition that will be evidenced by either debenture bonds or preferred stock, at the option of Gulfcoast. The *City* is the licensee of AM station WSUN which operates on a frequency of 620 kc with 5 kw power, unlimited time, in St. Petersburg, and is also the licensee of UHF television station WSUN-TV operating on channel 38 in the same community. This is St. Petersburg's only commercial television station, but the record shows that the UHF operation will be abandoned at the termination of this proceeding. Three of *Suncoast's* principals have majority interests in two radio stations in

other areas. Messrs. Wright and Playford together own a 75-percent interest in AM station WGGG, Gainesville, Fla., and these two plus Mr. Holland each own a 25-percent interest in AM station WNVY, Pensacola, Fla. Each is a director, and the two first named are officers of the licensees of the stations. The remaining stockholders have no ownership interest in any other media of mass communication. *Tampa's* majority stockholder, with a 75-percent interest, has a 50-percent interest in stations WKRG-AM, FM, and TV in Mobile, Ala., and a similar interest in a partnership which operates a number of motion picture theaters in the Mobile area. The remaining two stockholders have no ownership interests in other media of mass communication. The three Rahall brothers who are controlling stockholders of *WTSP-TV* also own AM stations WLCY (formerly WTSP) in St. Petersburg, and WQTY (formerly WTTT) in Arlington, Fla., and are also the majority owners of AM stations WWNR, Beckley, W.Va.; WKAP, Allentown, Pa.; and WNAR, Norristown, Pa. However, each of these radio stations is licensed to separate corporations, of which the principal stockholders are the three Rahall brothers. Three of *Bay Area's* stockholders own a 13.89-percent interest in Veterans Broadcasting Co. which is the licensee of AM station WVET and permittee of WVET-TV in Rochester, N.Y. Together, these three hold 25.15 percent of the Bay Area stock. Also, the proposed president and general manager was associated with the Columbia Broadcasting System in various executive capacities from 1932 to 1956 when he retired, and is the owner of 9,000 shares, out of 8 million outstanding shares, of CBS stock, or slightly over 0.1 percent. This same stockholder is also under contract with CBS in a consultant capacity, but this contract provides for its termination in the event of a grant to Bay Area.

8. In summation, it is recognized that the St. Petersburg Times and Gulfcoast's television station will be separate organizations, but the organizational makeup of the companies places control of both the television station and the newspaper in Mr. Poynter. The facts also show that the news facilities, film facilities, library and morgue of the newspaper will be used by the television station and, at least to that extent, their operation will be interrelated. Competition in the fields of information, news, advertising, and local expression will be fostered by grant of the construction permit for channel 10 to an applicant who has no comparable connections in the mass media field. *WTSP-TV* is less favored than some of the other applicants because of its ownership of broadcast facilities in St. Petersburg and elsewhere, but its comparative position is superior to Gulfcoast because of the number of other radio stations that provide service to the Tampa-St. Petersburg area. City is also under comparative disadvantage in the factor of diversification because it owns an AM and FM station in St. Petersburg, but this disadvantage is slightly less than that of *WTSP-TV* because of the latter's other radio interests. The fact that City also has a TV station has not been given any weight because of the finding that it will cease such operation at the termination of this proceeding. Tampa has no interest in mass media communications in the Tampa-St. Petersburg area, and for this reason it enjoys a slight advantage

over Gulfcoast, WTSP-TV, and City, but the ownership interest of Mr. Giddens in TV, AM, and FM facilities in Mobile makes this applicant inferior to Suncoast and Bay Area in this field of comparison. As between the latter two applicants, Bay Area is entitled to a slight preference because of the small percentage of ownership of three of its stockholders in a radio and TV station in New York and the approximately 0.1 percent stockownership of Mr. Van Volkenburg in CBS, as compared to the 75-percent ownership of some of the Suncoast stockholders in two radio stations in Florida. Although the preference of each applicant over the other in the factor of diversification of the media of mass communication is slight, the parties are rated as follows: Bay Area, Suncoast, Tampa, City, WTSP-TV, and Gulfcoast.

Proposed Facilities

Studios

9. Tampa, St. Petersburg, and Clearwater are the three largest cities in the service area that will be served by the proposed station. The two VHF television channels assigned to the Tampa-St. Petersburg area were awarded to applicants who maintain their main studios in Tampa, and there is nothing in the current record to indicate that either of these two Tampa stations maintain studios in St. Petersburg. To afford the citizens of St. Petersburg and Clearwater an opportunity for a local television outlet, four of the applicants—the City, Suncoast, WTSP-TV, and Bay Area—proposes to locate their main studios in St. Petersburg and to maintain auxiliary studios in Tampa. Tampa Telecasters proposes to locate its only studio in the city of Tampa, while Florida Gulfcoast proposes to locate its only studio in Largo. Neither of these latter two applicants propose the installation of any auxiliary studios. Bay Area and the City propose their main studio locations in the downtown area of St. Petersburg, while Suncoast and WTSP-TV will locate their main studios near the St. Petersburg end of the Gandy Bridge so as to be approximately equal distances from the downtown business area of the three cities. The failure of Gulfcoast and Tampa to provide for any studios in St. Petersburg results in their being held inferior in a comparative sense to the other four applicants. There is an insignificant difference in the locations of the other four applicants and they are on an equal basis, but are to be preferred over Gulfcoast and Tampa.

Equipment

10. Each of the applicants proposes to provide equipment necessary to produce its proposed programing. While differences appear among the several applicants in the amount and type of equipment which will be used for the coverage of remote events, color transmissions, and studio originations, they are not deemed to be of decisional significance. Illustrative of such equipment differences are the fact that one applicant proposes eight full monochrome and two live color camera chains, while the other applicants propose lesser amounts of equipment, to four monochrome cameras and no provision for live color transmission. Each of the applicants proposes to have a mobile unit for remote telecasts. Inasmuch as the equipment proposed by

each of the applicants appears to be adequate to enable the effectuation of its proposals, there is no basis for awarding any preference on this factor.

Staffs

11. The size of the staffs proposed by each of the applicants varies from a maximum of 119 full-time employees in the case of WTSP-TV, to a minimum of 56 full-time personnel for Gulfcoast. The City proposes a full-time staff of 77 employees, with an additional 30 persons who will be integrated on a part-time basis into its radio operation. Suncoast, Tampa, and Bay Area will employ staffs of 79, 65, and 80 persons, respectively. Each of the applicants has designated certain staff members to fill key positions in their proposed operations, and with the exception of Bay Area, these prospective staff members have had broadcast experience in the Tampa Bay area. Of the two staff members that have been selected by Tampa, one has been in the newspaper and broadcast business in the Tampa area. None of the four staff members named by Bay Area appear to have had any radio experience in the area. Inasmuch as the winning applicant will be able to employ adequate trained personnel to fill the staff positions of its proposed station, and each proposes an adequate staff to execute its proposed programming schedule, it is concluded that there is no decisional significance in this regard.

Integration of Ownership and Management

12. The reliance that may be placed on an applicant to execute its program proposal and planned operation may be somewhat foretold by the extent to which those who own the station propose to associate themselves with its active management. Integration of the stockholders of a licensee with the day-to-day management of the station often affords a measure of assurance not only that the declared policies will be translated into operating practices but also that the proposed program service to be offered by the station will remain responsive to community interests and needs, especially where the owners are local residents. *Gulfcoast* will have 100 percent integration of its 15 stockholders in the day-to-day operation of its proposed station. Five of its stockholders with a total holding of 20.76 percent will devote their full time to the operation of the station in various capacities. Stockholders with a 69.95-percent stockownership in the company will devote 25 percent or more of their time to the station, while the remaining seven stockholders will devote 10 percent of their time to the station. Nelson Poynter, the president and 65.75 percent stockholder, will devote an average of 25 percent of his time to the station and will maintain supervisory control over the operation of the station. *Gulfcoast* further maintains that, with the exception of Messrs. Moore and Sharp, all of the proposed stockholders have worked as a unit with each other either at WTSP, or the St. Petersburg Times, or both. However, this large integration is somewhat marred by the fact that all of the stockholders, with the exception of Mr. and Mrs. Poynter, have executed agreements to the effect that if the subscriber should

cease to be an employee of Gulfcoast, the corporation has an absolute right to repurchase their stock at its book value. The individual members of the *City* Council take no part in the management and operation of the City's present radio and television stations. Not only have they failed to take any part in the day-to-day operation of the City's stations, but they have delegated authority of all phases of the operation of those stations to the city manager who in turn has delegated that responsibility to the station manager. Even the hiring and firing of the station manager is beyond the council's jurisdiction. As a result of this strict hands-off policy with respect to the activities of the City's broadcasting facilities, it must be concluded that City has no integration of ownership and management. *Suncoast's* only stockholder who will devote 100 percent of his time to the affairs of the day-to-day operation of the station is Dan Smith, executive vice president, director, and 3.1 percent stockholder. Mr. Holland, president, director, and 25.7 percent stockholder, will devote an indefinite part of his time to the general supervision of the station's operation. Mr. Wright and Mr. Playford, each a 25.6-percent stockholder, will participate in major policy matters, particularly in the field of finance, for an undisclosed amount of their time. While certain types of activities in connection with the operation of the station are proposed for some 13 of its 15 stockholders, the extent of significant owner participation and contribution to station operation of this applicant cannot be determined from this record because their participation will occupy an unspecified part of their time which will be otherwise devoted to the pursuit of their various professions and business interests. One of *Tampa's* three stockholders, owning 10 percent of the stock, will devote full time to the proposed operation in his capacity as general manager of the station. The second stockholder, Mr. Ellis, having a 15-percent interest, will devote 10 percent of his time to the station, but the record does not disclose what his duties in connection therewith will be. Mr. Giddens, holder of 75 percent of this applicant's stock, plans to devote 50 percent of his time to the proposed station and will divide his time between the proposed station at St. Petersburg, stations WKRQ-TV, AM, and FM at Mobile, Ala., and his motion picture theaters. He proposes to establish a winter residence in the Tampa area and to make an unspecified number of trips to the area. For *WTSP-TV*, Sam Rahall, holder of 26.3 percent of the stock, will devote practically full time (90 percent) to the station; Joe Rahall, 23.3 percent stockholder, will spend 6 months in St. Petersburg each year and visit the city each month during the remainder of the year; Farris Rahall, a 23-percent stockholder, will devote 45 hours a month to station business. Marshall Cleaver, secretary and director but not a stockholder, will be the full-time general manager. Courtney Campbell, a director and stockholder, proposes to devote 10 percent of his time to the station. C. C. Vega, Jr., a director and stockholder, will devote 5 hours per week to the station. Ogden Davies will spend at least 20 hours a month on the station's affairs, while 14 other stockholders pledge at least 1 hour a week to the development of various type programming. For *Bay Area*, two officers, directors and stockholders, and two additional stockholders will de-

vote their full time to the operation of the station as general manager, operations manager, sales manager, and merchandising manager. Two other directors, Messrs. Hal James and Bennett, will devote at least 2 days per month to the station as consultants. Fred Waring proposes to spend 1 week every third month at the station as a program consultant. Another stockholder will devote 4 months each year to the station, while 3 others will spend 50, 20, and 10 percent, respectively, of their time in conjunction with the affairs of the station, for a total of 12 of its 20 individual stockholders. All of the members of the management group propose to take part in the operation of the station, ranging from 2 days per month to full-time participation.

13. In summarizing the above ultimate facts, it is noted that, percentage-wise, Tampa with its 3 stockholders and Gulfcoast with its 15 stockholders will both have 100 percent integration, and thus equally rank first; followed by Suncoast with approximately 87 percent of its stockholders, officers, and directors; WTSP-TV with approximately 73 percent; Bay Area with 60 percent; and City with 0 percent. Numerically, WTSP-TV with 21 of its 29 officers, directors, and stockholders is entitled to first preference, followed by Gulfcoast with 15, Suncoast with 13 of 15, Bay Area with 12 of 20, Tampa with 3, and City with none. Based on the above tabulation, it is concluded that WTSP, with its 21 stockholders, officers, and directors, and 73 percent integration, is entitled to a preference over Gulfcoast, with its 15 stockholders and 100 percent integration. Suncoast with 13 stockholders and 87 percent integration is entitled to third preference, followed by Bay Area, Tampa, and City in descending order of preference. While weighing the number of stockholders rather than the amount of stock held places an individual applicant, or a corporate applicant with few stockholders, such as Tampa Telecasters, at a disadvantage, it must be recognized that the more stockholders, officers, and directors that participate in the operation of a station, the more likely that the programming of that station will conform to and effectively fulfill the needs of the community, especially when such participants have a background of wide civic participation and greatly diversified business interests. This holds true not only for the factor of integration but for other factors as well.

Program Planning

14. In this proceeding, with six applicants, all of whom are basically qualified to own and operate a television station on the one frequency available, comparison must be made on every factor involved in competitive hearings. One such factor, often bypassed in proceedings involving fewer applicants, is the planning and preparation that went into the efforts of each party to ascertain the needs and desires of the television viewers in the service area of the proposed station. It may be expected that a program proposal that has been developed on the basis of the advice of prominent residents of the area will be much more likely to provide a television service that is in line with the needs of the area. The prime author of *Gulf-*

coast's program proposal was Mr. Crago. He enjoyed the assistance of Mr. and Mrs. Poynter as well as the aid of a Washington consultant and several of the stockholders. Mr. Crago also monitored the programing of the 3 television stations in the area, and the applicant made a total of 276 contacts with individuals and organizations in the area. However, most of these contacts were made in the city of St. Petersburg, and only four were made in Largo where the applicant proposes to locate its only studio. It appears that these contacts were used in the formulation of the program plans that have been enunciated by this applicant. An additional factor that influenced the programing proposal of Gulfcoast was the fact that some of the principals of this applicant had been involved in the operation of an AM station in St. Petersburg for a good many years. The *City's* proposed program schedule was the effort of Mr. Shawn, the proposed general manager, with the assistance of members of the staff of its present television station. No community surveys were made by any employee of the station, or of the City, to ascertain the needs, desires, and talent available in the area, as the City relied upon its experience in the area gained through approximately 7 years of television operation, and nearly 30 years of operation of an AM station. No member of the city council participated to any extent in the programing proposals of this applicant. The program proposal of *Suncoast* is primarily the work of Mr. Dan Smith. However, he had the advice and assistance of several of the stockholders, and distributed a rough draft of the proposed programing schedule to all of the stockholders at an organizational meeting. The proposal then was submitted with the original application in August 1957. Subsequently, a total of 106 contacts were made with various service groups in the area, and in December 1957 a revised programing schedule was submitted as a result of information gained from these contacts. The programing proposal of *Tampa* was originally prepared by Mr. Giddens and Mr. Persons, based primarily upon their experience in Mobile. The program proposal presented at the hearing was prepared principally by Mr. Persons in collaboration with Mr. Jones, a television consultant from Miami. Mr. Baskerville also participated in the making of this revised program proposal, and part of such revised proposal was based upon Mr. Baskerville's area knowledge, and 21 interviews which he had with persons and organizations in the area. As noted hereinbefore, the original proposal involved the use of video tape recorders, but the use of such recorders has not been permitted because of a variance from the application, and there is no showing that any contacts were made subsequent to the filing of the revised equipment plans with such recorders stricken therefrom. While Tampa has listed a group of organizations and events that will constitute a source of program material, no effort was made by this applicant to ascertain that the organizations that had been listed would appear and participate in the programing of the station in view of the change that had been necessitated in its equipment by the elimination of the video tape recorders. The program proposal of *WTSP-TV* began its formulation in the middle of 1957 when Sam Rahall made some preliminary contacts and drew up tenta-

tive plans for a program proposal. Thereafter, a program advisory committee composed of a dozen leaders in their respective fields in the area was selected to assist in the formulation of such program proposals, and to continue on a regular basis as consultants if WTSP-TV was granted a construction permit. While it is recognized that in many instances program advisory committees are devices of promise for hearing purposes only, in the instant case the committee actively participated in the programing by meeting with the officials of the proposed station on several occasions and made more than a dozen specific suggestions that were incorporated into the WTSP-TV programing proposal. On the basis of these proposals advanced by the committee, it must be found that the program advisory committee in this instance is not a device of promise, but that they have actively participated in the programing proposal of the station and will continue to do so in the event of a grant to WTSP-TV. This applicant has also had the benefits to be derived from operating a radio station in the area, and used the knowledge thus gained in formulating its program proposal. WTSP-TV is the only applicant that made thorough individual surveys of each site of its many proposed remote locations. These surveys were made, not only to ascertain that the remote program was technically feasible but also that the program material was available and cooperation of the individuals concerned therewith would be forthcoming to the applicant. The findings disclose further that WTSP-TV not only made as many contacts with organizations and individuals in the service area as all of the other applicants combined, but that the contacts covered much more of the service area of the proposed station than did any of the other applicants. The *Bay Area* program proposal was prepared by Mr. Hal James with the assistance of Messrs. Houseknecht and Bennett, and was based upon Mr. James' personal experience and a study of a program proposal for the same area advanced by a group of which he was a member in 1952. A survey that had been made by Mr. Bennett in 1952 was revised so as to reflect the current economic information of the area, and the survey also was used as a basis for the programing proposal of Bay Area. A total of 133 interviews with individuals and organizations in the area was made by several of the stockholders of the company, and the information gleaned from these contacts was embodied in the program proposal submitted by this applicant.

15. It is concluded that WTSP-TV is entitled to first preference in this category because it has evidenced more thorough detailed planning and preparation than any of the other applicants, not only upon the basis of its knowledge of area needs gained by operation of a radio station in the area, and from the greater number of contacts throughout the entire service area than any of the applicants, and in the surveys that were made of the availability of events and the cooperation of individuals involved in its proposed remote programs, but also in the use of a program advisory committee that actively participated in the program planning of this applicant and made specific programing suggestions that were incorporated in the WTSP-TV schedule. Gulfcoast is entitled to a second preference, based upon the experience

derived from its operation of an AM station in the area for several years; the fact that Mr. Crago monitored the programming of the other TV stations in the area; and that Gulfoast made 276 contacts with individuals and organizations in planning its program proposal. However, these contacts were mostly in St. Petersburg and did not thoroughly cover the entire service area as was the case with WTSP-TV. Bay Area is to be next preferred by reason of its interviews with individuals and organizations in the area; its economic surveys that formed a partial basis for its proposal; the former proposal of members of this group for a station in the same area; and the experience of Mr. James. Suncoast is to be preferred over City and Tampa because of its contact with several groups in the area and the technical knowledge of the area evidenced by Mr. Smith, the proposed general manager. City, by reason of its experience in the area, is to be preferred over Tampa, but cannot equal the preparation and planning of the first four named applicants in the category of program planning.

Program Policy

16. Each of the six applicants in this proceeding submitted statements of policies to guide its program operations, and these statements all indicate an intention to be guided by the NAB code and to abide by the Commission's rules and regulations. A few minor differences occur on the subject of editorializing, and it is interesting to note that the views of the applicants range from a position of no editorials, in the case of the City, to the presentation of editorial viewpoints on a regular basis, in the case of WTSP-TV. Between these two extremes are the positions of Gulfoast that editorial comment would be used where it would serve a useful purpose; Tampa has no present plans to editorialize, but if a position is taken on any issue it will be clearly labeled as an editorial; Bay Area will editorialize when worthwhile opportunity appears; and the Suncoast position that it proposes to editorialize. All of the parties will provide opportunity for the presentation of opposing views. While there appears to be a slightly different philosophy among the applicants, the policy statements do not reveal differences of sufficient magnitude to be of decisional significance and no preference can be awarded either of the applicants for this factor.

Programming Proposal

17. Each of the six applicants propose to affiliate with a major network, and has prepared its program proposal upon that basis. While the City of St. Petersburg is presently programming the network presentations of the American Broadcasting Co., the record is clear that the City does not propose to continue the operation of its present station, WSUN-TV, on the UHF channel beyond the termination of this proceeding. With respect to the network affiliation, the question has been posed as to whether the present ties of the president and proposed general manager of Bay Area with the Columbia Broadcasting System would prevent the other two networks in

the area from competing on an equal basis for affiliation in the future. In view of the present contract provision under which the consultancy arrangement will be terminated in the event of a grant to Bay Area, and in view of the minuscule stockholding in CBS of Mr. Van Volkenburg, the record fails to show that his relationship with CBS would result in any advantage to Bay Area, or any disadvantage to any of the other applicants or the other two networks.

18. Each of the applicants has advanced a typical week's program schedule that has time devoted to all of the recognized program types, and each contends that its proposal will provide a diversified and well-balanced program service. The total number of hours to be broadcast each week by the applicants varies from approximately 100 hours a week, in the case of Gulfcoast and Suncoast, through 110½ hours for Bay Area, 112 hours for the City, 113½ hours for Tampa, and approximately 124 hours for WTSP. WTSP proposed to sign on at 6:51 a.m. on weekdays and 7:36 a.m. on Saturdays, while none of the other applicants, except Tampa, will telecast during the morning hours prior to 9 a.m. The applicants all allege that they have based their programming proposals upon interviews, surveys, talks, and discussions with area residents and organizations. However, it is interesting to note the wide differences that have evolved from such discussions, interviews, and contacts. In the field of entertainment, the proposals vary, percentagewise, from a low of 58.81 percent in the case of Suncoast, through, in ascending order, WTSP, Gulfcoast, Tampa, and City, to Bay Area with a percentage of 72.1 percent. As will appear hereinafter, the percentages of the other categories also vary widely. All of the applicants admit that St. Petersburg contains an unusually large number of elderly and retired persons, and a correspondingly high percentage of shut-ins and semi-invalids. Similarly, it appears that there are many churches and religious denominations in the area. Because of the different number of hours per week that is proposed by each applicant for its total broadcast time, the rating of the applicants on the basis of the percentage of time to be devoted to each category is not the same rating that will be obtained if they are rated on the basis of the number of hours to be devoted to each category during a typical week. Thus, in the category of religious programs, the City proposes to devote 2.98 percent of its total broadcast time each week to this category, which is equivalent to 2 hours 50 minutes; Bay Area proposes 3.9 percent, which is the equivalent of 4 hours 20 minutes; Tampa proposes 4.4 percent, or 5 hours; WTSP proposes 4.77 percent, or 5 hours 25 minutes; Gulfcoast will devote 5.34 percent, or a total of 4 hours 55 minutes, to this category; while Suncoast will devote 5.44 percent, or a total of 4 hours 55 minutes. The average time of all of the applicants to be devoted to nonnetwork religious programs is 4 hours 35 minutes per week.

19. In the category of agricultural programming, the percentage and time to be devoted each week by the applicants, in ascending order, percentagewise, are as follows: the City proposes 1.56 percent, or 1 hour 45 minutes; WTSP proposes 2.48 percent, or 3 hours 5 minutes; Tampa proposes 2.64 percent, or a total of 3 hours; Bay Area proposes 2.9 percent, or 3 hours 10 minutes; Suncoast proposes 3 percent,

or a total of 3 hours; while Gulfcoast proposes 3.29 percent, or a total of 3 hours 20 minutes. It is interesting to note that, except for the City, the percentage of time to be devoted to agricultural programs ranges from 2.48 percent in the case of WTSP to 3.29 percent in the case of Gulfcoast, yet the difference in broadcast time between these two is only 15 minutes; and the time difference between Gulfcoast, who proposes the most time, and Suncoast and Tampa, who both propose next to the least, is only 20 minutes. The average amount of time to be devoted to this category of programing by all of the applicants is 2 hours 55 minutes.

20. All of the applicants propose to devote time to educational programing, and in terms of percentages, the proposals vary as follows, in ascending order: Bay Area, 5 percent; Tampa, 5.29 percent; Gulfcoast, 5.43 percent; Suncoast, 5.5 percent; WTSP, 5.87 percent; and City, 7.37 percent. In the total number of broadcast-hours proposed by the applicants for educational programing, the proposals vary from a minimum of 5 hours for Gulfcoast and Suncoast, through 5 hours 30 minutes for Bay Area, 6 hours for Tampa, 7 hours 15 minutes for WTSP, and 7 hours 45 minutes for City. The average amount of time to be devoted to educational programing by all of the applicants is 6 hours 5 minutes. However, WTSP proposes to carry two regularly scheduled programs that are not offered by any other applicant in this proceeding. The first of such programs is devoted to the teaching of Spanish, and is entitled "Conversational Spanish," which will be conducted by an instructor of the Hillsborough County School System. This program is designed to meet the needs of the large Latin- and Spanish-American population, or Spanish-speaking people in the area, and will be modeled after a similar program that has been broadcast over radio station WTSP. The second program to be presented by WTSP-TV is a regularly scheduled weekly program of 30 minutes devoted exclusively to the Negro schools in the St. Petersburg area.

21. Each applicant proposes to carry daily news programs designed to cover local, national, and regional news events, and the percentages of broadcast time devoted to news programs ranges from 4.4 percent in the case of Bay Area, through 6.98 percent for Gulfcoast; 7.05 percent for Tampa; 7.66 percent for the City; 9.8 percent for WTSP, to a top of 12.25 percent for Suncoast. Based on broadcast time in hours and minutes, the applicants vary, in ascending order, as follows: Bay Area, 4 hours 45 minutes; Gulfcoast, 6 hours 10 minutes; Tampa, 6 hours 15 minutes; City, 7 hours 5 minutes; WTSP-TV, 10 hours 55 minutes; and Suncoast, 11 hours. The average time for news broadcasts each week by all of the applicants is 7 hours 35 minutes.

22. The amount of discussion programing proposed by each of the applicants varies from 2 hours in the case of Suncoast, through 3 hours 10 minutes for Bay Area; 3 hours 30 minutes for Gulfcoast; 4 hours 15 minutes for City; 5 hours 15 minutes for Tampa; and 7 hours 10 minutes in the case of WTSP-TV. Percentagewise, in ascending order, the applicants propose the following: Gulfcoast, 3.45 percent; Suncoast, 3.5 percent; Bay Area, 4.2 percent; Tampa, 4.63 percent;

City, 4.69 percent; and WTSP, 6.19 percent. The average amount of time devoted to discussion programs by all of the applicants is 4 hours 15 minutes.

23. In the category of talk programing, the parties propose the following, percentagewise, in ascending order: City states that it will present 6.47 percent; Bay Area proposes 7.5 percent; Tampa, 7.71 percent; WTSP, 9.54 percent; Suncoast, 11.5 percent; and Gulfcoast, 12.8 percent. Based on total hours telecast in this category, the applicants, in ascending order, are as follows: City, 4 hours 30 minutes; Bay Area, 7 hours; Suncoast, 7 hours 30 minutes; Tampa, 8 hours 45 minutes; WTSP-TV, 10 hours 5 minutes; and Gulfcoast, 10 hours 40 minutes. The average of all times in this category is 8 hours 5 minutes.

24. A comparison of the local live programing proposed by all of the applicants, both commercial and sustaining, shows that City proposes 24.33 percent, or a total of 27 hours 15 minutes, and in ascending order, percentagewise, Suncoast proposes 31.75 percent, or 31 hours 45 minutes; Bay Area proposes 32.2 percent, or 35 hours 30 minutes; Gulfcoast proposes 36.49 percent, for a total of 37 hours; Tampa proposes 39 percent, or 44 hours 15 minutes; and WTSP proposes 41.22 percent, or a total of 51 hours of local live programing. The average time devoted to local live programs by all applicants is 37 hours 45 minutes.

25. The percentages of commercial and sustaining time to be broadcast by each applicant ranges from City with 65.04 percent commercial, 34.96 percent sustaining programs, to Tampa with 78 percent commercial and 22 percent sustaining programs. There is a variance in spot announcements from a low of 320 proposed by Suncoast through 321 for Tampa, 370 for City, 390 for WTSP-TV, 560 for Bay Area, to 564 for Gulfcoast. With respect to noncommercial spot announcements, Tampa proposes 100, Gulfcoast will broadcast 133, City proposes to provide 204, Bay Area will broadcast 225, WTSP-TV will make 271 announcements available, and Suncoast will have 347 such announcements per week.

26. An appraisal of the extensive evidence and findings on program subject matter and formats leads to a competitive evaluation of the differences hereinabove found. Entertainment programs exhibit no decisional significance, since the scope of interest proposed by each applicant appears to be adequate. In the category of religious programing, City has been found to be weak, but there is little to choose from among the other five applicants as they all propose regularly scheduled programs during the week and a remote telecast of Sunday church services. Similarly, in agricultural programing, City is also weak and its proposed programs are inadequate to meet the needs of the large farm populations within the service area. No preferential import can be derived from the agricultural programs of the other five applicants and they stand on an equal footing. In the field of education, WTSP-TV is entitled to some preference over the other applicants by reason of its two regularly scheduled programs that are not offered by any other applicant, and the large amount of such programing, which is second only to City; to be followed by City, Tampa,

Bay Area, Suncoast, and Gulfcoast, with preferential differences among these latter five being slight. In the category of news broadcasts, each of the applicants will telecast daily news programs covering local, State, and national events, but WTSP and Suncoast, by reason of their more extensive news presentations, are equally entitled to preference over the other applicants. Bay Area is inferior to the other applicants, and the remaining three, to wit, Gulfcoast, Tampa, and City, are entitled to equal preferences behind Suncoast and WTSP-TV, and ahead of Bay Area. In the matter of discussion programs, both quantitatively and qualitatively, WTSP-TV is entitled to first preference; followed, in descending order, by Tampa, City, Gulfcoast, Bay Area, and Suncoast. Suncoast is weak in this category, with only 2 hours of discussion programming each week. The talk programing proposed by the parties shows the City to be far behind the other applicants. Gulfcoast is to be slightly preferred over WTSP in this category, while the preferential ratings of the other applicants are as follows:

Tampa, Suncoast, Bay Area, and, least to be preferred, City. The Commission is vitally interested in the local live programing proposed by the applicants in any competitive television hearing, and on the basis of the total amount of time, both commercial and sustaining, as well as the varied subject matter, that will be telecast live by the parties to this proceeding, WTSP is to be preferred; followed, in descending order, by Tampa, Gulfcoast, Bay Area, Suncoast, and finally, City. The amount of time to be devoted to commercial and sustaining programs; the spot announcements that are proposed by the parties, and the noncommercial spot announcements that will be made available varies considerably in this case, but the noncommercial spot announcements proposed by each is deemed to be sufficient, in such applicant's own judgment, to adequately provide for the needs of the civic, fraternal, and other organizations in the area, and the record does not disclose otherwise. The number of spot announcements and the total commercial time proposed by each applicant varies, but these are business matters that are the primary concern of the applicant and are based upon the best business judgment of each. Therefore, the variances with respect to the matters of commercial and sustaining time, and the number of spot announcements, unless excessive, are outside the consideration of the Commission and are not deemed to be of decisional importance.

27. On the basis of the total competitive evaluation of the specific program proposals set forth above, it is clear that the WTSP-TV program proposal is entitled to be ultimately preferred over the other applicants because of its superiority in the fields of education, discussion, and large amount of local live programing, and its equivalent top ranking with some of the other applicants in religious, agricultural, and news programing. City's proposal is comparatively weak in the religious and agricultural categories, and ranks least in talk and local live programing. Bay Area's substantial weakness in the important news category is not balanced by its high rating in other categories, and requires that it be placed behind WTSP, Gulfcoast, Suncoast, and Tampa in overall consideration. In summary, on the basis

of the programming proposals of all the applicants, WTSP-TV is entitled to a substantial preference; to be followed by Gulfcoast, Tampa, Suncoast, Bay Area, and City.

Broadcast Experience

28. Each of the six applicants is identified through the principal stockholders or owners with the operation of radio or television stations in the St. Petersburg area or elsewhere. Four of the five officers of *Gulfcoast* were officers and directors of the former licensee of station WTSP. Mr. Poynter was president and majority stockholder of Pinellas Broadcasting Co. from 1939 to 1956 when it was the licensee of WTSP and WTSP-FM in St. Petersburg. Mr. Poynter also obtained experience in the broadcasting field during World War II when he served as Codirector of the Press Section of the Communications Bureau, and as Director in the Office of Coordinator of Information. The record does not disclose the exact duties of Mr. Poynter in the operation of station WTSP, except in a supervisory capacity. Mrs. Poynter obtained broadcast experience dating back to 1927 when she produced a radio program over a New York City station, and later served for 1 year as the theater, musical, and movie commentator on the station. She was associated with Pinellas when it operated WTSP. Mr. Olson was a director of Pinellas and executive vice president of the company, and assumed active management of the station for a period of time. Miss McConnie was secretary, treasurer, and a director of Pinellas for a period of approximately 2 years. Mr. Crago has had experience in the field of radio, but not in the operation of television stations. His capacity in the broadcasting field since 1936 has been as actor, announcer, sportscaster, special announcer, and a tour of duty as general manager of WTSP from 1955 to 1956. Miss Osgood has had experience as a writer, producer, and actress on radio, and between the years 1942 and 1954 was director of women's activities for NBC radio and television in Washington. Mr. Pierce was assistant continuity editor at NBC in New York City, and educational adviser for CBS in New York. James Sharp is presently the operations director of WLWA (TV) in Atlanta, Ga., and Mr. Moore has been chief engineer for several radio stations and is currently technical director at WSB-TV in Atlanta.

29. The *City* is the only applicant in this proceeding that has had experience in operating a television station in the area. It began the operation of a UHF television station in St. Petersburg on channel 38 in May 1953, and has operated the station since that date. Additionally, the *City* has been the licensee of standard AM broadcasting station WSUN for approximately 30 years. However, such operation presents a unique situation because the responsible *City* officials have had no experience in broadcast operations, and have taken no part in the day-to-day operation of those facilities. The city council has delegated the operation of the *City's* broadcast stations to the city manager, who in turn has delegated full responsibility to the station manager. Furthermore, the composition of the city council is constantly changing, and four of the seven members terms expired in July 1959, and three of such members were not seeking reelection.

While the members of the city council expressed their ignorance about the operation of the stations and of the broadcasting industry in general, the City is entitled to be commended for having operated its AM and television station in St. Petersburg for the length of time disclosed by the record. Although the present city manager, Mr. Armes, has been an employee of the City for several years, he only recently assumed his position as city manager and was not familiar with the broadcast operations of the two stations operated by the City. Mr. Fred Shawn, the present general manager of the City's stations, has held that position since May 1956, but he has been in the broadcast industry since 1932, although never in a station ownership capacity.

30. *Suncoast's* only officer, director, or stockholder that has had experience in radio and television is Mr. Daniel H. Smith. The majority of Mr. Smith's experience has been on the technical side of television in Maine and in the Tampa Bay area. He has supervised the construction of television stations and has been responsible for the staffing and operational plans of WTVT-TV and WFLA-TV in Tampa. His experience with WFLA included the feeding of programs to network shows, and to remote telecasts of local events. In addition, he was instrumental in the construction and operation of WEDU, the noncommercial educational station in the area, and was manager of that station for a short period of time. The three principal stockholders of Suncoast, Messrs. Wright, Playford, and Holland, have ownership interests in radiobroadcast stations in other areas, but they have never been involved in the day-to-day operation of the stations which they control.

31. While none of the stockholders of *Tampa Telecasters* has had any broadcast experience in the Tampa-St. Petersburg area, Mr. Giddens has had experience in the operation of both radio and television stations in Mobile, Ala. His AM broadcasting experience has dated from 1946 and his television experience from 1955. He is a 50-percent owner of WKRG-TV, AM, and FM, and has devoted practically his entire time to the management and ownership of these stations. Mr. Persons has been the general manager of WKRG-TV since 1955. He has had experience in both radio and television, and has served as vice president and manager of television operations of other stations. The third stockholder, Mr. Ellis, has had no broadcast experience.

32. *WTSP-TV's* three Rahall brothers have been associated in the ownership and operation of standard radiobroadcast stations since 1946 in communities situated in the eastern portion of the country. They are presently the majority stockholders of WTSP, St. Petersburg, Fla.; WWRN, Beckley, W.Va.; WKAP, Allentown, Pa.; WNAR, Norristown, Pa.; and WQTY, Arlington, Fla. These brothers were also minority owners of television station WCHS-TV in Charleston, W.Va., from 1954 to 1957 and held corporate offices in that licensee. All of the individual Rahall stations are licensed to separate corporate entities, but the principal officers, directors, and stockholders of each are the Rahall brothers. After the Rahalls took over the AM station of Pinellas Broadcasting Co. in 1956, its call

letters were changed to WLCY and Sam Rahall has been manager of that station since its acquisition. Marshall Cleaver has been associated with the Rahall stations in various capacities since 1947. Mr. Sam H. Mann was president and principal owner, as well as organizer, of the applicant which acquired the original permit for WTSP before Mr. Poynter acquired control in 1939. Mr. O. R. Davies has been manager of stations WKAP, Allentown and WNAR, Norristown, Pa., since 1947, and has been general manager of all the Rahall stations under the management team concept since 1955. He was also a member of the board of directors of WCHS-TV for a period of 16 months from April 1954 when the Rahalls were a 40-percent minority stockholder of that station. None of the other WTSP-TV stockholders have had any prior broadcast experience.

33. Several of *Bay Area's* officers, directors, and stockholders have had broadcast experience. Mr. Van Volkenburg was associated with the Columbia Broadcasting System since 1932 to 1956 in various executive capacities. He resigned his position as a member of the board of CBS in the latter year and is now under contract with CBS in a consultancy capacity. Mr. Houseknecht has been associated with radio advertising since 1937 and with television since 1939. From the middle of 1947 to the last of 1948, he was manager of station WVET in Rochester, N. Y., and since that date has been employed by various agencies in the sale of advertising and filmed packages for television stations. Mr. Ayres has been associated with the American Broadcasting Co. since 1948 in various capacities, and since 1957 has been sales manager of the Eastern Division Television Network of ABC. He also was vice president in charge of the NBC radio network for a period of 1 year. Messrs. Hal James and Bennett have had broadcast experience in connection with radio and television stations in the advertising and related field of activities for a period of years, and each is a director and a 4.88-percent stockholder of the licensee of station WVET-AM and FM, Rochester, N. Y. Mr. James has been associated with a number of well-known radio and television programs. Mr. Waring has had extensive experience in radio and television broadcast productions for many years as an orchestra leader.

34. Solely on the basis of the factor of broadcast experience, it is impractical to weigh the various shadings of television and radio knowledge and know-how that have been displayed by the applicants in this case. These shadings range from being the executive of a network to being a performer on a radio station, and there are various combinations of these shadings in several of the applicants. The large number of principals with broadcast experience that will devote significant effort and time to the Gulfcoast, Bay Area, and WTSP-TV proposals provide major asset values that inure to their benefit, with no significant distinguishable differences as to a preference, and they are equally rated first. Tampa, with only two experienced principals, although that experience has been extensive, must be rated slightly subordinate to the three above-named applicants. On behalf of Suncoast, the actual broadcast experience claim rests entirely upon that of Mr. Dan Smith, a 3.1-percent stockholder. He has had many years experience in broadcasting, and although most of it has been on the

technical side, his familiarity with television station construction and operation, especially in the Tampa Bay area, will render useful and meaningful assistance to this applicant. Finally, while City has had extensive experience in providing television and radiobroadcast service to the proposed service area, such experience cannot be said to be the experience of its principals, but rather is due to the faithfulness and dedication of its staff that have provided such service without supervision from the principals, except for the station manager, who is a city employee hired by the city manager, who in turn is hired by the city council. The experience of the staff is not the experience of the applicant and cannot be allocated to the City of St. Petersburg, especially under the facts that exist in this case. Thus, City must be least preferred on this factor, in spite of the experience of its employees and staff.

Past Broadcast Record

35. Of the six applicants involved in the present proceeding, the City of St. Petersburg is the only one presently engaged in the operation of any other standard broadcast, FM, or television station. However, all of the other five applicants have principals who have had, or presently have, ownership interests in licensees of the FCC, either in the St. Petersburg area or elsewhere. Only four of the applicants chose to affirmatively rely upon the past broadcast and public service records of the stations in which their principals were interested as a ground for preference. These four are the City of St. Petersburg, Florida Gulfcoast, WTSP-TV, and Tampa Telecasters.

36. *Gulfcoast.*—Nelson Poynter, the principal stockholder of Gulfcoast, was the controlling stockholder of Pinellas Broadcasting Co. which operated WTSP in St. Petersburg from 1939 to 1956 when it was sold to the Rahalls. With the exception of Mr. Crago, the principal executives of Pinellas Broadcasting Co. at the time it operated WTSP were officers, directors, or employees of the St. Petersburg Times, and all are now, including Mr. Crago, officers or directors of Gulfcoast. The findings of fact disclose the promises that were made by Pinellas in 1954 in its renewal application, and its performance as disclosed in the assignment application in 1955 at the time the station was sold, based upon the composite week for that year. A comparison of promises with performances shows that WTSP proposed to broadcast 0.8 percent agricultural programs and 1.6 percent educational programs, but none was produced during the 1955 composite week. A similar comparison for discussion programs shows that 1.8 percent were proposed, but only 0.9 percent were broadcast. The renewal application further proposed 8.3 percent live programming, but the 1955 composite week showed only 6 percent as having been broadcast. Cross-examination of this applicant revealed several violations of its announced policies with respect to commercial spot announcements, and some other admitted violations of the code of standards of good practice of the NAB. These infractions of the standards, not only of the NAB, but also of the Federal Communications Commission, have been discussed hereinbefore and are not shown to be of decisional significance, or of sufficient magnitude to reflect

discredit upon this applicant in view of the long period of time that Pinellas was the licensee of the station.

37. While the principal stockholders of two of the other applicants have operated standard AM broadcast stations in the area, the City of St. Petersburg is the only applicant that has operated a television station in that area. It began its television operation in 1953 and provided the only television service to the area for several years. However, with the advent of two VHF television channels in Tampa during 1955, the City lost its affiliation with NBC and CBS to these VHF stations. As a result, the City began to experience the fate of most of the UHF stations throughout the United States that had to compete with VHF stations. The City was also faced with the fact that station WEDU, a noncommercial educational station, had been established in St. Petersburg and had started operation on channel 3, which was also a VHF channel. For these reasons, no realistic comparison can be made between the promises set forth in the City's original application for a television station in 1952, with its performance as disclosed in either the 1957 renewal application or the 1958 composite-week analysis. The City's original application in 1952 proposed that it would carry 21 percent educational programing, but the 1957 composite week showed only 0.63 percent of such programing. This drop in promise versus performance may have been the result of the educational television station beginning operation, but its former assertions in 1952 are not nearly met by the 1957 composite-week showing of 1.88 percent religious, no agricultural programs, 2.34 percent news programs, and 2.52 percent discussion programs. The latter shortcomings cannot be ascribed to the beginning of operations of the educational stations. During the 1958 composite week, no agricultural programs were carried, 2.1 percent religious programs were broadcast, and 2.4 percent educational programs. The local live programing proposed by the City in its renewal application filed in 1957 stated that it would carry 7.02 percent local live programs. Its composite week for 1958 showed 11.2 percent live programing. The City's radio renewal application filed in 1957 proposed 11.6 percent religious, 1.5 percent agricultural, and 0.04 percent educational, while its composite-week analysis for 1958 showed 9.5 percent religious, 1.4 percent agricultural, no educational, and while 0.04 percent discussion programs were proposed, none appeared in the composite week. With respect to its local live programing, the renewal application proposed 12.5 percent, while the composite week showed 5.8 percent as actually having been broadcast.

38. *Suncoast* did not rely upon the past performance record of the two broadcast stations controlled by its major stockholders, and the record disclosed that neither Messrs. Holland, Wright, or Playford participated in the day-to-day operation of the stations, and only provided instruction for their operation in the form of broad general policies. Neither of these principals had any knowledge of the nature of the programing, the distribution of programs, or the number of spot announcements being presented at either station.

39. *Tampa*, in its Mobile application filed in 1953, proposed certain amounts of programing that it would provide the listening public;

however, the findings disclose that as time elapsed between 1952, when the proposal was made, and 1957, when the analysis of the composite week was made after the station began operating in 1955, a wide difference between promise and performance appears. This difference is not as serious as it would have been had the two times been closer together. The analysis of the 1957 composite week, however, does show that the station only provided 0.65 percent religious programing, 0.36 percent agricultural programing, and 0.65 percent educational programing. The percentages for news, discussion, and talks also show that they were substantially less than proposed originally by this applicant. While the application proposed 31.76 percent local live programing, the station actually presented 11 percent. Furthermore, the entertainment programs presented by this station was 89.42 percent, and this figure seems to be unusually high.

40. The five stations owned by the principals of *WTSP-TV* were the subject of extensive cross-examination during the hearing. Two of the station analyses submitted by this applicant were completely reanalyzed during the course of the hearing at the request of the opposing parties and, while certain discrepancies were disclosed, the overall programing was not changed materially. A comparison of the promises set forth in the renewal applications for these five stations and the performance disclosed by an analysis of the composite weeks showed that there was substantial compliance with the programing proposed. As an illustration, station *WTSP* in St. Petersburg proposed 6.2 percent religious programing and broadcast 7.6 percent; it proposed 1.7 percent agricultural programs and broadcast 1.8 percent; it proposed 2.4 percent educational programing and broadcast 2.4 percent; its proposed 10 percent news programs were broadcast; its 5.1 percent discussion programs were met with 5.3 percent broadcast; its local live programing as set forth in its proposal was 17.8 percent, and the analysis showed 25.8 percent as having been broadcast in this category. This station is in the area that is the concern of this hearing and has been under the direction of Sam Rahall who will manage the operation of the proposed television station. It has been taken as an illustration of the overall performance of the stations owned by the principals of *WTSP-TV*. As disclosed by the findings, *WFEA* in Manchester, N.H., is no longer owned by these parties; however, the facts show that while it was under the management of Farris Rahall, there were certain log-keeping practices that might be characterized as questionable, and several instances of program misclassification which detracted from the overall good service programing record of the station. They have acquired *WQTY* in Arlington, Fla., but no data were submitted for this station because this transfer was made subsequent to the closing of the record in this case.

41. *Bay Area* did not rely upon the past performance of the stations in Rochester, N.Y., in which three of its stockholders had an interest. These three stockholders, who own approximately one-fourth of the *Bay Area* stock, had 13.89 percent of the stock of the licensee of a radio and share-time television station in Rochester. The other applicants delved into the background and programing of these two stations quite extensively, but the findings disclose that the

information elicited is of no decisional significance. The fact that Van Volkenburg was the chief executive officer of CBS until his retirement in December 1956 is likewise considered not to be a detriment to this applicant. His consultancy contract is subject to cancellation in the event Bay Area is the successful applicant for this channel. As stated, Bay Area claims no credit for the minor stockholdings of Messrs. Hal James, Bennett, and Houseknecht in the Rochester stations, nor for the fact that Van Volkenburg is approximately a 0.1-percent stockholder of CBS and under a consultancy contract with the network. These minor stockholdings and the facts concerning the agreement between the proposed general manager and CBS are not of sufficient significance to be of decisional value.

42. In summary, the findings show that WTSP-TV has been more responsive to the St. Petersburg local programming interests and needs, and has more nearly adhered to its representations to the Commission for programming to that area than has either Gulfcoast or City, both of whom have been associated with stations in that city. Pinellas (or Gulfcoast) had no agricultural or educational programs during the 1955 composite week, and only 6 percent local live programming. During the 1958 composite week, City provided no educational or discussion programs over its radio station. City's television station provided no agricultural programs during either the 1957 or 1958 composite week. Tampa's showing has been made in Mobile, Ala., but the 1957 composite week showed only 0.36 percent agricultural, 0.65 percent religious, and 0.65 percent educational programming, with entertainment programs running 89.42 percent. While there have been violations of stated policy on the part of all the applicants as to frequency and length of spot announcements, and failures to correctly show such announcements, as well as incorrect logging practices and misclassification of programs, as stated hereinbefore, these derelictions that have been noted are primarily the result of misunderstanding the Commission's definitions and requirements rather than an attempt on the part of the licensees to deliberately mislead the Commission. On the factor of past broadcast record, the parties are to be preferred in the following order: WTSP-TV first, Tampa second, City and Gulfcoast are equally next. The other two applicants did not rely on this factor for a preference.

SUMMARY

43. In the foregoing findings and conclusions, all of the applicants have been compared and evaluated upon the basis of their evidentiary showing on the factors of local residence, civic participation, diversity of business interests, diversification of the media of mass communication, studios, staff, equipment, integration of ownership and management, program planning, programming policy, programming proposal, broadcast experience, and past broadcast record. These factors all relate to, and are encompassed within, the Commission's order designating these applications for comparative hearing in the following three general fields of inquiry: background and experience of each applicant with relation to its ability to own and operate its proposed

station; the plans of each for management and operation of the proposed stations; and the programing service proposed by each. Under the first general field of inquiry, the Commission considers: local residence, civic participation, diversity of business interests, broadcast experience, and past broadcast record, if any. The Commission's second general field of inquiry requires comparison of the applicants on: studios, staff, equipment, integration, planning and policies. The third field of inquiry is self-evident: the programing service proposed by each. One other factor that relates to the first field of inquiry is the Commission's policy of favoring diversification of the media of mass communication, which in turn is primarily concerned with preventing any party from gaining control of a majority, or all, of the media of mass communication in any one area.

44. In making the final evaluation of the six applicants in the instant proceeding, their comparative rating is not based upon any precise mathematical formula. Instead, such evaluation takes into account the differences that have evolved from the findings and conclusions on each comparative factor hereinbefore stated, and hereinafter summarized, as weighed on the scales of public interest, convenience, and necessity. In this connection, substantial needs have been shown to exist in St. Petersburg, Clearwater and surrounding communities for programs that are locally originated and produced, and a service that will provide a ready and effective outlet for the many civic, cultural, religious, charitable and other similar organizations in the area. So far as this record discloses, such communities are now without such local service, even though two VHF television stations are in Tampa.

45. Only in the factors of staff, equipment, and program policies have all the applicants been found to be equal. In the matter of studios, Tampa and Gulfcoast have been disfavored because they fail to provide any studios, even auxiliary studios, in either of the two most populated cities in the service area that are now without such facilities, while the other applicants are equally preferred in this category. With the exception of Tampa, which is least preferred in the factors of local residence and civic participation, no decisional preference has been awarded to any of the other five applicants, and they are all entitled to equivalent first ratings. The preferences on the other factors that have been gained by the applicants on the basis of their evidentiary showings, as summarized from the findings and conclusions, are set forth in the following paragraphs.

46. *WTSP-TV*'s proposal has been preferred over all the other applicants in the factors of integration, program planning, programing proposal, and past broadcast record. The preference given its programing proposal is substantial, while its program planning is entitled to a significant preference. This applicant has had an equal first preference with other applicants in the factors of broadcast experience and diversity of business interests. In the factor of diversification of the media of mass communication, this applicant has been rated fifth, only above Gulfcoast, by reason of the radio interests of its principals. However, this factor loses a good part of its significance because some of the principals of all the applicants have

radio, television, newspaper, or other mass media interests in the area or elsewhere.

47. *Bay Area's* proposal has been given first preference over all other applicants in the factor of diversification of the media of mass communication because its principals hold lesser interests in such media than the other applicants. It has an equivalent first preference with several other applicants in the factors of diversity of business interests and broadcast experience. This applicant has been rated third in program planning, fourth in integration, and fifth in its programing proposal.

48. *Suncoast* has not been preferred over all the other applicants in any comparative factor, but has had equal first preference with several applicants in diversity of business interests. Second preference, after Bay Area, has been given this applicant in the factor of diversification of the media of mass communication, and in the factor of integration it has been rated third, behind WTSP-TV and Gulfcoast. In program planning and its programing proposal, it is to be preferred fourth, ahead of City and Tampa, in the former factor, and Bay Area and City in the latter. Suncoast ranks ahead of City in broadcast experience, but behind the other four applicants.

49. *Gulfcoast's* failure to provide convenient studios for St. Petersburg and Clearwater weighs heavily against this applicant. Further, the fact that a grant to Gulfcoast would be contrary to the Commission's policy of diversification, inasmuch as Mr. Poynter would then control the dominant newspaper in Pinellas County as well as its only commercial television station, must be considered as disfavoring such a grant. It has also been rated fifth in the factor of diversity of business interests represented by its stockholders. These factors are not counterbalanced by its high ratings in broadcast experience, local residence, civic participation, equipment, and staff.

50. *City's* proposal has been found to be entitled to equal first preference with several of the other applicants in the factors of local residence, civic participation, studios, staff, equipment, and program policies. However, its total lack of integration of ownership and management; its inferiority in religious, agricultural, and local live programing; its fifth-place preference in program planning; and its last-place rating in the factor of broadcast experience of its principals, more than outweigh its higher preferences, and prevent it from receiving a grant in this comparative hearing.

51. The proposal of *Tampa* has not been preferred over the other applicants in any comparative area, although it has been ranked superior to Suncoast, Bay Area, and City in its programing proposal; ahead of Suncoast and City in the factor of broadcast experience; is ahead of City, WTSP-TV, and Gulfcoast in diversification of the mass media; and has been given second preference in the matter of its past broadcast record. However, the fact that it proposes a studio only in Tampa, which already has two VHF television stations, and has been least preferred of all the applicants in the factors of program planning, local residence, civic participation, and diversity of business interests, requires the conclusion that a grant of Tampa's application would not be in the best public interest.

52. Final competitive evaluation of all factors, as extensively detailed hereinabove, leads to the conclusion that WTSP-TV has demonstrated a superiority over the other applicants that will assure the effectuation of its proposal and will provide an operation that will be in the public interest of the entire service area. Thus, it is ultimately concluded that a grant of the application of WTSP-TV for this television facility will best serve the public interest, convenience, and necessity.

Accordingly, *It is ordered*, This 31st day of January 1961, that unless an appeal to the Commission from this initial decision is taken by any of the parties, or the Commission reviews the initial decision on its own motion in accordance with the provisions of section 1.153 of the rules, the application of WTSP-TV, Inc., for a construction permit for a television station to be operated on channel 10 in Largo, Fla., *Be, and the same is, hereby granted*; and, *It is further ordered*, That the applications of Florida Gulfcoast Broadcasters, Inc.; City of St. Petersburg, Fla.; Suncoast Cities Broadcasting Corp.; Tampa Telecasters, Inc.; and Bay Area Telecasting Corp., for use of the same facility, *Be, and the same are, hereby denied*.

32 F.C.C.

GORDON A. ROGERS, DOCKET No. 14101:

Initial decision granting application of Gordon A. Rogers for a construction permit for a new standard broadcast station to operate on 1550 kc with 1 kw power, daytime only, in Vancouver, Wash.; became final in accordance with section 1.153 of the Commission's rules.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON 25, D.C.

<p>In re Application of GORDON A. ROGERS, VANCOUVER, WASH. For Construction Permit</p>	}	<p>Docket No. 14101 File No. BP-13028 (formerly BP-14146)</p>
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APPEARANCES

Andrew G. Haley and *William J. Potts, Jr.*, on behalf of Gordon A. Rogers; and *Joseph D. Greene*, on behalf of the Broadcast Bureau, Federal Communications Commission.

INITIAL DECISION OF HEARING EXAMINER H. GIFFORD IRION

(Effective January 4, 1962, pursuant to sec. 1.153)

PRELIMINARY STATEMENT

1. This proceeding originally involved the competing applications of Gordon A. Rogers and Triple G Broadcasting Co. Gordon A. Rogers seeks a construction permit for a class II standard broadcast station to operate on 1550 kc with 1 kw power, daytime only, in Vancouver, Wash. Triple G Broadcasting Co. is licensee of station KWAY in Forest Grove, Oreg., and its application requested removal to Vancouver, using 1570 kc with 5 kw, daytime only. Because of adjacent-channel interference, the two applications were designated for hearing in a consolidated proceeding on specified issues, several of which have since become moot, including an issue which was added on July 12, 1961, at the request of Rogers.¹ Subsequent to this enlargement of issues, Triple G petitioned for dismissal without prejudice. Its petition was granted by the Chief Hearing Examiner on July 25, 1961, but the application was dismissed with prejudice for the reason that good cause had not been shown. In the light of this action, only the following issues are still pertinent:

(1) To determine the areas and populations which would receive primary service from the proposal of Gordon A. Rogers, and the availability of other primary service to such areas and populations.

¹ See memorandum opinion and order of July 12, 1961, 21 R.R. 823.

(3) To determine whether the instant proposal of Gordon A. Rogers would cause objectionable interference to the existing operation of station KWAY, Forest Grove, Oreg., or any other existing standard broadcast stations, and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other primary service to such areas and populations.

(6) (Originally No. 5) To determine, in the light of the evidence adduced pursuant to the foregoing issues, which of the instant applications should be granted.

2. Following a prehearing conference on June 8, the hearing was held on September 13, 1961, at which time the record was closed. Proposed findings and conclusions were filed by the Broadcast Bureau to which counsel for Rogers filed a supporting statement.

FINDINGS OF FACT

3. Vancouver, Wash., a city of 32,464 persons,² is located in the Portland, Oreg., urbanized area which has a total population of 651,685. Two standard broadcast stations are now assigned to Vancouver; namely, KISN (910 kc, 1 kw, DA-N, U) and KKEY (1150 kc, 1 kw, D). Eleven stations are assigned to Portland.

4. Based on an effective field of 190 mv/m and on ground conductivity values taken from figure M-3 of the rules, the proposed coverage is as follows:

Contour (mv/m)	Population	Area (sq. miles)
2.0.....	420, 214	359
0.5 (normally protected).....	553, 093	1, 280
Interference from KWAY.....	1, 747 (0.3%) ¹	9 (0.7%) ¹
Interference free.....	551, 346	1, 271

¹ Percentages refer to population and area within the normally protected contour.

5. There are 12 stations providing primary service to all of the rural area within the proposed interference-free contour, and 13 other stations serve portions. A minimum of 15 and a maximum of 22 other services are available. Referring to Vancouver alone, a signal of at least 2.0 mv/m is provided by 12 existing stations, including the 2 Vancouver stations and 9 in Portland.

6. Adjacent-channel objectionable interference (20 kc removed) would be caused by the proposal to station KWAY, Forest Grove, Oreg. (1570 kc, 1 kw, D, class II), in an area of 9 square miles including 213 persons, representing 0.7 percent of the area (1,279 square miles) and 0.26 percent of the population (80,999 persons) within the 0.5-mv/m normally protected contour of KWAY. The interference area lies in the vicinity of Rogers' proposed transmitter site and from 18.5 to 20 miles northeast of Forest Grove. A minimum of 19 and a maximum of 20 stations provide primary service to the interference area. No objectionable interference would be caused to any other existing stations.

7. Triple G Broadcasting Co., through its vice president Donald B. Crawford and in connection with its petition to dismiss, submitted

² All population figures are based upon the 1960 U.S. census.

a sworn statement that it had not been promised nor had it received any consideration in connection with the dismissal of its application. Gordon A. Rogers also submitted an affidavit that he had not given nor promised to give Triple G any consideration whatsoever with respect to the dismissal of its application.

CONCLUSIONS

1. This proceeding commenced with two competing applicants, but the subsequent dismissal of the application of Triple G Broadcasting Co. has rendered moot all issues except 1, 3, and 6. (See par. 1 of the preliminary statement.) The remaining application of Gordon A. Rogers seeks to establish a new class II station at Vancouver, Wash., operating on 1550 kc, daytime only, with power of 1 kw. Two stations are currently assigned to Vancouver, one unlimited time and the other daytime only. There are 11 stations in nearby Portland, Oreg.

2. The proposed operation would cause no objectionable interference to existing stations, except in the instance of station KWAY at Forest Grove, Oreg. This would be adjacent-channel interference (20 kc separation) which would affect an area of 9 square miles with a population of only 213 persons. The loss to KWAY would amount to only 0.26 percent in terms of population and 0.7 percent in terms of area. At least 19 other services are available within this interference area.

3. It is clear that the interference in this instance is de minimis and is outweighed by the establishment of a new daytime service to over 550,000 persons and the advent of a third local outlet for Vancouver. Gordon A. Rogers having previously been found qualified in all other respects, it follows that a grant of his application would be in the public interest.

4. It is further concluded that the circumstances leading to the dismissal of the competing application of Triple G Broadcasting Co. do not raise any question concerning the propriety of the instant grant.

It is ordered, This 13th day of November 1961, that unless an appeal from this initial decision is taken to the Commission, or unless the Commission reviews the initial decision on its own motion in accordance with the provisions of section 1.153 of the rules, the application of Gordon A. Rogers for a construction permit (file No. BP-13028) for a class II standard broadcast station to operate on 1550 kc with 1 kw power, daytime only, in Vancouver, Wash., *Is granted*.

32 F.C.C.

RANDALL G. SCHAUB (13W0246), DOCKET No. 14200:

Order revoking citizens radio station license effective February 19, 1962.
Section 19.33 of the rules.—Failure to maintain carrier frequency within tolerance specified by rules.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON 25, D.C.

<p>In the Matter of RANDALL G. SCHAUB, PORTLAND, OREG. Order To Show Cause Why There Should Not Be Revoked the License for Citizens Radio Station 13W0246</p>	}	<p>Docket No. 14200</p>
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MEMORANDUM OPINION AND ORDER

(Adopted January 17, 1962)

BY THE COMMISSION.

1. The Commission on July 20, 1961, released an order pursuant to section 312 (a) (4) and (c) of the Communications Act of 1934, as amended, directing the respondent to show cause why his license for citizens radio station 13W0246 should not be revoked for alleged violations of section 19.33 of the Commission's rules (47 CFR 19.33).

2. The show-cause order detailed the procedural rights of the respondent, including his rights to hearing or to waive hearing, if he so desired, and to submit a statement in mitigation or justification. The respondent, on July 26, 1961, replied to the show-cause order waiving his right to a hearing and submitting a written statement. Accordingly, on September 1, 1961, the Acting Chief Hearing Examiner terminated the proceeding and certified the case to the Commission in accordance with section 1.78(c) of the rules.

3. The Commission's records indicate, and the respondent does not deny, that, at various times between September 8, 1959, and April 25, 1961, and particularly on September 8, September 17, and October 1, 1959; January 21, April 24, May 24, and September 20, 1960; January 15 and April 5, 1961, respondent operated his citizens radio station with frequency deviation in excess of the tolerance specified in section 19.33 of the Commission's rules. These violations were brought to his attention by official notices of violation mailed September 9, September 25, and October 5, 1959; January 26, April 27, May 31, and September 30, 1960; and January 18 and May 3, 1961.

4. The respondent in his above-mentioned written statement claimed that the official notices of violation issued on September 17 and October 1, 1959, "were sent in the mail before * * * [he] ever got the September 8th one." Schaub claimed that at the time of these three violations, he was using a "home brew" transmitter (i.e., a transceiver

assembled by one who is not regularly engaged in the manufacture of radio apparatus on a commercial basis). The respondent alleges that this transmitter was taken off the air and not used again. Respondent claims that he then purchased a new transmitter, but that when he "received citations on it," it was returned to the dealer and a replacement obtained. Respondent states that the transmitter which was returned to the dealer was subsequently used "for a year on all day long, nothing done to it and the person who had it did not receive any citations on it." When he continued "getting citations," Schaub again changed transmitters, obtaining a new unit for his car and a new unit for his fixed location. However, when he "started getting citations again," he "had it checked and read on a frequency meter, and had it fixed." The unit at his fixed location was again replaced; however, when he "received a citation on it, because it had a bad crystal in it," it was changed again. Finally, respondent alleges that he has "always had the sets fixed and checked," that he has not attempted to perform the necessary maintenance on them himself, and that he has responded to all official notices of violation. Schaub claims to have spent about \$800 on citizens band equipment and about \$100 on frequency measurements and repairs in order to keep his apparatus operating properly. Respondent concludes that he has done his best to follow the rules and regulations, and that he does not "know what else to do."

5. From the record before us it is clear that, on nine separate occasions over a period of less than 3 years, respondent has operated his citizens radio station in violation of the Commission's rules. It is equally clear that, although the Commission's requirements with respect to the maintenance of radio transmission apparatus within the frequency tolerance specified by section 19.33 of the rules were brought to respondent's attention repeatedly, no effective action was taken by him to assure proper technical operation either before or after receipt of an official notice of violation. Moreover, the respondent, in his reply to the show-cause order, has offered the Commission no expectancy that his future operation will be different from that of the past.

6. The efficient and orderly use and administration of the radio spectrum require that licensees shall assume an affirmative responsibility to assure that their equipment is operating in accordance with the Commission's technical standards. Because of the shared use of frequencies and the large number of licensees, it is particularly important that the frequencies be maintained within the prescribed tolerance. Off-frequency operation can be guarded against by having periodic frequency measurements made by a service engineer or other person who has the proper equipment and skill. The record is devoid of any indication that respondent has had such periodic measurements made except after receipt of a notice of violation from the Commission. And even then, as indicated above, no effective action was taken. In this connection, the citations for off-frequency operations show that such repeated violations occurred at intervals ranging from less than 1 month to about 6 months after the respondent had advised that the matter had been rectified.

7. The facts clearly demonstrate that respondent repeatedly violated section 19.33 of the Commission's rules. Absent an assurance that the equipment meets the requirements of section 19.33 of the rules and that future operations will be in accordance with the applicable rules and regulations of the Commission, it is evident that the public interest would not be served by the continued operation of such station. We cannot, however, overlook the fact that respondent has made some effort, albeit ineffective, to bring his station into compliance. In view of these considerations, it is concluded that respondent's radio station license should be revoked without prejudice to the filing of an application for a new station license in not less than 90 days from the effective date of the revocation herein; provided, however, that respondent shall show that the equipment will meet the requirements of section 19.33 of the rules and that he has taken affirmative action to assure that the future operation of his station will be in compliance with the applicable rules and regulations.

Accordingly, *It is ordered*, This 17th day of January 1962, that the license for citizens radio station 13W0246 of Randall G. Schaub, 8611 NE. Pacific, Portland 20, Oreg., *Is revoked*, effective February 19, 1962, and that a copy of this order of revocation shall be served upon the licensee; and

It is further ordered, That such revocation shall be without prejudice to respondent's applying for a new license after 90 days from the effective date of revocation, notwithstanding the provisions of 47 CFR 1.550, which *Are, to the extent necessary, waived: Provided, however*, That in connection with any such application, the respondent shall furnish a written statement by a qualified technician that the equipment meets the requirements of section 19.33 of the Commission's rules, and a statement showing, in detail, the measures he has taken to assure that future operations of his radio station will be in compliance with the applicable rules and regulations of the Commission.

32 F.C.C.

AMERICAN TELEPHONE & TELEGRAPH Co., DOCKET No. 12940:

Decision terminating investigation into the lawfulness of certain tariff regulations relating to the interconnection of telephone company facilities with the communications facilities of certain right of way companies (including railroad companies), in view of the filing of revised tariff schedules and lack of record support for finding of unjust discrimination.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON 25, D.C.

In the Matter of
AMERICAN TELEPHONE & TELEGRAPH Co. }
Regulations Relating to Connections of } Docket No. 12940
Telephone Company Facilities With }
Certain Facilities of Customers }

MEMORANDUM OPINION AND ORDER

(Adopted January 17, 1962)

BY THE COMMISSION:

1. The Commission has before it the record to date in the above-entitled proceeding together with a joint petition for termination of proceeding filed April 24, 1961, by the Association of American Railroads; Chesapeake & Ohio Railway Co.; Chicago & North Western Railway Co.; Missouri-Kansas-Texas Railroad Co.; Chicago, Milwaukee, St. Paul & Pacific Railroad Co.; Illinois Central Railroad Co.; The New York Central Railroad Co.; Santa Fe Railway System; Southern Railway System; and the American Telephone & Telegraph Co. and other Bell System respondents. The prayer of the joint petition includes requests that the proceedings be terminated on the basis of the record and certain proposed tariff schedules (attached hereto as appendices A and B), and that such proposed tariff schedules be allowed to become effective on less than statutory notice. The Commission also has before it a statement filed May 3, 1961, on behalf of the United States Independent Telephone Association (USITA).

2. On July 14, 1959, the Commission instituted an investigation into the lawfulness of revised tariff regulations, effective July 15, 1959, of the American Telephone & Telegraph Co. and the Northwestern Bell Telephone Co.¹ relating to the connections of telephone company facilities with the communications facilities of certain right-of-way companies. Since 1953, the tariffs had provided for connection with

¹ Northwestern Bell's Tariff FCC No. 20, covering interstate exchange service between Iowa and its neighboring States, includes substantially similar provisions on connections as those contained in A.T. & T.'s Tariff FCC No. 134, so that in general only the A.T. & T. Tariff FCC No. 134 will be cited. The Northwestern Bell tariff is filed with this Commission inasmuch as Iowa has refrained from asserting regulatory jurisdiction over such matters. See sec. 221(b), Communications Act.

telephone company systems of private communications systems of electric power, oil, oil products, and natural gas pipeline companies. For many years prior to 1959, connections involving railroads had been covered by contracts without reference to, or reflection in, the tariff schedules on file with the Commission. However, effective July 15, 1959, such contracts were canceled and the railroads were added to the list of right-of-way companies subject to the tariff regulations.

3. The tariffs provided for general connections of the communications systems of such customers with most types of telephone company private line services (Tariff FCC No. 134C22d(6)), except telephone services which were limited to connections in the following circumstances:

(a) In cases of emergency involving safety of life or property;

(b) In cases where the customer facilities serve locations where it is impracticable because of hazard or inaccessibility for the Telephone Company to furnish its facilities; (c) during an interim period in cases where the customer has arranged for replacement of said customer facilities with facilities of the Telephone Company; (d) in cases where the customer circuits were terminated in Telephone Company facilities and qualified for connection to a local or toll central office line to form a through connection on July 14, 1959, under contracts or tariffs in effect on that date. (*Ibid.*, C22d(2).)

4. The Commission's order setting the matter for investigation (FCC 59-692) specified three issues for determination:

1. Whether any of the classifications, regulations, and practices contained in the above-mentioned tariff schedules are or will be unjust and unreasonable within the meaning of section 201(b) of the Communications Act of 1934, as amended;

2. Whether the above-mentioned tariff schedules will subject any person or class of persons to unjust or unreasonable discrimination, or give any undue or unreasonable preference or advantage to any person, class of persons, or locality, or subject any person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage within the meaning of section 202(a) of the Communications Act of 1934, as amended;

3. Whether the Commission should prescribe just and reasonable classifications, regulations, and practices to be hereafter followed with respect to the service governed by the aforementioned tariff schedules and, if so, what classifications, regulations, and practices should be prescribed.

By order of April 1, 1960 (FCC 60-315), the initiating order was clarified to insure consideration of the propriety of connection of such customers' privately owned facilities with the exchange and toll facilities of the telephone companies. This practice is generally prohibited by A.T. & T. Tariff FCC No. 132B7, as well as by Northwestern Bell Tariff FCC No. 20.

5. The parties respondent in the proceeding are the American Telephone & Telegraph Co., Northwestern Bell Telephone Co., and all telephone companies concurring in A.T. & T. Tariff FCC No. 134 and Northwestern Bell Tariff FCC No. 20. The intervenors are the eight railroads listed in paragraph 1, above, as well as the Association of American Railroads (AAR), General Telephone Service Corp., United States Independent Telephone Association, Central Committee on Radio Facilities of the American Petroleum Institute (CCRF), and National Committee for Utilities Radio (NCUR).

6. A prehearing conference was held before Hearing Examiner Jay A. Kyle on September 24, 1959, which was followed by 40 days of hearings beginning October 26, 1959, and ending May 10, 1960. Pursuant to the initiating order, the record was certified to the Commission for decision without the preparation of either an initial decision or a recommended decision by the hearing examiner. Upon a request made in anticipation of a possible agreement of position among the Bell System respondents, the intervening railroads and the AAR under which the revised tariff regulations would be filed, the filing of proposed findings of fact and conclusions has been indefinitely postponed.

7. The proposed tariffs accompanying the joint petition provide for the elimination of the so-called grandfather provisions (see above, 134C22d(2)(d)) and the alteration of the first clause of 134C22d(2) from "in cases of emergency involving safety of life or property" to—

(i) In cases of emergency involving safety of life or property; (ii) in addition, in cases of calls originated by railroad employees under circumstances indicating need for prompt action to secure or maintain the safety, continuity, or reliability of railroad service to the public, and related to the movement of passengers, mail, property, or equipment by railroad, or the repair, maintenance, or construction of railroad rights-of-way, structures, or equipment.

The revised tariffs provide for the inclusion in Tariff FCC No. 132, "Message Toll Telephone Service," of a provision to the effect that the right-of-way companies have the same rights to connect their facilities with the message toll telephone service as provided in Tariff FCC No. 134 for the connection to Telephone Company private line services and channels.

8. In its statement, referred to in paragraph 1 above, USITA asserts that it has some reservations about the scope of connection granted under the revised tariffs, but states that in the interest of terminating the proceeding no objection will be made on those grounds. However, USITA does object to the proposed revision of the general prohibition against connection contained in Tariff FCC No. 132. The basis put forward for such objection is that this provision would in effect embody in an interstate tariff what only belongs in an intrastate tariff; i.e., regulations governing exchange facilities. In the petition for termination the Bell System raised a similar point, but refrained from pursuing the matter in the interest of terminating the proceeding. We see no merit in this contention of the telephone companies. There is no doubt but that this Commission has jurisdiction over exchange facilities *to the extent* that such facilities are used in accomplishing interstate toll communication. In this respect we see little difference between the jurisdictional principle involved in this situation and that involved in cases previously before this Commission such as *In the Matter of the Use of Recording Devices in Connection With Telephone Service*, 11 FCC 1033.

9. Petitioners have assured the Commission that so far as they are aware, "[N]o railroad or telephone company which would be affected by such tariff revisions will object to their becoming effective." As far as the power and petroleum industries are concerned, the present

revisions appear to secure for them the same connection privileges they were permitted before the tariffs at issue in the proceeding were filed. As we understand the positions of the Central Committee on Radio Facilities of the American Petroleum Institute and the National Committee for Utilities Radio, this was their sole concern in intervening. Furthermore, there have been no objections to the proposed revisions from either organization.

10. The tariff schedules, as originally filed, present three separate problems of discrimination: (1) the so-called "grandfather" clause, whereby those private circuits which qualified for connection on July 14, 1959, would be allowed to continue so connected, while similar circuits coming into being after that could not be connected; (2) the difference in the degree of connection permitted as between railroads and other right-of-way companies; and (3) the preference accorded right-of-way companies in this respect as contrasted to the general public.

11. With regard to the first of these problems, the proposed revisions of the tariff eliminate the "grandfather" clause, thus eliminating any question of discrimination in this respect. With respect to the second, the position of CCRF and NCUR is, and the record so indicates, that the other right-of-way companies have no need for, nor do they desire, the same degree of connection as that permitted the railroads.

12. As regards the third problem, no evidence was adduced on the record of this proceeding concerning the need for connection with common carrier facilities by anyone other than right-of-way companies. Lacking such evidence, and especially in view of the fact that there is substantial evidence relating to the peculiar needs of the right-of-way companies, we are unable to say on the basis of this record that there exists any unjust discrimination, or undue disadvantage or preference in this respect.

13. Petitioners have requested the Commission to find just and reasonable and otherwise lawful respondents' general regulations prohibiting connection of customer-provided communications systems with the common carriers' systems. We do not think such a finding is appropriate on the basis of the record before us. To the contrary, we believe it more appropriate to continue our past policy of determining, on a case-by-case basis, the reasonableness, *vel non*, of the provisions as applied in particular circumstances.

14. Since the principal basis for terminating the proceeding is the change in the provisions of the tariff schedules, such revised schedules should become effective before the proceedings are terminated. However, inasmuch as the proposed revisions have been a matter of public record since the filing of the instant petition and no protests have been received, there appears to be no reason for the statutory 30-day notice required by section 203 of the act.

15. Accordingly, *It is ordered*, That for the reasons given above, the joint petition for termination *Is granted* to the extent indicated and in all other respects *Denied*, and the proceedings *Will be terminated* on the date the revised tariff schedules become effective. *It is further ordered*, That A.T. & T. and Northwestern Bell are hereby

granted special tariff permission to file the proposed revised tariff schedules on not less than 1 day's notice.

APPENDIX A

PROPOSED REVISION OF AMERICAN TELEPHONE & TELEGRAPH CO

TARIFF FCC NO. 134

General Regulations Tariff for Interstate Private Line Services and Channels

C. REGULATIONS APPLICABLE TO ALL PRIVATE LINE SERVICES AND CHANNELS

22. *Connections With Certain Facilities of Customers*d. *Power, pipeline, and railroad companies:*

(1) Facilities of an electric power company, or oil, oil products or natural gas pipeline company, or railroad company, provided primarily to communicate with points located along a right-of-way (including premises of such company anywhere in cities, towns or villages along the right-of-way) owned or controlled by such company and extending between or beyond exchange areas of the Telephone Company will be connected with facilities furnished by the Telephone Company to the same customer, subject to the regulations and conditions stated in d (1) to (6), inclusive, in addition to those specified in a preceding. Such connections will be made by means of switching or connecting equipment furnished by the Telephone Company.

(2) Such customer telephone facilities will be connected to full period private line telephone services, to full period telephone components of multiple private line services and channels, and to telephone services and channels derived from TELPAK channels furnished by the Telephone Company to the same customer, for communications with stations associated with such private line telephone services: *Provided, however,* That facilities of the customer will not be connected to a local or toll central office line to form a through connection except as follows: (a) (i) in cases of emergency involving safety of life or property; (ii) in addition, in cases of calls originated by railroad employees under circumstances indicating need for prompt action to secure or maintain the safety, continuity, or reliability of railroad service to the public, and related to the movement of passengers, mail, property, or equipment by railroad, or the repair, maintenance, or construction of railroad rights-of-way, structures, or equipment; (b) in cases where the customer facilities serve locations where it is impracticable because of hazard or inaccessibility for the Telephone Company to furnish its facilities; (c) during an interim period in cases where the customer has arranged for replacement of said customer facilities with facilities of the Telephone Company.

(3) Telephone circuits of the customer extending between or beyond exchange areas of the Telephone Company will be connected to a local or toll central office line to form a through connection only through manual switching equipment, or an attendant's position of dial PBX equipment furnished to the customer by the Telephone Company. Such equipment or position may be located at either or both ends of the customer's circuit.

(4) Connection of a customer's telephone circuit as specified in d(2) (a) (ii), (b) or (c) preceding may be established at either end of such circuit, but shall not be established at both ends simultaneously.

(5) Customer teletypewriter or Morse, telephotograph, data transmission, remote metering, supervisory control, or miscellaneous signaling facilities will be connected to private line facilities furnished for such purposes to the same customer.

(6) Facilities of the Telephone Company, when connected with facilities of the customer, will not be used for communications of others than the customer, except that such facilities may be used for the communications of, and be connected with facilities furnished by the Telephone Company to, other companies which (a) are operated with the customer as parts of an integrated electric power, oil, oil products, or natural gas system or railroad system under direct or common ownership or control; or (b) own or operate an electric power or pipeline or railroad system jointly with the customer; or (c) own or operate

electric power or pipeline or railroad facilities interconnected with those of the customer. Telephone Company facilities when so connected may be connected to a local or toll central office line to form a through connection for communications of other companies specified in (a), (b), or (c) preceding, including calls originated by employees of such companies, only under the circumstances set forth in d(2) (a) above.

APPENDIX B

PROPOSED REVISION OF NORTHWESTERN BELL TELEPHONE TARIFF FCC No. 20

INTERSTATE EXCHANGE TARIFF

Connections With Certain Facilities of Customers

D. POWER, PIPELINE AND RAILROAD COMPANIES

(1) Facilities of an electric power company or oil, oil products, or natural gas pipeline company, or railroad company, provided primarily to communicate with points located along a right-of-way (including premises of such company anywhere in cities, towns or villages along the right-of-way) owned or controlled by such company and extended between or beyond exchange areas of the Telephone Company, will be connected with facilities furnished by the Telephone Company to the same customer, subject to the regulations and conditions stated in (1) to (6), inclusive, in addition to those specified in a above. Such connections will be made by means of switching or connecting equipment furnished by the Telephone Company.

(2) Such customer telephone facilities will be connected to private branch exchange switchboards or other telephone switching or terminal equipments of the Telephone Company, located in the same or different local service areas, for communication with stations and private line facilities associated with said switching or terminal equipment: *Provided, however,* That, within the same local service area, a private branch exchange switchboard or other telephone switching or terminal equipment furnished by the Telephone Company for exchange or message toll service will not be connected with telephones of the customer except telephones associated with party line right-of-way circuits requiring line termination at the PBX, nor with private telephone switching equipment of the customer except where such private telephone switching equipment is used exclusively for dispatching.

(3) Facilities of the Telephone Company will be connected for exchange or message toll service with telephone facilities of the customer:

(a) (i) In cases of emergency involving safety of life or property; (ii) in addition, in cases of calls originated by railroad employees under circumstances indicating need for prompt action to secure or maintain the safety, continuity, or reliability of railroad service to the public and related to the movement of passengers, mail, property, or equipment by railroad, or the repair, maintenance, or construction of railroad rights-of-way, structures, or equipment.

(b) The customer facilities serve locations where it is impracticable because of hazard or inaccessibility for the Telephone Company to furnish its facilities; or

(c) During an interim period the customer has arranged for replacement of said customer facilities with facilities of the Telephone Company.

Customer facilities referred to in (b) and (c) preceding do not include mobile radio-telephone facilities.

(4) Telephone circuits of the customer extending between or beyond exchange areas of the Telephone Company will be connected for exchange or message toll service only through manual switching equipment, or an attendant's position of dial PBX equipment, furnished to the customer by the Telephone Company. Such equipment or position may be located at either or both ends of the customer's circuit.

(5) Connection of a customer's telephone circuit as specified in (3) (a) (ii), (b) or (c) preceding may be established at either end of such circuit, but shall not be established at both ends simultaneously.

(6) Facilities of the Telephone Company, when connected with facilities of the customer, will not be used for communications of others than the customer, except that such facilities may be used for the communications of, and be connected with facilities furnished by the Telephone Company to, other companies which—

(a) Are operated with the customer as parts of an integrated electric power, oil, oil products, or natural gas system or railroad system under direct or common ownership or control; or

(b) Own or operate electric power or pipeline or railroad system jointly with the customer; or

(c) Own or operate electric power or pipeline or railroad facilities interconnected with those of the customer.

Telephone Company facilities when so connected may be used for exchange or message toll communications of other companies specified in (a), (b), or (c) preceding, including calls originated by employees of such companies, only under the circumstances set forth in D(3)(a) above.

32 F.C.C.

AMERICAN TELEPHONE & TELEGRAPH Co., DOCKET No. 14251:

Decision terminating expedited proceedings held relative to certain limited questions and remanding said questions to presiding examiner for further evidentiary hearings. The Commission concluded that it could not determine the ultimate question of unjust discrimination, in a case involving volume rates, solely by reference to a difference in cost of furnishing service and without regard to the degree of competitive necessity.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON 25, D.C.

<p>In the Matter of AMERICAN TELEPHONE & TELEGRAPH Co. Regulations and Charges for TELPAK Services and Channels</p>	}	Docket No. 14251
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MEMORANDUM OPINION AND ORDER

(Adopted December 6, 1961)

BY THE COMMISSION: COMMISSIONERS HYDE AND BARTLEY ABSENT.

1. The proceedings which constitute the subject matter of this order were instituted as a result of a motion filed September 29, 1961, by Motorola, Inc. (Motorola), requesting separation from the remainder of the proceedings for an expedited decision under certain factual assumptions the issue set forth in our order of investigation and suspension of September 7, 1961 (FCC 61-1039), as to whether the suspended revised provisions of American Telephone & Telegraph Co.'s (A.T. & T.) Tariff FCC No. 250 filed August 3, 1961, are, or will be, unjustly or unreasonably discriminatory within the meaning of section 202(a) of the Communications Act of 1934, as amended.

2. In granting this request, the Commission by memorandum opinion and order of October 25, 1961 (FCC 61-1256), provided that, assuming the suspended revised tariff charges are compensatory and competitively necessary, evidence would be taken before the Commission, en banc, as to—

(1) Whether services under the suspended revised tariff schedules are distinguishable in any material respects from services offered under Tariff FCC Nos. 135, 140, 208, 220, 231, and 237; and

(2) Whether there are any material cost differences associated with furnishing a given number of channels to one customer as opposed to furnishing the same number of channels to as many customers.

The receipt of such evidence was had on November 13, 1961. On November 17, 1961, in accordance with the above-mentioned memorandum opinion and order of October 25, the Commission heard oral argument on the issue of whether, in the light of the evidence adduced,

the TELPAK rates under the suspended revised tariff schedules are unlawfully discriminatory or preferential under section 202(a) of the act. The parties were also permitted to file briefs.¹

3. The proponent of these separated proceedings, Motorola, has urged upon us the theory that under section 202(a) of the act,² a determination as to whether volume rates such as those provided for in the suspended revised tariff schedules are unlawfully discriminatory can be made if, supposing the nonvolume and volume rates constitute a "like communication service," any one of the following questions is answered in the negative:

- (1) Are the volume rates compensatory?
- (2) Are the volume rates competitively necessary, but not destructive of competition?
- (3) Are the volume rates "properly related" to the nonvolume rates?

As mentioned previously, we assumed, for the purposes of these separated proceedings solely, that the answers to the first two questions are in the affirmative; i.e., that the revised TELPAK rates are compensatory and competitively necessary. Thus, the only question to be decided under the Motorola theory, after the problem of "like communication service" has been met, is whether the volume rates are properly related to the nonvolume rates. Motorola maintains that in this case the relationships are clearly improper since the evidence does not show the requisite material cost savings to the telephone companies in furnishing the volume service.

4. What Motorola in effect is asking us to do is to hold that, in any case involving volume rates, the differential in rates must be correlated to a difference in cost of furnishing service, regardless of the degree of competitive necessity. This we do not believe is consonant with the holding of the Supreme Court in *Eastern Central Motor Carriers Assn. v. U.S.*, 321 U.S. 194 (1944). In that case the Court said at p. 210:

Appellants' broadest contention must be rejected at this stage. It is, in effect, that as a matter of law, in the particular circumstances competitive necessity becomes the controlling consideration, and costs of operations, that is the requirement that minimum volume rates be geared to loading capacity, become immaterial. That view must be rejected for the same reason as requires rejection, on this record and until further buttressed, of the Commission's converse view that costs exclusively control and competition becomes immaterial. Conceivably particular circumstances might make one or the other factor predominant and, in such a situation, the choice would be for the Commission to make, upon a proper weighing of the facts and opposing policies possibly applicable.

Were we to assume, *arguendo*, the fact of competitive necessity and nonetheless hold TELPAK rates unlawful, as we are asked to do here, we would in effect be saying that competition is immaterial. This, as

¹ All parties of record, excepting the Common Carrier Bureau, were represented both on the briefs and in the argument; such parties being Motorola, A.T. & T., The Western Union Telegraph Co., National Association of Manufacturers Committee on Manufacturers Radio Use, American Trucking Association, Bethlehem Steel Co., General Services Administration, Aeronautical Radio, Inc., and National Association of Motor Bus Owners.

² Sec. 202(a) of the act provides that: "It shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service, directly or indirectly, by any means or device, or to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage."

the Court has said in the above quotation, we may not do. Nor do we think that as a matter of policy we are justified in making such a conclusion at this stage without full consideration of all pertinent factors. As the Interstate Commerce Commission said in *Coal to New York Harbor Area*, 311 I.C.C. 355, 371: “* * * the lawfulness of innovations of this kind must be determined based upon the controlling circumstances and conditions, including the material economic as well as the physical facts of record, in particular situations.”

5. As the above shows, we are of the opinion that a decision on the ultimate question of unjust discrimination cannot be made at this time. It follows that there is no need for us to decide the questions subject to evidentiary showings under the October 25 order.

6. Accordingly, *It is ordered*, This 6th day of December 1961, that the questions raised by our memorandum opinion and order of October 25 *Are remanded* to the presiding examiner in the above-entitled matter for further evidentiary hearings, and that these expedited proceedings *Are hereby terminated*.

32 F.C.C.

MARSHALL C. PARKER, SARAH C. PARKER, BETH C. CURLEE, AND THOMAS H. CARTER, SR., D/B AS MARSHALL C. AND SARAH C. PARKER, DOCKETS NOS. 14135 ET AL.:

Initial decision granting application for construction permit for new standard broadcast station in Pontotoc, Miss.; became final in accordance with section 1.153 of the Commission's rules.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON 25, D.C.

In re Applications of
MARSHALL C. PARKER, SARAH C. PARKER, BETH C. CURLEE, AND THOMAS H. CARTER, SR., D/B AS MARSHALL C. AND SARAH C. PARKER, TUPELO, MISS.
FRANK K. SPAIN, TR/AS WTWV RADIO, TUPELO, MISS.
LEE H. THOMPSON, TR/AS PONTOTOC BROADCASTING CO.,1 PONTOTOC, MISS.
For Construction Permits
Docket No. 14135
File No. BP-13669
Docket No. 14136
File No. BP-14621
Docket No. 14137
File No. BP-14624

APPEARANCES

Andrew G. Haley and William J. Potts, Jr., for WTWV Radio; David S. Stevens, for Pontotoc Broadcasting Co.; Leonard S. Joyce, for Colonel Rebel Radio; and Vergil W. Tacy, for Chief, Broadcast Bureau, Federal Communications Commission.

INITIAL DECISION OF HEARING EXAMINER ANNIE NEAL HUNTING

(Effective January 17, 1962, pursuant to sec. 1.153)

PRELIMINARY STATEMENT

1. The above-captioned applications were designated for consolidated hearing by order, released May 29, 1961, upon issues relating to (1) areas and populations to be served and availability of service thereto; (2) interference to be caused by Lee H. Thompson, d/b as Pontotoc Broadcasting Co., to station WSUH, Oxford, Miss., or other stations; (3) financial qualifications of Marshall C. and Sarah C. Parker; (4) choice under section 307 (b) of the Communications Act

1 The correct name of this applicant is "Lee H. Thompson, d/b as Pontotoc Broadcasting Co."

of 1934, as amended, between the proposals for Pontotoc and Tupelo, Miss.; (5) standard comparative issue between the two proposals for Tupelo; and (6) ultimate decision, on the basis of the foregoing issues, as to which, if any, applications should be granted. Prior to the commencement of the hearing, Frank K. Spain, tr/as WTWV Radio, filed a petition for addition of an "Evansville" issue questioning the financial qualifications of Lee H. Thompson, d/b as Pontotoc Broadcasting Co. The petition was denied by the hearing examiner by order released September 18, 1961 (FCC 61M-1511).

2. Colonel Rebel Radio, licensee of station WSUH, Oxford, Miss., was made a party to the proceeding. The Commission's order of designation provided that, in the event of a grant to Marshall C. and Sarah C. Parker, the construction permit should contain a condition that the permittee submit a proof of performance to insure that the proposed nondirectional radiation pattern had not been seriously distorted due to reradiation from a water tank or water tanks in the immediate vicinity of the proposed antenna site.

3. A prehearing conference was held on June 30, 1961. All applicants were represented by counsel except Marshall C. Parker, Sarah C. Parker, Beth C. Curlee, and Thomas H. Carter, Sr., d/b as Marshall C. and Sarah C. Parker. No written appearance had been filed by this applicant, and the hearing examiner held the applicant in default. Hearing commenced on September 18, 1961, and the record was closed the same day. Proposed findings of fact and conclusions were filed by the Chief of the Commission's Broadcast Bureau; Frank K. Spain, tr/as WTWV Radio (Spain); and Lee H. Thompson, d/b as Pontotoc Broadcasting Co. (Thompson). Replies were filed by Spain and Thompson.

FINDINGS OF FACT

Frank K. Spain, tr/as WTWV Radio, Tupelo, Miss.

4. Spain seeks a construction permit for a new class III standard broadcast station at Tupelo, Miss. (1440 kc, 1 kw, day). Tupelo (population 17,221)² is the county seat of Lee County (population 40,589), in the northeastern section of the State.

5. Two standard broadcast stations are assigned to Tupelo; namely, WELO (580 kc, 500 w, 1 kw-LS, DA-2, U) and WTUP (1490 kc, 250 w, U). Primary service (2.0 mv/m or greater) to Tupelo is provided during daytime hours only by these two stations. Tupelo has a daily newspaper, a weekly newspaper, and a VHF television station.

6. Tupelo is governed by an elected mayor and board of aldermen, and has seven other officials. It has 272 employees divided among its various departments (police, fire, water and light, and other). The

² All population data are from 1960 U.S. census unless otherwise indicated. In the period from 1950 to 1960, the population of Tupelo increased by about 49.4 percent. Prior decennial census figures from 1950 back to 1900 were 11,527, 8,212, 6,361, 5,055, 3,881, and 2,118, respectively.

Tupelo Municipal Separate School District operates seven elementary schools, two junior high schools, and two high schools.³ The school system is administered by a five-member board, a superintendent, and eight principals.³ The total number of school employees is approximately 260, of which 168 are teachers.³ As of September 5, 1961, the enrollment was 4,500 students. About 125 additional were expected to be enrolled in a few days thereafter. The government of Lee County maintains 20 offices or agencies within Tupelo; the State of Mississippi, 8 departments or agencies; and the Federal Government, 13 offices and agencies. There are 38 active civic, welfare, social, and service organizations, and 26 churches and temples. Recreational facilities include 5 motion picture theaters, 3 swimming pools, 7 illuminated baseball diamonds, 3 city parks, a private golf course, 8 tennis courts, a 6,500-seat football stadium, fairgrounds with 10,000-seat stadium, 6 gymnasiums, a 40,555-volume public library, a gun club with firing range, a community center with seating capacity in excess of 1,000, and associated facilities, a zoo, and a youth center. There are 52 individual industrial concerns; 45 wholesale and 216 retail establishments; and 513 personal and professional service firms. Tupelo is located at the junction of U.S. Highways 45 and 78 and is served by two railroads, one airline, two buslines, seven motor freight lines, four taxi companies, and a privately owned bus system operating within the city limits which also serves Verona, Miss. Automobile, truck, and trailer rental service is also available.

7. The daytime coverage of Spain's proposed station would be as follows:⁴

Contour (mv/m)	Population	Area (sq. miles)
2.0.....	30,022	239
0.5 (normally protected) ¹	55,140	984

¹ The normally protected contour is also interference free in this instance.

² Pontotoc, Miss., is included within the 0.5 contour of the proposed station.

8. All rural area within the proposed primary service area receives daytime primary service (0.5 mv/m or greater) from WELO, WCPC, WMPS, and WHBQ serve 75-100 percent of the area; WMC and WREC, 50-75 percent; WNAU, WAMY, and WTUP, 25-50 percent; and WBIP, WERH, WSUH, and WVOK, less than 25 percent. A minimum of three and a maximum of eight stations provide daytime primary service to any one portion of the area.

³ Cf. Spain exhibit 6, pp. 2 and 3, with Spain exhibit 1, p. 28. The testimony of the superintendent of the Tupelo City Schools is accepted as more current.

⁴ Based on an effective field of 196 mv/m and on ground conductivity values from fig. M-3 of the rules.

Lee H. Thompson, d/b as Pontotoc Broadcasting Co., Pontotoc, Miss.

9. Thompson seeks a construction permit for a new class III standard broadcast station at Pontotoc, Miss. (1440 kc, 1 kw, day). Pontotoc (population 2,108)⁵ is the county seat and only trading area of Pontotoc County (population 17,232), and lies 16 miles west of Tupelo.

10. There is no standard broadcast station in Pontotoc or in Pontotoc County. Stations WELO, Tupelo, Miss.; WHBQ, WREC, WMPB, and WMC, Memphis, Tenn.;⁶ WCPC, Houston, Miss.; WSUH, Oxford, Miss.; and WNAU, New Albany, Miss., provide daytime primary service (0.5 mv/m or greater)⁷ to Pontotoc. There is a weekly, but no daily newspaper, in Pontotoc.

11. Pontotoc is governed by an elected mayor and board of aldermen, and has a city clerk and chief of police. It provides a 24-hour police radio service, with two-way radio to a city patrol car and radio interconnection with the sheriff's office and the Mississippi Highway Patrol. The Pontotoc Municipal Separate School District has a high school and an elementary school, with 44 teachers and an enrollment of 1,100 students. School facilities include 40 classrooms, 2 auditoriums, a vocational department, cafeteria, football stadium with seating capacity of 3,000, and gymnasium with seating capacity of 1,000. Pontotoc County maintains 8 other schools, with 93 teachers and 2,536 students. Pontotoc has a community hospital, constructed in 1952. A new wing was added in 1960, and the hospital's rated capacity is now 48 beds. It has a medical staff of eight doctors, including one board surgeon. There are 5 churches, with total membership of 1,806; Rotary Club, 28 members; Lions Club, 47 members; Civitan Club, 20 members; Junior Chamber of Commerce, 43 members; Development Association, 107 members; and Veterans of Foreign Wars. The city's recreational facilities, administered by the park commission, include swimming pool, two tennis courts, large picnic area, and an air-conditioned community house which has a large area for parties and dances, a large lounge area, and kitchen facilities. There are

⁵ In the period from 1950 to 1960 the population of Pontotoc increased by about 32.1 percent. Prior decennial census figures from 1950 back to 1900 were 1,596, 1,832, 2,018, 1,274, 1,277, and 1,010, respectively. Thompson attempted to show that the "community" of Pontotoc for sec. 307(b) purposes included not only the population of Pontotoc as shown in the census, but also additional population residing in areas immediately adjacent to the corporate limits of Pontotoc. The hearing examiner sustained objections to the showing as beyond the scope of the issues, since no issue had been requested or designated looking to a determination of whether the "community" of Pontotoc for sec. 307(b) purposes should be considered as extending beyond the corporate limits of Pontotoc. See *Michigan Broadcasting Company*, 20 R.R. 249, 252 (1960).

⁶ According to Bureau proposed findings, WDIA and WSUH, Memphis, Tenn., and Oxford, Miss., respectively, both serve Pontotoc. Although Pontotoc exhibit 1, p. 8, is not (due to overlap of contours) clear as to which station serves Pontotoc, it is apparent that both do not. Spain exhibit 2, p. 10, shows WSUH, but not WDIA, as serving Pontotoc. It is concluded that WSUH serves Pontotoc, but WDIA does not.

⁷ Since the population of Pontotoc is less than 2,500, a 2-mv/m signal is not required for primary service. See sec. 3.182(g) of Commission's rules.

about 174 firms which maintain offices, stores, or other places of business in Pontotoc. In addition, there are 36 supply firms which have home offices in another town but which serve Pontotoc.

12. The daytime coverage of Thompson's proposed station would be as follows:⁸

Contour (mv/m)	Population	Area (sq. miles)
2.0.....	¹ 17, 631	467
0.5 (normally protected).....	60, 294	1, 935
Interference from WSUH ²	935 (1.5 %)	24 (1.2 %)
Interference free.....	69, 359	1, 911

¹ Thompson would not provide primary service to Tupelo.

² Percentages refer to population and area within the normally protected contour.

13. All rural area within the proposed primary service area would receive daytime primary service from stations WHBQ and WCPC. WELO, WREC, WMP5, and WMC serve 75-99 percent of the area; WDIA, WSUH, and WNAU, 50-74 percent; and WBLE, WBIP, WTUP, WSAO, and WAMY, 1-24 percent. A minimum of 3 and a maximum of 11 daytime primary services are available to any one portion of the area.

14. No objectionable interference would be caused to station WSUH, Oxford, Miss. (1420 kc, 1 kw, D, class III), based on field intensity measurements taken by Thompson on that station, in the direction 103° true. Likewise, no objectionable interference would be caused by the Pontotoc proposal to any other existing standard broadcast station.

15. Spain seems to contend in paragraphs 2 and 3 of his proposed conclusions that the engineering showing made by Thompson is defective in that the field intensity measurements taken by Thompson for the purpose of determining whether there would be objectionable interference to station WSUH showed a different ground conductivity from that used in predicting the areas and populations to be served by Thompson's proposed station which was based on ground conductivities shown in figure M-3 of the Commission's rules. Spain's own engineering witness conceded that the measurements taken in this case on the one radial were sufficient to determine the degree of interference to station WSUH.⁹ However, no evidence was offered in the

⁸ Based on an effective field of 266 mv/m and on ground conductivity values from fig. M-3 of the rules.

⁹ Transcript, p. 77.

proceeding of field intensity measurements which could be used as a basis for predicting the areas and populations to be served by Thompson's proposed station.¹⁰ In the absence of such measurements, it was proper to use the ground conductivity values from figure M-3 of the Commission's rules. See section 3.183(c) of the Commission's rules. Accordingly, Spain's contention is without merit.¹¹

CONCLUSIONS

1. The application of Marshall C. Parker et al., d/b as Marshall C. and Sarah C. Parker, must be denied for default.

2. The remaining applicants, Spain and Thompson, were found by the Commission to be legally, technically, financially, and otherwise qualified to construct and operate their proposed new class III standard broadcast stations. The two proposals are mutually exclusive and would provide local transmission outlets for separate communities located about 16 miles apart. Thus, it is necessary to choose between them under section 307(b) of the Communications Act of 1934, as amended. There are three factors to be compared: meeting the need for transmission facilities, meeting the need for reception service, and efficient use of the frequency. See *Lawton-Fort Hill Broadcasting Company*, 7 R.R. 1216, 1233-1234 (1952); *Border Broadcasters*, 13 R.R. 463, 474 (1956); *Southern Indiana Broadcasters, Inc.*, 15 R.R. 349, 361 (1958); and *Riverside Church in the City of New York*, 31 FCC 57, 63 (1961).

3. Thompson's proposal would meet a greater need for transmission facilities. It would provide a first local transmission outlet for Pontotoc, Miss. (population 2,108); whereas the Spain proposal would provide a third local transmission outlet for Tunelo, Miss. (population 17,221). Tunelo is the county seat of Lee County (population 40,589); and Pontotoc is the county seat of Pontotoc County (population 17,232). The populations of Tunelo and Lee County are substantially larger than that of Pontotoc and Pontotoc County. Likewise, as shown in the findings, Tunelo has been growing at a greater rate and has substantially greater civic, governmental, commercial, and other activities than Pontotoc. The differences in population, size, extent of activities, and related factors are not necessarily controlling, however, in deciding the question of need for a local transmission outlet. The Commission has held in numerous cases that the need for a *first* local transmission outlet in a community of substantial size outweighs the need for an *additional* local transmission

¹⁰ Field intensity measurements made in one direction may not be used as a basis for computing ground conductivity values in the reverse direction. *Carolina-Piedmont Broadcasters, Inc.*, 5 R.R. 1277, 1281 (1951).

¹¹ See *Norman O. Protesman*, 14 R.R. 484, 486 (1956).

outlet in a substantially larger community with substantially more activities. *Lawton-Fort Sill Broadcasting Co.*, *supra*, 1233; *Mercer Broadcasting Co.*, 13 R.R. 891, 911 (1957); and *Walter G. Allen*, 21 R.R. 497, 500 (1961). See also *Harrell v. FCC*, 267 F. (2d) 629 (1959), and cases cited at page 631. Pontotoc is a community of sufficient size and importance to merit a local transmission outlet.¹² The population within the city limits of Pontotoc is 2,108. Pontotoc is the county seat of, and the only trading area in, Pontotoc County. Pontotoc has a school system with an enrollment of 1,100 students, a 48-bed hospital, 5 churches, and 6 civic organizations. There are approximately 174 business firms which maintain offices, stores, or other places of business in Pontotoc. Local civic organizations, governmental agencies, or merchants, desiring to use radio facilities, presently must rely on stations that are located outside of Pontotoc County.

4. Spain's proposal would meet a greater need for daytime reception service in Tupelo, which has only two daytime primary services, than Thompson's proposal in Pontotoc, which has eight daytime primary services.¹³ Neither applicant showed substantial differences in meeting the needs for reception service in other cities or towns. The need for daytime reception service in rural areas which would be met by the 2 proposals is not substantially different, the area to be served by Spain having 3 to 8 services; and the area to be served by Thompson, 3 to 11 services.

5. It is concluded that the need of Pontotoc for a first transmission outlet outweighs the need of Tupelo for a third daytime reception service and third transmission outlet, and that Thompson's proposal would provide a fairer and more equitable distribution of radio service than Spain's proposal.

6. Thompson's proposal would be slightly more efficient than Spain's, since a total of 59,359 persons would receive daytime primary service as against 55,140 persons under Spain's proposal.¹⁴

7. In view of the foregoing, and, principally, on the basis of the more fair and equitable distribution of radio service, the Thompson proposal is preferred in the light of section 307(b) of the act.

8. The Thompson proposal would not cause interference to station WSUH, Oxford, Miss., or any other existing station.

9. Accordingly, it is concluded that public interest, convenience, and necessity would be served by the denial of the Parker and Spain applications, and the grant of the Thompson application.

¹² See *Walter G. Allen*, *supra*, re Arab, Ala. (population 2,989). Cf. *Southern Indiana Broadcasters, Inc.*, *supra*, 360, re Newburgh, Ind. (population 1,324), and *Musical Heights, Inc.* 29 FCC 1, 4 (1960), re Braddock Heights, Md. (population 660).

¹³ Spain would also provide daytime primary service to Pontotoc. Thompson would not provide daytime primary service to Tupelo.

¹⁴ Spain's comparison of population within the 2-mv/m contours is inapposite since it is the total population served that determines the efficiency of the proposal.

ORDER

In view of the foregoing, *It is ordered*, This 14th day of November 1961, that unless an appeal to the Commission from this initial decision is taken by any of the parties, or the Commission reviews the initial decision on its own motion in accordance with the provisions of section 1.153 of the rules, the applications of Marshall C. Parker, Sarah C. Parker, Beth C. Curlee, and Thomas H. Carter, Sr., d/b as Marshall C. and Sarah C. Parker, and Frank K. Spain, tr/as WTWV Radio, for construction permits for new standard broadcast stations in Tupelo, Miss., to operate daytime only on 1440 kc, with a power of 1 kw, *Are denied*; and the application of Lee H. Thompson, d/b as Pontotoc Broadcasting Co., for a construction permit for a new standard broadcast station in Pontotoc, Miss., to operate daytime only on 1440 kc, with a power of 1 kw, *Is granted*.

32 F.C.C.

MARICOPA COUNTY BROADCASTERS, INC., DOCKET NO. 14196:

Initial decision granting application for a construction permit for a new standard broadcast station to operate on the frequency 1510 kc (class II), daytime only, with a power of 10 kw, at Mesa, Ariz.; became final in accordance with 47 CFR 1.153.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON 25, D.C.

In re Application of
MARICOPA COUNTY BROADCASTERS, INC., MESA, } Docket No. 14196
ARIZ. } File No. BP-14391
For Construction Permit

APPEARANCES

Mr. Arthur Stambler and Mr. Arthur W. Scharfeld, on behalf of Maricopa County Broadcasters, Inc.; and Mr. James F. Marten, on behalf of the Chief, Broadcast Bureau, Federal Communications Commission.

INITIAL DECISION OF HEARING EXAMINER WALTHER W. GUENTHER
(Effective January 25, 1962, pursuant to sec. 1.153)

PRELIMINARY STATEMENT

1. By order of the Commission released July 14, 1961 (FCC 61-886), the above-captioned application of Maricopa County Broadcasters, Inc. (hereinafter also Maricopa), requesting a construction permit for a new standard broadcast station to operate on the frequency 1510 kc (class II), daytime only, with a power of 10 kw, at Mesa, Ariz., was designated for consolidated hearing with the applications of Frank S. Barc, Jr. (docket No. 14195) (hereinafter also Barc), and Maryvale Broadcasting Co. (docket No. 14197) (hereinafter also Maryvale), each also applying for a new standard broadcast station on 1510 kc at Mesa, Ariz. Barc's application was dismissed by order of the Chief Hearing Examiner released October 11, 1961 (FCC 61M-1633), and that of Maryvale by order of the Acting Chief Hearing Examiner released November 17, 1961 (FCC 61M-1801). As to the latter, the Acting Chief Hearing Examiner found the agreement between Maricopa and Maryvale, leading to the dismissal of Maryvale's application, to be consistent with the public interest.

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2. Except as indicated hereinafter, the Commission's order of designation found Maricopa in all respects qualified. The issues still applicable to Maricopa are as follows:¹

To determine whether the 25-mv/m contour of the instant proposal of Maricopa County Broadcasters, Inc., and the 25-mv/m contour of station KHAT, Phoenix, Ariz., would overlap in contravention of 47 CFR 3.37, and, if so, whether circumstances exist which would warrant a waiver of said section.

To determine, in the light of the evidence adduced pursuant to the foregoing, if the instant application should be granted.

Station KHAT at Phoenix, Ariz., whose operation is involved in the technical issue set forth above, was not made a party to the proceeding.

3. Prehearing conferences were held on September 22 and October 23, 1961, hearing was held on November 7, 1961, and the record was closed by order released November 21, 1961. Proposed findings of fact and conclusions of law were timely filed by Maricopa on November 30, 1961. Broadcast Bureau agreed to either advise the hearing examiner informally whether it had any objections to the proposed findings and conclusions, or file a reply thereto within 10 days after the filing thereof by Maricopa. On December 1, 1961, Bureau informally advised that it had no objections thereto.

FINDINGS OF FACT

4. Maricopa, the only remaining applicant, seeks a construction permit for a new standard broadcast station to operate on the frequency 1510 kc (class II), daytime only, with a power of 10 kw, at Mesa, Ariz. One other standard broadcast station, station KBUZ (1310 kc), is presently operating in Mesa, Ariz. Based upon 1960 U.S. census data, 667,214 persons will be served within Maricopa's 2.0-mv/m contour, and 711,531 persons within its 0.5-mv/m contour. The areas to be served within these contours are 4,025 and 12,865 square miles, respectively. Maricopa's proposal will not be involved in objectionable interference with any existing standard broadcast station, nor any application pending before the Commission not consolidated in this proceeding. A variety of measurements taken by Maricopa and a study made by it of these measurements and of measurements made on a test transmitter by Maryvale pursuant to Commission authorization of August 25, 1961, not challenged in either respect by Broadcast Bureau, demonstrate that the 25-mv/m contour of the proposed Maricopa operation will not overlap the 25-mv/m contour of station KHAT, Phoenix, Ariz., operating on 1480 kc. The location of the KHAT 25-mv/m contour in the area pertinent to overlap was de-

¹The issues as framed for the three-party hearing included several respecting Barc's application, one calling for a determination of areas and populations to receive primary service from these respective proposals and the availability of other primary services thereto, as well as the standard comparative issue with respect to the three applications and the general conclusory issue. The dismissal of Barc's application eliminated from this hearing those issues raised with respect thereto. Inasmuch as the then remaining applicants Maricopa and Maryvale proposed substantially identical technical facilities and coverages, Barc's dismissal mooted the issues framed by the Commission calling for a comparison of the respective areas and populations proposed by the three original applications. Maryvale's dismissal eliminated from hearing the standard comparative issue required to choose among competing applicants.

terminated upon the basis of an analysis by Maricopa's consulting engineer of its measurements on KHAT; for purposes of such measurements and study, five radials were measured on the bearings 50°, 80°, 110°, 140°, and 170°. Analysis of such measurements showed that KHAT's 25-mv/m contour lies at a distance of about 2.5 miles from its transmitter. To determine the conductivity of the path between the proposed Maricopa transmitter and the KHAT 25-mv/m contour, Maricopa's consulting engineer analyzed measurements made (a) by Maricopa on station KBUZ in Mesa, Ariz., whose transmitter is located approximately 2½ miles from Maricopa's proposed site in the direction of the KHAT 25-mv/m contour; and (b) by Maryvale on a test transmitter at such time as it was a party to the instant proceeding. The test transmitter was operated from a site close to that of Maricopa (approximately 1 mile east of the proposed Maricopa site) and the measurements so taken traversed the same terrain involved between Maricopa and KHAT. (See Maricopa's exhibit 2.)

5. On the indicated basis of KHAT's 25-mv/m contour lying about 2.5 miles from its transmitter, the average ground conductivity between the Maricopa site and the KHAT 25-mv/m contour would have to be 25 millimhos per meter or greater in order for the 25-mv/m contours of the two operations to overlap. On the basis of his analysis of the available measurement data, Maricopa's consulting engineer concluded that the maximum conductivity anywhere along the pertinent path is not in excess of 15 millimhos per meter, and actually appears to be 10 millimhos per meter or less. Even assuming the highest conductivity of 15 millimhos per meter, there will be no overlap between the proposed Maricopa and KHAT 25-mv/m contours. (See pp. 3 and 4 of Maricopa's exhibit 2.)

6. As reflected in the affidavits submitted by Maricopa and Maryvale,² neither has paid or promised to pay any consideration whatsoever, directly or indirectly, in connection with the dismissal of Barc's application.

CONCLUSIONS

1. Maricopa was found by the Commission to be qualified in all respects except as indicated in paragraph 2, supra.

2. On the basis of the findings (see pars. 4 and 5, supra) it must be concluded that the issue on the overlap question (47 CFR 3.37) has been resolved in favor of Maricopa in that the 25-mv/m contour of its subject proposal does not overlap the 25-mv/m contour of station KHAT, Phoenix, Ariz. The location of the KHAT 25-mv/m contour, as well as the conductivity of the ground in the area between the Maricopa and KHAT sites, upon which this conclusion rests, were convincingly established by substantial measurements taken on KHAT, as well as on station KBUZ (Mesa, Ariz.) and on Maryvale's test transmitter. It follows that 47 CFR 3.37 is not contravened.

3. Dismissal of the applications of Barc and Maryvale rendered moot all issues except those set forth in paragraph 2 of the preliminary statement. The agreement between Maricopa and Maryvale, leading

² See Maricopa's exhibit 1 and Maryvale's exhibit 1.

to the dismissal of Maryvale's application, has been found to be consistent with the public interest.

4. In view of all of the matters set forth above, it is ultimately concluded that a grant of Maricopa's application will serve the public interest, convenience, and necessity.

Accordingly, *It is ordered*, This 4th day of December 1961, that unless an appeal to the Commission from this initial decision is taken by any of the parties, or the Commission reviews the initial decision on its own motion in accordance with the provisions of 47 CFR 1.153, the application of Maricopa County Broadcasters, Inc., for a construction permit for a new standard broadcast station to operate on the frequency 1510 kc (class II), daytime only, with a power of 10 kw, at Mesa, Ariz., *Is granted*.

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CORNBELT BROADCASTING Co. (WHOW), ET AL., DOCKETS Nos. 8261, 14020, 14021, AND 14023 :

Application of Cornbelt Broadcasting Co. (WHOW) for increase in power ; granted.

Applications of Loves Park Broadcasting Co. and Radio Joliet for new standard broadcast stations ; granted.

Application of Lake Zurich Broadcasting Co. ; denied for default.

Motion to strike exceptions of Village Broadcasting Co. (WOPA) ; granted.

Section 1.154(a) of the Commission's rules and regulations.—Sufficiency of exceptions ; discussed.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON 25, D.C.

In re Applications of CORNBELT BROADCASTING Co. (WHOW), CLINTON, ILL. ANGELO JOSEPH SALVI, TR/AS LOVES PARK BROADCASTING Co., LOVES PARK, ILL. LAKE ZURICH BROADCASTING Co., LAKE ZURICH, ILL. RAY F. KNOCHEL, HAROLD B. ROTHROCK, DEAN G. HILL, AND JOHN W. EVANS, D/B AS RADIO JOLIET, JOLIET, ILL. For Construction Permits	}	Docket No. 8261 File No. BMP-2562 Docket No. 14020 File No. BP-13755 Docket No. 14021 File No. BP-13825 Docket No. 14023 File No. BP-13858
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MEMORANDUM OPINION AND ORDER

(Adopted February 6, 1962)

BY THE COMMISSION: COMMISSIONER LEE DISSENTING AND VOTING FOR ORAL ARGUMENT; COMMISSIONER CROSS ABSENT.

1. The Commission has before it (a) the initial decision of Hearing Examiner Annie Neal Huntting, released September 22, 1961 (FCC 61D-145) ; (b) exceptions, and request for oral argument thereon, to that part of the initial decision which granted the application of Radio Joliet, filed on October 10, 1961, by Richard Goodman, Mason A. Loundy, Egmont Sonderling, and WOPA, Inc., a partnership doing business as Village Broadcasting Co., licensee of radio station WOPA, Oak Park, Ill., a party respondent in the above designated proceeding; and (c) a motion to strike exceptions to the initial decision, filed on October 24, 1961, by Radio Joliet. The initial decision herein looked toward granting each of the above-captioned applications with the exception of the application of Lake Zurich Broadcasting Co. which was denied for default.

2. WOPA's exceptions 1 and 3 refer to the failure of the examiner to make findings and conclusions to the effect that Radio Joliet's application was not timely filed with respect to the application of WOPA,

and for that reason Radio Joliet's application must be dismissed. In our order of designation, issue 4 stated that the application of Radio Joliet was not timely filed with the application of WOPA, and that interference questions were to be determined on the basis of WOPA being considered an existing station. The examiner made findings on that basis, and the exceptions by WOPA make no reference to error by the examiner other than failure to make findings and conclusions regarding matters which were not included in the designated issues.

3. WOPA's exceptions 2, 4, and 5 are bare assertions that the examiner erred in concluding that the need for the new service proposed by Radio Joliet outweighs the need for the service to be lost by reason of interference; that public interest, convenience, and necessity would be served by a grant of the application of Radio Joliet; and that the decretal clause should include grant of the application of Radio Joliet. None of WOPA's exceptions conform to the requirements of 47 CFR 1.154(a) in that they do not point out with particularity alleged errors in the decision, nor do they contain specific references to the page or pages of the transcript of hearing on which the exceptions are based. For the above reasons the motion to strike WOPA's exceptions is granted, and WOPA's request for oral argument thereon is accordingly denied.

4. We have carefully reviewed the initial decision and find the examiner's findings and conclusions to be accurate, complete, and fully supported by the record.

Accordingly, *It is ordered*, This 6th day of February 1962, that the motion to strike WOPA's exceptions to the initial decision herein, filed by Radio Joliet on October 24, 1961, *Is granted*; and the exceptions filed by WOPA on October 10, 1961, *Are stricken*; and

It is further ordered, That the initial decision of Hearing Examiner Annie Neal Hunting, released herein on September 22, 1961, *Is made effective*.

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON 25, D.C.

<p>In re Applications of CORNBELT BROADCASTING Co. (WHOW), CLINTON, ILL. ANGELO JOSEPH SALVI, TR/AS LOVES PARK BROADCASTING Co., LOVES PARK, ILL. LAKE ZURICH BROADCASTING Co., LAKE ZU- RICH, ILL. RAY F. KNOCHEL, HAROLD B. ROTHROCK, DEAN G. HILL, AND JOHN W. EVANS, D/B AS RADIO JOLIET, JOLIET, ILL. For Construction Permits</p>	}	<p>Docket No. 8261 File No. BMP-2562 Docket No. 14020 File No. BP-13755 Docket No. 14021 File No. BP-13825 Docket No. 14023 File No. BP-13858</p>
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APPEARANCES

Benedict P. Cottone, for Cornbelt Broadcasting Co.; *Maurice R. Barnes*, for Loves Park Broadcasting Co.; *Andrew G. Haley* and *Michael H. Bader*, for Lake Zurich Broadcasting Co.; *John W. Evans* and *Harold B. Rothrock*, for Radio Joliet; *Francis X. McDonough* and *Thomas S. Sullivan*, for Storz Broadcasting Co. (KOMA); *Jack P. Blume* and *Joseph J. Kessler*, for WKBW, Inc. (WKBW); *Robert L. Heald*, for Waukesha Broadcasting Co., Inc. (WAUX); *A. Harry Becker*, for Village Broadcasting Co. (WOPA); and *Morton L. Berfield*, for Chief, Broadcast Bureau, Federal Communications Commission.

INITIAL DECISION OF HEARING EXAMINER ANNIE NEAL HUNTING

(Adopted September 21, 1961)

PRELIMINARY STATEMENT

1. The above-captioned applications were designated for consolidated hearing by order (FCC 61-425) released April 5, 1961.¹ Except as to certain designated issues, each applicant was found to be legally, technically, financially, and otherwise qualified to construct and operate its proposed station. The issues designated are:

(1) To determine the areas and populations which would receive primary service from the proposals of Loves Park Broadcasting Co., Lake Zurich Broadcasting Co., WWGE Broadcasting Co., and Radio Joliet, and the availability of other primary service to such areas and populations.

¹The application of John P. Rohrs, tr/as WWGE Broadcasting Co., for a station in Wheaton, Ill., was originally involved in this proceeding. However, the Rohrs application was dismissed by the Chief Hearing Examiner in an order (FCC 61M-724) released Apr. 24, 1961. Each of the remaining applicants filed an affidavit stating that no consideration had been paid to Rohrs in connection with his dismissal.

(2) To determine the areas and populations which may be expected to gain or lose primary service from the proposed operation of station WHOW, and the availability of other primary service to such areas and populations.

(3) To determine the nature and extent of the interference, if any, that each of the instant proposals would cause to and receive from each other, and the interference that each of the instant proposals would receive from all other existing standard broadcast stations, the areas and populations affected thereby, and the availability of other primary service to the areas and populations affected by interference from any of the instant proposals.

(4) To determine whether the following proposals would cause objectionable interference to the existing stations or the proposal of WOPA indicated below, or any other existing standard broadcast stations, and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other primary service to such areas and populations.

<i>Proposal</i>	<i>Existing stations</i>
BP-13825, Lake Zurich Broadcasting Co.	KOMA, Oklahoma City, Okla. WKBW, Buffalo, N.Y. WHOW, Clinton, Ill. WAUX, Waukesha, Wis.
BP-13858, Radio Joliet...	WAUX, Waukesha, Wis. WOPA, Oak Park, Ill. BP-12303, WOPA (with which Radio Joliet was not timely filed).

(5) To determine whether the interference received by each instant proposal from any of the other proposals herein and any existing stations would affect more than 10 percent of the population within its normally protected primary service area in contravention of section 3.28(c) (3) of the Commission rules, and, if so, whether circumstances exist which would warrant a waiver of said section.

(6) To determine whether the instant proposal of Lake Zurich Broadcasting Co. is in compliance with section 3.24(g) of the Commission rules concerning population within the 1,000-mv/m contour, and, if not, whether circumstances exist which would warrant a waiver of said section.

(7) To determine whether the proposal of Lake Zurich Broadcasting Co. complies with section 3.187 of the Commission's rules concerning daytime radiation limitations.

(8) To determine, in the light of section 307(b) of the Communications Act of 1934, as amended, which of the instant proposals would best provide a fair, efficient, and equitable distribution of radio service.

(9) To determine, in the light of the evidence adduced pursuant to the foregoing issues, which of the instant applications should be granted.

2. Storz Broadcasting Co., WKBW, Inc.; Cornbelt Broadcasting Co.; Waukesha Broadcasting Co., Inc.; and Richard Goodman, Mason Loundy, Egmont Sonderling, and WOPA, Inc., a partnership d/b as Village Broadcasting Co., licensees of stations KOMA, WKBW, WHOW, WAUX, and WOPA, respectively, were made parties-respondent to the proceeding. Prehearing conferences were held on April 27 and May 19, 1961. The hearing was held June 29, 1961; and, upon the submission on July 10, 1961, of a revised engineering exhibit by Cornbelt Broadcasting Co., the record was closed on July 20, 1961.

3. Lake Zurich Broadcasting Co. (Lake Zurich) indicated, at the hearing, that it would not prosecute its present application,² and pre-

² Lake Zurich's petition for leave to amend its engineering proposal had been denied by order of the hearing examiner (FCC 61M-891) released May 22, 1961. On May 26, 1961, Lake Zurich filed a petition for review of the hearing examiner's ruling. This petition was still pending at the time of the hearing. The Lake Zurich petition for review was subsequently denied by Commission order (FCC 61-948) released Aug. 3, 1961.

sented no evidence. In view of Lake Zurich's default, its application must be denied.

4. Proposed findings of fact and conclusions were filed by the Commission's Broadcast Bureau. Reply comments were filed by Village Broadcasting Co., licensee of station WOPA.

FINDINGS OF FACT

Cornbelt Broadcasting Co. (WHOW)

5. Cornbelt proposes to increase the daytime power of station WHOW, Clinton, Ill., a class II station, from 1 kw to 5 kw, and to continue to operate with a power of 1 kw during critical hours (2 hours after sunrise and 2 hours before sunset) on 1520 kc.

6. Clinton (population 7,355)³ is located about 45 miles northeast of Springfield, Ill., and is not part of any urbanized area. Station WHOW is the only standard broadcast station in Clinton.

7. The present and proposed coverage of station WHOW includes the following areas and populations:⁴

Contour (mv/m)	Present		Proposed	
	Area (sq. miles)	Population	Area (sq. miles)	Population
2.0.....	1,520	171,261	3,220	252,995
0.5 ¹	5,150	270,878	10,600	535,157

¹ No interference from existing stations received within this contour.

8. Under the proposed operation, a net gain in primary service would accrue to WHOW amounting to 264,279 persons and an area of 5,450 square miles without loss of existing WHOW service to any one person. All of the gain area receives primary service (0.5 mv/m or greater) from 4 stations, and there are a minimum of 7 and a maximum of 14 services available to various portions of the area.

9. Apart from interference to the Lake Zurich proposal, which need not be considered herein, the only other interference to an applicant in this proceeding is that which would be imposed on the operation proposed by Loves Park to the extent indicated herein below. Loves Park has agreed to accept such interference.

Loves Park Broadcasting Co.

10. Loves Park proposes a new class II standard broadcast station in Loves Park, Ill., to operate on 1520 kc, with a power of 500 w, daytime only. Loves Park (population 9,086) is contiguous to the northern part of the city of Rockford, Ill., and is part of the Rockford urbanized area, which has a population of 171,681 persons. There is no standard broadcast station in Loves Park.

³ All population figures used herein are based upon the 1960 U.S. census.

⁴ On the basis of antenna radiation and ground conductivities indicated by figs. 8 and M-3, respectively, of the rules.

11. The proposed Loves Park coverage would include the following areas and populations if no other proposals were granted : ⁵

Contour (mv/m)	Area (sq. miles)	Population
2.0.....	606	256,966
0.5.....	2,042	310,930

12. No interference would be received by the Loves Park proposal from any existing station, but cochannel interference would be received from the WHOW proposal. Interference from proposed WHOW would involve 4,631 persons in an area of 242 square miles, representing 1.49 percent of the population and 11.84 percent of the area within the predicted 0.5-mv/m normally protected contour of Loves Park. Under the latter condition, Loves Park would serve 306,299 persons in 1,800 square miles. All of the area in the proposed interference zone receives primary service (0.5 mv/m or greater) from 9 stations, and there are a minimum of 14 and a maximum of 18 services available to the various portions of the area.

13. Loves Park's proposed station would provide primary service (2.0 mv/m or greater) to the following communities which receive service from other stations as follows :

Community	Population	Other services
Loves Park, Ill.....	9,086	8
Rockford, Ill.....	126,706	7
South Beloit, Ill.....	3,781	9
Belvidere, Ill.....	11,223	8
Beloit, Wis.....	32,846	9

14. All of the service area of the proposed station receives primary service (0.5 mv/m or greater) from 9 stations, and there are a minimum of 14 and a maximum of 22 services available to the various portions of the area.

Radio Joliet

15. Radio Joliet proposes a new class II standard broadcast station in Joliet, Ill., to operate on 1510 kc, with a power of 500 w, daytime only.

16. The city of Joliet (population 66,780) is located about 30 miles southwest of the center of Chicago in the Joliet urbanized area (population 116,585). Station WJOL (1340 kc, 250 w, U) is the only standard broadcast station located in Joliet.

17. The coverage of the proposed Joliet station would include the following areas and populations: ⁶

⁵ On the basis of ground conductivities indicated by fig. M-3 of the rules and an effective field unattenuated at 1 mile of 140 mv/m.

⁶ Based on an effective field unattenuated at 1 mile of 127.5 mv/m for a power of 500 w and ground conductivities shown on fig. M-3 of the rules.

Contour (mv/m)	Area (sq. miles)	Population
2.0.....	1, 088	306, 807
0.5.....	3, 283	452, 000

Primary service (2.0 mv/m or greater) would be provided to a portion of the Chicago urbanized area and the following communities:

Community :	Population
Romeoville Village, Ill.....	3, 574
Wilmington, Ill.....	4, 210
Lemont Village, Ill.....	3, 397
Coal City, Ill.....	2, 852

All of the urban and rural areas, including the above-mentioned communities, receive primary service from 10 stations.

18. Interference would be received only from station WOPA; however, such interference would occur in the Chicago urbanized area and beyond the proposed 2-mv/m contour. Thus, no loss of service would occur inasmuch as a signal of at least 2 mv/m is required for primary service in an urbanized area.

19. Adjacent-channel interference would be caused to station WOPA, Oak Park, Ill. (1490 kc, 1 kw-LS, 250 w, U),⁷ and cochannel interference to station WAUX, Waukesha, Wis. (1510 kc, 10 kw, DA-D, U). No other existing station would be caused interference. The interference to station WOPA would amount to 1,219 persons in an area of 6.1 square miles, representing less than 0.3 percent of both the estimated population (489,227 persons) and area (2,203 square miles) within the normally protected 0.5-mv/m contour of station WOPA. The interference to station WAUX would amount to 1,860 persons in an area of 15.8 square miles, or less than 0.1 percent of the population (3,089,929 persons) and 1.3 percent of the area (1,261 square miles) within the normally protected 0.5-mv/m contour of station WAUX. All of both interference areas receive primary service (0.5 mv/m or greater) from 10 stations.

CONCLUSIONS

1. The Lake Zurich application must be denied for default. The issues for determination with respect to the remaining applications relate to (1) compliance with section 3.28(c) of the Commission's rules regarding interference received, (2) interference to other proposals, and (3) interference to be caused by the Radio Joliet proposal to stations WOPA, Oak Park, Ill., and WAUX, Waukesha, Wis.

Compliance with section 3.28(c)

2. The Cornbelt, Loves Park, and Radio Joliet applications comply with the provisions of section 3.28(c) of the Commission's rules,⁸ since none would receive interference to more than 10 percent of the population within its normally protected primary service area.

⁷ Grant of the WOPA application for a construction permit (file No. BP-12303, docket No. 13023) became effective June 28, 1961, pursuant to sec. 1.153 of the rules.

⁸ Sec. 3.28(c) was redesignated 3.28(d), effective July 5, 1961.

Interference to other proposals in the consolidated proceeding

3. Loves Park has agreed to accept the interference from the Cornbelt proposal, and the two proposals are not mutually exclusive. Likewise, these proposals are not mutually exclusive with the Radio Joliet proposal.

Interference to existing stations

4. The Radio Joliet proposal would cause interference only to stations WOPA, Oak Park, Ill., and WAUX, Waukesha, Wis. The adjacent-channel interference to station WOPA would involve 1,219 persons in an area of 6.1 square miles, constituting less than 0.3 percent of both the population and area within the 0.5-mv/m normally protected contour of station WOPA. The cochannel interference to station WAUX would affect 1,860 persons in 15.8 square miles, representing less than 0.1 percent of the population and 1.3 percent of the area within the normally protected contour of station WAUX. In each instance, all of the interference areas receive service from 10 stations.

5. In view of the limited interference which would be caused to WOPA and WAUX and the multiplicity of other services available in the interference areas as compared with the desirability of a second local outlet in Joliet, a community of 66,780 persons, and the bringing of an additional primary service to 452,000 persons, it is concluded, in accordance with section 3.24(b) of the rules, that the need for the new service proposed by Radio Joliet outweighs the need for the service to be lost by reason of interference.

Public interest, convenience, and necessity

6. In view of the foregoing, it is concluded that public interest, convenience, and necessity would be served by grant of the applications of Cornbelt Broadcasting Co., Loves Park Broadcasting Co., and Radio Joliet; and that the application of Lake Zurich Broadcasting Co. should be denied for default.

ORDER

Accordingly, *It is ordered*, This 21st day of September 1961, that unless an appeal to the Commission from this initial decision is taken by any of the parties, or the Commission reviews the initial decision on its own motion in accordance with the provisions of section 1.153 of the rules, the application of Lake Zurich Broadcasting Co. for a construction permit for a new standard broadcast station to operate on 1520 kc, with a power of 1 kw, daytime only, at Lake Zurich, Ill., *Is denied* for default; and that the following applications *Are granted*: the application of Cornbelt Broadcasting Co. for a construction permit to increase the daytime power of station WHOW, Clinton, Ill., from 1 kw to 5 kw and to continue to operate with a power of 1 kw during critical hours (2 hours after sunrise and 2 hours before sunset) on 1520 kc, and the applications for construction permits for new class II stations by Loves Park Broadcasting Co., in Loves Park, Ill. (1520 kc, 500 w, daytime), and Radio Joliet, in Joliet, Ill. (1510 kc, 500 w, daytime).

CLINTON BROADCASTING CORP. (KROS), DOCKETS NOS. 13492 ET AL.:

Applications of Clinton Broadcasting Corp. (KROS); Illinois Broadcasting Co. (WSOY); WJOL, Inc. (WJOL); and Radio Milwaukee, Inc. (WRIT) (all class IV stations) for increases in daytime power from 250 w to 1 kw; granted.

Section 3.37 of the rules.—Minimum separation between stations.

Section 3.24(b) of the rules.—Interference to existing stations.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON 25, D.C.

<p>In re Applications of CLINTON BROADCASTING CORP. (KROS), CLINTON, IOWA ILLINOIS BROADCASTING CO. (WSOY), DECATUR, ILL. WJOL, INC. (WJOL), JOLIET, ILL. RADIO MILWAUKEE, INC. (WRIT), MILWAUKEE, WIS. For Construction Permits</p>	}	<p>Docket No. 13492 File No. BP-12665 Docket No. 13494 File No. BP-12916 Docket No. 13495 File No. BP-13054 Docket No. 13497 File No. BP-13158</p>
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APPEARANCES

Eugene L. Burke, on behalf of Clinton Broadcasting Corp. (KROS); *Arthur H. Schroeder* (Miller & Schroeder), on behalf of Illinois Broadcasting Co. (WSOY); *Harry J. Ockershausen* (Dempsey & Koplovitz), on behalf of WJOL, Inc. (WJOL); *David S. Stevens*, *William N. Early*, and *Robert W. Coll* (McKenna & Wilkinson), on behalf of Radio Milwaukee, Inc. (WRIT); *Alfred C. Cordon, Jr.*, *Thomas H. Wall*, and *Keith E. Putbresi* (Dow, Lohnes & Albertson), on behalf of respondent Bedford Broadcasting Co. (WBIW); *Samuel Miller* and *Mark E. Fields*, on behalf of respondent Jackson County Broadcasting Co. (KMAQ); *A. L. Stein*, on behalf of respondent Egyptian Broadcasting Co., "Voice of Egypt" (WJPF); *Eliot C. Lovett*, on behalf of respondent Audrain Broadcasting Corp. (KXEO); *Benito Gaguine* and *Lauren A. Colby* (Fly, Shuebruk, Blume & Gaguine), on behalf of respondent Peoria Broadcasting Co. (WAAP); *Ben C. Fisher* (Fisher, Wayland, Duvall & Southmayd), on behalf of respondent WKAN Radio, Inc. (WKAN); *Norman E. Jorgensen* and *Louis Schwartz* (Krieger & Jorgensen), on behalf of respondent WHBL, Inc. (WHBL); and *Robert J. Rawson*, *Joseph D. Greene*, and *Arthur J. Schissel*, on behalf of the Chief of the Broadcast Bureau, Federal Communications Commission.

32 F.C.C.

DECISION

(Adopted February 6, 1962)

BY THE COMMISSION: CHAIRMAN MINOW NOT PARTICIPATING; COMMISSIONER LEE DISSENTING; COMMISSIONER CROSS ABSENT.

1. The Commission has before it for consideration the initial decision¹ and all other matters of record herein. Oral argument was held on January 18, 1962, on exceptions filed by respondent Jackson County Broadcasting Co., licensee of standard broadcast station KMAQ, 1320 kc, Maquoketa, Iowa. With a single modification not critical to the determination herein, the initial decision is adopted in its entirety.²

2. Each of the applicants is an unlimited class IV standard broadcast station (1340 kc) seeking to increase daytime power from 250 w to 1,000 w. The examiner would grant all four applications despite violation by KROS and WJOL of section 3.37 of the Commission's rules.³ With respect to each of the offending proposals, he found, on the basis of uncontroverted testimony of record, that the kind of interference sought to be prevented by the rule is not likely to occur.⁴ On the foregoing basis and on the basis of considerations arising under the Commission's policy of encouraging class IV stations to increase power to 1,000 w, he concluded that section 3.37 should be waived.⁵ In the latter connection he pointed out that denials to KROS and WJOL would substantially diminish their present service areas and present a question as to whether any of the applications should be granted.⁶

3. At oral argument, KMAQ acknowledged that the pertinent findings of the examiner are correct, and conceded that it would not be adversely affected by a grant to KROS.⁷ It contended, however, that KROS could reduce its radiation by inserting a resistor in its tower, and thereby eliminate the offending overlap of KROS' 2-mv/m contour with the 25-mv/m contour of KMAQ. Such a reduction could not be effected without a loss to KROS of populations presently

¹ Initial decision of Hearing Examiner David I. Kraushaar, released June 28, 1961 (FCC 61D-96).

² Where the 2-mv/m contour of one station overlaps the 25-mv/m contour of another station, any resultant cross-modulation would not necessarily be confined to the overlap area. The last phrase of the examiner's second paragraph of conclusions—"in the pertinent overlap areas involved"—which might be construed to the contrary, is therefore deleted.

³ Sec. 3.37, as pertinent herein, deals with overlap between the 2-mv/m or 25-mv/m contour of an applicant, and the 25-mv/m or 2-mv/m contour of a station operating on a frequency 10 kc or 20 kc removed from the frequency applied for.

⁴ The situation is thus distinguishable from that in *Jeanette Broadcasting Co.*, 29 FCC 44, 19 R.R. 480 (1960), a case relied upon by KMAQ. There the transmitter sites were only 15.64 miles apart (here they are 26.8 miles apart as to KROS and 29.8 as to WJOL) and it was specifically concluded that "there would exist a danger of severe deterioration of service to many listeners." *Courier-Times, Inc.*, 23 FCC 329, 14 R.R. 817 (1957), another case relied upon by KMAQ, is no longer wholly reflective of Commission policy: see *The Bridgeport Broadcasting Co.*, 28 FCC 464, 18 R.R. 285 (1960).

⁵ WKAN Radio, Inc., licensee of standard broadcast station WKAN, 1320 kc, Kankakee, Ill., has withdrawn earlier objections to a grant of the WJOL proposal.

⁶ KROS' interference would increase from 1,732 persons (1.7 percent) to 16,672 persons (16.2 percent); for WJOL the increase would be from 26,350 (10 percent) to 120,538 (45.8 percent).

⁷ KMAQ would lose 360 potential listeners to KROS, and its total interference would be increased to 5 percent of population. Neither KMAQ nor any other station bases objections on interference grounds, and there is no question but what the need for the services proposed outweighs the need for the service to be lost by reason of interference. See sec. 3.24(b) of the Commission's rules.

served. Although in another case, there might be some warrant for requiring the applicant to reduce its radiation, there is none here where there appears to be no likelihood of cross-modulation occurring. Thus, with nothing to be gained (except literal compliance with a rule whose purpose would not be violated), and with efficiency and populations to be lost, the position advanced by KMAQ must be rejected.⁸

Accordingly, *It is ordered*, This 6th day of February 1962, that the applications of Clinton Broadcasting Corp. (KROS); Illinois Broadcasting Co. (WSOY); WJOL, Inc. (WJOL); and Radio Milwaukee, Inc. (WRIT), for daytime power increases from 250 w to 1,000 w on the frequency 1340 kc, *Are granted*, subject to the condition:

That permittee shall accept such interference as may be imposed by other existing 250-w class IV stations in the event such stations are subsequently authorized to increase power to 1,000 w.

⁸ Of KMAQ's four exceptions, the first three are denied as calling for findings of no decisional significance. The fourth exception calls for a denial of the KROS application, and it is denied for the reasons set forth herein.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON 25, D.C.

<p>In re Applications of CLINTON BROADCASTING CORP. (KROS), CLIN- TON, IOWA ILLINOIS BROADCASTING Co. (WSOY), DE- CATUR, ILL. WJOL, INC. (WJOL), JOLIET, ILL. RADIO MILWAUKEE, INC. (WRIT), MIL- WAUKEE, WIS. For Construction Permits</p>	}	<p>Docket No. 13492 File No. BP-12665 Docket No. 13494 File No. BP-12916 Docket No. 13495 File No. BP-13054 Docket No. 13497 File No. BP-13158</p>
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APPEARANCES

Eugene L. Burke, on behalf of Clinton Broadcasting Corp. (KROS); *Arthur H. Schroeder* (Miller & Schroeder), on behalf of Illinois Broadcasting Co. (WSOY); *Harry J. Ockershausen* (Dempsey & Koplovitz), on behalf of WJOL, Inc. (WJOL); *David S. Stevens*, *William N. Early*, and *Robert W. Coll* (McKenna & Wilkinson), on behalf of Radio Milwaukee, Inc. (WRIT); *Alfred C. Cordon, Jr.*, *Thomas H. Wall*, and *Keith E. Putbrese* (Dow, Lohnes & Albertson), on behalf of respondent Bedford Broadcasting Co. (WBIW); *Samuel Miller* and *Mark E. Fields*, on behalf of respondent Jackson County Broadcasting Co. (KMAQ); *A. L. Stein*, on behalf of respondent Egyptian Broadcasting Co., "Voice of Egypt" (WJPF); *Eliot C. Lovett*, on behalf of respondent Audrain Broadcasting Corp. (KXEO); *Benito Gaguine* and *Lauren A. Colby* (Fly, Shuebruk, Blume & Gaguine), on behalf of respondent Peoria Broadcasting Co. (WAAP); *Ben C. Fisher* (Fisher, Wayland, Duvall & Southmayd), on behalf of respondent WKAN Radio, Inc. (WKAN); *Norman E. Jorgensen* and *Louis Schwartz* (Krieger & Jorgensen), on behalf of respondent WHBL, Inc. (WHBL); and *Robert J. Rawson*, *Joseph D. Greene*, and *Arthur J. Schissel*, on behalf of the Chief of the Broadcast Bureau, Federal Communications Commission.

INITIAL DECISION OF HEARING EXAMINER DAVID I. KRAUSHAAR

(Adopted June 27, 1961)

PRELIMINARY STATEMENT

1. All the above applicants are licensees of class IV standard broadcast stations. All seek authorizations, in accord with current Com-
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mission allocation policy,¹ for an increase in daytime power from 250 w, unlimited, to 1 kw during the daytime while continuing nighttime operation with 250 w power, nondirectional, on the frequency 1340 kc. Originally, the four applications herein were consolidated and designated for hearing with four other applications² by order of the Commission released May 10, 1960 (FCC 60-489), due to mutual interference problems, objectionable interference involving existing broadcast facilities, violation of the "10 percent" rule (47 CFR 3.28(c)(3)), and violations (by applicants KROS and WJOL) of 47 CFR 3.37.³ Except for the specified issues—which need not be reproduced for present purposes—the designation order found that each of the applicants herein is basically qualified to construct and operate as proposed.

2. Prehearing conferences in the original consolidated proceeding were held June 8, October 14, and October 26, 1960. Procedural agreements were reached therein governing the future conduct of the hearing, which are hereby incorporated by reference to the transcripts and to orders of the hearing examiner released June 9 (FCC 60M-996), September 28 (FCC 60M-1636), October 5 (FCC 60M-1710), and October 27, 1960 (FCC 60M-1833), respectively. The hearing was held and concluded November 10, 1960, and the record duly closed. All evidentiary presentations were made in written form under oath, no witnesses were called, no rebuttal evidence was proffered, and the right to cross-examine was expressly waived. The parties, with the exception of the Commission's Broadcast Bureau, were directed to file proposed findings of fact and conclusions of law by January 10, 1961, and were authorized to file reply briefs by January 27.

3. On January 18, 1961, the Commission's Broadcast Bureau filed a motion requesting that the record be reopened and a "posthearing conference be set for January 24, 1961 * * * for the purpose of discussing the best means of expediting grant of the applications in this proceeding." The motion was granted by order of the presiding officer released January 19, 1961 (FCC 61M-94), and the conference requested was held January 24. During the conference the Bureau counsel suggested that the Bureau would prepare and file jointly with all applicants (i.e., all in the original consolidated proceeding) a petition for reconsideration and grant of all without further hearing, declaring that the Bureau "hoped to avoid the necessity of pro-

¹ See report and order released by the Commission on May 4, 1961, FCC 61-601 ("In the Matter of Amendment of the Commission's Rules and Regulations to effect certain changes therein with respect to the implementation of a more expeditious procedure in the processing of applications filed by existing class IV stations requesting an increase in power"), which cites pertinent rule changes; and see 47 CFR 3.28(c)(3), as revised effective Jan. 23, 1961, which was likewise designed to implement the new policy.

² Booth Broadcasting Co. (WIOU), docket No. 13491; Truth Radio Corp. (WTRC), docket No. 13493; Tri-City Radio Corp. (WLBC), docket No. 13496; and Stevens-Wismer Broadcasting, Inc. (WLAV), docket No. 13498. The first three of these applications were severed from this proceeding by order of the hearing examiner and an initial decision looking toward their grant was released May 29, 1961 (FCC 61D-75). The last-named application was granted out of hearing by the Commission itself (memorandum opinion and order, FCC 60-1358, released Nov. 18, 1960).

³ There are reciprocal agreements among all the applicants herein to accept any interference resulting from the mutual power increases sought by them (Tr. 228, 242). In addition, there is similar agreement between applicant WJOL and station WTRC, the latter a grantee under a prior initial decision (see footnote 2, supra). Likewise, there is agreement between applicant WSOY and respondents WJPF, KXEO, and WBIW, all class IV stations, to accept interference under the WSOY proposal (Tr. 227).

longing any grant of the applications, and perhaps obtain a grant of these applications by simple order of the Commission without the necessity for filing scads of proposed findings, and having the examiner prepare a thick initial decision" (Tr. 261).⁴ A procedure was evolved agreeable to all parties, with the approval of the hearing examiner, whereby the Bureau undertook to file such a joint petition within 2 weeks (Tr. 281). The petition was filed February 10, 1961, and the examiner likewise released an order on January 23, 1961, deferring further proceedings before him pending disposition of such petition by the Commission (FCC 61M-126). On May 12, 1961, the Commission released a memorandum opinion and order (FCC 61-620) which denied the joint petition, declaring, among other matters not here pertinent, that such action was being taken "In view of KMAQ's opposition, together with the fact that the joint petition presents for resolution questions which can best be decided in the light of findings of fact based upon the record developed at the hearing * * *." The KMAQ opposition to which the Commission referred was directed *exclusively* to the matter of violation of 47 CFR 3.37 by the proposals in one of the four applications listed in the caption hereof (KROS).

4. On May 15, 1961, the hearing examiner issued a new order (FCC 61M-853) reopening the record and scheduling a further posthearing conference for May 23 to consider the impact of the Commission's May 12 memorandum opinion and order. It was generally understood and agreed during this conference, the hearing examiner concurring and ruling in accord therewith, that the revision of 47 CFR 3.28(c)(3), which became effective January 23, 1961, shortly *before* the joint petition to which reference has been made was filed, now exempts class IV stations applying for a power increase above 250 w during the daytime from the 10-percent limitation of the rule. Consequently, the issue (numbered 11 in the original order of designation) is now moot as to *all* the proposals considered herein. As the hearing examiner conceived the problem in the present case—all parties present during the May 23 conference assenting—the matter of violations by the KROS and WJOL proposals of 47 CFR 3.37⁵ was the sole bar to grant of the applications considered herein. The examiner was satisfied, however, from his review of the record, that justification for waivers of the rule has been demonstrated by the evidence. He therefore requested that proposed findings of fact and conclusions of law be submitted limited solely to the facts considered crucial to this determination, in which the purpose of the policy of 47 CFR 3.37 would be discussed and in which the impact a denial of the KROS and WJOL applications would have upon the Commission's current policy to permit and encourage class IV existing standard

⁴ During a posthearing conference of May 23, 1961 (see text, par. 4), all parties, including the Broadcast Bureau, agreed that "scads of proposed findings" were no longer required, in view of the changed Commission policy regarding increases in daytime power for class IV existing standard broadcast facilities.

⁵ Providing that "A license will not be granted for a station on a frequency ± 30 kc from that of another station if the area enclosed by the 25-mv/m groundwave contours of the two stations overlap, nor will a license be granted for the operation of a station on a frequency ± 20 kc or ± 10 kc from the frequency of another station if the area enclosed by the 25-mv/m groundwave contour of either one overlaps the area enclosed by the 2-mv/m groundwave contour of the other."

broadcast stations to increase daytime power would also be evaluated. The examiner, in addition, requested that applicant WJOL submit an up-to-date affidavit by someone having knowledge of the facts concerning any interference complaints involving cross-modulation with station WKAN, Kankakee, Ill.⁶ Such affidavit having been submitted (WJOL exhibit 5) on May 24, 1961, the record was once again closed by order of the examiner released May 26, 1961 (FCC 61M-923). In accordance with the examiner's request, proposed findings of fact and conclusions of law have been duly submitted by the Commission's Broadcast Bureau and applicant Clinton Broadcasting Corp. (KROS) on June 14. Reply findings on behalf of respondent Jackson County Broadcasting Co. (KMAQ) were filed on June 22.

FINDINGS OF FACT

5. The following findings proposed by the Commission's Broadcast Bureau, with appropriate editorial revisions, are hereby adopted as in accord with the record:

6. On the basis of field strength measurements taken on stations KROS and KMAQ on radial paths toward the transmitter site of each station during December 1959 and again at the same measurement locations in July 1960, the proposed 2-mv/m contour of class IV station KROS would overlap the 25-mv/m contour of class III station KMAQ for a distance of 3.75 miles. The proposed 25-mv/m contour would not overlap the 2-mv/m contour of station KMAQ. The transmitter sites of the two stations are separated by 26.8 miles. Under the fact situation here presented, taking into account the separation of the two stations and the signal strength involved, the likelihood of any serious external or internal cross-modulation effects is so remote as to be virtually nonexistent.⁷

7. On the basis of field strength measurements taken on stations WJOL and WKAN on radial paths toward the transmitter site of each station, the present 2-mv/m contour of station WJOL does not overlap the 25-mv/m contour of station WKAN, but the proposed WJOL 2-mv/m contour would overlap the 25-mv/m contour of station WKAN for a distance of nearly 5 miles. The 2-mv/m contour of station WKAN overlaps the present and proposed 25-mv/m contour of station WJOL for a distance of 5 and 7 miles, respectively. The transmitter sites of the two stations are separated by 29.8 miles. According to the president of station WJOL, no complaints of cross-modulation have been received since he became associated with station WJOL on January 1, 1955, until the present time (May 23, 1961), and no interference has been encountered in monitoring station WJOL in the vicinity of the WJOL transmitter site and throughout the area within the 25-mv/m contour.

⁶ Station WKAN, with which applicant WJOL is involved in 2-mv/m-25-mv/m overlap in violation of 47 CFR 3.37, originally objected to interference it would receive under the WJOL proposal. However, it has withdrawn its objection (Tr. 171).

⁷ Based upon the un rebutted opinion of the expert engineering consultant employed by applicant KROS. There is nothing inherently incredible in this opinion considering the distance separating the two transmitter sites in particular, and the fact, officially noted, that neither Clinton nor Maquoketa are in an urbanized area. The opinion is accepted therefore as valid.

8. Station KROS now receives interference from existing stations WJOL and KMAQ affecting 1,732 persons in an area of 71 square miles, representing 1.7 percent of the population (102,931 persons) and 2.8 percent of the area (2,521 square miles) within the 0.5-mv/m normally protected contour of station KROS. If the applications of KROS and WJOL are denied and the applications of WRIT and WSOY to increase power are granted, station KROS would suffer additional objectionable interference from the proposals of WRIT and WSOY in an area of 390 square miles including 14,940 persons, or an increase of 15.1 percent and 14.5 percent of the area and population, respectively, within the 0.5-mv/m normally protected contour of station KROS. In the aggregate, KROS would suffer interference in an area totaling 461 square miles including 16,672 persons representing 17.9 percent of the area and 16.2 percent of the population normally served by station KROS in the absence of interference. A minimum of 11 and a maximum of 17 stations provide primary service (0.5 mv/m or greater) to the additional area of interference.

9. Station WJOL now receives interference from existing stations in an area of 1,130 square miles including 26,350 persons, representing 39.2 percent of the area (2,890 square miles) and 10 percent of the population (263,397 persons) within the 0.5-mv/m normally protected contour of station WJOL. If the applications of WJOL and KROS are denied and the applications of WRIT and WSOY to increase power are granted, station WJOL would receive additional objectionable interference from the proposals of WRIT and WSOY in a combined area of 857 square miles in which there are 94,188 persons, or an increase of 29.8 percent of the area and 35.8 percent of the population within the 0.5-mv/m normally protected contour of station WJOL. The total amount of interference from existing stations and the proposed operation of WRIT and WSOY would amount to 1,987 square miles including 120,538 persons representing 69 percent of the area and 45.8 percent of the population normally served by station WJOL in the absence of interference. Ten stations provide service to all of the additional interference area.

10. The following additional findings proposed by applicant Clinton Broadcasting Corp. (KROS), with suitable editorial revisions, are likewise adopted:

11. The area wherein the proposed KROS 2-mv/m contour will overlap the station KMAQ 25-mv/m contour encompasses approximately 6 square miles and the approximate population therein is 95. This is a rural area with houses widely separated. Clinton and Maquoketa are in different counties and neither is in an urbanized area.⁸

12. To be considered now are the benefits expected to flow from a grant of all of the applications herein in conformity with the Commission's new policy of raising power ceilings for class IV stations. For such action would result in providing new primary service in different segments of the country to an aggregate total of 571,177 persons in 2,093 square miles without causing any loss of such service

⁸ See also footnote 7, supra.

to populations presently served by the applicants. This is graphically portrayed in the following tabular breakdown :

Proposal	Location	Gained	
		Population	Area
KROS.....	Clinton, Iowa.....	39,353	897
WSOY.....	Decatur, Ill.....	83,863	797
WJOL.....	Joliet, Ill.....	353,099	50
WRIT.....	Milwaukee, Wis.....	94,862	349
Total.....		571,177	2,093

13. The proposals concededly will cause additional adjacent-channel objectionable interference to existing class III stations in areas aggregating 511.5 square miles affecting 25,643 persons. The following table summarizes the population losses to be suffered by each existing standard broadcast station thus affected within the pertinent 0.5-uv/m normally protected contours:

Proposal causing interference	Station receiving interference	Existing interference (percent)	Proposed additional interference (percent)	Total interference (percent)
KROS.....	KMAQ.....	1,830 (2.3)	2,190 (2.7)	4,020 (5.0)
WSOY.....	WAAP.....	2,562 (0.73)	5,516 (1.58)	8,078 (2.31)
WJOL.....	WKAN.....	15,939 (5.03)	2,846 (0.9)	18,785 (5.93)
WRIT.....	WHBL.....	62,007 (20.3)	15,091 (5.3)	77,098 (25.6)

Each area of interference receives service from at least 10 other standard broadcast stations.

CONCLUSIONS

1. As remarked in the preliminary statement above (see par. 4), the only obstacle to grant of all four applications is the admitted violation by KROS and WJOL of rule 3.37. The Commission has determined prior to designation for hearing that each of the applicants is legally, technically, financially, and otherwise qualified, except as indicated in the issues. The so-called "10 percent" issue has been rendered moot by the revision, effective January 23, 1961, of 47 CFR 3.28(c) (3), which exempts existing class IV standard broadcast stations seeking a power ceiling of up to 1 kw, daytime, from this limitation. All four applicants fit into the exempt category and the only purpose of the present proceeding is to determine whether their stations, all of which are class IV, should be permitted to increase power to 1 kw during the daytime. The new exemption must be construed in the light of the end result the Commission seeks to accomplish by the change in its rules, to wit, to enable and *encourage* a power increase up to 1 kw, daytime, *on a nationwide basis* by *all* existing class IV standard broadcast stations in order thereby to "make possible a fuller realization of the benefits to the nationwide class IV local radio service

and the public * * *." (See report and order in docket No. 13756, released December 19, 1960, FCC 60-1516, Mimeo 97508, par. 4.)

2. The evidence in this proceeding discloses that the policy thus enunciated, to enable and encourage existing Class IV stations to increase power, collides with Commission policy prescribed in rule 3.37, the overlap rule. However, this policy clash is not, as the facts also demonstrate, of a serious character,⁹ and it is in the public interest therefore that the rigors of rule 3.37 be modified by the grant of waivers. For the design of rule 3.37 to protect against "Interference to listeners resulting from assignments on adjacent channels in the standard broadcast band" where such interference results from "non-selectivity of receivers, external cross-modulation and internal cross-modulation" when the transmitters of such adjacent channel stations are relatively close together, the stations providing the same "general urban coverage,"¹⁰ will not be offended by waiving the rule in the present instance, it having been demonstrated without controverting evidence that the kind of interference the rule seeks to prevent either has not occurred over a long period of time during which overlap has existed (in the case of WJOL) or is not likely to occur (in the case of both KROS and WJOL). Conjoined with this circumstance and perhaps even more persuasive of waiver is the deleterious impact the denial of the KROS and WJOL applications would have upon the public these stations serve and upon the Commission's new allocation policy with respect to class IV stations. For denial while granting the applications of WSOY and WRIT would eviscerate the present service areas of these two stations (especially WJOL's), and denial of all four applications would operate to undermine Commission policy encouraging daytime power increases of class IV stations. No persuasive reason is suggested by the record for treating KROS differently from WJOL, or vice versa, the evidence in respect to the proposals of both these applicants showing equally the unlikelihood that cross-modulation will occur. On balance, therefore, it is concluded that the public benefit to be derived from broadened standard broadcast service by the present class IV applicants to an aggregate of 571,177 persons in 2,093 square miles in different segments of the country distinctly outweighs the remote possibility of detriment resulting from nonselectivity of receivers, external or internal cross-modulation, in the pertinent overlap areas involved.

3. Losses to existing class III stations due to additional adjacent-channel interference the subject proposals will cause will not be severe. Here, too, it is concluded that no persuasive public-interest reason has been demonstrated for denying the applications. On the contrary, considering that a grant of all four applicants will result in substantially extended service by class IV stations, that all interference areas

⁹ It may be urged that where two legislative or regulatory policies come into conflict, the policy established later in time should prevail. But no such artificial axiom need be applied under the circumstances of this case in any event. For what is here postulated may stand on its own peculiar facts without serving to establish any principle of general application.

¹⁰ See report and order in docket No. 8089, Federal Register, June 14, 1947, pp. 3893, 3894, amending the Standards of Good Engineering Practice by the inclusion of the substance of what is now rule 3.37. See also report and order adopted May 19, 1955 (12 R.R. 1525, 1527), transferring the standard into the Commission's rules as rule 3.37.

are presently served by a multiplicity of stations and that grant will further the Commission's policy to encourage such increases in daytime power by class IV stations, while a denial of any of the applications would operate to thwart, impede, or undermine that policy, it must be concluded that the public interest in granting the applications outweighs the disadvantages individual class III stations on adjacent channels will suffer by virtue of increased interference.

4. It is concluded ultimately that the public interest, convenience, and necessity will be served best herein by granting all four applications.

ORDER

Accordingly, *It is ordered*, This 27th day of June 1961, that unless an appeal to the Commission from this initial decision is taken by any of the parties, or the Commission reviews the initial decision on its own motion under 47 CFR 1.153, the applications of Clinton Broadcasting Corp. (KROS); Illinois Broadcasting Co. (WSOY); WJOL, Inc. (WJOL); and Radio Milwaukee, Inc. (WRIT), for daytime power increases from 250 w to 1 kw on the frequency 1340 kc, in behalf of station KROS, Clinton, Iowa; station WSOY, Decatur, Ill.; station WJOL, Joliet, Ill.; and station WRIT, Milwaukee, Wis., respectively, *Are granted*, subject to the condition:

That permittees shall accept such interference as may be imposed by other existing 250-w class IV stations in the event such stations are subsequently authorized to increase power to 1,000 w.

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SUNSHINE STATE BROADCASTING Co., INC. (WBRD), DOCKET No. 14014:

Application of WBRD, Bradenton, Fla., for construction permit for night-time operation; denied.

Section 3.28(d)(3) of the rules.—Ten percent rule.

Section 1.154(c).—Oral argument untimely requested.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON 25, D.C.

In re Application of SUNSHINE STATE BROADCASTING Co., INC. } (WBRD), BRADENTON, FLA. } For Construction Permit	Docket No. 14014 File No. BP-13440
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APPEARANCES

Lenore G. Ehrig, on behalf of Sunshine State Broadcasting Co., Inc. (WBRD); and *Kenneth A. Finch*, on behalf of the Chief, Broadcast Bureau, Federal Communications Commission.

DECISION

(Adopted February 6, 1962)

BY THE COMMISSION: COMMISSIONERS HYDE AND BARTLEY NOT PARTICIPATING; COMMISSIONER CROSS ABSENT.

1. Sunshine State Broadcasting Co., Inc., licensee of class III standard broadcast station WBRD, operating on 1420 kc with power of 1 kw, daytime only, using a directional antenna, at Bradenton, Fla., seeks authorization to extend the facilities of WBRD so as to operate at night with a power of 500 w, nondirectional. The initial decision (FCC 61D-120), released August 2, 1961, by Hearing Examiner Basil P. Cooper, would grant the application. Although WBRD and the Commission's Broadcast Bureau filed exceptions, oral argument was not timely requested.

2. The primary question presented for decision is whether the addition of a second nighttime service in Bradenton warrants a waiver of 47 CFR 3.28(d) to permit a grant of the above-entitled application even though the proposed operation would receive interference affecting 49.7 percent of the population within its 4-mv/m normally protected nighttime contour.

3. The hearing examiner's findings are not materially in dispute, and, as corrected, revised, or commented upon in this decision and in the rulings on exceptions appearing in the appendix attached hereto, they are adopted.

4. WBRD is one of two standard broadcast stations in Bradenton, Fla. (population 19,380); the other station, WTRL, operates un-

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limited time on the frequency 1490 kc with power of 250 w. Because of received interference, station WBRD's proposed nighttime operation would fail to serve 80.7 percent of the 155 square mile area and 49.7 percent of the 72,753 persons encompassed within its nighttime normally protected 4.0-mv/m contour, resulting in a net gain of 30 square miles and 36,575 persons. The gain area would include 2,146 persons in an area of 8.3 square miles who reside outside the city limits of Bradenton and who do not presently receive a Bradenton nighttime service. The business and industrial areas of Bradenton would be served by a second primary service¹ as would 1,583 persons in the city of Oneca, Fla., both presently being served by station WTRL, Bradenton. Seven existing standard broadcast stations provide primary service to portions of WBRD's proposed 20.7-mv/m nighttime interference-free contour, and there is a minimum of one and a maximum of four such services available at any point within that contour. Operating as proposed, WBRD would not cause interference nighttime to the operation of any existing station.

5. Although WBRD concedes that its proposal is not in accord with the requirements of 47 CFR 3.28(d)(3)² and does not come within any of its exceptions, it urges that the Commission find that the circumstances of this case provide adequate grounds for waiver of the rule. In support of its request for waiver, WBRD asserts that the only frequency which might suitably be used for nighttime operation in Bradenton is 1420 kc because of existing allocations and the Commission's rules. Other grounds urged for waiver are as follows: that Bradenton is a rapidly growing community; that it is in the hurricane belt and that a second Bradenton service is necessary for hurricane and civil defense warnings; that the residents of Bradenton should have a choice of local broadcast service, particularly since the existing local station is not affiliated with a network, whereas WBRD is; that a second primary service will be provided to 3,521 persons; and that WBRD's proposal will not cause interference to any existing or proposed broadcast station.

6. To warrant waiver of section 3.28(d)(3), special circumstances must be shown to exist indicating that the public interest requires such exceptional action. We do not find such circumstances present in WBRD's proposal. While it is indicated that WBRD proposes the only frequency usable at night in Bradenton, this provides no sound reason for waiving the rule in the face of the serious degradation of 1420 kc which would result from the inefficient operation proposed and which the rule is designed to prevent. Cf. *WPET, Inc.*,

¹The initial decision contains no finding in this regard. However, WBRD exhibit No. 1 at p. 5 indicates that WBRD's nighttime proposal would provide a second primary service to the Bradenton business and industrial areas. While said exhibit furnishes no population count in such areas, it is reasonable to find that 10 percent of the city's population (1,938 persons) reside therein. Accordingly, the finding is made that WBRD would provide a second primary service to 1,938 persons in Bradenton.

²This rule provides in pertinent part as follows:

"(d) Upon showing that a need exists * * * [a] station may be assigned * * * even though interference will be received within its normally protected contour: *Provided:* * * * (3) the interference received does not affect more than 10 percent of the population in the proposed station's normally protected primary service area; however, in the event that the nighttime interference received by a proposed class II or III station would exceed this amount, then an assignment may be made if the proposed station would provide either a standard broadcast nighttime facility or if 25 percent or more of the nighttime primary service area of the proposed station is without primary nighttime service * * *."

31 FCC 882, 884 (1961).³ Nor do the other reasons advanced in support of waiver demonstrate any such compelling need for WBRD's proposed nighttime service as would justify waiver where 49.7 percent of the population within the normally protected nighttime contour of WBRD would fail to receive service therefrom because of interference received.⁴ The fact that existing stations would not receive objectionable interference from WBRD's proposal is, of course, no reason for waiving the rule. Important as the needs may be for hurricane and civil defense warnings and for a choice in local broadcast service, they do not overcome the inefficiency shown to exist in WBRD's nighttime proposal. Similarly, that a second primary service would be provided to 3,521 persons is not a sufficient reason for waiving the rule in the light of the magnitude of the departure from the provisions of the rule. It is to be noted in this connection that none of the gain area is without primary service, there being a minimum of one and a maximum of four such services available at all points in such area. Regarding provision of a network affiliated service to Bradenton nighttime, no reason is shown why this fact should support waiver of the rule.

7. In further support of its contention that waiver should be granted, WBRD points to the following decisions: *B. J. Parrish*, 30 FCC 490, 21 R.R. 483 (1961); *Monocacy Broadcasting Company*, 29 FCC 301, 19 R.R. 137, aff'd sub. nom. *Price Broadcasters, Inc. v. FCC*, — U.S. App. D.C. —, — F. 2d —, 21 R.R. 2122 (1961); and *Hartford County Broadcasting Co.*, 31 FCC 498 (1961). These cases, however, are not controlling here. *Parrish* involved waiver of the "10 percent" rule, despite 57.8 percent nighttime interference, in unique circumstances where international agreements severely restricted the use of the requested frequency in the United States and made a more efficient use of that frequency virtually impossible. In the facts of the *Monocacy* case the Commission expressed the view that a full-time operation was preferable to a daytime-only operation, but there, unlike the instant case, no question of waiver of the "10 percent" rule was involved. In *Hartford*, the applicant proposed to bring a first local nighttime service to the community involved.

8. A request for oral argument on the exceptions to the initial decision was filed by WBRD on December 11, 1961, to which an opposition was filed by the Commission's Broadcast Bureau. Recognizing that its request is untimely, WBRD urges that it was confident in the correctness of the initial decision and did not believe it would be proper for it to have precipitated an oral argument based upon its sole exception and the exceptions of the Broadcast Bureau. The request will be denied. Inasmuch as the request was made only after

³ The Broadcast Bureau argues that full weight should not be given to the conclusionary statement that the frequency proposed is the only one usable at night in Bradenton, for no detailed showing in support thereof was submitted. While a more detailed showing should have been developed at the hearing to avoid duplication of effort, the opinion evidence was uncontroverted, and, as the conclusion drawn by the applicant is a reasonable one, we accept it. Cf. *Suburban Broadcasting Co., Inc.*, 31 FCC 16, 18 (1961); *Alkima Broadcasting Company*, FCC 61-1462, released Dec. 19, 1961.

⁴ Operating as proposed, WBRD would fail to serve, because of received interference, 80.7 percent of the area within its nighttime normally protected contour. It is unnecessary to discuss this question, to which issue No. 3 appears to be directed, for the application will be denied on "10 percent" rule grounds.

public notice of the Commission's preliminary instructions as to disposition of the proceeding, and inconsistently with our rules, WBRD is deemed to have waived oral argument.⁵

9. In view of the foregoing, it is concluded that a grant of WBRD's request to operate nighttime would not serve the public interest.

Accordingly, *It is ordered*, This 6th day of February 1962, that the request of Sunshine State Broadcasting Co., Inc. (WBRD), for waiver of section 3.28(d)(3) of the Commission's rules *Is denied*; and that the application of Sunshine State Broadcasting Co., Inc. (WBRD), for a construction permit to operate at night with a power of 500 w on the frequency 1420 kc *Is denied*.

APPENDIX

RULINGS ON EXCEPTIONS TO THE INITIAL DECISION

Exceptions of WBRD

<i>Exception No.</i>	<i>Ruling</i>
1-----	Granted to the extent indicated in par. 4 of the decision.

Exceptions of Broadcast Bureau

1, 3, 4-----	Denied. See par. 6 of decision.
2-----	Granted. The statement in finding 21 concerning ownership of television sets in the Bradenton area is speculative and conjectural.
5, 6-----	Granted as reflected in the decision.

⁵ See sec. 1.154(c) of the Commission's rules and regulations.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON 25, D.C.

In re Application of SUNSHINE STATE BROADCASTING Co., INC. (WBRD), BRADENTON, FLA. For Construction Permit	}	Docket No. 14014 File No. BP-13440
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APPEARANCES

Lenore G. Ehrig, on behalf of Sunshine State Broadcasting Co., Inc. (WBRD); and *Kenneth A. Finch*, on behalf of the Chief, Broadcast Bureau, Federal Communications Commission.

INITIAL DECISION OF HEARING EXAMINER BASIL P. COOPER

(Adopted July 31, 1961)

PRELIMINARY STATEMENT

1. In this proceeding, Sunshine State Broadcasting Co., Inc., requests a construction permit to extend the facilities of station WBRD, Bradenton, Fla., so as to authorize nondirectional operation at night with power of 500 w. Station WBRD now operates on the frequency 1420 kc with a power of 1 kw, daytime only, using a directional antenna.

2. The Commission by order dated March 29, 1961, released April 5, 1961, found that except as indicated by the issues, the applicant was legally, technically, financially, and otherwise qualified to construct and operate the station as proposed, but designated the application for hearing upon the following issues:

1. To determine the areas and populations which may be expected to gain or lose primary service from the proposed operation of station WBRD, and the availability of other primary service to such areas and populations.

2. To determine whether nighttime interference received from station WBRL, Columbus, Ga., would affect more than 10 percent of the population within the normally protected primary service area of the instant proposal of WBRD, in contravention of section 3.28(c)(3) of the Commission rules, and, if so, whether circumstances exist which would warrant a waiver of said section.

3. To determine whether, because of interference received, the proposed nighttime operation would be consistent with section 3.24(b) of the rules.

4. To determine, in the light of the evidence adduced pursuant to the foregoing issues, whether a grant of the instant application would serve the public interest, convenience, and necessity.

3. A prehearing conference was held on April 28, 1961. The evidentiary hearing was held on June 8, 1961, and the record closed on that date. Proposed findings of fact and conclusions of law were sub-

mitted on behalf of the applicant on July 17, 1961, and the Chief, Broadcast Bureau, on July 21, 1961.

4. All population figures hereinafter used are based on the 1960 Census of Population. The FCC conductivity map, figure M-3 of the Commission's rules, was used to determine the conductivities for the proposed nighttime operation. For other stations providing nighttime primary service, proof-of-performance measurements were used in determining the conductivities out to the last measuring point. Thereafter the conductivities shown by figure M-3 of the Commission's rules were used.

FINDINGS OF FACT

Engineering

5. Station WBRD now operates on the frequency 1420 kc with power of 1 kw using a directional antenna. The proposal now under consideration requests authority to operate at night with a power of 500 w employing a nondirectional antenna. The site for the proposed nighttime operation is approximately 1 mile west of the present site and closer to Bradenton. Thus operating as proposed, the station will have two different sites and two different coverage areas. Operating as proposed, station WBRD would become a class III-B station as defined by section 3.182(a) of the Commission's rules.

6. Based on an effective field of 126.6 mv/m (unattenuated at 1 mile) for the proposed 500-w nondirectional nighttime operation and on the ground conductivity values as shown by figure M-3 of the Commission's rules and the 1960 U.S. Census of Population, station WBRD operating as proposed would serve within its pertinent contours areas and populations as follows:

Contour (mv/m)	Area (sq. miles)	Population
4.....	155	72,753
Interference received.....	125	36,178
Interference free (20.7).....	30	36,575
1st local service.....	8.3	2,146
Gray area gain.....	4.34	1,583
3d primary service.....	3.96	563

The extent of the interference which station WBRD would receive encompasses 80.7 percent of the area and 49.7 percent of the population within the normally protected 4-mv/m nighttime contour of the proposed station.

7. The proposed nighttime interference-free contour of station WBRD encompasses all of the city of Bradenton, except for an area estimated to contain three or four houses in the northwest section of the city. Operating as proposed, station WBRD will serve 99 percent or more of the population of the city of Bradenton. Operating as proposed, the nighttime contour of station WBRD would also encompass most of the population of the city of Palmetto, Fla., adjacent on the north to the city limits of Bradenton. The station will serve 2,146 persons who reside outside the city limits of Bradenton who do not now receive primary service from station WTRL. These persons

reside in an area of 8.3 square miles situated generally to the south and southeast of the city of Bradenton.

8. As there will be no change in the daytime operation, no person or area now receiving service from WBRD will lose such service as a result of the grant of this application.

9. All of the area to be gained receives primary service of 2 mv/m or better from station WSUN, St. Petersburg, Fla. Station WTRL, Bradenton, and station WLCY, St. Petersburg, serve between 50 percent and 75 percent of the gained area, whereas station WFLA, Tampa, serves less than 25 percent of the gained area. There is a minimum of one and a maximum of four such services available to any part of the gained area.

10. Stations WSUN and WLCY, St. Petersburg, and WTRL, Bradenton, provide primary service of 2 mv/m or better to the city of Bradenton.

11. A study made by the applicant's consulting engineer gives consideration to the possible effect the proposed WBRD nighttime operation would have on stations now operating daytime only on 1420 kc which might conceivably propose to operate at night and which are sufficiently close to that part of the United States which would be affected. The study described the following:

Station	Location	Night limit for existing station		Night limit for proposed WBRD (mv/m)
		Station	Limit (mv/m)	
WDBF.....	Delray Beach, Fla.....	WRBL.....	15.4	5.8
WSTN.....	St. Augustine, Fla.....	WRBL.....	23.7	5.68
WPEH.....	Louisville, Ga.....	WRBL.....	23.2	3.76
WAVO.....	Avondale Estates, Ga.....	WRBL.....	6.74	3.28
		WKSR.....	7.16 RSS 9.85	
WLET.....	Toccoa, Ga.....	WKSR.....	13.62	2.94
WACT.....	Tuscaloosa, Ala.....	WQBC.....	5.91	2.91
		WKSR.....	5.99 RSS 8.43	
WSUH.....	Oxford, Miss.....	WQBC.....	6.1	2.12
KGNB.....	New Braunfels, Tex.....	XEH.....	5.99	.86

From the above, it may be seen that each of the existing daytime stations considered, in the event of proposed nighttime operation on 1420 kc, would receive a nighttime limitation from at least one existing nighttime operation which would be in excess of twice the limitation which would be produced by the proposed operation of WBRD, and thus proposed WBRD would not be a contributor to the RSS at any of the specified locations under Commission rules.

12. A further study by applicant's engineering consultant on the 1420-kc channel in areas where nighttime operation of new stations might be affected considered representative points covering the gulf coast and Atlantic coast from New Orleans, La. (point A), around the Florida coastline up to the South Carolina State line (point L). The points considered along this coastal periphery, the nighttime limit from WRBL at each such location, and the individual limit from proposed WBRD are shown in the table below:

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Point	Station	Night limit for existing station limit (mv/m)	Night limit for proposed WBRD (mv/m)
A	WRBL	9.75	3.11
B	WRBL	14.1	3.7
C	WRBL	22.4	4.37
D	WRBL	24.9	5.44
E	WRBL	27.3	5.55
F	WRBL	28.1	6.0
G	WRBL	16.49	5.91
H	WRBL	13.8	5.53
I	WRBL	15.4	5.8
J	WRBL	23.7	5.68
K	WRBL	23.6	4.56
L	WRBL	19.75	3.7

Station WRBL is the main factor in producing the nighttime limit at all of the listed points. In all cases, the limitation from the proposal of station WBRD is less than 50 percent of the limit produced by WRBL and would, therefore, not enter the RSS limitation. Based on the foregoing studies and examination of the 1420-kc allocation map, applicant's engineer was of the opinion that the proposed operation of station WBRD would not enter into the RSS limitation of any likely proposed nighttime operation within areas extending in a westerly direction from the proposed site to a distance of approximately 1,120 miles, approximately 600 miles in a northwesterly direction, 380 miles in a northern direction, and in a southern direction including all of the State of Florida. Also, proposed WBRD would not cause interference nighttime to the operation of any existing station.

13. Applicant's radio engineer states that a study of existing allocations and the present Commission allocation rules establishes that there is no class II or class IV frequency suitable for use in Bradenton, Fla., and that there is no regional frequency other than 1420 kc which might possibly be used for nighttime operation at Bradenton, Fla.

Nonengineering Facts

14. The city of Bradenton is located on the west coast of Florida on the Manatee River. Bradenton is approximately 20 miles south of the center of the city of St. Petersburg and approximately 41 miles south of the city of Tampa. Bradenton is separated from the Tampa-St. Petersburg area by Tampa Bay.

15. Bradenton (population 19,380 persons) is the county seat and largest city in Manatee County, Fla. In the area contiguous to Bradenton, there is a population of 66,452 persons. The Metropolitan Bradenton area contains approximately 95 percent of the 69,168 persons residing in Manatee County. Only two rural districts of the county, namely, Paris Division (population 1,635 persons) and Myakka Division (population 1,081 persons), are not contiguous to Bradenton.

16. Bradenton is governed by a mayor and a five-member city council. In addition to the city officials, the city is the county seat of Manatee County and the site of the governing activities for that county. The U.S. Census of Business for 1958 indicates that there

are 368 establishments in Bradenton having total sales of \$49,622,000. In Bradenton, there are 3 elementary schools with enrollments of 955, 551, and 1,009 pupils, respectively; a junior high school with an enrollment of 1,328 pupils; and a senior high school with an enrollment of 1,191 pupils. Manatee Junior College, approximately 4 miles from the center of the city, has a student enrollment of 1,171 persons. In addition to the schools in the city, there are numerous schools in the area adjacent thereto. In Bradenton, there are 52 churches and numerous social, civic, religious, and fraternal organizations and activities.

17. There are two local radio stations in Bradenton; namely, station WTRL, a class IV station operating on the frequency 1490 kc with power of 250 w, unlimited time, and station WBRD which now operates daytime only and requests authority to operate at night with a power of 500 w. There is one newspaper published in Bradenton, namely, the Herald, which has a circulation of 12,566.

18. The Bradenton area is in the heart of what is known as the "hurricane belt" on the Gulf of Mexico. In past years, this area has suffered property damage as a result of hurricanes. In September 1960, Hurricane Donna caused severe damage in the area. During Hurricane Donna, station WTRL, the other radio station in Bradenton, suffered a power failure and was forced to cease broadcasting when its emergency power supply also became inoperative. Station WBRD, however, was able to remain on the air until its normal sign-off time, approximately 6:30 p.m. However, when station WTRL went off the air because of the power failure, there was no local station available to provide important instructions from civil defense and other agencies.

19. Bradenton is the center of a diversified farming area, the major agricultural products including tomatoes, citrus fruit, celery, and flowers. The cattle industry is also becoming a major enterprise, producing both beef cattle and dairy products.

20. Frost warnings are an important service to the Bradenton area as a large segment of its economy is devoted to agricultural pursuits. Station WBRD regularly broadcasts frost warnings to farmers and citrus growers. This service, however, is now restricted to daytime hours. If the present application is granted, station WBRD will be able to reach at night rural areas in Manatee County which cannot now be served by station WTRL operating with 250 w power at night.

21. Bradenton is a resort area and also contains a large portion of people who have retired. It is estimated that approximately one-third of the Manatee County residents make their homes in trailers. A survey indicates that a large portion of these people of retirement age suffer eye trouble, a fact which possibly influences the low percentage of television set ownership in the Bradenton area. These people depend, in the main, on general delivery for their mail and on radio as their first means of communication of news and entertainment.

22. The city of Bradenton is growing rapidly. In 1950, it had a population of 13,604 persons and an assessed valuation of \$20,657,745, and by 1960 a population of 19,380 persons and an assessed valuation

of \$56,771,110. In the fall of 1960, a proposal was submitted to the residents of the Bradenton area looking toward the annexation of certain nearby communities and areas. This proposal was fiercely contested. While the annexation proposal was defeated, many issues associated thereto, the advantages and disadvantages of annexation, the costs of extending city services and related matters, created intense interest among the residents of the city of Bradenton and the area contiguous thereto.

CONCLUSIONS

1. In this proceeding, Sunshine State Broadcasting Co., Inc., requests a construction permit to extend the facilities of station WBRD, Bradenton, Fla., so as to authorize nondirectional operation at night with power of 500 w. Station WBRD now operates on the frequency 1420 kc with power of 1 kw, daytime only, using a directional antenna.

2. The Commission has found that except as indicated by the issues, the applicant is legally, technically, financially, and otherwise qualified to construct and operate the station as proposed.

3. Station WBRD operating as proposed will not cause objectionable interference to any existing or proposed station. A grant of this application will not deprive any area or any person of any broadcast service now being received.

4. Station WBRD operating as proposed will serve within its 20.7-mv/m interference-free nighttime contour an area of 30 square miles within which there is a population of 36,575 persons. The station, however, will receive objectionable interference affecting 80.7 percent of the area and 49.7 percent of the population residing within its normally protected 4-mv/m nighttime contour. Because of the extent of this interference, the questions presented for resolution are whether the facts herein warrant a waiver of the 10-percent provision of section 3.28(c)(3) of the Commission's rules (issue 2), and whether because of the interference received the proposed operation would be consistent with the requirements of section 3.24(b) of the Commission's rules (issue 3).

5. Station WBRD operating as proposed will provide a second outlet for local expression at night to the city of Bradenton, the first Bradenton service to an area of 8.3 square miles and a population of 2,146 persons who do not now receive service from station WTRL, and a second primary service to 4.34 square miles and a population of 1,583 persons. Two St. Petersburg stations and station WTRL, Bradenton, provide primary service of 2 mv/m or better to the city of Bradenton. Station WFLA, Tampa, serves less than 25 percent of the area to be gained.

6. Bradenton is a resort area in which there is a large portion of retired "senior citizens," many of whom reside in trailers. These people, in particular, have a need for a second radio outlet from which they can receive warnings and instructions on those occasions when the area is visited by a hurricane. The need for the nighttime authorization of a second Bradenton station was clearly demonstrated when Hurricane Donna visited this area in September 1960 and caused

sufficient damage to station WTRL to force it off the air during a part of the emergency.

7. An engineering study discloses that the grant of the WBRD application would not be a factor in denying the application of any station now operating on 1420 kc which might conceivably request authority to operate at night on that frequency. Furthermore, a study indicates that the proposed operation of station WBRD will not cause objectionable interference at night to any existing station and will not enter into the RSS limitation of any locally proposed nighttime operation of any station which might possibly be proposed. Because of existing allocations and Commission rules, there is no class II or class IV frequency suitable for use in Bradenton, Fla., and no regional frequency other than 1420 kc which might possibly be used for nighttime operation in Bradenton.

8. That a full-time operation is to be preferred to a daytime-only station was clearly indicated by the Commission in *The Monocacy Broadcasting Company et al.*, docket No. 12477 et al., 28 FCC 301 at 305 and 306, 19 R.R. 137 at 138c and 138d, wherein the Commission granted the Gettysburg application despite the finding that the city of Frederick which would have been served by a competing applicant "has a greater daytime need than has Gettysburg."

9. In summary, station WBRD operating as proposed will not deprive any area or any person of any broadcast service now received or which may be received from any station likely to be proposed by any applicant on the frequency 1420 kc. The application under consideration is the only proposal under which it is now feasible to bring a second local nighttime service to the city of Bradenton and the area contiguous thereto. The many "senior citizens" residing in this area which is in the heart of the hurricane belt of the Gulf of Mexico have a definite need for a second local radio outlet at night. These facts, when considered in the light of the areas and populations to be served, lead to the conclusion that the utilization of the frequency 1420 kc by station WBRD at Bradenton, Fla., in the manner proposed, warrants a waiver of the 10-percent provision of section 3.28(c)(3) of the Commission's rules and the finding that the proposed nighttime operation will be consistent with the requirements of section 3.24(b) of the Commission's rules. It follows, therefore, that the proposed operation will serve the public interest, convenience, and necessity.

It is ordered, This the 31st day of July 1961, that unless an appeal to the Commission from this initial decision is taken by any of the parties, or the Commission reviews the initial decision on its own motion in accordance with the provisions of section 1.153 of the rules, the application of Sunshine State Broadcasting Co., Inc., for a construction permit to authorize station WBRD, Bradenton, Fla., which now operates on the frequency 1420 kc with power of 1 kw, daytime only, using a directional antenna, to operate on the same frequency at night with power of 500 w using a nondirectional antenna, *Be and the same is hereby granted.*

WILLIAM S. HALPERN AND LOUIS N. SELTZER, D/B AS GREATER PRINCETON BROADCASTING CO. ET AL., DOCKETS NOS. 13718 ET AL.

Applications of Nassau Broadcasting Co. for a construction permit for a new standard broadcast station at Princeton, N.J., and Norwalk Broadcasting Co., Inc. (WNLK), for a change of its facilities at Norwalk, Conn.; granted.

Applications of William S. Halpern and Louis N. Seltzer, d/b as Greater Princeton Broadcasting Co., and The New Jersey Broadcasting Co.; denied.

Section 307(b) of the act.—Mooted.

Section 3.28(d) of the rules.—Waived.

Standard comparative issue.—Discussed.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON 25, D.C.

In re Applications of WILLIAM S. HALPERN AND LOUIS N. SELTZER, D/B AS GREATER PRINCETON BROADCASTING Co., PRINCETON, N.J. THE NEW JERSEY BROADCASTING Co., PRINCETON, N.J. NASSAU BROADCASTING Co., PRINCETON, N.J. NORWALK BROADCASTING Co., INC. (WNLK), NORWALK, CONN. For Construction Permits	}	Docket No. 13718 File No. BP-12412 Docket No. 13724 File No. BP-12829 Docket No. 13727 File No. BP-13064 Docket No. 13732 File No. BP-13444
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APPEARANCES

Philip Bergson, Morton H. Wilner, and Marshal L. Cole, on behalf of Greater Princeton Broadcasting Co.; Vincent A. Pepper, Thomas G. Shack, and Donald P. MacDonald, on behalf of The New Jersey Broadcasting Co.; Robert M. Booth, Jr., and John L. Tierney, on behalf of Nassau Broadcasting Co.; Frank Stollenwerck and Lauren A. Colby, on behalf of Norwalk Broadcasting Co., Inc. (WNLK); and Earl C. Walck and Vergil Tacy, on behalf of the Chief of the Broadcast Bureau, Federal Communications Commission.

DECISION

(Adopted February 6, 1962)

BY THE COMMISSION: COMMISSIONERS HYDE AND BARTLEY NOT PARTICIPATING; COMMISSIONER CROSS ABSENT.

1. This proceeding involves four applications for class III standard broadcast facilities on 1350 kc. William S. Halpern and Louis N. Seltzer, d/b as Greater Princeton Broadcasting Co. (Greater Princeton); The New Jersey Broadcasting Co. (New Jersey); and Nassau

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Broadcasting Co. (Nassau) each requests a new station (5 kw, DA-2, unlimited time) in Princeton, N.J., and only one of these three may be granted. Norwalk Broadcasting Co., Inc., seeks an increase in daytime power for station WNLK, Norwalk, Conn., from 500 w to 1 kw.

2. Hearing Examiner David I. Kraushaar, in an initial decision released May 9, 1961 (FCC 61D-64), proposes to grant the application of Nassau and to deny the remaining applications. Each unsuccessful applicant, as well as the Commission's Broadcast Bureau, filed exceptions thereto. Oral argument was held before the Commission, en banc, on December 7, 1961. The Commission's rulings on the exceptions are contained in the appendix attached hereto.

3. The initial decision sets forth the background and history of the proceeding, and this information need not be repeated here.¹ The findings of fact in the initial decision have been considered in light of the exceptions, and, with the modifications, corrections, and deletions noted herein and in the appendix, they are adopted.

4. The Commission has also carefully reviewed the examiner's conclusions, and is of the view that necessary changes warrant the substitution of entirely new conclusions, which are set forth hereafter. A brief review of the material facts will serve to place our conclusions in their proper context.

A. *The Norwalk Proposal*

5. Station WNLK presently serves 145,000 persons interference-free daytime, and would serve an additional 78,000 if its application for increased power were granted. Ten stations serve all of the rural gain areas, and the urban gain areas receive a minimum of three services. Such gain areas lie as close as 6 miles from the WNLK transmitter, and include 37,146 persons in the city of Stamford, Conn., 4 miles from Norwalk. Nassau's proposal would receive daytime interference from the existing WNLK operation affecting 3.42 percent of the population within its normally protected contour, and a grant to Norwalk would raise that figure to 6.34 percent which, when combined with the 5.43 percent interference Nassau would receive from other operations, would place Nassau in violation of section 3.28(d) of the Commission's rules, with a total of 11.77 percent interference. Similarly, the New Jersey and Greater Princeton proposals would receive 9.97 percent interference from the present WNLK operation and other existing stations, and would receive an additional 3.94 percent interference from the Norwalk proposal, raising their total received interference to 13.91 percent of the population within their normally protected contours.

B. *The Princeton Proposals*

6. *Greater Princeton* is a partnership consisting of William S. Halpern and Louis N. Seltzer. Neither is a Princeton resident, but Halpern, the proposed general manager of the station, would move

¹ The presently licensed operation of station WNLK is erroneously stated in par. 1 of the initial decision, which is corrected to reflect that Norwalk (WNLK) has 1350 kc, 500 w, DA-N, U.

to Princeton in the event of a grant. Both have operated station WCOJ, Coatesville, Pa., since its inception in 1949, and each is a 50-percent owner of the corporate licensee thereof. The operation of that station has been commendable, although the examiner found several minor logging discrepancies. They are also equal partners in Hammonton Broadcasting Co., the licensee of station WNJH, Hammonton, N.J.

7. *New Jersey* is a corporation with 19 subscribers and shareholders, of whom Horace W. Gross will own the largest interest, 26 percent. The remaining subscribers and shareholders will have interests ranging from 2 percent to 8 percent. All but Gross are residents of the Princeton area, and represent diverse business and civic interests. Gross is a Washington, D.C., resident, and is the only New Jersey principal with broadcast experience, gained as treasurer, director, and minority stockholder of Penn Allen Broadcasting Co., licensee of WFMZ and WFMZ-TV, Allentown, Pa., from 1948 to 1955, and as vice president, director, and stockholder in Howard S. Frazier, Inc., radio and television management consultants, positions he presently holds. Gross is the proposed general manager of the station, and is the only New Jersey principal proposing to devote time to the day-to-day operation of the station.

8. *Nassau* is a corporation with nine shareholders, eight of whom will hold no more than 5-percent interests. The ninth, Herbert W. Hobler, is president, 62-percent owner, and the proposed general manager and sales manager of the station. Each shareholder is a director, and all are residents of the Princeton area, representing diverse business and civic interests there. Kenneth R. Wight, a 5-percent owner, is the proposed program and technical director, and is the only principal aside from Hobler proposing full-time integration in the day-to-day operation of the station. While none of the Nassau principals have experience in the operation or ownership of broadcast stations, several have related experience. Hobler has experience in network and program sales, his father, A. W. Hobler (a 5-percent owner), has advertising and program production experience, and Wight, as an audio engineer, has production experience.

CONCLUSIONS

9. Prefatory to considering whether section 307(b) considerations are controlling in this proceeding, we must determine whether the Norwalk proposal is in fact mutually exclusive with the Princeton proposals. The only bar to a grant of Norwalk's application for increased daytime power for station WNLK is the fact that such operation would cause a small percentage of interference to each of the Princeton proposals which, taken together with the interference which each would otherwise receive, would force them over the 10-percent limit proscribed by section 3.28(d) of our rules. In the view of the Commission's Broadcast Bureau and the hearing examiner, waiver of that rule is not warranted by the facts of this case. We disagree, and are of the opinion that the facts presented fully justify waiver. While the populations to be served by the Princeton proposals receive

an abundance of other radio signals, the proposals would each provide Princeton with its first local transmission facility. Princeton had a 1950 population of 12,230, and is a well-known educational and research center. Its need for the service proposed here is certainly no less than that of Lawrenceville, Ill. (population 6,328), for the first local service granted it in *Southern Indiana Broadcasters, Inc.*, 24 FCC 521, 15 R.R. 349 (1958), where the Commission waived the 10-percent rule for an operation which would receive 17.1 percent interference.

10. In view of the small amount of violation present here and the demonstrated need for a first transmission facility in Princeton, the Commission concludes that section 3.28(d) of the rules should be waived, and the application of Norwalk granted. Accordingly, the specified 307(b) issue is moot.

11. As noted above, the examiner preferred Nassau to the other two Princeton applicants. While we agree with his ultimate result, we are not in accord with his assessment of the parties' showings under several of the criteria, for the reasons set forth below. We shall discuss these criteria in the following order: (A) Proposed Programing and Planning; (B) Likelihood of Effectuation, including Area Familiarity (local residence, civic participation, and diversity of business interests), Integration of Ownership With Management, Broadcast Experience, and Past Broadcast Record; and (C) Diversification of Ownership of Mass Communications Media.

A. *Proposed Programing and Planning*

12. The examiner found no significant differences in either content or overall balance of the programing proposed by each applicant, and, no party claiming error, we concur in that determination. In the area of planning, he considered Nassau and New Jersey equal to each other and slightly superior to Greater Princeton. In our view, Nassau and New Jersey are entitled to significant preferences, for both made a substantial effort to discover the needs of the Princeton community and how best to meet those needs, through extensive contacts with representatives of local educational, religious, charitable, and civic organizations. In addition, New Jersey undertook a survey of the listening habits of area residents. The planning of both lends assurance that they have an awareness of community needs and have given consideration to such needs in the design of their programing proposals. On the other hand, Halpern and Seltzer viewed community contacts as unproductive, and based their proposal on their past broadcast experience supplemented by statistics of the Princeton area derived from the Sales Management Yearbook and the local chamber of commerce and League of Women Voters. They failed to inquire into the needs and desires of community organizations and individuals, and this failure takes on even greater significance when it is considered that neither resides in the Princeton area.

13. Nassau and New Jersey each contend that it should be favored over the other; Nassau, on the basis of its greater number of contacts (145, compared to New Jersey's 91); and New Jersey, on the basis of its listenership survey. In this regard, the examiner properly noted

that the Commission does not regard one method of ascertaining community needs more suitable than another, but only requires that some realistic effort be shown to discover such needs.²

B. Likelihood of Effectuation

(1) Area familiarity

14. One factor which bears on the likelihood of effectuation is the extent to which each applicant is familiar with the area to be served, and local residence carries with it the presumption of knowledgeability. This presumption may be reinforced by a showing that the locally resident principals are active participants in the community's civic and business affairs. Although the Commission has frequently awarded individual preferences for local residence, civic participation, and diversity of business interests, in reality these are but facets of one criterion, area familiarity.

15. The findings of fact heretofore adopted demonstrate that each principal of Nassau is a resident of the Princeton area, that Gross is New Jersey's only nonresident principal, and that neither of Greater Princeton's partners is a Princeton resident. A majority of the principals of both Nassau and New Jersey have distinguished records of service in Princeton civic activities, and represent diverse business interests in the community, while Greater Princeton, by virtue of its lack of local residence, has no record of civic or business activity in the Princeton area.

16. That New Jersey's Gross will be 26-percent owner, president, and general manager of the proposed station renders his nonresidence particularly significant, and it must be concluded that Nassau has demonstrated greater area familiarity than New Jersey, which is, in turn, decidedly superior to Greater Princeton in this regard.

(2) Integration of ownership with management

17. The examiner's conclusions on the subject of integration, and some of the exceptions thereto, are indicative of a misunderstanding of the Commission's objectives in giving consideration to this important criterion. The objective sought is not that each stockholder have a titled position, nor that each spend a minimum amount of time weekly at the station or devoted to the business affairs of the licensee; rather, it is that the principal owners of the licensee play a distinguishable part in the management of the day-to-day operation of the station. See *WHDH, Inc.*, 13 R.R. 507, at 572-573; 22 FCC 767, at 864-865 (1957). Application of this test to the proposals before us compels the conclusion that only Hobler and Wight of Nassau, Gross of New Jersey, and Halpern of Greater Princeton may be considered integrated. Hobler, Gross, and Halpern each proposes to be general manager, and Wight will devote full time as Nassau's program and technical director. From a strictly quantitative viewpoint, Nassau's

² However, we reject, as inconsistent with our programming policy statement of July 29, 1960 (Public Notice 91874, FCC 60-970; 20 R.R. 1901), the examiner's view that "an alert broadcaster, * * * can accomplish the objectives desired merely by being attentive to his business and to the complaints and voluntary suggestions of the public he serves * * *."

67.6-percent integration is superior to Greater Princeton's 50 percent, which is, in turn, preferable to New Jersey's 26 percent. However, the experience and background of the integrated principals cannot be ignored. See *Triad Television Corp.*, 16 R.R. 501, at 666; 25 FCC 848, at 1019 and 1020 (1958). While the integrated principals of Greater Princeton and New Jersey demonstrate greater broadcast experience, they lack the familiarity with the Princeton area shown by Nassau's Hobler and Wight. These qualitative factors would appear to balance each other, and accordingly Nassau will be accorded first preference, Greater Princeton is second, and New Jersey third.

(3) *Broadcast experience and past record*

18. None of Nassau's principals has direct experience in the operation of a broadcast station, although Herbert Hobler has worked in network sales and other related fields; his father, A. W. Hobler, in program production; and Wight, in the technical aspects of program production. Nassau's showing in this regard is inferior to New Jersey's and Greater Princeton's. The experience of Halpern and Seltzer in owning and operating WCOJ in Coatesville for the past 12 years, and the commendable broadcast record compiled there, cannot be nullified by a few minor errors in logkeeping, and entitles Greater Princeton to a first preference in this area. Of New Jersey's principals, only Gross has broadcast experience, gained when he was associated with the licensee of stations WFMZ and WFMZ-TV from 1948 to 1955, and since 1955 in the related field of radio and television management consultancy. His experience at WFMZ, where he was business and commercial manager and treasurer of the corporate licensee, does not appear to be as broad as Halpern and Seltzer's experience. When diluted by lack of experience on the part of New Jersey's remaining shareholders, Gross' experience entitles that applicant to no better than second ranking in this category.

19. Before passing from this criterion, the Commission desires to point out the impropriety of the examiner's censure of Halpern and Seltzer for their alleged failure to file a proposed programing amendment to their application for a new Burlington, N.J., station until the 11th hour. Briefly stated, the relevant facts are these: Shortly after filing that application (which is wholly unrelated to their instant application) in November 1958, they decided to change the programing proposal; they prepared a new tentative program schedule in August 1960; by November 18, 1960, they decided definitely on a specific programing amendment; and the amendment was filed January 10, 1961 (officially noticed). As the application was not designated for hearing until February 1, 1961, the filing of an amendment prior to that date was a matter of right under section 1.311(a) of the Commission's rules. The Commission is unable to discern any basis for concluding that Halpern and Seltzer are lacking in their sensibility to public duty, and their commendable past broadcast record has been considered favorably in judging their instant application.

C. *Diversification of Ownership of Mass Communications Media*

20. In this area the examiner accorded Nassau a minor preference over New Jersey, by virtue of the ownership, by two minority stockholders of the latter, of a majority interest in the Mercer Messenger, a weekly shopping guide circulated free to homes in Ewing and Lawrence Townships. His finding that the Messenger, which carries only a few news items, bears no resemblance to a regular newspaper insofar as the circulation of news and views is concerned, which is supported by the record, necessitates a conclusion that it is not such a medium of mass communication as warrants unfavorable consideration under this criterion, and that diversification of the ownership of such media would be served equally well through a grant of either Nassau's or New Jersey's application. Greater Princeton suffers comparatively in this area because of its partners' ownership of Coatesville, Pa., and Hammonton, N.J., stations.

SUMMATION

21. In summary of the foregoing, it is concluded that Greater Princeton, in spite of its better broadcast experience reinforced by a good past record, is decidedly inferior to the other two applicants in view of its total lack of area familiarity and its minimal planning and preparation. Particularly significant in the comparison between Nassau and New Jersey is that Hobler, Nassau's proposed general manager, is locally resident and a 62.6-percent owner, while Gross, New Jersey's proposed general manager and the only principal of that applicant to be meaningfully integrated, is a nonresident and a 26-percent owner, albeit with more broadcast experience than Hobler. Nassau's greater area familiarity and more complete integration lend the better assurance that its proposal will be effectuated, and warrant the ultimate conclusion that the grant of its application would best serve the public interest, convenience and necessity.

Accordingly, *It is ordered*, This 6th day of February 1962, that the application of Nassau Broadcasting Co. for a construction permit for a new standard broadcast station at Princeton, N.J., to operate on the frequency 1350 kc with power of 5 kw, directional antenna, unlimited time, and the application of Norwalk Broadcasting Co., Inc. (WNLK), to increase daytime power to 1 kw and continue operation on 1350 kc with power of 500 w, DA-N, unlimited time, at Norwalk, Conn., *Are granted*; and that the applications of William S. Halpern and Louis N. Seltzer, d/b as Greater Princeton Broadcasting Co., and The New Jersey Broadcasting Co. *Are denied*.

It is further ordered, That the above-described grants to Nassau Broadcasting and Norwalk Broadcasting Co., Inc. (WNLK), are subject to the following condition:

Pending a final decision in docket No. 14419 with respect to presunrise operation with daytime facilities, the present provisions of section 3.87 of the Commission's rules are not extended to this authorization, and such operation is precluded.

APPENDIX

RULINGS ON EXCEPTIONS TO THE INITIAL DECISION

Exceptions of Greater Princeton Broadcasting Co.

<i>Exception No.</i>	<i>Ruling</i>
1-17-----	Granted in substance. Findings 60-65 of the initial decision are deleted as irrelevant. See par. 19 of the decision.
18, 19-----	Denied, for failure to comply with 47 CFR 1.154.
20-----	Denied. The WCOJ logs were not introduced in evidence and the record supports the examiner's finding.
21, 22-----	Denied. The survey was properly admitted.
23, 24-----	Denied as lacking decisional significance, and as irrelevant to the specified issues.
25-29-----	Granted. See pars. 18 and 19 of the decision.
30, 31-----	Denied in substance. See par. 20 of the decision.
32, 33-----	Denied for the reasons stated in the decision.

*Exceptions of The New Jersey Broadcasting Co.**A. To the findings of fact*

1-----	Granted, and finding 24 of the initial decision is enlarged to reflect that upon the subscriptions being effected, Gross will own 26 percent of the stock, the remaining interests varying from 2 percent to 8 percent.
2, 3-----	Granted, and findings 25 and 27 of the initial decision are corrected to reflect that all of Nassau's stockholders, and all of New Jersey's stockholders except Gross, are residents of the Princeton, N.J., area.
4-6-----	Denied as immaterial.
7-----	Granted, and finding 48 of the initial decision is deleted.
8-----	Denied. The examiner's assessment is correct.
9, 10-----	Denied in substance. The examiner's findings adequately and correctly detail the significant facts.
11-----	Denied for failure to comply with 47 CFR 1.154.
12, 13-----	Granted to the extent that finding 91 of the initial decision is deleted, and it is found in its stead that the local contacts made by New Jersey's principals were for the purpose of ascertaining needs and the extent of cooperation of area organizations, and were in fact generally utilized for that purpose.
14-----	Granted, and "ostensibly" is deleted from the first sentence of finding 93.
15-17-----	Granted to the extent that findings 94 through 96 are deleted as irrelevant.
18, 19-----	Granted to the extent reflected in par. 20 of the decision.
20-----	Granted to the extent that finding 100 is deleted.

B. To the Conclusions

1-3-----	Denied in substance. See pars. 14-16 of the decision.
4, 5-----	Denied in substance. See par. 18 of the decision.
6, 8-----	Denied in substance. See pars. 12 and 13 of the decision.
7-----	Granted. See par. 20 of the decision.
9-----	Denied as unsupported by the facts.
10, 11-----	Denied for the reasons stated in the decision.

Exceptions of Norwalk Broadcasting Co., Inc.

A. To the findings of fact

<i>Exception No.</i>	<i>Ruling</i>
1-----	Granted to the extent that it is additionally found that an area of 30.2 square miles with a population of 3,647 persons which formerly received WNLK service is now affected by interference from station WNHC, whose application was severed from this proceeding and granted, Norwalk agreeing to accept such interference; and that, if Norwalk's application is granted, WNLK's service will be restored to this area.
2-----	Denied as repetitious of facts previously found.
3, 4, 6-----	Granted to the extent that it is additionally found that the area to gain WNLK service lies as close as 6 miles from the WNLK transmitter site, and includes 37,146 persons in Stamford, Conn., which lies only 4 miles from Norwalk and has only one local station; and that the areas in which Nassau's proposed operation would receive interference from Norwalk's proposal lie from 8 to 42 miles from its transmitter site.
5-----	Denied as lacking in significance in view of the decision.

B. To the conclusions

- 1, 3-6----- Granted in substance.
- 2----- Denied as immaterial.

Exceptions of the Commission's Broadcast Bureau

- 1----- Granted. See par. 15 of the decision.
- 2----- Granted. See par. 17 of the decision.
- 3----- Granted. See pars. 18 and 19 of the decision.
- 4----- Granted. See par. 20 of the decision.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D.C.

<p>In re Applications of WILLIAM S. HALPERN AND LOUIS N. SELTZER, D/B AS GREATER PRINCETON BROADCASTING Co., PRINCETON, N.J. THE NEW JERSEY BROADCASTING Co., PRINCE- TON, N.J. NASSAU BROADCASTING Co., PRINCETON, N.J. NORWALK BROADCASTING Co., INC. (WNLK), NORWALK, CONN. For Construction Permits</p>	}	<p>Docket No. 13718 File No. BP-12412 Docket No. 13724 File No. BP-12829 Docket No. 13727 File No. BP-13064 Docket No. 13732 File No. BP-13444</p>
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APPEARANCES

Messrs. Philip Bergson, Morton H. Wilner, and Marshal L. Cole (Lyon, Wilner & Bergson), on behalf of Greater Princeton Broadcasting Co.; *Messrs. Vincent A. Pepper, Thomas G. Shack, and Donald P. MacDonald* (Smith & Pepper), on behalf of The New Jersey Broadcasting Co.; *Messrs. Robert M. Booth, Jr., and John L. Tierney*, on behalf of Nassau Broadcasting Co.; *Messrs. Frank Stollenwerck and Lauren A. Colby*, on behalf of Norwalk Broadcasting Co., Inc. (WNLK); and *Messrs. Earl C. Walck and Vergil Tacy*, on behalf of the Chief of the Broadcast Bureau, Federal Communications Commission.

INITIAL DECISION OF HEARING EXAMINER DAVID I. KRAUSHAAR

(Adopted May 4, 1961)

PRELIMINARY STATEMENT

1. This proceeding involves the following applications for standard broadcast facilities, all class III, as indicated:

Greater Princeton Broadcasting Co.
 New station in Princeton, N.J.
 1350 kc, 5 kw, DA-2, U

The New Jersey Broadcasting Co.
 New station in Princeton, N.J.
 1350 kc, 5 kw, DA-2, U

Nassau Broadcasting Co.
 New station in Princeton, N.J.
 1350 kc, 5 kw, DA-2, U

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Norwalk Broadcasting Co., Inc. (WNLK)
 For improved facility of Norwalk, Conn., station
 Has : 1350 kc, 500 w, day
 Requests : 1350 kc, 500 w, 1 kw, DA-N, U

2. The applications were originally consolidated with 22 other applications and designated for hearing by Commission order released August 5, 1960 (FCC 60-942). By various orders and memorandum opinions and orders granting petitions for reconsideration and grant without hearing, petitions for dismissal, and petitions for severance, disposition of all applications originally consolidated in this proceeding other than the four above specified has been accomplished.¹ Each of the four listed applicants with which this proceeding is now concerned the Commission has found to be legally, technically, financially, and otherwise qualified to construct and to operate as proposed, except as indicated in the issues specified in the order of designation. The issues with which these applicants are concerned are reproduced as follows:

1. To determine the areas and populations which would receive *new* primary service from each of the instant proposals for a broadcast station, and the availability of other primary service to such areas and populations.
2. To determine the areas and populations which may be expected to gain or lose primary service from each of the instant proposals for a change in the facilities of an *existing* broadcast station, and the availability of other primary service to such areas and populations.
3. To determine the nature and extent of the interference, if any, that each of the instant proposals would cause to and receive from each other and all other existing standard broadcast stations, the areas and populations affected thereby, and the availability of other primary service to the areas and populations affected by the interference from any of the instant proposals.
4. To determine whether the interference received from any of the other proposals herein and any existing stations would affect more than 10 percent of the population within the normally protected primary service area of any one of the instant proposals in contravention of section 3.28(c)(3) of the Commission rules, and, if so, whether circumstances exist which would warrant a waiver of said section.
5. To determine whether the following proposals would involve objectionable interference with the existing stations indicated below, or any other existing standard broadcast stations, and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other primary service to such areas and populations.

<i>Proposals</i>	<i>Existing stations</i>
BP-12412-----	WNLK, Norwalk, Conn.
BP-12829-----	do.
BP-13444-----	WNHC, New Haven, Conn.

* * * * *

10. To determine, in the light of section 307(b) of the Communications Act of 1934, as amended, which of the instant proposals would best provide a fair, efficient, and equitable distribution of radio service.
11. To determine on a comparative basis, in the event that Princeton, N.J. * * * is * * * selected as having the greatest need pursuant to section 307(b), which of the competing applicants for that city would better serve the public interest in the light of the evidence adduced pursuant to the

¹ Three applications formerly consolidated in this proceeding (WSTV, Inc., docket No. 13728, file No. BP-13115; Connellsville Broadcasters, Inc., docket No. 13731, file No. BP-13441; and Windber Community Broadcasting System, docket No. 13736, file No. BP-13475) are the subject of a separate initial decision released Feb. 20, 1961 (FCC 61D-17).

foregoing issues and the record made with respect to the significant differences between the applicants as to—

(a) The background and experience of each having a bearing on the applicant's ability to own and operate its proposed station.

(b) The proposals of each of the applicants with respect to the management and operation of the proposed station.

(c) The programing service proposed in each of the said applications.

12. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which, if any, of the instant applications should be granted.

3. Applicant Norwalk Broadcasting Co., Inc. (WNLK), was named as a party herein with respect to its existing operation.² Likewise Triangle Publications, Inc., the licensee of station WNHC in New Haven, Conn., which was formerly an applicant herein (docket No. 13711, file No. BP-12107), was named as a party with regard to the existing operation of station WNHC. On March 24, 1961, the Commission released a memorandum opinion and order (FCC 61-370) granting a petition filed by Triangle for reconsideration, severance, and grant of its application without hearing, subject to the conditions that "permittee shall accept such interference as may be imposed by other existing class IV stations in the event they are subsequently authorized to increase power to 1,000 w," and that "Permittee shall accept such interference as may be imposed in the event of a grant of the application of Norwalk Broadcasting Co., Inc. (WNLK)." It likewise appears (official notice taken of the WNHC petition, par. 6) that applicant Norwalk (WNLK) "has expressly agreed to a grant of WNHC's application" notwithstanding interference WNLK would receive from WNHC's proposed operation.

4. In the order of designation, the Commission authorized the examiner to enlarge the issues "on his own motion or on petition properly filed by a party to the proceeding, and upon sufficient allegations of fact in support thereof" by the addition of an issue to permit a determination to be made whether the funds found by the Commission to be available to the applicants "will give reasonable assurance that the proposals" will be effectuated. Applicants Greater Princeton and Nassau requested orally on the record that they be permitted to develop evidence pertinent to such issue against applicant New Jersey Broadcasting (Tr. 853-859).³ The request was denied without prejudice, however, to the filing of an appropriate petition (making a proper factual showing) in which inclusion of the issue to permit such inquiry might be requested (Tr. 859, 1093-1099). No such petition was ever filed and consequently the issue was not added.

5. Prehearing conferences affecting the applicants involved herein were held on September 27, 1960, and December 14, 1960. Hearing sessions were held on December 19, 1960, and on January 4, 5, 6, 9, 10, 11, and 13, 1961. On January 13 the record was closed. However, by memorandum opinion and order released January 31, 1961 (FCC 61-99), the Commission added a new issue (on petition by WKAP, Inc., a former applicant herein, to enlarge issues filed August

² A motion for severance filed by Norwalk on Feb. 23, 1961, was denied by order of the examiner released Mar. 8, 1961 (FCC 61-381).

³ Transcript citations throughout this decision refer to paginations of transcripts by the official court reporter. Pages have been renumbered in the dockets, in pencil, without notice to the presiding examiner and without authorization from him.

26, 1960) against a former applicant (Rodio Radio, docket No. 13730, file No. BP-13426) in this proceeding relative to its financial qualifications.⁴ Consequently, the record had to be reopened for the taking of evidence thereunder and this was done by order of the examiner released February 1, 1961 (FCC 61M-158). A prehearing conference limited to discussion of this matter was held on February 9 and further hearing thereon was scheduled for March 2, 1961. The further hearing was later postponed on the representation by the applicant involved that it was negotiating an agreement with a conflicting applicant (WKAP) which looked toward the dismissal of its application. Subsequently, the examiner granted a severance order severing the applications of Rodio Radio and WKAP from the instant proceeding, and at the same time closing the record herein once again (released March 15, 1961, FCC 61M-428).

6. The parties herein were directed to file proposed findings of fact and conclusions of law, and the deadline was established as March 20, 1961 (Tr. 1325, 1326). The filing of reply briefs was left optional and these were to be due 15 days after the date established for the filing of proposed findings. The deadlines were later extended on motion by applicant Nassau until April 4 and April 14, respectively. Proposed findings of fact and conclusions of law have been timely filed by all parties, and replies have likewise been filed by all parties except the Commission's Broadcast Bureau.

FINDINGS OF FACT⁵

A. *The Princeton Community*

7. The community of Princeton, N.J., consisting of Princeton Borough and of the Princeton Township, which completely surrounds the borough, is located in Mercer County, N.J. The 1950 U.S. census population of the Princeton Borough was 12,230 and of Mercer County was 229,781. There is no existing or authorized standard broadcast station in Princeton.

B. *Technical Considerations*

The proposal of Nassau Broadcasting Co.

8. Nassau Broadcasting Co. proposes to establish a first new standard broadcast station in Princeton, N.J., to operate on the frequency 1350 kc (class III-A) with a power of 5 kw, unlimited time, DA-2. Based on radiation values from the proposed directional antenna pattern and on ground conductivity values for the area from figure M-3 of the Commission's rules, in conjunction with field strength measurement data on station WNLK on bearings 207°, 208°, 218°, 223°, and 225° true in order to determine the extent of interference from the present and proposed operation of station WNLK, the coverage data are as follows:

⁴ The Commission at about the same time denied petitions by New Jersey Broadcasting to include a similar issue against its competitors in this proceeding, Greater Princeton and Nassau.

⁵ 1950 U.S. census data were used throughout in counting populations within the pertinent contours.

Contour (mv/m)	Population	Area (sq. miles)
<i>Proposed Daytime</i>		
2.0.....	293, 325	659
0.5 (normally protected).....	464, 986	2, 334
Interference from existing WNLK.....	15, 903 (3.42% ¹)	79 (3.38% ¹)
Interference from existing WORK.....	25, 213 (5.43% ¹)	244 (10.45% ¹)
Total interference.....	41, 116 (8.8% ¹)	323 (13.8% ¹)
Proposed interference free.....	423, 870	2, 011
Additional interference from proposed WNLK.....	13, 591 (2.92% ¹)	81 (3.46% ¹)
Total interference considering proposed WNLK.....	54, 707 (11.8% ¹)	404 (17.4% ¹)
Interference free as limited by WORK and proposed WNLK.....	410, 279	1, 930
<i>Proposed Nighttime</i>		
16.0 (interference free).....	35, 080	96
2.5 (normally protected).....	262, 297	514

¹ Percentages refer to population and area within normally protected contours.

² Includes all of Princeton, N.J.

9. During the daytime 7 stations provide primary service (0.5 mv/m or greater) to all of the rural areas within Nassau's proposed interference-free service area, 53 stations serve portions, and a minimum of 14 and a maximum of 30 such services are available to any one part therein. Also, during the daytime, a minimum of 22 and a maximum of 30 such services are available to any portion of the area of additional interference from WNLK's proposed operation. Princeton, N.J., now receives primary service (2.0 mv/m or greater) during the daytime from five stations.⁶ Nassau's proposal will bring an additional primary service (2.0 mv/m or greater) to the following communities which had a population in 1950 of 2,500 or more:

Trenton, N.J., which is now served by 8 stations;
 Flemington, N.J., now served by at least 5;
 Bordentown, N.J., now served by 7;
 Florence-Roberling, N.J., now served by 9;
 Hightstown, N.J., now served by at least 5;
 Jamesburg, N.J., now served by at least 5;
 Yardley, Pa., now served by 8;
 Morrisville, Pa., now served by 8.

It appears that urban areas that would receive the new service now receive between five and nine primary services (2.0 mv/m or greater) during the daytime.

10. During the nighttime six stations provide primary service (0.5 mv/m or greater) to the entire rural area within the proposed Nassau interference-free service area, an additional four stations serve portions of such area (at least four serve all of the Princeton community, one serves less than 25 percent of Princeton itself⁷), and a minimum of six and a maximum of nine other stations provide nighttime primary service to any one portion thereof.

⁶ A sixth station, WNEW in New York City, serves about 25 percent of Princeton during the daytime.

⁷ The presentations of Greater Princeton and New Jersey, infra, show that five stations serve all of Princeton during the nighttime and two other stations serve 20 percent of Princeton. The difference in the presentations in this respect are of no decisional significance.

11. Nassau's proposed operation will not cause objectionable interference, either day or night, to any existing or authorized broadcast station.

*The engineering proposals of Greater Princeton Broadcasting Co. and The New Jersey Broadcasting Co.*³

12. Applicants Greater Princeton and New Jersey, like applicant Nassau, propose to establish a new standard broadcast station in Princeton, N.J., also to operate on the frequency 1350 kc (class III-A) with a power of 5 kw, unlimited time, using different directional antennas during day and night hours.

13. Based on radiation values from the proposed directional antenna patterns and on ground conductivity values for the area from figure M-3 of the Commission's rules, in conjunction with field strength measurement data on station WNLK on bearings 207°, 208°, 218°, 223°, and 225° true in order to determine the extent of interference from the present and proposed operation of station WNLK, the coverage data for these two proposals are as follows:

Contour (mv/m)	Population	Area (sq. miles)
<i>Proposed Daytime</i>		
2.0.....	283, 292	675
0.5 (normally protected).....	472, 907	2, 310
Interference from existing WNLK.....	27, 958 (5. 91% ¹)	121. 7 (5. 27% ¹)
Interference from existing WORK.....	19, 187 (4. 06% ¹)	205 (8. 88% ¹)
Interference from WMID ²	13 (0. 0% ¹)	2. 3 (0. 1% ¹)
Total interference.....	47, 158 (9. 97% ¹)	329 (14. 25% ¹)
Proposed interference free.....	425, 749	1, 981
Additional interference from proposed WNLK.....	18, 633 (3. 94% ¹)	80. 6 (3. 48% ¹)
Total interference (WNLK granted).....	65, 791 (13. 91% ¹)	409. 6 (17. 7% ¹)
Proposed interference free (WNLK granted).....	407, 116	1, 900. 4
<i>Proposed Nighttime</i>		
16.0 (interference free).....	33, 796	86
2.5 (normally protected).....	277, 271	515

¹ Percentages refer to populations and area within the normally protected contour.

² By memorandum opinion and order released Feb. 28, 1961 (FCC 61-235), the Commission granted a joint petition for reconsideration, severance, and grant of the application, among others, of Mid-Atlantic Broadcasting Co., licensee of station WMID, for an authorization to increase power of station WMID to 1 kw on the frequency 1340 kc (class IV), subject to the condition, inter alia, that "Permittee shall accept such interference as may be imposed by other existing class IV stations in the event they are subsequently authorized to increase power to 1,000 w."

³ Includes all of Princeton, N.J.

14. During the daytime 7 stations provide primary service (0.5 mv/m or greater) to all of the rural areas within the proposed inter-

⁴ A controversy developed among the Princeton, N.J., applicants and their engineering consultants pertaining to the accuracy of certain of the population counts, on which the consulting engineers concerned had divergent opinions. At the suggestion of the examiner, and in order to avoid apparently needless cross-examination of the engineering consultants, all of the parties, including the Commission's Broadcast Bureau, were able to, and did, stipulate that the engineering presentation in behalf of applicant New Jersey is to stand also as the showing in behalf of Greater Princeton. Also the right to cross-examine the engineering consultants was waived, as was the right to present evidence in rebuttal of the engineering presentations of the parties (Tr. 301, 302, 310). While the proposals of Greater Princeton and New Jersey may not be identical, for practical purposes they may be so treated. For the transmitter sites proposed by these applicants are very close together, both applicants propose the same power nighttime and daytime and the same directional antenna patterns.

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ference-free service areas of these 2 applicants, 53 stations serve portions, and a minimum of 16 and a maximum of 33 such services are available to any one part therein. Also, during the daytime, from 14 to 22 stations provide primary service (0.5 mv/m or greater) to the additional interference area caused by proposed station WNLK, and, as indicated above, some 5 stations provide primary service (2.0 mv/m or greater) to all of Princeton during the daytime and another station serves a portion thereof.

15. During the nighttime six stations provide primary service (0.5 mv/m or greater) to the entire rural area within the proposed nighttime service areas (five serve all of Princeton itself and two serve 20 percent thereof⁹) and four stations serve portions of such area. From six to nine such services are available to any one part therein.

The operations proposed by Greater Princeton and New Jersey will not cause objectionable interference, either day or night, to any existing or authorized broadcast station.¹⁰

The engineering proposal of Norwalk Broadcasting Co., Inc., WNLK

16. Station WNLK is presently licensed to operate on the frequency 1350 kc (class III) with a power of 500 w, DA-N, U, at Norwalk, Conn. WNLK seeks authorization herein to increase its daytime power to 1 kw, nondirectional, while continuing to operate as heretofore at night.

17. According to the U.S. census, Norwalk, Conn., had a 1950 population of 49,460 (1950 U.S. Census, Vol. 1, p. 7-9) and has a 1960 population of 67,775 (1960 U.S. Census PC(A1)-8). It is located in the Stamford-Norwalk urbanized area which had a 1950 population of 173,536 (1950 U.S. Census, Vol. 1, p. 7-11). Norwalk has been designated by the Bureau of the Budget as the central city of the standard metropolitan statistical area consisting of Norwalk, Westport town and Wilton town, having an aggregate population of 96,756 in 1960 ("Standard Metropolitan Statistical Areas," 1961).

18. Based on an effective field unattenuated at 1 mile of 194 mv/m for 1 kw power, on ground conductivity values from figure M-3 of the rules and on field strength measurement data in the directions 153°, 173°, 193°, 208°, 213°, 218°, 223°, and 225° true, the coverage data for WNLK are as follows:

⁹ See footnote 6, supra.

¹⁰ WNLK's engineering presentation shows no objectionable interference will ensue to its present or proposed operation from the two Princeton proposals. New Jersey's presentation, however, shows that its proposal will cause objectionable interference to station WNLK affecting about 17 people in 15 square miles. Whichever statement is correct, the difference is too inconsequential for concern.

Contour (mv/m)	Population	Area (sq. miles)
<i>Present WNLK</i>		
2.0.....	128,859	128.0
0.5 (normally protected).....	158,693	531.4
Interference from WNHC (granted).....	13,649	140.0
Total interference.....	13,649 (8.6% ¹)	140.0 (26.3% ¹)
Interference free.....	145,044	391.46
<i>Proposed WNLK</i>		
2.0.....	² 188,356	174.4
0.5 (normally protected).....	245,815	846.6
Interference from WNHC (granted).....	22,570	210.5
Total interference.....	22,570 (9.2% ¹)	210.5 (24.9% ¹)
Interference free.....	223,245	636.1
Gain.....	78,201	244.7

¹ Percentages refer to population and area within the normally protected contour.

² Corrected population figure by agreement of the parties. See footnote 1 to WNLK's reply findings. WNLK's exhibit in evidence shows the population to be 133,979.

19. Ten other stations provide primary service (0.5 mv/m or greater) to all of the rural gain area proposed by WNLK.

20. Some urban areas would gain primary service (2.0 mv/m or greater) from proposed station WNLK.¹¹ One area is located on the mainland and includes a portion of Stamford, Conn., which is now served by stations WABC, WNBC, WOR, WGSM, and WSTC. Other areas are located on Long Island and include Kings Park and portions of Huntington, Northport, and East Northport, which are now served by stations WABC, WNBC, and WGSM, and Port Jefferson which is served by stations WICC, WELI, and WAVZ.

21. Objectionable interference from proposed WNLK to station WNHC, New Haven, Conn., is of no significance inasmuch as the latter station was recently granted an increase in power subject to acceptance of objectionable interference from proposed station WNLK. No objectionable interference would be caused to any other stations.

C. Comparative Considerations

1. The applicants

22. *Nassau Broadcasting Co.*¹² is a new corporation consisting of nine shareholders and stock subscribers, all of whom are also directors. The largest single stockholder thereof (and subscriber to the capital stock) is Mr. Herbert W. Hobler, who is the company's president. Hobler owns and has subscribed to 62.6 percent of the stock. Mr. F. J. Worthington, who owns and has subscribed to 5 percent of the corporate stock, is the company's vice president. Mr. Ralph S. Mason, who likewise owns and has subscribed to 5 percent, is the company's secretary and treasurer. Each of the other stockholders and sub-

¹¹ In its so-called "Reply Findings and Conclusions," pars. 5 and 6, WNLK names seven communities which it states will receive service in whole or in part from station WNLK for the first time, including 37,146 persons in Stamford, Conn. The evidence, however, does not reflect that any of the communities mentioned is underserved at the present time. On the contrary, WNLK concedes in par. 6 of its reply that eight other stations provide 2.0 mv/m service to WNLK's proposed urban gain areas.

¹² For convenience and consistency the applicants and their proposals will be considered herein in the following sequence, regardless of the sequence of docket numbers: Nassau, Greater Princeton, New Jersey. It may be noted that the findings with respect to engineering matters, supra, consider the Nassau proposal first inasmuch as Greater Princeton and New Jersey relied upon the same engineering presentation.

scribers with the exception of Mr. Howard W. Stepp, who will have a 2.4-percent interest, has a 5-percent ownership interest in the applicant. None of the stockholders or subscribers has other broadcast interests.

23. *Greater Princeton Broadcasting Co.* is a partnership consisting of Messrs. Louis W. Seltzer and William S. Halpern. Halpern and Seltzer own all of the stock of Chester County Broadcasting Co., the corporate licensee of standard broadcast station WCOJ, Coatesville, Pa. In addition, Seltzer and Halpern are equal partners in Hammon-ton Broadcasting Co., the permittee of a new standard broadcast station to operate on the frequency 1580 kc, daytime only, with 250 w, at Hammonton, N.J. (file No. BP-12754); they are copartners in Somerset Broadcasting Co., an applicant for a permit for a new AM station to be operated on the frequency 1530 kc, with 1 kw power, at Somerville, N.J. (BP-14234); and they are copartners in Burlington Broadcasting Co., the applicant for a permit for a new AM station to be operated on the frequency 1460 kc, with 5 kw day and night, at Burlington, N.J. (BP-12580).

24. *The New Jersey Broadcasting Co.* is a new corporation consisting of 20 stockholders, officers, directors, and subscribers to capital stock. The largest single stockholder and subscriber, who has a total ownership interest of 15.92 percent, is Mr. Horace W. Gross of Washington, D.C. Mr. Gross is also the president and a director of the company.¹³ The other stockholders all have interests, owned or subscribed, varying between 2.27 percent and 9.09 percent. Mr. Harold B. Erdman, who has a 9.09-percent interest owned and subscribed, is the corporate treasurer and a director; Mr. Albridge C. Smith III, who has no ownership interest, is the corporate secretary; Mr. A. C. Reeves Hicks, with a 2.27-percent ownership interest, is assistant secretary and assistant treasurer; Mr. Maurice F. Henly, Jr., a 9.09-percent owner, is a director of the corporation; Mr. Keven Kennedy, also a 9.09-percent owner, is a director; and Mr. Norbert A. Considine, Jr., a 9.09-percent owner, is vice president and a director.

2. Local ownership of principals

Nassau

25. All of the stockholders, officers, and directors of applicant Nassau are long-term residents of Princeton, N.J., several of them having been residents there for 15 years or more.¹⁴

Greater Princeton

26. Neither of the partners in applicant Greater Princeton resides presently in Princeton, N.J. Mr. Seltzer resides in Downingtown, Pa., and Mr. Halpern resides in Coatesville, Pa. Mr. Halpern who is general manager for station WCOJ, Coatesville, Pa., is the general manager proposed for the applicant's projected Princeton station and, consequently, if the application is granted he would take up

¹³ Gross has an option to purchase an additional 300 shares of the applicant's capital stock over above the 105 shares now owned by him and his subscription to 245 shares. If the option should be exercised, his ownership interest would increase to 26 percent of the company's outstanding stock.

¹⁴ Mr. Kenneth R. Wight, director and 5-percent stockholder and subscriber, presently resides in Laurence Township, which is adjacent to Princeton Township (Tr. 1022, 1023).

residence in Princeton in order to perform his duties as general manager. Mr. Seltzer does not propose to move to Princeton, but if applicant receives a grant he is to be responsible for designing and constructing the facilities in Princeton and thereafter to consult with his partner, Halpern, regularly and often on all phases of the operation. In terms of traveltime from Coatesville, under normal driving conditions, it would take him about $1\frac{3}{4}$ hours to travel to Princeton, and Mr. Seltzer expects to visit there frequently, on a daily basis, if necessary. Moreover, if Messrs. Halpern and Seltzer are successful in obtaining a construction permit for a station in Burlington, N.J., Seltzer plans to become a Burlington resident, and the driving time between Burlington and Princeton is about $\frac{3}{4}$ hours.

New Jersey

27. Mr. Horace W. Gross, applicant New Jersey's president, director and largest single stockholder and subscriber, who presently resides in Washington, D.C., is proposed as the general manager for the projected Princeton, N.J., station. Gross intends to move to Princeton if New Jersey's application is granted. The other stockholders and subscribers, directors, and officers of applicant New Jersey reside in the places indicated in the following table:

Name	Position	Ownership interest (percent)	Residence
Hyman L. Battle, Jr.	Stockholder	2.27	Princeton.
Harold B. Erdman	Stockholder treasurer, director.	9.09	Do.
Albridge C. Smith III.	Secretary		Do.
A. C. Reeves Hicks	Stockholder, assistant secretary, and assistant treasurer.	2.27	Do.
Maurice F. Healy, Jr.	Stockholder, director	9.09	Do.
Kevin Kennedy	do	9.09	Do.
John W. Brown	Stockholder	6.82	East Princeton, N.J.
Norbert A. Considine, Jr.	Stockholder, director, and vice president.	9.09	Kingston, N.J.
Donald Mackie	Stockholder	6.82	Princeton.
T. Hart Anderson III.	do	2.27	Hopewell, N.J.
Petersen Marzoni	do	2.27	Princeton.
David B. Miller	do	2.27	Do.
Arthur P. Morgan	do	2.27	Do.
Frederick H. Wandelt	do	2.27	Do.
John Forster Abeel	do	9.09	Cranbury, N.J.
George W. Conover	do	2.27	Princeton.
Peter F. Routhermel	do	2.27	Do.
Samuel E. Stewart	do	2.27	Do.
Raymond E. Stone, M.D.	do	2.27	Do.

3. Civic participation

28. The record shows that the principals of all the applicants herein belong, and have belonged to numerous civic, social, fraternal, cultural, educational, charitable, and religious organizations, and have participated in the activities of these groups. Thus, Mr. Seltzer of Greater Princeton is currently a director and member of the executive board of the Chester County Unit of American Cancer Society, a director of the Coatesville Orthopedic Committee, a member of the Coatesville Optimist Club, and a director of the Sheltered Workshop Project of the Pennsylvania Association for Retarded Children. Mr. Halpern is a director of the Coatesville Chamber of Commerce, a member

of the Coatesville Lions Club, a past member of the board of directors of Coatesville Orthopedic Committee, a past member of the board of directors of the Pennsylvania Association of Broadcasters (and chairman of its convention committee in 1960), and past president of the Coatesville Chapter of B'nai B'rith.

29. Mr. Herbert W. Hobler, president of applicant Nassau, has shown a similar broad participation and membership, both current and past, in various community organizations, mostly in Princeton itself, including the Princeton United Community Fund, and the First Presbyterian Church of Princeton (of which he is an elder). The same is generally true of each of the other principals of applicant Nassau, with the sole exception of Mr. Atherton W. Hobler, a 5-percent owner.

30. With respect to applicant New Jersey, the record does not show that Mr. Gross, applicant's president, who is presently a resident of Washington, D.C., has engaged in community civic activity since the year 1954. However, it was shown that when Mr. Gross resided in Allentown, Pa., between the years 1949 and 1954, he did participate actively in the United Fund Drive in that community and as a member or director in community work there. All of the other principals of applicant New Jersey, on the other hand, have participated in a wide range of civic activity as members or directors of various clubs, organizations, and drives, largely in Princeton itself.

4. *Integration of ownership and management*

Nassau

31. As indicated above, all nine of applicant Nassau's stockholders and subscribers are directors of the company. Mr. Herbert W. Hobler, applicant's largest single owner (62.6 percent), is its president. Mr. F. J. Worthington, with a 5-percent ownership interest, is vice president. Mr. Ralph S. Mason, also with a 5-percent interest in the company, is secretary-treasurer.

32. Mr. Hobler is to be the applicant's general manager, sales manager, and "coordinator" for religious programing; and Mr. Kenneth R. Wight, a director and a 5-percent owner, is to serve as program director and technical director.¹⁵

33. Mr. F. J. Worthington, vice president, director, and 5-percent owner, is to be "director of business affairs," principally responsible for proper accounting procedures, balance sheets, and in advising and counseling with the station management and directors on all financial aspects of the operation. He is to devote between 3 and 5 hours per week to these duties.

34. Mr. Ralph S. Mason, secretary-treasurer, director, and 5-percent owner, is to be "director of governmental affairs programing," concerned with "further discovering and cultivating sources of govern-

¹⁵ The term "technical director," as used by the applicant in describing Mr. Wight's position on the staff of its proposed station, was defined as not encompassing any supervisory authority over the station's engineering personnel since this would be outside of Mr. Wight's competence. It seems that his duties at the station would involve chiefly the production, or assistance in the production, of recorded programing in accordance with his experience in a recording ("audio engineering" service) business.

mental information of community interest." He intends to devote 3 or 4 hours per week to these duties.

35. Dr. Henry Abrams, director and 5-percent owner, is to be "director of educational programing," working with the various educational institutions in the area in developing program materials for the various scheduled educational programs, "in counseling with these various institutions, as well as allied organizations and learned men of the area in determining new opportunities of educational program service, and counseling with the station's management and directors regarding the total educational program effect." He is to devote about 4 hours per week to this endeavor.

36. Mr. Fred M. Blaicher, director and 5-percent owner, is to be "director of sports programing," responsible for working with the station management on sports programing of both an intercollegiate and interscholastic nature, "of working with the various organizations in establishing arrangements and liaison with the station regarding such programing, and in seeking out and working with other recreational organizations in the area involved in the health and welfare of the various communities." He is to devote "in excess of" 8 hours per week to his duties.

37. Mr. Raymond A. Bowers, director and 5-percent owner, is to be "director of health and social agencies programing with a responsibility of counseling and working with such agencies in the service area of the station in setting up regular and special programs which may serve the public and these agencies for the total betterment of the community." He is to devote from 2 to 4 hours per week to this endeavor.

38. Mr. Atherton W. Hobler, director and 5-percent owner, is to be "director of agricultural programing, advertising, and promotion," and is to work with various farm and agricultural organizations in developing program sources, materials, and programing. He expects to devote "several hours per week" and later, after retirement, to devote additional time to this endeavor.

39. Mr. Howard W. Stepp, director and 2.4-percent owner, is to be "director of youth programing," and is to work with youth agencies in developing programing ideas in this area. He proposes to spend 3 to 4 hours, "or more if necessary," to this endeavor.

Greater Princeton

40. Mr. William S. Halpern, 50-percent partner in Greater Princeton, is the proposed general manager, responsible for daily operations, of Greater Princeton's projected station. Mr. Louis W. Seltzer, the other partner, is to be completely responsible for the technical operation of the proposed station and is to be responsible as well for construction and design of the facilities. In order to carry out these responsibilities, Mr. Seltzer expects to visit Princeton frequently, daily if necessary.

New Jersey

41. Mr. Horace W. Gross, New Jersey's president, director, and largest single stockholder and subscriber, is New Jersey's candidate for general manager of its proposed Princeton station. Mr. Harold

B. Erdman, a 9.09-percent stockholder and subscriber and a director, is to serve as corporate treasurer. Mr. Albridge C. Smith III, who has no ownership interest and who is not a director, is to be the corporate secretary. Mr. A. C. Reeves Hicks, a 2.27-percent stockholder and subscriber, is to serve as assistant secretary and assistant treasurer. And Mr. Norbert A. Considine, Jr., a 9.09-percent stockholder and subscriber and director, is the corporate vice president. Mr. Considine, as vice president, is to assist Mr. Gross with planning and construction of the station. Mr. Erdman, as treasurer, is to be responsible for overall fiscal control. Mr. Smith, as secretary, is to keep the corporate records and conduct routine corporate business. Mr. Hicks, as assistant secretary and assistant treasurer, is to assist Messrs. Smith and Erdman.

42. New Jersey has set up stockholders' committees on education, "community service programs," a monitoring committee, and a committee on sales and promotion, in addition to proposing to utilize two of its stockholders, Messrs. Marzoni and Abeel, to advise on audience research and agricultural programs, respectively.

43. The committee on education consists of M. F. Healy, Jr. (9.09-percent stockholder and subscriber and a director); P. F. Routhermel (2.27-percent stockholder and subscriber); and G. W. Conover (2.27-percent stockholder and subscriber). These three men have a background in the field of education, Mr. Routhermel in particular being the headmaster of the Princeton County Day School. The committee is to meet monthly to appraise the station's educational programs, suggest improvements, and study the need for, and recommend, future programs.

44. The "community service programs" committee is to include H. B. Erdman, Jr. (9.09-percent stockholder and subscriber, treasurer, and a director); A. C. Smith III (the corporate secretary); D. Mackie (6.82-percent stockholder and subscriber); and A. P. Morgan (2.27-percent stockholder and subscriber). This committee is to assist the station in determining the amount of free time to give to the more than 150 churches, clubs, and organizations in the Princeton area, and is to review past programing to study the scope of the station's public service efforts and make recommendations. This committee is to meet monthly and make its recommendations to applicant's board of directors.

45. The monitor committee, which includes Mr. Hicks (2.27-percent stockholder and subscriber, assistant secretary, and assistant treasurer); Mr. Miller (2.27-percent stockholder and subscriber); Mr. Stewart (2.27-percent stockholder and subscriber); and Mr. Stone (2.27-percent stockholder and subscriber), is to be a "quality control committee responsible for monitoring the station and advising the board at monthly meetings on the overall quality of programing, production, and advertising presentation."

46. Applicant's sales and promotion committee includes Mr. Kennedy (9.09-percent stockholder and subscriber and a director), who is vice president of a New York City advertising agency; Mr. Considine (9.09-percent stockholder and subscriber, director, and vice president), who is director of advertising for a New York City clothing

and manufacturing firm; and Mr. Anderson III (2.27-percent stockholder and subscriber), who is manager of the Philadelphia office of Meridith Publishing Co. This committee is to study and recommend ways to increase the effectiveness of the station's sales department, program promotion, and audience promotion, and make recommendations to the board at monthly meetings.

47. In addition to the committees, Mr. Marzoni (2.27-percent stockholder and subscriber), who is to be adviser to the station on audience research, is vice president and research director of an advertising agency, and Mr. Abeel (9.09-percent stockholder and subscriber), who is to be adviser on agricultural programs, is board chairman of Forsgate Farms, Inc., a large dairy farm in Cranbury, N.J., and a member of the New Jersey Farm Bureau.

48. With particular reference to the functions to be performed in the proposed station by Messrs. Hicks and Smith, the evidence discloses that the monitor committee, of which Mr. Hicks is chairman, has never held a meeting; that Hicks has had nothing whatever to do with the preparation of the applicant's programing proposals; that his duties on the monitor committee, according to Hicks himself, would be to listen to radio on the drive between his home and office, his "only means of communication on a busy schedule," and to discuss with the committee members who reside and work in Princeton how the programs and commercials sound and to report their findings to the corporate board; that no member of the monitor committee, one of whom is a surgeon, another an obstetrician, and another the manager of an inn, is to be active in day-to-day station operations; and that Mr. Hicks and Mr. Smith (the latter being the corporate secretary and member of the "community service programs" committee) are associated in law practice and devote all their time during a normal working day to the practice of law. Additionally it was shown that Mr. Erdman's place of business until recently was either in Kingston or New Brunswick, N.J., and that he travels to the south on business from time to time; that Mr. Healy's place of business is in New York City whence he commutes daily from Princeton; that Mr. Kennedy's place of business likewise is in New York City where he commutes daily; that while New Jersey represented in an exhibit that the various committees described above resulted from the express interest of stockholders to contribute to station operation and from a desire to make use of the "special talents" of the individual stockholders, the only "special talents" which each such stockholder might utilize would be his own tastes and preferences consistent with station policy; that the contribution to the station by these committees would lie in advising the management or the directors in a meeting of types of music they might find objectionable or of objectionable advertising, or of anything else which they may not consider in the best interests of the station or its listeners; that none of the committee members has any special qualifications in terms of experience in radio station operation; and that it is not expected that any member of a committee would listen to the station all day or during any fixed period of time. Further, the record reveals that in all Mr. Gross' experience as a consultant or otherwise in the area of programing, he knew of no in-

stance wherein a broadcast station operating for more than 6 months utilized the type of stockholder committees to advise on programing as proposed by New Jersey herein.

5. *Experience and diversification of background*

Nassau

49. None of Nassau's principals has had experience in the ownership, operation, or management of a broadcast station. However, Mr. Hobler is presently (since June 1959) general sales manager of Videotape Productions of New York, the producers of television commercials and programs on videotape, and he has had several years' experience in network sales (e.g., sales account executive for MBS, 1948-49; for NBC-TV network sales, 1949-52; and for CBS-TV network sales, 1952-54).¹⁶ In addition, he wrote a 100-page employee textbook for MBS and served (from October 1958 until June 1959) as sales management consultant, specializing in general and sales management with Weed Radio & Television, a station representative firm in New York. Nassau's other principals have had a wide range of experience in the professional and business world. As examples, Mr. F. J. Worthington has been manager and secretary-treasurer of the Princeton University Store since 1947; Mr. Mason is partner in a Princeton law firm; Dr. Abrams is an ophthalmologist, a member of the staff of Princeton Hospital since 1938, and a faculty member of the University of Pennsylvania Graduate School of Medicine since 1947; Mr. Bowers is a builder and partner in a firm of architects; and Mr. Atherton W. Hobler, the father of Mr. Herbert Hobler, has been chairman of the executive committee, Benton & Bowles, Inc., the New York City advertising agency since 1952.¹⁷

Greater Princeton

50. The two partners in Greater Princeton have had experience in broadcasting itself. In 1949 they established station WCOJ, Coatesville, Pa., Mr. Louis N. Seltzer being the president of the corporate licensee of that station and chief engineer of the station, and Mr. William S. Halpern secretary-treasurer and general manager of the station. Seltzer is a graduate (1939) of Temple University, Philadelphia, with an A.B. degree in science. He has been an amateur radio operator continuously for 30 years. For a number of years he has been interested in single-sideband techniques and has received the DXCC Award from the American Radio Relay League and the "Worked 100" Award from CQ Magazine for making contact with

¹⁶ Mr. Hobler had approximately 2 years' experience with Mutual Broadcasting System in New York City as a trainee beginning in the year 1946. In that position, which involved "taking care of commercial customers and spending most of my time at that time in the radio studios," he prepared a 100-page training manual for new network employees and helped to develop several shows that either were broadcast or became audition records to be sold to the advertising industry. After 2 years he was transferred to Mutual's sales department, where he did his own research and where he created programs specifically in order to solicit business. His subsequent experience as a network sales executive or salesman brought him into contact with various well-known programs of the networks, but there is no evidence that his experience involved direct development of programing for any broadcast station. He has had no experience in actual radio station operation either as an employee or an owner.

¹⁷ In his long association with that agency (since 1932, according to his biographical statement in the record) Mr. Hobler, Sr., has supervised at one time four of the five top network radio shows in which the firm was involved as producer.

111 foreign countries using this technique. He presently holds commercial radiotelegraph second-class operator's license No. T2-3-314 and radiotelephone first-class operator's license No. P1-3-2272.

51. After graduating from college, Mr. Seltzer was employed by the Federal Communications Commission from 1940 to 1941. During this period, he worked in the Commission's monitoring stations in Millis, Mass., Gloucester, N.J., and Laurel, Md.

52. From 1941 to 1942, he was an assistant radio engineer, Navy Department, Bureau of Ships, Design Branch, Aircraft Radar Section. During this critical time in the early years immediately preceding and following the U.S. entry into World War II, when this country had little or no radar equipment in production for its mounting military needs and when much was still to be learned on the subject, Mr. Seltzer was engaged in the design and development of a number of pieces of aircraft radar equipment.

53. From 1942 to 1943, Mr. Seltzer was a factory engineer, Philco Corp., Philadelphia, Pa., where he was responsible for the solution of electronic problems concerning various pieces of military radar equipment.

54. After being drafted into the U.S. Navy in 1944 as an apprentice seaman, he was placed on inactive status because his work was considered critical by the U.S. Navy and returned to the employ of the Hazeltine Corp. at Little Neck, N.Y., where he served as a field engineer from 1943 to 1945. Mr. Seltzer holds an honorable discharge from the U.S. Navy as an apprentice seaman. Thereafter, he was employed as a field engineer by Philco Corp., Philadelphia, Pa., from 1945 to 1946. In the performance of his duties in the two aforementioned positions, Mr. Seltzer traveled to many areas in the Far Pacific (Guam, Okinawa, Kwajalein, Hawaii, etc.) and, also, to numerous places in the Caribbean and Central and South America for the Philco Corp. During this period, he was engaged in the installation of various types of complex electronic equipment and the training of military and civilian personnel in its use, maintenance, and repair after installation.

55. From 1947 to 1949, he was an associate engineer with Applied Physics Laboratory of the Johns Hopkins University, Silver Spring, Md. Here Mr. Seltzer was engaged in the design and field operation of telemetering equipment for use with some of the pioneer guided missiles under design and development in this laboratory. His job entailed active work in the laboratory in Silver Spring, Md., and in the field of various locations, including North Carolina and California, among others.

56. With respect to his experience with station WCOJ, it may be noted that Mr. Seltzer has participated from the beginning in both the daily operational problems and major policy decisions of the station. He has devoted about 25 percent of his time to technical matters in the operation of the station, and the balance to administration, selling, and programing.

57. Mr. Halpern was educated in the Philadelphia public schools. After graduation from high school, he took special courses in radio program production at Temple University and New York University.

From October 21, 1941, to December 24, 1945, he served in the U.S. Army. During this period, he served approximately 2½ years in the Quartermaster Corps, and approximately 1½ years in the Signal Corps at communications school and later as the radio operator on a troop transport in the Pacific. Following his discharge from military service, Mr. Halpern entered the field of radio professionally in 1946. At first, he was employed as an announcer at station WHNC, Henderson, N.C. He then became, successively, an announcer, production director, and program director at station WLBR, Lebanon, Pa. He served as program director at WLBR for 2 years and then came to Coatesville, Pa., in November 1949, as one of the founders of WCOJ. He has served as general manager of WCOJ for the past 11 years, during which he has been primarily responsible for the day-by-day operation of the station including the supervision of programing.

New Jersey

58. Of New Jersey's principals, only Mr. Horace W. Gross has had experience in broadcasting. Mr. Gross is a graduate of the Wharton School of Business and Finance, where he received a B.S. degree in economics in 1941. Also, he studied for 3 years at the Moore School of Electrical Engineering, University of Pennsylvania. He was treasurer, director, and a minority stockholder of Penn Allen Broadcasting Co., Inc., licensee of WFMZ and WFMZ-TV, Allentown, Pa., from 1948 to 1955. At the present time—since 1956—he is vice president, director, and less than a 25-percent stockholder in Howard S. Frazier, Inc., a Washington, D.C., firm of radio and television management consultants. Among the posts Gross has held with Penn Allen were those of business manager and commercial manager. In the latter position his duties were not limited to commercial activities but extended to include working with the company's president and its general manager in the development of operating plans and policies of the FM and later the UHF-TV station licensed to the company. During the period of early operation of the Penn Allen FM station, Gross participated in program planning. Gross participated as well in preparing and presenting the company's plans for television during 1948. He participated also with the company's president in starting a series of good music programs which had been fed to the FM station by arrangement with station WQXR-FM, New York. Penn Allen's application for a construction permit was granted during 1953 and the TV station went on the air in December 1954. In April 1955 the station suspended operations due to lack of financial support because of competition with Philadelphia VHF television stations.

59. New Jersey's principals other than Mr. Gross, as in the case of *Nassau*, supra, have had a wide range of experience in the professional and business world. Thus, as examples, Mr. Hyman L. Battle, Jr., is an attorney with a New York City law firm, and the vice president, director, and 30-percent stockholder of the Mercer Messenger, a weekly shopping guide; Mr. Maurice F. Healy, Jr., is divisional merchandising manager and stockholder of Personal Products Corp., a subsidiary of Johnson & Johnson (manufacturer of drugs and cosmetics); Mr. John Forster Abeel is the board chairman of Forsgate Farms, Inc.,

and holds directorships in several different companies; Mr. T. Hart Anderson III is manager of the Philadelphia office of Meredith Co., magazine publishers of Des Moines, Iowa; and Mr. Arthur P. Morgan is vice president of a New York City bank.

6. *Candor of Greater Princeton's principals*¹⁸

60. The evidence raises a question in regard to the candor of Greater Princeton's two partners and to the propriety of their conduct in withholding a proposed programing amendment to an application they filed sub nom. Burlington Broadcasting Co. (file No. BP-12580) for a broadcast facility in Burlington, N.J.

61. Messrs. Seltzer and Halpern, the evidence shows, prepared an amendment to their pending application for a broadcast facility in Burlington which they had not filed with the Commission. This amendment concerns the programing proposal of that applicant and they conceded, among other things, that the stated policy in the application as it now stands with respect to spot announcements does not represent the policy the applicant actually proposes to follow at the proposed Burlington station. Although the amendment was actually prepared some months ago, it was not filed because Seltzer and Halpern did not wish to disclose information therein to competitors who they claimed are not experienced broadcasters. Some of the decisions to alter the program proposal for the Burlington application, Seltzer first testified, were reached soon after that application was filed on May 15, 1959, others being made subsequently.

62. Seltzer and Halpern received a letter dated July 20, 1959, from the Commission which called attention to the fact that three mutually exclusive applications for the Burlington facility were on file. Thereafter, on August 1, 1960, the applicant advised the Commission of its intention to participate in such further proceedings the Commission might deem necessary. On September 14, 1960, an amendment sworn to on September 12,¹⁹ which was not the programing amendment mentioned above, however, was filed. The September 14 amendment included page 1, FCC Form 301, paragraph 2(b), wherein the applicant indicated with respect to sections II, III, and IV of the application form it was adopting the responses to these sections in its originally filed application. The applicant also asserted in the September 14 amendment that there have been no substantial changes in the information incorporated by reference to the originally filed application. Mr. Seltzer admitted that in swearing to the September 14 amendment to the Burlington application, he realized he was swearing that all statements made therein are considered material representations and that all exhibits are a material part thereof and are incorporated in

¹⁸ The charge was made by New Jersey that applicant Nassau, too, was lacking in candor for reporting erroneously, in an amendment to its application, that Mr. Wight, one of its stock subscribers, had paid in \$240 for the stock issued to him. The evidence shows, however, that the \$240 was actually paid, Hobler having advanced the money to Wight as a loan, although payment may have been made shortly after issuance of the stock certificate. The evidence does not reflect that anything more than inadvertent error, hardly serious enough to be characterized as misleading, was involved. The charge of lack of candor against Nassau is therefore rejected as without consequence.

¹⁹ The Sept. 14 amendment proposed a change in transmitter sites necessitated by the discovery that the site specified in the original application was owned by an estate whose executor was a principal stockholder and officer of an applicant in competition with the Seltzer-Halpern Burlington application.

the amendment just as if they had been set out in full in the application itself; and, also, that he had sworn that he endeavored to supply full and correct information on all matters relevant to the application. At the time Mr. Seltzer testified in the present case, the Burlington application, as amended, had not yet been set for hearing.

63. In further explanation of their motives for withholding the amendment to the Burlington programing proposals, Seltzer stated that he and his partner had decided to amend such proposals in that application because they had been acquiring more knowledge of the Burlington area since the application was filed and they felt they had to adapt themselves to changing conditions and requirements therein; that when the Burlington application was filed the applicant bore in mind that someone might review the program proposals and use or consider them in preparing a conflicting application; that the application was *not* filed with the realization that the applicant might find it desirable to amend its program proposals; and that the program proposals in the originally filed Burlington application were in fact the proposals of the applicant at that time, and had the application been granted at that time, Seltzer and Halpern would have put those proposals into operational effect.

64. Mr. Seltzer's explanations made it difficult to pin down exactly the point in time when he and Mr. Halpern first knew definitively they were going to amend the program proposals in their Burlington application. However, it is clear nonetheless from Mr. Seltzer's testimony that decisions to amend at least in some respects had been reached shortly after the original application was filed; but that many of the decisions were not meant to be final since it was contemplated that room for improvement in one programing area or another would continue. Seltzer first claimed that the amendment filed September 14, 1960, only included those changes which had been finalized as of that point in time, and that the projected programing amendment had not been prepared prior to September 14. He stated he could not recall when the programing amendment had been prepared other than to state it was "in the past month or two" (Tr. 551, 552). Asked whether he was certain that it was not prepared prior to September 14, Seltzer replied, "I am certain of that" (Tr. 552, lines 3-5). However, such a programing amendment had been "contemplated" prior to that date. He could not remember exactly when it was contemplated first, but "it may have been contemplated within a week or two after we filed the previous material" (Tr. 552, lines 9-12).

65. During a recess of the hearing session held January 5, 1961, Seltzer obtained a copy, at the request of opposing counsel, of the proposed programing amendment of the Burlington application. Included was a "Proposed Program Schedule" identified as "Exhibit No. 4" to the amendment, which bore the date August 25, 1960. Seltzer then explained that this document though dated August 25 was actually completed the day before, but that neither he nor his partner was certain it would be ready for submission then; that they were not satisfied it represented the programing proposal they finally wished to file; that even now [January 5, 1961] the proposed programing amendment had not been executed by them; that they now proposed to

file it "very soon," after their counsel advises them it is timely to file it. Finally, in response to questions by the presiding officer, Mr. Seltzer insisted that the projected programing amendment to the Burlington application had not been firmed up until after September 14, 1960, maintaining that the August 25 date on the proposed program schedule only meant that the particular pages in that exhibit happened to be finally typed up on that date. He then, for the first time, stated that the revised programing proposal actually became firm on November 18, 1960, and that the latter date was the date the partners finally decided they would file a programing amendment. Once again Seltzer reiterated that the amendment has not yet been filed because the partners simply did not wish the information to get into the hands of competitors for the Burlington facility any sooner than necessary.

7. Past broadcast performance

Nassau

66. As mentioned above, applicant Nassau and its principals have no record in this area of comparison.

Greater Princeton

67. With respect to the operation of station WCOJ by Greater Princeton's principals, the evidence reveals that 47 CFR 3.114 and 3.115 pertaining to the form of program logs and corrections thereof have not been (in all instances) strictly complied with by station WCOJ. Section 3.114 provides that "key letters or abbreviations may be used [i.e., on program logs] if proper meaning or explanation is contained elsewhere in the log." The original program logs for the station for its 1960 composite programing week omit any explanation of the abbreviations used therein.

68. In addition, while not a violation of the rules, the entry for Monday, February 2, 1959, between 7:06 a.m. and 7:28:45 a.m. shows a spot announcement identified as "Devitt's." There is no way of ascertaining from the log the actual length of this announcement.²⁰ Further, five other spot announcements during the same time period were apparently made, and there is no indication from the entries on the logs either as to the time each was broadcast or the length of each. The same sort of thing was shown to be applicable to all the logs for the composite week. Mr. Halpern maintained that all spot announcements unless tagged with the small letter "b," which means a half minute, were 1 minute in duration. But no one other than those familiar with the station's operating practices could ascertain this from the logs, and also if an announcer should happen to speak for more than a minute, this fact is unascertainable from an examination of the logs.

69. Section 3.115 provides that "Any necessary correction [i.e., on a program log] may be made only by the person originating the entry *who shall strike out the erroneous portion, initial the correction made, and indicate the date of correction.*" [Emphasis supplied.] The pro-

²⁰ The Commission's rules (see 47 CFR 3.111), it is true, do not contain an explicit requirement that the logs reflect the actual length of spot announcements broadcast. However, the length thereof must be logged in order to supply accurate information called for in the renewal application form. *Radio Station WSOO, Inc.*, 12 R.R. 953, 970 (footnote 5), 1006 (1956).

gram log of station WCOJ for Sunday, December 14, 1958, reveals there was a program entitled "Way of Life" which was classified as recorded. This entry, however, was inked out and the program reclassified as live. There was no initialing or dating of the inking out. Another entry, for a program entitled "Living the Faith," was likewise classified originally as recorded and this entry was also similarly altered to "live" and not initialed or dated. It was conceded that there were a number of other similar instances of the same thing.

70. Mr. Halpern, who is a 50-percent stockholder in the licensee of WCOJ and general manager of the station, and who is primarily responsible for this phase of station operations, asserted that he is familiar with the provisions of the Commission's rules on the manner in which program logs are to be kept; that he was "somewhat familiar" with section 3.114; that he knew station logs should show when a program begins and when it ends, and when station breaks occur; that the Commission's application form for renewal of station licenses calls for information concerning the placement of spot announcements within each 14¼-minute period, the number of such announcements, and the number thereof exceeding 1 minute in length.²¹ Further, all but the engineering portion of WCOJ's 1960 renewal application was prepared by Halpern or under his direction.

71. Mr. Halpern explained the WCOJ logging practice. He pointed out with respect to the matter of changes in the logs which were not initialed by the person making the changes that the majority of the changes were made *before* the actual broadcasts; that the logs were prepared several days in advance of date of broadcast and any number of changes occur between the final typing thereof and actual presentation on the air; that changes have to be made in ink by authorized personnel *prior to* broadcast as situations arise; that the announcer is responsible for noting deviations *at the end of the log* and for initialing these particular notations, after such deviations occur; that the announcer is not permitted to make any changes in a log except at the end of the log for the particular day; that Halpern now realized that whatever the changes in a log might be, they should be appropriately dated as well as initialed; that Halpern considered it to be impracticable to have logs retyped before they are given to announcers inasmuch as changes may occur within minutes, as well as hours, before broadcasts; and that with particular regard to the instances brought out herein where changes had been made which were not noted at the end of the logs, he was aware of only two such instances and he had been personally to blame for the errors since he had made the changes himself without initialing them. Further, Halpern conceded that by merely examining the official logs of WCOJ for the composite week, a person not connected with the station cannot ascertain when, how, or by whom any changes therein were made (Tr. 507-510).

²¹ The WCOJ 1960 renewal application, filed May 3, 1960, was signed by Halpern, who swore to its accuracy. Applicant's response to the query in sec. IV of the application "how many 14¼-minute periods contain five or more spot announcements?" was "31." In response to query on the number of such announcements exceeding 1 minute in length, application shows "None." Applicant also indicated the station's policy to be that no more than four spot announcements are to be broadcast in any 14¼-minute period, and no more than eight in each 29 minutes of participation programs, and that length of spot announcements would vary from 10 seconds to 1 minute in length.

72. The 1960 composite-week program log analysis in the 1960 renewal application of station WCOJ shows that 1.8 percent educational-type programs were broadcast. However, this was based upon programs aggregating 1 hour and 29 minutes (89 minutes) in length, according to the evidence. The percentage figure given in the renewal application, therefore, was obviously erroneous since 1.8 percent of 124 hours of programing yields over 2 hours of educational programing for the week involved.

73. Except for the matters mentioned above, no evidence was introduced to show that WCOJ may not have, or has not, lived up significantly to any promises set forth in its application filed with the Commission; or that it has not complied fully with other provisions of Commission rules and regulations or policies of the Commission. Indeed, favorable to the manner in which WCOJ has been operated it has been shown that the station has participated in and supported all community, civic, and charitable organizations; e.g., fund drives for many causes (viz, the Coatesville District United Charities Campaign, the Greater West Chester Fund, the Chester County Unit of the American Cancer Society, and Southeastern Pennsylvania Chapter of American Red Cross). In fact, the evidence shows (Greater Princeton exhibit 5) that WCOJ between January 1, 1960, and December 8, 1960, furnished free program time or spot announcements to something like 200 different local, regional, State, and national civic organizations and causes. In addition, the station has received awards, presumably for such public service, from some 15 such diverse organizations as the Muscular Dystrophy Association of America, Inc., the U.S. Air Force Academy, the U.S. Junior Chamber of Commerce, and the Chester County Council Boy Scouts of America. Finally, station WCOJ has broadcast religious programing on a regular daily or weekly basis in which time has been made available to all churches in Chester County; regular educational programs in behalf of the various schools in the area on some of which students and teachers participate; regular talk programs by professional home economists, water conservationists, and the district manager of the County Social Security Administration Office; and "special" programs covering such items of interest as the installation of a new president at a local college; election results, both local and national; March of Dimes Radiothon; news of emergency conditions affecting school sessions and highways; and various charitable campaigns.

New Jersey

74. Mr. Gross' association with station WFMZ in Allentown, Pa., and with the UHF television station operated by the licensee thereof, has already been mentioned. No evidence was adduced adverse to the manner in which these stations were operated or to Mr. Gross' participation therein. Nor does the record reveal in terms of specifics the character of the programing of these stations or show the extent to which the licensee carried out its representations and promises to the Commission. As indicated, none of New Jersey's principals other than Mr. Gross has had any affiliation with any broadcast station.

75. On the credit side of the ledger with respect to station WFMZ and its licensee, the record does show that at the time the FM station

commenced operating during 1947 with a power of 1 kw on a class A FM channel, there were very few FM sets in the market and that this station undertook both to promote FM broadcasting and its own programming; that it began broadcasting 17 hours a day with fully equipped studios and staff; and that it had to compete with several AM stations in the area; and was responsible, despite its handicaps, for initiating the first election return coverage from political party headquarters, the first "Community Christmas Carol Sing," the first broadcast of the Bethlehem Bach Choir, and the first live broadcasts of concert orchestras from the theater stage. The station had a commercial policy against advertising products or services which the management considered of questionable value or offensive to good taste, and in execution of this policy advertising from funeral homes, a deodorant account, and a laxative account were rejected. Also, the station had a policy against "multiple spotting" and "singing commercials," and on the latter account it lost the advertising of a major brewery and a regional bread account. Later, when the FM industry suffered a decline (1949-52), the station cut staff and broadcast hours in order to trim expenses and survive, yet continued to make an effort toward improvement of its situation. It requested permission from WQXR-FM, licensed to the New York Times, to rebroadcast certain of that station's programs and this request was ultimately granted. Thus it "initiated" the so-called "QXR Good Music Network." In 1950 WFMZ increased power to 20 kw and installed receivers in all public transportation buses serving Allentown, Bethlehem, and Easton, and initiated Transit Radio, a program for broadcasting to public transportation vehicles. Since 1951 WFMZ has pursued an all "good music" program policy.

8. *Planning and preparation*

Nassau

76. Mr. Hobler originally considered searching for a frequency that could be used in Princeton, N.J., and filing for it as an individual. However, after months of deliberation he thought it wiser to have others in the community join with him in the project. Consequently, he took the steps necessary to initiate Nassau's application in January of 1959. The first person he contacted as a prospective associate was Mr. Ralph Mason, a local lawyer who is active in civic affairs, and Mason agreed to join the organization as a stockholder.²² Hobler and Mason suggested different individuals to each other, and Hobler started contacting the various persons who are now Nassau's stockholders and subscribers.

77. Between some time in 1959 and the end of 1960, various contacts were made in the applicant's behalf of over 100 different individuals in different walks of community life who are, or were at the time, either spokesmen for or representatives of a variety of churches, organizations, clubs, and civic groups in the Princeton, N.J., area. Mr. Hobler made a great many of these contacts personally. However, Dr. Henry Abrams, Mr. F. J. Worthington, Mr. Fred W. Blaicher,

²² Mason is secretary, treasurer, and a director, and a 5-percent stockholder and subscriber in Nassau.

Mr. Kenneth R. Wight, Mr. Raymond A. Bowers, and Mr. Ralph S. Mason, all 5-percent stockholders and subscribers and directors of the company, made some of these contacts too. Several were also made by Mr. Howard W. Stepp, a 2.4-percent stockholder and subscriber and a director. A few of the contacts were made by letter or telephone, but the vast majority were personal in nature. In a number of instances the individuals contacted were contacted more than once. For example, Mr. Hobler personally contacted the dean of faculty of Princeton University on January 17 and January 20, 1959, and again on December 22, 1959. The alleged purpose of all these contacts was "to seek out the advice and opinions of various people in the proposed coverage area, to find out how they felt a radio station could serve the community, specific ideas as to what they might feel could be put into our program schedule, to survey both specifically and generally, to confirm any of the feelings that we, on the board, had about what we felt perhaps the community might use, and to translate many of these contacts into specific programing ideas and suggestions in the schedule" (testimony of Hobler, Tr. 993, 994).

78. The applicant's proposed program policy statement (Nassau exhibit 14) was prepared in draft originally by Mr. Hobler personally, based on his personal knowledge, on consultation with NAB brochures, and statements of policy by other stations. Hobler presented the draft to the applicant's board of directors and asked them how various elements thereof should apply specifically to the Princeton market. This document was prepared in draft form during the spring of 1960 and was finalized at the applicant's September board meeting.

79. Mr. Hobler also prepared the applicant's program description exhibit (exhibit 16) in draft form during March 1960. It was presented to the directors in April and reviewed in September and again in November. Mr. Hobler also had prepared rough descriptions of proposed programs at the time the applicant's original application had been filed, although these were not filed with the application.

80. With respect to the program contacts exhibit (Nassau exhibit 13), some of the contacts listed were made after the application had been amended to submit a new proposed program schedule. The purpose here was to expand the applicant's knowledge and understanding of the programing interests of the community by continuing to contact various persons therein to request their advice and cooperation. The evidence shows that the timing, subject matter, or content of a number of the programs the applicant proposes developed as the direct result of information from such community contacts by Mr. Hobler and one or more of the other stockholders. The applicant, through Mr. Hobler, represented that if Nassau were the successful applicant in this proceeding and assuming it could take the air the day after Mr. Hobler testified (January 11, 1961), it intended to broadcast the exact program schedule it was proposing in this proceeding. However, applicant, through Mr. Hobler, recognized that it would be speculative for anyone to try to pinpoint exactly the programs that would be broadcast and how these would be produced when there might be a considerable time lapse before the station could actually start broad-

casting. Thus, while the proposed program schedule concededly might be subject to substantial alteration by that time, applicant maintained that it did not anticipate that conditions in the Princeton area would change so much in the interval as to require a material change in the programing proposed by it. Applicant does intend to keep in touch with area characteristics, however, so that changes may be taken into account in connection with the programing as such changes occur.

Greater Princeton

81. Greater Princeton made no community contacts in the preparation of its programing proposals, taking the position that 11 years of broadcasting experience of its two partners convinced the applicant that the persons who might be contacted are not necessarily the persons in the same administrative positions when a new radio station might become a reality. Instead of making such contacts, however, Messrs. Halpern and Seltzer made survey trips to the Princeton area during the spring and winter of 1958, and they examined background statistical data on the area and did some research work to ascertain whether the area was still growing. Mr. Seltzer made a trip to the area and performed a frequency study in order to ascertain whether a frequency could be found which would be usable there. Besides questioning the utility of making community contacts, the applicant was motivated by a desire to conceal its programing ideas from potential competitors. For local people contacted in regard to the programing proposed by one applicant might well be contacted by other applicants also, and Mr. Seltzer believed they might divulge Greater Princeton's programing ideas to the other applicants.

82. In applying for a facility in Princeton, the applicant was motivated by a desire to be the one to establish the first local outlet in that community. With 11 years of broadcast experience behind them, the partners wished generally to branch out and to provide the first local broadcast service in any community which had no facility.

83. In their researches on the Princeton area, Messrs. Seltzer and Halpern relied on obtaining as much local information as they could through the chamber of commerce and from certain pamphlets issued by the League of Women Voters. They also examined the Sales Management Yearbook which shows population breakdown and retail sales for the area, from which they obtained data on the growth of the area and whether it was a "buying community" over the past 5 years. They were satisfied from their investigations and research that Princeton is a community with a high educational level, above the national average, in which one-third of all adults are college graduates. As indicated above, Messrs. Seltzer and Halpern have applications on file with the Commission for authorizations to establish standard broadcast stations in Somerville, N.J. (1960 U.S. census population, 12,458); Hammonton, N.J. (1960 U.S. census population, 9,854); and Burlington, N.J. (1960 U.S. census population, 12,687). In each of these three communities there were no local broadcast stations at the time the applications were filed, and station WCOJ was

the only station in Coatesville, Pa. (1960 U.S. census population, 12,971).

84. Mr. Halpern conceded that he knew nothing of the churches in the Princeton area other than that there are churches there, but claimed that upon very slight investigation all of the necessary facts could be ascertained. In response to inquiry by the hearing examiner on the matter of programing preparation, Mr. Halpern agreed that almost anyone with a degree of imagination could prepare paper program titles and formats for presentation to this Commission, with the qualification, however, that one would have to have some knowledge of the community to be served, which could be obtained easily by examining chamber of commerce information. The program titles in Greater Princeton's proposal, he represented, were prepared with Greater Princeton's application solely in mind. However, Halpern agreed that he could just as easily have lifted the titles from a current program log of station WCOJ, making alterations in the content of the programs now being broadcast by that station so as to provide for participation by Princeton residents.²³ Continuing in response to queries by the examiner, Halpern maintained that if WCOJ's programing were used in Princeton, it would have to be upgraded in terms of the quality of the content of some of the news and discussion programs in order to meet the needs of the Princeton area; that in terms of program types, e.g., talk programs, discussion programs, etc., as distinguished from the matter of local participation and of local topical interest, he would not say that the subject matter of Greater Princeton's proposed programing "necessarily" would be of interest to people anywhere in the United States, since there are sections in the country which would not appreciate such things as discussions of literary works or classical music; that he recognized, however, that one of the functions of a broadcaster should be not merely to cater to popular needs but to try to lift public tastes as well. While Mr. Halpern maintained, on the one hand, that he would not regard a broadcaster as remiss in his public responsibility if he broadcast no classical music at all provided he knew that the audience he was attempting to serve would not listen to such broadcasts (this would not be so in Princeton because 35 percent of the adult population there had been to college, he stated), he conceded, on the other, that almost any community in the United States has people who have gone to college and small minorities with interests and needs for which the broadcaster should devote at least some time. Summing up Greater Princeton's preparation of its program proposals, Halpern represented that these were developed as the result of an exercise of imagination derived partially from the experience of the two partners with WCOJ's operation in Coatesville, partially as the result of brief visits to the Princeton area, and partially from the examination of source material concerning the nature or composition of the Princeton community; e.g., chamber of commerce publications.

²³ There was no evidence that this was done in the present case.

New Jersey

85. New Jersey's preparatory work began during the fall of 1957, and the official decision to form a corporation for the purpose of applying to the Commission for the Princeton facility was reached during a meeting of 17 men on December 20, 1958. The search for a frequency to be used in Princeton began in October 1957 by Mr. Horace Gross, with the assistance and advice of a Washington, D.C., firm of consulting radio engineers. Before he moved to Washington, D.C., in 1956, Mr. Gross, except for the period from 1941 to 1946, lived from 30 to 50 miles from Princeton. Until 1950 Mr. Gross spent much of his time in Bucks County, Pa., which adjoins Mercer County, N.J., where Princeton is located. Thus, over the years Mr. Gross became familiar with Princeton, visiting there frequently and occasionally shopping there. Mr. Gross and Mrs. Gross were attracted to Princeton because of the educational opportunities available for children there, its residential character, and its vigorous cultural, political, and economic life. Also, Mr. Gross realized that Princeton had no commercial radio station and consequently there was an opportunity there to provide a needed service.

86. After searching for a frequency and making various engineering studies during the spring and summer of 1958, a meeting took place (on September 24, 1958) between Mr. Gross and Mr. Albridge C. Smith III, who later became New Jersey's corporate secretary, to discuss plans for establishing a Princeton radio station and to lay the foundation for the formation of the corporation. Gross, relying on his experience of about 10 years before with Penn Allen, proposed that a company be formed with local individuals who could be expected to have a common interest in providing radio service to the Princeton community. At about this time the search for a transmitter site began. At this particular time no one concerned with the plans that were being formulated knew that an application had been filed by Greater Princeton on September 23.

87. Originally New Jersey consisted of 16 incorporators and stockholders. An additional stockholder joined in January 1959. For personal reasons, three of the stockholders withdrew during December of that year, whereupon four new stockholders were brought in.

88. In connection with the preparation of its programming proposals, New Jersey, like Nassau, made a large number of local community contacts, of over 80 different individuals in different walks of community life who are, or were at the time, either spokesmen for or representatives of a variety of churches, organizations, clubs, and civic groups in the Princeton, N.J., area. While many of these contacts were made by Mr. Horace Gross, the majority of them were made by the other stockholders and subscribers of New Jersey. Most of them were personally made, but in several instances the telephone was utilized for the purpose. The contacts were made between December 1958 and November 1960, several of them during the latter month and three during the end of December 1958. New Jersey's application was filed February 9, 1959.

89. In requesting his associates to make the contacts, Mr. Gross asked them as far back as December of 1958 and January of 1959 to

contact civic and business groups in the area and to do as much of this as they could before the application was to be filed. All the persons who made the contacts were briefed by Gross on how to go about it, and Gross, in fact, wrote a script for them to use in the process.

90. Mr. A. C. Reeves Hicks, a 2.27-percent stockholder and subscriber and New Jersey's assistant secretary and assistant treasurer, who testified in this proceeding and who made some of the contacts, was unable to remember the reasons Gross gave for requesting that the contacts be made. Hicks testified he merely asked the persons be contacted how best they could utilize a radio station in the Princeton area and what kind of programs they could take advantage of. Hicks was under the impression that if New Jersey were the successful applicant in this proceeding, such contacts would continue to be made. Gross himself confirmed it is the applicant's proposal that its stockholders will continue to make such contacts on a followup basis along the same lines as indicated in the exhibits presented in evidence (Tr. 909).

91. Gross could cite only one instance from his personal experience or knowledge wherein the licensee of a broadcast station which was operative for more than 6 months continued to make such contacts. On questioning further, however, it developed that the one instance involved station WFMZ in Allentown, some of whose stockholders contacted people to appear on programs, and that the contacts differed from those made in behalf of New Jersey both in extent and in purpose. Gross admitted the possibility ("it is possible") that the contacts made in behalf of New Jersey were made in part for the purpose of prevailing in a comparative proceeding, but likewise they were made, he declared, for the purpose of assisting initially in the preparation of the applicant's program proposals, to ascertain the willingness of organizations and people connected therewith to appear on programs, and to ascertain which of the programs proposed ought to be modified (Tr. 912).

92. Applicant's contact exhibit (New Jersey exhibit 19) shows that some discussion was had in several instances concerning specific programs the applicant proposed. It appears generally that some of the contacts at least were utilized in the preparation of the applicant's proposed program schedule.²⁴ Other programs proposed, however, were prepared on the basis of the stockholders', directors', and Mr. Gross' experience.

93. Applicant as part of its preparation also had a listenership survey made by an advertising company ostensibly in order to ascertain the preferences for types of radio programs of people in the area. The survey report, however, which was received by it during May 1960, was utilized specifically as the basis of the musical content of certain entertainment programs proposed, for determining the content of proposed news programs, and in scheduling different kinds of music at different times during the broadcast day. As an example

²⁴ Mr. Gross testified (Tr. 928, 929) that "far more than half" of the reports on community contacts had been submitted before the final rough draft of the program description exhibits had been prepared, and that "by the time the complete and final form of the program descriptions was made, all the program contacts had been submitted."

of the manner in which the applicant utilized this survey, the survey indicates that 61 percent of the audience listening to the radio between 6 and 8 a.m. on an average weekday are teenagers. Consequently, applicant proposes to schedule in the musical component of its entertainment programing to be broadcast during that time slot records which it believes would appeal to the teenager listenership. An entertainment-type program entitled "The Sunlighter" listed in the applicant's proposed program schedule (New Jersey exhibit 7, p. 4) at 6:15, 6:35, 6:46, and 7:05, among other time periods during the mornings on weekdays, is described in its program description (exhibit 10, p. 2) as including "popular records" in its format. New Jersey promises that if its application is granted, it will have audience surveys made after the proposed station takes the air, probably on a 6-month basis (Tr. 912, 913). Applicant contends that the only way to program a station properly is for the management to go to the listeners in order to ascertain their desires in the way of program fare, and also to determine when people will be available to listen to various programs.

94. New Jersey's statement of program plans and policies (exhibit 6) was prepared by Mr. Gross who drew upon his overall experience in the broadcasting field in doing this. As indicated heretofore, Mr. Gross is presently the vice president of Howard S. Frazier, Inc., a radio and television management consulting firm which is engaged in studying the overall operations of broadcast stations, advising and counseling applicants before the FCC, making market studies, and doing appraisals. Some of this work involves the preparation of exhibits and related material for submission to the Commission. Gross has assisted in the preparation of cases other than New Jersey's for presentation before the Commission, Gross having had occasion to prepare or to participate in the preparation of statements of program plans and policies for various clients of the Frazier firm. In addition to his experience with Frazier, Gross had devoted essentially his entire business time and activities to the affairs of Penn Allen from 1947 until the spring of 1955.

95. New Jersey's statement on "program plans and policies" (exhibit 6) was prepared between March and December of 1960. Copies of the document in final form were mailed from Washington, D.C., to New Jersey's directors some 10 or 12 days prior to January 6, 1961. However, a draft of this document, as well as of various other exhibits, was supplied the directors at a meeting held November 19, 1960. On that occasion the exhibits were reviewed and approved in the form in which they were presented in evidence herein. The November 19, 1960, directors' meeting was the last one held, and prior to that meetings had been held in December 1959 and March 1960.

96. Mr. Gross, like Greater Princeton's Mr. Halpern, agreed that employing imagination almost anyone could compose program titles and formats for presentation to the Commission in an application for broadcast facilities and, further, that this does not require any particular specialized skill. Moreover, he agreed that in composing program titles for submission in the present case, he could easily have lifted such titles from other applications in the Commission's files

and have utilized even the exhibit material thereon submitted in some other proceeding, simply altering titles and descriptions to fit his conception of the programing needs of the Princeton, N.J., area. However, Gross did not do any such thing in the present case.

9. *Diversification of control of mass communications media*

Nassau

97. None of the principals of applicant Nassau has any present interest in any medium of mass communications.

Greater Princeton

98. Greater Princeton's two partners, as mentioned, own the licensee of standard broadcast station WCOJ, located in Coatesville, Pa., more than 75 miles from Princeton, N.J., as the crow flies. They are also 50-50 partners in Hammonton Broadcasting Co., which is the permittee (application granted December 7, 1960) of a new standard broadcast station at Hammonton, N.J., some 50 airline-miles from Princeton, which is authorized to operate on the frequency 1580 kc with 250 w, daytime only (file No. BP-12754). There was no evidence that any overlap of service areas as between these stations and that proposed by Greater Princeton will occur.

New Jersey

99. The evidence discloses that the only connections any of the principals of applicant New Jersey have with mass communications media are the interests of two of its stockholders and subscribers in a "weekly shopper" circulated free to residences mainly in Ewing and Laurence Townships, Mercer County, N.J. Mr. A. C. Reeves Hicks, a 2.27-percent stockholder in New Jersey and its assistant secretary and assistant treasurer, has a 25- to 30-percent interest in this shopper, which carries the name Mercer Messenger and is published by a company known as "Schweats, Inc."; and Mr. Hyman L. Battle, Jr., a 2.27-percent stockholder and subscriber of New Jersey, is vice president, director, and a 30-percent stockholder in the shopping guide. The Mercer Messenger consists of advertisements but also of some news "copy." It carries a few advertisements by Princeton, N.J., merchants, but most of its advertisements come from Trenton and Ewing and Laurence Township merchants. The paper is distributed by mail. Laurence Township is contiguous to Princeton Township. There are three weekly newspapers other than the Mercer Messenger which are published in Princeton. The record discloses that about 11,000 copies of the Mercer Messenger are distributed each week and without charge. While supposedly none are distributed in Princeton itself, there are some addresses in adjacent Laurence Township to which deliveries are made from a Princeton post office.

10. *Proposed programing*

100. The three applicants each submitted detailed proposed findings on their respective program proposals. In their proposed conclusions on this subject, however, they do not demonstrate that there are significant *substantive* differences in the programing proposed. Nassau urges that its program proposals alone "contain programs specifically

suggested by residents of Princeton," while its competitors' programming proposals were prepared by nonresidents and do not contain programs specifically suggested by residents.²⁵ Further, Nassau argues that its proposals reflect the "unusual character of the Princeton community," while its competitors' proposals are so "vague" as to be applicable to almost any community. Nassau concludes, however, that statistically there is no significant difference between the respective proposals. Greater Princeton, on the other hand, claims that its proposed programming is better balanced statistically than its competitors', and that New Jersey's proposals in particular are inferior because certain of its programming is scheduled without regard to the availability of listeners and some of the programs are incorrecly classified by Commission definition.²⁶ New Jersey claims its programming is so specifically defined that the Commission may be certain that its proposals will be effectuated, that Nassau's proposals are over-ambitious and not predicated on knowledge of their feasibility and the proposals themselves are vague and ill defined, and that Greater Princeton's policies and program proposals are not described with sufficient specificity, its proposed operation being on a "trial and error basis" rather than carefully planned. These contentions are mentioned now, rather than in the conclusions hereof, because they suggest that this decision need not be encumbered with the same minutia on the respective program proposals which the applicants have seen fit to submit in their proposed findings. *Johnston Broadcasting Company v. FCC*, 4 R.R. 2138, 2144, 2145.

101. Statistically, it will suffice to point out that Nassau proposes 70.5 percent entertainment-type programming during a typical week, as against 71.71 percent by New Jersey and 65.1 percent by Greater Princeton; 4.2 percent religious programming, as against 4.27 percent by New Jersey and 4.9 percent by Greater Princeton; 1.0 percent agricultural, as against 1.67 percent by New Jersey and 2.0 percent by Greater Princeton; 3.7 percent educational, as against 4.13 percent by New Jersey and 3.5 percent by Greater Princeton; 14.1 percent news, as against 11 percent by New Jersey and 13.9 percent by Greater Princeton; 3.6 percent discussion, as against 2.53 percent by New Jersey and 3.3 percent by Greater Princeton; and 2.9 percent talks, as against 4.69 percent by New Jersey and 5.3 percent by Greater Princeton. In terms of program sources, Nassau proposes 50.6 percent recorded commercial, as against 53.1 percent by New Jersey and 30 percent by Greater Princeton; 24.3 percent recorded sustaining, as

²⁵ The evidence does not support this claim insofar as applicant New Jersey is concerned. Moreover, it may be here noted that Princeton has long been a well-known center of education, the home of Princeton University and of many other fine public and private schools, and that all the applicants have taken this into account in framing their program proposals. While it may be that the successful applicant might consider the advisability of seeking out and putting into effect programming suggestions made by leaders in so highly cultured a community, the evidence herein does not establish that the program proposals of any one applicant suffer by comparison with any other merely because it did not obtain and use such suggestions in this case. At least the descriptions of the various programs proposed fall probatively to demonstrate the cogency of Nassau's position on this matter.

²⁶ The evidence does show that New Jersey may not have adhered strictly, and literally, to the Commission's definitions of talk- and discussion-type programs. While this may throw its percentage analysis out of kilter, the program descriptions supplied by New Jersey show nevertheless that its proposal will not be lacking significantly in programs the content of which will conform to Commission definitions of talk- and discussion-type programming.

against 19.3 percent by New Jersey and 36.1 percent by Greater Princeton. Nassau proposes 12.1 percent live commercial and 10.7 percent live sustaining, as against 9.6 percent and 14.5 percent, respectively, by New Jersey, and 7.6 percent and 13.6 percent by Greater Princeton. Nassau and Greater Princeton propose to broadcast 124 hours per week in toto and New Jersey 125 hours. Nassau proposes to broadcast 600 commercial spot announcements and 190 noncommercial spots per week, and New Jersey proposes 640 and 180, respectively, and Greater Princeton 625 and 165, respectively.

102. All of the applicants have submitted descriptions of individual programs proposed into evidence. While one description may be more detailed than another, there is nothing about these descriptions to indicate that any one program proposal is superior substantively to any of the others. Without departing from the resolve to avoid unnecessary detail in reaching findings from the evidence, it may be noted that Nassau appears to have proposed a number of locally originated programs, both live and recorded, of different types, e.g., the program "Chapel Service" from 6 to 6:15 a.m., Mondays through Fridays; "News Commentary," between 8:05 and 8:15 a.m., same days; and "Adventures in Music," between 1:30 and 2 p.m., same days, on which there is planned to be participation by local personalities, groups, clubs, or organizations, or announcements in their behalf. The same seems to be true with respect to such programs as "Mercer County Farm Agent," "Classified Column of the Air," and "Personality Spotlight" proposed by Greater Princeton, and with regard to such programs as "Sermon of the Week," "New Jersey Almanac," and "The A B C's of Music" proposed by New Jersey.

103. Each applicant likewise has proposed program policies which, if effectuated, should result in operations in conformity with the public interest. Thus, for example, Nassau proposes to broadcast news factually, objectively, and reliably, and to prohibit at all times profanity, vulgarity, irreverence, derisive, or suggestive words from all of its programing. Greater Princeton similarly proposes to maintain strict control over the content, production, and quality of each program to be broadcast and to adhere to the NAB Code. New Jersey proposes to adhere strictly to all laws, rules, and regulations, and to subscribe to and follow the NAB Code. While each of the policy statements submitted in evidence differs naturally from the others both in substance and in format, there is no basis for finding that any one of them is more than a statement of good intentions or that any one is superior than any other by any objective test.

104. Finally, it may be noted that the evidence does not establish that any one of the program proposals herein is more adequately geared to local interests, needs, or desires in the Princeton area than any of the others. Nor does the evidence demonstrate that any one proposal is more specific than the others, or even if it were, that such specificity would be decisionally meaningful in any event. Nor does the evidence establish that any applicant's scheduling of programs proposed is necessarily more or less faulty than the others, other than that New Jersey alone of the applicants has utilized a listenership survey to schedule some of its musical programs. By the time any

applicant would be able to build its proposed station and commence operations, it may indeed find it necessary to make many programming changes, including scheduling, in order to conform to its public-interest responsibility.

CONCLUSIONS

1. In this proceeding, the Commission having previously determined that all the applicants are basically qualified except as specified in the issues, the first question to be resolved is the matter of the electrical conflict between the WNLK proposal for a power increase and the proposals of the Princeton applicants for a new AM facility in Princeton, N.J. The second question at issue is which of the mutually exclusive proposals for the Princeton facility should prevail on a comparative basis, assuming that the conflict with WNLK does not preclude the assignment of the frequency 1350 kc in Princeton, N.J.

2. At the inception it is concluded that absent a waiver to the Princeton applicants of the "10 percent" rule, the proposal of WNLK for increase in daytime power from 500 w to 1 kw is mutually exclusive with each of the Princeton proposals. For, while a grant of any of the Princeton applications will not cause WNLK to be subject to objectionable interference in excess of the 10-percent limitation in the rule, the converse is not also true. Indeed, a grant of WNLK's application and the simultaneous grant of Nassau Broadcasting Co.'s would cause an increase from 8.8 percent to 11.8 percent of the population within the proposed normally protected (0.5 mv/m) contour of the latter applicant which would be affected by objectionable interference during the daytime. Similarly, a grant of WNLK's application and the simultaneous grant of either Greater Princeton's or New Jersey's application would result in increasing the populations within the proposed normally protected contours of these applicants which would be affected by objectionable interference during the daytime from 9.97 percent to 13.9 percent.

3. If a waiver to the Princeton applicants is not to be granted, the question presented is which of the proposals, WNLK's or the Princeton applicants', would be the best allocation, on a comparative basis, in accordance with 47 U.S.C. 307(b) and 47 CFR 3.24. In such a comparison it may first be noted that the facility sought by all the applicants, 1350 kc, is classified as a class III, or "regional" channel under 47 CFR 3.26, and that the Princeton applicants would make a more effective use of this channel during the daytime than would WNLK by serving far more people than the latter. The Princeton applicants would each establish a first local standard broadcast station in Princeton, N.J., a populous community (1950 U.S. census population 12,230). Applicant Nassau would provide a new interference-free service (0.5 mv/m or greater) during the daytime to a total rural population of 423,870 in 2,011 square miles, and to 35,080 persons in 96 square miles at night. Similarly, applicants Greater Princeton and New Jersey would provide such service to a rural population during the daytime of 425,749 in an area of 1,981 square miles, and to 33,796 persons in 86 square miles at night. Princeton itself, as well as the balance of the populations and areas to be served by the Princeton

applicants, is served presently, in whole and in part, by a number of other broadcast stations, and in fact there are no "white" or "gray" areas involved or any population which might be characterized as being relatively underserved from the standpoint of availability of reception service thereto, either during the daytime or at night. The evidence also discloses that even with a simultaneous grant of WNLK's application and any one of the applications for Princeton, there would be available to the populations which would not then receive service from the Princeton proposals a multiplicity of services from other stations during the daytime.

4. Examining WNLK's proposal, it appears that that station now provides interference-free service during the daytime to a total population of 145,044 in an area of 391 square miles within its 0.5-mv/m normally protected contour, and that by authorizing the improvement in facilities sought the station's daytime interference-free service area would be expanded to encompass a population of 223,245 in 636 square miles within its proposed 0.5-mv/m normally protected contour. This represents a gain of 78,201 persons who would receive a new service from station WNLK. Such increase would be accomplished without causing interference to any existing station other than to WNHC, New Haven, Conn., whose application for a power increase was recently granted conditioned upon acceptance by the permittee of such interference as may be imposed in the event of a grant of WNLK's application. It also appears, however, that all pertinent areas and populations presently receive daytime interference-free service from several stations other than station WNLK.

5. Under the facts outlined, the conclusion is inexorable that a greater need for the service proposed by the three Princeton, N.J., applicants has been demonstrated than for the additional service station WNLK would provide under the authorization it here seeks. *Lawton-Ft. Sill Broadcasting Co.*, 7 R.R. 1216 (1953). Further, the evidence suggests no basis for a waiver of the "10 percent" rule herein so that WNLK's application might be granted simultaneously with a grant of one of the Princeton applications. See *Louis Adelman*, 28 FCC 432, 18 R.R. 97; reconsideration denied, 29 FCC 1223. Accordingly, it is concluded ultimately that the application of Norwalk Broadcasting, Inc. (WNLK), for authorization for improved daytime facilities must be denied, and that one of the three applications for a new standard broadcast facility in Princeton, N.J., to be determined hereinafter, should be granted.

6. Since the three Princeton applications are mutually exclusive and only one can be granted, a comparative evaluation of these applicants and their proposals must be made in order to ascertain which of them will best serve the public interest, convenience, and necessity. The comparative factors involved have been detailed in the findings, and only the most pertinent and significant of these need be repeated in the following assessment.

7. As the Broadcast Bureau contends in its proposed conclusions, no basis for preferring any one of the Princeton applicants over the others in terms of engineering has been shown. Differences in popu-

lations to be served as between Nassau's proposal and the New Jersey-Greater Princeton proposal are minor and without significance.

8. In terms of the local ownership criterion, all of its owners, officers, and directors being longtime residents of Princeton, N.J., applicant Nassau enjoys a decisive edge over its competitors. As between Greater Princeton and New Jersey, the latter applicant has the edge since a substantial percentage of its ownership are *presently* local residents, while neither Mr. Halpern nor Mr. Seltzer reside in the Princeton area at the present time.

9. With regard to the degree of civic participation of the applicants' principals, applicant Nassau again deserves to be preferred over its two competitors. For while there is no significant basis for distinguishing between the overall participation in community activities in general of the individuals involved, the evidence shows that neither partner in Greater Princeton, nor Mr. Gross of New Jersey, has participated in community activities in the Princeton area itself, whereas virtually all of the owners of applicant Nassau have done so. As between Greater Princeton and New Jersey, the latter has the edge in this area of comparison since most, if not all, of its interested parties, save Mr. Gross, have participated in local Princeton area community activity.

10. In comparing the applicants with respect to proposed integration of their ownership with management, once again applicant Nassau is to be preferred, although the lines of distinction may not be so sharply drawn in this comparative area. Thus, Mr. Herbert W. Hobler, Nassau's largest single owner (62.6 percent), is to be its president and general manager and sales manager, while two 5-percent owners (Worthington and Mason) are to serve as corporate officers. On the other hand, only one of the 50-percent partners in Greater Princeton, Mr. Halpern, is going to live in Princeton and be responsible in actuality for day-to-day station operations. While Mr. Seltzer promises to be available, even on a daily basis if necessary, he is to live elsewhere and in the long run, it appears, to be responsible primarily for other broadcast interests of the partners once the proposed Princeton station of Greater Princeton becomes operational. (See *Hi-Line Broadcasting Co. et al.*, 22 FCC 891, 914.) With respect to New Jersey, only Messrs. Gross (with a present 15.92-percent ownership interest); Erdman (with a 9.09-percent interest); Hicks (a 2.27-percent owner); and Considine (a 9.09-percent owner) hold corporate offices which will impose upon them the obligation to execute the policies laid down by the directors. Collectively, therefore, only 36.37 percent of the present owners of New Jersey are to have such responsibility on a day-to-day basis, and even if Mr. Gross were to exercise his option to purchase additional shares, this percentage would only be increased to 46.45 percent. In making this comparison, Nassau's intention to impose specific obligations in different areas of programming upon individual minor shareholders who will only devote between 3 and 5 hours per week (save perhaps, Mr. Blaicher, who is to devote "in excess of 8 hours" to sports programming and Mr. Atherton Hobler, who is to devote "several hours" to agricultural programming and advertising and promotion), has been discounted,

both because of the insubstantiality of the time these individuals are to devote to such duties and the lack of any proof, in any event, that they are to have any real responsibility for executing station policy on a day-to-day basis. Similarly, New Jersey's proposal for so-called stockholders' committees to perform obligations comparable to the individuals in applicant Nassau has been discounted for similar reasons. In other words, in the absence of probative evidence that such individuals or committees are to have substantial day-to-day management responsibilities in connection with the execution of station policy as established by the corporate directors, it is difficult realistically to view either of these proposals as other than devices to gain advantage over competitors in a comparative hearing.

11. Considering the factor of broadcast experience of the applicants' principals, applicant Greater Princeton would ordinarily be entitled to a clear preference over its competitors for the 11 years' specific broadcast experience of its two partners. The Commission has declared that the significance of this factor is that "it lends some assurance of the ability to effectuate proposals and to overcome the manifold problems which necessarily arise in any operation" (*Hi-Line Broadcasting Co.*, 22 FCC 891, 918, 13 R.R. 1017). In terms of this conclusion, which is normally inferrible from the factor of experience in broadcasting per se, the findings herein show a lack of full awareness by Messrs. Halpern and Seltzer of their responsibility to make candid and timely disclosures of pertinent programing information in connection with the Burlington, N.J., application they filed with the Commission. While broadcasting is a highly competitive business and it is understandable why Halpern and Seltzer desired to withhold such information from potential competitors until the latest possible moment, an abiding and deep conviction of their responsibility to the public and to this Commission should have led to a greater discernment on their part of the need to make changes in information called for in the application form available to the Commission itself on a reasonably prompt basis without regard to the fortunes of business competition. Moreover, the omissions to comply strictly with the Commission's logging requirements, while these infractions were not grave herein, evince carelessness in operating procedure at station WCOJ which does not serve to reinforce the inferences normally deduced from broadcast experience and hence detracts materially from the weight to be accorded this factor in comparing Greater Princeton with its competitors herein.

12. On the other hand, while the experience of Mr. Hobler of applicant Nassau in network sales and program production and the past experience of New Jersey's Mr. Gross, garnered during his years of association with Penn Allen, are of a more limited and lesser order than the continuous broadcasting experience over the past 11 years of Messrs. Halpern and Seltzer, this experience was unblemished by any evidence of carelessness or lack of deep and abiding sensibility to public duty on their part. To paraphrase Commission pronouncement, therefore, it may be concluded that Hobler's and Gross' experience, they being the chief architects of their respective applicants, lends as much assurance that Nassau and New Jersey will have the

ability to effectuate their respective proposals and to overcome problems in the course of operations as the experience of Halpern and Seltzer does with regard to Greater Princeton. Further, to the extent that the Commission considers the greater diversity of business interests of principals of one applicant over the other as a basis for comparative preference, for the reason that such factor permits an inference that the applicant so preferred is more apt to have a greater knowledge of community needs and a continuing awareness of those needs than its competitor (see *Hi-Line Broadcasting Co.*, 22 FCC 891, 918, 13 R.R. 1017), both Nassau and New Jersey are concluded to be superior to Greater Princeton in this factor of comparison. As between Nassau and New Jersey by themselves, however, no basis of record is perceived for preferring one over the other, and consequently they are deemed to be equal in the latter area of comparison.

13. Related to the experience and background criteria but nevertheless a separate and distinct gage applied by the Commission in comparing mutually exclusive proposals for the same facility is the record of past performance of existing broadcast stations in which applicants or their principals have, or had, an interest.²⁷ In the present case applicant Nassau and its principals never had, and do not now have, interests in other broadcast stations.

14. The two partners of Greater Princeton, however, are the owners of station WCOJ in Coatesville, Pa. While the evidence does not show how well that station has carried out its past promises in application filed with the Commission, the evidence does show generally that the station has performed creditably in the support it has given to a variety of community causes, civic and charitable, and that the station has received awards for such service from some 15 diverse civic and charitable organizations. Also to its credit this station has broadcast religious programing on a regular daily or weekly basis in which it has made time available to all churches in Chester County, Pa., regular educational programing in behalf of various schools in the area, regular talk programing in which various officials and professional experts have participated, and special event programing of interest to the public in the area.

15. On the other side of the coin, however, as already mentioned, the manner in which program logs have been prepared and corrected at WCOJ leaves something to be desired; and because of the inaccuracies, particularly with respect to the failure of the logs to show the length of broadcast spot announcements, it is not possible to assess the accuracy of the data in this area in the WCOJ 1960 renewal application filed with the Commission. Moreover, the evidence shows that the percentage analysis of program types (particularly with regard to educational programing) for the 1960 composite week as reflected in the 1960 renewal application was inaccurate. While these

²⁷ In the absence of evidence comparing the record of the station with commitments by its licensee, it may be urged that the past performance of stations such as WCOJ, standing by itself, is simply another aspect of the experience criterion rather than a separate comparative yardstick. See *Liberty Television, Inc., et al.*, 29 FCC 538, 540 (par. 6). However, the Commission has in the past treated these as separate criteria even though under the facts they may point to the same inferences precisely because of the absence of evidence comparing records with commitments.

discrepancies in recordkeeping and reporting do not loom sufficiently significant to warrant stern censure, they do denote carelessness by the station's management of a degree to justify a demerit in the overall comparison between Greater Princeton and its competitors. For, if the performance of a broadcast station and the long experience in broadcasting of its principals are advanced as reasons for preferring Greater Princeton over its two newcomer opponents in this comparative proceeding, on the ground that this record and experience betoken greater reliability of such applicant and its proposals, carelessness in operating an existing facility tends to equalize the situation and to diminish the comparative advantages accruing to such existing broadcasters in their quest for new facilities in competition with applicants who are new to the industry. Too, the wariness of Messrs. Seltzer and Halpern, above considered in regard to the submission of a programing amendment to their application for a Burlington, N.J., facility, while a factor which is separable from the criterion which calls for the evaluation of station WCOJ's past performance record, does not augur well for the reliability of these gentlemen in the overall comparison. It may be noted here that no ordinary business enterprise is involved, that the applicants are seeking a valuable privilege in the public domain, that broadcast licenses are obligated *at all times* to put the public interest ahead and above all private business considerations, and that sincerity and complete candor to the Commission at all times is a sine qua non of proper and orderly functioning of the Commission's processes and the dispatch of the public's business. See *Walter T. Gaines (WGAV)*, 25 FCC 1387, 1407; 17 R.R. 163, 182. In sum, therefore, it is here concluded that neither the prior broadcast experience of the partners in Greater Princeton nor the past performance record of station WCOJ avails Greater Princeton a comparative edge over its competitors in this proceeding.

16. Already touched upon in these conclusions is the experience Mr. Gross acquired in his past association with the Penn Allen FM and TV stations in the Allentown, Pa., area. The evidence does not show the performance of these stations in relation to promises made to the Commission in applications filed by their licensee. The evidence does show, however, that Mr. Gross' affiliation was not merely passive or remote and that the FM station has performed creditable public service and was a pioneer in so-called "good music" programing during Mr. Gross' tenure. It may therefore be concluded that applicant New Jersey is entitled to some credit in the overall evaluation for Mr. Gross' part in compiling this record. However, in terms of the measurement of reliability, comparatively, of the applicants, in which the criteria of broadcast experience and records of past broadcast performance are merely means to ends or tools to be utilized in the measurement process, there is no truly significant ground here for concluding that any one of the applicants, New Jersey included, deserves a decisive edge over its competitors because of such matters.

17. In the comparative area of planning and preparation of the applicants herein, the evidence and findings establish no basis for distinguishing between applicant New Jersey and applicant Nassau. These applicants are adjudged, therefore, to be on a par in such regard.

It may be noted, however, that while Nassau's preparations included a large number of contacts and discussions with various community leaders and others in the area to be served by this applicant, in order to ascertain their ideas on programing, New Jersey went a step further and had a listenership survey made which it used in the scheduling of certain musical programing it was proposing. By a recently released policy statement ("Report and Statement of Policy Re: Commission En Banc Programing Inquiry," released July 29, 1960, Public Notice No. 91874, FCC 60-970), the Commission has encouraged "the diligent, positive, and continuing effort by the licensee to discover and fulfill the tastes, needs, and desires of his community or service area, for broadcast service," and by its proposed recent implementation of this policy statement the Commission has declared its intention to modify its application form to require statements by applicants of the measures they have taken or propose to take to ascertain community programing needs. However, neither in these recent pronouncements nor in any other statement of policy has the Commission suggested that any one methodology is necessarily more suitable than another in the consummation of this important phase of broadcaster responsibility. Nothing in the present record suggests significantly greater diligence in this regard in the steps taken either by New Jersey or by Nassau. Moreover, whether an applicant uses personal contact by telephone, or otherwise, of community leaders, or expensive polling services, or even no formal device at all, in its quest for knowledge of the area to be served seems to be without relevance per se. It may be that an alert broadcaster, indeed, can accomplish the objectives desired merely by being attentive to his business and to the complaints and voluntary suggestions of the public he serves, and that expensive polling techniques and other formalistic arrangements are not really necessary. The important consideration here is that the applicant at least be prepared with some plan to utilize in the achievement of his responsibility to the public and, if he represents to the Commission in his application that he will follow a particular procedure, that he be prepared to carry such promises to the Commission into operational effect on pain of being called to account. It may be observed, therefore, that while applicants, mostly in comparative cases, have frequently made the kind of extensive community contacts that New Jersey and Nassau have in this case, more likely than not this could be a device for gaining a preference in a comparative proceeding, with no real intention that it be used at all once the application concerned is granted. It is partly for this reason that the planning in which applicants New Jersey and Nassau have indulged has been detailed at some length in the findings hereof. The record has been made and is available for perusal in the future with regard to the successful applicant to insure that its promises are carried into fruition.

18. With regard to Greater Princeton's planning and preparation, it is noted that Halpern's and Seltzer's judgment was that community contacts at the present stage would not be useful. However, the partners have both visited the Princeton area and have consulted certain pamphlets and publications giving statistical data on the area. Once again they were motivated in part at least to avoid community pro-

graming contacts for fear that this might tip off their competitors concerning their programing ideas. While it cannot be said that the business judgment of Messrs. Halpern and Seltzer in this particular matter conflicts in any way with the requirements of the public interest or that their visits to this area, which appear to have been cursory, and their research into statistics, is worse or better than the methodology employed by their competitors in the quest for knowledge, a comparative conclusion is nonetheless ineluctable that their present knowledge of community needs in Princeton and environs is necessarily more secondhand and less in depth than the present knowledge of their competitors. Therefore, while New Jersey and Nassau are deemed to be equal in the planning and preparation criterion, they are deemed to have a slight edge over Greater Princeton in this area of comparison. The preference thus awarded is deemed to be "slight" because it may be expected that if Greater Princeton were to be successful in this proceeding, it would in time attune itself to local area needs by reasonable means.

19. Turning now to the diversification criterion, it is to be noted that none of Nassau's principals has any present interest in communications media, that Greater Princeton's two partners are owners of station WCOJ and the owners of a permittee of a new standard broadcast station in Hammonton, N.J., and that two minor stockholders of New Jersey together own more than half the stock in the publisher of a "weekly shopper" circulating in the Princeton area. While the "shopper" apparently carries a few news items, there was no evidence of record that this paper is anything like a regular newspaper insofar as the circulation of news and views are concerned. Moreover, the record does disclose that three weekly newspapers are published in Princeton besides the "shopper." With respect to Greater Princeton, the record disclosed no overlapping of service areas as between station WCOJ, the Hammonton station, or the station proposed by Greater Princeton in Princeton, N.J.

20. Traditionally, "diversification" has been applied in more than one aspect in Commission precedent. *Radio Fort Wayne, Inc.*, 9 R.R. 1221, 1221-1, and 1222m. Consideration has been given alike to the effect of preferring one mutually exclusive applicant over the other upon the policy to encourage the diversification of news and viewpoints in the immediate locality to be served and in more remote areas too. The Commission has also declared itself as favoring the diffusion of ownership of broadcast stations, "other factors being substantially equal." Thus, "where there is a choice between two applicants, one of whom has a television station²⁸ and another does not, public interest is better served by granting a license to the newcomer other factors being substantially equal rather than to the person already having a television station." For, as the Commission stated, "Under this policy it is possible for the maximum number of qualified people to participate in television and not have it restricted to a few large interests." *Bamberger Broadcasting Service, Inc.*, 11 FCC 211, 222;

²⁸ While the decision quoted in the text involved applications for permits for new television facilities, the principle applies equally, of course, to AM and FM facilities.

3 R.R. 914, 925 (1946). It may be that the latter principle should be applied in the present case vis a vis Greater Princeton and its two adversaries. Since, however, as appears from the foregoing conclusions, the application of other comparative criteria favors Nassau and New Jersey and in this sense it may be contended that other factors are not "substantially equal," it is unnecessary to reach such a conclusion here except to observe that the large degree of present local ownership of both Nassau and New Jersey and the diversity of business background and local civic participation of their principals suggest at this point cogent reason which will be cited hereinafter (in the summation) for preferring either of these newcomers to the broadcasting field over Greater Princeton with its two nonlocal partners.

21. In terms, on the other hand, of encouraging to the maximum extent possible the "dissemination of information from diverse and antagonistic sources" (*Associated Press v. United States*, 326 U.S. 1, 20; *Scripps-Howard Radio, Inc. v. FCC*, 89 U.S. App. D.C. 13, 189 F. (2d) 677), it is obvious that Nassau, with no media interests whatever in the Princeton area or anywhere else, is to be preferred, to a minor degree at least, over New Jersey in this comparative area. While no concentration of communication media involving Greater Princeton and its principals has been shown, it is also clear from the fact that Seltzer and Halpern are equal partners in the permittee of a new station at Hammonton, N.J., some 50 miles from Princeton, that the cause of better diversifying the dissemination of news and views at least within a radius of some 50 miles from Princeton will be served best by preferring applicant Nassau over Greater Princeton too in this aspect of diversification.

22. The final matter to be considered herein is proposed programming. The findings briefly summarize the contentions of the parties in this area of comparison and the result to be reached is forecast therein. It is concluded that there are no significant substantive differences (i.e., differences in program content) in the respective program proposals to justify preferring one applicant's proposals over those of its adversaries. All the applicants propose balanced program fare from the standpoint of quantity of different program types and sources. The statistical differences are too slight to differentiate between the proposals. It may be expected, whichever of the applicants is to prevail in this proceeding, that the successful applicant will comply with its responsibilities as a licensee and program in accordance with the need of the population in the area to be served and in the public interest. From the standpoint of comparison, however, the conclusion is here reached that the selection of the winning applicant herein must rest upon a determination of the relative reliability of the applicants and of the assurance that one more than the other two will be attentive and responsive upon a continuing basis to programming needs of the public, rather than upon the nature of the paper program proposals submitted herein.

SUMMATION

23. All the comparative factors of any significance in this case having now been considered, the point has been reached at which the determination must be made which of the applicants more or better than its adversaries may be expected to comport with the statutory standard of the public interest, convenience, and necessity. This ultimate conclusion cannot be ascertained by mathematical computations of plus and minus factors, but only by a judicious weighing process in which the objectives, of which the various comparative criteria developed by the Commission over the years are measuring devices, are duly considered. See *Oregon Television, Inc.*, 9 R.R. 1401, 1447. In short, these criteria are not ends in themselves but only means to ends. In this light, the foregoing findings and conclusions predict ineluctably that applicant Nassau is significantly superior to its adversaries. For, by its superior present local ownership, local civic participation of its principals, and proposed integration of its ownership in the management of the Princeton, N.J., station this applicant desires to build and operate, the inference is inevitable that Nassau, more so than either of its adversaries, is likely to be attentive and responsive on a continuing basis to the local broadcast needs of the Princeton area it desires to serve and to carry out its promises to the Commission. While applicant Greater Princeton has shown that its copartners have had direct experience in operating a broadcast station for some 11 years, other factors discussed above offset this advantage. Moreover, both Nassau and New Jersey, it is observed, are composed of experienced and dependable business and professional people who may reasonably be expected, and relied on, to learn the broadcasting business, and Commission policies and requirements in relatively short order. In short, there is no cogent reason on the basis of the present record why the Commission should not decide this case in such manner as to favor the infusion of new blood in the broadcasting industry. As between Nassau and New Jersey, on the other hand, Nassau rates ahead of New Jersey also because of its superior present local ownership, and better proposed integration and participation of its principals in local Princeton area civic activities. Moreover, in terms of encouraging the diversification of communications media, Nassau, whose principals have no communications interests whatever, rates higher than both its adversaries, although this element of the comparison does not, it is true, loom particularly important in light of the facts reviewed above.

ULTIMATE CONCLUSION

24. Based upon all of the foregoing findings and conclusions and the entire record in this proceeding, it is concluded ultimately herein that the public interest, convenience, and necessity will not be served by granting the application of Norwalk Broadcasting Co., Inc. (WNLK), for improved daytime facilities and simultaneously granting any of the applications for new standard broadcast facilities in Princeton, N.J.; that the interests of efficient and equitable allocation

will be served best by denying the Norwalk application herein; and that the public interest, convenience, and necessity will be served best by preferring and granting the application of Nassau Broadcasting Co. for a new standard broadcast facility in Princeton, N.J., and denying the conflicting applications of Greater Princeton Broadcasting Co. and The New Jersey Broadcasting Co. for facilities in the same community.

ORDER

Accordingly, *It is ordered*, This 4th day of May 1961, that unless an appeal to the Commission from this initial decision is taken by any of the parties, or the Commission reviews the initial decision on its own motion in accordance with 47 CFR 1.153, the application of William S. Halpern and Louis N. Seltzer, d/b as Greater Princeton Broadcasting Co.; The New Jersey Broadcasting Co.; and of Norwalk Broadcasting Co., Inc. (WNLK), *Are hereby denied*; and that the application of Nassau Broadcasting Co. for a construction permit for a new standard broadcast station at Princeton, N.J., to operate on the frequency 1350 kc, with a power of 5 kw, directional antenna, unlimited time, *Is hereby granted*.

32 F.C.C.

DIVESTMENT OF WESTERN UNION, DOCKET No. 6517:

Supplemental agreement between Western Union and American Securities Corp. found consistent with Commission decision of March 6, 1961, as modified by memorandum opinion and order of June 27, 1961, therefore no objection thereto interposed by Commission; American Communications Association's request to reopen record denied.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON 25, D.C.

<p>In the Matter of THE APPLICATION FOR MERGER OF THE WEST- ERN UNION TELEGRAPH CO. AND POSTAL TELEGRAPH, INC.</p>	}	Docket No. 6517
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MEMORANDUM OPINION AND ORDER

(Adopted February 2, 1962)

BY THE COMMISSION: CHAIRMAN MINOW ABSENT.

1. We are here concerned with a supplemental agreement executed on November 6, 1961, between The Western Union Telegraph Co. (Western Union) and American Securities Corp. (American Securities), which further amends their agreement of September 15, 1960 (which had been previously amended on January 13, 1961), providing for the divestment of the Western Union international telegraph operations as required under section 222 of the Communications Act of 1934. The supplemental agreement appears to contain (a) the September 15 agreement; (b) the supplemental agreement thereto dated January 13, 1961; (c) the modifications and conditions imposed by our decision released March 6, 1961,¹ as modified by our memorandum opinion and order released June 27, 1961,² approving such agreement; (d) new matter relating to deferrals, under certain circumstances, of certain payments which in the ordinary course of events would be due to Western Union from the proposed divestee, Western Union International (WUI); (e) amendments relating to American Securities' undertaking to negotiate with the Anglo-American Telegraph Co., Ltd. (Anglo), with respect to the lease (Anglo Lease) of certain transatlantic cables owned by Anglo and now used by Western Union in its international telegraph operations; and (f) certain other changes, including modifications in the time schedule.

2. The supplemental agreement was submitted to us on November 7, 1961, by Western Union and American Securities under a covering document stating that the submission was made in compliance with our order released October 31³ and was "for such action by the Com-

¹ 30 FCC 323 (1961).

² 30 FCC 951 (1961).

³ FCC 61-1290.

mission as may be necessary or appropriate.”⁴ By order released November 15, 1961,⁵ we stated that any comments on the supplemental agreement, insofar as it varied from the agreement of September 15 (as amended) as conditioned and modified by us, should be filed by November 27, 1961, and that any replies thereto should be filed by December 4, 1961. The only comments received were from American Communications Association (ACA), a labor union representing certain employees of Western Union who are engaged in the international telegraph operations of that company. A reply to these comments was filed by American Securities.

Description of Principal Changes Made by Supplemental Agreement

3. *Deferment of landline charges due Western Union.*—The supplemental agreement adds a new article sixth to the proposed agreement between Western Union and WUI relating to the use of gateway city Western Union offices⁶ by the divestee. Under such article, Western Union agrees to defer, out of the charges due to it for the landline handling of WUI traffic, sums equal to the amounts by which WUI's earnings (as defined in article sixth) fail to cover expenses plus amortization payments both on the \$4,500,000 in notes (Note) which are to be taken by the Prudential Insurance Co. of America,⁷ and on the approximately \$4 million of subordinated debentures to be issued by WUI.⁸ These deferrals, which bear 6 percent interest per year, are not to exceed \$1 million in any one calendar year, and their aggregate at any one time is not to exceed \$4 million. Repayment of deferrals will be made from time to time when earnings reach certain amounts. No further deferrals will be forthcoming whenever any of the following events occur: (a) the unpaid balance of the Prudential Note is reduced to \$2,250,000; (b) the net earnings of WUI in each of 3 consecutive years have been at least \$1,200,000; (c) when, if after making any payment listed below, the earned surplus of WUI will aggregate less than the sum of \$500,000 and all amortization payments made on the Note and debentures, WUI pays or authorizes a dividend other than a stock dividend, or makes a distribution on, or acquires for a consideration, any of its stock, or acquires for a consideration any part of the Prudential Note or subordinated debentures, except for amortization payments required by such Note or for meeting amortization payments due on the subordinated debentures within 18 months.⁹ Further, the provisions of article sixth will no longer

⁴ The supplemental agreement provides in sec. 6.1 that any necessary approval by us be granted by Feb. 2, 1962.

⁵ FCC 61-1340.

⁶ This agreement, exhibit C in the supplemental agreement, was exhibit G in the Sept. 15 agreement. Its former article sixth is now article seventh.

⁷ Prudential has entered into the amended agreement referred to in sec. 3.3 of the supplemental agreement within the time period set out in sec. 6.1.

⁸ Amortization payments on the note will be \$165,000 per year until the anniversary month in 1968 of its issuance and \$300,000 per year after that until maturity, which is 15 years from issue. Amortization payments on the subordinated debentures are to be calculated (under exhibit B to the supplemental agreement, which is, with changes, the same as exhibit E of the Sept. 15 agreement) so as to retire through annual fixed payments approximately 80 percent of the original principal amount of the debentures prior to maturity (15 years from issuance), with additional annual payments related to earnings. Under the contemplated Prudential agreement, no amortization payments can be made on the debentures until 4 years after issue.

⁹ WUI cannot, without the consent of Western Union, declare any such dividend or make any such payments so long as any deferrals are owed Western Union.

be effective, unless Western Union otherwise agrees, if WUI consolidates or merges with another international carrier, and on the effective date of such consolidation or merger the deferrals outstanding and accrued interest thereon are to be paid.

4. *Changes relating to American Securities' undertaking to negotiate with Anglo.*—The supplemental agreement in its section 3.1 deletes the requirement that American Securities make an offer for the Anglo stock¹⁰ and instead provides that American Securities shall endeavor to continue negotiations¹¹ with Anglo in an effort to agree on an arrangement which will permit the execution of instruments by Anglo which, among other things, will allow Western Union to assign the Anglo Lease without remaining as guarantor, will reduce the lease term and rental payments, and will waive and release certain other obligations under the lease.¹² The supplemental agreement may be terminated if agreement with Anglo has not been reached within 3 months after the Commission has given any required approval to the supplemental agreement, or if within such 3 months American Securities gives Western Union written notice of its failure to reach agreement with Anglo and of the termination of negotiations with it.¹³

Comments of ACA

5. ACA urges that in considering the proposed amended agreement, we review developments since our March 6 decision with respect to the viability of the proposed divestee, to the necessity of employment security conditions, and to pension guarantees. It requests that we reopen the record for further consideration of these issues, and reject the proposed agreement as inimical to the public interest.

Reply of American Securities

6. Replying to the ACA comments, American Securities alleges that such comments were not responsive to our November 15 order "to comment on such variations in the supplemental agreement," but rather are an effort to reopen and reargue matters already heard and disposed of. In these circumstances, American urges that we proceed in the matter and issue our order or orders reflecting the actions contemplated by section 4.1(4) of the supplemental agreement.

DISCUSSION

7. *Deferral of landline charges.*—As we have set forth above, the supplemental agreement adds new matter pursuant to which Western Union agrees to defer, under certain circumstances, collection of payments due it for the landline handling of WUI traffic within the

¹⁰ See sec. 3.1 of Sept. 15 agreement.

¹¹ These negotiations are being currently conducted.

¹² The matter to be covered by these instruments is set out in secs. 4.1(1), 4.1(2), exhibit E, and exhibit F of the supplemental agreement. With certain changes, these are the same as secs. 4.1(1), 4.1(2), exhibit I, and exhibit J, respectively, of the Sept. 15 agreement. Other changes with respect to Anglo appear in sec. 3.6 of the supplemental agreement (replacing the same section in the Sept. 15 agreement), and secs 4.2(1), 4.2(2), and 4.2(6) of the supplemental agreement (replacing the same sections in the Sept. 15 agreement).

¹³ Sec. 6.1.

continental United States. The basic problem presented by this deferral agreement is whether it creates a community of interest between Western Union and WUI contrary to the requirements of our decision of March 6, 1961. For the reasons set forth below, we do not believe that such an improper or unlawful community of interest results from this deferral agreement.

8. It is to be noted that the agreement is an interim one specifically designed to meet the problems resulting from the temporary decline in the earnings of Western Union's cable system. As set forth more fully in our decision of March 6, it appears to us that this decline will be reversed in the not too distant future. In essence then, this deferral agreement comes within the transitional period during which we have permitted certain activities which might otherwise be objectionable to be continued. (See par. 98 of our decision of March 6, 1961.) We note that the deferrals are not automatic and will not become effective unless in any given period the earnings of WUI are not sufficient to cover expenses plus payments required to amortize the Prudential Note and the subordinated debentures. According to the proposed agreements with respect to the Note and the subordinated debentures, these payments will amount to approximately \$165,000 per year for the first 4 years after divestment, and about \$525,000 per year thereafter.

9. It is most significant that even in its currently depressed state, the cable system of Western Union is earning an amount sufficient to cover the obligations which would be imposed upon it in the early period after divestment. Preliminary figures show that net operating income for the Western Union cable system for 1961 will be in the order of \$820,000. To this should be added a sum of approximately \$250,000 to reflect the proposed decrease in the Anglo rental, leaving Western Union with net operating income of \$1,070,000. From this \$1,070,000 it is necessary to deduct approximately \$531,000 to cover interest payments under the Note and the subordinated debentures. After such deduction, net operating income before Federal income taxes would be \$539,000. After deducting income taxes, net income left to the company would be \$259,000, or some \$94,000 more than required for amortization payments during the first 4 years of the new company's existence.

10. It is true that after the first 4 years the amortization payments will increase by some \$360,000 a year and will, therefore, require net earnings after taxes of \$266,000 more than was available in 1961. We have reviewed in detail the earning figures submitted to us by Western Union for 1961, and find that the increases in earnings to which we referred in our decision have begun to appear. Thus cable net operating revenues on the basis of the last 6 months of 1961 are running at an annual rate of \$1,160,000, or \$340,000 more than will actually be realized for the full year. If we adjust this annualized figure for the second half of 1961 to allow, on the one hand, for the decrease in the Anglo rental and, on the other hand, for the interest payments on the Note and debentures which the new company will assume, we find that Western Union's cable system would have realized some \$422,000

after income taxes. This amount is considerably in excess of the \$165,000 required for amortization during the first 4 years, and is only \$103,000 below the \$525,000 required in the fifth year.

11. It appears to us that Western Union is only beginning to realize the potential in increased earnings from its telex service and from its leased channel service. We note that telex revenues for the last quarter of 1961 were \$115,000, or an increase of 201 percent over the \$38,000 realized during the first quarter. Even if we postulate a much smaller percentage increase in these revenues over the next 4 years, it is clear that this one source alone would be more than sufficient to make up the shortage of \$103,000 referred to above. In addition, leased circuit revenues, which by their nature may be expected to increase more slowly, showed an increase of 17 percent for the last quarter of 1961 as against the first quarter.

12. In our decision of March 6, we also made reference to the plans of American Securities to modernize the system's plant and to strengthen its sales operations. We expect such modernization to have the effect of decreasing total expenses. However, even if it is successful in only maintaining expenses at present levels, it would appear that this should be more than sufficient to enable WUI to meet its amortization obligations without in any way taking advantage of the deferral agreement. This is so because it would be necessary for Western Union to increase gross revenues above those realized during the second half of 1961 by less than 6 percent in order to fully cover the increased amortization payments 5 years after divestment takes place. The growth of telex and leased circuit revenues by themselves will be much more than sufficient to take care of this requirement. Thus, we believe that as a practical matter, the deferral agreement will probably never be invoked.

13. A second important factor of which we should take note relates to the attitude of the other international carriers. None of these, which will be the competitors of WUI, has filed any comments in opposition to the proposed deferral agreement, although afforded ample opportunity to do so by our order of November 15, 1961. Apparently, therefore, none of these competing carriers believe that the deferral arrangement will create such community of interest between Western Union and WUI as would be prejudicial to its interests. We stated in our March 6 decision that the divestment requirement was intended to protect the other international carriers from any situation under which Western Union would have an incentive to favor its former cable system in the handling or distribution of traffic. This failure to comment is significant and, in the absence of overriding considerations, should be controlling.

14. Thus, in view of the temporary nature of the proposed arrangement, the probability that it will not be invoked, and the acquiescence by the competing international carriers, we believe that the arrangement will not be inconsistent with our March 6 decision, and interpose no objection to it.

15. *ACA comments.*—The ACA does not oppose, nor did it comment on, any of the new matter contained in the supplemental agreement now before us. Instead, ACA has used the opportunity afforded

for the filing of comments on such new matter to request a review of our March 6 decision, addressing itself particularly to the questions of the viability of WUI as a separate entity, employment security, and pension guarantees, in light of developments which have taken place since March 6, 1961.

16. This request is not timely. The Communications Act¹⁴ and our rules and regulations¹⁵ specifically provide that petitions for rehearing or reconsideration must be filed within 30 days after the issuance of a decision. No such request was made by ACA within the period allowed by law.

17. Moreover, none of the developments occurring between March 6 and now would afford a basis on which to grant the ACA request, even were the act and our rules and regulations to allow the filing of such request at the present time.¹⁶

18. The first point in ACA's comments relates to the presently depressed earnings of the cable system. Its comments thereon are apparently designed to indicate that a reversal of the present trend is not possible if the system were an independent company without the resources, engineering experience, etc., available through its current parent, Western Union. This argument was fully considered by us and found to be without merit in our March 6 decision. The low level of net earnings, particularly during the first part of 1961, is a continuation, not unanticipated by us at the time of our March 6 decision, of the drop which took place early in 1960. In our decision we indicated our expectation that earnings would not only recover but would increase. This, however, we recognized could not take effect until some time had passed and the external and internal factors on which we based such belief had come into play. Thus, we did not expect that the full potential of changes inherent in the industry itself, that is, growth in the demand for leased channel and telex services, would be reflected in Western Union cable earnings in a short period, but rather would grow over a long-run period of years.¹⁷ The internal changes that we had in mind, such as plant modernization and revitalization of the sales force, not only would reduce operating expenses below what they would otherwise be, but would also enable the system to secure a greater part of the potential demand for services. It is obvious that the results of these programs are not now reflected in the earnings of Western Union cables and that their full impact will not be felt until sometime after they have been instituted and developed by the new company. It is clear, therefore, that the ACA shows no basis for its request insofar as Western Union earnings are concerned. Moreover, as we have discussed above (par. 10), recent financial data indicate that the improvement in the earnings may have already started.

¹⁴ 47 U.S.C. sec. 405.

¹⁵ 47 CFR sec. 1.191.

¹⁶ We also note that the developments cited by ACA were actually occurring during all the months which have elapsed since our decision in March up to the time of the filing of the present request. However, during this entire period no action was asked of us by ACA.

¹⁷ As has been set forth above (par. 11), these services have started to show an improvement in the relatively short period since our decision was written.

19. The second point raised by ACA relates to employee layoffs. It is clear that layoffs by Western Union prior to and unconnected with divestment were never at issue before us in this matter. Normal protection of employees would appear to be a matter to be resolved by the company and the union in the collective-bargaining process in which ACA has been representing the employees of Western Union cables for many years. It is not proper to raise this matter now. Insofar as actual closures of facilities outside the continental United States, cited to us by ACA, are concerned, several observations are pertinent. In our decision we addressed ourselves to the question of whether the lay-off or transfer of a considerable number of employees might take place pursuant to the divestment plan. After analyzing the matter and noting the commitments made on the record by American Securities, we concluded that such an eventuality was improbable. Accordingly, we expressed the view that we should not interfere with the rights established by free collective-bargaining processes by imposing additional conditions. It is now alleged that notice has been given to the union that two Canadian stations will be shut down "in anticipation of the sale of the property," and the working force laid off, and it is further alleged by the union that there are indications that additional stations in Canada, Newfoundland, Ireland, and England will be shut down with resulting displacement of employees. There is no other showing that any of these closures are being made pursuant to a divestment plan or at the behest of American Securities. We cannot find that such unsupported allegations relating to activities of Western Union (a company which, it should be noted, ACA urges should remain the owner of the cables) are connected to divestment, and we therefore have no ground for instituting action. We might note that while there are no commitments whatever on the part of Western Union to retain stations or employees, we do have an unequivocal statement of intention in this regard from American Securities. On the basis of what has been alleged, we might well be justified in concluding that divestment would safeguard rather than endanger the position of present employees.

20. The third point raised by ACA relates to pension guarantees. We note that ACA alleges that it is difficult to understand how we can find it necessary in the public interest to guarantee the financial interests involved in the deferral agreement when the beneficiaries are "banks, insurance companies, and large corporations," while at the same time rejecting the protection asked by workers with regard to pensions. It appears to us that ACA misunderstands this matter. We have not required the guarantees involved in the deferral agreement. They have been privately negotiated and presented to us for our consideration. We must merely determine whether such agreements are contrary to the requirements of law or the public interest. ACA as a collective-bargaining agent has similarly made agreements for the protection of its employees. They too were presented to us as part of the divestment plan. We found that the assumption of such agreements by American Securities also was not contrary to law and was in the public interest. What we refused to do was to impose by Government fiat requirements above and beyond those freely

negotiated between the representatives of the employees and the representatives of management. We might note that various provisions and conditions imposed by our decision of March 6 in fact decreased certain guarantees desired by one of the "large corporations," i.e., American Securities, referred to by ACA. Parenthetically, we note that the guarantees incorporated into the supplemental agreement redound to the benefit of the divestee, and insofar as they tend to enhance its viability or profitability, they should at the same time quiet employee concern or fears that the divestee will not be viable.

Other Aspects of Supplemental Agreement

21. The supplemental agreement is also allegedly designed to incorporate the modifications and conditions imposed by our March 6 decision as modified on June 27. We do not think it necessary to review the supplemental agreement in minute detail to determine whether it accurately reflects the changes we required in the September 15 agreement, as amended. If there is any conflict, our modified decision will of course be governing.

22. The supplemental agreement also contains other new matters not discussed herein, which appear to be either of a minor nature or relate to matters which do not impinge upon or are consistent with our decision as well as with section 222 of the act. We accordingly do not interpose any objection to this new material.

CONCLUSION AND ORDER

23. On the basis of the above discussion, we (a) interpose no objection to the supplemental agreement of November 6 between Western Union and American Securities; and (b) finding no ground for a reopening of the record as requested by American Communications Association, *It is ordered*, This 2d day of February 1962, that such request *Be denied*.

32 F.C.C.

THE SEWARD BROADCASTING CO., INC., DOCKET No. 14213:

Initial decision granting application for a construction permit for a new standard broadcast station to operate daytime at Marion, Va., on 1330 kc with a power of 1 kw; became final in accordance with 47 CFR 1.153.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON 25, D.C.

In re Application of THE SEWARD BROADCASTING CO., INC., MARION, V.A. For Construction Permit	}	Docket No. 14213 File No. BP-13803
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APPEARANCES

Messrs. Frank U. Fletcher, Joseph F. Hennessey, and Edward F. Kenehan, on behalf of The Seward Broadcasting Co., Inc.; and *Mr. Larry M. Berkow*, on behalf of the Chief, Broadcast Bureau, Federal Communications Commission.

INITIAL DECISION OF HEARING EXAMINER WALTHER W. GUENTHER
(Effective February 1, 1962, pursuant to sec. 1.153)

Preliminary Statement—Findings of Fact—Conclusions

1. This proceeding, as presently constituted, involves the application of The Seward Broadcasting Co., Inc. (hereinafter also Seward), requesting a construction permit for a new standard broadcast station to operate daytime at Marion, Va., on 1330 kc with a power of 1 kw. Pursuant to the Commission's order released August 4, 1961, this application was consolidated for hearing with that of Saltville Broadcasting Corp. (Docket No. 14214) (hereinafter also Saltville). Saltville's application sought authority for operation on the same frequency, but at Saltville, Va.

2. The order of designation found each of the applicants in all respects qualified to construct and operate its respective proposal, except as to the following issues:

1. To determine the areas and populations which would receive primary service from each of the proposals, and the availability of other primary service to such areas and populations.

2. To determine whether a grant of the instant proposal of Saltville Broadcasting Corp. would be in contravention of the provisions of section 3.35(a) of the Commission's rules with respect to multiple ownership of standard broadcast stations.

3. To determine, in the light of section 307(b) of the Communications Act of 1934, as amended, which of the instant proposals would better provide a fair, efficient, and equitable distribution of radio service.

4. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which if either of the instant applications should be granted.

32 F.C.C.

Inter alia, this order further stated that each applicant, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and section 1.362(b) of the Commission's rules, shall give notice of the hearing 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 1.362(c).¹

3. By order released August 4, 1961, the Chief Hearing Examiner scheduled a prehearing conference for September 18, 1961, and the commencement of hearing for October 11, 1961. At the prehearing conference, held as scheduled, counsel for Saltville challenged the sufficiency of Seward's notice of publication. An affidavit of Seward's president, executed September 9, 1961, attesting to this notice, reflects that publication by Seward was made in the Smyth County News, the only weekly newspaper published in Marion, Va., on August 17, 24, and 31, 1961. In addition to the issues set forth in paragraph 2, supra, the notice referred to Seward as applying for a construction permit of the nature as indicated in paragraph 1, supra, and stated that said application "will be heard * * * in Washington, D.C., on or after September 18, 1961." Saltville's challenge was on the ground that said notice failed to make reference to applicant Saltville and failed to specify the time of commencement of hearing (October 11, 1961), thus contending that, as to content, Seward's notice did not meet the statutory requirements of section 311(a)(2) of the Communications Act of 1934, as amended, and of the Commission's rules implementing said section. After oral argument on Saltville's motion to hold Seward in default or to dismiss Seward's application because of jurisdictional defect, and as a result of a further prehearing conference on September 29, 1961, the hearing examiner rescheduled the commencement of hearing for October 30, 1961. In a pleading previously submitted in support of Seward's oral opposition to Saltville's motion, Seward's counsel stated that in order to preclude possible further delays it had initiated publication of another notice. The hearing examiner allowed Seward to publish an amended notice in Marion, Va., and it was for this reason (in view of the provisions

¹ Subsec. (a)(2) of sec. 311 provides that the applicant—

"If the application is formally designated for hearing in accordance with sec. 309, shall give notice of such hearing in such area at least 10 days before commencement of such hearing. The Commission shall by rule prescribe the form and content of the notices to be given in compliance with this subsection, and the manner and frequency with which such notices shall be given."

Subsec. (b)(1) of sec. 1.362 provides as follows:

"If one or more weekly newspapers of general circulation are published in the community in which the station is located or proposed to be located, notice shall be published in such a weekly newspaper once a week for the 3 weeks immediately following the release of the Commission's order specifying the time and place of the commencement of the hearing."

According to subsec. (e) of sec. 1.362, the notice required by (b) shall set forth:

- "(1) The name of the applicant or applicants designated for hearing.
- "(2) The call letters, if any, of the station or stations involved, and the frequencies or channels on which the station or stations are operating or proposed to operate.
- "(3) The time and place of the hearing.
- "(4) The issues in the hearing as listed in the Commission's order of designation for hearing."

Subsec. (g) (formerly subsec. (c)) of sec. 1.362 provides, in pertinent part, as follows:

"(g) Within 5 days of the last day of publication or broadcast of the notice required by paragraphs (b) * * * of this section, the applicant shall file a statement in triplicate with the Commission, setting forth the dates on which the notice was published, the newspaper in which the notice was published, the text of the notice, * * *."

(See Commission order (FCC 61-992) released July 28, 1961.)

of sec. 311(a)(2) of the act) that commencement of hearing was then scheduled for October 30, 1961.²

4. An affidavit executed October 18, 1961, by Seward's president attests to Seward's further publication in the Smyth County News of an amended notice of publication on September 28, October 5 and 12, 1961. Named therein are both the competing applicants; the frequency involved; October 30, 1961, as the time of hearing; the place of hearing; and the issues specified by the Commission. The affidavit was filed on behalf of Seward on October 19, 1961.

5. On October 18, 1961, Saltville filed a petition for leave to amend its application. The amendment proffered therewith specified the frequency 1080 kc (in lieu of 1330 kc). By order of the hearing examiner released October 31, 1961, said petition was granted, the proffered amendment was accepted, and Saltville's application, as amended, was removed from hearing and was returned to the processing line. As rescheduled by order released October 23, 1961, hearing was held on November 29, 1961. No proposed findings of fact and conclusions of law were requested.

6. As a result of the removal from hearing of Saltville's application, the issues specified by the Commission (see par. 2, supra) have become moot. By affidavit executed October 25, 1961, Seward's president attested to the fact that Seward has not paid any consideration, directly or indirectly, to Saltville in connection with Saltville's petition leading to the removal from hearing of Saltville's application.

7. Except for the issues which were mooted, the Commission found Seward in all respects qualified to construct and operate its proposal. It is thus concluded that a grant of Seward's application is in the public interest; the requirements of section 311(a)(2) of the Communications Act of 1934, as amended, having been met; and substantial compliance having been secured with the pertinent provisions of section 1.362 of the Commission's rules.

Accordingly, *It is ordered*, This 11th day of December 1961, that unless an appeal to the Commission from this initial decision is taken by any of the parties, or the Commission reviews the initial decision on its own motion in accordance with the provisions of section 1.153 of the rules, the application of The Seward Broadcasting Co., Inc., for a construction permit for a new standard broadcast station to operate daytime at Marion, Va., on 1330 kc with a power of 1 kw, *Is granted*.

² On Oct. 2, 1961, Saltville filed a petition for review of certain of the hearing examiner's rulings, inter alia, that of allowing Seward to publish an amended notice and of continuing the hearing date to Oct. 30, 1961. This petition sought, as alternative relief, dismissal of Seward's application. A petition for stay of proceedings pending review was filed by Saltville on the same date. These petitions were withdrawn by Saltville by letter received Nov. 9, 1961. (See par. 5, infra.)

BERNARD KIRSCHNER, DOCKET No. 14104

Initial decision suspending the general class amateur radio operator license (K2HMP) of respondent, Bernard Kirschner, for the remainder of the license period, viz, until November 19, 1962; and licensee ordered to surrender license.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D.C.

In the Matter of BERNARD KIRSCHNER, LOS ANGELES, CALIF. Suspension of Amateur Radio Operator License (K2HMP)	}	Docket No. 14104
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APPEARANCES

Bernard Kirschner, the respondent-licensee, in his own behalf; and *Violet L. Haley*, on behalf of the Safety and Special Radio Services Bureau of the Federal Communications Commission.

INITIAL DECISION OF HEARING EXAMINER ELIZABETH C. SMITH
(Effective February 1, 1962, pursuant to sec. 1.153)

PRELIMINARY STATEMENT

1. The Commission, by order adopted April 6 and released April 7, 1961, suspended the general class amateur radio operator license of Bernard Kirschner of Los Angeles, Calif., for the remainder of the license term; that is, until November 19, 1962. The basis for the suspension, as alleged in the order, was the violation of section 12.162 of the Commission's rules by the licensee in assisting or attempting to assist another (Isadore Paul Gillenson) to obtain an amateur radio operator license by fraudulent means.¹ The order provided a 15-day period within which the licensee could request a hearing on the matter; and further provided that, if the licensee requested a hearing, the order of suspension would be held in abeyance until the conclusion of hearing proceedings relative thereto. By letter dated April 26, 1961, Bernard Kirschner requested a hearing. Pursuant to such request, the Commission by order dated May 5, 1961, designated the matter for hearing upon the following issues:

(1) To determine whether the licensee committed the violations of the Commission's rules as set forth in the Commission's order of suspension;

¹ There was adopted and issued concurrently with the suspension order involved in this proceeding an order of suspension involving the amateur license of Isadore Paul Gillenson (docket No. 14103) involving the same subject matter as is under consideration herein; i.e., the examination taken by Kirschner in the name, and on behalf of Gillenson. An initial decision in the Gillenson proceeding is being released concurrently herewith.

(2) If the licensee committed such violations, to determine whether the facts or circumstances in connection therewith would warrant any change in the Commission's order of suspension.

By subsequent orders, and pursuant to request of Mr. Kirschner, the hearing was set for Los Angeles. The hearing was held in Los Angeles on October 18, 1961, and the record closed on that date. The respondent appeared in his own behalf without counsel. Proposed findings of fact and conclusions of law were timely filed by counsel for the Safety and Special Radio Services Bureau. None were filed by the respondent.²

FINDINGS OF FACT

2. Bernard Kirschner, the respondent herein, was born in New York, N.Y., on August 18, 1934, and, thus, at the time of the examination here in question, was over 26 years of age. He holds a general class amateur radio operator license which expires November 19, 1962.³

3. On the witness stand, he admitted that he was fully cognizant of the prohibitions of section 303⁴ of the Communications Act of 1934, as amended, and of section 12.162 of the Commission's rules relating to fraudulent licenses,⁵ and also admitted having seen and taken note of warnings concerning this matter which are printed in bold letters on the face of the Commission's examination material for both amateur and commercial operator licenses.

4. The Commission's Los Angeles, Calif., office regularly holds examinations for radio operator licenses. Any person who comes into the office to take an examination must submit an application, FCC Form No. 610, which he has signed and acknowledged before a notary public. The general procedure is for the field office to send all examination papers to Washington, D.C., for grading, but where an applicant submits a written request to take an examination for purposes of upgrading a license, it is permissible for the examining office immediately to grade the papers. However, because of the workload, this practice is generally discouraged.

5. Examinations were given for radio operator licenses in the Los Angeles office on December 21, 1960, by Lawrence D. Guy, electronics engineer, who has been employed by that office for the past 15 months and whose duties include giving examinations for amateur and commercial radio operator licenses. On that day, a man came into the office and, under the name Isadore P. Gillenson, submitted a written request for authority to take the amateur radio operator examination for purposes of upgrading Gillenson's technician class license to general class. He also submitted the required application FCC Form 610, which he had signed and sworn to before a notary public in the name Isadore P. Gillenson. The man then took the prescribed written

² The filing of proposed findings and conclusions was not ordered by the hearing examiner, but left to the option of the parties.

³ There is also indication in the record that Kirschner holds a commercial operator license, but the status of such license is not at issue in this proceeding.

⁴ Sec. 303, among other provisions, gives the Commission authority to suspend the license of any operator upon proof sufficient to satisfy the Commission that the licensee "has obtained or attempted to obtain, or has assisted another to obtain or attempt to obtain, an operator's license by fraudulent means."

⁵ Sec. 12.162 provides that—

"No licensed radio operator or other person shall obtain or attempt to obtain, or assist another to obtain or attempt to obtain an operator license by fraudulent means."

examination and code test for general class amateur radio operator license. This man was Bernard Kirschner.

6. However, before the upgrading of Gillenson's technician class operator license to general class could be validated, Walter W. Wallace of the Los Angeles office of the Federal Communications Commission received a telephone call from an unidentified person who informed Wallace of a rumor that someone recently had taken an examination, fraudulently, to upgrade a technician class amateur radio operator license to general class. A review of the files revealed that the application filed in the name of Isadore P. Gillenson on December 21, 1960, most nearly agreed with the description given in the telephone conversation.

7. The field office then sent Mr. Guy, who had given the examination, to visit Mr. Gillenson's place of employment to ascertain whether he could recognize Gillenson as the person who took the examination under that name on December 21, 1960. After being shown through the department where Mr. Gillenson worked and observing him, Mr. Guy was certain that Gillenson was not the man who had taken the examination under investigation. Mr. Wallace then learned that a Bernard Kirschner, respondent herein, who then was also employed by the same electronics laboratories, might be the person who took the examination under the name of Isadore P. Gillenson. It was thereupon arranged for Mr. Guy to be shown through the department where Mr. Kirschner then worked. However, before the visit could be made, Mr. Wallace received a telephone call from Mr. Gillenson, who requested an appointment for noon of that day for the purpose of discussing the matter under investigation.⁶

8. At about noon on December 29, 1960, Mr. Gillenson, accompanied by Bernard Kirschner, appeared at the Los Angeles FCC field office, where they were interviewed by Messrs. Wallace and Guy. Both Mr. Gillenson and Mr. Kirschner at that time stated, orally, that Gillenson had persuaded Kirschner to take the examination for general class amateur radio operator license for him. Both then signed written statements confirming their oral statements that Kirschner, at Gillenson's request, had taken the examination for general class amateur radio operator license in the name of Gillenson on December 21, 1960. These statements were witnessed by Messrs. Wallace and Guy, who were present at the time both the oral and written statements were made and signed. Both written statements were admitted into the record at the hearing without objection.

9. By letter to the Commission, dated June 9, 1961, Bernard Kirschner affirmed his written statement of December 29, 1960, saying, in pertinent part:

Within a few days of my taking the general class test for Mr. Gillenson, I went to the FCC here in Los Angeles, and made a complete statement of what I have done, as I felt it would be the proper thing to do.

10. There is a difference of about 22 years in the ages of Messrs. Gillenson and Kirschner, a difference which might well have alerted the examining official at the time the examination was taken to the

⁶ Mr. Gillenson made several calls to the field office before he was able to reach Mr. Wallace, whom he wanted to talk with personally.

impersonation of Gillenson being perpetrated by Kirschner. Even though, according to his own testimony, Kirschner knew that Gillenson had been born on December 6, 1911; he, nevertheless, showed Gillenson's birth date as December 6, 1921, on the form 610 which he executed in Gillenson's name as a condition precedent to taking the examination. This, of course, had the effect of reducing the difference in age by 10 years, or almost half, and thereby also reducing the probability of detection because of the age differential.

11. Mr. Kirschner at no time denied that he took the examination here under consideration for Gillenson, and in connection therewith also made a false oath; but he did attempt at the hearing to absolve Gillenson of any blame, then stating that he took the examination in Gillenson's name without the latter's knowledge or consent. In this connection, the testimony of both Gillenson and Kirschner is significant. According to their testimony, for some time prior to December 21, 1960, Kirschner had been tutoring (without compensation) Gillenson in the study of Morse code preparatory to Gillenson's taking the required examination to upgrade his radio amateur operator license, and Gillenson had made so little progress in perfecting the required proficiency that he often became "frustrated." Both also admitted on the witness stand that during occasions of "frustration," Gillenson had said to Kirschner, "Why don't you be nice and go down and take the test for me?"; or used other words of similar import. This, months later on the witness stand, they said was done only in a joking manner, despite their statements on December 29, 1960, when they freely admitted that Gillenson had "persuaded" Kirschner to take the examination. The record does not disclose any valid basis for their changed attitudes as to the nature of such requests, between December 1960 and October 1961.

12. Gillenson, when asked on the witness stand whether he had ever discussed with Kirschner whether or not the latter might take the examination for him, replied:

I don't think so. I don't truthfully recall. No; I don't think so. During the course of taking the code it got to the point where I just—I just couldn't do it, and I would say to him, well, it would be a lot easier if he would take it for me.

13. Neither did Gillenson deny that he went to the field office and made his statement, here in evidence, in which he admitted he had "persuaded" Kirschner to take the examination for him. He testified however, that—

I wrote it under duress, under shock, under a little pressure, in fact I didn't know what to write and Mr. Wallace, after I did write something, Mr. Wallace stated, "Is there anything else?" Or, "Would you like to write a little more?"

And truthfully I didn't know what to write. I just felt there was a moral issue involved here, the fact that he had done it, I felt I should accept some of the blame.

His only explanation of why, after he had had several months to think the matter over, he submitted the same statement to the Commission with just one word corrected was "Because I still felt the same way."

14. In this connection, Kirschner's explanation of why his statement and that of Gillenson were the same on the question of whether Gillenson had asked Kirschner to take the examination in question is also of interest. His explanation on the witness stand was that, after they became aware that the matter was under investigation, Kirschner and Gillenson discussed the matter and, according to Kirschner's testimony, undisputed by Gillenson—

We both decided the best thing to do was to go down to the FCC office. Mr. Gillenson told me that he felt it was his responsibility, that he wanted to take some of the blame and *we decided on writing what we did.* [Emphasis supplied.]

CONCLUSIONS

1. The evidence is uncontroverted that Bernard Kirschner, on December 21, 1960, appeared at the office of the Federal Communications Commission in Los Angeles, Calif., and under the name and guise of Isadore Paul Gillenson took the Commission's prescribed examination for general class amateur radio operator license for the purpose of upgrading Gillenson's technician class amateur radio operator license to general class, in violation of section 12.162 of the Commission's rules, as set forth in the order of suspension released April 7, 1961. Thus, the violations set forth in the order of suspension were committed by the licensee-respondent Kirschner and the determination required under issue No. 1 is resolved in the affirmative.

2. Consideration will next be given to whether the facts and circumstances existing in connection with the violations are such as to warrant any change in the suspension order, as required by issue No. 2.

In this connection, it is important to note that Bernard Kirschner was a man of mature age at the time he took the fraudulent examination; who was fully cognizant of the prohibitions of section 303 of the Communications Act of 1934, as amended; and of section 12.162 of the Commission's rules against assisting another to obtain a radio operator license by fraudulent means. This had been called to his attention in bold type on examination material which he had previously used in obtaining his own general class amateur radio operator license and his commercial radio operator license, as well as at the time he took the examination under the name of Gillenson. No evidence adduced in this proceeding mitigates, justifies, or excuses the violation which took place. On the contrary, the evidence shows a deliberate and calculated effort on respondent's part to deceive the Commission and to subvert its licensing processes.

3. After Kirschner learned that an investigation of the matter was underway, he voluntarily went to the field office of the Commission in Los Angeles with Gillenson and there stated in the presence of two employees of that office that it was he who took the examination on December 21, 1960, in the name of Isadore P. Gillenson, signing the name of Gillenson to the required documents and acknowledging one of them before a notary public; and that he had been persuaded by Gillenson to take the examination in question. Kirschner's later attempt to absolve Gillenson of guilt does not aid him. Assuming his witness-stand statement that he did not take the examination at the

request of Gillenson to be true—which assumption is not supported by the evidence as a whole—it would then have to be concluded not only that he made a false statement to the Commission on December 29, but that he conspired with Gillenson to mislead the Commission further by making false statements to it; since, according to Kirschner's testimony, the two had decided on what they would say on the December 29 visit prior to such visit. These statements, insofar as they relate to complicity on Gillenson's part, Kirschner and Gillenson now say are false. The overall evidence does not support such contention. On the contrary, the evidence clearly shows that the matter of the taking of the examination by Kirschner on behalf of Gillenson had been the subject of conversation between them on several occasions, albeit they now urge that such discussions were not serious in nature.

4. The charge made by Gillenson that he was under duress or "a little pressure" by a member of the staff of the Los Angeles field office when he made the statement, in both oral and written form, on December 29, 1960, that he had persuaded Kirschner to take the examination, is not substantiated by the evidence—not even by Gillenson's own testimony. The uncontroverted evidence shows that Mr. Gillenson, after he learned that the matter of the examination was under investigation, made some two or three telephone calls to the field office in an effort to reach Mr. Wallace personally; that when he reached him, Gillenson asked for an appointment with Wallace at noon of that day; that about noon Messrs. Gillenson and Kirschner appeared at the field office and were interviewed by Mr. Wallace and Mr. Guy, the latter having given the examination to Mr. Kirschner which was under investigation; and that after Gillenson and Kirschner had made their statements orally, they were written out—in Gillenson's case by his own admission he first wrote it out in long-hand and it was later typed—and signed. Gillenson's statement that he was in such a state of shock he did not know what to say is in direct conflict with Kirschner's uncontradicted testimony that they had discussed the matter prior to the visit to the field office and decided what to say. Certainly, to be asked if there is anything else relevant to be added to a statement does not constitute duress or pressure in any degree. The evidence clearly supports the conclusion that the December 29, 1960, statements were made freely and voluntarily, and without duress or pressure of any kind.

5. Kirschner's false statement as to the birth date of Gillenson shown on the form 610, which substantially decreased the wide age differential between the two men and, thus, decreased the probability of discovery, at the time of the examination, of the fraud being perpetrated, even though, according to his own testimony, he knew the correct date, is another facet of the web of deceit which was woven by him.

6. The deeds of an immature lad of 15 years of age who had experienced an upheaval in his school life which had resulted in a period of emotional disturbance during which the action in question was taken, as was the case in *Michael Alan Kaufman*, 25 FCC 1459, are not here under consideration. On the contrary, Mr. Kirschner is a

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man of mature years, with experience in the field of electronics and well aware of the serious consequences of his action.

7. No facts or circumstances have been presented which would warrant any reduction in the period of time for which the general class amateur radio operator license of Bernard Kirschner was suspended by the Commission's order released April 7, 1961.

Accordingly, *It is ordered*, This 11th day of December 1961, that unless an appeal to the Commission from this initial decision is taken by one of the parties, or the Commission reviews the initial decision on its own motion in accordance with the provisions of section 1.153 of the rules, the general class amateur radio operator license (K2HMP) of respondent, Bernard Kirschner, is suspended for the remainder of the license period, viz, until November 19, 1962, and that the Commission's order of suspension herein, released April 7, 1961, *Be and the same is hereby reinstated*; and

It is further ordered, That Bernard Kirschner shall submit his general class amateur radio operator license (K2HMP) to the Commission in Washington, D.C., immediately upon the effective date of this decision.

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CARTER MOUNTAIN TRANSMISSION CORP., DOCKET No. 12931:

Application of Carter Mountain Transmission Corp. for a permit to install microwave radio relay facilities on Copper Mountain, Wyo.; denied. Protest filed by licensee of station KWRB-TV, channel 10, Riverton, Wyo.; granted.

Applicant's communications common carrier status considered. Need to evidence operation in the public interest discussed.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON 25, D.C.

In re Application of
CARTER MOUNTAIN TRANSMISSION CORP., CODY,
WYO.

<p>For Construction Permit To Install an Additional Transmitter, To Transmit on Frequency 6387.5 Mc. Location: Copper Mountain, 20 Miles South of Worland, Wyo.</p>	<p>Docket No. 12931 File No. 2463-C1-P-58</p>
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APPEARANCES

Vernon L. Wilkinson, on behalf of protestant, Joseph P. Ernst and Mildred V. Ernst, d/b as Chief Washakie TV (KWRB-TV); *Douglas A. Anello*, on behalf of National Association of Broadcasters; *Robert J. Rawson*, on behalf of Chief, Broadcast Bureau, Federal Communications Commission; *Thomas G. Shack, Jr.*, *Vincent Pepper*, and *John P. Cole, Jr.*, on behalf of applicant, Carter Mountain Transmission Corp.; and *Arthur A. Gladstone* and *Byron E. Harrison*, on behalf of Chief, Common Carrier Bureau, Federal Communications Commission.

DECISION

(Adopted February 14, 1962)

BY THE COMMISSION: COMMISSIONER BARTLEY NOT PARTICIPATING; COMMISSIONER CROSS DISSENTING AND ISSUING A STATEMENT.

1. This is a protest proceeding under 47 U.S.C. 309(c)¹ and 405, arising out of the application of Carter Mountain Transmission Corp. ("Carter"), for a permit to install microwave radio relay pickup television signals to community antenna systems in Riverton, Lander, and Thermopolis, Wyo. Our grant without hearing was protested by Joseph P. and Mildred V. Ernst, d/b as Chief Washakie TV, licensee of station KWRB-TV, channel 10, Riverton, Wyo. ("KWRB-TV"), protestants alleging, inter alia, that by providing additional service to existing and operating CATV systems located in Thermopolis, River-

¹ The protest was filed under the then provisions of sec. 309(c) of the Communications Act of 1934, 48 Stat. 1085, as amended, 47 U.S.C.A. sec. 309(c).

ton, and Lander, Wyo., the microwave facilities would enhance their competitive standing to the economic detriment of KWRB-TV; and further, that Carter "is not eligible" to hold common carrier authorizations. By memorandum opinion and order of June 29, 1959 (FCC 59-617; 24 F.R. 5402), the effective date of the grant was postponed and the protest was set for oral argument before the Commission, en banc, with the licensee of KWRB-TV, Carter, and the Chief, Common Carrier Bureau, designated as parties. By memorandum opinion and order of May 20, 1960 (FCC 60-564; 25 F.R. 4606), the matter was designated for hearing. On May 25, 1961 (FCC 61D-74), Hearing Examiner Walther W. Guenther released an initial decision looking toward a denial of the protest, a setting aside of the stay of the effectiveness of the grant, and a reinstatement of the grant of the subject application. KWRB-TV filed exceptions and requested oral argument. The National Association of Broadcasters and Tri-State TV Translator Association sought and were granted leave to file memoranda of law, and the NAB was granted further leave to participate in the oral argument, which was held December 14, 1961.

2. The initial decision sets forth the background and history of the proceeding, which need not be repeated here. Except as modified herein and in the rulings on the exceptions, the Commission is in general agreement with the examiner's findings, which are hereby adopted. Except as modified herein, and in the rulings on the exceptions, the examiner's conclusions not inconsistent with this decision are hereby adopted. For reasons hereinafter stated, the Commission disagrees with the ultimate result reached by the examiner and, as to that portion of the decision reverses the examiner.

3. Two basic questions are presented for determination: (a) whether Carter is in fact a bona fide common carrier eligible for a common carrier microwave facility; and (b) whether, a determination having been made that Carter is a common carrier of a microwave facility to a CATV system, the public interest is inherent and the economic impact is of no legal significance. Each will be discussed in order.

4. KWRB-TV excepts to the examiner's findings and ultimate conclusion that Carter is a bona fide common carrier and to the examiner's failure to find that Carter is the alter ego of Western (a CATV operator). The examiner amply described the situation, adequately discussed the legal proposition, and ultimately concluded correctly. The burden of adducing facts concerning the interlocking ownership between itself and CATV was placed on the applicant, who proved to the examiner's satisfaction that Carter and CATV are separate legal entities, and that the existing degree of common or interlocking ownership would support no contrary inference. KWRB-TV failed to prove anything adverse to this conclusion. In view of the conclusion herein, we do not reach the question of the legal significance of a greater degree of, or a total identity of, ownership, and we refrain from expressing an opinion thereon. The applicant held itself out for hire, invited the public to use its facilities, and indicated its willingness and ability to carry out this hire. As a matter of fact, station KOOK-TV, with which Carter has no affinity of interest, accepted

Carter's offer and the examiner rightfully took official notice thereof. Thus, in accordance with the facts gathered pursuant to issues (3) and (4), issue (5) was properly resolved in applicant's favor.

5. After such findings, the examiner stated "[since] a grant of the subject application will serve the public interest [because it is a bona fide common carrier], * * * it is unnecessary to consider, in particular, the nature of the showing made by protestant under issue (2). * * * whatever impact the operations of the CATV systems may have upon protestant's operation of station KWRB-TV, * * * are matters of no legal significance to the ultimate determination made that a grant of the subject application of Carter, a bona fide communications common carrier, will serve the public interest." KWRB-TV urges that the examiner erred in so concluding. The National Association of Broadcasters, Tri-State TV Translator Association, and the Broadcast Bureau join.

6. When this application was designated for hearing, the Commission recognized that the grant of the microwave facility which is to be used to carry CATV into a community could conceivably destroy the only local television service. The Commission retained the right to make a determination on the facts by specifically including issues (1) and (2), which seek respectively to determine the areas and population now being served by KWRB-TV and the nature and type of said service; and to determine the impact which a grant of the instant application would have upon the operation of KWRB-TV, and the resulting injury, if any, to the public now served. Thus, it is clear that the Commission did not consider the impact of no legal significance, but sought facts on which an ultimate conclusion could be predicated. The examiner made adequate findings with respect to these issues, but gave these facts no weight in his conclusions.

7. Carter urges however, that even were the Commission to find an impact and were it to take cognizance of any adverse effect this impact may have on KWRB-TV, it must recognize that the CATV not the carrier (Carter in this instance) is responsible for the impact, and that the two systems are separate legal entities. This argument, appearing meritorious on its face, is set forth by the examiner (initial decision, p. 28, footnote 8). However, the Commission does not construe its responsibilities this narrowly. We find no justification for ignoring our obligations in the field of television simply because it happens to be common carrier activities that are being regulated at the moment. A grant of common carrier radio facilities requires a finding that the public interest will be served thereby; certainly the well-being of existing television facilities is an aspect of this public interest. Thus it is not only appropriate, it is necessary that we determine whether the use of the facility applied for would directly or indirectly bring about the elimination of the only television transmission or reception service to the public. In examining the entire instant situation, we may reasonably assume that the carrier (over which we do have jurisdiction) seeks to improve its present service and add additional services so that it may utilize any customer (i.e., CATV) potential. Carter contends that because we have no jurisdiction over the customer, we cannot consider the activities of the

customer in regulating the carrier. We do not agree. If making the grant enables this customer potential to destroy a basic Commission policy, then even assuming, *arguendo*, that the applicant is not the direct cause of the impact, the ability to create such a situation in this particular instance is sufficient to warrant an examination into the entire problem. We will not shut our eyes to the impact upon the public service which is our ultimate concern, when it appears that the grant may serve to deprive a substantially large number of the public of a service merely because the common carrier classification is used. The Commission does not operate in a vacuum. We will not permit a subsequent grant to be issued if it be demonstrated that the same would vitiate a prior grant, without weighing the public-interest considerations involved.

8. Carter further urges that considering the use which the common carrier subscriber may make of its facility places the Commission in the position of censoring public communications. Here again we do not agree with this position. As guardian of the public interest, we are entrusted with a wide range of discretionary authority and under that authority we may not only appraise the facts and draw inferences from them, but also bring to bear upon the problem an expert judgment from our analysis of the total situation as to just where the public interest lies.² We are not in this instance attempting to do anything more than make a valued judgment in this direction. There is no attempt to examine, limit, or interfere with the actual material to be transmitted. We are merely considering the question of whether the use of the facility is in the public interest, a conclusion which must be reached prior to the issuance of the grant. In seeking this ultimate answer, we must look at the situation in its entirety, and we do not agree that we are acting in any fashion which would constitute "censorship."

9. It would be helpful at this time to set down some of the pertinent facts. KWRB-TV's grade A and B contours include a total of 36,918 persons (1950 U.S. census), in an area of 13,845 square miles, encompassing approximately 10,548 homes.³ However, only 6 of the towns included in the aforementioned area have a population in excess of 1,000 persons; namely, Lander, Riverton, Thermopolis, Worland, Basin, and Greybull. We are primarily concerned here with the first four towns, having populations of 4,182, 6,845, 3,955, and 5,806 persons, respectively, totaling 20,788 persons, or 5,940 homes. The towns of Lander and Riverton had a relatively small number of subscribers to CATV operations, although from 1958 through 1960 they slowly increased the number of homes placed on the cable. The towns of Thermopolis and Worland had a large number of CATV subscribers, and these numbers had been decreasing during the years 1958 through 1960 with resultant increased sale of spots for KWRB-TV.

² In *Television Corporation of Michigan, Inc. v. FCC* (294 F. 2d 730 (1961)), the Court of Appeals for the District of Columbia Circuit stated, at p. 733, that "[N]either the statutory sections nor the 'priorities' express rigid and inflexible standards: the Commission has a broad measure of discretion in dealing with the many and complicated problems of allocation and distribution of service."

³ U.S. census national average of approximately 3.5 persons per "household" or "home."

10. KWRB-TV's overall programing serves the public interest. It has permission from each of the three networks with which it is affiliated to carry their entire schedules by deleting the "commercials" and substituting "public service," and it carries public service spots on behalf of the local town and community. It has a good local operating record and programs for the community it serves. If KWRB-TV were no longer to operate, no local programs of this type would be available to persons residing within the grade B contour, and they depend on this station for the airing of this local material.

11. The largest revenue returns are received from the towns of Lander and Riverton. Despite the fact that Worland has approximately 1,600 more persons than does Lander, the revenue from Lander is approximately 6 times that of Worland. This is attributed to the fact that CATV did not make any substantial inroad in Lander, while approximately 75 percent of the homes in Worland are on the cable. A similar type of comparison may be made between the towns of Riverton and Thermopolis.

12. Since its inception, station KWRB-TV has been operating in the "red"; that is, its operating expenses have exceeded its income. However, in each succeeding year of operation the gap between the two has become smaller, and as contended by protestant, should eventually be closed and then changed to "black." KWRB-TV points to a number of contributing factors, some of which are: the closing of the CATV station in Thermopolis (then under another operator) for approximately 6 months during 1960; a decrease in the number of homes carried on the CATV cable in the towns of Thermopolis and Worland where CATV has 44 percent and 75 percent subscriptions; KWRB-TV's being a "family enterprise" with resultant low expense and high productivity; reduction in the amount of syndicated film purchases and the substitution of network programing for which charges are no longer being exacted; but primarily, KWRB-TV's ability to show inroads on the number of cable subscribers together with an increase in its network affiliation status, enabled it to sell its spot advertising more readily, thus increasing its revenue.

13. Duplication of network programing exists not only between the imported programs entering the towns here involved over the cable system, but also with KWRB-TV signal. Network programs carried on KWRB-TV may also appear on one or more of the cable channels, without the local spot advertising. KWRB-TV states that at the present time, however, its picture is clearer and better than the one appearing on the CATV cable in the area. Thus, although a good deal of difficulty is encountered in attempting to sell spots in face of the division of audience, it manages to do so on the basis of better performance. However, it is urged that a grant of the instant application would permit the CATV to improve its facilities to match that of KWRB-TV, rendering the sale to local advertisers impossible in view of the fact that they would not be able to guarantee any viewing on its channel. Reason and logic cause us to agree with the conclusion that should the CATV system be permitted to expand its services and furnish better technical facilities, KWRB-TV will be placed in the economically disadvantageous position of finding it more

difficult to sell its advertising; it would have nothing to point to which would indicate to a potential advertiser that a popular program was being viewed over KWRB-TV vis-a-vis other potential channels. Its one balancing factor of a better picture will have been removed.

14. Licenses are granted by the Commission only if the operations proposed are found to be in the public interest, convenience, and necessity. Hence, when the impact of economic injury is such as to adversely affect the public interest, it is not only within our power, but it is our duty to determine the ultimate effect, study the facts, and act in a manner most advantageous to the public.⁴ Although most of the network programs carried by KWRB-TV would continue to be available to the present CATV subscribers in the 6 towns of over 1,000 persons, via translators or CATV's, such programs would not be available to persons not residing in the immediate vicinity of the towns in which the CATV systems and VHF translators operate, nor to persons in the towns unable to pay the CATV charges. Therefore, if KWRB-TV is eventually forced off the air as a result of a grant of the instant application, the public stands to lose its only local outlet, an outlet on which a considerable part of the population in northwestern Wyoming relies.

15. A review of KWRB-TV's revenue for the year 1959 indicates that Lander and Riverton each return \$14,191.31 and \$17,429.14, respectively, as against a return of \$6,457.20 and \$2,485.45 from Thermopolis and Worland, respectively, notwithstanding the fact that Worland has a larger population than does Lander. Thus, the four towns made up \$40,563.10 of a total revenue of \$66,812.03 for the year 1959. If the CATV pattern is permitted to be altered, and the substantial return from Riverton in particular is reduced, KWRB-TV, despite the fact that it would strive harder, would find it more difficult to sell its advertising in face of the split audience, and this situation, together with facts of record, results in our judgment that the demise of this local operation would result.

16. At the time KWRB-TV was granted its license, the Commission concluded that it was in the public interest to make such a grant. The Commission must now find it in the public interest to grant the instant application. Standing alone, it might appear that each does in fact serve the public interest, with KWRB-TV showing, inter alia, that it is the only local television outlet for the community, while Carter would show that an increase in its facilities would permit the rendition of better and more efficient service to the CATV serving the community. However, neither stands alone; the effect of one upon the other must be weighed, and the ultimate conclusion must be made to the best interest of the public. True, a grant of the instant application would permit the rendition of better service by the CATV, but at the expense of destroying the local station and its rural coverage. The CATV would permit the urban areas a choice of coverage, but the local station, especially in this case of a single-station market, serves

⁴The courts have held that economic injury to a licensee and public interest may be different matters. However, the former "becomes important when on the facts it spells diminution or destruction of service." *Carroll Broadcasting Company v. FCC*, 258 F. 2d 440, 443 (1958).

a wider area. A grant of this application will not contemplate an extension of coverage for the entire area included in KWRB-TV's contours, since it is too costly for CATV to enter the rural areas. Thus, the rural people would be left with nothing at all. This is not a true competitive situation where one or the other of the applicants would render the service. In this instance, if KWRB-TV, the local outlet, should be forced to cease operation, the rural people would be left without any service. We do not agree that we are powerless to prevent the demise of the local television station, and the eventual loss of service to a substantial population; nor do we agree that the Commission's expertise may not be invoked in this instance to predict this ultimate situation. Thus, after weighing the public interest involved in Carter's improved facility against the loss of the local station, it must be concluded, beyond peradventure of a doubt, the need for the local outlet and the service which it would provide to outlying areas outweighs the need for the improved service which Carter would furnish under the terms of the instant application. To the extent that this decision departs from our views in the report and order in docket No. 12443, 26 FCC 403 (released April 14, 1959), those views are modified.

17. In view of the foregoing and in light of the evidence adduced, we fail to find that a grant of the instant application would serve the public interest, convenience, and necessity, and therefore the application is denied, without prejudice however, to Carter's refile when it is able to show that the CATV operation will avoid the duplication of KWRB-TV programming which now exists and that the CATV system will carry the local KWRB-TV signal. Placing of these latter conditions upon the refile without prejudice is being done with full recognition of the separate corporate entities of Carter and the CATV. The realities of the situation, however, force a recognition of the fact that the conditions we impose upon Carter are a sine qua non to our finding that its operation will be in the public interest. Neither the Commission nor KWRB-TV can bring them about. Carter may accomplish this by a contract relationship between itself and the corporation with which it has some interlocking ownership [Western], or by some less formal means.

Accordingly, *It is ordered*, This 14th day of February 1962, that protest of Joseph P. Ernst and Mildred V. Ernst, d/b as Chief Washakie TV (KWRB-TV), *Is granted*; and the aforementioned application of Carter Mountain Transmission Corp. *Is denied* without prejudice to refile when a showing can be made that the duplication of programming is adequately avoided and a satisfactory arrangement is arrived at by which the cable system will carry the local KWRB-TV service.

APPENDIX

RULINGS OF THE COMMISSION ON EXCEPTIONS TO THE INITIAL DECISION

Exceptions of KWRB-TV (Protestant)

<i>Exception No.</i>	<i>Ruling</i>
1, 2, 3, 4, 8, 9, 10, 12, 13, 16, 18, 22, 23, 36.	Denied. Of no decisional significance in view of the ultimate decision herein.
5, 24, 25, 26.-----	Denied. See par. 4 of the instant decision.

32 F.C.C.

Exception No.

Ruling

- 6.----- Granted. The decision is altered to reflect the fact that there are 10 VHF channels allocated to the State of Wyoming, and that there are presently only 3 live television stations in operation.
- 7.----- Granted. The decision is altered to reflect the fact that KWRB-TV is the only station, of the three operating in Wyoming, which is in either the northern or western half of that State.
- 11, 14, 15, 17, 19, 20, 21.----- Granted in part to the extent reflected in the decision. Denied in all other respects as immaterial.
- 23.----- Denied insofar as the same calls for a conclusion that Carter fails to meet the criteria of being a communications common carrier; and granted insofar as the same calls for a conclusion that a grant of the instant application will not serve the public interest, convenience, or necessity.
- 27, 30, 33, 34, 35.----- Granted as reflected in the instant decision.
- 29, 31.----- Denied. The examiner's conclusion was correctly reached in this respect.
- 32.----- Granted as reflected in the instant decision. However, the words "non sequitur" are deleted as not descriptive of the examiner's conclusions.
- 37, 38.----- Granted.

DISSENTING STATEMENT OF COMMISSIONER CROSS

I dissent. Even though I sympathize with the plight of station KWRB-TV (channel 10, Riverton, Wyo.) in this instance, I nevertheless consider the relief being granted by the majority sets an undesirable precedent that is against the best overall interests of the broadcasting industry in this country.

In docket No. 12443 (released April 14, 1959), the Commission, after lengthy consideration and deliberation, properly, in my view, determined the rationale for deciding cases like this one. In paragraph 75 of the report and order in docket No. 12443, the Commission stated:

* * * it is neither proper, pertinent, nor necessary for us to consider the specific lawful use which the common carrier subscriber may make of the facilities of the carrier. To take a different view would place the Commission in the anomalous position of acting as censor over public communications, and put us under the burden of policing, not only the use of such facilities but the content of communications transmitted on the facilities. The logical extension of such a philosophy would require us to deny communications facilities of any kind (message telephone, telegraph, etc.) to CATV's and, for example, to deny access to facilities to those acting contrary to our concept of the public welfare. The adjudication of these matters is beyond our province.

Despite this previous statement by the Commission (and the other portions of the report and order in docket No. 12443 on this general subject), the protestant and others have now apparently convinced the majority that the Commission should consider the specific lawful use which the common carrier subscriber may make of the facilities of the carrier. The thrust of their argument in this regard is that the Commission should not, on the one hand, license microwave facilities to a common carrier when part or all of such facilities will be used by a CATV system to the economic detriment of the only television sta-

tion in the community, which has also been licensed by the Commission with its other hand.

Admittedly, this is a hard case, but there is an old saying that hard cases make bad law and, in my opinion, that is what is being done here by the decision of the majority. Having the Commission examine into the specific lawful use which the common carrier subscriber may make of the facilities of the carrier is, in my opinion, not only contrary to common carrier communications law and practice but could open up a veritable Pandora's box which in the end may well redound to the serious detriment of the broadcasting industry itself.

The Commission was aware of these undesirable possibilities at the time it released its report and order in docket No. 12443. Indeed, these factors were significant in persuading the Commission that the best way to protect the broadcaster in situations like this was not through the common carrier licensees but through legislation that would authorize the Commission to have some degree of regulation over the users; i.e., the CATV systems. Such legislation was, in fact, proposed to the Congress by the Commission and is still before the Congress.⁵ Accordingly, it is my view that we should not try to correct one isolated situation in the instant case by departing from our previously well-considered and soundly bottomed actions on the subject; i.e., the report and order in docket No. 12443 and our subsequent request to the Congress for the legislation noted above. I would therefore deny the protest and wait for the enactment of the requested legislation to deal with this matter.

⁵ S. 1044 and H.R. 6840 were introduced on Feb. 16, 1961, at the Commission's request.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON 25, D.C.

In re Application of
CARTER MOUNTAIN TRANSMISSION CORP., CODY,
WYO.

For Construction Permit To Install an
Additional Transmitter, To Transmit
on Frequency 6387.5 Mc. Location:
Copper Mountain, 40 miles South of
Worland, Wyo.

Docket No. 12931
File No. 2463-C1-P-
58

APPEARANCES

Vernon L. Wilkinson, on behalf of the protestant, Joseph P. Ernst and Mildred V. Ernst, d/b as Chief Washakie TV (KWRB-TV); *Vincent Pepper* and *John P. Cole, Jr.*, on behalf of the applicant, Carter Mountain Transmission Corp.; *Arthur A. Gladstone* and *Byron E. Harrison*, on behalf of the Chief, Common Carrier Bureau, Federal Communications Commission; and *Robert J. Rawson*, on behalf of the Chief, Broadcast Bureau, Federal Communications Commission.

INITIAL DECISION OF HEARING EXAMINER WALTHER W. GUENTHER
(Adopted May 24, 1961)

PRELIMINARY STATEMENT

1. This proceeding concerns an application for a permit to install microwave radio relay facilities for an off-the-air pickup of television signals on Copper Mountain, 40 miles south of Worland, Wyo., and to deliver such signals to community antenna television (CATV) systems in Riverton, Lander, and Thermopolis, Wyo. The subject application proposes to add a transmitter which will permit two channels of communication to Riverton and Lander, with the addition of a new point of communication, Thermopolis. Carter Mountain Transmission Corp. (hereinafter also Carter and applicant) filed the above-captioned application on April 24, 1958, and on April 22, 1959, the Commission (through the Chief of its Common Carrier Bureau) granted it (2463-C1-P-58) without hearing. Thereafter, on May 27, 1959, Joseph P. Ernst and Mildred V. Ernst, d/b as Chief Washakie TV, licensee of station KWRB-TV, channel 10, Riverton, Wyo. (hereinafter also KWRB-TV and protestant), and Mildred V. Ernst, licensee of standard broadcast station KRTR, Thermopolis, Wyo., pursuant to the provisions of sections 309(c) and 405 of the Communications Act of 1934, as amended, and 47 CFR 0.202, protested the grant. Protestants alleged, inter alia, that by providing addi-

tional service to existing and operating CATV systems located in Thermopolis, Riverton, and Lander, Wyo., the microwave facilities would enhance the competitive standing of these CATV systems to the economic detriment of KWRB-TV and KRTR, and further, that Carter "is not eligible" to hold common carrier authorizations. The hearing then requested was on the following issues:

1. To determine the areas and populations presently served by station KWRB-TV, and the nature and type of service provided by said station.

2. To determine the cost of placing KWRB-TV on the air plus any later capital expenditures, the monthly revenues of KWRB-TV during the past year, the corresponding monthly operating costs of said station, and the efficiency of said operation.

3. To determine the number of persons within KWRB-TV's service area which received service from a CATV system prior to the grant of the instant application, the call letters and locations of the stations thus received, and the quality of the signals thus received by the CATV subscribers.

4. To determine whether said signals were supplied via microwave facilities and with or without the consent of the station whose signal was thus utilized.

5. To determine whether the CATV operations in towns within KWRB-TV's service area intend to add subscribers to their systems or to extend their systems into other towns within KWRB-TV's service area, and the number of additional subscribers thus contemplated within the next 3 years.

6. To determine the number of persons within KWRB-TV's service area who receive television service from boosters, translators, or outside stations (exclusive of CATV subscribers), and the nature and extent of the service thus received.

7. To determine what impact a grant of 2463-C1-P-58 and the resulting increase in the number and clarity of outside signals provided to CATV subscribers in KWRB-TV's service area would have on the quantity and quality of service presently being rendered and presently projected by KWRB-TV, and more particularly whether the impact would be such as to jeopardize KWRB-TV's continued existence or necessitate a curtailment in the quantity and quality of service currently rendered by that station.

8. To determine the number of persons within KWRB-TV's service area which would lose the only service that they presently receive, in the event KWRB-TV ceased to operate.

9. To determine the extent to which it would be economically feasible to bring booster, translator, or satellite service to the population presently dependent on KWRB-TV for a television service, in the event that station ceased to operate.

10. To determine the extent to which persons who own and control Western TV Corp., Lander TV Corp., Riverton TV Corp., and Thermopolis TV Corp. (which own and operate CATV systems in Basin, Greybull, Lander, Riverton, Thermopolis, and Worland, Wyo.) likewise own and control Carter Mountain Transmission Corp.

11. To determine, in the light of evidence adduced under issue 10, whether Carter Mountain Transmission Corp. is a bona fide common carrier, or whether it is an alter ego corporate entity for the CATV groups, and, if so, whether it is eligible for a microwave facility under the Commission's rules and policies.

12. To determine whether the CATV systems which propose to utilize the microwave facilities of Carter Mountain Transmission Corp. and the grantee itself have heretofore used the signals of outside stations without their consent, whether they have thereby appropriated the property rights of others, or otherwise engaged in unfair competition by reaping where they have not sown, whether they propose to continue said practices in connection with any grant of the instant application, and, if so, whether such course of conduct adversely reflects on the character qualifications of the applicant.

13. To determine whether the grantee and/or the CATV systems which it serves propose (a) to carry KWRB-TV's signal if that station so requests;

(b) to carry said signal without degradation; (c) to take steps to prevent the CATV operations from interfering with the off-the-air pickup of KWRB-TV's signal.

14. To determine whether microwave grants should be made at this time, before Congress has had an opportunity to enact legislation deemed necessary by the Commission for the protection of the public interest, particularly in the absence of a commitment by the CATV systems and microwave grantees to abide by such conditions in the interim, in view of conclusions reached by the Commission in docket 12443 that CATV systems and microwave licensees should not be allowed to pick up the signals of a station without its consent and that such systems be required to carry the programs of the local station when the latter so requests without degradation.

15. To determine whether the Commission, in the light of the evidence adduced in *this* proceeding, should not foreclose the bringing into northwestern Wyoming via microwave facilities of distant out-of-State signals, even though the Commission does "not presently envision such a system of regulation" in all areas. (See 26 FCC 439, par. 93.)

16. To determine, in the light of the evidence adduced under the foregoing issues, whether a grant of the aforesaid application will serve public interest, convenience, and necessity.

2. By memorandum opinion and order released June 29, 1959 (FCC 59-617), postponing the effective date of the subject grant pending final determination of the matters raised in the protest, the Commission, in view of the conclusions theretofore reached *In the Matter of Inquiry Into the Impact of Community Antenna Systems, TV Translators, TV "Satellite" Stations, and TV "Repeaters" on the Orderly Development of Television Broadcasting* (docket No. 12443), 26 FCC 403 (April 1959), ordered that the protest of KWRB-TV¹ be set for oral argument before the Commission, en banc, to be held on July 24, 1959, on the following issues:

(1) To determine whether Carter Mountain Transmission Corp. is a bona fide communications common carrier eligible to receive approval and grant of the subject application.

(2) To determine whether our conclusions in paragraphs 45 through 51, and 58 through 79, of the report and order in docket No. 12443, as applied in this case, are in error.

(3) To determine whether the corporate interrelationships between Carter and CATV require a different conclusion in this case from that reached in docket No. 12443.

KWRB-TV, Carter, and the Chief of the Commission's Common Carrier Bureau were made parties to the proceeding.

3. Oral argument was held as scheduled, briefs having been submitted by the parties. Thereafter, in its memorandum opinion and order released May 20, 1960 (FCC 60-564), the Commission, rejecting issue 4 in part and issues 12, 13, and 14 outright (see par. 1 above), stated that the remaining issues requested were "comprehended" within the following six issues, as rephrased by the Commission, on which it ordered hearing as follows:

(1) To determine the areas and populations now served by station KWRB-TV, Thermopolis, Wyo., and the nature and type of service provided by said station.

¹The Commission held that the licensee of KRTR did not have standing to protest and to request reconsideration of the aforesaid grant, and thus dismissed her protest and petition for reconsideration.

(2) To determine what impact a grant of the aforesaid application will have upon the operation of station KWRB-TV, Thermopolis, Wyo., and the resulting injury, if any, to the public now served thereby.

(3) To determine what, if any, degree of common or interlocking ownership exists between Carter Mountain Transmission Corp. and Western TV Corp., Lander TV Corp., Riverton TV Corp., Thermopolis TV Corp., or any of them.

(4) To determine what, if any, effect such common or interlocking ownership, if such be found, may have upon the common carrier status of Carter Mountain Transmission Corp.

(5) To determine whether Carter Mountain Transmission Corp. is a bona fide common carrier and eligible for a common carrier microwave facility under Commission rules and regulations.

(6) To determine, in the light of evidence adduced and determinations made, whether a grant of the aforesaid application will serve the public interest, convenience, or necessity.

The Commission further directed that KWRB-TV shall have the burden of proceeding with the introduction of evidence and the burden of proof on the above issues designated as (1), (2), (4), and (5), and that Carter shall have these burdens on issues (3) and (6).

4. By order released October 17, 1960, a prehearing conference on the subject application was scheduled for October 27, 1960.² At that conference, over protestant's objections, the parties were directed to exchange their exhibits on November 22, 1960, and to proceed to hearing on November 28, 1960. The exhibits were exchanged as ordered. The actual hearing was subsequently postponed to January 30, 1961, because of the hearing examiner's intervening illness and his other hearing commitments. Oral and written evidence was adduced by the applicant and by the protestant on January 30 and 31, 1961, whereupon the record was closed. Proposed findings of fact and conclusions of law were timely filed on behalf of protestant and applicant, the latter also submitting a brief³ on issues (3), (4), (5), and (6) herein. A timely reply to protestant's proposed findings was filed on behalf of applicant together with a "memorandum of law" in supplement of its brief. A joint brief on issues (3), (4), and (5) was also timely filed on behalf of the Chiefs of the Commission's Common Carrier and Broadcast Bureaus.⁴

5. For purposes of this proceeding, the six issues designated by the Commission may be grouped into three separate categories: Issues (1), (2), and (3)—the factual issues; issue (5)—a combination factual-legal issue; and issues (4) and (6)—legal issues, with issue (6) also being a "conclusionary" issue.

² By order of the Chief Hearing Examiner released Sept. 27, 1960, Hearing Examiner Basil P. Cooper had been designated to preside. Thereafter (on Sept. 30, 1960), with the consent of all parties involved, the instant proceeding and other similar "microwave cases" were assigned to the undersigned hearing examiner. Except for the subject proceeding, all other "microwave cases" assigned to this hearing examiner have, in the meantime, either been dismissed or terminated.

³ Counsel for protestant was granted permission by the hearing examiner to cite relevant decisions and argue legal points in his proposed conclusions rather than in a separate brief. Protestant's conclusions, however, do not set forth, in lieu of a legal brief, decisions and relevant Commission precedent on issue (5).

⁴ The hearing examiner, in the conclusions set forth hereinbelow, agrees with the legal position advanced by Commission counsel in their joint brief on issues (3), (4), and (5), and has adopted it with certain modifications.

FINDINGS OF FACT

Carter Mountain Transmission Corp.

6. Carter, the above-captioned applicant for radio microwave relay facilities to transmit certain television signals⁵ to CATV systems operated by Western Television Corp. (hereinafter also Western) in Riverton, Thermopolis, and Lander (see par. 1 above), is a Wyoming corporation which presently has 8,000 shares of common (\$1 par) voting stock issued and outstanding. The following persons are officers, directors, and stockholders of Carter:

Name	Position	Stock interest (percent)
Roy E. Bliss.....	President and director.....	25
Thomas W. Mitchell, Jr.....	Vice president and director.....	25
E. T. Melbraaten.....	Secretary-treasurer and director.....	25
H. N. Moore.....	Director.....	25

Western Television Corp.

7. Western, into which several predecessor companies have been heretofore merged, is a Wyoming corporation which owns and operates CATV systems in Riverton, Thermopolis, Lander, Worland, Basin, and Greybull, Wyo. Its 599 shares of issued and outstanding common (\$1 par) stock are presently held as follows:

Name	Position	Ownership (percent)
Thomas W. Mitchell, Jr.....	President and director.....	26.8
Roy E. Bliss.....	Secretary-treasurer and director.....	1 69.9
Mrs. Roy E. Bliss.....	Vice president and director.....	-----
M. F. D. Holian.....	-----	2.0
Dorothy Steele.....	-----	1.3

¹ Owned jointly with his wife.

² Approximate.

8. Western and Carter are separate legal entities and, except as set forth in paragraphs 6 and 7 above, have no relationship.

Areas and populations served by KWRB-TV⁶

9. Of the three VHF television assignments presently being used in the State of Wyoming, channel 10 in Riverton (station KWRB-

⁵ At the time of the hearing there was pending an application of Carter to serve, as a result of a specific request, the licensee of station KOOK-TV (Billings, Mont.), file No. 100-C1-P-61. This application was granted on Feb. 2, 1961. Official notice is taken of the application and grant.

⁶ In the presentation of its case, protestant presented a total of three witnesses: a consulting radio engineer (Tr. 64), one of the owners and operators of KWRB-TV (Mrs. Ernst) (Tr. 129), and a proffered "economic expert" witness (Tr. 278). The testimony of the proffered economic expert witness was rejected by the hearing examiner because of protestant's failure to qualify the witness as an expert in the field of economic impact (Tr. 318-320). KWRB-TV's exhibit 19 ("Expert Testimony of Paul B. Mowrey on Economic Feasibility of KWRB-TV's Continuance of On-the-Air Operation"), to be sponsored by said witness, was therefore rejected by the hearing examiner. Applicant, though cognizant that the Commission (in its order of designation) directed the hearing examiner to make specific factual determinations under issues (1) and (2), takes the position that the evidence to be adduced under these issues is not relevant or material and may not properly be considered in reaching the conclusory determination required by issue (8). A brief of law in support thereof was submitted by applicant.

TV) is licensed to protestant. With its main studio in Thermopolis, station KWRB-TV identifies itself on the air, pursuant to prior Commission consent, as Riverton-Lander-Thermopolis-Worland.

10. The areas and populations (1950 U.S. census) within KWRB-TV's grades A and B contours⁷ are as follows:

Contour	Area (sq. miles)	Population	Homes or households ¹
Grade A.....	6,545	28,497	8,142
Grades A and B.....	13,845	36,918	10,548

¹ The figures in this column are derived from the population figures, using the U.S. census national average of approximately 3.5 persons per "household" or "home."

11. Included in KWRB-TV's grade B contour are *portions* of seven counties in northwestern Wyoming. Detailed population breakdowns, using the 1950 U.S. official MCD figures, show that KWRB-TV's grade B contour encompasses 5,754⁸ of the 13,176 persons residing in Big Horn County (approximately 43.7 percent of that county's 1950 population); 614 of the 15,182 persons residing in Park County (approximately 4 percent of that county's 1950 population); 5,236 of the 5,250 persons residing in Hot Springs County (approximately 99.7 percent of that county's 1950 population); 7,040 of the 7,252 persons residing in Washakie County (approximately 97.1 percent of that county's 1950 population); 18,078⁹ of the 19,580 persons residing in Fremont County (approximately 92.3 percent of that county's 1950 population); 20 of the 2,481 persons residing in Sublette County (approximately 0.8 percent of that county's 1950 population); and 187 persons in Natrona County (less than one-third of 1 percent of that county's 1950 population).

12. Disregarding its de minimis coverage (populationwise) of Natrona County, KWRB-TV's 1950 coverage of the other six counties, as broken down by the 1950 U.S. census into "urban population," "rural nonfarm population," and "rural farm population," is as follows:

⁷ The consulting engineer who sponsored the exhibit (KWRB-TV No. 1) on which are based these findings had never testified in hearings before the Commission, although he had prepared many broadcast applications (AM, FM, and TV). When questioned as to the accuracy of certain calculated figures appearing, i.e., on p. 4 (as to "MCD #3" under "Washakie County"), on p. 6 (as to "MCD #14" under "Fremont County"), and p. 7 (as to "MCD #17 and #18" under "Fremont County"), he admitted that these calculations were not prepared by him personally but under his direction and supervision; that from his own knowledge he could not testify that the total population figure appearing for instance on p. 6, as to Fremont County's "MCD #14" in KWRB-TV's grade A service area, is 268 as listed (challenged because of an apparently typographical error appearing in this context in the figure under the last column "Total served"); and that inaccuracies on p. 7 as to Fremont County (see MCD #17 and #18) were likewise apparently due to incorrect calculations. Counsel for applicant relied on these isolated instances in challenging the overall accuracy of the population data within KWRB-TV's grade A and grade B coverage. However, said counsel later withdrew his objection, provided protestant supplied "corrected information on these few errors." Although the latter has not been done, the hearing examiner views the pointed out errors as de minimis.

⁸ These totals were arrived at in reliance upon figures appearing on pp. 6 to 9, inclusive (last column), of KWRB-TV's exhibit No. 1.

⁹ Protestant's proposed figure of 18,067 did not take into account the error made requiring change from "1100" to "1111" under MCD #18. (See p. 7 of KWRB-TV's exhibit No. 1.)

County; percent ¹	Total population	Urban population ²	Rural nonfarm population ³	Rural farm population
Big Horn (43.7).....	13,176	2,508	5,506	5,162
Fremont (92.3).....	19,580	7,491	5,943	6,146
Hot Springs (99.7).....	5,250	2,870	1,441	939
Park (4).....	15,182	7,676	2,723	4,783
Sublette (0.8).....	2,481	-----	1,377	1,104
Washakie (97.1).....	7,252	4,202	1,321	1,729
Total (approximately 59).....	62,921	24,747	18,311	19,863

¹ The percentage figures shown opposite each county represent the proportion of that county's 1950 population (not area) lying within KWRB-TV's grade B contour.

² "Urban population," as used by the U.S. Census Bureau, comprises all persons residing in towns of 2,500 inhabitants or more.

³ "Rural nonfarm population," as used by the U.S. Census Bureau, comprises all persons residing in incorporated towns with fewer than 2,500 inhabitants.

13. A corresponding population tabulation, based on the 1960 Advance U.S. Census Reports,¹⁰ is as follows:

County	Total	Urban ¹	Rural ¹
Big Horn.....	11,898	-----	11,898
Fremont.....	26,168	11,027	15,141
Hot Springs.....	6,365	3,955	2,410
Park.....	16,874	9,578	7,296
Sublette.....	3,778	-----	3,778
Washakie.....	8,883	5,806	3,077
Total.....	73,966	30,366	43,600

¹ "Urban population" as used by the U.S. Census Bureau, comprises all persons residing in towns of 2,500 inhabitants or more. Population not classified as "urban" constitutes the "rural population." In the 1960 Advance U.S. Census Reports the "rural population" has not yet been broken down into "rural nonfarm population" and "rural farm population."

14. The U.S. census for both 1950 and 1960 list only 15 "towns" or other "incorporated places" within the entire area embraced within KWRB-TV's grade B contour, whose populations are as follows:¹¹

	Population			Population	
	1950	1960		1950	1960
Big Horn County:			Hot Springs County:		
Basin.....	1,220	1,319	Kirby.....	99	82
Manderson.....	107	167	East Thermopolis.....	241	281
Greybull.....	2,262	2,286	Thermopolis.....	2,879	3,955
Fremont County:			Park County: Meetee.....	404	514
Lander.....	3,349	4,182	Washakie County:		
Hudson.....	278	369	Ten Sleep.....	289	314
Riverton.....	4,142	6,845	Worland.....	4,202	5,806
Shoshoni.....	891	766	Total.....	20,697	27,323
Lost Cabin.....	73	47			
Pavillion.....	241	190			

15. As shown by these figures, there are only four towns in KWRB-TV's grade A contour¹² (Lander, Thermopolis, Riverton, and Worland), and only two towns between KWRB-TV's grade A and grade

¹⁰ Based on "Advance Reports—Final Population Counts for Wyoming, October 1960" (PC(A1)-52).

¹¹ There are no "towns or other incorporated places" listed by the U.S. census in those parts of the other two counties (Sublette and Natrona) which lie within KWRB-TV's grade B contour.

¹² See fig. 3 of KWRB-TV's exhibit No. 1.

B contours¹² (Basin and Greybull) which have populations in excess of 1,000 persons as follows:

Town	1950 population	1960 population ¹	Town	1950 population	1960 population ¹
Basin.....	1,220	1,319	Thermopolis.....	2,879	3,955
Greybull.....	2,262	2,286	Worland.....	4,202	5,806
Lander.....	3,349	4,182			
Riverton.....	4,142	6,845	Total.....	18,054	24,393

¹ Based on "Advance Reports—Final Population Counts for Wyoming, October 1960" (PC(A1)-52).

CATV operations within KWRB-TV's service area

16. Western operates CATV systems in each of the above-named six communities.¹³ The number of present and potential subscribers¹⁴ to the CATV systems in these six towns, as shown in the fall editions of Television Factbook for the past five years, is as follows:

	Factbook No. 23, 1956		Factbook No. 25, 1957		Factbook No. 27, 1958		Factbook No. 29, 1959		Factbook No. 31, 1960 ¹	
	Present	Potential	Present	Potential	Present	Potential	Present	Potential	Present	Potential
Basin.....					225	400	240	300	260	300
Greybull.....					285	600	360	535	475	535
Lander.....									50	900
Riverton.....					40	1,500	250	1,500	350	1,500
Thermopolis.....	130	2 703	200	2 700	575	850	500	900	400	900
Worland.....	575	850	994	1,600	1,200	1,500	1,225	1,500	1,000	1,500
Total.....	705	1,550	1,194	2,300	2,325	4,850	2,575	4,735	2,535	5,635

¹ See Carter's exhibit No. 2. Protestant's engineering witness testified that he determined the 1960 "potential" number of subscribers with, as recollected by him, the help of his assistant. As protestant's exhibit No. 4 clearly shows, these figures were taken from Television Factbook No. 31. In having become [as a witness] for the first time exposed to cross-examination and, as a result thereof, having been rather nervous and thus not quite able to cope with cross-examination's impact on a witness, it is apparent that this witness was confused since admittedly counsel for protestant himself and not this witness prepared protestant's exhibit No. 4, and the witness merely checked the figures thusly submitted to him (a similar observation applies to protestant's exhibits 2 and 3). This deficiency does, however, in the hearing examiner's view, not affect this witness' otherwise credible testimony.

² Systems then owned by Thermopolis Broadcasting Co., now out of operation.

As reflected in this table, in the two towns with the greatest number of subscribers (families) on the cable (Thermopolis and Worland), the number has dropped not insignificantly in the past 2 years. As to Thermopolis, Western closed its office there for 6 months in the latter part of 1960. In January of 1961 Western ran a 14-mile open-line wire from Copper Mountain into Thermopolis, taking KWRB-TV off the cable at that time and putting station KID-TV (Idaho Falls, Idaho) on the Thermopolis cable.¹⁵

¹² See fig. 3 of KWRB-TV's exhibit No. 1.

¹³ The only other town within KWRB-TV's grade B contour which presently has a CATV system is the summer resort community of Ten Sleep, which in 1950 had a population of 289 persons. The CATV system in that community is not operated by Western.

¹⁴ The term "subscribers" represents the number of "homes," "households," or "families" on the cable system.

¹⁵ A more extensive finding with regard to matters stated in the last three sentences is proposed by protestant (see par. 19 of its proposed findings); it should be noted, however, that protestant stated in this regard (see footnote 1 to par. 19 of its proposed findings) that the ultimate decision in this case is not likely to turn on whether the total number of present subscribers in 1960 is 2,535, as shown in Television Factbook, or some lesser figure estimated by protestant to be 1,500 or 2,000.

17. The signals of three television stations (those of KOOK-TV, Billings, Mont.; KTWO-TV, Casper, Wyo.; and KID-TV, Idaho Falls, Idaho) are carried on each of the six CATV systems (except that operating in Thermopolis) which Western operates within KWRB-TV's service area. The Thermopolis CATV system does not carry the signals of KID-TV, but has carried protestant's signal. The signal of a fourth television station (KGHL-TV, Billings, Mont.) is likewise carried on the CATV systems in Thermopolis, Worland, Basin, and Greybull. Background music (not as a result of a broadcast pickup) is supplied by the CATV systems on a separate channel in Riverton and Worland. Although KWRB-TV's signal has been carried on a few occasions for short periods of time on some of Western's CATV operations, its signal is not carried by that company at present on any of its systems.

18. While the cable systems in each of these six towns (except Riverton and Lander) carry the signals of four television stations, much of the network programming thus made available to CATV subscribers is duplicated due to the method by which each of the stations, whose signals are used on the cable, obtains its network programs. KID-TV's sources for programs not on film or locally originated are off-the-air pickups from Salt Lake City, Utah. KOOK-TV, in turn, is dependent on KID-TV's signal for all nonlocally originated programming. Stations KID-TV and KOOK-TV are affiliates of the same networks (ABC and CBS). Except for a small amount of locally originated (nonnetwork) programming on KID-TV and KOOK-TV, the placement of the signals of those stations on the same cable system results in duplication of identical programming. Further duplication occurs wherever KTWO-TV is carrying the same ABC or CBS shows as KID-TV, with that program thereby appearing on three different channels on the cable systems operated in these six cities (on KID-TV, KOOK-TV, and KTWO-TV). Thus, only on those occasions when KTWO-TV carries an ABC (or CBS) show different from that carried by KID-TV do the cable subscribers have a choice of three network shows.

19. Stated in converse fashion, when protestant's station KWRB-TV is carrying an NBC show, any spots (national or local) which it sandwiches in on adjacencies thereto are not seen by cable subscribers viewing that NBC show on KGHL-TV and/or KTWO-TV. Similarly, when KWRB-TV is carrying an ABC or CBS show, its spot adjacencies are not seen by the cable subscribers viewing that ABC or CBS show on KID-TV, KOOK-TV, and KTWO-TV. Thus, the audience which KWRB-TV can attract by carrying ABC, NBC, or CBS programs is split three or four ways. When asked about the effect of a grant of the subject application upon the operators of the CATV systems, Mrs. Ernst admitted that no different programs will become available and that the problem of convincing a local advertiser that she can deliver any audience on a particular show carried by KWRB-TV, a problem which she faces under the present CATV operations, is in no way different from that resulting from a grant here involved, except that, in her opinion, "the quality [of the

picture] today is not as good as what you expect the quality to be if these applications [sic] are granted" (Tr. 244).

20. The September 1960 issue of *Television Market Book*¹⁶ lists only three counties as being served by KWRB-TV, to wit:

County	VHF homes	Total homes	Population
Big Horn.....	2,100	3,200	11,400
Fremont.....	3,400	7,300	24,400
Hot Springs.....	1,000	1,800	5,600
Total.....	6,500	12,300	41,400

Translator operations within KWRB-TV's service area

21. VHF "boosters," some of which are being transformed into VHF "translators," have been operated over the past several years on an off-and-on basis in Riverton, Thermopolis, Lander, and Worland, supplying the programs of KTWO-TV. Boosters have similarly operated in the towns of Basin and Greybull, supplying the programs of KOOK-TV and KGHL-TV, respectively. These are the towns in which Western operates its CATV systems. Translator authorizations (on a temporary basis) have been recently granted in four other small communities within KWRB-TV's grade B contour—in Kirby (1960 population, 82); in Lucerne (1950 population, 14); in Meeteetse (1960 population, 514); and in Ten Sleep (1960 population, 314).¹⁷

Programing provided by KWRB-TV

22. Mr. and Mrs. Ernst, the licensees of station KWRB-TV, are experienced broadcasters. Mrs. Ernst has been associated with radio for approximately 40 years. During the 1920's and 1930's she worked part time in radio stations in Seattle, Bellingham, Tacoma, and Port Angeles, Wash. Mr. and Mrs. Ernst moved to Wyoming early in 1945, where they managed one of the five radiobroadcast stations then operating in that State. In March 1946 they placed their own radiobroadcast station on the air—station KWOR in Worland. Two years later they established a radiobroadcast station in Riverton (KWRL), followed by such a station in Torrington in 1950 (KGOS), and in Thermopolis in 1955 (KRTR).

23. Early in 1956, Mr. and Mrs. Ernst made a rather thorough study of television in very small markets around the country. Intending to bring television to the northwestern Wyoming area as soon as they felt they could do so and "stay alive," they decided that by disposing of station KGOS (a station remote from their other operations), by using what money they had, and by going into debt they could bring live television to that area. Their application (BPCT-2138) for channel 10, Worland, was filed May 23, 1956,¹⁸ with the transmitter to be located on Boysen Mountain, a peak in the Rockies with an elevation of approximately 7,500 feet above sea level, and with the main studio to be placed in Thermopolis. That

¹⁶ This trade publication is much relied upon by national advertisers for current county-by-county television set figures and for stations viewed at least once a week by 25 percent of the television homes in a given county.

¹⁷ Official notice has been taken of these authorizations (Tr. 162, 163).

¹⁸ Official notice has been taken thereof.

application was granted September 26, 1956.¹⁸ The station went on the air on December 22, 1957, with the call letters KWRB-TV. The Ernsts have continuously operated the station since that date.

24. During the first year (1958) the KWRB-TV was on the air, it commenced programing at 4 p.m. and signed off at 11 p.m. Starting in 1959 it expanded its schedule by signing on at 10 a.m. on Monday through Friday (with test pattern at 9:30 a.m.) and continuing on the air until 11 or 11:30 p.m., and signing on Saturday and Sunday either at 12 noon or 2 p.m.—approximately 92 hours per week.

25. A breakdown as to *type* of programs carried over KWRB-TV during the week of October 9–15, 1960, discloses the following percentages: Entertainment, 80; religious, 4; agricultural, 2; educational, 6.5; news, 5; discussion, 1; and talks, 1.5.

26. A breakdown of this same week by *source* discloses the following percentages:

	8 a.m.- 6 p.m.	6-11 p.m.		8 a.m.- 6 p.m.	6-11 p.m.
Network commercial (NC)....	43	58	Broadcast-hours per week....	57	34.40
Network sustaining (NS)....	26	10	Number of spot announce- ments.....	19	53
Recorded commercial (RC)....	-----	2	Number of noncommercial spot announcements.....	377	136
Recorded sustaining (RS)....	24	16			
Wire commercial (WC)....	-----	-----			
Wire sustaining (WS)....	-----	2			
Live commercial (LC)....	-----	12			
Live sustaining (LS)....	7	-----			
Total commercial.....	43	62			
Total sustaining.....	57	38			

Of the 74 hours of network programing carried weekly on the station, 3 hours each week are furnished by NBC, approximately 35 hours each week by CBS, and a like amount by ABC. Approximately 8.8 hours of either live commercial or live sustaining programs are carried weekly.

27. It is apparent from the instant record that KWRB-TV's overall programing serves the public interest. It has permission from each of the three networks with which it is affiliated (ABC, CBS, and NBC) to carry their entire schedules (even where KWRB-TV has not been "ordered" by the sponsor of a given show) by deleting the "commercials" and substituting "public service spots." Where the stations which supply KWRB-TV with signals for live network broadcasts (KOOK-TV for ABC and CBS, and KGHL-TV for NBC) are not ordered by the sponsor and where those stations do not elect to carry a nonordered network show by deleting the commercials, KWRB-TV is dependent on a delayed broadcast by kinescope of such omitted shows. As illustrated by the October 9–15, 1960, week, KWRB-TV broadcast 377 public-service spots between 8 a.m. and 6 p.m., and 136 between 6 p.m. and 11 p.m., or a total of 513 public-service spots for the week as against 72 commercial spots for the week. KWRB-TV carries public-service spots on behalf of community civic organizations, town officials, local police, schools, Red Cross, etc. The station

¹⁸ Official notice has been taken thereof.

provides local news, with portions thereof on locally produced film; local entertainment features such as local rodeos and the State fair; local educational roundtable discussions and "math-down contests"; local county farm agents and home demonstration agents; agricultural market reports; local weather reports; local high school and University of Wyoming football games; and local political broadcasts; programs geared to the area KWRB-TV serves.

28. With KWRB-TV not carried on the CATV systems or on VHF translators within its service area, the 36,918 persons (1950 U.S. census) within KWRB-TV's grade B contour are dependent on its continuation on the air for the foregoing *local* programs. If it no longer operated, no programs of this type would be available to these people, except for 187 persons in Natrona County who are also served by KTWO-TV. And while most of the network shows carried by KWRB-TV would continue to be available to some 2,535 present and 5,635 potential subscribers via the CATV systems in the 6 towns of over 1,000 persons and via VHF translators, such programs would not be available: (a) to persons in those towns who are not in a position to pay the initial connection costs, such as \$30 in Thermopolis, with a monthly service charge in that community of \$6.50; and (b) to persons not residing in the immediate vicinity of the towns in which the CATV systems and VHF translators operate.

29. In short, if KWRB-TV ceased to operate, approximately 37,000 people in its grade B contour would be left without any locally originated programs.

KWRB-TV's staff

30. Station KWRB-TV is operated at present with a complement of seven full-time employees and two half-time employees. Three of seven full-time employees are members of the Ernst family—Mrs. Ernst and her two sons.¹⁹ Mr. and Mrs. Ernst and each of their two sons have first-class "tickets" from the Commission. The two sons also have collegiate training in electrical engineering. The ability of the station to operate 92 hours each week with a staff of only seven or eight is explained in no small part by the fact that, as a "family enterprise," the Ernsts do not restrict their workweek to 40 hours. Neither Mr. nor Mrs. Ernst has drawn a salary or received a bonus or dividend from KWRB-TV since it went on the air.²⁰ In the years 1958 to 1960 the sons received monthly salaries of \$350 and \$400, respectively.

KWRB-TV's income and expenditures

31. With the consent of the stations and the networks involved, signals from KOOK-TV (ABC and CBS) and KGHL-TV (NBC) are picked up by KWRB-TV approximately a mile down from the top of Boysen Peak and delivered to KWRB-TV's transmitter by coaxial cable. Microwave facilities connect the studio in Thermopolis and the transmitter on Boysen Peak 14 airline-miles away. Microwave

¹⁹ Mr. Ernst, who is primarily responsible for the radio (AM) operations, is utilized for engineering work at KWRB-TV in emergencies.

²⁰ During 1958 and 1959, Mr. and Mrs. Ernst drew for themselves no compensation from station KWRB-TV, their living expenses then coming from other revenues.

and other capital improvements made by KWRB-TV since the station went on the air (December 1957), coupled with other items carried as capital investment, have increased protestant's "capital expenditures" to approximately \$188,000 as of October 1958 (KWRB-TV's exhibit No. 15 revised). Protestant's form 324 report for the year 1958, by Mrs. Ernst on May 22, 1959, certified as being true and correct, is as follows:

SCHEDULE 3.—Tangible property owned and devoted exclusively to broadcast service by the respondent

Item	As at end of year		
	Cost when first dedicated to broadcast service	Balance in accrued depreciation account	Cost after depreciation control (b) minus (c)
1. Land and land improvements and buildings.....	\$12,749	\$1,155	\$11,594
2. All other property (including transmitter, studio, office, and other property).....	125,049	17,712	107,337
3. Total, all property (1 and 2).....	¹ 137,798	18,867	118,931

¹ Mrs. Ernst, when confronted with these data, testified that her auditor (a certified public accountant) had submitted the filled-in form to her and that she was then under the impression that these data represented the "total value of the property," but that in her opinion protestant "had a greater value at the end of 1958 in that equipment than those figures" (Tr. 266).

The form 324 report for 1959, signed by Mrs. Ernst on March 30, 1960, shows the same order of figures as being the total of property exclusively devoted to protestant's television broadcast service (Tr. 268). Thus, the 1958 form 324 report shows accrued depreciation of \$18,867 and the 1959 report an accrued total of depreciation of \$35,163, the difference between the amount shown on the 1958 form and that on the 1959 form being what protestant's auditor calculated as the depreciation to be charged for 1959. Protestant's exhibit No. 15 revised shows, as of October 1958, total "Capital Investments and Installation Charges" of \$188,684. This total includes, inter alia, charges for "Engineering" (\$2,765), "Legal" (\$2,514), and "Interest on Contract" (\$16,881). Protestant's license application (form 302), filed on December 10, 1957, shows the total of capital construction costs as \$135,495. When asked whether certain equipment covered in exhibit No. 15 revised, such as "Off-Air Pickups" (\$3,741), "Test Equipment" (\$4,558), "Microwave" (\$16,140), "Jeep" (\$3,138), "RCA—Car Phone System" (\$2,694), and "Line O-Scribe" (\$2,001) had been purchased by protestant before it went on the air in December of 1957, Mrs. Ernst testified that "there has been considerable that was purchased between then and the following October"²¹ (Tr. 216).

32. KWRB-TV's operating revenues and expenses for the 3 calendar years it has been on the air are as follows:

²¹ A motion to have exhibit No. 15 revised stricken in view of the data reflected in protestant's 1958 and 1959 form 324 reports was withdrawn by counsel for the Chief of the Commission's Common Carrier Bureau with the observation that it would be left to counsel for protestant "to close the gap * * * between the figures shown on form 324 and the figure shown on revised exhibit 15" (Tr. 270). Protestant's proposed findings address themselves to this matter only to the extent indicated in par. 32, *infra*, of these findings (first three sentences thereof).

Year	Income	Operating expenses exclusive of depreciation	Operating expenses with depreciation
1958.....	\$29,785.15	\$53,044.92	\$69,947.48
1959.....	66,812.03	76,814.50	93,110.62
1960.....	61,122.47	67,090.69	183,386.81
Total.....	157,719.65	² 196,960.11	246,444.91

¹ Based on the same amount of depreciation for 1960 as shown for 1959.

² These figures include no salary or other payments to Mr. or Mrs. Ernst.

The substantial increase in KWRB-TV's operating expenses for 1959 over those for 1958 was to a large part due to the greatly expanded program schedule inaugurated in early 1959. The decrease in operating costs in 1960 over 1959 is attributable in part to a reduction in the amount of syndicated film purchases and the substitution of network programming for which charges are no longer being exacted. As stated in paragraph 33, *infra*, with regard to a breakdown of protestant's 1959 revenues, protestant's operating expenses for 1958 and 1959 were likewise itemized (KWRB-TV's exhibit No. 12). In 1959 the increase of \$9,300 for "salaries" is due to the changes in sign-on and signoff time: 1958—4 p.m. to 11 p.m., and 1959—10 a.m. to 11 or 11:30 p.m.; the increase of about \$1,600 for "utilities" due to longer airtime; the increase of about \$1,300 for "maintenance and rent" due to building repairs and studio rent increase; the increase of about \$2,300 for "television supplies" due to necessary replacement of tubes, etc.; 1959 increases (over 1958) for other items, such as "television services," "sales promotion," "auto repairs," "miscellaneous," etc., were satisfactorily explained by Mrs. Ernst. As to the amount of \$4,800 listed in 1959 under "interest on business debts," Mrs. Ernst testified that outstanding loans could possibly have been in the amount of \$20,000 at one bank and \$7,500 at another; she further testified that in preparing exhibit No. 12, she accepted the figures as arrived at by the auditor. When further questioned on this particular item because of the obviously high rate of interest charged, if as testified to then outstanding loans only totaled \$27,000, Mrs. Ernst admitted that she did not know the exact [bank] figures (Tr. 248-251).

33. A breakdown of the revenues received by KWRB-TV during 1959 (\$66,812.03) shows network revenues of \$3,536.31 (NBC and CBS); ²² national spot business of \$10,428.06; regional spot business of \$8,407.90; local business of \$17,429.14 in Riverton, of \$14,191.31 in Lander, of \$2,485.45 in Worland, and of \$6,457.20 in Thermopolis; and miscellaneous receipts of \$3,876.66 from Greybull, Basin, Shoshoni, etc.²³ The station has operated with the same rate card since it went on the air on December 22, 1957.

²² During 1959 and 1960, KWRB-TV, as a bonus station, paid ABC \$250 per month for the right to carry the programs of that network. Since Jan. 1, 1961, KWRB-TV, as a rate affiliate, has received payments from ABC for shows ordered by the sponsor. Starting Jan. 1, 1961, KWRB-TV's revenues from NBC and CBS network sources have increased from \$300 per month during 1959 to approximately \$800 per month, or \$9,600 per year.

²³ At the hearing KWRB-TV supplied overall figures (revenues and costs) for 1960. (See par. 32, *supra*.) Mrs. Ernst further testified that the national and regional business on the station for 1960 was about the same as it was for 1959, with some increase in the 1960 network revenues.

34. As borne out by the foregoing financial figures, and more particularly the increase in network revenue starting January 1, 1961, the gap between "cash income" and "cash outgo" is being narrowed. In this regard Mrs. Ernst testified that "business was getting a little better" (Tr. 260).

CONCLUSION

1. The frequency being sought by Carter (6387.5 Mc.) is intended for Point-to-Point Microwave Radio Service (Part 21, Subpart I, Section 21.700, et seq.). Before an application for such a facility can be granted, the Commission must determine first that Carter is a communications common carrier eligible to receive a grant of the subject application; and, second, that the public interest, convenience, or necessity will be served by such a grant.

2. Operators of community antenna television systems are not themselves eligible for microwave facilities reserved for common carrier use. Is Carter to be identified with such a system as an alter ego of Western? Two stockholders of Carter, who hold a total of 50 percent of that corporation's stock, own a total of 96.7 percent of the stock of Western, which in turn owns and operates CATV systems in Riverton, Lander, Thermopolis, and Worland, Wyo. Furthermore, though Carter's sole original customer was Western, an application of Carter to construct additional microwave facilities to enable it to provide, as requested, service to KOOK-TV, Billings, Mont., was granted on February 2, 1961.²⁴ No affiliation or unity of ownership exists between KOOK-TV and either Carter or Western. The question thus arises whether and, if at all to what extent, any or all of these matters affect the Commission's initial determination of Carter's status as a communications common carrier.

3. The Commission has heretofore held that an insignificant "interlocking of interest or control" by a microwave relay common carrier and the subscriber or subscribers is not a disqualification as to common carrier status. (See *J. E. Belknap & Associates*, 10 R.R. 517, 518 (1954).)²⁵ Since then the Commission has authorized a great number of grants to provide microwave relay common carrier service where the degree of such interlocking relationship has reached virtually 100 percent. The instant case presents a situation where holders of negative control (50 percent) of the common carrier entity own close to 100 percent of the subscriber CATV's.

²⁴ Protestant in this regard emphasizes that for the facilities here sought by the application as filed, granted, and designated for hearing, Western was listed as Carter's sole proposed and prospective customer, and that Carter's application has since then not been amended to reflect any additional customers. The fact that Carter, through facilities requested in a different application, may supply a different customer (KOOK-TV) has in protestant's view no bearing on the subject authorization for the furnishing of television programming to CATV systems operated by (as viewed by protestant) Carter's alter ego in Riverton, Thermopolis, and Lander. (See par. 49 of protestant's proposed conclusions.) Protestant furthermore argues that even if the Commission should conclude that Carter is a bona fide common carrier and otherwise eligible for a microwave facility under part 21, a grant herein fails to meet the statutory test of "public interest, convenience, or necessity." (See par. 51 of protestant's proposed conclusions.)

²⁵ In that case, the extent of interlocking was the holding of a minority interest in the subscriber CATV by some stockholders of the common carrier.

4. As recognized by the Commission and its predecessor agencies,²⁶ the status of a communications common carrier initially obtains as a result of the bona fide offer of an entity to serve the public upon reasonable request, and without discrimination, pursuant to legally applicable tariffs. That the purported carrier initially proposes to serve, in addition to other members of the public, itself or an entity closely affiliated with itself, has been regarded by the Commission and its predecessor agencies as immaterial at the time of commencement of service.²⁷ Common carrier status is not lacking merely because a considerable portion of a company's business consists of communications service carried for itself or for the industry with which it is associated. (See *Southern Pacific Terminal Co. v. ICC*, 219 U.S. 498, 520, et seq.; *Producers Transportation Co. v. Railroad Commission of State of California et al.*, 251 U.S. 228, 230, 231, affirming 176 Cal. 499; *Joint Rates with The Birmingham Southern Railroad Co.*, 32 ICC 111, 120 ("Generally speaking, the mere fact of ownership should make no difference in the status of a common carrier as such"); *Decatur Navigation Company v. Louisville & Nashville Railroad Co. et al.*, 31 ICC 281, 285 ("If a company holds itself out to the public as a carrier of goods for hire, invites the public to accept its services and use its facilities, it is a common carrier"); *Kelly v. General Electric Co.*, 110 Fed. Supp. 4, 6; *Atchison, Topeka & Santa Fe Railway Co. et al. v. Kansas City Stock Yards Co.*, 33 ICC 92, 100; and *Detroit Edison Co. Terminal Allowance*, 209 ICC 55, 58 ("The principal test of common carriage is whether there is a bona fide holding out coupled with the ability to carry for hire").

5. In its decision *In the Matter of Allocation of Frequencies and Promulgation of Rules and Regulations for a Theatre Television Service*, 9 R.R. 1528, 1538, 1539 (1953), the Commission recognized that certain communication services, subject to Commission regulation on a common carrier basis, might serve only one subscriber in a community. The ultimate test of common carrier status turns upon the right of the public to use the carrier's facilities and to demand service. As stated by the U.S. Supreme Court in *The Tap Line Cases*, 234 U.S. 1, 24:

It is insisted that these roads are not carriers because the most of their traffic is in their own logs and lumber and that only a small part of the traffic carried is the property of others. But this conclusion loses sight of the principle that the extent to which a railroad is in fact used, does not determine the fact whether it is or is not a common carrier. It is the right of the public to use the road's facilities and to demand service of it rather than the extent of its business which is the real criterion determinative of its character.

²⁶ Common carrier radio communications were formerly regulated by the Interstate Commerce Commission. (See House Rept. No. 1850, 73d Cong., on Communications Act of 1934, 1 R.R. 10 :241.)

²⁷ Official notice is taken that, inter alia, the following entities have been licensed as radio communication common carriers: Atlantic Communications Corp. was authorized, on Jan. 17, 1935, to serve boats operated by its affiliate, Atlantic Refining Co., in Philadelphia Harbor and the Schuylkill River; Central Radio Telegraph was authorized, prior to 1937, at Rogers City, Mich., to serve boats of its affiliate, Michigan Limestone & Chemical Co., operated on the Great Lakes; Warner & Tumble Radio Service was authorized, on Oct. 11, 1938, to operate a public coast station at Memphis, Tenn., to serve tugboats operated by Warner & Tumble in Memphis Harbor and the Mississippi River; Palmyra Development Co., Ltd., was authorized, on Aug. 4, 1954, to serve commercial fishing boats operating off Palmyra Island, T.H., owned by its affiliate, Kaylar-Dahl Fish Co.; and miscellaneous common carriers providing mobile radio service have been authorized under similar conditions, on a regular basis, since 1949.

(See also *Second Industrial Railways Case*, 34 ICC 596, 601; *Transportation Activities of Midwest Transfer Company*, 49 MCC 383; *Ace Trucking Company*, 32 MCC 793; and *Washington ex rel. Stimson Lumber Co. v. Kuykendall et al.*, 275 U.S. 207, 211, affirming 137 Wash. 602.)

6. The statutory standard of "public interest, convenience, or necessity" to be applied to a communications common carrier is not identical or interchangeable with that which is to be applied to a broadcaster. (See the Commission's report and order in docket No. 12443, cited in par. 2 of findings, in particular pars. 74 and 75 thereof.) In *Texas et al. v. United States et al.*, 292 U.S. 522 (1934), the U.S. Supreme Court recognized that the "public interest" in regulating common carriers is not the same as what that term might imply in a different context, stating, *inter alia*:

The criterion to be applied by the [Interstate Commerce] Commission in the exercise of its authority * * * is that of the controlling public interest. And that term as used in the statute is not a mere general reference to public welfare, but as shown by the context and purpose of the act, "has direct relation to adequacy of transportation service, to its essential conditions of economy and efficiency, and to appropriate provision and best use of transportation facilities" (p. 531).

(See also *New York Central Securities Corporation v. United States et al.*, 287 U.S. 12, 24, 25 (1932).)

7. Commission rules look to a showing of different factors in authorizing extension of common carrier facilities than are involved in broadcasting applications. (Sec. 21.700 of the Commission's rules, et seq., 1 R.R. (pt. 2) 71: 121, and 26 FCC 403, 432, par. 74.)

8. In view of all of the foregoing it is concluded that insofar as the holding out by the subject applicant is concerned, the Commission's initial determination that said applicant is a communications common carrier eligible to receive a grant of the subject application was, and is, proper.

9. With the question of the legal status of the applicant having been disposed of, the remaining question goes to the factor of public need. Absent a showing of reasonable prospect of use of microwave facilities by someone other than an associate or an affiliate of the applicant, the facts *may* warrant the exercise of Commission discretion in determining that there is no bona fide present public and that there is no reasonable expectancy of future public need. On such a determination the Commission could refuse an initial grant of authorization or terminate an existing grant upon a later appropriate showing.²⁸ While the extent to which the public uses radio communication facilities is not controlling, there must be some appreciable use thereof by the public or else the holding out to carry for all is merely an empty form. (*In the Matter of The Inland Railway Company*, 78 ICC 59, 64.) The question of use by the public (meaning an interest unrelated to the

²⁸ It has been the uniform practice of the Commission to advise licensees, in circumstances similar to these relating to this applicant, that a review will be undertaken of its actual operations after it has had a reasonable opportunity to implement its public service offering, and that, if there has been no use of the facility by members of the public other than associates or affiliates of the applicant, it may be determined that there is no public need for the continuance of the authorization.

applicant) is, in any event, laid to rest in this case by the order of service from KOOK-TV.²⁹ (See par. 2 of conclusions above.)

10. The Commission has heretofore ruled with respect to the essence of the problem presented in this case so far as common carrier status is involved. (See the Commission's report and order referred to in par. 6 of conclusions above.) Since there is no issue in this case challenging the correctness of that determination as applied in this case (compare the issues in this case with issue (2) set forth in the Commission's memorandum opinion and order herein adopted June 24, 1959 (FCC 59-617)), it is concluded that the cited determination in docket No. 12443 controls the decision in this case.

11. On the basis of all of the foregoing, it is further concluded that the degree of interlocking ownership and control between Carter and Western as found is of no consequence with respect to the common carrier status of Carter as a matter of law, apart from the request of KOOK-TV for service; that Carter is entitled to common carrier status as a matter of fact and of law because of the request of KOOK-TV for service, Carter's application filed as a result thereof and the Commission's authorization therefor; and that Carter is a bona fide common carrier and eligible to be a grantee of a common carrier microwave facility under the Commission's rules and regulations, and that such a grant will serve the public interest, convenience, or necessity.

12. On the basis of this record, protestant, in its proposed conclusions, submits that Carter is "to all intents and purposes an alter ego of Western" and urges denial of the subject application on that ground and as otherwise failing to meet the statutory test of public interest, convenience, or necessity. In its paragraphs 47 to 75, especially paragraphs 59 to 75, protestant seeks to demonstrate, particularly on the basis of its showing as to revenues derived from the respective communities, (1) how and to what extent, in the communities within KWRB-TV's service area in which Western is operating, the respective CATV operations are causing protestant loss in revenues to that extent that, i.e., "A drop in local revenues derived from Riverton and Lander by \$13,646.44 *annually* would create a gap which would spell the demise of KWRB-TV" (par. 67 of protestant's proposed conclusions); (2) that by greatly improving the CATV's present picture quality of signals in Riverton, Lander, and Thermopolis by means of the requested microwave facilities, "there is every reason to believe that Western * * * will attract substantially more viewers to its cable systems in those communities than it has at present"; (3) that with regard to certain communities, the mere existence of a booster (absent a CATV system supplying multiple signals to a substantial number of subscribers) has had no serious impact on protestant's revenues; (4) that the split in audience resulting from Western's CATV operations has an adverse impact on protestant's national and regional spot business and on its revenues from the networks; (5) that the loss of audience cannot but affect KWRB-TV's revenues "to the point that any hope of operating in the black will have gone aglimmer-

²⁹ The hearing examiner is aware of the applicant's view (see par. 36 of its brief) "that the sole objective test is one of a holding out to serve the public," and that "if there is a 'need' for the service when the facility is authorized, the need does not diminish due to the fact that there are no additional customers for service."

ing"; and (6) that an unconditional³⁰ grant herein will "thwart the [television] allocation table of depriving northwestern Wyoming of local [television] transmission facilities * * * thereby defeating the congressional mandates embodied in sections 1 and 307(b) of the Communications Act."

13. No detailed analysis of the arguments advanced in these paragraphs of proposed conclusions is necessary in view of the conclusion herein (see par. 4-11 of conclusions, *supra*) that Carter is a bona fide communications common carrier within the purview of the Commission's rules and that a grant of the subject application will serve the public interest. In view thereof, it is unnecessary to consider, in particular, the nature of the showing made by protestant under issue (2) (see footnote 6 of findings and pars. 16-21 in connection with pars. 9-15 of findings).³¹ Thus, whatever impact the operations of the CATV systems may have upon protestant's operation of station KWRB-TV, these are matters of no legal significance to the ultimate determination made that a grant of the subject application of Carter, a bona fide communications common carrier, will serve the public interest. In this connection it should be emphasized that protestant at no time (see par. 1 of findings as to the issues requested by protestant with its May 27, 1959, protest) sought an issue to determine whether the Commission's conclusions set forth in paragraphs 45 through 51 and 58 through 79 of its report and order in docket No. 12443 (see *supra*), as applied in this case, are in error.³² The Commission's initial determination in its docket No. 12443 proceeding thus controls the disposition of this case³³ and the subject protest must be denied.

Accordingly, because public interest, convenience, or necessity would be served, *It is ordered*, This 24th day of May 1961, that unless an appeal to the Commission from this initial decision is taken by any of the parties, or the Commission reviews the initial decision on its own motion in accordance with the provisions of 47 CFR 1.153, the protest of Joseph P. Ernst and Mildred V. Ernst, d/b as Chief Washakie TV (KWRB-TV), *Is denied*; the action of the Commission (released June 29, 1959 (FCC 59-617)) staying the effectiveness of the grant of the subject application *Is set aside*; and the action of the Commission of April 22, 1959 (through the Chief of its Common Carrier Bureau (2463-C1-P-58)), granting the subject application *Is affirmed*.

³⁰ See footnote 10, *infra*.

³¹ Even if considered, the record precludes any reliable approach to an accurate estimate of that "impact." If there is any impact upon KWRB-TV's operation, such impact is not caused by Carter but its CATV customers. Furthermore, as to the degree of impact, if any, upon the public served by KWRB-TV, the record does not permit but conjecture. How can it be determined in what manner and to what extent the boosters admittedly in operation, the operating CATV systems, and/or other media such as radiobroadcasting or newspapers contribute to the competition to which KWRB-TV is exposed?

³² Such an issue was, for instance, included in the Commission's order released June 28, 1960 (FCC 60-736), in regard to the application of New England Microwave Corp., docket No. 13614.

³³ Protestant's request for a conditional grant (requiring Carter to make Western carry on its various cable systems KWRB-TV's program schedule without degradation of signal and to black out the signals of all other stations on the cable system simultaneously carrying a program televised by KWRB-TV—see par. 77 of protestant's proposed conclusions) is thus unwarranted. See also pars. 78 and 79 of the cited report and order in docket No. 12443.

32 F.C.C.

DAVID L. KURTZ, DOCKET No. 13346:

Decision granting the application of David L. Kurtz for construction permit for new FM broadcast station (class B, 101.1 mc, 9.4 kw) in Philadelphia, Pa.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON 25, D.C.

In re Application of
DAVID L. KURTZ, PHILADELPHIA, PA.
For Construction Permit

} Docket No. 13346
} File No. BPH-2774

APPEARANCES

Maurice M. Jansky, of Loucks & Jansky, for David L. Kurtz; *Edward F. Kenehan*, of Spearman & Roberson, for Concert Network, Inc.; and *Vergil W. Tacy* and *Thomas B. Fitzpatrick*, for Chief, Broadcast Bureau, Federal Communications Commission.

DECISION

(Adopted February 14, 1962)

BY THE COMMISSION.

1. David L. Kurtz (Kurtz) seeks a construction permit for a new class B FM broadcast station in Philadelphia, Pa., to operate on 101.1 Mc, with 9.4 kw of power (channel 266). Concert Network, Inc. (Concert), which at the time of the hearing was an applicant for a new class B FM broadcast station in Trenton, N.J., to operate on channel 268, was named a party to the proceeding since Kurtz operating as proposed would cause adjacent-channel interference to Concert's proposed operation.¹ Other than this, Kurtz's proposed operation would not cause interference to or receive interference from any existing stations.

2. The history of this proceeding need not be repeated here, for it has been set forth in detail in the initial decision of Hearing Examiner Forest L. McClenning (FCC 61D-7) which was released on January 30, 1961. The examiner recommended a grant of the Kurtz application. Concert filed exceptions to the initial decision, and oral argument thereon was held before the Commission, en banc, on May 18, 1961.

3. Concert's participation as a party in this proceeding has become moot inasmuch as its application for a new FM broadcast station in

¹ The examiner considered Concert an existing station for purposes of this proceeding since Kurtz amended his application to specify 101.1 Mc after hearing on Concert's application in a consolidated proceeding had been substantially completed. Concert's application was mutually exclusive with that of WBUD, Inc. (docket No. 12952-3). See par. 2, *infra*.

Trenton, N.J., has been denied after a comparative hearing. See decision in *WBUD, Inc.* (FCC 62-54), released January 15, 1962. Likewise, Concert's exceptions filed in this proceeding have become moot.

4. At the time of designation, Kurtz was found to be legally, financially, technically, and otherwise qualified to construct and operate his proposed station. Grant of the Kurtz application, which will neither receive interference from nor cause interference to any existing station, will bring a new class B FM broadcast service to 3,190,803 persons. We conclude, therefore, that a grant to Kurtz would serve the purposes of section 307(b) of the Communications Act of 1934, as amended, and would be in the public interest.

5. Accordingly, *It is ordered*, This 14th day of February 1962, that the above-captioned application of David L. Kurtz for a construction permit for a new class B FM broadcast station at Philadelphia, Pa., *Is granted.*

32 F.C.C.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON 25, D.C.

In re Application of
DAVID L. KURTZ, PHILADELPHIA, PA.
For Construction Permit

} Docket No. 13346
} File No. BPH-2774

APPEARANCES

Maurice M. Jansky, of Loucks & Jansky, for David L. Kurtz; *Edward F. Kenehan*, of Spearman & Roberson, for Concert Network, Inc.; and *Vergil M. Tacy*, for Chief, Broadcast Bureau, Federal Communications Commission.

INITIAL DECISION OF HEARING EXAMINER FOREST L. McCLENNING

(Adopted January 26, 1961)

PRELIMINARY STATEMENT

1. By Commission order of October 5, 1960, pursuant to the provisions of section 309(b) [now 309(e)] of the Communications Act of 1934, as amended, the application of David L. Kurtz for construction permit for a new frequency modulation broadcast station at Philadelphia, Pa., was designated for hearing. Authority is sought to operate on the class B facilities 101.1 Mc (channel 266), with 9.4 kw power, and antenna height of 128 feet above average terrain. Concert Network, Inc. (hereinafter also referred to as Concert), applicant for a new frequency modulation broadcast station to operate at Trenton, N.J., on the frequency 101.5 Mc (channel 268), was named a party to the proceeding.¹ The order of designation found the applicant legally, technically, financially, and otherwise qualified, except as indicated by the specified issues, to construct and operate the proposed station. The hearing issues specified are as follows:

1. To determine the area and population within the 1-mv/m contour, the area and population therein which would be served by the proposed station, and the availability of other FM services (at least 1 mv/m) to such proposed service area.

2. To determine whether the instant proposal would involve objectionable interference with the operation proposed in the application of the Concert Network, Inc. (BPH-2619, docket No. 12953), for a new FM broadcast station at Trenton, N.J., or any existing FM broadcast station, and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other FM service of at least 1 mv/m to such areas and populations.

¹ The instant application was amended to specify the frequency 101.1 Mc after hearing on the application of Concert Network, Inc., in a consolidated proceeding had been substantially completed as to the evidentiary phases. For purposes of this proceeding, Concert accordingly stands in the position of an existing operation.

3. To determine, in the light of the evidence adduced pursuant to the foregoing issues, whether a grant of the above-described application of David L. Kurtz should be made.

2. A prehearing conference was held on October 27, 1960. Hearing was held on December 7, 1960, at which time the record was closed. Proposed findings of fact and conclusions of law were filed on January 18, 1961, by applicant, respondent, and the Commission's Broadcast Bureau.

FINDINGS OF FACT

3. Philadelphia has a population of 2,071,605 persons and the Philadelphia urbanized area a population of 2,922,470 persons (1950 U.S. census).² The 1-mv/m contour of Kurtz's proposed operation would encompass an area of 1,037 square miles having a population of 3,190,803 persons. This proposal would receive objectionable adjacent-channel interference from the proposed operation of Concert Network, Inc., in an area of 145 square miles having a population of 92,554 persons. This elliptic area lies generally to the east of Philadelphia, is 8½ miles in width at the widest point, and a maximum of 24 miles in length. It is approximately midway between the cities of Philadelphia and Trenton which are separated by a distance of 24 miles. Population within the interference area represents 2.9 percent of the total population within the 1-mv/m contour. There are a maximum of 18 other FM services and a minimum of 11 such services available to various portions of this area. A maximum of 21 other FM services and a minimum of 11 such services are available to various portions of the proposed operation's interference-free area of 892 square miles which has a population of 3,098,249 persons. Ten of the thirteen Philadelphia FM stations serve all of Kurtz's proposed service area.

4. Operating in the manner proposed, Kurtz would cause adjacent-channel interference to Concert's proposed station. Such interference would occur in an area of 34 square miles immediately surrounding Kurtz's proposed transmitter site. This area lies in central Philadelphia, and is approximately 24 miles from Trenton and 15 miles from the Concert transmitter site. Concert's proposal includes within its normally protected 1-mv/m contour an area of 2,870 square miles having a population of 3,237,931 persons. Station WFIL-FM, Philadelphia, causes interference to the Concert proposal in an area of 21 square miles having a population of 186,305 persons. The interference area which would result from the Kurtz proposal overlaps to some extent the interference area from station WFIL-FM. The additional interference from the Kurtz proposal would lie in an area of 31.7 square miles having a population of 841,133 persons. Thus combined interference to which Concert would be subject is 52.7 square miles having a population of 1,027,438 persons, or 31.7 percent of the population and 1.8 percent of the area within the Concert 1-mv/m contour. All of the interference area to Concert's proposal receives service from 16 FM stations and in part from 2 additional stations. Except as

² Under the 1960 U.S. census the population of Philadelphia includes 2,002,512 persons.

detailed, *supra*, Kurtz's proposed operation would not cause interference to or receive interference from any other existing stations.

CONCLUSIONS

1. The determination of whether grant of the instant application would serve the public interest through implementation of the provisions of section 307(b) of the Communications Act of 1934, as amended, must rest upon the provisions of the Commission's rules designed to effectuate this purpose in the allocation of the type facilities here sought. Section 3.204 of the rules specifies that "A class B station is a station which operates on a class B channel and is designed to render service primarily to a metropolitan district or principal city and the surrounding rural area, or to rural areas removed from large centers of population. * * * Class B assignments will be made in a manner to insure, insofar as possible, a maximum of service to all listeners, whether urban or rural, giving consideration to the minimum signal capable of providing service." Section 3.311 of the rules specifies the signal intensity to be placed over the principal city to be served, and for class B stations the signal intensity to be placed "over the business district of cities of 10,000 or greater within the metropolitan district served."

2. Initially, it is to be noted that the interference both to and from the Kurtz proposal is adjacent channel. Accordingly, no area would suffer a loss in the total number of services available. Interference to Concert's proposed operation from an area standpoint is nominal, but from a population standpoint is substantial. This circumstance, however, arises from the fact that the interference would occur entirely or almost entirely within the city of Philadelphia which has a high density of population. The population loss within the area of interference to Kurtz's proposed operation represents only 2.9 percent of the total population within the 1-mv/m contour, the area involved is outside the principal city to be served by Kurtz and would receive services from the Concert proposal. Appraising these considerations against the allocation standards set forth in paragraph 1 of these conclusions, it is apparent that neither the interference to nor from Kurtz's proposed operation justifies denial of the application. Trenton, N.J., and Philadelphia, Pa., constitute completely separate and distinct metropolitan districts and principal cities. Interference to Concert's station would lie wholly or almost wholly within a relatively small area of the city of Philadelphia, and the service which would be provided this area by the Trenton operation is merely incidental to the basic purpose of the allocation should the Trenton application be granted. This area would be served by Kurtz's proposal, the class B facility which would be allocated to the city of Philadelphia. Nor would this interference render the Trenton proposal an inefficient allocation as there would remain within its interference-free contour an area of 2,817.3 square miles having a population of 2,210,493 persons. The interference area to Kurtz's proposal is relatively limited and lies approximately midway between Philadelphia and Trenton. This area would receive service from the Trenton operation in the event of a

grant of that application and presently receives a minimum of 11 other services. The efficiency of the Kurtz proposal is substantially unaffected by this interference consideration. The interference which would result from the grant of both the instant and the Concert applications in the context of this proceeding accordingly would not affect the efficiency of either station to fulfill the primary function of the allocation involved. A grant of the instant application would, moreover, bring a new class B FM service to an area of 892 square miles having a population of 3,098,249 persons. For these reasons, a grant would tend toward insuring a maximum of service to all listeners within the meaning of section 3.204 of the Commission's rules, and toward providing a fair, efficient, and equitable distribution of radio service to the communities involved within the meaning of section 307(b) of the Communications Act of 1934, as amended. In view of the foregoing findings of fact and conclusions and upon consideration of the entire record in this proceeding, it is concluded that a grant of the instant application would serve the public interest, convenience, and necessity.

Accordingly, *It is ordered*, This 26th day of January 1961, that unless an appeal to the Commission from this initial decision is taken by a party, or the Commission reviews the initial decision on its own motion in accordance with the provisions of section 1.153 of the rules, the application herein of David L. Kurtz *is granted*.

32 F.C.C.

SAYGER BROADCASTING Co., DOCKETS Nos. 13091 AND 13101 :

Applications of Herman E. Sayger, tr/as Sayger Broadcasting Co., and Milton Maltz and Robert G. Wright, d/b as Malrite Broadcasting Co., respectively, for construction permits for new standard broadcast stations at Tiffin and Norwalk, Ohio; denied.

Section 3.28(d)(3) of the Commission's rules.—Interference within normally protected contours.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON 25, D.C.

In re Applications of HERMAN E. SAYGER, TR/AS SAYGER BROADCAST- ING Co., TIFFIN, OHIO MILTON MALTZ AND ROBERT G. WRIGHT, D/B AS MALRITE BROADCASTING Co., NORWALK, OHIO For Construction Permits	}	Docket No. 13091 File No. BP-11673 Docket No. 13101 File No. BP-12316
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APPEARANCES

Andrew G. Haley and *Michael H. Bader* (Haley, Wollenberg & Bader), on behalf of Sayger Broadcasting Co.; *Samuel Miller*, on behalf of Malrite Broadcasting Co.; *George S. Smith* (Smith, Hennessey & McDonald), on behalf of Mahoning Valley Broadcasting Corp.; *Robert F. Jones*, on behalf of Southeastern Ohio Broadcasting System, Inc.; *Pierson, Ball & Dowd*, on behalf of The Community Broadcasting Co.; and *P. W. Valicenti*, on behalf of the Chief, Broadcast Bureau, Federal Communications Commission.

DECISION

(Adopted February 21, 1962)

BY THE COMMISSION: COMMISSIONER BARTLEY NOT PARTICIPATING;
COMMISSIONER FORD ABSENT.

1. Sayger Broadcasting Co. seeks a construction permit for a new standard broadcast station at Tiffin, Ohio (1250 kc, 500 w, 1 kw-LS, DA-2, U, class III). Malrite Broadcasting Co. requests a construction permit for Norwalk, Ohio (1240 kc, 100 w, U, class IV). The initial decision of Hearing Examiner Charles J. Frederick (FCC 61D-98), released June 29, 1961, would deny both applications. Exceptions to the initial decision were filed by both applicants. The rulings on these exceptions are set forth in the appendix hereto. Oral argument was heard before the Commission, en banc, on December 14, 1961.

2. The hearing examiner's findings and conclusions have been considered in light of the exceptions filed, and they are adopted except as indicated herein and in our rulings on the exceptions. The principal issues in this proceeding involve the applicants' compliance with section 3.28(d)(3) of the Commission's rules.

Sayger's Proposal

3. Under its proposed daytime operation, Sayger's normally protected 0.5-mv/m contour would encompass an area of 2,480 square miles with a population of 211,378 persons. Due to interference from existing stations, 17.5 percent of the population within the foregoing contour would not receive service from the proposed station. No part of the rural area within the whole of Sayger's normally protected contour—including the proposed interference areas—receives daytime primary service from fewer than 11 other stations. Tiffin, the city to be served, receives such service from no fewer than five other stations, one of which is located in Tiffin and licensed to Malrite. Other cities proposed to be served by Sayger are presently served by no fewer than three other stations. At night, Sayger would be limited to its 13.5-mv/m contour containing 24,001 persons in an area of 117 square miles, the interference within its normally protected (4.0 mv/m) contour causing a 67.3-percent population loss.¹ The rural area within Sayger's proposed nighttime service area receives primary service from no fewer than three other stations. Tiffin, the only urban area to be served at night, presently receives 2.0-mv/m service from two stations, neither of which provides a signal of 10 mv/m to Tiffin's business and factory areas.

4. Sayger concedes that its daytime proposal does not comply with the 10-percent limitation prescribed by section 3.28(d)(3) of the rules, but contends that unusual circumstances dictate waiver thereof. In support, Sayger points out that a new primary service would be brought to numerous persons; that the station would provide a second local daytime service and a first local nighttime service to Tiffin; that, nighttime, a "white area" consisting of the business and factory areas of Tiffin would be served;² that daytime primary service would be provided to 5 other cities ranging in population from 4,083 to 29,375 persons, all located from 16 to 33 miles from Tiffin; and that no interference would be caused to any existing stations.

5. The Commission holds daytime proposals to higher standards of efficiency than nighttime proposals, and exceptions from nighttime violation of section 3.28(d)(3) are provided for in specified "first local" and "white area" nighttime situations. But, even if such nighttime features can appropriately be looked to in determining whether a daytime violation should be permitted, the Commission would be reluctant to base a daytime waiver solely or principally on nighttime considerations. Thus, the daytime proposal itself must also

¹ Because Tiffin is presently without a local nighttime standard broadcast facility, there would be no violation at night of sec. 3.28(d)(3).

² According to the 1960 census, Tiffin has a population of 21,478. Although evidence on the point was not tendered, it is reasonable to assume that 10 percent of the population (2,148) reside in the business and factory areas. *Sunshine State Broadcasting Company, Inc.*, FCC 62-134.

possess outstanding features of the type relied upon by the Commission in extending waiver of the rule.⁵ This consideration serves to distinguish the *Southern Indiana* case,⁴ a case principally relied upon by Sayger. There, the daytime station proposed was to be the first in the community as well as the first in the county, and it was also to provide a second primary service daytime to 12,378 persons. Here, Tiffin already has a daytime station, and no portion of Sayger's proposed service area presently receives daytime primary service from fewer than three other stations. As in the *Dodge City* case (footnote 3, supra), the daytime showing is deficient, failing even to approach that before us in *Southern Indiana*. Accordingly, the waiver request must be denied.

Malrite's Proposal

6. Within its normally protected 0.5-mv/m daytime contour, Malrite would ordinarily serve a total of 84,112 persons in an area of 1,372 square miles. Due to interference from three existing stations, 48.64 percent of the population within this contour would not receive service. (At the time of the hearing, the total interference from these three stations totaled 13.99 percent; two of these (class IV stations WBBW and WHIZ), however, were subsequently granted power increases. See *WBVP, Inc.*, 31 FCC 532 (1961), and *WMRC, Inc., et al.*, 31 FCC 57, 59 (1962).) The rural area within Malrite's primary service area presently receives primary service from 5 to 12 other stations. Three stations provide primary service to Norwalk, a city of 9,775. Where formerly Malrite would have caused slight interference to WHIZ, this element has been removed by the recent grant to WBBW. At night, Malrite would serve to its 19.22-mv/m contour an area of 12.6 square miles encompassing 10,194 persons. The rural service area now receives three other primary signals; the urban area (Norwalk) now receives two.

7. Malrite objects to the examiner's refusal to allow it to substitute field intensity measurements on stations WBBW and WHIZ for earlier-submitted coverage figures based on the Commission's soil maps. Taking into account the recent power increases extended to WBBW and WHIZ, the measurement data would have the effect of reducing the violation from 48.64 percent to 33.6 percent. Irrespective of the figure, however, Malrite submits that a waiver of section 3.28 (d) (3) is warranted because (a) Malrite proposes the first local transmission facility in Norwalk and Huron County (population 39,353), and (b) Norwalk receives only 3 services daytime and the county only 2.

8. We are in full accord with the examiner's refusal to permit Malrite to substitute field intensity measurements for its earlier-submitted soil map computations. Since Malrite did not offer to change its showing until well after all of the parties had put in their engineering evidence, the offer must be viewed as untimely, and Mal-

⁵ Cf. *Dodge City Broadcasting Company, Inc.*, 29 FCC 900, 19 R.R. 615 (1960), where the daytime interference was to be 17.7 percent, and the applicant was to provide a first nighttime service to Liberal, Kans. Because there was already a daytime station located in Liberal, and because the applicant could show gray-area coverage involving only 747 persons, the waiver request was denied.

⁴ *Southern Indiana Broadcasters, Inc.*, 24 FCC 521, 15 R.R. 349 (1958).

rite must be bound by the evidence which it originally chose to submit.⁵ *WKAP, Inc.*, 6 R.R. 260 (1950), offers no support for Malrite's position. There, the Commission permitted a reopening of the record for the introduction of measurement data showing the interference between the two applicants to be less than previously computed from the soil maps. However, in that case there existed the possibility that both applications could be granted as not being mutually exclusive, a consideration not present as to the measurement data tendered here.

9. But, regardless of the figure used, Malrite cannot be granted. As has been many times stated, unusual circumstances must be present to justify waiver, and we regard the circumstances relied upon here by Malrite as insufficient. We recognize that Malrite would bring a first station to Norwalk and Huron County and that in such respects the situation is similar to that before us in the *Southern Indiana* case (par. 5, supra) where we waived 17.1 percent interference. However, we cannot consider such factors as persuasive where, as here, the station would suffer a minimum interference of almost twice that allowed in the *Southern Indiana* case which, as was stated therein, was "a close and difficult case." See *Louis Adelman*, 28 FCC 432, 18 R.R. 97 (1960),⁶ where the station was to suffer 22.5 percent interference and was to provide a first local service to a community of over 14,000 persons.

10. Remaining are questions relating to Malrite's proposed antenna site, and to Malrite's possible violation of the multiple-ownership rule. These questions need not be resolved, since, as set forth above, Malrite has failed to persuade the Commission that the beneficial effects of its proposal would outweigh the grossly insufficient operation proposed.⁷

Accordingly, *It is ordered*, This 21st day of February 1962, that the applications of Sayger Broadcasting Co. and Malrite Broadcasting Co., for new standard broadcast stations at Tiffin, Ohio, and Norwalk, Ohio, respectively, *Are denied*.

APPENDIX

RULINGS ON EXCEPTIONS TO THE INITIAL DECISION

Exceptions of Sayger Broadcasting Co.

<i>Exception No.</i>	<i>Ruling</i>
1, 2-----	Granted in substance. The findings in par. 1 are completed, with the additional finding that Tiffin is a community of growing size and importance.
3, 4, 5-----	Denied. The need for a first service can be presumed.
6-----	Denied. Whether the applications are mutually exclusive is immaterial in light of the decision reached herein.
7-----	Denied. The examiner's finding is accurate.
8, 9-----	Denied. (See par. 10 of the decision.)
10 ¹ -----	Denied. (See pars. 3-5 of the decision.)

¹ Exceptions 10, 11, 12, 13, 14, 15, 16, and 17 correspond to Sayger Broadcasting Co.'s exceptions 1, 2, 3, 4, 5, 6, 7, and 8 to the conclusions in the initial decision.

⁵ Cf. *Alkima Broadcasting Company*, 30 FCC 932 (1961), where test measurements were rejected and the parties held to a stipulation as to coverage previously entered into.

⁶ Affirmed, sub nom., *Guinan v. FCC*, — F. 2d —, 22 R.R. 2026 (1961).

⁷ The initial decision contains findings but no conclusions on these issues. The better procedure is for the examiner to fully resolve each issue specified for hearing in the proceeding. *Alkima Broadcasting Company*, 30 FCC 932 (1961).

<i>Exception No.</i>	<i>Ruling</i>
11, 12-----	Granted. (See pars. 3-5 of the decision.)
13-----	Denied. (See pars. 4-5 of the decision and see ruling on Sayger's exception No. 4.)
14-----	Denied. (See pars. 4-5 of the decision.)
15, 16-----	Denied. (See par. 10 of the decision.)
17-----	Denied, in view of the decision herein.

Exceptions of Malrite Broadcasting Co.

1-----	Granted in substance, and par. 9 is completed with the findings that (1) the trading areas of Norwalk and Tiffin are considered separate; (2) Malrite intends to program and obtain commercial support for WTTF and its proposed Norwalk station principally from the county where each is located; and (3) Norwalk is a trading center and the largest city in Huron County.
2-----	Denied. The examiner's ruling is affirmed. (See pars. 6-8 of the decision.)
3-----	Denied. (See par. 10 of the decision.)
4-----	Denied. The requested findings are essentially cumulative in nature. (Also, see par. 10 of the decision.)
5-----	Denied. (See par. 6 of the decision.)
6-----	Denied. (See ruling on Malrite's exception No. 2.)
7-----	Denied. However, see par. 10 of the decision.
8-----	Denied. (See pars. 6-9 of the decision.)

32 F.C.C.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON 25, D.C.

<p>In re Applications of HERMAN E. SAYGER, TR/AS SAYGER BROADCAST- ING Co., TIFFIN, OHIO MILTON MALTZ AND ROBERT G. WRIGHT, D/B AS MALRITE BROADCASTING Co., NORWALK, OHIO For Construction Permits</p>	}	<p>Docket No. 13091 File No. BP-11673 Docket No. 13101 File No. BP-12316</p>
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APPEARANCES

Andrew G. Haley and *Michael H. Bader* (Haley, Wollenberg & Bader), on behalf of Sayger Broadcasting Co.; *Samuel Miller*, on behalf of Malrite Broadcasting Co.; *George S. Smith* (Smith, Hennessey & McDonald), on behalf of Mahoning Valley Broadcasting Corp.; *Robert F. Jones*, on behalf of Southeastern Ohio Broadcasting System, Inc.; *Pierson, Ball & Dowd*, on behalf of The Community Broadcasting Co.; and *P. W. Valicenti*, on behalf of the Chief, Broadcast Bureau, Federal Communications Commission.

INITIAL DECISION OF HEARING EXAMINER CHARLES J. FREDERICK
(Adopted June 28, 1961)

PRELIMINARY STATEMENT

This proceeding commenced by Commission order, released August 14, 1959, in which 59 applications were designated for hearing in a consolidated proceeding. This proceeding was initially entitled "Fredericksburg Broadcasting Corporation." The above-captioned applications were severed from the aforementioned multiparty proceeding on March 22, 1961. Sayger Broadcasting Co. (Sayger) requests 1250 kc, 500 w, 1 kw-LS, DA-2, U, at Tiffin, Ohio; Malrite Broadcasting Co. (Malrite) requests 1240 kc, 100 w, unlimited hours, at Norwalk, Ohio.

FINDINGS OF FACT

Sayger Broadcasting Co., Tiffin, Ohio (Requested: 1250 kc, 500 w, 1 kw-LS, DA-2, U)

1. According to the 1950 U.S. census, Tiffin, Ohio, had a population of 18,952.¹ Tiffin is 43 miles southeast of Toledo, Ohio (center to center). One standard broadcast station, which operates daytime

¹ According to the 1960 U.S. census, Tiffin has a population of 21,478.

only, is presently assigned to the community; namely, WTTF (1600 kc, 500 w, DA-D, class III).

2. Based on radiation values from the proposed directional antenna patterns, on ground conductivity values for the area taken from figure M-3 of the rules, and employing 1950 U.S. census data, the proposed coverage is as follows:

Contour (mv/m)	Population	Area (sq. miles)
<i>Daytime</i>		
0.5 (normally protected).....	211,378	2,480
Interference from WCAE, WGL, and WCHO.....	37,074 (17.5%)	831 (33.5% ¹)
Interference free.....	174,304	1,649
Interference from existing stations and proposed Malrite.....	54,524 (25.8%)	1,157 (46.7%)
Interference free (if Malrite is also granted).....	* 156,854	1,323
<i>Nighttime</i>		
4.0.....	73,497	554
Interference from WCAE.....	49,496 (67.3%)	437
13.5 (interference free).....	24,001	117

¹ Percentages refer to population and area within the normally protected contour.

* The applicant shows a population of 211,378 within its 0.5-mv/m contour on table No. 1 of exhibit 2 and a population of 211,387 on table No. 5. On the latter table, an interference-free population of 156,863 is shown in lieu of the figure "156,854" adopted herein. It appears that the figure "211,387" is an inadvertent transposition.

3. During daytime hours stations KYW, WJR, WLW, and WTVN provide primary service (0.5 mv/m or greater) to all of the rural area within the proposed primary service area; WSPD, WKBN, WWJ, WTTF, and WLEC serve 75-100 percent; WEOL, WTOD, WFOB, WFO, and WFIN serve 50-75 percent; WCAR, WKMH, WTOL, and WHKK serve 25-50 percent; 16 others serve less than 25 percent. A minimum of 11 and a maximum of 19 stations provide such service to any portion thereof. If Malrite is simultaneously granted, the area of objectionable interference from that proposal receives a minimum of 11 and a maximum of 15 such services.

4. The following cities would be included within the proposed 2.0-mv/m contour daytime: Port Clinton (population 5,541) which is served by stations WJR, KYW, WLEC, WFO, and WSPD; Fremont (population 16,537) which is served by stations WFOB, WSPD, WJT, and WFO; Clyde (population 4,083) which is served by stations WSPD, WLEC, WTTF, KYW, and WJR; Bellevue (population 6,906) which is served by stations WTTF, WJR, KYW, and WLEC; Sandusky (population 29,375) which is served by stations WJR, WLEC, and KYW.

5. Stations WJR, WFO, WFIN, WFOB, and WTTF provide primary service (2.0 mv/m or greater) to all of the city of Tiffin daytime, and station WSPD provides such service to 80 percent thereof.

6. Stations WLW, WJR, and KYW, all clear-channel stations, provide primary service (0.5 mv/m or greater) to all of the rural area within the nighttime primary service area, and station WSPD serves 75 percent of the area with an interference-free signal of 2.0 mv/m or greater.

7. Stations WJR, Detroit, Mich., and WSPD, Toledo, Ohio, provide primary service (2.0 mv/m or greater) to all of the urban area pro-

posed to be served at night which involves only the city of Tiffin. Neither station provides a signal of at least 10 mv/m to the business and industrial areas thereof at night.

8. No objectionable interference would be caused to any existing standard broadcast stations.

Malrite Broadcasting Co., Norwalk, Ohio (Requested: 1240 kc, 100 w, U, class IV)

9. According to the 1950 U.S. census, Norwalk, Ohio, had a population of 9,775.² Norwalk lies 57 miles southeast of Toledo, Ohio, and 31 miles east northeast of Tiffin, Ohio (center to center). No standard broadcast stations are presently assigned to the city of Norwalk nor to Huron County in which Norwalk is located. Huron County had a 1950 population of 39,353.

10. Based on an effective field (unattenuated at 1 mile) of 47.5 mv/m, ground conductivity values for the area taken from fig. M-3 of the rules, and employing 1950 U.S. census data, the proposed coverage is as follows:

Contour (mv/m)	Population	Area (sq. miles)
<i>Daytime</i>		
0.5 (normally protected).....	84, 112	1, 372
Interference from WTOL, WHIZ, and WBBW.....	11, 768 (13. 99% ¹)	170 (12. 4% ¹)
Interference free (if granted alone).....	72, 344	1, 202
Additional interference from proposed WBBW.....	17, 016 (20. 23% ¹)	175 (12. 74% ¹)
Total interference (if granted with proposed WBBW).....	28, 784 (34. 22% ¹)	345 (25. 14% ¹)
Interference free (if granted with proposed WBBW).....	55, 328	1, 027
Additional interference from proposed WHIZ.....	29, 139 (34. 65% ¹)	501 (38. 8% ¹)
Total interference (if granted with proposed WHIZ).....	40, 907 (48. 04% ¹)	671 (48. 9% ¹)
Interference free (if granted with proposed WHIZ).....	43, 205	701
Additional interference from proposed WBBW and WHIZ ²	29, 139	501
<i>Nighttime</i>		
19.22 (interference free).....	10, 194	12. 6

¹ Percentages refer to population and area within the normally protected contour.

² Objectionable interference from proposed WBBW falls within the interference from proposed WHIZ

11. Stations WKBN, WTVN, WJR, WEOL, and KYW provide primary service (0.5 mv/m or greater) to all of the rural area within the proposed daytime service area; WHKK, WLW, WRFD, and WSPD serve 75-99 percent thereof; WOSU, WWST, WWIZ, WHK, WLEC, and WTTF, 50-74 percent; WFRO, WWJ, WHCO, and WFOB, 25-49 percent; WOWO, WGAR, WDOK, WMAN, WTOD, WCLW, and WAKR, less than 24 percent. A minimum of 12 and a maximum of 19 stations provide such service to any portion thereof. At least five stations provide such service to the areas of objectionable interference that would be received if the proposals of stations WBBW and WHIZ were granted individually or simultaneously with the proposal of Malrite.

12. Stations WJR, Detroit, Mich.; WEOL, Elyria, Ohio; and KYW, Cleveland, Ohio, provide primary service (2.0 mv/m or greater) to the city of Norwalk daytime.

² According to the 1960 U.S. census, Norwalk, Ohio, has a population of 12,900 (1960 U.S. census (PC(A1)-37)).

13. Stations WJR, KYW, and WLW, all clear-channel stations, provide primary service (0.5 mv/m or greater) to all of the rural area proposed to be served nighttime.

14. Stations WJR, Detroit, Mich., and KYW, Cleveland, Ohio, provide primary service (2.0 mv/m or greater) to all of the urban area proposed to be served at night, which involves only the city of Norwalk.

15. According to the showing of station WHIZ, Zanesville, Ohio, the Malrite proposal would cause cochannel objectionable interference to the existing operation of station WHIZ (1240 kc, 250 w, U, class IV) in an area of 25 square miles including 600 persons representing 1.5 percent of the area (1,730 square miles) and 0.5 percent of the population (119,130 persons) within the 0.5-mv/m contour of station WHIZ.³ That station now suffers objectionable interference from station WBBW affecting an area of 120 square miles including 4,640 persons, or 6.9 percent of the area and 3.9 percent of the population within its 0.5-mv/m contour; thus, in the aggregate, station WHIZ would suffer objectionable interference affecting 8.4 percent of the area and 4.4 percent of the population within its 0.5-mv/m contour. The new interference area lies 23 to 28 miles northwest of the center of the city of Zanesville. Stations WKBN, WTVN, WHKK, WLW, WJW, WRFD, WWST, KYW, WWVA, WILE, WCLT, WBNS, and WTNS provide primary service (0.5 mv/m or greater) to all of the new interference area, and four stations serve portions thereof. If the proposal of station WBBW (BP-12474, Docket 13109) is granted, Malrite would not cause objectionable interference to the existing operation of station WHIZ inasmuch as any interference from Malrite would fall in the area which would suffer objectionable interference from proposed station WBBW.

16. Cochannel objectionable interference would be caused to proposed station WHIZ, Zanesville, Ohio (1240 kc, 250 w, 1 kw-LS, U, class IV) (BP-13029, docket 13137), in an area of 140 square miles including 3,540 persons representing 4.2 percent of the area (3,310 square miles) and 1.8 percent of the population (195,010 persons) within the 0.5-mv/m contour of station WHIZ. That proposal would suffer objectionable interference from existing class IV stations WBBW and WCOL affecting areas totaling 495 square miles including 16,100 persons, or 15 percent of the area and 8.3 percent of the population within its 0.5-mv/m contour; thus, in the aggregate, it would suffer objectionable interference totaling 19.2 percent of the area and 10.1 percent of the population within its 0.5-mv/m contour. The area of interference caused by Malrite lies 27 to 37 miles northwest of the center of the city of Zanesville. At least 12 stations provide primary service (0.5 mv/m or greater) to any portion of the interference area caused by Malrite. If the proposal of class IV station WCOL (BP-13155, docket 13147) is granted simultaneously

³ The location of the existing 0.5-mv/m contour of station WHIZ was based on field intensity measurements on that station in the directions of 29°, 42°, 74°, 133°, 237°, 275°, 298°, and 334° true, and on ground conductivity values from fig. M-3 of the rules thereafter and in directions not measured. Malrite submitted a separate showing of objectionable interference from its proposal to existing station WHIZ, and its data were based on ground conductivity values taken from fig. M-3 of the rules. Since measured data are considered the best evidence, the showing of Malrite is not included herein.

with Malrite, the interference which the Malrite proposal would cause to proposed station WHIZ would decrease to an area of 110 square miles including 1,990 persons. If the proposal of station WBBW (BP-12474, docket 13109) is granted simultaneously with Malrite, the interference which the Malrite proposal would cause to proposed station WHIZ would fall within that caused by proposed station WBBW.

17. No new objectionable interference would be caused by Malrite to station WTOL, Toledo, Ohio, inasmuch as any interference to that station from the Malrite proposal would fall in an area presently under objectionable interference from station WCOL, Columbus, Ohio.

18. No new objectionable interference would be caused to the existing operation of station WBBW, Youngstown, Ohio, inasmuch as any interference to that station from the Malrite proposal would fall in an area presently under objectionable interference from station WHIZ, Zanesville.

19. No objectionable interference would be caused to proposed station WBBW, Youngstown, Ohio (BP-12474, docket 13109), inasmuch as the interfering contour (0.025 mv/m) of proposed Malrite falls within the interfering contour of existing or proposed station WHIZ and within the proposed service area of station WBBW.

20. No objectionable interference would be caused by the Malrite proposal to any existing standard broadcast stations other than shown herein. The Malrite proposal is mutually exclusive with the proposal of Sayer Broadcasting Co. herein.

21. The proposed 0.5-mv/m contour of Malrite overlaps the 0.5-mv/m contour of station WTTF, Tiffin, Ohio (1600 kc, 500 w, DA-D, class III), in an area of 696 square miles including 32,332 persons representing 44.3 percent of the area (1,568 square miles) and 23.9 percent of the population (135,041 persons) within the primary service area of station WTTF, and 50.7 percent of the area (1,372 square miles) and 38.4 percent of the population (84,112) within the 0.5-mv/m normally protected contour of the Malrite proposal. Stations WKBN, WTVN, WJR, WEOL, KYW, WTTF, and WSPD serve all of the above 0.5-mv/m overlap area, 12 others serve portions, and a minimum of 13 and a maximum of 16 stations serve any one part thereof. Although Malrite would suffer objectionable interference within its 0.5-mv/m normally protected contour, no evidence was submitted employing its interference-free contour whether if granted alone or simultaneously with others. There would be no overlap of the respective 2.0-mv/m contours of station WTTF and the Malrite proposal, and neither station would provide primary service to the city of the other.

Issue No. 15 (formerly No. 13)

22. Issue No. 15⁴ is directed to the application of Malrite Broad-

⁴ In the 309(b) letter to the applicant, the Commission advised that "it appears that the proposed site may involve serious cross-modulation and reradiation problems with nearby metallic conductors and that a full study of the various problems which thus may be encountered should be made by the applicant. Furthermore, due to the curtailed ground system proposed, a question is raised as to whether or not minimum radiation efficiency can be achieved for this class of station."

casting Co., among others, and for convenience is repeated here. It reads as follows:

15. To determine whether transmitter site proposed by each of the following applicants is satisfactory with particular respect to any conditions that may exist in the vicinity of the antenna system which would distort the proposed antenna radiation pattern.

23. Malrite's antenna will be located in the backyard of a frame house (which will serve as the transmitter house) at 66½ Main Street in the old built-up main business section of Norwalk. There is a mixture of residential and commercial buildings of frame and masonry construction in this area. The backyard site is rimmed on all sides with buildings one to three stories high, and the base of the antenna would rest in a hollow with respect thereto 15 or more feet below the level of the surrounding rooftops. An automobile repair garage 15 to 30 feet high and 12½ feet from the proposed antenna extends along one side of the yard. It is constructed of metal framework and masonry, having steel frame supports with a grid of steel framing overhead. A three-story building is attached to the rear of the garage and has a metallic backing about 55 feet wide. The 1½- to 2-story house fronting the site has a metal roof about 25 feet wide. TV receiving antennas, some mounted on tall metal masts, are scattered about the area immediately adjacent to the site on roofs of various buildings and have an overall height of 40 to 50 feet. Standard powerlines on poles 20 to 30 feet high with drops running to buildings in the area are located some 30 to 60 feet from the site in several directions. A high school building three stories high lies some 170 feet to the east, and a church with a steeple lies some 200 feet to the north-northeast of the site. Malrite's antenna system consists of a single, guyed, insulated, vertical steel tower with a lead length of 150 feet above base insulator. This is approximately 0.19 wavelength on the proposed operating frequency of 1240 kc. The proposed ground system will consist of an expanded copper ground screen having the dimensions 25 by 84 feet for a total of 2,100 square feet. Ninety-four 6-foot copper ground rods will be driven into the ground and brazed to the screen around its perimeter. The tower will be located in the center of the ground system. Guy wires will be 120° apart and will be attached to concrete anchors located on the site at a maximum radius from the antenna. Plumbing in the surrounding buildings will be bonded to the ground system if possible.

24. In the opinion of Malrite's engineer, the antenna system as proposed should produce a relatively nondirectional pattern with a specified RMS of 47.5 mv/m for 100 w, the rectangular ground system would have negligible effect on pattern circularity, and, excluding outside influences, a single vertical antenna would produce essentially a circular pattern regardless of what ground system is employed.⁵

⁵ This engineer actually set up a test transmitter at the proposed site employing an antenna and ground system with substantially the same dimensions as the antenna and ground system proposed by Malrite. Radials were measured in eight directions. An essentially circular pattern was obtained and the RMS was analyzed to be 46 mv/m for 72.3 w power. The evidence was excluded as untimely and was then submitted as an offer of proof by Malrite.

He cited his experience in this regard with the installations of stations KOHO and KAIM at Honolulu, Hawaii. These two stations employ the same antenna. The ground system is rectangular in shape and the antenna is off-center. The 240 ground radials vary in length from 48 to 139 feet and are partially covered by a two-story building. An FM transmitting antenna 76 feet high is located 40 feet from the building, and other business buildings up to four-stories high are nearby. The proof of performance showed an essentially circular pattern. Another engineering witness testified on behalf of Malrite that station WOOK (formerly WINX), Washington, D.C., had operated nondirectionally and had employed an irregular-shaped ground system with the antenna being located off-center. Railroad tracks ran alongside one edge of the ground system. A two-story paint factory 75 feet long made of cement block was situated 25 feet from the base of the tower, and a quonset hut that was used for the transmitter building was located between the factory and the tower. Field strength measurements taken on eight radials (not filed with the Commission) showed the pattern to be circular within plus or minus 5 mv/m.

25. Sayger's engineer was of the opinion that while it might be possible for Malrite to attain the specified RMS radiation of 47.5 mv/m, the combination of losses in the ground system and the effect of surrounding buildings, particularly the garage,⁶ on the effective height of the antenna, raised serious doubts that the specified radiation could be achieved. Additionally, he believed that cross-modulation would occur because of the presence of a cast iron roof drain within 15 feet of the antenna, an old corrugated steel roof with metal eave spouts on a house fronting the site, a large metal surface on a building at the rear of the garage adjacent to the property, and other nearby downspouting. Also, in his view, cross-modulation effects might occur in television receivers in the area. This same engineering witness also asserted that although he did not have extensive experience in the matter, in his opinion the shape of the ground system could affect the shape of the radiation pattern to an extent that it would approach a directional pattern where a rectangular ground system is installed. In this connection he cited his experience with stations WABQ, Cleveland, Ohio, and WSRS, Cleveland Heights, Ohio. The ground system employed by station WABQ was a rectangular insulated counterpoise on a rooftop. The measured non-directional operation produced an elongated pattern almost rectangular in shape. This, he felt, provides evidence that a rectangular ground system is conducive to a rectangular antenna radiation pattern. The rooftop counterpoise-type ground system employed by station WSRS and the nondirectional radiation pattern as measured at one time by this witness (not previously submitted to the Commission) were essentially square in shape. Considering the shape of the proposed ground system, the buildings in the immediate vicinity thereof (in-

⁶ Although Sayger alleged that the proximity of Malrite's proposed station to a garage represented a potential fire hazard because of possible arcing between metallic parts which would be immersed in the immediate vicinity of the antenna when the station is in operation, no findings are made here relative to this aspect inasmuch as it is not germane to any issue in this proceeding.

cluding the adjacent garage) with plumbing, wiring, and metallic attachment or metal roof, and the presence of powerlines and TV receiving antennas nearby, he judged that the proposed pattern would not be circular but might be distorted as much as 30 percent. It was also his view that the presence of a large gas storage tank located about one-fourth mile away from the antenna⁷ of station WAMM, Flint, Mich., distorted the field of the nondirectional operation by causing a stretching of the pattern into a shape resembling a teardrop.

26. A witness for Malrite stated that he was not in agreement with the proof of performance of station WABQ, that the alinement of the distorted rectangular pattern was about 12° removed from the alinement of the rectangular counterpoise rooftop ground system, and that the distortion was actually due to the close proximity of Fenn College, a 210-foot 21-story building constructed of steel frame with masonry exterior located 1 block southeast of the transmitter site of station WABQ. Furthermore, with respect to the possibility of cross-modulation effects to which Sayger's engineer alluded, Malrite's engineer stated that under somewhat similar conditions in connection with the operation of station WABQ, no cross-modulation effects were experienced in the area.

27. Malrite Broadcasting Co. submits that it will accept a grant of its application subject to the following condition: That prior to grant of program test authority, sufficient field intensity measurements be provided the Commission to show that a minimum field intensity of 150 mv/m/kw (47.5 mv/m for 0.1 kw) is attained by the installation and that the radiation pattern from the antenna is relatively nondirectional in nature.

CONCLUSIONS

1. The proceeding herein involves the applications of Sayger Broadcasting Co. for a class III facility unlimited operation at Tiffin, Ohio, and Malrite Broadcasting Co. for a class IV facility, unlimited, with a minimum power of 100 w, at Norwalk, Ohio. Each of the two applicants has been found to possess the requisite financial, legal, technical, and other qualifications to construct and operate its station except to the extent specified by the issues which remain principally questions of interference caused or received by each of the proposals. The principal question present requires a determination whether the interference received by each of the applicants would affect more than 10 percent of the population within the normally protected primary service area in contravention of section 3.28(c) of the rules, and, if so, whether circumstances exist which would nevertheless warrant a waiver of the rule and a grant of either or both applications.

2. Initially, it should be noted that Sayger Broadcasting Co. requests authority to operate at Tiffin, Ohio, as a class III station with 1 kw power daytime and 500 w nighttime, and that Malrite requests authority to operate at Norwalk, Ohio, a class IV station with 100 w minimum power unlimited time. As the findings demonstrate,

⁷ He gave the dimensions of the tank as being 50 ft. high and 30 or 40 ft. across, whereas the witness for Malrite stated the dimensions to be 235 ft. high and 220 ft. across.

the proposal of Sayger would receive interference from three existing stations to the extent of 17.5 percent, or 37,074 persons out of a total population of 211,378 persons proposed to be served. If the interference received were computed on the basis of a grant of the Malrite proposal, it would affect 54,524 persons, or 25.8 percent. Nighttime, the Sayger proposal would receive interference from WCAE to the extent of 67.3 percent of the population and 79 percent of the area.

3. As detailed in the findings, the Malrite proposal would receive interference from three existing stations to the extent of 13.99 percent of the total population to be served by its proposal. If class IV station WBBW's application for increased power is granted, the interference received by Malrite would be increased by 20.23 percent, resulting in a total interference received of 34.22 percent. Additionally, if the proposal of class IV station WHIZ is also granted in this proceeding, the interference received by Malrite would be increased to 48.64 percent.

4. A grant of the Sayger proposal would give Tiffin, a city of 18,952 people,⁸ its second local station and its first local nighttime service. The Malrite proposal would give Norwalk, a city with 9,775⁹ people, and Huron County with a population of 39,353,¹⁰ a first local transmission service. It should be noted, however, that each of the cities involved receive primary service from a number of other stations. In the case of Norwalk, daytime service is received over the entire city from three stations, and Tiffin, on the other hand, receives primary service over the entire city from five stations and over 80 percent of the city from another station.

5. The Malrite proposal would cause cochannel interference to the existing operation of WHIZ, Zanesville, and would thereby increase overall interference to that station from 3.9 percent of the population to 4.4 percent of the population within the 0.5-mv/m contour in a new area of interference located 22 to 28 miles from Zanesville. Sayger's proposal would cause no objectionable interference to any existing station.

6. Whether a grant may be made of the Sayger and Malrite proposals depends upon whether sufficient circumstances exist which justify a waiver of section 3.28(c) of the Commission's rules and regulations. Considering first the Sayger proposal, the findings demonstrate that it will provide a second local daytime service and a first local nighttime service to a city with a population of more than 18,900 persons, and that at least 5 other stations provide daytime primary service thereto. In addition, four stations provide primary service to the entire area proposed to be served by Sayger. Ordinarily such a proposal would be granted absent a serious technical or basic qualification obstacle. However, as is noted, in view of the fact that interference will be received by the proposal, a determination is necessary under section 3.28(c) (3) of whether there is a sufficient showing that such a need exists for assignment of Sayger's proposal as to override the matter of inefficient allocation. An adverse conclusion must be

⁸ 1950 U.S. census figures.

⁹ 1950 U.S. census figures.

¹⁰ 1950 U.S. census figures.

reached respecting the proposal of Sayger. Sayger, as noted, will receive 17.5 percent interference from existing stations, which is considerably more than the 10 percent limit provided by the Commission's rules. No exception is provided in such rule for a grant of an application for *class III* facilities where interference caused is in excess of that amount. It is not ignored that Sayger's proposal would bring a second local service to a sizable community as well as bring it its first nighttime service, but in view of the Commission's policy with regard to interference in excess of 10 percent, it is concluded that Sayger has failed to demonstrate sufficient justification to warrant a waiver of the rule. Accordingly, it is concluded that the application of Sayger must be denied.

7. Turning to the proposal of Malrite and applying the same standard, it must be concluded that interference caused by Malrite to station WHIZ is not excessive and that it is not sufficient to constitute a bar to a grant of its application. Considering this aspect of the rules alone, the need for the service would outweigh the loss of service caused by interference. However, in weighing whether this 100-w proposal should be squeezed into the class IV allocation, sight is not lost of the stated policy of the Commission that class IV stations impose their service by increasing power to the maximum permissible limit of 1 kw. Such a subsequent increase by Malrite would cause serious destructive interference to WHIZ operating with 1 kw. This fact demonstrates that the Malrite application is, in fact, a shoehorn proposal disruptive of efficient allocation on the 1240 kc frequency.

8. As in the case of Sayger, the proposal of Malrite would receive interference considerably in excess of 10 percent and, as the findings demonstrate, if the proposal is considered in the light of a grant of other existing class IV stations to increase power to 1 kw, the extent of interference received by Malrite would be at least 34 percent and as much as 48 percent.

9. In concluding that the Malrite proposal should also be denied, it must be noted that the exception to class IV stations receiving more than 10 percent interference does not apply to the case of Malrite, for the rule states clearly, "Further proviso 3 of this paragraph shall not apply to *existing* class IV stations on local channels applying for an increase in power above 250 watts nor to *new* class IV stations proposing power in *excess of 250 watts* with respect to population in the primary service area outside the equivalent 250 watt 0.5 mv/m contour." Thus, in order to be eligible for a grant the Malrite proposal must meet the standards of section 3.28(c) (3). It is submitted that the elements of exceptional circumstances are not here present even though the proposal would provide Norwalk with its first local transmission facility since there are three stations which provide primary service to all of the city. Moreover, none of the population proposed to be served by Malrite is without primary service either day or night. Furthermore, since it is Commission policy to upgrade class IV stations so as to permit operation thereof with power in excess of 250 w, Malrite would of necessity be forced subsequently to request increased power for Norwalk in the face of power increase for surrounding class IV stations. But before this point may be appropriately reached, the

Malrite proposal must fulfill at the very minimum the allocation requirements of the Commission's rules. This it cannot do, for at the outset it is clear that assignment of the frequency to Malrite involves excessive interference even at the minimum 100 w operation. In order for the Malrite proposal to be considered, it must involve less than the maximum permissible interference received, namely 10 percent, at 100 w. Obviously, under the facts here obtaining, the Malrite proposal cannot comply with the basic allocation requirements and must be denied.

10. The foregoing conclusions respecting the Malrite proposal are based on the use of soil conductivity figures and not on any field intensity measurements. Malrite at a very late stage of the proceeding offered measurements which were rejected because of their untimeliness. Some finality must attach to the administrative process and records of these proceedings cannot be kept open indefinitely.

11. Accordingly, it is concluded that the applications of Malrite and Sayger be denied.

Accordingly, *It is ordered*, This 28th day of June 1961, that unless an appeal from this initial decision is taken by a party, or the Commission reviews the initial decision on its own motion in accordance with the provisions of section 1.153 of the rules, the applications of Sayger Broadcasting Co. and Malrite Broadcasting Co. for new standard broadcasting stations to operate at Tiffin, Ohio, and Norwalk, Ohio, respectively, *Be and they are denied*.

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RADIO QUESTS, INC., ET AL., DOCKETS NOS. 14115 AND 14116:

Initial decision granting application of Radio Quests, Inc., for a new standard broadcast station to operate on 1330 kc, 500 w, daytime, using a directional antenna, at Willoughby, Ohio, conditionally; and granting application of WHOT, Inc., to change the facilities of radio station WHOT at Campbell, Ohio, from 1570 kc, 1 kw, DA-day, to 1330 kc with power of 500 w-LS, 1 kw, nighttime, using a different directional antenna pattern for day and night operation; became final in accordance with section 1.153 of the Commission's rules.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON 25, D.C.

In re Applications of
RADIO QUESTS, INC., WILLOUGHBY, OHIO

WHOT, INC., CAMPBELL, OHIO
For Construction Permits

}

Docket No. 14115
File No. BP-12691
Docket No. 14116
File No. BP-14037

APPEARANCES

Harry J. Daly, Lenore G. Ehrig, and Leonard S. Joyce, on behalf of Radio Quests, Inc.; John H. Midlen and Donald K. Smith, on behalf of WHOT, Inc.; William P. Sims, Jr., and John A. Rafter, on behalf of WMRC, Inc.; Warren E. Baker, on behalf of Rensselaer Polytechnic Institute; Samuel Miller and Mark E. Fields, on behalf of WJPS, Inc.; Marcus Cohn and Roy F. Perkins, Jr., on behalf of Booth Broadcasting Co.; Paul M. Segal, Arthur Scharfeld, Arthur Stambler, and Robert B. Jacobi, on behalf of Allen T. Simmons, Inc.; and Richard E. Ely and Richard M. Riehl, on behalf of the Chief, Broadcast Bureau, Federal Communications Commission.

INITIAL DECISION OF HEARING EXAMINER MILLARD F. FRENCH

(Effective February 8, 1962, pursuant to sec. 1.153)

PRELIMINARY STATEMENT

1. This proceeding involves the applications of Radio Quests, Inc., for a construction permit for a new standard broadcast station to operate on 1330 kc with power of 500 w., using a directional antenna, daytime only, at Willoughby, Ohio, and of WHOT, Inc., for a construction permit to change the facilities of standard broadcast station WHOT from 1570 kc with a power of 1 kw, daytime only, to 1330 kc with power of 1 kw, night, and 500 w local sunset, using a different directional antenna day and night, unlimited time, at Campbell, Ohio. The Commission designated the two applications for consolidated

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hearing on May 11, 1961, and, in this order it found WHOT, Inc., legally, technically, financially, and otherwise qualified, and Radio Quests, Inc., legally, technically, and otherwise qualified to construct and operate the respective proposals, except as indicated in the specified issues which are:

1. To determine the areas and populations which would receive primary service from the proposed operation of Radio Quests, Inc., and the availability of other primary service to such areas and populations.

2. To determine the areas and populations which may be expected to gain or lose primary service from the proposed operation of station WHOT, and the availability of other primary service to such areas and populations.

3. To determine the nature and extent of the interference, if any, that each of the instant proposals would cause to and receive from each other, and the interference that each of the instant proposals would receive from all other existing standard broadcast stations, the areas and populations affected thereby, and the availability of other primary service to the areas and populations affected by interference from any of the instant proposals.

4. To determine whether the instant proposal of WHOT, Inc., would cause objectionable interference to the nighttime operation of stations WJPS, Evansville, Ind.; WHAZ, Troy, N.Y.; WEVD, New York, N.Y.; WPOW, New York, N.Y.; WFBC, Greenville, S.C.; and WTRX, Flint, Mich., or any other existing standard broadcast stations, and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other primary service to such areas and populations.

5. To determine whether the instant proposal of Radio Quests, Inc., would cause objectionable interference to station WADC, Akron, Ohio, or any other existing standard broadcast stations, and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other primary service to such areas and populations.

6. To determine, with respect to the proposed daytime operation of WHOT, whether a waiver of section 3.28(c)(3) of the Commission's rules is justified.

7. To determine whether the city of Willoughby, Ohio (sought to be served by Radio Quests, Inc.), is in an area of maximum signal suppression, and, if so, whether the proposed directional antenna system represents good engineering practice, especially in view of the normally expected wide variations in signal strength occurring in null areas of directional patterns.

8. To determine whether Radio Quests, Inc., is financially qualified to construct and operate its proposed stations.

9. To determine, in the light of section 307(b) of the Communications Act of 1934, as amended, which of the instant proposals would better provide a fair, efficient, and equitable distribution of radio service.

10. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which, if either, of the instant applications should be granted.

2. Named as parties to the proceeding were: Debs Memorial Radio Fund, Inc., licensee of station WEVD; WMRC, Inc., licensee of station WFBC; Rensselaer Polytechnic Institute, licensee of station WHAZ; WJPS, Inc., licensee of station WJPS; WPOW, Inc., licensee of station WPOW; Booth Broadcasting Co., licensee of station WTRX; and Allen T. Simmons, Inc., licensee of station WADC. No appearances were filed for either Debs Memorial Radio Fund, Inc., or WPOW, Inc., and they did not participate in any manner in this proceeding.

3. On June 5, 1961, Allen T. Simmons, Inc., filed a petition to enlarge the issues to include multiple ownership and duopoly issues with respect to the Radio Quests proposal, and this petition was denied by the Commission on September 20, 1961. WHOT, Inc., on June 5, 1961, filed a motion to delete issue No. 4 concerning the question of

nighttime interference to the operations of stations WJPS, WHAZ, WEVD, WPOW, WFBC, and WTRX, which motion was denied by the Commission on September 7, 1961. The petition of Louis W. Skelly of July 5, 1961, to intervene in this proceeding was denied by the Chief Hearing Examiner on July 21, 1961. The petition filed on September 6, 1961, by Radio Quests, Inc., for leave to amend its application was granted by the hearing examiner on September 15, 1961.

4. Pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and section 1.362 of the Commission's rules, each of the applicants gave notice of the hearing. The Commission was timely advised by WHOT, Inc., and Radio Quests, Inc., of the publication of such notice as required by section 1.362(g) of the rules.

5. A prehearing conference and the hearing in this matter were held on June 9, 1961, and September 6, 1961, respectively. The record was closed in the proceeding on September 22, 1961.

FINDINGS OF FACT

*The Radio Quests, Inc., Proposal**Issues 1, 3, and 5*

6. Willoughby, Ohio, with a population of 15,058 according to the 1960 U.S. census, is located in Lake County which has a population of 148,700. It also lies within the eastern limits of the Cleveland urbanized area, population 1,784,991. No standard broadcast stations are assigned to Willoughby, but there is one station assigned within the county; namely, WPVL, Painesville, Ohio (1460 kc, 500 w, D). Painesville is the county seat and is located some 12 miles east of Willoughby. There are eight stations assigned to Cleveland. The city limits of Cleveland and Willoughby at the closest point are 5.5 miles apart.

7. Based on radiation values taken from the directional antenna pattern and on ground conductivity values for the area taken from figure M-3 of the rules, employing 1960 U.S. census data, the proposed coverage is as follows:

Contour (mv/m)	Population	Area (sq. miles)
2.0.....	832,906	369
0.5 (normally protected).....	898,318	1,220
Interference from WFIN and WICU ¹	42,936 (4.78%)	285 (23.3%)
Interference free (granted alone).....	855,382	935
Interference from proposed WHOT ¹	66,484 (7.4%)	833 (68.2%)
Interference free (WHOT granted).....	831,834	387

¹ Percentages refer to population and area within the normally protected contour.

Interference from proposed WHOT entirely masks interference from existing stations, WFIN and WICU. It is based on field intensity measurements taken on station WHOT.

8. Stations WKBN, WJR, WJW, KDKA, KYW, WGAR, WDOK, and WHK provide primary service of 0.5 mv/m or greater to all of the

rural areas within the proposed primary service area, if granted alone, and 22 others serve portions of such area. Eight stations provide such service to all of the area of objectionable interference that would be suffered by the proposal from proposed station WHOT. Stations WKBN, WJR, KYW, WGAR, WERE, WHK, and WJW provide primary service of 2.0 mv/m or greater to all of the urban areas within the proposed primary service area if granted alone or with proposed station WHOT. A first primary service of 10 mv/m or greater would be provided by the proposal to a total of 4,065 persons in the business and factory areas of the communities of Willoughby (population 15,058), East Lake (population 12,467), and 70 percent of Willowick (population 18,749); and a second such service would be provided to 2,138 persons in these areas in the community of Wickliffe (population 15,760) and the remainder of Willowick. This is based on the assumption that 10 percent of the population of the cities resides in these areas. None of these communities has a local broadcast station. A substantial portion of the city of Cleveland, Ohio, would fall within the proposed 2.0-mv/m contour.

9. Stations KYW, WGAR, WDOK, WERE, WABQ, WHK, and WJW, Cleveland, Ohio; WKBN, Youngstown, Ohio; WJR, Detroit, Mich.; WREO, Ashtabula, Ohio; and WPVL, Painesville, Ohio, provide daytime primary service of 2.0 mv/m or greater to the city of Willoughby.

10. Based on field intensity measurements made by the applicant's engineer on station WADC in the directions of 5° and 15° true, adjacent-channel interference (20 kc removed) from the proposal to station WADC, Akron, Ohio (1350 kc, 5 kw, DA-1, U), would fall entirely within the Cleveland urbanized area outside of the 2.0-mv/m contour of station WADC. Since WADC does not render primary service in such area, it will suffer no loss of service from Radio Quests' proposed station.

11. On the basis of ground conductivity values taken from figure M-3 of the rules, cochannel objectionable interference would be caused by the Willoughby proposal to station WTRX, Flint, Mich. (1330 kc, 1 kw, 5 kw-LS, DA-2, U, class III), in an area of 29 square miles including 1,288 persons representing 0.51 percent of the area (5,719 square miles) and 0.19 percent of the population (683,432 persons) within the 0.5-mv/m contour of station WTRX. That station now suffers objectionable interference from other sources affecting 26.81 percent of the area and 7.62 percent of the population within its 0.5-mv/m contour; thus, in the aggregate, it would suffer objectionable interference totaling 27.32 percent of the area and 7.81 percent of the population within its 0.5-mv/m contour. The added interference area lies 55 to 60 miles east of Flint, Mich. Stations WTAC, WJR, WWJ, WCAR, WXYZ, WKMH, WTH, WHLS, WJBK, WDOG, and WSAG provide primary service of 0.5 mv/m or greater to all of the added interference area. No objectionable interference would be caused to any other existing standard broadcast station.

Signal suppression over Willoughby (issue 7)

12. Willoughby is located in the southwest portion of Lake County and in the northeast part of the Cleveland urbanized area. With

respect to the main business district which is centrally situated, Willoughby extends northward for a distance of some 4 miles to Lake Erie, and to the southwest for a distance of about 3 miles. The upper portion of the city is approximately 1 mile wide and the lower portion which extends to the southwest has a width of 1.3 miles. Radio's proposed transmitter site lies just outside the city limits and at a distance 0.8 mile northwest of the business district.

13. The proposed antenna system consists of four 185-foot (190 feet overall) vertical radiators, located to form a parallelogram with the long sides 230° (472.5 feet) in length bearing 275° true and the short sides 160° (328.5 feet) in length bearing 290° true (Radio Quests exhibit 1, pp. 1, 11). The directional antenna radiation pattern has one major lobe directed north and one directed to the south. The pattern is drawn in at the center from the east and west. A minor lobe to the east with maximum radiation of 47 mv/m is directed over the main business district, which is characterized as small and non-industrial. A sharp minimum to the southeast at a bearing of 145° true with an effective field of 13.2 mv/m is directed over a portion of the main business and residential sections of the city. The base impedance for the east tower was calculated to be 22.3 plus $j11.4$; the east center tower, 68.8 plus $j3.4$; the west center tower, 24.1 plus $j36.1$; and the west tower, 28.5 plus $j6.7$. A loss of 1 ohm was assumed to exist at the base of each tower. Radio proposes to install a Clark Model 108 phase monitor which has monitoring accuracy in terms of phase of 1° with a resolution ability of 0.5° .

14. Since the operating parameters of a directional antenna can be expected to vary in day-to-day operation, studies were made of the effects of variations in antenna currents and phasing. Under one mode of operation it was assumed that the current in each tower would vary as much as plus or minus 2 percent, and phase would vary as much as plus or minus 2° with respect to the reference tower. A second mode of operation restricted the outer limits of current variation to plus or minus 1 percent and phase variation to plus or minus 1° . In each instance the variations were considered to occur simultaneously and in such a way as to reflect itself in the most detrimental manner possible insofar as it affects the proposed station's coverage of Willoughby. The mathematical probability that the directional antenna parameters would vary in such a way as to produce the most detrimental effect on coverage was considered to be over 250 to 1.

15. The field and phase parameters for the array under the most adverse conditions are shown below. Case 1 represents a change of 2 percent and 2° ; Case 2, 1 percent and 1° .

	Field			Phase (degrees)		
	Theoretical	Case 1 (2 percent)	Case 2 (1 percent)	Theoretical	Case 1 (2°)	Case 2 (1°)
East tower.....	1.0	0.98	0.99	0	0	0
East center tower.....	.7	.714	.707	-49	-47	-48
West center tower.....	.61	.622	.616	-17.4	-15.4	-16.4
West tower.....	.427	.419	.423	-66.4	-68.4	-67.4

The radiated fields for the above parameters over the pertinent angles are as follows:

Azimuth (degrees)	Theoretical (mv/m)	Case 1 (2 percent, 2°) (mv/m)	Case 2 (1 percent, 1°) (mv/m)
55.....	27.6	27.9	27.7
65.....	25	19.3	22.1
75.....	24.2	17.3	21.1
85.....	33.3	29.2	32
95.....	43.4	41.4	42.4
105.....	46.7	44.9	45.7
115.....	41.1	39	40.1
125.....	28.6	24.8	26.3
135.....	15.8	7.68	11.6
145.....	13.2	13.9	13.4
155.....	29.6	35.4	31.2

From considerations of the basic directional antenna design which reflects favorable base impedances for the respective radiating elements, as set forth in paragraph 8, and the changes resulting from parameter variations as above, the engineering witness expressed the opinion that the proposed array is stable; that the chances of the signal being reduced to the values set forth in either case 1 or case 2 are extremely remote; that with modern instrumentation, changes of the order depicted in case 2 (1 percent and 1°) are readily detected; and that the currents and phases can be maintained within this tolerance.

16. Assuming no variation in operating parameters, all of the main business district would be included within the proposed 25-mv/m contour, and all of the city would be included within the proposed 5.0-mv/m contour. However, at some points the two contours would be tangent to the limits of these respective areas. Under the conditions specified for cases 1 and 2, a portion of the Willoughby business district would not be included within the 25-mv/m contour. The excluded area is located principally on Route 20 (Euclid Ave.) south of Vine Street. For the adjustments as indicated in case 1, approximately 20 percent of the business district of Willoughby would receive a signal of less than 25 mv/m, the minimum signal over the area being 18.5 mv/m. A small portion of the residential section of Willoughby would receive a signal of less than 5 mv/m, the minimum signal over the area being 2.9 mv/m. A house count indicates that 58 homes are located in the latter area, and assuming 3.6 persons per house, this would represent a population of 209 persons. For the situation as indicated in case 2, approximately 10 percent of the business district would receive a signal of less than 25 mv/m, the minimum signal over the area being 20.1 mv/m. A small portion of the city of Willoughby would receive a signal of less than 5.0 mv/m, the minimum signal in the area being 4.4 mv/m. There are no homes located in the latter area, therefore no population would be affected. In the minimums of the radiation pattern, the phenomenon of audio distortion may be noticeable in an area about 100 feet wide extending along an irregular line from a point near the antenna to the city limits and beyond; however, very few persons would be affected.

17. As a guide in selecting a transmitter site, the engineering consultant forwarded to the applicant an overlay of the proposed 25-mv/m contour with instructions that this contour should encompass the city of Willoughby. An exhibit shows the area in which a transmitter site could potentially be located and from which the proposed station would provide at least 25 mv/m over the main business district and 5.0 mv/m over the residential area. The northern boundary of the area was considered to be limited by an airport and the distance therefrom was maintained at 2 miles. The southern boundary was considered to be limited by terrain factors and consideration of potential overlap of the 2.0- and 25-mv/m contours of stations WADC, Akron, Ohio, and the proposed station—a separation between pertinent contours being maintained at 2 miles. The eastern boundary was selected so as to permit a signal of at least 10 mv/m over the entire business district of Willowick, 70 percent of which at the present time does not receive a signal of this strength from any station. The total area of this entire potential zone is approximately 5 square miles. The proposed site is located on the northern edge of this plot. Any move to the east of the proposed site would involve objectionable interference with station WADC. While not spelled out in the record, the evidence shows that if the site were moved sufficiently to the east, the 2.0-mv/m contour would be partially or entirely removed from the city of Cleveland, Ohio, thus increasing the possibility of a violation of the 10-percent provision of section 3.28(d) of the rules.

18. Admittedly, operation from a transmitter location somewhat east of the proposed site which would result in the business district falling in one of the major radiation lobes is to be desired. However, land in this area is difficult to secure and is in general not zoned for commercial use. In the latter respect two witnesses testified on behalf of the applicant concerning their extensive but vain search for a transmitter site which would permit the new station to provide the kind of coverage to Willoughby as initially stated. The directional antenna pattern now specified by the applicant, a modification of one originally proposed, was designed to make the proposal compatible with the proposal of station WHOT in the hope that both applications could be granted instead of only one or the other. In arriving at a final directional antenna design, consideration had to be given, among other things, to possible objectionable interference with stations WFIN, Findlay, Ohio; WTRX, Flint, Mich.; WICU, Erie, Pa.; WETZ, New Martinsville, W. Va.; WADC, Akron, Ohio; and proposed station WHOT. Applicant's engineering consultant did not have any real concern about the fact that the proposed 25-mv/m contour would barely include all the business district, because in his opinion a small urban community such as Willoughby has a manmade electrical noise level considerably less than found in the large cities. Under the restrictions enumerated, applicant's engineering consultant advanced an antenna design which he believes to be most feasible for accomplishing the several objectives.

Financial qualification of Radio Quests, Inc. (issue 8)

19. As recited in the order designating the Radio Quests application for hearing, the reason a financial issue was included was because the stock subscription had expired and the balance sheets of the subscribers to the Radio Quests stock were not current. On September 18, 1961, Radio Quests amended its application to delete a subscriber to 15 shares of the Radio Quests stock; to show that all stock subscriptions had been exercised; and to bring the financial plan for the proposed operation current.

20. The total cost of construction is as follows:

1. Transmitter proper including tubes.....	\$4, 157. 60
2. Antenna system, including antenna ground system, coupling equipment, transmission line.....	21, 969. 34
3. Frequency and modulation monitors.....	1, 165. 00
4. Studio technical equipment.....	3, 708. 06
5. Acquiring, remodeling, or constructing buildings.....	5, 500. 00
6. Other items.....	1, 000. 00
	37, 500. 00

To meet construction costs, Radio Quests has an equipment credit of \$23,250, plus an equipment downpayment of \$1,033.39, to meet the cost of items 1 through 4 which total \$31,000, leaving a cash requirement of \$6,716.61 for these items, plus \$6,500 to cover items 5 and 6, or a total cash requirement to construct the station of \$13,216.61. An additional \$11,250 (or one-fourth of \$45,000) is required to meet the cost of initial operation for a period of 3 months. Therefore, the total cash required to meet Radio Quests' estimated construction cost and expense of early operation is \$24,466.61. To meet this need, Radio Quests has cash on hand and in banks totaling \$35,959.90. Thus Radio Quests has approximately \$11,500 more cash than is required to meet estimated construction costs and expenses of early operation.

*The WHOT, Inc., Proposal**Issues 2 and 3*

21. Campbell, Ohio, has a population of 13,406 according to the 1960 U.S. census. Campbell adjoins the southeast limits of Youngstown, Ohio, and is a part of the Youngstown-Warren urbanized area which has a population of 509,006. Station WHOT, the applicant's station, is the only one assigned to Campbell. Three stations are assigned to Youngstown and one to Warren.

22. Based on the radiation values taken from field intensity measurements on station WHOT and on radiation values from the proposed directional antenna patterns, and on ground conductivity values obtained from the same measurements, employing 1960 U.S. census data, the coverage is as follows:

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Daytime

Contour (mv/m)	Present		Proposed	
	Population	Area (sq. miles)	Population	Area (sq. miles)
2.0.....	429,977	399	432,178	407
0.5 (normally protected)	546,662	1,323	556,676	1,273
Interference from WCLW and WSHH ¹	24,343 (4.45%)	153 (11.56%)	-----	-----
Interference from WICU, WSAZ, and WFIN ¹	-----	-----	11,646 (2.09%)	79 (6.21%)
Interference free.....	522,319	1,170	545,030	1,194
Additional interference from proposed Willoughby ¹	-----	-----	25,560 (4.59%)	346 (27.18%)
Total interference ¹	-----	-----	37,206 (6.68%)	425 (33.39%)
Interference free.....	522,319	1,170	519,470	848

¹ Percentages refer to population and area within the normally protected contour.

Both Radio Quests and WHOT have agreed to accept the interference occurring during daylight hours to each other from the mutual operation of their respective proposals.

Nighttime

Contour (mv/m)	Present		Proposed	
	Population	Area (sq. miles)	Population	Area (sq. miles)
4.0 (normally protected).....	-----	-----	403,869	573
Total interference from WFBC and WPOW ¹	-----	-----	172,811 (42.8%)	362 (63.1%)
9.92 (interference free).....	-----	-----	231,058	211

¹ Percentages refer to population and area within the normally protected contour.

The above 9.92-mv/m contour is based upon the highest nighttime RSS limitation that would be caused to the proposed operation of station WHOT by the present nighttime operation of stations WFBC and WPOW. Station WPOW shares time at night with stations WHAZ and WEVD, but when the latter two stations are operating, the RSS nighttime limitation would be less than the limitation with WPOW operating.

23. As a result of the proposed change in daytime facilities, if granted alone, station WHOT would extend its primary service to an additional 35,796 persons in urban areas consisting of portions of Warren and Canfield, Ohio, as well as to an additional 37,248 persons in rural areas totaling 309 square miles for a total gain in primary daytime service of 73,044 persons in 309 square miles. Station WHOT would no longer provide primary service to 23,900 persons in urban areas consisting of portions of Sharon, Pa., and all of Farrell, Pa., as well as to 26,433 persons in rural areas totaling 285 square miles, for a total loss in primary daytime service of 50,333 persons in 285 square miles. There would thus be a net gain in station WHOT primary service daytime amounting to 22,711 persons and 24 square miles.

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Stations WPIC, WKBN, WFMJ, and WHHH provide primary service of 2.0 mv/m or greater to all of the urban areas that would gain or lose station WHOT primary service daytime, and four others serve portions of such area. Stations WKBN, WHLO, WPIC, KDKA, KYW, WFMJ, WFAR, and WHHH provide primary service of 0.5 mv/m or greater to all of the rural areas that would gain or lose primary service daytime, while at least 20 others serve portions thereof and a minimum of 13 and a maximum of 23 stations serve any one portion. If the Willoughby proposal is granted simultaneously, station WHOT would gain and lose the same urban populations and areas, but its rural gain would be reduced to 27,371 persons in 182 square miles and the total gain would be reduced to 63,167 persons in 182 square miles. The rural loss would be increased to 42,116 persons in 504 square miles for a total loss of 66,016 persons in 504 square miles, and a net loss of 2,849 persons and 322 square miles. Stations WKBN, WHLO, WPIC, KDKA, KYW, WFMJ, WFAR, WJR, WJW, WGAR, and WHHH serve the rural area that would not be gained by station WHOT if proposed Willoughby is granted simultaneously.

24. Operating on its new frequency daytime, station WHOT would not cause objectionable interference to any existing standard broadcast station. In abandoning its present frequency, station WHOT would remove objectionable interference now caused daytime to station WCLW, Mansfield, Ohio (1570 kc, 1 kw, DA-D, class II), in an area of 274 square miles including 7,918 persons.

25. Since station WHOT does not presently operate at night, all of the proposed nighttime service area would gain WHOT primary service. Station WKBN provides interference-free primary service of 2.0 mv/m or greater to all of the urban population within the proposed nighttime primary service area, while WFMJ serves 91.8 percent thereof; WBBW, 59.7 percent; WHHH, 55.7 percent; WFAR, 23 percent. A minimum of one and a maximum of five stations serve any one portion of such urban area. The urban population now receiving one service totals 16,680, of which 7,819 reside in Campbell, Ohio and 7,031 reside in Struthers, Ohio. The urban population receiving 2 services totals 28,760. Stations WJR, KDKA, KYW, and WKBN provide primary service of 0.5 mv/m or greater to all of the rural population within the proposed nighttime primary service area; WFMJ serves 42.1 percent thereof; WFAR, 21.7 percent WHHH, 5.8 percent; WKST, 2.1 percent; WBBW, 0.31 percent. A minimum of four and a maximum of seven stations serve any one portion of such rural area.

26. Station WKBN, Youngstown, Ohio, provides interference-free primary service of 2.0 mv/m or greater to all of the city of Campbell at night; station WBBW, Youngstown, Ohio, serves 10.7 percent of the residential areas and 31.6 percent of the business and industrial areas therein; WFMJ, Youngstown, Ohio, serves 45 percent of the residential areas and 27.2 percent of the business and industrial areas; WHHH, Warren, Ohio, serves 16.8 percent of the residential areas. The nighttime proposal of station WHOT would provide a second primary service to 5,479 persons in the residential areas and to 2,340 persons in the business and industrial areas of Campbell, for a total

of 7,819 persons. It would provide a third primary service to a total of 2,989 persons in these latter areas, a fourth to 1,630 persons, and a fifth to 968 persons.

Relationship to other nighttime operations (issue 4)

27. Based on the appropriate skywave field intensity curves in the Commission's rules, no objectionable interference would be caused by the nighttime proposal of station WHOT to stations WJPS, Evansville, Ind.; WHAZ, Troy, N.Y.; WEVD, New York, N.Y.; WPOW, New York, N.Y.; WFBC, Greenville, S.C.; WTRX, Flint, Mich.; or any other existing standard broadcast stations. Field strength measurements taken by the applicant on station WFBC in the directions of 287.5° and 336° true verify previous measurements on these two radials which were submitted as part of the WFBC proof of performance on file with the Commission. An additional radial was measured in the direction of 309.5° true to establish for the first time the radiation of station WFBC in this direction. Based on a measured effective field of 202 mv/m in the horizontal plane at 309.5° true, station WFBC would place an individual limitation of 5.53 mv/m at station WJPS, Evansville, Ind., which, when combined with an individual limitation of 4.3 mv/m from station KFH, would establish the RSS limitation of station WJPS to be 7.0 mv/m. On this basis, an individual limitation of 3.44 mv/m from proposed station WHOT would not enter the RSS limitation of station WJPS.

Compliance with 10 percent rule (issue 6)

28. When the WHOT application was designated for hearing in this consolidated proceeding with the Radio Quests' proposal, it was indicated that the total interference which would be received by the proposed daytime operation was 12.6 percent of the population within the normally protected contour. This represented interference from the Willoughby proposal and from stations WETZ, WFIN, WICU, and WSAZ. Field intensity measurements subsequently made on station WETZ (1330 kc, 1 kw, D), New Martinsville, W. Va., disclosed there would be no objectionable interference from that station to the WHOT daytime proposal. As the total interference which would be received by the proposed WHOT daytime operation from existing stations and the Willoughby proposal is only 6.68 percent of the population within the normally protected daytime contour, there would be no violation of section 3.28(d) (3) of the Commission's rules, more commonly known as the 10-percent rule.

ULTIMATE FINDINGS AND CONCLUSIONS

1. Radio Quests, Inc., seeks a construction permit to operate a new class III standard broadcast station at Willoughby, Ohio, on 1330 kc with 500 w power, daytime only, directional antenna, and WHOT, Inc., proposes to change the facilities of station WHOT at Campbell, Ohio, from a class II operation on 1570 kc with 1 kw power, daytime only, directional antenna, to a class III operation on 1330 kc with 1 kw power nighttime and 500 w daytime, using a different directional antenna day and night. Because of interlinking interference prob-

lems with one another, the applications were designated for hearing in a consolidated proceeding on matters pertaining to coverage, mutual objectionable interference, objectionable interference with existing stations, the 10-percent provision of section 3.28(d) of the rules with respect to the WHOT proposal, the financial qualifications of Radio Quests and conformity of its proposal with good engineering practice.

2. Willoughby, Ohio, with a 1960 population of 15,058, is located in Lake County which has a population of 148,700 and lies within the eastern limits of the Cleveland urbanized area which has a total population of 1,784,991. No standard broadcast stations are assigned to Willoughby. The Radio Quests' proposal would serve 855,382 persons in an area of 935 square miles daytime if granted alone. Eight stations serve all of the rural areas therein and 22 others serve portions. Seven stations serve all of the urban areas therein. If both the Radio Quests and WHOT are granted, the Radio Quests, Inc., proposal would serve 831,834 persons in an area of 387 square miles. Eight stations provide 0.5 mv/m or greater service to all of the rural area which would not be served under these conditions, and seven stations provide 2.0 mv/m or greater service to the urban areas so affected. Eleven stations serve the city of Willoughby daytime. A first primary service of 10 mv/m or greater would be provided to 4,065 persons in the business and factory areas of Willoughby (population 15,058), East Lake (population 12,467), and Willowick (population 18,749), and a second such service would be provided to 2,138 persons in said areas in Willowick and Wickliffe (population 15,760). None of these communities has a local broadcast station.

3. A substantial portion of the city of Cleveland, Ohio, would fall within the proposed 2.0-mv/m contour. Any interference that would be caused by Radio Quests, Inc., to station WADC, Akron, Ohio, would fall within the Cleveland urbanized area outside of the 2.0-mv/m contour of station WADC and, therefore, would not cause any new interference. Cochannel objectionable interference would be caused to station WTRX, Flint, Mich., in an area of 29 square miles including 1,288 persons, thus raising the overall interference to that station from 26.81 percent of the area and 7.62 percent of the population to 27.32 percent of the area and 7.81 percent of the population within its 0.5-mv/m contour. The additional interference area lies 55 to 60 miles east of Flint, and 11 stations serve all of such area. No objectionable interference would be caused to any other existing standard broadcast station.

4. Although the Radio Quests' proposal, if granted, would raise the overall interference to station WTRX from 7.62 percent to 7.81 percent of its population (an increase of 0.19 percent), a total of only 1,288 persons would lose this service, whereas a grant of the subject proposal would bring a first local outlet to Willoughby and a first primary service, daytime, to 4,065 persons, a second such service to 2,138 persons, and a new primary service to a total of 831,834 persons (assuming a grant of the WHOT proposal). In view of this, it is concluded that the need for the service as proposed by Radio Quests

substantially outweighs the service that would be lost as a result of the interference to station WTRX.

5. With regard to issue 7, as to whether the proposed directional antenna system represents good engineering practice, the following facts are noted. A sharp minimum in the directional antenna pattern of Radio Quests, Inc., toward the southeast at a bearing of 145° true with an effective field of 13.2 mv/m is directed over a portion of the main business and residential sections of Willoughby. Assuming no variations in operating parameters, all of the main business district would be included within the proposed 25.0-mv/m contour. If the currents in the respective towers varied 2 percent and the phases with respect to the reference tower varied 2° , approximately 20 percent of the business district of Willoughby would receive a signal of less than 25 mv/m, the minimum being 18.5 mv/m. A small portion of the residential section would receive a signal of less than 5.0 mv/m, the minimum being 2.9 mv/m. A house count, assuming 3.6 persons per house, reflects a population therein of 209 persons. The mathematical probability that this 2 percent and 2° variance would occur is approximately 250 to 1. If the currents are varied 1 percent and the relative phases 1° , approximately 10 percent of the business district would receive a signal of less than 25 mv/m, the minimum being 20.1 mv/m. A small portion of the city would receive a signal of less than 5.0 mv/m, the minimum being 4.4 mv/m. No homes are located in the latter area. Audio distortion resulting from the proposed minimum over the city would be noticeable in an area about 100 feet wide extending along an irregular line from a point near the antenna to the city limits and beyond.

6. Radio Quests' selection of a transmitter site represents an attempt to reconcile conflicting factors. A site a little farther to the east of the one specified in the application would permit the proposed station to provide greater field strengths over the business district and portions of the city residential area, and would eliminate the generally undesirable feature of service to the principal city from a relatively deep minimum of the directional radiation pattern. An area of 5 square miles wherein a transmitter site could be located is limited by an airport on the north, a 2- and 25-mv/m overlap problem with an existing station on the south, loss of a so-called "white area" consisting of the business district of Willowick, Ohio, to the west, and objectionable interference to an existing station and possible violation of the 10-percent provision of section 3.28(d) of the rules to the east. Additionally, other possible sites in western Lake County which were feasible from an engineering standpoint were unavailable due to zoning restrictions and the refusal of the zoning boards to grant variances for the proposed antenna system. The record reflects that Radio Quests expended much time and effort attempting to find a more suitable site, but was unable to do so.

7. The phase monitor proposed by Radio Quests, Inc., has a monitoring accuracy of 1° in phase with a resolution ability of 0.5° , and changes in current of 1 percent can be readily detected. The array itself is considered to be of a stable design and readily maintained within such tolerances. Operation of the proposed station within the

specified tolerance would permit the new station to continuously provide a signal of at least 25 mv/m to all or substantially all of the business district of Willoughby, and at least 5 mv/m to all or substantially all of the city residential area.

8. While as a matter of good engineering practice selecting a site which would place a portion of the city to be served in an area of maximum signal suppression, under ordinary circumstances, should not be condoned, the circumstances in this case warrant deviation from this norm. Here, the proposed directional antenna system appears to be of a stable design which, if it operates as predicted, will place the required signal strength over both the business and residential areas. Moreover, even if a variance in phase and current of 2° and 2 percent, respectively, should occur (a 250-to-1 mathematical probability), the subject proposal would still be in substantial compliance with the coverage rules. Further, the phase monitor which Radio Quests proposes to use is capable of detecting and resolving shifts in phase of much less than 2 percent. Finally, considering the allocation problem here involved and the continued and conscientious attempts by the applicant to find a more suitable site, it is concluded that no other site was available to Radio Quests than the one herein proposed. Therefore, the deviation from good engineering practice herein proposed should under these peculiar circumstances be allowed.

9. The financial issue against Radio Quests was placed in the order of designation on the basis that the stock subscriptions appeared on their face to have expired and the balance sheets of the principals were not current. Radio Quests, after the order of designation was released, was permitted to amend its application to show that a minority shareholder had withdrawn and that all outstanding stock subscriptions had been called. Considering cash on hand and in banks, downpayment on equipment, and an equipment credit, Radio Quests has \$11,500 in excess of the capital required to construct its proposal and operate for a reasonable period of time (3 months). It is concluded, therefore, that Radio Quests is financially qualified.

10. With respect to the WHOT, Inc., proposal, the questions requiring resolution pertain to coverage, interference to existing stations, possible contravention of section 3.28(d), and the 307(b) question. Campbell, Ohio, with a 1960 population of 13,406, adjoins the city limits of Youngstown, Ohio, on the southeast and is a part of the Youngstown-Warren urbanized area. Station WHOT, now operating daytime only, is the only one assigned to Campbell. Three stations are assigned to Youngstown and one to Warren. By changing frequency, station WHOT proposes to extend its daytime service to an additional 73,044 persons in an area of 309 square miles including 35,796 persons in Warren and Canfield, Ohio, but would no longer serve 50,333 persons in an area of 285 square miles including 23,900 persons in Sharon and Farrell, Pa. There would be a net gain of 22,711 persons and 24 square miles. Four stations serve all of the urban gain and loss areas, and four others serve portions thereof. Eight stations serve all of the rural gain and loss areas, while from 13 to 23 serve various portions thereof. If the Willoughby proposal is simultaneously granted, station WHOT would provide daytime primary service

of 0.5 mv/m or greater to 519,470 persons in an area of 848 square miles. This represents a total urban and rural gain over the present WHOT operation of 63,167 persons in an area of 182 square miles, and a total urban and rural loss of 66,016 people in an area of 504 square miles, for a net loss of 2,849 persons in 322 square miles. These 2,849 persons represent less than 1 percent of the population within the present WHOT daytime interference-free contour. Eleven stations serve all of the area that would be lost under these conditions. No objectionable interference would be caused to any existing standard broadcast station daytime. Additionally, in abandoning the present frequency, station WHOT would remove objectionable interference now caused daytime to station WCLW, Mansfield, Ohio, in an area of 274 square miles including 7,918 persons.

11. The interference which would be received by the proposed WHOT daytime operation from existing stations represents 2.09 percent of the population within the 0.5-mv/m (normally protected) contour. With a grant of the Willoughby proposal, this area of interference is increased to an amount representing only 6.68 percent of the population in the proposed daytime normally protected contour. It is concluded, therefore, that there is no violation of the 10-percent provision of section 3.28(d) (3) of the Commission's rules.

12. At night, station WHOT, which presently operates daytime only, would serve 231,058 persons in an area of 211 square miles. From one to five stations serve the urban populations therein, and from four to seven stations serve the rural population. The urban area presently receiving only one service contains a population of 16,680, of which 7,819 reside in Campbell, Ohio, and 7,031 reside in Struthers, Ohio. The urban area presently receiving two services includes 28,760 persons. Within Campbell, Ohio, a third service would be provided to 2,989 persons, a fourth to 1,630, and a fifth to 968. No objectionable interference would be caused by proposed station WHOT at night to any existing standard broadcast station.

13. As found hereinbefore, the population that would lose daytime primary service in the event of a grant of the WHOT proposal presently receive a number of services. The important public-interest consideration favoring a grant is the fact that WHOT will be able to bring to the city of Campbell its first local nighttime service; a new service nighttime to over 231,000 people; a second primary service nighttime to over 16,000 people; and a third such service to over 28,000. The need for this new nighttime service outweighs any need the persons presently receiving daytime service from WHOT may have for the WHOT service they will lose.

14. Some mutual interference is involved between the two proposals presented by the applicants during daytime operation. However, each applicant has agreed to accept the interference that it will receive from the other's operation as a condition upon a grant of its proposal. The findings hereinbefore set forth show that mutual exclusivity is not involved in the present proceeding, and, therefore, a 307(b) choice is not necessary, and the cited section of the act does not prohibit a grant of both applications in this proceeding.

15. Upon the basis of the entire record in this case, and in view of the foregoing findings and conclusions, it is concluded that a grant of the instant proposals of both applicants will provide a fair, efficient, and equitable distribution of radio service and otherwise will be in furtherance of the public interest, convenience, and necessity.

Accordingly, *It is ordered*, This 19th day of December 1961, that unless an appeal to the Commission from this initial decision is taken by any of the parties, or the Commission reviews the initial decision on its own motion in accordance with the provisions of section 1.153 of the rules, the application of Radio Quests, Inc., for a new standard broadcast station to operate on 1330 kc, 500 w, daytime, using a directional antenna, at Willoughby, Ohio, and the application of WHOT, Inc., to change the facilities of radio station WHOT at Campbell, Ohio, from 1570 kc, 1 kw, DA-day, to 1330 kc with power of 500 w-LS, 1 kw, nighttime, using a different directional antenna pattern for day and night operation, *Be, and the same are, hereby granted, And it is further ordered*, That the Radio Quests' construction permit shall contain the following condition :

A properly designed phase monitor shall be installed in the transmitter room and shall be continuously available as a means for correctly indicating relative phase and antenna current relations in the several elements of the directional antenna system with an accuracy of 1° and 1 percent, respectively. In operation, the phase difference and the current ratios of the towers with respect to the reference tower (East tower—No. 1) shall not be allowed to vary from the established operating value by more than 1° in phase and 1 percent in current ratio.

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WASHINGTON BROADCASTING Co., (WOL), DOCKETS Nos. 13528 ET AL.:

Applications of Washington Broadcasting Co. (WOL); Delaware Broadcasting Co. (WILM); WDAD, Inc. (WDAD); Centre Broadcasters, Inc. (WMAJ); Sky-Park Broadcasting Corp. (WFTR); Miners Broadcasting Service, Inc. (WPAM); and Cumberland Valley Broadcasting Corp. (WTBO) (all class IV stations) for increase in power to 1 kw; granted.

Section 3.24(b) of the rules.—Broadcast facilities; showing required.

Commission policy concerning daytime power increases for class IV stations.

Fair hearing.

Existing stations meeting minimal signal requirements in principal community.

Section 3.188(d).—Rooftop antenna prohibition waived.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON 25, D.C.

In re Applications of

WASHINGTON BROADCASTING Co. (WOL),
WASHINGTON, D.C.

DELAWARE BROADCASTING Co. (WILM),
WILMINGTON, DEL.

WDAD, INC. (WDAD), INDIANA, PA.

CENTRE BROADCASTERS, INC. (WMAJ), STATE
COLLEGE, PA.

SKY-PARK BROADCASTING CORP. (WFTR),
FRONT ROYAL, VA.

MINERS BROADCASTING SERVICE, INC.
(WPAM), POTTSVILLE, PA.

CUMBERLAND VALLEY BROADCASTING CORP.
(WTBO), CUMBERLAND, MD.

For Construction Permits

Docket No. 13528

File No. BP-12145

Docket No. 13529

File No. BP-12250

Docket No. 13530

File No. BP-12455

Docket No. 13531

File No. BP-12463

Docket No. 13532

File No. BP-12624

Docket No. 13533

File No. BP-13197

Docket No. 13534

File No. BP-13471

APPEARANCES

Leonard H. Marks and *Stanley S. Neustadt*, on behalf of Washington Broadcasting Co. (WOL) and Cumberland Valley Broadcasting Corp.; *William A. Porter* and *Edwin R. Schneider*, on behalf of Delaware Broadcasting Co.; *George O. Sutton*, on behalf of WDAD, Inc., and Centre Broadcasters, Inc.; *Robert L. Heald* and *Henry R. Goldstein*, on behalf of Sky-Park Broadcasting Corp.; *Keith E. Putbrese*, *Earl R. Stanley*, and *Charles J. McKerns*, on behalf of Miners Broadcasting Service, Inc.; *Keith E. Putbrese* and *Harry G. Sells*, on behalf of Prince William Broadcasting Corp.; *Richard C. O'Hare*, on behalf of Equitable Publishing Co.; *Philip Bergson*, on behalf of WFPG, Inc.; *Norman E. Jorgensen*, on behalf of Raritan Valley Broadcasting Co.; *John P. Castleberry, Jr.*, on behalf of Will-

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Mont Broadcasting Co. (WMPT); and *Robert J. Rawson and Richard E. Ely*, on behalf of Chief, Broadcast Bureau, Federal Communications Commission.

DECISION

(Adopted February 28, 1962)

BY THE COMMISSION: COMMISSIONERS MINOW, CHAIRMAN; HYDE AND BARTLEY NOT PARTICIPATING.

1. This proceeding involves the applications of the above-captioned class IV stations, all operating on 1450 kc, unlimited time, for construction permits to increase daytime power to 1 kw. The initial decision of Hearing Examiner Thomas H. Donahue (FCC 61D-86) looks toward a grant of all seven applications. Exceptions were filed by Raritan Valley Broadcasting Co. (Raritan), licensee of class IV station WCTC, 1450 kc, New Brunswick, N.J., a respondent, and by the Chief of the Commission's Broadcast Bureau. Oral argument was held before the Commission, en banc, on December 8, 1961. The Commission's rulings on the exceptions are set forth in the appendix.

2. The findings and conclusions in the initial decision have been examined in the light of the exceptions. Subject to the changes and modifications indicated in this decision and the appendix, they are adopted. We are in general agreement with the initial decision, but some comment and discussion regarding the principal exceptions is warranted.

3. Raritan's exceptions are directed principally to the proposed grant of the application of Delaware Broadcasting Co. (WILM), the licensee of station WILM, Wilmington, Del. WILM's proposed operation involves cochannel interference with two other proposals, with WCTC and other existing stations.¹ Operating as proposed, WILM would provide a new primary service to 60,868 persons who now receive primary service from 8 stations, and, in varying degrees, primary service from 29 other stations. It would cause 17,848 persons within WCTC's 0.5-mv/m interference-free contour to lose service from that station. The new interference to WCTC would increase the percentage of the interfered-with population within such contour from 3.3 percent to 9.2 percent. A minimum of 12 and a maximum of 22 other primary services are available to such population. If WILM's application were denied and the other applications herein were granted, approximately 18,439 persons within WILM's normally protected contour would lose its service.

4. Raritan argues that the record contains no evidence that the need for the proposed WILM service outweighs the need for the

¹As the examiner found, with the exception of the licensees of stations WCTC and WFPG, Atlantic City, N.J., all of the licensees of stations to which any of the proposed operations herein would cause interference, applicants and respondents, have agreed to accept such interference. Where interference is involved between proposals, the agreements are couched in terms of both parties to the agreement accepting the interference caused by the other. Since the licensee of station WFPG took no exception to the examiner's findings and conclusions regarding the interference which the WILM proposal would cause to its station, this aspect of the WILM proposal will not be discussed further.

service to be lost from WCTC.² It argues that the Commission's policy respecting power increases to 1 kw for class IV stations should not be accorded controlling decisional significance in the circumstances of this case. However, in addition to our policy strongly favoring and encouraging class IV power increases, it is clear that the need for the service proposed by WILM outweighs the need for the service to be lost from WCTC. WILM would provide a new primary service to 60,868 persons. While its operation would cause 17,848 persons within WCTC's 0.5-mv/m interference-free contour to lose the service of that station, a minimum of 12 and a maximum of 22 other primary services are available to those persons. Moreover, no specific need for the service to be lost from WCTC has been demonstrated.³ Of significance, also, is the fact that the interference which WILM would cause would not create new "white" or "gray" areas. The conclusion is compelling, on these facts, that the need for the service proposed by WILM outweighs the need for the service to be lost from WCTC.

5. Raritan also charges that it was denied a fair hearing by the exclusion of evidence of WCTC's 2- and 25-mv/m contour involvement with station WNJR, Newark, N.J. Raritan sought to show that section 3.37 of the Commission's rules presents a bar to a speedy and uncontested approval of its own pending application for power increase.⁴ Raritan urges that this factor caused it to delay filing an application until such time as it was too late to be consolidated into the present proceeding. Raritan submits that these facts would establish a justification for postponing grants in this proceeding until its application can also be acted upon. It cannot be said that Raritan was denied a fair hearing, for the decision to delay filing its application was a matter of its own judgment influenced by the opinion of its engineering counsel that the chances for waiver of section 3.37 would improve if the application were later filed. Neither the applicants in this proceeding, nor the additional persons proposed to be served, should be penalized because of Raritan's election of a course of action which it deemed would best serve its own interests. Moreover, the involvement is exclusively between WCTC and WNJR, and the proposals herein affect that situation in no respect. Since the excluded evidence concerns matters not germane to this proceeding, the examiner's ruling is affirmed.

6. Raritan takes issue with the examiner's conclusion that while all but one of the applicants did not fully meet their respective burdens of proof under issue 1 because they failed to adduce evidence

² In this connection, Raritan points to *WMAX, Inc.*, 19 R.R. 1012, where the Commission stated that sec. 3.24(b) permits the right of existing stations to render interference-free service within their normally protected contour to be invaded only upon convincing showing of need for the new proposed service. WMAX did not involve a proposal to increase power of a class IV station, and the interference affected 19.03 percent of the population within the normally protected contour of an existing station, while here the co-channel interference involved would affect 9.2 percent of the population within WCTC's normally protected contour.

³ Raritan did not seek enlargement of the issues to permit inquiry into the needs of the population in the interference area for any special programming which WCTC might offer thereto. Presumably, therefore, it meets no special needs of such population. See *Mid-America Broadcasting System, Inc.*, 19 R.R. 889 (1960).

⁴ An application for power increase by WCTC has been set for hearing on an issue to determine whether sec. 3.37 of the rules would be violated by the operation proposed, and, if so, whether waiver of that section would be in the public interest.

as to the size, population, and location of business and factory districts within their principal cities, nonetheless their overall showings are not invalidated.⁵ Raritan submits that such failure of proof should result in denial of the respective applications involved because no basis exists for determining whether the minimal signal required for primary service to those districts by section 3.182 (f) and (g) of the rules would be provided. We agree with the Broadcast Bureau that as licensees of existing class IV stations the applicants are entitled to a presumption of meeting the minimal signal requirements, and that the applicants had no burden of proof to meet in this connection under the designated issue.

7. In view of the foregoing, we conclude that grant of each of the above-entitled applications would serve the public interest. The grants will, however, be subject to the condition that the permittees will accept the interference that may be received from other class IV stations subsequently increasing power to 1 kw.

8. Accordingly, *It is ordered*, This 28th day of February 1962, that the applications of Washington Broadcasting Co. (WOL), Washington, D.C.; Delaware Broadcasting Co. (WILM), Wilmington, Del.; WDAD, Inc. (WDAD), Indiana, Pa.; Centre Broadcasters, Inc. (WMAJ), State College, Pa.; Sky-Park Broadcasting Corp. (WFTR), Front Royal, Va.; Miners Broadcasting Service, Inc. (WPAM), Pottsville, Pa.; and Cumberland Valley Broadcasting Corp. (WTBO), Cumberland, Md., for construction permits to increase the daytime operating power of their stations from 250 w to 1 kw, *Are granted*, subject to the following conditions:

That the permittees shall accept such interference as may be imposed by other existing 250 w class IV stations in the event they are subsequently authorized to increase power to 1 kw;

That Miners Broadcasting Service, Inc. (WPAM), shall take appropriate steps that may be necessary to prevent cross-modulation or reradiation with the present operation of station WPPA, Pottsville, Pa., and shall cooperate with said station in eliminating any problems that may occur in the event of a grant of application file No. BP-13265, which proposes a daytime power increase for station WPPA;

That Cumberland Valley Broadcasting Corp. (WTBO) shall take appropriate steps that may be necessary to prevent cross-modulation or reradiation with the present operation of station WCUM, and shall cooperate with WCUM to eliminate any additional interaction problems that may occur in the event of a grant of application file No. BP-13357, which proposes a daytime power increase for WCUM.

⁵ Issue 1 inquires into the areas and populations which may be expected to gain or lose primary service from the proposed operations of each of the instant applicants, and the availability of other primary service to such areas and populations.

APPENDIX

RULINGS ON THE EXCEPTIONS

Exceptions of Raritan Valley Broadcasting Co.

<i>Exception No.</i>	<i>Ruling</i>
1, 2, 3, 8, and 9-----	Denied in accordance with the opinion rendered in this decision.
4-----	Denied; par. 6 of the findings and the last sentence of par. 2 of the conclusions is deleted for the reasons stated in par. 6 of this decision.
5-----	Granted; the predicted chain reaction of withdrawn consents to interference among the applicants herein in the event any one of the applications is denied is conjectural and unsupported by the record.
6-----	Denied; it would not serve the general public interest to defer grants herein pending a grant of the Raritan application for power increase which is now in hearing.
7-----	Granted; the requested condition has been included.

Exceptions of the Broadcast Bureau

<i>Exception No.</i>	<i>Ruling</i>
1 and 3-----	Granted; see ruling on Raritan exception No. 4, supra.
2 and 5-----	Granted; the second sentence of par. 8 of the findings is deleted and the following is substituted therefore: "The area within WOL's present 0.5-mv/m contour is free of interference." Also, the second sentence in footnote 1 of the conclusions is deleted.
4-----	Granted; change "WMPV" in par. 16, line 2, to "WNPV."
6-----	Granted; see the ruling on Raritan exception No. 7, supra.

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C.

<p>In re Applications of WASHINGTON BROADCASTING CO. (WOL), WASHINGTON, D.C. DELAWARE BROADCASTING CO. (WILM), WIL- MINGTON, DEL. WDAD, INC. (WDAD), INDIANA, PA. CENTRE BROADCASTERS, INC. (WMAJ), STATE COLLEGE, PA. SKY-PARK BROADCASTING CORP. (WFTR), FRONT ROYAL, VA. MINERS BROADCASTING SERVICE, INC. (WPAM), POTTSVILLE, PA. CUMBERLAND VALLEY BROADCASTING CORP. (WTBO), CUMBERLAND, MD. For Construction Permits</p>	}	<p>Docket No. 13528 File No. BP-12145 Docket No. 13529 File No. BP-12250 Docket No. 13530 File No. BP-12455 Docket No. 13531 File No. BP-12463 Docket No. 13532 File No. BP-12624 Docket No. 13533 File No. BP-13197 Docket No. 13534 File No. BP-13471</p>
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APPEARANCES

Stanley S. Neustadt, on behalf of Washington Broadcasting Co. (WOL) and Cumberland Valley Broadcasting Corp.; *William A. Porter* and *Edwin R. Schneider*, on behalf of Delaware Broadcasting Co.; *George O. Sutton*, on behalf of WDAD, Inc., and Centre Broadcasters, Inc.; *Robert L. Heald* and *Henry R. Goldstein*, on behalf of Sky-Park Broadcasting Corp.; *Keith E. Putbrese*, on behalf of Miners Broadcasting Service, Inc.; *Keith E. Putbrese* and *Harry G. Sells*, on behalf of Prince William Broadcasting Corp.; *Richard C. O'Hare*, on behalf of Equitable Publishing Co.; *Philip Bergson*, on behalf of WFPG, Inc.; *Norman E. Jorgensen*, on behalf of Raritan Valley Broadcasting Co.; *John P. Castleberry, Jr.*, on behalf of Will-Mont Broadcasting Co.; and *Richard E. Ely*, on behalf of the Chief, Broadcast Bureau, Federal Communications Commission.

INITIAL DECISION OF HEARING EXAMINER THOMAS H. DONAHUE

(Adopted June 9, 1961)

PRELIMINARY STATEMENT

1. The above-captioned applicants are a group of presently licensed class IV stations, all operating on 1450 kc, unlimited time. They are all here seeking to increase power from 250 w to 1000 w, daytime. By order released May 31, 1960 (FCC 60-613), the Commission found all of them legally, technically, and financially qualified to engage in

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the operations proposed, except for matters placed in issue. The issues designated were:

1. To determine the areas and populations which may be expected to gain or lose primary service from the proposed operations of each of the instant applicants, and the availability of other primary service to such areas and populations.

2. To determine the nature and extent of the interference, if any, that each of the instant proposals would cause to and receive from each other and all other existing standard broadcast stations, the areas and populations affected thereby, and the availability of other primary service to the areas and populations affected by interference from any of the instant proposals.

3. To determine whether the instant proposal of station WOL would involve objectionable interference with station WPRW, Manassas, Va.; station WGET, Gettysburg, Pa.; station WFTR, Front Royal, Va.; station WILM, Wilmington, Del.; or any other existing standard broadcast stations, and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other primary service to such areas and populations.

4. To determine whether the instant proposal of station WILM would involve objectionable interference with station WPAM, Pottsville, Pa.; station WOL, Washington, D.C.; station WFPG, Atlantic City, N.J.; WGET, Gettysburg, Pa.; WCTC, New Brunswick, N.J.; BP-11313, Lansdale, Pa.; BP-11934, Lansdale, Pa.; or any other existing standard broadcast stations, and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other primary service to such areas and populations.

5. To determine whether the instant proposal of station WDAD would involve objectionable interference with station WTBO, Cumberland, Md.; station WJPA, Washington, Pa.; station WMAJ, State College, Pa.; or any other existing standard broadcast stations, and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other primary service to such areas and populations.

6. To determine whether the instant proposal of station WMAJ would involve objectionable interference with station WDAD, Indiana, Pa.; station WGET, Gettysburg, Pa.; station WMPT, South Williamsport, Pa.; station WTBO, Cumberland, Md.; or any other existing standard broadcast stations, and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other primary service to such areas and populations.

7. To determine whether the instant proposal of station WFTR would involve objectionable interference with station WOL, Washington, D.C., and station WTBO, Cumberland, Md., or any other existing standard broadcast stations, and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other primary service to such areas and populations.

8. To determine whether the instant proposal of station WPAM would involve objectionable interference with station WMPT, South Williamsport, Pa.; WILM, Wilmington, Del.; and station WGET, Gettysburg, Pa.; or any other existing standard broadcast stations, and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other primary service to such areas and populations.

9. To determine whether the instant proposal of station WTBO would involve objectionable interference with station WJPA, Washington, Pa.; station WDAD, Indiana, Pa.; station WMAJ, State College, Pa.; station WGET, Gettysburg, Pa.; and WFTR, Front Royal, Va.; or any other existing broadcast stations, and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other primary service to such areas and populations.

10. To determine whether the interference received by each instant proposal from any of the other proposals herein and any existing stations would affect more than 10 percent of the population within its normally protected primary service area in contravention of section 3.28(c)(3) of the

Commission rules, and, if so, whether circumstances exist which would warrant a waiver of said section.

11. To determine whether the rooftop antenna system proposed by Washington Broadcasting Co. (BP-12145) is in compliance with section 3.188 (d) of the rules, and, if not, whether circumstances exist which would warrant a waiver of said section.

12. To determine whether the transmitter site proposed by Washington Broadcasting Co. (BP-12145) is satisfactory with particular regard to any conditions that may exist in the vicinity of the antenna system which would distort the proposed antenna radiation pattern.

13. To determine, in the light of section 307 (b) of the Communications Act of 1934, as amended, which of the instant proposals would best provide a fair, efficient, and equitable distribution of radio service.

14. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which, if any, of the instant applications should be granted.

The order of designation not only named all of the applicants as parties to the proceeding with respect to their proposals but also with respect to their existing operations. The following nonapplicant stations were also named parties to the proceeding:

Prince William Broadcasting Corp. (WPRW, Manassas, Va.).

Times & News Publishing Co. (WGET, Gettysburg, Pa.).

WFPG, Inc. (WFPG, Atlantic City, N.J.).

Raritan Valley Broadcasting Co., Inc. (WCTC, New Brunswick, N.J.).

Donald W. Huff (BP-11313, Lansdale, Pa.).¹

Equitable Publishing Co. (BP-11934, Lansdale, Pa.).

Washington Broadcasting Co. (WJPA, Washington, Pa.).

Galen D. Castlebury, Jr., tr/as Will-Mont Broadcasting Co. (WMPT, South Williamsport, Pa.).

The designation order further directed that in the event grant was recommended to Miners or Cumberland, conditions be attached requiring those applicants to take such steps as would be necessary to prevent cross-modulation problems.

2. A prehearing conference was held on July 18, 1960. At that conference, appearances were entered for all of the applicants and for the following respondents: Prince William Broadcasting Corp. (WPRW), Manassas, Va.; Equitable Publishing Co., Lansdale, Pa.; John P. Castleberry, Jr., South Williamsport, Pa., pro se (WMPT). A second prehearing conference was held on November 18, 1960. At that conference appearances were again entered for all of the applicants and for the following respondents: Prince William Broadcasting Corp. (WPRW); WFPG, Inc. (WFPG), Atlantic City, N.J.; and Raritan Valley Broadcasting Co., Inc. (WCTC), New Brunswick, N.J. Hearing was held on December 7, 1960. At the hearing all applicants were represented by counsel. Appearances were entered for the following respondents: WFPG, Inc., and Raritan Valley Broadcasting Co., Inc. (WCTC). The Commission's Broadcast Bureau was represented at all of the proceedings.

¹ Huff and Equitable were mutually exclusive applicants in hearing status at the time of designation. During pendency of this matter, Equitable won grant and call letters WNPV were assigned its station. *Donald W. Huff*, 19 R.R. 644.

3. As a result of considerable prehearing effort by the parties, agreements were effected under which each party's direct presentation was submitted into evidence without objection. Further, cross-examination was waived by the parties on all presentations except that of Delaware Broadcasting Co. (WILM) on whose presentation cross-examination was conducted by counsel for the two respondents WFPG, Inc., and Raritan Valley Broadcasting Co., Inc. (WCTC).

4. Proposed findings were filed by the Broadcast Bureau on January 23, 1961. Reply findings were filed by Miners Broadcasting Service, Inc., on February 9, 1961, and by Raritan Valley Broadcasting Co., Inc., on February 14, 1961.

5. The issues designated are conventional issues usually employed in competitive proceedings. This matter by no means involves the usual competitive situation. In a very real sense the applications are here prosecuted as a class action, with all applicants pressing for grant of all applications. Under such circumstances the Bureau in its proposed findings in general treated the first nine issues as moot except insofar as they directed determination of facts concerning interference affecting WILM, WFPG, and WCTC. Since the first nine issues have not been formally declared moot by the Commission and since the examiner has doubt that the Commission intended them to become moot by reason of the common position of the applicants, he has elected to make findings in response to those issues. In so doing, however, he has made no attempt to cast his findings in the comprehensive terms that would be required were the applicants here in competitive status. Rather, he has attempted to make such findings as are necessary to furnish adequate understanding of the component parts of the quasi-class action here involved.

FINDINGS OF FACT

Service and Interference

Primary service

6. It will be noted that the first issue calls for a determination of the areas and populations that will gain or lose primary service under each of the proposals. Of the seven applicants here involved, only WFTR, Front Royal, Va., made a showing that permits findings under this issue. Section 3.182 of the Commission's rules requires that in order for a signal to constitute primary service to a city having a population of 10,000 or over, it must have a strength of 10-50 mv/m over the business and factory areas, and 2 mv/m or more over residential areas. Where cities or towns having populations of 2,500 to 10,000 are involved, a 2-mv/m-or-greater signal over the entire community is deemed to constitute primary service. For communities having populations of 2,500 or less and for service to rural areas, a

0.5-mv/m-or-greater signal is held to constitute primary service.² WOL, WILM, WDAD, WMAJ, WPAM, and WTBO all serve cities which have populations exceeding 10,000.³ None of these applicants made showings on the location, size, and population of the business and factory areas in those cities. Nor did any of them portray the 10-mv/m contours of their existing or proposed operations. Accordingly, the above-enumerated applicants can only be held to have failed in proof under the first issue.

7. WFTR now furnishes primary service to an area of 366 square miles including a population of 19,700. Under its proposal it will furnish primary service to an area of 506.3 square miles having a population of 23,035. Thus, it follows that WFTR proposes to increase the areas and population to which it furnishes primary service by 140.3 square miles and 3,335 persons.⁴

Interference

WOL

8. At the present time WOL's 0.5-mv/m contour includes an area of 520 square miles and a population of 1,069,057. The record does not disclose the loss its present operation suffers because of objectionable interference.

9. The instant proposal of WOL will involve objectionable interference with WPRW, Manassas, Va.; WFTR, Front Royal, Va.; and WILM, Wilmington, Del. The proposal will not involve interference with WGET, Gettysburg, Pa.⁵

10. By reason of interference from WPRW and the proposed operation of WFTR and WILM, instead of serving an area of 948.63 square miles and a population of 1,190,096 with a 0.5-mv/m-or-greater signal,

² 3.182 Engineering standards of allocation.

"(f) The signals necessary to render primary service to different types of service areas are as follows:

"Area :	<i>Field intensity groundwave¹</i>
"City business or factory areas-----	10 to 50 mv/m.
"City residential areas-----	2 to 10 mv/m.
"Rural—all areas during winter or northern areas dur- ing summer-----	0.1 to 0.5 mv/m.
"Rural—southern areas during summer-----	0.25 to 1.0 mv/m.

"(g) In determining the population of the primary service area, it may be considered that the following signals are satisfactory to overcome manmade noise in towns of the population given.

"Population :	<i>Field intensity groundwave</i>
"Up to 2,500-----	0.5 mv/m.
"2,500 to 10,000-----	2.0 mv/m.
"10,000 and up-----	Values given in par. (f) of this sec- tion."

² According to the 1950 census, populations for the cities in which the applicant stations are located are: Washington, D.C., 802,178; Wilmington, Del., 110,356; Indiana, Pa., 11,743; State College, Pa., 17,227; Front Royal, Va., 8,115; Pottsville, Pa., 23,640; Cumberland, Md., 37,679.

⁴ It might be noted that to all appearances the only reason WFTR's showing meets the burden of proof under the first issue is because it alone of the 7 applicants is not located in a city having a population in excess of 10,000.

⁵ The Commission's decision in *The Monocacy Broadcasting Company*, 19 R.R. 137, released Mar. 29, 1960, granted a construction permit to WGET, authorizing that station to change frequency from 1450 kc to 1320 kc. This action rendered moot any question of interference to WGET by any applicant in this proceeding, all of whom propose to operate on 1450 kc.

the proposed operation of WOL will furnish such service to an area of 299.7 square miles and a population of 1,142,538. There are 10 other stations that furnish 0.5-mv/m-or-greater service to that part of WOL's 0.5-mv/m contour that will not receive 0.5-mv/m-or-greater service from WOL's proposed operation.

11. The proposed operation of WOL will cause interference to WPRW. Because of that interference, instead of furnishing 0.5-mv/m-or-greater service to an area of 555 square miles and a population of 35,254, WPRW will furnish such service to an area of 542.84 square miles and a population of 33,003. There are 10 other stations that furnish 0.5-mv/m-or-greater service to the interference area created by WOL.

12. Were WOL to operate as now licensed and were WFTR and WILM to operate as proposed, due to interference from the latter stations, WOL's 0.5-mv/m-or-greater service would be reduced so that it would span an area of 342.72 square miles and a population of 942,949.

WILM

13. At the present time because of interference from WPAM, Pottsville, Pa., and WFPG, Atlantic City, N.J., instead of serving an area of 867 square miles and a population of 353,279 with a 0.5-mv/m-or-greater signal, WILM thus serves an area of 681 square miles and a population of 321,449.

14. The proposed operation of WILM will involve interference with the proposed operations of WOL, Washington, D.C., and WPAM, and with the present operation of WNPV, Lansdale, Pa.; WCTC, New Brunswick, N.J.; WMVB, Millville, N.J.; and WFPG.

15. By reason of interference from the proposed operations of WOL and WPAM, instead of serving an area of 1,627 square miles and a population of 465,818 with a 0.5-mv/m-or-greater signal, the proposed operation of WILM will furnish such service to an area of 970 square miles and a population of 382,317. Eight stations furnish 0.5-mv/m service to all of the additional area WILM would thus serve. Some 29 other stations serve varying portions of that area.

16. By reason of interference from the proposed operation of WILM, the 0.5-mv/m interference-free contour of WMPV will be reduced from an 847-square-mile area and a population of 184,185 to an 841.4-square-mile area and a population of 183,097. For the same reason WFPG's 0.5-mv/m interference-free contour will be reduced from an area of 404 square miles and a population of 124,661 to an area of 252 square miles and a population of 118,998. WCTC's 0.5-mv/m interference-free contour will be similarly reduced from an area of 603 square miles and a population of 297,914 to a 483-square-mile area and a population of 280,070.

17. There are at least 10 stations that provide a signal of 0.5 mv/m or greater within the area of new interference caused WNPV by the WILM proposal. There are a minimum of 11 and a maximum of 16 stations similarly serving the like interference area of WFPG. A minimum of 12 and a maximum of 22 other stations thus serve the interference area that would be created within WCTC's 0.5-mv/m contour by reason of WILM's proposed operation.

18. Were WILM to operate as now licensed and were WOL and WPAM to operate as proposed, due to interference from the latter stations, WILM's 0.5-mv/m-or-greater service would be reduced so that it would span an area of 549 square miles and a population of 303,010.

WDAD

19. At the present time, because of interference from WJPA, Washington, Pa., and WTBO, Cumberland, Md., instead of serving an area of 441.9 square miles and a population of 45,998 with a 0.5-mv/m-or-greater signal, WDAD thus serves an area of 401.8 square miles and a population of 42,770.

20. The proposed operation of WDAD will involve objectionable interference with WJPA, Washington, Pa., and the proposed operations of WTBO and WMAJ, State College, Pa.

21. By reason of interference from the proposed operations of WMAJ and WTBO, instead of serving an area of 833.8 square miles and a population of 77,928 with a 0.5-mv/m-or-greater signal, the proposed WDAD operation will furnish such service to an area of 523.8 square miles and a population of 47,772. There is at least 1 station and there are as many as 15 stations furnishing 0.5-mv/m-or-greater service to the area that would for the first time receive a 0.5-mv/m-or-greater service from WDAD.

22. By reason of interference from the proposed operation of WDAD, instead of serving an area of 724.2 square miles and a population of 139,833 with a 0.5-mv/m-or-greater signal, WJPA will furnish such service to an area of 559.2 square miles and a population of 110,705. All of the interference area thus created is served with a 0.5-mv/m-or-greater signal from 10 other stations. The proposed operation of WDAD will also cause interference to the proposed operations of WTBO and WMAJ. The impact of that interference is shown in paragraphs 26 and 41 below.

23. Were WDAD to operate as now licensed and were WMAJ and WTBO to operate as proposed, due to interference from the latter stations and from WJPA, WDAD's 0.5-mv/m-or-greater service would be reduced so that it would span an area of 300.8 square miles and a population of 36,581.

WMAJ

24. At the present time, because of interference from WMPT, South Williamsport, Pa., instead of serving an area of 584 square miles and a population of 42,324 with a 0.5-mv/m-or-greater signal, WMAJ thus serves an area of 571.5 square miles and a population of 41,174.

25. The proposed operation of WMAJ will involve interference with the proposed operations of WTBO, Cumberland, Md.; WDAD, Indiana, Pa.; and WMPT, South Williamsport, Pa.

26. By reason of interference from WMPT and the proposed operations of WTBO and WDAD, instead of serving an area of 1,124.8 square miles and a population of 66,668 with a 0.5-mv/m-or-greater signal, the proposed operation of WMAJ will thus serve an area of

858.8 square miles and a population of 53,426. There are a minimum of one and a maximum of seven other stations furnishing 0.5-mv/m-or-greater service to the area that will for the first time receive a 0.5-mv/m-or-greater service from WMAJ.

27. The interference-free 0.5-mv/m contour of WMPT now spans an area of 302 square miles and a population of 78,290. By reason of interference from the proposed operation of WMAJ and another operation here proposed, WPAM, those areas and populations will decline. WMAJ's contribution to that decline amounts to an area of 59.3 square miles and a population of 2,420. There are a minimum of three and a maximum of six other stations serving the area that will be lost to WMPT's 0.5-mv/m service area by reason of the proposed operations of WMAJ and WPAM. The proposed operation of WMAJ will also cause interference to the proposed operations of WTBO and WDAD. The impact of that interference is shown in paragraph 41 below and paragraph 21 above.

28. Were WMAJ to operate as now licensed and were WDAD and WTBO to operate as proposed, due to interference from the latter stations and from WMPT, WMAJ's 0.5-mv/m-or-greater service would be reduced so that it would span an area of 484.1 square miles and a population of 39,696.

WFTR

29. At the present time because of interference from WTBO, instead of serving an area of 394 square miles and a population of 22,427 with a 0.5-mv/m-or-greater signal, WFTR thus serves an area of 366 square miles and a population of 19,700.

30. The proposed operation of WFTR will involve interference with the proposed operations of WTBO, Cumberland, Md., and WOL, Washington, D.C.

31. By reason of interference from the proposed operations of WTBO and WOL, instead of containing an area of 764.5 square miles and a population of 36,612, the proposed 0.5-mv/m interference-free service of the proposed operation of WFTR will span an area of 506.3 square miles and a population of 23,035. In the area that the proposed operation of WFTR would thus lose by reason of interference, there are a minimum of none and a maximum of four other stations furnishing 0.5-mv/m-or-greater service.

32. The proposed operation of WFTR will cause interference to the proposed operations of WOL and WTBO. For the impact of that interference, see paragraph 10 above and paragraph 41 below.

33. Were WFTR to operate as now licensed and were WTBO and WOL to operate as proposed, due to interference from the latter stations, WFTR's 0.5-mv/m-or-greater service would be reduced so that it would span an area of 236.8 square miles and a population of 16,262.

WPAM

34. At the present time because of interference from WILM, instead of serving an area of 383 square miles and a population of 100,200 with a 0.5-mv/m-or-greater signal, WPAM thus serves an area of 372 square miles and a population of 98,890.

35. The proposed operation of WPAM will involve objectionable interference with the present operation of WMPT, South Williamsport, Pa., and the proposed operation of WILM, Wilmington, Del.

36. By reason of interference from the proposed operation of WILM and the present operation of WMPT, instead of serving an area of 740 square miles and a population of 136,200, the proposed operation of WPAM will thus serve an area of 524 square miles and a population of 125,700. There are a minimum of 6 and a maximum of 12 other stations serving the area that would for the first time receive a 0.5-mv/m-or-greater service from WPAM.

37. The proposed operation of WPAM will cause interference to the present operation of WMPT and to the proposed operation of WILM. For the impact of that interference, see paragraphs 15 and 27 above.

38. Were WPAM to operate as now licensed and were WILM to operate as proposed, due to interference from WILM, WPAM's 0.5-mv/m-or-greater service would be reduced so that it would span an area of 273 square miles and a population of 88,710.

WTBO

39. At the present time, because of interference from WDAD, WFTR, and WMAJ, instead of serving an area of 784 square miles and a population of 94,297 with a 0.5-mv/m-or-greater signal, WTBO thus serves an area of 768 square miles and a population of 93,858.

40. The proposed operation of WTBO will involve interference with the proposed operations of WDAD, WFTR, and WMAJ.

41. By reason of interference from the proposed operations of WDAD, WFTR, and WMAJ, instead of containing an area of 1,385 square miles and a population of 113,628, the 0.5-mv/m interference-free service of WTBO's proposed operation will span an area of 904 square miles and a population of 99,261.

42. In the 0.5-mv/m interference-free service area to be gained under WTBO's proposal, there are a minimum of four and a maximum of seven other stations furnishing such service.

43. The proposed operation of WTBO will cause interference to the proposed operations of WDAD, WMAJ, and WFTR. For the impact of that interference, see paragraphs 21, 26, and 31 above.

44. Were WTBO to operate as now licensed and were WDAD, WFTR, and WMAJ to operate as proposed, due to interference from the latter stations, WTBO's 0.5-mv/m-or-greater service would be reduced so that it would span an area of 531 square miles and a population of 85,296.

45. With the exception of licensees of stations WCTC, New Brunswick, N.J., and WFPG, Atlantic City, N.J., all of the licensees of stations to which any of the proposed operations would cause interference, applicants and respondents, have agreed to accept the interference proposed to be caused. Where interference is involved between proposals, the agreements are couched in terms of both parties to the agreement accepting the interference caused by the other.

The 10-Percent Rule (Issue 10)

46. On December 14, 1960, the Commission adopted a report and order, *In the Matter of Amendment of Part 3 of the Commission's Rules and Regulations To Effect Certain Changes Therein With Respect to Interference Received by Class IV Broadcast Stations Seeking To Increase Power to More Than 250 Watts*, 20 R.R. 1661. In that report and order the Commission specifically exempted class IV stations seeking to increase daytime power from 250 w from the thrust of the 10-percent rule embodied in section 3.28(c) (3) of its rules. All of the applicants here qualify for the exemption. Accordingly, issue 10 has been rendered moot.

WOL's Site and Antenna Proposals (Issues 11 and 12)

47. WOL has spent the last 5 years looking for a new antenna site. No space has been located that would conform to the District of Columbia zoning regulations. If WOL were to locate in Virginia or Maryland, it would not place a 25-mv/m signal across the Washington business district nor a 2-mv/m signal over the majority of Washington. Under its proposal, its signal would accomplish those objectives. A zoning map of Washington shows that the WOL proposed 1,000-mv/m contour covers areas designated "Commercial and Light Manufacturing" and "Community Business Center." It would, therefore, appear that the number of persons residing within the total area encompassed by that contour is negligible. WOL estimates that less than 100 persons live there. Rigid building codes in the area of WOL's site minimize the chance of nearby plumbing and wiring creating operational problems. In 7 years on the air, WOL has never had a complaint stemming from a cross-modulation problem and has no reason to believe that such problems would arise under its proposed operation.

48. No building over 110 feet lies within a mile of WOL's site and no building over 55 feet is located within three-fourths of a mile of that site. A number of stations operating with power in excess of 1 kw have nearby structures that are both higher and nearer their site than has WOL. District of Columbia building codes prohibit structures in excess of 130 feet. The majority of large cities have buildings substantially in excess of that height.

49. There are two smokestacks near the WOL tower. These stacks are less than 0.12 wavelength in height. WOL is confident that any "coupling" that might exist would have only a negligible effect on its proposed radiation pattern.

50. Three water tanks are located near WOL's antenna. One, 25 feet high, located on top of a building 60 feet high, is about 390 feet from the WOL antenna. The second, 40 feet high, located on top of a building 80 feet high, is about 800 feet from the WOL antenna. The third, also 40 feet high, located on a building 55 feet high, is about 350 feet from the WOL antenna. The overall height of the first tower is one-twentieth of a wavelength. The height of the second and third is less than one-tenth of a wavelength. WOL does not

believe there are any serious shadowing problems attendant upon its proposal.

CONCLUSIONS

1. Grant of all seven applications would provide a new 0.5-mv/m-or-greater service to a total of 187,151 persons residing in an area of 906.3 square miles.⁶ Further, as the Commission points out in its order amending section 3.28(c) (3) of its rules to permit the type of power increase here sought, the quality of the signal each of the applicant stations would transmit to its entire listening audience would be improved. All save two stations that would be affected by interference from the operations proposed here have agreed to accept such interference. The two stations that have withheld consent are WFPG and WCTC. Reference to paragraph 16 will show that by reason of interference from the proposed operation of WILM, instead of furnishing 0.5-mv/m interference-free service to an area of 404 square miles and a population of 124,661, WFPG will furnish such service to an area of 252 square miles and a population of 118,998. Instead of WCTC furnishing such service to an area of 603 square miles and a population of 297,914, for the same reason, that station will furnish such service to an area of 483 square miles and a population of 280,070. While it is apparent that the impact of interference from WILM on WFPG and WCTC is by no means inconsequential, it is also clear from the face of the figures that it is in no sense so extensive as to threaten viability. Further, it must be remembered that not only will WILM expand its 0.5-mv/m-or-greater service into an area of 289 square miles having a population of 60,868 (see pars. 13 and 15 above) but, as previously noted, it will also considerably improve the quality of the signal received by its present listeners. Not to be overlooked is the further consideration that were WILM's application to be denied, instead of furnishing 0.5-mv/m interference-free signal to an area of 681 square miles and a population of 321,449, by reason of interference from WOL and WPAM, WILM would furnish such service to an area of 549 square miles having a population of 303,010. WILM's agreement to accept interference from WOL and WPAM is conditional upon grant of its application. Should its application be denied, it is conceivable that WILM's consent to the receipt of interference would be withdrawn, thereby threatening the inauguration of a chain of similar withdrawals of consent. To say the least, this would cast a shadow over the entire horizontal increase in power contemplated by the applications here at hand. The creation of such a problem is one to be avoided if possible. In sum, while it is regrettable that WFPG and WCTC are to be hurt by grant of WILM's application, it is clear

⁶ This figure includes figures representing the difference between the areas and populations within the present 0.5-mv/m contour of WOL and the areas and populations within its proposed interference-free contour. As noted in par. 8, WOL made no showing on its present 0.5-mv/m interference-free service. The inclusion of the WOL figures in the cumulative totals, of course, renders those figures slightly inaccurate insofar as they purport to speak in terms of new 0.5-mv/m service. The cumulative totals, however, are intended only to show that one of the benefits that would flow from grant of all of the applications would be the gain of new service by substantial areas and populations. Considering the very general nature of the point the totals support, any such inaccuracy as is here identified must surely be regarded as de minimis.

that their injury is impelled by substantial public-interest considerations.

2. Interference to WFPG and WCTC by no means constitutes all of the considerations militating against grant of the subject applications. For a failure of proof to be condoned is no service to orderly procedures. (See par. 6 above.) The creation or perpetuation of a "white area" certainly lends no aid to applicant's cause. (See par. 31.) What the examiner understands to be an expansion of areas where listeners turning to 1450 kc will receive an unlistenable signal due to interference also appears singularly at odds with the public-interest standard. However, when consideration is given to the improvement of 1450-kc coverage these applications promise, on balance, it would appear that the public good that will flow from the expansion of service contemplated by the applications here at issue outweighs the harm that will flow from their grant. Thus conclusion favorable to the applicants is reached under the first nine issues.

3. Section 3.188(d) of the Commission's rules contains a flat prohibition against rooftop antennas being utilized by stations broadcasting with power in excess of 500 w. WOL proposes to utilize its present rooftop antenna. However, WOL appears to be unable to locate another site and believes it can operate sans modulation problems. Because of these considerations and because WOL is an integral part of the horizontal power increase which, in essence, is here being prosecuted jointly by the seven applicants, it is concluded in response to issue 11 that a waiver of the requirements of section 3.188 (d) as it applies to WOL is appropriate.

4. In response to issue 12, it can only be concluded that WOL has met its burden of proof under that issue (see pars. 48-50) and that there is no evidence of record to controvert the opinion of its expert that its antenna site is satisfactory insofar as distortion of radiation pattern is concerned.

5. Since grant of all seven applications will be here recommended, issue 13 is deemed moot.

Accordingly, *It is ordered*, This 9th day of June 1961, that unless an appeal to the Commission from this initial decision is taken by any of the parties, or the Commission reviews the initial decision on its own motion in accordance with the provisions of section 1.153 of the rules, the applications of Washington Broadcasting Co. (WOL), Washington, D.C.; Delaware Broadcasting Co. (WILM), Wilmington, Del.; WDAD, Inc. (WDAD), Indiana, Pa.; Centre Broadcasters, Inc. (WMAJ), State College, Pa.; Sky-Park Broadcasting Corp. (WFTR), Front Royal, Va.; Miners Broadcasting Service, Inc. (WPAM), Pottsville, Pa.; and Cumberland Valley Broadcasting Corp. (WTBO), Cumberland, Md., for construction permits to increase the daytime operating power of their stations from 250 w to 1 kw, *Are granted*; *And it is further ordered*, That grant to Miners Broadcasting Service, Inc. (WPAM), shall contain the following condition:

The permittee shall take appropriate steps that may be necessary to prevent cross-modulation or reradiation with the present

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operation of station WPPA, Pottsville, Pa., and shall cooperate with said station in eliminating any problems that may occur in the event of a grant of application, file No. BP-13265, which proposes a daytime power increase for station WPPA;

and that the grant to Cumberland Valley Broadcasting Corp. shall contain the following condition:

The permittee shall take appropriate steps that may be necessary to prevent cross-modulation or reradiation with the present operation of station WCUM and shall cooperate with WCUM to eliminate any additional interaction problems that may occur in the event of a grant of application of file No. BP-13357 which proposes a daytime power increase for WCUM.

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JAMES E. WALLEY ET AL., DOCKETS NOS. 12651 AND 12821:

Initial decision (1) granting application of James E. Walley for a construction permit for a new standard broadcast station to operate on 1340 kc, 250 w, U, at Oroville, Calif.; and (2) denying mutually exclusive application of Gene V. Mitchell and Robert T. McVay, d/b as SanVal Broadcasters, for the same facilities; made effective.

Section 1.154(a) of the rules.—Procedural sufficiency of exceptions.

Section 3.37 of rules.—Minimum separation between stations.

Standard comparative issue.—Significant differences between the applicants on comparative basis.

Good faith in filing application.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON 25, D.C.

In re Applications of
JAMES E. WALLEY, OROVILLE, CALIF.

GENE V. MITCHELL AND ROBERT T. McVAY,
D/B AS SANVAL BROADCASTERS,
OROVILLE, CALIF.

For Construction Permits for Standard
Broadcast Stations

Docket No. 12651
File No. BP-11655
Docket No. 12821
File No. BP-12381

MEMORANDUM OPINION AND ORDER

(Adopted February 28, 1962)

BY THE COMMISSION.

1. The initial decision of Hearing Examiner Elizabeth C. Smith was released herein on October 17, 1961 (FCC 61D-155; Mimeo No. 11142). Subsequently, and pursuant to petition of SanVal Broadcasters, a Commission order extended the time for the filing of exceptions to the initial decision to November 24, 1961 (FCC 61M-1827; Mimeo No. 13181).

2. On November 22, 1961, there was filed with the Commission a document entitled "Comments of SanVal Broadcasters." Therein, SanVal describes its document as "comments in lieu of exceptions," and states that while it "respectfully disagrees" with the examiner's ultimate conclusion preferring James E. Walley to SanVal, it is not taking "further procedural steps" or filing "formal exceptions." In its document, SanVal goes on to challenge as "erroneous, inaccurate" and "not supported by the record" conclusions by the examiner as to the past broadcast records of a radio station formerly licensed to SanVal, and one presently licensed to one of the SanVal partners. In a reply of December 4, 1961, Walley interprets SanVal's comments as a suggestion that the conclusions involved be deleted, and states

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that he has no objection to such deletion, provided there is "only a reasonable delay" in the grant to him becoming final.

3. Quarreling as they do with the examiner's conclusions, SanVal's comments can only be regarded as exceptions to the initial decision within the meaning of section 1.153 of the Commission's rules. SanVal has not challenged the accuracy of the findings upon which the conclusions in question are based, and has offered no transcript or other record references by which such findings of fact or resultant conclusions can be tested. Accordingly, they must be considered as so lacking in the particularity required by section 1.154(a) of the Commission's rules as to dictate their outright denial. We recognize that Walley has not opposed deletion of the conclusions involved; however, the Commission is not disposed to strike from the initial decision conclusions going to such important matters on the bare agreement of the applicants in the proceeding.

Accordingly, *It is ordered*, This 28th day of February 1962, that the initial decision herein, released October 17, 1961, *Is made effective*; that the application of Gene V. Mitchell and Robert T. McVay, d/b as SanVal Broadcasters, for a construction permit for a new standard broadcast station to be operated unlimited time on the frequency 1340 kc, with a power of 250 w, at Oroville, Calif., *Is denied*; and that the mutually exclusive application of James E. Walley, for the same facilities, *Is granted*, subject to the following condition:

Permittee shall accept such interference as may be imposed by existing 250 w class IV stations in the event they are subsequently authorized to increase power to 1,000 w.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON 25, D.C.

In re Applications of
JAMES E. WALLEY, OROVILLE, CALIF. }

GENE V. MITCHELL AND ROBERT T. MCVAY,
D/B AS SANVAL BROADCASTERS, OROVILLE,
CALIF. }

For Construction Permits for Standard
Broadcast Stations }

Docket No. 12651
File No. BP-11655
Docket No. 12821
File No. BP-12381

APPEARANCES

Robert M. Booth, Jr., on behalf of James E. Walley; *Richard Hildreth*, *Frank U. Fletcher*, *Lester W. Spillane* (on depositions only), and *Kenneth H. Bates* (on depositions only), on behalf of SanVal Broadcasters; and *Richard E. Ely*, *Robert J. Rawson* and *Robert B. Jacobi*, on behalf of the Broadcast Bureau.

INITIAL DECISION OF HEARING EXAMINER ELIZABETH C. SMITH

(Adopted October 6, 1961)

PRELIMINARY STATEMENT

1. This proceeding now involves the above applications. The proceeding has had a long and somewhat tortuous path. The application of Walley was first designated for hearing in November 1958, with the application of the licensee of station KMOR for renewal of license. Thereafter, in April 1959, the application of SanVal Broadcasters, as well as those of the licensees of station KATO, Reno, Nev., and station KSRO, Santa Rosa, Calif., for changes in facilities, was added to the consolidated proceeding. Subsequently, in November 1959, the applications of the licensees of station KDOL, Mojave; station KIST, Santa Barbara; station KATY, San Luis Obispo; station KOMY, Watsonville; and station KMAK, Fresno, Calif., for change in the facilities of such stations, were added to the proceeding. Finally, the application for renewal of license of station KCRA, Inc., Sacramento, was designated for hearing in this proceeding in May 1960. Subsequently, the other applications were severed, removed from hearing and granted, or dismissed.¹ The

¹ The applications of the licensees of KSRO (docket 12820), KIST (docket 13281), KATY (docket 13282), KOMY (docket 13283), and KMAK (docket 13284) were severed into a separate proceeding by memorandum opinion and order dated Sept. 28, 1960. A decision granting the five applications was released July 10, 1961. The application of KBET (docket 12819) was removed from hearing and granted by the Commission by memorandum opinion and order dated Jan. 11, 1961, subject to the condition that it accept

applications of James E. Walley and SanVal Broadcasters, each requesting a construction permit for a new standard broadcast station to operate on 1340 kc with a power of 250 w at Oroville, Calif., are mutually exclusive. The Walley application was originally designated for hearing with the application of Oroville Broadcasters for renewal of license of station KMOR then at Oroville, Calif. Thereafter, the application for renewal of license of station KMOR was dismissed for failure to prosecute. In the meantime, the application of SanVal Broadcasters was designated for hearing in the consolidated proceeding. At the time of designation for hearing, the Commission found Walley and SanVal to be legally, technically, financially, and otherwise qualified to construct and operate their respectively proposed stations, except as to those matters raised by specific issues. The issues pertinent, in whole or in part, to the above applications are as follows:

- (1) To determine the areas and populations which would receive primary service from James E. Walley and SanVal Broadcasters, and the availability of other primary service to such areas and populations.
- (3) To determine the nature and extent of the interference, if any, that each of the instant proposals would cause to and receive from each other and all other existing standard broadcast stations, the areas and populations affected thereby, and the availability of other primary service to such areas and populations involved in the areas of interference between the proposals.
- (4) To determine whether the following proposals would involve objectionable interference with the existing stations indicated below, or any other existing standard broadcast stations, and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other primary service to such areas and populations.

Proposals

BP-11655-----

BP-12381-----

Existing stations

KBET,¹ Reno, Nev.
 KCRA, Sacramento, Calif.
 KBET, Reno, Nev.
 KCRA, Sacramento, Calif.

¹ Formerly KATO.

- (5) To determine whether the interference received from any of the other proposals herein, * * *, and any existing stations would affect more than 10 percent of the population within the normally protected primary service area of any one of the instant proposals in contravention of section 3.28(c) (3) of the Commission rules, and, if so, whether circumstances exist which would warrant a waiver of said section.
- (7) To determine whether the application of James E. Walley was filed in good faith or whether said application was filed for the purpose of hindering and obstructing a grant of the application (file No. BR-1926) for a renewal of the license of station KMOR or the assignment of said license.
- (12) To determine whether the 2-mv/m contour of station KCRA and the 25-mv/m contours of the proposed Oroville stations overlap.
- (14) To determine whether, in the event overlap as indicated is found to exist, * * * a waiver of section 3.37 should be granted * * * the Oroville applicants.
- (15) To determine, on a comparative basis, * * * which of the two proposals of James E. Walley and SanVal Broadcasters would better serve

such interference as may be imposed by the station proposed by either of the instant Oroville applications. The renewal application of KCRA (docket 13482) was severed from this proceeding, by order dated Apr. 28, 1961, and a decision issued granting the renewal of the station license, subject to the condition that it accept such interference as may result to it from a grant of either the application of James E. Walley or that of SanVal Broadcasters, is now final.

the public interest, convenience, and necessity in the light of the evidence adduced under the issues herein and the record made with respect to the significant differences between the two applications as to—

(a) The background and experience of each having a bearing on the applicant's ability to own and operate the proposed station.

(b) The proposals of each of the instant applicants with respect to the management and operation of the proposed station.

(c) The programing service proposed in each of the instant applications.

(16) To determine, in the light of the evidence adduced pursuant to the foregoing issues, which, if any, of the instant applications should be granted.

Prehearing conferences in this proceeding were held on July 17, 1959; December 22, 1959; February 17, 1960; May 16, 1960; June 3, 1960; September 6, 1960; and November 23, 1960. Hearing sessions were held on March 15-18, 1960; March 21, 1960; September 27, 1960; October 10, 12, 14, 1960; and November 29-30, 1960.² The record was closed on November 30, 1960. Proposed findings of fact and conclusions of law have been filed on all issues by both applicants. The Broadcast Bureau filed proposed findings and conclusions on all issues except the comparative issue. Replies to the proposed findings and conclusions also have been filed by the applicants.

FINDINGS OF FACT

Community Involved

2. Oroville, Calif., the city in which Walley and SanVal each seek to establish a new class IV standard broadcast facility to operate, unlimited time, on 1340 kc with a power of 250 w, had a population of 5,387 persons according to the 1950 U.S. census.³ Oroville, the county seat of Butte County, is situated about 61 miles in a northerly direction from Sacramento, Calif. It is not included in an urbanized area by any agency of the U.S. Government, or otherwise. There is presently no standard broadcast station authorized in Oroville. Consequently, a grant of either the Walley or SanVal application would permit the establishment of a first transmission facility in that community.

Engineering Considerations

3. SanVal's proposed transmitter site is in the city of Oroville.⁴ The transmitter site proposed by Walley is outside the city and 2.2 miles west of the SanVal site.

Coverage

4. Based upon the ground conductivity in the Oroville area shown in figure M-3 of the rules, each of the proposed stations would provide coverage as shown below:

² Also, depositions were taken in San Francisco on Aug. 16, in Oroville on Aug. 18 and 19, and in Bakersfield, Calif., on Oct. 31, 1960.

³ The 1960 U.S. census shows the city has grown to 6,115 persons. All population data herein relating to station coverage and interference reflect the 1950 U.S. census.

⁴ SanVal seeks the same facilities and proposes to employ the same site and physical equipment, including antenna, which were previously licensed to KMOR in Oroville.

Contour (mv/m)	Walley		SanVal	
	Population	Area (sq. miles)	Population	Area (sq. miles)
<i>Nighttime</i>				
9.34 (interference free)-----	8, 678	135	8, 602	139. 7
<i>Daytime</i>				
2.0-----	28, 100	810	28, 190	823
0.5 (normally protected)-----	69, 500	3, 450	76, 340	3, 432
Interference ¹ -----	918 (1. 3%)	63 (1. 8%)	991 (1. 3%)	108 (3. 1%)
0.5 (interference free)-----	68, 582	3, 387	75, 349	3, 324

¹ Percentages are related to population and area within proposed normally protected primary service area.

The interference received by Walley and SanVal, as shown in the table above, reflects the combined interference from the *proposals* of KOMY, Watsonville, Calif. (docket 13283), to increase daytime operating power on the cochannel frequency of 1340 kc from 250 w to 1 kw, and KSRO, Santa Rosa, Calif. (docket 12820), to increase daytime power on the adjacent-channel frequency of 1350 kc from 1 kw to 5 kw.⁵

5. The rural areas wherein each of the Oroville stations would furnish a new primary service during daytime hours now receive primary service (0.5 mv/m or greater) from each of 10 stations in its entirety, with numerous other stations providing such service to portions of the area. Oroville receives primary service (2 mv/m or greater) daytime from at least seven stations. All of the proposed nighttime service area, including the city of Oroville, receives primary service from stations KNBC and KGO in San Francisco and station KFBK in Sacramento.

Interference

6. Either of the Oroville proposals would cause adjacent-channel interference only to station KCRA, Sacramento, Calif., and cochannel interference only to station KBET, Reno, Nev. KBET, a class IV station, was recently authorized to increase daytime power on 1340 kc from 250 w to 1 kw subject to acceptance of such interference as may result from a grant of either of the stations proposed at Oroville (memorandum opinion and order, FCC 61-43, released January 16, 1961). In view of this Commission action, the matter of interference to KBET is no longer of importance in this proceeding. In the case of KCRA, the resulting interference (two channels removed) would develop in a limited area around each of the proposed transmitter sites and about 60 miles from KCRA. The maximum interference, calculated by SanVal, would affect 192 persons residing in an area of 39.3 square miles.⁶ Other service is provided in this proposed interference area by each of 17 stations.

⁵ Inasmuch as both proposed KOMY and proposed KSRO were originally consolidated in this proceeding but subsequently severed, the interference that each would cause an Oroville station is set out here as though each were an existing station. (Decision of Commission granting application of KOMY and KSRO was released July 10, 1961.)

⁶ Walley calculated the proposed interference would develop in an area of 11.3 square miles, affecting 274 persons. In view of the small separation between the Walley and

Overlap of 2- and 25-mv/m contours

7. Oroville is located about 61 miles north of the KCRA transmitter site. Field strength measurements taken on the signal of KCRA⁷ during March 9 and 12, 1959, were submitted on behalf of the Sacramento station. These measurements were made along a radial bearing true north from the KCRA transmitter, terminating at a distance of 64.2 miles after passing through the city of Oroville. Measurements, appropriately spaced, were taken at a total of 58 locations, including 2 (points 54 and 55) in Oroville slightly off the radial (less than 1 mile). The number of measurements taken on the radial and their spacing along the radial are in close conformance with the specifications of section 3.186(a) (1) of the rules.⁸ From 0.65 mile to 2 miles there are a total of 14 measurements spaced at 0.1-mile intervals, from 2 to 6 miles there are 12 measurements spaced at intervals varying from 0.1 to 0.6 mile, and from 6 to 20 miles there are 8 measurements spaced at intervals from 1 to 2.4 miles. Beyond 20 miles a total of 22 measurements are variously spaced from 1.1 to 4 miles, with the majority falling between 1.5 to 2.5 miles. On the basis of his analysis of these measurements, KCRA's expert engineering witness established the station's inverse distance field at 1 mile as 500 mv/m. Also on this radial the witness placed the 2-mv/m contour at a distance between 61 and 61.5 miles from the KCRA transmitter site. The tabulated measurement data and the graphical plot of the data disclose that every measurement on the radial out to a distance of 61.2 miles is in excess of 2 mv/m. Since the KCRA 2-mv/m contour lies at a distance of at least 61 miles from the KCRA transmitter site on a true north bearing, such contour would overlap the 25-mv/m contour of either station proposed at Oroville, inasmuch as the respective 25-mv/m contours intersect the radial at distances less than 61 miles from the KCRA transmitter.

8. Field strength measurements on KCRA were also submitted on behalf of Walley. These measurements were made principally on a purported true north radial, with additional measurements on two stub radials at bearings of 352° and 358° true. The several measurements which are supposed to constitute the 352° and 358° stud radials do not actually fall along true radials from KCRA. The necessity of taking measurements exactly on a radial line, especially where directional operation is involved and more particularly where the radiated

SanVal transmitter sites, the interference that each would cause to KCRA should be substantially the same in area. The interference resulting in either case is considered minimal and not significant to the ultimate decision in this proceeding. Moreover, KCRA's renewal application has now been granted subject to acceptance of such interference as would result from a grant of either of these Oroville applications.

⁷At the time of the hearing, the Walley and SanVal applications for stations at Oroville, Calif., and the KCRA renewal application were part of the same proceeding. As hereinabove indicated, the KCRA application was severed from the Oroville applications by order dated Apr. 28, 1961. Decision in which the KCRA renewal application was granted became final on June 30, 1961.

⁸In pertinent part, sec. 3.186(a) (1) reads as follows:

"(1) Beginning as near to the antenna as possible without including the induction field and to provide for the fact that a broadcast antenna not being a point source of radiation (not less than 1 wavelength or 5 times the vertical height in the case of a single element, i.e., nondirectional antenna or 10 times the spacing between the elements of a directional antenna), measurements shall be made on 8 or more radials, at intervals of approximately one-tenth mile up to 2 miles from the antenna, at intervals of approximately one-half mile from 2 miles to 6 miles from the antenna, at intervals of approximately 2 miles from 6 miles to 15 or 20 miles from the antenna, and a few additional measurements if needed at greater distances from the antenna."

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fields are changing rapidly as here with changes in azimuth bearing, is self-evident. In any event, the significant radial here is the one on the true north bearing from KCRA. When compared to the requirements of the rules, the actual number of Walley measurements on the true north radial fall short of the acceptable criteria which would render them probative in the circumstances of this proceeding. There are only two measurements on the exact radial within 2 miles⁹ of KCRA; whereas section 3.186 of the rules would contemplate as many as 15 measurements. From 2 to 6 miles there are only four measurements on the radial—the rules look for some eight measurements at ½-mile intervals. Between 6 miles and 15 miles there is only one measurement on the true north radial; whereas the rules indicate measurements at approximately 2-mile intervals. In all, for a distance of 62 miles, a total of only 10 measurements lie on the radial and only 1 of such measurement locations (point 61) lies anywhere near the vicinity of Oroville. In view of their greater reliability, the placement of KCRA's 2-mv/m contour in this decision is based upon the measurements made by KCRA.¹⁰

9. Upon consideration of all of the measurements in evidence in this proceeding, Stuart L. Bailey,¹¹ the expert witness testifying on behalf of KCRA, expressed the opinion that in some area not clearly defined, the 2-mv/m contour of KCRA would overlap the 25-mv/m contour of either of the proposed Oroville stations, but that such area of overlap was impossible of finite delineation because measurements in an area like that around Oroville depart from a smooth curve, and in such a situation the definition of a contour becomes difficult.

10. He further expressed the opinion that notwithstanding the overlap of the KCRA 2-mv/m contour and the proposed 25-mv/m contours of either of the proposed Oroville stations, no interference to KCRA from either proposed operation or to either of the proposed operations from KCRA will result from the nonselectivity of radio receivers; that such interference as will result between KCRA and the proposed operations is defined by the 30-to-1 ratio prescribed by the rules of the Commission.

11. Moreover, according to the expert testimony of Mr. Bailey, the order of magnitude of the fields involved in the instant allocation problem is such that no interference of the kind described as external cross-modulation may be expected. He further testified that to his

⁹ Eighteen measurements were made, but only two were on the true north radial. The other 16 were taken along a canal and were off radial from 2° to 16°.

¹⁰ The expert engineering witness for KCRA testified that even if the Walley measurements are used, the 2-mv/m contour would fall at a distance between 59.5 and 60 miles. Since the critical distance is exceeded, there would be overlap of the KCRA 2-mv/m contour with the 25-mv/m contour of either proposed station at Oroville.

¹¹ Mr. Bailey has had considerable experience in the field of radio engineering. He received bachelor of science and master of science degrees in electrical engineering from the University of Minnesota. He has represented broadcast stations before the Federal Communications Commission for many years. He has been a member of the Executive Council of the Central Radiation Propagation Group of the Bureau of Standards, and is presently a member of the Advisory Committee on radio wave propagation of the National Academy of Sciences. He, also, is a member of the U.S. National Committee for the International Scientific Radio Union, and has attended general assemblies of this group for the United States. Mr. Bailey was a member of the Radio Technical Planning Board and the Federal Communications Commission's Industry ad hoc Committee on television allocations, and is a fellow, past treasurer and past national president of the Institute of Radio Engineers, and a member of the Radio Wave Propagation Committee of that organization.

knowledge there has never been an observation of this type of interference with field intensities of the level here involved.

12. Likewise, Mr. Bailey expressed the expert opinion that the order of magnitude of the fields here involved is such that no interference between KCRA and either of the proposed Oroville stations will result from internal cross-modulation within the transmitters of the stations concerned.

13. Section 3.37 of the rules and regulations of the Commission provides that a license will not be granted for a station "on a frequency ± 20 kc or ± 10 kc from the frequency of another station if the area enclosed by the 25-mv/m groundwave contour of either one overlaps the area enclosed by the 2-mv/m groundwave contour of the other." Mr. Bailey stated the expert opinion that, under the circumstances of this case, the requirements of the rule may be relaxed for a frequency separation of 20 kc and the same grade of service recognized for 10 kc separation still provided.

APPLICANTS

Walley

14. *James E. Walley*, who was born in 1923, was graduated from high school in Norwalk, Calif., in 1941. He is now a resident of Yuba City, Calif. After graduation from high school, he worked at small jobs before being employed by an aircraft company in Long Beach, Calif., as an apprentice mechanic, where he remained until after World War II as an experimental aircraft mechanic. Subsequently, Mr. Walley attended a trade school in Los Angeles, studying code and advanced radio theory. After completing the course of instruction in this school, he went to sea as a radio operator for 2 years. Walley's first position in the broadcast industry was with station KULA, Honolulu, Hawaii, where he worked for approximately 1 year. He then returned to the mainland of the United States and worked as an operator-technician at television station WOC-TV, Davenport, Iowa, for 5 or 6 months while awaiting an opening at station KECA-TV. He was next employed at television station KECA-TV in Los Angeles for about a year. Following this, Walley worked with a consulting engineer in Los Angeles, on such projects as station KBIG on Catalina Island and the construction of the new building and facilities of CBS-TV, Hollywood. His next employment was with AM station KLAC, Los Angeles, Calif., where he was an engineer-technician. In the summer of 1953, while on a vacation through northern California, Walley accepted a position as manager and chief engineer of station KAGR, Yuba City, Calif. He assisted in the construction of station KAGR and has served as its manager and chief engineer continuously since 1953, except for a 6-month period in 1954 when the station was sold. During that period, he continued as chief engineer.

(a) In 1955, Walley organized a business to service and maintain two-way mobile radio communication equipment and systems in the Yuba City-Marysville-Oroville¹² area. Since then he has devoted time outside his normal employment at station KAGR to such mobile

¹² Yuba City and Marysville, separated only by a river, are considered "twin cities." They are located about 25 airline-miles south of Oroville.

communications business. He operates this business from his home, with three part-time employees, and renders service to customers over an area of 45 to 50 miles, including some in Oroville. He also upon occasion did emergency repair work on the technical facilities of station KMOR in Oroville.

(b) Walley holds advanced amateur, first-class radiotelephone, and first-class radiotelegraph operator's licenses.

(c) He is a member of the chamber of commerce, a director of the Commercial Club, and an "absentee" member of the Kiwanis Club of Yuba City; and, in connection with his duties as manager of station KAGR, has been active in fund-raising drives for many civic and welfare organizations and has acted as master of ceremonies for shows and activities for such organizations as the March of Dimes and the Red Cross.

(d) In the event his application is granted, Walley will resign his position with station KAGR and move to Oroville before the station begins operation. He plans to construct the station and install the equipment, and to devote full time to his proposed station as manager and chief engineer. He also plans to continue the operation of the mobile communication service in a manner which would not interfere with his operation of the proposed Oroville station.

SanVal Broadcasters

15. SanVal Broadcasters is a partnership composed of two equal partners, Gene V. Mitchell and Robert T. McVay.

16. *Gene V. Mitchell*, who was born in 1908, was graduated from high school in Eugene, Oreg., in 1926. He is now a resident of Merced, Calif. The year following high school graduation he spent at sea as an apprentice seaman. He then moved to San Francisco, Calif., where he worked as a salesclerk. In 1929, Mitchell moved to Merced, Calif., and entered into a partnership with his brother-in-law in a laundry business, an interest he has retained to date and a business in which he is active. This business has grown from a 2-employee operation to its present staff of 58, and has branched into drycleaning, linen and industrial supply. In 1940-42, Mitchell was one of the developers of a housing subdivision which built and sold houses. The following 2 years were spent in the Air Corps, from which he was honorably discharged in 1944. Whereupon, he returned to the operation of the Merced Laundry and a dairy and cattle ranch. The ranch was sold in 1958. After the sale of station KGEN, Mitchell purchased a group of properties known as the Boloyne Estate, which operates a group of 22 apartments and duplexes. He also is interested in and supervises a 20-acre subdivision known as the Country Club Tract, which is in the process of development.

(a) In 1956, Mr. Mitchell entered into a partnership with Robert T. McVay (SanVal Broadcasters) which applied for and was granted a construction permit for an AM station in Tulare, Calif. (KGEN). Mitchell was active in obtaining the land and leases for the studio and antenna sites for the Tulare station. He also made trips to Tulare to confer with his partner as to the operation of station KGEN, assisted in formulating station policy, made contacts with local businessmen,

helped in obtaining sales contracts, and had direct control of all financial activities of the company. He did not, however, actively participate in the operation of the station on a day-to-day basis. The station was sold in July 1958, after less than 2 years of operation by the partnership.

(b) Mitchell's present civic, social, and fraternal organizations include membership in chambers of commerce, Elks Club, Merced Golf and Country Club, Monterey Peninsula Country Club, and laundry and drycleaning trade associations on a State and National level. In the past, he participated in drives for Boy Scouts, Red Cross, United Givers, and the local chamber of commerce, but no such activity was shown to have taken place after 1957.

17. *Robert T. McVay*, who now resides in King City, Calif., was born in 1927, and graduated from high school and college in Los Angeles, Calif. His career in radio began in 1951 as a staff announcer at station KFJI, Klamath Falls, Oreg. Subsequently, he became sports director, farm director, and program director (1952), commercial manager, and, in the absence of the news director, interim news director (1953). In 1954, McVay resigned from the staff of station KFJI to become assistant manager and sports director at station KSDA,¹³ Redding, Calif., where he was employed until early 1955, when he resigned to become a salesman and the sports director at station KYOS, Merced, Calif. In 1956, McVay joined Gene V. Mitchell to form the partnership of SanVal Broadcasters, which was granted a construction permit for an AM station in Tulare, Calif. (KGEN). On November 16, 1956, he resigned from station KYOS to begin his duties as coowner and general manager of station KGEN. On July 31, 1958, the license of KGEN was assigned to McMahan's R Street Corp. Thereafter, McVay went to work as general manager of station KWG, Stockton, Calif. In September 1959, he resigned from station KWG and became sole owner and general manager of station KRKC in King City, Calif., where he has remained to date.

(a) He is a member of the Elks Club, Lions Club, chamber of commerce, Merchants Committee, and the church of his choice in King City. He has been a member of the Elks and Lions Clubs and of the chamber of commerce or junior chamber of commerce in each of the cities in which he has lived since 1951. In Tulare, he was city chairman of a Cancer Crusade and was also active in promoting local youth and sports activities.

(b) In the event the SanVal application is granted, McVay will move to Oroville and manage the station. He has already selected a manager for station KRKC in King City, who will be charged with the day-to-day operation of that station.

Ownership of Media of Mass Communication

Walley

18. James E. Walley has never had an ownership interest in any radiobroadcast facilities, or other media of mass communication.

¹³ While McVay was employed by KSDA at Redding, he had a small interest in the station. A considerable length of time after he left its employ, the station went bankrupt and his ownership interest was extinguished in the bankruptcy proceeding.

SanVal

19. The applicant partnership presently owns no radiobroadcast facilities, or other media of mass communication. However, McVay, a 50-percent partner in the instant application and the proposed general manager of the station contemplated, is the sole owner of station KRKC in King City, Calif. The partnership applicant herein was also, as already indicated, formerly the licensee of station KGEN in Tulare, Calif.

*Past Broadcast Record**Walley*

20. While Walley has been engaged in radiobroadcasting work for many years, a substantial portion of the time as manager and chief engineer of station KAGR in nearby Yuba City, Calif., it has been in the capacity of an employee with no ownership interest, and thus he has no past record of broadcast station operation.

SanVal

21. The partnership applicant herein (SanVal Broadcasters) built station KGEN in Tulare, Calif., and operated it from the commencement of program tests in January 1957 through July 1958, when it was sold. In addition, McVay, individually, has owned and operated station KRKC, King City, Calif., since September 1959. McVay testified as to the operation of both stations. The programing record of promise versus performance of SanVal in connection with station KGEN at Tulare and that of McVay with respect to station KRKC were explored at some length in the record in this proceeding.

Station KGEN

22. During the operation of station KGEN by the partnership, McVay resided in Tulare. Mitchell, the other partner, continued to reside in Merced, Calif., making trips at intervals to Tulare. In the beginning, Mitchell was listed as general manager, with McVay as station manager, and later on McVay became general manager.

23. The proposed program schedule for station KGEN, which was prepared by McVay, was, according to his testimony, based on his experience in radio in other areas and "what I thought would be an adequate program schedule for Tulare." Prior to the filing of the KGEN application, McVay had been in Tulare in connection with the application three or four times, mostly, however, in connection with the location of a transmitter site. He made no survey to determine the needs of the community, but did attend a Lions Club meeting in Tulare and talked to the club members and two or three other people. Station KGEN is a daytime-only station, and McVay gave as the reason for failure to carry several of the proposed programs the fact that the station, as a daytime-only station, could not present its full schedule of programs for several months in the year. The reason given for failure to carry other proposed programs was lack of cooperation from proposed participants. The record does not show that agreement for such participation was sought in advance of proposing the programs in question. Likewise, it was known at the time the proposed program

schedule was prepared that the station would operate as a daytime-only station.

24. Station KGEN was sold as the result of the partnership being approached by a media broker with an offer for the station and "the feeling" on the part of the partnership that the assignee could provide as good a service, or better, with the station than SanVal was providing. Furthermore, Gene V. Mitchell who, under the SanVal partnership agreement in effect at that time, controlled the financial policy, needed money for other purposes.

25. Although McVay testified that the "majority" of the programs listed in the proposed program schedule of the application for construction permit were broadcast, a comparison of the percentage analysis in the proposed typical week set forth in the application for construction permit with that of the composite week shown in the assignment applications shows substantial differences¹⁴ percentagewise, including a total absence in some important categories. The percentage analysis, as to type, of the proposed program schedule attached to the application for construction permit for station KGEN and that for the composite week included in the application for assignment of license dated in July 1958 show the following:

	Proposed typical week (construction permit)	Composite week (assignment)
	<i>Percent</i>	<i>Percent</i>
Entertainment.....	76.59	85.0
Religious.....	4.76	1.0
Agricultural.....	3.57	1.0
Educational.....	2.98	None
News.....	9.12	8.0
Discussion.....	1.49	None
Talks.....	1.49	5.0
Total.....	100.00	100.0

Eighty-four broadcast-hours were proposed and the assignment application shows the station actually broadcast 105 hours. McVay testified that the station broadcast no more than 3 commercial spot announcements in a quarter hour, or 12 commercial spot announcements in an hour. At least two public-service announcements per hour were provided for.

26. With respect to agricultural programs, farm news was broadcast, Monday-Friday, from 6:30 to 6:35 a.m., and "Musical Marketing Time" from 12:35 to 1 p.m. However, "County Farm Adviser," proposed in the application for Thursday from 5:35 to 6 p.m., was not carried. Here again, according to McVay, the varying signoff time of a daytime-only station made it impossible for 5 months a year to present such a program at the scheduled time and, furthermore, the farm adviser appeared on a full-time station at Visalia, the county seat of Tulare County. No agricultural programs were broadcast on Saturday or Sunday of the composite week. The proposed local church service was never broadcast because, according to McVay,

¹⁴ Official notice has been taken of the Commission's files containing these analyses.

“the station did not want to pay the line charges necessary for a live church broadcast, and the churches that we talked to at least were unable to pay the line charges at the time we talked to them.” A 15-minute taped program was presented by the Visalia Ministerial Association on Sunday mornings instead. Cross-examination developed that the Sunday religious programs consisted of a half-hour transcribed dramatic program prepared by a transcription service, a 15-minute transcribed program for the Nazarene Church, a 30-minute transcribed program for the Baptist Church, the 15-minute taped program for the Visalia Ministerial Association, and a 15-minute Catholic church service in Spanish carried as part of a Spanish-language program. With respect to educational programs, McVay testified on direct examination that the educational programs proposed in the application for construction permit were not broadcast, but that a musical program was available for use by the high school and organizations. No educational programs were shown on the logs for the composite week. McVay testified that a program entitled “Your City Council,” shown in the application, was not broadcast because of the early signoff so many months of the year, and that “Behind the Mayor’s Desk,” likewise, was not broadcast because of the early signoff and also because the mayor did not take advantage of the time. Again, because of early signoff, according to McVay, the programs “The PTA Reports,” “Your County Schools,” and “Social Security” were not broadcast. McVay testified that spot announcements and interviews were presented in lieu of some of the programs. Certain other programs were carried in lieu of those that were not presented. A program for high school students was carried out by hiring students to present the program which was used by the high school and school organizations. On one occasion, shortly after KGEN went on the air, it helped, through spot announcements, interviews, and other promotions, in a campaign to raise money to send the local school band to Washington to march in an Inaugural Parade. On occasion, other aspects of local affairs, such as the city council, PTA matters, and the activities of the mayor, were presented through news coverage, interviews, or spot announcements.

27. As the operation of KGEN by SanVal Broadcasters continued, changes were made in programs. Special events were broadcast, including the Tulare County Fair where KGEN set up a complete studio, and also a roving remote unit that permitted broadcasts from any point on the fairgrounds. Other broadcasts covered the high school football, basketball, and track events. SanVal Broadcasters printed and distributed programs at the basketball games without charge to spectators. Remote programs were also carried of parades, a courthouse opening from the communities of Exeter (which has no station), Visalia, and others. A series of tape-recorded programs supplied by a U.S. Senator was presented, as was a weekly broadcast supplied by the AFL-CIO. Little league baseball broadcasts were presented five nights a week during the summer, and interviews, news items, and spot announcements for the local police, county sheriff, civic groups, etc., were broadcast.

Station KRKC

28. Robert T. McVay acquired his personally owned radio station KRKC, King City, Calif., on September 6, 1959. At that time, station KRKC, which had been under absentee ownership, was losing money and generally rundown. In order not to make commitments that would keep him from moving to Oroville in the event the SanVal application should be granted, McVay contacted John McAdam before he made the purchase. McAdam had worked with McVay for 18 months at station KGEN and 20 months at station KYOS, where he had been assistant station manager and program director, respectively. McAdam agreed to come to KRKC as general manager, and he and McVay have since the purchase been operating the station.

29. McVay represented that the program schedule attached to the transfer of control application of KRKC had been prepared under his direction. It was, in fact, the one given to him by James H. Rose, the seller of the station, who advised McVay that this was the schedule then in effect on the station. The Rose schedule, with three changes in classification, was the program schedule which McVay represented had been prepared by him, or under his supervision or direction.¹⁵ McVay planned to continue it in order to provide a smooth transition and, as time went on, to improve upon it. However, it turned out that the schedule Rose gave McVay, while it was the schedule which had been filed with the application for a construction permit, had never been carried out. As a result, McVay was immediately required to create his own schedule for the station, making necessary changes in the one received from Rose; and at the time of hearing, he was continuing to change the schedule, as necessary.

30. A program, "Morning Devotional," which was being presented Monday through Friday from 9:05 to 9:15 when McVay took over, was discontinued by him after he was informed by a minister that the ministers did not like to come up to the station on a daily basis, but would prefer a Sunday program rotated among the ministers, and such a Sunday program was instituted. The program "Shopping Hints" was not being presented when McVay took over the station, and he incorporated it into another program. Likewise, the programs "Three Little Words" and "School Corner," not being broadcast, were arranged for by McVay and McAdam with the high school principal. One of these is carried Monday through Friday for 5 minutes and is a report from the high school done by the students on the activities at the school, including the daily cafeteria menu. The other is broadcast on Monday, Wednesday, and Friday for 5 minutes, featuring a member of the school journalism class interviewing someone under the supervision of the journalism teacher. "Woman's World" and "Around the Town" were not being presented, but there are similar

¹⁵ McVay testified that he made only three changes between that which Rose handed him and that which he submitted with his application for transfer, and that those changes related to three programs which were listed as "educational" and which McVay "did not exactly understand what the content was." He, therefore, changed the classification from "educational" to "talk." According to McVay's testimony, "Other than that, I sent in the exact same program schedule with the application for transfer of control as he [Rose] had submitted to the Commission with his application to build a radio station at King City and the one that he [Rose] had given to me as being actually in effect" at the time of purchase.

programs broadcast now. The scheduled programs "Milestones in History," "What's New in Science," "What's the Question" were not being carried when McVay took over and have not been added. Likewise, "Stock Market Report" was not being carried. However, KRKC now has a program Monday through Friday which gives the stock market reports. Also, the scheduled 4-H program was not being carried. McVay has talked to 4-H Club people and expects to start a program soon. The "Folk Songs" program scheduled for Sunday was not being broadcast. The station now carries a Sunday-morning program of religious, western, and polka music. "Church Services" scheduled for Sunday was not being broadcast. This program is not being carried by McVay. The local ministers are not willing to produce the program because of line charge expense which the churches are expected to pay. In place thereof, the station has made available, and the ministers are using, a quarter-hour "ministerial type" program on Sunday morning which is rotated among them. Likewise, the program "Civic Forum" was not being broadcast. However, the station has had city officials on the air on various occasions.

31. Other examples of programs broadcast Monday through Friday over KRKC are a farm news report from 7 to 7:05 a.m., and farm market news service from 12:30 to 12:35 p.m. There is an hour program originating in Greenfield, Calif., broadcast by that town's postmaster, giving local news, meeting notices, and birthdays. A similar program from 10:05 to 11 a.m. is presented from Soledad, Calif. From 12:05 to 1 p.m., there is a program from a restaurant in King City where travelers and from two to five townspeople are invited to come in and discuss items. From 6 to 6:05 p.m., a commentary on local issues is broadcast, and in it the station expresses its views and invites the public to express theirs. A number of candidates for election have been invited to appear on this program without charge. On Saturdays, high school sports of the night before are broadcast on tape. On Sundays, the religious program "Heart-beat Theater" is broadcast; and there are political broadcasts with taped shows by the two U.S. Senators from California alternating every 2 weeks. Another program, "The Commonwealth Club," features the recorded comments in a 15-minute program each week of an outstanding speaker who has appeared at that organization's meeting in San Francisco. KRKC also has a special weather program, "The Travelers' Weather Forecast," every morning for the entire coastline of California on Highway 101 as well as the San Joaquin Valley. Programs for various governmental organizations, such as the U.S. Navy, are also carried. McVay, upon acquiring KRKC, instituted a monthly newsletter that is sent out in the community in connection with the operation of station KRKC. The first newsletter asked for suggestions and comments on the station's service. There is no evidence as to what has been done about any comment or suggestion received from listeners.

32. In the event SanVal receives a grant at Oroville, the day-to-day operation of station KRKC would be left to McAdam as manager. However, McVay would "continue to exercise licensee control over

the station" and keep in touch with it by visits, telephone, letters, by exercising financial control, and other means.

PROPOSALS

James E. Walley

Preparation and planning

33. The application of Walley was originally filed on October 23, 1957, and was amended on February 19, 1958. James E. Walley has been in Oroville many times since he moved to nearby Yuba City in 1953. For some time after station KAGR in Yuba City began operation, agricultural programs were exchanged with station KMOR, which required his travel to Oroville. He also traveled to Oroville a number of times to perform emergency repairs for station KMOR. His mobile communications service business also has customers in the Oroville area. Investigations into the possibility of purchasing or leasing KMOR or its equipment caused him to go to Oroville during the period before the filing of his application. Subsequent to the filing of his application, he made a number of trips to Oroville in preparation for this hearing. Apparently only one¹⁶ contact specifically for program purposes was made prior to filing of the application. Walley testified that in the last 3 or 4 years he has visited Oroville "a minimum of once every 2 weeks, sometimes as often as three and four times a week." Walley's proposed program schedule was based upon his knowledge of Oroville and the surrounding area, upon discussions with various persons in the Oroville area, and upon his experience in broadcasting. After filing his application, in preparing the statements and descriptions of program plans and policies, Walley personally contacted various persons, some more than once, in and near Oroville between January 1959 and March 1960, to discuss the manner in which the proposed station might serve their organizations and to obtain assurance of cooperation in the presentation of programs. He testified with respect to personal meetings concerning the station with more than 50 persons connected with more than 45 organizations in the area. However, no actual program schedule was shown to those contacted, but he did tell them about the programing; and some of the effort in this direction was, at least in part, for commercial purposes. When making contacts, Walley did not take formal notes.

Policies

34. Walley represents that it will be his policy to vary the actual program service constantly to accommodate changing needs, tastes, and desires of the public. For example, educational programs during the summer vacation period would be less frequent than and different from those during the school year; agricultural information, including frost warnings for the fruitgrowers, would vary from season to season; and talks by candidates for public office would occur only

¹⁶ He discussed programing with a representative of the University of California Agricultural Extension Service, a service with which he was already dealing at the Yuba City station.

during political campaigns. Walley proposes to confer with school officials and educational leaders to determine how the station can best serve the educational needs of the area.

All music and other matter broadcast by the station would be under Walley's direct control. Extremes in music would be avoided. All records would be auditioned before they would be released to the staff for broadcast.

(a) Commercial spot announcements would be limited to 1 minute in length. Thirty-second or shorter than 1-minute spot announcements would be sold when possible. A maximum of three 1-minute commercial spot announcements would be broadcast in a 14-minute period. Time would be made available to candidates for public office on an equal basis. Although time and announcements would be sold to candidates at regular commercial rates, additional opportunities to appear without cost would be afforded so that all candidates would be able to present their views. Advertising of alcoholic beverages other than beer and wine would not be accepted. Beer, wine, and cigarette advertising would not be broadcast in any program intended primarily for a younger audience. Advertising of proprietary medicines and similar products would not be broadcast if, either by the nature of the product or method of presentation, such advertising would be offensive to listeners. In scheduling any advertising of proprietary medicines or similar products as may be acceptable, the time of day would be considered. For example, certain advertising would not be scheduled during luncheon or dinner periods. No bait and switch, per inquiry, or direct mail advertising would be accepted. No horserace or other information conceivably useful to gamblers would be broadcast.

(b) In addition to regularly scheduled programs, special programs would be arranged as the need arises. Some of the special broadcasts would be aired from public meeting places to afford the public an opportunity to attend and perhaps participate in a question-and-answer period. These special programs would be of the forum or roundtable type, with representatives of both sides of a public issue in attendance and with a moderator to preside.

(c) News will be presented at regular intervals, with emphasis upon local and regional news, and other programs will be interrupted for important news bulletins, stories, and programs as they occur. Walley proposes to instruct all employees on the handling of news and to keep in regular contact with all public offices and hospitals. Important news stories that are telephoned in will be recorded by "beeper" equipment and rebroadcast.

Management

35. James E. Walley will serve as manager and chief engineer of his proposed station, devoting his full time thereto.¹⁷

¹⁷ While Walley, as do McVay and Mitchell, has other business interests, any time to be devoted thereto will not affect his normal full-time duties at the proposed station. Walley testified he has a "fully licensed man who may rearrange his affairs so that he will be able to handle the Yuba City end complete" of his mobile communications business. In connection with other business activities, McVay testified as to his arrangement for a station manager to handle the day-to-day operation of his radio station in King City, Calif. No plan has been shown to enable Mitchell to devote time to the proposed station despite his several business interests.

Studio and staffing

36. Walley proposes to operate station transmitter by remote control from studios to be located in the Oroville Inn in downtown Oroville.

37. As already indicated, Walley plans to be the manager and chief engineer of the station on a full-time basis. In addition, he expects to employ two, or possibly three, full-time combination announcer-engineers, a salesman, and an office girl. He also proposes that the clerical help, and possibly the salesman, will have a third-class operator's license for emergency purposes. Walley plans to add additional personnel in the future to handle news and sports.

Programming

38. The statistical analysis of the proposed illustrative program schedule, based upon operation from 6 a.m. to 10 p.m., weekdays, and 8 a.m. to 10 p.m., Sunday, a total of 110 hours a week, is as follows:

<i>Type</i>	<i>Percent</i>	<i>Source</i>	<i>Percent</i>
Entertainment -----	80.65	Recorded commercial-----	58.34
Religious -----	4.09	Recorded sustaining-----	23.94
Agricultural -----	1.28	Wire commercial-----	7.35
Educational -----	.65	Wire sustaining-----	.98
News -----	8.03	Live commercial-----	2.80
Discussion -----	2.42	Live sustaining-----	6.59
Talk -----	2.88		
		Total commercial-----	68.49
Total -----	100.00	Total sustaining-----	31.51
		Total -----	100.00

Walley proposes to sign off his station at 10 p.m. every night of the week because of what he described as "the inherent nature of Oroville." All news programs were classified as wire even though some local live news would be presented. This was done because the actual amount of local live news would vary and cannot be determined until each broadcast. Walley estimated that from one-third to one-half of the news programs would have sufficient local and regional news gathered or rewritten by the station's staff to be classified as "live." A maximum of 510 commercial and a minimum of 125 noncommercial spot announcements are proposed.

(a) Proposed *entertainment* programs include: Monday through Friday, "Town Clock Time," a recorded program presented from 6:15 to 7 a.m., will feature popular music, as will "Wake-Up Time," a recorded program broadcast from 7:05 to 9 a.m., interrupted by a 5-minute newscast. "Second Cup of Coffee" will be broadcast from 9:05 to 10 a.m., recorded. From 10:05 to 10:15 a.m., Monday through Friday, "Star of the Day" will be presented, followed by "Featured Album" from 10:15 to 10:30 a.m. These programs are recorded. From 11:05 to 11:30 a.m., Monday through Friday, the recorded program "Easy Listening" will be presented. "Meet Your Neighbor" will be a partial entertainment program broadcast as live from 11:30 to 11:45 a.m., Monday through Friday. From 12:05 to 12:15 p.m., Monday through Friday, recorded "Music" will be broadcast. "Music for the Lunch Bunch" will be presented Monday through Friday from

12:30 to 1 p.m., recorded. From 1:05 to 3 p.m., recorded "Music for the Mrs." will be broadcast. This program will be music of the "background" type. The "Bulletin Board Show," a recorded program, will be broadcast from 3 to 4 p.m., Monday through Friday. This show will feature announcements of local activities. "Record Rack" will be broadcast Monday through Friday from 4:05 to 5 p.m., and on Saturday from 2:05 to 4 p.m., with a 5-minute news program at 3 p.m. From 5:15 to 6 p.m., "Home-Goers" will be broadcast as recorded, Monday through Friday. From 6:15 to 7 p.m., Monday through Friday, and from 6:05 to 7 p.m. on Saturday, "Supper Serenade" will be presented as recorded. Monday through Friday, from 7:05 to 10 p.m., "Night Watch" will be broadcast, recorded. This program will feature one 15-minute entertainment segment by a government service. The exact beginning of the "Night Watch" show depends upon local sunset time, except for the winter months. Recorded "Saturday Musical Round-Up" will be broadcast 6 to 7 a.m., and "Away On a Week-End" will be broadcast on Saturday from 8:05 to 10 a.m., except for a 5-minute news program at 9 a.m. From 10:05 to 12 a.m. on Saturday, recorded "Touring the Town" will be broadcast, except for a 5-minute newscast at 11 a.m. "Saturday Afternoon Hit Record," a recorded program, will be broadcast from 4:05 to 4:45 p.m. and 5:05 to 6 p.m. From 7:30 to 10 p.m., "Saturday Night Stepping," a recorded program, will be broadcast. The Sunday recorded entertainment programs are "Proudly We Hail," from 8 to 8:30 a.m.; "Forward March," from 10 to 10:15 a.m.; "Reserved for You," from 10:15 to 10:30 a.m.; "Guest Star," from 10:30 to 10:45 a.m.; "Stars for Defense," from 10:45 to 11 a.m.; "Air Time," from 11 to 11:30 a.m.; "Serenade in Blue," from 12 to 12:15 p.m.; "Music," from 1:05 to 6 p.m. and 7:05 to 9:55 p.m., except for 5 minutes of hourly news; and "Sunday Supper Serenade," from 6:15 to 7 p.m. It is represented that, in general, music during the early morning hours would be popular, bright, and lively to start a person on his day's activities; music during the middle of the day would be selected to permit background listening by the housewife while she is engaged in her normal duties and chores about the home; music for teenagers would be presented in the late afternoon; and evening music programs would present a wide variety of music designed to appeal to most listeners irrespective of age. More serious music would be presented on Sunday afternoon and evening, and would include symphonic and similar music and selections.

(b) *Religious* programs proposed are: "Religious Devotion," 6 to 6:15 a.m., Monday through Friday, which would be produced in cooperation with the Ministerial Association and would consist of a short talk or sermonette, prayers, religious music, and church bulletins. The program would be taped in advance if the ministers so desire. "Saturday Musical Round-Up," 7:15 to 8 a.m., Saturday, would be conducted by a minister and would present religious western-type music. On Sunday from 8:30 to 10 a.m., religious programs obtained from national church organizations would be presented in cooperation with the local churches. Some programs, such as "The Christophers" and "Hour of the Crucified," would be obtained from Catholic Church

organizations and broadcast during this period. A "Local Church Service" would be presented each Sunday from 11:30 a.m. to noon by remote pickup or tape recording from churches in the area on a rotating basis. The period from 11 to 11:30 a.m. would be available should more time be required for the church service broadcast. "Methodist Men's Hour," 12:30 to 1 p.m., Sunday, would be obtained from the national church organization and would be almost entirely non-sectarian. "Religious News and Discussions," 6 to 6:15 p.m., Sunday, would present church news, both local and worldwide; special religious programs would be presented during the Christmas, Easter, and other important seasons. (This program was classified as "discussion" for purposes of the statistical analysis.) News of churches and their organizations and activities would be given on news programs, by noncommercial spot announcements, and on the "Bulletin Board Show," 3 to 4 p.m., Monday through Friday.

(c) Proposed *agricultural* programs would be presented in cooperation with the farm adviser¹⁸ of Butte County and other agricultural leaders and organizations. "Farm Show" is scheduled 12:15 to 12:30 p.m., Monday through Friday. The program would feature reports on agricultural activities throughout the station's service area; talks and discussions by the farm adviser and other agricultural leaders and officials; on the spot interviews with farmers concerning new or interesting developments and practices; bulletins from the U.S. Department of Agriculture and the Soil Conservation Service; bulletins, talks, and other material obtained from the Agricultural Extension Service of the University of California; market reports, predictions, and trends; and local and long-range weather reports. A somewhat similar program, "Farm News and Bulletins," would be presented on Saturday from 7:05 to 7:15 a.m. A roundup of market condition summaries would be included in the 7 a.m. and 6 p.m. news programs, Monday through Friday, and on other programs during marketing season. Special programs of interest to farmers would be broadcast as they occur. Frost warnings of particular interest to olive, nut, and orange growers of the area would be broadcast whenever required.

(d) *Educational* programs: Walley plans to confer frequently with the school officials and educational leaders concerning the manner in which the station could best serve the educational needs of Oroville and Butte County. As the result of discussions with educational leaders, the only educational programs proposed in the application are scheduled for Saturday. However, additional educational programs would be presented on other days and at other times if and when the need for such programs arises. The period from 12:05 to 1 p.m. on Saturdays has been set aside for "High Previews." The program would be prepared and presented by high school students under the auspices of their schools and with the assistance of their teachers and the station's staff. The program would include news stories on various scholastic, social, and athletic happenings and events by student reporters, talks and discussions by students on subjects of interest to

¹⁸ The farm adviser has duties similar to those of county agents in some other States.

teenagers, and talks and interviews of educational officials and youth leaders on subjects such as vocational guidance, higher education, and coordination of education with military services. One 15-minute period of the program has been classified as "discussion" because an average of at least 15 minutes each week would be devoted to discussions. News of schools and educational activities would be presented on regular news programs and, when appropriate, by special programs. When controversies of considerable public interest arise on the school board, PTA, and similar groups, the station would attempt to broadcast the discussions.

(e) *News* programs have been scheduled by Walley Monday through Friday at the following times and lengths: 7 a.m., 5 minutes; 8 a.m., 15 minutes; 9 a.m., 10 a.m., 11 a.m., noon, 1 p.m., and 4 p.m., 5 minutes each; 5 p.m., 10 minutes; 6 p.m., 15 minutes; and 7 p.m. and 8 p.m., 5 minutes each. News programs have been scheduled for Saturday as follows: 7 a.m., 8 a.m., 9 a.m., 10 a.m., 11 a.m., noon, 1 p.m., 2 p.m., 3 p.m., 4 p.m., 5 p.m., and 6 p.m., 5 minutes each. News programs have been scheduled for Sunday as follows: 1 p.m., 2 p.m., 3 p.m., and 4 p.m., 5 minutes each; 5 p.m., 15 minutes; and 7 p.m., 8 p.m., 9 p.m., and 9:55 p.m., 5 minutes each. Because, in the applicant's opinion, world and national news are well covered by network-affiliated stations which may be heard in the area, emphasis would be placed upon local and regional news. The news programs would include a summary of world and national news obtained from a wire service, regional news obtained from either the wire service or the station's staff or both, and local news obtained by the station's staff. Much of the local news would be broadcast as it happens and would be reported on later news programs. The public would be invited to telephone news items and stories which then would be checked for accuracy. Telephone "beeper" and remote pickup facilities would be provided and used. Oroville and the surrounding area are subjected to severe flash floods caused by extremely heavy rainstorms and sudden thaws of snow in the mountains, and this applicant proposes to work closely with all officials and organizations during periods of threatened or actual emergency. All storm and other bulletin warnings would be checked with the proper officials before broadcast to insure against "scare" and "panic" bulletins. Weather reports would be included in all news programs.

(f) *Discussion* programs would include: "Local Women's Show," 10:30 to 10:45 a.m., Monday through Friday, would be assigned a new name before presented, would be conducted by a woman employee of the station, and would present discussions of the activities and objectives of women's clubs and organizations, fashions, cooking, home-making hints, housing, decorating, gardening, and numerous other subjects. Announcements of community activities would be included in the program. The discussion portion of "High Previews" has been described above. "Chamber of Commerce," 1:05 to 1:30 p.m., Saturday, would present reports and discussions under the auspices of the chamber of commerce concerning its activities. "Service Club Reports and Discussion," 7 to 7:30 p.m., Saturday, would present reports and discussions concerning the aims, objectives, and activities of the

various service clubs such as Lions, Kiwanis, and Rotary. Taped excerpts of talks of featured speeches and the questions and answers following the talks would be included in the program. Additional time during the week would be made available for such broadcasts. "Religious News and Discussion," 6 to 6:15 p.m., Sunday, has been described above.

(g) *Talk* programs would include: "At Your Service," 10:45 to 11 a.m., Monday through Friday, would present announcements concerning activities in the area, announcements of job vacancies and availabilities from the Employment Office, and announcements concerning objects for sale or desired. "Meet Your Neighbor," 11:30 a.m. to noon, Monday through Friday, would present letters from listeners expressing their ideas and views on community, civic and governmental affairs and matters, and comments of listeners telephoned to the station during the program. When controversial matters would be discussed, the station would offer the opportunity for presentation of conflicting views. The subjects to be discussed would be selected by the station. Fifteen minutes of the program was classified as "talk" and the remainder as "entertainment." "Sports News," 5:10 to 5:15 p.m., Monday through Friday, and "College and High School Sports," 4:45 to 5 p.m., Saturday, would present latest sports news, stories, and scores of national, regional, State, and local athletic events, both amateur and professional. The Saturday program would present from time to time interviews with coaches, athletes, and other sports leaders of the area.

(h) *Special events* in the primary coverage area would be broadcast by the use of recordings, direct broadcast lines, and remote pickup transmitters. Such programs would be classified as news, discussions, or talk depending upon the content and nature of the program. If permission can be obtained from the officials then in office, meetings of the city council and the county supervisors would be broadcast either in whole or in part. An example of a special event is the new dam to be constructed near Oroville. Numerous events would be broadcast such as the breaking of ground, the pouring of the first concrete, initial closing of the water gates, and the dedication. Various local athletic events, such as the high school football games and little league baseball games, would be broadcast as they occur. Such programs were not shown on the proposed illustrative program schedule because the frequency and time of broadcast was not known.

SanVal Broadcasters

Preparation and planning

39. The application of SanVal was originally filed on September 16, 1958, and its program schedule changed in an amendment filed in February 1959.¹⁹ The program schedule, program descriptions, and staff duties of SanVal were prepared by McVay, one of the partners, on the basis of his broadcast experience in other areas and his some-

¹⁹ The amendment containing program schedule changes filed in February 1959 was after the Walley application had been designated for hearing, but before the SanVal application had been so designated.

what limited familiarity with Oroville, and contacts made in Oroville after the original application was filed. The original Oroville program proposal was based on the program schedule attached to the application for construction permit for station KGEN at Tulare.²⁰ According to McVay's testimony, the exhibits dealing with the proposed operation of SanVal were sent to and approved by Mitchell, the other partner, without comment. Mitchell made no mention relative to the pending application in his written testimony and he did not testify personally at the hearing. As already indicated, there is no evidence that he has ever been in Oroville.

40. McVay has been in Oroville a number of times over a period of years. He first visited Oroville in 1941 when 14 years old on a vacation trip. He next visited Oroville in 1947. From 1947 to the time of the hearing, McVay has visited Oroville at irregular intervals, but on an average of once a year or oftener. Some years he made no visits and some years made as many as six visits. McVay's first visit to Oroville in connection with broadcasting was in October of 1957 when he investigated the possibility of purchasing station KMOR.²¹ McVay's next visit to Oroville was apparently in July of 1958, at which time he met with a realtor and looked for a home. He again visited Oroville on September 6, 1958, at which time he negotiated a lease agreement for use of the equipment and building of station KMOR. As already noted, SanVal's application was filed on September 16, 1958. McVay's next visit to Oroville was on November 20, 1958, at which time he attended an Elks Club football banquet and met a number of Oroville residents. In January of 1959, he inspected the plant of station KMOR in the company of the chief engineer of KWG, Stockton, Calif., where McVay was then employed. McVay attended a meeting of the Lions Club in January of 1959 and a chamber of commerce meeting in February of 1959. He also visited Oroville in February and March 1960 in connection with program proposals.

41. The program contacts on behalf of SanVal were made by McVay, using a list of organizations and groups furnished by the Oroville Chamber of Commerce. When making the contacts, he showed the persons a copy of the proposed programing.²² McVay used these contacts to prepare a revision of his program schedule, which he later filed as the February 1959 amendment to the applica-

²⁰ On direct examination, McVay testified that "I also proposed it [the KGEN proposed program schedule] as the original schedule for Oroville."

²¹ SanVal first became interested in the possibility of owning a broadcast station in Oroville in October of 1957, when a transcription service salesman told McVay that station KMOR was having financial difficulties. After a visit to Oroville and an inspection of the station by McVay, he learned from a broker that "he was putting together a deal with Jack Breece and if the deal with Breece fell through, he would contact" McVay. Nothing more was done concerning KMOR until May of 1958, when McVay learned that Breece's application for transfer of control of KMOR was no longer pending. Upon advice of counsel, SanVal decided to file an application for construction permit, specifying the facilities of KMOR, counsel advising that such application "would be the most expeditious route. That to attempt to do what Breece did would require a comparative hearing anyway, and we might just as well file a new application." After negotiations for land for a transmitter site "fell through," an agreement to lease the equipment and building used by KMOR was obtained from Dan Beebe.

²² The deposition of Elton E. Waggener, secretary-manager of Gridley Chamber of Commerce, one of those contacted, leaves doubt as to whether a copy of the proposed programing was, in fact, exhibited to him. Waggener further testified that he was not aware that there was a competing application or with whom the information requested by McVay was to be used.

tion. He also made other contacts after the program schedule was amended which related to cooperation in carrying out the proposed programing. McVay made about 49 contacts; of these, 32 were made in person. Of these contacts, 13 were made before SanVal amended its program proposal in February 1959.

Policies

42. In the operation of its proposed station, SanVal Broadcasters would subscribe to the "Standards of Good Practice for Radio Broadcasters" of the National Association of Broadcasters. In addition to compliance with Federal and State laws and the rules and regulations of the Federal Communications Commission, SanVal Broadcasters will keep itself informed as to the activities of the Federal Trade Commission with respect to broadcasting and advertising matters. It will also maintain contact with other Federal and State agencies and otherwise keep itself and the public informed on matters of interest and importance to the community.

43. SanVal has proposed a policy for specific types of broadcasting, as follows: A variety of entertainment programs will be produced at different times so as to provide entertainment for every type of listener. Whenever possible, entertainment programs will present live talent, particularly where local individuals or groups are concerned. All recognized religious groups will be invited to make use of the station. No distinction will be made between faiths in scheduling religious programs. As part of the religious programing, tolerance of other beliefs and a knowledge of other beliefs will be emphasized. Announcements of church services and activities will be carried. Services will be presented for those unable to attend church. SanVal will work with the schools and school officials in the area to present programs on their behalf. Students and teachers will be encouraged and assisted in developing programs and in making appearances on the station. Contact will be maintained with school officials for the presentation of special announcements and programs. Reports and advice from experts in the field and information on publications of an agricultural nature will be presented. Liaison with county, State, and Federal agents and extension workers will be maintained and their use of the station's facilities encouraged. The news and weather programs will be prepared with the agricultural listener in mind. SanVal will present a regular schedule of news programs, including local, State, National, and international news events, but special emphasis on local events. No commentary will be made unless it is specifically identified as such, and where commentary is presented on a controversial matter, persons or groups having opposing views will be given equal time to reply. If the matter is of sufficient local interest, and if no persons or groups holding opposing viewpoints come forward, they will be sought out by the station and presented with the text of the commentary to aid them in their reply.

44. SanVal will present discussion and talk programs on a variety of matters of interest to the public. As part of its function to keep the public interested in public issues, SanVal Broadcasters will present interviews with local citizens via telephone on matters of local

and national issues whenever no groups or organizations are scheduled to appear on the regular discussion programs. If an issue is highly controversial, a special program will be set up to provide a forum for the presentation of both sides of the question. Equal time will be provided for persons or groups holding conflicting views to present their side of the question. Political broadcasts will be encouraged. All candidates for major offices will be provided sustaining time to present their views and platforms. SanVal will present editorials on matters on which it believes that the public should be informed. Such editorials will usually be of approximately 1 minute in length and will be presented at the end of selected newscasts.

45. Public-service spot announcements will be presented at times that will provide them with the greatest amount of exposure to the type of listener to which they would be directed. In order to relieve the burden on organizations, SanVal Broadcasters will endeavor to determine the meetings and other occasions that are coming up each week, and to present announcements with regard to them. Time will also be made available to organizations that have programs to present, such as the recruiting programs for the Armed Forces or the informational programs provided by the Veterans' Administration.

46. Control over advertising continuity will be maintained, and the station would reject all or any part of such continuity that is not in good taste, is misleading, or is for a product or service that does not meet the claims made for it in the advertising copy. All copy will be reviewed by the station manager or a member of the staff to insure that it is acceptable to the station. Copy not prepared by the station will have to be submitted for review at least 24 hours in advance of the time it is to be presented. With respect to commercial spot announcements, such announcements would not exceed 1 minute in length and no more than three would be broadcast in a 14½-minute period, except for so-called classified ads which would be similar to classified advertisements in newspapers.

Management

47. In the event of a grant of the SanVal application, Gene V. Mitchell, a 50-percent partner, will be named as general manager of the proposed station, and Robert T. McVay, the other partner, will be the station manager. However, McVay, the only partner who testified in person at the hearing, stated that, while it was expected that Mitchell "will be general manager to begin, as he was in Tulare, and then I will become general manager from station manager." This was the pattern followed at Tulare and, according to McVay, Mitchell "will have the same role there [Oroville] that he did in Tulare. He was more active in the beginning."²³ In conjunction with station manager McVay, Mitchell will develop policies on financial and other matters of a policy nature, including programing, and will keep in touch with the station by reports from the station manager and by visits to the station. Mitchell will not move to Oroville,

²³ In Tulare, Mitchell had advanced the necessary funds and, under the partnership agreement then in effect, had financial control of the station. Such circumstances no longer obtain.

but will remain a resident of Merced and retain his business interests there. Merced is at least 160 airline-miles from Oroville.²⁴ So far as this record discloses, Mitchell has never visited Oroville and, clearly, he made none of the contacts of Oroville residents shown on behalf of the partnership.

48. Robert T. McVay, the other equal partner, will move to Oroville and, as already indicated, be the station manager. He will be in complete charge of the day-to-day operation of the station, including the employment of personnel, the detailing of their duties, the programming of the station, the public-service efforts of the station, and the implementation of partnership policies.

Studio and staffing

49. SanVal proposes to use the studio and transmitter formerly used by station KMOR.²⁵ As hereinbefore indicated, McVay, one of the partners, will serve as full-time station manager. In addition, there will be five other employees, including a program director who would also serve as announcer 35 hours a week, a chief engineer who would serve as announcer 36 hours a week, a news director who would serve as announcer 10 hours a week, a salesman who would serve as announcer 30 hours a week, and a bookkeeper-receptionist. Mitchell, the other partner who would have the title of general manager, would not be active in the day-to-day operation of the station and thus is not to be considered an actual staff member.

Programming

50. The statistical analysis of SanVal's proposed program schedule, based upon operation from 6 a.m. to midnight each day, a total of 126 hours a week, is as follows:

<i>Type</i>	<i>Percent</i>	<i>Source</i>	<i>Percent</i>
Entertainment -----	77.51	Recorded commercial-----	56.88
Religious -----	3.17	Recorded sustaining-----	24.40
Agricultural -----	2.78	Wire commercial-----	3.77
Educational -----	2.38	Wire sustaining-----	3.31
News -----	9.46	Live commercial-----	2.38
Discussion -----	2.91	Live sustaining-----	9.26
Talks -----	1.79		
	-----	Total commercial-----	63.03
Total-----	100.00	Total sustaining-----	36.97
		Total -----	100.00

Commercial spot announcements would total 756 and noncommercial spot announcements would total 252 under the proposed program schedule.

(a) *Entertainment* programs proposed total 25. These include: "Alarm Clock Club," a recorded show featuring "bright, breezy music and speech," which will be broadcast Monday through Saturday from 6 to 8 a.m., with 5-minute news and weather breaks every half hour, and from 8:35 to 9 a.m., and will be made available to local organizations for announcements and to official groups such as the police

²⁴ This is based upon a measurement on a map of the State of California contained in a reputable atlas which clearly indicates that the distance by highway would be substantially greater than the airline mileage.

²⁵ These facilities are to be leased from Dan Beebe for \$300 per month.

department for bulletins. From 9:35 a.m. to 12 noon, Monday through Saturday, "Morning Melodies," a recorded program, will be broadcast, featuring music and speech, and will also be available to the public for announcements and bulletins. A recorded program, "Homemaker Harmonies," will be broadcast from 9:15 to 9:30 a.m., Monday through Saturday, featuring musical selections plus home-making tips. From 12:15 to 12:30 p.m., "Noon Tune Time," a recorded program featuring luncheon music, will be broadcast. "Matinee Melodies," a recorded program, will be presented Monday through Saturday from 1:05 to 4:30 p.m., with 5-minute newscasts on the hour, featuring music and speech and available to local organizations for public service spot announcements. From 5:05 to 5:30 p.m., Monday through Saturday, the recorded program "Top Tune Time" will feature popular recorded music, news, and traffic reports. "Dinner Music," a recorded program, Monday through Saturday from 6:05 to 7 p.m., of dinner music, with a limited number of interruptions. From 7:30 to 10 p.m., "Music for Evening" will be presented, with hourly 5-minute newscasts, featuring recorded music from present and past movies, Broadway shows, and popular adaptations of the classics. "Top 40 on 1340" will be a recorded show presented Monday through Saturday from 10:05 to midnight, featuring the top 40 tunes of the week in the area as determined by record sales. Certain selections from the past will also be played. On Mondays from 8:15 to 8:30 a.m. will be "Music on Deck," a recorded program provided by the U.S. Navy; and from 7:15 to 7:30 p.m., "Stars for Defense," a recorded program provided by Civil Defense, will be presented. On Tuesdays, during these respective times, "Serenade in Blue," a recorded U.S. Air Force program, and "The Navy Swings," a recorded U.S. Navy program, will be presented. Wednesday's schedule will present "Let's Go to Town," a U.S. National Guard recorded program, and "Reserved for You," a U.S. Air Force program, at those respective times. The Thursday schedule will feature "Guest Star," a recorded U.S. savings bond program, in the morning segment, and "Country Hoedown," a recorded U.S. Navy program, in the evening. These segments on Friday will feature "Manhattan Melodies," a recorded U.S. Air Force program, and "Join the Navy," a recorded program, respectively. On Saturdays, from 8:15 to 8:30 a.m., "Here's to Veterans," a recorded Veterans' Administration program, will be presented. "Music for Sunday," a recorded program presented on that day from 6 to 7 a.m., 8:05 to 8:15 a.m., 9:05 to 9:15 a.m., and 10:05 to 10:15 a.m. From 8:30 to 9 a.m. on Sunday, "Proudly We Hail," a recorded program provided by the U.S. Army. "Heartbeat Theater," a recorded program presented by the Salvation Army, will be broadcast on Sundays from 10:30 to 11 a.m. From 12:05 to 6 p.m., "Sunday Serenade," a recorded show, will be presented. During this broadcast time, there will be hourly 5-minute newscasts, and the program itself will feature recorded music, sports scores, traffic reports, and other information. "Scores and Encores," a recorded program, will be presented on Sunday from 7 to 9 p.m., featuring light classical and show music without interruption. "Sunday Evening Serenade" will be broadcast from 9:05 to 12 midnight.

Favorite selections of recorded music from Broadway shows and movies, and popular adaptations of the classics, will be heard on this program.

(b) The proposed program schedule shows eight *religious* programs: "Church Calendar" broadcast as a local program on Saturday from 7:15 to 7:30 p.m. The program will list all church services and activities for churches which wish to use the opportunity. "Sunday Morning Hymnal Time" will be a recorded program broadcast from 7 to 8 a.m., featuring religious music. From 8:15 to 8:30 a.m. on Sundays, "Showers of Blessing," a recorded program presented by the Nazarene Church, will be broadcast. The local "Oroville Ministerial Association" will be broadcast from 9:15 to 9:30 a.m. on Sunday. This program will be of a nondenominational nature made available to the members of the association on a rotating basis. "Baptist Hour," a recorded Southern Baptist Church program, will be presented on Sunday from 9:30 to 10 a.m. "Assembly of God Program" will be broadcast as a local program from 10:15 to 10:30 a.m. on Sunday. From 11 to 12 noon on Sunday, "Local Church Broadcast," a local program, will be broadcast. This program will be a complete broadcast of a local church service for those people unable to attend church. "Religious News and Views" will be broadcast as a local program on Sunday from 6:30 to 7 p.m. It will present religious news and views by members of the Ministerial Association and others. A portion of the program may be devoted to religious music.

(c) *Agricultural* programs proposed on a regular basis are two in number: "Farm News," a wire program broadcast from 6:30 to 6:35 a.m., Monday through Saturday, which will bring up-to-the-minute information to the agricultural population in and around Butte County, and feature market reports, market information, short- and long-range weather forecasts, announcements of publications of interest to farmers, and special reports from local agricultural and homemaker agents. The other program is "Musical Marketing Time," a recorded program broadcast Monday through Saturday from 12:30 to 1 p.m., which will be a review of the agricultural news of interest to the farmers, and include live and taped interviews with local farm authorities, weather forecasts, and market reports.

(d) *Educational* programs proposed are: "High School Time," a local show to be broadcast from 4:30 to 5 p.m., Monday through Saturday, which will be produced in cooperation with Oroville High School and will include students announcing high school sports and news items and playing recorded music.

(e) *News* programs proposed include: "Local News," Monday through Saturday from 7 to 7:05 a.m., which will be presented as a live program and will cover international, national, regional, and local news, with special emphasis on regional and local news. Similar programs will be broadcast Monday through Saturday from 10 to 10:05 a.m., 5 to 5:05 p.m., 6 to 6:05 p.m., and 10 to 10:05 p.m. These programs will be local live. From 7:30 to 7:35 a.m. and 5:30 to 5:35 p.m., Monday through Saturday, the wire program "Sports Report" will be presented, which is designed to provide sports information over a broad area, including international, national, regional, and local

topics. Other wire programs, "World News," will be presented, Monday through Saturday, from 8 to 8:05 a.m. and 12 to 12:05 p.m. "Regional News" will be broadcast as wire, Monday through Saturday, from 8:05 to 8:10 a.m. and 12:05 to 12:10 p.m., to provide news of northern California interest. "Local News," presented from 8:10 to 8:15 a.m. and 12:10 to 12:15 p.m., Monday through Saturday, will provide coverage of local news prepared by the station's news director. From 8:30 to 8:35 a.m., Monday through Saturday, "Stock Market Report" will be presented. In addition, there will be 5-minute wire newscasts at 1, 2, 3, 4, 7, 8, and 9 p.m., Monday through Saturday. On Sunday, there will be ten 5-minute newscasts from 8 a.m. until 9 p.m.

(f) Six *discussion* programs are proposed: From 9:05 to 9:15 a.m., Monday through Saturday, the local program, "Homemaker Harmonies," will be broadcast for use by various clubs and organizations for discussions of interest to local women. "Discussion Time," a local program for discussion of local, national, and international problems by various groups, will be presented Monday through Saturday from 7:05 to 7:15 p.m. and will provide equal time to opponents of public issues. On Monday, from 5:35 to 6 p.m., the local show, "Your City Council," will be broadcast, which will present city council members and other interested persons discussing city affairs. On Wednesday, from 5:30 to 6 p.m., the local program, "The PTA Reports," will be presented, featuring parent-teacher association groups from various schools in the Oroville area. This program will alternate with other civic groups and will assume the group title when broadcast. "Your County Schools," a local program, will be broadcast on Friday from 5:35 to 6 p.m. The "Chamber of Commerce Program" will be broadcast on Sunday from 6:05 to 6:30 p.m. as a local program featuring discussions of projects of the group.

(g) *Talk* programs proposed by SanVal include: "Classified Ads," a local program available for listing small advertisements, will be broadcast Monday through Saturday from 9:30 to 9:35 a.m. From 9 to 9:05 a.m., Monday through Saturday, the local program, "What's Going On," will be presented and will contain news and notices of club meetings. "Behind the Mayor's Desk" will be a local program presented, 5:35 to 6 p.m., on Tuesday, featuring the mayor of Oroville. On Thursday, 5:35 to 6 p.m., the local program, "Butte County Historical Society," will be broadcast featuring a different member each week talking about a happening from out of the past. On Saturday, "Social Security Program" will be presented as a local program from 5:35 to 6 p.m., and will feature persons from the local Social Security office talking on the program's benefits.

(h) *Special events*: In addition to the programs specified in its proposed schedule, SanVal proposes to broadcast special events in the Oroville area, such as the Silver Dollar Fair in Chico, Calif.; other nearby fairs; Oroville High School sports; little league ball games; city council meetings; chamber of commerce meetings; Elks football banquet; and other civic meetings of the city.

Good-Faith Issue

51. One of the issues herein, the so-called "good-faith issue"²⁶ (No. 7), deals with the motive of applicant Walley in the filing of his application vis-a-vis the renewal application of former station KMOR, then licensed for operation in Oroville on the frequency herein sought. This issue was included as the result of letters addressed to the Commission by Norris M. Goodwin,²⁷ an Oroville attorney, in which he made certain allegations concerning Walley's conduct. The evidence with respect to this issue is involved and, in some instances, sharply conflicting.²⁸ Walley and Norris M. Goodwin both testified in person, but the testimony of corroborative and rebuttal witnesses was taken by deposition.

52. Some facts, however, appear to be undisputed, one of which is that in the spring or early summer of 1957, Walley, as well as others, knew that Oroville Broadcasters, the then licensee of KMOR, was having financial difficulties. He had not been paid for engineering services which he had performed for KMOR and had been advised by merchants and employees that they were not being paid. He also knew that there was no salesman and no station manager on the scene. He was aware, too, that the Commission had not acted upon the application for renewal of license of KMOR, which had been pending for some time.²⁹

53. According to Goodwin's testimony, while he was regularly retained by the newspaper company, it was not until early in 1957 that he was retained by the Oroville Mercury Broadcasters partnership because of arrearage in rental payments; in June of 1957, Oroville Mercury Broadcasters filed suit for, and was granted, an attachment of accounts receivable of Oroville Broadcasters, the then licensee of station KMOR, for unpaid rent which, in August 1957, amounted to

²⁶ See p. 3, supra, for text of issue.

²⁷ Norris M. Goodwin during his pertinent negotiations and discussions with Walley and Thomas J. Corkin, Walley's Oroville attorney, represented the Oroville Mercury Broadcasters, a partnership composed of Dan L. Beebe and Floyd Sparks—Sparks resides in Hayward, Calif., and Beebe resides in Oroville. The Oroville Mercury Broadcasters was the original permittee and licensee of the station (then KDAN) and at all times pertinent herein was the owner of the radio equipment and transmitter and studio building used in the operation of station KMOR, which was in 1957—at the period of time here under consideration—licensed to the Oroville Broadcasters, which had no relationship with the Oroville Mercury Broadcasters, other than by reason of the lease arrangement for the physical facilities used by station KMOR. Beebe and Sparks are also partners in the Oroville Mercury Co., which publishes a newspaper, daily except Sunday, in Oroville. The newspaper partnership is composed of Beebe and Sparks, together with Randolph Beebe, Jr., Alice Nyburg, "and a couple of other potential partners who have, who are purchasing through their employment at Mercury a potential interest in the partnership to accrue some time in the future."

²⁸ A table containing the names of the witnesses and dates pertinent to this matter is attached hereto as appendix A, as an aid in following and understanding the significance of the findings herein made.

²⁹ The Commission records show the renewal application (BR-1926) had been filed in September 1956 and that, under date of Mar. 6, 1957, the Commission had written Oroville Broadcasters in connection with its renewal application, raising certain questions with respect to stockownership of the licensee and informing the licensee that questions have been raised "as to who, in fact, are the stockholders, officers, and directors of Oroville Broadcasters; who has the right to vote the respective stockholdings; who has possession of the stock; which agreements and options, if any, truly represent the transactions which have actually taken place with respect to Oroville Broadcasters' stock; whether unauthorized transfers of control have occurred, particularly in light of the family and business relationship" of certain persons named in the letter "and whether misrepresentations have been made to the Commission with respect to the above stock." The letter further advised that, "In light of the above, the Commission is unable to determine, at this time, that a grant of the above application would serve the public interest. Accordingly, it appears that said application must be designated for hearing."

approximately \$2,300;³⁰ after the attachment was obtained, the Beebe interests were able to go through the books of the company and "to the best of our ability we determined that there was approximately \$23,000 on that owing to various creditors in the community at that time," including the back rent due his client.

54. Walley testified that early in 1957 he had conversations with officers of the licensee of station KMOR concerning the purchase of the KMOR license and that he attempted to interest, separately, Harry Engle, Lyle Lavy, and John Steventon, to associate with him in the KMOR purchase. The deposition of Lyle Lavy fully supports Walley's testimony on this point.³¹ Walley testified that no "sum offer" was made, and that "the assets were considered to be out of line with the cost."

55. Walley further testified that he contacted two broadcast attorneys in Washington who independently investigated the status of KMOR and its renewal application, as shown in the public files of the Federal Communications Commission, and separately advised him against purchasing KMOR, in view of the expense likely to be involved in clearing up the legal problems facing the licensee of station KMOR at the Commission.³² It is not clear from the record whether these attorneys were also aware of the financial plight of KMOR.

56. A Mr. Vargas, connected with Oroville Broadcasters, licensee of station KMOR, contacted Goodwin in July 1957 concerning the rent owed by KMOR to Goodwin's client, Dan Beebe. According to Goodwin's testimony, a general discussion followed relating to the affairs of KMOR, and an agreement was reached that both Vargas (presumably Raymond D.) and Goodwin would attempt to contact people with respect to finding a purchaser for the KMOR license. According to Goodwin, "Their [KMOR] main asset at that time was the license or the availability of license to them. My clients, of course, own all of the radio equipment itself." It should be noted that at such time the accounts receivable of KMOR had been attached and were, or had been, in the hands of a receiver or caretaker as the result of the attachment suit.³³ According to Goodwin, about September 13,

³⁰ The record is not clear as to the amount of rent in arrears at the time the attachment suit was filed in June. According to Goodwin, the first serious default in rental payment occurred in January 1957 and he had endeavored to collect the rent thenceforth, apparently with little or no success.

³¹ Steventon's deposition also corroborates Walley. However, no date is mentioned as to when Walley talked to Steventon, whereas Lyle Lavy refers to early 1957. Engle did not testify.

³² At least one of the two Washington attorneys consulted by Walley advised him that it would cost anywhere from \$10,000 to \$15,000 to clear up the legal problems connected with the purchase of KMOR. The licensee was faced with questions relating to what then appeared to be irregular transactions concerning the stock of the licensee, and a hearing was thus highly probable, if not inevitable, in connection with its renewal application; and, moreover, until the renewal application was acted upon favorably, KMOR had little, if anything, of value to sell, since the physical facilities were owned by the Beebe-Sparks partnership (Oroville Mercury Broadcasters). In addition to the legal problems relating to renewal of license, there was also the indebtedness outstanding against the licensee.

³³ The record is somewhat confused as to the arrangement under the receivership. According to Goodwin's testimony, when Beebe attached the accounts receivable of KMOR in June 1957. "We also put a receiver in at the station"—Kathleen Avril LaBlanc, Goodwin's secretary—whose duty it was "to stay at the station and take in on behalf of the sheriff any money that might come into the station in the course of the daily business." He further testified that Mrs. LeBlanc spent her entire day at the office of the station—and not at his office—for a period of approximately 2 weeks; that he did not pay her for that period, but the sheriff paid her and billed Beebe for such period of time. Goodwin

1957, he reached an agreement with Vargas' attorney, providing that "in consideration of our not proceeding to evict," and allowing them to keep the station on the air, if they could, that "they [KMOR] would not sell their lease as it stood, but that we would have an interest in making a new lease with whomever they could sell their stock to or to whom they sold their business."

57. Thomas J. Corkin, an Oroville attorney who represented Walley, testified, by deposition, that Walley initially contacted him about KMOR some months prior to the time he actually retained him as an attorney concerning the matter, but that the first time "that I was aware that he was concerned with the acquiring of the station was in September or late August of 1957"; that he advised Walley not to purchase the stock of the licensee; that he [Corkin] prepared a lease agreement on behalf of Walley in September of 1957, after Walley had come to his office, following a conversation with Beebe, and handed him [Corkin] a yellow piece of paper that had handwritten notes relating to the agreement that Walley and Beebe had orally reached at Beebe's office and asked him to incorporate in the lease agreement the terms set forth in the notes; that he gave the lease agreement after it was drafted to Walley, and Walley left, stating that he was taking it to Beebe. Corkin further testified that he had several months of negotiations with Goodwin relative to the lease and also a subsequent lease, which had been prepared by Goodwin. These negotiations covered a period both before and after the alleged offer of Walley to be bought off.

58. Corkin's office records show that the first notation with respect to the lease was one reading, "call for appointment with Dan [Beebe] and KEEN." Corkin called Beebe on September 10, 1957, and requested information about the status of his negotiation with the representative of station KEEN, and requested an appointment because Beebe stated that he wanted to talk to KEEN before he would give Walley an outright lease on the radio station facilities. Corkin further testified that he "informed Mr. Beebe at his request that he would honor his suggestion that he wanted to see what KEEN had to offer before he would sign an agreement with Mr. Walley"; that on September 16, 1957, Goodwin was in Corkin's office and they had a discussion concerning the lease which Corkin had prepared, but that they disagreed over the exclusivity feature of the lease—Corkin insisting that Beebe give an exclusive lease to Walley and Goodwin disagreeing with such arrangement—but that negotiations were not broken off at that time. Corkin further testified that Walley brought the Goodwin draft of the lease to his [Corkin's] office on or about September 16 or 18, 1957.

further testified that "The operation was expensive to my client * * *. And we determined that the amounts that were apparently being received or the protection that it afforded to him was costing him more than the receiver justified, and she left. We no longer kept a receiver in there after that." Mrs. LeBlanc, on the other hand, testified in her deposition that she didn't have the full-time job as receiver, but that another girl had this; that "I was there on the weekends, and then there was one day, this one particular girl was ill and I had to come down to the office before I went to work. this was at the request of the sheriff's department." She further testified that "I simply stayed there to make sure that the employees didn't take anything, or remove anything from the station." She agreed that she was paid by the sheriff for the time she spent at the station.

59. Corkin also testified that Walley instructed him to negotiate with Goodwin with reference to "withholding filing with the FCC for a short time in the initial negotiations, during which time KEEN was involved"; that he notified Goodwin that "we would withhold filing until such time as they would have an opportunity to talk to the representative of KEEN." Corkin also testified that "Subsequent to that time, I informed Mr. Goodwin specifically that we would not withhold filing any longer and pressed him for the written agreement with Mr. Beebe, and shortly before, within a day or two before, Mr. Walley's application was filed, I gave Mr. Goodwin the so-called ultimatum, I told [*sic*] him that if he would not go along with our request, would they lease the station to Mr. Walley if he became the licensee. Mr. Goodwin's answer to that was they were not out to make friends or anything else, it was a business transaction, and if Mr. Walley got the license, of course they would lease the premises to him." At that particular time, Corkin also had conversations with Walley's Washington counsel, requesting information as to FCC procedures, and had conversations with Walley relating to those, and he also asked Washington counsel's advice about making an application at that particular time. It was Washington counsel's advice to Corkin and Corkin's own opinion that filing could not be withheld longer. Corkin testified that "I therefore instructed Mr. Walley to complete the preparation of the form, I think it is 301, and to send it to Washington * * * for filing. I informed Mr. Goodwin of that action." Corkin testified that, according to his notes made at the time of the conversation, this took place on October 16, 1957. (The application is dated October 19, 1957.)

60. Corkin further testified that "Mr. Goodwin never at any time mentioned to me that Mr. Walley had suggested that he would be bought off or any other such statements * * *. If it ever happened, Mr. Goodwin did not call it to my attention." Corkin also testified that "I feel as one attorney to another, if such a situation existed, the first thing the attorney would do would call it to the attention of the attorney with whom he was dealing * * *."

61. Corkin also testified that he had a telephone conversation with Goodwin on or about November 20, 1957, and another one on December 4, 1957, and that in one of those two conversations (which were the last two he had with Goodwin), he informed Goodwin that "in view of their attitude,³⁴ that Mr. Walley would have to amend his applica-

³⁴ On cross-examination, Corkin, when asked what he referred to when he testified that Walley would have to change to a new site because of the attitude evidenced by Beebe and Goodwin, his answer and questions and answers which followed on the subject were:

"A. The attitude was that Mr. Beebe and Mr. Goodwin who requested of me that I have Walley step aside as they had some other people they wanted to deal with and Walley was a stumbling block with his application filed.

"Q. They wanted you to hold up until they could see whether this problem could be worked out; is that right?

"A. Oh; absolutely not. They wanted us to give up the business proposition in favor of someone we had never heard of.

"Q. When you say 'business proposition,' what do you mean?

"A. Well, I imagine Mr. Beebe was seeing who he could get the most money on a new lease out of. It was a pure, as Mr. Goodwin stated to me, Mr. Beebe was only interested in one thing, he had an arrangement with the city of Oroville for that property of \$1 a year, and he was leasing it out to the highest bidder.

"Q. Did Mr. Walley ever discuss at all with you the possibility of withdrawing his application after it was filed?

"A. Never."

tion for a new site." Corkin also testified that after the Walley application was filed, Beebe and Goodwin requested him to have Walley step aside, since they had some other people they wanted to deal with and Walley's application was a stumbling block. (See footnote 34.)

62. Goodwin's allegation in his November 21, 1957, letter, that "several documents have been written" which were "refused by Walley for various reasons not particularly pertinent here," is not true by his own testimony. He admitted on the witness stand that he had drafted only one such document [the lease], and that the other document he had in mind was the lease which had been drafted by Walley's attorney. Walley had indeed not refused the document drafted by his own attorney. He had, however, rejected the lease agreement drawn by Goodwin, the only document which Goodwin, under oath, could recall having drafted when confronted with this sentence. It is also noted in connection with the letter of April 30, 1958, that, according to Goodwin's own testimony, his client insisted that that letter contain the clear statement that Beebe had not been present at any of the conversations related therein. This, according to Goodwin, was because Beebe had no personal knowledge of the conversations with Walley.

Conversations between Walley, Beebe, and Goodwin ³⁵

63. The first meeting between Walley and Dan L. Beebe, coowner of the physical facilities leased by KMOR, occurred on July 29, 1957, in Beebe's office.³⁶ The meeting had been arranged by Edwin L. Kirkpatrick,³⁵ a friend of Walley's, who had been asked by Walley to approach Beebe to "* * * just sort of feel out to see what the proper manner of approach to the present owner would be." Kirkpatrick accompanied Walley to such meeting with Beebe. The purpose of the meeting was to discuss a lease of the KMOR facilities³⁷ and, as Walley explained, he approached "Beebe to find out if I could take over KMOR, inasmuch as it was closing, what arrangements could be made and—this was nearer to an inquiry * * *." On the same date, and following the meeting in Beebe's office, Walley and Kirkpatrick³⁸ met with Norris M. Goodwin, Beebe's attorney, and obtained from him, at Beebe's direction, certain engineering data concerning station KDAN, predecessor to station KMOR.³⁹ These engineering data

³⁵ Walley and Goodwin both testified at length in this proceeding, and Kirkpatrick testified by deposition. Beebe did not testify.

³⁶ As already found, the physical facilities used by KMOR were actually owned by Oroville Mercury Broadcasters, a partnership composed of Beebe and Sparks, the latter a resident of Hayward, Calif. The negotiations with Walley on behalf of such partnership, here under consideration, were all carried on by Beebe personally or by Goodwin as attorney for Beebe.

³⁷ Walley's interest in obtaining a lease was based on his "* * * understanding that I needed a lease to apply for this frequency * * *."

³⁸ Kirkpatrick's deposition corroborates the date and indicates that he was also present at the first meetings with Beebe and Goodwin, respectively.

³⁹ Goodwin's testimony indicates that his first meeting with Walley occurred around "2 weeks before September," and that the only other person present was his secretary, Kathleen LeBlanc. Walley's date of the first meeting [in late July], as well as the fact that he was accompanied by Kirkpatrick, is corroborated by Kirkpatrick. While Kathleen LeBlanc first fixed the time as "early fall," she later, under cross-examination, fixed it at "sometime around July or August," and she also testified that Walley on several visits to Goodwin's office was accompanied by "another party," whom she could not name. Even though Mrs. LeBlanc constantly referred to "early fall" or "fall months," her benchmark for time as to much of her testimony was when she had had dental surgery. This she placed at "just a few days before" she served at the station for the sheriff's office in connection with the attachment of the KMOR accounts. According to the testimony of Goodwin, the attachment suit was in June 1957, and the receivership or caretaker function in connection with the attachment was carried on for only about 2 weeks thereafter.

were to be used in any application for a construction permit filed by Walley for the frequency then licensed to KMOR.

64. Both Walley and Goodwin acknowledge subsequent contacts concerning the lease of the facilities, and much of the conflict relates only to the type of contact and the dates thereof. There is agreement that Walley presented a lease to Goodwin—at Beebe's direction—which had been prepared by Thomas J. Corkin, Oroville attorney for Goodwin; that Goodwin presented a lease which he had prepared to Walley; and that neither lease was acceptable to the other. Walley also testified to other meetings with Beebe during the same general period of time. According to Walley's testimony, he next met⁴⁰ with Beebe (after the first meeting on July 29, 1957) at Beebe's home sometime between August 13 and 17, 1957, at which meeting he was accompanied by Kirkpatrick and a Mr. Wagner; he had a third meeting with Beebe at Beebe's office on September 3, 1957, and was again accompanied by Kirkpatrick; he had a fourth meeting with Beebe at Beebe's office on September 10, when he was unaccompanied; on September 18, 1957, he had a fifth meeting with Beebe, at which he gave him the draft of the lease prepared by Corkin⁴¹ and on the same day took the draft of the lease to Goodwin at Beebe's request.

65. The record contains conflicting testimony concerning Walley's agreement to withhold filing of his permit application. Walley testified that he agreed to refrain from filing, only in regard to the pending negotiations with Messrs. Snell and Farr from station KEEN, San Jose, Calif., to purchase KMOR.⁴² Goodwin's testimony is that Walley agreed to withhold filing his application until all negotiations had failed or the station license had been forfeited, and that Walley was kept apprised of all negotiations re sale of KMOR, including negotiations with John R. (Jack) Breece.⁴³ Walley, however, denied any knowledge of the negotiations between Goodwin and Breece at the time the Walley application was filed. He admitted that he had been advised that filing an application for construction permit would require a comparative hearing with the pending KMOR renewal application.

66. The deposition of Thomas J. Corkin, attorney for Walley, corroborates Walley's testimony that Walley agreed to withhold filing his application *only* until negotiations for KMOR's sale to the KEEN interests, Snell and Farr, had been concluded.⁴⁴ As elsewhere found herein, Corkin testified that subsequent to the visit to KMOR by

⁴⁰ According to Kirkpatrick's deposition, he arranged for the first meeting between Walley and Beebe and accompanied Walley to Beebe's office for it, and again when the Corkin-drawn lease was presented to Beebe, and later in the same day the two took the lease to Goodwin at Beebe's direction; this was soon after the 27th of August, when Beebe returned from a trip to Canada.

⁴¹ See par. 57-61, *supra*, for Corkin's participation.

⁴² Snell and Farr visited KMOR in September 1957. Walley learned from Vic Ives, KMOR announcer and program director, of the visit and of their disinterest.

⁴³ Goodwin's testimony indicates that he was first contacted on behalf of Breece and Robinson in September 1957, by Ike Twining. Breece testified that he first met Goodwin sometime between Oct. 1 and 10, 1957, but that he visited station KMOR as early as September 15. Negotiations between Goodwin and the KEEN group took place in September 1957.

⁴⁴ The deposition of Kathleen LeBlanc, Goodwin's secretary, was offered to support Goodwin's testimony. However, Mrs. LeBlanc's testimony lacks preciseness as to the parties, conversation, and dates involved; i.e., " * * * he promised to withhold any adverse action until such time our *prospective people* dropped out * * * ". "He promised he wasn't going to do anything until the radio station had been taken off the air and until we had failed in these *other negotiations*." [Emphasis supplied.]

Snell and Farr, he informed Goodwin of Walley's intention to file his permit application and "pressed him for the written agreement * * *," and was told by Goodwin that if Walley became the licensee, they [Beebe] would lease the premises to Walley.⁴⁵ After consulting with Walley's Washington attorney, Corkin advised Walley to file the application. The Walley application was filed on October 23, 1957.

67. There is substantial agreement between the Walley and Goodwin testimony that a meeting occurred in Goodwin's office shortly after the Walley application was filed and that the figures \$10,000 and \$15,000, respectively, were mentioned in the ensuing discussion.⁴⁶ They were alone during the meeting. However, Kathleen LeBlanc, Goodwin's secretary, was in the outer office. According to Goodwin, Walley entered his office and proceeded to inquire about the lease; thereafter, Walley became upset, confused, and flushed upon learning that Goodwin had knowledge of the filing of his permit application, but, "after collecting his wits," Walley offered "to be bought off" for \$10,000. Goodwin testified that he considered Walley's filing of his application a breach of faith, that the conversation was animated, and that he was "mildly upset." Goodwin further testified that Walley stated, "* * * Well, it will cost someone about \$15,000 to get rid of me in Washington." Walley admits that he was angered considerably over Goodwin's refusal to give him an exclusive lease, but also testified as to Goodwin's anger. Walley categorically denies making an offer to sell out, admitting, however, that the sum \$10,000 may have been mentioned "* * * as a reference * * * as I might say I wouldn't go to that place to eat for \$10,000." Walley explains that he was stating that he wouldn't dismiss even if someone offered him \$10,000.⁴⁷ With regard to the figure "\$15,000," Walley admits a reference to that sum in discussing estimated expenses connected with the purchase of the license of station KMOR.⁴⁸

68. Goodwin further testified that Walley visited his office on April 30, 1958 (a date subsequent to the dismissal of the Breece application);⁴⁹ that the lease was again discussed; and that "I think that it was on this date that some mention was also made about the former offer that he had made for \$10,000, and if memory serves correctly, he made a passing remark at that time that he would still go along with his former offer without his elaborating on it."⁵⁰ Walley categorically denied seeing Goodwin on April 30, 1958, and asserted that the only mention of the \$10,000 figure, subsequent to the meeting in Goodwin's office—immediately after the filing of Walley's applica-

⁴⁵ Goodwin admitted several conversations with Corkin, but denied any forewarning as to the filing, whereas Corkin testified that he gave Goodwin such information shortly after mid-October 1957, and that the only agreement to withhold filing related specifically—and only—to the KEEN people, who had by then investigated and lost interest.

⁴⁶ Walley approximates the date as the latter part of October. Goodwin sets the date as Nov. 3, 1957.

⁴⁷ The deposition of LeBlanc reflects that she overheard the discussion wherein Walley was willing to "drop his adverse action for a certain amount of money."

⁴⁸ Walley had been advised by a Washington radio lawyer, it would cost anywhere from \$10,000 to \$15,000 to clear up legal problems in connection with the purchase of KMOR.

⁴⁹ Goodwin testified that "This is not as strong a recollection possibly as some of the other conversations I have had with him, but I do believe that it happened about that time."

⁵⁰ The Breece application for transfer of control (BTC-2676) was filed on Dec. 3, 1957, and dismissed on Apr. 17, 1958.

tion—occurred in a telephone conversation with Goodwin around the middle of 1958,⁵¹ following Walley's receipt of a McFarland letter dated May 26, 1958, reciting allegations pertaining to Walley's offer to be "bought off."⁵²

Conversations between Walley and Breece

69. As already found, John R. (Jack) Breece filed an application to transfer control of the licensee of KMOR to himself on December 3, 1957. At that time, both KMOR's renewal and the mutually exclusive permit application of Walley were pending. The testimony of Walley and Breece, with regard to Walley's alleged offer to Breece to withdraw his [Walley's] application, is, in many respects, in agreement. In his deposition, Jack Breece testified that two meetings were held with Walley at a restaurant; that the only other party present besides Breece and Walley at the meetings was Gene W. Robinson [Breece's prospective partner and proposed manager of the station]; that both meetings were held at Breece's instigation; that the first meeting was merely exploratory in nature and nothing of importance was discussed; that Breece's interest in pursuing negotiations with Walley at the second meeting [wherein the alleged offer was made] was "* * * perhaps Mr. Walley would withdraw his application for his expenses involved and that this would then eliminate the problem of the license renewal to the Oroville Broadcasters"; that at this second meeting Breece asked Walley if he would withdraw his permit application in return for expenses; that he had informed Walley of his expenses in connection with the prospective purchase of KMOR; that Walley did not reveal his expenses; that Walley offered to withdraw his application for \$10,000; and that Breece disregarded the offer.

70. Deposition testimony from Jerry B. Evarts, a friend of Walley's, reveals Evarts' presence at the second meeting with Walley, Breece, and Robinson. Evarts testified that Walley told Breece and Robinson, in response to their question, that he did not want to sell out, he wanted the station; that Breece and Robinson would not accept Walley's negative reply; that during a period when Breece and Robinson were not present, Evarts suggested in order to end the conversation that Walley give a ridiculous figure, \$15,000 or \$20,000; that upon resuming the conversation, Walley again refused to drop his application; that after "* * * they kept pressing for a figure * * *, Mr. Walley gave them a figure"; and that the meeting was terminated almost immediately after the figure was given without reaching any agreement.

71. The stipulation⁵³ re Gene W. Robinson states that Walley was accompanied at the second meeting by another man, whose name Robinson did not remember; that Breece suggested that Walley reimburse Breece;⁵⁴ that Walley refused, upon which Breece asked Walley

⁵¹ The date was established as June 2, 1958.

⁵² On redirect examination, Walley stated that after his application had been amended [February 1958], he called *Beebe* concerning renewal of the lease negotiations. Walley's surrebuttal testimony identifies the date as April, after dismissal of the Breece application, but was uncertain as to whether the telephone call was made to Beebe or Goodwin.

⁵³ Counsel for SanVal and Walley stipulated that if Robinson was called as a witness, he would testify as set forth above.

⁵⁴ Breece testified that he did not suggest that Walley reimburse him. Robinson's stipulated testimony corroborates Evarts' account.

if he would dismiss his application for consideration; that Walley made no statement concerning expenses; that Walley stated a figure, possibly \$10,000, which both Breece and Robinson considered excessive; and that the meeting ended shortly thereafter.⁵⁵

Conversations between Walley and Ives

72. The deposition of Victor Ives, program director at station KMOR during the last few months of operation,⁵⁶ relates that two meetings with Walley occurred; a meeting at KMOR during September 1957, and a meeting at Seybold's Restaurant some weeks later.⁵⁷ Ives does not recall the details of the first meeting, but believes he informed Walley that the KEEN group [Snell and Farr] had visited KMOR and were not interested. Ives testified that a second meeting with Walley occurred some weeks after the first meeting [at Seybold's Restaurant] during which Ives expressed his opinion to Walley that it would be fairer and better business for Walley to assume the liabilities of the existing station rather than apply for a new station.⁵⁸ According to Ives, Walley then "* * * told me that if I did not want him to file an application for that particular frequency, that it would cost me \$5,000," and that if Ives did not have the money, Beebe or Goodwin could provide it. Ives testified that he informed Helen Bales and Harry Heydenreich, KMOR creditors, and Norris Goodwin, attorney for Beebe, of the conversation. Ives further testified that he wrote a letter to the FCC following the conversation with Walley at Seybold's relating the details of said discussion, but was not sure it was ever mailed and also testified that he had been unable to locate a copy.⁵⁹ In rebuttal to Ives, Walley testified that he recalled only one meeting with Ives—at the radio station on October 12, 1957⁶⁰—at which time Ives informed him of the visit to KMOR by Snell and Farr and of their disinterest. Walley stated that he had no recollection of ever being with Ives in Seybold's Restaurant, and categorically denied making any offer to Ives not to file a permit application for any sum of money at any meeting.

Walley's transmitter sites

73. While there is no issue as to the availability of Walley's transmitter site, evidence in connection therewith is relevant with respect to the good-faith issue and evidence relating thereto. Walley testified that subsequent to the filing of his application and after hearing of Breece's application for transfer of control of the licensee of station KMOR, he entered into a written agreement with a Mr. and Mrs. Lowell concerning the lease of a tract of land for the location of the

⁵⁵ Walley's testimony on the meetings with Breece was presented in rebuttal to Breece, and is in accord with the earlier deposition of Everts.

⁵⁶ Ives left KMOR on Oct. 26, 1957. KMOR went off the air on either Nov. 2 or Nov. 5, 1957. The authorization from the Commission is dated Nov. 5, 1957, but refers to a period of 30 days beginning Nov. 2 and ending Dec. 1, 1957. During the last few months of operation, Ives was in complete charge of station.

⁵⁷ Ives testified that the first meeting with Walley occurred after the visit to KMOR by Messrs. Snell and Farr in September 1957.

⁵⁸ Ives does not recall the circumstances surrounding the second meeting.

⁵⁹ Ives also testified that he "believed" he had sent a copy of the letter to Breece. A study of the Commission's files does not show that such a letter was ever received.

⁶⁰ On cross-examination, Walley referred to the date of the meeting as "* * * around the first half of October."

station.⁶¹ According to Walley, the terms of such agreement included the cost of the property per month, the fact that the Lowells would lease the property, and that monthly payments were to commence only when construction started. Mrs. Lowell's deposition corroborates the existence and date of the agreement, differing only to the extent that Mrs. Lowell referred to the terms as granting Walley a first option to purchase the land, rather than to lease the land. As already found, *supra*, the Walley application had been filed on October 23, 1957, and was thereafter amended to reflect a new site—the new site being the Lowell property—on February 19, 1958.

74. During the testimony of Goodwin, it was developed that, in March 1960 and shortly before his appearance on the witness stand in Washington, D.C., he had, at the request of Robert T. McVay, gotten in touch with a Mrs. Lowell, whom he had been informed was the owner of the property specified by Walley in his amended application, for the purpose of determining whether Walley, in fact, had a lease agreement on such site; that he had gone out to the property, talked with the Lowells' daughter and, at his request, Mrs. Lowell thereafter called him on the telephone. He further testified that in the course of his conversation with Mrs. Lowell, "she told me that she had called Walley, and that she had told a little white lie, that she told him someone was interested in it and that he bought it after hearing that someone was interested in it." Mrs. Lowell, in her deposition, categorically denied that she had told Goodwin that she had told Walley a "little white lie." It was her uncontradicted testimony that she and her husband had at the time a bona fide offer from a party, whom she named and whose address she gave, and that she so advised Walley because she felt that Walley had a first option to purchase; and that he had immediately purchased the land. The circumstances of her conversation with Goodwin—though not the content thereof—were corroborated by the deposition of her daughter, Mrs. Edith M. Rosenbaum.

75. It appears from a consideration of all the evidence in this record that at the time the Walley application was filed, specifying the transmitter site which he had been attempting to lease from Beebe, he had reason to believe that such site was available to him; and that when he [Walley] became aware the Beebe site might not then be available to him, he immediately took steps to, and did, obtain another site and amended his application accordingly.

1956 renewal application of KMOR

76. In 1956 Walley was listed in the renewal application of station KMOR as its chief engineer—at a time when he was manager and chief engineer at station KAGR. He also signed section II (engineering) of such renewal application above the line bearing the notation "technical director, chief engineer, or consulting engineer," and none of the categories were either stricken or underscored. Walley testified that he felt that his service was in the nature of "technical advice." The other portions of the renewal application, which listed him as

⁶¹ The document was not introduced in evidence at the hearing. However, reference thereto on the record indicates the date as Nov. 25, 1957.

chief engineer, were executed by other persons than Walley and he is not responsible for such showing. However, in addition to his signature to the engineering section of the renewal application, under date of September 11, 1956, Walley wrote the Commission on KMOR letterhead relative to KMOR engineering logs and signed the letter as chief engineer. There was apparently attached to such letter an acknowledgment by Walley before a notary public, wherein no title is given for him. Walley's explanation of this was that, "At one time, during the difficult days of KMOR, I volunteered to help them through a period while they were short a chief engineer"; that he was the "only man with a license who had anything to do with the station. I was not employed by KMOR on that basis"; that he considered himself a "troubleshooter"; that when they were short an engineer, he wrote or phoned the San Francisco field office of the Commission relative to working for KMOR, and "was advised that if I did that as a full engineer up there, I couldn't be considered a full-time engineer at my own station. And that kind of canceled the whole thing out, what I was trying to do. I don't believe it was ever completed." He further testified that, to the best of his belief, he had submitted bills to KMOR for his work in the name of "Mobile Communications."⁶²

CONCLUSIONS

1. Both applicants in this proceeding have been found by the Commission to be legally, technically, financially, and otherwise qualified to construct, own, and operate the respectively proposed station, except with respect to matters raised by specific issues⁶³ set forth in the designation order.

2. Oroville, Calif., presently has no local radiobroadcast station, and a grant of either proposal would furnish a transmitting facility for local self-expression of such community. Either the proposal of Walley or SanVal would provide a new nighttime service to approximately 8,600 persons in an area of approximately 135 square miles. All of the proposed nighttime service area, including the city of Oroville, receives primary service from two stations in San Francisco and one in Sacramento. Walley's proposal will provide a new daytime service to 68,582 persons in an area of 3,387 square miles, and SanVal's proposal will provide a daytime service to 75,349 persons in an area of 3,324 square miles. Ten stations individually provide primary service (0.5 mv/m or greater) daytime to the entire rural area of both proposals, and numerous others serve portions of such area. Seven stations provide primary service (2 mv/m or greater) daytime to Oroville.

3. Both proposals would cause cochannel interference to station KBET, Reno, Nev., and adjacent-channel interference to station KCRA, Sacramento, Calif. The KBET application for an increase

⁶² SanVal proposes a finding that this activity was carried on by Walley despite the statement from the field office in San Francisco to the effect that he could not act as chief engineer for two stations. While the date of the call to the San Francisco office was not definitely ascertained, the evidence does not support a finding that his activities in connection with the 1956 renewal application of KMOR were after such telephone call.

⁶³ The text of issues pertinent to these applicants is set forth on pp. 2-3, supra.

in power, originally consolidated in this proceeding, has been severed and granted with the condition that it accept any interference resulting from a grant of either Oroville proposal. Likewise, the application for renewal of license of station KCRA, originally consolidated in this proceeding, has been severed and granted with the condition that KCRA accept any interference resulting from a grant of either Oroville proposal. Under these circumstances, no obstacle is presented to a grant of either application on the basis of interference to an existing station.

4. A determination must be made as to whether there is a violation of section 3.37 of the Commission's rules and regulations; and, if such violation is found to exist, whether a waiver of the rule should be granted. Section 3.37 of the rules provides that—

A license will not be granted for a station on a frequency of ± 30 kc from that of another station if the area enclosed by the 25-mv/m groundwave contours of the two stations overlap, nor will a license be granted for the operation of a station on a frequency ± 20 kc or ± 10 kc from the frequency of another station if the area enclosed by the 25-mv/m groundwave contour of either one overlaps the area enclosed by the 2-mv/m groundwave contour of the other.

5. The evidence establishes that the area enclosed by the 2-mv/m contour of KCRA as presently operating overlaps in some undefined location and extent the area enclosed by the 25-mv/m contour of the Walley or the SanVal proposal for a station at Oroville, Calif. The overlap would occur approximately 60 miles from Sacramento, the site of KCRA.

6. The initial proposal of the Commission which resulted in the establishment of section 3.37 of the rules was made in Public Notice No. 4485, dated February 4, 1947. After oral argument on the matter before the Commission, en banc, the Commission on June 10, 1947, by order in docket No. 8089, amended its standards of good engineering practice by inserting, in pertinent part, the following:

* * * Accordingly, no station will be licensed for operation with less than 40 kilocycles separation from another station, if the area enclosed by the 25-mv/m groundwave contours of the two stations overlap. Frequency separation of 20 kilocycles and 10 kilocycles are considered inappropriate for stations with the same *general urban coverage*, and therefore no station will be licensed for operation with less than 30 kilocycles frequency separation if the area enclosed by the 25-mv/m groundwave contour of either one overlaps the area enclosed by the 2-mv/m groundwave contour of the other. [Emphasis supplied.] (Federal Register, June 14, 1947, p. 3893.)

7. In the report accompanying this order, the Commission made the following pertinent observations:

* * * Interference to listeners resulting from assignments on adjacent channels in the standard broadcast band is caused by nonselectivity of receivers, external cross-modulation and internal cross-modulation. * * *

and

* * * The problems presented herein have been the subject of study for a long period of time. The Commission intends to continue such studies. The special studies undertaken for the purpose of this hearing upon which testimony was adduced were concerned only with the problems of nonselectivity of receivers and of external cross-modulation. Neither of the

two studies were conducted for sufficient length of time or over a sufficient portion of the standard broadcast band to permit conclusions to be drawn with complete confidence. In addition, the Commission is of the opinion that a study should be undertaken of the many new types of radio receivers on the market since the end of hostilities in 1945 so that the Commission will be informed as to the characteristics of these receivers. In the meantime the Commission believes that relaxation of the standards should not be undertaken in the absence of a showing that radio service will not be deteriorated thereby. * * * (Federal Register, June 14, 1947, pp. 3893-3894.)

8. By report and order adopted May 19, 1955 (12 R.R. 1525, 1527), this provision of the standards was "with editorial changes" transferred to the rules as section 3.37. In so doing the Commission said, "In shifting these provisions to the rules, the Commission is not changing their manner of implementation" (12 R.R. 1527, 1528). The Commission also noted in the 1955 report and order that "The reason for the rule is that a determination of interference solely in accordance with the appropriate interference ratio does not realistically portray the potential interference that might result in such a case" and cited in support of this observation its report in docket No. 8089 dated June 7, 1947, *supra* (12 R.R. 1527, 1530).

9. It thus appears that the purpose of section 3.37 of the rules was, and is, to prevent the possible creation of a type of interference between broadcast stations that is not susceptible to delineation by the use of interference ratios and results from the nonselectivity of broadcast receivers, external cross-modulation and internal cross-modulation. Stuart L. Bailey, a qualified and recognized expert in the field of radiofrequency propagation and allocation matters, after a study of all the measurements introduced in this proceeding and other pertinent data, expressed the opinion that no interference could result to either KCRA or either of the Oroville proposals in the circumstances here presented because of nonselectivity of receivers, external cross-modulation or internal cross-modulation, and that such interference as would exist was properly described by the 1 : 30 desired-to-undesired signal ratio prescribed in the rules of the Commission. This expert opinion is unrefuted and undisputed in this record.

10. Only recently the Commission had occasion to state, "whether a rule is to be waived is a matter to be determined not solely upon alleged similarities to other cases, but rather in the light of the *relevant circumstances of the proceeding in which it is requested.*" [Emphasis supplied.] (*WPGC, Inc.*, 19 R.R. 394, 395.) In *National Broadcasting Co. v. United States*, 319 U.S. 190, at page 225, the Supreme Court observed:

* * * The problems with which the Commission attempted to deal could not be solved at once and for all time by rigid rules-of-thumb. The Commission therefore did not bind itself inflexibly to the licensing policies expressed in the regulations. In each case that comes before it the Commission must still exercise an ultimate judgment whether the grant of a license would serve the "public interest, convenience, or necessity." If time and changing circumstances reveal that the "public interest" is not served by application of the regulations, it must be assumed that the Commission will act in accordance with its statutory obligations.

11. In *The Bridgeport Broadcasting Co.*, 18 R.R. 285, the Commission waived the provisions of section 3.37 of the rules with regard to a frequency separation of 20 kc, observing, inter alia, that—

The overlap of the existing WICC 25-mv/m contour and the WVNF 2-mv/m contour has been present since before July 1947—at which time the Commission amended its engineering standards to preclude such overlap between stations with the same general urban coverage. * * * Thus, initially, the situation here can be distinguished from the usual case, wherein a proposed operation would create an overlap situation. Although this overlap situation has existed since before 1947 and although WICC has maintained records of complaints as to interference since 1952, an examination of the WICC files disclosed no record of any complaint of interference between that station and WVNJ. In the circumstances here present, and considering the facts of record herein, it is reasonable to conclude that no such interference would result from the proposed WICC operation. * * * (18 R.R. 286d.)

and

* * * Though consideration of a waiver evidences a relaxation of our past policy of strict adherence to the proscription of section 3.37, it is warranted within the objectives sought to be accomplished by said section—i.e., to require a sufficient physical separation of stations to prevent an allocation conducive to the type of interference which the rule seeks to preclude. * * * (18 R.R. 286e.)

And, in *Vincent G. Cofey and Benjamin A. Oswalt*, 19 R.R. 441, the Commission reaffirmed its waiver of section 3.37 and grant of an application increasing an already existing overlap of 2- and 25-mv/m contours of stations separated by 20 kc, because “The Commission noted that no problems of cross-modulation between WMRO and WTAQ had been reported.”

12. In the two cases cited, the Commission waived the provisions of section 3.37 because there had been no evidence of interference of the sort the rule was designed to prevent. In the instant case, the uncontroverted evidence indicates that no such interference will occur if the rule is waived. In this regard, it is pertinent to observe that the parties requested the opportunity to make tests to determine the presence or absence of such interference, and the necessary authorization was refused.⁶⁴

12-A. Under the facts and circumstances of this case, liberal construction of the applicable rule is justified, and it is, therefore, concluded that public interest, convenience, and necessity would be served by a waiver of section 3.37 of the rules; and, accordingly, the provisions of section 3.37 are hereby waived.

Good-Faith Issue

13. The resolution of the “good faith” issue requires consideration of two factors: (a) the act of filing the application for construction permit by Walley for a station to use the same frequency as that already in use by station KMOR at Oroville; and (b) the alleged offers to “sell out” after such filing. So far as the bare fact of filing

⁶⁴ Station KMOR formerly operated at Oroville with the identical frequency herein applied for by Walley and SanVal, and it was contemplated that the KMOR transmitter would be used. See letter (8841) signed by Acting Secretary of the Commission, dated July 12, 1960, addressed to Jansky and Bailey.

an application is concerned, there is nothing, per se, wrong in such act. Clearly the basic law involved—the Communications Act of 1934, as amended, and the rules and regulations promulgated pursuant thereto by the Commission—permits the filing of bona fide applications for facilities of an existing station at the time of renewal of license. Such an application is, of course, competitive with the existing station's renewal application and a comparative hearing is required under the act. This, also, does not make the filing of the competitive application a wrongful act unless it is shown that it was filed for a purpose other than to obtain an authorization for a station. Walley's motive in filing his application is, therefore, the keystone around which the determination of this issue must be resolved.

14. That Walley had for some time evidenced an active interest in the ownership of a radio station in Oroville is clearly shown not only by his own uncontradicted testimony but also by the testimony of others, among whom were individuals he had attempted to interest in going in with him to purchase KMOR many months before it went off the air and also many months before he filed his application for construction permit. He had also consulted three attorneys, two in Washington and one in Oroville, relative to the purchase of KMOR. They had each investigated the status of KMOR and advised him not to purchase the stock of the licensee. The regular license of KMOR had long since expired and the station was operating on an extension thereof, pending action on its renewal application. It was well known locally that the station had financial and personal problems, and the public files of the Commission also clearly indicated other difficulties which confronted the licensee in connection with its renewal application—in connection with which a hearing appeared highly probable, regardless of whether a competing application for the facilities was filed. Walley's action, in November 1957, after learning that an application to transfer control of KMOR to Breece had been or was to be filed, of securing an agreement with the Lowells pertaining to a future option arrangement on a specific tract of land as a new location for his proposed station, is also a factor showing his good faith in filing his application.

15. Goodwin, attorney for Beebe, the coowner of the building and radio equipment used by KMOR, has impugned Walley's motives. He did this first in letters to the Commission in late November 1957 and, again, in April 1958. He again made similar charges⁶⁵ while on the witness stand. The allegations as to Walley's lack of good faith with him and his client [Beebe] are based upon oral conversations between them [Goodwin and Walley]. No written documents

⁶⁵ In the April 1958 letter, Goodwin also imputed to the Commission "*an adverse ruling from your department, to prevent a sale from taking place * * **" and alleged that "lack of ability on the part of the corporation to sell out [was] *due to FCC rulings*"; and, in stating an inclination to accept Walley's lease proposal, he stated that it was "only because we have a building standing empty and producing no income, and not because we are charitably inclined toward Walley, who we feel has effectively prevented us from doing otherwise, *through the assistance of your department.*" [Emphasis supplied.] Evidently Goodwin—though an attorney—was not familiar with the provisions of either the Communications Act or the rules and regulations of the Commission. There is no evidence whatsoever that any action had been taken or ruling had been made by the Commission with respect to his client's problems, or to assist Walley in any way.

relative to the Walley-Beebe-Goodwin-Corkin negotiations⁶⁶ are in evidence, and apparently no others exist, other than the Goodwin draft of the lease and the Corkin draft of the lease. These do not support a conclusion either that Walley agreed to withhold the filing of his application or that he indicated in any way that he wanted to be—or could be—bought off. Beebe, according to Goodwin's own testimony, specifically directed Goodwin to state in the latter's letter to the Commission in April 1958, that all of the conversations referred to in the letter were between Walley and Goodwin, and that Beebe was not present at any time. Goodwin's allegations must stand or fall on testimony as to contents of conversations regarding the matter.

16. Walley categorically denied any agreement to withhold filing of his application, except with respect to negotiations with the KEEN people. There is agreement that Walley, both personally and through Corkin, his counsel who represented him in the negotiations with Beebe and Goodwin, Beebe's attorney, in the lease negotiations, had agreed, at Beebe's and/or Goodwin's request, to withhold filing of the Walley application to enable them to negotiate with the owners of KEEN, San Jose, Calif. There is also no disagreement with respect to the fact that Walley and Corkin wanted an exclusive lease agreement with Beebe, and that Beebe and Goodwin did not want to give an exclusive lease, and that negotiations as to the lease continued for some time. It is also undisputed that at the time the Walley application was filed, on October 23, 1957, Walley and Beebe had an oral understanding relating to a lease, but that the exclusivity feature was a factor of sharp disagreement and no lease agreement had been signed. The evidence also shows that at the time the Walley application was filed, the KEEN people had investigated the purchase of KMOR, had expressed their disinterest and departed from the scene.

17. The testimony of Goodwin, on the one hand, and that of Walley, on the other, take widely divergent paths as to whether or not there was an agreement on the part of Walley to withhold filing his application for an indefinite period—even until KMOR was actually off the air. Walley asserted that there was no agreement to withhold filing beyond the conclusion of negotiations with people from KEEN, whereas Goodwin asserted that the agreement was to withhold filing for an indefinite period and to be terminated only by cessation of operation by KMOR.⁶⁷ Corkin fully corroborates Walley's position in that he, as attorney for Walley, advised both Beebe and Goodwin that Walley would not withhold filing except for a short period of time for the purpose of allowing opportunity for exploration of possibility of sale of KMOR to the KEEN people. Goodwin's secretary during the period of time in question, Kathleen LeBlanc, was present in the outer office during some, if not all, of Walley's visits to Goodwin's

⁶⁶ It is noted in passing that the evidence shows that, even though Beebe and Walley both had local Oroville counsel, the negotiations were not channeled at all times through their respective counsel; and that, furthermore, not only did the principals negotiate with each other, but apparently the attorneys also had conversations relative to the lease matter with the other principal as well as the other principal's attorney. Perhaps less confusion might have existed under other circumstances.

⁶⁷ In connection with Goodwin's testimony that he relied upon Walley as to the applicable radio law, it is necessary only to observe that it is somewhat unusual for an active practicing attorney to depend upon a layman to advise him as to the basic law involved. Walley apparently did not feel qualified to make legal decisions on his own behalf, since he consulted two attorneys specializing in radiobroadcast law, as well as retaining local Oroville counsel.

office and testified in attempted corroboration of Goodwin's position. Unlike the testimony of Corkin, her testimony was vague and hazy on many important factors. Moreover, some of her testimony was in conflict with that of Goodwin with respect to her duties and tenure at KMOR for the sheriff's office in connection with the receivership brought about by Beebe's attachment suit.

18. Even if Walley had agreed to withhold the filing of his application, as asserted by Goodwin—a conclusion which the record does not support—this fact would not establish that the act of filing was for the purpose of hindering or obstructing any application. Inferences and innuendoes of bad faith do not balance the affirmative evidence of good faith. The evidence does not support a conclusion that Walley's act of filing an application when he did constituted an element of bad faith.

19. Another factor to be considered is the alleged offers of Walley to be "bought off," made by Goodwin, Breece, and Ives, respectively. At the meeting in Goodwin's office soon after the filing of Walley's application, it is significant to note that Walley's interest, at the outset, concerned lease negotiations, and Goodwin's own testimony was that Walley did not want to buy KMOR. The "offer" was allegedly made later in the meeting during the course of an animated verbal exchange concerning the fact that Walley had filed an application. Goodwin's allegations of a meeting and an offer in April 1958 were specifically denied by Walley on both counts. On the other hand, Goodwin's recollection of the date, existence, and substance of such offer is characterized by uncertain terminology and, by reference, depends upon the existence of the alleged offer made to Goodwin earlier. Regarding the alleged offer to Breece, the facts show that the meeting was initiated by Breece for the express purpose of buying off Walley. A supporting deposition fully corroborates Walley's explanation of the circumstances. In both cases [Goodwin and Breece], the alleged offers are founded upon interpretations of the pertinent conversations wherein Walley acknowledged use of terminology which may have given rise to the allegations. The circumstances of the aforementioned conversations, to which there is no disagreement, considered together with Walley's candid and forthright explanation on the witness stand, satisfactorily manifest the absence of a nefarious intention to obstruct or hinder the application. As to the alleged offer to Ives, no supporting testimony was presented, although Ives testified that he contemporaneously informed at least four persons of the offer, two of whom, Goodwin and Breece, testified in this proceeding. He also testified that he wrote a letter to the Commission relating to the alleged offer which, he testified, he "believed" he mailed. He produced no copy of such letter. Moreover, a check of the records of the Commission does not disclose that any such letter was received by it. Furthermore, whereas Walley explained the circumstances of the other alleged offers, the offer quoted to Ives was categorically denied by Walley.

20. That conversations may be subject to more than one interpretation is unfortunate, at least in this case, but not unique. What may be apparent in the minds of participants to a discussion is subjective, and not susceptible of objective proof. The evidence relating to Walley's conduct at these meetings wherein the "offers" were alleged

to have been made, when considered in the context of the existing situation, demonstrates a course of action, though perhaps lacking in prudence, not inconsistent with a bona fide applicant.

21. It is, therefore, concluded that the application of James E. Walley is a bona fide application filed in good faith for the purpose of obtaining a grant for his proposed station in Oroville, and not for the purpose of hindering and obstructing a grant of the application for renewal of license of station KMOR or the assignment of said license.

Comparative considerations

22. Since both applicants have been found to be qualified to construct and operate the station, respectively, sought and such stations are mutually exclusive, it must now be determined which proposal, on a comparative basis, would better serve the public interest, convenience, and necessity, and thus should be granted. Various factors or criteria for such comparison have been developed by the Commission over the years in comparative proceedings.

Local residence

23. Neither of the applicants now resides in Oroville. *Walley*, one of the applicants, will move to Oroville in the event of a grant of his application. *McVay*, a 50-percent partner in *SanVal Broadcasters*, the other applicant, will also move to Oroville in the event of a grant of the *SanVal* application. The other *SanVal* partner (*Mitchell*) will continue to reside in Merced, Calif. Thus, *Walley* will have a greater degree of local residence, and merits a preference on this factor.

Civic participation

24. Here, again, neither of the applicants has any history of civic participation in Oroville. *Walley* has participated in the civic life of Yuba City, where he now lives and manages a radio station. Likewise, *McVay*, a partner in *SanVal*, has shown participation in the civic life of King City, Calif., where he now resides and owns and manages a radio station. *Walley's* residence in Yuba City, which is about 25 miles from Oroville, began in 1953, when he entered the employ of station KAGR. During the same general period of time, *McVay* has resided in Klamath Falls, Oreg.; and Redding, Merced, Tulare, Stockton, and King City, Calif., where he participated in the civic life of the respective communities. *Mitchell*, the other 50-percent partner in *SanVal*, has resided in Merced, Calif., for more than 30 years. Prior to 1957, he participated somewhat actively in the civic life of Merced; since that time his civic participation, even in Merced, has been limited. No decisional preference exists between the applicants on this factor.

Broadcast experience

25. *Walley* has spent most of his adult life in the employ of radio-broadcast stations, and for many years has managed a station in nearby Yuba City. He is also the chief engineer of the station. Likewise, *McVay*, a partner in *SanVal*, has spent most of his adult life in radio-broadcast work, as an employee, part owner, or owner of a radio sta-

tion. He is now general manager of a station in King City which he owns, and has also served as manager of another station. In addition, he has served as announcer, salesman, and in programing capacities. Mitchell, the other partner in *SanVal*, has had some experience in the operation of a radio station—chiefly in the field of financing—which he gained during the less than 2-year operation of KGEN by *SanVal* Broadcasters. He has had no experience in the actual day-to-day operation of a radio station. Principals in both applications have had substantial broadcast experience—that of *Walley* has been in both technical and nontechnical phases of station operation, whereas that of the *SanVal* partners has been in the non-technical field. There is no significant difference between the applicants on this factor.

Diversification of business interests

26. *Walley*, now and for the past several years, has, in his off-hours from the radio station which he manages, carried on a servicing business for mobile radio equipment users. *McVay*, a partner in *SanVal*, owns a radio station in King City, Calif. Mitchell, the other partner in *SanVal*, has business interests in laundry, drycleaning, linen and industrial supply, as well as in real estate ownership, operation and development—all in the Merced area. *SanVal* has shown a greater diversification of business interests. However, due to the location of such interests, it is not of decisional significance here, since the importance of the diversification of business factor lies in the broader knowledge of the community to be served which is gained thereby, thus lending assistance in keeping abreast of the needs of the community.

Integration of ownership and management

27. *Walley* will engage in the day-to-day operation of his proposed station as its general manager and chief engineer; and thus there will be 100-percent integration of ownership and management in the day-to-day operation of such station. *McVay*, a 50-percent partner in *SanVal*, will participate in the day-to-day operation of the partnership's proposed station as station manager or perhaps general manager. While the other *SanVal* partner, Mitchell, is listed as general manager, it has not been shown that he will actually participate in the day-to-day operation of the station. He resides a substantial distance from Oroville, will not move there, and has other business interests in his home area which require time and attention. The evidence shows that, while he was listed as general manager of station KGEN, which was located at Tulare—much nearer to his home in Merced than is Oroville—his participation in the operation of that station was not on a day-to-day basis. *McVay* testified that it was expected the Oroville operation would follow the pattern of the Tulare operation. *Walley* merits a preference on this factor.

Diversification of media of mass communications

28. Neither of the applicants now owns any communications media in either the Oroville area or elsewhere. However, a partner (50 percent) in *SanVal* and the manager of its proposed station owns a radiobroadcast station in King City, Calif., located a substantial

distance from Oroville. Walley merits a significant preference on this factor.

Past broadcast operation record

29. *Walley* has never had an ownership interest in a broadcast station of any kind or class, and thus has no past record of broadcast stewardship. However, the record of *SanVal's* operation of station KGEN, Tulare, must be considered, as well as the operation of station KRKC, King City, individually owned by *McVay*, the proposed resident partner and manager at Oroville.

30. *SanVal* constructed station KGEN and operated it for about 19 months before it was sold. *McVay* was the partner who prepared the programming for the Tulare application, as he has done in the instant proceeding. *McVay* testified that a majority of the proposed programs were carried. However, a comparison, percentagewise, of the analysis of the proposed typical week contained in the application for construction permit for KGEN with that for the composite week set forth in the application for assignment of the KGEN license by the partnership, shows that in a number of categories, actual performance fell far behind the promises made. For example, it had been promised that 4.76 percent of the weekly time would be devoted to religious programs, while only 1 percent was actually carried during the composite week. The local church services were never broadcast as proposed because neither the station nor the churches would pay the necessary line charges. Likewise, it was proposed that 3.57 percent of the time would be devoted to agricultural programs and 1 percent was so devoted during the composite week. It had also been promised that 2.98 percent and 1.49 percent of the broadcast time, respectively, would be devoted to the highly important educational and discussion program categories, whereas none whatever is shown in the composite week. Increases were shown in entertainment (76.59 percent versus 85 percent) and talks (1.49 percent versus 5 percent) programs. Station KGEN is a daytime-only station and *McVay* gave this as a reason for failure to carry many of the proposed programs. Lack of cooperation from proposed participants was given as the reason for failure to carry other programs. The record does not show that such participation was sought in advance of the representations to the Commission that such programs would be carried. In fact, he admitted that the proposed program schedule for KGEN was based on his experience in radio in other areas and what he thought would be an adequate program schedule for Tulare; that he made no effort to determine the needs of Tulare other than to attend a meeting of the local Lions Club and talk to the club members and a few other people. While he made three or four trips to Tulare in connection with the application, such trips were primarily in connection with the location of the transmitter. The fact that KGEN was a daytime station is clearly no reason—or valid excuse—for its failure to carry the programs which were proposed to the Commission at the time the authorization for the station was requested. The Commission had a right to assume that the programs proposed were tailored for the requested daytime station. In connection with promise versus performance on the part of an applicant, the recent memorandum opinion and order of the Commission

(FCC 61-878), *In the Matter of Application of KORD, Inc.*, granting a short-term license, wherein the Commission stressed the duties and responsibilities of broadcast licensees to adhere to their program proposals, is pertinent. There it was stated:

The Commission relies upon these proposals in making the finding that a grant of the application would be in the public interest. The proposals, we stress, cannot be disregarded by the licensees, without adequate and appropriate representations as to changes in the needs of the community. In short, the licensee cannot disregard the proposals in the hope that he will simply be permitted to "up grade" when called on to account.

31. The Commission also specifically pointed out in the *KORD* decision, *supra*, that while it has never considered that program proposals "must be exactly and precisely discharged" and considerable flexibility and discretion is not only permitted, but called for in the public interest, it is well established that the licensee does have a duty to carry out substantially the programming policies embodied in its proposal (or in the alternative, to justify to the Commission why there has been substantial departure therefrom). The Commission further pointed out in the *KORD* decision that—

In comparative hearings, it has stressed the importance of an applicant's past broadcast record in evaluating whether a grant to him would best serve the public interest. In short, the Commission's concern with proposal versus actual operation is not a new development, but has long been an integral part of its concern with the public interest in the broadcast field.

The decision of the Commission in the *KORD* case is one of general importance in the broadcast field and was, therefore, sent to all licensees. Even more recently, the Commission, in its consideration of the renewal of license of Allentown Broadcasting Corp. for station WHOL, emphasized the responsibility of licensees with respect to representations made in obtaining a grant, in a letter to WHOL (Public Notice—October 4, 1961—Report No. 3927) renewing the license for 1 year only. The past broadcast operating record of San-Val in its operation of KGEN is such as to cast doubt as to the likelihood of satisfactory fulfillment of its programming representations in the instant proceeding.

32. The record with respect to station KRKC, individually owned by McVay and personally managed by him since its acquisition in September 1959, also has discrepancies between promise and performance. Even more important, the evidence shows that—to put the best face on it—McVay did not use the care necessary to know whether he was making correct representations to the Commission. The program schedule which he represented had been prepared under his direction was, in fact—with minor changes in classification—the one given to him by Rose [the seller of the station] as that being then broadcast.⁶⁸ It developed later that such program schedule was also the one which Rose had used in obtaining his construction permit and apparently never carried out. McVay before his purchase of the station did not pay enough attention to the station operation to know what programming was actually being broadcast, even though he knew that the station did not have community acceptance. Cer-

⁶⁸ McVay testified that he had used the programming given to him by Rose because he wanted a smooth transition when he took over the station.

tainly, the shortcomings of his predecessor in ownership are not chargeable to McVay. However, when he makes a representation to the Commission, his failure to ascertain the correctness of his own representation is chargeable to him. The Commission has a right to expect not only honest intent in representations, but honest and accurate representations. McVay did not exercise the high degree of care and diligence which the Commission has a right to expect of a licensee. On the other side of the coin, it does appear that McVay, who had to create his own program schedule for the station immediately upon consummation of the assignment of the license, has made a number of programing changes which are, in many instances, a decided improvement over the prior programing.

33. The record of promise versus performance of SanVal itself in the operation of KGEN and that of McVay at KRKC, particularly the record of McVay's lack of candor and care in his representations to the Commission at the time of his acquisition of KRKC, cast doubt upon assurance that SanVal will fulfill its promises as to proposed programing at Oroville. While the improvements in programing made by McVay after he took over the operation of KRKC tend to reduce, to some degree, such doubt, it does not remove it. Variances similar to those found between KGEN's promise and its performance are discussed in both the *KORD* decision, *supra*, and the WHOL renewal letter, *supra*, and the Commission emphasized that such stewardships "fall short of the degree of responsibility which the Commission has a right to expect of its licensees." Clearly, in the absence of adequate explanations—and such explanations have not been given with respect to KGEN—failure to live up to representations, and particularly absence of programing in important categories, does not demonstrate the proper sense of responsibility in a licensee. Paucity of knowledge of the effect of hours of operation and whether needed cooperation would be forthcoming is no excuse. These are things which the Commission had a right to assume had been thoroughly explored before the representations were made.

Proposals

34. *Preparation and planning.*—Walley, with his residence since 1953 in nearby Yuba City and numerous visits to Oroville during such period of time, already had some knowledge of the area. This knowledge was supplemented by contacts with some 50 persons connected with approximately 45 organizations. McVay, on behalf of SanVal, also contacted some 45 to 50 individuals relative to its proposals. No significant difference exists in this area of comparison.

35. *Program proposals.*—Both applicants propose a balanced program schedule, and no decisional difference exists between the applicants' program proposals or the policies proposed. SanVal urges a preference because of its greater number of broadcast-hours proposed. The Commission has held that such factor is not of decisional importance under circumstances such as are shown in the instant case.

36. *Staffs and studios.*—The evidence supports a conclusion that both of the applicants would be able to effectuate their proposals with the staffs and studios proposed, and no decisional difference exists between them on this factor.

37. *Engineering proposals.*—The engineering proposals of the applicants are substantially the same, and no preference is warranted in this area of comparison.

SUMMATION

38. Upon the local factors of residence, civic participation, integration of ownership and management, and diversification of business interests, all of which bear upon the applicant's knowledge of and sensitivity to the needs of the community to be served, Walley has made a better showing than has SanVal, since he has preference over SanVal in the degree of local residence ownership and has also shown a substantially greater degree of integration of ownership and day-to-day management. No basis for preference has been shown to exist with respect to civic participation or as to diversification of business interests in the local community.

39. Likewise, no preference exists with respect to the staffing, studios, and engineering proposals of the respective applicants. Walley must be preferred on the factor of diversification of ownership of communications media.

40. In the category of past broadcast experience, the only facet thereof in connection with which SanVal might be entitled to some preference is experience in operation coupled with station ownership. Balanced against this is the fact that Walley has managed a station in the same general area as Oroville for many years and also concurrently served as its chief engineer; and the further important fact that the character of operation of the stations under McVay and SanVal ownership does not lend any particular aura of special competence. Thus, it is concluded that no decisional difference exists between the applicants as to past broadcast experience.

41. Walley has no past broadcast operation for comparison, whereas SanVal itself does have such a record and, in addition, McVay as an individual owner has a record of past broadcast operation. As already discussed in detail in these conclusions (pars. 29–33), the record of operation of neither KGEN under the aegis of SanVal nor that of KRKC under McVay is such as to merit a preference of decisional importance for SanVal.

42. SanVal's challenge of Walley's character qualifications is not supported by the evidence. While Walley, at times, acted imprudently or injudiciously during negotiations for a lease of the radio building and equipment owned by Beebe and at that time leased by KMOR, imprudence or injudiciousness is not a disqualifying factor—were that so, it might have very far-reaching effects in the industry. Walley's demeanor on the witness stand and his candor in relating his activities lend credence to his statement of what actually happened, and, additionally, there is corroborative testimony on the important factors. The circumstances in this case are somewhat unusual in that the owner (or his attorney) of purely physical equipment, with no interest in or right to the existing station license, apparently felt that, because of creditor position for past due rent, there existed a right to expect other applicants to refrain indefinitely from applying for the frequency, in order that he might try all avenues of collecting past and future rentals. This misconception of the law was undoubtedly

the basis of some of the misunderstandings which occurred. The law clearly contemplates that at the time of renewal of license, any bona fide applicant may file a competing application for the frequency used by the station asking for renewal of license.

43. On the basis of the foregoing findings and conclusions, it is concluded that the public interest, convenience, and necessity would be better served by a grant of the application of Walley, and the consequent denial of the SanVal application.

It is, accordingly, ordered, This 6th day of October 1961, that unless an appeal from this initial decision is taken by one of the parties, or the Commission reviews it on its own motion in accordance with the provisions of section 1.153 of the rules, the application of James E. Walley for a construction permit for a new standard broadcast station to be operated unlimited time on 1340 kc, with a power of 250 w, at Oroville, Calif., *Be and the same is hereby granted;* and the application of Gene V. Mitchell and Robert T. McVay, doing business as SanVal Broadcasters, for the same facilities *Be and the same is hereby denied.*

It is further ordered, That the grant to Walley is subject to the following condition :

Permittee shall accept such interference as may be imposed by other existing class IV stations in the event they are subsequently authorized to increase power to 1,000 w.

APPENDIX A

Names of persons and list of pertinent dates, relating to issue 7:

<i>Names</i>	
James E. Walley-----	An applicant herein.
Dan L. Beebe-----	One of the partners of Mercury Broadcasters (formerly licensee of station KDAN, the call letters of which became KMOR under successor licensee) and also owner of the physical facilities used by station KMOR.
Norris M. Goodwin-----	Oroville attorney for Dan L. Beebe.
Thomas J. Corkin-----	Oroville attorney for James E. Walley.
John R. (Jack) Breece and Gene W. Robinson.	Persons interested in "purchasing" station KMOR
Messrs. Snell and Farr-----	Coowners of station KEEN who once evidenced "interest" in acquiring KMOR.
Kathleen A. LeBlanc-----	Secretary to Norris Goodwin.
Victor M. Ives-----	Employee of station KMOR.
	<i>Dates</i>
Renewal application (BR-1926) of KMOR filed (defective application dated Sept. 17, 1956, was returned)-----	Sept. 27, 1956
Walley's application filed-----	Oct. 23, 1957
Cessation of KMOR's operation-----	Nov. 2, 1957
Commission's authorization for cessation (authorization for 30 days from Nov. 2, 1957)-----	Nov. 5, 1957
Breece's application (BTC-2676) for transfer of control of station KMOR filed-----	Dec. 3, 1957
Walley's application amended-----	Feb. 19, 1958
Dismissal of the Breece application (per request dated Apr. 15, 1958)-----	Apr. 17, 1958
Dismissal of the KMOR renewal application (for failure to prosecute)-----	Dec. 19, 1958

JOHN M. BRYAN AND WILLIAM K. BOWES, JR., D/B AS CHAMPION ELECTRONICS,
JOINT VENTURE, DOCKET NO. 14283:

Initial decision granting application for construction permit for a new class II standard broadcast station at Provo, Utah, to operate on 1540 kc, 1 kw power, daytime only; became final in accordance with section 1.153 of the Commission's rules.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON 25, D.C.

<p>In re Application of JOHN M. BRYAN AND WILLIAM K. BOWES, JR., D/B AS CHAMPION ELECTRONICS, JOINT VEN- TURE, PROVO, UTAH For Construction Permit</p>	}	<p>Docket No. 14283 File No. BP-13912</p>
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APPEARANCES

Philip Bergson, for applicant; *James F. Marten*, for the Chief,
Broadcast Bureau, Federal Communications Commission.

INITIAL DECISION OF HEARING EXAMINER HERBERT SHARFMAN
(Effective February 19, 1962, pursuant to sec. 1.153)

FINDINGS OF FACT, CONCLUSIONS, AND ORDER

1. Champion Electronics' application for a new class II standard broadcast station at Provo, Utah, to operate on 1540 kc, 1 kw power, daytime only, had been set down for hearing in a consolidated proceeding with the application of Edwin A. Niehay, Docket No. 14284, File No. BP-13990. The Commission's designation order, released October 16, 1961, specified the following issues:

1. To determine whether Edwin A. Niehay is financially qualified to construct and operate his proposed station.

2. To determine, on a comparative basis, which of the instant proposals would better serve the public interest, convenience, and necessity in light of the evidence adduced pursuant to the foregoing issues, and the record made with respect to the significant differences between the applicants as to—

(a) The background and experience of each having a bearing on the applicant's ability to own and operate its proposed station.

(b) The proposals of each of the applicants with respect to the management and operation of the proposed station.

(c) The programing service proposed in each of the said applications.

3. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which of the instant applications should be granted.

Except for the matters involved in the issues, each applicant was found to possess the basic requisite qualifications to construct and op-

erate its proposal. Niehay's application, however, was dismissed with prejudice (after he had requested dismissal without prejudice) by the Acting Chief Hearing Examiner in his order released December 4, 1961.¹ The only specific issue relating to Champion Electronics, the remaining applicant—the comparative issue—was thereby rendered moot.

2. After a prehearing conference on November 17, 1961, a hearing on Champion Electronics' application was held on December 21, 1961, when the record was closed. Counsel for the applicant and the Broadcast Bureau waived the filing of proposed findings of fact and conclusions, and corrections to the transcript.

3. Official notice was taken of Champion Electronics' proof of publication of notice of hearing in accordance with rule 1.362, and of an affidavit by John M. Bryan, on behalf of Champion Electronics, that no consideration had been paid or promised Niehay for the dismissal or default in the prosecution of his application. The comparative issue being moot, and Champion Electronics having been found qualified to construct and operate the station, as already noted, nothing stands in the way of a grant of its proposal.

4. Accordingly, and because public interest, convenience, and necessity will be served, *It is ordered*, This 29th day of December 1961, that unless an appeal from this initial decision is taken to the Commission by a party, or the Commission reviews the initial decision on its own motion in accordance with the provisions of section 1.153 of the rules, the above-captioned application of John M. Bryan and William K. Bowes, Jr., d/b as Champion Electronics, Joint Venture, for a new class II standard broadcast station at Provo, Utah, to operate on 1540 kc, 1 kw power, daytime only, *Is granted*.

¹ By memorandum opinion and order released Nov. 28, 1961, the Acting Chief Hearing Examiner had denied Niehay's request to withdraw his notice not to appear in this proceeding and for acceptance of late filing of appearance.

LEO JOSEPH THERIOT (KLFT), DOCKET No. 13925:

Order revoking respondent's license for class III station KLFT, Golden Meadow, La., effective April 16, 1962.

Section 3.93(c) of the rules.—Failure to employ a full-time, first-class radiotelephone operator.

Section 3.47 of the rules.—Failure to maintain yearly equipment measurements.

Section 3.931 of the rules.—Failure to maintain the conelrad receiver properly.

Section 3.111(b) of the rules.—Failure to make proper plate and antenna current entries in the operating log.

Section 3.40(b) of the rules.—Failure to take necessary protective measures.

Section 1.76 of the rules.—Failure to respond to Commission Notices.

Misrepresentations to the Commission.—Considered.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON 25, D.C.

In the Matter of Revocation of License of LEO JOSEPH THERIOT For Standard Broadcast Station KLFT, Golden Meadow, La.	}	Docket No. 13925
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APPEARANCES

Julian P. Freret, for Leo Joseph Theriot, respondent; *Robert J. Rawson* and *Richard E. Ely*, for the Chief, Broadcast Bureau, Federal Communications Commission.

DECISION

(Adopted March 15, 1962)

BY THE COMMISSION: CHAIRMAN MINOW NOT PARTICIPATING.

1. By an order to show cause (FCC 61-94) released on January 19, 1961, as amended by order (FCC 61-674) released May 22, 1961, the Commission directed Leo Joseph Theriot (respondent), licensee of standard broadcast station KLFT, Golden Meadow, La., to show cause why an order revoking his license for said station should not be issued.¹ The show-cause order (as more fully set forth therein and in the examiner's initial decision), after reciting the factual basis therefor, in substance charges that respondent willfully and intentionally violated the Commission's rules; made misrepresentations to the Commission concerning such rules violations; failed to respond to Commission notices; and directed respondent to appear and give evidence thereto at a hearing. Subsequent to a hearing held at New

¹ Class III station KLFT operates on 1600 kc with 1 kw of power, daytime only.

Orleans, La., Examiner Jay A. Kyle issued an initial decision (FCC 61D-130, released August 18, 1961) which would revoke respondent's license. Respondent filed exceptions to the initial decision and requested oral argument. The Commission's Broadcast Bureau replied to the exceptions. It supports the initial decision.

2. On February 8, 1962, the Commission, en banc, heard oral argument on the exceptions. The rulings thereon are in the attached appendix. Except for any modifications and comments contained herein (and in the appendix), the initial decision is adopted as the Commission's decision.

3. The examiner concluded that Theriot had willfully violated the Commission's rules; that he failed to answer Commission correspondence; and that he had made misrepresentations to the Commission regarding such rules violations. The examiner's findings amply support his conclusions and, notwithstanding respondent's exceptions and oral argument, we find no reason to disturb those conclusions.

4. Respondent contends he has not violated section 3.93(c) of our rules;² that his hiring of an outside radio engineering firm (Hamilton Radio Service) which was on call 24 hours per day satisfied section 3.93(c); and that section 3.93(c) of our rules is sufficiently confusing to permit the conclusion that Theriot is in compliance therewith. The plain language of section 3.93(c) calls for a first-class radiotelephone operator in regular full-time employment *at the station*. It has been so interpreted. See *Amendment of Operator Rules, Report and Order*, 9 R.R. 1501 (1953). In that proceeding a party asked the Commission to change its operator rules. Under the requested change "the first class operator would not be required to be a full-time employee but only to be 'on call and reasonably available to fulfill his specified duties'." The Commission rejected this requested change. It said (at p. 1506): "It is our view that each station should have in its regular full-time employment and at the station at least one operator holding a radiotelephone first-class operator license to effect and insure the proper functioning of the station equipment and the implementation of the conelrad plan * * *". We notified respondent at the time of the first inspection (May 1960) that his arrangement with an outside radio service did not comply with section 3.93(c). Yet, according to the record, a first-class operator finally came on duty at the station on April 17, 1961. Thus, it is clear that respondent willfully disregarded section 3.93(c). In short, there is no reason to disturb the examiner's conclusion in this regard.

5. Respondent argues that revoking KLFT's license would only be inflicting punishment on the people of Golden Meadow for the alleged sins of Leo Joseph Theriot; that KLFT is the only station in the community; that it broadcasts local news, storm and hurricane warnings, and French-language programs in a unique area requiring such service. Thus, argues respondent, the real losers (in case of revocation) will be the public, not Theriot.

² Sec. 3.93(c) reads in pertinent part: "(c) The license of a station which is operated by one or more operators holding other than a radiotelephone first-class operator license shall have one or more operators holding a radiotelephone first-class operator license in regular full-time employment at the station whose primary duties shall be to effect and insure the proper functioning of the transmitting equipment."

6. Theriot's willful violations of rules designed to protect the public; the nature of his misrepresentations regarding those violations; his failure to answer Commission correspondence regarding such violations and his excuse for not answering; and his demeanor during the hearing establish that Theriot does not possess the character qualifications necessary to be the licensee of a radio broadcast station and cannot be depended on to operate station KLFT in a manner consistent with the public interest, convenience, and necessity. Loss of service will be a regrettable result of revocation. But where the necessary qualifications of a licensee are found wanting this result is unavoidable. However, were we to view the effect of the loss of service differently, our decision would be the same. For stations in New Orleans serve Golden Meadow and its surrounding area. Respondent himself admits that portions of KLFT's service area are also served by stations in Morgan City, Thibodaux, and Houma, La. In short, we agree with the examiner's conclusion that Leo Joseph Theriot's license should be revoked.

Accordingly, *It is ordered*, This 15th day of March 1962, that the license for standard broadcast station KLFT held by Leo Joseph Theriot of Golden Meadow, La., *Is revoked*, effective April 16, 1962, and that a copy of this order of revocation shall be served upon the licensee.

APPENDIX

RULINGS OF THE COMMISSION ON THE EXCEPTIONS TO THE INITIAL DECISION

*Exceptions of Respondent, Leo J. Theriot**Substantive exceptions*

<i>Exception No.</i>	<i>Ruling</i>
1-----	Denied. Argumentative.
2-----	Denied. No decisional significance.
3-----	Denied. Examiner's findings are adequate. Further, the exception is argumentative.
4-----	Denied. The record does not support the finding to the extent claimed.
5-----	Denied. Pars. 41 through 45 of the examiner's findings of fact adequately reflect the state of the record.
6-----	Denied. Examiner's finding is supported by the record.
7-----	Denied. Finding is sufficient as a partial basis for examiner's conclusions in par. 12 of his conclusions.
8-----	Denied. No decisional significance under the issues to be proved.
9-----	Denied. The examiner's findings in par. 7 of his findings of fact sufficiently described the evidence of record.
10-----	Denied. The examiner's finding in par. 7 of his findings of fact is sufficient.
11-----	Denied. No decisional significance.
12-----	Denied. Argumentative.
13-----	Granted in part, the last statement in par. 12 is deleted, and the following language is inserted instead: "On January 19, 1961, the Commission released its order to show cause." Denied insofar as the inserted fact is not objectionable.
14-----	Denied. Argumentative and of no decisional significance.
15-----	Denied. The examiner may pass on the witness' demeanor. The record supports his description.

Exception No.	Ruling
16-----	Denied. The record testimony supports the examiner's statement.
17-----	Granted. In the 2d sentence of par. 19 of the examiner's findings of fact change the words "as in full time employ" to read: "He is in full time employ."
18-----	Denied. Respondent did not object to the question at the hearing. The facts elicited tend to show Theriot's course of conduct prior to the hearing.
19-----	Denied. The examiner's inference is logical and supported by the record. (See Tr. 111.)
20-----	Denied. Argumentative. In the matter of conflicting evidence the examiner can attach greater weight to the witness' testimony he feels is more accurate.
21, 22-----	Denied. No decisional significance.
23-----	Denied. The examiner's findings are adequate.
24-----	Denied. The record supports this finding.
25-----	Denied. However, after the 6th sentence in par. 30 of the examiner's findings of fact add this sentence: "The 'Original Duplicate' is a copy of a letter Theriot alleges he sent to our New Orleans office." This clarifies any possible ambiguity and accurately reflects the state of the record.
26-----	Denied. The examiner's findings on the witness' demeanor are adequately supported by the record.
27-----	Denied. The examiner's findings are supported by the record.
28-----	Denied. Argumentative.
29-----	Granted in part. The final sentence in par. 34 of the examiner's findings of fact is deleted. Insert instead: "The witness gave evasive answers regarding the alleged tests in 1959 and the evidentiary finding is that the tests were not made." The inserted sentence accurately reflects the record. Therefore the remainder of the exception is denied.
30-----	Denied. Argumentative.
31-----	Denied. The examiner's analysis of the witness' demeanor appears proper.
32-----	Denied. The examiner's conclusion is sustained by the record.
33-----	Granted in part. In the 2d sentence of par. 8 of the examiner's conclusions delete the word "absurd." Insert, instead, the words "not convincing." Thus, the characterization is removed but the record is left accurate.
34-----	Denied. The examiner's observations are sustained by the record.
35-----	Denied. The record supports this conclusion.
36-----	Denied. The examiner's finding is reasonable and supported by the record.
37-----	Denied. Argumentative and contrary to respondent's previous position that the "original" of the "Original Duplicate" had been sent to the Commission's New Orleans office.
38-----	Denied. Argumentative. Respondent's exception presupposes an "evil motive." See <i>United States v. Illinois Central Railroad</i> , 303 U.S. 239 (1938).
39-----	Denied. No decisional significance. Unrelated to the issues.
40-----	Denied. See par. 4 of our decision herein.
41-----	Denied. Contrary to the facts of record. Also see par. 6 of our decision herein.

Procedural exceptions

<i>Exception No.</i>	<i>Ruling</i>
1-----	Denied. Theriot was not precluded from presenting his further evidence on the Hamilton Radio arrangement. (See Tr. 487.) There he developed his position that the Hamilton Radio arrangement is in compliance with the Commission's first-class operator requirements.
2-----	Denied for these reasons: (a) Respondent made no objection at Tr. 308; (b) Theriot used only approximately one-half of his allotted time; and (c) respondent rested 2½ hours before the assigned cutoff time, making no offers of proof, and failing to indicate a desire to present further witnesses or testimony.
3-----	Denied. Respondent sought to elicit self-serving testimony. Further, such conclusionary testimony would go to the ultimate question of law to be decided by the examiner.
4, 5-----	Denied. No adequate foundation for the opinions sought to be elicited; the opinions (even if elicited) are of no decisional significance. Respondent was permitted to introduce all the factual evidence he desired on the listening needs of the people in the Golden Meadow area. And the examiner correctly found that "the record is void of any evidence that KLFT's programing has been contrary to the public interest." (See par. 7, p. 4, of findings of fact.)
6-----	Denied. The record shows that respondent's counsel was merely trying to "clarify" what he thought was a "record" impression. Both Bureau Counsel and the examiner stated (on the record) they had never received the impression respondent was trying to clarify. Thereafter, Theriot's counsel stated: "If you don't get that impression, I'll drop it. I just wanted to clarify it. That's all." Thus, respondent abandoned his objection on which the exception was based.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON 25, D.C.

In the Matter of Revocation of License of LEO JOSEPH THERIOT For Standard Broadcast Station KLFT, Golden Meadow, La.	}	Docket No. 13925
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APPEARANCES

Julian P. Freret, Esq., for Leo Joseph Theriot, respondent; and *Robert J. Rawson, Esq.*, and *Richard E. Ely, Esq.*, for the Chief, Broadcast Bureau, Federal Communications Commission.

INITIAL DECISION OF HEARING EXAMINER JAY A. KYLE

(Adopted August 17, 1961)

PRELIMINARY STATEMENT

1. This proceeding arose as a result of an order to show cause released by the Commission on January 19, 1961 (FCC 61-94), which directed Leo Joseph Theriot, licensee of standard broadcast station KLFT, Golden Meadow, La., to show cause why an order revoking his license for said station should not be issued. The show-cause order, after reciting the factual basis therefor, charges that Theriot had willfully and intentionally continued the station's day-to-day operation in violation of sections 3.47¹ and 3.93(c) of the Commission's rules and had failed to respond to Commission notices in violation of section 1.76 (formerly sec. 1.61) of the Commission's rules. Therefore, pursuant to sections 312 (a) (3), (4), and (c) of the Communications Act of 1934, as amended, respondent was directed to show cause why an order revoking his license for station KLFT should not be issued and to appear and give evidence with respect thereto at a hearing to be held in Washington, D.C., on a date to be subsequently specified. In an order released March 21, 1961, the location of the hearing was moved to New Orleans, La., upon motion of respondent. Subsequently, the Commission granted a petition of the Broadcast Bureau to amend the order to show cause by the addition of the following paragraph as a second last paragraph thereof (released May 22, 1961) :

It is further ordered, That a determination be made as to whether Leo Joseph Theriot made, or caused to be made, any misrepresentations to the Commission or its employees in connection with the operation of station KLFT or the above-captioned proceeding, and, if so, whether such mis-

¹ The appendix includes certain pertinent portions of the Communications Act of 1934, as amended, and pertinent portions of certain rules of the Commission.

representation or misrepresentations constitute good cause for the revocation of the station's license pursuant to the provisions of section 312(a) (1) and 312(a) (2) of the Communications Act of 1934, as amended.

2. A prehearing conference was held on March 22, 1961, and the hearing was held in New Orleans, La., on May 24, 25, and 26, 1961. The record was closed on June 22, 1961, following the submission of certain documentary evidence by the respondent.

FINDINGS OF FACT

Golden Meadow, La.

3. Golden Meadow, La., where station KLFT is located, is a city of 3,097 persons according to the 1960 U.S. census. The city is approximately 40 airline miles southwest of New Orleans and 65 miles by highway from New Orleans' southwest boundary. The southern border of the area served is the Gulf of Mexico and Golden Meadow lies in the easternmost portion of the so-called Acadian country in Lafourche Parish (County) in the south central portion of Louisiana. The city proper of Golden Meadow stretches along Bayou Lafourche which has been described as the "longest street in the world" and is more than 100 miles long. A fleet of shrimp and oyster boats provides the principal industry of Golden Meadow. However, oil exploration and production is also a significant industrial product in the area. Originally settled by the French and now inhabited principally by their descendants of Gallic temperament, the area includes approximately 80 percent of people who speak and understand the French patois, which is the traditional language of the area. There are no newspapers in Golden Meadow and, except for the radio station here involved, no communications media exist in the community. The nearest newspapers are located in the city of Thibodaux, La., the Lafourche Comet and the Press, the former published twice weekly and the latter on a weekly basis. Thibodaux is in excess of 50 miles from Golden Meadow and a separate community and, accordingly, local news pertaining to Golden Meadow is inadequately covered.

Leo Joseph Theriot

4. Leo Joseph Theriot was the original licensee and continues to be licensee of station KLFT, which commenced operation at Golden Meadow in November 1955. His interests and activities in the Golden Meadow community are many and varied, and include the Theriot Insurance Service, the Leo J. Theriot General Insurance Agency, the Theriot Investment Co., the State Bank & Trust Co., the Sanders Lumber Co., the Southern Lafourche Regional Planning Commission, of which he is chairman, the All American Insurance Co. of Lafayette, La., the General Management Account Corp. of Golden Meadow, of which he is vice president, the Aluminum Alloy Boat Co. (also a vice president), and a building and loan association to serve the Golden Meadow area. In addition to these business activities, Theriot has spent considerable time in public-service work and related civic activities.

Failure to employ a first-class engineer

5. Theriot is the sole proprietor of the station and the general manager. When KLFT began operation, respondent employed one Earl Herron as manager and chief engineer of the station. Herron held a first-class radiotelephone operator's license and was employed on a full-time basis. Difficulties developed between Theriot and Herron and the latter left the employ of Theriot on July 18, 1959. It is important to note at this junction that another first-class radiotelephone operator, one George L. Roundtree, was not employed on a full-time basis until April 17, 1961, which was approximately 1 month prior to the evidentiary hearing in this proceeding. (See pars. 6 and 28, *infra.*) Herron was a part-time employee for about 2 months after July 18, 1959.

6. Hamilton Radio Service² is located in Houma, La., which is approximately 50 miles from Golden Meadow. In the interim from the departure of Herron on July 18, 1959, until April 17, 1961, or for a period of 1 year 9 months, it rendered engineering service to the Golden Meadow station on a call-to-call basis. The evidence is extremely vague as to the arrangement between Theriot and Hamilton Radio Service as Theriot was most evasive on the subject matter. However, it is manifestly clear on the record that from the time of the departure of Herron on July 18, 1959, until April 17, 1961, Theriot did not have on duty at his station a first-class radiotelephone operator, all of which is contrary to the provisions of section 3.93(c) of the Commission's rules.

Operation of KLFT

7. The Commission records disclose that KLFT now operates as a class III station upon 1600 kc with a power of 1 kw. The assistant manager of the station, who is also an announcer and salesman, Gerald J. Chatanier, testified that the station did not employ any reporter but that organizations, such as the American Legion, hospital, and different clubs called the station and reported the news. Most of the programing broadcast over the station is music and news. Some of the broadcasts are in French, including newscasts and Louisiana-French music. The newscasts include local news and weather information, including hurricane warnings, and the station is an important source of storm warnings to the people of the area. The station has cooperated with many local and civic functions of various types and the record is void of any evidence that KLFT's programing has been contrary to the public interest.

The Course of Events Which Resulted in the Commission's Order To Show Cause

8. William J. Simpson is the engineer in charge of the New Orleans field office of the Commission. His responsibility, in part, is from

² Apparently sometime from July 18, 1959, to the date of the hearing, Hamilton Radio Service was incorporated and became Hamilton Radio Communications, Inc. The date of the incorporation is not clear on the record. However, as the personnel of the two organizations remained the same, reference throughout this initial decision will be to Hamilton Radio Service, which will include both organizations without distinction.

time to time inspecting standard broadcast stations in his area to ascertain if they are operated in compliance with the Commission's regulations. He has associated with him a professional staff who function under his supervision and direction. On May 26, 1960, Simpson personally inspected KLFY, which inspection disclosed *at least five violations* of the Commission's rules, including the failure to employ a first-class radiotelephone operator on a full-time basis. On that date, Simpson advised Theriot that the Hamilton Radio Service agreement did not meet the requirements of the Commission for the obvious reason that there was not a first-class operator in regular full-time employment. Theriot informed Simpson that he was meeting with difficulty in employing a first-class operator because they were reluctant to move to a small town such as Golden Meadow.³ Simpson advised Theriot that the station at Golden Meadow was not particularly different from many of the stations in the three-State area which he inspected. Theriot mentioned to Simpson that he had talked to a man by the name of "Varlando" about employment, but the evidence is fragmentary on the point because "Varlando" was never actually identified on this record. On June 16, 1960, an official notice of violation on FCC form 793 was mailed to Theriot, and the field office in New Orleans, having not received any reply to this official notice of violation, mailed Theriot a photostatic copy of the notice. *It is obvious that Theriot wholly ignored this notice.* The notice of violation set out the irregularities that were found on May 26, 1960, as follows:

Noncompliance with the Commission's rules and regulations:

1. Sec. 393(c). There was no evidence available that one or more operators holding a radiotelephone first-class operator license was in regular full-time employment at the station whose primary duties shall be to effect and insure the proper functioning of the transmitting equipment.

2. Sec. 3.47. The required yearly equipment performance measurements were not available for inspection.

3. Sec. 3.931. At the time of the inspection the volume control of the conelrad receiver was turned so low as to render the receiver inoperative.

4. Sec. 3.111(b). The entries for the plate current and the antenna current in the operating log during the inspection were incorrect. The plate current was 485 ma; whereas, 540 ma was logged and the antenna current was 4.3 amperes; whereas, 4.49 amperes was logged. (The operator is failing to take into account the multiplier factor which is posted.)

5. Sec. 3.40(b). The gate to the enclosure at the base of the series-fed antenna was unlocked.

9. Subsequently, on August 9, 1960, there was mailed⁴ to Theriot a revocation warning on FCC form No. 794. This warning noted that Theriot had failed to make a satisfactory response to violations noted in official notice forwarded on June 16, 1960 (par. 8, *supra*), and further, the revocation warning cited the station for violating section 1.61 (now sec. 1.76) of the Commission's rules by failing to submit such a response. There is no contradiction in the evidence but that the revocation warning was received by Theriot on August 10, 1960.

10. Even after sending the revocation warning, Simpson again made several trips to Golden Meadow and on at least one occasion

³ See pars. 22, 26, and 27, *infra*.

⁴ Certified-mail return receipt requested.

went to Theriot's office, asked for him, and was told that the respondent was not there.

11. Finally, on November 26, 1960, after having received no reply from the previous communications addressed to Theriot, Simpson saw Theriot in Golden Meadow. On this occasion, Simpson again advised Theriot that the requirements for engineering at the station were not being met through arrangements with the Hamilton Radio Service. He also advised respondent that the New Orleans field office had received no reply to the notices they had sent him and "that he must do something; that we had to have a reply to these notices."

12. On December 15, 1960, Theriot wrote the New Orleans office the following letter:

Re violation notice 6/16/60.
FEDERAL COMMUNICATIONS COMMISSION,
608 Federal Building,
New Orleans, La.

GENTLEMEN: Please be advised that the discrepancies have been corrected as follows:

1. We have a first-class operator who repairs or adjusts the equipment when required. We are making every effort to obtain the services of a full-time operator as soon as possible.

2. The annual performance measurements have been made on December 15, 1960, by consulting radio engineer L. J. N. du Treil, and meet the FCC requirements.

3. The conelrad receiver has been adjusted to proper volume and personnel on duty instructed to keep it at proper level.

4. Personnel on duty have been instructed in the reading of the plate voltage and current meters and the remote antenna meter and in properly recording the readings in the log.

5. The gate to the tower fence is kept locked.

Referring to advisory notice of May 26, 1960, please be advised that discrepancies have been corrected as follows:

1. The weeks [sic] in the antenna enclosure have been cut and will be kept cut.

2. The shorting switch for the antenna meter has been repaired and can now be opened and closed as desired.

(S) Leo J. Theriot,
(T) LEO J. THERIOT.

It is apparent that the Commission was not satisfied with Theriot's course of action which has been previously outlined and the attendant neglect and disregard of his obligations as a licensee of a broadcast station because on January 19, 1961, the Commission released its order to show cause.

13. Theriot filed a petition for reconsideration on February 13, 1961, requesting that the order be dissolved and that the hearing scheduled be canceled. Attached to this petition was an "affidavit of compliance" attested to by Louis J. N. du Treil, a consulting radio engineer in New Orleans.⁵ Mr. du Treil's affidavit said in part:

* * * and I am informed and believe that the said Leo Joseph Theriot has in the employ of KLFY a full-time radiotelephone first-class operator, one George L. Roundtree, Jr., the holder of radiotelephone first-class license PI-8-2507, issued in New Orleans and expiring March 16, 1962.

The petition for reconsideration, which was sworn to and verified by Theriot before a notary public on February 11, 1961, said in part:

⁵ Mr. du Treil was employed for many years by the Federal Communications Commission in its New Orleans field office.

Prior to issuance and receipt of the said order of January 19, 1961, petitioner had in fact taken definite and positive steps to achieve full and complete compliance with all applicable rules and regulations of the Commission; more specifically, he took the following action:

(a) He engaged the services of consulting engineer Louis J. N. du Treil, whose qualifications are well known to the Commission and its engineering staff, for the completion of equipment measurements as required by sections 3.40 and 3.47 of the rules, and such measurements were in fact made. See appendix A.

(b) He engaged on a full-time basis, George L. Roundtree, Jr., holder of radiotelephone first-class operator's license PI-8-2507, issued at New Orleans and expiring March 16, 1962.

A Visit to Houma and Subsequent Inspection at Golden Meadow

14. Jules J. Freeman is a field engineer employed by the New Orleans field office. On March 28, 1961, he went to the Hamilton Radio Service in Houma for the purpose of inspecting the communications system there. He asked George L. Roundtree, Jr., then an employee of Hamilton Radio Service, to see his license, and was advised that it was posted at KLFT in Golden Meadow. Roundtree told Freeman at that time that for the preceding 4 years he had been employed by Hamilton Radio Service, but did maintenance work on the equipment at KLFT upon the orders of his employer. He stated further that any moneys received for his services were paid to his employer. He, in turn, was paid a salary by Hamilton Radio Service plus overtime. Freeman inquired as to the reason why Roundtree's license was posted at KLFT and Roundtree stated that he was being paid \$50 per month to permit his license to hang in the Golden Meadow station. As a result of this conversation, Freeman asked Roundtree for a statement and the two went to the post office, where Roundtree typed up the statement which was subsequently notarized by a notary public in Houma. The affidavit, inter alia, contained facts as set out above in this paragraph.

15. The next day, March 29, 1961, Freeman, in company with Lewis Terry, also an employee of the Commission's New Orleans field office, upon instructions from Simpson conducted an inspection of KLFT at Golden Meadow. During the course of the inspection he inquired of Gerald J. Chatanier, the assistant manager, in the presence of Miss Eula Mae Duet, as to the whereabouts of the station engineer, Roundtree. He was advised that it being Wednesday the engineer was not present; that he was off Sundays and Wednesdays. When Freeman specifically asked Chatanier the question if the engineer was present on the preceding day, which was Tuesday, an affirmative answer was given that the station engineer had been there the full day. (It is to be remembered that Freeman had interviewed Roundtree on that particular Tuesday in Houma, some 50 miles away.) When asked if Roundtree had been there the preceding day, which was Monday, the station assistant manager still gave him an affirmative answer. Further, Freeman testified that Chatanier had told him that the station engineer had been at the station every day except Sunday and Wednesday the week before, and likewise he had been there the preceding week except for Sunday and Wednesday. As a result of this conversation, both Chatanier and Miss Duet gave Freeman a state-

ment respecting the presence of the station engineer as just outlined above. When confronted with the truth of the situation as to the whereabouts of Roundtree at Houma, both Chatanier and Miss Duet decided to amend their statements. In passing, it might be observed at this time that at this inspection there were a number of Commission rules being violated in the station operation, including sections 3.93(c) and 3.47(b). The former violation is in regard to the failure to have a first-class operator on full-time employment and the latter violation discloses that there was no record of equipment performance for the earlier interval *prior* to December 15, 1960. An official notice of violation was sent to Theriot on or about April 7, 1961, calling *seven violations* of the Commission's rules to his attention.

Testimony of Erla Mae Duet

16. Miss Duet is employed as traffic manager of KLFT and has been variously in its employ since December 15, 1959. She has known Roundtree since she became an employee of the station. She testified that he came there on service calls for Hamilton Radio Service. She recalled the visit of Freeman on March 29, 1961. Prior to his visit, she had instructions from Theriot to give out certain information respecting Roundtree and her testimony in that connection is as follows:

A. That anyone coming up to the station asking if we had an engineer, we were instructed to say yes, we had a full time engineer, Mr. Roundtree.

Q. And did you so instruct or so advise Mr. Freeman?

A. Yes, sir; I did.

Q. And did you later correct that?

A. Yes, sir; I did.

PRESIDING EXAMINER. You advised him on March 29, 1961?

THE WITNESS. I am not certain if that is the date, but that must be because it is the only time that Mr. Freeman has visited the radio station since I have been employed.

She further testified that the amended statement read as follows:

A. The previous statement I submitted was false. I was following orders issued by Mr. Leo Joseph Theriot. I wish to amend that statement. I have not seen Mr. Roundtree at KLFT on days mentioned. Signed.

Miss Duet appeared as a witness under subpoena by the Government and was forthright and candid in her testimony.

Testimony of Gerald J. Chatanier

17. Gerald J. Chatanier is an announcer, salesman, and assistant manager of KLFT. He, like Miss Duet, appeared under subpoena of the Government but he was a reluctant witness. He testified somewhat as to the operation of the station which is not particularly pertinent here, and that Theriot gave him the same instructions relative to Roundtree that Miss Duet had testified she received. He testified that he had so advised Freeman that Roundtree was a full-time employee of the station. He admitted that later he changed that statement, which was not the truth. He had acted under instructions of Theriot in making the false statement respecting Roundtree.

"Original Duplicate" letter

18. The "Original Duplicate" letter dated April 14, 1961, is an interesting angle of the conduct of Theriot in response to the numerous

communications from the Commission most, if not all, of which were sent to him by certified mail, return receipt requested. On May 5, 1961, Theriot sent an "Original Duplicate" of a letter that he allegedly mailed to the New Orleans office of the Commission on April 14, 1961, in response to the April 7, 1961, notice of violation. In the May 5, 1961, letter, Theriot advised that he had not received any reply to the "Original Duplicate" letter of April 14, and stated that he would appreciate hearing from the Commission respecting the contents of that communication. The original of the "Original Duplicate" letter was neither received by the New Orleans office nor was it sent by certified or registered mail. Why Theriot chose to label this letter "Original Duplicate" is not known. His testimony on this point is as follows:

Q. Now, going back a moment to exhibit No. 3, I notice it bears a caption, "Original Duplicate." Who put that caption there?

A. Well, Mr., I believe this is the one that Mr. du Treil when he came in to work and Mr. Roundtree that they worked out the discrepancies that we had and they gave me some information on this.

Q. You mean Mr. du Treil put that caption "Original Duplicate" on there?

A. No; I don't mean that Mr. du Treil put it. I say I imagine when Mr. du Treil came and worked and Mr. Roundtree to correct the discrepancies that we had, that this was furnished, these captions.

Q. I don't believe you understand the question, Mr. Theriot. Do you see this notation up here at the top of the letter "Original Duplicate"; do you see that?

A. Yes, sir.

Q. Who put that there on that letter?

A. Apparently I did, sir.

Q. For what purpose did you put it there?

A. Would that be on the original notice of violation? Because every time that I wrote a letter I always put a reference to it.

Q. Doesn't this purport to be a copy of a letter which you claim you sent the Commission on April 14, 1961?

A. Yes, sir; I guess it does.

Q. Now, isn't it a fact that you never did send that letter to the Commission on April 14, 1961?

A. To my knowledge, sir, every letter that I write is mailed, too. I am sure I have written this one, and it was mailed.

Further on the "Original Duplicate" letter the witness testified as follows:

Q. In Commission exhibit 3, Mr. Theriot, you stated: "Gentlemen, as of this date we have not received any reply from you regarding violation notice dated April 7 and 10, 1961, in reference to the inspection under date of March 29, 1961. I am again sending you an original duplicate of my answer, which is self-explanatory and will appreciate hearing from you regarding this matter."

Now, was it your practice, Mr. Theriot, whenever you wrote to the Commission in response to a 793 when you didn't hear from them, to send them an original duplicate of your original response?

A. In normal correspondence, sir, we have some what we call updates. Sometimes we have updates on some things and sometimes not, no, so it is not a necessary practice.

19. Turning now to the contents of the "Original Duplicate" letter dated April 14, 1961, Theriot represented that "as of April 1961" he had employed a radiotelephone first-class operator full time for his station. He used the words "as in full-time employ." The record in this proceeding reflects, however, that Roundtree did not report for duty full time until April 17, 1961. In addition, Theriot made the

representation that the records of equipment performance measurements for the yearly interval *prior to* December 15, 1960, "were made during a period when another person was performing engineering duties at this station. These records have not as yet been located. We are at this time making a search of our records and files, live and dead. If they are located a copy will be forwarded to your office." These records were never produced at the evidentiary hearing in this proceeding. (See appendix, sec. 3.47(b).) This demonstrates clearly that Theriot did not comply with that Commission rule. There is no scintilla of evidence that the equipment performance measurement tests as of December 15, 1959, were ever made.

Testimony of Louis J. N. du Treil

20. Louis J. N. du Treil was called by the Commission as a witness in this proceeding. He testified that the statement in his affidavit dated February 10, 1961, attached to Theriot's petition for reconsideration, referred to previously, was predicated on information from Theriot that Roundtree was a full-time, first-class radiotelephone operator in the employ of Theriot's station and that, referring to Theriot, "I assumed that he was telling me the truth."

21. Sometime in February 1961, Du Treil wrote Theriot a letter asking for the station's transmitter log sheets for December 14 and 15, 1960. On February 9, 1961, Theriot sent Du Treil the log sheets as requested and along with them a photostatic copy of Roundtree's license. Upon being interrogated as to why this photostatic copy was sent to him, Du Treil testified in part as follows:

Q. Did he send you anything else in addition to the log sheets?

A. Yes, sir. He sent me a photostatic copy of Mr. Roundtree's license.

Q. Had you requested that photostatic copy of Mr. Roundtree's license?

A. I don't think so.

Q. Would there be any particular reason why you would want a copy of Mr. Roundtree's license?

A. I don't recall why he sent me the license. However, I found it convenient to have it so that I could confirm what I put in the affidavit; namely, that he had a license of a certain number issued at a certain place and expiring on a certain date.

Q. Was it this information, namely, that Mr. Theriot telling you that he had in his employ a first-class engineer, and is this copy of the license which he enclosed with the exhibit No. 9 the basis for your making out the affidavit which was submitted with the petition for reconsideration?

A. Yes, sir.

Q. Do you have any reason or can you in any way understand why this photostatic copy of the license was mailed to you? If you don't know, just say you don't.

A. May I see that exhibit 9?

Q. Yes, sir.

A. Answering your question, sir, I am quite sure that I did not request the copy of the license.

Testimony of Harold J. Callais

22. Harold J. Callais is a lifelong resident of Golden Meadow. He has a first-class operator's license. He took and passed the examination for this license on August 8, 1960. The license was issued on August 10, 1960. On August 8, 1960, Callais sought employment with KLFT. He saw Theriot on this date and advised him he was interested in obtaining a job as a first-class engineer. Theriot inquired if

Callais had his license with him. When Callais informed him that he did not, Theriot suggested that when he had his license Callais should return and Theriot would make a photostatic copy of it and they would talk further. On this first visit to Theriot, Callais testified he informed Theriot that he was seeking permanent, full-time employment and that he wanted to quit his present job.

23. At the time he first contacted Theriot, Callais was working for the California Co. 7 days on and 7 days off. After talking with Theriot, Callais put in a 7-day stint with his employer before talking with respondent again. However, it was not more than 14 days after his first contact with him that Callais again saw Theriot. On this occasion Callais testified he had his license with him. Theriot handed the license to his secretary and she went into a back room and returned with the license and a copy thereof. She gave these to Theriot, who returned the original to Callais and kept the copy. When Theriot's secretary returned she had only one copy of the license with her. Theriot told Callais he wanted a copy of his license in order to *check it out with Washington* to see if it was valid. On several occasions thereafter Callais contacted Theriot, who informed him he had heard nothing with respect to the *alleged validity check* of Callais' license. Theriot never at any time contacted Callais with respect to employment at KLFT, although on one occasion he advised Callais he would contact him when he had heard something about the check he was purporting to run on Callais' license.

24. Ultimately Callais became concerned that he would be held responsible for the operation of KLFT because Theriot had a copy of his license. Because of this on February 8, 1961, he again contacted Theriot and told the latter he desired the copy back. At this time Theriot told Callais he could not comply with his request because the copy of the license was *in Washington*. Callais asked Theriot to get it and Theriot advised him he would see what he could do about it. A week later, on February 15, Callais returned to KLFT and Theriot handed him the copy of his license. At that time Callais asked Theriot if he was going to employ an engineer and Theriot told him he was not going to employ a first-class engineer; that he would prefer shutting down the station before doing so.

25. By letter to the Commission's New Orleans office dated February 8, 1961, Theriot represented that on December 16, 1960, he had forwarded to that office for approval a Thermofax copy of Callais' license. He claimed he had received no reply to the December letter and requested that the Thermofax copy of Callais' license be returned so that it could be given to Callais, who had requested it. Theriot testified he sent a letter along with Callais' license to the Commission and that he had a copy in his files which he was requested to produce. *The alleged copy was not produced; neither was the alleged letter nor the copy of Callais' operator's license ever received by the Commission's New Orleans office.*

An inquiry

26. As the hearing was drawing to a close, Theriot brought forward a letter from one Hampton C. Clark, Jr., Forest, Miss., dated August 11, 1960, inquiring as to whether or not there was an opening at the

station for an engineer-announcer. On August 15, 1960, by registered letter, Theriot replied to Clark advising him that he was interested in an engineer holding a first-class ticket and suggested that Clark come to Golden Meadow for an interview. Theriot did not pursue the matter any further.

Help from the New Orleans office

27. William J. Simpson, of the New Orleans office, gave testimony that he had suggested to Theriot the name of an engineer who was seeking employment and who would move to Golden Meadow. This engineer's name was J. W. Byars, Maben, Miss. Simpson put in the record communications between Byars and himself. On March 15, 1961, Simpson wrote Byars the following letter:

Mr. J. W. BYARS,
Maben, Miss.

DEAR SIR: If I recall correctly, you telephoned this office in November 1960 regarding employment at a broadcast station as an engineer. You stated that you were looking for employment and asked if we knew of any stations that were in need of engineers. I told you of several stations, including KLFT, Golden Meadow, La. Did you contact KLFT? If you did, would you tell us what KLFT told you about employment. Your cooperation in this matter is appreciated.

(Signed) WILLIAM J. SIMPSON,
Engineer in charge.

and the reply from Byars is the following:

Mr. WILLIAM J. SIMPSON,
Federal Communications Commission,
608 Federal Building, New Orleans, La.

DEAR SIR: I am writing in reply to your letter dated March 15 relating to KLFT, Golden Meadow, La. On or about December 1, 1960, I contacted KLFT by telephone shortly after I contacted your office, and the reply in which I received was that they didn't have a position open for an engineer, but stated they would take my name and address in case of an opening. I am still available and hoping to find an engineer's position.

I hope this information is what you needed.

Yours truly,

J. W. BYARS.

George L. Roundtree's employment with Theriot

28. George L. Roundtree, Jr., heretofore mentioned, became a full-time employee of Theriot as a first-class radiotelephone operator on April 17, 1961. However, when Jules Freeman, of the New Orleans office, inspected KLFT on March 29, 1961, two employees of the station, upon direction of the proprietor, attested that Roundtree was a full-time employee at that time and had been for some time previous thereto.⁶ Prior to April 17, 1961, Roundtree worked for Hamilton Radio Service at Houma, about 50 miles distance from Golden Meadow. The circumstances surrounding his employment with KLFT are intriguing. His salary at KLFT is \$300 per month. Some months prior to actual employment with Theriot's station as heretofore related he had been paid \$50 per month to permit his license to be posted in the studio near the remote-control equipment. This practice started in December 1960. His wages at Hamilton Radio Service, where he

⁶ See pars. 16 and 17, supra.

worked for 4 years, were \$2.20 an hour straight time plus \$3 an hour for overtime. When he worked at Hamilton Radio Service he was reimbursed for mileage and lodging while on the road. His gross salary in 1960 from Hamilton Radio Service was about \$7,000. He had received as much as \$199 gross for 1 week's service at Hamilton Radio Service. Included in his employment at Hamilton Radio Service was a paid 2-week vacation period, but he had no arrangement with Theriot for a paid vacation. He testified that, at the time he gave the statement to Freeman, referred to in paragraph 14, supra, he had made up his mind to change employment and had so advised Freeman that it was a confidential conversation because he had not at that time notified his employer, Hamilton Radio Service. It is obvious, however, that after the discovery of the \$50 monthly payments to Roundtree by Theriot, after the entering of the show-cause order by the Commission, and after a prehearing conference in this proceeding, Roundtree suddenly accepted employment at almost a 50-percent reduction in income with station KLFT in the month prior to the start of the evidentiary hearing. The reason Roundtree gave for quitting Hamilton Radio Service, with its substantially higher compensation, was as follows:

Q. Mr. Roundtree, turning your attention to your employment with Hamilton, I think you said you worked for Hamilton for 4 years. In those 4 years, do you recall any other times when you attempted to leave Hamilton?

A. Yes, sir.

Q. Why, sir?

A. That is hard to explain, and saying that I have a definite reason, and, well, you might say it is a definite reason, but during the course, and it could be all in myself, within myself, but I felt tension working there, and I just desired other employment and on one occasion I had submitted, well I had verbally told him that I was quitting, but I didn't have another position to go to at that time. Well, we discussed it, I believe, for several hours, about 2 or 3 hours or something like that, until I decided to stay.

Q. And then did there come another time when you also seriously considered leaving Hamilton?

A. Yes, sir.

Q. What was that occasion?

A. Well, it was more or less just wanting to get away, wanting to change my position.

29. With only a few exceptions, all the work that had been done by Hamilton Radio Service for KLFT was performed by Roundtree. He would make trips to Golden Meadow when requested to by the station's staff, who would contact him by telephone at Houma during normal working hours and at home during all other times. As an employee at Hamilton Radio Service it was his duty to make calls at Theriot's station when requested to at any time. When he was employed by Hamilton Radio Service, he on occasions made courtesy calls on KLFT, but such calls were a prevailing service for all Hamilton Radio Service out-of-town customers when its employees were in a given vicinity. Respecting the \$50 a month that Theriot commenced paying Roundtree in December 1960 for posting his license at Theriot's station, Roundtree testified that he was not unhappy about the arrangement. He said that "you might say" that it was in the way of a windfall but that he did not perform any certain duties or functions for the windfall. He received three checks at one time in February

1961 for the arrangement. He volunteered to visit Theriot's station when he was in the area visiting his wife's relatives, but these calls were not mandatory and were discretionary on his part. The location of Roundtree's license at the station had not been changed from the time he personally posted it up to the date of the evidentiary hearing in May 1961.

Equipment performance measurements

30. Equipment performance measurements for 1960 were made on December 15 of that year by Du Treil assisted by Roundtree. The only time Roundtree made equipment performance measurements upon KLFT was this occasion when he assisted Du Treil. Hamilton Radio Service did not have the equipment necessary to make the measurements and never made such measurements. Du Treil did not make any equipment performance measurements for the year 1959 and he had no arrangement or understanding with Theriot that he would make such measurements without being requested. There is not one iota of evidence that equipment performance measurements in 1959 were ever made. If the "Original Duplicate" letter could be taken at face value, the implication has to be that they were taken. That alleged communication said that *prior* to December 15, 1960, the equipment performance measurements "were made during a period when another person was performing engineering duties at this station." Who the "another person" is, Theriot could never explain. The only finding that can be made is that the December 15, 1959, equipment performance measurements were not made and any suggestion that they were made must be found not to be true as records are not available contrary to section 3.47 of the Commission rules.

Testimony of Leo J. Theriot

31. Leo J. Theriot, as set out in paragraph 4, *supra*, was the original licensee and remains the licensee of KLFT. As there indicated, he is a substantial and prominent businessman in his community, and has a variety of business and civic activities. He was called by the Commission as an adverse party. Rule 43 of the Federal Rules of Civil Procedure, entitled "Evidence," in its subsection (b), provides in part as follows: "Scope of examination and cross-examination: * * * A party may call an adverse party * * * and interrogate him by leading questions and impeach him in all respects as if he had been called by the adverse party * * *" To say that Theriot was uncooperative is putting it mildly. His memory was extremely faulty on many details concerning the operation of his station despite the fact that here involved is a sole proprietorship and Theriot is the manager of his own station. Beyond that, during the time Theriot was on the witness stand he had difficulty in understanding questions and many times his answers not only failed to be responsive but were incoherent and evasive. On occasions throughout his testimony Theriot faltered with the truth. Only portions of his testimony are herewith set out.

32. Respecting his employment of Roundtree, the witness was unable to recall as to when a final agreement was arrived at, whether it was December 1960, January, February, or March 1961. The following is his testimony at one point on the subject of employment:

32 F.C.C.

Q. Did Mr. Roundtree at any time in January, February or March of 1961, when you talked to him, say anything but that he would think about your offer?

A. I wouldn't remember now; no, sir.

33. As to whether he had had discussions with Roundtree relative to the latter's posting his license at Theriot's station and remuneration therefor, his testimony on that point reads:

Q. Now, there came a time, did there not, Mr. Theriot, when Mr. Roundtree posted his license at KLFT; is that right?

A. Yes, sir.

Q. When was the license first posted?

A. I don't recall, sir.

Q. By whom was it posted?

A. I don't know who posted it. It could have been personnel at the station.

Q. Now, how did it come about? When did you have discussions which led to the posting of Mr. Roundtree's license at KLFT with Mr. Roundtree?

A. I don't remember.

Q. Did you have these discussions in October?

A. I don't recall, sir.

Q. December?

A. Still don't recall.

Q. January?

A. Don't remember.

Q. February?

A. Don't remember, sir.

Q. Was it posted in November?

A. I wouldn't know if it was posted in November.

Q. Was it posted in October?

A. I don't know.

Q. Was it posted in March of 1961?

A. I don't recall, sir.

Q. Was it posted in February of 1961?

A. I don't recall, sir.

Q. Was it posted in January of 1961?

A. Don't recall.

PRESIDING EXAMINER. Will you speak up? The reporter has difficulty in hearing you, and so do I.

By Mr. ELY:

Q. What was the first time that you learned Mr. Roundtree's license was posted at KLFT?

A. I don't remember that, sir.

Q. What discussions did you have with Mr. Roundtree which led up to the license being posted at KLFT?

A. I wouldn't remember that, sir.

Q. Did you pay him for posting his license there?

A. I paid Mr. Roundtree, in addition to Mr. Hamilton, \$50 a month for services that he come in at all hours of the week.

Mr. ELY. Mr. Examiner, I move that the answer be stricken and that the witness be instructed to answer the question. The question was did he pay Mr. Roundtree for posting his license at KLFT.

THE WITNESS. No, sir.

This record pointedly shows that this testimony is directly contradictory to the testimony of Roundtree, because Roundtree had testified that he had been paid the \$50 a month for 3 months for posting his license. (See pars. 14 and 29, supra.) The evidence also is that the witness did not recall his last conversation with Roundtree prior to his reporting for work on April 17, 1961, which was in the month preceding the evidentiary hearing.

33. Respecting his transactions with Du Treil, which is set out in part in paragraph 20, et seq., supra, the witness could not recall that he had talked to Du Treil in December 1960. Further, he could not remember having sent Du Treil any information from December 15 or 16, 1960, to February 10, 1961. At the hearing on May 24, 1961, Theriot testified as follows:

- Q. Did you ever send Mr. du Treil any logs?
- A. I don't recall that, sir.

The next day upon interrogation, the respondent testified:

- Q. Now, when you sent those logs to Mr. du Treil, did you send him anything else in addition to the logs?
- A. Not that I recall now; no, sir.
- Q. Are you sure you didn't send anything else besides the logs?
- A. Not that I recall, sir.

As heretofore set out, Du Treil signed an "affidavit of compliance" that was attached to Theriot's petition for reconsideration filed February 13, 1961, and which had been sworn and subscribed to before a notary public by Theriot on February 11, 1961. Yet Theriot said he did not recall asking Du Treil to make the affidavit but Du Treil testified specifically on the point.

34. As to the equipment performance measurements for the year 1959, Theriot did not know whether Du Treil made them or not. Du Treil testified he did not make such measurements. Theriot could not relate any facts respecting the statement that he had made in his alleged "Original Duplicate" communication inferring that the 1959 measurement tests had been made. It is to be recalled that that communication contained the words "when another person was performing engineering duties at this station." His testimony in this respect is as follows:

- Q. When you wrote the letter, did you know the name of the person who gave you the information upon which you allegedly based your answers?
- A. Yes, sir.
- Q. What is the name of the person?
- A. Well, it was either Mr. du Treil or one of the personnel, Jerry Chatanier. He had the statement. Who usually gives me these notes, gives me my information?
- Q. Who is Mr. Chatanier?
- A. Who?
- Q. Who is Mr. Jerry Chatanier?
- A. He is one of the employees at the station.
- Q. What are his duties?
- A. He assists Mr. du Treil or any engineers that comes on. He is an announcer. And he—
- Q. Is Mr. Chatanier an engineer?
- A. No, sir.

- * * * * *
- Q. But it is your testimony that you don't know the name of the person you referred to in exhibit 3 [Original Duplicate letter] as the person who was performing engineering duties at the station?
 - A. My answer to that is I do not recall who gave it to me now.
 - Q. Isn't it a fact that you now know there were no such measurements in existence at the time you wrote this letter?
 - A. No, sir.
 - Q. You mean you don't know that?
 - A. What I meant to answer is that to my knowledge there were measurements made.

Q. For 1959?

A. For 1959; yes, sir.

Q. How did you know this?

A. Because if there wouldn't be any, I wouldn't have answered that question that there were.

The witness clearly evaded any answer as to the individual making the alleged tests in 1959, and from the evidence the finding has to be made that the tests were not made.

35. Theriot remembered the inspection of the station made in May 1960 by William J. Simpson, of the New Orleans office, but he could not recall that Simpson stated that Hamilton Radio Service could not be regarded as a substitute for a full-time radiotelephone first-class operator as provided for in section 3.93(c) of the Commission's rules. Likewise, while he could recall the visit that Simpson made later to the Golden Meadow station in November 1960, the witness' memory again failed him in recalling that Simpson once more told him that Hamilton Radio Service could not be substituted for a full-time first-class engineer.

36. Theriot testified that he made a Thermofax copy of the license of Harold J. Callais to send to the FCC in New Orleans to see if they could qualify Callais to work as an engineer. His testimony was that he had made one Thermofax copy of the Callais license but subsequently changed his testimony to state that he made two copies, one to keep for his files and the other to send to the FCC. He stated that he gave one copy to Callais and he was under the impression that he mailed the other copy to the FCC. The New Orleans office never received this communication.

37. The respondent testified that he offered Roundtree a salary of \$300 per month to work for him about 3 years ago when he was working for Hamilton Radio Service. At the same time, Herron was still in Theriot's employ and he was having difficulties with Herron. From time to time thereafter Theriot stated that he had renewed his proposal to Roundtree but to no avail. When Roundtree was working for Hamilton Radio Service, Theriot paid Hamilton Radio Service for the work that was done by Roundtree. Roundtree works 45 hours a week at the station, but Theriot testified he had regarded Roundtree as a full-time employee throughout the period of time that Hamilton Radio Service was rendering services for the station. Theriot did not make a particular effort to locate another engineer on a full-time basis after the departure of Herron. He spoke to a "Mr. Varlando," but he was not interested in coming to work for Theriot. Who "Varlando" is, is unexplained from the evidence. Theriot had made inquiry of a radio-parts supplier in New Orleans if they would try to locate a first-class operator for him. However, Theriot was indefinite as to the time of the visit with this radio-parts supplier. He had talked to a "Mr. Davidson," who was associated with the radio-parts supplier, but had not written him any letters and, although he testified he had called him by telephone, he could not recall when and the number of times. Likewise, he did not recall the last conversation with "Mr. Davidson." The witness did not contact any radio schools in an effort to obtain employment of a full-time engineer. He testified that he did not ask the Commission's New Orleans office to help

him in an effort to locate an engineer. He did not advertise in trade publications or inspect trade publications to see if there was any qualified person seeking employment. His other efforts in endeavoring to locate a full-time engineer were limited to general conversations with friends and general business acquaintances in Golden Meadow except for the correspondence with Hampton C. Clark, Jr. (par. 26, supra). Theriot testified that he knew Callais held a first-class ticket from the Commission, but thought he was seeking only part-time employment. The witness denied that he had ever had a telephone call in 1960 from J. W. Byars, of Maben, Miss., about which Simpson testified. (See par. 27, supra.)

38. To contradict himself he admitted that he told Du Treil that Roundtree was a full-time employee of KLFT as embodied in Du Treil's affidavit attached to the petition for reconsideration. His answer to the question as to whether he had made the statement to Du Treil was as follows: "Apparently I did, because I still say that he was my full-time employee."

39. Theriot testified that he had been a licensee of the Commission since 1955 when the station went on the air. He testified that certain people from Opelousas, La., attempted or wanted to purchase his station, but he could not recall the names of the individuals of the prospective purchasers. The witness testified that he very seldom did any broadcasting over his station except in emergencies or "with other people or political periods." He testified that since January he had had monthly meetings of his employees and gave instructions that they should comply with the rules and regulations of the Commission. He testified that "I know very little" about the rules and regulations of the Commission and that he had not attempted to familiarize himself with such rules and regulations although he had been a licensee since 1955.

40. Although Roundtree commenced his employment at KLFT in the month before the evidentiary hearing, *to be exact on April 17, 1961*, the witness could not remember when he placed Roundtree on his payroll at \$300 a month. On this point he testified:

I wouldn't remember, sir, but that wasn't too long. I would say maybe 3 or 4 months; 4 or 5 months, maybe.

Public witnesses

41. Five witnesses who were prominent citizens of the Golden Meadow area appeared at the hearing in New Orleans and testified relative to the operation of the station as well as about Theriot personally. James Summersgill, who is in the ice and freeze business, appeared as president of the Louisiana Shrimp Association, which has a membership of 700. Summersgill testified that there were 500 boats in the association and that the membership was made up of people from Texas to Mississippi along the entire coast. He testified that a large number of shrimpers listen to the station and the service was invaluable in that the news and weather service of KLFT contributed to the safety of lives and property and helped prevent the violation of the shrimp laws of Louisiana. Likewise, oyster fishermen, Summersgill stated, use KLFT for news, and the English and French news programs are the only source of local news to the area. Sum-

mersgill had lived in Golden Meadow for 30 years and was well acquainted with Theriot during that period. He testified that Theriot had been the recent recipient of an award for outstanding citizenship. Summersgill testified that he was requested by Theriot to attend the hearing in order to testify in the latter's behalf. On cross-examination he testified that New Orleans stations carried information including storm and hurricane warnings. He further testified that he occasionally listened to stations in New Orleans.

42. Another witness was Richard Guidry, a member of the State Legislature of Louisiana from 1952 to 1956. He had lived in Golden Meadow for 31 years. He is president of a local drilling company, and testified that in remote areas of his drilling operations news was received in both French and English from KLFT. He further testified that "he did not see eye to eye in politics" with Theriot, but that his candidates had as much time on KLFT as they desired. The witness said that there was not a newspaper in Golden Meadow and that the station was a satisfactory source of news for the local residents. He is on the board of directors of the State Bank & Trust Co. with Theriot and Theriot has asked him to testify at the evidentiary hearing.

43. Another witness was the mayor of Golden Meadow, John A. Egle. He listens to station KLFT primarily for "local news, happenings [and] announcements." News furnished from distant newspapers does not meet the needs of Golden Meadow. Some of the local news in out-of-town newspapers is as much as 2½ days old. He felt that, relative to announcements, official declarations, and like subjects, the local station had about a 90-percent coverage. He regarded the station as an excellent source of news because of the high degree of illiteracy in the community. He commended the station on its public-service contributions, particularly in the way of civil defense. Theriot had asked the witness to testify in the hearing and said that Theriot told him that the issue in the case was that "his license was up for a renewal." The witness further said that Theriot stated "that he had been operating contrary to the FCC rules without an engineer or a technician."

44. John A. Brady, president and general manager of the Lafourche Telephone Co., lives at Larose, La., approximately 12 to 15 airline miles north of Golden Meadow. Prior to moving to Larose in 1960, he had lived in Golden Meadow 16 years. The witness is also the present district governor of Rotary District 620 of south Louisiana and has been active in the State telephone association for many years, having been both past president, present secretary, and on the board of directors. He listens to two stations, KLFT and at times to WWOM in New Orleans. It was the witness' belief that, especially because of the factor of news and the area being without a newspaper, KLFT met a profound need in the community. He had known Theriot since 1933 or 1934 and that he had been active in civic affairs and a leader in the industrial phase of the community life.

45. Another public witness was Alvin J. Louviere, who is employed by the State of Louisiana as petroleum inspector in the mineral department. He is also part owner of a boat company and likewise

a board member of the bank with Theriot and Guidry. He is also in the transportation department of civil defense of the Lafourche Parish. He has been a resident of Golden Meadow for 47 years and listens to newscasts and religious programs over KLFT. During the 1960 Hurricane Donna, the Theriot station remained on the air and rendered a distinct public service by constant alert. The witness had known Theriot about 25 years and regarded him as an outstanding civic leader in the area. He knew nothing derogatory about Theriot as related to his character. Theriot had asked him to appear at the hearing at a board of directors' meeting of the bank where Guidry was also present. It was his understanding that what was involved at the hearing was the question of renewal of the KLFT license. Also noted on the record were letters of recommendation as to the performance of station KLFT, from the sheriff of the city of Thibodaux, La., U.S. Army recruiting station in the area, the town of Golden Meadow, signed by Egle, and the president of the local police jury (political governing body).

CONCLUSIONS

1. Leo Joseph Theriot is the licensee of KLFT at Golden Meadow, La., and has been since the station went on the air in November 1955. He is a prominent citizen of the Golden Meadow community and, besides his many business activities, has devoted considerable time in public service work and related civic activities in his hometown.

2. KLFT operates as a class III station upon 1600 kc with a power of 1 kw. It is owned entirely by Theriot, who is the station's general manager. The station does not have a network affiliation and its programing generally consists of news and music. Some of the broadcasts are in French, as the inhabitants of the community are primarily of French descent. The station is an important source of hurricane and storm warnings to the people of the area. The principal industry of Golden Meadow, which has a population of 3,097 according to the 1960 U.S. census, is a fleet of shrimp and oyster boats with some oil exploration and production in the vicinity consisting of primarily offshore operations. There are no newspapers in Golden Meadow and the only communications media existing in the community is the Theriot standard broadcast station.

3. On January 19, 1961, the Commission released a show-cause order directed to Theriot requiring him to show cause why an order revoking his license for the station should not be issued. The show-cause order charged that Theriot had willfully and intentionally continued the station's day-to-day operation in violation of sections 3.47 and 3.93(c) of the Commission's rules and had failed and neglected to respond to the Commission's notices in violation of section 1.76 (formerly sec. 1.61). Therefore, pursuant to sections 312 (a) (3), (4), and (c) of the Communications Act of 1934, as amended, the respondent was directed to show cause why an order revoking his license for station KLFT should not be issued and to appear and give evidence with respect thereto at a public hearing.

4. On May 22, 1961, upon petition by the Broadcast Bureau, the Commission added another paragraph to the show-cause order respecting the question of whether Theriot had made or caused to be made any misrepresentations to the Commission in connection with the operation of KLFT, which is set out in paragraph 1, page 604, supra.

5. Although Theriot had been a licensee since November 1955, he testified that "I know very little" about the rules and regulations of the Commission, and, further, that he had not attempted to familiarize himself with said rules and regulations. The demeanor of Theriot on the witness stand was poor. He was a sullen and evasive witness and frequently demonstrated a faulty memory. His testimony generally was lacking in candor. He was not cooperative and offered little, if anything, in the way of mitigation for his repeated day-to-day violations of the Commission's rules and regulations.

6. Along in May 1960, William J. Simpson, engineer in charge of the Commission's New Orleans field office, inspected Theriot's station in Golden Meadow and determined that there were at least five violations of the Commission's rules, including the failure to employ a first-class radiotelephone operator on a full-time basis, which is a violation of section 3.93(c). Theriot had not had in his employ a full-time engineer since one Earl Herron left his employ on July 18, 1959. Simpson told Theriot that the arrangement that he had with Hamilton Radio Service of Houma, La., for servicing KLFT did not meet the requirements of the rule just referred to. Subsequently, between May 26, 1960, and November 26, 1960, Simpson made several trips to Golden Meadow and on at least one occasion went to Theriot's office but was unable to see him. On November 26, 1960, Simpson did see Theriot in Golden Meadow and again emphasized to Theriot that the arrangements that respondent had with Hamilton Radio Service were not fulfilling the requirements of section 3.93(c) respecting the full-time employment of a first-class engineer. While Theriot recalled the visits of Simpson to the station, his memory failed in that he did not recall that Simpson advised him that the services of Hamilton Radio Service could not be substituted for a first-class engineer. However, after Simpson's visit to Golden Meadow in May 1960 the New Orleans office, on June 16, 1960, mailed to Theriot an official notice of violation on FCC form 793 setting out the irregularities (five in number) that Simpson had observed at the station. Theriot wholly ignored this notice. Having not received any reply to this official notice of violation, the New Orleans office sent a photostatic copy of the original notice to Theriot. Theriot chose to totally ignore the photostatic copy. On August 9, 1960, by certified mail, return receipt requested, the New Orleans office mailed to Theriot a revocation warning on FCC form 794. This warning noted that Theriot had failed to make satisfactory response to violations noted in the official notice forwarded on June 16, 1960, and, in addition, the revocation warning cited the station for violating section 1.61 (now sec. 1.76) of the Commission's rules by failing to submit such a response. There is no question but that Theriot received this revocation warning. As heretofore related, Simpson saw Theriot on November 26, 1960, and insisted that the violations of the station had to be corrected.

7. Finally, on December 15, 1960, Theriot wrote the New Orleans office a letter which is set out in paragraph 12, page 608, *supra*. The Commission issued its order to show cause on January 19, 1961, and subsequently Theriot filed his petition for reconsideration on February 13, 1961. In the petition for reconsideration, which was sworn to and verified to by Theriot on February 11, 1961, he made a false representation to the Commission that George L. Roundtree, Jr., then an employee of Hamilton Radio Service, was employed on a full-time basis as a first-class engineer at KLFT. He also attached an "affidavit of compliance" attested to by Louis J. N. du Treil, a consulting radio engineer in New Orleans, which left the inference that Du Treil was informed and believed that Roundtree was in the full-time employment of Theriot at his station. Du Treil testified that he had predicated this representation upon information that had been supplied to him by Theriot or as Du Treil testified "I assumed that he [Theriot] was telling me the truth."

8. When confronted with the fact that he had told Du Treil that Roundtree was a full-time employee of his prior to April 17, 1961, which was not true, Theriot explained it as follows: "Apparently I did, because I still say that he was my full-time employee." That answer is absurd because Roundtree was a full-time employee of Hamilton Radio Service at Houma, La., some 50 miles distance from Golden Meadow. As heretofore related, Roundtree did not enter the employ of Theriot until April 17, 1961, which was about 5 weeks prior to the evidentiary hearing in New Orleans. When asked categorically when Roundtree commenced his employment at KLFT, Theriot could not remember. His answer in part was "I would say maybe 3 or 4 months; 4 or 5 months, maybe."

9. As a subterfuge to deceive both the public and the Commission, Roundtree posted his license at KLFT in December 1960, for which he was paid the sum of \$50 per month. Roundtree subsequently was employed as a first-class engineer on a full-time basis by Theriot commencing April 17, 1961, at \$300 per month, although he had been paid approximately \$7,000 by Hamilton Radio Service at Houma for the year 1960, not including certain expenses but including a paid vacation. Roundtree readily admitted to an employee of the Commission that he rendered no services to Theriot for his license being posted at the latter's station above and beyond the services that he rendered to the station as an employee of Hamilton Radio Service who was paid directly by Theriot. Roundtree was not unhappy about receiving the windfall for not performing extra duties at the station in return for \$50 per month. Theriot attempted to explain that he paid Roundtree \$50 a month "for services that he come in at all hours of the week" in addition to the services that Roundtree rendered to the station as an employee of Hamilton Radio Service. Theriot testified that he did not pay Roundtree \$50 per month for merely hanging his license at KLFT. Therefore, either Roundtree or Theriot was not telling the truth, because their statements are directly contradictory. The hearing examiner accepts Roundtree's version of this arrangement as the truth.

10. Two employees of the Commission made an inspection of KLFT on March 29, 1961. The day before, one of these employees had inspected the communications system of Hamilton Radio Service in Houma. At that time he had interviewed Roundtree, who was then employed at Hamilton Radio Service. Roundtree related in detail the circumstances surrounding the fact that his license was posted at Theriot's station some 50 miles away in Golden Meadow. (See par. 9, p. 624, supra.) At that time he gave the Commission employee a notarized statement concerning the conditions under which his license was posted at KLFT and that he was being paid \$50 a month for the accommodation.

11. On March 29, 1961, in addition to finding *seven* violations of the Commission's rules at KLFT, the two Commission employees just referred to interviewed two employees of the station, Miss Eula Duet and Gerald J. Chatanier. Chatanier, in the presence of Miss Duet, told the two Commission employees that Roundtree was a full-time engineer at the station and had been on duty at certain particular times. Miss Duet acquiesced in Chatanier's statements. To augment this interview with the two Commission employees, the two Theriot employees signed statements substantiating their conversations with the Commission employees. During the day, however, the two employees became concerned about the false statements they had made and repudiated them. Both these employees testified at the hearing in New Orleans and stated under oath that they had told the falsehoods as to Roundtree's employment on a full-time basis at KLFT under instructions from their employer, Theriot. Theriot heard these witnesses give this testimony and never denied the truth thereof. It is perfectly clear from the evidence here that Miss Duet and Chatanier were directed by Theriot to make the misrepresentations concerning Roundtree as a full-time employee of the station.

12. The conclusion is here reached from the abundance of evidence that equipment performance measurements for December 15, 1959, were not made. There was a complete violation of section 3.47 of the Commission's rules, and the attempted explanations of Theriot just followed the pattern of patent misrepresentations to the Commission because the tests were never made. There is no evidence in the record to support Theriot's flimsy and weak suggestion that "another person was performing engineering duties" *prior* to December 15, 1960. Theriot simply did not have a first-class engineer on a full-time basis from the time Herron left his employ on July 18, 1959, until Roundtree became his employee on April 17, 1961, or a period of approximately 1 year 9 months. Theriot, in the time he was without the services of a first-class engineer on a full-time basis, was negligent and dilatory in fulfilling the requirements of the Commission's rules, particularly section 3.93(c). His excuses for failure to hire a man with a first-class ticket are fragmentary and unbelievable. He testified as to talking to a "Mr. Varlando." Who "Varlando" was is not clear from the record. He had the opportunity to employ Harold J. Callais. His excuse for not employing Callais, who lived in Golden Meadow, falls short of plausibility. The Commission's New Orleans office referred to him another engineer by the name of J. W. Byars,

of Maben, Miss. Theriot did not follow up this lead. He had an inquiry from one Hampton C. Clark, Jr., Forest, Miss., in August 1960, and outside of sending him a registered letter and asking him to come to Golden Meadow for an interview, Theriot let the matter drop. Theriot did not advertise in trade journals or inspect trade publications to ascertain if there were any qualified persons seeking employment. He did talk to a "Mr. Davidson" connected with a radio-parts supply house in New Orleans, but his efforts, if any, in seeking a full-time engineer were limited primarily to general conversations with friends and business acquaintances in Golden Meadow. In other words, he did not make genuine efforts to comply with section 3.93(c) until after the Commission's order to show cause was entered, after a prehearing conference was held in this matter and the evidentiary hearing was to become a stark reality.

13. One other point in passing relates to the so-called "Original Duplicate" letter dated April 14, 1961. (See par. 18, p. 610, *supra*.) The question arises as to whether this alleged communication was an artifice that turned up at the evidentiary hearing. The original of the "Original Duplicate" letter was neither received by the New Orleans office nor was it mailed by registered or certified mail. But accepting, *arguendo*, that the original letter was actually written, it contained misrepresentations. Inference was made that the 1959 equipment performance measurement tests had been made while in reality they had not, and the impression was left that a first-class operator had been employed full time "as of April 1961" while Roundtree did not begin his employment with Theriot until April 17, 1961. This is, of course, contrary to the petition for reconsideration filed February 13, 1961, wherein over the verification of Theriot the pleading contained the following:

(b) He [Theriot] engaged on a full-time basis, George L. Roundtree, Jr., holder of radiotelephone first-class operator's license P1-8-2507, issued at New Orleans and expiring March 16, 1962.

14. Five public witnesses appeared at the hearing and testified as to the need of the station in Golden Meadow, particularly as to its news reports. Two of the witnesses were under the impression that the evidentiary hearing was a license-renewal proceeding, while one of the two had been advised by Theriot that he was operating contrary to the Commission's rules "without an engineer or technician." All five of the witnesses referred to Theriot's varied business and civic activities in his community.

15. In summation, the pattern of conduct displayed by Theriot is self-evident in this proceeding and cannot in finality be disputed. Theriot, with design, attempted to deceive or avoid the Commission and its staff at every opportunity. The lack of veracity of his statements, including both written communications and testimony at the hearing, attaches to the licensee with remarkable clarity. Very little credibility, if any, can be given to the representations that Theriot made to the Commission and its staff, as well as the fragmentary evidence that he presented at the hearing in New Orleans. He has willfully and intentionally violated the Commission's rules and

pointedly ignored written and verbal communications concerning said violations.

16. In view of the foregoing findings of fact and conclusions and upon consideration of the entire record in this proceeding, it is concluded that the license of Leo Joseph Theriot, licensee of standard broadcast station KLFT at Golden Meadow, La., in the public interest, convenience, and necessity should be revoked.

Accordingly, *It is ordered*, This 17th day of August 1961, that unless an appeal by the Commission from this initial decision is taken by any of the parties, or the Commission reviews the initial decision on its own motion in accordance with the provisions of section 1.153 of the rules, the license of Leo Joseph Theriot, licensee of standard broadcast station KLFT at Golden Meadow, La., *Be, and the same is, hereby revoked.*

APPENDIX

Section 312 of the Communications Act of 1934, as amended, provides in part:

(a) The Commission may revoke any station license or construction permit—

(1) for false statements knowingly made either in the application or in any statement of fact which may be required pursuant to section 308;

(2) because of conditions coming to the attention of the Commission which would warrant it in refusing to grant a license or permit on an original application;

(3) for willful or repeated failure to operate substantially as set forth in the license;

(4) for willful or repeated violation, or willful or repeated failure to observe any provision of this Act or any rule or regulation of the Commission authorized by this Act or by a treaty ratified by the United States;

* * *

* * * * *

(c) Before revoking a license or permit pursuant to subsection (a), * * * the Commission shall serve upon the licensee, permittee, or person involved an order to show cause why an order of revocation * * * should not be issued. Any such order to show cause shall contain a statement of the matters with respect to which the Commission is inquiring and shall call upon said licensee, permittee, or person to appear before the Commission at a time and place stated in the order, but in no event less than thirty days after the receipt of such order, and give evidence upon the matter specified therein; * * *

Section 1.76 of the rules provides in part:

(a) Any licensee who appears to have violated any provision of the Communications Act or any provision of this chapter shall be served with a written notice calling the facts to his attention and requesting a statement concerning the matter. FCC form 793 may be used for this purpose.

(b) Within 10 days from receipt of notice or such other period as may be specified, the licensee shall send a written answer, in duplicate, direct to the office of the Commission originating the official notice. If an answer cannot be sent nor an acknowledgment made within such 10-day period by reason of illness or other unavoidable circumstances, acknowledgment and answer shall be made at the earliest practicable date with a satisfactory explanation of the delay.

Section 3.47 of the rules provides in part:

(a) The licensee of each standard broadcast station shall make the following * * * equipment performance measurements at yearly intervals. One such set shall be made during the 4-month period preceding the date of filing application for renewal of station license.

* * * * *

(b) The data required by paragraph (a) of this section, together with a description of instruments and procedure, signed by the engineer making the measurements, shall be kept on file at the transmitter and retained for a period of 2 years and on request shall be made available during that time to any duly authorized representative of the Federal Communications Commission.

Section 3.93(c) of the rules provides in part:

(c) The licensee of a station which is operated by one or more operators holding other than a radiotelephone first-class operator license shall have one or more operators holding a radiotelephone first-class operator license in regular full-time employment at the station whose primary duties shall be to effect and insure the proper functioning of the transmitting equipment * * *

32 F.C.C.

JOHN K. ROGERS ET AL., DOCKETS NOS. 12976 AND 12980:

Application of John K. Rogers for construction permit for new standard broadcast station at Bristol, Tenn., to operate on the frequency 1550 kc, 1 kw, daytime only; granted. Competing application of Kingsport Broadcasting Co., Inc. (WKPT), for mutually exclusive facilities at Kingsport, Tenn.; dismissed.

Section 1.312(c) of the rules.—Request to dismiss application after designation for hearing.

Section 1.316 of the rules.—Circumstances surrounding dismissal of mutually exclusive application.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON 25, D.C.

In re Applications of
JOHN K. ROGERS, BRISTOL, TENN.

KINGSPORT BROADCASTING CO., INC. (WKPT),
KINGSPORT, TENN.
For Construction Permits

Docket No. 12976
File No. BP-12915
Docket No. 12980
File No. BP-13070

APPEARANCES

Robert M. Booth, Jr., on behalf of John K. Rogers; Robert W. Coll, on behalf of Kingsport Broadcasting Co., Inc. (WKPT); and Robert J. Rawson, David I. Kraushaar, and Ray R. Paul, on behalf of the Chief of the Broadcast Bureau, Federal Communications Commission.

SUPPLEMENTAL DECISION

(Adopted March 15, 1962)

BY THE COMMISSION: CHAIRMAN MINOW NOT PARTICIPATING.

1. A Commission decision in this matter, released May 23, 1961, 30 FCC 785, 20 R.R. 522, granted the application of Kingsport Broadcasting Co., Inc. (WKPT), to change the operating authority of station WKPT, Kingsport, Tenn., from unlimited time on the frequency 1440 kc with a power of 250 w, to daytime only on the frequency 1550 kc, with a power of 10 kw. Simultaneously, the decision denied the mutually exclusive application of John K. Rogers for a construction permit for a new standard broadcast station at Bristol, Tenn., on the frequency 1550 kc with a power of 1 kw, daytime only. Rogers appealed.

2. Thereafter, WKPT sought from the Commission and received a cancellation of the construction permit issued pursuant to the decision. The Commission and Rogers filed a joint motion with the court of appeals for remand of the proceeding. The court having remanded the proceeding, it is now before us for further disposition.

3. WKPT's action in securing a cancellation of its construction permit is construed as a request for dismissal of its application under section 1.312(c) of the Commission's rules. Affidavits of no consideration, contemplated by section 1.316(c)(1) of the rules, have been received from the applicants, and it does not appear that WKPT's determination to withdraw was prompted by any agreement between the applicants bringing into play the procedures set forth in sections 1.316(a) and (b) of the rules. Accordingly, WKPT's request for dismissal can be granted without further proceedings.

4. Rogers has heretofore been determined to be fully qualified to receive the grant it seeks, and the award to WKPT turned solely on grounds arising under section 307(b) of the Communications Act. In light of all of the foregoing, there is no obstacle to a grant at this time of the Rogers' application.

Accordingly, *It is ordered*, This 15th day of March 1962, that the decision released herein on May 23, 1961, *Is set aside*; that the application of Kingsport Broadcasting Co. for change of facilities of WKPT, Kingsport, Tenn., *Is dismissed*; and that the application of John K. Rogers for a construction permit for a new standard broadcast station at Bristol, Tenn., to operate on the frequency 1550 kc with a power of 1 kw, daytime only, *Is granted*.

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HYDIE R. PETERSON (WK-8260), DOCKET No. 14308:

Order revoking ship radio station license effective April 24, 1962.

Section 1.76 of the rules.—Failure to reply to official notice of violation and correspondence.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON 25, D.C.

<p>In the Matter of HYDIE R. PETERSON, P.O. Box 196, FERNAN- DINA BEACH, FLA. Order To Show Cause Why There Should Not Be Revoked the License for Radio Station WK-8260 Aboard the Vessel <i>Little Derek</i></p>	}	Docket No. 14308
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MEMORANDUM OPINION AND ORDER

(Adopted March 15, 1962)

BY THE COMMISSION:

1. The Commission, on October 23, 1961, released an order pursuant to section 312 (a) (4) and (c) of the Communications Act of 1934, as amended, directing the respondent to show cause why his license for radio station WK-8260 aboard the vessel *Little Derek* should not be revoked for alleged violations of section 1.76 of the Commission's rules (47 CFR sec. 1.76).

2. The show-cause order spelled out the violations and detailed the procedural rights of the respondent, including his right to a hearing, or to waive hearing if he so desired, and to submit a statement in mitigation or justification. The respondent on November 8, 1961, replied to the show-cause order, waiving his right to a hearing and submitting a written statement. Accordingly, by order released December 4, 1961, the Acting Chief Hearing Examiner terminated the proceeding and certified the case to the Commission in accordance with section 1.78(c) of the rules.

3. The Commission's records indicate that, on June 27, 1961, the Commission sent the respondent an official notice of violation alleging that on June 3, 1961, the radio station aboard the *Little Derek* was used for the exchange of communications with a radio station aboard another vessel which exceeded 3 minutes in duration, in violation of section 8.366(f) (1) of the Commission's rules. This notice was sent to Peterson at his Fernandina Beach, Fla., address (his address of record). When no reply was made, a followup letter was sent to respondent on July 27, 1961, again advising him of the violation and warning that failure to reply within 15 days of receipt might result in the institution of proceedings for the revocation of his license.

This letter was sent by certified mail and was received by Peterson's agent on July 28, 1961. No reply to this letter was made. Accordingly, on August 14, 1961, an additional followup letter was sent to the respondent by certified mail which warned that proceedings for the revocation of his license would be instituted at the conclusion of a 15-day period should no reply to the Commission's previous correspondence of June 27 and July 27, 1961, be made. A return receipt for certified mail indicates that this letter was received for the respondent on August 21, 1961, by Peterson's agent. No reply to this letter was made and the above-mentioned order to show cause was released on October 23, 1961.

4. The respondent in his written statement claimed that the official notice of violation mailed on June 27, 1961, was not received by him because he was moving his "base of operation" to Freeport, Tex., at the time. The Commission's letter of July 27, 1961, was not received, according to Peterson, until August 5, 1961, at which time the vessel *Little Derek* was on a 60-day trip at sea. Respondent claimed that, since a reply to the Commission's letter required the signed statement of the vessel's captain, he waited until the *Little Derek* came into port at the end of August 1961. Peterson alleges that this statement was sent to the Commission's Miami field office at about the 1st of September and that his copy of this statement was lost when Hurricane Carla destroyed his office at Freeport, Tex.

5. The Commission's records fail to reflect the return by the Post Office Department of correspondence directed to the respondent. Similarly, the Commission has not received the letter allegedly sent by the respondent about the 1st of September. Section 1.76(b) of our rules requires that an acknowledgment of an official notice of violation be sent whenever it is not possible to make a reply thereto within the 10-day period prescribed. No such acknowledgment was sent by the respondent to any of the Commission's correspondence. The correspondence dated June 27, July 27, and August 14, 1961, was sent to Peterson's Fernandina Beach address.

6. Neither the respondent's assertion that he did not receive the official notice of violation sent to him in the regular course of mail nor his claim that he replied to the Commission's correspondence belatedly are sufficient to warrant our withholding the sanction of revocation in this case. The respondent is chargeable with notice of the contents of an official notice of violation sent to him in the regular course of mail at the mailing address furnished by him to the Commission (*In the Matter of John Vella*, 29 FCC 799 (1960)). Notwithstanding, therefore, the respondent's denial of receipt of the official notice of violation mailed on June 27, 1961, we find that under the facts of this case he has repeatedly violated section 1.76(a) of our rules and that the revocation of his license is warranted. However, inasmuch as this case appears to fall into the category of first offense, nonaggravated failures to respond to official notices of violation and correspondence in regard thereto, leniency in the application of the sanction of revocation is appropriate (*In the Matter of Alfred J. Henderson*, 30 FCC 685 (1961)).

Accordingly, *It is ordered*, That the license of Hydie R. Peterson, Fernandina Beach, Fla., for radio station WK-8260 aboard the vessel *Little Derek*, *Is revoked* effective April 24, 1962, and that a copy of this order of revocation shall be served upon the licensee; and

It is further ordered, That such revocation shall be without prejudice to consideration of an application for a new radio station license no less than 30 days from the effective date of revocation, notwithstanding the provisions of 47 CFR 1.551 which are, to the extent necessary, waived.

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ISAAC RUSSELL (1W6601), DOCKET No. 14278:

Order revoking citizens radio station license effective April 24, 1962.
Section 310(a) of the act.—Revocation of license issued to alien on basis of misrepresentation of citizenship.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON 25, D.C.

<p>In the Matter of ISAAC RUSSELL, D/B AS ISAAC RUSSELL'S TAXI, CALAIS, MAINE</p> <p>Order To Show Cause Why There Should Not Be Revoked the License for Radio Station 1W6601 in the Citizens Radio Service</p>	}	<p>Docket No. 14278</p>
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MEMORANDUM OPINION AND ORDER

(Adopted March 15, 1962)

BY THE COMMISSION:

1. By order to show cause released October 6, 1961, the Commission, pursuant to section 312(a)(2) and 312(c) of the Communications Act of 1934, as amended, directed Isaac Russell to show cause why his license for citizens radio station 1W6601 should not be revoked because of conditions coming to the attention of the Commission which would have warranted it in refusing to grant him a license on his original application.

2. The show-cause order set forth that, on June 15, 1960, the Commission issued to the respondent a license for citizens radio station 1W6601 on the basis of an application filed by him on May 9, 1960; that in such application he had represented that he was a citizen of the United States; that information had come to the Commission's attention indicating that, at the time of such application, he was, in fact, a citizen of Canada and that, had the Commission, at the time of the issuance of the license for citizens radio station 1W6601, known of the alien status of the respondent, it would have refused to grant his application. The order alleged that the respondent was prohibited from holding a radio station license in the citizens radio service by section 310(a) of the Communications Act of 1934, as amended.

3. In addition to the foregoing, the show-cause order detailed the procedural rights of the respondent, including his right to waiver of hearing, if he so desired, and to submit a statement in mitigation or justification. The respondent filed a statement in reply to the show-cause order under date of October 12, 1961, in which he claimed that he signed the application without reading closely all the details of

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the application; that he did not realize that "he had to be a citizen of the United States to hold said license"; that any representation that he was a U.S. citizen was in error and not done intentionally; and that when he realized that he had "to be a citizen to hold said license" he destroyed the license by tearing it up and throwing it away. He stated that he did not wish to oppose the revocation of his license for radio station 1W6601.

4. Operation of the subject radio station has been discontinued.

5. Section 310(a) of the Communications Act of 1934, as amended, provides, in part, that a station license shall not be granted to or held by an alien. Admittedly, at the time of the grant of the instant application, respondent was an alien. Had this fact been known to the Commission, at the time it granted the instant application, it would have been warranted in refusing to grant a license to the respondent herein. Thus, such license must now be revoked.

6. Accordingly, *It is ordered*, This 15th day of March 1962, pursuant to section 312 (a) (2) and (c) of the Communications Act of 1934, as amended, that the license of Isaac Russell, d/b as Isaac Russell's Taxi, Calais, Maine, for radio station 1W6601 in the citizens radio service, *Is revoked* effective April 24, 1962, and that a copy of this order of revocation shall be served upon the said licensee at his last known address of 19 North Street, Calais, Maine.

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MID-AMERICA BROADCASTING SYSTEM, INC., ET AL., DOCKETS NOS. 13010 ET AL.:

Application of Mid-America Broadcasting System, Inc., for new standard broadcast station at Highland Park, Ill.; dismissed. Application of North Suburban Radio, Inc., for new standard broadcast station at Highland Park, Ill.; granted. Application of Elgin Broadcasting Co. (WRMN) for increase in daytime power from 500 w to 1 kw; granted. Applications of Green Bay Broadcasting Co. (WDUZ), Racine Broadcasting Corp. (WRJN), Booth Broadcasting Co. (WJLB), Southern Michigan Broadcasting Corp. (WELL), Knorr Broadcasting Corp. (WSAM) and WSJM, Inc. (WSJM), all for increases in daytime power from 250 w to 1 kw; granted.

Section 1.154(a) of the rules.—Procedural sufficiency of exceptions.

Section 1.363 of the rules (as in force prior to February 20, 1961).—Merger of applicants.

Section 3.24(b) of the rules.—Interference to existing stations.

Section 3.28(d) (3).—The 10-percent rule.

Section 3.35(b) of the rules.—Multiple ownership of standard broadcast stations.

Section 3.37 of the rules.—Minimum separation between stations.

Section 307(b) of the act.—Fair, efficient, and equitable distribution of broadcast facilities.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON 25, D.C.

In re Applications of

MID-AMERICA BROADCASTING SYSTEM, INC.,
HIGHLAND PARK, ILL.

NORTH SUBURBAN RADIO, INC., HIGHLAND
PARK, ILL.

J. RICHARD SUTTER, JOSEPH E. McNAUGHTON,
WILLIAM D. McNAUGHTON, GENERAL PART-
NERS, AND JOHN T. McNAUGHTON, LIMITED
PARTNER, D/B AS ELGIN BROADCASTING CO.
(WRMN), ELGIN, ILL.

GREEN BAY BROADCASTING Co. (WDUZ),
GREEN BAY, WIS.

RACINE BROADCASTING CORP. (WRJN), RA-
CINE, WIS.

BOOTH BROADCASTING Co. (WJLB), DETROIT,
MICH.

SOUTHERN MICHIGAN BROADCASTING CORP.
(WELL), BATTLE CREEK, MICH.

KNORR BROADCASTING CORP. (WSAM), SAGI-
NAW, MICH.

WSJM, INC. (WSJM), ST. JOSEPH, MICH.

Docket No. 13010*
File No. BP-11689
Docket No. 13024*
File No. BP-12318
Docket No. 13043*
File No. BP-12778

Docket No. 13645*
File No. BP-13014
Docket No. 13646*
File No. BP-13146
Docket No. 13641†
File No. BP-12351
Docket No. 13642†
File No. BP-12806
Docket No. 13643†
File No. BP-12834
Docket No. 13644†
File No. BP-12880

For Construction Permits

APPEARANCES

Harry M. Plotkin, Gene A. Bechtel, Robert L. Bard (Berge, Fox & Arent) and *Robert W. Coll* (McKenna & Wilkinson) for Mid-America

*Group II-A.

†Group II.

Broadcasting System, Inc.; *Robert W. Coll, David Stevens and Joseph M. Kittner* (McKenna & Wilkinson) for North Suburban Radio, Inc.; *Lenore G. Ehrig and Harry J. Daly* (Daly and Ehrig) for Elgin Broadcasting Co.; *Samuel Miller and Mark E. Fields* for Green Bay Broadcasting Co.; *Reed T. Rollo and Aloysius B. McCabe* (Kirkland, Ellis, Hodson, Chaffetz & Masters) for Racine Broadcasting Corp.; *Marcus Cohn, Stanley B. Cohen and Roy F. Perkins, Jr.* (Cohn and Marks) for Booth Broadcasting Co.; *Robert M. Booth, Jr., and John L. Tierney* for Southern Michigan Broadcasting Corp. and Knorr Broadcasting Corp.; *Grover C. Cooper, Ben C. Fisher and Charles V. Wayland* (Fisher, Wayland, Duvall & Southmayd) for WSJM, Inc.; and *Earl C. Walck* for the Chief, Broadcast Bureau, Federal Communications Commission. Appearances were entered for respondents as follows: *Mr. Fields* for WAMM; *Messrs. Booth and Tierney* for WIMS; *Messrs. Cooper, Fisher and Wayland* for WMAN; and *Craig E. Davids* for WCER.

DECISION

(Adopted March 15, 1962)

BY THE COMMISSION: COMMISSIONERS MINOW, CHAIRMAN; AND BARTLEY NOT PARTICIPATING.

1. The captioned Group II applications seek an increase in daytime power from 250 w to 1 kw and to continue to operate on the same frequency of 1400 kc for all four stations. The Group II-A applications request the following: North Suburban seeks a new station (class III) at Highland Park, Ill., to operate daytime only, using a directional system, on 1430 kc with power of 1 kw; Elgin to increase the daytime power of station WRMN, Elgin, Ill. (class III) from 500 w to 1 kw, and to continue to operate on its assigned frequency of 1410 kc; Green Bay and Racine to increase the daytime power of their respective class IV stations WDUZ, Green Bay, Wis., and WRJN, Racine, Wis., from 250 w to 1 kw, while continuing to operate on 1400 kc. The Commission has found all the applicants legally, technically, financially, and otherwise qualified except as indicated in the specified issues. Shortly after designation for hearing, Mid-America Broadcasting System, Inc., and North Suburban Radio, Inc., entered into an agreement to consolidate their interests. North Suburban's application was amended to reflect the agreement, and Mid-America petitioned to dismiss its application.

2. In an initial decision released September 26, 1961 (FCC 61D-146), Hearing Examiner Herbert Sharfman considered the merger arrangement and associated circumstances under applicable law, and concluded that no serious public interest question is raised thereby. The initial decision would dismiss the Mid-America application and would grant all of the remaining except that of Elgin. Elgin's proposed 2-mv/m contour would overlap North Suburban's proposed 25-mv/m contour, although the transmitter sites would be 22.2 miles apart. Concluding that section 3.37 of the Commission's rules should not be waived so as to permit a grant of both applications, the ex-

aminer thereafter preferred North Suburban to Elgin on grounds deriving from section 307(b) of the Communications Act.

3. Oral argument has been had on exceptions filed by Elgin.¹ Upon consideration of the problems presented in the light of current policy and practice, the Commission believes that Elgin should also be granted, a result resisted by none of the applicants. Accordingly, the initial decision is adopted except to the extent that it would deny Elgin. (See initial decision, pars. 67-68.) In connection with the foregoing, the Commission observes that, with a denial, Elgin would suffer additional interference involving 15,617 persons and would be precluded from gaining in its interference-free area 76,075 persons, a net difference of 91,692 persons. More persuasive, the Commission's experience in dealing with existing overlap situations of the type proposed here dictates a conclusion that the harmful effects sought to be guarded against by section 3.37 are not likely to occur. *Cf. Clinton Broadcasting Corp.*, FCC 62-141, 32 FCC 367, — R.R. —.²

4. The Commission notes that a grant to Elgin raises its received interference from 14.2 percent of population to 18.1 percent. As the examiner points out, however, the resultant severe violation of section 3.28(d)(3) need not preclude a grant, since a denial would raise the interference to 19.04 percent.

Accordingly, it is ordered, this 15th day of March 1962:

(a) That the motion to strike, filed November 28, 1961, by Elgin Broadcasting Co., *Is dismissed*;

(b) That the petition to dismiss its application, filed September 10, 1959, by Mid-America Broadcasting System, Inc., *Is granted*, and that such application (docket No. 13010, file No. BP-11689) *Is dismissed*;

(c) That the application of North Suburban Radio, Inc., for a new standard broadcast station at Highland Park, Ill., 1430 kc, 1 kw, daytime only (class III), and the application of Elgin Broadcasting Co. (WRMN), 1410 kc, 500 w, daytime only (class III), for increase in power to 1 kw, *Are granted*, each subject to the following condition:

Pending a final decision in docket No. 14419 with respect to presunrise operation with daytime facilities, the present provisions of section 3.87 of the Commission's rules are not extended to this authorization, and such operation is precluded.

(d) That the application of class IV applicants (all 1400 kc, 250 w, unlimited) Green Bay Broadcasting Co. (WDUZ), Green Bay, Wis.; Racine Broadcasting Corp. (WRJN), Racine, Wis.; Booth Broadcasting Co. (WJLB), Detroit, Mich.; Southern Michigan

¹ By pleading filed November 28, 1961, Elgin moved to strike specified portions of North Suburban's reply to exceptions. The Commission regards the motion as essentially frivolous in nature and as an attempt to inject an additional pleading not contemplated by the Commission's rules. It is dismissed on the foregoing bases.

² Disposition of Elgin's four exceptions is as follows: The first is denied as completely lacking in the specificity required by sec. 1.154(a) of the Commission's rules. The second is granted in substance for the reasons set forth above. The third is denied as moot in light of the result reached herein. The fourth is granted in that it calls for a grant of Elgin's application.

Broadcasting Corp. (WELL), Battle Creek, Mich.; Knorr Broadcasting Corp. (WSAM), Saginaw, Mich.; and WSJM, Inc. (WSJM), St. Joseph, Mich., all for increase in daytime power to 1 kw, *Are granted*, each subject to the following condition:

That permittee shall accept such interference as may be imposed by other existing 250-w class IV stations in the event such stations are subsequently authorized to increase power to 1000 w.

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON 25, D.C.

<p>In re Applications of MID-AMERICA BROADCASTING SYSTEM, INC., HIGHLAND PARK, ILL. NORTH SUBURBAN RADIO, INC., HIGHLAND PARK, ILL. J. RICHARD SUTTER, JOSEPH E. McNAUGHTON, WILLIAM D. McNAUGHTON, GENERAL PART- NERS, AND JOHN T. McNAUGHTON, LIMITED PARTNER, D/B AS ELGIN BROADCASTING Co. (WRMN), ELGIN, ILL. GREEN BAY BROADCASTING Co. (WDUZ), GREEN BAY, WIS. RACINE BROADCASTING CORP. (WRJN), RACINE, WIS. BOOTH BROADCASTING Co. (WJLB), DETROIT, MICH. SOUTHERN MICHIGAN BROADCASTING CORP. (WELL), BATTLE CREEK, MICH. KNORR BROADCASTING CORP. (WSAM), SAGI- NAW, MICH. WSJM, INC. (WSJM), ST. JOSEPH, MICH. For Construction Permits</p>	<p>} Docket No. 13010* File No. BP-11689 Docket No. 13024* File No. BP-12318 Docket No. 13043* File No. BP-12778 Docket No. 13645* File No. BP-13014 Docket No. 13646* File No. BP-13146 Docket No. 13641† File No. BP-12351 Docket No. 13642† File No. BP-12806 Docket No. 13643† File No. BP-12834 Docket No. 13644† File No. BP-12880</p>
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APPEARANCES

Harry M. Plotkin, Gene A. Bechtel, Robert L. Bard (Berge, Fox & Arent) and *Robert W. Coll* (McKenna & Wilkinson) for Mid-America Broadcasting System, Inc.; *Robert W. Coll, David Stevens* and *Joseph M. Kittner* (McKenna & Wilkinson) for North Suburban Radio, Inc.; *Lenore G. Ehrig* and *Harry J. Daly* (Daly and Ehrig) for Elgin Broadcasting Co.; *Samuel Miller* and *Mark E. Fields* for Green Bay Broadcasting Co.; *Reed T. Rollo* and *Aloysius B. McCabe* (Kirkland, Ellis, Hodson, Chaffetz & Masters) for Racine Broadcasting Corp.; *Marcus Cohn, Stanley B. Cohen,* and *Roy F. Perkins, Jr.* (Cohn and Marks) for Booth Broadcasting Co.; *Robert M. Booth, Jr.,* and *John L. Tierney* for Southern Michigan Broadcasting Corp. and Knorr Broadcasting Corp.; *Grover C. Cooper, Ben C. Fisher* and *Charles V. Wayland* (Fisher, Wayland, Duvall and Southmayd) for WSJM, Inc.; and *Earl C. Walck* for the Chief, Broadcast Bureau, Federal Communications Commission. Appearances were entered for respondents as follows: *Mr. Fields* for WAMM; *Messrs. Booth* and

*Group II-A.

† Group II.

Tierney for WIMS; Messrs. Cooper, Fisher and Wayland for WMAN; and Craig E. Davids for WCER.

INITIAL DECISION OF HEARING EXAMINER HERBERT SHARFMAN

(Adopted September 21, 1961)

PRELIMINARY STATEMENT

1. This initial decision covers the applications in groups II and II-A of the proceeding involving numerous applications which had been initiated by the Commission's order of designation released August 12, 1959, and supplemented by order released July 13, 1960.¹ The captioned group II applications seek an increase in daytime power from 250 w to 1 kw and to continue to operate on the same frequency of 1400 kc for all four stations. The group II-A applications request the following: North Suburban seeks a new station (class III) at Highland Park, Ill., to operate daytime only, using a directional system, on 1430 kc with power of 1 kw; Elgin to increase the daytime power of station WRMN, Elgin, Ill. (class III) from 500 w to 1 kw, and to continue to operate on its assigned frequency of 1410 kc; Green Bay and Racine to increase the daytime power of their respective class IV stations, WDUZ, Green Bay, Wis., and WRJN, Racine, Wis., from 250 w to 1 kw, while continuing to operate on 1400 kc. The Commission has found all the applicants legally, technically, financially, and otherwise qualified except as indicated in the specified issues.

2. The issues applicable to the group II applications are:

2. To determine the areas and populations which may be expected to gain or lose primary service from each of the instant proposals for a change in facilities of an existing standard broadcast station, and the availability of other primary service to such areas and populations.

5. To determine whether the following proposals would involve objectionable interference with the existing standard broadcast stations indicated, or any other standard broadcast stations, and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other primary service to such areas and populations:

- BP-12351----- WSAM, Saginaw, Mich.
WELL, Battle Creek, Mich.
WMAN, Mansfield, Ohio.
- BP-12806----- WSJM, St. Joseph, Mich.
WCER, Charlotte, Mich.
- BP-12834----- WJLB, Detroit, Mich.
WAMM, Flint, Mich.
WELL, Battle Creek, Mich.
WTCM, Traverse City, Mich.
- BP-12880----- BP-10839 (D-12299), WAMM, Flint, Mich.
WRJN, Racine, Wis.
WELL, Battle Creek, Mich.
BP-11285 (D-12302), WIMS, Michigan City, Ind.

20. To determine whether the proposal of BP-12806 (WELL) is in contravention of section 3.188(d) of the rules and if so, whether circumstances warrant a waiver of the rules.

¹ At the first prehearing conference of the consolidated proceeding the applicants were divided into groups. Later regroupings were made, thus accounting for group II-A.

21. To determine whether a grant of the proposals of BP-12351 (WJLB), BP-12806 (WELL) or BP-12834 (WSAM) would be in contravention of section 3.35(b) of the Commission rules with respect to concentration of control.

25. To determine, in the light of the evidence adduced pursuant to the foregoing issues which, if any, of the instant applications should be granted.

The licensees of stations WMAN, Mansfield, Ohio; WCER, Charlotte, Mich.; WAMM, Flint, Mich.; WTCM, Traverse City, Mich.; WIMS, Michigan City, Ind.; and WRJN, Racine, Wis., were made parties to the proceeding because of the impact of the group II proposals upon their existing operations.

3. The issues applicable to the group II-A applications (as will presently be noted, another issue was added later by the Commission) are:

1. To determine the areas and populations which would receive primary service from each of the instant proposals for a *new* standard broadcast station, and the availability of other primary service to such areas and populations.

2. To determine the areas and populations which may be expected to gain or lose primary service from each of the instant proposals for a change in facilities of an *existing* standard broadcast station, and the availability of other primary service to such areas and populations.

3. To determine the nature and extent of the interference, if any, that each of the instant proposals would cause to and receive from each other and all other existing standard broadcast stations, the areas and populations affected thereby, and the availability of other primary service to the areas and populations affected by interference from any of the instant proposals.

4. To determine whether the interference received from any of the other proposals herein and any existing stations would affect more than 10 percent of the population within the normally protected primary service area of any one of the instant proposals in contravention of section 3.28(c) (3) of the Commission rules and, if so, whether circumstances exist which would warrant a waiver of said section.

5. To determine whether the following proposals would involve objectionable interference with the existing standard broadcast stations indicated, or any other standard broadcast stations, and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other primary service to such areas and populations:

BP-12318 (North Suburban) -----	WRMN, Elgin, Ill. WHFC, Cicero, Ill.
BP-12778 (WRMN) -----	WRJN, Racine, Wis. WGES, Chicago, Ill. New, BP-10253 (D-11763), Lafayette, Ind. (now WAZY).
BP-13014 (WDUZ) -----	WRDB, Reedsburg, Wis. WRIG, Wausau, Wis. WRJN, Racine, Wis.
BP-13146 (WRJN) -----	WTCM, Traverse City, Mich. WDUZ, Green Bay, Wis. WRDB, Reedsburg, Wis. WRMN, Elgin, Ill. WSJM, St. Joseph, Mich. WGES, Chicago, Ill.

6. To determine whether the antenna system proposed by Mid-America Broadcasting System, Inc. (BP-11689), by Stevens-Wismer Broadcasting Co. (BP-12368), by Friendly Broadcasting Co. (BMP-8502), and by Chester Broadcasting Co. (BP-11417) would constitute a hazard to air navigation.

7. To determine whether Mid-America Broadcasting System, Inc. (BP-11689) has a reasonable expectation of securing the transmitter site specified in its instant proposal and, if not, whether said proposal is on a site-to-be-determined basis in contravention of section 3.33 of the Commission rules and, therefore, should be dismissed.

8. To determine whether overlap of the 2-mv/m and 25-mv/m contours would occur between the instant proposal of Seaway Broadcasting Co., Inc. (BP-11872) and the existing and proposed operations of WHFC, Cicero, Ill., and between the proposals BP-12318, BP-11680 and BP-12778, and if so, whether circumstances exist which warrant a waiver of said rule.

23. To determine, in the light of section 307 (b) of the Communications Act of 1934, as amended, which of the instant proposals would best provide a fair, efficient, and equitable distribution of radio service.

25. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which, if any, of the instant applications should be granted.

The licensees of stations WGES, Chicago; WRDB, Reedsburg, Wis.; WRIG, Wausau, Wis.; WTCM, Traverse City, Mich.; WSJM, St. Joseph, Mich.; and WHFC, Cicero, Ill., were made parties to the proceeding because of the impact of the group II-A proposals upon their existing operations.

Group II

4. Prehearing conferences were held on these and other applications on September 16 and November 22, 1960, and hearing on the subject applications was held on January 18, 1961, when Knorr and Southern Michigan were given permission to submit additional exhibits. After these exhibits were distributed and no objections advanced by the other parties, they were received in evidence and the hearing was concluded by the hearing examiner's order released March 3, 1961. Booth Broadcasting Co. afterwards tendered an additional exhibit, and there being no objection it was received by order released March 20, 1961. (The record of hearing in group II was closed by order dated September 7, 1961.) At the hearing it was agreed that the Broadcast Bureau would file proposed findings on the engineering issues and the applicants who must meet the section 3.35(b) issue (issue No. 21) would file findings with respect to that issue. Accordingly, proposed findings of fact and conclusions were filed by Booth on March 2, 1961; by Southern Michigan and Knorr on March 13, 1961, and by the Broadcast Bureau on April 7, 1961. On April 17, 1961, applicant WSJM, Inc., filed a "Support" of the Broadcast Bureau's proposed findings of fact and conclusions.

Group II-A

5. A prehearing conference on the subject applications (and others) was held on September 16, 1960. Hearings on the group II-A applications were held on January 30 and February 23, 1961, when that phase of the hearings was concluded. Proposed findings of fact and conclusions were then filed by Green Bay Broadcasting Co. (WDUZ) on March 14, 1961, by Racine Broadcasting Corp. (WRJN) on April 25, 1961, and by North Suburban, Elgin, and the Broadcast Bureau on

April 28, 1961. As noted above, issue No. 8 looked to a determination whether there would be an overlap of the 2-mv/m and 25-mv/m contours of the proposals of Mid-America (see, however, next paragraph) and North Suburban, and Elgin's proposed improvement of the facilities of WRMN. On February 17, 1961, however, Elgin filed a motion to clarify or enlarge issues to permit a determination whether there would be overlap of the 2-mv/m and 25-mv/m contours of the North Suburban proposal and the *existing* operation of WRMN. By order released May 15, 1961 (as amended on North Suburban's petition by an order released June 30, 1961) the Commission on its own motion directed the taking of further evidence in response to issue No. 8, which was amended to read as follows:

(8) To determine whether overlap of the 2-mv/m and 25-mv/m contours would occur between the instant proposal of Seaway Broadcasting Co., Inc. (BP-11872) and the existing and proposed operations of WHFC, Cicero, Ill., and between the existing and proposed operations of WRMN, Elgin, Ill., and the instant proposals of North Suburban Radio, Inc. (BP-12318) and Mid-America Broadcasting System, Inc. (BP-11689), and if so, whether circumstances exist which warrant a waiver of 47 CFR 3.37.

A prehearing conference on the remand was held on May 24, 1961, and hearing on June 29 and 30, 1961. The record was held open for the submission of additional exhibits by North Suburban. By letter dated July 11, 1961, North Suburban proffered these exhibits, and there being no objection they were received in evidence and the record of hearing on group II-A was closed by the hearing examiner's order released July 18, 1961. Supplemental proposed findings of fact and conclusions were filed by North Suburban, Elgin, and the Broadcast Bureau on August 15, 1961. Replies were filed by North Suburban and Elgin on September 1.

6. *Merger of Mid-America and North Suburban and proposed dismissal of Mid-America Broadcasting System, Inc., application.*—Mid-America Broadcasting System, Inc., and North Suburban Radio, Inc., entered into an agreement dated August 27, 1959, to consolidate their interests. Mid-America's application would be dismissed and the principal stockholder of that applicant would, contingent upon the grant of the North Suburban application, acquire a one-third interest in North Suburban, and he and his wife would become associated with North Suburban, as more fully set forth in the findings of fact. Pursuant to the agreement, on September 10, 1959, Mid-America filed a petition to dismiss its application and on September 11, 1959, North Suburban filed a petition for leave to amend its application to reflect the agreement reached by the parties. By memorandum opinion and order released September 25, 1959, the hearing examiner granted the petition to amend and received the amendment, and noted that Mid-America's petition to dismiss under rule 1.365(b) must await the initial decision. Under the provisions of section 1.363(c) then in effect, the consolidation of interests of these parties added an additional issue to this proceeding; that is, whether the grant of the North Suburban application would be in the public interest in the light of

the arrangement whereby the parties effected a consolidation of their respective interests.²

FINDINGS OF FACT

Group II

7. Since the four applicants are licensees of class IV stations seeking to increase daytime power from 250 w to 1 kw, these findings are limited to considerations based on the assumption that all four stations will operate simultaneously with the requested power of 1 kw. Apart from interference between the proposals, the only other indicated interference to existing stations would be as follows:

Proposed from—	To—
WJLB.....	WMAN, Mansfield, Ohio.
WELL.....	WCER, Charlotte, Mich.
WSAM.....	{WAMM, Flint, Mich.
WSJM.....	{WTCM, Traverse City, Mich.
	WIMS, Michigan City, Ind.

WJLB, Detroit, Mich. (1400 kc)

8. Station WJLB now furnishes a primary service daytime to 2,755,743 persons in an area of 1,091 square miles. Operating as proposed, primary service would be provided 2,877,655 persons in 1,146 square miles. By the proposed power increase, WJLB would continue to provide service to all of its present service area and in addition would make a new service available to 121,912 persons and an area of 55 square miles. Proposed WJLB would not cause interference to any existing station other than class IV.³

9. The licensee of WJLB has interests in the following standard broadcast stations:

- WSGW, Saginaw, Mich. (790 kc, 5 kw/1 kw, DA-2).
- WTRX, Flint, Mich. (1330 kc, 5 kw/1 kw, DA-2).
- WIBM, Jackson, Mich. (1450 kc, 250 w, U).
- WTOD, Toledo, Ohio (1560 kc, 5 kw, D).
- WJVA, South Bend, Ind. (1580 kc, 1 kw, D).
- WIOU, Kokomo, Ind. (1350 kc, 1 kw, DA-2).

Proposed WJLB's 2-mv/m contour would not overlap the 2-mv/m contour of any of these commonly owned stations, but there would be a slight overlap of the proposed interference-free service area within the 0.5-mv/m contour with a like area of WTOD to include an esti-

² The provisions of secs. 1.363 (b) and (c) in effect when these events occurred were as follows:

"(b) Where the applicants in a consolidated hearing for a broadcast facility by option, merger, or like arrangement effect a consolidation of their respective interests, the application which is to be prosecuted should be amended to reflect the arrangements between or among the applicants, and as amended will be retained in hearing along with the other applications, which will be dismissed by the hearing examiner's initial decision.

"(c) In all cases arising under pars. (a) and (b) of this section, the hearing examiner will consider in the initial decision the issue of whether a grant of the remaining application or applications to be prosecuted would be in the public interest in the light of the arrangement whereunder the parties effected a consolidation of their respective interests or the competing applications were either dismissed or amended and removed from hearing."

³ Cochannel interference would be caused WMAN, Mansfield, Ohio, a class IV station operating with a power of 250 w. WMAN has on file an application (BP-14585) to increase daytime power to 1 kw. WJLB and WMAN have agreed to accept the interference resulting from their respective proposals to increase daytime power to 1 kw.

mated 5 square miles. There would be no other overlap of primary service areas.

WELL, Battle Creek, Mich. (1400 kc)

10. Station WELL now furnishes a primary service daytime to 92,947 persons in an area of 372 square miles. Operating as proposed, primary service would be provided 98,150 persons in 463 square miles. By the proposed power increase, WELL would continue to provide service to all of its present service area and in addition would make a new service available to 5,203 persons and 91 square miles.

11. Apart from interference to other class IV stations, proposed WELL would cause adjacent channel interference to WCER, Charlotte, Mich. (1390 kc, 1 kw, DA-D, class III) in an area of 22 square miles including 675 persons, representing less than 1 percent of the area (2,313 square miles) and population (160,585) within the WCER 0.5-mv/m normally protected contour. All of the proposed interference area receives from seven to nine other services. In addition, the proposed service of WELL would be substituted for that of WCER within this interference area.

12. WELL seeks a waiver of section 3.188(d) of the rules which prohibits the use of roof-top antenna installations with power in excess of 500 w. In support of a waiver, Paul J. Haller, general manager of WELL and vice president of the licensee corporation, states that the WELL antenna system has been located on the roof of the Michigan Bank Building in the center of the Battle Creek business district for more than 25 years, and that during the 13 years of his association with the station he has never heard a complaint of interference arising from the station's operations. Such complaints would necessarily be reported to him by his staff. In 1957 a new site was considered, but in view of the station's high nighttime limitation, the search had to be limited to the center of the city where a satisfactory site could not be found. If the station is authorized to increase power, all legitimate complaints of interference will be investigated immediately and corrected if possible.

13. The estate of Frederick A. Knorr, deceased, owns 22.7 percent of the common voting stock of Southern Michigan Broadcasting Corp., licensee of station WELL; 55.4198 percent of the class A common voting stock of Knorr Broadcasting Corp., licensee of stations WSAM, Saginaw, Mich., 1400 kc, 250 w, U; WKMH, Dearborn, Mich., 1310 kc, 5 kw, DA-2, U; WKMF, Flint, Mich., 1470 kc, 1 kw/5 kw LS, DA-2; and 99.92 percent of the common voting stock of Jackson Broadcasting & Television Corp., licensee of station WKHM, Jackson, Mich., 970 kc, 1 kw, DA-2. Operation with increased power by WELL will not result in overlap of its primary service area with that of any of the other listed stations. The primary service areas of both existing and proposed WSAM overlap the primary service area of WKMF and the 2-mv/m contours in each instance also overlap. However, the 2-mv/m contour of WKMF does not include Saginaw, and WSAM's proposed 2-mv/m contour would not include any portion of Flint. No other listed station would involve overlap with the WSAM proposal.

WSAM, Saginaw, Mich. (1400 kc)

14. Station WSAM now furnishes primary service daytime to 254,853 persons in an area of 1,403 square miles. Operating as proposed, primary service would be provided 256,231 persons in 1,465 square miles. By the proposed power increase, WSAM would not only continue to provide service to all its present service area but in addition would make a new service available to 1,378 persons and an area of 62 square miles.

15. Apart from interference to class IV stations,⁴ proposed WSAM would cause adjacent channel interference to WAMM, Flint, Mich. (1420 kc, 1 kw, DA-D, class III). New interference would develop in an area of 62 square miles including 6,206 persons, representing 2.9 percent of the area (2,127 square miles) and 1.79 percent of the population (346,231 persons) within the 0.5-mv/m contour of WAMM. That station now receives interference from existing stations affecting an area of 235 square miles including 16,409 persons, or 11 percent of the area and 4.7 percent of the population within its 0.5-mv/m contour. In the aggregate, WAMM would suffer interference in 297 square miles involving 22,615 persons, or to 13.9 percent of the area and 6.53 percent of the population within the normally protected contour. The additional interference area would lie within a radius of 6 miles of Flint and about 25 miles northwest of the center of Saginaw. Eleven stations, four of which are in Flint, serve all of the proposed interference area, and seven other stations serve portions of the area.

16. *Additional findings on rule 3.35(b)*.—Each of the Booth stations listed in paragraph 9, above, is operated independently. Except for top executive management they are separately staffed, each having its own complete staff, including a full-time manager. The manager is responsible for the day-to-day operations of the station and for carrying out the broad general policies adopted by the directors of the applicant corporation. Among his duties, the manager of each station has authority to hire and fire personnel, to accept advertising contracts, and to program the station to meet the particular needs of its community, within the general policies set forth by the directors. As indicated, each station has its own sales manager and local sales organization, program director and program staff, news director, chief engineer and engineering staff. Separate financial records are maintained for each station.

17. Each Booth station programs independently of the others. There is no duplication of local programing, the program schedules being tailored to the individual needs of the respective communities. Stations WSGW and WIOU are CBS affiliates; WJVA is a Mutual affiliate, and WIBM and WTRX are ABC affiliates. Stations WJLB and WIOD are not affiliated with any network. The selection of network programs for affiliated stations is made locally.

18. During the fiscal year of 1958, 79.81 percent of all sales by WJLB was to local accounts, that is, to sponsors in Detroit or the

⁴ Cochannel interference would be caused WTCM, Traverse City, Mich., a class IV station operating with a power of 250 w. WTCM has on file an application (BP-14407) to increase daytime power to 1 kw.

adjacent area; 20.19 percent of the sales of WJLB was to national advertisers. The corresponding figures for the other stations are as follows:

Call letters	Percent local	Percent national
WSGW.....	83. 12	16. 88
WTOD.....	95. 77	4. 23
WIOU.....	85. 41	14. 59
WIBM.....	79. 52	20. 48
WTRX.....	77. 91	22. 09
WJVA.....	94. 31	5. 69

There has been no substantial change since that date.

19. The sales staff and organization of WJLB, Detroit, concentrates its activities in the city of Detroit and the small communities immediately surrounding the city. The sales staff of WTOD has never solicited business in Wayne County, in which Detroit is located, and has never sold any accounts on WTOD to sponsors whose businesses are located outside of the Toledo metropolitan area. The sales staff of WTOD does not solicit business from local prospective advertisers beyond Monroe, Mich., which is about 70 miles from the center of Toledo and 35 miles south of Detroit. The local sales staff of WJLB does not solicit business south of Wayne, which is about 25 miles from the center of Detroit and 30 miles from Toledo. The sales staff of WIBM, Jackson, limits its activities to Jackson, Jackson County, and the southern portion of Ingham County to the north of Jackson. The sales staff of WIOU, Kokomo, works primarily in that city and the surrounding countryside, Howard County. WJVA's sales staff sells South Bend and St. Joseph County.

20. There are no requirements or practices which require an advertiser on one station to purchase time on any of the other Booth stations. However, a national advertiser who buys identical announcements on two or more stations may receive a small discount because the selling and servicing costs are less, just as an advertiser who buys more than the minimum number of announcements or programs receives a frequency discount. The savings amount to 5 percent for the second station and 5 percent for each succeeding station. When this type of sale is made it is by the station sales manager or the national sales representative when making calls for a particular station. Booth Broadcasting Co. has no regional or national sales representative who is employed to make sales for all seven stations. Because of this and the general policy of the licensee to operate all of the stations independently, there are actually very few instances of advertisers who have availed themselves of the discount rate in the purchase of spots on more than one station. In 1958, for example, there were nine such instances, representing only a small percentage of total volume.

21. Each of the five Knorr stations listed in paragraph 13, above, is operated independently, and findings similar to those made on the Booth stations above may be made here: Each station has a managing

director who is responsible for the day-to-day operations of the station and for carrying out the policies adopted by the directors. In addition to his other duties, the manager has authority to hire and fire personnel, to accept advertising contracts and to program the station in accordance with the general policies of the directors. Each station has its own sales manager and local sales organization, its own program director and program staff, its own news director, and its own chief engineer and engineering staff. Separate financial records are maintained for each station. The only common programs on all five stations are some sports events. WELL is an ABC affiliate; WSAM an NBC affiliate; WKMJ, Mutual; and WKMF and WKHM are with CBS.

WSJM, St. Joseph, Mich. (1400 kc)

22. Station WSJM now furnishes primary service daytime to 68,518 persons in an area of 234 square miles. Operating as proposed, primary service would be provided 79,128 persons in 400 square miles. By the proposed power increase, WSJM would not only continue to provide service to all its present service area, but in addition would make a new service available to 10,610 persons and an area of 166 square miles.

23. Apart from interference to other class IV stations,⁵ proposed WSJM would cause adjacent channel interference to WIMS, Michigan City, Ind. (1420 kc, 5 kw-D/0.5 kw-N, DA-2, class III) in an area of 0.24 square mile, including 104 persons, where other service is received from each of 15 stations. In addition, the service from WSJM would be substituted for that of WIMS in the proposed interference area.

Group II-A

North Suburban Radio, Inc.

24. North Suburban Radio, Inc., seeks a construction permit for a new class III standard broadcast station at Highland Park, Ill., to operate daytime only, with a directional antenna, on the frequency of 1430 kc with a power of 1 kw.

25. Highland Park, with a population of 16,808 according to the 1950 U.S. census, is in Lake County, which had a 1950 population of 179,097.⁶ Highland Park is part of the Chicago urbanized area (1950). There are now no standard broadcast stations in Highland Park, and only one (WKRS, Waukegan) in Lake County.

26. Based on the horizontal plane radiation pattern for the proposed directional antenna system and ground conductivity for the area taken from figure M-3 of the rules, the proposed coverage is as follows:

⁵ These stations are all applicants in this proceeding, including WRJN, an applicant in group II-A.

⁶ According to the 1960 U.S. census the population of Highland Park is 25,532, and that of Lake County 293,656. However, unless otherwise specified, 1950 census data are used.

Contour (mv/m)	Population	Area (sq. miles)
0.5 (normally protected).....	1,317,080	679
Interference from WBEV and WCMY ¹	64,787	402
Percent interference ²	4.93	60
Interference free.....	1,252,293	272

¹ Radiation values and ground conductivities used in determining the interfering contours of WCMY and WBEV were derived from field strength measurements. In the case of WCMY measurements were taken along radials in the directions 39° and 70° true; in the case of WBEV the radials were in the directions of 100° and 146° true.

² Percentages are related to population and area within the normally protected contour.

27. All of the proposed rural service area is now served by 10 standard broadcast stations with a signal strength of 0.5 mv/m or greater. These stations are WIND, WTMJ, WMAQ, WGN, WBBM, WAIT, WLS, WCFL, WMBI, and WJJD. All are Chicago stations except WTMJ, Milwaukee, Wis. The same stations provide primary service (2 mv/m or greater) to all the urban areas within North Suburban's primary service area, including the city of Highland Park.

28. The new station proposed at Highland Park will cause objectionable interference to both the existing and proposed operation of station WRMN, Elgin, Ill., and to the proposed operation of station WHFC, Cicero, Ill.⁷ Interference to WRMN is treated at a later point in connection with the WRMN application. In the case of proposed WHFC, the contemplated interference would fall in that portion of the Chicago urbanized area outside proposed WHFC's 2-mv/m contour. Since proposed WHFC would not render a primary service in this urban area, no new interference would result. Apart from the foregoing, no other existing or proposed station will receive interference from North Suburban's proposed station.

29. Issue 8 requires a determination whether an overlap of the 2-mv/m and 25-mv/m contours would exist between North Suburban's proposed station and the existing and proposed operations of WRMN. This aspect of the proceeding is treated in connection with the WRMN application below.

Elgin Broadcasting Co. (WRMN)

30. Elgin Broadcasting Co. seeks a construction permit to increase the power of WRMN, Elgin, Ill., a class III station, from 500 w to 1 kw, and continue operating on 1410 kc, daytime only. In 1950, Elgin had a population of 44,223.⁸

31. The following tabulation shows the extent to which the present and proposed operations of WRMN would provide primary service and the effects on such service from grants of the applications of North Suburban and WRJN, both applicants in this proceeding:

⁷ The application of WHFC, Inc. (docket No. 13037), requesting an increase in the daytime power of station WHFC, Cicero, Ill. (class IV), from 250 w to 1 kw was also designated for hearing in this proceeding. By its memorandum opinion and order released February 20, 1961, the Commission granted this applicant's petition for reconsideration and granted the application subject to the condition that WHFC shall accept such interference as may be imposed by other class IV stations in the event they are subsequently authorized to increase power to 1,000 w.

⁸ The 1960 U.S. census gives the population as 49,447.

	WRMN present		WRMN proposed	
	Population	Area (sq. miles)	Population	Area (sq. miles)
0.5 mv/m (normally protected)-----	320, 863	2, 716	428, 991	3, 522
Existing interference-----	45, 550	230	41, 951	392
Percent loss-----	14. 2	8. 47	9. 78	11. 12
Interference free-----	275, 313	2, 486	387, 040	3, 130
Additional interference from—				
North Suburban-----	776	24	2, 928	12
Percent loss-----	0. 24	0. 88	0. 68	0. 34
Proposed WRJN-----	14, 841	295	32, 724	124
Percent loss-----	4. 6	10. 85	7. 64	3. 44
Total loss ¹ -----	61, 167	549	77, 603	524
Percent loss-----	19. 04	20. 2	18. 1	14. 9
Interference free-----	259, 696	2, 167	351, 388	2, 998

¹ Assumes interference from existing and proposed stations.

32. By operating as proposed, WRMN would extend its service to 111,727 persons and an area of 644 square miles. If the proposals of North Suburban and WRJN were also granted the gain would be restricted to 76,075 persons and an area of 512 square miles. All of the area which would gain service from proposed WRMN or which would not be served because of interference received from other stations operating as proposed would have service available to any one part from a minimum of 12 stations.

33. The present and proposed operations of WRMN result only in adjacent channel interference to the existing operations of WRJN, Racine, Wis., and WGES, Chicago, Ill. (1390 kc, 5 kw, DA-2, U) and cochannel interference to WAZY, Lafayette, Ind. (1410 kc, 1 kw, DA-D). Interference to WRJN is treated elsewhere in connection with the WRJN application to increase station power. With respect to WGES and WAZY, the interference which WRMN, present and proposed, would impose is reflected in the following table:

Interference from—	WGES		WAZY	
	Population	Area (sq. miles)	Population	Area (sq. miles)
Proposed WRMN-----	1, 326	41	2, 860	155
Existing WRMN-----	818	28	1, 172	75
Increased loss-----	508	13	1, 688	80

In terms of population within normally protected contours, WGES is now subject to 0.02 percent interference from WRMN; this would be increased to 0.03 percent should WRMN operate as proposed. Similarly, the percentage loss by WAZY would be increased from 0.7 to 1.69 percent. In no instance would any portion of the proposed interference area receive fewer than 10 other services.

34. Issue No. 8, as already noted, requires a determination as to whether there would be an overlap of the 2-mv/m and 25-mv/m contours between North Suburban's proposed station and the existing and proposed operations of WRMN, and if so, whether circumstances exist which would warrant a waiver of section 3.37 of the Commission's rules. Numerous measurements were taken on the signal of

WRMN and submitted in evidence by the respective engineering consultants for North Suburban and WRMN, both of whom are experienced in field strength measurement procedures. While there was considerable cross-examination of the engineers taking the field strength measurements, the accuracy of the field strength meters employed and the accuracy of the measurement data were not impeached. Nor is it necessary to give any consideration to field strength measurements made by each engineering consultant on stub radials bearing 67° and 72° true, inasmuch as the measurements begin with values of field strength of nearly 2 mv/m and continue away from WRMN to lower signal values. Even if these data were to be used in conjunction with the nearby full radials to be discussed below, the data would still be insufficient to establish the WRMN 2-mv/m contour at the bearings of 67° and 72°. This is true because of the failure of the engineers to take field strength measurements where the signal values were greater than 2 mv/m so that when taken together the data would be statistically complete to establish a trend from which the location of the 2-mv/m contour could be ascertained. Neither engineering witness prepared or submitted a graphical plot (that is, E against D) of the stub radial data.⁹

35. The transmitter site at Highland Park is 22.2 miles east-north-east of the WRMN transmitter site. North Suburban's engineer took field strength measurements on the WRMN signal along radials bearing 62°, 69.5°, and 80° true. Similarly, WRMN's engineer took measurements along radials 69.5° and 75° true. In each instance, with the possible exception of the 62° radial, the number of measurements and their disposition are sufficiently complete to comply with the requirements of section 3.186 of the rules. The following table represents a summary of each of the radials:

Radial bearing	Date taken	Made by—	Distance (miles)
62°	August 1957	North Suburban	25.5
69.5°	June 1961	North Suburban	23.2
80°	December 1958	North Suburban	27.5
69.5°	February 1961	WRMN	26.08
75°	January 1961	WRMN	26.0

36. Based on these field strength measurements, which indicate a higher ground conductivity than given by figure M-3 of the rules, it is undisputed that the 2-mv/m contour of *proposed* WRMN would overlap North Suburban's 25-mv/m contour, penetrating to a distance beyond the latter's proposed transmitter site; and the essential conflict in this case is whether there would be overlap of WRMN's *existing* 2 mv/m with the 25-mv/m contour of the Highland Park station.

37. North Suburban contends that on the basis of its measurements, WRMN's existing 2-mv/m contour would fail to overlap the proposed North Suburban 25-mv/m contour; and to the contrary, WRMN holds

⁹ North Suburban's engineer made what might be termed verification measurements on radials 62°, 67°, 69.5°, 72°, 75°, and 80° true for the purpose of checking field strength measurements previously taken by himself and WRMN's engineer. These measurements were only taken at a few points at distances in excess of 16 miles from the WRMN transmitter.

that its field strength measurement data on the 69.5° and 75° radials establish overlap. WRMN agrees, however, that no overlap of 2-mv/m and 25-mv/m contours would occur on either the 62° or 80° radials which bracket the Highland Park site. Consequently, the crucial radials for consideration are those in the directions 69.5° and 75° true. The 69.5° radial is in the direction of the proposed site at Highland Park, and the 75° radial passes to the south of the site. WRMN's analysis of the field strength measurement data on each of the two radials established an inverse distance field of 132 mv/m and a "best fit" curve of 15 mmhos/m. On the 75° radial, the "best fit" conductivity curve fits the data to a distance of about 15 miles. Beyond this distance and out to the end of the radial at 26 miles, all the measurement data, with the exception of one point, are below the conductivity curve. WRMN's engineer contends that even though the measurement data fall below the curve, the curve should be used to establish the distance to the 2-mv/m contour, as the ground conductivity might change seasonally with corresponding variation in field strength at the different locations. North Suburban's engineer disagrees with such an analysis of the data in the vicinity of the 2-mv/m contour, and instead contends that a curve through the points should average the data. It is concluded, as does North Suburban's engineer, that any curve to be used for establishing the distance to a specified field strength contour should represent an average of the measurement data along the path. It is the actual field strength data which determine the location of a particular contour and not any theoretical curve based on uniform ground conductivity failing to match the data. In other words, a theoretical curve conforming to a uniform ground conductivity value cannot be expected to coincide with field strength measurement data for a path of nonuniform ground conductivity. Reference to the graph shown on page 6 of WRMN exhibit 3 shows that the dots representing the measured field strength at the several distances beyond 15 miles follow a relatively smooth trend and that an averaging line drawn through the data will cross a field strength of 2 mv/m at a distance of 21 miles.¹⁰ Since the distance from the WRMN transmitter site along the 75° radial to North Suburban's proposed 25-mv/m contour is approximately 21.6 miles, WRMN's existing 2-mv/m contour in this direction would fall short of overlapping the 25-mv/m contour by 0.6 mile.

38. Turning now to the 69.5° radial measurements, WRMN's analysis of its own data on this radial establishes the 2-mv/m contour at a distance of 21.8 miles from the WRMN transmitter site. The 69.5° radial intersects the North Suburban 25-mv/m contour at a distance of 21.1 miles from the WRMN site, with the nearest approach of the contour at 21 miles occurring a little to the north of the 69.5° radial. Since the distance from the WRMN site to the existing WRMN 2-mv/m contour is greater than the distance from the WRMN site to the North Suburban 25-mv/m contour, there would be an overlap of the two contours in contravention of section 3.37 of the rules.

¹⁰ WRMN would disregard the measurement data and place the distance to the 2-mv/m contour at 22 miles.

39. North Suburban's measurement data on the WRMN 69.5° radial, as analyzed by its engineering consultant, establish an inverse distance field at 1 mile of 135 mv/m, and the distance from site to 2-mv/m contour as 20 miles. Thus, the existing WRMN 2-mv/m contour would fall short of overlapping North Suburban's 25-mv/m contour by at least 1 mile.

40. An antenna system like that used by WRMN would be expected to develop an unattenuated field strength at 1 mile of 133.5 mv/m for a power of 500 w on the basis of figure 8 of the rules. North Suburban's analysis of its measurement data on the 69.5° radial yielded a value of 135 mv/m and WRMN's engineer analyzed his measurement data for the same radial bearing as 132 mv/m.¹¹ This close agreement in analysis of inverse distance field is consistent with the measurement data, which in each instance agree closely to a distance of about 18 miles. Beyond this distance North Suburban's measurements show a more rapid signal attenuation than those made on behalf of WRMN. It is not helpful, in attempting to ascertain the location of the WRMN 2-mv/m contour, to base findings on the relative accuracy of the measurements of the engineers, for an inquiry along this line is an exercise in futility, both engineers being experienced and skilled in standard broadcast station field strength measurement techniques. Instead, the location of the WRMN 2-mv/m contour must be established by an average of the 69.5° radial measurement data.

41. The full radial measurements on the 69.5° bearing were made by WRMN in February 1961 and by North Suburban in June 1961. Since changes in weather and season can affect the strength of the signal received at a distant point from a standard broadcast station, the differences observed are entirely consistent with experience and not new to Commission proceedings. Where such differences are encountered, the Commission has relied upon an average of the measurement data. (See *Jeannette Broadcasting Co.*, 19 R.R. 480, 480(b).)¹² Neither the North Suburban engineer nor the WRMN engineer submitted a showing which combined the two sets of data for the 69.5° radial. However, by superimposing that portion of the curve in the vicinity of 20 miles from North Suburban exhibit 7, page 7, on the graph shown in WRMN exhibit 3, page 7, the average distance to the WRMN 2-mv/m contour would fall slightly short of 21 miles from the WRMN transmitter site.¹³ With the existing WRMN 2-mv/m contour on the 69.5° radial so established, there would be no overlap of this contour with the North Suburban 25-mv/m contour.

42. The hearing examiner has not undertaken to follow WRMN's suggestions as to the possible inaccuracy or variability of North Suburban's meters (par. 11, proposed findings). Caviling (par. 1, North

¹¹ While no evidence was submitted regarding the operating power of WRMN during each of the periods of measurements, the fact that the unattenuated field strength in each instance was in close agreement can be construed as indicating that WRMN's actual operating power was unchanged.

¹² It should be here noted that the estimated effective ground conductivities set forth in fig. M-3 of the rules reflect the average of numerous measurements taken at various seasons of the year.

It might also be noted that neither North Suburban (par. 9, reply) nor WRMN (par. 4, reply) agrees with the averaging process, each insisting upon the accuracy of its particular measurements.

¹³ Being based upon evidence of record, this type of finding of fact is an appropriate one. *Williamsport Radio Broadcasting Associates, Inc.*, 13 R.R. 1230, 1240c (par. 31).

Suburban reply) about meter accuracy is easy, but merely labors the obvious. For one must recognize the human—and inhuman—factors which combine to produce measurement proof. The subject does not lend itself to guaranteed accuracy. At this remove, one cannot demand divine freedom from doubt, but only assurance that an honest and reasonable method was employed to ascertain the facts.

43. The hearing examiner also agrees with North Suburban in its characterization of WRMN's argument as a "startling proposition"—that where there is "confusion" in the record because of dissimilar measurements by the parties the existing station must prevail, for this doctrine would give an insurmountable advantage to the existing station. The newcomer is entitled to have its evidence considered on its own merits, and not burdened with a presumption of subordination to the conflicting evidence of its broadcaster-opponent. And as North Suburban points out, the "confusion" could have been averted had WRMN agreed to North Suburban's request that joint measurements be taken (Tr. 338) (par. 7, reply).

44. WRMN's contention that its measurements are entitled to preference as "positive evidence" over North Suburban's allegedly "negative evidence" (par. 3, reply) must be rejected. WRMN declares that because it "definitely measured a field intensity of 2 mv/m inside the North Suburban proposed 25-mv/m contour," it developed "positive evidence of its existence," as contrasted with North Suburban which "stopped when it measured 2 mv/m outside its proposed 25-mv/m contour" and thus has only "negative evidence." The distinction attempted by WRMN falls wide of the mark. The term "negative evidence," as such, is applicable where a witness testifies, for example, that he never heard of a fact. Traditionally, though with progressively less emphasis, such evidence has been considered inferior to "positive" testimony that the fact did not occur. (See *Stachelberg v. Ponce*, 128 U.S. 686, 691; cf. *Romero v. International Terminal Operating Co.*, 358 U.S. 354, 370, and Wigmore, *Evidence* (3d edition), Sec. 664, who strongly criticizes the subordination of "negative" to "positive" evidence.) In the present case, however, North Suburban's measurements are no more negative evidence than WRMN's. By inference or extrapolation the signal intensity within the 25-mv/m contour can be calculated, so that there is not an absence of positive evidence but merely a different kind of positive evidence.

Green Bay Broadcasting Co. (WDUZ)

45. Green Bay Broadcasting seeks to increase the daytime power of WDUZ, Green Bay, Wis., a class IV station, from 250 w to 1 kw and to continue operating on 1400 kc with a nighttime power of 250 w.

46. Station WDUZ now furnishes a primary service daytime to 155,031 persons in an area of 1,813 square miles. By the proposed power increase, assuming simultaneous operation with proposed WRJN, WDUZ would not only continue to provide service to all of its present service area but in addition would make a new service available to 41,304 persons and an area of 536 square miles. Proposed

WDUZ would not cause interference to any existing station other than class IV.¹⁴

Racine Broadcasting Corp. (WRJN)

47. Racine Broadcasting Corp. seeks to increase the daytime power of WRJN, Racine, Wis., a class IV station, from 250 w to 1 kw and to continue operating on 1400 kc with a nighttime power of 250 w.

48. Station WRJN now furnishes a primary service daytime to 329,397 persons in an area of 1,309 square miles. Assuming the simultaneous operations of proposed WRJN together with proposed WDUZ and proposed WSJM at St. Joseph, Mich.,¹⁵ proposed WRJN would extend its service to an additional 744,545 persons and to a new area containing 227 square miles. If it is further assumed that WRMN operates as proposed, the WRJN gain would be reduced to 741,207 persons and an area of 180 square miles without loss of existing service.

49. Apart from interference to other class IV stations,¹⁶ proposed WRJN would cause adjacent channel interference to WGES, Chicago, Ill. (1390 kc, 5 kw, DA-2, class III) and to WRMN as above shown. New interference to WGES would develop in an area of 160 square miles including 22,190 persons, or 3.96 percent of the area (4,040 square miles) and 0.44 percent of the population (5,119,470) within the 0.5-mv/m contour of WGES. That station now receives interference from the existing operation of WRJN and WRMN affecting an area of 668 square miles including 45,448 persons, or 16.5 percent of the area and 0.89 percent of the population within the 0.5-mv/m contour. In the aggregate, WGES would suffer interference affecting areas totaling 828 square miles involving 67,638 persons or 20.5 percent of the area and 1.3 percent of the population if WRJN is authorized to operate as proposed. In the latter instance WGES would continue to provide a primary service daytime to 5,051,832 persons in an area of 3,212 square miles. The additional interference area at its closest point lies approximately 35 miles north of the center of Chicago. At least 10 stations serve the entire proposed new interference area. With the inclusion of interference from proposed WRMN, the WGES service area would be reduced by another 508 persons (0.01 percent) and 13 square miles (0.3 percent).

Merger of Mid-America and North Suburban interests

50. The Mid-America application for Highland Park was filed in November 1957. Lester Gould is the principal stockholder; his wife, Dorothy, and four other persons hold small stock interests. The application listed Mr. Gould as the proposed general manager of the station, and on January 26, 1959, the application was amended to list Mrs. Gould as the program director. The Goulds intended to live

¹⁴ In addition to interference to WRJN, proposed WDUZ would also cause interference to the following three class IV stations, the licensees of which have agreed to accept the interference: WRDB, Reedsburg, Wis.; WRIG, Wausau, Wis.; WTCM, Traverse City, Mich.

¹⁵ WSJM is an applicant in group II to increase daytime power from 250 w to 1 kw.
¹⁶ Interference would be caused to three class IV stations, two of which are applicants in this proceeding, WDUZ and WSJM. The third station, WRDB, Reedsburg, Wis., had an application (BP-13762) on file to increase daytime power from 250 w to 1 kw, which was granted June 21, 1961.

in Highland Park upon the sale of station KFMA, Davenport, Iowa, which they owned and were operating. They bought a home and moved to Highland Park in November 1958.

51. In the fall of 1958 North Suburban filed an application for a Highland Park facility similar to that sought by Mid-America. Charles Liebman and Eli E. Fink are the sole and equal owners of North Suburban. Shortly after the North Suburban application was filed Mr. Gould telephoned Mr. Fink from Davenport, stating that he had been in business a number of years and knew that a fight would be costly; that the Goulds were going to sell the Davenport station and intended to move to Highland Park; and that he would be happy to sit down and talk with Mr. Fink and see if they would have a meeting of the minds. Mr. Fink made no commitment.

52. The next contact was again initiated by Mr. Gould and resulted in a meeting at the home of Mr. Liebman in July 1959. Present were Messrs. Liebman, Fink, Gould, and Mrs. Gould. At this meeting the Goulds discussed their views with respect to a possible merger. (a) They felt that they have valuable contributions to make to station operations by reason of their long experience in the broadcasting business; (b) they had a strong position because they filed their application first; and (c) they were entitled to 51 percent, but then came down to 50 percent, interest in a merger arrangement. Mr. Gould testified that in seeking the merger agreement one of the basic considerations was employment with the station. Mr. Liebman testified that he and Mr. Fink were "trading hard"; they were listening, not saying anything or agreeing to anything. After the meeting was over Messrs. Liebman and Fink discussed the matter. Since neither had any experience in radio operation, they knew they would have to have somebody to operate the station. But they were determined, in combination, to retain control and were not interested in any 50 percent arrangement. They also knew that Mid-America had lost its transmitter site and they had a tactical advantage on that account.

53. The Goulds were asked by Liebman and Fink to prepare a budget for the first year and a cash flow sheet, to get their views as to the amount of working capital required while the station was operating at a loss before revenues built up. The budget and flow sheet were submitted and were discussed by Liebman and Fink. As a result of these discussions they felt that they would have to have a station manager and a program director, and that the first year's work of both of these employees would be difficult because it would involve not only operation but organization of the station. They were impressed by the abilities of Mrs. Gould, and by the work she had done in contacting people in the community with regard to the Mid-America application. They were strong believers in stock ownership for managerial positions. Based on what they had seen, the Goulds were "as good a gamble as anybody." They tentatively decided on a figure of \$10,000 a year for Mr. Gould and \$5,000 for Mrs. Gould, in the belief that a family income of \$15,000 would probably be a minimum figure at which the Goulds could live successfully in Highland Park, buy their home, and participate in community affairs.

54. At a further conference sometime in early August 1959, Liebman and Fink proposed the \$10,000 and \$5,000 salary figures. The Goulds regarded them as being too low, and it was then agreed that Mr. Gould should receive \$12,000 and Mrs. Gould \$6,000 a year. According to Mr. Gould, an additional consideration for the higher figure was the fact that he might work for 3 months to get the station on the air, but that salary would not start until broadcasting began. It was also agreed at this meeting that Liebman, Fink, and Gould should each have a one-third ownership interest.¹⁷ In reaching a salary agreement Messrs. Liebman and Fink knew of the radio experience of Mr. and Mrs. Gould. That experience is as follows: Mr. Gould was the sole owner of station WJNC, Jacksonville, N.C., where he employed Mrs. Gould in 1949 and 1954; the license was transferred to their own corporation in which he had an interest. She was program director, supervised traffic, had a broadcast program, and attended many meetings of organizations. For 2 years Mr. Gould was a director at large of the NAB and while he was away attending many meetings Mrs. Gould carried on. Station WJNC was disposed of, but at that time Mr. Gould had an interest in WLSC, Wallace, N.C., and though not on the payroll, Mrs. Gould's background and knowledge were useful in the operation of the station. The Goulds having bought and operated station KFMA, Davenport, Iowa, from February 1, 1956, until December 1, 1958, Mr. Gould was general manager and Mrs. Gould was program director and assisted in the operation of the station. The Goulds are now employed by station KQAQ, Austin, Minn. (population 28,500) as station manager and program director, with Mr. Gould having a drawing account of \$9,600, and Mrs. Gould receiving \$385 a month.

55. After the meeting in early August, the agreement between the parties was prepared and executed on August 27, 1959. The significant provisions briefly stated are: Mid-America would file a petition requesting the dismissal of its application; all expenses in the prosecution of the Mid-America application are to be borne by Gould, but he is to bear no expenses incurred by North Suburban before the date of the agreement; Gould subscribed for 50 shares of common stock, the same number owned by Mr. Liebman and by Fink; the 3 owners agree to advance funds as needed; a provision for the employment of the Goulds for the period of 1 year; and a provision that Liebman and Fink shall receive no salaries for their services during the first year of operation.

56. The provision for employment of the Goulds contains a proviso reading as follows:

* * * however, if Gould shall sell or pledge any of his stock of North Suburban, North Suburban shall be entitled to terminate such contracts of employment on thirty (30) days' notice.

In explanation of this provision Mr. Liebman testified that "This thinking is the ordinary thinking in contracts"; that he wants the Goulds to stay in the picture and wants them to have an incentive;

¹⁷ The agreement of the parties also covers the operation of the new FM station at Highland Park for which North Suburban has been granted a construction permit.

that he is firmly committed to incentive arrangements for managerial employees because of his experience in the publishing business. Mr. Gould testified that the restriction of the employment contract to 1 year was Mrs. Gould's idea. Upon moving from North Carolina, the Gould family went through a cold winter in Davenport and Mrs. Gould did not want to be committed for more than 1 year until they could see whether they liked the winter of the Chicago area.

Characteristics of Highland Park

57. Highland Park is an old autonomous city. It was founded over a century ago, and although it is sometimes considered a part of the suburbia of Chicago, it has its own economic, social, cultural, religious, educational, and political activities. It is in Lake County, whereas most of the Chicago suburbs are in Cook County. The business section of Highland Park is 22 miles from the principal Chicago business sections. Highland Park is governed by an elected four-man council, an elected mayor, and a city manager appointed by the mayor with the approval of the council. It is the site of the annual Ravinia festival. The festival is held every summer and comprises a notable program of orchestral music, dancing, and other stage productions. Highland Park is also the home of Tenthouse, a summer stock theatrical production which has been well received for many years. The city is immediately adjacent to Music Theatre which features musical comedies. The North Shore area, of which Highland Park is a part, also has many lecture forums and concerts, as well as sports events.

CONCLUSIONS

Group II

58. The evidence shows that simultaneous grant of the applications will permit WJLB, WELL, WSAM, and WSJM to provide a new service in diverse areas which would total 149,103 persons in 374 square miles. Adjacent channel interference would be imposed only upon class III stations and would total 6,985 persons and 84 square miles. The following summarizes the percentage population loss which would be suffered by the class III stations :

From—	To—	Loss	
		Existing	Proposed
WJLB.....	None.....		
WELL.....	WCER.....		Less than 1 percent.
WSAM.....	WAMM.....	4.74 percent.....	6.53 percent.
WSJM.....	WIMS.....		Less than 1 percent.

Except for WAMM, in each instance the station causing adjacent channel interference would substitute its own service for that of the interfered-with station so that there would be no change in the number of services available in the interference areas. In the case of WAMM, a minimum of 12 other services are available in the proposed interference area.

59. In balancing the gains and losses resulting from the proposed 1-kw operations, it must be recognized that in certain instances future power increases by other class IV stations now operating with 250 w would cause some reduction in the overall gain by the stations here involved. However, these other stations would offset any such loss by the gains to their own operations. The overall effect, therefore, of a grant of the applications for increased power would be to bring a new daytime service to sizable populations and at the same time benefit class IV stations to the maximum practicable degree.

60. With respect to issue No. 20, it is concluded that WELL has made a satisfactory showing to warrant a waiver of section 3.188(d) of the rules, otherwise applicable to its roof-top antenna system.

61. Issue 21 in this proceeding seeks a determination whether a grant of the proposals to increase the power of stations WJLB, WELL, or WSAM would be in contravention of section 3.35(b) of the Commission's rules with respect to concentration of control. Turning to the concentration as it relates to the Knorr interests, it is undisputed that the Knorr Estate controls WSAM by virtue of ownership of a majority of the stock. The Knorr Estate also holds a 22.7 percent interest in WELL. It is not necessary to determine whether the Knorr Estate exercises control, de facto or otherwise, of WELL since, as shown below, even if such control were present, a grant of increase of power to both WSAM and WELL would not result in a concentration of control in violation of section 3.35 of the rules. This basic question was considered by the Commission in *Knorr Broadcasting Corp.*, 14 R.R. 929, which involved an application for increase in daytime power of station WKMF, Flint, Mich. The Commission there determined that the grant of the application under consideration would not result in a concentration of control of standard broadcast stations in a manner inconsistent with rule 3.35. The Commission considered all the present Knorr operations except station WELL, which was acquired after the hearing in that case (file BAL-2598; assignment of license granted April 17, 1957). A grant of the application of station WELL will not result in overlap of its primary service area with that of any of the Knorr stations. The primary service areas of both existing and proposed WSAM, Saginaw, Mich., overlap the primary area of WKMF, Flint, Mich., and the 2-mv/m contours in each instance also overlap. However, the 2-mv/m contour of station WKMF does not include Saginaw and WSAM's proposed 2-mv/m contour would not include any portion of the city of Flint. Further, Flint and Saginaw are separate and distinct communities, and as the findings of fact show, the Knorr stations operate independently of each other. The increases in power here sought are consistent with the rationale of the *Knorr* case, *supra*, and it is concluded that the grant of the applications to increase the power of stations WELL and WSAM would not be in contravention of section 3.35(b) of the Commission's rules.

62. A grant of Booth's proposal to increase the power of station WJLB, Detroit, Mich., would result in a slight overlap of the proposed interference-free service area within the 0.5-mv/m contour with a like area of Booth's station WTOD, Toledo, Ohio. WJLB's proposed

2-mv/m contour would not overlap the 2-mv/m contour of any of Booth's commonly owned stations. The question of concentration of control of the Booth operations was considered in *Booth Broadcasting Co.*, 18 R.R. 934, which considered an application for increase in power of its Flint station; and, more recently, in connection with Booth's applications for increase in power of its Toledo, Ohio, and Saginaw, Mich., stations. In all of the above instances it was held that the Booth operations did not contravene section 3.35 of the Commission's rules.¹⁸ Nor do the findings of fact indicate that operation of the Booth stations adversely affects their standing under rule 3.35. The increase in power here requested makes little change in Booth's overall coverage. It is concluded that the grant of the application of station WJLB would not be in contravention of section 3.35(b) of the Commission's rules.

Group II-A

63. The applications which comprise group II-A of this proceeding include North Suburban's proposal for a new class III station to operate daytime only with a power of 1 kw at Highland Park, Ill.; the proposal of WRMN, Elgin, Ill., a daytime only class III station, to increase station power from 500 w to 1 kw; and the proposals of class IV stations WDUZ, Green Bay, Wis., and WRJN, Racine, Wis., to increase daytime power from 250 w to 1 kw. Each of the applicants was previously found to be legally, technically, financially, and otherwise qualified except as to the issues specified. As stated in the preliminary statement, there is also an issue to determine whether the grant of the North Suburban application would be in the public interest in the light of the arrangement whereby Mid-America Broadcasting System and North Suburban effected a consolidation of their interests, and also the matter of Mid-America's petition to dismiss its application, which was filed on September 10, 1959, pursuant to the agreement between these parties.

64. It is appropriate to discuss the issue raised by the merger arrangements between Mid-America and North Suburban before dealing with the various requests for facilities. The consolidation of the ownership interests of the parties is effected by the acquisition by Mr. Gould of a one-third ownership interest in North Suburban. In addition to this Mr. and Mrs. Gould are to be given an employment contract for a period of 1 year. They will serve as station manager and program director, respectively, at salaries of \$12,000 and \$6,000. The record establishes that both Mr. and Mrs. Gould acted in these capacities in the operation of the stations they previously owned, and intended to serve similarly if their Highland Park proposal were granted. Further, the record clearly establishes that it was the Goulds who initiated and pursued the merger and who insisted that their employment was a condition precedent to agreeing to merge.

65. With these pertinent facts in mind, it must now be considered whether the merger arrangements and, more particularly, the em-

¹⁸ *Booth Broadcasting Co.* (WTOD), 30 FCC 391; the initial decision in *Booth Broadcasting Co.* (WSGW), docket No. 12915, was modified and the application was granted by the Commission's Memorandum Opinion and Order (FCC 61-377) released Mar. 24, 1961, 30 FCC 470.

ployment compensation provisions are consistent with the public interest, convenience, and necessity. Such a determination is called for not only by the Commission's rules (sec. 1.363), but more importantly by section 311(c) of the Communications Act. Employment arrangements as well as consultant agreements may obviously be used to circumvent the requirements of section 1.363 of the rules and section 311 of the act. They compel a determination whether the dismissing applicant, who is the beneficiary of the employment agreement, has not in fact profited by the arrangement. It is sometimes difficult to determine whether these agreements are bona fide and whether the compensation bears a reasonable relationship to the services to be rendered. Here, however, it can be held that the compensation is not excessive and that the facts support the conclusion that the reimbursement arrangement is not part of a payoff scheme. The record facts establish that the Goulds intended to perform the functions of station manager and program director if their application had been granted. The record also establishes that Messrs. Liebman and Fink gave careful consideration to the employment of the Goulds and agreed to this employment only after assuring themselves that the Goulds could carry out their duties, which would otherwise have had to be performed by others. In view of all these facts, it is concluded that the employment provisions in the merger agreement are not a subterfuge to obtain an improper profit, and do not raise any serious public interest question.

66. The evidence establishes that although WRMN's *existing* 2-mv/m contour would not overlap the 25-mv/m contour of the Highland Park station, WRMN's *proposed* 2-mv/m contour would overlap the proposed 25-mv/m contour of the station at Highland Park. North Suburban's proposed site at Highland Park is 22.2 miles generally to the northeast of the WRMN transmitter site. Because of the overlap, simultaneous operation may not be authorized without a waiver of section 3.37 of the rules which specifically prohibits overlap, in view of the 20 kc separation involved, of the 2-mv/m contour with the 25-mv/m contour.

67. WRMN proposes a waiver of the provisions of rule 3.37 in respect of the proposed operations of WRMN and North Suburban, thus permitting, as it contends, a grant of both applications. It declares that the "overlap here is very small" and that the "separation between the transmitter locations is more than 20 miles," and claims that under the present policy of the Commission toward the application of the overlap rule, previously an absolute bar, waiver would be justified to allow a first local service to Highland Park and an improvement of its own service (pars. 10-11, supplemental conclusions). In addition, it says (par. 6, reply) :

Justification for a waiver further exists in the Commission's current policy of granting daytime power increases to local channel stations in order to improve radio service to the public. One of the parties to this proceeding is class IV station WRJN, Racine, Wis. WRMN, operating on 1410 kc, will suffer a loss of *existing* service upon a grant of the WRJN application to increase its power on adjacent channel 1400 kc. This loss will not be mitigated by virtue of a substitution of WRJN's service due to

interference which WRJN's proposal will receive from other stations. Thus, a serious loss of service will be suffered by WRMN which can be eliminated by a grant of WRMN's application to increase its power to 1 kw along with a grant to WRJN. A waiver of section 3.37 should also be made allowing a grant to North Suburban.

68. It must be realized that no previous case with facts similar to the present situation has been found; and that it is at least doubtful whether a rule designed to prevent "interference from nonselectivity of receivers, external cross-modulation, and internal cross-modulation within the transmitters" (*The Bridgeport Broadcasting Co. (WICC)*, 18 R.R. 285, 286b), should be waived simply to permit an applicant to protect itself against encroachment upon its service area, where, as here, there is no proof in the record that the potential evils which the rule is designed to prevent will not exist with simultaneous operation of the overlapping stations. Thus, in the reported waiver cases cited by WRMN, the following is noted: In *Vincent G. Cofey (WMRO)*, 19 R.R. 441, there was already overlap, which would have been increased from 7.5 to 40.8 square miles, and no problems of cross-modulation between the stations (WMRO and WTAQ) had been reported. Accordingly, in this "unique situation" (19 R.R. at 443), the Commission, in effect, waived the overlap rule. The only point of similarity between the cited and the instant cases is that in *Cofey*, WMRO, like WRMN in the case at bar, stated that it had no objection to a grant of the other station's application. In *The Bridgeport Broadcasting Co. (WICC)*, 18 R.R. 285, *supra*, the transmitters were 67 miles apart, and overlap, as in *Cofey*, which already existed, would be increased. The Commission said (18 R.R. at 286d): "Thus, initially the situation here can be distinguished from the usual case, wherein a proposed operation would create an overlap situation"; and also that "although this overlap situation had existed since before 1947 and although WICC has maintained records of complaints as to interference since 1952, an examination of the WICC files disclosed no record of any complaint of interference between that station and WVNJ." The distinction between these cases of old overlap situations, where there is at least some justification for predicting that enlargement of the overlap area will not be attended with undesirable consequences in the light of past experience, and the present case where there is no such premise and no evidence otherwise by which a prediction can reasonably be made, is obvious. It is regrettable that by strict application of the overlap rule here WRMN is, in a sense, a class III victim of the Commission's policy encouraging class IV stations to increase power. But if the overlap rule has any meaning under present-day operation and receiving techniques, it cannot be waived merely to avert a result which has no relation to the purpose of the rule. While, therefore, there is considerable appeal to WRMN's contention that the overlap rule should be relaxed in order to overcome the appreciable appropriation of its service population by the WRJN grant (which, as noted below, is dictated by the record and which WRMN has not opposed), and even though it would be necessary to exercise a double measure of lenience in respect of both the

10-percent and overlap rules,¹⁹ waiver of overlap rule 3.37 is not indicated.

69. The new station proposed by North Suburban represents a first local transmission facility in Highland Park, a city of 16,808 persons (1950), and the second standard broadcast station in Lake County. Primary service would be provided a total of 1,252,293 persons in an area of 272 square miles wherein at least 10 services are available in any one portion of the rural and urban areas. Station WRMN is the only station which would suffer a loss as a result of North Suburban's proposed operation at Highland Park. The interference to WRMN would develop in an area of 24 square miles (0.88 percent) containing 776 persons (0.24 percent). WRMN now suffers a loss within its 0.5-mv/m normally protected contour of 8.47 percent in area, and 14.2 percent in population, and with the addition of the new interference the total area and population loss would be 9.35 and 14.44 percent, respectively. Should the proposal of WRJN to increase power from 250 w to 1 kw be authorized also, then WRMN would suffer an additional loss in an area of 295 square miles (10.85 percent) containing 14,841 persons (4.6 percent) and the loss in the aggregate would amount to 20.2 percent of the area and 19.04 percent of the population within the WRMN normally protected primary service area. Since the interference which WRMN would receive from proposed North Suburban and proposed WRJN is adjacent channel in nature, there would be a substitution of service, and the total number of services in the proposed interference areas would remain unchanged.

70. On the other hand, if the WRMN application were granted and the North Suburban application denied, then WRMN service would be extended to 111,727 persons and an area of 644 square miles. If WRJN were to operate as proposed, then the gain to WRMN would total 79,003 persons and 520 square miles. The loss which proposed WRMN would suffer from existing stations represents 9.78 percent of the population and 11.12 percent of the area within the proposed 0.5-mv/m contour. Addition of the interference from proposed WRJN increases the loss to 17.42 percent in population and 14.56 percent in area. In each instance the proposed gain area has other service available from no less than 12 stations in any one part. Also, since the interference which proposed WRJN would cause the present proposal of WRMN is adjacent channel in nature, there would be a substitution of service and the total number of services in the area would remain unchanged. Apart from the interference proposed WRMN would cause proposed WRJN, adjacent channel interference would be caused

¹⁹ Were it necessary to assess the impact of a 10-percent rule violation upon the overlap waiver request it would be proper to take into account the fact that while a grant of the North Suburban and WRJN applications would result in interference within the proposed WRMN normally protected contour considerably beyond the 10-percent limit of rule 3.28(d)(3) (formerly 3.28(c)(3)), grants of the North Suburban and WRJN applications, most especially WRJN's, would also substantially increase the population loss within the WRMN present normally protected contour, the existing deviation from the 10-percent limit being increased, with the percentage rising from 14.2 to 19.04 percent. Thus, even if WRMN's application is denied, it will be deprived of much of its service population through the increase of WRJN's power and its current standard operation continued and even worsened in percentage. The 10-percent rule violation in itself, therefore, need not have prevented an overlap waiver.

an additional 508 persons in 13 square miles now served by WGES, Chicago, Ill., and cochannel interference to an additional 1,688 persons in 80 square miles now served by WAZY, Lafayette, Ind. The loss to WGES and WAZY is relatively small in percentage, and each of the proposed interference areas receives no less than 10 services.

71. A weighing of all of the foregoing factors compels a conclusion that North Suburban's proposal must be preferred over that advanced by WRMN. North Suburban's proposal will satisfy the need for a first transmission facility in the substantial community of Highland Park, as opposed to WRMN's proposal to improve its facility in Elgin. It is this consideration which is crucial in establishing a preference. In addition, although the areas which each proposes to serve have an abundance of reception services, the fact that North Suburban would provide a new service to a much larger population than proposed WRMN is a factor entitled to some weight.

72. As has been noted in paragraph 31, above, a grant of the North Suburban proposal would cause interference to WRMN in an area of 24 square miles (0.88 percent) containing 776 persons (0.24 percent). Since the interference caused is adjacent channel in nature, the proposed service of North Suburban would be substituted for that lost by WRMN and the total number of services in the area would remain unchanged. And the factors which are generally persuasive in favor of North Suburban over WRMN's request for increased power are also the factors which, considered in connection with rule 3.24(b), require the conclusion that there is a greater need for the service proposed by North Suburban than for the service that would be lost by WRMN.

73. North Suburban's proposal would not involve interference with either proposed WDUZ or WRJN. On the assumption that WDUZ and WRJN operate simultaneously as proposed, WDUZ would make a new service available to 41,403 persons and an area of 536 square miles in addition to continuing its existing service without any loss. Apart from interference with proposed WRJN, interference would be caused only to the existing operation of three class IV stations, each of which has agreed to accept the proposed interference.

74. Under the condition of simultaneous operation with proposed WDUZ and proposed WSJM, an applicant in this proceeding (group II), proposed WRJN would provide a new service to 744,545 persons and an area of 227 square miles. Apart from interference to three class IV stations, two of which are involved in this proceeding and a third which has an application pending to increase daytime power from 250 w to 1 kw, proposed WRJN would cause adjacent channel interference to class III stations WRMN, as heretofore noted, and to WGES, Chicago, Ill., to the extent that the percentage of population subject to interference would be increased from the present 0.89 percent to 1.3 percent. In each instance service from proposed WRJN would be substituted for that of WRMN and WGES, and the total number of services in the proposed interference areas would remain unchanged.

75. A grant of the WDUZ and WRJN applications would enable these stations to provide a new service to substantial populations.

The most significant interference which would be caused to class III stations is that to be imposed upon the existing operation of WRMN by proposed WRJN. However, there is a multiplicity of other services in the area. The fact that both WDUZ and WRJN would provide a new service to very substantial populations, coupled with the Commission's policy favoring increased power of class IV stations to 1 kw, furnishes a sound basis for concluding that a grant of the WDUZ and WRJN applications would be in the public interest.

76. Accordingly, because public interest, convenience, and necessity would be served, *It is ordered*, This 21st day of September 1961, that unless an appeal from this initial decision is taken to the Commission by a party or the Commission reviews the initial decision on its own motion in accordance with the provisions of section 1.153 of the rules:

(a) The petition of Mid-America Broadcasting System, Inc., to dismiss its application, filed September 10, 1959, *is granted* and its application (docket No. 13010, file No. BP-11689) *is dismissed*.

(b) The above-captioned applications of Booth Broadcasting Co. (WJLB), Southern Michigan Broadcasting Corp. (WELL), Knorr Broadcasting Corp. (WSAM), WSJM, Inc., North Suburban Radio, Inc., Green Bay Broadcasting Co. (WDUZ), and Racine Broadcasting Corp. (WRJN) *are granted*; and the above-captioned application of Elgin Broadcasting Co. (WRMN) *is denied*.

(c) The grant to each of the class IV applicants (Booth Broadcasting Co. (WJLB), Southern Michigan Broadcasting Corp. (WELL), Knorr Broadcasting Corp. (WSAM), WSJM, Inc., Green Bay Broadcasting Co. (WDUZ), and Racine Broadcasting Corp. (WRJN)) is subject to the condition that the permittee shall accept such interference as may be imposed by other existing 250-w class IV stations in the event they are subsequently authorized to increase power to 1 kw.

ARTHUR W. ARUNDEL ET AL., DOCKET No. 13935:

Initial decision, severing and granting an application not mutually exclusive with the other applications, became final in accordance with section 1.153 of the Commission's rules.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON 25, D.C.

<p>In re Applications of ARTHUR W. ARUNDEL, CHARLES TOWN, W. VA. SUBURBAN BROADCASTING CORP., ELKTON, MD. H. CLAY ESBENSHADE, TR/AS LANCASTER COUNTY BROADCASTERS, LANCASTER, PA. For Construction Permits</p>	}	<p>Docket No. 13935 File No. BP-12762 Docket No. 13936 File No. BP-12981 Docket No. 13937 File No. BP-13106</p>
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INITIAL DECISION OF HEARING EXAMINER THOMAS H. DONAHUE

(Effective February 28, 1962, pursuant to sec. 1.153)

The hearing examiner has before him a petition for severance and grant filed by Arthur W. Arundel on November 20, 1961; and

It appearing that the Arundel application is not mutually exclusive with the other applications in this proceeding and that otherwise there is no impediment to grant of that application; and

It further appearing that the Commission's Broadcast Bureau has no objection to grant of the instant petition (see Broadcast Bureau's comments on petition for severance and grant, filed November 30, 1961);

It is ordered, This 3d day of January 1962, that the application of Arthur W. Arundel for a new standard broadcast station to operate on 1550 kc, 5-kw power, daytime only, at Charles Town, W. Va., *Is severed* from this proceeding and *Granted*.

32 F.C.C.

THE "JET" BROADCASTING Co., INC. (WJET), ET AL., DOCKETS Nos. 13884-13886:

Initial decision conditionally granting applications for construction permits to increase power of their class III and IV broadcast stations in Erie, Pa., Buffalo, N.Y., and Dunkirk, N.Y., became final in accordance with section 1.153 of the Commission's rules.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON 25, D.C.

<p>In re Applications of THE "JET" BROADCASTING Co., INC. (WJET), ERIE, PA. WBNY, INC. (WBNY), BUFFALO, N.Y. LAKE SHORE BROADCASTING Co., INC. (WDOE), DUNKIRK, N.Y. For Construction Permits</p>	}	<p>Docket No. 13884 File No. BP-12188 Docket No. 13885 File No. BP-13285 Docket No. 13886 File No. BP-13300</p>
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APPEARANCES

Lenore G. Ehrig, on behalf of the "Jet" Broadcasting Co., Inc. (WJET); *Stanley B. Cohen*, on behalf of WBNY, Inc. (WBNY); *John B. Jacob*, on behalf on Lake Shore Broadcasting Co., Inc. (WDOE); and *Lewis Cohen*, on behalf of the Chief, Broadcast Bureau, Federal Communications Commission.

INITIAL DECISION OF HEARING EXAMINER THOMAS H. DONAHUE

(Effective February 23, 1962, pursuant to sec. 1.153)

PRELIMINARY STATEMENT

1. The "Jet" Broadcasting Co., Inc. (WJET), Erie, Pa., and WBNY, Inc. (WBNY), Buffalo, N.Y., each seeks a construction permit to increase the daytime power of their class IV stations from 250 w to 1,000 w on 1400 kc. Lake Shore Broadcasting Co., Inc., licensee of WDOE, Dunkirk, N.Y., requests a construction permit to increase the daytime power of its class III station from 500 w to 1,000 w on 1410 kc. By Commission order, released December 15, 1960 (FCC 60-1489), the Commission found all three applicants legally, technically, and financially qualified to effect the changes proposed except for matters placed in issue. The following issues were designated:

1. To determine the areas and populations which may be expected to gain or lose primary service from the proposed operation of stations WDOE, WBNY, and WJET, and the availability of other primary service to such areas and populations.

32 F.C.C.

2. To determine the nature and extent of the interference, if any, that each of the instant proposals would cause to and receive from each other and all other existing standard broadcast stations, the areas and populations affected thereby, and the availability of other primary service to the areas and populations affected by interference from any of the instant proposals.

3. To determine whether the instant proposal of WJET would cause objectionable interference to stations WBNY, Buffalo, N.Y., and WDOE, Dunkirk, N.Y., or any other existing standard broadcast stations, and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other primary service to such areas and populations.

4. To determine whether the instant proposal of WDOE would cause objectionable interference to stations WBNY, Buffalo, N.Y., and WJET, Erie, Pa., or any other existing standard broadcast stations, and, if so, the nature and extent thereof, the areas and populations affected thereby and the availability of other primary service to such areas and populations.

5. To determine whether the instant proposal of WBNY would cause objectionable interference to stations WDOE, Dunkirk, N.Y., and WJET, Erie, Pa., or any other existing standard broadcast stations, and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other primary service to such areas and populations.

6. To determine whether the interference received by the proposal of station WDOE from any of the other proposals herein and any existing stations would affect more than 10 percent of the population within its normally protected primary service area in contravention of section 3.28(c)(3) of the Commission rules and, if so, whether circumstances exist which would warrant a waiver of said section.

7. To determine whether the proposed operations of WJET and WBNY would be in contravention of section 3.188(d) of the Commission rules with particular regard to their proposals to operate with rooftop antennas and, if so, whether circumstances exist which would warrant a waiver of said section.

8. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which, if any, of the instant applications should be granted.

A prehearing conference was held in this proceeding on February 16, 1961. A hearing session was held on March 31, 1961. Proposed findings were filed jointly by the applicants on May 1, 1961. On May 10, 1961, the Broadcast Bureau filed its proposed findings. The latter findings of fact are succinct and comprehensive, and the facts therein contained are not disputed by the findings filed by the applicants. The Bureau's findings are here adopted in their entirety.

FINDINGS OF FACT

2. "Jet" Broadcasting Co., Inc., and WBNY, Inc., each requests a construction permit to increase only the daytime power of their respective class IV stations, WJET and WBNY, from 250 w to 1,000 w and continue operating unlimited time on 1400 kc. Lake Shore Broadcasting Corp., Inc., licensee of station WDOE, Buffalo, N.Y., seeks a construction permit to increase the daytime power of its class III station from 500 w to 1,000 w and continue operating unlimited time on 1410 kc. All three cities are located along the shores of Lake Erie with Buffalo at the extreme northeast end of the lake. Dunkirk lies approximately midway between Buffalo and Erie, about 39 miles southwest of Buffalo and 46 miles northeast of Erie (joint exhibit 1, p. 20). The proposals herein are interlinked by interference

in that WDOE involves adjacent channel interference with the proposals of WJET and WBNY.¹

Station WJET

3. Station WJET now furnishes primary service daytime to 186,431 persons in an area of 476 square miles.² Operating as proposed and assuming WBNY and WDOE also operate as proposed, primary service would be provided by WJET to 197,926 persons in an area of 658 square miles. By the proposed power increase, WJET would not only continue to provide service to all of its service area but in addition would make a new service available to 11,495 persons in an area of 182 square miles (joint exhibit 1, p. 25, figs. 1, 2, 3). A minimum of 9 and a maximum of 12 stations provide primary service to the rural portions of the gain area (joint exhibit 2, p. 6).

4. Station WJET proposes to continue operating with its rooftop antenna with a power of 1,000 w. Such an operation raises a conflict with the provisions of section 3.188(d) of the rules which limits power of a rooftop installation to a maximum of 500 w. The WJET antenna system, installed in 1951, is located on the roof of a warehouse type building. The roof of the building is 20 feet in height above ground. The ground system consists of 120 radials uniformly spaced around the base of the antenna tower and bonded to the structural steel in the building. In addition, there is a screen at the base of the tower and copper straps along the edge and sides of the building connected to radials buried in the ground where the radials are less than a quarter wavelength. The rooftop ground system is also connected to a ground system on the roof of a similar but somewhat larger adjacent building. The use of separate sites for day and night operation was considered but an examination of the coverage both day and night disclosed the present site as the most feasible location. The only other sites which would serve equally as well as the existing site would be in the central business area which would require a rooftop installation or in a residential area close to the center of the city. There has been only one complaint of cross-modulation at a location 2 miles from the station beyond the present blanket contour. The cause of this condition was due to a defective television antenna system. The applicant has indicated that they have the equipment and experience to deal with cross-modulation problems and will satisfy any legitimate complaints which may arise. However, none are anticipated. On the basis of the above, a waiver of section 3.188(d) of the rules is requested by WJET (joint exhibit 1, pp. 7, 12-15, figs. 7, 8).

Station WBNY

5. Station WBNY now furnishes primary service daytime to 858,228 persons in an area of 800 square miles. Operating as proposed and assuming WJET and WDOE also operate as proposed, primary service would be provided to 913,982 persons in an area of 1,108 square

¹ Although interference would develop between the operations proposed by WJET and WBNY, such interference is not a consideration where two class IV stations seek to simultaneously increase power from 250 w to 1 kw.

² Unless otherwise indicated, all population coverage data herein is based on the 1950 U.S. census (joint exhibit 1, p. 17).

miles. By the proposed power increase, WBNY would not only continue to provide service to all of its service area but in addition would bring a new service to 55,754 persons in an area of 308 square miles (joint exhibit 1, pp. 19-23). A minimum of 9 and a maximum of 16 stations provide primary service to various portions of the proposed gain area (joint exhibit 2, p. 10).

6. Under the proposed power increase, station WBNY expects to continue operating with its rooftop antenna which has been in use since 1935. The antenna tower is located on top of a 68-foot five-story steel frame building. The ground system consists of uniformly spaced copper wire radials in varying lengths extending to the edge of the roof and bonded to the structural steel framework of the building at several points. The ground system is also connected to the steel framework of an adjacent building. The antenna site of station WBNY is located in the center of the business district of Buffalo so as to provide maximum signal strength over the city consistent with the rules. Separate sites for the daytime and nighttime operation have been considered. It is possible to operate from a site in residential areas of the city and still meet the minimum signal requirements of the rules daytime. However, it is significant to note that no technical difficulties have been encountered at the present site and it is unlikely that another site as satisfactory as the present site can be found from which the required nighttime minimum signal could be placed over the city without resorting to a rooftop installation. There have been no complaints of interference due to cross-modulation since the installation of the antenna system. On the basis of the foregoing, WBNY request a waiver of section 3.188(d) of the rules (joint exhibit 1, pp. 7-12, fig. 5).

Station WDOE

7. Coverage data of the existing and proposed operation of station WDOE considering interference from the existing and proposed operations of stations WJET and WBNY is summarized in the following tabulation (joint exhibit 1, pp. 19-21, 24, 24a) :

Contour (mv/m)	Present		Proposed	
	Population	Area (sq. miles)	Population	Area (sq. miles)
2.0.....	50,307	365	55,304	502
0.5 (normally protected).....	94,113	1,030	113,833	1,353
Interference from existing WJET and WBNY.....	5,883	40	12,245	88
Percentage ¹	6.24	3.9	10.8	6.5
0.5 (interference free).....	88,230	990	101,588	1,265
Interference from proposed WJET and WBNY.....	13,403	93	18,574	193
Percentage ¹	14.3	9	16.3	14.5
0.5 (interference free).....	80,710	937	95,259	1,160

¹ Percentage of population within the 0.5 mv/m normally protected contour.

8. As previously indicated, WDOE is located approximately mid-way between WJET and WBNY. The present and proposed operations of WJET and WBNY involve mutual adjacent channel interference with the like operation of WDOE. If the proposals of WJET and WBNY are granted and WDOE denied, the present operation

of WDOE would fail to continue primary service to 7,520 persons in an area of 53 square miles. If the proposals of WJET and WBNY are denied and WDOE granted, the proposed operation of WDOE would bring a new primary service to 13,358 persons in an area of 275 square miles. If all 3 proposals are granted, primary service of proposed WDOE would be extended to 10,731 persons in an area of 218 square miles but because of interference from the proposals of WJET and WBNY, proposed WDOE would suffer a loss of primary service involving 3,702 persons in an area of 48 square miles. Under this condition, the net gain for WDOE would amount to 7,029 persons in an area of 170 square miles (joint exhibit 1, pp. 4, 19-21, 24, 24a).

9. Primary service (0.5 mv/m or greater) is available to the proposed gain area, assuming a grant of all proposals, from the following stations in the indicated proportions: 100 percent from WGR and WBEN; 50 to 75 percent from WJTN, WNAE, and WGGO; 25 to 50 percent from WKBN, WEBR, WWOL, WHAM, WHLD, WJOC, WOTR, and WKBW; and up to 25 percent from WYSL, WNIA, WERC, and WICU. A minimum of 6 and a maximum of 11 services are available to the area (joint exhibit 2, p. 7).

10. The areas in which interference would be received by the present and proposed operation of WDOE from the proposals of WJET and WBNY receive primary service (0.5 mv/m or greater) from a minimum and maximum number of stations as follows (joint exhibit 2, pp. 12, 13, 16, 20) :

Source of interference	Number of services	
	Minimum	Maximum
Interference from proposed WJET to present WDOE.....	6	7
Interference from proposed WJET to proposed WDOE.....	5	7
Interference from proposed WBNY to present WDOE.....	10	11
Interference from proposed WBNY to proposed WDOE.....	10	11

CONCLUSIONS

1. From the foregoing findings, it is apparent that class IV stations WJET and WBNY would under their proposals not only continue to furnish service to the areas they now serve but WJET would also furnish service to a new area of 182 square miles containing a population of 11,495 and WBNY would thus serve a similar area of 308 square miles containing a population of 55,754. It is also apparent from the above findings that were all 3 applications here involved to be granted, station WDOE would increase its service area 170 square miles wherein reside a population of 7,029.

2. Grant of all three applications would result in WDOE losing 14.5 percent of the area and 16.3 percent of the population within its proposed 0.5-mv/m contour by reason of interference from WJET and WBNY. This, of course, violates the Commission's 10-percent rule. However, it will be noted in paragraph 7 above that at the present time by reason of interference from those two stations WDOE now loses 3.9 percent of the area and 6.24 percent of the population from

its 0.5-mv/m contour. Assuming grant to WDOE and denial of the WJET and WBNY applications, it may also be noted that WDOE would in any event be in violation of the 10-percent rule since, by reason of interference from the existing operations of WJET and WBNY, 10.8 percent of the population within WDOE's proposed 0.5-mv/m contour would be lost. Finally, it should be noted that there are a number of other stations now serving the area that would be lost to the proposed WDOE operation by reason of interference from the proposed operation of WJET and WBNY. Bearing in mind the considerable number of people that stand to gain a new service from grant of WDOE's application, there appears to be ample justification for waiving the Commission's 10-percent rule in this instance.

3. WJET and WBNY both seek waiver of section 3.188(d) of the Commission's rules which prohibits use of rooftop antennas with power in excess of 500 w. The rooftop antennas of both stations have been in use for many years. Cross-modulation complaints have in the past been negligible in number. Adverse effects by reason of antenna location are not expected by the parties. Other antenna locations have been explored by both stations but relocation is not regarded by them as feasible. Both stations furnish assurance that they will satisfy legitimate complaints stemming from their antenna problems. The Broadcast Bureau recommends waiver of the rule as to both stations. These considerations appear to constitute adequate cause for waiver of the rule in question.

4. Since waiver of both rules here involved seems appropriate and noting that the three applicants here involved have all been found to be otherwise qualified for grant, that a considerable expansion of radio service will result from grant of all three applications, and that grant of the three applications will tend to implement the policy of the Commission encouraging upgrading class IV stations to maximum permissible power;

It is ordered, This 2d day of January 1962, that unless an appeal to the Commission from this initial decision is taken by any of the parties, or the Commission reviews the initial decision on its own motion, in accordance with the provisions of section 1.153 of the rules, the applications of the "Jet" Broadcasting Co., Inc. (WJET), Erie, Pa., and WBNY, Inc. (WBNY), Buffalo, N.Y., for construction permits to increase the daytime power of their class IV stations from 250 w to 1,000 w on 1400 kc; and the application of Lake Shore Broadcasting Co., Inc. (WDOE), Dunkirk, N.Y., for a construction permit to increase the daytime power of its class III station from 500 w to 1,000 w on 1410 kc *Are granted*, but in respect of the WJET and WBNY applications subject to the following condition:

Permittees shall accept such interference as may be imposed by other existing 250-w class IV stations in the event they are subsequently authorized to increase power to 1 kw.

THE FORT HAMILTON BROADCASTING Co. (WMOH) ET AL., DOCKETS Nos. 13879-13881:

Initial decision conditionally granting applications for construction permits to increase power of class IV broadcast stations in Hamilton, Ohio, Lafayette, Ind., and Fort Wayne, Ind., became final in accordance with section 1.153 of the Commission's rules.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON 25, D.C.

<p>In re Applications of THE FORT HAMILTON BROADCASTING Co. (WMOH), HAMILTON, OHIO LAFAYETTE BROADCASTING, INC. (WASK), LAFAYETTE, IND. INDIANA BROADCASTING CORP. (WANE), FORT WAYNE, IND. For Construction Permits</p>	}	<p>Docket No. 13879 File No. BP-12869 Docket No. 13880 File No. BP-13252 Docket No. 13881 File No. BP-13768</p>
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APPEARANCES

Lenore G. Ehrig, on behalf of the Fort Hamilton Broadcasting Co. (WMOH); *A. L. Stein*, on behalf of Lafayette Broadcasting, Inc. (WASK); *John Ellicott* and *Ernest W. Jennes*, on behalf of Indiana Broadcasting Corp. (WANE); *Harrison T. Slaughter* and *John McD. Corn*, on behalf of Vincennes Sun Co. (WAOV); *Robert W. Coll*, on behalf of WPFA Radio, Inc. (WCVS); *Roy F. Perkins* on behalf of Booth Broadcasting Co. (WIBM); and *Earl C. Walck*, on behalf of the Chief, Broadcast Bureau, Federal Communications Commission.

INITIAL DECISION OF HEARING EXAMINER THOMAS H. DONAHUE
 (Effective March 6, 1962, pursuant to sec. 1.153)

PRELIMINARY STATEMENT

1. The above-captioned applicants are all class IV stations seeking to increase daytime power. WMOH and WASK request increase from 250 w to 1 kw. WANE requests increase from 250 w to 500 w. By order released December 15, 1960 (FCC 60-1485), the Commission found each applicant legally, technically, and financially qualified to make the changes in operation proposed except for matters placed in issue. The issues designated to be heard sought determination of the following matters: (1) the areas and populations proposed to be served; (2) the nature and extent of interference proposed to be caused and received; (3) under section 307(b) of the Communications Act of 1934, as amended, grant of which applications would best provide

a fair, efficient, and equitable distribution of radio service; and (4) which, if any, of the applications should be granted.

2. At a prehearing conference held on February 27, 1961, it developed that the interference conflicts which had given rise to the applications being designated for hearing had been resolved either by agreement or default of those affected. The applicants requested a continuance of hearing to permit them to petition the Commission to reconsider and grant their applications without hearing.

3. On April 12, 1961, the applicants filed a joint petition for reconsideration and grant without hearing. In that pleading, which was accompanied by engineering affidavits, applicants urged the following: (1) Each applicant would, through its respective proposal, substantially expand its service area; (2) the interference that would result from grant of all three applications would be negligible and those to be affected by such interference had either agreed to accept the interference or had defaulted from the proceeding; (3) grant of all three applications would serve to effect a fair and equitable distribution of facilities; and (4) the Commission's determination in the *Martinsburg* case¹ was not in point in this case, for here all applicants desired reconsideration and grant—severance was neither necessary nor was it desired; (5) considerations of administrative efficiency pointed to the relief requested—neither the applicants nor the Commission's staff should be burdened with the expense and delay involved in prosecuting through hearing applications that were ripe for grant; and (6) equitable considerations dictated reconsideration and grant if, as petitioners believed, the Commission had recently changed its policy of designating for hearing all class IV applications for power increase when, regardless of amount, interference was involved.

4. On April 25, 1961, the Commission's Broadcast Bureau filed its comments to the parties' petition. The Bureau was "constrained to disagree" with the effort of the parties to distinguish the circumstances of the instant case with those present in *Martinsburg*. In the Bureau's opinion, the Commission in *Martinsburg* "intended to limit the number of pleadings requiring full Commission consideration so that it could devote more of its time to important policy questions affecting broadcasting as a whole, and in so doing was declaring that applications designated for hearing should continue through the hearing process and should not find their way back to the Commission by way of petitions for reconsideration and grant." Indicating sympathy with the petitioners' problems, the Bureau stated that it believed the public interest questions still pertaining to their proposals could "readily be resolved in the hearing process without needlessly consuming the time and energies of the Commissioners who must direct their attention to more serious policy questions."

5. On May 22, 1961, the applicants filed a pleading entitled, "Supplement to Joint Petition for Reconsideration and Grant Without Hearing." In that pleading the applicants pointed out the following:

¹ In *Martinsburg Broadcasting Co. (WEPM)*, 21 R.R. 219, the Commission had held that when two out of three class IV applicants for power increases sought reconsideration and grants after it developed there was no bar to grant of their applications, they should have sought from the hearing examiner severance and grant by way of separate initial decision.

The Commission on May 4, 1961, had issued a report and order amending section 1.354(c) of its rules directing its staff to process, without designation for hearing, applications of existing class IV stations requesting increase in daytime power where only interlinking interference problems and slight adjacent channel interference were involved. Had that policy been in effect when the instant applications were under preliminary consideration, they would have been granted, not designated for hearing. Having already been penalized by having to go through the preliminary stages of hearing, it would be both inequitable and unjustifiable to require applicants to further pursue the hearing process. Petitioners were but seeking "normal current treatment of their applications."²

6. On May 24, 1961, the Commission released a memorandum opinion and order denying the petition for reconsideration and grant. In that order the Commission stated:

While we agree with petitioners that—assuming the accuracy of their factual allegations—their applications would not under current policy be designated for hearing, the Commission is not disposed to reconsider designation orders already issued. The ultimate result desired by petitioners, viz, the grant of their applications, can be achieved expeditiously by following the procedures set in motion by the designation order, and their petition will therefore be denied.

7. On June 12, 1961, hearing duly convened. The applicants submitted their cases into evidence without objection. The examiner directed the filing of proposed findings.

8. On July 6, 1961, the parties filed "Joint Proposed Findings of Fact and Conclusions of Law." On July 17, 1961, there was filed the "Comments of Broadcast Bureau on 'Joint Proposed Findings of Fact and Conclusions of Law.'" These two pleadings were then placed at the bottom of the examiner's file of closed records to be considered in connection with initial decision in this matter when its seniority and the examiner's hearing schedule otherwise permitted.

9. There are no facts here in dispute. The findings and conclusions submitted by the parties are all supported by evidence contained within the covers of this record. Modified in accordance with those comments of the Broadcast Bureau that appear to have merit, they are herewith adopted.

FINDINGS OF FACT

The Fort Hamilton Broadcasting Co. (WMOH)

10. Radio station WMOH operates on 1450 kc with 250 w and is located at Hamilton, Ohio. Its application proposes an increase in daytime power from 250 w to 1 kw. Official notice may be taken of the fact that the 1960 population of Hamilton, Ohio, according to the U.S. census, is 72,354. Hamilton is located in Butler County which, in 1960, had a population of 199,076.

²The applicants in their supplemental pleading also noted that the Commission on May 19, 1961, in *L. M. Hughey (WTWB) et al.*, 21 R.R. 604, had broadened its holding in *Martinsburg* to deny a petition for reconsideration and grant without severance by two applicants, both of whom had claimed to have resolved the interference problems that were at issue. The *Hughey* holding was not applicable to their petition, claimed applicants, for there was no indication in the *Hughey* case that the original designation had been inappropriate.

Service

11. At present, radio station WMOH, operating at 250 w, provides the following service:³

Contour (mv/m) ¹	Population ²	Area (sq miles) ³
2 mv/m.....	219,300	590
0.5 mv/m ⁴	344,800	1,995

¹ In computing the contours set forth in this proceeding, WMOH referred to the Commission's soil conductivity map, fig. M-3, except that where measurements were available, such measured data was employed, including the measured data contained in Northside exhibit C, dated November 1960 (docket 11908). Radiations for nondirectional operations were taken from the FCC official notification list. Radiations for directional operations were taken from the appropriate patterns on file with the FCC. The equivalent distance method was employed wherever a change in conductivity was involved (WMOH exhibit 1, p. 10).

² The population figures shown in this exhibit are based on a count by minor civil divisions using 1950 U.S. census data (WMOH exhibit 1, p. 3).

³ The areas set forth by WMOH were determined by calculation for circular areas and by use of a planimeter for other areas (WMOH exhibit 1, p. 3).

⁴ Interference free; no interference from existing stations.

12. As proposed, radio station WMOH, operating at 1 kw, day, will provide the following daytime service:⁴

Contour (mv/m)	Population	Area (sq. miles)
2 mv/m.....	620,000	1,100
0.5 mv/m.....	830,600	3,580
Interference from WASK and WANE proposals.....	19,700 (2.3 percent)	320
Interference free.....	810,900	3,260

13. The places of over 2,500 population and the urbanized areas which would gain 2-mv/m service from the proposed operation of WMOH are populated by 341,387 persons; there would be a daytime total net gain in interference-free service to a population of 466,100 persons.⁵ The following places with populations in excess of 2,500 persons and urbanized areas would gain 2-mv/m service from the proposed operation of WMOH:

Place	Population (1950 census)	Percentage which would gain service	Population gain
Franklin Village, Ohio.....	5,388	100	5,388
Lebanon Village, Ohio.....	4,618	100	4,618
Oxford Village, Ohio.....	6,944	20	1,389
Cincinnati, Ohio.....	503,998	50	1 252,000
Golf Manor Village, Ohio.....	3,603	100	3,603
Madelra Village, Ohio.....	2,689	100	2,689
Silverton Village, Ohio.....	4,827	100	4,827
Elmwood Place Village, Ohio.....	4,113	100	4,113
Cheviot City, Ohio.....	9,944	100	9,944
Green Township (urban), Ohio.....	7,829	40	3,172
Norwood City, Ohio.....	35,001	90	1 31,500
St. Bernard City, Ohio.....	7,066	100	7,066
Montgomery Village, Ohio.....	579	100	579
Deer Park Village, Ohio.....	7,241	100	7,241
Columbia Township (urban), Ohio.....	6,517	50	3,258
Total urban gain.....			341,387

¹ Proposed 10-mv/m contour, required for coverage of business district of a city of over 10,000 population, does not cover city; 10 percent of city assumed residing in business district, and, therefore, deducted from gain figure (WMOH exhibit 1, p. 7).

² WMOH exhibit 1, p. 4.

³ WMOH exhibit 1, p. 5.

⁴ WMOH exhibit 1, p. 2.

The localities which would gain 2-mv/m service from the proposed operation of WMOH presently receive at least 2 mv/m from five other stations: WKRC, WLW, WPFB, WSAI, and WCKY, all Cincinnati, Ohio.⁶ There are eight other standard broadcast stations which provide at least 0.5-mv/m service to 100 percent of WMOH's total gain area. They are: WKRC, Cincinnati, Ohio; WLW, Cincinnati, Ohio; WSAI, Cincinnati, Ohio; WCIN, Cincinnati, Ohio; WCKY, Cincinnati, Ohio; WPFB, Middletown, Ohio; WHAS, Louisville, Ky.; and WIBC, Indianapolis, Ind.⁷

14. WMOH agrees to accept the interference which will be caused to its proposal from a grant of the proposals of WASK and WANE.⁸

Interference

15. The proposed operation of WMOH will cause interference to the proposed operations of WASK and WANE, coapplicants herein. Each of these stations has agreed to accept such interference as a condition upon the grant of their proposals.⁹

16. Interference will be caused to the proposed 250 w operation of Northside Broadcasting Co. at Jeffersonville, Ind. The interference which would be caused to the proposal of Northside by a grant of the proposal of WMOH would be in an area of 175 square miles wherein 8,490 persons reside. At present, Northside receives interference from existing operations in areas totaling 133 square miles wherein 12,498 persons reside. Accordingly, a grant of WMOH's proposal would result in total interference to the Northside proposal in an area of 308 square miles wherein 20,988 persons reside, representing 4.7 percent of the population within Northside's 0.5-mv/m contour.¹⁰ Northside has agreed to accept such interference from the proposal of WMOH.¹¹ There are nine other 0.5-mv/m services available to all of the areas wherein the proposed Northside operation would receive additional interference from the proposed operation of WMOH.¹²

Lafayette Broadcasting, Inc. (WASK)

17. Radio station WASK presently operates on 1450 kc with 250 w power, unlimited time, at Lafayette, Ind. Its application proposes an increase in daytime power to 1 kw.¹³ An amendment to the WASK application to change the type transmitter was filed May 31, 1961. This amendment was granted June 20, 1961.¹⁴

Service

18. The present WASK interference-free 0.5-mv/m daytime contour of 135,871 persons will be increased to 189,646, if the WASK, and other pending class IV applications are granted. The present and

⁶ WMOH exhibit 1, p. 11.

⁷ WMOH exhibit 1, p. 11.

⁸ Transcript, dockets Nos. 13879 et al., p. 33.

⁹ Transcript, dockets Nos. 13879 et al., p. 33.

¹⁰ WMOH exhibit 1, p. 8.

¹¹ Transcript, dockets Nos. 13879 et al., p. 42.

¹² WMOH exhibit 1, p. 9.

¹³ Service and interference data for WASK are based upon WASK exhibit 1 except where otherwise indicated.

¹⁴ Order of hearing examiner, dockets Nos. 13879 et al., FCC 61M-1070, June 20, 1961.

proposed normally protected and interference-free daytime contours of WASK—assuming a grant of the five other applications of cochannel stations affecting WASK—are: ¹⁵

	Population	Area (sq. miles)
Present normally protected 0.5 mv/m.....	146, 235	2, 200
Proposed normally protected 0.5 mv/m.....	221, 666	3, 950
Present interference free (assume grants of WHFC, WCVS).....	135, 871	1, 587
Proposed interference free (assume all applications granted).....	189, 646	2, 790

19. No area presently served by WASK will lose service from it if all applications are granted.¹⁶

Interference

20. The only interference to other present or proposed operations involves class IV cochannel stations seeking an increase in daytime power. As listed at page 2 of the hearing order dated December 7, 1960 (FCC 60-1485), these are WHFC, WCVS, WANE, WMOH and WAOV. There are agreements for acceptance of mutual interference with all stations involved.

(a) WHFC, Cicero, Ill. (docket No. 13037; file No. BP-12655): This station has filed an application to increase daytime power to 1 kw which has been granted. The grant contains an express condition that it is subject to the acceptance by WHFC of interference from other existing class IV stations thereafter authorized to increase power to 1 kw. *Mid-America Broadcasting System, Memorandum Opinion and Order*, released February 20, 1961, FCC 61-190.

(b) WCVS, Springfield, Ill. (docket No. 13647; file No. BP-13161): The proposed operation of WASK will cause objectionable interference to the present operation of WCVS in an area of 42.5 square miles, which contains 7,672 persons. This is 3.2 percent of the population within the present 0.5-mv/m contour. Assuming a grant of the pending application of WCVS, the objectionable interference from the proposed operation of WASK would involve an area of 105 square miles, which contains 6,373 persons.¹⁷ At the prehearing conference in this proceeding, counsel for WCVS appeared and stated on the record that WCVS would accept interference from WASK at 1 kw in return for a reciprocal agreement by WASK which WASK acknowledged.¹⁸

(c) WANE, Fort Wayne, Ind.; WMOH, Hamilton, Ohio: These are the other applicants in the instant proceeding. WANE and WMOH have agreed to accept the interference from WASK provided their applications are granted together with that of WASK.¹⁹

(d) WAOV, Vincennes, Ind. (file No. BP-14197): The interference from WASK to the present WAOV 250-w operation would affect

¹⁵ WASK exhibit 1, p. 2.

¹⁶ WASK exhibit 1, pp. 4 and 5.

¹⁷ WASK exhibit 2, pp. 1-2.

¹⁸ Transcript, dockets Nos. 13879 et al., p. 7.

¹⁹ Transcript, dockets Nos. 13879 et al., p. 8.

5,237 persons in 112 square miles.²⁰ This represents approximately 6 percent of the population within the WAOV 0.5-mv/m contour. WAOV has pending an application to increase power to 1 kw daytime which would offset the interference from the similar WASK increase. If all pending class IV applications are granted, including that of WAOV, the WAOV interference-free contour will be increased from 92,430 persons to 105,590 persons. The licensees of WAOV and WASK have entered into an agreement for acceptance of mutual interference at 1 kw.²¹

Indiana Broadcasting Corp. (WANE)

21. Station WANE presently operates on 1450 kc with a power of 250 w day and night at Fort Wayne, Ind. The instant application proposes an increase in daytime power to 500 w. An amendment to the WANE application specifying a different type transmitter was filed June 12, 1961. This amendment was granted June 20, 1961.²²

*Service*²³

22. The present 0.5-mv/m daytime contour of WANE encompasses 223,963 persons in 1,676 square miles. The proposed 0.5-mv/m contour will include 250,413 persons in 2,257 square miles. The present 2-mv/m daytime contour of WANE encompasses 173,899 persons in 405 square miles. The proposed 2-mv/m contour will include 183,076 persons in a 598-square-mile area.²⁴

23. The following table shows the present and proposed interference-free service areas of WANE (a) assuming all other class IV stations were to remain at their presently authorized powers of 250 w, and (b) assuming all pending applications for higher daytime powers by these other stations were to be granted:²⁵

	WANE—250 w		WANE—500 w	
	Population	Area (sq. miles)	Population	Area (sq. miles)
(a) Assuming all other class IV stations at 250 w....	209,205	1,344	226,467	1,680
(b) Assuming all other class IV stations at 1 kw....	186,998	764	201,725	1,032

24. It will be noted from this table that under a given set of conditions regarding the surrounding stations on 1450 kc the WANE service area and population will be greater at 500 w than at 250. If all other stations remain at their presently authorized powers, the gain

²⁰ WASK exhibit 1, p. 6.

²¹ Transcript, dockets Nos. 13879 et al., pp. 35-36.

²² Order of hearing examiner, dockets Nos. 13879 et al., FCC 61M-1071, June 20, 1961.

²³ The WANE showing of service is based upon WANE exhibit 1, an engineering affidavit prepared on the basis of Commission soil conductivity values. At the hearing, WANE's engineer, Howard T. Head, testified that certain field strength measurements taken in 1947 by a previous licensee of WANE and in the Commission's files had been brought to his attention by the Broadcast Bureau shortly before the hearing and after the preparation of WANE exhibit 1. Mr. Head testified that after reviewing the measurements it was apparent that their use would not appreciably affect the showing in WANE exhibit 1 and that the WANE service area using the measurements would be substantially the same as shown in WANE exhibit 1. See transcript, dockets Nos. 13879 et al., pp. 38-41.

²⁴ WANE exhibit 1, table I, pp. 1-2.

²⁵ WANE exhibit 1, table I, pp. 1-2.

in population served by WANE is approximately 17,000. If all of the surrounding stations increase power to 1 kw, WANE will serve approximately 15,000 more persons at 500 w than at 250 w.

25. There will be some reduction in the interference-free 0.5-mv/m contour of WANE as between (a) WANE at 250 w assuming the other stations on 1450 kc continue to operate at 250 w, and (b) WANE at 500 w assuming all the surrounding stations on 1450 kc increase power to 1 kw. This reduction amounts to 7,480 persons in an area of 312 square miles or somewhat less than 3 percent of the population within the proposed WANE 0.5-mv/m contour. This reduction arises from the fact that WANE operates with a rooftop antenna and under section 3.188(d) of the Commission's rules, stations with rooftop antennas are limited to 500-w maximum power. At the time WANE filed its application the Commission had followed a policy of consistently refusing to waive the rooftop antenna power limitation of 500 w.

26. Unless the Commission should deny all the surrounding applications on 1450 kc, WANE will serve a substantially larger population at 500 w than it could serve at its presently authorized 250-w limitation. Assuming all class IV stations on 1450 kc increase power as proposed, WANE will serve 14,727 more persons in an area of 268 square miles at 500 w than it would at 250 w.

27. All of the present 0.5-mv/m area lost to WANE is served 100 percent by at least five other stations.²⁶

*Interference*²⁷

28. Only one adjacent channel station is affected by the proposed WANE power increase. This is station WPGW, 1440 kc, 500 w-D, Portland, Ind. The additional interference to WPGW affects 2,195 persons in an area of 70.5 square miles, representing slightly more than 2 percent of the WPGW 0.5-mv/m population.²⁸ WPGW failed to enter an appearance in this proceeding or to appear at the pre-hearing conference on February 27, 1961,²⁹ and was ruled in default by the examiner at that time.³⁰ At least five other stations provide a daytime primary service to the entire interference area which would be caused to station WPGW from the proposed operation of WANE.³¹

29. Operating at 500 w as proposed, WANE will cause some interference to the operations of cochannel stations WIBM, Jackson, Mich., WMOH, Hamilton, Ohio, and WASK, Lafayette, Ind., all of which are class IV stations which have applied to increase daytime powers to 1 kw.

30. WANE has entered into agreements with WASK and WMOH, coapplicants herein, under which each of those stations has agreed to

²⁶ WANE exhibit 1, table IV.

²⁷ The WANE interference showing is based upon WANE exhibit 1, an engineering affidavit prepared on the basis of Commission soil conductivity values. At the hearing WAYNE's engineer, Howard T. Head, testified that certain field strength measurements taken in 1947 by a previous licensee of WANE and in the Commission's files had been brought to his attention by the Broadcast Bureau shortly before the hearing and after the preparation of WANE exhibit 1. Mr. Head testified that after reviewing the measurements it was apparent that their use would not appreciably affect the showing in WANE exhibit 1 and that the interference to other stations would be no greater than that shown in WANE exhibit 1. See transcript, dockets Nos. 13879 et al., pp. 38-41.

²⁸ WANE exhibit 1, table I, p. 4.

²⁹ Transcript, dockets Nos. 13879 et al., p. 5.

³⁰ Transcript, dockets Nos. 13879 et al., p. 19.

³¹ WANE exhibit 1, table II.

accept interference from WANE provided all three applications are granted together. WASK and WMOH have also agreed not to oppose a subsequent WANE application for 1 kw employing the antenna system specified in the pending WANE application.³² The interference to WASK and WMOH from the proposed WANE operation and from other sources is described in the findings with respect to each of those applicants.

31. WIBM is an applicant for 1 kw daytime power in a separate proceeding. The interference from the proposed WANE operation to the present and proposed operation of WIBM is as follows:³³

Additional interference to WIBM from proposed WANE

To present WIBM			To proposed WIBM		
Area (sq. miles)	Population	Percent population 0.5-mv/m contour	Area (sq. miles)	Population	Percent population 0.5-mv/m contour
49.....	1,350	1	83.....	4,643	3

At least three stations provide 100-percent service to the entire area of interference within the present and proposed 0.5-mv/m contour of station WIBM.³⁴ Station WIBM has entered into an agreement with WANE that it will not oppose the WANE 500-w application nor any subsequent application of WANE to increase power to 1 kw.³⁵

CONCLUSIONS

1. *Service.*—There will be substantial overall improvements in the service of the applicants if all of the applications are granted. WMOH's 0.5-mv/m interference-free daytime service will be increased by 466,100 persons in 1,265 square miles. WASK's 0.5-mv/m interference-free daytime service will be increased by 53,775 persons in 1,193 square miles. WANE's service area and population will be slightly reduced from the 250-w level, the reduction being 7,480 persons in 312 square miles, but this could be avoided only if all other class IV stations in the area, including others not applicants in this proceeding, were limited to the present 250 w. As noted in paragraph 27 above, five other stations serve WANE's "loss area." Considering the chain reaction which such a limitation would impose, this is not a realistic possibility. On the assumption that all pending class IV applicants are granted, the WANE power increase to 500 w will increase the WANE service area by 14,727 persons in an area of 268 square miles over what could be served at 250 w.

2. *Interference.*—All interference problems with other stations are of small magnitude and have been fully resolved. Only one adjacent channel station is affected, WPGW, Portland, Ind., and the additional interference to this station affects only slightly more than 2 percent of the population within its normally protected contour. This sta-

³² Transcript, dockets Nos. 13879 et al., p. 8.

³³ WANE exhibit 1, table I, pp. 3-4.

³⁴ WANE exhibit 1, table III.

³⁵ Transcript, dockets Nos. 13879 et al., p. 7.

tion has defaulted. At least five other stations serve 100 percent of the area of interference to WPGW. All other interference is to co-channel class IV stations, all of which have accepted this interference. In all instances but one, these stations have applied for increases to 1-kw daytime power so as to at least offset the interference from the instant proposals. The only station not yet seeking a corresponding increase is a recent grantee at Jeffersonville, Ind., the additional interference to which affects less than 2 percent of the population within that station's 0.5-mv/m contour. This grantee has stated that it has no objection to this interference.

3. 307(b).—Since it has been established that the applications here are not mutually exclusive, it is unnecessary to arrive at conclusion under the 307(b) issue.

4. Apropos the history of this proceeding outlined in paragraphs 1 to 8 of the preliminary statement, to borrow a phrase from the Broadcast Bureau, the examiner is constrained to make comment. Administrative agencies are continually under fire for the cost and delay involved in administrative hearings. It has been the examiner's view that a not inconsiderable factor contributing to that problem is the practice of agencies processing matters via the hearing route that either should never have been placed there in the first place or, having been placed in hearing for good cause, have been retained in that status after cause has dissipated. Hearings at best are cumbersome, time consuming, and expensive undertakings. No one familiar with the process would recommend its merits on the ground of efficiency. The only reason, as far as the examiner knows, that it has been superimposed upon the administrative process is that no one in the history of Anglo-American jurisprudence has been able to devise a better method than open hearing for locating the kernel of truth among disputing parties and at the same time afford reasonable protection to their rights. In time, science may furnish a superior substitute with something in the nature of a truth serum. Until some such substitute comes along, those saddled with the job of trying to pick truth out of conflict must "make do" with the system. But, simply because the system exists for a very specialized purpose does not mean that it should be used as a dumping ground for administrative matters that cannot be conveniently handled elsewhere. Such use does nothing to effect reform of the process and works genuine hardship on those directly involved in it. Our judicial system has scrupulously limited the scope of its work to cases and controversies. Were administrative agencies to borrow from that book and similarly limit the ambit of their hearing function, a contributing factor to the source of much criticism of administrative hearings would be removed.

5. In the instant matter, from the first conference, recommendation favorable to the parties was a foregone conclusion. The data, material to decision, was all contained in the exhibits attached to the parties' joint petition for reconsideration and grant. There only remained a spot check to be made of the accuracy of that data and the preparation of a brief order granting the petition, stamped with the seal of Commission approval, for the applicants to go ahead with their plans for expanded operation. Instead the ponderous mecha-

nism of hearing was utilized with the result that it has taken months instead of days for the matter to reach this penultimate stage. For those who may ask, "if grant was so easy to determine, why didn't the examiner get out his decision sooner," the answer to the question is because the examiner had other matters pending before him that, either through seniority or by law, took precedence. To those who may say that other arms of the Commission were busy too, the examiner submits this homily, "when one has more eggs than the hens can handle, to increase the hatch get more hens, don't set owls."

It having been established that grant of the application will result in a considerable number of people receiving a new broadcast service as contemplated by the Commission's policy of encouraging class IV stations operating with 250 w to seek power increase and there being no reason why grants should not issue, *It is ordered*, This 11th day of January 1962, that unless an appeal from this initial decision is taken by any of the parties or the Commission reviews the initial decision on its own motion in accordance with the provisions of section 1.153 of the rules, the applications of the Fort Hamilton Broadcasting Co. (WMOH), Hamilton, Ohio, and Lafayette Broadcasting, Inc. (WASK), Lafayette, Ind., to increase daytime power from 250 w to 1 kw and the application of Indiana Broadcasting Corp. (WANE), Fort Wayne, Ind., to increase daytime power from 250 w to 500 w *Are granted*, subject to the condition that the permittees shall accept such interference as may be imposed by the other existing 250-w class IV stations in the event they are subsequently authorized to increase power to 1 kw.

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BATAVIA BROADCASTING CORP. (WBTA), DOCKET No. 13019:

Initial decision granting application for construction permit to increase the daytime power of unlimited-time class IV station WBTA, Batavia, N.Y., from 250 to 500 w, became final in accordance with section 1.153 of the Commission's rules.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON 25, D.C.

In re Application of BATAVIA BROADCASTING CORP. (WBTA), BATAVIA, N.Y. For Construction Permit	}	Docket No. 13019 File No. BP-12235
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APPEARANCES

Warren Woods (Wilson, Woods & Villalon) for applicant; *Lenore G. Ehrig* and *Harry J. Daly* (Daly & Ehrig) for respondent WNBTV; *Maurice M. Jansky* and *Carl M. Imlay* (Loucks & Jansky) for respondent WESB; and *Earl C. Walck* for the Chief, Broadcast Bureau, Federal Communications Commission.

INITIAL DECISION OF HEARING EXAMINER HERBERT SHARFMAN

(Effective March 6, 1962, pursuant to sec. 1.153)

PRELIMINARY STATEMENT

1. This proceeding involves the application of Batavia Broadcasting Corp. for a construction permit to increase the daytime power of unlimited-time class IV station WBTA at Batavia, N.Y., from 250 w to 500 w. By order released August 12, 1959, the Commission designated its application and many other applications for hearing in a multiparty proceeding bearing lead docket No. 13010, *Mid-America Broadcasting System, Inc.* As a result of various severances the Batavia application, previously in group VII, lead docket No. 13016, proceeded to separate hearing. In its order released August 12, 1959, the Commission found Batavia legally, technically, financially, and otherwise qualified to construct and operate its proposal, except as indicated by the specified issues. The issues, as restated in the Commission's order released July 13, 1960, are as follows:

2. To determine the areas and populations which may be expected to gain or lose primary service from each of the instant proposals for a change in facilities of an *existing* standard broadcast station, and the availability of other primary service to such areas and populations.

3. To determine the nature and extent of the interference, if any, that each of the instant proposals would cause to and receive from each other and all other existing standard broadcast stations, the areas and popula-

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tions affected thereby, and the availability of other primary service to the areas and populations affected by interference from any of the instant proposals.¹

* * * * *

5. To determine whether the following proposals would involve objectionable interference with the existing standard broadcast stations indicated, or any other standard broadcast stations and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other primary service to such areas and populations.

<i>Proposal</i>	<i>Existing stations</i>
* * * * *	* * * * *
BP-12235-----	CKCR, Kitchener, Ontario, Canada. WESB, Bradford, Pa. WNBT, Wellsboro, Pa.
* * * * *	* * * * *

9. To determine whether the transmitter specified by Batavia Broadcasting Corp. (BP-12235) is acceptable for 250-w power.

* * * * *

18. To determine whether the transmitter site proposed by each of the following proposals is satisfactory with particular regard to any conditions that may exist in the vicinity of the antenna system which would distort the proposed antenna radiation pattern, and, if so, to determine what means will be used to insure satisfactory operation in the manner proposed: Batavia Broadcasting Corp. (BP-12235).

* * * * *

23. To determine, in the light of section 307(b) of the Communications Act of 1934, as amended, which of the instant proposals would best provide a fair, efficient, and equitable distribution of radio service.

* * * * *

25. To determine, in the light of the evidence adduced pursuant to the foregoing issues which, if any, of the instant applications should be granted.

2. The licensees of stations WESB, Bradford, Pa., and WNBT, Wellsboro, Pa., were made parties respondent with respect to the Batavia application. Prehearing conferences were held on the Batavia application, together with other applications on September 16, 1960, and June 20, 1961, and hearing on the Batavia application alone on October 31 and November 17, 1961, when the record was closed. Proposed findings of fact and conclusions were filed by the Broadcast Bureau January 10, 1962. Applicant might have filed a reply by January 22, but it has elected not to do so. The following findings of fact and conclusions are taken with little change from the Broadcast Bureau's proposals.

FINDINGS OF FACT

3. Batavia Broadcasting Corp. is the licensee of WBTA, Batavia, N.Y., a class IV station which operates unlimited time on the frequency 1490 kc with a power of 250 w. It proposes only an increase in daytime operating power for WBTA to 500 w. Batavia is in western New York, between Rochester and Buffalo. According to the 1960 census, Batavia has a population of 18,210. WBTA is the only station in Batavia.

¹ Issue 4—the "10-percent rule" issue—was rendered moot by the amendment of sec. 3.28 of the Commission's rules, effective Jan. 23, 1961.

4. With its present power of 250 w, WBTA serves during daytime hours 126,720 persons in an area of 1,496 square miles. An additional 580 persons in 14 square miles within the normally protected 0.5-mv/m contour are not served because of interference from station WESB, a cochannel class IV station at Bradford, Pa. Since the close of the present record the Commission made final a hearing examiner's initial decision granting the applications of stations WESB, Bradford, Pa., WNBT, Wellsboro, Pa., and WOLF, Syracuse, N.Y., to increase their daytime power from 250 w to 1 kw.² Under these conditions the present service area of station WBTA would be reduced as shown in the following table:

Contour (mv/m)	Area (sq. miles)	Population
0.5.....	1,510	127,300
Interference from WESB, WNBT, WOLF.....	283	16,380
Interference free.....	1,213	110,340

5. Operation with the proposed power of 500 w by WBTA would substantially limit the impact of the 1-kw operations of stations WESB, WNBT, and WOLF on the existing service area of station WBTA. The coverage which would be achieved by proposed WBTA is as follows:

Contour (mv/m)	Area (sq. miles)	Population
0.5.....	1,980	167,286
Interference from WESB, WNBT, WOLF.....	395	25,360
Interference free.....	1,585	141,926

6. Assuming simultaneous operation of stations WESB, WNBT, and WOLF with powers of 1 kw, proposed WBTA would serve 31,586 more persons than would be served by existing WBTA under the same condition. The corresponding increase in service area is 372 square miles.

7. All of the area within the proposed 0.5-mv/m contour as well as the existing WBTA service area currently receives broadcast service from six Rochester stations (WHMA, WHEC, WRUM, WSAY, WBBF, and WVET) and four Buffalo stations (WBEN, WEBR, WGR, WKBW).

8. Proposed WBTA would cause interference to only one existing station, WESB, Bradford, Pa., a class IV station which operates with a power of 1 kw during daytime hours. In its application for increased power WESB agreed to accept the interference from proposed WBTA. Furthermore, the grant of the WESB application for increased power was conditioned upon acceptance of interference from other class IV stations in the event they increased power from 250 w to 1 kw.

²The Commission gave notice on Dec. 27, 1961, that the initial decision released Nov. 1, 1961 (FCC 61D-160), became effective Dec. 21, 1961.

9. Evidence developed in *Ivy Broadcasting Co., Inc. (WOLF)*, docket No. 13016 et al. (with which, as noted above, the Batavia application had previously been consolidated in group VII of the multiparty case), as to the extent of interference to station WNBT from proposed WBTA, was incorporated in this proceeding by reference. This evidence showed that no interference would be caused to station WNBT on the basis of field intensity measurements on WNBT toward WBTA.

10. By letter dated September 18, 1961, the Canadian Government advised the Commission that Canada had no objection to the proposed operation of WBTA. The matter of interference to station CKCR, Kitchener, Ontario, Canada, is therefore resolved.

11. The applicant proposes to use a Gates BC-500 T transmitter which had not been approved by the Commission at the time of designation for hearing. Since that date, the BC-500 T transmitter has been type-approved by the Commission.

12. With respect to issue No. 18, photographs of the terrain in eight directions from the WBTA site show that there are no structures which might distort the radiated field. No change is proposed in the site or antenna tower of WBTA.

CONCLUSIONS

13. WBTA has satisfactorily resolved the issues in this proceeding with respect to its proposed transmitter and transmitter site. The Canadian Government has no objection to a grant of its proposal. Apart from receiving interference from other class IV stations, proposed WBTA would cause interference to only one existing station, a class IV station which, during the pendency of this proceeding, was authorized to increase daytime power from 250 w to 1 kw subject to the condition that interference be accepted from other class IV stations in the event they increase power from 250 w to 1 kw. In view of the severance of the WBTA application from other applications with which it was designated for hearing, there is no need to make a section 307(b) determination (issue 23). In sum, there is no bar to a grant of the WBTA application. Grant of the application, permitting WBTA to expand its service, would be consonant with the Commission's nationwide policy to upgrade class IV stations, and would serve the public interest, convenience, and necessity.

14. Accordingly, *It is ordered*, This 11th day of January 1962, that unless an appeal from this initial decision is taken to the Commission by a party or the Commission reviews the initial decision on its own motion in accordance with the provisions of section 1.153 of the rules, the above-captioned application of Batavia Broadcasting Corp. for a construction permit to increase the daytime power of unlimited-time station WBTA, Batavia, N.Y., from 250 w to 500 w, *Is granted*, subject to the condition that the permittee shall accept such interference as may be imposed by other existing 250-w class IV stations in the event they are subsequently authorized to increase power to 1,000 w.

PROCEDURES ON TRANSFER AND ASSIGNMENT APPLICATIONS, DOCKET No. 13864 :

Amendment of part I of rules to add section 1.365 relating to procedures on transfer and assignment applications.

Rule adopted providing that where transferor has owned station less than 3 years, the application for transfer or assignment will be designated for hearing, unless the transferor has met the exceptions specified in the rule.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON 25, D.C.

In the Matter of
AMENDMENT OF PART I OF THE COMMISSION'S
RULES ADDING SECTION 1.365 CONCERNING
APPLICATIONS FOR VOLUNTARY ASSIGNMENTS
OR TRANSFERS OF CONTROL } Docket No. 13864

REPORT AND ORDER

(Adopted March 15, 1962)

BY THE COMMISSION: COMMISSIONER HYDE DISSENTING AND ISSUING A STATEMENT; COMMISSIONER BARTLEY CONCURRING AND ISSUING A STATEMENT; COMMISSIONER CRAVEN DISSENTING; COMMISSIONER CROSS CONCURRING AND ISSUING A STATEMENT.

1. On December 7, 1960, the Commission issued a notice of proposed rulemaking looking toward the modification of its procedures relating to applications for voluntary assignments or transfers of control. In brief, the Commission proposed that such applications be subjected to more careful scrutiny than in the past for the purpose of determining whether such transfers or assignments result from practices which are inconsistent with the duties and responsibilities of broadcast licensees and incompatible with broadcasting in the public interest.

2. It is clear that, under the Communications Act, the duties and responsibilities of a licensee include the following:

(a) A duty not to speculate, barter, or trade in licenses (hereinafter referred to as "trafficking"), to the detriment of the public interest; and

(b) A duty, in the light of the specific circumstances and needs of the area which a licensee serves, to render a meritorious program service.

3. These principles of licensee responsibility make it clear that the accelerated trend in the sale of broadcast properties which has been occurring since 1955 presents serious questions for the Commission's determination. The facts concerning this trend are set forth in Appendix A annexed hereto, together with relevant statistical data establishing (a) the high ratio (45-53 percent) of transfer and assignment applications involving short-term ownership; and (b) the ap-

preciable number of such applications affecting numerous communities throughout the country.

4. In our view, the appreciable number of such applications involving short-term ownership of stations in numerous communities compounds the problem of the accelerated trend in the sale of broadcast properties, and presents an important public-interest question of whether numerous communities throughout this country are being deprived of the benefits which we believe, based upon our experience, come from sustained station ownership. The licensee is under a continuing duty to make a good-faith effort to implement the proposals made in his application. *KORD, Inc.*, 21 R.R. 781. But experience has demonstrated that time is needed to fully or substantially implement the proposals or to gain a better understanding of the program needs and desires of the community, and to adjust programming to such needs and interests. Where the licensee seeks to sell his station after only a short period of time, all these efforts may be frustrated or cut off in midstream; the new owner may have to gain his own insight and experience in this critical area.

5. As to "trafficking," the Commission is seriously disturbed over the very high ratio of transfer and assignment applications involving short-term ownership of stations in numerous communities. It believes that it has a special obligation to insure that such short-term assignment or transfer applications do not constitute trafficking in licenses. An applicant who seeks to dispose of his license within the first few years encompassed by his initial license period obviously warrants special scrutiny. There are thus two considerations—"trafficking" and disruption, perhaps leading to deterioration in programming during this critical formative period (par. 4, *supra*). In the Commission's view, either of these considerations would support the remedial action which we have determined to take (par. 6, *infra*). Taken together, the Commission believes that they clearly call for such action. In short, the accelerated trend in the sale of broadcast stations, compounded by the appreciable number of short-term sales of stations in numerous communities, presents a general problem affecting licensee responsibilities, which is of such magnitude to require this Commission to establish immediate and effective remedial procedures.

6. We intend to embark upon a program of intensified scrutiny of proposed transfers or assignments which occur within a short period. We recognize, of course, that various changes in circumstances may create hardships necessitating a station's sale, remove any question of "trafficking" and justify a transfer, in terms of private equity and public interest, despite any disruptive effects which might otherwise result from short-term changes in ownership. In the absence of a showing of such circumstances, however, we believe that the transfer or assignment of a broadcast license held for a short time is *prima facie* inconsistent with the duties of the licensee and the public interest. The questions raised are substantial and material enough to require exploration in a hearing. Moreover, we believe it vital that our intensified scrutiny apply evenhandedly to all licensees. For this reason, it is appropriate to fix a uniform period, within which proposed transfers

or assignments will be regarded as raising substantial questions of trafficking or undue disruption. We are persuaded that 3 years is an appropriate benchmark. The Congress, taking into account both the need for maintenance of public control over the spectrum and the need for stability and continuity in station ownership, has limited broadcasting licenses to a maximum 3-year period. Our own experience, moreover, has led us to issue regular licenses for this period in all the broadcasting services.

7. By the proposed procedures, an applicant seeking Commission consent to a transfer or assignment of a station held for less than 3 years will be required to make a compelling affirmative showing of unforeseen changed circumstances or of hardship—more or less beyond his control—for a grant of the application without hearing. Absent such showing, the Commission will, in accordance with its proposed modification of procedures, designate an application involving a station held less than 3 years for hearing, to fully explore and test, through the Commission's hearing procedures, the material and substantial questions presented as to the extent of the licensee's compliance with its responsibilities, and the effect of the transfer or assignment upon the public interest. In the Commission's view, the policing of these duties and responsibilities of licensees, with maximum emphasis on requiring compliance to be developed and tested through the hearing process, will have salutary effects. This new procedure will afford the Commission an opportunity for reaching sound judgments on the issue of whether a licensee has complied with the responsibilities delineated in paragraphs 3-5, *supra*. Only in this way will the Commission be able to develop the full facts in this critical area of the public interest. Further, as additional information and experience is gained, the Commission will be better able to judge whether there is need for more severe limitations to be placed upon the sale of broadcast properties,¹ or whether some other quite different procedures should be adopted. It is expected, however, that our present action will be sufficient to deal with these problems. Finally, this procedure will serve as some deterrent to quick transfers by licensees tempted to traffic in licenses. The licensee who has engaged in activities suggestive of trafficking within this time period will now know that his trafficking activities will be fully explored at a hearing. The Commission wishes to make clear, however, that those applicants who have not engaged in such activities or in any conduct not inconsistent with the public interest should not be deterred because of the new remedial measures. Such applicants may still obtain grants, if they establish on the hearing record that a grant would serve the public interest (pars. 8 and 11, *infra*). We recognize,

¹ Cf. the Staff Report of the Special Subcommittee on Legislative Oversight issued November 30, 1958; the Report of the Special Subcommittee on Legislative Oversight issued January 3, 1959; H.R. 11340, a bill introduced by Mr. Harris on March 23, 1960, "to promote the public interest by amending the Communications Act of 1934, to place certain additional limitations on the transfer of licenses, and for other purposes." See also, H.R. 1165 which was introduced on January 3, 1961 in the 87th Congress, and is identical in pertinent respect with H.R. 11340. In this connection it is to be noted that there are substantial differences between H.R. 11340 and H.R. 1165, on the one hand, and the Commission's subject proposal, on the other. The proposed legislation would establish a rigid three year holding period as a statutory standard of public interest *depositive* of applications.

of course, that such an applicant would prefer avoiding the expense and time, perhaps as much as a year, required for a hearing. But for the reasons we have stated, we believe that in the present circumstances we cannot make the public-interest finding required under the act without a hearing.

8. In the interest of clarity, the Commission desires to point out that it contemplates that by the built-in exception to the proposal relating to "changed circumstances," some applications involving stations held for less than 3 years will be granted without a hearing. Similarly, the Commission contemplates that such applications will also be granted after a hearing, provided (a) there has been substantial compliance with the aforementioned principles of licensee responsibility, and (b) no other reasons require a denial. In short, we are simply stating that such applications (absent changed circumstances permitting a grant without hearing) will be more carefully examined and tested through the hearing process, than is otherwise possible.²

9. With respect to applications filed after the 3-year period, the Commission will also continue to examine carefully into the "trafficking" problem. However, the Commission recognizes that although the "time factor," standing alone, cannot dispose of the trafficking problem, the passage of time does, to some extent at least, lessen or diminish this problem. For this reason, the rule adopted herein includes a direction to the Chief of the Broadcast Bureau (a) to examine carefully such applications, on a case-to-case basis, to determine whether any characteristics of trafficking appear to be present; and (b) if so, to seek additional information, by letter inquiries to the applicants, similar to that which will be required to be developed and tested in the hearing process with respect to stations held less than 3 years. Thereafter, where issues of trafficking remain, such applications will be designated for hearing by the Commission.

10. Subsections (a) and (d) of the attached rule embody these policies in the form of regulations. Subsection (a) requires a licensee seeking Commission consent to a transfer or assignment of a station held for less than 3 years, to make a compelling affirmative showing of changed circumstances—more or less beyond the control of the licensee—for a grant without hearing. There is, of course, no easy formula by which every situation can be classified as to whether it does or does not constitute "hardship" or "changed circumstances." Every case must, of necessity, be decided on its own merits based upon a detailed factual showing by the applicant of all relevant and material facts. In section IV of this report, we have discussed illus-

² In this connection, the Commission wishes to point out that where a licensee has not held a station for 3 years, he should not—

(a) Surrender control of a station by artifice, such as, for example, employment or other types of contracts with the buyer, whereby the buyer is retained as general manager of the station, or as a consultant to the seller; and

(b) Thereafter defer filing an application for Commission consent to the transfer or assignment until after the expiration of the 3-year period in order to subvert the purpose of the rule.

Under circumstances such as this, applications filed after the 3-year period present even more serious questions (a) concerning the character qualifications of a licensee, and (b) whether the transfer contravenes the provisions of sec. 310(b) of the Communications Act.

trative examples of what may or may not constitute "changed circumstances" or "hardship."

11. Absent a compelling affirmative showing of changed circumstances permitting a grant without hearing, subsection (a) provides that the application shall be designated for hearing on issues which will be designed, on a case-to-case basis, to fully develop, to test, and to determine whether or not the licensee has complied with the aforementioned duties and responsibilities. Assuming, *arguendo*, that a transferor establishes, at a hearing, that he has not engaged in trafficking, that he has made a good-faith effort to fulfill his programming representations or adjust his programming to the needs of his area, that no unwarranted interruption or deterioration in programming service has occurred, or will occur, incompatible with broadcasting in the public interest, and that he has a valid reason for transferring the station after only a brief period of operation, it may reasonably be concluded that the application would be granted. Conversely, it is clear that where, after a hearing, there is substantial evidence that a transferor has engaged in "trafficking" or that an unjustified failure, interruption, or deterioration in program service has occurred, or might occur, the Commission would, of necessity, deny such an application as contrary to the public interest. Thereafter, the Commission, in its discretion, may institute appropriate proceedings directed against the licensee.

12. Interested persons were given an opportunity to file comments on the Commission's original proposal, and over 50 comments have been received. With a few exceptions, the respondents object to the proposal, urging, however, that in the event the Commission nonetheless determines that the proposal is in the public interest, the proposed rule should be changed in a number of specific ways. A few respondents make a direct attack upon the legal validity of the proposal, contending that it transcends the authority contained in the Communications Act. The other objecting respondents appear to challenge the wisdom of the proposal, as a matter of policy, rather than its legality, and they call attention to certain hardships and inequities which it is alleged would result from the particular language of the rule proposed.

13. The comments and our views thereon, together with the changes considered acceptable and included in the finalized rule, are, for convenience, grouped into five categories, discussed in sections of this report as follows:

- I. Comments directed to the Commission's legal authority to adopt the proposed rule and to the need therefor.
- II. Comments regarding the undesirability of the proposal, as a matter of policy.
- III. Comments with regard to suggested alternative procedures.
- IV. Comments concerning requested modifications of the proposed rule.
- V. Summary of major changes included in finalized rule.

I. COMMENTS DIRECTED TO THE COMMISSION'S LEGAL AUTHORITY TO ADOPT THE PROPOSED RULE AND TO THE NEED THEREFOR

14. In approaching this issue of the Commission's authority to adopt this rule, it is of significance that many of the respondents have misconstrued the rule by translating it, in effect, into the type of 3-year holding period limitation of H.R. 11340, constituting a statutory bar, to a grant of an application. (See footnote 1, *supra*.) Based upon this fundamental misconception, respondents contend that the Commission lacks authority to adopt the subject rule, following substantially the same arguments advanced by *NBC* and *Storer*, respectively, in *National Broadcasting Co. v. United States*, 319 U.S. 190 (1943) (network regulations), and *Storer Broadcasting Co. v. United States*, 351 U.S. 192 (1956) (maximum limitation on station ownership). In this connection, respondents assert, in effect, that the Commission has authority to adjudicate the problem of trafficking on a case-to-case basis, but that it has no choice but to wait until trafficking occurs and then hold hearings as each case arises.

15. Apart from the fact that the courts have repeatedly upheld the Commission's rulemaking authority in the face of such contentions, there are substantial differences between this rule, and the public-interest standards established by the network and maximum limitation rules which are *dispositive* of applications. As shown by our discussion in paragraphs 7-11, *supra*, the Commission's subject rule is *procedural* only, to be used in *passing* upon applications. We are according every licensee the right to a hearing, whereas in the *NBC* and *Storer* cases, *supra*, the complainants objected to rules which denied them a hearing. Moreover, we believe that the Commission's basic rulemaking authority is applicable with even greater force, where we are, as here, simply adopting procedures which, by the hearing process, will afford the Commission the opportunity of making sound judgments with respect to a licensee's compliance with its duties and responsibilities. Certainly, there is nothing arbitrary in recognition of the facts that (a) the accelerated trend in the sale of broadcast stations, compounded by short-term ownership affecting numerous communities throughout this country, presents a general problem relating to licensee responsibilities; and (b) under these circumstances, such licensee responsibilities require testing through a hearing process (pars. 4-6, *supra*). The Commission could apply such a policy on a case-to-case basis; that is, as each case comes before the Commission, it could designate the case for hearing under a general policy. Since this is so, there is no reason why it cannot formalize this practice through the rulemaking process by announcing in advance the procedures it will follow in passing upon applications for transfers and assignments.

16. Respondents' principal contentions are that (a) the Commission has no authority to establish a mandatory hearing requirement; (b) the Commission's declared policy to hold hearings on such issues as displacement of personnel, disruption of operational continuity, and the impact of such events upon licensee responsibilities is inconsistent with the Commission's long-established policy of expediting

action on transfer applications because of these same business exigencies; (c) these business practicalities incident to the sale of stations render the mandatory hearing requirement meaningless; (d) there is no basis for the 3-year period; and (e) statistics do not justify the Commission's concern with the problem of trafficking.

17. Each of these contentions, in our view, is lacking in merit. What we have said in paragraph 15, above, disposes of the claim that the Commission lacks authority to establish, through its rulemaking authority, a mandatory hearing requirement to be applied to certain types of applications because they reflect or involve a general problem affecting licensee responsibilities. It is the Commission's further view that although a mandatory hearing requirement may constitute a deterrent to the filing of some transfer applications, this factor does not constitute a penalty against "legitimate" transfers as urged by respondents. (See pars. 7 and 11, *supra*.) The Commission has not only a right, but a duty, under section 309(e) of the act, to require any questions reasonably related to the public interest which cannot be resolved on the information in the application itself, to be explored through the hearing process. Under these circumstances, it is evident that there is no merit to a contention that the Commission's mandatory hearing requirement constitutes a breach of an alleged duty to grant an application, without hearing, under section 309(a). Section 309(a) relates only to applications where there are no public-interest questions raised necessitating a hearing, and the Commission is therefore able to find, based upon the information in the application itself, that the public interest would be served by a grant.

18. Nor is there any merit to respondents' contentions that "business practicalities" render the mandatory hearing requirement meaningless, and that the Commission's rule is at odds with its policy of expediting action on transfer applications. It appears that respondents have failed to recognize that the Commission, through its experience, has a familiarity with (a) the problems incident to station sales; (b) the potential effects of such problems upon licensee responsibilities; (c) the practices of licensees to gear time limitation periods for consummation of sales, not only to these business exigencies but, in addition, to Commission procedures and policies; and (d) the fact that, despite these business exigencies, hearings have been held in the past, and are presently being held, on transfer applications on such issues as multiple ownership, overlap, etc. Thus, we are familiar with the fact that the time limitation period for consummation of sales contracts is generally 90 to 120 days, because of business exigencies and of the time required for processing the application by the Commission. Our policy of according such applications expedited action, in recognition of these business practicalities, is certainly consistent with the public interest, where no questions are presented which require a hearing.

19. We also recognize that where a hearing is required by the Commission, sales contracts generally provide for an extension of the time limitation provision, for the same period required for a Commission hearing and a decision. Commission records reflect that where transfer applications have been designated for hearing on issues relating to

such matters as multiple ownership, etc., the parties, in some instances, have not pursued the hearing and have canceled the sales contract. However, Commission records also include instances where the parties have prosecuted their applications and have extended the time limitation provision of the sales contract for the period required for a Commission hearing and decision. Where the hearing is pursued, a licensee generally affords whatever assurances are necessary to station personnel, to program sources, and to advertisers, in order to continue a program service compatible with the public interest. In our experience, the potential problems relating to station sales are not insurmountable and can generally be accommodated, when the Commission decides that a hearing is necessary. Indeed, at this juncture, licensees normally make whatever business arrangements are necessary to lessen the impact of the proposed sale upon continued station operations during the pendency of such a hearing.

20. Respondents' claim that there is no basis for the 3-year period is also lacking in merit. The 3-year period is significant only in identifying the applications which will be designated for hearing absent a showing of changed circumstances. Three years is a normal license period, even though variations in this period do occur because of other licensing policies. Moreover, we have previously made clear in paragraph 4, *supra*, that the appreciable number of short-term sales, involving stations located in numerous communities throughout the country, compounds the problem of the accelerated trend in the sale of broadcast properties, presenting an important public-interest question of whether numerous communities are being deprived, by short-term ownership, of the benefits which we reasonably believe, based upon our experience, come from sustained station ownership.

21. For these reasons, we believe that the basis of the 3-year period is a reasonable one as a means of identifying the applications which will be designated for hearing, absent a showing of changed circumstances.

22. Finally, we cannot agree with respondents' contention that statistics are necessary to justify the Commission's concern with the trafficking problem. The Commission does not need statistics showing that any appreciable number of stations are acquired for "trafficking" purposes to justify its concern with this problem. The Commission has expressed its concern over trafficking for years. In addition to the Commission's stated concern, there have been expressions of grave congressional concern over the problem. (See footnote 1, *supra*.)

23. Nor can we agree with the position of one respondent that the statistical data from the Commission's annual reports do not establish an accelerated trend in the sale of broadcast properties. In this connection, the Commission has noted that this one respondent quoted figures which are incorrect for the year 1955 with respect to "Total transfers granted." This respondent also failed to consider the relevant figures from the FCC annual reports relating to "Transfer applications received." In our view, the number of "Transfer applications received" is more indicative of the continued increase in the activity relating to the sale of broadcast properties, because the figures with respect to "Applications granted" do not include those

which are rescinded by voluntary agreement of the parties, or those which are set for hearing or which are denied by the Commission.

24. As stated in paragraph 4, *supra*, the statistics set forth in appendix A establish (a) the accelerated trend in the sale of broadcast properties; (b) the high percentage (over 50 percent) of applications filed for substantial changes in ownership involving short-term ownership; and (c) the appreciable number of such applications relating to short-term ownership which, in turn, involve numerous communities throughout this country.

II. COMMENTS REGARDING THE UNDESIRABILITY OF THE PROPOSAL, AS A MATTER OF POLICY

25. The major arguments advanced by respondents concerning the undesirability of the Commission's proposal as a matter of policy are, in most part, geared to the private rights of broadcasters, to business exigencies, etc. As shown by the discussion in paragraph 18, *supra*, the Commission recognizes these private rights and business exigencies, and accords them full consideration in making its overall public-interest determinations. However, where a general problem exists which affects licensee responsibilities, then the Commission must subordinate these private concerns to more paramount public interest factors.

26. We have given careful consideration to respondents' contentions that the proposed new procedures will, in effect, constitute a deviation from our free enterprise system of broadcasting, and will discourage the investment of private venture capital in the broadcasting industry. These contentions ignore the fact that the broadcast industry is one affected with a public interest, and that this Commission, within the limits of the Communications Act, is charged with the basic responsibility of considering relevant aspects of the public interest in effectuating its licensing procedures and policies. In the face of the accelerated trend in the sale of broadcast properties and of the appreciable number of transfer applications involving short-term ownership of stations, we would be remiss in our responsibilities in administering the Communications Act if we did not effectuate the new procedure here adopted.

27. The Commission agrees that trafficking, standing alone, is to a considerable extent a subjective problem, and that the Commission, of course, has adequate authority to deal with it on a case-to-case basis. But these considerations do not undermine the desirability of the general procedural policy we have adopted with respect to the particular problem of possible trafficking within the initial 3-year period. Moreover, the Commission is concerned not solely with trafficking, but also with the effects upon licensee responsibilities of the accelerated trend in the sales of broadcast properties and of short-term ownership of stations (par. 4, *supra*). Our remedial rule is directed to both these policy considerations. As urged by the respondents the "time factor" of 3 years, standing alone, cannot eradicate the trafficking problem. Accordingly, subsection (d) has been added to the rule to make it clear that the Commission will continue to examine

carefully the trafficking problem in connection with transfer and assignment applications involving stations held more than 3 years.

III. COMMENTS WITH REGARD TO SUGGESTED ALTERNATIVE PROCEDURES

28. Although all respondents agree that trafficking is incompatible with licensee responsibilities and contrary to the public interest, they nevertheless disagree profoundly on what should be done about this. Their views range from suggesting that we merely issue a statement of policy indicating that we will examine more carefully into the trafficking problem, to proposals for a full-scale investigation into the entire subject of trafficking. The respondents marshaled a series of arguments, all geared to the private rights of broadcasters and business exigencies, to explain their preferences for some course of action which would include no immediate remedial procedures to test the compliance of licensees with their duties and responsibilities. The Commission rejects these alternative suggested procedures which, in essence, are innocuous and do not meet (a) the real issue of the general problems of the accelerated trend in the sale of broadcast properties, of short-term ownership of stations, and of trafficking, affecting licensee responsibilities; and (b) the need for immediate and effective remedial procedures.

IV. COMMENTS CONCERNING REQUESTED MODIFICATIONS OF THE PROPOSED RULE

29. The respondents request a number of modifications of the rule, primarily in light of hardships and inequities which they allege would result from the particular language of the rule as proposed. The more important of these requests are discussed below.

30. With respect to the built-in exception to the rule relating to "changed circumstances" (subsec. (a)(3)), respondents claim that the scope of this exception should not be limited to extraordinary circumstances, but should include factors relating to "human equations." We have previously stated that—

There is, of course, no easy formula by which every situation can be classified as to whether it does or does not constitute "hardship" or "changed circumstances." Every case must, of necessity, be decided on its own merits, based upon a detailed factual showing by the applicant of all relevant and material facts.

31. With these general views in mind, we turn now to the additional exceptions of the rule sought by respondents. Contrary to their assertions, we believe that the following situations are lacking in merit as constituting changed circumstances sufficient to obviate the need for a hearing:

- (a) Basic unhappiness in living conditions in a community or complete dissatisfaction with the broadcast business.
- (b) Plans to expand and enter new and larger markets.
- (c) A cursory statement, without supporting facts; viz, "business reasons which could not be foreseen or predicted."

32. In the absence of an unusual showing, exception (a) relates to situations which, generally speaking, can be avoided by a reasonable

person, exercising reasonable prudence, prior to entering the broadcast business, or prior to moving to a new community. It would seem that the reasonably prudent person would become acquainted sufficiently with the broadcast business by some type of indoctrination, either as an employee or observer of other station operations, prior to becoming an owner of a station. Similarly, it would appear that the reasonably prudent person would become acquainted with a community in which he is thinking of buying a station by residing there temporarily prior to purchasing the station.

33. Exception (b), on its face, does not constitute a "changed circumstance" beyond the control of the licensee. For this same reason, we have concluded that the proposed exception for "death or disability of key management personnel" should be deleted. Such personnel, though important, are not indispensable or irreplaceable. Exception (c) is too vague, with too many variations and connotations. Obviously, this type of exception will have to be handled on a case-to-case basis in the interpretation of "other changed circumstances affecting the licensee or permittee occurring subsequent to the acquisition of the license or permit," provided for in subsection (a)(3).

34. As urged, in substance, by the respondents, the Commission agrees that the following situations constitute "changed circumstances":

(a) Where a station is required to be sold because of a separation or divorce settlement, provided such settlement has been ratified or ordered by a court decree.

(b) Where a licensee is transferring the station to members of his immediate family, as a gift, provided such transfer is not inconsistent with the Commission's multiple-ownership rules.

35. With respect to the requested exception (b) relating to gifts to immediate members of a family, this exception would not be applicable to a situation where a licensee desires to sell a station in less than 3 years to a third party for purposes of deriving funds to establish pre-testamentary gifts or trusts.

36. With respect to the exception "inadequacy of operating capital" included within subsection (a)(3) of the proposed rule, respondents have pointed to the difficulties of administering such a standard. Of equal significance in the Commission's view is the fact that such a broad standard could be interpreted by a licensee to include his unwillingness, as a matter of business judgment, to risk more capital available from other sources. For these reasons, the Commission has deleted "inadequacy of operating capital" from subsection (a)(3) of the new rule, and has substituted therefor the standard of "unavailability of capital," which obviously excludes the situation where a licensee has other substantial resources.

37. In accordance with the objection of respondents to the applicability of the 3-year period to major changes in facilities as proposed in subsection (b)(1), the Commission has amended this subsection to provide that where initial operating authority is issued to cover the construction permit for a major change in facility, the commencement date of the 3-year period shall then revert back to the date the licensee received its original operating authority. By making this modifica-

tion, the Commission believes that it has met the major objections of the respondents, but at the same time the modification would require construction of the "major change" prior to sale by the licensee, unless the licensee could meet the built-in exception of changed circumstances.

38. Certain respondents further claim that FM and UHF stations should be exempted from the requirements of the proposal. There is clearly no basis for the exemption of whole classes of stations from the paramount public-interest considerations compelling the adoption of this rule. Similarly, there is no basis for the type of exemption sought by respondents in connection with subsection (b) (4) relating to multiple owners. Subsection (b) (4) applies only where a multiple owner desires to sell *all his stations as a package*, and under these circumstances, fair administration of the new rules requires that the date of acquisition of the last station shall be applicable to all such holdings.

39. Respondents have also requested that a termination date be specified in the rule for the purpose of calculating the length of time the station has been operated by the transferor. Accordingly, the Commission has, by new subsection (c), added a provision which provides that in determining whether a broadcast interest has been held for 3 years, the Commission will calculate the period between the date of acquisition as specified in subsection (b) (1) and the date the application for transfer or assignment is tendered for filing with the Commission.

V. SUMMARY OF MAJOR CHANGES INCLUDED IN THE FINALIZED RULE

40. In summary, editorial revisions have been made in the title of the rule. In addition to editorial modifications, there has been stricken from subsection (a) (3) the following language: "inadequacy of operating capital" and "or of key management personnel." In substitution for "inadequacy of operating capital," there has been inserted "unavailability of capital." Aside from editorial changes, subsection (b) (1) has been amended by providing that where initial operating authority is issued to cover the construction permit for a major change in facility, the commencement date of the 3-year period shall then revert back to the date the licensee received its original operating authority. A new subsection (c) has been added to provide for a termination date in calculating the 3-year period. A new subsection (d) has been added with respect to the procedures relating to applications for Commission consent to transfers or assignments of a station held for more than 3 years. By subsection (d) the Commission has made clear that, with respect to applications filed after the 3-year period, it will continue to examine carefully into the problem of "trafficking," as more fully described above. All changes conform to the basic purposes of this proposal.

ORDER AMENDING THE COMMISSION'S RULES AND REGULATIONS

41. Pursuant to the provisions of section 4(c) of the Administrative Procedure Act, amendments to the Commission's rules relating to non-substantive matters may be made effective within less than 30 days

from the time the amendments are published in the Federal Register. This new rule shall therefore become effective on March 23, 1962, and shall be applicable to all applications filed thereafter. In this connection, the Commission desires to point out that although this new rule shall become effective within less than 30 days, notice of the Commission's instructions to the staff to prepare this report and order was made public on January 4, 1962, and the public therefore has had knowledge of the general nature of the new rule for more than 60 days.

42. In view of the foregoing, *It is ordered*, That part I of the Commission's rules and regulations is amended to include new section 1.365 as set forth in the attached appendix B.

It is further ordered, That said section 1.365 shall be effective and shall be applicable to all applications filed on or after March 23, 1962.

Authority for the adoption of the above amendment is contained in sections 4(i), 4(j), 303(r), 308(b), 309, and 310(b) of the Communications Act of 1934, as amended.

APPENDIX A

STATISTICAL DATA REFLECTING ACCELERATED TREND IN SALES OF BROADCAST STATIONS

TABLE I.—*Transfer applications received and granted*

[Based upon FCC annual reports]

Fiscal year ending June 30—	AM granted	AM received	FM granted	FM received	TV granted	TV received	Totals	
							Granted	Received
1960.....	712	821	124	159	102	122	938	1,102
1959.....	806	917	103	112	99	101	1,008	1,130
1958.....	644	741	99	113	98	105	841	959
1957.....	636	681	78	74	120	132	834	887
1956.....	525	590	77	81	100	109	702	780
1955.....	¹ 506	562	69	67	122	124	¹ 697	753

¹ A respondent claimed erroneously these figures to be 982 and 1,173, respectively.

TABLE II.—*Percentage of transfer applications received and granted as compared with authorized stations (Including CP's Not on Air)*

[Based upon FCC annual reports]

Fiscal year ending June 30—	AM	FM	TV	Total	Total transfers		Percent	
					Granted	Received	Granted	Received
1959.....	3,500	799	607	4,906	1,008	1,130	20.4	22.9
1958.....	3,353	634	665	4,652	841	959	18.1	20.6
1957.....	3,238	560	651	4,449	834	887	18.7	19.9
1956.....	3,020	546	609	4,175	702	780	16.8	18.7
1955.....	2,840	552	582	3,974	¹ 697	753	¹ 17.5	18.9

¹ A respondent claimed erroneously these figures to be 1,173 and 29.5 percent.

STATISTICAL DATA REFLECTING APPRECIABLE NUMBER AND HIGH PERCENTAGE
OF APPLICATIONS INVOLVING SHORT-TERM OWNERSHIP

	1960	1961
Number of applications acted upon by the Commission seeking substantial changes in ownership.....	416	376
Number of applications relating to stations held more than 3 years.....	205	207
Number of applications relating to stations held less than 3 years.....	211	169
Percent of applications involving stations held less than 3 years.....	53	46
Number of separate and different communities involved in applications relating to short-term ownership (stations held less than 3 years).....	205	159

APPENDIX B

§ 1.365 *Procedures on transfer and assignment applications.*

(a) If, upon the examination, pursuant to sections 309(a) and 310(b) of the Communications Act of 1934, as amended, of an application for Commission consent to an assignment of a broadcast construction permit or license or for a transfer of control of a corporate permittee or licensee, it appears that the station involved has been operated by the proposed assignor or transferor for less than 3 successive years, the application will be designated for hearing on appropriate issues pursuant to section 309(b) of the Communications Act of 1934, as amended, unless the Commission is able to find that—

(1) The application involves a translator station only, a FM station operated for at least 3 years together with a subsidiary communications authorization held for a lesser period; or

(2) The application involves a pro forma assignment or transfer of control; or

(3) The assignor or transferor has made an affirmative factual showing, supported by affidavits of a person or persons with personal knowledge thereof, which establishes that due to unavailability of capital, to death or disability of station principals or to other changed circumstances affecting the licensee or permittee occurring subsequent to the acquisition of the license or permit, Commission consent to the proposed assignment or transfer of control will serve the public interest, convenience, and necessity.

(b) The commencement date of the 3-year period set forth in paragraph (a) of this section shall be determined as follows:

(1) Where the authorizations involved in the application consist of a license and a construction permit authorizing a major change in the facilities of the licensed station (as defined in §§ 1.354, 1.355, and 1.356), the 3-year period shall commence with the date of the Commission's grant of the construction permit for the modification. However, when operating authority has been issued to cover the construction permit for a major change in facility, the commencement date for calculating the length of time the station has been operated for purposes of this section shall then revert back to the date the licensee received its original operating authority. A grant of authority for minor modifications in authorized facilities shall have no effect upon the calculation of this time period.

(2) Where the authorization involved in the application consists of a permit authorizing the construction of a new facility, or a license covering such permit, the 3-year period shall commence with the date of issuance of initial operating authority.

(3) Where the operating station involved in the application was obtained by means of an assignment or transfer of control (other than pro forma), the 3-year period shall commence with the date of grant by the Commission of the application for said assignment or transfer of control. If the station was put in operation after such assignment or transfer, paragraph (b) (1) and (2) of this section shall apply.

(4) Where an application is filed for Commission consent to a transfer of control of a corporation holding multiple licenses and/or construction permits, the commencement date applicable to the last-acquired station shall

apply to all the stations involved in the transfer, except where the application involves a FM station operated for less than 3 years and an AM station operated for more than 3 years, both serving substantially the same area. Said exception shall apply to the same circumstances where assignment applications are involved.

(c) In determining whether a broadcast interest has been held for 3 years, the Commission will calculate the period between the date of acquisition as specified above and the date the application for transfer or assignment is tendered for filing with the Commission.

(d) With respect to applications filed after the 3-year period, the Chief of the Broadcast Bureau is directed (1) to examine carefully such applications, on a case-to-case basis, to determine whether any characteristics of trafficking remain; and (2) if so, to seek additional information by letter inquiries to the applicants, such as that which will be required to be developed and tested in the hearing process with respect to stations held less than 3 years.

DISSENTING STATEMENT OF COMMISSIONER ROSEL H. HYDE

I dissent to the action taken in docket No. 13864.

The notice of proposed rulemaking regarding procedures applicable to broadcast transfer and assignment applications was issued December 7, 1960, at which time I issued a statement of separate views. The comment submitted in response by interested parties overwhelmingly opposes the proposed new rule. I believe it appropriate and necessary on the basis of the record to reaffirm my statement of December 1960, as a dissent to the final order approved by a majority of the Commission.

In addition, I would invite attention to the fact that neither the statistics cited by the Commission in its report nor reference to transfer statistics over a longer period would justify the conclusions drawn by the majority. The final order repeatedly refers to an alleged accelerated trend in the sale of broadcast properties, whereas reference to statistics going back to 1952 (attached) disclose that the increase in volume corresponds to the increase in number of stations. Actually, the trend as measured by a percentage of the total number of stations was downward during the years 1959 to 1961.

However, the more serious error is in the assumptions and speculations in which the majority has indulged.

There is nothing in the record to indicate that service has been adversely affected by the transfers which have been approved. Any such assumption would be in contradiction of the public-interest finding the Commission has made in each case. If, as the majority says, there are too many assignments of new stations, perhaps analysis would show the need for more appropriate Commission attention than imposition of burdensome procedural rule. In this connection, I deplore the use of devices to make substantive policy through the interposition of time-consuming procedures.

There has been no study as to the reasons why a large number of transfers concern new authorizations. How many such transfers are the result of ill-advised inadequately-planned-and-financed ventures? Is a long delay in the consideration of a relinquishment an appropriate way to deal with a grant already in difficulty? As I previously stated, the more logical way to deal with the assignment and transfer question is to deal with individual applications either for initial licensing or assignments on a carefully considered basis.

Broadcast station transfer data from FCC annual reports

Year	AM	FM	TV	Total	Total transfers		Percent	
					Granted	Received	Granted	Received
1961	3,757	1,092	650	5,499	881	1,064	16.0	19.4
1960	3,581	912	653	5,146	938	1,102	18.2	21.4
1959	3,500	769	667	4,936	1,008	1,130	20.4	22.9
1958	3,353	634	665	4,652	841	959	18.1	20.6
1957	3,238	560	651	4,449	834	887	18.7	19.9
1956	3,020	546	609	4,175	702	780	16.8	18.7
1955	2,840	552	582	3,974	697	753	17.5	18.9
1954	2,697	569	573	3,839	673	733	17.5	19.1
1953	2,584	601	483	3,668	¹ 605	576	16.5	15.7
1952	2,420	648	108	3,176	¹ 605	611	19.1	19.2

¹ Disposed.

CONCURRING STATEMENT OF COMMISSIONER ROBERT T. BARTLEY

I concur in the adoption of this rule, since it may lessen attempts to traffic in broadcast authorizations.

However, in my opinion, the rule does not go to the core of the problem.

As pointed out in my statement on the notice of proposed rule-making in this proceeding, I would prefer a rule which looks, not to how *long* the authorization has been held, but how *well* the new user of the authorization would serve the public interest.

Assignments and transfers are not undesirable per se. New licensees may reshape the purpose and image of a station so that it is turned from a marginal to a meritorious operation. On the other hand, of course, they may turn it from a meritorious to a marginal or submarginal operation.

Thus, the Commission's basic consideration in each sale is whether use of the frequency by the new licensee will result in an improvement or a degradation of service to the public.

Pursuant to section 310(b) of the Communications Act, the Commission may grant its consent to requests for assignments and transfers only if it finds affirmatively that the public interest would be served by the assignment or transfer *itself*. Therefore, the basic consideration is not whether the Commission should approve a bargain entered into for the convenience or profit of the parties thereto, but, rather, whether the sale itself would benefit the public. If the sale will not effectuate improvement, how does it benefit the public?

Accordingly, I favor the adoption of a rule which would require a finding in all requests for voluntary assignments and transfers (except pro forma cases) that the transaction could be expected to result in an improved broadcast structure; and that the Commission may grant its consent, without hearing, if the assignee or transferee meets the burden of establishing such expectation by an affirmative showing that the assignment or transfer would result in improvement among the following public-interest areas: (a) licensee responsibility, (b) integration of ownership and management, (c) local residence, (d) diversification of control of mass media, (e) fostering competition among broadcast stations, (f) participation in community affairs,

(*g*) direct supervision of the station, (*h*) public-service responsibility, (*i*) and a continuing awareness of and attention to the needs of the area to be served. Thus, if the showing is meritorious and the applicant is qualified in all other respects, consent could be granted without a hearing. Otherwise, the application would be designated for hearing to determine on the basis of issues then obtaining whether consent to the assignment or transfer would be consistent with the public interest, convenience, and necessity.

CONCURRING STATEMENT OF COMMISSIONER CROSS

I concur in the need for a rule designed to curb the large number of transfers of stations which have been held by their owners for less than one 3-year license period. In my view, such a rule is needed to correct abuses in this field. However, I would have preferred to place the limitation on the buyer; i.e., let the seller sell to any qualified buyer, provided said buyer had not bought or sold a station within 3 years.

Moreover, I would have preferred specific exemption from the 3-year rule for certain types of partnership reformations where no new principals are brought into the entity. I realize that under this rule such transfers may be approved without hearing under the clause in section 1.365 (a) (3) providing for such disposition when the transfers and assignments are due "to other changed circumstances affecting the licensee or permittee occurring subsequent to the acquisition of the license or permit, * * *." Nevertheless, I would have preferred specific exemption to the rule, where, for example, there is an equal partnership in which A, B, and C are partners, and A wishes to dispose of his partnership interest to B and C. In my view, absent other valid reasons for a hearing, an application for Commission consent to such a transfer should be granted without hearing.

32 F.C.C.

ELEVEN TEN BROADCASTING CORP., DOCKETS Nos. 13622 AND 13623 :

Applications of Eleven Ten Broadcasting Corp. for renewal of license of standard broadcast station KRLA (and Aux.) at Pasadena, Calif., and for license to cover construction permit; denied.

Program proposals.—Licensee's good faith weighed in light of operations since station acquisition.

Promotions and contests.—Manner conducted.

Log alterations.—Considered.

Licensee responsibility.—Discussed.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON 25, D.C.

In re Applications of ELEVEN TEN BROADCASTING CORP., PASADENA, CALIF. For Renewal of License of Standard Broadcast Station KRLA (and Aux.) For License To Cover Construction Per- mit (BP-11700)	}	Docket No. 13622 File No. BR-1189 Docket No. 13623 File No. BL-7701
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APPEARANCES

Messrs. Thomas N. Dowd, William S. Green (Pierson, Ball & Dowd), and *Peter Campbell Brown* (Manning, Hollinger & Shea), for the applicant; and *Messrs. Robert J. Rawson, Thomas B. Fitzpatrick, and Lewis I. Cohen*, for the Chief, Broadcast Bureau, Federal Communications Commission.

DECISION

(Adopted March 15, 1962)

**BY THE COMMISSION: COMMISSIONER CROSS CONCURRING AND ISSUING
A STATEMENT.**

1. Eleven Ten Broadcasting Corp. seeks renewal of license of standard broadcast station KRLA (and Aux.), Pasadena, Calif., and a license to cover its construction permit authorizing 50 kw power. The applications were designated for hearing to determine (a) whether, in light of its operations since it acquired station KRLA, the licensee's assignment application program proposals were made in good faith; (b) whether the licensee operated KRLA contrary to the public interest in light of the manner in which the "Find Perry Allen" contest was conducted; (c) whether the station's program logs were altered to deceive the Commission; (d) whether, since the assignment, Jack Cooke, an alien, has exercised control with respect to KRLA's operations contrary to section 310 of the Communications Act of 1934, as amended, and the rules and regulations promulgated thereunder; and (e) whether in light of the evidence adduced pursuant to the foregoing issues, a grant of Eleven Ten's applications would serve the public interest, convenience, or necessity.

2. The initial decision of Hearing Examiners James D. Cunningham and Herbert Sharfman (FCC 61D-53), released April 21, 1961, would grant both of Eleven Ten's applications, but with renewal for a period of 1 year. Exceptions to the initial decision were filed by Eleven Ten and the Commission's Broadcast Bureau. The rulings on these exceptions are set forth in the appendix hereto. Eleven Ten disagrees with several of the examiner's findings, but acquiesces in the grant of the short-term renewal; the Bureau urges denial of both applications. The Commission heard oral argument on January 18, 1962; participating in oral argument were counsel for applicant and the Bureau. Subsequent to oral argument, Eleven Ten, on February 27, 1962, filed a petition to reopen the record.

3. The examiner's findings have been considered in light of the exceptions filed, and they are adopted except as indicated herein and in our rulings on the exceptions.

4. It is not necessary to restate in detail the hearing examiners' findings of fact. It is clearly established that two contests conducted by station KRLA—the Perry Allen contest and the Golden Key contest—were fraudulent in the sense that various clues which were broadcast over station KRLA were deceptive, and knowingly so.¹ Eleven Ten concedes that the conduct of these contests constitute "errors of judgment," but urges as a mitigating factor that the contests took place during "the frantic first days of a new operation." It further argues that there is no evidence that any listener was misled or deceived, and that prizes in both contests were paid to the winner. No effort, however, is made by Eleven Ten to equate the chicanery involved in these contests with responsible station operation, and, in our judgment, no such effort could successfully be made.

5. It is likewise well established in the hearing examiners' findings that KRLA program logs were altered improperly to reflect the broadcasting of short religious programs which, in fact, were not broadcast.² We agree with the hearing examiners' conclusion³ that the only possible purpose of the alteration was to deceive the Commission. The examiners also found, however, that Donald Cooke (the principal owner of Eleven Ten and its president) did not become aware of the log alterations until he received notice thereof from the Commission. Eleven Ten contends that such unawareness, together with the fact that there is no showing that Donald Cooke was careless in employing the personnel who were responsible for the alterations, precludes imputation to it of this intent to deceive the Commission.

6. The same contention might, of course, be advanced to absolve Eleven Ten of responsibility for the chicanery practiced in the Perry Allen and Golden Key contests since the examiners' findings indicate that Donald Cooke was unaware of it and did not authorize it, and that among the persons he left in charge of these contests was his brother Jack—a seasoned broadcaster from Canada. Inherent in such contention, however, is the view that a licensee who delegates to persons it deems responsible, authority to operate and manage a station

¹ See findings of the initial decision, pars. 36-52.

² See findings of the initial decision, pars. 99-103.

³ See conclusions of the initial decision, par. 8.

cannot be held responsible for their activities if it is unaware of them. This is, of course, a completely untenable view. Retention of effective control by a licensee of the station's management and operation is a fundamental obligation of the licensee, and a licensee's lack of familiarity with station operation and management may reflect an indifference tantamount to lack of control. See *Mile High Stations, Inc. (KIMN)*, 20 R.R. 345 (1960).

7. That Donald Cooke did not, at least prior to November of 1959,⁴ manifest an effective sense of responsibility for station operation and management is clear from the findings. Thus, Donald Cooke visited Los Angeles from April 29 through May 5, 1959, and again from August 12 through August 21, 1959. He left Los Angeles on August 21 despite the fact that only 2 days before he advised his brother Jack that station KRLA "was a mess." Though by correspondence and telephone Donald Cooke maintained contact with station operation and management, its actual operation and control were variously left in the hands of his brother Jack and several station employees. Under these circumstances, the chicanery practiced in the two contests within 2 weeks after Donald Cooke left and the log alterations which were made 2 months after Donald Cooke left, cannot be dismissed as incidents which could occur even in the best-managed operations as a result of the defection of a trusted employee. On the contrary, they are apt illustrations of what may be expected when the licensee does not maintain effective control and delegates control in fact to others. Only by holding a licensee responsible for the operation and management of a station, and only by insistence that the reins be held by the licensee, can there be any reasonable assurance of responsible station operation and management.

8. Though Donald Cooke was apparently unaware of the log alterations, it is clear from the examiners' findings concerning KRLA's programing that Donald Cooke not only countenanced but also suggested ways in which changes might be made in KRLA's programing and yet be made to appear as conforming with the programing proposals made at the time of transfer and in the renewal application. The only restraint on him in this regard was the inhibiting fear that he might "run afoul" of the Commission or that the changes would not "pass muster" with the Commission. Thus, in an office memorandum of October 2, 1959,⁵ Donald Cooke stated that he regretted that a farm report had been proposed for each newscast. In rejecting a suggestion that farm market reports be incorporated in the form of "tips to housewives," Donald Cooke in that same memorandum stated that he could not see how it would "help KRLA conform to its proposed broadcast schedule." His alternative suggestion was to include a 30-second farm market report on certain specific newscasts, but not on all newscasts; this, he thought, "would fill the bill." He advised a member of his staff to give serious attention to this problem, because he was "not anxious to run afoul of the FCC." As indicated in paragraphs 68 and 70 of the findings of the initial decision, the response of Schulz, the station manager, to this memorandum of Octo-

⁴The Perry Allen and Golden Key contests were conducted early in September of 1959. The log alterations were made in the latter part of October of 1959.

⁵This memorandum is quoted in full in par. 67 of the findings of the initial decision.

ber 2, 1959, was that a 40-second market roundup would be broadcast twice a day; that there would be broadcast two 2-minute "featurettes" a day, directed to housewives, explaining the "best buy" in produce; and this programing, it was stated, would fulfill KRLA's obligations to broadcast agricultural programs. Heiman, the station's production director, responded to Donald Cooke's memorandum of October 2, 1959, by stating that KRLA was "incorporating 30 seconds of a morning newscast to a Farm Fair * * * of interest mainly to the consumer rather than the farmer." Donald Cooke was apparently satisfied with these responses. It is clear that Donald Cooke, Heiman, and Schulz had a common understanding that agricultural programs were, at best, a necessary evil; that ways and means were to be devised to cut back such programs to a bare minimum without running "afoul of the FCC"; and that programs designed principally for the consumer could be represented as agricultural programs.

9. In the assignment application, Eleven Ten stated that it planned to schedule each night at 10:40 p.m., Monday through Saturday, a program which would broadcast information concerning civic activities. In the memorandum of October 2, 1959, referred to above, Donald Cooke wondered whether "a public announcement in this [i.e., 10:45 to 11 p.m.] period without any commercial announcements * * * designates the entire 15 minutes as public service. If this is so, are both of you fellows [Heiman and Schulz] satisfied that we should not have to put a 15-minute talk in?" Schulz responded by stating that KRLA would insert one single-minute public service spot announcement in a sustaining quarter hour; the remaining 14 minutes would consist of playing the "Top Forty" tunes; and KRLA would log the entire 15 minutes as public service programing. Schulz stated that "we do not have to fill the entire 15 minutes with gab." Apparently Donald Cooke acquiesced in these suggestions by Schulz, notwithstanding the fact that they included a deliberate plan to misrepresent the true character of the program which was to be broadcast.

10. On December 16, 1959, the Commission directed a 309(b) letter to Eleven Ten stating, in part, that station KRLA was apparently not operated in conformity with the program proposals made by Eleven Ten in connection with the approval of the assignment application. Following receipt of this letter, Donald Cooke instructed his staff to initiate programs which had been proposed at the time the assignment application was considered, but which had never been presented; these instructions were given so that Donald Cooke could include, in his response to the 309(b) letter, "a fulfillment of the promises" originally made by Eleven Ten.⁶ On January 13, 1960, Eleven Ten requested an extension until February 15, 1960, to reply to the 309(b) letter because, among other reasons, Donald Cooke desired to "* * * personally verify the information which will be submitted in response to the Commission's inquiry which he cannot do without spending an extended period in California."⁷

⁶ See par. 75 of the findings of the initial decision.

⁷ See par. 77 of the findings of the initial decision.

11. On February 15, 1960, Donald Cooke, in response to the 309 (b) letter, submitted program information “* * * which reflects the manner in which this station is carrying out its original representations made to the Commission at the time it requested approval of the assignment.”⁸ This information was submitted in the form of an amendment to the renewal application, and there was also submitted an analysis of the week of January 31, 1960, to February 6, 1960, prepared by Heiman. Donald Cooke was in Los Angeles this entire week, having arrived on January 22, 1960, and remaining until February 10, 1960. As indicated in the findings⁹ of the initial decision, numerous misrepresentations are contained in these amendments. Thus, it was stated that a policy was initiated in October of 1959 to present at 5:55 a.m. and 1:55 p.m. (formerly at 11:55 a.m.) 4½ minutes of newscasts “devoted to farm news”; in contrast to this statement, Schulz on October 5, 1959, advised Donald Cooke that there would be broadcast a “40-second market roundup in the 5:55 a.m. and 11:55 a.m. newscasts.” It was also stated in the amendment that 30 seconds of agricultural news will be broadcast in every newscast, and that this policy has been fulfilled since January 8, 1960, although it “was not strictly adhered to prior to that date.” Though the implication of this quotation is that even prior to January 8, 1960, it was the general practice to broadcast farm news in each newscast, such representation is in direct conflict with Donald Cooke’s memorandum of October 2, 1959 (see par. 8 above), that farm news on two newscasts a day would be sufficient; it is in conflict with Heiman’s statement of October 4, 1959, that the “farm” news to be broadcast was of interest mainly to the consumer; and it is also in conflict with Heiman’s written statement of October 26, 1959, to Donald Cooke that agricultural news would be broadcast twice a day. In the February 15, 1960, amendment, Eleven Ten included under the category of agriculture a program listed as “Best Buy of the Day”; Heiman subsequently admitted that the program could not properly be classified as agricultural. The February 15, 1960, amendment also classified as agricultural a Monday morning program called “KRLA Farm Roundup.” It was represented that it first appeared on January 11, 1960, and that it includes transcribed agricultural information consisting of comment by certain named agricultural experts. Perry Allen, the diskjockey who was on duty every Monday morning from 5 to 6 a.m. when this program was carried, testified that he did not recall having broadcast any of the transcriptions.

12. Each of these misstatements appeared in the February 15, 1960, amendments, notwithstanding the fact that, as has been indicated, an extension of time for responding to the 309 (b) letter was granted at Donald Cooke’s request so that he could “personally verify the information” to be submitted. In April of 1960, nearly 2 months after the February 15 amendments were submitted, Heiman proposed certain changes in the Sunday programming. In his response of April 12, 1960, Donald Cooke stated, in part, as follows:

⁸ See par. 80 of the findings of the initial decision.

⁹ See pars. 81–86 of the findings of the initial decision.

Just to confirm my feelings about the Sunday religious and public service programing, before doing anything, the following points should be answered in the affirmative:

1. Tommy Dowd [Eleven Ten's Counsel] should be consulted and should approve the move.

2. No move should be made until about a month after the FCC has approved KRLA's request for its license renewal.

At that time, undoubtedly, we will be able to drop some of the present programing, but we will only do so with the full approval of Pierson, Ball & Dowd, of course.

In explanation of this letter, Donald Cooke stated that he expected the license to be renewed before April 12, 1960, but that—

The reason for the letter itself was we were coming into the summer months, and the schools, the public schools, the high schools, and the colleges would no longer be in session, which would make it extremely difficult for us, if not impossible, to continue such shows as "California," "Topic Youth," and "Seminar."

13. In its brief, Eleven Ten argues that its failure to effectuate its program proposals during the initial period of its operation is not a basis for refusing to renew its license. In this connection, it cites a number of Commission decisions to the effect that latitude must be afforded licensees in the early phases of operation. It also argues that it never abandoned its program proposals, and that the failure to carry out its program proposals does not necessarily imply that its program proposals were not made in good faith.

14. The ultimate question posed by the hearing issues is whether a renewal of Eleven Ten's license is in the public interest. In view of the evidence adduced pursuant to the hearing issues, the conclusion is inescapable that responsible management was not characteristic of Eleven Ten's operation of station KRLA. In its early stages, Donald Cooke failed to maintain effective control of the station's operation and delegated actual control to his brother Jack and to station employees, and during that period the Perry Allen and Golden Key contests were conducted and the station's logs were altered. While, as we have indicated, even in the best-managed operation isolated instances of such practices could occur, this provides no defense to Donald Cooke's failure to assume effective control over the station's operation; so far as Donald Cooke is concerned, it is purely fortuitous that there were not many more instances of deception. After Donald Cooke assumed a greater interest in the details of station operation, he demonstrated a willingness to connive with station employees in various schemes to hoodwink the Commission into believing that KRLA's programing conformed with its program proposals. A similar effort to mislead the Commission as to KRLA's past programing was made in Eleven Ten's response to the Commission's 309(b) letter—a response which was submitted following the granting of Eleven Ten's request for additional time for filing a response so that Donald Cooke could "personally verify" its contents. Nearly 2 months after the response was filed, Donald Cooke indicated a willingness to drop certain programs proposed in the amended renewal application—but in no event until after the renewal application was granted. This record of neglect, on the one hand, and of efforts to mislead the Commission, on the other hand, disqualifies Eleven Ten from being a licensee of

the Commission, and its applications will, therefore, be denied. A willingness to deceive a regulatory body, even as to matters unimportant in themselves, warrants denial of a renewal application. *Federal Communications Commission v. WOKO, Inc.*, 329 U.S. 223 (1939).

15. On February 27, 1962, Eleven Ten filed a petition to reopen the record. The examiners were of the view that a 1-year period of surveillance was essential to determine whether Eleven Ten can be relied upon to provide a meritorious service on a permanent basis. Eleven Ten points out that more than 1 year has elapsed since the hearing record was closed. It requests an opportunity to show that its programming in the last year has been meritorious, and it alleges that it has made extensive efforts to ascertain and meet the needs of the community it proposes to serve.

16. There may be cases in which it would be appropriate to reopen the record for the reasons advanced by Eleven Ten. This is not one of those cases. The efforts to distort the true character of KRLA's programming were not limited to the period prior to the time that the Commission called KRLA's attention to the fact that its programming was not in accord with its program proposals. KRLA made similar efforts in its response to the Commission's inquiry. Less than 2 months after its renewal application was amended, Donald Cooke indicated his willingness to drop certain of the proposed programs—but not until after the license had been renewed. In its petition, Eleven Ten is, in effect, asking for one more chance. We find no mitigating circumstances which would warrant a grant of its request. It was disposed to deceit in advance of any Commission inquiry; it was disposed to deceit at the time of the Commission inquiry; it was disposed to deceit in the programming it would present after renewal of its license. In view of this continued pattern of deception, a meritorious programming fare, which may have been presented while the disposition of its renewal application was still in doubt, does not provide any assurance that such deception would not subsequently be resumed. Under the circumstances, no useful purpose would be served by reopening the record to adduce evidence as to Eleven Ten's programming since the record was closed. See *Federal Communications Commission v. WOKO, Inc.*, *supra*.

Accordingly, *It is ordered*, This 15th day of March 1962, that the petition to reopen the record, filed February 27, 1962, by Eleven Ten Broadcasting Corp. *Is denied*;

It is further ordered, That the above-captioned applications of Eleven Ten Broadcasting Corp. *Are denied*; and

It is further ordered, That in order to enable Eleven Ten Broadcasting Corp. to wind up its affairs, *It is authorized to operate* station KRLA until April 16, 1962.

APPENDIX

RULINGS ON EXCEPTIONS TO THE INITIAL DECISION

Exceptions of Eleven Ten Broadcasting Corp.

<i>Exception No.</i>	<i>Ruling</i>
1, 9, 55-----	Denied, as being of no decisional significance.
2-----	Granted, and par. 5 of the findings is corrected to show that the total consideration was \$900,000 plus the costs not to exceed \$115,000 involved in the construction of the 50-kw facilities.
3-----	Granted in substance, and footnote 3 and par. 5 of the findings are completed with the finding that the facts therein are complete and appeared in the assignment application.
4, 16-----	Denied. The requested findings were, in essence, made by the examiner. (See par. 22 of findings.)
5-----	Denied, as immaterial.
6-----	Granted in part and denied in part. Par. 10 of the findings is completed, with the additional finding that Donald has been interested in purchasing a radio station for years but because of financial considerations was unable to do so. The remainder of the requested findings are denied as cumulative in nature.
7-----	Denied. The requested findings are either cumulative or irrelevant.
8-----	Granted. The record does not support an inference that the price formula for the purchase of the station was developed by the Cooke's counsel.
10-----	Granted in part and denied in part. Par. 14 is modified to reflect that Donald testified under oath that he intended to carry out the public service programs proposed in the schedule. The remainder of the requested findings were either made or are too vague. (See par. 62 of the findings.)
11-----	Denied. The requested findings are conclusionary.
12-----	Granted, and par. 16, sentence 6, is modified to show that the testimony was under oath.
13-----	Denied. The requested finding is conclusionary.
14-----	Denied. See pars. 24 and 26 of the findings.
15-----	Granted in substance; and par. 17 of the findings is modified to show that Donald also discussed policies and operational problems with Loyal King who stayed on at KRLA as general manager, and that Donald corresponded with King and issued various instructions to him throughout his tenure as general manager. (However, see ruling on Eleven Ten exception 31 and others considered therewith.)
17-----	Granted in part and denied in part. Par. 18 is modified to show that Donald set out to hire a new program director and that he had knowledge of the station WKY operation at Oklahoma City, and sought out Bill Wheatley, its program director. The remainder of the requested findings are of no decisional significance. (However, see ruling on Eleven Ten exception 31 and others considered therewith.)
18-----	Granted in part and denied in part. Par. 18 is modified to the extent of showing that Donald hired Wheatley and subsequently informed Jack to that effect. The remainder of the requested findings are cumulative in nature. (However, see ruling on Eleven Ten exception 31 and others considered therewith.)
19-----	Denied. There is no evidence of any such discussion. The remainder of the exception is denied because the examiner's findings are adequate.

<i>Exception No.</i>	<i>Ruling</i>
20-----	Denied. The requested finding is not relevant at this point. (However, see ruling on Eleven Ten exception No. 28.)
21, 37-----	Denied. The examiner's findings are adequate and not misleading.
22-----	Granted, and the term "however" in par. 19, sentence 3, of the findings is deleted.
23, 24-----	Granted in part and denied in part. Par. 19 is modified to show that (a) Donald was informed that Wheatley had excellent experience in the area of modern radio operation and seemed to be especially suitable for Donald's objective in the programing of KRLA; and (b) Wheatley understood Donald's objective for KRLA and saw nothing inconsistent between a "Top Forty" operation and talk and cultural programing.
25, 26, 27-----	Granted in substance, and par. 20 of the findings is modified to show that (a) without consulting Jack, Donald contacted several persons as possible station managers; (b) Donald hired Schulz after having met him, notwithstanding Jack's reservations as to Schulz's suitability; and (c) Donald immediately corresponded with Schulz and sent him the program schedule and policy submitted to the FCC, and that he stated that the program schedule will be "* * * similar to that which we submitted to the FCC. It will be closely related to the one submitted to the FCC, but it cannot be identical." (However, see ruling on Eleven Ten exception 31 and others considered therewith.)
28-----	Granted in substance, and par. 21 is completed with the additional findings that prior to the time Wheatley took over as program director, Donald sent him the program schedule and preamble submitted to the FCC with the transfer application and that Donald pointed out that, while there might be some minor changes from the schedule submitted to the Commission, the actual program service would be "similar" and "closely related" to that proposal. The same information was made available to Schulz. (However, see ruling on Eleven Ten exception 31 and others considered therewith.)
29-----	Granted in substance, and par. 22 is modified to show that the policy concerning spot announcements pertained only to the transition period; that when Eleven Ten took over KRLA, the station's income was largely from commercial religion and remotes from area nightclubs; and that the new management's initial efforts were devoted to selection of a staff and creation of a proper physical setup. The remainder of the requested findings are cumulative.
30-----	Granted in part and denied in part. Par. 23 of the findings is modified to reflect that within a week after his arrival, Wheatley canceled commercial religious programs and programs emanating from nightclubs, such cancellations being in accord with the transfer application. The remainder of the requested findings are cumulative.
31, 32, 33, 56, 66, 69, 70, 81, 82, 87, 91, 98, 99, 100, 101, 107, 131.	Granted, and the additional requested findings are made. These findings indicate the extent to which Donald Cooke participated in and maintained contact with station operation and management, and they are recognized collectively in par. 7 of the decision. However, taken as a whole, these facts do not evidence a degree of participation sufficient to alter our conclusion in par. 14 that Donald Cooke did not exercise <i>effective</i> control over station operations.
34-----	Denied, as cumulative.

<i>Exception No.</i>	<i>Ruling</i>
35-----	Granted, and par. 24 of the findings is modified to reflect that in connection with their work in sales reports, Dobson knew that Jack was relaying Donald's wishes. (However, see ruling on Eleven Ten exception 31 and others considered therewith.)
36-----	Granted, and the repetitious findings are deleted.
38-----	Granted, and the word "reports" in the sentence in par. 24 of the findings beginning "In these visits * * *" is deleted.
39-----	Granted, and par. 24 is completed with the additional requested findings.
40-----	Granted in part and denied in part. Footnote 11 of the findings is completed with only the factual recitations contained in app. A attached to Eleven Ten's exceptions. However, see ruling on Eleven Ten exception 31 and others ruled on therewith. The remainder of the requested findings are conclusionary.
41-----	Denied. The requested finding is conclusionary.
42-----	Denied. The finding accurately states that he approved the purchase—and not the jingles themselves—before he heard them.
43-----	Granted in part and denied in part. Par. 25 of the findings is modified to reflect that Donald was present at the Los Angeles recording session and that after having heard part of the jingles, he told Wheatley that he hoped that the others were better; that Jack claims to have heard and disapproved of some jingles other than the Dallas jingles during his July 9-23 visit; and that Wheatley, however, claims that Jack's disapproval was directed at the Dallas jingles and was expressed before Aug. 20, but after the Aug. 17 recording session. (However, see ruling on Eleven Ten exception 31 and others considered therewith.)
44-----	Denied. Although Donald was in Pasadena after the closing of the transfer, the record does not disclose a studio visit during that time.
45-----	Denied. Failure to make the requested finding does not support a reverse inference.
46, 47, 49, 51-----	Granted, and the findings are completed with the additional requested findings. (However, see ruling on Eleven Ten exception 31 and others considered therewith.)
48-----	Granted in part and denied in part. Par. 28 is completed with the additional finding that Donald had decided over Jack's objection to fire the announcers, while Schulz suggested that some be fired and some retained. The remainder of the requested findings are denied. (See ruling on Bureau exception No. 1. Also see ruling on Eleven Ten exception 31 and others considered therewith.)
50-----	Denied. Wheatley's testimony is not inconsistent.
52-----	Denied. The quotation marks do not characterize the evidence.
53, 103-----	Denied. The examiner's findings are adequate.
54-----	Denied. The requested finding is conclusionary.
57-----	Denied, as irrelevant.
58-----	Denied. The specific issue on the Perry Allen contest was designed to adduce evidence to aid in determining whether Eleven Ten operated KRLA for improper purposes. Evidence concerning any other questionable contest conducted by KRLA is material for the same reason.
59-----	Granted, and par. 36 is modified to reflect that the Golden Key contest was conceived by Jack and others. Also, the title preceding par. 35 is deleted.

<i>Exception No.</i>	<i>Ruling</i>
60-----	Granted in part and denied in part. Par. 39 is completed with the additional findings that the clues were ambiguous and could have applied to any location in Los Angeles. The remainder of the requested findings are either cumulative or unsupported by the record.
61, 62-----	Granted in substance, and pars. 39 and 41 are completed with the additional finding that (a) Wheatley knew the location of the Key when the clues were worth \$40,000; (b) Wheatley testified that the clues were definite enough at the value of \$20,000—8 a.m., Monday, Sept. 7, 1959, the day the Key was found—for someone to have determined the Key's location; and (c) the clues written by Wheatley while he was unaware of the Key's whereabouts were most ambiguous and were, therefore, applicable, but only in the sense that the Key could have been anywhere.
63-----	Granted, and par. 41 is completed with the finding that Donald approved of the allocation of \$50,000 for the contest.
64-----	Denied. The circumstances under which Jack signed the check are irrelevant.
65-----	Denied. The origin of the \$200 check is irrelevant.
67-----	Denied. The requested findings are conclusionary.
68-----	Denied. The requested findings are conclusionary.
71, 73, 78-----	Granted. However, these findings, while they supply further detail about the circumstances in which the Perry Allen contest was held, do not disturb the Commission's conclusions concerning the conduct of the contest.
72-----	Denied. The examiner's finding is accurate and not misleading. Further, no adverse inference is drawn from the use of the term "Top Forty."
74, 76, 85-----	Denied. The examiner's findings are adequate.
75-----	Denied, as immaterial.
77-----	Denied, as immaterial.
79-----	Denied. Referenced expression does not appear in cited paragraph of the findings.
80-----	Granted in part and denied in part. The requested findings are made except for that finding which states there is no doubt that KRLA intended to pay the winner of the contest since the record does not support a finding that the station intended to pay the full amount of the prize originally offered.
83, 122-----	Granted. See par. 4 of the decision.
84-----	Denied. Failure to make the requested finding does not support a contrary inference.
86-----	Denied. However, the last sentence of par. 59 of the findings is modified by substituting "testified under oath" for "however, insists."
88-----	Denied. The challenged finding is not misleading. Also see par. 80 of the findings.
89-----	Denied. The challenged finding is accurate, and the requested finding was made by the examiner. (See par. 23 of the findings.)
90-----	Granted in part and denied in part. The challenged finding is adequate and not misleading. The requested finding has been made. (See ruling on Eleven Ten's exception 28.)
92-----	Granted in part and denied in part. All the requested findings are made except for those in the second and third statements, such statements being opinion testimony only.
93-----	Granted in part and denied in part. The last sentence is not supported by the record.

<i>Exception No.</i>	<i>Ruling</i>
94	Granted to the extent of finding that in addition to the basic ingredient of music, Eleven Ten exhibit 2 also refers to religious, agricultural, educational, and community service programing.
95	Granted, and par. 66 of the findings is clarified as requested by the exception.
96	Denied. Denied in part as inconsistent with exceptions 94 and 95, both of which were granted.
97	Denied. The findings are accurate and not misleading.
102	Granted in substance, and the word "However" in the last sentence is deleted.
104, 105	Granted in substance, except for part (a) of exception 105. (See par. 101 of the findings.)
106	Denied. The findings are adequate and do not conflict with the ruling on Eleven Ten's exception 105. The requested findings are also partly cumulative and partly irrelevant.
108	Denied. However, par. 77 of the findings is modified to include the whole text of the Jan. 13, 1960, letter.
109, 113, 124	Granted, and the requested corrections are made.
110	Denied. The matter excepted to was included as part of exhibit B to par. 7 of section IV of the amendment to the application. Official notice of this amendment was taken. Tr. 1015.
111	Denied. However, "approximately" is inserted after "initiated" in par. 82 of the findings.
112	Denied. The examiner's findings in par. 82 note the contrast between the statement quoted in par. 81 of the findings and the letter referred to in par. 82 of the findings.
114	Denied, as immaterial.
115	Denied. "Public service" programs and "agricultural programs" have been used as terms of art throughout the proceeding.
116, 117	Denied. The challenged findings are accurate.
118	Denied, as of no decisional significance.
119	Denied, as lacking specificity.
120	Denied. However, the challenged sentence is modified to show that what was meant was that Donald's explanation would explain only the discontinuance of the program "Seminar."
121	Denied. The letter indicates that Perry Allen was not required to be in Los Angeles during part of the time of the Perry Allen contest; however, the quotation marks are deleted.
123	Granted, and footnote 35 of the findings is deleted.
125	Denied. The examiner's findings are adequate and not misleading.
126, 127	Denied. The finding is accurate, and exception 126 is argumentative.
128	Denied. The challenged finding is adequate.
129	Granted, and par. 100 of the findings is corrected to reflect that Donald does not remember specifically whether he questioned Heiman, but that he remembers questioning Schulz thoroughly.
130	Denied. The requested finding was made.
132	Denied, as immaterial.
133	Granted in part and denied in part. The first portion of the first requested finding is denied since there is no reference to Heiman's statement as an affidavit. The final portion of that requested finding is denied as immaterial. The remainder of the requested findings are made. (However, see pars. 6 and 7 of the decision.)
134	Granted, and footnote 39 is completed with the requested finding. (However, see pars. 6 and 7 of the decision.)

<i>Exception No.</i>	<i>Ruling</i>
135-----	Granted in substance, and par. 54 of the findings is completed with the finding that any of Wheatley's testimony concerning Jack's possible exercise of control over KRLA is based upon his surmises and opinions.

Exceptions of the Broadcast Bureau

<i>Exception No.</i>	<i>Ruling</i>
1-----	Denied. However, par. 28 of the findings is completed with the additional finding that Jack directed the search for new diskjockeys. (See Eleven Ten exhibit 13.)
2-----	Denied, as of no decisional significance.
3-----	Granted, and the phrase "nothing but" is inserted after the word "broadcasting" in line 2, par. 37, of the findings.
4-----	Denied. The record does not support the requested finding.
5-----	Denied, for failure to cite specific record references in support. (See sec. 1.154 of the rules.)
6-----	Denied. However, par. 79 of the findings is completed with the additional finding that Fry recognized Schulz's signature and notarized the affidavit at Donald's request.
7-----	Denied. The examiner's findings are adequate.
8-----	Granted. (See ruling on Eleven Ten's exception 129.)
9, 10, 11, 12, 14-----	Denied, as unnecessary to final result reached.
13-----	Granted, to the extent reflected in the decision.
15-----	Granted, to the extent reflected in the decision.
16-----	Granted, as reflected in the decision.

CONCURRING STATEMENT OF COMMISSIONER CROSS

In my opinion, the evidence clearly establishes that Jack Kent Cooke, while still a Canadian citizen, did exercise effective control of station KRLA from August 21 to September 14, 1959. Accordingly, I disagree with the majority to the extent they failed to so find. This was a violation of section 310 of the Communications Act and of the Commission's rules. Moreover, it was done despite prior assurances to the Commission by the applicant, Donald Cooke, made at the time the Commission was considering the transfer of KRLA to Donald Cooke, that his wealthy brother Jack could not participate in the ownership of KRLA either directly or indirectly so long as he was a Canadian citizen. Furthermore, it was during the period while Jack Cooke was exercising control of KRLA that the two rigged promotional prize contests (Golden Key and Find Perry Allen) were conducted by KRLA.

The unanswered question in my mind is: was this unlawful control by Jack Cooke a willful violation, or was it (as claimed by the applicant) the result of unforeseen and deteriorating economic circumstances that motivated the protective instinct of one brother for the other—a characteristic as old as man. All through the record of this case there are illustrations of the older and richer brother, Jack, helping his poorer kid brother, Donald. It was Jack who had the broadcasting experience and it was Jack who put up most of the purchase money (over \$500,000) for buying KRLA. Donald mortgaged practically everything he owned to get \$110,000 toward the KRLA purchase and, even so, \$100,000 of this was borrowed from a bank with wealthy brother Jack guaranteeing the loan. The Commission was aware of these financial arrangements at the time it approved the transfer of KRLA to Donald Cooke.

While I cannot condone or excuse the unlawful or reprehensible operations of KRLA under Jack Cooke's stewardship during the period noted above, I would be inclined to accept the applicant's explanation and temper justice with mercy under the circumstances if these were the only violations involved. However, there also were other violations; i.e., the falsified logs and the failure of the applicant to carry out his program proposals.

The admitted log alterations are explained by the applicant as having been done in his absence and without his knowledge or consent. Moreover, the applicant claims that he, as well as the Commission, was lied to and deceived by his trusted employee in this matter. As regards the failure to carry out his program proposals, the applicant testified that he intended to carry out those proposals, but financial losses and operational inadequacies prevented him from doing so.

In my view, all of these things added together indicate a pattern of operation by KRLA that was based primarily on expediency and had little or no regard for the law or the Commission's rules. Although a short-term license, plus an admonition to "Go, and sin no more," might be indicated for some of the violations, the aggregate pattern makes it impossible for me to make the public-interest finding necessary to grant the license renewal. I therefore concur with the majority; i.e., I would reverse the examiner and not renew the license.

32 F.C.C.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON 25, D.C.

<p>In re Applications of ELEVEN TEN BROADCASTING CORP., PASADENA, CALIF. For Renewal of License of Standard Broadcast Station KRLA (and Aux.) For License To Cover Construction Per- mit (BP-11,700)</p>	}	<p>Docket No. 13622 File No. BR-1189</p> <p>Docket No. 13623 File No. BL-7701</p>
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APPEARANCES

Messrs. Thomas N. Dowd, William S. Green (Pierson, Ball & Dowd), and *Peter Campbell Brown* (Manning, Holinger & Shea), for the applicant; and *Messrs. Robert J. Rawson, Thomas B. Fitzpatrick, and Lewis I. Cohen*, for the Commission's Broadcast Bureau.

INITIAL DECISION OF HEARING EXAMINERS JAMES D. CUNNINGHAM
AND HERBERT SHARFMAN

(Adopted April 20, 1961)

PRELIMINARY STATEMENT

1. The applications of Eleven Ten Broadcasting Corp. for renewal of license of standard broadcast station KRLA, Pasadena, Calif., and for license to cover construction permit, were designated for hearing by order released July 5, 1960, upon the following issues:

1. To determine whether, in light of its operations since it acquired station KRLA, the licensee's program proposals contained in its application for Commission consent to assignment of the license of station KRLA (then KXLA) (BAPL-171) were made in good faith;

2. To determine whether, in light of the manner in which the Find Perry Allen contest was conducted by station KRLA in and about September 1959, the licensee operated said station for improper purposes contrary to the public interest;

3. To determine whether the station's program logs for the week of October 18-24, 1959, were altered with the intent and purpose of deceiving the Commission.

4. To determine whether, since the date of assignment of license of station KRLA (formerly KXLA) to the licensee, Jack K. Cooke, a Canadian citizen, has exercised control with respect to the operations of said station contrary to the provisions of section 310 of the Communications Act of 1934, as amended, the Commission's rules and policies promulgated thereunder;

5. To determine, in light of the evidence adduced pursuant to the foregoing issues, whether a grant of the above-entitled applications would serve the public interest, convenience, or necessity.

2. Prehearing conferences were held on October 3 and October 28, 1960. The hearing began in Los Angeles, Calif., on October 31, 1960, and continued through November 9, 1960. A final hearing session was held in Washington on December 22, 1960, when the record was closed. Proposed findings of fact and conclusions were filed by applicant and the Broadcast Bureau on March 13, 1961. At the conference of October 28, 1960, counsel consented to the presiding hearing examiner's association with another hearing examiner of the Commission in the preparation of the initial decision.

FINDINGS OF FACT

3. On October 22, 1958, there was filed with the Commission an application to assign the license of station KRLA,¹ Pasadena, Calif., from Pacific Coast Broadcasting Co. (Pacific) to Eleven Ten Broadcasting Corp. (Eleven Ten).² Donald Cooke (Don), a U.S. citizen, was and is the sole stockholder of Eleven Ten. Under the original terms of this assignment application, Eleven Ten was to acquire only the license of KRLA, and a company named Broadcast Equipment Corp. (Broadcast Equipment) was to acquire all of the physical assets of KRLA.³ Broadcast Equipment was and is owned by Donald Cooke's brother, Jack Kent Cooke (Jack), who was a citizen of Canada at the time of this hearing.⁴ Broadcast Equipment was committed to purchase from Pacific all of the latter's physical equipment, land, and transmitter site leaseholds for \$553,680, plus an amount equal to any cost expended by Pacific for the construction of its newly authorized 50-kw facilities up to the time of the purchase, and to assume and perform all contracts of Pacific for such construction.⁵ Broadcast Equipment was required at its own cost to install any and all equipment and facilities necessary to enable KRLA to operate with its new facilities. By agreement, Broadcast Equipment was to lease these physical facilities to Eleven Ten for a period of 10 years at a rental of \$50,000 a year.

4. Broadcast Equipment held an option, good until November 21, 1965, to purchase all the stock of Eleven Ten for \$250,000. Its option was to be exercised by Broadcast Equipment or its assignee only when it or its assignee possessed the necessary qualifications to be a licensee of a broadcast station. The option expressly provided that until the

¹ On Aug. 31, 1959, the call letters of KXLA were changed to KRLA. Throughout, the station will be referred to as KRLA.

² All of the assignment application and associated material was incorporated by reference by ruling of the hearing examiner.

³ By a purchase agreement of Oct. 10, 1958, between Don and Pacific, Don was given an option to acquire all of the assets of Pacific. Don then assigned his rights in the agreement to Eleven Ten. Subsequently, Eleven Ten notified Pacific it elected to exercise the option and that it had assigned to Broadcast Equipment the right to acquire the physical property, land, and transmitter leasehold of Pacific.

⁴ Jack Kent Cooke is the beneficiary of Private Law 86-486, 86th Cong., H.R. 8156, approved Sept. 14, 1960, providing that he should "be held and considered to have been lawfully admitted to the United States for permanent residence on September 28, 1953 * * *." A Canadian citizen at the time of the hearing, he there testified to his intention to become an American citizen "in a matter of weeks." He has very extensive Canadian business interests. Jack had also been interested in investing in broadcast property in the United States, but was advised by his attorneys he could not own an American radio station because of his Canadian citizenship. He owns 100 percent of the stock of CKEY, Toronto, and for 11 years has been consultant to CKOY, Ottawa. He is not shown now to be an American citizen.

⁵ On Nov. 12, 1958, a construction permit was issued to Pacific authorizing KRLA to increase power from 10 to 50 kw, daytime. Official notice is taken of this action.

purchase of the stock or the transfer of the license, "Broadcast Equipment, its assignee, employees, and agents shall not directly or indirectly control, supervise, direct, or attempt to control, supervise, or direct the operation of radio station KXLA."

5. The total consideration to be paid to Pacific was \$900,000. Broadcast Equipment paid Pacific \$553,680 for certain physical assets, leaving a balance of \$346,319 to be paid by Eleven Ten for assets which would include \$246,319 in cash derived from the sale of securities owned by Pacific. This \$246,319 was to be applied to reduce the sum paid by Eleven Ten to \$100,000, which was the amount already deposited by Eleven Ten in escrow against the purchase price. Don's source of funds was as follows: He was to pay \$10,000 for the stock of Eleven Ten from money acquired by him in the ordinary course of his business. Eleven Ten, with the individual guarantee of Don, obtained a loan of \$100,000 from the Chase Manhattan Bank. The Royal Bank of Canada offered to purchase the note of Eleven Ten at any time Chase Manhattan wished to sell it. Chase Manhattan was to call upon the Royal Bank of Canada to purchase the note of Eleven Ten. Jack orally agreed to hold the Royal Bank harmless, thereby precluding any possibility of a default judgment being entered against Eleven Ten.⁶

6. On January 28, 1959, the Commission addressed a section 309(b) letter to Don and Pacific, raising the question whether the real party in interest in the assignment was Jack, since substantially all the money needed to finance the purchase was to be furnished directly or indirectly by Jack. It also questioned "* * * whether the public interest is served by a grant of a license to one who has committed himself prior to such grant to a transfer of control of the licensee."

7. To justify a grant of the assignment application as originally filed, Don submitted a letter on February 14, 1959, in which he stated, among other things:

In order that our answers may be considered in their proper perspective, it appears desirable at the outset to briefly review the general background of the proposed acquisition of KXLA as set forth in our application. Donald R. Cooke, an American citizen, became interested in acquiring radio station KXLA, Pasadena, Calif. This station was available for purchase at a cash price of approximately \$900,000. Since a cash purchase price of this amount was beyond Donald's own personal financial resources, he discussed the matter with his brother, Jack Kent Cooke, a Canadian citizen, and a person of considerable financial means. The two brothers recognized from the outset that Jack as a Canadian citizen could not own, control, or participate to any significant extent as an equity owner in an American broadcast station because of the restrictions upon alien ownership and control as set forth in section 310 of the Communications Act. However, Jack was willing to render financial assistance to his brother if a way could be found to do so, which, on the one hand, would be prudent from a business viewpoint and, on the other hand, would satisfy all requirements of the Federal Communications Act * * *.

In addition, Don stated:

* * * it was recognized that Jack could not participate in the ownership or control of KXLA, either directly or indirectly, so long as he was a Canadian citizen * * *.

⁶ Jack had previously helped out his brother financially in the organization of Don's firm, Donald Cooke, Inc. (See below.)

8. On March 16, 1959, the assignment application was amended to eliminate the option held by Broadcast Equipment.⁷ For this concession, Eleven Ten agreed to an increase in the rent to be paid to Broadcast Equipment from \$50,000 to \$90,000 a year, and Jack was released from the indirect guarantee of the \$100,000 loan that Don had made with the Chase Manhattan Bank. Eleven Ten then arranged to borrow \$100,000 from Empire Trust Co. which was used to pay off the loan from Chase Manhattan. This loan was personally guaranteed by Don. Eleven Ten executed a promissory note for the \$100,000. Don pledged as collateral everything he owned, including all the shares he owns in Donald Cooke, Inc., all the issued and outstanding common stock of Eleven Ten, and his home and car.⁸

9. Jack did not advance all of the funds to acquire the station on advice of counsel, who decided that Don should contribute the balance [\$110,000]. Don understood that he should make this contribution because “* * * if I were to control the station, I would have to have a certain valuation * * * involved in the transaction itself.” He testified, however, that he “had always intended to put up money for my part of the transaction.” There was no provision in the assignment application committing Broadcast Equipment to loan funds to Eleven Ten. In the assignment application, Don represented:

Mr. Cooke [Don] has made and will continue to make frequent visits to California, and, while he will maintain his principal office in the city of New York, he will spend at least one-fourth of his time at Pasadena in the active operation of station KXLA. Mr. Cooke will employ a competent full-time station manager, and Mr. Cooke anticipates that one-fourth of his own time will enable him to provide through KRLA a program service which will meet the needs of the listeners within its service area. If additional time at the station appears needed or desirable, he will spend more time there.

10. Jack first became interested in securing an investment in U.S. broadcast properties some time in 1950 and conferred with counsel. He was advised that since he was an alien, he was ineligible to be a licensee. For this reason he then dropped the matter. In the early part of 1958, he again discussed with the same counsel the possibilities of investing in a broadcast station in the United States. He was advised that this could be done by a leasing arrangement with an eligible licensee. The general formula of not paying more than 10 times the earnings of a radio station was accepted as the standard for the purchase price. This formula was the only ceiling or limitation on the money to be invested.

11. In September 1958, after considerable study of the field, including consideration of Philadelphia, St. Louis, Louisville, and Miami, Jack first considered buying station KRLA, Pasadena, Calif. He had been told by friends and business acquaintances that KRLA, a 10-kw station, with an application pending for 50 kw, might be for sale. Before September 1958, Jack had not known that the station was for sale. About September 6, 1958, he was introduced in Los Angeles to

⁷ The option was eliminated to avoid a hearing on the assignment application and the delay which would result. Don felt that the purchase agreement with Pacific might lapse before Commission action was forthcoming.

⁸ Donald Cooke, Inc., is a radio representation firm of which Jack and Don are each 50 percent shareholders.

Loyal King, the principal shareholder, president, and general manager of Pacific, licensee of KRLA. Beginning early in September 1958, he had many meetings with King until about September 20, in which they negotiated for the sale of KRLA. Jack had informed King at the outset of the negotiation that he was a Canadian, and King was told of the plan advanced by Jack's counsel; that is, Jack's acquisition of the physical assets and Don's acquisition of the license. By the time Jack left Los Angeles about September 20, 1958, he and King had agreed upon a price for the purchase of KRLA. All that remained was the drafting of the contract of sale.

12. Don was first told that KRLA might be for sale in the first week of September 1958, when Jack called from Los Angeles to tell him he had been talking to King. Jack informed Don of KRLA's frequency, power, and the pendency of the 50-kw application. The negotiations were concluded and the purchase price agreed to by Jack without having examined the books of the station licensee. Don was committed to a purchase price by Jack without having any actual firsthand knowledge of the financial condition of the station.⁹ The important thing, Jack informed Don, was that the application for 50 kw was pending. Jack then met with Don in New York on September 21 and again described the purchase. Subsequently, in the latter part of September 1958, Don, Jack, and counsel met often to discuss the contract to purchase.¹⁰

13. On October 10, 1958, a purchase agreement between Pacific and Don was signed by Don in New York City. (This purchase agreement is part of the associated material in the assignment application which was incorporated by reference in this proceeding.) Section 5, paragraph (c), of the agreement stated that Don had examined and knows the condition of the premises covered by the agreement. Don, however, had signed the purchase agreement without ever having seen the premises. In fact, Don's first visit to Pasadena was after the consummation of the assignment on May 1, 1959.

14. As a part of the assignment application, there was attached a proposed program schedule and policy statement, which, according to the application, had been prepared under Don's supervision. The record reflects that Don, Jack, and counsel prepared this material. Counsel guided Jack and Don in the preparation of the proposed program schedule and policy statement. The program schedule was "fairly well" patterned after that of station CKEY, Toronto, Canada, which is owned by Jack. Don recommended no specific program incorporated in the schedule.

15. The following findings relate, among other things, to Jack's activities in connection with the operation of KRLA after the Commission consented to the assignment application on March 25, 1959.

16. Eleven Ten assumed operation of KRLA on May 1, 1959. Jack arrived in Los Angeles on April 30 and remained through May 13. He

⁹ Jack testified that he told Don the financial operating records of the station " * * * would be of no great moment in the operation because it was a country and western music radio station."

¹⁰ Jack testified that after completing the negotiations with King, he stepped out of the picture; for he stated that after Sept. 20 " * * * Mr. Dowd and Donald pretty well took over the arrangements that were necessary" to complete the purchase.

attended the closing on May 1. King was asked by Don to remain as general manager of KRLA and he continued in that position until July 3. During this period Jack saw King about "three, four, five times." These visits, he testified, were primarily social, although King told Jack how work was progressing on the 50-kw construction permit. Jack visited the studios of KRLA some three times during the period April 30 through May 13, and also visited the transmitter site.

17. Don arrived in Los Angeles about April 28 and remained until about May 5. He spoke to and met Loyal King for the first time on about April 30 or May 1, 1959. (May 1 was the day of the consummation of the assignment.) Don authorized King to sign checks on behalf of Eleven Ten, and during May he instructed him with regard to various matters relating to the operation of KRLA.

18. William J. Wheatley came to New York on May 15, 1959, at Don's suggestion, to be interviewed for the position of program director of KRLA. Wheatley first met Don at Don's office for about 15 minutes. Then both of them went to meet Jack, and for about 2 or 3 hours Wheatley and Jack discussed radio programming in general terms in Don's presence. Virtually all of Wheatley's discussions of programming while he was in New York were with Jack. He spent many hours talking about programming with Jack, who described to Wheatley the types of radio service available in Los Angeles. They discussed how KRLA should be programmed. Wheatley and Jack compared the programming of station WKY, Oklahoma City, Okla., where Wheatley was then employed, with Jack's station, CKEY, Toronto, Canada.

19. While in New York neither Jack nor Don discussed with Wheatley educational, religious, or any other type of "public service" programming. Wheatley did not recall having been shown the assignment application that had been filed with the Commission, or its programming representations. Don, however, testified that he hired Wheatley partly because he was impressed with Wheatley's past experience in putting on religious sustaining, educational, talk, discussion, and agricultural programming. Don wanted Jack's opinion of Wheatley, and Jack told him that Wheatley had excellent experience with popular music programming. Wheatley was hired as program director of KRLA.

20. Edwin V. Schulz came to New York on May 16, 1959, at Don's suggestion, to be interviewed for the job of general manager of KRLA. Don spoke to Schulz and then he introduced Schulz to Jack. Don wanted Jack to appraise the abilities of Schulz because of Jack's greater experience in operating a radio station (Don's experience had been mostly in sales). Schulz was offered the job of general manager during this visit. He reported at KRLA about July 15, 1959.

21. Wheatley reported to KRLA on July 1, 1959. Pursuant to instructions from Don, he was to assume general supervision of the station for 2 weeks pending the arrival of Schulz, the new general manager. It was within the scope of his authority as program director to hire new personnel to carry out the programming of the

station, and he was to have complete charge of all programing. Wheatley performed these duties until about August 20, 1959.

22. From May 1 until KRLA received authority to begin program tests with its 50-kw operation, the programing of the station was to continue as it had under previous ownership, with country and western music. It was hoped that the permission to operate with 50 kw would be received by August 1 and that simultaneously with operation with increased power the programing format would change to "Top Forty"—music and news. In addition, the same policy with respect to noncommercial spot announcements was followed. This policy was "very casual," and consisted of scheduling "a certain number of noncommercial spots throughout the day based upon current needs."

23. Shortly after Wheatley arrived, he canceled commercially sponsored religious programs or originations from nightclubs, because they were not considered to be acceptable under the new "Top Forty" format. Wheatley advised the churches concerned that "in the near future, KRLA will institute a roundrobin of broadcasts from the various churches, costs which will be borne by KRLA." Before this Don had specified that contracts for current commercial religious programs would not be renewed because of the new "Top Forty" schedule which was to begin September 1, 1959.

24. Jack arrived back in Los Angeles on July 6, 1959, and remained until July 23, 1959. During this period Jack worked with Schulz and Wheatley on a budget for KRLA. They met daily for about 4 days to establish how much it was going to cost on a month-to-month basis to operate the station, and to set revenue goals for the sales department to meet operating expenses. In these discussions, decisions were arrived at mutually. Jack worked with them and a third person (whose name is not disclosed in the record) on setting up forms to be used in the internal affairs of the station. In addition, he worked with Schulz on organizing the sales department of KRLA, and Dobson, the accountant, on setting up sales reports. During Jack's July 6-23 visit, he and Dobson met to discuss the preparation of budgets for KRLA for the remainder of 1959 and for part of 1960. Dobson prepared many budgets pursuant to Jack's instructions. He also received instructions from Schulz with regard to these budgets, but not from Wheatley. Jack did not inform Dobson that he was imparting these instructions at Don's request. In a letter by Don to Schulz dated July 29, 1959, Don wrote that he had seen copies of the working papers Jack used to describe to Dobson the method of preparing the budget and weekly sales reports for KRLA. Neil Watt, the accountant for Jack's station CKEY, Toronto, furnished many of the working papers and methods of accounting now being used on KRLA. In July 1959, for about 1 week, Jack was at the station for a couple of hours in the morning and sometimes later again in the afternoon, and he had desk space at KRLA's studio. In these visits he discussed with Dobson the setting up of budgets, reports, and financial reports of KRLA. Financial and budget reports prepared by Dobson were mailed to Jack after he had left Los Angeles at his direction. Also at Jack's direction, Dobson sent a profit-and-loss statement to Jack in

Toronto, as well as to Don. During this period in July, Jack also directed Dobson to change the method of reporting depreciation on financial statements. Jack asked Dobson to handle the bookkeeping of his company, Broadcast Equipment, an operation he described as "minuscule" because it consisted only of the posting of the rental checks. Dobson set up the books for Broadcast Equipment. The address of Broadcast Equipment is KRLA's studio in Pasadena. Its ledgers and books of original entries are kept at the station's studio and are now maintained by Donald Fry, the present accountant for Eleven Ten. From the time the assignment application was approved, until February 9, 1960, various employees of Eleven Ten were authorized to sign checks on behalf of Broadcast Equipment. Dobson and Fry performed all these functions as part of their regular duties as employees of Eleven Ten. When Fry was employed, Schulz directed him to maintain the records of Broadcast Equipment.¹¹

25. Wheatley mailed Don a tape recording of promotional jingles (the Dallas Jingles) recorded for station WKY, Oklahoma City, Okla. Don approved the purchase of these jingles, the only limitation being his indecision as to whether they should be purchased for cash or on a barter basis. Thereafter, these same jingles were recorded in Los Angeles for KRLA and bought by Wheatley on behalf of Eleven Ten for \$2,000 cash and a dollar value of spot announcement time on KRLA (variously estimated as from \$12,000 to \$20,000), which the producers of the jingles could sell for cash. The jingles were never broadcast over KRLA because Jack did not consider them to be suitable for use on the air.

26. Don, as already indicated, arrived back in Los Angeles on August 12 and remained until August 21, 1959. Most of his time was spent in the Hollywood sales office organizing the sales department. He visited the studios of KRLA on August 20 for the first time. He saw Wheatley twice prior to August 20, once on August 12 at an advertising agency and on August 17 when the jingles described above were recorded. On August 18, 1959, Wheatley, in a memorandum to the staff of KRLA, declared that there would be a presentation or "dry run" on August 20 for Jack and Don, among others. Jack arrived back in Los Angeles on August 19. He came to Los Angeles, he testified, "to help him with any of the problems that are almost, inevitably attendant on the opening of a station; to lend [Don] assistance, guidance, sympathy, comfort, and to enjoy the opening promotion of the KRLA campaign * * *." Jack testified that upon his arrival, Don informed him that "* * * [KRLA] was a mess."¹²

¹¹ There was considerable record evidence of written reports and instructions between Don, Schulz, and other employees in 1959 and 1960. In addition to these communications between Los Angeles and New York, Don visited Los Angeles on the following occasions: Apr. 29 through May 4, 1959; Aug. 12 through Aug. 21, 1959; Nov. 9 through Nov. 20, 1958; Jan. 22 through Feb. 10, 1960; Mar. 14 through Mar. 18, 1960; and June 6 through June 30, 1960.

¹² The Broadcast Bureau questions the credibility of this testimony on the ground Don was not then sufficiently informed of KRLA's operations to make an authoritative statement of its condition, as since Aug. 12 he had spent most of his time in the KRLA sales department and did not visit the studios until Aug. 20, the day of the dry run. Obviously, it is impossible to hold, however, that Jack's testimony is incredible merely because Don may have overestimated the extent of his knowledge of KRLA. In any event, the "mess" referred to was not explained in the record; it may, indeed, have related to Don's knowledge of the sales department.

27. On August 20, 1959, the dry run as scheduled was held at the studios at KRLA. Its purpose was to present, on the air, personnel hired by Wheatley. Each diskjockey Wheatley had hired did a simulated 30-minute program while Jack took notes. Don testified that he had asked Jack to note his comments as to the announcers, the pace, how fast the operation should be, and the general running of a "Top Forty"-type station, since he felt that Jack's past knowledge and experience made him better equipped for the purpose than he was. Jack was "shocked" by Wheatley's choice of diskjockeys and he so informed Don. During the dry run, Jack made many remarks to Wheatley such as "This man has no business being a diskjockey," "This man should never have been hired," "What were you thinking about when you hired this man," and "This man has got to go." Don testified, however, that during the dry run Jack stated that he considered a diskjockey named Frank Pollack to be unsatisfactory, but that Don disagreed and Pollack's employment was not terminated at that time. Wheatley testified that he was present throughout the dry run and recalled "overhearing" no such conversation.¹³

28. That evening, Jack, Wheatley, Schulz, and Don met at the Hollywood sales office. Jack repeated to Wheatley in substance the same remarks he had made earlier that day. Audition tapes of diskjockey applicants who had not been hired by Wheatley were listened to and analyzed by the group. Wheatley testified that Jack determined which applicants should be contacted as possible diskjockeys for KRLA.¹⁴ It was decided that Don, Wheatley, and Schulz would contact the likely prospects.

29. Don left Los Angeles for New York the next day, August 21, 1959, because of "personal and business reasons." He asked Jack to take over the duties of program director.

30. After Don left on August 21, 1959, Jack, at a meeting on August 23, advised the staff that Wheatley was still program director and that they were to take their orders from Wheatley. Thereafter, Wheatley¹⁵ reported to Jack and not to Schulz, the general manager. Subsequent to August 20, Jack actively participated in the organization of the staff and gave instructions to on-the-air personnel.

31. Jack also worked with the sales department, and with the accounting department establishing reporting procedures for sales reports and projected revenues for KRLA. In addition, he worked on setting up bookkeeping procedures. These were all duties which Wheatley had never performed as program director. Prior to September 14, Jack visited the McCann-Erickson Advertising Agency, the manager of Western Airlines, and two other advertising

¹³ The Broadcast Bureau's proposed findings are so couched as apparently to suggest a finding that because of the alleged discrepancy between Wheatley's and Don's testimony, Don's must be discredited. It must be noted, however, that Wheatley's testimony was in the form of "negative evidence"—he did not "overhear." He was not directly asked whether Don and Jack had disagreed about Pollack. Consequently, the impeaching power of Wheatley's testimony here would be insufficient to discredit Don's.

¹⁴ Jack testified that it was determined " * * * by the group mutually" which applicants would be contacted.

¹⁵ Wheatley, about Aug. 21 or 22, tried to resign as program director, but Schulz told him he would have to tender his resignation to Don, who had hired him. He tendered his resignation to Jack, who refused to accept it for the same reason. Finally, he was allowed to resign by Don, who required him to execute a covenant not to compete in the market. The resignation was effective Sept. 11, 1959.

agencies whose names he does not recall, for the purpose of trying to sell advertising time for KRLA. Jack saw an account executive for McCann-Erickson two times to urge him to buy time for Coca-Cola on KRLA. Subsequently, Jack spoke to this account executive over the telephone and Jack was told that the Coca-Cola account would not come to KRLA.

32. Jack also met with Schulz and the Eiseman-Johns Advertising Agency to plan a promotional contest for KRLA. The promotion was to use newspaper advertising to promote a \$25,000 contest based on identifying the pictures of KRLA's diskjockeys.

33. During the period August 21 to September 15, 1959, while Don was in New York, he received no *written* communications from Jack, although he discussed the progress of the programing, the problems inherited from Wheatley, and the promotions and contests KRLA would be sponsoring with Jack on the telephone.

34. The August 23, 1959, meeting mentioned above was attended by Jack, Wheatley, Schulz, and all of the diskjockeys and newsmen. Schulz opened the meeting, made a few remarks, and then turned it over to Jack. The diskjockeys wanted to know whether they were still employed. Jack assured them that their contracts would be honored. One diskjockey wanted a written contract. Jack told him that he did not need one, but if he wanted a written contract, the diskjockey could have it.

35. *Contests conceived by Jack.*—As noted above, it was hoped that permission to operate with 50-kw power would be received by August 1, and that simultaneously with operation at the increased power, the programing format of KRLA would change from country and western to "Top Forty" music and news. Jack told Wheatley that the target date had been changed to September 1.¹⁶ On August 28, 1959, the Commission denied the station's request for program test authorization. Therefore, a new target date of September 2, 1959, was set for the "Top Forty" format. On August 31, 1959, the station received permission for program test authorization and at 6 a.m., September 3, 1959, the regular programing of the new "Top Forty" format began.

36. During this period of uncertainty as to when KRLA would receive program test authorization, Jack conceived the idea of a contest as a "sustaining action" pending receipt of the authorization. The contest would relieve the embarrassment of KRLA in failing to operate at 50 kw at an earlier date. Jack's idea revolved around a Golden Key which would theoretically unlock the new transmitter for KRLA's 50-kw operation. Wheatley was told by Jack that a key would be hidden, that KRLA would broadcast clues to its location, and that when the key was found, a money prize would be awarded. At the beginning of the contest, the prize was to be \$50,000; as the clues got easier, the prize was to be reduced (each clue was assigned a prize value). The minimum prize was to be \$2,000, but Jack later determined that \$5,000 would be the minimum. The contest began on August 30, 1959, and ended on September 7, 1959.

¹⁶ Technical problems compelled the change.

37. Beginning at midnight September 1, 1959, on a 24-hour basis until 6 a.m., September 3, KRLA continuously broadcast contest clues. The logs of KRLA reflect that this programing which is listed as "Talk" consisted solely of clues to the location of the Golden Key, with the exception that twice during each quarter hour the clues were interrupted at approximately 4- or 5-minute intervals by a telephone contest in which names of Los Angeles residents were picked from the telephone book at random and they were asked to call the station within a stipulated time in order to win a money prize; and (2) by another telephone prize contest "Don't Say Hello, Say KRLA." Each of these subsidiary contests was broadcast for approximately 1 minute.

38. At 6 a.m., September 3, 1959, KRLA's program logs reflect it began broadcasting its regular popular music programing format. This programing consisted of a diskjockey show which had included within each one-quarter hour two contest promotions. One of the contests, as described above, involved calling names at random from Los Angeles telephone books. The other was the Golden Key contest. The program logs show this programing continued at least through September 4, 1959.

39. The clues to the Golden Key contest were written at Jack's direction by Wheatley and a friend of Jack's named "Frank Loy." Jack buried the key initially on August 29, 1959, but he did not tell Wheatley where the key was hidden. Wheatley thereafter wrote, without any knowledge of the hiding place, at least 20 contest clues which were broadcast over KRLA. He submitted these clues to Jack before their broadcast. Jack testified that "it's the closest thing to being impossible" that the key could have been found from listening to Wheatley's clues broadcast from August 30 to September 3.

40. The key was not found where it had been hidden on August 29, 1959. Jack's friend, Frank Loy, on September 3, 1959, hid the key at the Marineland resort, and it was not until September 4 or 5 that Loy, at Jack's direction, told Wheatley where the key was buried. The original clues, written by Wheatley when he had no knowledge of where the key was hidden, were broadcast over KRLA until the morning of September 7.

41. After Wheatley was told that the key had been hidden at Marineland, but before September 7, Jack told Wheatley that the key had to be found on September 7. Jack wanted the key found then because it was Labor Day and thousands of people would be at Marineland, a popular recreation spot. Jack directed Wheatley to write clues so leading that it would be obvious where the key was hidden. After receiving these instructions, Wheatley devised clues which were broadcast on KRLA for the first time on the morning of September 7, 1959. He wrote the clues from information supplied to him by Loy at the time he was told of the hiding place. They definitely pointed to the key's location. At about 2:30 p.m. on September 7, Jack told Wheatley that although Jack had originally determined that the prize was to decrease to \$2,000, he had decided (as above indicated) that when \$5,000 was reached the prize would go no lower. Mrs. Patricia Beers, a KRLA listener, found the key on September 7, 1959, and she re-

ceived the \$5,000 at the studios to the accompaniment of promotional pictures.

42. Although Jack had no authority to sign checks on behalf of Eleven Ten, he cosigned two such checks. He cosigned the \$5,000 check dated September 7, 1959, awarded to the finder of the Golden Key contest, and a \$200 check dated September 12, 1959. Jack could not recall the purpose of the \$200 check, which was payable to cash. Both checks were cosigned by Edwin V. Schulz, general manager. Don testified that he never authorized Jack to sign checks on behalf of Eleven Ten. The voucher copy of the \$5,000 and \$200 checks which Jack signed on behalf of Eleven Ten have had Jack's signature erased from the vouchers, but both Don and Jack testified that neither one had ordered these erasures, and their origin is a mystery in this record.

43. *Perry Allen contest.*—The tape of another diskjockey, Perry Allen, who was then employed by station WKBW, Buffalo, N.Y., was heard by Don on the evening of August 20, 1959, and also by Jack then or a few days later.¹⁷ Allen, to get a job at KRLA, had sent a tape of his voice to Wheatley some time before August 20, 1959. Wheatley telegraphed Allen that his tape indicated he would be unsuitable for KRLA, his delivery being "too frantic." During the last week of August, Jack called Allen in Buffalo and offered him the job of diskjockey during the 6 to 9 a.m. period.¹⁸ Jack told Allen that he would be needed for the kickoff of KRLA's "Top Forty" format. Allen stated that he would try to be at KRLA for the kickoff, but that he was under a contract to WKBW, which called for a notice of termination. Allen could not accept employment until he spoke to the management of WKBW about his existing contract. Jack told Allen to call him after he had spoken to the management of the station.

44. Following Allen's conversation with Jack, he spoke to the WKBW management, who contended that the station could not release him from his contract until it found a replacement. Allen then called Jack and told him of WKBW's position. Jack told Allen to try to find a replacement, and offered to reimburse Allen for any liability he might incur in leaving Buffalo without WKBW's consent.

45. Allen, at Jack's suggestion, spoke to a lawyer in Buffalo who advised him that the contract he had with WKBW was binding; and when Allen again asked WKBW for an early release, the licensee of WKBW threatened to institute injunction proceedings against Allen if he left without his permission. On or about August 30, Allen's wife told Jack that Allen could not be in Los Angeles for the kickoff and Jack asked her the earliest date he could arrive in Los Angeles. She then estimated a date 2 weeks ahead, that is, September 12, 1959, when Allen could leave WKBW with the permission of the management. Later that day Jack called Allen and told him

¹⁷ Don had already heard Perry Allen over WKBW.

¹⁸ Jack testified that he told Allen that "Donald had tried to reach him, that he had been unable to, that I was acting in Donald's behalf at KRLA, that the new tape was in [a Perry Allen tape other than the 'too frantic' tape mentioned above], and that we would like to have him join the staff of KXLA in the very important, if not the most important time slot in any radio station, the 6 to 9 a.m. period."

that they had a definite agreement that Allen would come to Los Angeles September 12, 1959, and that since Allen could not be at KRLA for the kickoff of the new format, it would be necessary to have a promotional contest centering around him.

46. The next day, August 31, Jack called Allen in Buffalo to give him instructions regarding the promotional contest he had mentioned to Allen the previous day. Allen first outlined a contest idea which Jack rejected immediately over the telephone.¹⁹ Jack then described to Allen the "Find Perry Allen contest." Listeners were invited to walk up to a person and ask, "Are you Perry Allen, the latest member of KRLA, Eleven Ten." Clues would be broadcast each day. The first person to locate Perry Allen would get the prize. The prize would start at \$10,000, and each day it would be decreased by \$1,000 until Allen reached Los Angeles, when the prize would have decreased to \$1,000 and the clues would be very easy. Jack told Allen to prepare tapes to be sent to KRLA which were designed in Jack's own words to—

* * * get everyone, if it were possible, in Los Angeles accosting every little man in Los Angeles with the statement, KRLA, Eleven Ten.

47. Jack asked Allen if he had any particular characteristics that would be noticeable in a crowd. Allen told him that he was short, that he wore a bow tie frequently, and a gray suit. Jack directed Allen to tape 12 announcements per day for 10 days with something like the following example:

Look for the guy in the bow tie * * * in the Los Angeles restaurant, and if you walk up to the right person and ask [the correct] question * * * you'll win the money.²⁰

From Jack's instructions, Allen wrote a "fact sheet" which he read back to Jack to make sure he had the instructions correct regarding the contents of the tapes, and from this fact sheet, Allen recorded the tapes which he mailed to KRLA. A day or two later Jack telephoned Allen to tell him the content of the tapes was fine, but that they were too long, and he asked Allen to shorten them. Allen did so. Jack then arranged for the tapes to be broadcast over KRLA.

48. Jack called a meeting of the KRLA staff before the first broadcast of Allen's tapes; the Allen contest was discussed. Don Cole, a KRLA diskjockey during the period under discussion,²¹ at a staff meeting testified that he informed Jack that he objected to the form of the contest because Allen was not in Los Angeles, and that he told Jack that if anybody discovered Allen was not in Los Angeles, "we would be in trouble." In substance, he testified, Jack replied, "Don't you worry about it; I'll take care of it."²² Jack told the diskjockeys

¹⁹ The idea involved a contest which would require the listener to guess the distance Allen would travel each day *en route* to California, identify his hotel, and so on. Jack rejected the contest idea as impracticable because Allen "would have to come by some strange means of transportation in order to take 2 weeks to get from Buffalo to Los Angeles.

²⁰ Jack testified "he can't honestly" say whether he directed Allen in the tapes to "* * * announce that he was to be searched or looked for in Los Angeles, in Los Angeles restaurants, or at the ball park," but "[he] may have."

²¹ Cole left KRLA on Oct. 4, 1960, having "refused to sign a contract for another year of employment with KRLA, another year of employment, because of this pending hearing * * *."

²² Jack, however, testified he did not recall that anyone objected to the Perry Allen contest because it was known Allen was in Buffalo.

the hours they would be broadcasting, how many of the "Top Forty" records would be used in the programing, and he explained the Perry Allen contest. One of the diskjockeys, Frank Pollack, during the meeting told Jack that Purcell and Blore of station KFWB, Los Angeles, knew where Allen was, though Pollack didn't say where. Jack replied that no one knew where Allen was except himself [Jack] and a few others.²³

49. Jack directed the diskjockeys to broadcast extemporaneous live announcement "tags" to Allen's tapes. Jack was asked the question: "Did you advise the announcers who handled the Perry Allen show for the first 2 days that they were to *ad lib* along with the tape and instruct them to say:

"Go out into the streets of Los Angeles, look in restaurants or in ball parks for Perry Allen' and to generally give the impression that Perry Allen was located in Los Angeles."

Jack answered this question: "I suppose I did."

50. On the morning of September 3, Cecil (Hal) Goodwin, then a diskjockey employed by Eleven Ten (his employment was terminated on September 11, 1959), broadcast over KRLA some of the tapes Allen had recorded. In addition, as directed by Jack, he amplified these tapes by saying in substance, "Go out on the streets * * *" and look for Allen.

51. On the morning of September 4, Don Cole (at "Jack's suggestion or appeal") broadcast over KRLA some of the tapes Allen had recorded. Jack heard the tapes broadcast "which led [him] to believe that Perry Allen might be in Los Angeles."

52. Allen was "found" on September 4 (the second day of the contest) in Buffalo by two employees of the corporate licensee of KFWB, Los Angeles.²⁴ After extended negotiations, about October 26, 1959, \$10,000 was paid to Purcell (one of the finders) on behalf of station KFWB, as the prize for finding Allen.

53. In connection with the Perry Allen contest, KRLA ran two other promotions from September 3 to September 12, 1959. A prize was awarded to the listener who guessed the exact time Allen spoke his first words over KRLA. The second promotion was one that KRLA arranged for Allen's arrival at the Los Angeles airport (on September 12). Allen was directed to sell dollar bills there for 50 cents; while he was selling them, other station personnel were doing the same thing.

54. Jack left KRLA on September 14, 1959, but returned on September 21, 1959, for about an hour, to introduce Herbert Heiman to the staff of KRLA. Jack had hired Heiman as production director, or manager, after discussion with Don. Jack left Los Angeles on September 21, 1959, and did not return until a few days before

²³ Jack, however, testified he did not recall a member of the staff's saying that Purcell and Blore, of station KFWB, knew of Allen's whereabouts.

²⁴ After being tapped in Buffalo, Allen put in a call for Wheatley in Los Angeles but could not reach him, and then called Jack Cooke, who invited the winners to come to Los Angeles so that the promotional value of the contest could be exploited (one of the winners told Jack he was from a St. Paul radio station).

November 2, 1960 (just before the present hearing on the renewal of KRLA's license).²⁵

55. *Loans from Broadcast Equipment to Eleven Ten.*—Some time during August 1959, Don told Jack that KRLA needed more money. Jack agreed that Broadcast Equipment would lend \$50,000 to Eleven Ten. He agreed to make the loan since he already had a large investment in Broadcast Equipment and he felt it necessary to protect that investment. Also, he wanted to help Don. Don had mortgaged everything he owned to form Eleven Ten and did not have the additional funds needed for the operation of KRLA; and he could not borrow money from any source other than Jack. It later became necessary for Jack to lend additional money to Don. These later loans were required because “* * * Don had reached a point really of no return. It was almost essential to continue to help him.”

56. As of September 30, 1960, Eleven Ten owed Broadcast Equipment \$375,000 on the principal of the money lent to Eleven Ten, and \$13,429 in interest on the loans. The loans were unsecured and are evidenced by demand notes at 5½ percent interest. At least one of these notes, that of October 22, 1959, was prepared by Schulz at Don's direction. The rent due under the lease between Eleven Ten and Broadcast Equipment up to September 30, 1960 (17 months from the assignment on May 1, 1959), was \$127,500. Of this amount, Eleven Ten has only paid \$4,167 to Broadcast Equipment. The remainder of the rent, totaling \$123,333, was still owing on that date. The grand total of money owed by Eleven Ten to Broadcast Equipment as of September 30, 1960, is \$511,762. As noted above, Eleven Ten has borrowed \$100,000 from Empire Trust on a loan which Don personally guaranteed. As of September 30, 1960, Eleven Ten had paid \$50,000 on the principal and \$5,972 interest (5 percent) on this note. Part of the funds borrowed by Eleven Ten from Broadcast Equipment were used to make all the payments on the principal and interest due on this loan.

57. *Relationship of Eleven Ten and Broadcast Equipment under lease agreement.*—The lease agreement states:

Eleven Ten is fully aware of the conditions of the leased premises. Broadcast Equipment makes no warranty or representation, either express or implied, as to the fitness, design, or condition of, or as to the quality of the material, equipment, or workmanship in the leased premises, except that Broadcast Equipment does warrant that it will at its own cost and expense install any and all equipment and facilities necessary to enable [Eleven Ten] to operate with a power of 50 kilowatts in accordance with its authority from the Federal Communications Commission.

There is no provision in the lease for any increase in rent because of additional expenditures by Broadcast Equipment.

58. Broadcast Equipment has purchased and depreciates studio equipment for KRLA valued at \$4,492. Eleven Ten has purchased and depreciates studio equipment valued at \$3,719. Fry, Eleven Ten's accountant, receives instructions from Jack and Don as to

²⁵ Since the acquisition of KRLA by Eleven Ten, Jack had been in Los Angeles for the following periods Apr. 20–May 13, 1959; July 6–23, 1959; Aug. 19–Sept. 26, 1959 (and, in addition, during the hearing period).

whether equipment purchased is to be owned by Broadcast Equipment or Eleven Ten. Depreciation on an asset is taken by the corporation which carries the asset on its books. Jack Reeder, chief engineer of KRLA, authorized the purchase of the studio equipment bought by Broadcast Equipment for KRLA. Fry sent the invoice to Canada and a check was prepared there for the purchase price.

59. Don read the assignment and lease agreement between Eleven Ten and Broadcast Equipment many times. It is his understanding that Eleven Ten may require Broadcast Equipment to furnish additional funds for equipment and studios, beyond the amount which had been necessary to complete construction and place KRLA's 50-kw operation on the air. For example, should KRLA receive permission to move its studios from Pasadena to Los Angeles, Broadcast Equipment must furnish and pay for all equipment, including costs of installation. The basis for his belief is the fact that Broadcast Equipment owns and controls all physical assets. Don testified:

This is the original arrangement made between Eleven Ten and Broadcast Equipment that, when and if Jack Cooke became an American citizen, he would have the rights to purchase Eleven Ten Broadcasting.

Jack, however, insists that there are no understandings between him and Don with respect to the ownership or operation of KRLA, or to future interest in the property, not disclosed to the Commission.

60. *Programing representations made in assignment application.*— In the assignment application filed with the Commission, Eleven Ten submitted a policy statement regarding its proposed programing. It stated:

The applicant proposes to schedule on KRLA, Pasadena, Calif., a program of popular music, news on the hour, and news headlines on the half-hour, with sportscasts at peak periods of male listening. The program emphasizing music, news, and sports will be produced to appeal to the largest possible cross section of audience in the station's area.

Surveys will be conducted regularly in an attempt to determine the changing likes and dislikes of the listeners of the area. KRLA will keep abreast of the results of these surveys by programing accordingly.

In the field of public service, KRLA proposes to broadcast polished and attractive performances by teachers, educators, and proponents of culture. In order to do so, KRLA proposes to train and coach speakers, where necessary, to present talks with an aura of professionalism and showmanship.

Free time on the station and, again, the help and assistance of the station's staff will enhance the programs broadcast by religious and civic service organizations.

Music:

Recorded and transcribed popular music will constitute the majority of the music broadcast by KRLA. Records and transcriptions will be chosen by the station's library staff to present a well-balanced schedule of the music of yesterday, today, and tomorrow.

News:

The news department's chief functions will be twofold: (1) the rewriting and editing of teletype news; (2) the gathering and processing of local news. By highlighting local facets of the news and selecting and rewriting items of national news with a desirable local impact, the applicant further plans to fulfill a need of listeners of the area.

Religion:

KRLA will not accept sponsored religious programs. Religious programs normally will be confined to the period 6 a.m. to 12 noon Sundays, with the

exception of a daily inspirational message broadcast early in the morning. A religious service of a different denomination (in rotation) will be broadcast each Sunday, thus giving every religion an opportunity to communicate with the public served by the station.

Agriculture:

KRLA serves a farm area, second in importance only to the industrial strength of the region. With this in mind, the station will schedule 1-hour program each week calculated to satisfy the needs and the entertainment more of the farm audience. Bulletins highlighting farm market prices, weather conditions of interest to the farmers—such as storm and frost warnings—will be broadcast on every newscast 24 times a day.

Education:

The applicant proposes to offer to educators, scientists, and professional men, not only the physical facilities of the station but the talents of the program personnel of the station to assist these men to present their talks in a manner best calculated to attract listeners. It has been the experience of the applicant that radio stations frequently provide their facilities to speakers, but fail to help these people to a practical understanding and proper use of the broadcast medium.

KRLA will schedule at 10:45 p.m., nightly, the program, "Town Hall," on which exponents of culture, science, technology, etc., will speak.

We believe these programs will be of sufficient general interest to the public to cause stations in other areas to schedule them. KRLA will offer to these other stations tapes of the programs so that they too may broadcast them:

Community service:

KRLA plans to schedule each night at 10:40 p.m., Monday through Saturday, the program "Town Crier" in which will be broadcast announcements and information highlighting the events of the community: charity, hospital, church, and civic organizations. The station will not only offer its facilities to these civic groups, but will develop and broadcast information of their activities which the station believes will be of general interest to the public. (Assignment Application.)

Don testified he intended to carry out all the representations set forth above.

61. The policy statement on religion was proposed by Don and was his "most specific contribution." Don felt KRLA "* * * had to do a great deal of public service, we had to cut out commercial religion, and we had to do an all-around community job." KRLA proposed to broadcast religious programming on Sunday from 6:05-6:30 a.m., 6:31-7, 7:05-7:30, 8:05-8:30, 9:05-9:30, 10:05-10:30, and church services from 11:05-12 noon.

62. Don was responsible for a proposed program entitled "Town Crier," which was to be broadcast nightly at 10:40, and one called "Town Hall" at 10:45. The former was to be a community calendar and the latter was to be a "Discussion" program.

63. The percentage of time proposed to be devoted to the various program categories was as follows:

	<i>Percent</i>
Entertainment.....	82.7
Religious.....	2.1
Agriculture.....	1.0
Education.....	1.9
News.....	10.0
Discussion.....	.3
Talks.....	2.0

64. *Eleven Ten's programming policy and programming prior to January 1960.*—As stated above, the assignment application was granted on March 25, 1959, and Eleven Ten assumed operation of KRLA on May 1, 1959. The application for renewal of KRLA's license was filed with the Commission on September 2, 1959. Since the programming analysis covered only the period the station was operated by Pacific, the Commission directed Eleven Ten by letter dated October 28, 1959, to submit a revised program analysis for the period October 18 through 24, 1959, inclusive, and the logs for each date. By amendment to its renewal application submitted November 12, 1959, Eleven Ten represented that for the week of October 18–24, 1959, the percentage of time devoted to the following categories was:

	Percent
Entertainment.....	87.25
Religious.....	1.16
Agricultural.....	1.69
Educational.....	.00
News.....	8.20
Discussion.....	.00
Talks.....	3.70

¹ See below.

65. By August 14, 1959, the date the renewal application was executed, Wheatley had taken no steps looking toward broadcasting any religious or educational programs. Wheatley never received any "specific" instructions to prepare such programming to coincide with the commencement of the new "Top Forty" format.²⁶

66. The programming for the week of October 18–24, 1959, and the programming proposed to be broadcast by KRLA represents a departure by Eleven Ten from the programming promises in its assignment application. In the amendment, for the first time Eleven Ten said:

It is the opinion of the licensee that under present day circumstances radio is most effective when its messages are reduced to timely and repetitive announcements. The experience of KRLA during the short time that it has operated under its present ownership has proved the effectiveness of this technique.

In a memorandum from Schulz to the employees of Donald Cooke, Inc., dated October 15, 1959, which is set forth below, Schulz said that KRLA was the only Los Angeles radio station which could offer advertisers complete personality programming (diskjockey) all day Sunday in addition to the other 6 days, uninterrupted by commercial religion. In the renewal application filed November 12, 1959, it was stated: "The basic ingredient of the proposed programming of KRLA is *music* * * *. Management has evolved its basic format which should remain substantially the same throughout the coming license period." [Emphasis not supplied.]

67. On October 2, 1959, Don had sent an office memorandum to Heiman with a copy to Schulz.²⁷ It read:

²⁶ Wheatley was asked whether he had received any "instructions." and replied that he had received "no such specific instructions." The implications of this discrepancy between question and answer were not explored on the record.

²⁷ Heiman, as previously noted, had been hired on Sept. 21, 1959, as a production director or manager.

To: Herb Heiman
 From: D. R. Cooke
 Copy to: Ed Schulz

Subject:

When I made up the program schedule which was submitted to the FCC and approved by them, I included a farm report on each newscast. I regret now that I did so. However, Pierson, Ball & Dowd urged that KRLA increase its amount of agricultural programing. Thus, the reason for the inclusion of the farm report.

Naturally, we don't want the usual "hayseed" type of report inserted in our newscasts. However, surely there are means of getting around the strictly rural or "hayseed" type of information.

For instance, could we broadcast the prices of: Avocadoes, oranges, lemons, This information can be obtained from the Sunkist Fruit Exchange in Los Angeles. I believe they issue a daily citrus report.

Wheat prices, corn prices, barley prices, as quoted on the Chicago Grain Market.

Available also, I am given to understand, are the prices on cattle, as quoted on the Oklahoma and Los Angeles Cattle Markets.

Ed Schulz has an idea that the farm market reports can be incorporated in our schedule in the form of "tips to housewives." I don't see how this would help KRLA conform to its proposed broadcast schedule. I think that a 30-second farm market report on *certain specific newscasts* (certainly not on the 24 newscasts a day) would fill the bill.

Herb, please give your serious attention to this. I am not anxious to run afoul of the FCC.

By now, you have undoubtedly received a copy of the program schedule which we submitted to the FCC. You will note that KRLA intends to—

(1) Set up a series of religious programs; and (2) set up a series of public service talks in the late evening.

Treating first with No. 2, perhaps the use of a public service announcement in a quarter hour, say from 10:30-10:45 p.m., nightly, will satisfy the FCC.

Ed Schulz tells me that a public announcement in this period without any commercial announcements being included in the period designates the entire 15 minutes as "public service." If this is so, are both of you fellows satisfied that we should not have to put a 15-minute talk in? I understand that the Smog Research Division of UCLA is prepared to give us material for 1-minute spot announcements which could be used in such a period and which would result in the 15-minute period being classified as "public service." As I recall it, Dr. Hagen Smith is the professor or researcher in charge of the smog program, and Mr. Jim Miller is the public relations counselor for that part of the university.

As to the series of religious programs, nothing would please me more than to remove the necessity of broadcasting a roundtable of churches in the 11 a.m. to 12 noon period Sundays. If both of you fellows feel that we should have a religious program on the air and, whether we want a religious program on the air or not, we must broadcast one in order to conform with our promise to the FCC, why not put it on between 6 and 7 a.m. Sunday mornings? Would this pass muster? You will also note that KRLA has undertaken to broadcast a 30-second or 60-second message of religious good cheer each morning at 5:59 a.m. My thought originally was to invite each clergyman in the Los Angeles area to prepare a 30- or 45-second inspirational message. If we had a backlog of 50-100 inspirational messages, they would not wear out their welcome too soon.

I am anxious to get your reaction to this memo.

Yours very truly,

(Sgd.) Don.

DC: dmc [Emphasis not supplied.]

68. Prior to the above memorandum's introduction into evidence, Don had testified that the religious programing he had proposed in the assignment application is the kind of programing that identifies

a radio station with the community it serves. In explanation of the statement in the memorandum regarding religious programs (next to last paragraph), Don testified:

* * * We had lost a great deal of money at KRLA. Ed Schulz was involved in the losses as general manager, and I asked him for the simple reason I felt that perhaps the 11 to 12 noon period Sundays could be sold commercially for at least the time being to get us out of this terrible loss position.

Schulz replied to Don's memorandum, saying that with regard to the agricultural programming, KRLA would insert a 40-second market roundup in the 5:55 and 11:55 a.m. newscasts. In addition, Schulz planned to broadcast two 2-minute "featurettes" a day, directed to housewives, explaining the "Best Buy" in produce. Schulz informed Don that this programming would satisfy KRLA's obligations insofar as agriculture was concerned. In the assignment application, Eleven Ten had promised to broadcast a 1-hour program each week designed for a farm audience, not for a housewife audience. In addition, Eleven Ten promised to broadcast information such as farm market prices and weather conditions of interest to farmers on every newscast 24 times a day.

69. In response to Don's query about quarter-hour "public service" segments, Schulz under date of October 5, 1959, replied that KRLA would insert one single-minute "public service" spot announcement in a sustaining quarter-hour. The remaining 14 minutes would consist of the playing of the "Top Forty" tunes, and KRLA would log the entire 15 minutes as public service programming. Schulz informed Don, "we do not have to fill the entire 15 minutes with gab." [Emphasis not supplied.]

70. Heiman replied on October 4, 1960, to Don's memorandum stating, among other things, "We are incorporating 30 seconds of a morning newscast to a Farm Fair * * * of interest mainly to the consumer rather than the farmer."

71. Schulz addressed a memorandum dated October 15, 1959, to the employees of Donald Cooke, Inc., the sales representation organization, which sold advertising time for KRLA. As stated above, Don and Jack are both 50 percent shareholders in this corporation. The memorandum stated, in part:

Scheduling: Here is an important fact * * * KRLA Radio is the ONLY LOS ANGELES STATION to block program its personalities in the same time slot SEVEN DAYS A WEEK! Yep * * * that's right * * *, only on KRLA can you hear each and every personality at his regular time ON SUNDAY TOO! This unique programming schedule has been arranged at GREAT EXPENSE to the management. * * *

"Sunday Radio: You might ask yourself why we have gone to trouble of duplicating our Monday through Saturday schedule on Sunday * * * something very few stations do. Well, in Los Angeles * * * SUNDAY IS A BIG RADIO DAY. Yes, there is a city on wheels the size of Detroit every Sunday from 9 a.m. to 11 p.m. in Metropolitan Los Angeles. KRLA's listeners are on the go everywhere, in their cars, at the beach, with their portables, fishing to the lakes or ocean. Remind your clients too * * * when they call for a Monday through Saturday schedule to ADD MORE SPOTS to cover that all important SUNDAY RADIO AUDIENCE IN L.A.! And ONLY KRLA can offer complete personality programming all day Sunday uninterrupted by commercial religion."

72. Don testified that the duplication of KRLA's Monday through Saturday programing on Sunday took place with his approval. He said:

At this time, because sales had been so bad, I was almost willing to do anything to get the sales on the radio station, and if [the duplication of the Monday through Saturday programing on Sunday] would help, I would go along until we got to the point where we didn't have to borrow or suffer these terrible losses.

However, after testifying that the duplication of programing was designed to recoup KRLA's losses, Don later stated that the memorandum meant that KRLA's ratings would improve by carrying a 7-day "Top Forty" music format and that the purpose of the memorandum was not "particularly" to get more advertising revenue on KRLA.

73. Don came to Los Angeles on November 9, 1959, to improve KRLA's advertising revenue since the station was losing money, and he remained until November 20, 1959. In addition, he testified, he felt that the "public service programing" of KRLA ought to begin. At this time, insofar as "public service programing" was concerned, KRLA had a 40-second market roundup in the 5:55 and 11:55 newscasts, and two 2-minute "featurettes," as noted above, were directed to housewives, but they were classified as "agricultural."

74. *Commission's section 309(b) letter.*—On December 16, 1959, the Commission addressed a section 309(b) letter to Eleven Ten. The letter stated, in part:

It appears from a review of the above documents and other pertinent information contained in the Commission's file on station KRLA that you are not operating your station in accordance with the programing proposals made by you and considered by the Commission in connection with its approval of the assignment of license (BAPL-171) earlier this year. Additionally, a question exists as to whether you intended to carry out the representations made in your statement of program service submitted with that application.

A review of the logs submitted by you for the week of October 18 to October 24, 1959 (as requested by the Commission's letter of October 28, 1959), indicates that you may have falsified the program logs for each of the 7 days mentioned above by the addition of certain religious programing to the entries of other programs actually broadcast on those dates.

You were advised in the Commission's letter of October 28, 1959, that information had been brought to the attention of the Commission which indicates that on September 4, 1959, station KRLA broadcast announcements by Perry Allen—or someone purporting to be Perry Allen—which stated that the listeners should look for Allen in a Los Angeles restaurant and "identify" him so as to win \$9,000. You admit that on the date in question Allen was actually still working for a station in Buffalo, N.Y. A question is raised as to whether your conduct of this contest constitutes an improper use of your facilities inimical to the public interest.

* * * * *

An inquiry conducted by the Commission indicates that Jack K. Cooke, a Canadian citizen, inaugurated the present programing format utilized by station KRLA; that Jack K. Cooke has changed his residence to the Los Angeles area and is active in the day-to-day management of the station; that at the conclusion of the "Find Perry Allen" contest mentioned above, the "finder" telephoned KRLA and was referred to Jack K. Cooke who advised him to fly to Los Angeles with Allen "for a big publicity splash"; and that disagreements, arising out of Jack K. Cooke's participation in station operations, existed between him and certain station staff members in matters of the station policy and management. It appears that these

activities constitute actual control of the station, by Jack K. Cooke, contrary both to the provisions of section 310 of the Communications Act, and to the representations by Donald R. Cooke with respect to the ownership and control of the station made in your assignment application (BAPL-171).

The letter stated that a reply from Eleven Ten was required within 30 days.

75. *Programing steps taken by Eleven Ten as a result of Commission's 309(b) letter.*—By letter-memorandum dated January 4, 1960, Don wrote Heiman “* * * I want very much to put our public service house in order, exacting order, well before January 15th. I say this because I hope to include my response to the FCC letter of December 16, a fulfillment of the promises of my FCC submission of November 20, 1958.”²⁸ The memorandum is devoted to a recapitulation of the program representations made by Eleven Ten in its assignment application, and its failure to fulfill these representations. Don instructed Heiman to initiate the programs proposed in the assignment application. More specifically, Don instructed Heiman to schedule: (1) a church service from 11 to 11:55 a.m. each Sunday “beginning at once”; (2) “within 24 hours,” a 1-hour weekly “farm audience program,” as promised in the assignment application; (3) “beginning at once,” 30 seconds of farm information on every newscast, 24 hours a day; (4) as soon as possible, preferably well before January 15, “Town Hall” at 10:45 p.m. nightly, as promised in the assignment application. Don also instructed Heiman that he would be expected to begin to produce the educational shows promised in the assignment application, only, however, after he had carried out the above instructions. Don told Heiman that in connection with Eleven Ten’s “failure to broadcast these particular [Education] shows,” he would “beg the indulgence of the Commission” and promise to have them on the air as soon as they could be produced.²⁹

76. On January 8, 1960, in a “progress report,” Heiman replied that he was “* * * proceeding posthaste on all [Don’s] requests.”

77. By letter dated January 13, 1960, Eleven Ten asked for an extension until February 15, 1960, to reply to the section 309(b) letter of December 16, 1959. The primary reason given for the requested extension of time was Don’s desire to “* * * personally verify the information which will be submitted in response to the Commission’s inquiry which he cannot do without spending an extended period in California.” By letter dated January 15, 1960, the Commission extended the time for filing a reply until February 15, 1960.

78. The purpose for the 1-month extension was to obtain more time to enable Don to submit evidence that the programing proposed in the assignment application was, in fact, being broadcast over KRLA. He wanted the “full complement” of programs specified in the assignment application to be on the air by January 30, 1960, “at all costs.” Don arrived in Los Angeles on January 22, 1960, and returned to New York on February 10. The main reason for this trip was “* * * to set up a so-called crash program, to get everyone of the

²⁸ Don is referring to his programing representations made in the assignment application.

²⁹ Don was referring to the following programs proposed to be broadcast on Sunday: 7:30 to 8 a.m., “Report on Education”; 8:31 to 9 a.m., “School Speaks”; 10:31 to 11 a.m., “Youth Talks.”

public service features we have promised the FCC into effect on KRLA."

79. *Eleven Ten's response to Commission 309(b) letter and programming amendment.*—On February 15, 1960, the Commission received Don's sworn response to the 309(b) letter of December 16, 1959. As part of his response he submitted an affidavit of Wheatley and an "affidavit" of Schulz. Schulz's "affidavit" was titled "Draft No. 1—Revised No. 1." It responded in some degree to every question raised in the 309(b) letter. The notarization on Schulz's affidavit is dated February 8, and on February 9, 1960, he left the employ of Eleven Ten.³⁰ Don testified he has no explanation why the affidavit is entitled "Draft No. 1—Revised No. 1," nor does he know whether Schulz was told this document was to be only a draft and not an "affidavit."³¹ Donald Fry, the accountant for Eleven Ten, notarized Schulz's "affidavit," but did not see Schulz sign the "affidavit," nor was Schulz present when the notarization took place.

80. As part of his response to the 309(b) letter, Don also submitted program information "* * * which reflects the manner in which the station is carrying out its original representations made to the Commission at the time it requested approval of the assignment." This information was furnished as an amendment to Eleven Ten's application for licensee renewal received on February 15, 1960. As part of the amendment KRLA submitted a new part IV of the renewal application which included an analysis of the week of January 31, 1960, to February 6, 1960, prepared by Heiman. It specified the following breakdown:

	<i>Percent</i>
Entertainment -----	81.1
Religious -----	2.5
Agriculture -----	2.7
Education -----	2.0
News -----	8.9
Discussion -----	0.3
Talks -----	2.5

81. As part of the February 15, 1960, amendment there was an exhibit entitled "Agriculture in the News," which stated:

Two newscasts a day will have the majority of their content devoted to farm news. They will be broadcast at 5:55 a.m. and 1:55 p.m., and will be 4 minutes 30 seconds in length. This policy was initiated approximately in October 1959, with the 1:55 p.m. report given at 11:55 a.m. The change to 1:55 p.m. took place the week of January 18, 1960. A complete agricultural weather forecast is included in each of these newscasts.

Thirty seconds of agricultural news will be included in every newscast aired on KRLA. This policy was not strictly adhered to prior to January 8, 1960; however, it has been fulfilled from that date on. The content includes pertinent local and national news developments that would interest local farmers and livestock breeders in the Southland. Stock, grain, and poultry exchange prices are quoted daily.

82. Though it was stated that there were 4 minutes and 30 seconds of newscasts "devoted to farm news," described as a policy initiated in October 1959, in a letter from Schulz to Don dated October 5, 1959,

³⁰ It is a matter of dispute, now pending before the California courts, whether Schulz resigned or was discharged. Don testified that "he resigned" (Tr. 894).

³¹ Don first testified that he was present when Schulz's affidavit was prepared and signed. During cross-examination, however, Don stated he did not recall that he was present when Schulz signed the "affidavit."

he wrote only that there would be broadcast over KRLA “* * * a 40-second market roundup in the 5:55 a.m. and 11:55 a.m. newscasts.”

83. As noted above, it was stated that the policy of broadcasting 30 seconds of agricultural news on every newscast was not strictly adhered to prior to January 8, 1960. Don, however, had written Heiman and Schulz on October 2, 1959, that “I think a 30-second farm market report on certain *specific newscasts* (certainly not on the 24 newscasts a day) would fill the bill.” [Emphasis not supplied.] Heiman replied, “We are incorporating 30 seconds of a morning newscast to a Farm Fair * * * of interest mainly to the consumer rather than the farmer.” Subsequently, on October 26, 1959, Heiman again wrote that agriculture news would be broadcast but twice a day.³²

84. In the amendment submitted on February 15, 1960, under the category of “Agriculture,” KRLA listed “Best Buy of the Day.”

Once per day, Monday through Friday, between 11:30 and 11:45 a.m., the show the “Best Buy of the Day” is aired. This 60-second presentation began October 15, 1959. Its purpose is to help Southland shoppers find what farm products arrive in Los Angeles in the greatest quantity and quality so they may better prepare their shopping list. This information is supplied by Mr. Cleveland of the Federal State Market News Service. It is proposed that shortly, with his cooperation, KRLA will air two 4-minute 30-second shows direct from the Produce Warehouse in Los Angeles.

This program, Heiman admitted, was not properly classified according to the Commission’s definition as set forth in the application. The February 15, 1960, amendment also specified “KRLA Farm Roundup” as “Agricultural.” This program was described as follows:

“KRLA Farm Roundup”:

The “KRLA Farm Roundup” is a 50-minute program aired each Monday morning from 5 to 5:50 a.m. It made its first appearance on Monday, January 11, 1960. The “Farm Roundup” is a show composed of live and transcribed agricultural information and recorded music. The live portions include weather conditions and frost warnings; the latter specifically for each of the citrus crops. Complete weather forecasts for each of the agricultural districts are given by the announcer on duty. He also gives a weekend stock exchange roundup and pertinent local and national farm news. The transcribed portions include comment by:

Dr. C. M. Hardin, president, American Association of Land-Grant Colleges and State Universities, and chancellor, University of Nebraska.

Dr. J. W. Fitts, president, Soil Science Society of America, and head, Department of Soils, North Carolina State College.

Dr. C. F. Sprague, president, American Society of Agronomy, research agronomist, Agricultural Research Service, USDA.

Carl E. Rose, president, National Association County Agricultural Agents in cooperation with the Farm Radio News Service, and such persons as Edward Holter of the National Grange, Administrator Clarence Ferguson of the Federal Extension Service, and Senator Eugene McCarthy of Minnesota, plus many more in cooperation with the Farm Outlook for 1960.

The amendment was received by the Commission on February 15, 1960, and “Farm Roundup” was represented as having begun on January 11, 1960. It is not clear from the record whether the transcribed portions were broadcast over KRLA directly before or after February 15, 1960.³³ Heiman never heard the program broadcast.

³² For some unknown reason, Eleven Ten referred to agricultural news as “Public service.”

³³ Allen had broadcast the program since Jan. 11, 1960.

Perry Allen was the diskjockey on duty in January and February on Monday from 5 to 6 a.m., when this program was carried, and Heiman instructed him to broadcast the transcriptions of the various persons whose names are set forth in the above quotation.

85. On several occasions Heiman gave Allen "disks, transcribed spots of varying length," and asked if he thought they would be usable on the air. Allen said he had read the amendment filed on February 15, 1960, which states the transcriptions were broadcast, and that he did not recall having broadcast any of the transcriptions mentioned in the previous paragraph.

86. Although "Farm Roundup" is classified as "Agricultural," a satisfactory showing was not made as to the time devoted to the broadcast of agricultural information, news, or weather. However, within a 15-minute segment of "Farm Roundup," about 3 minutes of farm information was broadcast. The program contained "bits" of agricultural information which would not be broadcast during a normal diskjockey program.

87. On January 11, 1960, Don directed Heiman to "* * * obtain, in every instance, letters from all sources that will be of benefit to KRLA in the matter of public service, religion, education, etc." On January 13, 1960, in a letter to Schulz, Don wrote, "The importance of these local church services cannot be minimized since we expect the ministers, priests, and rabbis to send us warm letters of thanks and acknowledgment of the services rendered by KRLA." Twelve public witnesses testified, on behalf of Eleven Ten, to the excellent service provided their organizations by KRLA. (Only three of the organizations these witnesses represented were contacted prior to the Commission's 309 (b) letter of December 16, 1959.)

88. On April 6, 1960, Heiman's progress report to Don stated, in part:

Religion and public service:

We definitely must do something about Sunday. This involves moving our block of "discussion" and "religion" to the period 6 a.m. to 10 a.m. if at all possible. I will approach Con Robinson this week to investigate the possibilities of a delayed broadcast or, instead, a broadcast of their evening service to free us from the 11 to 12 period for the summer. I propose the following schedule:

<i>Program</i>	<i>Time period</i>
Sound of His Music-----	6:00- 6:15
Rosary -----	6:15- 6:30
Seminar -----	6:30- 6:55
Religious News-----	6:55- 7:00
Spirit of Today-----	7:00- 7:30
Scope Unlimited-----	7:30- 8:00
Lake Ave. Congregational Service (DB)-----	8:00- 9:00
Mass -----	9:00-10:00
Perry Allen (etc.)-----	10:00-12:00

Would it be possible to put "Scope Unlimited" and either "Seminar" or "Spirit of Today" on hiatus for the summer? How about "California" for the summer? Due to the nature of the program Topic Youth as we know it must be off for the summer.

89. In explanation of this memorandum, Heiman said:

* * * I felt that when summer would be upon us that there would be a tremendous amount of people going toward the beach and to resort areas. I

felt that if we were not on their car radios by 10 in the morning, that we would lose this portion of the audience for the rest of the day.

90. Don, in a memorandum to Heiman, dated April 12, 1960, about 55 days after he had submitted a response to the 309(b) letter, stated:

DONALD COOKE, INC.

INTER-OFFICE CORRESPONDENCE

From: Don Cooke.
HERB HEIMAN,
Pasadena, Calif.

NEW YORK, April 12, 1960.

DEAR HERB: It was very good to talk with you on the phone today. There isn't any doubt that KRLA is the most talked-about station and will be the most listened-to station in Los Angeles.

Just to confirm my feelings about the Sunday religious and public service programing, before doing anything, the following points should be answered in the affirmative:

1. Tommy Dowd should be consulted and should approve the move.
2. No move should be made until about a month after the FCC has approved KRLA's request for its license renewal.

At that time, undoubtedly, we will be able to drop some of the present programing, but we will only do so with the full approval of Pierson, Ball & Dowd, of course.

Looking forward to hearing the tape on KABL. Thanks.

Best regards,

(Sgd.) Don.

DC: duc

91. In explanation of this letter to Heiman, Don expected the FCC to renew KRLA's license before April 12, 1960, but that—

The reason for the letter itself was we were coming into the summer months, and the schools, the public schools, the high schools, and the colleges would no longer be in session, which would make it extremely difficult for us, if not impossible, to continue such shows as "California," "Topic Youth," and "Seminar."

In this connection, the eight programs broadcast in the period on Sunday from 6 to 10 a.m., six were religious programs, and of the educational-type programs, only "Seminar" was broadcast during this period.

92. *Perry Allen contest—licensee's investigation and report to Commission.*—On October 28, 1959, the Commission asked KRLA to supply it with full details concerning the Perry Allen contest. Don, in late October or November, directed Schulz to check thoroughly regarding the details of the matter. Schulz called a meeting of KRLA employees. Don Cole told Schulz, in substance, what is reflected in previous findings. In a sworn response dated November 10, 1959, Schulz replied on behalf of KRLA. The letter said, in part, that "in late August Allen was hired and he was expected to report for work at KRLA by September 5." The letter further read:

In order to promote Allen's arrival in Los Angeles and the start of his new program on KRLA Radio, we began a "Find Perry Allen" contest on KRLA Radio the afternoon of September 3. It was our intention to bring Allen across the country, making occasional stops en route, and have Allen make beeper telephone reports as to the progress of his trip across the country, at the same time giving "clues" as to his whereabouts, and clues as to the time and place of his arrival in Los Angeles.

* * * * *

32 F.C.C.

We must state categorically that the "Find Perry Allen" contest on KRLA Radio was a legitimate, bona fide radio promotion contest produced on the air to publicize the Perry Allen show on KRLA Radio to listeners in our coverage area.

* * * * *

In regard to the paragraph in the Commission's letter concerning an announcement promoting the contest which implied that Perry Allen was in Los Angeles when, in fact, he was still in Buffalo, this ad lib statement went beyond the fact sheet used in the contest.

* * * * *

It had been the intention of the station to broadcast specific clues as to Allen's whereabouts, but the contest did not last long enough to make this possible. * * *

93. In Don's sworn response to the 309(b) letter, he stated:

Insofar as the Perry Allen promotion contest is concerned, I have made as complete an investigation as the circumstances permit. For the most part I uncovered little beyond that reported by Schulz in his response of November 10, 1959 * * *. Whatever the reasons may be, I cannot affirm or deny that some of the announcements may have indicated that Allen was at the time in Los Angeles, since the continuity is not available * * *. To the best of my ability I have endeavored to furnish full and complete information [in this statement].

94. Around the date of the contest, Jack told Don that Allen could not report to KRLA until September 12, 1959. Nevertheless, Don said, he still authorized the contest, but the "details" were worked out by the programing department. Jack and Don discussed "the overall philosophy," though not the details of the contest. By that, Jack meant that the Perry Allen contest was designed to stir up interest in KRLA's call letters, in its frequency, and in Allen's name. All Don knew of the Perry Allen contest was that he gave his permission that it be conducted. Don read about the contest in Broadcasting Magazine's issue of September 14, 1959.³⁴ Since Schulz was the general manager, Don checked with him to find out what had actually occurred. In a telephone conversation after the Broadcasting Magazine was published, Schulz told Don that it was an ad lib remark by one of the announcers that caused the "trouble." Don called upon Schulz for a full written report of the incident. He said he had a copy of Schulz' report. After Broadcast Bureau counsel requested that this report be made available, Don then testified that he did not ask Schulz to provide him with a written report at this time, and said he first asked Schulz for a written report at the end of October or in the beginning of November.

95. Soon after Don spoke to Schulz, he spoke to Jack, who told him that tapes of Allen's voice were made; that there were announcements throughout the day by all the diskjockeys; but that Jack could not recall that any of them had actually specified Allen "was anywhere but in Buffalo or at some other area." Jack did not inform Don, according to the latter's version, that he had issued instructions to the diskjockeys to *ad lib* so as to indicate that Allen was in Los Angeles. Don claimed to have been informed by Jack that when the

³⁴ The article stated, in part, "On September 4, * * * KRLA aired this announcement: Go out on the streets of Los Angeles today. Take a hint: go to a Los Angeles restaurant, look for a guy in a bow tie and say 'KRLA 1110 L.A.' And if you say this to me, the newest member of KRLA's ever lovin' 1110 men, Perry Allen, you'll be richer by \$9,000 in cash. So go." The article further stated that the person who found Allen called KRLA and talked to Jack.

announcements began, Allen could not possibly have been in Los Angeles, for Allen was not to come there until September 12. Before submitting his response to the Commission's 309(b) letter, Don went to Los Angeles in January with counsel, as they "wanted to thoroughly check the accuracy of the story which Ed Schulz had told [them]." In conducting this investigation they met with Allen, who according to Don, told them that he had sent tapes to KRLA, but that the only part of the contents of the tapes that Allen could recall were that they said "Listen for Perry Allen." Allen recalled a meeting with counsel in which he was asked about the Perry Allen contest, but he could not recall whether Don had been present. Allen claims that his response to counsel's question "was fundamentally along the lines" he testified to in this proceeding, but he could not "recall the specific statements that I made at that time."³⁵

96. In Don's investigation, it is claimed he and counsel checked thoroughly. However, Don did not personally speak to Don Cole, although Cole was still employed at KRLA, nor did he speak to Goodwin, who had left the station; Don did not personally ascertain whether Goodwin was still available for questioning. Don did not know if Cole was questioned at this time by counsel; but Schulz told Don that during the investigation Schulz conducted at the end of October or in November, Schulz got all the diskjockeys together to ask them the circumstances of the Perry Allen contest, and Don thought "* * * that * * * Cole would be in that meeting."

97. During this investigation Don did not ask Jack about the contest, although Don testified at the time of the Perry Allen contest Jack had complete charge of programing. Don claimed not to have questioned Jack because Schulz had handled the response with the trade press and "seemed to be the most knowledgeable person on the staff at the time." Don testified he did not know that the idea and details of the Allen contest were conceived by Jack. Although Jack told Don in advance he was going to run the Perry Allen contest in which \$10,000 could be given away, Jack did not say he had *originated* the idea of the Perry Allen contest.

98. With regard to Don's knowledge of contests broadcast over KRLA during Jack's tenure as "program director," he testified that he approved the "promotions and contests that might possibly take place, (though he left the details to the program department)"; and that he allotted \$50,000 to the KRLA budget for these ventures. If the \$50,000 was not adequate, money was to be taken away from some other classifications and put into these promotional contests. In Don's words, "This is one of the most important items we had at the time."

99. "*Thoughts (or Words) for the Day*," issue No. 3, program log alterations.—In Don's response to the question raised in the 309(b) letter regarding the falsification of KRLA's logs, he referred to

³⁵ See footnote 13 above. The Broadcast Bureau's proposed findings from which these are adapted states that "Allen" did not recall that Don had been present. Actually, Allen testified:

"I recall the meeting with Mr. Dowd. I'm very unclear as to whether Mr. Cooke was present at that time. I just frankly don't remember. I do, however, remember the meeting with Mr. Dowd."

Obviously, Allen's testimony, if to be advanced as impeachment of Don's, is even weaker than the Broadcast Bureau's version, for he did not recall *that* Don was present but *whether* he was, so that even his imperfect recollection is ambiguous.

Schulz' accompanying "affidavit" and stated he had no personal knowledge beyond what was contained in Schulz' statement. This issue in the designation order involves the question whether the words "Words for the Day" or "Thoughts for the Day" were added once on each of KRLA's logs for the week of October 18 to 24, 1959. The addition to the logs is listed as being 2 minutes in length and is classified as "Religion." Schulz, in his "affidavit," said the addition to the logs was "made to reflect what had actually taken place." Schulz' explanation was:

The broadcast of "Thought for the Day" as a regular feature commenced during the second week of October 1959. Instructions were issued to the program department who carried out the instructions immediately by giving the necessary instructions to the announcers. Unfortunately the traffic department did not receive instructions to schedule these announcements on the program logs. When the analysis of the week of October 18-24 was completed, it was noted that that analysis did not reflect any religious programming which we knew to be contrary to the actual facts. Pursuant to my instructions, the notation with respect to "Thought for the Day" was added to the program logs.

100. Don learned of the alleged addition to the logs after receiving the 309(b) letter which raised this question. He therefore went to Los Angeles with his counsel in January 1960, and questioned Schulz and Heiman together on this matter. He testified that he questioned Heiman thoroughly.³⁶ According to Don, he did not address his inquiries to Heiman, because Heiman was young, and he considered Schulz, as general manager, to be the responsible party. Schulz told him the programs had actually been broadcast, and since Schulz was the general manager, Don accepted his explanation. Heiman, though he knew Schulz' statements to be false, said nothing. Don testified to speaking to no other staff members about this matter; and that the first time he had reason to doubt the truth of Schulz' affidavit was about 3 weeks before the hearing began, when he was so informed by Heiman.

101. In connection with this issue, Heiman testified that on the weekend of October 31, 1959, he, Schulz, and others worked together to compile a program analysis for the week of October 18 to 24, 1959, for submission to the Commission. According to Heiman, Schulz remarked that there was no religion in the program analysis, and none shown in the logs, and that Schulz said that there should be some. Heiman testified that Schulz said with a wink: "I did tell you, didn't I, Herb, to put a 'Word for the Day' or 'Thought for the Day' on the air beginning that week, did I not?" Heiman testified that his reply to Schulz was "Something to the effect: If you say so." Schulz in Heiman's presence requested a staff member to type in the logs, "Thought for the Day" or "Word for the Day." Heiman testified that to his knowledge as program director, this program was not broadcast during the week of October 18 through 24, 1959; and that it was not until the first week of November that Schulz even ordered him to buy the book containing the material to be used for this "program."

³⁶ Heiman had become responsible for programing by Oct. 18, 1959.

102. Heiman wrote the following statement which he gave to two members of the staff of the Commission :

AUGUST 31, 1960.

The statement below is true to the best of my knowledge.

On the weekend of October 30 and November 1st these people worked on gathering material for the FCC (logs of October 18, etc.). Ed Schulz, Mrs. Schulz, Janice Crosby, Elayne and Herb Heiman. On the night of Sunday it was called to my attention by Ed that we had a zero percent in religion and that he had asked me to place in the studio a few weeks prior to that date, a book containing a message "Thought for the Day."

I could not find the book or original note left in the studio. I showed Ed the note's carbon and it was decided by him to attempt to reflect that we had run a short religious message during the week of October 18th.

Although the "Word (Thought) for the Day" was placed in the log hurriedly—an accompanying note was not sent to clarify the intent of placing the addition on the log. This was simply overlooked because of the extreme haste brought on by the November 14th deadline.

There was no intent to perpetrate fraud or commit an act illegally to my knowledge.

HERB HEIMAN.

It was the consensus of those at the meeting that the thought for the day must have been aired; however, I did not actually hear it on the air.

HERB HEIMAN.

Signed before me this 31 day of August 1960.

THOMAS B. FITZPATRICK.
LEWIS COHEN.

Heiman did not disclose the truth to Don about the log incident sooner since during Schulz' tenure as general manager, he felt the "responsibility of the details and facts were on Mr. Schulz' shoulders" and after Schulz left he "perhaps did not have enough moral conviction to confess, as it were, to my employer." He testified he had no intention of withholding the truth from his employer or counsel when "the time was right."

103. In response to the question whether Heiman considered it more important to give the true facts to the Government of the United States (through Messrs. Fitzpatrick and Cohen) or to his counsel,³⁷ Heiman replied, "I intended, as I said, to be elusive to the representatives of the Federal Communications Commission."³⁸

CONCLUSIONS

1. *Control issue.*—Section 310 of the Communications Act of 1934, as amended, prohibits the holding of a radio station license by "Any alien or the representative of any alien," or "Any corporation of which

³⁷ Don first learned that the representations made by Schulz (that is, that the insertions were made to reflect programing actually carried on the air) were not correct about 3 weeks before the present hearing, when Heiman informed Mr. Dowd, KRLA's counsel, that the statement in the Schulz' affidavit was not entirely correct. Counsel then on his return to Washington immediately called the Broadcast Bureau and informed Bureau counsel that for the first time he had reason to believe that the affidavit which had been previously submitted to the Commission over the signature of Schulz, and a part of an official response filed on behalf of KRLA, was not true and correct. KRLA's counsel then related to Bureau counsel the substance of what was subsequently testified to by Heiman at the hearing.

³⁸ An investigator from the Commission visited the studios of KRLA. Before the visit, Schulz instructed Jacqueline Pressley, an employee of KRLA, to refuse to answer if she was asked if Jack was at the station or had been there. Schulz further instructed her that if she were asked if Jack stayed in Los Angeles, she was to answer that she did not know. Mrs. Pressley was asked by the investigator whether Jack had been at the station, and pursuant to the instructions from Schulz, she did not answer.

any officer or director is an alien." The purpose of this statute "is to safeguard the United States from foreign influences in the field of radio, and it must be construed in the light of its purpose." *Kansas City Broadcasting Corporation, Inc.*, 5 R.R. 1057, 1093; *Noe v. FCC*, 260 F. 2d 739, cert. den., 359 U.S. 924. While Jack Kent Cooke, who is a citizen of Canada and not of the United States, is neither an officer nor director of the corporate applicant herein, Eleven Ten Broadcasting Corp., this would, of course, not preclude the conclusion, if supported by the facts, that his participation in the affairs of the corporation violated section 310 of the Communications Act, for the test is whether there was actual control. "Congress did not imply artificial tests of control," *Rochester Telephone Corporation v. U.S.*, 307 U.S. 125, 145.

2. On the basis of the facts of record herein, it is determined that Donald Cooke, the controlling stockholder of record of Eleven Ten, had not surrendered his control thereof, and that Jack Kent Cooke did not, in fact, acquire or exercise such control contrary to the statute cited above. It is unnecessary to dwell unduly upon the dangerous tactic of setting up a lessor corporation [Broadcast Equipment Corp.] owned by Jack Kent Cooke, to hold the physical assets of the corporate applicant herein, for, beyond any question of brotherly affection, this gave him a strong financial interest to interfere in its affairs. The plan also offered him a formidable temptation to regard it as a temporary holding arrangement whereby Don would ostensibly operate the station, though really for Jack's benefit, until he became legally competent to take over in his own name. It is established that Jack had been intent on acquiring a radio property or properties in the United States, and that price was not a controlling factor because of his substantial resources. While it was to be bought in the name of Don, a man of limited means, Jack ultimately was to become licensee of any station to be acquired. In the case of KRLA, this was at first hoped to be achieved by means of an option running to Jack, to be exercised when and if he became an American citizen. The option, however, was canceled after it was questioned by the Commission. The supposition that the cancellation did not, however, change Jack's hopes is reinforced by contemplation of the generosity of Broadcast Equipment Corp., supra, the lessor, regarding KRLA's rental, especially while the licensee laid out substantial sums of money for contest prizes; and it may be, despite Jack's claim that there is no understanding between him and his brother with reference to a future interest in KRLA not already disclosed to the Commission, that in his own mind, at least, he expects to take over the station when and if he can legally do so. However, the issue here must be decided on the basis of overt acts either pointing or not pointing to unlawful control, and not upon speculation as to a state of mind not manifested in operative acts.

3. It was implicit in Don's attempt to conduct the affairs of KRLA largely from across the continent, a practice which cannot be commended, that persons on the scene would perform acts ordinarily the function of an owner, and would apparently be in control. Nor can the applicant be heard to deny that Jack's activities in and about the station, particularly with regard to the promotion contests, would in

the absence of existing brotherly and financial ties, have been resented and repudiated as those of an officious intermeddler. Nevertheless, the one dispositive fact cannot be found to emerge from the evidence; namely, that Don had relinquished ultimate control to Jack. Whether Don had "enlisted," as the applicant contends, the talents and experience of Jack to help him "bring order out of chaos and mediocrity," or Jack had drafted himself to protect his investment, is immaterial. In the discharge of his duties, Jack ostensibly must, upon this record, be held to have exercised authority similar to that which might have been vested in some other trusted employee charged principally with responsibility for the program department's operations. So far as programming was concerned, it was comparable to the authority given William J. Wheatley although, as noted in the findings of fact, Jack also performed duties which Wheatley had never assumed as program director. Wheatley continued in his position as program director, with his authority in abeyance during Jack's stay, and he reported to him instead of to Schulz, the general manager. Wheatley, however, resigned on September 9, 1959, and Jack remained until Herb Heiman reported for duty as production manager or director on September 20, 1959, when Jack left the station. From that date on, he did not return to KRLA, and there is no evidence that he has since given orders or instructions to any employee or participated in the direction or control of the operations of the station in any manner. Except for the periods and in the manner described in the findings of fact, it does not appear that Jack made decisions for the licensee or issued orders to its employees. To repeat what has already been suggested, while Jack's conduct during his stay at the station on the surface might not have been significantly different from an owner's, and he had apparently to the subordinate employees invested himself with an attitude of dominance, on analysis his intervention in station affairs is still seen to have been subject to Don's record legal control. That Don was indiscreet, and even foolish, in permitting his brother (who, he had indicated to the Commission, would not participate in the ownership or control of KRLA), to visit the station, let alone perform ambiguous acts, whatever the temptation because of the station's allegedly precarious condition, goes without saying. But while Don's judgment may be condemned, the record would not permit a conclusion that his good faith is to be impugned, for he is not shown to have retired, in favor of his brother Jack or anyone, from ultimate control of KRLA. His absentee ownership presented dangers of misinterpretation even where ordinary employees were concerned, a danger which was intensified when one having so large a financial stake in the physical assets of the enterprise as Jack was involved. From these considerations, it must be concluded that since the time of the assignment of the KRLA license to Eleven Ten Broadcasting Corp., Jack Kent Cooke, a Canadian citizen, has not exercised control with respect to the operations of the station in a manner which may be considered contrary to the provisions of section 310 of the Communications Act of 1934, as amended, and the Commission's rules and policies promulgated thereunder.

4. *Programing issue.*—This involves a determination of “whether in light of its operations since it acquired station KRLA, the licensee’s program proposals contained in its application for Commission consent to assignment of the license * * *” were made in good faith. Of necessity, the resolution of this issue requires a retrospective application of KRLA’s operations to the question of intent at the time the applicant sought the Commission’s consent to acquire the station’s license. While it is obvious from the record, as well as from the pertinent facts herein found under this issue, that Eleven Ten did not adhere to its original proposals to the Commission with reference to programing, this fact would not in itself necessarily imbue with fraud, malice, or deception the applicant’s representations to the Commission in regard to projected program service. It is shown, upon the record, that heavy financial losses requiring immediate recoupment forced a reexamination of the station’s program schedule, and no reason implying a more vicious self-interest than an attempt to protect the applicant’s investment has been developed by the evidence. However, with this understandable stimulus to a program schedule which offered a greater financial return, it was not, as recognized by the Broadcast Bureau, “until 5 months after Eleven Ten assumed operation of KRLA” that “Don took the first action toward the abandonment of Eleven Ten’s programing promises made in the assignment application.” It is realized that, during this period, the station was still generally operating under the assignor’s program format; nevertheless, the delay in the first affirmative step toward departure from the program proposals obviously would not strengthen, under the limited issue of “good faith,” the Bureau’s contention as to the presence of bad faith on the part of the applicant at the time the assignment application was prepared and filed with the Commission. It would appear to be unreasonable to infer, either from a change so long delayed or from representations in documents filed months after the assignment application was received by the Commission, that the applicant had not intended to carry out its original representations. While it did not raise program schedules to a more commendable level until prodded by correspondence from the Commission, this factor, in light of the foregoing analysis, is not material. In this connection, there was no evidentiary showing relating to the time of filing the application; and, as indicated, the fact that the applicant departed, or attempted to depart, from its programing representations, should not, in and of itself, receive reflexive dispositive significance to its prejudice under the limited issue which relates solely to “good faith” at the time of filing. It is to be understood, however, that the material departures, both attempted and realized, from the promises made in the assignment application merit severe condemnation, as do Donald Cooke’s programing instructions to his staff, particularly those under date of April 12, 1960, which were not satisfactorily explained by him in this record. A suspicion at least lingers that his April 12, 1960, instructions were prompted by a desire to make only a temporary and token compliance with the programing representations contained in the assignment application in an effort to forestall action by the Commission. Were the programing issue in this pro-

ceeding in terms of *promise* versus *performance*, a conclusion adverse to the applicant would, of course, be compelled.

5. The Find Perry Allen and Golden Key contests both represent a type of station operation which, if the broadcast industry is to continue maturing, should be relegated to oblivion. With reference to the Perry Allen contest, it is obvious from the findings of fact that it was conceived in cynical fashion to play upon the gullibility and cupidity of the audience, in the hope of gaining widespread quick publicity for the new KRLA. With arrogant disregard of the true facts, announcements were broadcast to induce listeners to believe that Allen was in Los Angeles and that the large initial prize was at least possible of attainment, when, in reality, he was across the continent at the time. Manifestly, the KRLA management intended to heighten the publicity effect by dangling, as it were, before the audience a great prize which it did not expect to pay. It thought, indeed, that it would be able to settle for a much smaller prize than that originally announced; but, through unforeseen circumstances, it was obliged to pay the full prize.

6. The Golden Key contest may be considered as akin to the Perry Allen contest. At the outset, it too offered the hope of a huge prize, although the station management knew that no one had a chance of winning until the prize had substantially dwindled in value, and it would then, by the use of leading language in the announcements, permit someone to locate the key and obtain the reward. It is also of particular significance that many continuous hours of broadcasting time were devoted to a series of irresponsible announcements of this and other contests, in disregard of the programing obligations which had been assumed by the applicant.

7. As a general matter, these contests are to be condemned. As program subjects they are found to be completely without merit. Both contests, and particularly the Perry Allen contest, were conducted in shabby and irregular fashion, and the station's program time was subverted to improper purposes. It appears, however, that KRLA has discontinued this type of operation, and for this reason its derelictions will be less stringently viewed than would otherwise have been the case.

8. *Alteration of program logs.*—It is established that the KRLA program logs were altered improperly to reflect the broadcasting of short religious programs which, in fact, were not broadcast. The only possible purpose of this was to deceive the Commission. It appears from the evidence, however, that Donald Cooke was not aware of the mislogging until he received notice from the Commission. Thereafter, his investigation of the matter consisted of "thoroughly" interrogating Edwin V. Schulz [general manager] who informed him untruthfully that the programs had in fact been presented; and although Herb Heiman [program director] was aware of this misinformation, he failed to correct it. Cooke notified the Commission accordingly. He claims not to have learned that he had been misinformed by Schulz until a few weeks before commencement of hearing in this proceeding, and there is no evidence to refute his claim. Obviously, Cooke should have made a far more detailed investigation

of such an important matter than merely to question Schulz "thoroughly." Numerous other sources of information and methods of obtaining the true facts could and should have been explored by him. While Cooke is here held to have been neglectful of his duty properly to inform himself before reporting to the Commission in the matter of the alleged mislogging of religious programs, nevertheless responsibility for the initial misreporting to the Commission may not, on the basis of this record, be imputed to him or Eleven Ten Broadcasting Corp., of which he is the controlling head.

9. *Short-term renewal.*—With regard to the final issue governing the proceeding, while the ultimate conclusion herein favors the applicant, as heretofore indicated this general ruling cannot be considered an approval of all of its behavior since it acquired station KRLA, and it is here determined that section 307(d) of the Communications Act Amendments, 1960, and section 3.34 of the Commission's rules authorizing short-term grants, find appropriate use in this proceeding. A renewal of license to KRLA for the full 3-year period is not indicated, but a 1-year renewal is appropriate and will serve the ends of justice and the public interest. This ruling is compelled by the detailed findings of fact and conclusions hereinabove set forth. In sum, the haphazardly directed nature of the station's operations after the Commission was advised, as an inducement for approving the assignment, of definite operational plans; the frantic and undignified promotional activities, supplemented by some days of continuous programming which publicized contests and ignored the station's other obligations to the public; the obviously inept absentee direction marked by programming irresolution; and the failure of Donald Cooke adequately to inform himself regarding program mislogging prior to submission of his report to the Commission, all betoken censurable managerial immaturity and operational shortcomings. It is true that after admonition was received from the Commission, the station's program service improved; but whether Eleven Ten Broadcasting Corp., under the record control of Donald Cooke, may, in light of its past, be relied upon to deliver a meritorious service on a permanent basis in accordance with the requirements of the Communications Act and the rules of the Commission, is a question which can be answered best after surveillance during the forthcoming short-term renewal period hereinafter specified. In this connection, the general competence of Donald Cooke to serve as a controlling head and principal policy maker of Eleven Ten Broadcasting Corp. may also be observed during this period.

Accordingly, *It is ordered*, This 20th day of April 1961, that unless an appeal from this initial decision is taken to the Commission by either of the parties to the proceeding, or the Commission reviews the initial decision on its own motion in accordance with the provisions of section 1.153 of the rules, the above-captioned application for license to cover construction permit is granted; and that the above-captioned applications for renewal of licenses, insofar as they contemplate the regular 3-year term, *Are denied, but are granted only to the extent that the said licenses are renewed for the term of 1 year.*

IRALEE W. BENNS, TR/AS SHEFFIELD BROADCASTING CO., DOCKET NOS. 12315 ET AL. :

Upon reconsideration after remand from court of appeals, which had been requested by the Commission, grant of application of Sheffield Broadcasting Co. for construction permit for new standard broadcast station at Sheffield, Ala., to operate on the frequency 1290 kc, 1 kw, daytime only, and denial of mutually exclusive application of J. B. Falt, Jr., for similar facilities; reaffirmed.

Diversification of control of the media of mass communications.—Reconsidered.

Interest of applicant's son in other stations.—Not attributed to applicant in the circumstances of this case.

Section 3.35(a) of the rules.—Charge of violation rejected as not within issues and raised too late.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON 25, D.C.

<p>In re Applications of IRALEE W. BENNS, TR/AS SHEFFIELD BROADCASTING CO., SHEFFIELD, ALA. J. B. FALT, JR., SHEFFIELD, ALA. For Construction Permits</p>	}	<p>Docket No. 12315 File No. BP-11130 Docket No. 12316 File No. BP-11559</p>
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MEMORANDUM OPINION AND ORDER ON REMAND

(Adopted March 28, 1962)

BY THE COMMISSION: COMMISSIONERS MINOW, CHAIRMAN; AND CRAVEN NOT PARTICIPATING; COMMISSIONERS BARTLEY AND FORD DISSENTING AND ISSUING STATEMENTS.

1. The Commission has this case before it on a remand from the U.S. Court of Appeals for the District of Columbia Circuit, which was granted on the Commission's motion prior to argument and decision. Our original decision of April 12, 1961 (30 FCC 579-584), granted the application of Iralee W. Bennis, tr/as Sheffield Broadcasting Co. (Bennis or Sheffield Broadcasting), for a construction permit for a new standard broadcast station to operate on 1290 kc, with a power of 1 kw, daytime only, at Sheffield, Ala., and denied the mutually exclusive application of J. B. Falt, Jr. (Falt), for the same facility. By memorandum opinion and order of September 13, 1961 (31 FCC 563-564), we denied Falt's petition for reconsideration. Falt thereupon appealed to the U.S. Court of Appeals for the District of Columbia Circuit. Believing that we might have erroneously evaluated the extent of Mrs. Bennis' other broadcast interests, we requested the court to remand the case for our further consideration. The court granted the Commission's request on March 13, 1962.

2. In our earlier decision, we concluded that with the exception of a small preference to be awarded to Falt in the area of ascertainment

of community needs, and the preference due Sheffield Broadcasting in the area of diversification of control of the media of mass communications (found to be decisive), no preference should be awarded to either applicant in the other areas of comparison. Upon a restudy of the case, we adhere to our previous findings and conclusions on all of the comparative factors except the diversification factor. With respect to diversification, we believe that although the basic findings accurately reflected the record, our ultimate findings on Mrs. Benns' interests did not adequately reflect the basic findings. Reevaluation of this factor is therefore in order.

3. Mrs. Benns is president and active general manager of station WVOK in Birmingham, Ala. This station operates during daytime hours with a power of 50,000 w, on 690 kc. The licensee is Voice of Dixie, Inc., which is owned 12½ percent by Mrs. Benns; 12½ percent by her husband, William E. Benns, Sr.; and 25 percent by their son, William E. Benns, Jr. The remaining 50-percent interest is owned by an individual not related to Mrs. Benns, who resides in Montgomery, Ala. There are eight other AM stations in Birmingham and a construction permit for another has been granted. Mrs. Benns has been responsible for setting all policies and making major operational decisions for station WVOK since 1947. At the present time she is at the station every day during working hours and is available at other times for emergencies. She testified that she is at the station by 9 o'clock every morning with little time off for lunch and remains until 3 o'clock in the afternoon. She does a great deal of the book-keeping for the station, has written every check for WVOK that has been written, and has deposited all of the receipts of the station. She has an auditor who posts the books monthly, but the everyday details are handled by her.

4. In our previous decisions we characterized Mrs. Benns' interest in station WVOK as a "minority interest" and refused to accord any significance to the interests of her husband and son in that station. However, it is apparent that, in addition to her minority stock interest in WVOK, Mrs. Benns "controls" WVOK within the meaning of that term in the context of determining other broadcast interests attributable to Mrs. Benns. In the *ABC-Paramount Merger* case, 8 Pike and Fischer, R.R. 541, at 616-617, we stated that the word "control" is not a "narrow, legalistic concept but one which must be applied realistically and broadly"; and that the term "is not limited to majority stock ownership, but includes actual working control in whatever manner exercised." See also, *Amendment of the Multiple Ownership Rules*, 9 Pike and Fischer, R.R. 1563, at 1569-1570. Thus, since Mrs. Benns is the dominant factor in the operation of WVOK, a critical consideration in applying our diversification policy, we will consider WVOK as another broadcast interest controlled by Sheffield Broadcasting, rather than a station in which Mrs. Benns has merely a minority interest.¹

¹A true minority interest, without more, would clearly be less significant. Since we have recognized Mrs. Benns' control of WVOK, we need not decide the extent to which the interests of her husband and son in that station could be considered together with hers.

5. In addition to controlling WVOK, Mrs. Benns was president, director, and 45-percent owner of WFLI, Inc., the permittee of standard broadcast station WFLI, at Lookout Mountain, Tenn., at the time of our original decision. WFLI operates with 10 kw daytime and 1 kw nighttime. Lookout Mountain is located 135 miles from Sheffield, and is virtually contiguous to Chattanooga, Tenn. Although there are no other stations in Lookout Mountain, six AM stations are operating in Chattanooga. Since our previous decisions, Commission records, of which we take official notice, show that Mrs. Benns has sold 10 percent of her interest in WFLI to her son, William E. Benns, Jr., leaving her with 35 percent interest. The remaining owners are: Cyril G. Brennan (25 percent), William J. Brennan (25 percent), and T. Julian Skinner (5 percent). The record does not show who controls WFLI, or the extent of Mrs. Benns' management interest in WFLI. We do not believe, however, that the omission of these details warrants our reopening our record, for we believe that station WFLI should also be given full weight as an interest of Mrs. Benns in view of her large stock interest and the office she holds.

6. J. B. Falt, Jr., has majority ownership interests in the following stations: (a) WFUN (60 percent), a 250-w unlimited-time station at Huntsville, Ala., the remaining stock of which is held by his wife (62½ percent) and his partner John Garrison (33⅓ percent).² Huntsville is served by three other stations; (b) WAJF (100 percent), a 250-w unlimited-time station at Decatur, Ala. Decatur is served by two other stations; and (c) Marshall County Broadcasting Co., Inc (66⅔ percent), which holds a permit to operate a 1,000-w daytime-only station at Arab, Ala., which will be the only station in Arab. John Garrison, owner of a 33⅓-percent interest in WFUN, also owns 33⅓ percent of the Arab station. The only overlap between any of the primary service contours of any of the existing or proposed stations in which Falt now has an interest occurs between the 0.5-mv/m contours of WFUN and WAJF. This overlap occurs in an area representing less than 10 percent of the total area included within the 0.5-mv/m contour of either station.

7. Sheffield is near the northwestern corner of Alabama, 62 miles west of Huntsville, 73 miles northwest of Arab, and 42 miles northwest of Decatur. Huntsville is 23 miles northeast of Decatur and 27 miles north of Arab. Arab is 32 miles southeast of Decatur. Thus, as we said in our previous decision, if we were to grant Falt's application he would "control four standard broadcast stations in northern Alabama within a radius of less than 100 miles."³ In our opinion, this high degree of sectional concentration which would result from a grant of

² Since the record was closed, Commission records, of which we take official notice, show that the call letters of WFUN have been changed to WFIX, and that a construction permit to increase the daytime power of WFIX from 250 w to 1,000 w was granted by the Commission on June 21, 1961. WFIX continues to operate at 250 w nighttime.

³ We reiterate again that in deciding the diversification issue unfavorably to Falt, the decision has been made without regard to the examiner's reliance upon the total broadcast-hours per week over which Falt would have control in a small area of Alabama. See 30 FCC at 595, 600, and our granting of the Broadcast Bureau's exceptions Nos. 7 and 10 which were directed to the point that total number of broadcast-hours is meaningless. 30 FCC at 584.

the Falt application outweighs, in comparison, the interests properly attributable to Mrs. Benns.

8. We have considered that Mrs. Benns fully controls WVOK, a 50-kw daytime-only station located in a large community, and that she holds a 35-percent interest in WFLI, which we have considered for purposes of this comparison to be located in Chattanooga, Tenn., and which we have assumed she controls. We have also noted the lesser power of Falt's stations and their location in smaller communities. We have considered, too, in this comparison that there is 47.2 percent overlap between the 0.5-mv/m contours of WVOK and the proposed Sheffield station, while no such overlap would be presented by a grant of the Falt application. Nevertheless, the facts which we consider to be most important are that a grant to Falt would give him control of a fourth station, whereas a grant to Mrs. Benns would be for a third, and that Falt's numerically greater interests are concentrated in a small area. WFLI is located in another State 135 miles from Sheffield, and WVOK is also located 100 miles from Sheffield; on the other hand, Falt's existing and proposed stations would all be located within a radius of less than 100 miles. Services more widely dispersed in Alabama and Tennessee do not invite the dangers which might arise from a concentration of control in a small area of one State.

9. Having considered the record again, the Commission adheres to its original conclusion that the public interest would better be served by granting the application of Sheffield Broadcasting than that of Falt, despite Falt's slight preference on ascertaining community needs.

10. One other point may be mentioned in connection with the diversification issue. We held before that the other broadcast interests of Mrs. Benns' son, William E. Benns, Jr., in stations in which Mrs. Benns herself had no interest, should not be attributed to her in the absence of a showing of participation by her. The record shows that William E. Benns, Jr., has the following interests in broadcast stations other than WVOK and WFLI: (a) 45-percent interest in WSLA-TV, and in WBAM, a 50-kw AM station, in Selma, Ala.; and (b) a 33 $\frac{1}{3}$ -percent interest in WIOI, a 500-w AM station in New Boston, Ohio.⁴ (His wife has a 5-percent interest in WBAM and WSLA-TV.) The examiner refused to permit Falt's counsel to cross-examine Mrs. Benns as to the extent of her son's interests in these stations (Tr. 30-31).⁵ This ruling was the basis for Falt's exception No. 1. We denied this exception, holding that—

In the absence of a showing of control over the business affairs of one family member by other members, mere family relation-

⁴ The record in this proceeding shows that William E. Benns, Jr., has only a 3-percent interest in WIOI. Since the close of the hearing, however, Commission records, of which we take official notice, show that William E. Benns, Jr., now holds 33 $\frac{1}{3}$ percent interest in WIOI.

⁵ The only reason given by Falt's counsel at the hearing for asking this question was that such information was called for by FCC Form No. 301, and that the record should be brought up to date. Falt's pleadings failed to give any reasons for objecting to the examiner's refusal to permit such questioning. See R. 556. Nevertheless, we have considered Falt's apparent argument that if control by Mrs. Benns over her son could be shown, the stations in which William Benns, Jr., has an interest would have to be attributed to her for purposes of the diversification criterion.

ship is insufficient ground for consideration of other broadcast interests held by family members.

We adhere to that conclusion as to these interests, and note that although Falt's counsel was not permitted to ask the specific questions at that point, not only Falt's counsel but Broadcast Bureau counsel later questioned Mrs. Benns concerning any aid, advice, or assistance which she gave her son in connection with his broadcast interests (Tr. 33-35, 68, and Tr. 70-71). The record shows that the only connection between Mrs. Benns and her son in the broadcasting field is that William E. Benns, Jr., gives Mrs. Benns engineering advice in the technical operation of her stations. The record negates any implication of control by Mrs. Benns over her son, or interest by Mrs. Benns in her son's stations. Mrs. Benns and her son are both adults living in separate homes, and Falt's pleadings do not allege any instance or example of control. Thus, we have not attributed to Mrs. Benns any stations in which her son has an interest but she does not.

11. Finally, we turn to the contention raised by Falt in his petition for reconsideration that the overlap between WVOK and the proposed Sheffield Broadcasting station is contrary to section 3.35(a) of our multiple-ownership rules. We rejected Falt's contention previously and must do so again, making clear now, if we did not before, that Falt's contention was raised too late. (To the extent that any language in our previous opinion indicates to the contrary, it is now withdrawn.) In our previous decisions and present decision, we have noted the overlap between WVOK and the proposed Sheffield Broadcasting station. We intended to consider the overlap only in connection with our consideration of the comparative merits of the applicants under the diversification criterion.⁶ For no issue on compliance with section 3.35(a) was designated for hearing, nor did any party seek to enlarge the issues to include such a question. Falt's contention was raised for the first time after the hearing was closed, and after a final decision had been issued. Moreover, Falt did not request that the record be reopened for further evidence.⁷ "It goes without saying that the requirements of a fair hearing include notice of the claims of the opposing party and an opportunity to meet them." *Federal Trade Commission v. National Lead*, 352 U.S. 419, at p. 427. Consequently, while we might originally have included an issue on section 3.35(a), we will not now consider whether the Sheffield Broadcasting application should be denied as in violation of this rule, nor, considering the status of the case, will we on our own motion designate such a new issue for additional hearing.

⁶ It may be noted here that Falt's counsel stated as his reason for introducing the overlap exhibit that such evidence "is relevant, and material under the question of diversification of media of mass communications." See Tr. 252.

⁷ In considering individual applications under the provisions of sec. 3.35, the Commission has said it will examine evidence as to: (1) the extent of overlap of service areas; (2) the degree of common ownership, operation and control; and (3) all other pertinent factors including location of centers of population, distribution of population, other competitive service to the overlap areas and populations, location of trade areas, metropolitan districts, and political boundaries, areas and populations to which services of stations are directed (as indicated by commercial business of stations, news broadcasts, sources of programs and talent, nature of programs, coverage claims, and listening audience), and location of main and secondary studios. FCC Public Notice 7110, Apr. 11, 1947.

12. On March 15, 1962, Falt filed a petition for stay which requested that the Commission issue an order staying its action granting the application of Sheffield Broadcasting pending reconsideration. Falt's petition alleged that "it would be inconsistent with the purpose of section 319(a) of the Communications Act for the Commission to leave the construction permit outstanding so that the permittee could proceed with construction pending reconsideration of the grant." In view of our action today, Falt's petition will be dismissed on the ground that the request is now moot.

Accordingly, *It is ordered*, This 28th day of March 1962, that the Commission's decision of April 12, 1961, granting the application of Sheffield Broadcasting Co. and denying the competing application of J. B. Falt, Jr., both for a construction permit for a new standard broadcast station to operate on the frequency 1290 kc, at Sheffield, Ala., *Is hereby affirmed*, and the petition for stay *Is dismissed*.

DISSENTING STATEMENT OF COMMISSIONER ROBERT T. BARTLEY

I vote to remand the case to the examiner for a further hearing on whether either of the proposals is in compliance with section 3.35 (a) and (b) of our rules on duopoly and concentration of control.

DISSENTING STATEMENT OF COMMISSIONER FREDERICK W. FORD

Although voting originally in favor of Sheffield, I would have granted Falt's petition for reconsideration. I therefore dissented from the Commission's opinion and order denying such relief, 31 FCC 563, and adhere to that position now.

In my view the facts of this case do not warrant a preference for Sheffield under the diversification criterion. The applicant's sole owner, Mrs. Benns, already has what appear to be controlling interests in WVOK, a 50-kw station located at Birmingham, and WFLI, a 10-kw station at Lookout Mountain, Tenn. While a grant to Falt would place him in control of four broadcast stations, none of these exceeds 1 kw in power and the total population they serve is vastly exceeded by Mrs. Benns' Birmingham station alone. The majority places great weight on the fact that Falt's stations are all located in the same section of Alabama, but in terms of coverage, the overlap of the service areas of these stations is minimal. On the other hand, 47 percent of the area within the 0.5-mv/m contour of the proposed Sheffield station lies within the 0.5-mv/m contour of WVOK, Birmingham. It seems to me that the relative size of Mrs. Benns' existing operations and the overlap situation that would be created by a grant should be given greater adverse weight under the diversification criterion than the fact that Falt would control a fourth station in northwestern Alabama.

For this reason and because Falt was preferred on the only other decisional point—ascertainment of community needs—I would reconsider the decision in this case and grant the application of J. B. Falt.

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COLUMBIA RIVER BROADCASTERS, INC., DOCKET NO. 13771:

Application of Columbia River Broadcasters, Inc., for a construction permit for a new standard broadcast station at Mount Vernon, Wash. (1470 kc, 500 w, DA, day) ; granted.

Section 307 (b) of the act.—Fair, efficient, and equitable distribution of broadcast facilities.

Section 3.24 (b) of the rules.—Interference to existing stations.

Section 3.24 (c) of the rules.—Financial qualifications of applicant.

Section 3.28 (d) (3) of the rules.—The 10-percent rule.

Commission's standard broadcast technical standards.—Performance of antenna system.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON 25, D.C.

<p>In re Application of COLUMBIA RIVER BROADCASTERS, INC., MOUNT VERNON, WASH. For Construction Permit</p>	}	<p>Docket No. 13771 File No. BP-11933</p>
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APPEARANCES

Quayle B. Smith, on behalf of Columbia River Broadcasters, Inc.; *John P. Southmayd* (Fisher, Wayland, Duvall & Southmayd), on behalf of Beckley Radio Co.; and *Richard E. Ely*, on behalf of the Chief, Broadcast Bureau, Federal Communications Commission.

DECISION

(Adopted March 28, 1962)

BY THE COMMISSION.

1. Columbia River Broadcasters, Inc., requests a construction permit for a new standard broadcast station at Mount Vernon, Wash., to operate daytime only on 1470 kc at 500 w (class III). Mount Vernon had a 1950 population of 5,230 and a 1960 population of 7,921. Its one existing station, KBRC, is licensed to Beckley Radio Co., a party to this proceeding. This was formerly a four-applicant proceeding, and one of the applications (by Carl-Dek, Inc.) was for a new station on 1460 kc at Kirkland, Wash. The Mount Vernon and Kirkland proposals involved mutual interference, and the designation order herein specified standard interference and section 307(b) issues. By memorandum opinion and order released January 9, 1961 (FCC 61-6), the Commission severed and granted the other three applications. In connection with the foregoing action, Carl-Dek had shown that it would suffer a total of 1.2 percent (6,834 persons) interference within its normally protected contour (0.16 percent—961 persons—by applicant Columbia River); that it would cause interference to Columbia River in the amount of 2.58 percent (1,128 persons);

and that the interested parties had agreed to accept the mutual interference.

2. Thereafter, the Columbia River application was heard on the issues remaining as to it. By initial decision released September 13, 1961 (FCC 61D-141), Hearing Examiner Charles J. Frederick would grant Columbia River. The initial decision is now before us on exceptions filed by Beckley Radio Co.

3. Beckley contends that sections 3.24(b) and 3.28(d) of the Commission's rules require a showing by the applicant that the need for its proposed service outweighs the need for service lost as a result of interference which the proposal would cause to Carl-Dek's KCDI at Kirkland; and that no section 307(b) need can be implied for Mount Vernon in view of its small size, its existing transmission facility, and an abundance of reception service in Mount Vernon and the surrounding rural area. These contentions are completely lacking in merit. Not only is the interference to Carl-Dek de minimis (0.16 percent), but also, except for Carl-Dek's agreement to accept the interference, Carl-Dek would still be in hearing with Columbia River. For the latter reason, KCDI cannot be regarded as an "existing station" within the meaning of the above sections 3.24(b) and 3.28(d). Finally, the Commission's action in severing and granting Carl-Dek represents a determination that, insofar as the above rules are concerned, grants of both applications would be in the public interest notwithstanding the mutual interference.¹

4. Among the issues upon which the Columbia River application was heard was a financial issue. This issue was limited to the question of whether the applicant would be able to secure credit from its equipment supplier, and the issue was completely satisfied when applicant showed (exhibit 2) that the necessary credit would be extended. Beckley's exceptions in this area assume that the applicant was required to make a full financial presentation, and they, too, are without merit. Although the applicant adduced evidence beyond the scope of the issue, such procedure was unnecessary.

5. In view of the foregoing, and except to the extent that the examiner also assumed the financial issue to be a full one, the initial decision herein is adopted. Rulings on Beckley's exceptions may be found in the appendix attached hereto.

Accordingly, *It is ordered*, This 28th day of March 1962, that the application of Columbia River Broadcasters, Inc., for construction permit for a new standard broadcast station at Mount Vernon, Wash., the station to operate daytime only on 1470 kc, with a power of 500 w and a directional antenna, *Is granted*, subject to the following condition:

Pending a final decision in docket No. 144419 with respect to presunrise operation with daytime facilities, the present provisions of section 3.87 of the Commission's rules are not extended to this authorization, and such operation is precluded.

¹ Beckley's reliance on *Mountain Empire Radio Company*, 30 FCC 739, 21 R.R. 630 (1961), is misplaced. The foregoing case is an initial decision which became automatically effective when no exceptions were filed. As such it is not a precedent binding on the Commission. (See public notice of Jan. 6, 1961, FCC 61-25.) Moreover, the interference there was to *existing* stations, and the interference percentages were 6 percent of population to the one station and 12 percent to the other. As to the mootness of the section 307(b) issue herein, see *Suburban Broadcasting Corp.*, 29 R.R. 969, 19 R.R. 833 (1960).

APPENDIX

RULINGS OF COMMISSION ON EXCEPTIONS OF BECKLEY RADIO Co.

<i>Exception No.</i>	<i>Ruling</i>
1, 10, 12-----	Denied. See par. 3 of decision.
2, 3, 5-----	Denied. The findings requested are of no decisional significance.
4-----	Granted. For clarification it is found that applicant would cause to Carl-Dek's station at Kirkland, Wash. (KCDI), interference affecting 961 persons (0.16) in that station's normally protected service area.
6, 7, 8, 11-----	Denied. See par. 4 of decision.
9-----	Denied. See pars. 3 and 4 of decision.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON 25, D.C.

In re Application of COLUMBIA RIVER BROADCASTERS, INC., MOUNT VERNON, WASH. For Construction Permit	}	Docket No. 13771 File No. BP-11933
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APPEARANCES

Quayle B. Smith, on behalf of Columbia River Broadcasters, Inc.; *John P. Southmayd* (Fisher, Wayland, Duvall & Southmayd), on behalf of Beckley Radio Co.; *Marcus Cohn* and *Stanley B. Cohen* (Cohn & Marks), on behalf of Carl-Dek, Inc.; *Francis X. McDonough* (Dow, Lohnes & Albertson), on behalf of KBKW, Inc.; *Henry Perozzo*, on behalf of Henry Perozzo (KAYE); and *Richard E. Ely*, on behalf of the Chief, Broadcast Bureau, Federal Communications Commission.

INITIAL DECISION OF HEARING EXAMINER CHARLES J. FREDERICK
(Adopted September 11, 1961)

PRELIMINARY STATEMENT

The above-captioned application of Columbia River Broadcasters, Inc., is for a permit to construct a new class III standard broadcast station to operate on 1470 kc with a power of 500 w, employing a directional antenna, daytime only, at Mount Vernon, Wash. This application was initially designated for hearing in a consolidated proceeding with three other applications upon specified issues by order of the Commission, released September 20, 1960, which also named Beckley Radio Co., licensee of station KBRC at Mount Vernon, Wash., a party to the proceeding with respect to the subject application. After designation, however, the other three applications with which Columbia River was originally consolidated were removed from hearing and granted, thus rendering moot all but the following issues in the order of designation:

1. To determine the areas and populations which would receive primary service from the proposals of Columbia River Broadcasters, Inc., and Carl-Dek, Inc., respectively, and the availability of other primary service to such areas and populations.
3. To determine the nature and extent of the interference, if any, that each of the instant proposals would cause to and receive from each other and all other existing standard broadcast stations, the areas and populations affected thereby, and the availability of other primary service to the areas and populations affected by interference from any of the instant proposals.
5. To determine whether the interference received by each instant proposal from any of the other proposals herein and any existing stations would affect more than 10 percent of the population within its normally

protected primary service area in contravention of section 3.28(c) (3) of the Commission rules, and, if so, whether circumstances exist which would warrant a waiver of said section.

6. To determine whether Columbia River Broadcasters, Inc., is financially qualified to construct and operate its proposed station, inasmuch as the said applicant failed to submit a showing that credit has been extended to it from the equipment manufacturer.

7. To determine whether the directional antenna system proposed by Columbia River Broadcasters, Inc., can be adjusted and maintained as proposed, and whether the performance of the antenna system would be in accordance with the Commission's standard broadcast technical standards.

9. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the instant applications should be granted.

Aside from the above specified issues, the applicant was found basically qualified in all respects to construct and operate its proposed station. A prehearing conference was held on October 5, 1960, and hearing sessions were held on December 21, 1960, and June 8, 1961, when the record was closed.

FINDINGS OF FACT

Issues 1, 3, 5:

1. According to the 1950 U.S. census, Mount Vernon, Wash., had a population of 5,230. The community lies 55 miles north of Seattle, Wash. One station, KBRC (1430 kc, 1 kw, 5 kw-LS, DA-N, U), is assigned to Mount Vernon.

2. Based on radiation values taken from the directional antenna pattern and on ground conductivity values for the area from figure M-3 of the rules,¹ employing 1950 U.S. census data, the proposed coverage is as follows:

Contour (mv/m)	Population	Area (sq. miles)
0.5 (normally protected).....	43,645	826
Interference from KCDI ¹	1,128 (2.58% ²)	76 (9.2% ²)
Interference free.....	42,517	750

¹ Station KCDI, Kirkland, Wash. (1460 kc, 5,000 w, DA-D), was formerly the applicant Carl-Dek, Inc. (BP-13491, D-13774), originally consolidated herein. When the Commission granted the application of Carl-Dek, it noted that the subject applicant and Carl-Dek, Inc., agreed to accept interference which would be mutually caused.

² Percentages refer to population and area within the normally protected contour.

3. Stations KVI, KGDN, KIRO, KVOS, KOMO, KING, and KBRC provide primary service (0.5 mv/m or greater) to all of the rural area proposed to be served; KARI serves 75-99 percent thereof; KENY, KJR, KQTY, and KOL, 50-74 percent; KXA, KOYO, KTW, KAGT, and KRKO, 25-49 percent; KTAC, KUDY, KNBX, KPUG, KMO, KOND, and KTIK, less than 25 percent. A minimum of 7 and a maximum of 20 stations provide such service to any one part thereof.

¹ The waters of Puget Sound were assumed to have a conductivity of 5,000 millimhos per meter north of Everett, Wash.; 40 millimhos per meter from Everett south to Seattle; and 8 millimhos per meter for the remaining portion of the sound. The applicant made these assumptions based on an examination of the Coast and Geodetic Publication 31-4 (fifth edition), entitled "Density of Sea Water at Tide Stations Pacific Coast," which showed that the salinity of Puget Sound decreases toward the south.

4. Stations KVI, KIRO, KOMO, and KING, Seattle, Wash.; KGDN, Edmonds, Wash.; KVOS, Bellingham, Wash.; KAGT, Anacortes, Wash.; and KBRC, Mount Vernon, Wash., provide primary service (2.0 mv/m or greater) to the city of Mount Vernon, daytime.

5. Other than station KCDI, the proposed operation would neither cause objectionable interference to nor receive objectionable interference from any existing station.

Issue 7:

6. The applicant proposes to employ a two-tower directional antenna system with the specification that the towers are to be 48 electrical degrees apart on a line bearing 150° true, unity field ratio, and current in the northwest tower is to lead the current in the southeast tower by 134° . On the usual assumption of sinusoidal current distribution, the radiation resistance for each of the towers, both of which are to be 80.5 electrical degrees in height, would be 26.5 ohms referred to the tower base, and the mutual impedance between towers would be 22.8 ohms at a phase angle of minus 8° . Assuming these values of self-resistance and mutual impedance, and assuming also an equivalent loss resistance per tower of 2 ohms, the operating resistance of the southeast tower would be 15.1 ohms and the operating resistance for the northwest tower would be 10.5 ohms. On the basis of the foregoing, the RMS of the pattern would be 128 mv/m unattenuated at 1 mile. The RMS of the pattern will be controlled by introducing additional resistance, if necessary, in series with one or both tower bases in order to hold the RMS to 125 mv/m, as shown on the directional antenna pattern. Use of resistors will have the dual effect of controlling the RMS and contributing further to antenna system stability. Substantial experience in the design, adjustment, and maintenance of directional antenna systems indicates to applicant's engineering consultant that this two-element directional antenna, with base operating resistances, both positive and substantial, will be relatively easy to adjust and will be stable in operation. Changes in effective loss resistance produced by variations in ground characteristics will be minor related to the satisfactory operating resistance of the towers; consequently operating parameters will vary but little. The main lobe of radiation of the pattern proposed is relatively insensitive to small changes in antenna field ratios and phase. Even as much as a 5-percent change in ratio and 5° change in phase would produce no noticeable variation over the major portion of the main lobe. In the null region, sufficient tolerance has been provided to account for as much variation in antenna system parameters as is to be expected.

Issue 6:

7. Total cost of the station proposed by Columbia River Broadcasters is estimated at about \$24,420, revenues for the first year at \$33,600, and cost of operation for the same period at \$26,260. Cost of construction may be itemized approximately as follows:

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Transmitter including tubes-----	\$4, 651
Antenna system-----	6, 718
Frequency and modulation monitors-----	1, 218
Studio technical equipment-----	2, 261
Acquiring land-----	5, 000
Acquiring buildings-----	3, 390
Other items-----	1, 200

8. C. James England will furnish all plans, material, labor, and procure all permits necessary to construct the studio and transmitter building proposed by applicant. However, credit in the amount of \$3,000 will be extended by England to the applicant in the form of a note to be executed by the applicant and payable in 30 equal monthly installments of \$100 each, plus interest at 6 percent per annum on the unpaid balance, with the first payment to be due and payable on the 15th day of the month following completion of construction of the building. The personal financial statement of England discloses he has more than sufficient liquid and current assets in excess of liabilities to permit him to fulfill his commitment to the applicant.

9. In connection with the purchase of its technical equipment, a deferred purchase plan will be extended to applicant by Gates Radio Co. Under this plan applicant will be able to purchase about \$13,235 worth of such equipment for a downpayment of 25 percent to be submitted with firm order, and the balance of 75 percent to be financed over 36 months at the rate of finance charge in effect at the time the order is made firm. The deferred balance, including finance charge, is to be payable in 36 monthly installments, with the first payment due 60 days after shipment of the transmitter.

10. Similarly, the applicant does not propose to pay in full at one time the total \$5,000 it has allocated for the acquisition of land. Instead, upon the exercise of a purchase option for which it paid \$500 (which is allocable against the full price), it proposes to pay down an additional \$500 for its proposed transmitter-studio site and to finance the remainder in monthly payments of approximately \$77 (or more), which includes interest at 6 percent on the unpaid balance.

11. Ward Beecher, who is vice president and majority stockholder of the applicant, has agreed to subscribe for \$9,000 worth of applicant's stock and to pay this sum in cash. Mr. Beecher, upon grant of the subject application, has also agreed to lend \$7,000 to be evidenced by a promissory note and to be secured by assignment to him of a promissory note of which applicant is the payee. The note to be executed by applicant to Beecher shall be payable 2 years from the date of execution, with interest at 6 percent from the date 30 days from the date of the note until the date of payment with interest and principal to be paid simultaneously at maturity. Mr. Beecher has stock listed on exchange, bank stocks, and investment fund shares in excess of \$77,000, and his cash and other current assets materially exceed current liabilities. His gross income for 1956 exceeded \$22,000, and for 1957, \$35,000.

CONCLUSIONS

1. With the removal from hearing and grant of the three applications with which Columbia River was formerly consolidated for hearing, the only questions remaining for resolution pertain to the latter applicant's compliance with section 3.28(c) of the rules, its financial qualifications, and whether its directional antenna system can be adjusted and maintained as proposed and would perform in accordance with the Commission's standard broadcast technical standards. All of these questions are resolved in the applicant's favor.

2. As demonstrated by the findings, the proposed operation will receive interference affecting only 2.58 percent of the population within its normally protected service area, which is appreciably less than the 10-percent maximum contemplated under section 3.28(c) of the Commission's rules. Similarly, the evidence reflects that the directional system can be adjusted and maintained as proposed, and that the performance of the antenna system would be in accordance with the Commission's standard broadcast technical standards, including required efficiency.

3. Finally, it is concluded that the applicant will be able to defer in approximate figures \$4,000 of its land costs, \$3,000 of its building costs, and \$9,500 of its equipment costs, or an aggregate of \$16,500 of its total estimated cost of construction. It should therefore be able to place its station on the air for about \$8,000 (\$24,420 less \$16,500). Since a loan and stock subscription will provide \$16,000, the applicant would have left \$8,000 with which to defray the cost of initial operation, or sufficient to operate for more than 3 months, assuming an equal quarterly distribution of estimated cost of operation for the first year. Under these circumstances, it is concluded that the applicant is financially qualified, since it is apparent that it can construct and operate its proposed station for a reasonable initial period even assuming no revenue is received during that time.

4. It is concluded that the operation proposed by Columbia River Broadcasters, Inc., would serve the public interest, convenience, and necessity.

Accordingly, *It is ordered*, This 11th day of September 1961, that unless an appeal from this initial decision is taken by a party, or the Commission reviews the initial decision on its own motion in accordance with the provisions of section 1.153 of its rules, the application of Columbia River Broadcasters, Inc., for a new standard broadcast station to operate on 1470 kc with a power of 500 w employing a directional antenna, daytime only, at Mount Vernon, Wash., *Be and it hereby is granted.*

WILLIAM S. HOWARD (11W0425), DOCKET No. 14345:

Order revoking citizens radio station license, effective May 7, 1962.

Section 1.76 of the rules.—Failure to respond to official notice of violation and other official correspondence.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON 25, D.C.

In the Matter of WILLIAM S. HOWARD, COSTA MESA, CALIF. Order To Show Cause Why There Should Not Be Revoked the License for Radio Station 11W0425 in the Citizens Radio Service	}	Docket No. 14345
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MEMORANDUM OPINION AND ORDER

(Adopted March 28, 1962)

BY THE COMMISSION.

1. By order to show cause released October 26, 1961, the Commission, pursuant to sections 312(a)(4) and 312(c) of the Communications Act of 1934, as amended, directed William S. Howard to show cause why his license for citizens radio station 11W0425 should not be revoked for repeated violations of section 1.76 of the Commission's rules (47 CFR 1.76).

2. The show-cause order alleged that respondent had repeatedly violated section 1.76 of the rules in that he failed to respond to an official notice of violation mailed on June 13, 1961, and a followup letter dated July 25, 1961. The official notice of violation charged that respondent had operated radio station 11W0425 in violation of sections 19.24(a)(1), 19.31(c), and 19.61(a) of the Citizens Radio Service rules. Such notice expressly requested respondent to reply within 10 days. The Commission's letter dated July 25, 1961, advised respondent of his failure to reply to the official notice of violation and requested that a response be submitted within 15 days from the date of that letter. No reply was received to the Commission's letter.

3. In addition to the foregoing, the show-cause order detailed the procedural rights of the respondent, including his right to a waiver of hearing if he so desired and to submit a statement in mitigation or justification. No reply to the show-cause order was received by the Commission, and accordingly, by order released February 26, 1962, the Chief Hearing Examiner terminated the proceeding and certified the matter to the Commission in accordance with section 1.78(c) of the rules.

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4. In view of the above, there can be no other conclusion than that the respondent has repeatedly violated section 1.76 of the Commission's rules as charged in the order to show cause in this proceeding.

5. In view of the respondent's failure to reply to the above-described communications and to the order to show cause, the Commission has no basis upon which to predicate a finding that the respondent is interested in the continued use of his radio station or that such station will be operated in compliance with law in the future. It is, of course, axiomatic that the orderly and effective administration and regulation of the Safety and Special Radio Services, virtually all of which involve the shared use of frequencies, require that licensees operate their radio stations in accordance with the applicable rules and regulations. The optimum and efficient usage of frequencies compels it. It is equally essential that licensees respond promptly and satisfactorily to all Commission communications, and particularly so when such communications involve alleged rule violations. Under the circumstances of this case, the Commission cannot condone the actions of respondent in failing to reply to Commission correspondence, nor can it justify any action less than revocation of the station license as contemplated by the order to show cause.

Accordingly, *It is ordered*, This 28th day of March 1962, that the license of William S. Howard for radio station 11W0425 in the Citizens Radio Service *Is revoked*, effective May 7, 1962, and that a copy of this order of revocation shall be served upon the said licensee at his last known address of 271 Rose Lane, Costa Mesa, Calif.

32 F.C.C.

EUGENE R. BURBANK (WP-5512), DOCKET No. 14374 :

Order revoking ship radio station license, effective May 7, 1962.

Section 1.76 of the rules.—Failure to respond to official notice of violation and other official correspondence.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON 25, D.C.

<p>In the Matter of EUGENE R. BURBANK, MANHATTAN BEACH, CALIF. Order To Show Cause Why There Should Not Be Revoked the License for Radio Station WP-5512 Aboard the Vessel <i>El Barca de Oro</i></p>	}	Docket No. 14374
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MEMORANDUM OPINION AND ORDER

(Adopted March 28, 1962)

BY THE COMMISSION.

1. By order to show cause released November 16, 1961, the Commission, pursuant to sections 312(a)(4) and 312(c) of the Communications Act of 1934, as amended, directed Eugene R. Burbank to show cause why his license for radio station WP-5512 should not be revoked for repeated violations of section 1.76 of the Commission's rules (47 CFR 1.76).

2. The order to show cause in this matter charged respondent with repeated violation of section 1.76 of the Commission's rules because of his failure to respond to Commission correspondence. Specifically, the order alleged that on June 16, 1961, an official notice of violation was sent to respondent concerning his failure to post the license for radio station WP-5512 aboard the vessel *El Barca de Oro*, in violation of section 8.102 of the Commission's rules. It was charged that Burbank failed to reply to the Commission's notice of June 16, 1961, and that, resultantly, on July 17, 1961, a followup letter was sent to him. Respondent's reply to this letter was unsatisfactory in that it merely indicated that the application for license for WP-5512 had been filed by someone other than the licensee, viz, one Benrad, Inc., of San Pedro, and that a new application for license had been filed "through Benrad, Inc." On July 25, 1961, an additional letter was sent to Burbank requesting that he advise when a duplicate license had been received. No reply to this letter was made. Further correspondence was sent to respondent on August 25, 1961, but its delivery was refused.

3. In addition to the foregoing, the show-cause order detailed the procedural rights of the respondent, including his right to a waiver of hearing if he so desired and to submit a statement in mitigation or

justification. No reply to the show-cause order was received by the Commission, and accordingly, by order released February 26, 1962, the Acting Chief Hearing Examiner terminated the proceeding and certified the matter to the Commission in accordance with section 1.78(c) of the rules.

4. In view of the above, there can be no other conclusion than that the respondent has repeatedly violated section 1.76 of the Commission's rules as charged in the order to show cause in this proceeding.

5. In view of the respondent's failure to reply to the above-described communications and to the order to show cause, the Commission has no basis upon which to predicate a finding that the respondent is interested in the continued use of his radio station or that such station will be operated in compliance with law in the future. It is, of course, axiomatic that the orderly and effective administration and regulation of the Safety and Special Radio Services, virtually all of which involve the shared use of frequencies, require that licensees operate their radio stations in accordance with the applicable rules and regulations. The optimum and efficient usage of frequencies compels it. It is equally essential that licensees respond promptly and satisfactorily to all Commission communications, and particularly so when such communications involve alleged rule violations. Under the circumstances of this case, the Commission cannot condone the actions of respondent in failing to reply to Commission correspondence, nor can it justify any action less than revocation of the station license as contemplated by the order to show cause.

Accordingly, *It is ordered*, This 28th day of March 1962, that the license of Eugene R. Burbank for radio station WP-5512 aboard the vessel *El Barca de Oro* is revoked, effective May 7, 1962, and that a copy of this order of revocation shall be served upon the said licensee at his last known address of 3201 Poinsettia, Manhattan Beach, Calif., and 410 North Varney, Burbank, Calif.

32 F.C.C.

AL TURCHIARO (2W2922), DOCKET No. 14377:

Order revoking citizens radio station license, effective May 7, 1962.

Section 1.76 of the rules.—Failure to respond to official notices of violation and other official communications.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON 25, D.C.

<p>In the Matter of AL TURCHIARO, 4433 DEREMIER AVENUE, BRONX, N.Y. Order To Show Cause Why There Should Not Be Revoked the License for Radio Station 2W2922 in the Citizens Radio Service</p>	}	Docket No. 14377
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MEMORANDUM OPINION AND ORDER

(Adopted March 28, 1962)

By THE COMMISSION.

1. By order to show cause released November 20, 1961, the Commission, pursuant to sections 312(a)(4) and 312(c) of the Communications Act of 1934, as amended, directed Al Turchiaro to show cause why his license for citizens radio station 2W2922 should not be revoked for repeated violation of section 1.76 of the Commission's rules (47 CFR 1.76).

2. The order to show cause alleged that respondent had repeatedly violated section 1.76 in that he failed to reply to four separate official notices of violation which were mailed to him on June 29, July 13, July 21, and August 10, 1961, and followup letters concerning each of the official notices of violation, dated, respectively, July 31, August 17, August 22, and September 6, 1961. All of the official notices of violation charged the respondent with violation of section 19.61 of the Commission's rules on the various dates therein set forth. The notice of July 21, 1961, additionally, charged violation of section 19.33—operating with excessive frequency deviation; and section 19.62—failure to transmit proper station identification. The followup letters advised the respondent that his failure to reply to the official notices of violation violated section 1.76 of the Commission's rules, and requested that a response be submitted within 15 days from the date of the receipt of each letter. No reply was received either to the official notices of violation or letters.

3. In addition to the foregoing, the order to show cause detailed the procedural rights of the respondent, including his right to a waiver of hearing, if he so desired, and to submit a statement in mitigation or justification. No reply to the order to show cause

was received by the Commission. Accordingly, by order released February 27, 1962, the Chief Hearing Examiner terminated the proceeding and certified the matter to the Commission as provided by section 1.78(c) of the rules.

4. In view of the above, there can be no other conclusion than that the respondent has repeatedly violated section 1.76 of the Commission's rules as charged in the order to show cause in this proceeding.

5. In view of the respondent's failure to reply to the above-described communications and to the order to show cause, the Commission has no basis upon which to predicate a finding that the respondent is interested in the continued use of his radio station or that such station will be operated in compliance with law in the future. It is, of course, axiomatic that the orderly and effective administration and regulation of the Safety and Special Radio Services, virtually all of which involve the shared use of frequencies, require that licensees operate their radio stations in accordance with the applicable rules and regulations. The optimum and efficient usage of frequencies compels it. It is equally essential that licensees respond, promptly and satisfactorily, to all Commission communications, and particularly so when such communications involve alleged rule violations. Under the circumstances of this case, the Commission cannot condone the actions of respondent in failing to reply to Commission correspondence, nor can it justify any action less than revocation of the station license as contemplated by the order to show cause.

Accordingly, *It is ordered*, This 28th day of March 1962, that the license of Al Turchiaro for radio station 2W2922 in the Citizens Radio Service *Is revoked*, effective May 7, 1962, and that a copy of this order of revocation shall be served upon the said licensee at his last known address at 4433 DeRemier Avenue, Bronx, N.Y.

32 F.C.C.

HAROLD A. MARARIAN (1A2035), DOCKET No. 14399:

Order revoking citizens radio station license, effective May 7, 1962.

Section 1.76 of the rules.—Failure to respond to official notice of violation and other official correspondence.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON 25, D.C.

<p>In the Matter of HAROLD A. MARARIAN, 19 ARCH STREET, PROVIDENCE, R.I. Order To Show Cause Why There Should Not Be Revoked the License for Radio Station 1A2035 in the Citizens Radio Service</p>	}	Docket No. 14399
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MEMORANDUM OPINION AND ORDER

(Adopted March 28, 1962)

BY THE COMMISSION.

1. By order to show cause released November 20, 1961, the Commission, pursuant to sections 312(a) (4) and 312(c) of the Communications Act of 1934, as amended, directed Harold A. Mararian of Providence, R.I., to show cause why the license of his citizens radio station 1A2035 should not be revoked.

2. The order to show cause charged repeated violation of section 1.76 of the Commission's rules (47 CFR 1.76) in that the respondent failed to reply to an official notice of violation, mailed June 22, 1961, and followup letter dated July 25, 1961. The official notice of violation alleged that the respondent was operating radio station 1A2035 in violation of section 19.61(g) of the rules governing the Citizens Radio Service in that communications were being transmitted to specific persons or stations beyond the direct groundwave coverage of station 1A2035. It was expressly requested that the respondent reply within 10 days, describing the corrective action taken. No reply was received and a letter was sent to the respondent on July 25, 1961, by certified mail-return receipt requested (Cert. No. 33584), advising that his failure to reply to the official notice of violation violated section 1.76 of the Commission's rules; describing the information the Commission desired; and asking that reply be made within 15 days of receipt of the letter. Respondent did not reply to the Commission's letter.

3. In addition to the foregoing, the show-cause order detailed the procedural rights of the respondent, including his right to a waiver of hearing, if he so desired, and to submit a statement in mitigation or justification. No reply to the show-cause order was received by the

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Commission, and, accordingly, by order released February 27, 1962, the Acting Chief Hearing Examiner terminated the proceeding, and certified the matter to the Commission in accordance with section 1.78 of the rules.

4. In view of the above, there can be no other conclusion than that the respondent has repeatedly violated section 1.76 of the Commission's rules as charged in the order to show cause in this proceeding.

5. In view of the respondent's failure to reply to the above-described communications and to the order to show cause, the Commission has no basis upon which to predicate a finding that the respondent is interested in the continued use of his radio station or that such station will be operated in compliance with law in the future. It is, of course, axiomatic that the orderly and effective administration and regulation of the Safety and Special Radio Services, virtually all of which involve the shared use of frequencies, require that licensees operate their radio stations in accordance with the applicable rules and regulations. The optimum and efficient usage of frequencies compels it. It is equally essential that licensees respond promptly and satisfactorily to all Commission communications, and particularly so when such communications involve alleged rule violations. Under the circumstances of this case, the Commission cannot condone the actions of the respondent in failing to reply to Commission correspondence, nor can it justify any action less than revocation of the station license as contemplated by the order to show cause.

Accordingly, *It is ordered*, This 28th day of March 1962, that the license of Harold A. Mararian for radio station 1A2035 in the Citizens Radio Service *Is revoked*, effective May 7, 1962, and that a copy of this order of revocation shall be served upon the said licensee at 19 Arch Street, Providence, R.I.

32 F.C.C.

EUGENE M. MOODY (7W2223), DOCKET No. 14417:

Order revoking citizens radio station license, effective May 7, 1962.

Section 1.76 of the rules.—Failure to respond to official communications from the Commission concerning a violation.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON 25, D.C.

In the Matter of EUGENE M. MOODY, 2345 16TH AVENUE, VERO BEACH, FLA. Order To Show Cause Why There Should Not Be Revoked the License for Radio Station 7W2223 in the Citizens Radio Service	}	Docket No. 14417
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MEMORANDUM OPINION AND ORDER

(Adopted March 28, 1962)

BY THE COMMISSION.

1. By order to show cause released December 8, 1961, the Commission, pursuant to sections 312(a)(4) and 312(c) of the Communications Act of 1934, as amended, directed Eugene M. Moody of Vero Beach, Fla., to show cause why the license of his citizens radio station 7W2223 should not be revoked.

2. The order to show cause charged repeated violation of section 1.76 of the Commission's rules (47 CFR 1.76) in that the respondent failed to reply to a letter dated August 11, 1961, alleging that the respondent was violating section 310(b) of the Communications Act and section 19.17 of the Commission's rules by permitting others, who were operating unlicensed radio equipment, to identify their radio transmissions by use of the call sign of his station. It was expressly requested that the respondent reply within 10 days, describing the corrective action taken. No reply was received, and a further letter was sent to the respondent on September 26, 1961, by certified mail-return receipt requested (Cert. No. 97002), advising that failure to reply violated section 1.76 of the Commission's rules, and asking for a reply to the Commission's letter. The respondent did not reply.

3. In addition to the foregoing, the order to show cause detailed the procedural rights of the respondent, including his right to a waiver of hearing, if he so desired, and to submit a statement in mitigation or justification. No reply to the order to show cause was received by the Commission, and, accordingly, by order released February 27, 1962, the Acting Chief Hearing Examiner terminated the proceeding, and certified the matter to the Commission in accordance with section 1.78 of the rules.

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4. In view of the above, there can be no other conclusion than that the respondent has repeatedly violated section 1.76 of the Commission's rules as charged in the order to show cause in this proceeding.

5. In view of the respondent's failure to reply to the above-described communications and to the order to show cause, the Commission has no basis upon which to predicate a finding that the respondent is interested in the continued use of his radio station or that such station will be operated in compliance with law in the future. It is, of course, axiomatic that the orderly and effective administration and regulation of the Safety and Special Radio Services, virtually all of which involve the shared use of frequencies, require that licensees operate their radio stations in accordance with the applicable rules and regulations. The optimum and efficient usage of frequencies compels it. It is equally essential that licensees respond promptly and satisfactorily to all Commission communications, and particularly so when such communications involve alleged rule violations. Under the circumstances of this case, the Commission cannot condone the actions of the respondent in failing to reply to Commission correspondence, nor can it justify any action less than revocation of the station license as contemplated by the order to show cause.

Accordingly, *It is ordered*, This 28th day of March 1962, that the license of Eugene M. Moody for radio station 7W2223 in the Citizens Radio Service *Is revoked*, effective May 7, 1962, and that a copy of this order of revocation shall be served upon the said licensee at 2345 16th Avenue, Vero Beach, Fla.

32 F.C.C.

MARSHALL W. JONES (9Q0085), DOCKET No. 14418:

Order revoking citizens radio station license, effective May 7, 1962.

Section 1.76 of the rules.—Failure to respond to official notice of violation and other official correspondence.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON 25, D.C.

In the Matter of MARSHALL W. JONES, HOUSTON, TEX. Order To Show Cause Why There Should Not Be Revoked the License for Radio Station 9Q0085 in the Citizens Radio Service	}	Docket No. 14418
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MEMORANDUM OPINION AND ORDER

(Adopted March 28, 1962)

BY THE COMMISSION.

1. By order to show cause released December 11, 1961, the Commission, pursuant to sections 312(a) (4) and 312(c) of the Communications Act of 1934, as amended, directed Marshall W. Jones to show cause why his license for citizens radio station 9Q0085 should not be revoked for repeated violations of section 1.76 of the Commission's rules (47 CFR 1.76).

2. The show-cause order alleged that respondent had repeatedly violated section 1.76 of the rules in that he failed to respond to an official notice of violation mailed on July 8, 1961, and a followup letter dated August 8, 1961. The official notice of violation charged that respondent had operated radio station 9Q0085 in violation of section 19.61 (a) and (g) of the Citizens Radio Service rules. Such notice expressly requested respondent to reply within 10 days. The Commission's letter dated August 8, 1961, advised respondent of his failure to reply to the official notice of violation and requested that a response be submitted within 15 days from the date of that letter. No reply was received to the Commission's letter.

3. In addition to the foregoing, the show-cause order detailed the procedural rights of the respondent, including his right to a waiver of hearing, if he so desired, and to submit a statement in mitigation or justification. No reply to the show-cause order was received by the Commission, and accordingly, by order released February 27, 1962, the Chief Hearing Examiner terminated the proceeding and certified the matter to the Commission in accordance with section 1.78(c) of the rules.

32 F.C.C.

4. In view of the above, there can be no other conclusion than that the respondent has repeatedly violated section 1.76 of the Commission's rules as charged in the order to show cause in this proceeding.

5. In view of the respondent's failure to reply to the above-described communications and to the order to show cause, the Commission has no basis upon which to predicate a finding that the respondent is interested in the continued use of his radio station or that such station will be operated in compliance with law in the future. It is, of course, axiomatic that the orderly and effective administration and regulation of the Safety and Special Radio Services, virtually all of which involve the shared use of frequencies, require that licensees operate their radio stations in accordance with the applicable rules and regulations. The optimum and efficient usage of frequencies compels it. It is equally essential that licensees respond promptly and satisfactorily to all Commission communications, and particularly so when such communications involve alleged rule violations. Under the circumstances of this case, the Commission cannot condone the actions of respondent in failing to reply to Commission correspondence, nor can it justify any action less than revocation of the station license as contemplated by the order to show cause.

6. Accordingly, *It is ordered*, This 28th day of March 1962, that the license of Marshall W. Jones for radio station 9Q0085 in the Citizens Radio Service *Is revoked*, effective May 7, 1962, and that a copy of this order of revocation shall be served upon the said licensee at his last known address of 2907½ Albany, Houston, Tex.

32 F.C.C.

FLOYD CONSTRUCTION Co., INC., DOCKET No. 14422:

Order revoking licenses of special industrial radio stations KGH-627, KIL-448, and KE-6425, effective May 7, 1962.

Section 1.76 of the rules.—Failure to respond to official correspondence concerning a violation.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON 25, D.C.

In the Matter of FLOYD CONSTRUCTION Co., INC., POST OFFICE DRAWER 78, SAVANNAH, GA. Order To Show Cause Why There Should Not Be Revoked the Licenses for Special Industrial Radio Stations KGH-627, KIL-448, and KE-6425	}	Docket No. 14422
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MEMORANDUM OPINION AND ORDER

(Adopted March 28, 1962)

BY THE COMMISSION.

1. By order to show cause, released December 12, 1961, the Commission, pursuant to sections 312(a) (4) and 312(c) of the Communications Act of 1934, as amended, directed Floyd Construction Co. Inc., Savannah, Ga., to show cause why the licenses of its special industrial radio stations KGH-627, KIL-448, and KE-6425 should not be revoked.

2. The order to show cause charged repeated violation of section 1.76 of the Commission's rules (47 CFR 1.76) in that the respondent failed to reply to a letter dated June 21, 1961, alleging an unauthorized transfer of control of special industrial radio station KE-6425 in violation of section 310(b) of the Communications Act of 1934, as amended, and in violation of section 11.56(d) of the Commission's rules made pursuant thereto; and a violation of section 11.66 of the Commission's rules in respect to special industrial radio stations KE-6425, KGH-627, and KIL-448. It was expressly requested that the respondent reply within 10 days, describing the corrective action taken. No reply was received and a letter was sent to the respondent on September 27, 1961, by certified mail-return receipt requested (Cert. No. 97090), advising that failure to reply violated section 1.76 of the Commission's rules, and asking for a reply to the Commission's letter. Respondent did not reply.

3. In addition to the foregoing, the order to show cause detailed the procedural rights of the respondent, including its right to a waiver of hearing, if it so desired, and to submit a statement in mitigation or justification. No reply to the order to show cause was received by the

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Commission, and, accordingly, by order released February 27, 1962, the Acting Chief Hearing Examiner terminated the proceeding, and certified the matter to the Commission in accordance with section 1.78 of the rules.

4. In view of the above, there can be no other conclusion than that the respondent has repeatedly violated section 1.76 of the Commission's rules as charged in the order to show cause in this proceeding.

5. In view of the respondent's failure to reply to the above-described communications and to the order to show cause, the Commission has no basis upon which to predicate a finding that the respondent is interested in the continued use of the radio stations or that such stations will be operated in compliance with law in the future. It is, of course, axiomatic that the orderly and effective administration and regulation of the Safety and Special Radio Services, virtually all of which involve the shared use of frequencies, require that licensees operate their radio stations in accordance with the applicable rules and regulations. The optimum and efficient usage of frequencies compels it. It is equally essential that licensees respond promptly and satisfactorily to all Commission communications, and particularly so when such communications involve alleged rule violations. Under the circumstances of this case, the Commission cannot condone the actions of the respondent in failing to reply to Commission correspondence, nor can it justify any action less than revocation of the station licenses as contemplated by the order to show cause.

Accordingly, *It is ordered*, This 28th day of March 1962 that the licenses of Floyd Construction Co., Inc., for radio stations KGH-627, KIL-448, and KE-6425 in the Special Industrial Radio Service *Are revoked*, effective May 7, 1962, and that a copy of this order of revocation shall be served upon the said licensee at its address of record, Post Office Drawer 78, Savannah, Ga.

VALUE RADIO CORP. (WOSH) ET AL., DOCKETS NOS. 13926-13927:

Initial decision conditionally granting applications for construction permits to increase daytime power of class IV stations from 250 w to 1 kw, in Oshkosh, Wis., and Beloit, Wis.; became final in accordance with section 1.153 of the Commission's rules.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON 25, D.C.

In re Applications of VALUE RADIO CORP. (WOSH), OSHKOSH, WIS. HOWARD MILLER ENTERPRISES & CONSULTANTS, INC. (WGEZ), BELOIT, WIS. For Construction Permits	}	Docket No. 13926 File No. BP-13268 Docket No. 13927 File No. BP-13576
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APPEARANCES

Ben C. Fisher, on behalf of Value Radio Corp. (WOSH); *Harrison T. Slaughter* and *John McD. Corn*, on behalf of Howard Miller Enterprises & Consultants, Inc. (WGEZ); *Jack P. Blume* and *Joseph J. Kessler*, on behalf of WDBQ Broadcasting Co.; *A. Harry Becker*, on behalf of Village Broadcasting Co. (WOPA); *Robert M. Booth, Jr.*, and *John L. Tierney*, on behalf of the Bureau Broadcasting Co.; and *Richard E. Ely* and *Donald L. Rushford*, on behalf of the Chief, Broadcast Bureau, Federal Communications Commission.

INITIAL DECISION OF HEARING EXAMINER THOMAS H. DONAHUE
(Effective March 20, 1962, pursuant to sec. 1.153)

PRELIMINARY STATEMENT

1. This hearing involves the applications of Value Radio Corp. (WOSH) and Howard Miller Enterprises & Consultants, Inc. (WGEZ), to increase the daytime power of their class IV stations from 250 w to 1 kw.¹ The applications were designated to be heard by Commission order released January 31, 1961 (FCC 61-109). In the order of designation, both applicants were found to be legally, technically, and financially qualified to engage in the construction and operation proposed but for matters placed in issue. The issues designated read as follows:

(1) To determine the areas and populations which may be expected to gain or lose primary service from the proposed operation of stations WOSH and WGEZ, and the availability of other primary service to such areas and populations.

¹ Hereafter the applicants will be referred to by the call letters of their stations.

(2) To determine the nature and extent of the interference, if any, that each of the instant proposals would cause to and receive from each other and all other existing standard broadcast stations, the areas and populations affected thereby, and the availability of other primary service to the areas and populations affected by interference from any of the instant proposals.

(3) To determine whether the instant proposals would involve objectionable interference with existing stations or proposals with regard to which the applicant was not timely filed as outlined below, or any other existing standard broadcast stations, and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other primary service to such areas and populations.

<i>Proposal</i>	<i>Existing station or proposal</i>
BP-13268-----	WCBQ, Whitehall, Mich., 1490 kc, 250 w, U, IV. BMP-8307 (WCBQ), Whitehall, Mich., 1490 kc, 250 w, 1 kw-LS, U, IV. WGEZ, Beloit, Wis., 1490 kc, 250 w, U, IV.
BP-13576-----	WDBQ, Dubuque, Iowa, 1490 kc, 250 w, U, IV. WOPA, Oak Park, Ill., 1490 kc, 250 w, U, IV. WOSH, Oshkosh, Wis., 1490 kc, 250 w, U, IV. WISM, Madison, Wis., 1480 kc, 1 kw, 5 kw-LS, DA-2, U, III. BP-12135, Princeton, Ill., 1490 kc, 100 w, U, IV. BP-12303 (WOPA), 1490 kc, 250 w, 1 kw-LS, U, IV.

(4) To determine, in the light of section 307(b) of the Communications Act of 1934, as amended, which of the instant proposals would better provide a fair, efficient, and equitable distribution of radio service.

(5) To determine, in the light of the evidence adduced pursuant to the foregoing issues, which of the instant applications should be granted.

The order further provided that the following station licensees be made parties to the proceeding in respect of their present operations:

Licensee :	<i>Station</i>
Paul A. Brandt-----	WCBQ
Howard Miller Enterprises & Consultants, Inc-----	WGEZ
WDBQ Broadcasting Co-----	WDBQ
Village Broadcasting Co-----	WOPA
Value Radio Corp-----	WOSH
Heart O'Wisconsin Broadcasters, Inc-----	WISM

It was further ordered that Paul A. Brandt, licensee of station WCBQ, and Russell Armentrout and Mildred Armentrout, d/b as Bureau Broadcasting Co., and Village Broadcasting Co. be made parties to the proceeding in respect of their proposed operations.

2. There were three sessions held on the record in this proceeding—two prehearing conferences and one brief formal hearing session. The first conference was confined to a discussion of the problems involved in general in the proceeding and the intermediary steps to be taken before formal hearing was to be held. The following program of future steps to be taken was agreed upon :

Exchange date-----	¹ May 15, 1961
Engineering conference-----	² May 31, 1961
Further prehearing conference-----	June 6, 1961
Freeze date-----	³ June 14, 1961
Hearing-----	June 19, 1961

¹ This date covered the informal exchange of the applicants' direct written presentations.

² This conference was held to permit all parties to informally voice objection to the showings prepared by their adversaries with a view toward eliminating objection to the admissibility of evidence at the hearing.

³ Applicants were not permitted to alter their direct written presentations after this date.

3. At the second conference, which was held on June 15, 1961, the following matters were covered. Counsel for WGEZ and WOPA reported that agreement had been reached between those two parties under which WOPA would not oppose the application of WGEZ and would accept the interference WGEZ would cause WOPA in exchange for like treatment by WGEZ of a similar proposal currently pending of WOPA to increase power. Counsel for WDBQ noted that he was in disagreement with counsel for WGEZ over whether, under the issues, WGEZ was required to submit proof on the interference its proposed operation would cause not only to the existing operation of WDBQ but to the operation proposed by that station—in the opinion of counsel for WDBQ, both showings were required. Counsel reported on the results of the engineering conference and counsel for both applicants indicated their respective showings were ready for submission into evidence. Counsel for the parties stated that it would be unnecessary for witnesses to appear at the hearing to present evidence.

4. The substance of what occurred at the hearing on June 19, 1961, may be thus recapitulated. Counsel for WDBQ stated that WDBQ would not object to grant of either application at issue. Both applicants, without objection, submitted their direct presentations into evidence. The examiner took official notice of the population of Beloit, Wis. The examiner officially noticed the fact that on May 9, 1961, an initial decision was issued recommending grant of applications for facilities at Princeton and Oak Park, Ill. Counsel for Bureau Broadcasting Co. stated that he had had no communication from his client as to whether Bureau would oppose the WGEZ application, but that his client might elect to file a pleading at the proposed findings stage. Counsel for WGEZ requested that the examiner note that in the Oak Park-Princeton initial decision, the examiner recommended grant on condition that the applicants accept interference from other 250-w stations that were increasing power to 1 kw. A discussion was held concerning the filing of proposed findings.

5. On August 8, 1961, the Broadcast Bureau filed "Proposed Findings of Fact and Conclusions." On August 18, 1961, WDBQ filed a "Response to Broadcast Bureau's Proposed Findings." On August 24, 1961, WGEZ filed a pleading entitled "Opposition to Alternative Requests of WDBQ Broadcasting Co." The substance of WDBQ's pleading may thus be briefly stated. It concurred in the findings of fact submitted by the Broadcast Bureau. It had no objection to grant of both applications. As a result of grant of WGEZ's application, WDBQ would lose 10.6 percent of its service area. In light of this fact, it requested: (1) that the initial decision be held up pending favorable determination by the Commission of a petition WDBQ had pending which requested the Commission to waive its filing rules and grant its application to increase power; or (2) that a condition be placed on the grant of WGEZ's application to the effect that WGEZ should not commence construction until the Commission has acted favorably upon WDBQ's application for power increase, and in the event that increase was granted WGEZ be required not to commence tests until WDBQ is similarly authorized. The basis for this request,

alleged WDBQ, was the fact that when the Commission in its report and order of May 3, 1961, amended its rules to provide more expeditious treatment of applications by class IV stations to increase power (FCC 61-601, 21 R.R. 1600), it recognized the desirability of simultaneous power increases by class IV stations where interference between such class of stations was involved.² Further, urged WDBQ, the Commission has, in a number of recent cases, conditioned authorization for class IV power increases upon grantees not entering upon program tests until such time as other class IV stations, which would receive substantial interference from proposed operations, have also been authorized to increase power. For this proposition, WDBQ cited *In re Application of Colby Broadcasting Corporation (WJOB), Hammond, Indiana* (FCC 61-962).

6. In its response to the WDBQ pleading, WGEZ opposed on two grounds: (1) it knew of no instance where issuance of initial decision had been withheld pending disposition of an untimely filed application; and (2) request to condition grant on WGEZ's coming abreast of WDBQ's application status came as a surprise and was opposed because (a) at hearing, counsel for WDBQ indicated it would not object to grant of either application, and (b) if increased interference from WGEZ to WDBQ were the only problem, such a condition to grant as was effected in *Colby* might be appropriate, but in the instant matter if WGEZ does not go up in power it will suffer more loss in coverage as a result of interference from the recently authorized 1-kw operation of WOPA at Oak Park, Ill., than the present operation of WDBQ would suffer from the proposed 1-kw operation of WGEZ.

7. In its reply to WGEZ's opposition, WDBQ reiterated that only recently has the Commission's policy become crystallized favoring across-the-board grants of class IV power increase applications. Again WDBQ pointed to *Colby* as precedent for attaching conditions to grant to deter class IV stations from enjoying increased coverage before other class IV stations to which they will cause interference secure similar improvement of facilities.

8. The findings of fact submitted by the Broadcast Bureau have been checked and find support in material received into evidence. No counterfindings have been filed. Accordingly, the Broadcast Bureau's findings are here adopted.

FINDINGS OF FACT³

9.

1. The findings herein assume simultaneous operation of both proposals with a power of 1,000w as requested.

Station WOSH

2. Station WOSH now furnishes a primary service daytime to 202,329 persons in an area of 2,934 square miles. Operating as proposed, primary service would be provided to 314,723 persons in 3,607 square miles. By the proposed power increase, WOSH would not only continue to provide service to all of its present service area, but in addition would make a new service available to 112,394 persons in an area of 673 square miles (WOSH exhibit 1, pp. 4, 5, 11, 14, 21). Proposed WOSH would not cause interference to any

² For title of the document referred to, see p. 787.

³ Population figures were obtained from the 1950 U.S. census.

existing station other than the class IV 1-kw operation of station WCBQ, Whitehall, Mich., and the proposal herein of station WGEZ (WOSH exhibit 1, pp. 2, 15, 16, 21). Station WCBQ has agreed to accept the interference from proposed WOSH (WOSH exhibit 1, p. 18) and grant of the WCBQ application to increase daytime power to 1 kw is subject to the condition that interference be accepted from any other class IV stations increasing power above 250 w (memorandum opinion and order, FCC 61-340, released March 17 [23], 1961).

3. Station WGEZ now furnishes a primary service daytime to 69,868 persons in an area of 708 square miles. Operating as proposed, primary service would be provided to 84,742 persons in 932 square miles. By the proposed power increase, WGEZ would not only continue to provide service to all of its present service area, but in addition would make a new primary service available to 14,874 persons in an area of 224 square miles (WGEZ exhibit 2 [1], pp. 11-14).

4. Apart from interference to proposed WOSH, WGEZ operating as proposed would cause interference to class III station WISM at Madison, Wis. (1480 kc, 5 kw-D/1 kw-N, DA-2, V), and to class IV stations WDBQ, Dubuque (250 w), Iowa; WOPA, Oak Park, Ill. (1 kw); and NEW, Princeton, Ill. (100 w). The authorizations for the Oak Park and Princeton stations which became effective June 28, 1961, are conditioned upon acceptance of interference from other class IV stations in the event such stations increase power to 1 kw. WDBQ has on file an application (BP-14510, filed November 22, 1960) to increase daytime power to 1 kw and has agreed to accept interference from proposed WGEZ (Tr. 68, 69).

5. The adjacent-channel interference to station WISM would involve 289 persons in an area of 25 square miles, representing 0.1 percent of the population (267,412 persons) and 0.6 percent of the area (4,780 square miles) within the 0.5-mv/m normally protected contour of station WISM (WGEZ exhibit 2 [1], pp. 19, 20). All of the area receives primary service (0.5 mv/m or greater) from 12 stations (WGEZ exhibit 2 [1], p. 21).

CONCLUSIONS

1. It is apparent from the above findings that as a result of their proposals, the two applicants will substantially increase their service areas, thus providing a new standard broadcast service to a considerable number of listeners. While both proposed operations will cause interference to other existing and proposed operations, the stations and applicants so affected have had opportunity to be heard and have either acquiesced in grant of the proposals or have interposed no objection to their grant. Since the Commission has urged the desirability of class IV stations increasing power, it is clear that grant of the applications should be here recommended, see report and order, in the matter of *Amendment of Part I of the Commission's Rules and Regulations To Effect Certain Changes Therein With Respect to the Implementation of a More Expeditious Procedure in the Processing of Applications Filed by Existing Class IV Stations Requesting an Increase in Power*, 21 R.R. 1600.

2. As noted in paragraphs 5 through 7 of the preliminary statement, WDBQ seeks to have the timing of grant of the WGEZ application coincide with grant of its own application for power increase. Neither of the two authorities cited by WDBQ (the Commission's report and order noted above and its order in *Colby Broadcasting Corporation* (FCC 61-962)), in the opinion of the examiner, furnishes adequate support for the relief requested. It is true that in the report and order the Commission, in adopting amendment to its rules

to accommodate more across-the-board processing of class IV applications, did emphasize that one of the desirable attributes attendant upon the amendment under consideration was the fact that it tended to minimize class IV interference problems. This, however, is a far cry from saying that class IV applicants for power increase, who for one reason or another are ineligible for across-the-board consideration, are entitled to have the Commission's processes so synchronized as to confer upon them all benefits which other class IV applicants taking a different route may enjoy. Because an agency recognizes and seeks to ameliorate the impact of an undesirable condition upon a group within a class does not mean that in taking such action it has issued an insurance policy holding all members of the class harmless from the condition it has sought to avoid. The *Colby* order (FCC 61-962) similarly fails to persuade. In that matter the Commission was ruling upon alternative requests by a petitioner who sought either to have the *Colby* grant set aside and designated for hearing, or to have the grant conditioned upon petitioner achieving parallel application status. *Colby* objected to hearing, but agreed to the condition. The Commission granted the petition insofar as it requested the condition. This is quite a different matter than the situation here where the party seeking the condition has already been through hearing with the applicant against whom it seeks relief and has had ample opportunity to demonstrate, if it could, that the public interest would suffer unless grant of its application was timed with grant of the applications at issue. Here petitioner, WDBQ, not only failed to produce any such independent showing but has also consented to grant of the WGEZ application. Rejection of WDBQ's claim to relief does not suggest that the claim is wholly without merit. Creation of interference to existing operations is action that should be avoided if possible. Synchronization of processing is a method whereby interference may be avoided. As WGEZ suggests, if the interference WGEZ's proposed operation would cause the existing operation of WDBQ were the only interference consideration involved in the latter's request, perhaps favorable consideration should be given to WDBQ's petition. However, WGEZ points out, in its pleading, that such is not the case for if WGEZ does not go up in power it would suffer greater interference from WOPA, Oak Park, Ill., than WDBQ's present operation will receive from WGEZ's proposal. Presumably, then, synchronization of WDBQ's application processing with WGEZ's would also entail bringing WOPA into the picture, and WOPA might well in turn point to some class IV applicant whose proposal would similarly cause interference to its existing operation. Decent regard for the orderly dispatch of the Commission's functions rebels at opening such a Pandora's box. The Commission in encouraging class IV stations to increase daytime power is, on behalf of the public, seeking to expand on a nationwide basis the scope of radio service. Such action, of course, benefits immeasurably the individual stations which can qualify for increased power. The process of effecting the program is one beset by many complexities. That it cannot be effected with absolute equity to all parties involved is unfortunate but apparently unavoidable. The

slight dislocation to the present WDBQ operation that may be temporarily caused as a result of WGEZ's expanded operation appears a small price for WDBQ to pay for similar expanded operation even though its enjoyment of that benefit may postdate WGEZ's operation with increased power.

Accordingly, *It is ordered*, This 26th day of January 1962, that unless an appeal to the Commission from this initial decision is taken by one of the parties, or the Commission reviews the initial decision on its own motion in accordance with the provisions of section 1.153 of the rules, the applications of Value Radio Corp. (WOSH) and Howard Miller Enterprises & Consultants, Inc. (WGEZ), to increase the daytime power of their class IV stations from 250 w to 1 kw at Oshkosh, Wis., and Beloit, Wis., respectively, *Are granted*, subject to the following condition:

Permittees shall accept such interference as may be imposed by other existing 250-w class IV stations in the event they are subsequently authorized to increase power to 1 kw.

32 F.C.C.

NEWTON-CONOVER BROADCASTING Co., INC. (WNNC), DOCKET No. 14285:

Initial decision granting, conditionally, the application of Newton-Conover Broadcasting Co., Inc., for an increase in daytime power of class IV station WNNC at Newton, N.C., from 250 w to 1 kw, and to continue operation on 1230 kc with a nighttime power of 250 w; became final in accordance with section 1.153 of the Commission's rules.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON 25, D.C.

<p>In re Application of NEWTON-CONOVER BROADCASTING Co., INC. } (WNNC), NEWTON, N.C. For Construction Permit</p>	}	<p>Docket No. 14285 File No. BP-14077</p>
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APPEARANCES

John P. Bankson, Jr. (Miller & Schroeder), on behalf of Newton-Conover Broadcasting Co., Inc.; and *Joseph D. Greene*, on behalf of the Chief, Broadcast Bureau, Federal Communications Commission.

INITIAL DECISION OF HEARING EXAMINER MILLARD F. FRENCH

(Effective March 20, 1962, pursuant to sec. 1.153)

PRELIMINARY STATEMENT

1. This proceeding involves the above-captioned application of Newton-Conover Broadcasting Co., Inc., requesting an increase in daytime power of class IV station WNNC at Newton, N.C., from 250 w to 1 kw, and to continue operation on 1230 kc with a nighttime power of 250 w. By order released October 13, 1961, this application was designated for hearing upon the following specified issues:

(1) To determine the areas and populations which may be expected to gain or lose primary service from the proposed operation of station WNNC, and the availability of other primary service to such areas and populations.

(2) To determine whether the instant proposal would cause objectionable interference to station WKMT, Kings Mountain, N.C., or any other existing standard broadcast stations, and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other primary service to such areas and populations.

(3) To determine, in the light of the evidence adduced pursuant to the foregoing issues, whether a grant of the instant application would serve the public interest, convenience, and necessity.

By the same order, R. H. Whitesides, licensee of station WKMT (1220 kc, 1 kw, day), Kings Mountain, N.C., was made a party respondent. A prehearing conference was held on November 8, 1961, and a hearing was held on December 13, 1961, at which time the record was closed. The licensee of station WKMT failed to file a notice

of appearance and did not appear at either the prehearing conference or the hearing.

FINDINGS OF FACT

2. Newton-Conover Broadcasting Co., Inc., proposes to increase the daytime power of station WNNC at Newton, N.C., from 250 w to 1 kw, and to continue operation on 1230 kc with a nighttime power of 250 w. Newton is located about 35 miles northwest of Charlotte, N.C., and has a population of 6,658. Station WNNC is the only standard broadcast station in Newton.

3. The proposed increase in daytime power would restore the service previously provided by WNNC to areas and populations which have lost that service by reason of grants of power increases to cochannel class IV stations WSKY, Asheville, N.C.; WIST, Charlotte, N.C.; WMFR, High Point, N.C.; and WBBI, Abingdon, Va. Based on 1960 census figures, the proposed coverage as compared to the present curtailed coverage of WNNC is as follows:

Contour	Present		Proposed	
	Area (sq. miles)	Population	Area (sq. miles)	Population
2.0.....	156	34,046	302	67,826
0.5.....	581	68,799	1,110	136,161
Interference free.....	453	57,068	763	104,370

4. The proposed power increase would extend the service of WNNC to an additional 47,302 persons within an area of 310 square miles. Whereas existing WNNC serves only 20 percent of Hickory, N.C., and 60 percent of East Hickory and none of Longview, N.C., proposed WNNC would provide primary service of 2 mv/m or greater to all three communities. Of 25 stations providing service to some portion of the gain area, WIRE and WHKY serve all of such gain area. Ten of the stations serve portions amounting to less than 25 percent of the gain area, but the distribution of the 25 stations is such that all parts of the gain area receive a minimum of 6 services.

5. Aside from the interference caused to cochannel class IV stations now authorized to operate with a daytime power of 1 kw, the WNNC proposal would cause interference to station WKMT, a class II station at Kings Mountain, N.C. (1220 kc, 1 kw, day). Based on inverse fields of 183 mv/m for WKMT and 190 mv/m for WNNC and on conductivities taken from figure M-3 of the rules, the interference to WKMT is as follows:

	Population	Area (sq. miles)
WKMT 0.5-mv/m contour.....	173,740	1,075
Interference from existing WNNC.....	1,309	19
Present interference free.....	172,431	1,056
Additional interference from proposed WNNC.....	6,300	59
Interference free.....	166,131	997

The 6,300 persons in 59 square miles that would lose the service of WKMT currently receive at least 8 other services. Seven stations (WBT, WAYS, WHKY, WIRC, WLON, WOHS, and WCFT) now provide service to all of the area and its 6,300 residents. Other stations serving portions of the area include WDBM, WIST, WLTE, WGGC, and WBBO. WKMT now suffers interference from WNNC which affects 1,309 persons, or 0.75 percent of the population, and 19 square miles, or 1.8 percent of the area within its normally protected 0.5-mv/m contour. The new interference from proposed WNNC would raise the total WKMT loss to 4.4 percent of the population and 7.2 percent of the area.

ULTIMATE FINDINGS AND CONCLUSIONS

1. Newton-Conover Broadcasting Co., Inc., licensee of station WNNC (1230 kc, 250 w, U), Newton, N.C., seeks to increase the daytime power of WNNC, an existing class IV station. The application was designated for hearing principally to determine the extent of interference that would be caused to WKMT (1220 kc, 1 kw, day), a class II station at Kings Mountain, N.C., and whether the need for the new service resulting from an increase to 1 kw outweighs the need for the service to be lost as a result of interference. It is noted that while the proposed WNNC operation will cause interference to four other class IV stations, the construction permits issued to those four stations to increase daytime power to 1 kw have been conditioned on acceptance of interference from other class IV stations seeking an increase in daytime power.

2. As the findings demonstrate, the resulting new interference to WKMT would involve 6,300 persons and an area of 59 square miles. WKMT now suffers interference from WNNC totaling 0.75 percent of the population within its 0.5-mv/m normally protected contour. The new interference from proposed WNNC would raise the total WKMT loss to 4.4 percent of the population and 7.2 percent of the area within the station's normally protected 0.5-mv/m contour. WKMT would continue to provide service to 166,131 persons in 997 square miles. The 6,300 persons to be affected by the new interference will continue to receive at least 8 services from other existing stations.

3. Proposed WNNC would provide a new service to 47,302 persons in 310 square miles. In this gain area there are at least six services available from other stations. It is noted that the impact of the interference to which WKMT would be subject would not in the aggregate materially affect the extent of the station's overall service area. Additionally, of major decisional significance is the fact that the WNNC proposal represents another step toward implementing the Commission's nationwide policy of daytime power increases for class IV stations. The interference to WKMT is not of such magnitude as to override the benefits which can be expected to accrue from nationwide class IV increases in power. Therefore, it must be concluded that the need for the new service proposed by WNNC out-

weighs the need for the service which would be lost by WKMT by reason of the requested power increase.

4. Upon the basis of the entire record in this proceeding, it is concluded that a grant of WNNC's application to increase its daytime power would serve the public interest, convenience, and necessity. In accordance with Commission policy, the construction permit which issues should be conditioned upon the permittee's acceptance of interference from other existing class IV stations that are subsequently authorized to increase power in excess of 250 w.

Accordingly, *It is ordered*, This 26th day of January 1962, that unless an appeal to the Commission from this initial decision is taken by any of the parties, or the Commission reviews the initial decision on its own motion in accordance with the provisions of section 1.153 of the rules, the application of Newton-Conover Broadcasting Co., Inc., for an increase in daytime power of class IV station WNNC at Newton, N.C., from 250 w to 1 kw, and to continue operation on 1230 kc with a nighttime power of 250 w, *Be, and the same is, hereby granted; And it is further ordered*, That the construction permit shall contain the following condition:

Permittee shall accept such interference as may be imposed by other existing 250 w class IV stations in the event they are subsequently authorized to increase power to 1,000 w.

32 F.C.C.

JOHN M. BARRICK, GLASGOW, KY., DOCKET No. 14281 :

Initial decision granting application for a construction permit for a new standard broadcast station (class III) in Glasgow, Ky., to operate on 1440 kc, with 1 kw power, daytime only; became final in accordance with section 1.153 of the Commission's rules.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON 25, D.C.

In re Application of
JOHN M. BARRICK, GLASGOW, KY.
For Construction Permit

} File No. BP-14641
} Docket No. 14281

APPEARANCES

Maurice M. Jansky, Esq., on behalf of John M. Barrick; and *Earl C. Walck, Esq.*, on behalf of the Chief, Broadcast Bureau, Federal Communications Commission.

INITIAL DECISION OF HEARING EXAMINER ISADORE A. HONIG

(Effective March 22, 1962, pursuant to sec. 1.153)

PRELIMINARY STATEMENT

1. The above-captioned application of John M. Barrick (hereinafter "Barrick") seeks a construction permit for a new standard broadcast station (class III) in Glasgow, Ky., to operate on 1440 kc, with 1 kw power, daytime only. Barrick's application was originally designated for hearing in a consolidated proceeding with a mutually exclusive application (file No. BP-13996) for an identical broadcast facility in Glasgow, Ky., filed by Lewis M. Owens, John A. Hartnett, and Carl R. Thomale, d/b as Barren County Broadcasting Co. The Commission's designation order (FCC 61-1183, released October 10, 1961) specified a financial qualification issue as to applicant Barrick¹ and the standard comparative issue as to the proposals of both applicants. Except for the question of his financial qualification, the Commission found that Barrick possesses the basic requisite qualifications (i.e., legal, technical, and otherwise) to construct and operate his proposed Glasgow station. The designation order directed that a grant of either application should contain a condition "that the permittee accept any interference received as a result of a subsequent grant of the application of Taylor County Broadcasting Co., Inc., file No. BP-13851, for an increase in the daytime power of station WTCO, Campbellsville, Ky."

¹ The financial issue was stated as follows: "1. To determine whether John M. Barrick is financially qualified to construct and operate his proposed station."

2. Commission records (docket No. 14281) reflect the filing on October 30, 1961, in triplicate, of the affidavit of John M. Barrick attesting the publication on October 19, 20, 26, and 27, 1961, in the Glasgow Daily Times of a local notice of designation of his application for hearing in accordance with the requirements of section 1.362(b) of the Commission's rules.

3. On October 24, 1961, the two above-identified applicants for a Glasgow station filed a joint request pursuant to the provisions of section 311(c) of the Communications Act and section 1.316 of the Commission's rules, requesting approval by the Commission of an agreement looking toward the dismissal of the Barren County Broadcasting Co. application and reimbursement by Barrick to the dismissing applicant company of the expenditures made in connection with the preparation and in the prosecution of its application. A prehearing conference was held on November 14, 1961, at which time arrangements were made for proceeding to hearing on the originally scheduled date of December 13, 1961, with respect to the financial issue applicable to the Barrick application. On November 29, 1961, there was released a memorandum opinion and order (FCC 61M-1863) of the Acting Chief Hearing Examiner which document: (a) granted the joint request of applicants Barren County Broadcasting Co. and Barrick for approval of their agreement; (b) dismissed the Barren County application; and (c) retained the Barrick application in hearing status. As a result of the above-described action of the Acting Chief Hearing Examiner, the standard comparative issue has been rendered moot and there remains for determination in this proceeding only the question of the financial qualification of applicant Barrick.

4. On December 12, 1961, Barrick filed a petition for leave to amend his application so as to reflect new financing arrangements (bank loan and deferred payments on equipment) made by him. The amendatory petition was granted by the hearing examiner in a ruling announced on the record after an oral argument held on this pleading on December 13, 1961, prior to the commencement of the hearing. By a memorandum of ruling (FCC 61M-1962) released December 15, 1961, the oral ruling on the petition in question was formalized. The evidentiary hearing on the Barrick application was held on December 13, 1961, but the record was kept open pending the submission by the applicant of an additional exhibit in the form of a statement under oath by Mrs. Ruth Barrick, the mother of the applicant. On December 18, 1961, Barrick filed a motion requesting (a) the receipt in evidence of additional "Barrick Exhibit 3" tendered therewith, and (b) the closing of the record as well as the designation of a filing date for proposed findings and conclusions.² By an order of the hearing examiner released December 21, 1961 (FCC 61-1994), this petition was granted, the proffered exhibit was received, and the record was closed. Proposed findings of fact and conclusions were filed by applicant Barrick on December 29, 1961. The Broadcast Bureau did not submit proposed find-

² The Barrick motion indicated that Bureau counsel had informally consented to the granting of this pleading.

ings of fact and conclusions, nor did it avail itself of the right to file a reply pleading by January 5, 1962.

FINDINGS OF FACT

5. The instant application of John M. Barrick for a new broadcast station to operate daytime on 1440 kc with a power of 1,000 w, will bring a second standard broadcast facility to the city of Glasgow, Ky. According to the 1960 U.S. census, the population of Glasgow was 10,069 persons. This city is located in Barren County, the population of which numbered over 28,000 persons in 1960.

6. The total cost of constructing the proposed Barrick station is estimated as \$12,720. In addition to this amount, the applicant's agreement to reimburse Barren County Broadcasting Co., as approved by the Commission, requires the expenditure of an additional \$1,105.54, bringing the total estimated expenditure for construction of the proposed station and for the reimbursement obligation to \$13,825.54.

7. The sum of \$12,720, representing the total estimated expenditure for construction of the proposed station, includes the following items of technical equipment: the 1-kw transmitter and associated gear including tubes (\$5,195); the antenna and ground system (\$2,500); frequency and modulation monitors (\$1,150); and studio equipment (\$1,475). The total estimated cost of this technical equipment is \$10,320. Other capital expenditures (not taking into account the payment to Barren County Broadcasting Co.) include an estimated cost of \$600 for the acquisition of land, \$1,200 for the construction of a building, and \$600 for engineering expenses, or a total of \$2,400. The above enumeration of technical equipment and other items of capital expenditure yields a total amount of \$12,720 required for the construction of the proposed station. Estimated cost of operation of the proposed station is \$35,000 for the first year of operation.

8. With regard to the estimated equipment cost of \$10,320, Gates Radio Co. has agreed, as evidenced by a letter from Gates dated November 21, 1961, to an initial downpayment of 25 percent and to the financing of the balance of the cost over a period of 36 months. On the basis of this financing arrangement, which contemplates payment of the deferred balance in 36 consecutive monthly installments, and assuming that the proposed station will not have any income for the first 3 months of operation, the applicant's estimated out-of-pocket expenditures will be—

Land	\$600.00
Building	1,200.00
Engineering expenses.....	600.00
25 percent of equipment costs to Gates.....	2,580.00
Payment to Barren County Broadcasting Co.....	1,105.54
3 payments to Gates.....	645.00
3 months' operating costs.....	8,750.00
Total	15,480.54

9. The evidence establishes that the Citizens National Bank of Glasgow, Ky., will extend to the applicant a line of credit from that

bank in the total amount of \$16,000, to be used in the construction and operation of his proposed Glasgow station. Any moneys borrowed under the bank commitment would be represented by promissory notes of the applicant payable 6 months after date, but renewable thereafter on terms and conditions to be agreed upon. The notes which the applicant will execute to the bank for the moneys supplied under the line of credit are to be endorsed by his mother, Mrs. Ruth Barrick. These notes will also be secured by a mortgage in the amount of \$8,000 on certain real estate owned by the applicant in Glasgow, Ky., and by the pledge of an insurance policy and insurance company shares (worth \$2,000 in all) owned by the applicant. Furthermore, the applicant's mother will, in addition to endorsing his notes, pledge bonds and savings accounts belonging to herself and having a value of \$7,000. All of these securities are fully described in a letter to the applicant from the Citizens National Bank having the date of December 8, 1961. (See exhibit 2, p. 2.)

10. The applicant submitted in evidence a current financial statement of his assets and liabilities as of November 27, 1961, which shows that his total assets exceed his total liabilities by \$38,449. Listed among his "quick assets" are cash in the sum of \$500, and "commissions" due the applicant in the amount of \$1,100. The financial statement reflects various real estate holdings of the applicant with a total value of \$40,000 and subject to mortgages in the total sum of about \$16,000.

CONCLUSIONS

1. The application of John M. Barrick proposes a new class III standard broadcast station at Glasgow, Ky., to operate daytime on 1440 kc with a power of 1 kw. Although originally designated for comparative hearing with Barren County Broadcasting Co., then an applicant for identical facilities in Glasgow, Ky., the dismissal of the latter application left only one issue for hearing on the application of John M. Barrick; to wit, the determination of whether this applicant is financially qualified to construct and operate his proposed station. Save for the question as to his financial qualification, the Commission has found the applicant legally, technically, and otherwise qualified with respect to his proposal herein.

2. Applicant Barrick has complied with the requirements of section 311(c) of the Communications Act and section 1.362(b) of the Commission's rules as to publication of a local notice of the designation of his application for hearing, and has also submitted to the Commission the necessary statement, in triplicate, as to publication of such notice required by section 1.362(g) of the rules. No objection to a grant of the Barrick application has been filed by any member of the public, nor did any such person seek to submit evidence at the hearing on this application.

3. The total cost of construction of the proposed station, plus the obligation to make reimbursement in the amount of \$1,105.54 to Barren County Broadcasting Co., the withdrawing applicant, requires a total expenditure of \$13,825.54. The equipment supplier has agreed to a financing arrangement whereby the total equipment cost of

\$10,320 will be met by an initial downpayment by Barrick of 25 percent, with the balance to be paid in consecutive monthly installments over a period of 36 months. On this basis and assuming that the new station will not yield any income during the first 3 months of operation, the applicant's out-of-pocket expenditures to construct his proposed station, including the reimbursement obligation, and to operate it for this initial period will amount to \$15,480.54.

4. The applicant has arranged with the Citizens National Bank of Glasgow, Ky., for a fully secured loan of \$16,000, which amount will be more than sufficient to cover the necessary out-of-pocket expenses of \$15,480.54 to be incurred in the construction and the initial period of operation of his station. The notes to cover any sums advanced under the bank's commitment will be signed by the applicant and endorsed by his mother, Mrs. Ruth Barrick, and will be secured by Mrs. Barrick's pledge of bonds and saving accounts worth \$7,000, and by the applicant's \$8,000 mortgage on a property in Glasgow and his pledge of a policy of insurance and insurance stock in the total value of \$2,000. In addition to the \$16,000 available to him under the bank loan, the applicant's current financial statement shows "quick assets" of cash in bank and commissions due him in the total sum of \$1,600. This financial statement further reflects that the value of applicant's real estate holdings would be about \$16,000 after allowing for existing encumbrances and an \$8,000 mortgage to be executed in favor of the bank. Taking into account the \$16,000 available to the applicant under the aforementioned bank loan, and the \$1,600 in quick assets as well as the substantial value of the real estate (after encumbrances) shown by his financial statement, it is concluded that the applicant's assets and immediate sources of credit are sufficient to cover the out-of-pocket expenditures needed to build the new station and operate it, without regard to any revenue, for an initial period of 3 months as well as to pay for the legal expenses incurred in the prosecution of his application and provide for other expenditures that might arise through unforeseen contingencies. Since the applicant has satisfactorily demonstrated his ability to provide the sums of money required to build his proposed station and operate it without revenue for at least 3 months, it is concluded, in accordance with well-established Commission policy, that he is financially qualified to construct and operate his proposed Glasgow station.

In view of the foregoing, it is concluded that the public interest, convenience, and necessity will be served by a grant of the instant application of John M. Barrick for a construction permit for a new standard broadcast station in Glasgow, Ky., to operate daytime on 1440 kc with a power of 1 kw, subject to the condition stated in the designation order that the permittee accept any interference received as a result of a subsequent grant of the application of Taylor County Broadcasting Co., Inc., file No. BP-13581, for an increase in the daytime power of station WTCO, Campbellsville, Ky.

Accordingly, *It is ordered*, This 29th day of January 1962, that unless an appeal to the Commission from this initial decision is taken by any of the parties, or the Commission reviews the initial decision on its own motion in accordance with the provisions of section 1.153

of the rules, the application of John M. Barrick for a construction permit for a new standard broadcast station (class III) in Glasgow, Ky., to operate on 1440 kc with 1 kw power, daytime only, *Is granted*, subject to the following condition :

Permittee shall accept any interference received as a result of a subsequent grant of the application of Taylor County Broadcasting Co., Inc., file No. BP-13851, for an increase in the daytime power of station WTCO, Campbellsville, Ky.

32 F.C.C.

KENOSHA BROADCASTING, INC., DOCKET No. 14174

Initial decision conditionally granting application for a construction permit for a new FM broadcast station to operate on the frequency 95.1 Mc (channel 236), as amended, to specify effective radiated power of 4.0 kw and with antenna height of 256 feet above average terrain; became final in accordance with section 1.153 of the Commission's rules.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON 25, D.C.

In re Application of KENOSHA BROADCASTING, INC., KENOSHA, WIS. } For Construction Permit	Docket No. 14174 File No. BPH-3367
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APPEARANCES

Mr. Mark E. Fields, on behalf of applicant Kenosha Broadcasting, Inc.; *Mr. Howard F. Roycroft*, on behalf of intervenor the Journal Co. (WTMJ-FM); *Mr. Joseph D. Greene*, on behalf of the Chief of the Broadcast Bureau, Federal Communications Commission.

INITIAL DECISION OF HEARING EXAMINER DAVID I. KRAUSHAAR
(Effective March 13, 1962, pursuant to sec. 1.153)

FINDINGS AND CONCLUSIONS

1. Kenosha Broadcasting, Inc., applied for a construction permit for a new FM broadcast station to operate on the frequency 95.1 Mc (channel 236), with effective radiated power of 6.19 kw and an antenna height of 256 feet above average terrain, at Kenosha, Wis. Its application was mutually exclusive with an application filed by Lake Zurich Broadcasting Co. (file No. BPH-3203; docket No. 14173) for a construction permit for an FM station in Kenosha, Wis., on the same frequency. The two applications were consolidated and designated for hearing by Commission order released June 26, 1961 (FCC 61-794), on specified issues pertaining to the coverage proposed by each of the applicants and a matter of objectionable interference it appeared the Lake Zurich proposal would cause to an existing FM station, in addition to the so-called standard comparative issue.¹

2. By order released August 23, 1961 (FCC 61M-1393), the Acting Chief Hearing Examiner granted a petition by Lake Zurich filed August 11 requesting the dismissal of its application without prejudice, and the Lake Zurich application was thus dismissed. In the meantime, however, by order released July 28, 1961 (FCC 61M-

¹ Applicant Kenosha Broadcasting, Inc., was found by the Commission to be legally, technically, financially, and otherwise qualified to construct its proposed station and to operate it except as indicated in the issues.

1299), the Chief Hearing Examiner granted intervention against applicant Kenosha Broadcasting, Inc., on petition by the Journal Co., licensee of FM broadcast station WTMJ-FM, Milwaukee, Wis., filed July 14, 1961, alleging objectionable interference within the 1-mv/m contour of station WTMJ-FM, affecting an estimated population of 3,395 in an area of about 1.8 square miles, that would result from a grant of the Kenosha Broadcasting, Inc., application. Because there were no specified issues encompassing the latter problem, the Commission itself, by memorandum opinion and order released September 18, 1961 (FCC 61-1103), granted a motion by intervenor to enlarge the issues and added an interference issue pertaining to the alleged objectionable interference to FM broadcast station WTMJ-FM, Milwaukee, Wis., under the Kenosha Broadcasting proposal. The specific issues of fact which were finally involved² in this proceeding, therefore, are:

a. To determine the area and population within the 1-mv/m contour, the area and population therein which would be served by the proposed station, and the availability of other FM services (at least 1 mv/m) to such proposed service area.

b. To determine whether the proposal of Kenosha Broadcasting, Inc., would involve objectionable interference to station WTMJ-FM, Milwaukee, Wis., or any other existing FM broadcast stations, and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other FM service of at least 1 mv/m to such areas and populations.

The Commission's designation order, it may be noted, prescribes that in the event of a grant of Kenosha Broadcasting, Inc.'s application, "the construction permit shall contain a condition requiring that station WLIP [applicant's AM station] request permission from the Commission to determine power of WLIP by the indirect method during installation of the FM antenna and checking resistance of the tower after the installation has been completed; prior to authorization of program tests, resistance measurements and form 302 must be submitted for WLIP."

3. A prehearing conference was held in this proceeding on July 28, 1961. The hearing was originally scheduled to commence on September 15, 1961, but was postponed for 1 week on the hearing examiner's own motion due to an emergency which required him to preside at a field hearing in Cincinnati, Ohio, on September 15. On September 22 a hearing session was convened, but it was discovered that applicant could not establish that it had complied with the requirement of publication of the hearing notice prescribed by statute and the Commission's rules and regulations, 47 U.S.C. section 311(a)(2) and 47 CFR 1.362(b). The examiner having been notified formally by petition filed by the applicant on September 25, 1961, that publication had not in fact been accomplished, a memorandum opinion and order (FCC 61M-1574) holding the proceedings held September 22 to be a nullity was released by the hearing examiner on

² The standard comparative issue (issue 3 in the designation order) was rendered moot by the dismissal of the Lake Zurich application, as was an interference issue (issue 2) concerning the Lake Zurich proposal vis-a-vis FM station WMRO-FM, Aurora, Ill.

September 27, 1961. The latter memorandum opinion and order, an order issued by the examiner on October 3, 1961 (FCC 61M-1597), and a further order issued by him on October 26 (FCC 61M-1696) describe the situation and developments in detail and explain the delay in rescheduling the matter for hearing on November 22, 1961. These documents, which are part of the docket record, are therefore incorporated by reference. Hearing was held on November 22, 1961, compliance with the publication requirements having then been established of record to the hearing examiner's satisfaction, and the record was duly closed.

4. On December 8, 1961, some 16 days after the record had been closed and 4 days prior to the deadline date established for the filing by respondent of its proposed findings of fact and conclusions of law, the Commission released an order amending rule 1.356 (FCC 61-1447) by imposing a "freeze" on the processing of FM broadcast applications, including those in hearing status, which did not conform to certain interim criteria set forth in the amended rule. It was also provided that "Any person may amend a pending application to bring it into conformity with the interim criteria, and thereafter, the subject proposal will be considered and processed in accordance with the procedure set forth in this note." The applicant's proposal in this case seemed to conflict with the interim criteria, and therefore the examiner, by memorandum opinion and order released December 19, 1961 (FCC 61M-1986), called for the submission of briefs or motions directed to this question. On December 21, 1961, however, applicant elected to proceed by petitioning for leave to amend its proposal by reducing power, and there being no opposition, or other pleading responsive to the motion, the petition was granted by memorandum opinion and order of the hearing examiner released January 3, 1962 (FCC 62M-3). The same order reopened the record and scheduled a further hearing on the amended proposal for 9 a.m., January 10, 1962. Further hearing was duly held on the date scheduled and evidence in the form of a new engineering exhibit (applicant's exhibit 3), which conformed the proof to the amended proposal, was introduced and the record closed once again. All parties informally informed the hearing examiner on January 12, 1962, that they waived their right to file proposed findings of fact and conclusions of law.

5. The evidence now discloses—the earlier showing by the applicant having been rendered moot by the showing introduced during the January 10, 1962, hearing session—that operating in conformity with its amended proposal, with effective radiated power of 4.0 kw instead of 6.19 kw as proposed originally (all other aspects of operation remaining the same as originally proposed), the proposed FM broadcast station of Kenosha Broadcasting, Inc., will neither cause interference within the 1-mv/m contour of any existing FM broadcast station, nor be affected by interference from any existing station within its own proposed 1-mv/m contour. Nor does the proposal as amended involve conflict with any other pending application.³ These

³ There being no interference cognizable under the rules and policies of the Commission to existing FM broadcast stations, findings and conclusions regarding other FM broadcast services within applicant's proposed service area become superfluous.

findings are predicated on undisputed evidence disclosing adequately that interference considerations have been ascertained and analyzed in accordance with the interim criteria set out in rule 1.356, amended. Thus, among other things, a ratio of 1:100, desired to undesired signals, was properly applied and it was shown that the 1,000-uv/m (60 dbu) contour of station WTMJ-FM, Milwaukee, Wis., in the direction of the Kenosha proposed site (WTMJ-FM operates on 94.5 Mc, three channels removed from 95.1 Mc, the frequency on which applicant proposes to operate) will not penetrate within a radius of 5 miles of the proposed transmitter site using the F (50, 50) propagation curves specified in the amended rule.⁴ In all other respects, too, the requirements specified in the amended rule were met in locating pertinent contours. Additionally, though not necessary to the decision under the circumstances, the evidence discloses that applicant's station would be a first FM facility in Kenosha, Wis., a city with population according to the 1960 U.S. census of 67,899, and would serve within its proposed 1-mv/m contour a population of 241,599 in an area of 285 square miles.

6. Undisputed evidence in the record, in the form of an affidavit, indicates that applicant neither gave nor promised to give any consideration whatsoever in connection with the dismissal of the Lake Zurich Broadcasting application which was hitherto in conflict with Kenosha Broadcasting, Inc.'s application, and that applicant has not received or been promised any consideration in connection therewith. This evidence, in fact, is corroborated by an affidavit by the treasurer of Lake Zurich Broadcasting Co. which was filed in support of its August 11, 1961, petition to dismiss.

ULTIMATE CONCLUSION

7. In view of the above, it is concluded ultimately that no impediment to a grant of the subject application as amended now exists, either under amended rule 1.356 or any other rule or policy of the Commission, and that the public interest, convenience, and necessity will be served by the prompt grant of said application so that the people of Kenosha, Wis., might be provided with their first local FM transmission service at an early date.

ORDER

It is ordered, This 18th day of January 1962, that unless an appeal to the Commission from this initial decision is taken by any of the parties, or the Commission reviews the initial decision on its own motion in accordance with the provisions of rule 1.153, the application of Kenosha Broadcasting, Inc., for a construction permit for a new FM broadcast station to operate on the frequency 95.1 Mc (channel 236), as amended, to specify effective radiated power of 4.0 kw and

⁴By notice of withdrawal filed Jan. 15, 1962, of which the hearing examiner takes official notice, counsel for station WTMJ-FM, the intervenor herein, advised the Commission that intervenor was withdrawing its objection to grant and had no further interest in the proceeding in view of the applicant's engineering showing in support of the amended application.

with antenna height of 256 feet above average terrain, *Is hereby granted*, subject to the following condition:

Station WLIP shall request permission from the Commission to determine power of WLIP by the indirect method during installation of the FM antenna and checking resistance of the tower after the installation has been completed; and prior to authorization of program tests, resistance measurements and form 302 are to be submitted for WLIP.

32 F.C.C.

VIRGINIA-KENTUCKY BROADCASTING Co., INC. (WNRG), DOCKET No. 13231:

Initial decision granting application of Virginia-Kentucky Broadcasting Co., Inc. (WNRG), Grundy, Va., for change in facilities from 1250 kc to 940 kc, and increase in power from 1 kw to 5 kw; became final in accordance with section 1.153 of the Commission's rules.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON 25, D.C.

In re Application of VIRGINIA-KENTUCKY BROADCASTING Co., INC. } (WNRG), GRUNDY, VA. } For Construction Permit	Docket No. 13231 File No. BP-12326
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APPEARANCES

John B. Jacob and Thomas H. Wall, on behalf of Virginia-Kentucky Broadcasting Co., Inc. (WNRG); and *Robert J. Rawson, Thomas B. Fitzpatrick, Kenneth A. Finch, Robert B. Jacobi, Richard E. Ely, James F. Marten, Richard M. Riehl*, and *Morton L. Berfield*, on behalf of the Broadcast Bureau.

INITIAL DECISION OF HEARING EXAMINER ELIZABETH C. SMITH

(Effective March 13, 1962, pursuant to sec. 1.153)

PRELIMINARY STATEMENT

1. The above-captioned proceeding for change of facilities of station WNRG from 1250 kc to 940 kc in Grundy, Va., was originally a part of the proceeding in which there were a total of 31 applications, which were designated for hearing by the Commission on October 28, 1959.¹ A number of the original applications were dismissed, some were severed and granted, and others² remain in the proceeding and are the subject of another initial decision. By order dated January 17, 1962, the above-captioned application was severed.

2. In the various orders of designation, the Commission found that, except as indicated by the issues specified below, Virginia-Kentucky Broadcasting Co. is legally, technically, financially, and

¹ The transcript of record in this proceeding is found in three separate dockets due to dismissals and severances.

² Richmond Broadcasting Co., Centerville, Ind., docket No. 13223 et al.

otherwise qualified to construct and operate its proposal. The issues pertinent to the Virginia-Kentucky application are as follows:³

(1) To determine the areas and populations which would receive *new* primary service from each of the instant proposals for a broadcast station, and the availability of other primary service to such areas and populations.

(2) To determine the areas and populations which may be expected to gain or lose primary service from each of the instant proposals for a change in the facilities of an *existing* broadcast station, and the availability of other primary service to such areas and populations.

(3) To determine the nature and extent of the interference, if any, that each of the instant proposals would cause to and receive from each other and all other existing standard broadcast stations, the areas and populations affected thereby, and the availability of other primary service to the areas and populations involved in the interference between the proposals.

(4) To determine whether the interference received from any of the other proposals herein and any existing stations would affect more than 10 percent of the population within the normally protected primary service area of any one of the instant proposals in contravention of section 3.28(c)(3) of the Commission rules, and, if so, whether circumstances exist which would warrant a waiver of said section.

* * * * *

(14) To determine, in the light of section 307(b) of the Communications Act of 1934, as amended, which of the instant proposals would best provide a fair, efficient, and equitable distribution of radio service.

* * * * *

(23) To determine, in the light of the evidence adduced pursuant to the foregoing issues, which, if any, of the instant applications should be granted.

3. The first prehearing conference in the original proceeding was convened on December 11, 1959. Other sessions of prehearing conference were held in April, September, and December, 1960, and January 1961. The evidentiary hearing as to the group of which the above-captioned application was then a part was held on dates in February, March, April, May, June, and July, 1961; the record was closed by order dated August 4, 1961, and the filing of proposed findings of fact and conclusions was completed on November 27, 1961.

³The issues are as renumbered in the Commission's order dated July 7, 1960, FCC 60-809, 90883.

FINDINGS OF FACT

4. The application of Virginia-Kentucky Broadcasting Co., Inc., requests authorization to change facilities of station WNRG, which operates daytime only in Grundy, Va., from 1250 kc to 940 kc, and to increase power from 1 kw to 5 kw.

5. Grundy is located in southwestern Virginia in Buchanan County, about 12 miles from the West Virginia border and about 15 miles from the Kentucky border. It has a population, based on the 1960 U.S. census, of 2,287, and is the county seat of Buchanan County, which had a 1960 population of 36,724. Grundy is the only incorporated town in Buchanan County. The county is at, or near, the top in the State in taxes paid per capita. This county and the town of Grundy are almost alone in southwest Virginia in showing an increase in population during the 1950-60 decade. Grundy is the commercial, as well as governmental, center of the county. Station WNRG is the only station in Grundy or in Buchanan County. One weekly newspaper is published in Grundy.

6. Coal mining is the principal industry in the area. In Buchanan County alone there are over 800 coal mines. The Grundy trade area also includes counties in two adjoining West Virginia counties; a large portion of Pike County, Ky.; and Dickenson and Tazewell Counties, Va. There are more than a dozen automobile dealers, 8 large supermarkets and numerous produce stands and general stores, as well as 9 retail furniture and appliance stores, 11 department stores, 3 drugstores, 3 jewelry stores, 3 theaters, and other firms, in Grundy.

7. The town operates under the council-manager form of government. The public school system of Buchanan County includes 51 elementary schools and 5 high schools, all fully accredited by the Commonwealth of Virginia. There are 6 churches in the city of Grundy and 12 more shown as members of the Buchanan County Ministerial Association. There are some 23 civic clubs and organizations in Grundy. Electric service is supplied to the area by the Appalachian Power Co., telephone service by the General Telephone Co. of the Southeast, and the Norfolk & Western Railway Co. serves the entire county with spur tracks and one central yard in order to transport the coal that is mined in the county.

8. Based on effective fields of 192 mv/m for the present operation and 403 mv/m for the proposed, and on ground conductivity values

for the area taken from figure M3 of the rules, employing 1960 U.S. census data, the coverage is as follows:

Contour (mv/m)	Present		Proposed	
	Popula- tion	Area (sq. miles)	Population	Area (sq. miles)
2.0.....	19,622	268	70,121	1,090
0.5 (normally protected).....	72,960	981	313,319	3,920
Interference from proposed Lexington.....			12,406 (3.95%)	118 (3% ¹)
Interference free if proposed Lexington granted.....			300,913	3,802
Interference from proposed Cincinnati.....			25,435 (8.12%)	373 (9.5%)
Interference free if proposed Cincinnati granted.....			287,884	3,547
Interference from proposed Lexington and Cincinnati.....			25,435 (8.12%)	373 (9.5%)
Interference free if proposed Lexington and Cincinnati granted.....			287,884	3,547

¹ Percentages refer to population and area within the normally protected contour. The present normally protected contour is interference free.

9. Under the proposed change in frequency and power, station WNRG would extend its normally protected (0.5 mv/m) contour to an additional 240,359 persons in an area of 2,939 square miles during the daytime. No station provides primary service (0.5 mv/m or greater) to all of the gain area; WRIC serves 75-100 percent thereof; WCYB, 50-75 percent; and 26 others, less than 25 percent. A minimum of two and a maximum of eight stations provide such service to any one part therein. The gain area would be decreased to include 227,953 persons in an area of 2,821 square miles, if the Lexington proposal (docket 13237) is granted. A minimum of three and a maximum of eight stations serve any one part of the area not gained under these conditions. The gain area would be decreased to include 214,924 persons in an area of 2,566 square miles, if the Cincinnati proposal (docket 13246) or the Lexington and Cincinnati proposals, applications in the proceeding from which this application was severed, are granted. A minimum of two and a maximum of eight stations serve any one part of the area not gained under such conditions. There would be no loss of present WNRG service.

10. In addition to the service provided by the present operation of WNRG, WRIC, Richlands, Va., and WCYB, Bristol, Va., also provide primary service (0.5 mv/m or greater) to the city of Grundy daytime.

11. No objectionable interference would be involved between the Grundy proposal and any existing standard broadcast station.

12. The Grundy proposal would cause objectionable interference within the normally protected contour of the Cincinnati proposal, affecting 0.8 percent of the population within such contour. It would also cause objectionable interference to the Lexington proposal, affecting 5.65 percent of the population within the normally protected

contour of Lexington. It is noted that all of these areas of interference are well within the tolerance contemplated by section 3.28 of the rules.

CONCLUSIONS

1. The application of Virginia-Kentucky Broadcasting Co. is for a change in the facilities of station WNRG, Grundy, Va., from 1250 kc to 940 kc, and to increase power from 1 kw to 5 kw, daytime, and the applicant has been found to be legally, technically, financially, and otherwise qualified to construct and operate the requested facilities.

2. Under the proposed operation, an additional 240,359 persons would reside within the normally protected contour of station WNRG. The instant proposal would involve interference with proposals for new stations at Lexington, Ky. (docket 13237), and Cincinnati, Ohio (docket 13246),⁴ but in neither case would the interference equal the 10-percent tolerance contemplated by section 3.28 of the rules and does not constitute a bar to a grant of the Grundy proposal, regardless of which of the proposals remaining in the original proceeding are granted. The Lexington proposal would cause interference to the Grundy proposal, affecting 3.95 percent of the population within the Grundy normally protected contour and would thereby reduce the number of additional persons who would receive the new Grundy service by 12,406 persons. Likewise, the Cincinnati proposal would result in interference to the Grundy proposal, affecting 8.12 percent of the population within its normally protected contour and thereby reduce the population receiving the new Grundy service by 25,435 persons. No objectionable interference is involved between the Grundy proposal and any existing station. Thus, a maximum of 240,359 persons and a minimum of 214,924 additional persons would receive the new Grundy service. The minimum figure would obtain in the event the Cincinnati proposal should be granted.⁵ No person would lose the present Grundy service. No station now provides primary service to all of the gain area. However, 1 station serves 75-100 percent thereof; another, 50-75 percent; 26 others, less than 25 percent; and any one part thereof has a minimum of 2 and a maximum of 8 primary services.

3. Based on the foregoing findings and conclusions and a consideration of the entire record, it is concluded that public interest, convenience, and necessity would be served by a grant of the application of Virginia-Kentucky Broadcasting Co., Inc., for a change in the facilities of station WNRG, Grundy, Va.

⁴The Lexington proposal and the Cincinnati proposal are part of the proceeding from which the Grundy proposal was severed. The Grundy proposal would cause objectionable interference to the Lexington proposal, affecting 5.65 percent of the population within the Lexington normally protected contour, and would, likewise, cause objectionable interference to the Cincinnati proposal, affecting 0.8 percent of the population within the normally protected contour of Cincinnati. The interference involved is not such as to have any decisional effect on the grant or denial of any of the proposals.

⁵The Lexington and Cincinnati applications are mutually exclusive and their ultimate disposition will be governed by factors other than the interference with Grundy.

It is, therefore, ordered, This 18th day of January 1962, that unless an appeal to the Commission from this initial decision is taken by one of the parties, or the Commission reviews the initial decision on its own motion in accordance with the provisions of section 1.153 of the rules, the application of Virginia-Kentucky Broadcasting Co., Inc., for a change in facilities from 1250 kc to 940 kc and increase in power from 1 kw to 5 kw *Be and the same is hereby granted.*

32 F.C.C.

PLAINS RADIO BROADCASTING Co., DOCKETS Nos. 14215-14224, INCLUSIVE:

Initial decision denying applications of Plains Radio Broadcasting Co. for additional time to construct stations KRKY, Denver, Colo.; WFFM, Cincinnati, Ohio; KFMV, Minneapolis, Minn.; KFMC, Portland, Oreg.; and KPRN, Seattle, Wash., and also denying applications for consent to assignment of construction permits of the above-mentioned stations from Plains Radio Broadcasting Co. to United Communications, Inc.; became final in accordance with section 1.153 of the Commission's rules.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON 25, D.C.

<p>In re Applications of PLAINS RADIO BROADCASTING Co. For Additional Time To Construct Radio Station KRKY, Denver, Colo.</p> <p>For Additional Time To Construct Radio Station WFFM, Cincinnati, Ohio</p> <p>For Additional Time To Construct Radio Station KFMV, Minneapolis, Minn.</p> <p>For Additional Time To Construct Radio Station KFMC, Portland, Oreg.</p> <p>For Additional Time To Construct Radio Station KPRN, Seattle, Wash.</p> <p>For Consent to Assignment of Construction Permit for Radio Station KRKY, Denver, Colo., to United Communications, Inc.</p> <p>For Consent to Assignment of Construction Permit for Radio Station WFFM, Cincinnati, Ohio, to United Communications, Inc.</p> <p>For Consent to Assignment of Construction Permit for Radio Station KFMV, Minneapolis, Minn., to United Communications, Inc.</p> <p>For Consent to Assignment of Construction Permit for Radio Station KFMC, Portland, Oreg., to United Communications, Inc.</p> <p>For Consent to Assignment of Construction Permit for Radio Station KPRN, Seattle, Wash., to United Communications, Inc.</p>	<p>Docket No. 14215 File No. BMPH-6458</p> <p>Docket No. 14216 File No. BMPH-6459</p> <p>Docket No. 14217 File No. BMPH-6460</p> <p>Docket No. 14218 File No. BMPH-6461</p> <p>Docket No. 14219 File No. BMPH-6463</p> <p>Docket No. 14220 File No. BAPH-222</p> <p>Docket No. 14221 File No. BAPH-223</p> <p>Docket No. 14222 File No. BAPH-224</p> <p>Docket No. 14223 File No. BAPH-225</p> <p>Docket No. 14224 File No. BAPH-226</p>
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APPEARANCES

Clair L. Stout and *Thomas S. Sullivan*, on behalf of Plains Radio Broadcasting Co.; *William E. Murray* and *Graham Loving, Jr.*, on behalf of United Communications, Inc.; *Robert J. Rawson*, *Kenneth A. Finch*, and *Ernest Nash*, on behalf of the Broadcast Bureau, Federal Communications Commission.

INITIAL DECISION OF HEARING EXAMINER H. GIFFORD IRION

(Effective March 29, 1962, pursuant to sec. 1.153)

PRELIMINARY STATEMENT

1. This proceeding is concerned with two sets of applications. One set requests an extension of time to complete construction, and the other seeks consent to assignment of construction permits. The permits in question were all granted on March 16, 1960, to Plains Radio Broadcasting Co. and they authorize FM stations in the cities specified. Plains and United Communications, Inc., filed the assignment applications jointly on June 1, 1960. While they were awaiting the Commission's consent, they instead received 309(b) letters calling attention to certain questionable matters which in the opinion of the Commission might prevent a grant without hearing. Each applicant thereafter replied to those letters.

2. Since the time originally allowed for construction would expire on November 16, 1960, Plains filed its five applications for an extension of time. Nothing further happened until July 26, 1961, at which time the Commission designated all of these applications for hearing. The order of designation recited a number of matters about which the Commission was concerned, and these in turn are further reflected in the issues. Broadly speaking, there are two basic inquiries: (1) the question of good faith, diligence, and intention to construct on the part of Plains; (2) the attempts made to ascertain the tastes, needs, and desires of the communities for which stations are proposed and the plans thereafter formed to serve such tastes, needs, and desires. The designation order specified the following issues:

1. To determine why Plains Radio Broadcasting Co. did not file a supplemental ownership report pursuant to section 1.343(c) of the Commission's rules reflecting Mr. Liston's resignation as a director of the company.
2. To determine whether Plains Radio Broadcasting Co., in continuing to prosecute its applications for construction permits for the above-described FM broadcast facilities after the resignation of Mr. Jack D. Liston as a director of its company on February 15, 1960, and by failing to advise the Commission of such resignation and of its primary reliance upon the services of Mr. Liston prior to Commission action on its applications on March 16, 1960, failed to exercise good faith and proper diligence in its dealings with the Commission.
3. To determine whether Plains Radio Broadcasting Co. still intended to construct and operate the proposed stations at the time the Commission granted the applications for construction permits.
4. To determine, in the light of the evidence adduced pursuant to the foregoing issues, whether the reasons advanced by Plains Radio Broadcasting Co. in support of its requests for extension of completion date constitute a showing that failure to complete construction was due to causes

not under its control, or constitute a showing of other matters sufficient to warrant an extension within the meaning of section 319(b) of the Communications Act of 1934, as amended, and section 1.323(a) of the Commission's rules.

5. To determine whether and to what extent the proposed assignee has made any attempt to ascertain and fulfill the programing needs and desires of the communities proposed to be served.

6. To determine whether the programing proposed by the proposed assignee will meet the needs and interests of the communities concerned.

7. To determine whether the reported selling price includes the cost of preparing, filing, and prosecuting an application for a sixth FM broadcast station at Detroit, Mich. (file No. BPH-2824), dismissed April 15, 1960, and, if so, whether grant of the above-entitled assignment applications would be consistent with the Commission's policy against "trafficking" in construction permits.

8. To determine whether, on the basis of the evidence adduced with respect to the foregoing issues, grant of the above-entitled applications would serve the public interest, convenience, and necessity.

3. Hearings were held on November 13, 14, and 15, 1961, the record being closed on the last date. Proposed findings and conclusions, were filed by Plains and the Broadcast Bureau on January 9, 1962.

FINDINGS OF FACT

The proposed assignor and its FM plans

4. Plains Radio Broadcasting Co. has been a broadcast licensee since 1935. At the present time it is licensee of stations KGNC and KGNC-FM, Amarillo, Tex., and KFYO, Lubbock, Tex. The stock of Plains is owned by Globe News Publishing Co. (81 percent) and the Ed Fagg Trust (19 percent), both of which are controlled by the Whittenburg family. Globe News is licensee of KGNC-TV in Amarillo.

5. The Whittenburg family first became associated with Plains in 1951 through the purchase of a 35-percent interest in Globe News, but in 1955 they acquired control of both Plains and Globe News. S. B. Whittenburg is the principal active official of the broadcast properties, although his brother-in-law, Mr. Walker, is president of Plains.¹ On important policy matters, S. B. Whittenburg confers with the other directors and with members of the family. Jack D. Liston, who was formerly general manager, is a member of the family by marriage, his wife being S. B. Whittenburg's sister. He is also a director. The details of the Ed Fagg Trust are not material except to say that the beneficiaries are members of the Whittenburg family who are also electors of the trustees.²

6. In 1958 Jack Liston, who was then general manager of the Amarillo stations, advanced the idea of constructing an FM station in Amarillo. This eventually became KGNC-FM and during its early operation it duplicated the programs of its AM sister. The following spring, Liston attended the NAB convention and was greatly impressed by a new type of automated programing called "Programatic" which was produced by a subsidiary of the Muzak Corp.³

¹ In response to a question from the examiner, Mr. Whittenburg agreed to the characterization of his position as the "boss."

² Family members under 18 are not electors.

³ See par. 21 below.

This was introduced at KGNC-FM and it resulted in such a favorable response from listeners and advertisers that Liston's excitement was increased. Later that year he persuaded the board of directors to apply for FM permits in six large cities and the following applications were filed on the dates shown: ⁴

Location	File No.	Date filed
Minneapolis, Minn.....	BPH-2844..	Nov. 9, 1959
Seattle, Wash.....	BPH-2854..	Nov. 25, 1959
Cincinnati, Ohio.....	BPH-2879..	Dec. 16, 1959
Portland, Oreg.....	BPH-2892..	Dec. 31, 1959
Denver, Colo.....	BPH-2902..	Jan. 15, 1960

7. At approximately the same time Liston had discussions with a representative of Programatic regarding an expansion of the service and from these discussions a plan formed in his mind to become either a representative of Programatic or a consultant on his own. At first, however, Liston did not discuss his plans with any associates in Plains. Sometime in December 1959 he had conversations with Mr. Loving in New York whom he interested in forming a corporation to apply for FM stations in leading markets with use of the Programatic Service. Loving proceeded to form United Communications, Inc., which is the proposed assignee herein. His associates in that corporation are Mr. William E. Murray and Mr. William H. Hernstadt. Plans were drawn up by United for the filing of such applications, but none was actually filed because of a change in events.

8. Although Liston did not discuss his consulting plans with any members of the Whittenburg family except his wife, S. B. Whittenburg appears to have suspected that something of the sort was distracting Liston from his managerial duties. At all events a discussion took place between S. B. Whittenburg and Liston on or about February 15, 1960. It was Whittenburg's position that Liston could not function efficiently as general manager of the stations and at the same time perform consulting services for other parties. Liston evidently agreed and the result of the discussion was his resignation as general manager. He did not, however, resign as a director of Plains and continues to hold that position. Together with his wife he also continues to have an interest in the profits of Plains.

9. Notwithstanding Liston's resignation as general manager, he was forthwith engaged as a consultant not only for KGNC-FM but for each of the FM stations proposed by Plains. His remuneration was to be \$100 per month per station, but he was paid only for the month of March 1960 in connection with KGNC-FM.

10. Within a very short time after the Whittenburg-Liston discussion, S. B. Whittenburg began to entertain grave doubts as to the wisdom of proceeding with construction of FM stations in widely scattered markets since he had always relied upon the availability of Liston to construct and operate those stations as manager.⁵ Nothing

⁴ There was also an application filed for Detroit, but this was later dismissed.

⁵ Despite a certain vagueness in recalling dates, which is not surprising in view of the fact that apparently no written records were kept of events, Whittenburg was quite positive that within 2 or 3 days after Feb. 15 he knew he was going to recommend against

was done, however, in the ensuing weeks and on March 16, 1960, the Commission granted the five construction permits which are the subject of this proceeding. The application for a permit in Detroit could not be granted without a hearing, so at Plains' request it was dismissed on April 15, 1960.

11. Whittenburg could not be absolutely certain about dates, but it was not until early in April that a meeting was held of the Plains directors to decide upon a course of action with respect to the newly granted permits. As already indicated, Whittenburg himself was opposed to going ahead with construction in Liston's absence and most of his associates in Plains were of like mind.⁶ The meeting of the directors was informal.⁷ The first inclination of the directors was to return the permits to the Commission. On the other hand, Liston, who had been summoned to the meeting, advised against this. It was his opinion that the permits could be sold to another party for the costs already incurred, and he clearly had in mind his new acquaintances in New York who composed United.

12. Accordingly, Liston was authorized to see whether the permits could be disposed of for costs. He thereupon called on the principals of United and persuaded them that an assignment would be in their interest.

13. The details of the negotiations are somewhat cloudy, but at least it is clear that Liston acted as intermediary. Suffice it to say that a contract dated May 12, 1960, was signed by both parties, and the amount which Plains was to recoup was specified as \$21,008.69. According to Plains, this figure did not include all expenses, but it definitely did include the cost of pursuing the Detroit application which had been dismissed. In the opinion of S. B. Whittenburg, the assignment should include the cost of all six applications as a package, or in the alternative the permits should be returned to the Commission. No termination date is included among the contract's provisions and its execution is, of course, subject to FCC approval.

14. Pursuant to the agreement, joint applications seeking approval of the assignment of five FM stations were filed with the Commission on June 1, 1960. Each permit had required that construction begin by May 16 and be completed by November 16, 1960. No construction had been undertaken at that time or at any other time.

15. On the 1st of August the Commission dispatched identical letters to each of the applicants pursuant to section 309(b) of the Communications Act and indicated certain doubts that the public interest would be served by the proposed assignments. Replies to these letters were made by each party, but in view of the time element Plains pro-

proceeding with FM construction. In his own words: "I did not have my heart in it after Jack Liston was moving out."

⁶ So far as the record indicates, this was the first time Whittenburg had communicated his doubts to other members of the family group, but in any event the corporation had taken no definite action with respect to the pending applications prior to Mar. 16, nor with respect to the grants after then.

⁷ According to S. B. Whittenburg, the five family members of the board of directors have an "unofficial meeting" every day or two along with other members of the family who are not directors. He explained it this way: "The ones that are not directors unofficially have as much to say as directors in those kind of meetings." It would not be unfair to characterize Whittenburg's entire testimony regarding Plains as showing a rather informal organization in which the real authority resides in the family group, but most particularly in S. B. Whittenburg himself.

ceeded on October 17, 1960, to file five applications for extension of time for construction. These applications, together with the assignment applications, are the subject of the present hearing.

The proposed assignee and its FM plans

16. As heretofore shown, the group in New York City, which incorporated as United Communications, Inc., consists of Messrs. Loving, Murray, and Hernstadt. They were likewise persuaded by Liston's enthusiasm for going into FM operations with the Programmatic Service and had originally proposed to file seven applications of their own. Liston was to be engaged on a consulting basis, although there was apparently some misunderstanding as to what this involved. (See par. 17 below.) When Liston informed the principals of United that the outstanding construction permits were available in exchange for the sum of Plains' expenditures, the New York group agreed that this would be more feasible than prosecuting their own independent applications for new stations. Accordingly they signed the contract already referred to and joined in the applications for consent to assignment.

17. One thing emerges quite clearly from the testimony and that is the deep misunderstanding which arose as to what was expected of Liston by United. The principals of United are admittedly unfamiliar with broadcast operations. As a result each party was looking for someone to run the proposed stations; in short, a manager who would build and operate them. This someone was to be Liston, the only person possessing any genuine knowledge of the business. At some time in late 1959 or early 1960, Liston conceived the plan of becoming a consultant. When he announced this to S. B. Whittenburg, that gentleman immediately detected the difference between managerial and consulting activities. But apparently no one at United ever grasped this distinction and confidently expected that Liston would supervise their operations in detail. The reliance is reflected in the delegation of responsibility to Liston for making a survey of the proposed markets with respect to need. That matter, however, is more appropriately dealt with as an independent topic. (See par. 20 et seq.)

Intention to construct

18. As heretofore indicated (par. 5), the primary responsibility for the broadcast operations of Plains lay with S. B. Whittenburg and, although he conferred occasionally with other members of the family and with the directors, the record shows that his advice was accorded great respect. For this reason his personal attitude toward construction of the FM stations assumes special importance.

19. Liston's resignation took place on or about February 15 and at that time the FM applications were still pending before the Commission. During the interval between the resignation and the grants (March 16), Whittenburg acknowledged that he lost confidence in going ahead with construction without Liston's services as general manager. The markets were widely scattered and Whittenburg felt indisposed to call on any of his other employees to manage the stations. He delayed taking any positive action, however, until after

the Commission had granted the applications, and even then nothing was done for a period of about 2 weeks (from March 16 to April 1). By that time there appears to have been a general opinion among members of the family against going ahead and S. B. Whittenburg's own initial inclination was to return the permits for cancellation. As has been seen, Liston's confidence that a sale could be effected to recoup the costs finally prevailed.⁸ At no time after March 16—or even after February 15—does the evidence show any clear-cut intention to proceed with construction. This was certainly the case by early April when the decision to assign was made. No one speaking for Plains made any claim that actual construction was undertaken or contemplated after that date.

Ascertainment of needs and desires and programing designed to meet them

20. In approaching this aspect of the case, one thing stands out very clearly. Both Plains and United were clearly infatuated with the profit possibilities of operations using the Programatic format. As a consequence the testimony as to program planning⁹ was ingenuous in its clarity.

21. Programatic is an adjunct of the Muzak Corp. and it manufactures a device which will play tapes of recorded music continuously for 8 hours. The apparatus contains an upper deck which plays music only and a lower deck which is synchronized so as to perform commercials or other purely local material. An automatic switching device controls the two tapes. The advantage of this to the broadcaster is that it permits a low-cost operation with fewer personnel, since no one is needed to adjust the tape during its 8-hour performance. According to Liston, the Muzak Corp. had been conducting monthly surveys for 20 years over the entire United States to determine audience preferences with respect to music. In this connection Liston recognized that there are minority as well as majority needs and tastes, but he gave no evidence that Muzak or anyone else had attempted to ascertain these.

22. In case of both Plains and United, the first step was to decide upon the communities to be served, and these were clearly conceived of as markets rather than communities with distinctive needs. Loving, who in this matter was guided by Liston's advice, testified that "it is important to get into the top 50, as I recall, so that we would be among the top 50 markets." Accordingly, seven markets were chosen, the identity of which is not material now, but subsequently the permits of Plains became available and Loving, again acting on Liston's advice, concluded that these were even better markets. Loving's testimony explains the situation as succinctly as possible:

It was clearly understood that Mr. Liston would handle the entire operation for us and we would be expected to merely supply the financing.

⁸ S. B. Whittenburg was persuaded by Liston like the others, but he was quite positive in saying that unless the costs of prosecuting the Detroit application were included in the terms of sale, he would prefer to return the permits to the Commission. The main thing is that he had by then abandoned all intention of building.

⁹ This came principally from Loving and Liston.

Of course, we would have the stockownership of the company, and if we wanted to, being the owners of the company, if we wanted to do other things, we could also do it. But as far as the FM business went, Mr. Liston was going to run it as a consultant just like he was going to run these other stations. Tr. 259.

Mr. Liston was very optimistic about the profit potentials of the FM operation with the use of Programatic. He indicated that the cost of operating a station on this basis was minimal and that with using minimum expected figures on advertising, that great profit could be earned. I think his figures were that we could expect to make about \$30,000 a year per station, which would have been about \$210,000 for all seven stations. Tr. 262.

Of course, this all contemplated that we would go ahead and take the Programatic service which Mr. Esau was trying to sell and which, of course, we agreed to do. The whole concept was based on using that service. Tr. 263.

23. In accordance with this philosophy, United adopted the original program plans of Plains and these were quite simple. All of the FM stations were to use Muzak's Programatic Service which would constitute the sole source of programing.

24. Neither Plains nor United claims to have made any genuine survey to determine needs, tastes, or interests. At Liston's request the engineer for Plains monitored existing FM programing in some of the cities to see what was being currently broadcast, but there was no pretense that this in any way ascertained needs. No interviews were conducted with community leaders or potential listeners to any extent that might be considered a fair sample. Liston felt, quite simply, that since the Programatic type of music was not being carried in any of the proposed markets, there would be a need for it. The only real survey was made to determine the size of the markets and the FM set saturation. United's principals did not even visit any of the cities.¹⁰

25. After receipt of the Commission's 309(b) letter, however, Liston was requested by United to visit the cities where stations were proposed. He spent a minimum of 8 hours in each city and conducted what he called a "survey," but frankly admitted that he did not feel these were "competent and meaningful." It should also be mentioned that United plans no programing in categories such as discussion, religious, educational, or news.¹¹ It will merely provide recorded music together with spot announcements. Although Liston expressed the belief that Muzak would permit the broadcaster to request the kind of music it desired, no provision was made for this in United's contract with that company.

26. There are certain miscellaneous facts which, perhaps, will throw some light on the general picture. Obviously the central figure in this rather strange proceeding, where seller and buyer throughout the hearing worked at cross-purposes,¹² was Jack Liston. It was he who interested both Plains and United in applying for FM grants. It was he who conceived the idea of selling the permits granted to

¹⁰ Loving said with respect to the cities: "* * * if I have ever been in any of them, it has been just briefly."

¹¹ Mr. Loving did say at one point that he intended to insert "spot news broadcasts" on the tapes made locally.

¹² United's apparent dissatisfaction with the "deal" it made with Plains Radio was clearly apparent throughout the hearing. Its counsel, who is also a principal in the applicant corporation, conducted a vigorous and hostile cross-examination of its coapplicant's witnesses.

Plains in order to recoup expenses. It was he who persuaded United to buy. He wound up as consultant to both parties and remains such. In all of these dealings he continued to receive sums of money from both parties. Yet the unmistakable impression conveyed by all the testimony from both Plains and United is that nobody in authority in either company had any clear understanding of exactly what was happening or what was involved in the process of seeking an authorization from the Commission. Time and time again Mr. Whittenburg and Mr. Loving reiterated that they relied on Liston to get things done. Loving made it abundantly clear that neither he nor his fellow principals have any intention of actively managing the operations of the stations if the assignments are approved. The president of United, Mr. Hernstadt, stated: "As president and chief executive officer, I intend, under the direction of our consultant Mr. Jack Liston, to do whatever is necessary to have these stations function in the manner I just described." None of the principals of United has had any prior broadcast experience.

27. Jack Liston is not a director, officer, or stockholder of United. As heretofore indicated, however, he remains a director of Plains and continues to have an interest in the profits of that corporation.

28. On the surface the expenses incurred by Plains as shown in their exhibits appear to be reasonable, leaving aside the inclusion of costs for the Detroit application. Yet in certain instances the items would have been normal operating expenses not specifically connected with the FM applications.

29. The contract between Plains and United was attached to the applications for approval of assignment. It did not include a termination date among its provisions. Costs were detailed in exhibit B to that agreement and Plains' treasurer admitted that they were incorrectly stated. However, he was unable to explain the discrepancy between those and the figures transmitted with Plains' letter of August 12, 1960, in reply to the Commission's 309(b) letter. The latter were correct, according to the treasurer's testimony.

CONCLUSIONS

1. Before proceeding to the major aspects of this case, one matter raised by the first two issues may be briefly disposed of. These issues were drafted on the assumption that Jack D. Liston had resigned as a director of Plains and that such resignation had not been duly reported. Liston did not, in fact, resign as a director although he did resign as general manager. In view of this, no obligation rested on Plains to file a supplemental ownership report.

2. On March 16, 1960, Plains, which is now the proposed assignor, became a permittee for five FM stations to be located in the cities of Denver, Colo., Cincinnati, Ohio, Minneapolis, Minn., Portland, Oreg., and Seattle, Wash. The principal figure in Plains with respect to its broadcast interests is S. B. Whittenburg. He testified that the corporation filed its applications for the FM stations entirely on the advice of Jack Liston, at that time the general manager of Plains' Amarillo stations. Furthermore it did so in complete reliance on

Liston's becoming general manager of the new stations. A full month before the Commission granted the permits, Liston had resigned as general manager, a fact which must have been known to the Whittenburg family and the board of directors. It was certainly known to S. B. Whittenburg who had discussed the matter with Liston on or about February 15, 1960. Not more than a couple of days passed before he had resolved in his own mind that it would be unwise to proceed with construction of the stations for which applications were still pending.

3. This was the situation during the month preceding March 16 when the grants were made. It is inconceivable that the individuals in authority at Plains¹³ were unaware of the problem as to whether they should go forward with construction. According to Whittenburg, members of the family and directors met informally every 2 or 3 days and it is past belief that they did not discuss their plans with regard to FM. Liston was out as general manager and no replacement was available in the organization. Nevertheless, no action whatsoever was taken and the Commission, being unaware of the altered situation, granted the permits.

4. Following March 16 Whittenburg said that the inclination of the directors (and presumably the Whittenburg family) was to return the permits to the Commission, but this was not done. Instead there was a lapse of time amounting to a week or two before any definitive action was taken and this consisted of an attempt to recoup the expenses by assigning the permits to United. Plains took no steps toward actual construction nor did the directors, subsequent to March 16, have any positive intention of proceeding with construction. It is elementary, of course, that section 319(b) of the Communications Act contemplates a good-faith intent by permittees to proceed with construction. Yet the most favorable inference that can be drawn on behalf of Plains is that, after Liston's resignation, the directors simply had no plans for doing anything. Even supposing that there was some lingering hope of going ahead with construction, this conduct falls so far short of the diligence expected of a permittee as to destroy any possible indulgence which might be shown to Plains for the requested extensions of time. Plains has been a broadcast licensee for a considerable period of time, and its present owners, the Whittenburg family, have been in the business since 1951. The indifference with which they treated the matter of communicating the altered situation to the Commission would be difficult to excuse even in a newcomer to the industry and certainly not in experienced broadcasters.

5. Assuming, however, that time for completion of construction ought to be extended, there remain other inquiries regarding the proposed assignments. The first of these squarely raises the issue of trafficking in permits. It may be assumed that a transaction inconsistent "with the Commission's policy against trafficking in construction permits" is a serious matter, but before embarking upon a discussion of the question it is only proper to observe that these appli-

¹³ This would include the directors and members of the Whittenburg family.

cations will fail on other grounds so that the issue could be avoided as unnecessary to a decision. On the other hand, there are sound reasons why broadcasters, members of the bar, and other interested persons have a right to know how this issue should be resolved. The examiner, therefore, feels honor bound to meet the issue as though it were the only point in the case.

6. There is very little case law on the subject and, so far as the examiner is aware, the term has not been specifically defined. Consultation with all available dictionaries has likewise been of little help. They are in substantial agreement that the verb "traffic" means "to sell, barter, or trade; to engage in commerce." A subsidiary definition implies venality but this apparently is not a necessary element. In the famous *Avco* case of 1945,¹⁴ the Commission, in dealing with the price paid for a radio station, posed several questions of which only the following is pertinent to the present situation. The question reads:

1. Is the price paid such as to indicate a trafficking in licenses? That is, is there evidence that the licensee acquired the station for the purpose of reselling it at a profit rather than for the purpose of rendering a public service?

7. From this it appears that the elements of trafficking are twofold. There must be a positive intent to use the permit for gain, and there must be an absence of intent to render a service to the public. Actually the existence of the one logically implies the existence of the other, because a party who contemplated disposing of his permit once it was granted could scarcely be said to intend a service for the public. In either instance, of course, the intent may be proved by acts and circumstances as well as by the declarations of the parties. *Schauffler v. United Association of Journeymen & Apprentices* (1956), 230 Fed. (2d) 572; cert. den. 352 U.S. 825; *Franklin Broadcasting Co., Assignor, et al.*, FCC 62-52, January 23, 1962. Bearing this in mind, it is instructive to review the salient facts of this case in the order of their occurrence. Plains originally applied for six permits with an intention of building and operating FM stations. Shortly thereafter an event occurred [Liston's resignation] which changed this purpose so that any intent of going forward with construction was abandoned. That was around February 15, yet Plains failed to inform the Commission of its altered attitude, and on March 16 five of the permits were granted. A sixth application (for Detroit) was later dismissed. By this time Plains was provoked into action and steps were taken to sell the permits for costs, but these included the costs of the Detroit application.

8. From the bare sequence of events, it is difficult not to infer that Plains sat by quietly until the grants were made so that it would have a vehicle for recovering costs. Obviously there was nothing to sell or assign prior to March 16. Although there is no positive evidence that the assignment idea occurred to S. B. Whittenburg until it was suggested by Liston in early April, it is nevertheless clear that Whittenburg (who must be considered as spokesman for Plains in this matter) had abandoned any intention of building by mid-February.

¹⁴ 3 R.R. 6, 26; 11 FCC 3, 23.

From that point onward Plains no longer proposed to render an FM service in the communities applied for. There was consequently at least a constructive intent to dispose of the permits rather than to build.

9. The desire to recoup expenses is, of course, not unnatural and does not in itself constitute trafficking. It appears well established, however, that the Commission considers the recovery of sums exceeding actual expenses in the assignment of a construction permit as indicative of trafficking.¹⁵ A case quite similar to the present throws some light on this. In *Eagle River Broadcasting Company*,¹⁶ Examiner Ende made a thorough review of the legal questions involved in the purchase price to be paid for a permit. In that case Eagle River proposed to assign a permit to another company in consideration of \$20,000, although the actual costs were approximately \$14,000. The joint application was thereupon designated for hearing on the sole issue of trafficking. Before proceeding to hearing, the applicants petitioned for consent to amend, reducing the purchase price to actual claimed expenses. Implicit in this situation were two questions. The first was whether the sale for profit constituted trafficking and, assuming an affirmative answer to this, the second question was whether such action affected the character of the parties so as to jeopardize the entire transaction. In the absence of a clearly stated policy from the Commission, the examiner was reluctant to assume a character disqualification. He, therefore, allowed the amendment and removed the application from hearing status pursuant to section 1.363(c) of the rules inasmuch as the trafficking issue had become moot. It is noted that the application was subsequently granted as a nonhearing action with one dissent.

10. In the present situation Plains declared at the hearing that, if the Commission considered the inclusion of the Detroit costs as improper, it would accept the actual expenses for the five remaining permits. No amendment was proposed to accomplish this and it is not the Commission's function, of course, to rewrite agreements for the parties. Judgment, therefore, must be made on the contract currently proposed. In this contract Plains overreached itself by including the costs of prosecuting the Detroit application which, having been dismissed, was in no way involved in the deal with United. Whitenburg regarded the costs for all six applications as constituting a "package," but there was no sound justification for this. He might as well have included operating expenses for one of Plains' Amarillo stations. In either instance Plains would be recovering something over and above the sums paid out in connection with the permits being assigned. This has particular significance when it is seen in context with the facts already recited with regard to Plains' delinquent conduct.

11. It is only reasonable to say that an applicant should not be allowed to profit from its own lack of diligence or good faith. To say

¹⁵ The phrasing of the order of designation in this case would so indicate. Nevertheless, there have been instances of consent to assignment of a permit where a profit was realized. *American Television Co., Inc. (KNAC-TV)*, 12 R.R. 1433; *Verluis Radio and Television, Inc.*, 9 R.R. 1123.

¹⁶ 21 R.R. 824 (1961).

that Plains' conduct was marked by bad faith would, perhaps, be excessive, but there was certainly an absence of diligence. By doing nothing, Plains allowed certain applications to mature into permits which then became assets. In other words, the permits had lost their proper significance for the permittee and were regarded merely as subjects for bargaining. Inclusion of the Detroit costs in the "package" confirms this conclusion and illuminates a pattern of conduct which, in its entirety, amounts to trafficking.

12. In reaching this conclusion, the examiner is not unaware of an obligation to tread cautiously along a path which has been so little explored. It might be argued that the "profit" involved in the Detroit costs was relatively small or that the permittee did things which have very likely been done by others with impunity. It would not even be unreasonable to characterize the transgression as a technical one in which the acts and omissions suggest carelessness rather than gross misconduct. Notwithstanding these considerations, the pattern of conduct is logically embraced by any reasonable definition of trafficking, since it demonstrates a subversion of the construction permits themselves, a transformation of authorizations to serve the public into assets for sale. Even with sympathy for a first offender, no other conclusion could be arrived at in good conscience.

13. In view of the foregoing conclusions, it is obvious that additional time cannot be granted to Plains for the completion of construction nor can an assignment be approved in view of the factor of trafficking. The issues, however, have also invoked problems concerned with United, the proposed assignee.

14. The three principals of United took no steps whatever toward an inquiry into the needs, tastes, and desires of any of the communities for which they hoped to acquire FM grants. They adopted the original format of Plains for installing a new system of automated programing called Programatic,¹⁷ and their testimony makes it quite plain that the purpose was to reduce operating expenses. The same format was proposed for each of the stations as Plains had originally proposed, and it might be mentioned that Plains had similarly taken no steps to ascertain community needs and interests. Both assignor and assignee relied on the counsel of Jack Liston who was doubtless enthusiastic about the possibilities of using Programatic Service but who was motivated more by the economy of the device than by any burning desire to serve some specific need. It must be explained, parenthetically, that this decision is in no way concerned with the merits of Programatic and is not to be taken as implying that the service would be contrary to the public interest. The essential thing is that the principals of United made no reasonable effort to relate the Programatic Service to any distinctive local needs in the communities proposed. Furthermore, they disavowed any intention of actively operating the stations (which would be left to Liston) so there is no reason to suppose that they would have engaged in the continuing attention to local needs which is expected of a broadcast licensee.¹⁸

¹⁷ See par. 21 of the findings of fact for description of Programatic Service.

¹⁸ See report on Commission policy of programing, 20 R.R. 1901.

15. Contemplating this case as a whole, the most generous thing that can be said about either of the applicants is that they displayed a lack of diligence. This perhaps is to be more excused in the principals of United inasmuch as none of them had any prior broadcast experience and were therefore less aware of their responsibilities. Even so, the standards of public interest cannot be lightly relaxed to condone mistakes and neglect regardless of the motivations lying behind them. Whatever serious intention Plains may have had of building these stations was lost when Liston departed as general manager. This was a full month prior to the time the permits were granted and the only possible inference is that from that point on they intended to dispose of the permits rather than proceed with construction. Whether such disposition was to be by sale or otherwise is less important than the absence of intent to provide the broadcast services authorized. The fact that they may have been lacking in any plan whatever does not alter this conclusion. In summary, it is concluded that the public interest would not be served by the requested extensions of time nor by the proposed assignment of permits.

It is ordered, This 6th day of February 1962, that unless an appeal from this initial decision is taken to the Commission, or unless the Commission reviews the initial decision on its own motion in accordance with the provisions of section 1.153 of the rules, the applications of Plains Radio Broadcasting Co. for additional time to construct stations KRKY, Denver, Colo.; WFFM, Cincinnati, Ohio; KFMV, Minneapolis, Minn.; KFMC, Portland, Oreg.; and KPRN, Seattle, Wash., *Are denied;* and

It is further ordered, That the applications for consent to assignment of construction permits of the above-mentioned stations from Plains Radio Broadcasting Co. to United Communications, Inc., *Are denied.*

32 F.C.C.

SUBURBAN BROADCASTING CORP. ET AL., DOCKETS NOS. 13936-13937:

Initial decision granting application for construction permit for new standard broadcast station to operate daytime on 1550 kc, with power of 250 w, directional antenna, at Elkton, Md., and denying competing application for construction permit for new standard broadcast station to operate daytime on 1550 kc, with power of 1 kw, directional antenna, at Lancaster, Pa.; became final in accordance with section 1.153 of the Commission's rules.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON 25, D.C.

<p>In re Applications of SUBURBAN BROADCASTING CORP., ELKTON, MD. H. CLAY ESBENSHADE, TR/AS LANCASTER COUNTY BROADCASTERS, LANCASTER, PA. For Construction Permits</p>	}	<p>Docket No. 13936 File No. BP-12981 Docket No. 13937 File No. BP-13106</p>
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APPEARANCES

Eliot C. Lovett and *Lee G. Lovett*, on behalf of Suburban Broadcasting Corp.; *Samuel Miller* and *Mark E. Fields*, on behalf of H. Clay Esbenshade, tr/as Lancaster County Broadcasters; and *Earl C. Walck*, on behalf of the Chief, Broadcast Bureau, Federal Communications Commission.

INITIAL DECISION OF HEARING EXAMINER THOMAS H. DONAHUE

(Effective March 29, 1962, pursuant to sec. 1.153)

PRELIMINARY STATEMENT

1. The applicants in this proceeding seek construction permits for new standard broadcast stations to operate daytime on 1550 kc (class II): Suburban Broadcasting Corp. with power of 250 w, directional antenna, at Elkton, Md.; and Lancaster County Broadcasters with

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power of 1 kw, directional antenna, at Lancaster, Pa. By order released February 6, 1961 (FCC 61-135), the Commission designated these applications, together with four other applications, for hearing in a consolidated proceeding.¹ The Commission in its order of designation found the applicants to be legally, technically, financially, and otherwise qualified to construct and operate the stations proposed except for matters placed in issue. The issues designated read as follows:

1. To determine the areas and populations which would receive primary service from each of the instant proposals for a broadcast station, and the availability of other primary service to such areas and populations.

2. To determine the nature and extent of the interference, if any, that each of the instant proposals would cause to and receive from each other and the interference that each of the instant proposals would receive from all other existing standard broadcast stations, the areas and populations affected thereby, and the availability of other primary service to the areas and populations affected by interference from any of the instant proposals.

* * * * *

5. To determine whether the interference received by each instant proposal from any of the other proposals herein and any existing stations would affect more than 10 percent of the population within its normally protected primary service area in contravention of section 3.28(c)(3) of the Commission rules, and, if so, whether circumstances exist which would warrant a waiver of said section.

* * * * *

9. To determine, in the light of section 307(b) of the Communications Act of 1934, as amended, which of the instant proposals would best provide a fair, efficient, and equitable distribution of radio service.

10. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which of the instant applications should be granted.

¹ Saul M. Miller (docket No. 13934); Horace J. Elias and Irving E. Robinson, d/b as Elias and Robinson (docket No. 13938); North Penn Broadcasting Co. (docket No. 13939); and Arthur W. Arundel (docket No. 13935) were the other applicants. By orders of the Chief Hearing Examiner, released June 1, 1961 (FCC 61M-954), and July 10, 1961 (FCC 61M-1182), petitions to dismiss the applications of North Penn and Saul M. Miller were granted. The application of Elias and Robinson was held in default by order of the hearing examiner, released Apr. 25, 1961 (FCC 61M-733), corrected by order released May 2, 1961 (FCC 61M-733). By order of the Chief Hearing Examiner, released May 3, 1961 (FCC 61M-787), a petition to dismiss application filed by Elias and Robinson on Apr. 25, 1961, was dismissed as moot. By initial decision, released Jan. 9, 1962, a petition for severance and grant filed by Arthur W. Arundel on Nov. 20, 1961, was granted. Metro-WBOF, Inc., licensee of WBOF, Virginia Beach, Va.; WJMJ Broadcasting Corp., licensee of WJMJ, Philadelphia, Pa.; WBUX Broadcasting Co., licensee of WBUX, Doylestown, Pa.; and Interstate Broadcasting Co., Inc., licensee of WQXR, New York, N.Y., were made parties to the proceeding. WBUX took no part in the proceeding. The interests of WBOF, WJMJ, and WQXR in the proceeding lay with applications no longer here involved. While they participated in the initial stages of the proceeding, they did not participate in final hearing.

2. Prehearing conferences were held on April 10 and June 21, 1961. Hearing was held on July 5, 1961. On July 26, 1961 the applicants jointly petitioned that the record be reopened to receive affidavits to the effect that they had not through any exchange of consideration induced the dismissal or denial of the applications of those which had dropped out. By order released July 28, 1961, the hearing examiner reopened the record, accepted the affidavits, and closed the record.

3. Proposed findings were filed by the Broadcast Bureau, with opportunity afforded the parties to file replies if they desired. The Broadcast Bureau's findings were filed on August 7, 1961. Replies were not filed. The Bureau's findings are supported by the record and with minor editorial changes are here adopted.

FINDINGS OF FACT

Suburban Broadcasting Corp., Elkton, Md. (requested: 1550 kc, 250 w, DA-D, class II)

4. Elkton, Md., has a population of 5,989 according to the 1960 U.S. census (PC(1)22A; Suburban exhibit 1, fig. V). It is located in the extreme northeast corner of the State and is the county seat of Cecil County which has a 1960 population of 48,408. No standard broadcast stations are assigned to the community.

5. The following areas and populations would be included within the following pertinent field strength contours under the Suburban proposal (Suburban exhibit 1) :

Contour (mv/m)	Population	Area (sq. miles)
2.0.....	30,910	135
0.5 (normally protected) ¹	78,920	495

¹ This contour is interference free.

6. Stations WHP, WVCH, WRCV, WBAL, and WCAU provide primary service (0.5 mv/m or greater) to all of the rural area within Suburban's proposed primary service area; WFIL, WIP, WPEN, C.P. (Newark, Del.), WTUX, WASA, and WCOJ, 75-100 percent;

WCBM, WIBG, and WDEL, 50-75 percent; WABW, WAMD, WILM, and WDAS, 25-50 percent. A minimum of 11 and a maximum of 16 stations provide such service to various portions of that area (Suburban exhibit 1, fig. V).

7. A station operating under a construction permit in Newark, Del., provides primary service (2.0 mv/m or greater) to 50 percent of the city of Elkton daytime (Suburban exhibit 1, fig. V).

8. Because of mutually destructive interference, the proposal of Suburban Broadcasting Corp. is mutually exclusive with the proposal of Lancaster County Broadcasters (Suburban exhibit 1, fig. IV; Tr. 96).

Lancaster County Broadcasters, Lancaster, Pa. (requested: 1550 kc, 1 kw, DA-D, class II)

9. Lancaster, Pa., has a population of 61,055 according to the 1960 U.S. census (PC(1)40A). It lies about 50 miles west of Philadelphia and is the county seat of Lancaster County which has a 1960 population of 278,359. Two standard broadcast stations are assigned to the community—WLAN (1390 kc, 1 kw, DA-N, U) and WGAL (1490 kc, 250 w, U).

10. The areas and populations enclosed within pertinent field strength contours of the proposed Lancaster operation and the interference involved in the proposal is shown in the following table (Lancaster exhibit 1):

Contour (mv/m)	Population	Area (sq. miles)
2.0.....	162,987	286
0.5 (normally protected).....	267,565	1,028
Interference from the Arundel station at Charles Town, W. Va. (see footnote 1, p. 828).....	24,109 (9.01% ¹)	112.4 (10.9% ¹)
Interference free.....	243,456	915.6
Interference the proposed Lancaster operation would cause Arundel.....	1,171 (1.2% ¹)	19 (1.2% ¹)

¹ Percentages refer to population and area within the normally protected contour of the station receiving interference.

11. Station WHP provides primary service (0.5 mv/m or greater) to all of the rural area within the proposed primary service area of Lancaster; WBAL, WLAN, WSBA, WNOW, WORK, WGSA, WFIL, and WRCV serve 75-100 percent thereof; WHYL, WGAL,

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WLBR, WCOY, WEEU, WIP, WCBM, and WOR, 50-75 percent; WCOJ, WHUM, WGCB, WCMB, and WEZN, 25-50 percent; WAEB, WRAW, WCAU, WPPA, WASA, WBMD, WFBR, WAMD, WHVR, WCAO, WKBO, and WHGB, less than 25 percent (Lancaster exhibit 1, pp. 6, 7). A minimum of 11 and a maximum of 22 stations provide such service to various portions of that area (Lancaster exhibit 1, p. 10). From 12 to 20 stations serve the area of interference caused to the Lancaster proposal by the Arundel proposed operation (Lancaster exhibit 1, p. 5).

12. Station WLAN and WGAL, both in Lancaster, provide primary service (2.0 mv/m or greater) to the city daytime (Lancaster exhibit 1, p. 10).

13. The affidavits of the two applicants (see par. 2) contain assertions that neither applicant has promised nor paid any consideration with respect to any of the conflicting applications which were dismissed, nor with respect to the failure of Elias and Robinson to further prosecute their application. These assertions parallel those set forth in the affidavits accompanying the petitions to dismiss.

CONCLUSIONS

1. Suburban would bring a first-time local outlet to Elkton, Md., a community of 5,989 and a county seat. At the present time only 50 percent of Elkton receives a primary service daytime. Suburban would also furnish another daytime primary service to 78,920 persons in an area of 495 square miles, all of whom now receive such service from numerous stations. Absent consideration of its competitor, the Suburban proposal poses no interference problems.

2. Lancaster would bring a third local outlet and a third daytime primary service to Lancaster, Pa., a city of 61,055, also a county seat. Lancaster would furnish an additional daytime primary service to a population of 267,565 in an area of 1,028 square miles. This population now receives similar service from numerous stations. Lancaster would both cause to and receive interference from the upcoming operation of Arundel at Charles Town, W. Va. It is unnecessary to here assess the precise weight to be accorded this comparative disability, for more significant criteria dictate grant to Suburban.

3. In its proposed findings, the Bureau urges that disposition of the instant matter should be controlled by the precedent of *Walter G. Allen et al.*, 30 FCC 601, 603. The hearing examiner agrees. He has researched Commission decisions subsequent to that one and has been unable to find in any later decision any alteration of the views ex-

pressed in *Allen*. The case stands for the proposition that in 307(b) evaluation, in the absence of countervailing circumstances (e.g., white areas or other broad discrepancy in available service, discrepancy in program proposals, or compelling interference considerations), a proposal to bring a first-time local outlet to a community is to be accorded more weight than a proposal to add a local outlet but serve more people. Applied to the facts here, the *Allen* doctrine points to grant of the Suburban application.

Accordingly, since both applicants have been found to be legally, technically, and financially qualified to undertake the proposals here involved, and since operation by Suburban has been found to result in a more fair, efficient, and equitable distribution of facilities, *It is ordered*, This 6th day of February 1962, that unless an appeal to the Commission from this initial decision is taken by any of the parties, or the Commission reviews the initial decision on its own motion in accordance with the provisions of section 1.153 of the rules, the application of Suburban Broadcasting Corp. for a construction permit for a new standard broadcast station to operate daytime on 1550 kc (class II), with power of 250 w, directional antenna, at Elkton, Md., *Is granted*; and the application of H. Clay Esbenshade, tr/as Lancaster County Broadcasters, for a construction permit for a new standard broadcast station to operate daytime on 1550 kc (class II), with power of 1 kw, directional antenna, at Lancaster, Pa., *Is denied*.

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JACK E. LARSON (3W4505), DOCKET NO. 14451:

Order dismissing proceeding for revocation of citizens radio station license.

Section 1.76 of the rules.—Failure to respond to official notice of violation and other official correspondence.

Respondent submitted license for cancellation.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON 25, D.C.

<p>In the Matter of JACK E. LARSON, CHESTER, PA. Order To Show Cause Why There Should Not Be Revoked the License for Radio Station 3W4505 in the Citizens Radio Service</p>	}	Docket No. 14451
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MEMORANDUM OPINION AND ORDER

(Adopted April 12, 1962)

BY THE COMMISSION: COMMISSIONERS BARTLEY, LEE, AND CROSS ABSENT.

1. By order to show cause released December 19, 1961, the Commission, pursuant to section 312(a)(4) and 312(c) of the Communications Act of 1934, as amended, directed Jack E. Larson to show cause why his license for citizens radio station 3W4505 should not be revoked for repeated violations of section 1.76 of the Commission's rules (47 CFR 1.76).

2. In addition to the foregoing, the show-cause order detailed the procedural rights of the respondent, including his right to a waiver of hearing if he so desired and to submit a statement in mitigation or justification. No reply to the show-cause order was received by the Commission, and accordingly, by order released March 1, 1962, the Acting Chief Hearing Examiner terminated the proceeding and certified the matter to the Commission in accordance with section 1.78(c) of the rules.

3. On March 12, 1962, the license document for citizens radio station 3W4505, attached to a copy of the Acting Chief Hearing Examiner's order of February 28, 1962, was submitted for cancellation. Nothing else has been received from the respondent.

4. In view of the above, dismissal of the instant proceeding is warranted.

Accordingly, *It is ordered*, This 12th day of April 1962, that the captioned matter *Is dismissed*, and that a copy of this order of dismissal shall be served upon the said licensee at his last known address of 1125 Thomas Street, Chester, Pa.

ART LEONARDSON AND OWEN CLEVERLY, D/B AS GEM STATE CANDY Co. (13W2005, 13W2006, AND 13W2007), DOCKET No. 14346:

Order revoking citizens radio station licenses, effective May 23, 1962.

Section 1.76 of the rules.—Failure to respond to official notice of violation and other official correspondence.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON 25, D.C.

<p>In the Matter of ART LEONARDSON AND OWEN CLEVERLY, D/B AS GEM STATE CANDY Co., IDAHO FALLS, IDAHO Order To Show Cause Why There Should Not Be Revoked the Licenses for Radio Stations 13W2005, 13W2006, and 13W2007 in the Citizens Radio Service</p>	}	Docket No. 14346
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MEMORANDUM OPINION AND ORDER

(Adopted April 12, 1962)

BY THE COMMISSION: COMMISSIONERS BARTLEY, LEE, AND CROSS
ABSENT.

1. By order to show cause released October 31, 1961, the Commission, pursuant to section 312(a)(4) and 312(c) of the Communications Act of 1934, as amended, directed Art Leonardson and Owen Cleverly, d/b as Gem State Candy Co., to show cause why its licenses for citizens radio stations 13W2005, 13W2006, and 13W2007 should not be revoked for repeated violations of section 1.76 of the Commission's rules (47 CFR 1.76).

2. The show-cause order alleged that respondent had repeatedly violated section 1.76 of the rules in that it failed to respond to an official notice of violation mailed on June 28, 1961, and a followup letter dated August 14, 1961. The official notice of violation charged that respondent had operated radio station 13W2006 in violation of section 19.33 of the Citizens Radio Service rules. Such notice expressly requested respondent to reply within 10 days. The Commission's letter dated August 14, 1961, advised respondent of its failure to reply to the official notice of violation and requested that a response be submitted within 15 days from the date of that letter. No reply was received to the Commission's letter.

3. In addition to the foregoing, the show-cause order detailed the procedural rights of the respondent, including its right to a waiver of hearing if it so desired and to submit a statement in mitigation or justification. No reply to the show-cause order was received by the Commission, and accordingly, by order released March 1, 1962, the

Acting Chief Hearing Examiner terminated the proceeding and certified the matter to the Commission in accordance with section 1.78(c) of the rules.

4. The official notice of violation mailed on June 28, 1961; the followup letter of August 14, 1961; and the order to show cause were sent to the respondent at the address furnished by it in its applications for station licenses. The official notice of violation was not returned to the Commission by the Post Office Department and a return receipt for certified mail indicates that the followup letter was received by an agent for the respondent. The order to show cause was returned by the Post Office Department as "unclaimed." No response to any of the Commission's correspondence nor to the order to show cause has been received.

5. In view of the above, there can be no other conclusion than that the respondent has repeatedly violated section 1.76 of the Commission's rules as charged in the order to show cause in this proceeding.

6. In view of the respondent's failure to reply to the above-described communications and to the order to show cause, the Commission has no basis upon which to predicate a finding that the respondent is interested in the continued use of its radio stations or that such stations will be operated in compliance with law in the future. It is, of course, axiomatic that the orderly and effective administration and regulation of the Safety and Special Radio Services, virtually all of which involve the shared use of frequencies, require that licensees operate their radio stations in accordance with the applicable rules and regulations. The optimum and efficient usage of frequencies compels it. It is equally essential that licensees respond promptly and satisfactorily to all Commission communications, and particularly so when such communications involve alleged rule violations. Under the circumstances of this case the Commission cannot condone the actions of respondent in failing to reply to Commission correspondence, nor can it justify any action less than revocation of the station licenses as contemplated by the order to show cause.

Accordingly, *It is ordered*, This 12th day of April 1962, that the licenses of Art Leonardson and Owen Cleverly, d/b as Gem State Candy Co., for radio stations 13W2005, 13W2006, and 13W2007 in the Citizens Radio Service *Are revoked*, effective May 23, 1962, and that a copy of this order of revocation shall be served upon the said licensee at its last known address of 135 Birch Street, Idaho Falls, Idaho.

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JAMES H. WITHROW (6W3437), DOCKET No. 14497:

Order revoking citizens radio station license, effective May 23, 1962.

Section 1.76 of the rules.—Failure to respond to official communications from the Commission concerning a violation.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON 25, D.C.

<p>In the Matter of JAMES H. WITHROW, POST OFFICE BOX 828, SAINT MARY'S, GA. Order To Show Cause Why There Should Not Be Revoked the License for Radio Station 6W3437 in the Citizens Radio Service</p>	}	<p>Docket No. 14497</p>
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MEMORANDUM OPINION AND ORDER

(Adopted April 12, 1962)

BY THE COMMISSION: COMMISSIONERS BARTLEY, LEE, AND CROSS
 ABSENT.

1. By order to show cause released January 29, 1962, pursuant to section 312 (a) (4) and (c) of the Communications Act of 1934, as amended, the Commission directed James H. Withrow of Saint Mary's, Ga., to show cause why the license of his citizens radio station 6W3437 should not be revoked.

2. The order to show cause charged repeated violation of section 1.76 of the Commission's rules (47 CFR 1.76) in that he failed to reply to an official notice of violation, mailed June 20, 1961, and a followup letter dated August 10, 1961, concerning that notice. The official notice of violation had alleged that respondent was operating radio station 6W3437 in violation of section 19.61(a) of the rules governing the Citizens Radio Service. It was expressly requested therein that the respondent reply within 10 days, describing the corrective action taken. No reply was received. Thereafter, on August 10, 1961, a letter was sent to respondent by certified mail (Cert. No. 89792)—return receipt requested—advising the respondent that his failure to reply to the official notice of violation violated section 1.76 of the Commission's rules, and requesting that a reply be made within 15 days of receipt of the letter. Respondent did not reply to that letter.

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3. In addition to the foregoing, the order to show cause detailed the procedural rights of the respondent, including his right to a waiver of hearing, if he so desired, and to submit a statement in mitigation or justification.

4. In response to the order to show cause, respondent filed a statement waiving his right to a hearing and furnishing information apparently in mitigation or justification of the violations charged. In the latter statement, he admitted receiving the official notice of violation and the followup letter; that he did not reply to either of them; and that he had operated his station in violation of section 19.61 (a) of the Commission's rules as charged. He stated that he has not been on the air since the violation and was sorry for being "so neglectful in answering the citations"; that he no longer has any use for the license; and that the license was enclosed with the statement. He further stated that, in the future, he would respond to Commission correspondence.

5. The station license was not submitted with the respondent's statement. Accordingly, a letter of inquiry concerning the matter was sent to him and, although received by the respondent on February 13, 1962, as evidenced by his signature to a Post Office Department return receipt card, he has not replied thereto nor has the license been received in the Commission.

6. It is clear that the respondent has repeatedly violated section 1.76 of the Commission's rules. While he has expressed regret for failure to reply to Commission correspondence and has given assurance of no recurrence thereof in the future, it is apparent that no reliance can be placed on his statements, since he has failed to respond to the Commission's most recent letter and submit his license for cancellation.

7. It is essential that licensees respond promptly and satisfactorily to all Commission communications, and particularly when such communications involve rule violations. The Commission cannot condone the actions of the licensee in failing to respond to Commission communications and, under all the circumstances of this case, there is no other reasonable alternative except to revoke his radio station license.

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Accordingly, *It is ordered*, This 12th day of April 1962, that the license of James H. Withrow for radio station 6W3437 in the Citizens Radio Service *Is revoked*, effective May 23, 1962, and that a copy of this order of revocation shall be served upon the said licensee at his address of record, Post Office Box 828, Saint Mary's, Ga.

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DAVID I. AND ISABEL P. FLOOD, D/B AS TELEPHONE ANSWERING SERVICE OF TRENTON ET AL., DOCKETS NOS. 14148 AND 14149 :

Application of David I. and Isabel P. Flood, d/b as Telephone Answering Service of Trenton, for construction permit for new one-way signaling service in the Domestic Public Land Mobile Radio Service at Trenton, N.J.; granted. Competing application of Eugene R. Lemieux, d/b as Radio Mobile Answering Service; denied.

Comparative issue.—Comparative criteria discussed.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON 25, D.C.

In re Applications of DAVID I. AND ISABEL P. FLOOD, D/B AS TELEPHONE ANSWERING SERVICE OF TRENTON EUGENE R. LEMIEUX, D/B AS RADIO MOBILE ANSWERING SERVICE For Construction Permits To Establish a New One-Way Signaling Service in the Domestic Public Land Mobile Radio Service at Trenton, N.J.	}	Docket No. 14148 File No. 2745-C2-P-60 Docket No. 14149 File No. 2907-C2-P-60
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APPEARANCES

Leonard Etz, on behalf of David I. and Isabel P. Flood, d/b as Telephone Answering Service of Trenton; *Daryal A. Myse*, on behalf of Eugene R. Lemieux, d/b as Radio Mobile Answering Service; *E. E. Mather*, on behalf of Diamond State Telephone Co.; *William H. Borghesani*, on behalf of Ruth and Seymour H. Chervinski, d/b as Page Call; and *Neil Sandberg*, *Joseph Chuchkin*, and *Byron E. Harrison*, on behalf of the Chief, Common Carrier Bureau, Federal Communications Commission.

DECISION

(Adopted April 18, 1962)

BY THE COMMISSION: COMMISSIONERS MINOW, CHAIRMAN, AND LEE ABSENT; COMMISSIONER CROSS NOT PARTICIPATING.

1. These mutually exclusive proposals for a one-way paging service to operate on the same frequency in Trenton, N.J., were designated for hearing on issues to determine the extent to which harmful interference would be caused and received, and "to determine, on a comparative basis, the nature and extent of the services proposed by each of the applicants, including rates, charges, practices, classifications, regulations, personnel, and facilities pertaining thereto."

2. Examiner Cooper, in an initial decision released December 1, 1961 (FCC 61D-167), proposes the grant of the application of David I. and Isabel P. Flood, d/b as Telephone Answering Service of Trenton (hereinafter Flood), and denial of the application of Eugene R. Lemieux, d/b as Radio Mobile Answering Service. Lemieux filed exceptions thereto, and oral argument before the Commission en banc was held on March 29, 1962.

3. The initial decision adequately sets forth the background and history of this proceeding, and this information need not be repeated here. The Commission has carefully considered the exceptions in light of the record, and our rulings thereon are contained in the appendix. The findings of fact contained in the initial decision are considered to be substantially accurate and complete, and with the addition noted in the appendix, they are adopted. Although we agree with the examiner's ultimate result, we are of the view that his conclusions require some comment, which is set forth herebelow. A brief review of the facts adduced under the comparative issue will serve to put our conclusions in their proper context.

4. Both applicants propose substantially similar operations, whereby pocket or automobile receivers receive subscribers' code numbers and short messages. Neither resides in Trenton, but both operate telephone answering services there. Flood's service has been in operation since 1950, and now has 550 subscribers, 25-35 percent of whom are doctors. Lemieux started his service 3 years ago and has 81 subscribers. Flood is a standby, remote control dispatcher for 2 private (non-common-carrier) two-way radio systems, while Lemieux is the licensee of station KEC928, a two-way common carrier system which has 30 customers in Trenton, and of KEC927, a similar system in Hightstown, N.J., with 2 customers. Flood's staff consists of 24 full-time personnel, including himself. Lemieux's staff at Trenton consists of five full-time and two part-time personnel. Whereas both Mr. and Mrs. Flood would devote full time to the proposed operation, Lemieux would spend approximately 2 hours a day at the proposed station. The existing answering service staffs would operate the proposed paging service as an additional duty. Flood has four firm orders for the new service, and three other subscribers to his answering service have expressed an interest. Lemieux has five potential customers, four of whom are subscribers to his Trenton two-way service.

5. Each applicant submitted with his application a schedule of proposed rates. These are as follows:

A. *Flood*:

- (1) Rental of, and unlimited broadcast service to, pocket receivers—\$12 per month, and \$10 per month for each additional pocket receiver.
- (2) Installation of receiver in automobile—\$10.
- (3) Rental of receiver in automobile—\$3 per month.
- (4) Unlimited broadcast service to receiver in automobile—\$12 per month.
- (5) Maintenance of receivers free of charge.

Flood's testimony at the hearing was somewhat inconsistent with the foregoing rates, in that he proposed to charge \$11.50 per month for additional receivers rather than \$10 as stated in the application, and

also proposed rates for reconditioned receivers of \$8 for the first unit and \$7.50 for each additional unit per subscriber.

B. Lemieux:

(1) Rental of and unlimited broadcast service to (unspecified type) receiver—\$10 per month.

(2) Maintenance of receivers free of charge.

Lemieux testified that his rate applied to both pocket and automobile receivers and that installation of the latter would be free of charge.¹

6. The examiner assigned (conclusion 14) controlling weight to—the fact that Flood now has among the present customers to his telephone answering service a much larger number of high priority (i.e., medical, other professional, and emergency service personnel) potential subscribers * * * than does Lemieux, * * * which leads to the conclusion that greater public use would be made of the proposed service if the construction permit is granted to Flood.

7. Lemieux urges that his service will be equally available to Flood's answering service subscribers, and, since he proposes lower rates, he would better serve the public need for one-way service. Lemieux also claims a preference because he presently operates as a common carrier, contending that he should be permitted to expand his service to the fullest permissible extent.

8. The Commission is not convinced that Flood has the greater customer potential solely because of the larger number of existing subscribers to his answering service. It would appear more logical to assume that the successful applicant will attract those of the loser's customers who desire both the answering service and the paging service, or that the loser will enter into some agreement with the winner whereby the latter will dispatch calls from the former's answering service. Accordingly, to the extent that existing subscribers to answering services may be deemed potential customers of a paging service, the parties may be considered equal. From the standpoint of more immediate prospects, it would seem that Flood, with four firm orders and three other subscribers expressing an interest in the proposed service, should be only slightly preferred to Lemieux, with five interested customers. This preference is not, in any event, controlling.

9. Implicit in a determination of this proceeding is a recognition that the service in question is of little value to a member of the public unless it be operated in conjunction with a telephone answering service, as proposed by each of these applicants. The Commission's lack of regulatory control over such answering services raises a question as to the validity of preferring one applicant for his lower rates, since, in order to make a profit on his total operation, he can adjust the rates charged for his answering service without knowledge or permission of the Commission. In any event the differences in rates proposed by the applicants are not significant enough to warrant the award of

¹ To the extent that Flood's testimony varies from his application, it must be disregarded. Similarly, Lemieux's testimony concerning free installation of automobile receivers, since it was not mentioned in the application, cannot be considered. In this regard, the tariffs proposed in the applications, sine qua non to a determination of this proceeding, are officially noticed.

a major preference, and in view of the above consideration no preference is awarded in this area.

10. As noted in paragraph 4, *supra*, Mr. and Mrs. Flood would devote full time to the proposed operation, whereas Lemieux would spend no more than 10-15 hours per week at the Trenton station. Fully half of Lemieux's attention is devoted to a motel which he owns in Hightstown, and he would divide the remaining 50 percent of his time between his Lakewood and Trenton operations. Flood is entitled, therefore, to a significant preference for his proposal to participate fully in the operation of the service, as compared to Lemieux whose attention is divided among several business entities at separate points.

11. While neither the Floods nor Lemieux reside in Trenton, both live in nearby communities. Mr. and Mrs. Flood have had their principal business in Trenton since 1950, and are preferred slightly to Lemieux, whose principal business interest is his motel in Hightstown and who has had his business in Trenton for only 3 years.

12. Lemieux urges that he is entitled to preferential consideration by virtue of his already being a licensee in this service, citing *Mackay Radio & Telegraph Co., Inc. v. F.C.C.*, 97 F. 2d 641 (1938), and *F.C.C. v. RCA Communications, Inc.*, 346 U.S. 86 (1953). Neither case controls. *Mackay* merely states that the antitrust laws do not require that the Commission grant a license to a second public service company which desires to compete with an existing service, while *RCA* stands for the proposition that in deciding whether to authorize a competing common carrier service, the Commission may not assume that competition is good, *per se*, but must find that it would serve some beneficial purpose. The instant record provides no basis for a conclusion that competition would or would not serve some beneficial purpose in Trenton. For example, there is no evidence of other services existing in Trenton, or, if such do exist, the nature of their rates, practices, clientele, etc. Moreover, because of the differences between Lemieux's existing two-way services and the proposed one-way service, it is clear that these would not be in direct competition. Thus, aside from crediting Lemieux for the experience he has gained through operation of the two-way services, he is entitled to no preference by virtue of his being an existing licensee. Similarly, Flood is not to be preferred on the basis of any added competition flowing from his not being an existing licensee.

13. In experience the applicants are substantially equal. While Lemieux has had 2 years' experience in the two-way service, and 3 years' experience in the telephone answering service, he has no direct one-way experience. Although Flood dispatches private (non-common-carrier) two-way systems, he has not been a licensee. Nevertheless, he has operated his answering service, in conjunction with which he proposes to operate the instant service, since 1950.

14. In summary of the foregoing, Flood has been preferred to Lemieux for his full-time participation in the proposed operation, and, slightly, for his larger immediate customer potential and his better familiarity with the Trenton community. The applicants have been deemed equal in other areas of comparison. It is therefore the

Commission's conclusion that a grant of Flood's application would better serve the public interest, convenience, and necessity.

Accordingly, *It is ordered*, This 18th day of April 1962, that the application of David I. and Isabel P. Flood, d/b as Telephone Answering Service of Trenton, for a permit to construct a new one-way signaling service at Trenton, N.J., *Is granted*; and the application of Eugene R. Lemieux, d/b as Radio Mobile Answering Service, for the same facilities, at Trenton, N.J., *Is denied*.

APPENDIX

RULINGS ON EXCEPTIONS TO THE INITIAL DECISION

Exceptions of Eugene R. Lemieux, d/b as Radio Mobile Answering Service

<i>Exception No.</i>	<i>Ruling</i>
1, 2-----	Granted. See par. 8 of the decision.
3 (a), (f), and (j)-----	Denied as lacking significance, in view of Lemieux's testimony (Tr. 173) that he would advertise no more than a week in the newspaper, and thereafter only in the telephone book.
3 (b) and (h)-----	Granted to the extent that it is found that Mr. and Mrs. Flood live in Washington Crossing, Pa., 9 miles from Trenton. Denied as to the remainder as lacking decisional significance. The Commission does not require that mere applicants be "fully aware" of all applicable Commission rules and regulations.
3 (c) and (d)-----	Denied in substance as lacking decisional significance. However, see footnote 1 to par. 5 of the decision.
3 (e)-----	Denied as lacking decisional significance.
3 (g)-----	Denied as repetitious of the examiner's finding 22.
3 (i)-----	Denied. See par. 9 of the decision.
3 (k)-----	Denied. The Commission concludes to the contrary.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON 25, D.C.

<p>In re Applications of DAVID I. AND ISABEL P. FLOOD, D/B AS TELEPHONE ANSWERING SERVICE OF TRENTON For a Construction Permit To Establish a New One-Way Signaling Service in the Domestic Public Land Mobile Radio Service at Trenton, N.J.</p>	}	<p>Docket No. 14148 File No. 2745-C2-P-60</p>
<p>EUGENE R. LEMIEUX, D/B AS RADIO MOBILE ANSWERING SERVICE For a Construction Permit To Establish a New One-Way Signaling Service in the Domestic Public Land Mobile Radio Service at Trenton, N.J.</p>	}	<p>Docket No. 14149 File No. 2907-C2-P-60</p>

APPEARANCES

Leonard Etz, on behalf of David I. and Isabel P. Flood, d/b as Telephone Answering Service of Trenton; *Daryal A. Myse*, on behalf of Eugene R. Lemieux, d/b as Radio Mobile Answering Service; *E. E. Mather*, on behalf of Diamond State Telephone Co.; *William H. Borghesani*, on behalf of Ruth and Seymour H. Chervinski, d/b as Page Call; and *Neil Sandberg*, *Joseph Chachkin*, and *Byron E. Harrison*, on behalf of the Chief, Common Carrier Bureau, Federal Communications Commission.

INITIAL DECISION OF HEARING EXAMINER BASIL P. COOPER

(Adopted November 28, 1961)

PRELIMINARY STATEMENT

1. In this proceeding, David I. and Isabel P. Flood, d/b as Telephone Answering Service of Trenton (hereinafter sometimes referred to as Flood), and Eugene R. Lemieux, d/b as Radio Mobile Answering Service (hereinafter sometimes referred to as Lemieux), each requests a permit to construct a new one-way signaling service to operate on the frequency 35.58 Mc in the Domestic Public Land Mobile Radio Service at Trenton, N.J.

2. The Commission by order dated May 31, 1961, released June 7, 1961, found that except as indicated in the issues, each applicant was legally, financially, and technically qualified to be the licensee of the station proposed by it, but as the applications were mutually exclusive

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and as initially proposed would cause interference to existing stations designated both applications for hearing on the following issues:

(a) To determine, on a comparative basis, the nature and extent of the services proposed by each of the applicants, including rates, charges, practices, classifications, regulations, personnel, and facilities pertaining thereto.

(b) To determine, on the basis of the engineering standards set out above, whether any harmful interference would result from the cochannel operation of each of the proposed Trenton, N.J., stations to the service provided by station KGA473 (Wilmington, Del.) within its 43-dbu service contour and, if so, in view of the service being provided, whether such interference would be undesirable or intolerable.

(c) To determine, on the basis of the engineering standards set out above, whether any harmful interference would result from the cochannel operation of station KGA473 (Wilmington, Del.) to the service proposed by each of the applicants within the 43-dbu contour of each of the proposed stations at Trenton, N.J., and, if so, in view of the nature of the service proposed, whether such interference would be undesirable or intolerable.

(d) To determine, on the basis of the engineering standards set out above, whether any harmful interference would result from the cochannel operation of station KEC935 (Newark, N.J.) to the service proposed by each of the applicants within the 43-dbu service contour of each of the proposed stations at Trenton, N.J., and, if so, in view of the nature of the service proposed, whether such interference would be undesirable or intolerable.*

(e) To determine the area and population which may be expected to receive service from each of the proposed stations within its 43-dbu service contour, and the need for such service in the area proposed to be served.

(f) To determine, in the light of the evidence adduced on all the foregoing issues, which, if any, of the applications should be granted.

The order of designation named Diamond State Telephone Co., licensee of station KGA473 at Wilmington, Del., and Ruth and Seymour H. Chervinski, d/b as Page Call, licensees of station KEC935 at Newark, N.J., as party intervenors, and also designated the Chief, Common Carrier Bureau, Federal Communications Commission, as a party to the proceeding.

3. Prehearing conferences were held on July 10 and 28, 1961, and the evidentiary hearing was held on September 25, 1961. Proposed findings of fact and conclusions of law were submitted by Eugene R. Lemieux, d/b as Radio Mobile Answering Service, on October 20, 1961, and by David I. and Isabel P. Flood, d/b as Telephone Answering Service of Trenton, on October 23, 1961.¹

FINDINGS OF FACT

Engineering and Coverage

4. Both applicants propose to locate their transmitting equipment in the same general area. The antenna of the station proposed by each of the applicants will be located on the top of a building at

*It appears to be unnecessary to consider whether an installation at Trenton would interfere with Newark, since our engineering evaluation of this possibility shows that such potential is not substantial. However, the height and power of the Newark installation, and the intervening terrain, indicate a practical possibility that interference might be caused in Trenton from Newark.

¹ These findings consist of the following single paragraph:

"We have carefully considered the presentation of evidence given at the hearing held on Monday, September 25, 1961, and feel that the evidence was so conclusive that no further statements are needed."

145 East State Street, Trenton, N.J. The center of the antenna will be 232 feet 9 inches above mean sea level. The effective antenna height above average terrain will be 140 feet. In all respects, the coverage of the station proposed by each of the applicants is identical.

5. The antenna will be so mounted that the maximum gain will be 4.0 db in the direction of 135° and 315° true with the nulls at 45° and 225° true. So oriented, the proposed station will not cause objectionable interference within the 43-dbu service contour of either station KGA473, Wilmington, Del., or station KEC935, Newark, N.J.²

6. The proposed Trenton station will receive objectionable interference within its 43-dbu contour from stations KGA473 and KEC935. The areas and populations to be served and the extent of objectionable interference to be received are as follows:

Contour	Area (sq. miles)	Population
43 dbu.....	195	282,381
Interference from KGA473 and KEC935.....	107	68,642
Within interference-free contour.....	88	213,739

The interference-free contour of the proposed station encompasses the entire Trenton, N.J., area as well as the Bordentown, N.J., and the Levittown, Pa., areas.

Nontechnical Matters

7. Each applicant proposes to operate his base station in substantially the same manner. Each subscriber will be furnished a small pocket receiver and will be assigned a code number. On being requested to contact a subscriber, the station will broadcast the subscriber's code number and a short message such as "call your office," "call the hospital," or "call your home." The subscriber will use his pocket receiver from time to time to see if he is being called. Upon receiving a message, he should thereafter go to the telephone and advise the station of such fact, following which the station will take the message off the air. In the absence of a call from the subscriber, the message, which may be as long as 5 seconds, will be transmitted for approximately an hour.

8. David I. and Isabel P. Flood are the owners and operators of Telephone Answering Service of Trenton which they began on January 3, 1950, with two subscribers. As of the date of the hearing, they were rendering service to approximately 550 subscribers, of which between 25 percent and 33 percent were members of the medical profession. Among the organizations in Trenton being served by Flood are the Mercer County Component Medical Society, Mercer County Dental Society, Mercer County Optometric Society, the Society for the Prevention of Cruelty to Animals, Council of Churches, and Alcoholics Anonymous.

² Similar amendments proposed by each applicant and accepted by the hearing examiner removed the possibility of objectionable interference from each of the proposed stations to stations KGA473 and KEC935.

9. Flood operates 24 hours a day using seven 80-line switchboards and a staff of 24 persons including the owners. As of the date of the hearing, all of the employees had been with the company more than 2 years and four (not counting the owners) for more than 10 years.

10. Flood is now dispatching by remote control two private two-way radio systems. All of the personnel of Telephone Answering Service of Trenton as of the date of the hearing had been licensed to operate two-way radio equipment.

11. The control point for the proposed one-way paging service will be in the offices of Telephone Answering Service of Trenton. This point will be adjacent to or near the present switchboards. Present personnel will man and operate the proposed one-way signaling station. Technical supervision and maintenance of the equipment will be handled by a local licensed technician.

12. At the hearing, Flood proposed rates as follows:

1. \$12 per month for unlimited service for a single unit. \$11.50 per month for unlimited service for each additional unit per subscriber.
2. \$8 per month for unlimited service for a single reconditioned pocket unit in good working order. \$7.50 per month for unlimited service on each additional reconditioned pocket unit in good working order per subscriber.
3. \$3 per month rental of receivers for use in motor vehicles, plus reasonable installation fee. Subscriber may purchase and install his own receiver for use in motor vehicle in lieu of paying such charges.

These rates varied from the rates proposed in the application in that in the application, the rental and service for the second receiver was \$10 per month per unit and no provision was made for a reduced rate for the use of reconditioned pocket units. In the application, the fee for installing a mobile receiver in subscriber's vehicle, if requested, was specified as \$10. Mr. Flood sought to explain the differences in the proposals mentioned above on the ground that it was his understanding that he could change the rates at will.

13. Mr. Flood seeks the one-way station because it would enable him to provide a valuable extra service to his subscribers and to such members of the general public as may be interested in it. As of the date of the hearing, Mr. Flood had four persons who had requested the service and a total of seven who had expressed an interest in it. He estimates initially that they might develop a dozen customers.

14. Eugene R. Lemieux, d/b as Radio Mobile Answering Service, has been operating a telephone answering service in Trenton, N.J., for 3 years, and as of the date of the hearing had 81 customers. He is also the licensee of station KEC928 which he has been operating in the Domestic Public Land Mobile Radio Service in Trenton for the past 2 years and now has 30 customers.

15. Mr. Lemieux is the licensee of station KEC927 which he has been operating in the Domestic Public Land Mobile Radio Service in Hightstown, N.J., for the past 2 years and has two customers. He intends to start a telephone answering service in Hightstown as soon as dial telephone service has been installed by the telephone company.

16. As of the close of the hearing, Mr. Lemieux's telephone answering service and the above-mentioned two-way radio services were

about at the "break-even" point insofar as operating revenue was concerned. His primary source of income, however, is from a 23-unit motel in Hightstown located near his home. This motel is supervised by a manager.

17. At the time of the hearing, Mr. Lemieux was prosecuting an application for a new two-way base station to operate in the Domestic Public Land Mobile Radio Service at Lakewood, N.J., a city approximately 30 miles east of Trenton. On September 29, 1961, subsequent to the close of the hearing, this application was granted and the call letters KEC943 were assigned to that station.

18. The control point for the proposed one-way signaling service will be located in the offices in Trenton from which two-way radio station KEC928 and the telephone answering service are operated. Station KEC928 and the telephone answering service in Trenton have been locally supervised by Mrs. Evelyn Riegal since May 1959. On occasion, Mrs. Riegal acts as an operator. She has had 3 years' experience in operating a one-way signaling service in Philadelphia, Pa. In addition to Mrs. Riegal, the present staff for the combined Trenton operations consists of four full-time operators and two part-time operators, one of whom is Mrs. Lemieux. All of the present staff have appropriate radio licenses. This staff will man and operate the proposed one-way signaling station.

19. Mr. Lemieux lives in Hightstown, N.J., approximately 15 miles northeast of Trenton. It takes him approximately 20 minutes to drive from his home to Trenton. Mr. Lemieux and his wife operate station KEC927 from their home. Mr. Lemieux has a multiwave set in his car which enables him to keep in touch with and monitor both the Trenton and Hightstown stations when he is in his car. He can monitor both stations from his home in Hightstown.

20. Mr. Lemieux presently spends approximately 20 hours per week in managing and supervising his present telephone answering service and radio business, and will devote such time as necessary to the operation of the proposed one-way signaling service.

21. The technical supervision of the proposed one-way service will be handled by a local corporation which has available local technicians for emergency service.

22. The proposed one-way signaling service will supplement Mr. Lemieux's telephone answering service and his two-way mobile service in Trenton. As he presently has direct telephone contact between his operation in Trenton and station KEC927 in Hightstown, he will be able to use the one-way signaling service to contact those Hightstown customers who subscribe to the proposed Trenton service when within range of the Trenton base station.³ A survey disclosed five potential customers, four of whom are presently using his two-way radio service, some are using his telephone answering service. These customers are primarily in the service field.

³ The same will apply to customers in Lakewood who may subscribe to the proposed Trenton service.

23. At the hearing, Lemieux proposed rates as follows:

1. Rental of receiver units at \$10 per month per unit with unlimited service.

This was consistent with the proposed rates filed with the application. At the hearing, however, Mr. Lemieux stated that he would furnish the subscriber either a pocket-type receiver or an automobile-type receiver and if the subscriber took the automobile-type receiver, it would be installed in the subscriber's car at no charge. The application did not identify the type of receiver to be furnished and did not mention free installation of automobile-type receivers.

CONCLUSIONS

1. In this proceeding, David I. and Isabel P. Flood, d/b as Telephone Answering Service of Trenton, and Eugene R. Lemieux, d/b as Radio Mobile Answering Service, each requests a permit to construct a new one-way signaling service to operate on the frequency 35.58 Mc in the Domestic Public Land Mobile Radio Service at Trenton, N.J.

2. The station proposed by each of the applicants is in the same general area with the antenna proposed by each applicant to be erected on the top of the same building. In all respects, the coverage and coverage characteristics of the station proposed by each applicant are identical. The two applications are mutually exclusive.

3. Operating as proposed, the station of the successful applicant will have within its 43-dbu contour an area of 195 square miles and a population of 282,381 persons, and within its interference-free contour an area of 88 square miles and a population of 213,739 persons. The interference-free contour of the proposed station encompasses the entire Trenton, N.J., area as well as the Bordentown, N.J., and Levittown, Pa., areas.

4. Operating in the manner proposed, the station of the successful applicant will not cause objectionable interference within the 43-dbu contour of any other station.

5. Both applicants own and operate telephone answering services in Trenton, N.J. One applicant, Flood, began his service in 1950 with 2 customers and as of the date of the hearing had 550 subscribers. The other applicant, Lemieux, began his telephone answering service approximately 3 years ago and now has 81 customers.

6. Flood supplements his telephone answering service by contacting subscribers through two private two-way radio stations. Lemieux is the licensee of station KEC928 which he has been operating in the Domestic Public Land Mobile Radio Service in Trenton for the past 2 years and has 30 customers. In addition, Lemieux is the licensee of another two-way station, KEC927, at Hightstown, N.J., approximately 15 miles northeast of Trenton and on September 29, 1961, received a permit for a new station at Lakewood, N.J., approximately 30 miles east of Trenton.

7. The staff of each applicant (Flood, 24 including the owners) and (Lemieux, 7 including the owners) has had adequate experience

in the telephone answering service and a substantial amount of experience in handling two-way radio service. All members have appropriate radio licenses. Each staff is capable of operating properly the proposed one-way signaling service. Each applicant has made arrangements to have his station serviced by competent licensed local engineers.

8. The basic rate proposed by Flood, \$12 per month, is slightly higher than the basic rate proposed by Lemieux, \$10 per month. At the hearing, Flood proposed a \$11.50 monthly rate for a second receiver which was at variance with the \$10 rate proposed in his application. He also proposed a new and lower rate for customers using reconditioned receivers which had not been mentioned in his application. Lemieux, on the other hand, interpreted the rates which he had proposed in a most liberal manner, proposing to install automobile-type receivers at no cost to the customer, a service not mentioned in his application.

9. Surveys conducted by each of the applicants indicated an interest in the proposed service. Flood has four customers who have requested the service and seven who have expressed an interest in it. Lemieux has five potential customers, four of whom are now subscribers to his two-way service.

10. Each applicant believes the proposed station would be of great assistance in the operation of his telephone answering service. The proposed station, however, would be operated as a common carrier available to all who are subscribers thereto. Each applicant is qualified to receive a construction permit and each would use the facility in an acceptable manner.

11. A telephone answering service, while serving the public, is not necessarily a common carrier, and in this sense Flood does not now operate as a common carrier. Lemieux, on the other hand, operates station KEC928 in Trenton and station KEC927 at Hightstown as common carriers. He is the permittee of station KEC943 at Lakewood which will be operated as a common carrier. In this sense, he is a common carrier and it is urged that by virtue of this fact he is entitled to a preference in that the one-way facilities would be used to expand his common carrier services.

12. The one-way paging service, as well as all frequencies to be licensed for use in the common carrier service, is intended to be used in such a way as to bring the maximum service to the maximum number of subscribers within the schedule of priorities provided for in section 21.512 of the rules of the Commission.

13. As a general rule, the potential customer for a one-way signaling or paging service is a person who performs a service of such a nature that he feels he must be "on call" at all hours and has reason to believe that he may or will be called when he is away from his home and office. Such a person will frequently subscribe to a telephone answering service or radio facility, either or both, as a means of making himself available at all times. Among those who frequently feel that they should be "on call" at all hours are doctors, members of the clergy, and persons performing emergency service calls. As of the close of the hearing, Flood, with 550 customers to his telephone

answering service, of which between 25 percent and 33 percent were members of the medical profession, has 4 definite subscribers for the new service and by far the larger immediate potential for the one-way paging service. While there is reason to believe that Lemieux's telephone answering service will continue to grow, the fact remains that he now has but 81 customers to that service and but 30 customers to his two-way common carrier service in Trenton. Furthermore, of the five potential one-way customers, four are presently subscribers to his two-way radio service.

14. While Lemieux proposes rates which are lower than the rates proposed by Flood, and despite the ineptness with which Flood presented his rate structure at the hearing, the hearing examiner finds that controlling weight in the resolution of this proceeding should be given to the fact that Flood now has among the present customers to his telephone answering service a much larger number of high priority potential subscribers to the proposed one-way signaling service than does Lemieux, a fact which leads to the conclusion that greater public use would be made of the proposed service if the construction permit is granted to Flood.

15. From the foregoing, it is found that the public interest, convenience, and necessity will be served by granting the application of David I. and Isabel P. Flood, d/b as Telephone Answering Service of Trenton.

It is ordered, This the 28th day of November 1961, that unless an appeal to the Commission from this initial decision is taken by any of the parties, or the Commission reviews the initial decision on its own motion in accordance with the provisions of section 1.153 of the rules, the application of David I. and Isabel P. Flood, d/b as Telephone Answering Service of Trenton, for a permit to construct a new one-way signaling service to operate on the frequency 35.58 Mc in the Domestic Public Land Mobile Radio Service at Trenton, N.J., *Be and the same is hereby granted*; and the application of Eugene R. Lemieux, d/b as Radio Mobile Answering Service, for the same facilities at Trenton, N.J., *Be and the same is hereby denied*.

WILLIAM WRIGHT NEWMAN (6W7143), DOCKET No. 14373:

Order revoking license for station in the Citizens Radio Service effective May 28, 1962.

Section 1.76 of the rules.—Failure to reply to official correspondence.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON 25, D.C.

<p>In the Matter of WILLIAM WRIGHT NEWMAN, AUGUSTA, GA. Order To Show Cause Why There Should Not Be Revoked the License for Radio Station 6W7143 in the Citizens Radio Service</p>	}	Docket No. 14373
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MEMORANDUM OPINION AND ORDER

(Adopted April 18, 1962)

BY THE COMMISSION: COMMISSIONERS MINOW, CHAIRMAN, AND LEE
ABSENT.

1. The Commission, on November 13, 1961, released an order pursuant to section 312 (a)(4) and (c) of the Communications Act of 1934, as amended, directing respondent to show cause why his license for citizens radio station 6W7143 should not be revoked for alleged violations of section 1.76 of the Commission's rules (47 CFR § 1.76).

2. The show-cause order spelled out the alleged violations and detailed the procedural rights of the respondent, including his right to waive a hearing if he so desired and to submit a statement in mitigation. The respondent, on November 17, 1961, replied to the show-cause order, waiving his right to a hearing and submitting a written statement. Accordingly, on December 4, 1961, the Acting Chief Hearing Examiner released an order terminating the proceeding and certifying the case to the Commission in accordance with section 1.78(c) of the rules.

3. The Commission's records show that, on March 22, 1961, it sent an official notice of violation to Newman alleging noncompliance with section 19.61 (a), (c), (f), and (g) of the rules. This notice required a written answer from respondent within 10 days of its receipt. However, by letter dated March 28, 1961, one Warren Woodward sent a letter purporting to be in reply to the official notice of violation in which it was represented that he "was operating on this license with full permission from William Wright Newman."

4. Subsequently, on June 14, 1961, a letter was sent to respondent advising him of the illegality of any purported transfer of his station license or the operating authority conferred thereunder, and

asking him to reply within 10 days as to the facts of the matter. This letter was received for the respondent by his agent on June 17, 1961. No reply was made. Thereafter, on August 10, 1961, an additional letter was sent to respondent and he was again requested to reply within 10 days. Respondent replied on August 19, 1961. In his reply he claimed that he had not used his citizens radio station since January 6, 1961, but furnished no explanation for the violation and stated "apparently someone in Augusta, Ga., has been using my call letters." Accordingly, on September 19, 1961, a further letter was addressed to respondent in which he was specifically requested to advise the Commission "(1) whether Warren Woodward on February 25, 1961, was engaged in the operation of citizens radio apparatus under the call sign 6W7143 with * * * [his] permission, and (2) by what means Warren Woodward came into possession of the official notice of violation which was directed to * * * [him] on March 22, 1961." Newman was again requested to reply within 10 days of receipt of the Commission's letter. A return receipt for certified mail indicates that this letter was received by Newman on October 10, 1961. No reply was made to that letter.

5. As indicated above, the show-cause order charged respondent with repeated violation of section 1.76 of the Commission's rules because of his failure to respond to Commission correspondence. There has been no denial of that charge by respondent nor have there been presented any facts in mitigation thereof. It is clear that, by his repeated failure to reply to official correspondence, he has demonstrated a disregard for the Commission's procedures. While respondent has furnished some information concerning the alleged unlawful transfer of control of his radio station, he has left unexplained the fact that correspondence directed to him came into the possession of Mr. Woodward and it seems clear that respondent has endeavored to mislead the Commission concerning the facts of the matter and has evidenced a lack of candor in responding to Commission correspondence. This becomes evident when it is noted that, in his first letter, he categorically denied knowledge of the matter and represented that he had not transferred, and did not intend to transfer, his radio station license. Then, when advised of Mr. Woodward's statement that the latter had full permission to use the radio station, he represented only that Woodward "*does not*" have permission to use his call sign and that respondent had not had anything to do with the station since the middle of April 1961. This latter date is significant because Woodward's operation of the radio station, which resulted in the issuance of the original notice of violation, was prior to that time; viz, February 25, 1961.

6. In the circumstances of this case, it must be concluded that respondent repeatedly violated section 1.76 of the Commission's rules and that there have been shown no facts or circumstances in mitigation of such violation. We have emphasized previously in similar cases that licensees must promptly and satisfactorily respond to Commission correspondence, particularly when such correspondence involves alleged rule violations. The Commission expects licensees to respond with forthrightness and candor. Responses which not only

lack these basic attributes, but contain incomplete or misleading information, as is the case here, merely serve to compound the violation. The Commission cannot condone the actions of the respondent in this case, nor can it justify any action less than revocation as contemplated by the order to show cause.

Accordingly, *It is ordered*, This 18th day of April 1962, that the license of citizens radio station 6W7143 of William Wright Newman, RMSA 585-72-83 OC Division, U.S.S. *Merrick* (AKA-97), c/o FPO, San Francisco, Calif., *Is revoked*, effective May 28, 1962, and that a copy of this order of revocation shall be served upon the licensee.

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PEOPLES BROADCASTING CORP., DOCKET No. 13765:

Application of Peoples Broadcasting Corp. for a new class B FM broadcast station construction permit at Trenton, N.J.; granted.

FM frequency allocation policy.—Considered.

Section 1.356 of the rules.—Waiver considered.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON 25, D.C.

In re Application of PEOPLES BROADCASTING CORP., TRENTON, N.J. For Construction Permit (FM)	}	Docket No. 13765 File No. BPH-3059
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APPEARANCES

Herbert M. Schalkind and *Benito Gaguine* (Fly, Shuebruk, Blume & Gaguine), on behalf of Peoples Broadcasting Corp.; *Robert F. Jones* and *Warren C. Zwickly*, on behalf of Seaboard Radio Broadcasting Corp.; *John A. Rafter* and *Alfred C. Cordon, Jr.* (Dow, Lohnes & Albertson), on behalf of NTA Radio Broadcasting Co. and Asbury Park Press, Inc.; and *Vergil W. Tacy*, on behalf of Chief, Broadcast Bureau, Federal Communications Commission.

DECISION

(Adopted April 25, 1962)

BY THE COMMISSION: COMMISSIONER CRAVEN NOT PARTICIPATING; COMMISSIONER FORD ABSENT.

1. This proceeding involves the application of Peoples Broadcasting Corp. Peoples seeks a construction permit for a new class B FM broadcast station (WTTM-FM) at Trenton, N.J. It would operate on 94.5 Mc (channel 233) with an effective radiated power of 20 kw and an antenna height of 238 feet above average terrain.

2. Hearing Examiner Guenther's initial decision (FCC 61D-37, released March 29, 1961) would grant Peoples' application subject to the condition contained therein. Seaboard Radio Broadcasting Corp. (Seaboard), NTA Radio Broadcasting Co. (NTA), and Asbury Park Press, Inc. (Asbury), all respondents, filed joint exceptions to that decision. Peoples filed a statement supporting the initial decision along with certain limited exceptions.

3. Seaboard is licensee of class B station WIBG-FM, Philadelphia, Pa. NTA is licensee of class B station WNTA-FM, Newark, N.J. Asbury is licensee of class A station WJLK-FM, Asbury Park, N.J. These three stations would all cause interference to and receive interference from Peoples' proposal.

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4. On September 14, 1961, the Commission, en banc, held oral argument on the exceptions. The rulings on these exceptions are in the attached appendix. Except for any modifications and comments contained herein (and in the appendix), the initial decision is adopted as the Commission's decision. However, before we proceed to such comments and modifications we will rule on Peoples' petition for waiver of section 1.356 of our rules. This petition was filed on January 2, 1962, and has not previously been disposed of.

5. The facts that led Peoples to file its petition for waiver are these: After the hearing was completed, after the initial decision was released, and after the exceptions were filed, the Commission released its notice of inquiry in docket No. 14185 which looks toward a revision of the FM allocation system.¹ On September 15, 1961 (the day following oral argument), the Commission released a public notice stating that it had instructed the staff to prepare a document looking toward a grant of Peoples' application. Before such a document could be prepared, the Commission amended its FM processing criteria pending the outcome of rulemaking in docket No. 14185 and RM-94.² Peoples asks us to waive such interim criteria. Respondents oppose that request, but the Broadcast Bureau supports it.

6. We have carefully weighed the advantages and disadvantages of waiver under this set of facts. We conclude that the public will benefit more by our granting waiver, even though there is a "minor" departure from the established FM interim criteria.³ And we could not justify waiver solely because such a departure is "minor." However, Peoples filed its application in 1960. It prepared both its application and its detailed engineering exhibits to comport with the then-existing rules. A full hearing was held on that basis. Proposed findings and replies were submitted in that context. Oral argument was held. In fact, we instructed our staff to prepare a document granting the application almost 3 months before the interim processing rules were promulgated. We note, too, that the respondents fully participated in all stages of the proceeding. Thus, this case has reached an advanced stage of administrative finality. It is this combination of facts, along with the corresponding advantages to the public that a grant will bring (hereinafter set out), that warrants waiver here. Accordingly, we conclude Peoples' petition for waiver should be granted.⁴

7. 1,812,743 persons (1,690 sq. miles) would fall within Peoples' proposed 1-mv/m contour. However, the proposal would receive interference affecting 278,336 persons (15.35 percent) in an area of 125 square miles (7.4 percent). Thus, the interference-free 1-mv/m contour would embrace 1,543,407 persons in an area of 1,565 square miles. In addition, Peoples' proposal would also bring a third com-

¹ Notice of Inquiry, Notice of Proposed Rulemaking, Memorandum Opinion and Order, 21 R.R. 1655, 26 F.R. 6130, FCC 61-833, released July 5, 1961.

² See FCC 61-1447, released Dec. 6, 1961, as amended by our order of Feb. 16, 1962 (FCC 62-198). Also see sec. 1.356 of the Commission's rules.

³ A study reveals that respondents' interference is less under the interim criteria than under the criteria utilized in this proceeding.

⁴ In connection with the adoption of this decision, the Commission has determined that a waiver of the interim criteria is justified; this conclusion is based upon the fact that an initial decision was released before Dec. 6, 1961, the date of adoption of the interim FM criteria. This proceeding is one of six which are in the same procedural posture and a waiver as to them will have no appreciable effect upon the FM rulemaking (docket No. 14185).

petitive FM station to Trenton (1960 U.S. census population, 114,167). Thus, it would give the residents another choice of FM programming. It would also bring a second FM reception service to approximately 5,000 persons, and a third such service to approximately 7,000 persons.⁵

8. Peoples' proposal will cause some adjacent-channel interference to the respondents. The initial decision shows that station WNTA-FM would receive interference affecting 27,217 persons (0.2 percent) residing in 150 square miles (4.8 percent); that station WJLK-FM will receive interference affecting 7,954 persons (3.9 percent) residing in 16 square miles (2.6 percent); and that station WIBG-FM will receive interference affecting 11,700 persons (0.35 percent) in an area of 40 square miles (2.99 percent).⁶ Thus, the small amount of interference caused respondents is an insufficient reason for disturbing the examiner's findings and conclusions.

9. Respondents contend that the "unusual factual situation presented by the instant proposal" requires that the *WMRO, Inc.*, decision, relied on by the examiner, should not bind the result here.⁷ They argue that Peoples is trying, in effect, to "shoehorn a substandard 'drop-in' into an otherwise completed area allocation structure." They contend that the Peoples' proposal is "hemmed in on three sides by conflicting assignments." We do not agree. There are no "unusual" facts present here. The interference which Peoples causes respondents does not occur near their respective stations. In fact, it occurs on the fringes of their service areas. The small amount of interference both caused and received is obviously outweighed by the additional service provided. (See par. 4 of the initial decision's conclusions.) Another competitive FM station in Trenton is generally consonant with the FM allocation picture. About 5,000 persons will have their second FM reception service, and about 7,000 persons will receive a third such service. These are the allocation standards which are meaningful under this set of facts.

10. At oral argument, respondents requested that we delay our decision herein pending the outcome of the rulemaking proceeding in docket No. 14185, supra. As noted, the notice of inquiry in that docket was released after the exceptions in this case were filed. In fact, the oral argument herein was scheduled the day after that notice was released. Many comments and suggestions have been filed in that rulemaking proceeding. They will require careful study and analysis. In short, we find no reason to delay this grant under the existing circumstances.

11. In view of the foregoing, we agree with the examiner that a grant of the instant application would result in an equitable and

⁵ The initial decision correctly concluded that Peoples would bring a second competitive FM station to Trenton. However, on Jan. 10, 1962, the Commission granted the application of WBUD, Inc., for a construction permit to operate a new class B FM station with 20 kw power on channel 268 in Trenton. See *WBUD, Inc.*, 32 FCC 93, 23 R.R. 135 (1962). Thus, a grant here would actually bring a third FM station to Trenton. Originally Peoples' proposal would have brought a second FM service to 12,268 persons, and a third such service to 13,369 persons.

⁶ However, under the interim FM processing criteria discussed, supra, there will be no interference between station WIBG-FM and the proposed station.

⁷ See *WMRO, Inc.*, 21 R.R. 467, 21 R.R. 472, reversed on grounds not applicable here *sub. nom. American Broadcasting Paramount Theatres, Inc. v. FCC*, U.S. App. D.C. Nos. 16264 and 16528, decided Apr. 5, 1962; also see *In re Telemusic*, 30 FCC 240, 20 R.R. 498, released Feb. 27, 1961.

efficient distribution of FM broadcast facilities, and that the public interest, convenience, and necessity would be served by granting Peoples' application.

Accordingly, *It is ordered*, This 25th day of April 1962, that the petition for waiver filed by Peoples Broadcasting Corp., on January 2, 1962, *Is granted*; and

It is further ordered, That the application of Peoples Broadcasting Corp. (BPH-3059) for a new FM broadcast station at Trenton, N.J., to be operated on a class B frequency of 94.5 Mc (channel 233) with an effective radiated power of 20 kw and an antenna height of 238 feet above average terrain, *Is granted*, subject to the following condition:

Station WTTM shall receive permission from the Commission to determine power of WTTM by the indirect method; during installation of the FM antenna, WTTM shall maintain the directional antenna system as closely as possible to values appearing in the license; and upon completion of construction, WTTM shall submit sufficient data to show that the directional antenna pattern remains substantially unchanged, but if there is any change in the antenna or common point resistance, WTTM shall submit forms 302 to report the change.

APPENDIX

RULINGS OF THE COMMISSION ON THE EXCEPTIONS TO THE INITIAL DECISION

Joint exceptions of Seaboard Radio Broadcasting, NTA Radio Broadcasting Co., and Asbury Park Press, Inc.

<i>Exception No.</i>	<i>Ruling</i>
1, 2, 3, 4.....	Denied. The examiner's findings are adequate.
5.....	Denied. See initial decision, par. 3 of conclusions.
6.....	Denied. In view of our decision herein.
7.....	Denied. See pars. 7, 8, and 9 of our decision herein.
8.....	Denied. The record does demonstrate such a need.
9.....	Denied. The applicant submitted sufficient facts to justify full consideration of his proposal.
10.....	Denied. The examiner's conclusion is correct.
11.....	Denied. See our decision herein.
12.....	Denied. See our decision herein.

Exceptions of Peoples Broadcasting Corporation

<i>Exception No.</i>	<i>Ruling</i>
1.....	Denied. Immaterial under the designated issues.
2.....	Denied. The examiner's conclusion is proper in the light of the designated issues. See the order of designation herein, FCC 60-1060, released Sept. 13, 1960 (issue 1).

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON 25, D.C.

In re Application of PEOPLES BROADCASTING CORP., TRENTON, N.J. For Construction Permit (FM)	}	Docket No. 13765 File No. BPH-3059
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APPEARANCES

Messrs. Benito Gaguine and Herbert M. Schulkind, on behalf of the applicant, Peoples Broadcasting Corp.; *Messrs. Warren C. Zwicky and Robert F. Jones*, on behalf of the respondent Seaboard Radio Broadcasting Corp.; *Messrs. John A. Rafter and Alfred C. Cordon, Jr.*, on behalf of the respondents NTA Radio Broadcasting Co. and Asbury Park Press, Inc.; and *Mr. Vergil W. Tacy*, on behalf of the Chief, Broadcast Bureau, Federal Communications Commission.

INITIAL DECISION OF HEARING EXAMINER WALTHER W. GUENTHER

(Adopted March 27, 1961)

PRELIMINARY STATEMENT

1. This proceeding involves the application of Peoples Broadcasting Corp. (hereinafter also Peoples) which requests a construction permit for a new FM broadcast station at Trenton, N.J. The proposed station would operate on a class B frequency of 94.5 Mc (channel 233) with an effective radiated power of 20 kw and an antenna height of 238 feet above average terrain. The applicant is the licensee of station WTTM (AM). It proposes to locate its main studio outside the city of Trenton in a building utilized for studios of station WTTM (AM), located close to the political boundaries of Trenton, and to mount the FM antenna on one of the towers of the directional antenna system of that station.

2. The Commission, by its order released September 13, 1960, found the applicant legally, technically, financially, and otherwise qualified to construct and operate the proposed station, and designated the instant application for hearing upon the following issues:

1. To determine the area and population within the 1-mv/m contour, the area and population therein which would be served by the proposed station, and the availability of other FM services (at least 1 mv/m) to such proposed service area.

2. To determine whether the instant proposal would involve objectionable interference with stations WIBG-FM, Philadelphia, Pa.; WNTA-FM, Newark, N.J.; and WJLK-FM, Asbury Park, N.J.; or any other existing FM broadcast stations, and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other FM service of at least 1 mv/m to such areas and populations.

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3. To determine, in the light of the evidence adduced pursuant to the foregoing issues, whether a grant of the above-described application of the Peoples Broadcasting Corp. should be made.

Seaboard Radio Broadcasting Corp., licensee of station WIBG-FM, Philadelphia, Pa.; NTA Radio Broadcasting Co., licensee of station WNTA-FM, Newark, N.J.; and Asbury Park Press, Inc., licensee of station WJLK-FM, Asbury Park, N.J., were made parties to the proceeding. It was further ordered that in the event of a grant of the application, (a) 47 CFR 3.205(a) shall be waived to permit the main studio to be located outside the city limits of Trenton, N.J., and not at the site of the transmitter; and (b) the construction permit shall contain a condition stating that station WTTM shall request permission to determine power of WTTM by the indirect method; that during installation of the FM antenna, WTTM shall maintain the directional antenna system as closely as possible to values appearing in the license; and that upon completion of construction, WTTM shall submit sufficient data to show that the directional antenna pattern remains substantially unchanged, but if there is any change in the antenna of common point resistance, WTTM shall submit forms 302 to report the change.

3. A prehearing conference was held on October 21, 1960, and the hearing was held, with all parties participating, on December 20, 1960, at which time the record was closed. Proposed findings of fact and conclusions of law urging a grant were timely filed on behalf of Peoples and the Chief of the Broadcast Bureau (hereinafter also Bureau), and timely reply findings were filed on behalf of Peoples on February 28, 1961. On that date there was also filed a pleading labeled "Joint Reply Findings of Fact and Conclusions of Law" on behalf of Seaboard Radio Broadcasting Corp. (WIBG-FM), NTA Radio Broadcasting Co. (WNTA-FM), and Asbury Park Press, Inc. (WJLK-FM). A motion to strike the joint pleading was filed on behalf of Peoples on March 10, 1961, and a joint opposition thereto was filed on behalf of Seaboard Radio Broadcasting Corp., NTA Radio Broadcasting Co., and Asbury Park Press, Inc., on March 20, 1961.¹

¹ Examination of the "Joint Reply Findings of Fact and Conclusions of Law," consisting of seven lines of an introductory nature, two pages (pars. 1-5) of a "Preliminary Statement," and four and one-half pages (pars. 1-7) of "Conclusions," discloses that its "Preliminary Statement" does not partake of what properly constitutes a "reply to findings." To illustrate, of the five paragraphs of its "Preliminary Statement," pars. 2, 3, 4, and 5 (slightly more than a page and a half), except for two or three phrases of embellishment, simply restate findings timely submitted by Peoples and Bureau. Of the 10½ lines of par. 1, only less than 2 lines can be said to suggest a "reply finding." Thus, that portion of the pleading is simply an attempt, under the guise of "reply findings," to file proposed findings of fact 13 days after the date specified by the hearing examiner. Having been filed late and without authority therefor, the hearing examiner will not consider them as being properly before him. The further question arises, however, whether to accept and consider the therewith additionally submitted four and one-half pages of "Conclusions" (part of the pleading). Respondents' opposition to the motion to strike draws support from an initial reference to Webster's definition of a "reply" and in general from the theory that where, as here, the conclusions are to be drawn from undisputed evidence, "recitation of at least some of the basic facts is necessary for cohesion and context," and that otherwise their reply is addressed to a "full and fair consideration of the undisputed evidence," prompted by the nature of Peoples' presentation revealing alleged "deficiencies." To the extent thus that, in view of the uncomplicated and undisputed nature of the evidence of the subject case, a reply would be a proper vehicle to set forth a respondent's legal position in reliance upon undisputed facts of record, opponents' "Conclusions" are accepted and considered herein. The hearing examiner is of the view that such acceptance—under the circumstances here prevailing—does not amount to treating the conclusions as a separate pleading. Peoples' motion to strike is

FINDINGS OF FACT

4. Trenton, N.J., situated on the Delaware River some 55 miles southwest of New York City and 30 miles northeast of Philadelphia, which had a population of 128,009 persons in 1950, has a population of 114,167 persons according to the 1960 U.S. census. It is the principal city of the Trenton urbanized area, which had a population of 189,321 in 1950. According to the 1960 U.S. Census Advance Reports, Final Population Counts, the Trenton standard metropolitan statistical area has a population of 266,392 persons. One FM station, WTOA-FM (97.5 Mc, 14.5 kw, 275 feet, class B), is assigned to the city of Trenton.

5. Stations WPRB, Princeton, N.J.; WTOA-FM, Trenton, N.J.; and WPBS, WCAU-FM, WFIL-FM, WFLN-FM, and WQAL, all in Philadelphia, Pa., provide 1-mv/m service to all of the city of Trenton; station WIP-FM, Philadelphia, serves 75-100 percent thereof; station WPCA-FM, Philadelphia, serves 50-74 percent thereof; and stations WAWZ-FM, Zarephath, N.J., and WIFI, Philadelphia, serve less than 25 percent thereof. A minimum of 8 and a maximum of 11 such services are available to any one portion of the city.

6. Operating as proposed, Peoples' station would provide coverage of the Trenton area as follows: ²

Contour (mv/m)	Population	Area (sq. mi.)
1.0.....	1,812,743	1,630
Interference from WIBG-FM, WNTA-FM, and WJLK-FM.....	278,336 (15.35% ¹)	125 (7.4% ¹)
Interference free.....	1,534,407	1,565

¹ Percentages refer to population and area within the 1-mv/m contour.

The interference that would be caused to Peoples' proposal by WNTA-FM, Newark, N.J., falls in an area generally northeast of Princeton, N.J., some 17 miles from the center of Trenton; that caused by WJLK-FM, Asbury Park, N.J., falls in an area west of Freehold, N.J., 20 miles east of the center of Trenton; and that caused by WIBG-FM, Philadelphia, Pa., falls in the Philadelphia area, some 22 miles southwest of the center of Trenton.

7. Station WTOA-FM provides an FM service to 75-100 percent of the area within the proposed interference-free contour; station WQAL serves 50-74 percent thereof; stations WPBS, WCAU-FM, WDAS-FM, WFIL-FM, WFLN-FM, WHAT-FM, WIFI, WIP-FM, and WPCA-FM (all in Philadelphia) and WPRB serve 25-49 percent thereof; and stations WDEL-FM and WJBR (both in Wilmington, Del.), WKDN (Camden, N.J.), WCTC-FM (New Brunswick, N.J.), WAWZ-FM, WFMZ (Allentown, Pa.), WGPA-FM

thus only granted to the extent indicated, and in view thereof its alternative request for leave to file response is granted to the extent it deals with the conclusionary part of the joint reply and is denied in all other respects. To the extents indicated, respondents' opposition to the motion to strike and/or respond is granted in part and is denied in part.

² The pertinent field strength contours were projected on the basis of ground evaluation profile data and use of the propagation curves contained in 47 CFR 3.333. Unless otherwise noted, all population coverage data reflects the 1950 U.S. census. Also, all reference to service in accordance with the issues means a signal of at least 1 mv/m.

(Bethlehem, Pa.), WBYO-FM³ (Boyertown, Pa.), WEEB-FM and WEST-FM (both in Easton, Pa.), WIBF (Jenkintown, Pa.), WBCB (Levittown-Fairless Hills, Pa.); and WIBG-FM serve less than 25 percent thereof. A minimum of 1 and a maximum of 20 such services are available to any one part thereof. The part receiving 1 service includes 12,268 persons in an area of 75 square miles; that receiving 2 includes 13,639 persons in an area of 135 square miles; and that receiving 3 includes 69,810 persons in an area of 245 square miles.

8. Adjacent-channel objectionable interference (1 channel or 200 kc removed) would be caused by proposed station WTTM-FM to station WNTA-FM, Newark, N.J. (94.7 Mc, 13.5 kw, 540 feet), in an area of 150 square miles, including 27,217 persons representing 4.8 percent of the area (3,110 square miles) and 0.2 percent of the population (12,539,200 persons) within the 1-mv/m contour of WNTA-FM. The area would lie approximately 24 to 35 miles southwest of the center of Newark, N.J. Stations WPRB, WTOA-FM, and WAWZ-FM provide FM service to 75-100 percent of the interference area; station WCTC-FM serves 50-74 percent thereof; stations WJLK-FM, WHTG-FM (Eatontown, N.J.), WVNJ-FM (Newark, N.J.), WGPA-FM, WEST-FM, WNYC-FM, WABC-FM, WCBS-FM, WNEW-FM, WOR-FM, WNBC-FM, WQXR-FM (the last seven in New York, N.Y.) serve less than 25 percent thereof. A minimum of 3 and a maximum of 12 such services, of at least 1 mv/m, are available to various portions thereof.

9. Adjacent-channel objectionable interference (1 channel or 200 kc removed) would be caused by proposed station WTTM-FM to station WJLK-FM, Asbury Park, N.J. (94.3 Mc, 1 kw, 250 feet), in an area of 16 square miles, including 7,954 persons representing 2.6 percent of the area (616 square miles) and 3.9 percent of the population (203,880 persons) within the 1-mv/m contour of station WJLK-FM. The area would fall approximately 14 to 15.5 miles west of the center of Asbury Park. Station WHTG-FM provides FM service to 50-74 percent of the interference area; station WPRB serves 25-49 percent thereof; stations WNTA-FM and WNYC-FM serve less than 25 percent thereof. A minimum of none and a maximum of four such services are available to any one part therein. An area of approximately 6 square miles would occur wherein no other 1-mv/m service would be provided by other stations. This area, which is classified as rural, contains 516 persons according to the 1950 U.S. census.

10. Adjacent-channel objectionable interference (2 channels or 400 kc removed) would be caused by proposed station WTTM-FM to station WIBG-FM, Philadelphia, Pa. (94.1 Mc, 20 kw, 170 feet), in an area of 40 square miles, including 11,700 persons representing 2.9 percent of the area (1,417 square miles) and 0.35 percent of the population (3,320,935 persons) within the 1-mv/m contour of station WIBG-FM. The area would lie approximately 17 to 25.5 miles northeast of the center of Philadelphia and approximately 8 to 14.5 miles west and southwest of the center of Trenton. Stations WPRB, WTOA-FM, WBCB, WPBS, WCAU-FM, WFIL-FM, WFLN-FM,

³ The reference in Peoples' exhibit 2 (p. 14) to "WBYU-FM Boyertown, Pa." is obviously a typing mistake.

WHAT-FM, WIFI, WIP-FM, WPCA-FM, and WQAL provide FM service to all of this interference area; station WDAS-FM serves 75-100 percent thereof; station WIBF serves 50-74 percent thereof; station WKDN serves 25-49 percent thereof; and stations WFMZ and WGPA-FM serve less than 25 percent thereof. A minimum of 15 and a maximum of 18 such services, of at least 1 mv/m, are available to any portion therein.

11. Apart from the foregoing, no objectionable interference would be caused by proposed station WTTM-FM to any other existing FM broadcast station.

CONCLUSIONS

1. Except as to the issues specified herein, Peoples has been previously found legally, technically, financially, and otherwise qualified. The question to be resolved is whether a grant of Peoples' application for a new class B FM broadcast station in Trenton, N.J., would serve the public interest, convenience, and necessity. This requires an examination of the service which Peoples' proposed station would provide and the interference which would result therefrom.

2. Trenton, N.J., has a population of 114,167 (1960) and is the principal city of the Trenton urbanized area with a 1950 population of 189,321. One FM station (WTOA-FM) is assigned to the city. Peoples proposes to serve 1,534,407 persons in an area of 1,565 square miles. Twenty-five stations provide FM service to the area, and from 1 to 20 serve any one portion thereof. A second FM service would be provided by the proposal to 12,268 persons, a third to 13,639, and a fourth to 69,810. Seven FM stations serve all of the city of Trenton, 4 serve portions, and from 8 to 11 serve any individual section thereof. Objectionable interference received by the proposal would affect 7.4 percent of the area and 15.35 percent of the population within the 1-mv/m contour. Adjacent-channel interference (one channel removed) would be caused to station WNTA-FM, affecting 4.8 percent of the area and 0.2 percent of the population within the 1-mv/m contour of that station. The interference area would lie approximately 24 to 35 miles southwest of the center of Newark. Sixteen such stations serve portions of the interference area, and from 3 to 12 serve any one part thereof. Adjacent-channel objectionable interference (one channel removed) would be caused to station WJLK-FM, Asbury Park, affecting 2.6 percent of the area and 3.9 percent of the population within the 1-mv/m contour of that station. The interference area would lie approximately 14 to 15.5 miles west of the center of Asbury Park. Four such stations serve portions of the area, and from none to four serve any portion thereof. The area receiving no FM service other than WJLK-FM is classified as rural and includes 516 persons in an area of 6 square miles. Adjacent-channel objectionable interference (two channels removed) would be caused to station WIBG-FM, Philadelphia, affecting 2.9 percent of the area and 0.35 percent of the population within the 1-mv/m contour of that station. The interference area would lie approximately 17 to 25.5 miles northeast of the center of Philadelphia and approximately 8 to 14.5 miles west and southwest of the center of Trenton. Twelve such stations

serve all of the interference area, 5 serve portions, and from 15 to 18 serve any part therein. Other than the three mentioned stations, the operation as proposed would cause no objectionable interference to any other existing FM broadcast station.

3. The Commission stated in its recent memorandum opinion and order released February 17, 1961, *In re WMRO, Inc. (WMRO-FM)* (FCC 61-205),⁴ that class B assignments will be made "to insure, insofar as possible, a maximum of service to all listeners, whether urban or rural, giving consideration to the minimum signal capable of providing service" (47 CFR 3.204(a) and 3.313(c)); that the "entire regulatory scheme for FM which the Commission has followed contemplates a certain flexibility in making assignments of class B stations"; and that "the Commission has reserved for itself the power or discretion to determine in each case whether a particular grant is necessary to provide an equitable and efficient distribution of facilities." (See pars. 4, 5, and 7 thereof; also, the Commission's decision *In re Telemusic Co.*, released Feb. 27, 1961 (FCC 61-226).)

4. It is concluded that a grant of the instant application would result in an equitable and efficient distribution of FM broadcast facilities. In reaching this conclusion the opposing arguments advanced in respondents' pleading have been carefully considered. They are rejected for the reasons hereinabove and hereinafter indicated. The fact that 516 persons would lose their only FM service has not been overlooked. However, weighing heavily in favor of a grant of the proposal is the fact that it would bring the second FM broadcast station to Trenton, a city of 114,167 persons, and would bring a second FM service to 12,268 persons and a third such service to 13,639 persons. Establishment of a competitive FM facility in this comparatively large community, and the fact that in granting the instant proposal service would be brought to underserved areas, warrant the conclusion that the public interest, convenience, and necessity would be served by a grant.

Accordingly, *It is ordered*, This 27th day of March 1961, that unless an appeal to the Commission from this initial decision is taken by any of the parties, or the Commission reviews the initial decision on its own motion in accordance with the provisions of 47 CFR 1.153, the application of Peoples Broadcasting Corp. for a new FM broadcast station at Trenton, N.J., to be operated on a class B frequency of 94.5 Mc (channel 233) with an effective radiated power of 20 kw and an antenna height of 238 feet above average terrain, *Is granted*, subject to the following condition:

Station WTTM shall request permission from the Commission to determine power of WTTM by the indirect method; during installation of the FM antenna, WTTM shall maintain the direc-

⁴ On Nov. 4, 1960, WMRO, Inc., was granted a construction permit for a class B FM station on channel 236 (BMPH-6426) (WMRO-FM) at Aurora, Ill. Operating as proposed, WMRO-FM would cause interference to WENR-FM (channel 234), Chicago, Ill., resulting in "substitution of service from WMRO-FM for that provided by WENR-FM in an area of 30 square miles in which 5,361 persons reside * * * represent[ing] a loss of 1.44 percent, area, and 0.103 percent, population, to WENR-FM." The licensee of WENR-FM sought reconsideration of the Commission's Nov. 4, 1960, grant to WMRO, Inc., on the ground of alleged objectionable interference within its 1-mv/m contour; its petition was denied.

tional antenna system as closely as possible to values appearing in the license; and upon completion of construction, WTTM shall submit sufficient data to show that the directional antenna pattern remains substantially unchanged, but if there is any change in the antenna of common point resistance, WTTM shall submit forms 302 to report the change.

32 F.C.C.

KENNETH G. PRATHER AND MISHA S. PRATHER ET AL., DOCKETS NOS. 12210 AND 14019:

Initial decision granting (1) application of Kenneth G. Prather and Misha S. Prather for a construction permit for a new standard broadcast station to operate on 1360 kc, 500 w, daytime only, at Boulder, Colo., and (2) application of KDEN Broadcasting Co. to increase power of standard broadcast station KDEN (1340 kc, 250 w, U) to 1 kw at Denver, Colo.; corrected, modified, and made effective.

Section 307 (b) of the act.—Fair, efficient, and equitable distribution of broadcast facilities.

Section 3.24 (b) of the rules.—Interference to existing stations.

Section 3.37 of the rules.—Minimum separation between stations.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON 25, D.C.

<p>In re Applications of KENNETH G. PRATHER AND MISHA S. PRATHER, BOULDER, COLO. KDEN BROADCASTING Co. (KDEN), DENVER, COLO. For Construction Permits</p>	}	<p>DOCKET No. 12210 File No. BP-13380 DOCKET No. 14019 File No. BP-13119</p>
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ORDER

(Adopted April 25, 1962)

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 25th day of April 1962;

The Commission having under consideration (1) the initial decision herein of Hearing Examiner Isadore A. Honig, released January 25, 1962 (FCC 62D-11); (2) exceptions of the Broadcast Bureau, filed February 26, 1962; and (3) all other matters of record herein;

It appearing that the Bureau's exceptions are concerned solely with correcting the wording of the condition to be attached to the grant recommended by the examiner for KDEN Broadcasting Co., and that no other exceptions have been filed; and

It further appearing that the above correction should be effected, and that there should be attached to the Prather grant the Commission's standard condition relating to presunrise operation with daytime facilities; and

It further appearing that, after due consideration, and with the above correction and the above addition, a grant of each of the captioned applications would serve the public interest, convenience, and necessity;

It is ordered, That the above-described initial decision *Is made effective*, the condition as to KDEN Broadcasting Co. to read as follows:

32 F.C.C.

Permittee shall accept such interference as may be imposed by other existing 250 w class IV stations in the event they are subsequently authorized to increase power to 1,000 w ;
and the grant to Kenneth G. Prather and Misha S. Prather to be subject to the following condition :

Pending a final decision in docket No. 14419 with respect to pre-sunrise operation with daytime facilities, the present provisions of section 3.87 of the Commission's rules are not extended to this authorization, and such operation is precluded.

32 F.C.C.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON 25, D.C.

In re Applications of KENNETH G. PRATHER AND MISHA S. PRATHER, BOULDER, COLO. KDEN BROADCASTING Co. (KDEN), DENVER, COLO. For Construction Permits	}	Docket No. 12210 File No. BP-13380 Docket No. 14019 File No. BP-13119
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APPEARANCES

Philip Bergson, Esq., for Kenneth G. and Misha S. Prather; *Aloysius B. McCabe, Esq.*, for KDEN Broadcasting Co.; *Corwin R. Lockwood, Esq.*, for KGHF, Inc.; and *P. W. Valicenti and Donald Rushford, Esqs.*, for the Chief, Broadcast Bureau, Federal Communications Commission.

INITIAL DECISION OF HEARING EXAMINER ISADORE A. HONIG

(Adopted January 24, 1962)

PRELIMINARY STATEMENT

1. This proceeding involves: (1) the application of Kenneth G. Prather and Misha S. Prather (hereinafter "Prather") for a construction permit for a new standard broadcast station in Boulder, Colo., to operate on 1360 kc with 500 w power, daytime only, utilizing a directional antenna; and (2) the application of KDEN Broadcasting Co. (hereinafter "KDEN"), licensee of standard broadcast station KDEN, Denver, Colo. (1340 kc, 250 w, U), for authorization to increase daytime power to 1 kw. By order of the Commission (FCC 61-424, released April 4, 1961) the two applications were designated for hearing in a consolidated proceeding from the following issues: ¹

1. To determine the areas and populations which would receive primary service from the proposed operation of Kenneth G. and Misha S. Prather, and the availability of other primary service to such areas and populations.

2. To determine the areas and populations which may be expected to gain or lose primary service from the proposed operation of station KDEN, and the availability of other primary service to such areas and populations.

3. To determine the nature and extent of the interference, if any, that each of the instant proposals would cause to and receive from each other, and the interference that each of the instant proposals would receive from all other existing standard broadcast stations, the areas and populations affected thereby, and the availability of other primary service to the areas and populations affected by interference from any of the instant proposals.

¹ Except as indicated by the issues stated herein, the Commission found both applicants to be legally, technically, financially, and otherwise qualified to construct and operate their instant proposals.

4. To determine whether the instant proposal of Kenneth G. and Misha S. Prather would cause objectionable interference to the existing operation of station KDEN, Denver, Colo., or any other existing standard broadcast stations, and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other primary service to such areas and populations.

5. To determine whether the instant proposal of KDEN Broadcasting Co. would cause objectionable interference to station KGHF, Pueblo, Colo., or any other existing standard broadcast stations, and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other primary service to such areas and populations.

6. To determine whether overlap of the 2-mv/m and 25-mv/m contours would occur between the instant proposals in contravention of section 3.37 of the Commission's rules, and, if so, whether circumstances exist which would warrant a waiver of said section.

7. To determine, in the light of section 307(b) of the Communications Act of 1934, as amended, which of the instant proposals would better provide a fair, efficient, and equitable distribution of radio service.

8. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which, if either, of the instant applications should be granted.

As further appears from the designation order, KGHF, Inc., the licensee of station KGHF, Pueblo, Colo. (1350 kc, 5 kw, 1 kw DA-N), was made a party to the proceeding. In addition, KDEN Broadcasting Co., the licensee of station KDEN, was made a party to the proceeding with respect to its existing operation.

2. It should be noted that the instant Prather application proposes a class III station—one which, as defined in Commission rules, operates on a "regional channel" and is designed to render service primarily to a metropolitan district and the rural area contiguous thereto. The term "metropolitan district," as here used, includes "any principal center of population in any area." Station KDEN, on the other hand, is a class IV standard broadcast facility—a station operating on a "local channel" and designed to render service primarily to a city or town and the suburban and rural areas contiguous thereto.² Since KDEN presently operates its station with a daytime power of 250 w, it is apparent that its instant application for a 1-kw daytime operation on 1340 kc seeks to take advantage of the amendment of the Commission's rules, effective July 7, 1958, which provides for the acceptance and consideration on a case-by-case basis of class IV station applications for increases in daytime power up to 1 kw instead of the 250-w maximum previously provided.³

3. A prehearing conference was held on April 26, 1961, and at that time it was agreed that the hearing originally scheduled for June 12 would be postponed to July 11, 1961. On May 18, 1961, there was filed with the Commission the affidavit, in triplicate, of E. E. Koepke, president of KDEN, Inc., attesting the publication in the Rocky Mountain News (a Denver, Colo., daily newspaper) on May 2, 3, 9, and 10, 1961, of a notice of designation for hearing of the KDEN application in accordance with the requirements of section 1.362(b) of the Commission's rules. The same affidavit reflected also that the notice of designation of this application for hearing was broadcast over station KDEN on these same days. On May 24, 1961, applicant

² The respective definitions of class III and class IV stations are found in secs. 3.21(b) and 3.21(c) of the Commission's rules.

³ See, Report and Order of the Commission in docket No. 12604, "Power Limitation of Class IV Stations," 17 R.R. 1541.

Prather submitted to the Commission, in triplicate, a proof of publication in the Boulder Daily Camera (a Boulder, Colo., daily newspaper) on May 1, 2, 8, and 9, 1961, of the notice of designation for hearing of the Prather application prescribed by section 1.362(b) of the rules. Pursuant to a motion for continuance filed on June 30, 1961, by counsel for applicant Prather, the hearing examiner issued an order on July 5, 1961, further postponing the hearing to September 14, 1961. The evidentiary hearing was thereafter held on September 14, 1961, and subsequently the record was formally closed by an order of the hearing examiner (FCC 61M-1631) released October 11, 1961.⁴ Proposed findings of fact and conclusions were filed by each of the applicants on December 1, 1961, and by the Broadcast Bureau on December 4, 1961.⁵ Respondent KGHF, Inc., did not participate in this proceeding beyond the prehearing stage, and no proposed findings and conclusions were submitted by this party. On December 7, 1961, applicant Prather filed a "Statement in Lieu of a Reply to KDEN's Proposed Findings and Conclusions" in which Prather concurs in the conclusion proposed by KDEN that, "in the peculiar circumstances of this case, a waiver of section 3.37 of the Commission's rules would be in the public interest."⁶ Moreover, in this statement Prather expresses consent to the simultaneous grant of both applications herein subject to the condition that KDEN accept such interference as may be created to its proposed operation by the new Boulder station. On December 8, 1961, KDEN filed a "Statement in Lieu of Reply Findings" proposing a grant of both the KDEN and Prather applications, although reserving the position set forth in its December 1, 1961, pleading that if a choice were necessary, "the public interest would require the grant of its application and denial of the Prather application." The Broadcast Bureau did not file a reply pleading.

FINDINGS OF FACT

The Prather proposal

4. The city of Boulder, Colo., is located in the north-central part of the State some 20 miles northwest of Denver. Boulder, with a 1960 population of 37,718 persons, is the county seat of Boulder County which has a population of 74,254 persons (1960 U.S. Census PC(1)-7A). The 1960 population of the city of Boulder represents an increase of 88.6 percent over 1950; the population of Boulder County has increased 53.7 percent since 1950. Although the city of Boulder is not within the "Denver urbanized area," as defined under the 1960 U.S. census, both the city and county of Boulder are located within the "Denver Standard Metropolitan Statistical Area."⁷ One standard

⁴ This order also: (1) received in evidence revised pars. 8 and 9 of KDEN exhibit 2 in lieu of pars. 8 and 9 of the exhibit as introduced at the hearing; and (2) received in evidence additional Prather exhibit 3.

⁵ By an order issued Dec. 5, 1961, the examiner granted a Dec. 4 petition of the Bureau to accept its proposed findings of fact and conclusions which were filed a few days late because of a duplicating delay.

⁶ It may be noted that both applicant KDEN and the Broadcast Bureau have proposed a waiver of sec. 3.37 in the pleadings filed by them on Dec. 1 and 4, 1961, respectively.

⁷ This statistical area is defined in the U.S. Bureau of the Budget publication "Standard Metropolitan Statistical Areas" (1961). As stated in this publication ("Introduction," p. 5), "The general concept of a metropolitan area is one of an integrated economic and social unit with a recognized large population nucleus. * * * * * Further, it is stated: "The standard metropolitan statistical area will then include the county of such a central

broadcast station is assigned to Boulder; namely, KBOL (1490 kc, 250 w, 1 kw LS, U, class IV).

5. Boulder is the site of the University of Colorado, which has an enrollment of about 11,000 students in its various colleges and graduate schools. The following are also located in Boulder: Colorado Chautauqua; Boulder-Colorado Sanitarium and Hospital; Community Hospital; Boulder Laboratories; National Bureau of Standards; and the National Center for Atmospheric Research. The city of Boulder has a city manager-city council form of local government. This community has two public libraries with nearly a million volumes, its own symphony orchestra, several dramatic groups (Nomad Players and University Theater), and a historical society museum. Educational facilities, in addition to the University of Colorado (Boulder Campus), include 22 public schools and 3 parochial (2 day and 1 boarding) schools. Boulder has 40 regular churches of various denominations and 8 religious groups that serve students at the university. Banking facilities comprise three commercial banks, three savings and loan associations, and two savings banks, with combined total resources in excess of \$70 million. Transportation service is provided by: two railroads (Colorado & Southern, and Union Pacific); two bus companies (year-round service by City Bus System, and Denver-Boulder intercity service during the summer only by Rocky Mountain Transportation Co.); and two motor freight carriers.

6. Only one newspaper, the Boulder Daily Camera, an evening newspaper with a circulation of 10,876, is published in Boulder. Other newspapers published in Boulder County are: one daily, the Longmont Times-Call; and four weeklies—the Louisville Times, the Broomfield Star-Builder, the Lafayette Leader, and the Longmont Ledger. The only standard broadcast station in Boulder County, other than KBOL, is KLMO (1050 kc, 250 w, daytime) in Longmont.

7. Based on radiation values from the proposed directional antenna pattern and on ground conductivity values from figure M-3 of the rules, except in the directions of 100°, 130°, and 150.5° true where test transmitter measurement data from a nearby site originally proposed by Prather was also employed, and in the directions 143°, 150°, and 165° true where measurement data on nearby station KBOL was also employed, and using 1960 U.S. census figures, the proposed coverage under the Prather application is as follows: ⁸

Contour (mv/m)	Population	Area (sq. miles)
0.5 (normally protected).....	145,434	3,282
Interference from existing KDEN.....	305 (0.21%) ¹	13 (0.4%)
Interference free (if granted alone).....	145,129	3,269
Additional interference from proposed KDEN.....	6,631 (4.54%)	88 (2.68%)
Total interference from proposed KDEN.....	6,936 (4.75%)	101 (3.08%)
Interference free (if proposed KDEN granted simultaneously).....	138,498	3,181

¹ Percentages refer to population and area within the normally protected contour of proposed Prather station.

city and adjacent counties that are found to be metropolitan in character and economically and socially integrated with the county of the central city.¹¹

⁸ Cities with population of 2,500 or greater and urbanized areas located beyond the 2.0-mv/m contour have been excluded in determining the populations served. The Prather proposal would not provide a 2-mv/m service to the City of Denver.

8. The proposed Prather station would provide Boulder with its second standard broadcast transmission facility. In addition to Boulder station KBOL, 10 other standard broadcast stations, of which 7 are in Denver, now provide primary service (2.0 mv/m or better) to Boulder. Five Denver stations (KLZ, KHOW, KOA, KPOF, and KIMN) provide primary service (0.5 mv/m or greater) to all of the rural area within the proposed daytime primary service area. A minimum of 7 and a maximum of 24 stations provide such service to various portions therein.

9. The proposed Prather station would receive objectionable interference from no existing or proposed operation other than from KDEN. The interference received from KDEN's present operation would affect 305 persons within 13 square miles; and 6,936 persons within 101 square miles representing 4.75 percent of the population and 3.08 percent of the area within the proposed Prather 0.5-mv/m contour, would be subject to interference from KDEN's proposed operation. In both instances, the interference areas would lie on the south side of the city of Denver at distances ranging from 25 to 38 miles from the proposed Prather transmitter site. A minimum of 20 and a maximum of 21 other primary services are available within the area which would receive interference from KDEN's present operation; and a minimum of 19 and a maximum of 21 other such services are available within the area which would suffer interference from KDEN's proposed operation.

10. Adjacent-channel objectionable interference would be caused by the Prather proposal to the existing operation of station KDEN, Denver, Colo, in an area of 32 square miles including 967 persons, representing 0.82 percent of the area (3,911 square miles) and 0.11 percent of the population (888,903 persons) within the 0.5-mv/m contour of station KDEN. That station now suffers combined objectionable interference from stations KSID and KVRH in a total area of 771 square miles including 2,673 persons, constituting 19.7 percent of the area and 0.3 percent of the population within its normally protected contour. Thus, in the aggregate, KDEN would suffer objectionable interference affecting 20.52 percent of the area and 0.41 percent of the population within its existing 0.5-mv/m contour in the event of a grant of the Prather application. The additional interference area surrounds the proposed transmitter site at Boulder to a radius of 3 miles and lies 19 to 26 miles northwest of Denver. Eleven stations (KLZ, KNOW, KSSS, KHIL, KOA, KPOF, KIMN, KLTR, KGMC, KFSC, and KBRB) provide primary service (0.5 mv/m or greater) to all of this interference area. No objectionable interference would be caused by the Prather proposal to any other existing standard broadcast station.

11. The KDEN proposal would receive combined interference from existing stations KSID, KVRH, and KGHF affecting 5,212 persons in 1,420 square miles, representing 0.5 percent of the population and 19.4 percent of the area within the proposed KDEN 0.5-mv/m contour. The proposed Prather station would cause additional objectionable interference to KDEN's proposed daytime operation affecting only 416 persons in an area of 13 square miles, representing 0.04 percent

of the population and 0.17 percent of the area, respectively, within the proposed K DEN 0.5-mv/m contour. The interference suffered by the K DEN proposal from the Prather station would occur in a small circular area, located generally to the northwest of Boulder and the center of which would be 30 miles from the K DEN transmitter. A minimum of 19 other primary services are available within the 13-square-mile area which would be lost by the proposed K DEN operation because of the interference from the Prather station. If the additional interference from the Prather proposal is taken into account, the proposed K DEN operation would suffer total interference affecting 5,628 persons in 1,433 square miles, or 0.54 percent of the population and 19.57 percent of the area within the proposed 0.5-mv/m contour of station K DEN.

The K DEN proposal

12. The city of Denver is located in north-central Colorado some 20 miles southeast of Boulder, and has a population of 493,887 persons (1960 U.S. census). Denver is the principal city of the Denver urbanized area which has a population of 803,624 (1960 U.S. census PC(1)-7A). Eleven standard broadcast stations inclusive of station K DEN are assigned to Denver, and 17 stations are assigned to the Denver standard metropolitan statistical area as defined by the U.S. Bureau of the Budget.⁹ K DEN is the only standard broadcast station in the city of Denver presently operating during daytime hours with power of less than 1 kw.

13. The Denver area had an overall population growth in the census decade between 1950 and 1960 of more than 50 percent. More than 75 percent of this growth occurred in suburban areas at distances of 10 to 30 miles from the K DEN transmitter rather than in the city of Denver itself. By far the largest part of the suburban population growth occurred in the area north and northwest of Denver between Denver and Boulder, which includes cities and towns such as Brighton, Westminster, Thornton, and Derby. Official population estimates of the Denver Intercounty Regional Planning Commission indicate that this growth of population in the northwest Denver suburbs between Denver and Boulder will continue. During the census decade, the Denver-Boulder toll expressway between the two cities was completed, and, as a result of this superhighway, it now takes only 30 minutes to drive from downtown Denver to downtown Boulder. Thousands of people commute to work each day from Boulder and outlying suburban areas between it and Denver.

14. In operating during daytime hours with 250 w in competition with Denver's numerous other more high-powered stations, the management of K DEN has found that as a practical matter its listenership in outlying communities is low in comparison to its competitors. Moreover, the station has found that organizations and program sources in the outlying suburbs of the Denver metropolitan area turn to K DEN's higher powered competitors for coverage of local events. For instance, the University of Colorado, which frequently calls upon

⁹ The 1960 "Denver Standard Metropolitan Statistical Area" includes Denver, Adams, Arapahoe, Boulder, and Jefferson Counties in Colorado. See footnote 7 hereinbefore for a further definition of such area and the source thereof.

KDEN Broadcasting Co. to carry announcements and programs of interest to the university, at the present time directs such requests primarily to KDEN-FM. In its past negotiations with national, regional, and local advertisers, KDEN has found that it is a less attractive prospect than its competitors to such advertisers for coverage of the entire Denver metropolitan area.

15. Based on an effective field of 250 mv/m for 1 kw power and on ground conductivity values from figure M-3 of the rules except in the directions of Pueblo and Boulder, Colo., where field strength measurements on file were employed, and using 1960 U.S. census data, the coverage under the existing and proposed KDEN operations is as follows:

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Contour (mv/m)	Present		Proposed	
	Population	Area (sq. miles)	Population	Area (sq. miles)
2.0.....	852, 798	1, 427	917, 212	2, 659
0.5 (normally protected)	888, 903	3, 911	950, 834	7, 308
Interference from KSID and KVRH.....	2, 673 (0.3% ¹)	771 (19.7%)		
Interference from KSID, KVRH and KGHF.....	886, 230	3, 140	5, 212 (0.55%)	1, 420 (19.4%)
Interference free (if KIDEN granted alone).....	967 (0.1%)	32 (0.8%)	945, 622 (0.04%)	5, 888 (0.2%)
Additional interference from Prather (BP-13380).....	3, 640 (0.4%)	803 (20.5%)	416 (0.04%)	13 (0.2%)
Total interference (if Prather granted).....	886, 263	3, 108	5, 628 (0.59%)	1, 433 (19.6%)
Interference free (if Prather granted).....			945, 206	5, 875

¹ Percentages refer to population and area within the normally protected contour.

16. The proposed operation of station KDEN with 1 kw power during daytime hours would result in a net gain in KDEN's 2-mv/m service of 64,419 persons residing in a total land area of 1,232 square miles. The areas which would gain a new 2-mv/m service under the KDEN proposal lie generally at distances of 20 to 30 miles from the KDEN transmitter, and these 2-mv/m gain areas, which encircle the KDEN transmitter, include all of the cities of Boulder, which had a 1960 population of 37,803, and of Brighton, which had a 1960 population of 7,055. Both of these cities are located northwest of Denver and neither now receives primary service from KDEN. At least nine other standard broadcast stations provide primary service of 2 mv/m or better to all of the areas which would gain such a service from KDEN's proposal.

17. No area presently receiving service from station KDEN will lose such service by a grant of the KDEN application. If the KDEN proposal were granted alone, the result of the proposed increase in daytime power to 1 kw would be to extend the primary service (0.5 mv/m or greater) of station KDEN to an additional 59,392 persons in an area of 2,748 square miles. Eleven stations (KLZ, KHOW, KSSS, KHIL, KOA, KPOF, KIMN, KLIR, KGMC, KFSC, and KBRB) provide primary service (0.5 mv/m or greater) to all of the rural gain area. If the Prather proposal at Boulder is granted simultaneously, this gain area would be reduced to 58,976 persons in an area of 2,735 square miles. The same above 11 stations serve the area which would receive interference from the Prather proposal.

18. Adjacent-channel objectionable interference would be caused by the proposal of station KDEN to station KGHF, Pueblo, Colo. (1350 kc, 1 kw, 5 kw-LS, DA-N, U, class III), in 2 separate areas totaling 227 square miles and including 382 persons in all, representing 1.84 percent of the area (12,350 square miles) and 0.14 percent of the population (264,718 persons), respectively, within the 0.5-mv/m contour of station KGHF. That station now suffers objectionable interference from station KVRH, Salida, Colo., affecting an area of 101 square miles some 50 miles west of Pueblo, including 75 persons, or 0.82 percent of the area and 0.03 percent of the population within its 0.5-mv/m contour. Thus, in the aggregate, station KGHF would suffer objectionable interference totaling 2.66 percent of the area and 0.17 percent of the population within its 0.5-mv/m contour. The added interference areas resulting from the KDEN proposal lie some 60 miles north of Pueblo and about 45 miles south of Denver. Eleven stations (KLZ, KHOW, KSSS, KHIL, KOA, KPOF, KIMN, KLIR, KGMC, KFSC, and KBRB) provide primary service (0.5 mv/m or greater) to all of these two additional interference areas (0.5 mv/m or greater) caused by the proposed operation of station KDEN.

19. In addition to the above-described adjacent-channel interference by station KDEN operating as proposed, some cochannel objectionable interference would also be caused to class IV stations KSID, Sidney, Nebr. (1340 kc, 250 w, 1 kw-LS, U), and KVRH, Salida, Colo. (1340 kc, 250 w, S.H.). Station KSID was recently granted an increase to 1 kw power daytime, subject to the condition that it

accept objectionable interference from other 250-w class IV stations, increasing power daytime to 1 kw, and station KVRH filed no complaint against the subject KDEN application and was not made a party respondent.¹⁰ No objectionable interference would be caused by proposed station KDEN to any other existing standard broadcast stations.

Issue No. 6—Overlap of 2- and 25-mv/m contours

20. The two subject proposals are 20 kc removed in frequency from each other. The Commission, in its order of designation, found that, based on measurement data from both applicants, the 2.0-mv/m contour of the KDEN Broadcasting Co. proposed operation would overlap the 25-mv/m contour of the proposed Prather station in contravention of section 3.37 of the rules,¹¹ and additional measurement data would be required to establish that such overlap would also not occur in the opposite direction. It therefore placed the overlap matter in hearing through an issue which reads as follows:

6. To determine whether overlap of the 2-mv/m and 25-mv/m contours would occur between the instant proposals in contravention of section 3.37 of the Commission's rules, and, if so, whether circumstances exist which would warrant a waiver of said section.

21. To meet the above-specified issue, Prather submitted additional measurement data obtained from field intensity measurements made in March 1959, and on June 19 and 20, 1960, on station KBOL, the only existing standard broadcast station at Boulder, Colo. The transmitter site of station KBOL is located 3.5 miles southeast of the proposed Prather site and lies almost in a direct line toward the transmitter site of station KDEN, which is situated 29.75 miles southeast of the proposed Prather site. Complete radials were measured on station KBOL in the directions of 150° and 165° true and a stub radial was measured at 143° true. The stub radial, being incomplete, is not recognized herein for the purpose of establishing ground conductivity over the pertinent path.¹² The radial in the direction of 150° true lies substantially along a direct path between the transmitter sites of Prather and station KDEN. The measured data reflect an essentially uniform ground conductivity value of 12 m/mhos in the direction of 150° true over its entire path to a distance of 28 miles. The side radial in the direction of 165° true reflects an essentially uniform ground conductivity value of 10 m/mhos over its entire path to a distance of 27 miles.

22. Prather also submitted test transmitter measurements made in April 1959 in the directions of 100° and 130° true from the proposed

¹⁰ Station KVRH did not file a petition to intervene in this proceeding.

¹¹ Sec. 3.37 of the Commission's rules, entitled "Minimum separation between stations," provides:

"A license will not be granted for a station on a frequency of plus or minus 30 kc from that of another station if the area enclosed by the 25 mv/m groundwave contours of the two stations overlap, nor will the license be granted for the operation of a station on a frequency plus or minus 20 kc or plus or minus 10 kc from the frequency of another station if the area enclosed by the 25 mv/m groundwave contour of either one overlaps the area enclosed by the 2 mv/m groundwave contour of the other. [Emphasis supplied.]

¹² The Commission has pointed out in recent decisions that it "considers it preferable, and to the advantage of the parties involved, that conductivity determinations be based on measurement data that are complete for each radial." See, *Old Belt Broadcasting Corp. et al.*, 30 FCC 1048, 1069 (1961); *Sunbury Broadcasting Corp. (WKOK)*, docket No. 13325, FCC Decision 61-1271, Nov. 1, 1961.

Prather site and other test transmitter measurements made June 17 and 18, 1958, in the direction of 150.5° true from a site originally proposed by this applicant and located 0.3 mile east of the site now proposed.¹³ The 150.5° radial lies substantially along the direct path toward the transmitter site of station K DEN. The measured data reflect an effective ground conductivity value of 17 m/mhos in the direction of 100° true to a distance of 12.5 miles, an effective value of 20 m/mhos in the direction of 130° true to a distance of 10.5 miles, and a value of 15 m/mhos in the direction of 150.5° true for a distance of 10.5 miles. On the basis of all of the above-measured data, the proposed 2.0-mv/m contour of Prather was calculated to fall at a distance of 21 miles along the direct path toward the transmitter site of station K DEN.

23. The basis for the determination of contours for the present and proposed K DEN operations was taken from the instant K DEN application for an increase in daytime operating power from 250 to 1,000 w. Station K DEN took field strength measurements on its present operation in the directions of 322.5° and 338° true which placed its proposed 25-mv/m contour at a maximum distance of 8 miles toward the Prather site.¹⁴ Since the distance between the Prather and K DEN sites is 29.75 miles and the Prather 2.0-mv/m contour falls 21 miles from its site toward station K DEN, there would be no overlap of the Prather 2.0-mv/m and the proposed K DEN 25-mv/m contours, the separation being three-fourths of a mile. It also follows that the Prather 2.0-mv/m contour would not overlap the existing 25-mv/m contour of station K DEN operating with 250 w power, the clearance between them being 4.5 miles.

24. In the opposite direction, there would be a separation of one-half mile between the existing 2.0-mv/m contour of station K DEN and the Prather 25-mv/m contour. However, the *proposed* 2.0-mv/m contour of station K DEN would overlap the Prather 25-mv/m contour to a substantial degree, encompassing approximately two-thirds of the area within the Prather 25-mv/m contour and extending beyond the Prather transmitter site.

CONCLUSIONS

1. The proposed Prather station would provide a second standard broadcast facility in Boulder, Colo., a city of more than 37,000 persons (1960) situated some 20 miles northwest of Denver. Boulder is the county seat of Boulder County, which has a population of approximately 75,000 persons, and is also the site of the University of Colorado with an enrollment of about 11,000 students. The Prather proposal would suffer objectionable interference from only one existing station, namely, station K DEN, and this interference from the existing K DEN operation would be minute in terms of both the population (305 persons) and area (13 square miles) affected. The very small area within the proposed 0.5-mv/m Prather contour which would receive interfer-

¹³ Full data for the 150.5° radial was submitted in the original proceeding in docket No. 12210.

¹⁴ Full data for these measurements were submitted in the original proceeding in docket No. 12210.

ence from present station KDEN lies to the south of Denver and at least 20 interference-free primary services would be available therein. If the interference from the existing operation of station KDEN is taken into account, the Prather proposal would make available a new daytime primary service to 145,129 persons in an area of 3,629 square miles. Eleven stations serve the city of Boulder daytime. Five stations serve all of the rural area within the interference-free 0.5-mv/m contour of the Prather proposal, and from 7 to 24 stations serve various portions thereof. If the proposed KDEN operation is authorized, the Prather proposal will be subjected to greater interference from station KDEN affecting 6,936 persons in 101 square miles, representing 4.75 percent of the population and 3.08 percent of the area, respectively, within the proposed 0.5-mv/m Prather contour. The interference area would fall to the south of the city of Denver at distances ranging from 25 to 38 miles from the Prather transmitter site. At least 19 other primary services are available within the area that would receive interference from the KDEN proposal. Taking into consideration the interference resulting from the KDEN proposal, the Prather station would provide primary service to 138,498 persons in 3,181 square miles.

2. The Prather proposal would cause adjacent-channel objectionable interference to the existing operation of station KDEN. This interference from the Prather station would be in addition to present interference from stations KSID and KVRH, and would increase the overall objectionable interference that station KDEN now suffers, from 17.7 percent of the area and 0.3 percent of the population within its 0.5-mv/m contour to 20.52 percent of the area and 0.41 percent of the population therein. The new interference area resulting from the proposed Prather operation surrounds the proposed transmitter site at Boulder to a radius of 3 miles and lies 19 to 26 miles northwest of Denver. Eleven stations provide primary service to all of this additional interference area. No objectionable interference would be caused by the Prather proposal to any other existing standard broadcast station.

3. The Prather station would cause even less interference to the proposed KDEN operation than it would to existing station KDEN; the interference occasioned to the KDEN proposal would affect only 416 persons in an area of 13 square miles, or 0.4 percent of the population and 0.2 percent of the area within the proposed KDEN 0.5-mv/m contour. At least 19 other primary services are available in the small circular area located generally to the northwest of Boulder that would be lost under the KDEN proposed operation because of interference from the Prather station.

4. Upon weighing the considerations that the Prather proposal would bring a second broadcast facility to the city of Boulder and would provide a new primary service to more than 138,000 persons against the minimal interference which this proposal would cause to a single station—the existing station KDEN operation—within an area of only 13 square miles enjoying numerous services, it is concluded that a preponderant need for the proposed Prather station has clearly been shown. Hence, the Prather proposal satisfies the require-

ment of section 3.24(b) of the rules that where a new standard broadcast station will cause objectionable interference to existing stations, it must be shown the need for the proposed service outweighs the need for the service which will be lost by reason of such interference. Moreover, a comparison of the impressive transmission and reception service benefits to be derived from the Prather proposal with the insignificant loss in service by reason of interference caused to the proposed KDEN operation leaves no doubt as to the preponderating need for the new Prather service. Thus the adjacent-channel objectionable interference that would be created to the proposed KDEN operation by the Prather station does not stand in the way of a grant of the instant Prather application.

5. Denver, Colo., a city of 493,887 persons (1960), is the principal city of the Denver urbanized area which has a population of 803,624. Eleven standard broadcast stations are assigned to Denver. As a result of the proposed increase in its daytime power, station KDEN would extend its service to an additional 59,392 persons in an area of 2,748 square miles if only the KDEN application is granted. Eleven stations serve all of the rural area that would be gained by proposed station KDEN in the absence of the Prather operation. The gain area would be reduced so as to include 58,976 persons in an area of 2,735 square miles if the KDEN proposal is granted simultaneously with the Prather proposal. The same 11 stations referred to above serve the interference area of 13 square miles that would result from the Prather proposal.

6. Adjacent-channel objectionable interference would be caused by proposed station KDEN to station KGHF, Pueblo, Colo., thereby increasing the overall objectionable interference suffered by station KGHF from 0.82 percent of the area and 0.03 percent of the population to 2.66 percent of the area and 0.17 percent of the population within its 0.5-mv/m contour. The new interference area caused by the KDEN proposal lies some 60 miles north of Pueblo and about 45 miles south of Denver. Eleven stations serve all of this additional interference area. Cochannel interference would be caused by the KDEN proposal to class IV station KSID, Sidney, Nebr.; however, that station was recently granted an increase in power subject to acceptance of interference from other class IV proposals such as that of station KDEN. Some cochannel objectionable interference would also be caused by the KDEN proposal to class IV station KVRH, Salida, Colo.¹⁵ However, that station was not made a party by the Commission and did not petition to intervene herein. Nor has station KVRH filed any objection to the KDEN proposed increase in power.

No objectionable interference would be caused by proposed station KDEN to any other existing standard broadcast stations. As has been found above (par. 7, findings of fact), the KDEN proposal would cause interference to the proposed Prather station affecting 6,936

¹⁵ The record does not show the precise extent to which the KDEN proposal would cause interference to station KVRH which operates with a power of 250 w. However, the instant KDEN application (BP-13119) reflects the fact that existing station KDEN now causes some objectionable interference to station KVRH, and further indicates, on the basis of 1950 U.S. census data, that the proposed KDEN operation would create but minor additional interference to the KVRH operation.

persons in 101 square miles, or 4.75 percent of the population and 3.08 percent of the area within the 0.5-mv/m contour of the Prather operation. The area of interference would fall to the south of Denver and at a minimum distance of 25 miles from the proposed Prather site. A multitude of other services would be available to this interference area.

7. The substantial gain in service that would accrue to station KDEN in the event of an increase in its daytime power to 1 kw outweighs the small losses that would be suffered by existing stations KGHF and KVRH by reason of interference from the KDEN proposal. In reaching this conclusion, the examiner has taken into consideration, among the other factors mentioned above, the especially cogent circumstances that the KGHF interference area is served by numerous stations and that no objection has been raised by station KVRH or any other interested source against the limited additional interference to its operation. Additionally, the loss in station KVRH service is rendered even less significant in light of the Commission's policy to encourage improvement in the service of existing class IV stations such as KDEN. It must be concluded that the KDEN proposal clearly qualifies for a grant from the standpoint of the applicant's demonstration of a preponderant need for the proposed gain in KDEN service, as opposed to the prospective losses by existing stations through interference. Furthermore, the interference that the KDEN proposal would create to the new Prather station in Boulder is not of sufficient magnitude or impact to require a denial of the KDEN application. In this connection, it is apparent that the statistical incidence of the interference would be greatly diminished by the availability of at least 19 other services within the interference area, which area would be at a considerable distance away from Boulder.

8. Applicant Prather has complied with the requirements of section 311 of the Communications Act and section 1.362 of the Commission's rules concerning the filing of a statement, in triplicate, reflecting the prescribed publication of local notice of designation of the Prather application for hearing. Similarly, applicant KDEN has complied with section 311 of the act and section 1.362 of the rules requiring the submission of a statement, in triplicate, showing both the publication and broadcast of the prescribed notice of designation of the KDEN application for hearing.

9. Disregarding any question of overlap between the proposals of Prather and KDEN, a grant of both applications would be in the public interest since both applicants possess the necessary statutory qualifications and in each case their proposals would bring a new broadcast service to substantial populations and areas consistent with the "preponderant need" requirement of section 3.24(b) of the rules. But issue 6 herein requires a further determination of whether overlap would occur between the 2-mv/m and 25-mv/m contours of the proposals in contravention of section 3.37 of the rules, and, if so, whether circumstances exist which warrant a waiver of said section so as to permit a grant of both applications. The question as to overlap must be answered in the affirmative; while no overlap of the 2-mv/m and 25-mv/m contours would occur under the present operation of station KDEN, it has been found that the proposed KDEN 2-mv/m contour

would overlap the proposed 25-mv/m contour of the Prather operation in substantial measure. Hence it must now be determined whether circumstances exist to warrant a waiver of section 3.37 of the rules or whether a choice in light of section 307(b) of the Communications Act must be made between the Prather proposal to establish a second local broadcast station in Boulder and the KDEN proposal to increase the power of its station located in Denver from 250 w to 1 kw.

10. The purpose of the applicable overlap proscription in section 3.37 of the rules "is to buttress the objective sought by the adjacent-channel radio specifications by providing a sufficient physical separation between stations, thereby avoiding substantial overlap of service areas where the presence of high signal intensities from the respective stations might give rise to interference caused by nonselectivity, external cross-modulation, and internal cross-modulation." *In re The Bridgeport Broadcasting Co. (WICC)*, 18 R.R. 286d. There is no evidence in the record indicating the extent to which interference can be anticipated as between the two proposals herein by reason of the above-specified causes. It can be observed, however, that the Prather and KDEN transmitter sites would not be in close proximity to each other, inasmuch as their respective locations will be separated by a distance of nearly 30 miles. With reference to this circumstance, moreover, KDEN points out that, viewing its station as a 250-w local station, the 30-mile separation between it and the station proposed by Prather would be adequate to satisfy the requirements of section 3.37. This applicant then emphasizes the consideration that in the case at bar the violation of the rule in question would occur only because of an increase in daytime power of an existing class IV station. By analogizing this situation to the one wherein the Commission by virtue of an amendment of its so-called "10 percent rule" (sec. 3.28(d) (3)) excepts from the limitation therein a class IV, 250-w daytime station seeking an increase in power, KDEN argues that a waiver of section 3.37 is similarly justified with respect to its own proposal. While the analogy is helpful, there are present more persuasive considerations, discussed below, which warrant a waiver of section 3.37.

11. The record shows that the city of Boulder is a thriving community separate and distinct from Denver, and is outside the "Denver urbanized area," as defined under the 1960 U.S. census. In addition, Boulder has a population of over 37,000 persons, and is the site of the University of Colorado with an enrollment of about 11,000 students as well as the county seat of Boulder County which has a population of approximately 75,000 persons. At the present time, the city of Boulder, which has been experiencing a rapid growth in its population, has only one local standard broadcast station. The foregoing facts amply demonstrate that Boulder has need for the proposed Prather station which would provide this increasingly important and expanding community with a second local primary service and with its first competitive outlet.

12. The proposal of KDEN to improve the facilities of its class IV station at Denver would extend the service of station KDEN to an additional 58,976 persons, assuming a simultaneous grant of the Prather proposal. At the same time, the Commission's objective to

improve opportunities for class IV stations to provide an effective local daytime service in the face of hindrances by the increasingly higher degree of local manmade noises, from population and industrial growth, and because of the expansion of communities would be furthered by a grant of the K DEN application. Another factor favoring a grant of the K DEN proposal is the consideration that a denial of this proposal could very well engender a chain reaction requiring a denial of other class IV stations in the same area seeking a power increase. Furthermore, denial of the K DEN application would deprive the existing operation of K DEN of protection from existing nearby class IV stations seeking an increase in power to 1 kw. On the other hand, an increase in the power of station K DEN to 1 kw as requested by it would eliminate the serious competitive handicap which this station now suffers as the only 1 among 11 stations in Denver which operates with a daytime power of less than 1 kw.

13. The denial of a waiver of section 3.37 in this proceeding would necessitate making a choice between the Prather and K DEN proposals. The process of selection would require weighing the need for a second broadcast outlet for Boulder, a community of 37,718 persons, against the need to increase the power of station K DEN, a 250-w operation, which is under competitive disadvantage as compared with the other 10 Denver stations because of its lower power. In arriving at a choice, the examiner would have to take into consideration also the Commission's view that the improvement of service to be derived from a nationwide chain of local station power increases holds a position of "superior decisional significance" (report and order released May 4, 1961—FCC 61-601). The examiner is of the opinion, however, that the circumstances existing in this case with respect to both proposals make unnecessary a determination as to which is to be preferred. For it is concluded that the substantial gains in service to be derived from both proposals and the public-interest advantages inherent in authorizing a second Boulder broadcast outlet and upgrading station K DEN, Denver's only station operating with a power of 250 w daytime, plainly warrant a waiver of section 3.37 and the simultaneous grant of the two applications concerned. Thus it is further concluded that the public interest, convenience, and necessity would be served by a simultaneous grant of the Prather application for a new station in Boulder, Colo., and of the K DEN application for an increase in daytime power of its station in Denver, Colo., from 250 w to 1 kw.

In view of the foregoing, and upon consideration of the entire record in this proceeding, *It is ordered*, This 24th day of January 1962, that unless an appeal to the Commission from this initial decision is taken by any of the parties, or the Commission reviews the initial decision on its own motion in accordance with the provisions of section 1.153 of the rules:

1. A waiver of section 3.37 of the Commission's rules *Is granted*.

2. The application of Kenneth G. Prather and Misha S. Prather for a new standard broadcast station (class III) at Boulder, Colo., to operate daytime only on the frequency of 1360 kc with 500 w power, utilizing a directional antenna, *Is granted*; and

3. The application of KDEN Broadcasting Co. for an increase in daytime power of station KDEN, Denver, Colo. (1340 kc, 250 w, U, class IV), from 250 w to 1 kw, *Is granted*, subject to the following condition:

“Permittee shall accept such interference as may be imposed by other existing class IV stations in the event they are subsequently authorized to increase power to 1 kw.”

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LAKESHORE BROADCASTING CORP., INC., DOCKET NO. 14175:

Initial decision granting application of Lakeshore Broadcasting Corp., Inc., for a construction permit for a new FM broadcast station to operate on 92.1 Mc (channel 221) with 1 kw power and an antenna height of 190 feet above average terrain at Racine, Wis.; became final in accordance with section 1.153 of the Commission's rules.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON 25, D.C.

In re Application of LAKESHORE BROADCASTING CORP., INC., RA- CINE, WIS. For Construction Permit	}	Docket No. 14175 File No. BPH-3264
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APPEARANCES

Edgar F. Czarra, Jr., on behalf of Lakeshore Broadcasting Corp., Inc.; *Morton L. Berfield* and *James F. Marten*, on behalf of the Broadcast Bureau.

INITIAL DECISION OF HEARING EXAMINER H. GIFFORD IRION

(Effective April 18, 1962, pursuant to sec. 1.153)

1. The application of Lakeshore Broadcasting Corp., Inc., requests a construction permit for a new FM station to operate on 92.1 Mc (channel 221) with 1 kw power and an antenna height of 190 feet above average terrain at Racine, Wis. This proceeding commenced as a consolidated hearing with three applications. Hearings were held and the record was closed on November 1, 1961. On December 8, 1961, before proposed findings were submitted by the parties, the Commission amended section 1.356 of its rules to "freeze" further processing of FM applications, including those in hearing status. Exceptions were permitted, however, provided an applicant met certain criteria set forth in section 1.356.

2. Originally the application of Lakeshore was mutually exclusive with the application of Service Broadcasting Corp., Kenosha, Wis., and the latter, in turn, involved interference with the third application, that of Ruth M. Crawford, executrix of Estate of Percy B. Crawford (WYCA), Hammond, Ind. On February 2, 1962, Lakeshore and Service filed separate petitions looking toward a solution of their several problems. The petition of Service requested leave to amend and be removed from hearing to the processing line. The petition of Lakeshore pointed out that if Service's application were amended, as proposed, the conflict between the two applications would no longer exist and the engineering issues of the hearing, insofar as

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Lakeshore was concerned, would become moot. The hearing examiner granted both petitions on February 21, 1962 (FCC 62M-266, Mimeo No. 16677). Also on February 2, 1962, Lakeshore and Service filed a joint request for approval of an agreement. In substance the agreement provided that Lakeshore would pay the sum of \$500 to Service as partial reimbursement of engineering expenses involved in the latter's amendment. This request was approved on February 15, 1962, by the Acting Chief Hearing Examiner. He found that the total expenses of Service amounted to more than \$3,000 and that they were legitimately and prudently incurred (FCC 62M-244, Mimeo No. 16550).

3. The situation with respect to the Lakeshore application at the present time is as follows: It involves no interference with either of the two applications with which it was originally designated for hearing; it complies with the requirements of section 1.356 with respect to processing;¹ and it involves no interference with existing FM stations. The only other question regarding it relates to a clause in the order of designation which reads as follows:

It is further ordered, That in the event of a grant of the application of the Lakeshore Broadcasting Corp., Inc., the construction permit shall contain a condition stating that program tests will not be authorized until Jerome P. Feeney submits evidence to show that his connections with stations WRJN and WRJN-FM have been severed.

During the hearing Lakeshore produced evidence that Jerome P. Feeney, its president, had severed all connections with stations WRJN and WRJN-FM, Racine, Wis., on February 24, 1961. The order of designation set forth the finding that Lakeshore is legally, financially, technically, and otherwise qualified to construct and operate the station and, had it not been for the expected interference, no hearing would have been necessary. With the interference questions eliminated, it follows that a grant of the application will serve the public interest.

It is ordered, This 26th day of February 1962, that unless an appeal from this initial decision is taken to the Commission, or unless the Commission reviews the initial decision on its own motion in accordance with the provisions of section 1.153 of the rules, the application of Lakeshore Broadcasting Corp., Inc., for a construction permit (file No. BPH-3264) for a new FM broadcast station to operate on 92.1 Mc (channel 221) with 1 kw power and an antenna height of 190 feet above average terrain at Racine, Wis., *Is granted.*

¹This finding is based upon an engineering statement from Lakeshore's consultant which was attached to the petition for severance and upon comments filed by the Broadcast Bureau on Feb. 20, 1962, concurring in the engineering statement.

CLARENCE EVERETT JONES ET AL., DOCKET No. 14256 ET AL. :

Initial decision granting applications of Clarence Everett Jones for a construction permit to operate a class III station at St. George, S.C., on the frequency of 1300 kc, with 500 w power, daytime only, and Robert S. Taylor for a construction permit to operate a class III station at Aiken, S.C., on the frequency of 1300 kc, with 500 w power, daytime only; became final in accordance with section 1.153 of the Commission's rules.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON 25, D.C.

In re Applications of CLARENCE EVERETT JONES, ST. GEORGE, S.C. ROBERT S. TAYLOR, AIKEN, S.C. For Construction Permits	}	Docket No. 14256 File No. BP-13022 Docket No. 14257 File No. BP-13892
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APPEARANCES

Lenore G. Ehrig (Daly & Ehrig), on behalf of Clarence Everett Jones; *Samuel Miller*, on behalf of Robert S. Taylor; and *James F. Marten* and *P. W. Valicenti*, on behalf of the Chief, Broadcast Bureau, Federal Communications Commission.

INITIAL DECISION OF HEARING EXAMINER CHARLES J. FREDERICK

(Effective April 19, 1962, pursuant to sec. 1.153)

PRELIMINARY STATEMENT

This proceeding involves the applications of Clarence Everett Jones (hereinafter "Jones") for a construction permit to operate a class III station at St. George, S.C., on the frequency of 1300 kc, with 500 w power, daytime only, and Robert S. Taylor (hereinafter "Taylor") for a construction permit to operate a class III station at Aiken, S.C., on the frequency of 1300 kc, with 500 w power, daytime only. The Commission, after noting that except as indicated by the issues each of the applicants is legally, technically, financially, and otherwise qualified to operate his proposed station, designated these applications for a consolidated hearing by order released September 14, 1961 (FCC 61-1079), upon the following issues:

1. To determine the areas and populations which would receive primary service from the proposed operations of Clarence Everett Jones and of Robert S. Taylor, and the availability of other primary service to such areas and populations.

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2. To determine the nature and extent of the interference, if any, that each of the instant proposals would cause to and receive from each other, and the interference that each of the instant proposals would receive from all other existing standard broadcast stations, the areas and populations affected thereby, and the availability of other primary service to such areas and populations affected by interference from any of the instant proposals.

3. To determine whether interference received from existing standard broadcast stations, including WKRT, Cocoa Beach, Fla., and the other proposal herein, BP-13892, would affect more than 10 percent of the population within the normally protected primary service area of the instant proposal of Clarence Everett Jones, BP-13022, in contravention of section 3.28(c) (3) of the Commission rules, and, if so, whether circumstances exist which would warrant a waiver of said section.

4. To determine, in the light of section 307 (b) of the Communications Act of 1934, as amended, which of the instant proposals would better provide a fair, efficient, and equitable distribution of radio service.

5. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which, if either, of the instant applications should be granted.

A prehearing conference was held on October 26, 1961. The hearing was held on January 22, 1962, and the record was closed on the same day.¹

FINDINGS OF FACT ²

Clarence Everett Jones

1. The community of St. George, S.C., in which Jones proposes to operate a new standard broadcast station on 1300 kc, 500 w power, daytime only, has a population of 1,833. St. George is the county seat of Dorchester County, S.C., and is governed by a city council form of government. This community, which is not part of any urbanized area, contains 2 elementary schools and 2 high schools, 1 Baptist and 1 Methodist church, the Dorchester County Hospital, a public library, a weekly newspaper, 14 civic clubs, and 1 commercial bank. St. George is served by the Southern Railroad, which has one passenger service north and one south daily. U.S. Highways 15 and 98 pass through St. George, and the Greyhound and Southeastern bus companies provide service. Dorchester County is devoted entirely to an agriculture economy. Thirty percent of the county is cultivated in cotton, corn, tobacco, livestock, and eggs, and the remaining 70 percent is devoted to commercial timberland. The center of St. George is located approximately 71 miles southeast of Aiken, S.C., and approximately 45 miles northwest of Charleston, S.C.

2. There is no standard broadcast station assigned to St. George. Primary service is available in the community from a total of seven stations.

¹ By memorandum opinion and order, released Dec. 18, 1961 (FCC 61-1464), the Commission denied a petition to enlarge issues filed by Jones on Oct. 5, 1961, which requested an issue to determine whether Taylor possesses the requisite character qualifications to be a licensee of the Commission.

² All population data are based on 1960 U.S. census.

3. The areas and populations which would receive primary service from the proposed station and the extent of interference that would be received from station WKRT, Cocoa Beach, Fla. (1300 kc, 500 w, day), include the following:

Contour (mv/m)	Area (sq. miles)	Population
2.0-----	380	13,767
0.5 (normally protected)-----	1,282	39,680
Interference from WKRT ¹ -----	53	1,318
0.5 (interference free)-----	1,229	38,362

¹ The interference from station WKRT constitutes 4.13 percent of the area and 3.32 percent of the population within the proposed 0.5-mv/m contour of the proposed station.

Primary service (0.5 mv/m or greater) is provided to rural portions of the service area within the proposed 0.5-mv/m interference-free contour by the following stations in the indicated proportions: 100 percent from WIS; 75 to 100 percent from WWBD and WDIX; 50 to 75 percent from WSAV, WPAL, and WALD; 25 to 50 percent from WBAW, WTND, WTMA, and WCSC; and up to 25 percent from WGAY, WNCG, WBEU, WBHC, WOKE, and WORC. There are a minimum of 2 and a maximum of 10 primary services available to various portions of the area.³

Robert S. Taylor

4. The community of Aiken, S.C., in which Taylor proposes to operate a new standard broadcast station on 1300 kc with a power of 500 w, daytime only, has a population of 11,243 and is the largest community in Aiken County. The community of Aiken contains 166 retail stores with 882 employees, and 13 factories employing 213 persons. Aiken County is primarily devoted to agriculture. The community of Aiken is not part of any urbanized area. Station WAKN (990 kc, 1 kw, day) is the only standard broadcast station assigned to Aiken.

5. The proposed station would receive interference from station WCKI, Greer, S.C. (1330 kc, 1 kw, day), and provide primary service to areas and populations as follows:

³ An antenna radiation value of 124 mv/m for 500 w of power as determined from fig. 8 of the rules in conjunction with ground conductivities indicated by fig. M-3 of the rules was used to establish the extent of the proposed field strength contours. Pertinent field strength contours of the several other stations were based upon values of radiation as listed in the Commission's "Official List for Information Setting Forth Notified Assignments of Standard Broadcast Stations of the United States" and ground conductivities shown on fig. M-3.

Contour (mv/m)	Area (sq. miles)	Population
2.0.....	191.5	33,027
0.5 (normally protected).....	718	53,181
Interference from WCKI ¹	1.9	363
0.5 (interference free).....	706.1	52,818

¹ The interference from station WCKI represents 0.1 percent of the area or 0.7 percent of the population within the proposed 0.5-mv/m normally protected contour.

6. Primary service (0.5 mv/m or greater) is available in the rural portions of the proposed station's service area from the following stations in the indicated proportions: 100 percent from WAKN, WGAC, and WAUG; 75 to 100 percent from WRDW and WIS; 50 to 75 percent from WBAW and WGUS; 25 to 50 percent from WTHB, WSSL, WBBQ, and WBLR; and up to 25 percent from WBIA, WJES, and WWBD. A minimum of 5 and a maximum of 11 stations serve various portions of the area.⁴ The record is silent as to the primary services available to Aiken.

Simultaneous operation

7. In order to determine the nature and extent of possible interference which Taylor's proposed station might inflict on the new station at St. George, field strength measurements were taken on behalf of Taylor on the signals of WAKN in Aiken. The WAKN transmitter site is located approximately 4.5 miles west of Taylor's proposed transmitter site. These measurements were made along three full radials bearing 99°, 110.5°, and 122° true toward the service area of the proposed station at St. George. In each instance the field strength measurements were made to a distance in excess of 60 miles. On the basis of ground conductivity established from these measurements from Aiken toward St. George, Taylor's proposed station would cause no interference to the station proposed at St. George.

8. Operating as proposed and assuming ground conductivity to be that shown by figure M-3 of the rules for the path from St. George toward Aiken, Jones' proposed station would impose interference on the new station at Aiken affecting an area of 106 square miles includ-

⁴ Pertinent contours of the proposed station and the several other stations were depicted on the basis of an antenna radiation of 132.5 mv/m for the proposed operation and 190 mv/m for station WCKI. Ground conductivities shown on fig. M-3 of the rules were employed in all cases.

ing 2,406 persons, representing 14.8 percent of the area and 4.5 percent of the population within the 0.5-mv/m normally protected contour of the proposed station. All of the interference area receives primary service (0.5 mv/m or greater) from stations WAKN, WGAC, and WAUG; 75 to 100 percent from WBAW and WIS; 50 to 75 percent from WWBD; and up to 25 percent from WBLR, WGUS, WTHB, WBBQ, WBIA, and WRDW. There are a minimum of five and a maximum of eight services available to the area.

9. Assuming a grant of both applications, the Jones station would provide a new primary service to 38,362 persons in 1,229 square miles and that proposed by Taylor to 50,412 persons in 610.1 square miles. In each instance interference received within the normally protected 0.5-mv/m contour would affect less than 10 percent of the population therein.

CONCLUSIONS

1. As detailed in the findings, neither proposal would violate section 3.28(d)(3) of the rules.⁵ While the Taylor proposal would not cause interference to the proposed operation of Jones, a relatively small amount (4.5 percent of population) of interference would be caused the Taylor proposal by the operation proposed by Jones. However, a minimum of five stations serve this population. In light of these facts, it is concluded that a 307(b) choice need not be made. Both applicants were found to be legally, technically, financially, and otherwise qualified, and with the 307(b) question resolved favorably, it is concluded that the public interest, convenience, and necessity would be served by a grant of both applications.

Accordingly, *It is ordered*, This 26th day of February 1962, that unless an appeal from this initial decision is taken by a party, or the Commission reviews the initial decision on its own motion in accordance with the provisions of section 1.153 of the rules, the applications of Clarence Everett Jones for a construction permit to operate a class III station at St. George, S.C., on the frequency of 1300 kc, with 500 w power, daytime only, and Robert S. Taylor for a construction permit to operate a class III station at Aiken, S.C., on the frequency of 1300 kc, with 500 w power, daytime only, *Be and they hereby are granted*; and

⁵ Sec. 3.28(c)(3) of the rules has been amended since the issuance of the designation order in this proceeding and the pertinent section of the rules is sec. 3.28(d)(3).

It is further ordered, As required by the Commission's order (FCC 61-1079) designating the application for hearing, that the following condition be contained in any construction permit issued to Clarence Everett Jones:

Program tests will not be authorized until the permittee submits data to establish that the proposed transmitter meets the requirements of sections 3.48 and 2.524 of the Commission's rules.

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QUESTS, INC., DOCKET No. 14106:

Initial decision granting application for construction permit for a new standard broadcast station using a directional antenna at Ashtabula, Ohio; became final in accordance with section 1.153 of the Commission's rules.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON 25, D.C.

In re Application of QUESTS, INC., ASHTABULA, OHIO For Construction Permit	}	Docket No. 14106 File No. BP-13786
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APPEARANCES

Harry J. Daly, Esq., and *Mrs. Lenore G. Ehrig*, for Quests, Inc.;
Kenneth A. Finch, Esq., and *James F. Marten, Esq.*, for Chief, Broadcast Bureau, Federal Communications Commission.

INITIAL DECISION OF HEARING EXAMINER JAY A. KYLE

(Effective April 26, 1962, pursuant to sec. 1.153)

PRELIMINARY STATEMENT

1. This proceeding originally involved the mutually exclusive applications of James V. Perry (Perry), docket No. 14105, file No. BP-13574, and Quests, Inc. (Quests), docket No. 14106, file No. BP-13786.

2. The Perry application was for a construction permit for a new standard broadcast station at Grove City, Pa., to operate on 1600 kc, 500 w, daytime only. Quests is seeking a construction permit for a new standard broadcast station at Ashtabula, Ohio, to operate on 1600 kc, with a power of 1 kw, daytime only, using a directional antenna.

3. By order released May 8, 1961, the above applications just referred to were designated for hearing in a consolidated proceeding. The applicants, except for the issues set out below, were found legally, technically, financially,¹ and otherwise qualified to construct and operate their respective proposals. The enlarged issues were as follows:

1. To determine the areas and populations which would receive primary service from the instant proposals, and the availability of other primary service to such areas and populations.
2. To determine the nature and extent of the interference, if any, that each of the instant proposals would cause to and receive from each other, and the interference that each of the instant proposals would receive from

¹ After the commencement of the evidentiary hearing, the Commission by order released Sept. 25, 1961 (FCC 61-1130), granted in part Perry's petition to enlarge issues and added an issue as to the financial qualifications of Quests which is issue No. 4, p. 892.

all other existing standard broadcast stations, the areas and populations affected thereby, and the availability of other primary service to the areas and populations affected by interference from any of the instant proposals.

3. To determine whether the instant proposal of James V. Perry would cause objectionable interference to station WHLL, Wheeling, W. Va., or any other existing standard broadcast stations, and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other primary service to such areas and populations.

4. To determine whether Quests, Inc., is financially qualified to construct and operate its proposed station for a reasonable length of time without operating revenue.

5. To determine whether the interference received by each instant proposal from the other proposal herein and any existing stations would affect more than 10 percent of the population within its normally protected primary service area in contravention of section 3.28(c) [now (d)] (3) of the Commission rules, and, if so, whether circumstances exist which would warrant a waiver of said section.

6. To determine, in the light of section 307(b) of the Communications Act of 1934, as amended, which of the instant proposals would better provide a fair, efficient, and equitable distribution of radio service.

7. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which, if either, of the instant applications should be granted.

Wheeling Broadcasting Co., licensee of station WHLL, Wheeling, W. Va., was made a party to the proceeding.

4. A prehearing conference was held on June 9, 1961. The evidentiary hearing was held on July 20, October 17 and 18, 1961. Wheeling Broadcasting Co. neither entered an appearance nor participated in this proceeding. By order released November 14, 1961, the Acting Chief Hearing Examiner granted the petition of Perry for dismissal of his application without prejudice. The record was held open to permit receipt of Quests' exhibits 3 and 4, and by order of the hearing examiner was closed on January 25, 1962. Proposed findings of fact and conclusions of law were filed on behalf, Chief, Broadcast Bureau, on February 27, 1962, which were informally concurred in by counsel for Quests on February 28, 1962.

FINDINGS OF FACT

5. Quests, Inc., has been found by the Commission in its order released May 8, 1961, to be legally, technically, and otherwise qualified to construct and operate its proposed facility, except as appears in the issues in the designation order heretofore referred to.

6. The city of Ashtabula, Ohio, is located in Ashtabula County and has a population of 24,559 based on the 1960 U.S. census. It lies on Lake Erie midway between Cleveland, Ohio, and Erie, Pa. Ashtabula is not a part of any urbanized area. One standard broadcast station, WREO (970 kc, 1 kw, 5 kw-LS, U), is assigned to Ashtabula.

7. As heretofore indicated, Wheeling Broadcasting Co. having failed to file an appearance and participate in the proceeding, along with the dismissal of the Perry application, rendered moot issue No. 3.

8. Based on radiation values specified on the proposed directional antenna pattern and on ground conductivity values for the area taken from figure M-3 of the rules, employing 1960 U.S. census data, the proposed coverage is as follows:

Contour (mv/m)	Population	Area (sq. miles)
2.0.....	150, 892	443
0.5 (normally protected).....	190, 035	1, 376
Interference from WHLL ^{1 2}	1, 532 (0. 8%)	28 (2%)
Interference from CHVC ¹	5, 980 (3. 1%)	81 (5. 9%)
Total interference ^{1 2}	7, 482 (3. 9%)	109 (7. 9%)
Interference free.....	182, 553	1, 267

¹ Percentages refer to population and area within the normally protected contour.

² Based on field intensity measurements taken on station WHLL, Wheeling, W. Va., by Quests in the directions of 0° and 345° true.

³ Field intensity measurements taken on station WTFF, Tiffin, Ohio, by Quests in the directions of 0°, 70.5°, and 91° indicate no objectionable interference would be received from that station.

9. Stations WKBN, WJR, WPIC, WGRP, WREO, KDKA, KYW provide primary service (0.5 mv/m or greater) to the rural areas within the proposed daytime primary service area; WHLO, WERE serve 75-100 percent thereof; WGAR, WDOK, WWOW, WFMJ, WHK, WHHH, WPVL, WMGW, 50-75 percent; WJW, WERC, WKST, WADC, 25-50 percent; WCNS, WCMW, WCUE, WICU, WJET, WFAR, WJMO, WABQ, and WHOT, less than 25 percent. A minimum of 10 and a maximum of 19 stations provide such service to various portions thereof. A third primary service (2.0 mv/m or greater) would be provided by the Quests' proposal to Geneva, Ohio, and to most of Conneaut, Ohio. The former city, according to the U.S. 1960 census, has 5,677 population, while there are 10,577 persons in the latter city.

10. Stations WREO, Ashtabula, Ohio; WKBN, Youngstown, Ohio; and KYW, Cleveland, Ohio, provide primary service (2.0 mv/m or greater) to the city of Ashtabula daytime. Station WREO provides a 10-mv/m signal to the city; thus the proposal would provide a second primary service to an estimated 10 percent of the population of the city, or 2,456 persons assumed to be located within the business and manufacturing areas.²

11. The evidence indicates that the total construction costs and cost of operation for Quests' proposal for Ashtabula are broken down as follows:

Transmitter proper including tubes.....	\$4, 801. 15
Antenna system, including antenna ground system, coupling equipment, transmission line.....	9, 941. 00
Frequency and modulation monitors.....	1, 320. 00
Studio technical equipment, microphones, transmission equipment.....	3, 500. 00
Acquiring land.....	1, 750. 00
Acquiring, remodeling, or constructing buildings.....	1, 850. 00
Other items.....	800. 00
Total	23, 962. 15

12. Quests estimates its cost of operation for the first year to be \$43,000 while, on the other hand, its estimated revenue for the same period is \$60,000.

² In its original exchange of exhibits, Quests showed that it would cause objectionable interference to station WTFF, Tiffin, Ohio. It later took field intensity measurements on station WREO, Ashtabula, Ohio, in the direction of 251° true, and on the basis of that data determined there would be no objectionable interference caused to WTFF.

13. The supplier of the equipment, Gates Radio Co., indicated by a letter under date of September 21, 1961, that of the estimated total equipment cost of slightly less than \$19,600, only a quarter downpayment will be required, in the amount of approximately \$4,900. Quests proposes in its financial plan that it will have only 2 months of operation without income, which amount is estimated to be \$7,166.66. In *Iredell B/Casting Co. (WDBM)*, 13 R.R. 996, 1002 (1957), and *Sanford A. Schafitz*, 14 R.R. 852, 864 (1958), the Commission held that an applicant who has sufficient funds available to build and operate its station for at least 3 months without any revenues is financially qualified. Therefore, to meet this financial qualification, as laid down in the authority just cited, an additional month's cost of operation should be added, or \$3,583.33 to make a total of \$10,749.99 required to meet the estimated cost of operation for 3 months without revenues.

14. Quests will need approximately \$20,800 to meet its operating cost for the first 3 months, which broken down is as follows: \$4,900 is approximately one-fourth downpayment on equipment totaling \$19,600; \$2,500 first year's payment on land; \$1,850 first year's payment on building; \$10,749.99 first 3 months' cost of operation; and \$800 miscellaneous. However, the evidence indicates that the applicant has made the land payment for the entire first year in the amount of \$2,500, which would reduce the cost of construction and initial operation from approximately \$20,800 to \$18,300. Further, the evidence is that the cost of construction and initial operations are to be financed by the sale of 232½ shares of common class A stock at \$100 per share, thereby netting Quests liquid assets of \$23,250. As of October 7, 1961, the corporation had issued 250 shares of common class A stock, of which 17½ shares had been issued to two individuals for services rendered and the balance of \$23,250 had been paid in by the stockholders with their stock subscription.

15. The balance sheet of Quests, Inc., Ashtabula, Ohio, as of October 7, 1961, is as follows:

<i>Assets</i>		<i>Liabilities</i>	
Cash on hand and in bank -----	\$21,597.15	Mortgage payable (land) -	\$7,500.00
Organizational expense (to date) -----	5,902.85	Notes payable -----	5,000.00
Land -----	10,000.00	Capital outstanding stock -	25,000.00
	<hr/>	Total liabilities and capital -----	<hr/>
Total assets -----	37,500.00		37,500.00

The item of notes payable of \$5,000 represents a loan from its principal stockholder, Kenneth S. Mapes. As indicated above, the applicant has \$21,597.15 in cash and in bank, from which it can readily draw to meet the sum of \$18,300 referred to in paragraph 14, supra.

CONCLUSIONS

1. Quests, Inc., has already been found by the Commission in its order of designation to be legally, technically, and otherwise qualified to operate its proposed facilities, except as specified in the issues above.

2. The applicant proposes to bring to Ashtabula, Ohio, its second local standard broadcast station. The 1960 population of Ashtabula is 24,559. A third primary service (2.0 mv/m or greater) would be provided by the Quests' proposal to Geneva, Ohio, with a population of 5,677, and to most of Conneaut, Ohio, which has a population of 10,577 persons.

3. Issue No. 3 was rendered moot when Wheeling Broadcasting Co., licensee of station WHLL, Wheeling, W. Va., which was made a party to this proceeding, neither entered an appearance nor participated herein and the application of James V. Perry, an original applicant in this proceeding, was dismissed.

4. The undisputed evidence is that Quests has at least \$21,597.15 cash to meet its cost of construction and initial cost of operation of \$18,300. This does not take into consideration the possible liquidity of other assets of the applicant. Following *Iredell B/Casting Co., supra*, and *Sanford A. Schafitz, supra*, which both held that an applicant who has sufficient funds available to build and operate its station for at least 3 months without any revenue is financially qualified, the conclusion is here reached that Quests is financially qualified to construct and operate its proposed facility at Ashtabula.

5. Referring to issue No. 5 relating to section 3.28(d)(3) (formerly sec. 3.28(c)(3)), which is known as the "10 percent rule," the findings reflect that the proposed new Quests' station at Ashtabula would receive interference within its 0.5 normally protected contour affecting substantially less than 10 percent of the population therein. Therefore, it would obviously not be in contravention of the 10-percent rule.

6. In view of the foregoing findings of fact and conclusions, and upon consideration of the entire record in this proceeding, it is concluded that a grant of the application of Quests, Inc., for a construction permit for a new standard broadcast station to operate on 1600 kc with power of 1 kw, daytime only, using a directional antenna at Ashtabula, Ohio, would serve the public interest, convenience, and necessity.

Accordingly, *It is ordered*, This 6th day of March 1962, that unless an appeal to the Commission from this initial decision is taken by any of the parties, or the Commission reviews the initial decision on its own motion in accordance with the provisions of section 1.153 of the rules, the application of Quests, Inc., for a construction permit for a new standard broadcast station to operate on 1600 kc with a power of 1 kw, daytime only, using a directional antenna, at Ashtabula, Ohio, *Is granted*.

PATCHOGUE BROADCASTING Co., INC., DOCKET No. 14381:

Application of Patchogue Broadcasting Co., Inc., for a new standard broadcast station construction permit at Riverhead, N.Y.; granted.

Protest filed by Interstate Broadcasting Co., Inc.; denied.

Section 3.182 (a) (ii) of the rules.—Considered.

(Former) Section 309 (c) of the Communications Act.—Considered.

Economic injury as a separate element for consideration.

Unique service rule.—Rulemaking proceeding as appropriate for reinstatement or further consideration.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON 25, D.C.

In re Application of PATCHOGUE BROADCASTING Co., INC. (WAPC), RIVERHEAD, N.Y. For Construction Permit	}	Docket No. 14381 File No. BP-11663
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APPEARANCES

Messrs. Maurice M. Jansky and Carl H. Imlay, for Interstate Broadcasting Co., Inc.; *Messrs. Samuel Miller and Mark E. Fields*, for Patchogue Broadcasting Co., Inc.; *Mr. Thomas B. Fitzpatrick*, for the Chief, Broadcast Bureau, Federal Communications Commission.

DECISION

(Adopted May 2, 1962)

BY THE COMMISSION: CHAIRMAN MINOW DISSENTING AND ISSUING A STATEMENT IN WHICH COMMISSIONER HYDE JOINS; COMMISSIONER FORD ABSENT.

1. On July 15, 1959, the Commission granted the application of Patchogue Broadcasting Co., Inc. (Patchogue), for a construction permit for a new standard broadcast station at Riverhead, N.Y. The proposed station would operate on 1570 kc, daytime only, with 1 kw of power.

2. In a protest filed August 14, 1959, pursuant to former section 309 (c) of the Communications Act of 1934, as amended, Interstate Broadcasting Co., Inc. (Interstate), licensee of station WQXR (1560 kc, 50 w, New York City) requested (a) that Patchogue's application be designated for hearing on issues specified by Interstate; (b) that Interstate be made a party to the proceeding; and (c) that the effective date of the grant of Patchogue's application be postponed pending the conclusion of the requested hearing. In its protest, Interstate contended that the grant of Patchogue's application would result in a modification of Interstate's license to station WQXR as a consequence of the interference which station WQXR would receive be-

tween its 0.5-mv/m and 0.1-mv/m contours; that it is a party aggrieved or whose interest will be adversely affected by a grant of Patchogue's application because of economic injury; and that the public interest is not served by a grant of Patchogue's application and destruction of the WQXR service in Riverhead, N.Y., area because "the public interest, convenience, and necessity will be better served by the continuance of its [WQXR's] program service in the Riverhead area than by the establishment of the Patchogue service."

3. Interstate's protest was dismissed in *Patchogue Broadcasting Co., Inc.*, FCC 59-936, 18 R.R. 862a, released September 14, 1959. The Commission concluded that Interstate had not alleged facts which show that it is a party in interest to have standing to protest the grant of Patchogue's application, and the Commission further concluded that the facts relied on by Interstate do not show that the grant of Patchogue's application was improperly made or would otherwise not be in the public interest.

4. Interstate appealed the Commission's actions granting Patchogue's application and dismissing Interstate's protest. It was stipulated by the parties that the question presented by the appeal was whether Interstate's "allegations of economic injury, which would result solely from adjacent channel interference * * * were sufficient to establish that, as a matter of law, appellant [Interstate] is a person aggrieved or whose interests are adversely affected within the meaning of section 309(c) of the Communications Act of 1934, as amended, so as to bring this matter within the rule of *Metropolitan Television Co. v. Federal Communications Commission*, 95 U.S. App. D.C. 326, 221 F. 2d 879 [12 R.R. 2001]." In its decision, *Interstate Broadcasting Co., Inc. v. Federal Communications Commission*, 109 U.S. App. D.C. 190, 285 F. 2d 270, 20 R.R. 2112 (1960), the court of appeals stated that though the area, the population, and listeners shown to be affected by Patchogue's proposal are relatively small, other pending applications would have similar effects on Interstate, and hence the "smallness of the immediately disputed facts cannot deny the protestant his right to a hearing." The court further stated that "we are deciding merely that the allegations of Interstate were sufficient to entitle it to a hearing under the doctrine of *Metropolitan [supra]* * * *. We emphasize the fact that we intimate no opinion on the merits of the protest." The court concluded that Interstate was a party in interest within the meaning of section 309(c) of the act, and the Commission's ruling granting Patchogue's application and dismissing Interstate's protest was set aside "so that the Commission may conduct a hearing on Patchogue's application at which Interstate will be a party."

5. At no time prior to the court's decision had an evidentiary hearing been ordered with respect to Patchogue's application; the Commission had previously determined that Patchogue was qualified in all respects. Hence, upon remand from the court of appeals, the first matter to be determined was the issue or issues on which an evidentiary hearing, if any, and at which Interstate could participate as a party, was to be held. To permit a determination of this question, the Commission, in its memorandum opinion and order in *Patchogue Broad-*

casting Company, Inc., FCC 61-1361, released November 20, 1961, designated for oral argument the following question:

To determine whether, if the facts alleged in the protest were proven, grounds have been presented for setting aside the grant of the instant application, and if an evidentiary hearing is required, the scope thereof.

In that same memorandum opinion and order, Interstate was made a party to the proceeding, and it was also afforded an opportunity to file a brief and memorandum of law. Interstate availed itself of that opportunity, and oral argument was held before the Commission en banc on December 15, 1961.

6. Interstate, in its memorandum of law filed December 18, 1961, requested that the following issues be designated for hearing:

a. To determine the extent and nature of the interference, if any, which the Patchogue application and all other presently pending applications would cause to WQXR's present primary service area and other primary services available to such areas of interference, and the nature thereof.

b. To determine whether because of cumulative interference, if any, from Patchogue and other presently pending applications, WQXR is "likely to be financially injured" by a loss of listeners, by a loss of its competitive position vis-a-vis other clear-channel stations, or otherwise.

c. To determine in the light of the loss of WQXR listeners which might result from a grant of the Patchogue application and other presently pending applications, whether the Patchogue proposal would provide a fair, efficient, and equitable distribution of a radio service within the meaning of section 307 (b) of the Communications Act of 1934, as amended.

d. To determine the nature and character of the program services proposed to be provided by Patchogue, and the need therefor.

e. To determine the nature of the program service provided or to be provided by WQXR to the areas, if any, which will be deprived of such service by a grant of the Patchogue proposal, and the need therefor in such areas.

f. To determine whether the public interest, convenience, and necessity will be served by the grant of the Patchogue application.

The issues thus requested differ somewhat both in scope and phraseology from those requested in its protest. The latter read as follows:

1. To determine the areas and populations which will receive primary service from the operation of the station proposed by Patchogue Broadcasting Co., Inc., and the other primary service available to these areas and populations.

2. To determine whether the proposed operation of Patchogue Broadcasting Co., Inc., would involve interference to the presently interference-free groundwave and primary service area of station WQXR, and, if so, the areas and populations affected thereby, and the other services available to those areas and populations.

3. To determine the nature of the program service provided by WQXR to the areas of interference, if any, the nature of the program service provided by other stations to such areas, and in the light thereof to determine whether the public interest would be served by the destruction of the WQXR service in the areas affected.

7. The engineering facts which were alleged in Interstate's protest, and which for purposes of the oral argument before the Commission were accepted as correct, are that station WQXR would receive from Patchogue's proposed station interference beyond station WQXR's 0.5-mv/m contour. The interference would, however, be adjacent channel in nature, and the signal which would be provided by Patchogue's proposed station would be substituted for that of station WQXR.

8. Under the rules, a class I station such as station WQXR is not protected against adjacent-channel interference beyond the 0.5-mv/m contour of the class I station, and hence the interference which station WQXR would receive does not constitute a modification of its license.¹ In seeking to extend the protection of WQXR's signal beyond that station's 0.5-mv/m contour, Interstate is collaterally attacking the Commission's determination that practical considerations necessitate the designation of the 0.5-mv/m contour as the outer limit of protection.² See paragraph 13 of *Catskills, supra*.

9. Interstate also alleges that the programing fare offered by WQXR is unique, and it contends that a grant of Patchogue's application would be in the public interest only if it is first determined, on the basis of an evidentiary hearing record, that the need for Patchogue's proposed service is greater than the need for the WQXR service which would be lost. It is Interstate's view that only if such a determination has been made is there any basis for concluding that it is in the public interest to deprive any of WQXR's listeners located beyond the 0.5-mv/m contour of that station of the continued opportunity of listening to WQXR's programs.

10. The contentions thus advanced by Interstate constitute an attempt on its part to reinstate, on an ad hoc basis, the unique service rule, which was deleted in 1957.³ One of the reasons for the deletion of this rule is that its application resulted in expensive and time-consuming hearings and thus tended to induce applicants to abandon their proposals or to alter their proposals to protect established stations despite the fact that the watered-down proposals may render less service.⁴ In our rulemaking leading to the deletion of the unique service rule, it was determined that the advantages to be gained by granting extended protection to a station offering unique service were outweighed by the harmful effects which such extension would precipitate. Interstate has not alleged, much less shown, that the public-interest considerations underlying the deletion of the unique service rule are not applicable to the circumstances of this proceeding. Absent such a showing, Interstate's request for an evidentiary hearing is thus in direct conflict with the cited public-interest consideration underlying the deletion of the unique service rule. Its request cannot be granted without either ignoring or reconsidering this public-interest consideration.

11. An adjudicatory proceeding such as this is not the appropriate forum for reconsideration of the reasons underlying the deletion of

¹ See *Patchogue Broadcasting Co., Inc.*, FCC 50-936, 18 R.R. 862a (1950); *Catskills Broadcasting Co.*, FCC 61-619, 21 R.R. 593 (1961). In these Commission opinions, Interstate's contentions to the contrary were fully considered and rejected. We adhere to views expressed in the cited opinions. Neither in its protest nor in its memorandum of law does Interstate advance any new arguments concerning the degree of protection afforded class I stations against adjacent-channel interference outside their 0.5-mv/m contours.

² Only under limited circumstances, not here present, is a class I station's signal protected beyond its 0.5-mv/m contour. As stated in par. 13 of *Catskills, supra*, this protection is accorded in order to assure some service to sparsely populated areas even though its signal is not satisfactory.

³ The provisions of this rule and the reasons for its deletion are discussed in par. 14 of *Catskills, supra*.

⁴ Interstate was a party to the rulemaking proceeding leading to the deletion of the unique service rule, and in that proceeding it stressed the importance of the programing offered by WQXR as a reason for not deleting this rule.

the unique service rule. The advantages and disadvantages of the rule were carefully weighed in a rulemaking proceeding in which all interested parties had an opportunity to participate and in which Interstate was one of the participants. Our decision to delete the rule did not rest on the circumstances of one case, or of one licensee such as Interstate; it was based instead upon the overall public advantages and disadvantages of the rule. A course of action, such as that now advocated by Interstate and which would serve to revive the rule, would have effects not limited to this proceeding or to one licensee such as Interstate; other licensees could demand that they, too, be given similar consideration, and there would then be re-created the very conditions which in our rulemaking we determined were not conducive to the institution of new and efficient broadcast services. If the unique service rule is to be reinstated, either in its original form or in some modified form, it should be done only after the overall effects of such reinstatement are evaluated, and the appropriate forum to consider such reinstatement is a rulemaking proceeding in which all interested parties have an opportunity to participate. Interstate may, of course, petition for rulemaking looking to the reinstatement of the unique service rule, either in its original or in a modified form, and it may take similar steps to extend beyond the 0.5-mv/m contour the protection presently accorded class I stations against adjacent-channel interference. An adjudicatory proceeding is not, however, the appropriate forum in which to pursue either objective.

12. The claim of economic injury made by Interstate in its protest has been upheld by the court of appeals for purposes of giving it standing to file a protest to the grant of Patchogue's application. Interstate did not and does not allege that its ability to serve the public would be affected adversely as a result either of the grant of Patchogue's application, or as a result of a grant of Patchogue's application and of other applications which would cause station WQXR to lose listeners outside its normally protected contour.⁵ Hence, the rule of *Carroll Broadcasting Co. v. FCC*, 103 U.S. App. D.C. 346, 258 F. 2d 440, 17 R.R. 2066 (1958), is inapplicable. Absent an allegation that the economic injury would tend to impair its ability to serve the public, it is clear that the economic injury—though sufficient to give standing—does not of itself constitute a separate and independent element to be taken into account in determining whether an application should be granted. See *FCC v. Sanders Brothers Radio Station*, 309 U.S. 470, 9 R.R. 2008 (1940).

13. It is thus clear that (a) a grant of Patchogue's application would not result in objectionable interference to station WQXR

⁵ In its memorandum of law, Interstate stated:

"It [Interstate] will also prove that such a loss of its listening-following will cause a 'likelihood of financial injury,' which the court of appeals noted was sufficient to make Interstate an aggrieved party in this proceeding. When an existing licensee offers to prove that the economic effect of other applications would be detrimental to the public interest, the Commission should afford an opportunity for presentation of such proof, under the decision written by Judge Prettyman in *Carroll Broadcasting Co. v. FCC*, 258 F. 2d 440, 443 (C.A.D.C.) (1958). In this case where several copending applications are to be considered as a cumulative problem, the necessity for hearing on this issue is especially apparent." Though citing the principle enunciated in *Carroll*, Interstate at no time alleged that the economic injury would impair its ability to serve the public. Had such allegation been made, a comparison of the relative merits of the operations of Patchogue and Interstate might be in order. See *Herbert P. Michels*, 17 R.R. 557, 560 (1958).

or result in a modification of Interstate's license; (b) since the interference area lies beyond Interstate's normally protected 0.5-mv/m contour, and since the unique service rule has been deleted, the programming fare offered by station WQXR is not a matter to be considered in connection with the ultimate public-interest determination of whether Patchogue's application should be granted; and (c) since Interstate has not alleged that its ability to serve the public would be affected adversely by the economic injury which it would receive as a result of the grant of Patchogue's application and/or by the grant of other applications which would cause station WQXR to lose listeners beyond its normally protected 0.5-mv/m contour, Interstate's economic injury is not a separate and independent element to be taken into account in determining whether the grant of Patchogue's application would be in the public interest. Interstate's request for an evidentiary hearing seeks, in effect, an extension of its protected area beyond its 0.5-mv/m normally protected contour; it is not requesting the waiver of any rule. It is, however, in effect requesting that we either abandon, or not regard as controlling in this proceeding, the policy objectives underlying the deletion of the unique service rule. Any decision to abandon these policy objectives should be taken only after all interested parties have had an opportunity to present their views in a rulemaking proceeding. Interstate's request for an evidentiary hearing is in direct conflict with these policy objectives, and this conflict can be resolved in Interstate's favor only upon a showing that the circumstances of this case present countervailing policy considerations and objectives. No such circumstances have been shown to be present.

14. In view of the conclusions reached in paragraph 13 hereof, it is clear that none of the issues requested by Interstate in its protest and in its memorandum of law is relevant to an ultimate decision in this proceeding. Thus, issues *d* and *e* requested in the memorandum of law and issue 3 requested in its protest presuppose that the unique service rule is still in effect. Issue *a* in its memorandum of law and issues 1 and 2 in its protest presuppose that station WQXR is, under our engineering rules, protected against adjacent-channel interference outside its 0.5-mv/m contour; the further request in issue *a* as to whether the pending proposals would cause interference to station WQXR is irrelevant since the Patchogue proposal would not cause objectionable interference to WQXR. Issue *c* of its memorandum of law proceeds from the same erroneous premise; 307(b) considerations are not applicable in the absence of objectionable interference.⁶ The request for issue *b* of the memorandum of law is not supported by allegations that the economic injury to Interstate might tend to result in possible diminution of its ability to serve the public; for the reasons indicated above, in the absence of such allegations it is clear that the economic injury to Interstate does not constitute a separate and independent element to be taken into account in determining whether Patchogue's application should be granted. Issue *f* requested in the memorandum of law is a general public-interest issue; since nothing

⁶ *Star of the Plains Broadcasting Co. v. FCC*, 267 F. 2d 629 (C.A.D.C., 1959), and *Democrat Printing Co. v. FCC*, 202 F. 2d 298 (C.A.D.C., 1952), cited by Interstate, do not support a contrary conclusion. In both of these cases, the interference area was within the existing station's normally protected contour.

has been alleged by Interstate which would require a hearing on this issue, no purpose would be served by specifying such a hearing issue.

15. It is strenuously urged by Interstate that the court of appeals' decision as to its standing to file a protest requires the Commission to hold an evidentiary hearing. We do not so construe the court's decision. The court expressly stated that it was not ruling on the merits of the protest. In accordance with the court's decision, Interstate was made a party, and, as such, was given full opportunity to present for the Commission's consideration all matters which it deemed relevant to the question of whether a grant of Patchogue's application would be in the public interest. As has been concluded herein, none of the matters advanced by Interstate is relevant to the ultimate public-interest determination. Under these circumstances, no useful purpose would be served by holding an evidentiary hearing on any of the issues requested by Interstate. We do not agree with Interstate that it is fair interpretation of the court's decision that an evidentiary hearing must nevertheless be held, or that, in using the term "hearing" the court necessarily meant an evidentiary hearing. Interstate's reliance upon a number of court of appeals' decisions⁷ as supporting a contrary view is misplaced. Both in *Philco* and *Federal Broadcasting*, the court made it clear that some fact or situation must be alleged tending to show, if established at a hearing, that a grant of the license would contravene the public interest; in the absence of such an allegation, an evidentiary hearing need not be held. In *Clarksburg*, the court was of the view that a sufficient showing had been made. In the instant proceeding, none of the allegations made by Interstate has any relevance whatever to the ultimate public-interest determination. Interstate's further argument, also based on *Clarksburg*, that a full evidentiary hearing must be held to permit the development of matters beyond those alleged in the protest presumes, contrary to fact,⁸ that the Commission has any reason to believe, either from the protest or its own files, that a full evidentiary hearing may develop other relevant information not in the possession of the protestant.

Accordingly, *It is ordered*, This 2d day of May 1962, that the protest filed by Interstate Broadcasting Co., Inc. (WQXR), on August 4, 1959, *Is denied*.

It is further ordered, That the above-captioned application of Patchogue Broadcasting Co., Inc. (BP-11663), *Is granted*, subject to the following condition:

Before program tests are authorized, permittee shall submit sufficient data made with appropriate equipment and in coopera-

⁷ *Clarksburg Publishing Co. v. FCC*, 225 F. 2d 511, 514-515, 12 R.R. 2024 (C.A.D.C., 1955); *Philco Corp. v. FCC*, 293 F. 2d 864, 21 R.R. 2079 (C.A.D.C., 1961); *Federal Broadcasting System v. FCC*, 225 F. 2d 560, 563-565, 12 R.R. 2048 (C.A.D.C., 1955).

⁸ In its memorandum of law, Interstate makes reference to a letter of Dec. 5, 1961, to the Commission from RCA Communications, Inc. In that letter, RCAC noted the condition which was added on Nov. 2, 1960, to Patchogue's construction permit and which is identical to the one included herein, and it stated that tests which it made in conjunction with Patchogue have not demonstrated conclusively that the cross-modulation problem can be avoided. Since Patchogue's grant is being made subject to the condition that harmful cross-modulation will not occur, the cross-modulation problem does not require that an evidentiary hearing be held to determine whether Patchogue's application for a construction permit may be granted.

tion with RCAC to establish that harmful cross-modulation interference will not occur to the RCA receiving operations at Riverhead, N.Y.

DISSENTING STATEMENT OF CHAIRMAN MINOW, IN WHICH COMMISSIONER
HYDE JOINS

The majority fails to consider the harm which a grant of the Patchogue application will cause to the public. The harm alleged is the loss of unique program service rendered by station WQXR to a significant number of listeners. Former section 309(c) of the act, which governs this case, requires that we accept this allegation as true in deciding whether an evidentiary hearing on the Patchogue application is required. Yet, the majority holds that, simply and solely because the affected listeners reside beyond the WQXR service contours which are protected by our rules, their loss of service must be ignored.

I think this holding attributes to our standard broadcasting allocation rules a rigidity which they were never intended to have. Further, I think it cannot be justified under the governing public interest standard, because it places the administrative convenience of the Commission and applicants for new or changed facilities ahead of the interests of the listening public.

The Commission's standard broadcast allocation rules were not originally intended to impose a flat, arbitrary limit upon the protection which might be extended to needed service. Until 1957, specific provision was made in the rules (or in the Standards of Good Engineering Practice) for protection of unique service, on a case-to-case basis, beyond the contours specified for normal protection. The majority, however, relies upon a 1957 order which deleted the so-called "unique service rule," and adopted a blanket policy of refusing to protect service beyond specified contours. 16 R.R. 1501. The protestant, it holds, has failed to show any reason why that policy should not control this individual case; nor does the majority think the protestant is entitled to a full reconsideration of the general policy announced in 1957 in this limited adjudicatory proceeding.

The 1957 order was based on these conclusions: that the unique service rule had served "little or no useful purpose since its adoption"; that its provisions were "too vague and indefinite to be of any assistance in the filing and processing of applications for new and improved standard broadcast facilities" and had "prompted much uncertainty as to the protection to be afforded to and by standard broadcast stations"; that this defect could not be overcome through greater specificity because it had proved impossible to formulate any general definition of what constituted the "same general program service"; that the rule "may discourage applicants and prospective applicants for new and improved AM facilities by threatening expensive, time-consuming hearings" and that it "may tend to persuade applicants to

alter their proposals to protect established stations despite the fact that the watered-down proposals may render less service" (16 R.R. 1504, par. 13). In essence, the Commission held that the public interest demands a fixed limit to the protection which will be afforded to existing service—without any exception whatsoever for service beyond that limit which is uniquely valuable to the listeners who stand to lose it if a new station is authorized.

It is immaterial whether this approach to the protection of service from interference is characterized as a "rule," which might be "waived" in appropriate circumstances, or as a "policy," which might be held "not controlling" in an individual case where "countervailing policy considerations" were shown to exist. The heart of the matter lies in the Commission's refusal to provide *any* protection not specified in its rules, no matter *what* "countervailing considerations" are shown. It is hardly possible to make an exception to a policy of making no exceptions without destroying the policy; thus it is erroneous to suggest that the protestant before us has had a meaningful opportunity to show that the 1957 policy does not control its individual case.

Nor will it do to suggest that the 1957 policy may be attacked only in rulemaking proceedings, where all interested parties would have an opportunity to present their views. It may well be reasonable to adhere, for adjudicatory purposes, to a general policy which was *validly* adopted in rulemaking proceedings, relegating all attacks upon a continuation of that policy to further rulemaking. Cf. *Coastal Bend Television Co. v. FCC*, 98 U.S. App. D.C. 251, 234 F. 2d 686. But the claim before us is that the policy adopted in 1957 was and is totally invalid, because it conflicts with the governing statute. We cannot refuse to consider such a claim. Cf., *Functional Music, Inc. v. FCC*, 107 U.S. App. D.C. 34, 274 F. 2d 543, cert. den., 361 U.S. 813.

For these reasons, I think we should consider the validity of our 1957 determination here. On consideration of its validity, I would reject that determination as arbitrary and unjustified. The Commission's 1957 statement that application of the "unique service" principle "may" tend to discourage meritorious applications for new or improved AM facilities was not based on any investigation, much less finding, of the facts in this regard. Nor does the suggestion that the rule had acted as a significant deterrent to the filing and prosecution of such applications square with the fact that between 1939 and 1956, while the "unique service" principle was in effect, the number of authorized AM stations rose from 774 to 3,020. (6 FCC Annual Report 118; 22 FCC Annual Report 119.) In the face of this explosion in the number of authorized facilities, we cannot reasonably conclude that stimulation of new services is so vital that the cost in terms of loss of existing service beyond protected contours must *always* be disregarded.

The remaining reasons for the 1957 determination are also insufficient. True, a general definition of "unique service" is not available.

But this does not justify a refusal to even consider whether service of a particular station to particular listeners is so uniquely valuable to those listeners as to warrant its protection. The essence of the "unique service" principle lies in the thought that general definitions cannot capture the public interest for all times and all cases—that room must be left for the play of an informed judgment. Similarly, the fact that the rule created uncertainty and did not provide "assistance in the filing and processing of applications for new and improved standard broadcast facilities" does not justify total inflexibility. Considerations of administrative convenience cannot outweigh considerations rooted in service to the public.

Certainty is desirable for many purposes. If, for example, we are seeking to promote rapid expansion of a new service, to avoid piecemeal degradation of an established service, or to lay down a nationwide plan for the development of a service, the promulgation of flat and easily understood rules may be wholly appropriate, if not mandatory. But there is no rule of general applicability so all-encompassing in its wisdom that we need not hold ourselves open for the possibility that a waiver may be required in some individual case. *United States v. Storer Broadcasting Co.*, 351 U.S. 192, 205. And the ultimate end for which we labor is not to produce the greatest certainty but rather to produce the service of greatest value to the public.

This leads to the question of whether the protestant before us has made out a truly exceptional case which requires a hearing. The Patchogue application—which the protestant would have us deny—brings to Riverhead, N.Y., its second local service; it also brings additional new service to a substantial number of people in surrounding areas. Against these benefits, the protest alleges the loss of a unique service by a smaller, but significant, number of people.¹ If this allegation is taken as true, I am not prepared to say that the benefits of the grant outweigh its defects. The significance of the benefits should be weighed in a hearing, where the amount and character of existing service to Riverhead and surrounding areas can be determined, the relationship of Riverhead to nearby metropolitan centers can be explored, the factual underpinnings of the protestant's claim that the service of WQXR is uniquely valuable to the residents of the interference area can be tested, and all relevant factors can be considered.²

¹ The protestant's showing as to the "uniqueness" of the WQXR service in the interference area is perhaps somewhat lacking in specificity. However, former sec. 309(c) required "merely an articulated statement of some fact or situation which would tend to show, if established at a hearing, that the grant of the license contravened public interest, convenience, and necessity." *Federal Broadcasting System, Inc. v. FCC*, 96 U.S. App. D.C. 260, 225 F. 2d 560, cert. den., 350 U.S. 923. I think the protestant's showing meets this standard. I take no position on the question of whether that showing would be sufficient under the present terms of sec. 309.

² The court has directed our attention to the larger problem inherent in a series of recent grants or pending applications which threaten interference to the service of WQXR outside its protected service contour. *Interstate Broadcasting Co. v. FCC*, 109 U.S. App. D.C. 190, 285 F. 2d 270. I do not think it necessary to consolidate all of such proceedings. The principle involved—whether unique service beyond the specified contours may ever be protected—is the same; but the individual problem which each case presents is different, depending upon the existing and proposed services involved.

In such a hearing, I would place the burden of proof upon the protestant. For we are dealing with a claim that service which is not normally considered reliable enough to warrant its protection, at the expense of new services in adjacent areas and across the country, should yet receive protection. The burden of justifying such extraordinary action should be upon its proponent.

We should not, however, foreclose the protestant's opportunity to carry this burden. If its service to residents of the interference area is of unique importance, we should not sacrifice that service without good reason. Otherwise we place our administrative rules ahead of the needs of the listening public.

32 F.C.C.

IOWA GREAT LAKES BROADCASTING Co. (KICD), DOCKET No. 13102 ET AL.:

Decision granting, inter alia, the application of Bloomington Broadcasting Corp. (WJBC) and Radio Moline, Inc. (WQUA); affirmed.

Section 3.24(b) of the rules.—Broadcast facilities; showing required.

Section 3.21(c) of the rules.—Signal strength; intensity required.

Burden of proof.—Nature of evidence required under the issues.

Class IV stations.—Showing required for power increases.

Directional antenna.—Requirement that directional antenna be used.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON 25, D.C.

<p>In re Applications of IOWA GREAT LAKES BROADCASTING Co. (KICD), SPENCER, IOWA WSBC BROADCASTING Co. (WSBC), CHICAGO, ILL. CORNBELT BROADCASTING CORP. (KFOR), LIN- COLN, NEBR. WTAX, INC. (WTAX), SPRINGFIELD, ILL. WJMC, INC. (WJMC), RICE LAKE, WIS. BLOOMINGTON BROADCASTING CORP. (WJBC), BLOOMINGTON, ILL. GRANITE CITY BROADCASTING Co. (WJON), ST. CLOUD, MINN. SOUTHERN WISCONSIN RADIO, INC. (WCLO), JANESVILLE, WIS. MARSHALL ELECTRIC Co. (KFJB), MARSHALL- TOWN, IOWA RADIO MOLINE, INC. (WQUA), MOLINE, ILL. NORTH PLATTE BROADCASTING, INC. (KODY), NORTH PLATTE, NEBR. WAPELLO COUNTY BROADCASTING Co. (KBIZ), OTTUMWA, IOWA For Construction Permits</p>	<p>Docket No. 13102 File No. BP-12386 Docket No. 13114 File No. BP-12503 Docket No. 13120 File No. BP-12697 Docket No. 13130 File No. BP-12819 Docket No. 13131 File No. BP-12831 Docket No. 13132 File No. BP-12835 Docket No. 13134 File No. BP-12935 Docket No. 13138 File No. BP-13048 Docket No. 13139 File No. BP-13086 Docket No. 13144 File No. BP-13151 Docket No. 13145 File No. BP-13152 Docket No. 13146 File No. BP-13154</p>
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MEMORANDUM OPINION AND ORDER

(Adopted May 2, 1962)

BY THE COMMISSION: CHAIRMAN MINOW NOT PARTICIPATING; COMMISSIONER FORD ABSENT.

1. There is before the Commission a petition for reconsideration filed by La Salle County Broadcasting Corp., licensee of station WLPO (class II), La Salle Ill., on December 13, 1961, and oppositions filed in response thereto.

32 F.C.C.

2. Petitioner requests that we reconsider and reverse our decision of November 13, 1961 (31 FCC 905), insofar as it grants the applications of Bloomington Broadcasting Corp. (WJBC) and Radio Moline, Inc. (WQUA), licensees, respectively, of class IV stations at Bloomington and Moline, Ill. The facts are as stated in the decision and they are incorporated here by reference.

3. Specifically, petitioner claims that no proof of a present deficiency in signal intensity exists in the case of these applicants and that consequently power increases are not necessary for them to render "primary service" as required by the Commission's Technical Standards. Our report and order of June 2, 1958 (docket No. 12064, 17 R.R. 1541), indicates that increased signal intensity is desirable to overcome a nationwide pattern of added manmade noises, electrical interference, and urban expansion. Moreover, we found that in all but rare exceptions, such a pattern exists throughout the country. This being so, a need for uniform power increases by class IV stations was concluded to exist. Petitioner has not demonstrated, nor in the course of the hearing even challenged, that in the particular instances this was not the case. Its argument in this respect, therefore, is not well taken.

4. Petitioner again insists there was a failure of proof of a need for the WJBC and WQUA services in the proposed gain areas outweighing the need for the service of WLPO which would be lost due to new interference from such stations. Our decision points out that no evidence as to the comparative needs of these areas was required since petitioner did not seek enlargement of the issues to encompass such an inquiry. Petitioner now contends that at the time of the original grant of WLPO's license application it was presumed that a need for its service existed within its entire interference-free contour; and that, in the absence of any other evidence, the Commission must assume that the need for its class II service in the interference area is greater than the need for class IV service which would be provided outside of the community and the rural and suburban areas contiguous thereto. The need presumed to exist at the time of original grant of WLPO's application was not fixed for all time. As determined here, the normally protected contour of a station may be intruded upon where, in the words of section 3.24(b) of the rules, the need for the proposed service outweighs the need for the service that will be lost by reason of objectionable interference. This is the precise determination which was made in the instant proceeding. As noted in our decision, presumably WLPO's programming in the interference area meets no special need of the population therein, for otherwise it would have petitioned for enlargement of the issues so that without question its programming to the interference area would have been a proper subject of inquiry. See *Mid-America Broadcasting System, Inc.*, 19 R.R. 889 (1960); *Washington Broadcasting Co. (WOL)*, 32 FCC 525, 22 R.R. 1092 (1962).

5. Petitioner also reargues that the overall adverse impact on the public in terms of losses of service would be less if the WJBC and WQUA applications are denied and their current operations suffer the added interference flowing from the other proposals in this pro-

ceeding. Our decision at paragraph 10 indicates that the applications must be evaluated in light of the particular nature and circumstances of this proceeding where the applicants are striving to effectuate the aims for improved nationwide service enunciated in our report and order, *supra*. The overall public benefit to be realized from a nationwide chain of local power increases by class IV stations occupies a position of significant decisional importance in assessment of these applications. Logically, considering the applications in this proceeding as a whole, grant of the WJBC and WQUA applications would achieve a more efficient balance between restricted use of frequencies and interference, and would obviate potential problems arising from a chain reaction of opposition to the other applications herein otherwise granted. It should be noted that within WQUA's normally protected contour, 17,128 persons now receiving its service would lose that service if WQUA's application were denied and all others herein were granted.¹ This is an additional overall public-interest consideration favoring grant of WQUA's application.

6. A further aspect of the petition warranting comment is the argument that WJBC and WQUA were obligated to hold interference to WLPO to a minimum by employing directional antennas. We spoke briefly of the directional antenna question in our 1958 report and order, and in our report and order of May 4, 1961 (FCC 61-601), relating to the processing of class IV applications, we stated:

Thus it behooves each class IV applicant for power increase to 1 kw, to consider carefully its proposal and to avoid objectionable interference, to other than class IV operations, by utilization of a directional antenna system, *lest action on its application be delayed pending completion of the hearing process.* [Emphasis added.]

As this language indicates clearly, we were merely reminding potential class IV applicants that objectionable interference to other than class IV stations could delay action on their applications because of the possibility of protracted hearings. They were thereby cautioned that in the interest of expeditious action on their applications they would be well advised to assess the possibility of using directional antennas. The language was not intended to impose a mandatory obligation upon applicants to propose the use of directional antennas.

7. The remaining contentions of WLPO have been sufficiently considered and treated in our decision in this proceeding.

Accordingly, *It is ordered*, This 2d day of May 1962, that the petition for reconsideration filed on December 13, 1961, by La Salle County Broadcasting Corp. *Is denied.*

¹ As to WQUA, such a finding was not made in the initial decision. Upon reconsideration of this matter, WLPO's exception (No. 3) to the omission of such finding is granted to the extent that the findings of fact are amended to include the following:

"If the proposal of WQUA is denied and all other proposals herein are granted, WQUA's existing operation would suffer additional interference within the 0.5-mv/m contour affecting 17,128 persons. Such interference would raise the total population within that contour so affected to 39,429 (WQUA exhibit 1, p. 6)."

WPET, INC. (WPET), DOCKET NO. 13225:

Petition of WPET, Inc., for reconsideration of decision denying that portion of its application requesting nighttime operation, or, in the alternative, for remand and further hearing; and for oral argument on its petition; denied.

Section 3.28 (d) of the rules.—Waiver elements reviewed.

Alleged newly discovered evidence.—Considered.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON 25, D.C.

<p>In re Application of WPET, INC. (WPET), GREENSBORO, N.C. For Construction Permit</p>	}	<p>Docket No. 13225 File No. BP-11742</p>
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MEMORANDUM OPINION AND ORDER

(Adopted May 2, 1962)

BY THE COMMISSION: CHAIRMAN MINOW CONCURRING IN THE RESULT;
COMMISSIONER BARTLEY NOT PARTICIPATING; COMMISSIONER FORD
ABSENT.

1. The Commission has before it a petition for reconsideration filed by WPET, Inc., on December 6, 1961, directed to the decision of the Commission released November 6, 1961 (31 FCC 882). The decision granted that portion of WPET's application to increase daytime power of station WPET at Greensboro, N.C. (950 kc), from 500 w to 5 kw. However, we denied that portion of its application requesting nighttime operation because it would receive interference affecting 65.5 percent of the population within its 2.5-mv/m normally protected contour. We concluded that no circumstances were shown to warrant such substantial noncompliance with the 10-percent requirements of section 3.28(d)(3) of our rules. WPET requests that the Commission reconsider and grant its nighttime proposal or remand the proceeding to the examiner for further hearing; it also requests oral argument on its petition. The Broadcast Bureau opposes these requests.

2. In seeking reconsideration and grant of its entire application, WPET asserts that adequate grounds exist for waiver of section 3.28(d)(3) insofar as its nighttime proposal is concerned. Among the facts urged in support of waiver are the competitive effect of its nighttime proposal, WPET's lack of network affiliation, the number of persons to whom a new primary service nighttime would be brought, and the lack of interference caused to other nighttime stations. These factors were considered in paragraphs 7-9 of the decision. The Commission adheres to the views therein expressed.

32 F.C.C.

3. In addition to the foregoing arguments previously disposed of, WPET urges consideration of several new factors in support of its waiver request: (a) the substantial number of persons who would receive a new primary nighttime service would be increased considerably if 1960 rather than 1950 U.S. census figures were used—an increase from 110,697 persons to 155,882 persons; (b) WPET's application is the only one which has been filed in 4 years proposing a nighttime operation in Greensboro, and the denial thereof may doom Greensboro to never receiving additional nighttime service from any source; and (c) WPET's nighttime proposal would provide coverage to a gray area involving approximately 50 persons. The 1960 population figures are unacceptable since WPET has made no showing as to the effect of 1960 data on the population which would be lost as a result of interference. However, even assuming that the loss were the same as for 1950, we are not persuaded that the population gain realized by use of the later figures justifies waiver in light of the very substantial noncompliance with the requirements of section 3.28(d)(3) of the rules. That denial of WPET's application may doom Greensboro to never receiving additional local nighttime service is purely speculative. Finally, WPET's request to receive evidence as to its extremely small gray area coverage was denied by the Commission at oral argument as untimely and must still be rejected on the same ground.

4. WPET contends that the Commission's concern with degradation of 950 kc was misplaced. It argues that there is nothing in the record to suggest that a more efficient use of the frequency is possible, and, in addition, it submits an engineering affidavit in which the view is expressed that a more efficient use is not possible. The short answer to these contentions is that the burden was on WPET as the applicant to establish during the hearing that it was entitled to waiver of the 10-percent rule, and that in meeting that burden, WPET had the responsibility of introducing such evidence, as in its view, was necessary to the successful prosecution of its case. WPET's failure to make a showing which the Commission deemed adequate to outweigh the defects in its proposal does not, of course, entitle it to change and improve its case at this late date. Moreover, WPET's engineering affidavit does not provide any basis for reconsidering the conclusion reached in our decision as to the degradation of the frequency since it consists mainly of the conclusionary statements of its consulting engineer and lacks factual showings (maps depicting the areas concerned or the location of the various stations and their field strength contours) necessary to support its claims. In addition, the defective affidavit also requires denial of WPET's alternative request since it falls far short of making the necessary *prima facie* showing to warrant a remand for further evidentiary hearing on the question of whether WPET's proposed operation would be the most efficient possible nighttime use of the frequency. Finally, even if WPET had demonstrated, as it claims, that its nighttime proposal is the most efficient use of 950 kc within WPET's proposed normally protected 2.5-mv/m contour, there would still remain the problem of the degradation of 950 kc beyond that contour which results from inefficient

operations and which section 3.28(d)(3) of the rules is designed to prevent. WPET fails to show other considerations which either outweigh the undesirable effects of its proposed inefficient operation or negate our holding in the *Matter of Revision of the Ten Per Cent Rule* (10 R.R. 1595, 1958 (footnote 2), and 10 R.R. 1600 and 1600e) that assignments must be restricted to avoid appreciable degradation of overall service by the unrestricted addition of a large number of new stations whose interference, while individually negligible, is not negligible when viewed as a whole.

5. WPET's final argument is that "the benefits derived from a grant of its daytime proposal [should] be considered as one of the factors in favor of a grant of its nighttime proposal." It does not attempt to show the relevance of this argument to the question of whether its nighttime noncompliance with the 10-percent rule should be waived, nor is the relevance of this argument evident.

6. It is contrary to the general practice of the Commission to hear oral argument on a petition for reconsideration. WPET has not alleged any special circumstances to warrant an exception to our general practice. Its request for oral argument is, therefore, denied.

Accordingly, *It is ordered*, This 2d day of May 1962, that the petition filed December 6, 1961, by WPET, Inc., for reconsideration *is denied* in all respects.

32 F.C.C.

GEORGE L. SCOTT (WK-6448), DOCKET No. 14355:

Order revoking ship radio station license, effective June 11, 1962.

Section 1.76 of the rules.—Failure to respond to official notice of violation and other official correspondence.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON 25, D.C.

<p>In the Matter of GEORGE L. SCOTT, 814 AMELIA DRIVE, FERNAN- DINA BEACH, FLA. Order To Show Cause Why There Should Not Be Revoked the License for Radio Station WK-6448 Aboard the Vessel <i>Miss Satellite</i></p>	}	Docket No. 14355
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MEMORANDUM OPINION AND ORDER

(Adopted May 2, 1962)

BY THE COMMISSION: COMMISSIONER FORD ABSENT.

1. By order to show cause released November 1, 1961, the Commission, pursuant to sections 312(a) (4) and 312(c) of the Communications Act of 1934, as amended, directed George L. Scott to show cause why his license for radio station WK-6448 aboard the vessel *Miss Satellite* should not be revoked for repeated violations of section 1.76 of the Commission's rules (47 CFR 1.76).

2. The show-cause order alleged that respondent had repeatedly violated section 1.76 of the rules in that he failed to respond to an official notice of violation mailed on July 13, 1961, and a followup letter dated August 14, 1961. The official notice of violation charged that respondent had installed aboard the subject vessel a radio transmitter different from that authorized by the station license, in violation of section 8.21 of the Commission's rules. Such notice expressly requested respondent to reply within 10 days. The Commission's letter dated August 14, 1961, advised respondent of his failure to reply to the official notice of violation and requested that a response be submitted within 15 days of that letter. No reply was received.

3. In addition to the foregoing, the show-cause order detailed the procedural rights of the respondent, including his right to a waiver of hearing, if he so desired, and to submit a statement in mitigation or justification. The respondent, under date of November 6, 1961, replied to the show-cause order, waiving his right to a hearing and submitting a written statement. Accordingly, on January 12, 1962, the Acting Chief Hearing Examiner terminated the proceeding and certified the matter to the Commission in accordance with section 1.78(c) of the rules.

32 F.C.C.

4. Respondent, in his written statement of November 6, 1961, filed in response to the order to show cause, represented that the operation of the radio station aboard the vessel *Miss Satellite* had been terminated. At the same time, respondent filed an application for station license, to authorize the operation of the equipment actually installed aboard the ship.

5. The Commission's records indicate that on September 9, 1961, the respondent personally received a letter from the Commission dated September 8, 1961, calling attention to the matter of his failure to reply to the above-mentioned official notice of violation and revocation warning letter, and notified him that unless reply to such letter was made within 15 days of its receipt, proceedings for the revocation of his license would be instituted. Scott has furnished no explanation for his failure to reply to this letter nor as to why, upon its receipt, action was not taken with respect to the outstanding official notice of violation and revocation warning letter. Moreover, he has left unexplained the inconsistency between his representation that correspondence from the Commission prior to the latter part of October 1961 was received by his wife, but not brought to his attention and his personal receipt of the September 8 letter. Additionally, the Commission has noted that at the time of the inspection of his station on June 20, 1961, the posted license showed an issuance date of November 1, 1958, and called for the installation of an Apelco AE 75M transmitter. The Commission's records indicate that this license was modified on the basis of an application filed by the respondent on December 31, 1958, and that a Raytheon Ray 75 A1 transmitter was required to be installed. The equipment actually found aboard the vessel was a Raytheon 75A transmitter which is not type accepted for use in the class of station operated by the respondent.

6. In view of the above, the Commission has concluded that the respondent has repeatedly violated section 1.76 of its rules and that the facts and circumstances in connection with such violations require the revocation of respondent's license. However, in the light of Scott's representation that the unauthorized operation of the Raytheon 75A transmitter was terminated on November 6, 1961, and in view of the fact that the respondent has filed an application which will be handled administratively, the revocation of his license without prejudice to the consideration of a proper application no less than 30 days from the effective date of this order is warranted.

Accordingly, *It is ordered*, This 2d day of May 1962, that the license of George L. Scott, Fernandina Beach, Fla., for radio station WK-6448 aboard the vessel *Miss Satellite* is revoked effective June 11, 1962, and that the provisions of section 1.551 of the Commission's rules are waived to the extent necessary to permit consideration of a proper application for station license no less than 30 days from the effective date of this order.

WBUD, INC., DOCKET No. 12952 ET AL.:

Petition of Concert Network, Inc., for reconsideration of the Commission's decision released January 15, 1962; denied.

Relative importance of comparative criteria in the light of the standard of the public interest, convenience, and necessity; standard of community needs; discussed.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON 25, D.C.

In re Applications of WBUD, INC., TRENTON, N.J. CONCERT NETWORK, INC., TRENTON, N.J. For Construction Permits for New FM Broadcast Stations	}	Docket No. 12952 File No. BPH-2600 Docket No. 12953 File No. BPH-2619
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MEMORANDUM OPINION AND ORDER

(Adopted May 9, 1962)

BY THE COMMISSION: COMMISSIONER HYDE ABSENT; COMMISSIONER FORD NOT PARTICIPATING.

1. The Commission, on January 15, 1962, released its decision¹ in the above-captioned proceeding, granting the application of WBUD, Inc. (WBUD), for a new class B FM broadcast station in Trenton, N.J., and denying the application of Concert Network, Inc. (Concert), for a similar facility in Trenton. A petition for reconsideration of the decision, filed by Concert on February 14, 1962, is now before us for consideration. Oppositions thereto have been filed by WBUD and the Chief of the Commission's Broadcast Bureau.

2. This was a comparative proceeding. Essentially, WBUD's definite preferences in local residence and civic participation, slight preferences in programing and in planning and preparation, and preference in integration of ownership and management, were concluded to outweigh in importance the distinct preference given to Concert with respect to areas and populations, slight preference in diversification of business interests, and preference (assumed) because of its wholly nonduplicative FM format. From WBUD's preferences, a greater responsiveness to community needs and a greater likelihood of effectuation of program proposals was found to exist.

3. Concert charges that although WBUD properly received preferences for local residence, civic participation, planning and preparation, and integration of ownership and management, in the light of *WJR, The Goodwill Station*, 9 R.R. 227, 260c-260d (1954), such preferences are minimized by virtue of Concert's existing broadcast operations,

¹ 32 FCC 93, 23 R.R. 135 (adopted Jan. 10, 1962).

which allegedly demonstrate that Concert's proposal will be effectuated. It is further contended that the criteria which won the decision for WBUD do not meet the test of which proposals will better serve the public interest, convenience, and necessity; the proper criteria, asserts Concert, are coverage, the program service to be rendered, and the number of hours each station would render service. Concert's charges of error simply do not stand up. *WJR* involved three applicants with no local residence and little integration of ownership and management. Under such circumstances the Commission held that factors which lend assurance of a more complete and effective response to community needs and effectuation of proposals become less critical when a record of an applicant's past performance in the operation of a broadcast station is available. In this case, however, WBUD makes a showing of local residence, etc., and there is nothing in the record to minimize this showing; it is an impressive showing in view of the fact that Concert's showing relates to communities other than Trenton. Furthermore, the three criteria suggested by Concert as determinative do not in any manner take precedence over the criteria which look towards responsiveness to community needs and effectuation of proposals. Under *Johnston Broadcasting Company v. Federal Communications Commission*, 175 F. 2d 351, 357 (D.C. Cir. 1949), we would be remiss if we were not to consider all of the factors advanced by the parties. Indeed, we carefully considered all such factors and concluded that WBUD's preferences outweighed those preferences awarded to Concert.

4. Concert argues that the Commission "garnished" its conclusion by stating that WBUD's preferences indicate a greater responsiveness to community needs. Concert considers this conclusion as clearly erroneous, alleging that "there is no evidence in the record on which to base such a conclusion." It further argues that community needs cannot be assumed. Unquestionably, WBUD's preferences indicate a greater responsiveness to community needs in a comparative sense. Thus, the preferences in local residence, civic participation, integration of ownership with management, and planning and preparation, demonstrate a far greater knowledge of and association with Trenton and its various civic enterprises on the part of WBUD. *Scripps-Howard Radio, Inc. v. FCC*, 89 U.S. App. D.C. 13, 189 F. 2d 677 (1951), cert. denied, 342 U.S. 830. These preferences, reflecting WBUD's familiarity with local conditions to be served, contrast with Concert's failure to investigate or ascertain the program needs or tastes of the Trenton area. There clearly was evidence in the record supporting the conclusion thus reached; further evidence of the nature of the community's needs and interests was unnecessary because the crucial consideration with respect to these factors is the extent of the applicant's ties to the community and his knowledge of it.

5. Concert also challenges the Commission's award to WBUD of a slight preference in programing; it points to its programing format as superior on its face; and it further charges the Commission with neglect in refusing to "consider the program proposals pro and con * * *." But the Commission did consider the program proposals of the parties, and awarded a preference to WBUD because its

programs were considered overall more responsive to the local needs of Trenton. See decision, paragraphs 6 and 10, 32 FCC 93, 94-96. In the absence of this "yardstick," or some other suitable test, a decision by the Commission that one set of program proposals was inherently superior would amount to the impressment of its own opinion on the local community. Concert has not shown that its proposed format is superior in terms of the needs, tastes, and interests of the community it seeks to serve.

6. Concert's other alleged "errors" are no more than restatements of matters which were previously argued and that have been fully and carefully considered and rejected by the Commission.

Accordingly, *It is ordered*, That the petition of Concert Network, Inc., filed February 14, 1962, for reconsideration *Is denied*.

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BISCAYNE TELEVISION CORP. ET AL., DOCKET NO. 10854 ET AL.:

Petition of Biscayne Television Corp. for reconsideration and rehearing with respect to the Commission's decision released August 3, 1961; denied.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON 25, D.C.

<p>In re Applications of BISCAYNE TELEVISION CORP., MIAMI, FLA. EAST COAST TELEVISION CORP., MIAMI, FLA. SOUTH FLORIDA TELEVISION CORP., MIAMI, FLA. SUNBEAM TELEVISION CORP., MIAMI, FLA. For Construction Permits for New Television Broadcast Stations (Channel 7)</p>	}	<p>Docket No. 10854 File No. BPCT-1453 Docket No. 10856 File No. BPCT-1612 Docket No. 10857 File No. BPCT-1806 Docket No. 10858 File No. BPCT-1816</p>
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MEMORANDUM OPINION AND ORDER

(Adopted May 9, 1962)

BY THE COMMISSION: COMMISSIONER HYDE ABSENT; COMMISSIONER LEE DISSENTING; COMMISSIONER CRAVEN NOT PARTICIPATING.

1. The Commission has before it for consideration (a) "Petition for Reconsideration, Reopening of the Record, and Rehearing," filed September 5, 1961, by Biscayne Television Corp. (Biscayne); (b) oppositions to the petition filed September 15, 1961, by the Office of General Counsel (OGC) and Sunbeam Television Corp. (Sunbeam); and (c) reply of Biscayne to the oppositions, filed September 25, 1961.

2. By decision released August 3, 1961 (31 FCC 237), the Commission, inter alia, set aside its grant to Biscayne of a construction permit for channel 7, Miami, Fla., granted Sunbeam's application, and denied the applications of Biscayne, East Coast Television Corp., and South Florida Television Corp. for such channel. The decision was not to become effective until further order of the Commission pending review, if any, by the U.S. Court of Appeals. On September 5, 1961, the above-described petition was filed wherein Biscayne claims that our decision was unlawful in denying its application and granting that of Sunbeam.

3. Biscayne first contends that the decision is invalid as either a revocation or as a comparative decision. As to revocation, Biscayne alleges that the Commission did not comply with the statutory procedures in section 312 of the Communications Act and that its action was thus unlawful. Biscayne does not specify how the Commission failed to comply with section 312, claiming that noncompliance is

“obvious.” Aside from the fact that this does not satisfy 47 CFR 1.191(e) requiring particularity in such petitions, this proceeding is not, and could not have been, for revocation. A brief recapitulation of the history of this case will make this plain. The first Commission decision, released January 20, 1956, was reversed and remanded by the court of appeals on March 14, 1957. On June 21, 1957, the Commission issued its second decision. To this, Sunbeam filed a notice of appeal on July 22, 1957, consideration of which was postponed until the Commission could evaluate petitions for reconsideration filed by East Coast and South Florida. On April 7, 1959, the Commission reopened the record on the issues now before the Commission, and this was approved by the court of appeals on May 13, 1959. Therefore, no decision granting Biscayne’s application has become final and the procedures specified by section 312 of the act, as amended, are not applicable. *Ford Motor Co. v. National Labor Relations Board*, 305 U.S. 364, 373, 374 (1939). Moreover, to hold otherwise would completely nullify the rehearing provisions of section 405 of the act, for it would mean that before the Commission could reconsider a grant, revocation procedures would be necessary. Such an interpretation assumes that the Commission’s jurisdiction in the case ends with issuance of the decision; such an assumption is not justified. See *Enterprise Co. v. FCC*, 97 U.S. App. D.C. 374, 231 F. 2d 708 (1955), and *Albertson v. FCC*, 87 U.S. App. D.C. 39, 189 F. 2d 397 (1950), which hold that jurisdiction over an order remains with the Commission until the time for appeal (tolled by an application for rehearing) has expired.

4. Biscayne then asserts that if the instant proceeding was not a revocation proceeding, the final decision must comply with the requirements of a comparative proceeding. Citing *Johnston Broadcasting Co. v. FCC*, 85 U.S. App. D.C. 40, 175 F. 2d 351 (1949), as requiring comparison on all significant differences, Biscayne maintains that the Commission did not comply with *Johnston*; that the decision’s procedural deficiencies are “apparent on its face”; and that the Commission must consider all significant differences between competing applicants in reaching a comparative decision and cannot reach a decision on the basis of one area of difference to the exclusion of all others. Although *Johnston* does stand for such general rule, Biscayne misapplies it to this proceeding. The court in *Johnston* stated that after minimum qualifications to protect public interest have been established, private interests and thus the comparative process comes into play. In the instant case, the Commission has determined that Biscayne, by its actions, failed to meet such minimum qualifications, and therefore a comparative proceeding is not necessary.

5. Biscayne next argues that, on the basis of the foregoing, it was denied a full hearing since the Commission cannot deny its application for “alleged character deficiencies” without conducting a full hearing as to character. Biscayne claims that character was not an issue in the proceeding; that even if it were, it was not given the opportunity to demonstrate its character qualifications; and that a full comparative hearing is necessary. We think this argument is premised upon a basic misconception of what is at issue here. Petitioner was disqualified because it displayed a willingness to pervert

the processes of administrative adjudication. The language of the court of appeals, in *WKAT, Inc. v. FCC*, — U.S. App. D.C. —, 296 F. 2d 375 (1961), cert. den. 368 U.S. 841 (1961), is equally applicable here. Particularly pertinent to Biscayne's argument is this statement (at 383):

We do not have here an ordinary case of "unclean hands," in which counterbalancing considerations of public interest in the service involved might justify awards despite misbehavior.⁶ This case concerns corrupt tampering with the adjudicatory process itself. No public interest in service or capacity for service is paramount to the public interest in the integrity of the adjudicatory processes of government, the Commission concluded. The order proposed to be adopted by the Commission is well within its authority, the breadth of which is well illustrated by the order approved in *Massachusetts Bay Telecasters et al. v. Federal Communications Commission*.⁷

As the court makes clear elsewhere in its opinion, the principle of *Hazel-Atlas Co. v. Hartford Co.*, 322 U.S. 238 (1944), and *Root Refining Co. v. Universal Oil Products Co.*, 169 F. 2d 514, cert. den. 335 U.S. 912 (1949), are applicable to the situation now before us. Furthermore, the argument that the Commission cannot disqualify an applicant on the basis of misconduct without weighing its other qualifications to be a licensee is directly contrary to well-settled law. *Federal Communications Commission v. WOKO, Inc.*, 329 U.S. 223, 228-229 (1946); *Federal Communications Commission v. Broadcasting Service Organization, Inc.*, 337 U.S. 901 (1949), reversing 84 U.S. App. D.C. 152, 171 F. 2d 1007; *Meste v. United States*, 70 F. Supp. 118 (E.D.N.Y.), affirmed 332 U.S. 749 (1947). The Commission has discretion to conclude that no capacity for service is paramount to the public interest in the legality of the adjudicatory processes of government.

6. Biscayne also seems to argue that the question of its character was not in issue in the remand proceeding with the result that the Commission was precluded from drawing conclusions on character. The remand issues themselves belie this assertion. In any event, the time for Biscayne to question the issues or ask for their amendment or clarification has expired (47 CFR 1.141).

7. Biscayne asserts that the principles announced in *WKAT* are not applicable here because "[O]nly by the grossest distortion could it be argued that Biscayne's conduct constitutes what the court described in *WKAT* as 'corrupt tampering with the adjudicatory process itself.'" The Commission has reexamined the examiner's statements under his heading of "Testimony and Discussion" as modified by the rulings on the exceptions (31 FCC 244, 246 et seq.). The only conclusion favorable to Biscayne that we can draw is that applicant's activities appear to have been conducted with more finesse than those of Public Service, but that they constituted corrupt tampering cannot be doubted. It would be essential to Biscayne's argument that we modify the factual findings in the manner urged in the petition, but we find no more justification for doing that now than we did when essentially

⁶ See, for example, the discussion in *Federal Communications Comm'n v. WOKO*, 329 U.S. 223, 229 * * * (1946).

⁷ 111 U.S. App. D.C. —, 295 F. 2d 131.

the same points were raised by Biscayne's exceptions to Judge Stern's initial decision.

8. Biscayne challenges the validity of Commissioner's votes and argues that the Commission's decision erroneously purported to consider "the whole record." Actually, claims Biscayne, only three Commissioners [Hyde, Bartley, and Lee] heard oral argument on all aspects of this proceeding. Commissioners Minow [Chairman], Ford, and Cross did not hear oral argument on any aspect of this case other than the *ex parte* matter¹ and thus are ineligible to vote on consideration of the whole record. Further, states Biscayne, since Commissioner Lee dissented and only two Commissioners [Hyde and Bartley], having the legal right to do so, voted to deny Biscayne's application, a quorum was lacking for such action. Also, alleges Biscayne, the three Commissioners who did not hear oral argument on the comparative issues are "strangers" to Sunbeam's application, cannot consider the merits thereof, and cannot vote to grant such application. Biscayne's argument depends for its validity on the theory that full comparative consideration of the Biscayne application was required. However, as stated above (see par. 5, *supra*), such consideration is not required here. The five Commissioners who voted for adoption of the decision all heard oral argument on the question of disqualification by reason of the *ex parte* conduct and thus were fully and properly able to adopt such decision disqualifying Biscayne because of such conduct. Since all the applicants but Sunbeam are herein disqualified, resulting in making further comparative consideration unnecessary, it is clear that the present Commissioners have full authority to grant Sunbeam's application.

9. Biscayne also claims that no grant can be made to Sunbeam since, by various actions, it has abandoned its application and has willfully concealed material facts from the Commission. Biscayne alleges that Sunbeam's corporate structure has been changed without notice to the Commission, that there is no information on file with the Commission which shows Sunbeam's financial qualifications, and that Sunbeam's transmitter site is no longer available. In response to this, Sunbeam asserts that (*a*) except for certain immaterial changes which have taken place,² the corporate structure, including officers, directors, stockholders, and stock subscribers has remained substantially the same as that on file with the Commission; (*b*) a loan commitment (Sunbeam's major source of funds) has been extended to November 27, 1963; and (*c*) though its original transmitter site is no longer available, a site, located like the original site on the Miami antenna farm, is available. In support of this, Sunbeam has attached to its pleading in opposition to Biscayne's petition, sworn statements from its officers, directors, and stockholders, and several engineering exhibits. Sunbeam requests that these be considered as amendments to its

¹ Commissioner Craven is not participating in this proceeding.

² C. L. Clement, treasurer, director, and stock subscriber, withdrew from the application. E. M. Spence, vice president, director, and stock subscriber, has died. The foregoing was duly reported to the Commission. E. N. Ansin, a stockholder, became treasurer and director, succeeding Clement. Also there are several other changes in the officers and directors, but no changes in ownership. See par. 10, *infra*.

application and that in view of the length and uniqueness of this proceeding, good cause exists for their acceptance at this time.

10. It is settled law that a party whose application is properly denied for lack of qualifications to receive a grant is without standing to challenge the grant to another of the permit he seeks. *Simmons v. Federal Communications Commission*, 79 U.S. App. D.C. 264, 145 F. 2d 578 (1944); *Mansfield Journal Co. v. Federal Communications Commission*, 84 U.S. App. D.C. 341, 173 F. 2d 646 (1949). Accordingly, since Biscayne has been properly disqualified, it is clear that Biscayne lacks standing to challenge the validity of the grant to Sunbeam. In any event, the arguments are without merit. Since the loan commitment is still in existence, there is no question as to Sunbeam's financial responsibility. The charge of changes in corporate structure of which Biscayne seeks to make capital were changes in personnel and/or employees, not changes in the ownership of Sunbeam and therefore not changes in its corporate structure. Moreover, Sunbeam's proposed amendments indicate that, except for those indicated in footnote 2, *supra*, the original officers and directors have again been elected at a corporation meeting held September 10, 1961. Although the foregoing changes should have been reported earlier to the Commission, pursuant to 47 CFR 1.311, the omissions are minor. Further, Sunbeam's proposed amendments adequately correct these omissions and reflect the present status of the corporation. In addition, Sunbeam's proposed amendments specify a transmitter site 1.6 miles from the original transmitter site. There are no material differences between the coverage contours of the two sites. The uniqueness and length of this proceeding furnish good cause for acceptance at the time of all these amendments, albeit they are not in the usually filed form. In view of the foregoing, Biscayne's charges that Sunbeam abandoned its application and willfully concealed material facts from the Commission are without merit.

Accordingly, *It is ordered*, This 9th day of May 1962, that the petition for reconsideration, reopening of the record, and rehearing filed by Biscayne Television Corp. *Is denied* in all respects; that the attachments to Sunbeam Television Corp.'s opposition to Biscayne's petition *Are accepted* as amendments to Sunbeam's application; that Sunbeam's application *Is amended*; and that our decision, released August 3, 1961 (31 FCC 237), *Is reaffirmed*.

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COMMUNITY TELECASTING CORP. ET AL., DOCKETS NOS. 12501, 12503, 12504, 12505, AND 12506:

Application of Moline Television Corp. for construction permit for a new television broadcast station to operate on channel 8 in Moline, Ill.; granted. Competing applications for the same authority of Community Telecasting Corp., Tele-Views News Co., Inc., Midland Broadcasting Co., and Illiway Television, Inc.; denied.

Section 309(b) of the act.—Comparative qualification of applicants considered.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON 25, D.C.

<p>In re Applications of COMMUNITY TELECASTING CORP., MOLINE, ILL. TELE-VIEWS NEWS CO., INC., MOLINE, ILL. MIDLAND BROADCASTING CO., MOLINE, ILL. ILLIWAY TELEVISION, INC., MOLINE, ILL. MOLINE TELEVISION CORP., MOLINE, ILL. For Construction Permits for New Tele- vision Broadcast Stations</p>	}	<p>Docket No. 12501 File No. BPCT-2339 Docket No. 12503 File No. BPCT-2367 Docket No. 12504 File No. BPCT-2370 Docket No. 12505 File No. BPCT-2428 Docket No. 12506 File No. BPCT-2440</p>
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APPEARANCES

David S. Stevens and Joseph M. Kittner (McKenna & Wilkinson), *Tele-Views News Co., Inc.*; *Vincent B. Welch and Donald E. Bilger* (Welch, Mott & Morgan), for *Midland Broadcasting Co.*; *Reed Miller and Paul A. Porter* (Arnold, Fortas & Porter), for *Community Telecasting Corp.*; *Thomas N. Dowd and William S. Green* (Pierson, Ball & Dowd), for *Moline Television Corp.*; *Paul Dobin and Stanley B. Cohen* (Cohn & Marks), for *Illiway Television, Inc.*; and *Ray Paul and Robert J. Rawson*, for the Chief, Broadcast Bureau, Federal Communications Commission.

DECISION

(Adopted May 16, 1962)

BY THE COMMISSION: CHAIRMAN MINOW ABSENT; COMMISSIONER CRAVEN NOT PARTICIPATING; COMMISSIONER FORD DISSENTING AND ISSUING A STATEMENT; COMMISSIONER CROSS DISSENTING.

PRELIMINARY STATEMENT

1. This proceeding involves the applications of Community Telecasting Corp. (Community), Tele-Views News Co., Inc. (Tele-Views),

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Midland Broadcasting Co. (Midland), Illiway Television, Inc. (Illiway), and Moline Television Corp. (Moline TV), for a new television station on channel 8 with main studios in Moline, Ill. By order, released June 30, 1958, the Commission found Community, Midland, and Moline basically qualified. Tele-Views was found legally and technically qualified, and Illiway was found legally and financially qualified, and technically qualified except for overlap between the proposed station and WREX-TV, Rockford, Ill. Issues 2 and 5 related to such problems. These issues were determined in conclusions 1 and 2 of the initial decision. Issues 1 and 3 were rendered moot by dismissal of other applications. Issues 4 and 6 were directed to the comparative merits of the applicants. The initial decision of Hearing Examiner Charles J. Frederick, released April 28, 1960 (FCC 60D-52), proposed a grant of the Community application, based on the superiority of Community in the comparative criteria of local residence, civic participation, broadcast experience, integration of ownership and management, and programing (because of educational programs). He also found that Community shared preference with certain applicants over others in "diversification of business interests" and "diversification of media of mass communications." Exceptions to the initial decision were filed by each of the applicants and the Broadcast Bureau. Reply briefs were filed by Community, Midland, Illiway, and Moline TV.

2. Oral argument was held before the Commission en banc on June 2, 1961. On August 16, 1961, Illiway petitioned for leave to amend its application to reflect the death of J. Paul Madison and the substitution of Helen Louise Madison, his wife, in his lieu as stockholder and stock subscriber. The fact was also reported to the Commission at oral argument. Since this change will result in no advantage to Illiway and was caused by events beyond this applicant's control, good cause appears to exist for a grant of the petition. Similarly, Moline petitioned on February 27, 1962, to reflect the death of William Leonard, stockholder, and to substitute his estate sub nom. Audrey Leonard, executrix, the death having been reported to the Commission by letter of September 13, 1961. The petition should be granted. In view of the minuscule stock interest of William Leonard, the Commission notes the substitution but concludes that its effect on the conclusions herein is de minimis. Both petitions will be granted in the ordering clause of this decision.

3. The findings of fact in the initial decision have been considered in light of the exceptions and replies filed, and we adopt them with the modifications noted in our discussion or in the appendix hereto, which contains our rulings on the exceptions to the initial decision. The Commission has also reviewed, in light of the exceptions, the examiner's conclusions which, as pointed out above, led to an ultimate preference for the Community application. The examiner's conclusions are modified to the extent reflected herein.

4. As previously noted, in considering the financial qualifications of Tele-Views and of the overlap problem between the proposed stations and WREX-TV, the Commission specified issues 2 and 5, respectively, in its order of designation. The examiner correctly disposed of such issues in conclusions 1 and 2 of the initial decision, and those conclu-

sions are adopted. In view of the determinations made under these issues, each of the applicants is basically qualified, and the question remaining for determination is which of the applicants is best qualified.

5. We agree with the hearing examiner that no significant differences exist between the applicants in the comparative areas of planning; studios, staffing, and equipment; and policies. Our attention has been drawn to *Suburban Broadcasters*, 30 FCC 1021, 20 R.R. 951, aff'd sub nom. *Patrick Henry et al. v. FCC*, — App. D.C. —, — F. 2d —, — R.R. — (slip opinion March 29, 1962, not yet reported), and *KORD, Inc.*, 31 FCC 85, 21 R.R. 781, both of which allegedly preclude a finding that Moline's program proposals, which are based upon the knowledge of its personnel of the Moline area, reflect the needs of the area. *Suburban* stands for the proposition that an applicant may be required to demonstrate an earnest interest in serving a local community by evidencing a familiarity with its particular needs and an effort to meet them; it does not prescribe the only acceptable methods for satisfying these requirements. Moline's efforts, as shown upon this record, were sufficient. *KORD* involves the continuing responsibility of a licensee to keep abreast of community needs and, therefore, is not applicable here. We are also of the view that no significant differences exist in the area of programing. The hearing examiner concluded that although the programing proposals of each of the applicants are well balanced, a slight preference should be awarded to Community because of its greater emphasis on educational programing. We agree with the hearing examiner that each of the applicants proposes a well-balanced program schedule, but we do not agree that a preference should be awarded solely on the basis of the emphasis placed upon one or more categories of programing. The varying degrees of emphasis are a reflection of the respective applicants' judgments as to the programing needs of the community they propose to serve. Where, as here, no affirmative showing is made either that the judgment of the other applicants is unreliable, or that there is a particular community need requiring a greater than usual emphasis on a given category of programing, any preference awarded on the basis of such emphasis would entail a Commission judgment that one type of programing is to be preferred over another without regard to community need. None of the applicants has a broadcast record, and the minority interests which various stockholders of some of the applicants have in broadcast stations do not provide any basis for comparison in the area of broadcast record.

6. In the area of diversification of media of mass communication, the hearing examiner awarded a preference to Community, TeleViews, and Midland over Moline and Illiway. While we agree with the examiner's conclusion, we think that the preference awarded the first three over Moline is slight, and the preference over Illiway is only moderate. In connection with Illiway, we have considered the conditional intention of Messrs. Baisch and Guyer to divest themselves of their interests in WREX-TV, Rockford, Ill., in the event of a grant. Moline's inferior showing in this area is attributable solely to the fact that one of its directors owns a majority of the stock in a weekly newspaper with a circulation of 7,000-7,200 in the area east of Moline.

Since this area is served by four daily and two weekly newspapers, with a number of broadcast stations (AM, FM, TV), we attach very slight comparative significance to the ownership of the weekly newspaper by one of Moline's directors. Illiway's moderate demerit in this area is attributable solely to the small minority interests which several of its principals have in widely scattered standard broadcast and television stations; only one of these stations—a standard broadcast station—is located in the Moline area, and a 3.6-percent stockholder of Illiway (but not an officer or director) is a 20-percent stockholder, vice president, and treasurer of that station.

7. We agree with the hearing examiner that Illiway, Community, and Moline share a preference over Midland and Tele-Views in the area of diversification of business interests. The preference is, however, only slight, since a diversity of business interests is represented in all of the applicants.

8. In the area of civic participation, the hearing examiner awarded a preference to Community on the ground that the long, local residence of all of Community's stockholders is reflected in its record of civic participation, and, in support, he mentioned approvingly the fact that each officer and director of Community has a record of occupying positions of responsibility in a variety of civic organizations. The record shows, however, that the local stockholders of all of the applicants are closely identified with the community and have participated in community affairs and activities. We agree with the Broadcast Bureau's view that to grant Community a preference over Tele-Views, Moline, and Illiway would be engaging in a "game of numbers" (i.e., Community's larger number of stockholders would be translated into a preference), and this we have consistently refused to do. In *Tampa Times Co.*, 10 R.R. 77 (1954), we stated (p. 136) that "we do not believe it appropriate to add up the associations of each applicant and award a preference on that basis. The crucial consideration on this point is whether the applicants have demonstrated a familiarity, through such associations, with civic organizations, and thus, civic needs." Except for Midland, we rate the applicants equal in this comparative area; Midland suffers somewhat in comparison chiefly because only its minority stockholders have any record of civic participation in the Moline area.

9. In the area of local residence, the hearing examiner preferred Community over the other applicants because it showed the greatest percentage (100 percent) of local ownership. Tele-Views, though locally owned, was rated below Community because of a stipulation (see par. 7 of the examiner's conclusions) that one of Tele-Views' stockholders would be disregarded in comparing the applicants; this served to reduce Tele-Views' local ownership of stock to 87 percent. Moline is 75 percent locally owned, Illiway 67 percent and Midland 33 percent. Except for Midland, the majority of the stock of each of these applicants is owned by local residents, and the ultimate control which such majority ownership vests in local residents provides assurance of the applicant's continued insight into the ever-changing needs of the area and through such insight provides assurance as to their being met on a continuing basis. Where the stock is 100 percent

locally owned, as in the case of Community and Tele-Views, there is, of course, greater assurance of local control than where some of the stock is owned by nonresidents. It does not follow, however, that an applicant in which a minority of the stock is owned by nonresidents and in which a minority of the officers and directors are nonresidents will not be in the firm control of local residents, and, absent a showing to the contrary, it must be presumed that the minority of nonlocal stockholders and officers and directors will not have control. The presumption of retention of control by local residents who hold the majority of the stock, and constitute a majority of the members of the officers and directors, becomes stronger, of course, as the percentage of nonresident stock interest declines and as the number of nonresident stockholders in principal offices diminishes. However, these differences in degree in the weight which can be accorded to the presumption of local control based upon local ownership of a substantial majority of the stock do not provide any basis for awarding substantial preferences as between applicants; only very slight preferences can be awarded on this basis. In the instant proceeding, Community, Tele-Views, Illiway, and Moline—in all of which either all or a substantial majority of the stock is locally owned, and in which a majority of the directors and officers are local residents—are entitled to a substantial preference over Midland, only one-third of the stock of which is locally owned. As between the remaining applicants, only very slight preferences can be awarded: first, Community; second, Tele-Views; third, Moline; fourth, Illiway.

10. In the area of integration of ownership and management, the examiner preferred Community, rated Midland second, and the remaining applicants were not listed in order of preference. The basis for the examiner's conclusion was that Community would be 100 percent integrated, and "partially on the basis of Community's local experience and residence (hence, more meaningful integration)." The examiner's conclusion that Community would be 100 percent integrated is based upon the fact that all of the stockholders who are not officers or directors will each serve in an advisory capacity with respect to one or more aspects of the station's operations. Except for Midland, all of the other applicants have also devised plans for such stockholder participation, but in the case of none of these other applicants would all of the stockholders participate.

11. Little weight, if any, can be attached to the fact that provision has been made for the participation by stockholders as advisers or members of one or more advisory committees. Their functions and depth of participation are too indefinite to provide any basis for a preference as between applicants. Moreover, the stockholders to whom such roles have been assigned have in the overwhelming majority of instances no prior experience in station operation and management, and the time which such stockholders propose to devote to their role is so limited that there is little likelihood that they can acquire sufficient familiarity with the problems of station operation and management to enable them to make a responsible and meaningful contribution. Indeed, there is a real risk that the participation by such stockholders may never rise above the level of the superficial, and in-

stead of providing a basis for a preference in the area of integration of ownership and management, an applicant's reliance on such participation might well serve to detract from the showing in this area. For these reasons, the desultory participation by stockholders in various advisory capacities will be disregarded in comparing the applicants.

12. In the area of integration of ownership and management, Tele-Views makes the weakest showing, since none of its officers or stockholders will devote a substantial portion of their time to station operation. Their participation is limited to advising the station's general manager. The next weakest showing in this comparative area is that made by Illiway; only two of its stockholders (one a vice president, the other without an elective office), with a combined stock interest of 5.5 percent, will devote full time to the station. While other officers and stockholders of Illiway will participate in station operation, their participation, except for that of its vice president, Bettendorf, is limited to a few hours a week up to two 1-hour days per week; Bettendorf (a 68-percent stockholder) would devote one-third of his time to the station, and he would advise the general manager as to public-service programs and act in a liaison capacity. Moline's president, Schreiber, with a 10-percent stock interest, will devote full time to the station. Community's vice president, Wodlinger, also with a 10-percent stock interest, will likewise devote full time to the station. None of the other officers or stockholders of Moline or Community propose to devote full time to station operation. Community¹ is, however, entitled to a degree of preference over Moline because more of its remaining officers and stockholders will participate for 10 hours a week or more in station management and operation than will the other officers and stockholders of Moline,² and the aggregate stock interest of Community's participating officers and stockholders exceeds that owned by Moline's participating officers and stockholders. The remaining applicant, Midland, makes the strongest showing in the comparative area of integration of ownership and management, and it is entitled to a substantial preference. Officers and stockholders with a combined stock interest of 67 percent in Midland would devote full time to the station, and all of its other officers and stockholders would each devote a minimum of 20 hours per week to station operation and management.

13. In the comparative area of broadcast experience, the examiner preferred Community over the other applicants. The apparent basis of the preference was that the experience on which Community relies was gained in the area which its proposed station would serve. The examiner's findings show that Wodlinger, a 10-percent stockholder and the vice president and general manager of Community, has been employed in broadcasting from 1948 to 1958. While Wodlinger has participated in various phases of broadcasting operations, his principal activity was sales, and he was sales manager of WOC-TV-AM-FM in Davenport, Iowa, from 1950 to 1958. Midland's broadcast

¹ Seven stockholders of Community, in addition to Wodlinger, will devote 10 or more hours a week to the station. In the aggregate, they hold 71 percent of the stock.

² Three stockholders of Moline, in addition to Schreiber, will devote 10 or more hours a week to the station. These three have a combined stock interest of 34 percent.

experience consists primarily of the experience gained by members of the Atlass family in Chicago. H. Leslie Atlass, the president and 37-percent stockholder, was born in 1919. He was for a brief period the head of the Columbia Broadcasting System's television department in Chicago in 1945. When the activities of this department were suspended, he was employed in sales for a standard broadcast station in Chicago until 1948; and from 1948 to 1956, he was employed by standard broadcast station WIND in Chicago, serving as program director and subsequently also as treasurer and director of the licensee of that station. Frank Atlass II, a 15-percent stockholder, director, and proposed program manager of Community, was born in 1931. He has been employed in broadcasting since 1950, working for the Columbia Broadcasting System and subsequently for station WBBM-TV, Chicago, of which he is now the sales manager. His experience has been chiefly in sales except for (a) his work as writer-producer of a weekly program presented from May 4, 1957, to January 1958 for the Columbia Broadcasting System television network, and (b) a 2-year period in which he was an executive producer and program manager of station WBBM-TV. Harriet Jane Atlass, a director, 15-percent stockholder, proposed public affairs director, was born in 1933. Her experience in broadcasting began in 1955, and she has produced numerous programs, concentrating chiefly on public affairs. She is presently public affairs director of stations WBBM and WBBM-TV. In addition to these members of the Atlass family, John H. Lujack, a 3.9-percent stockholder and proposed sports director for Midland, has had some experience in televising football games and sports programs.

14. None of Tele-Views' stockholders have had any broadcast experience. Two of Illiway's stockholders who would be active in the operation of its station have had broadcast experience. Joseph M. Baisch, executive vice president of Illiway, has been general manager of station WREX-TV, Rockford, Ill., since 1954. As general manager, he supervises all of the activities and operations of that station. The broadcast experience of Illiway's proposed station manager, John T. Mazzie, a 1-percent stockholder, dates back to 1947. From that year until 1952, he was employed in various capacities by WOW-TV, Omaha, Nebr., and in 1952 he became executive producer of that station. Since 1954, he has been program director of WREX-TV. In that capacity, he is responsible for the actual creation and production of all programs.

15. Moline's president, Schreiber, who owns 10 percent of the stock and would devote full time to the management of the station, has had broadcast experience extending back to 1931, when he became public relations director for station WGN, Chicago. He coordinated the activities of standard broadcast station WGN with the Mutual Broadcasting System, which WGN helped establish. Beginning in 1941 he served in various executive capacities with WGN. He was the general manager for WGN-AM-TV for about 15 years, concluding his service with those stations in 1956. He has been a director of WPIX, Inc., New York City, and a director of the Mutual Broadcasting System.

While at WGN, Schreiber stressed the development of local news coverage and public affairs programs. He developed a music staff, and presented live musical programs. A program for preschool children, presented by a representative of the Chicago Board of Education, was developed. Talks by authorities in the fields of agriculture and management were presented daily. In addition to Schreiber, several other stockholders of Moline have had intermittent and part-time association with broadcasting, but their experience is not significant for comparative purposes.

16. We do not agree with the examiner that Community should be preferred in the area of broadcast experience. It is evident that Schreiber's experience has not only extended over a longer period of time than that of any of the others, but the scope of his activities and responsibility has been as broad, and in most instances, broader than that of any of the others. While the members of the Atlases family who would be associated with Midland have had varied experience, none of them has had overall responsibility for station management. The experience of Frank and Harriet, compared to that of Schreiber, has been gained in a relatively brief period of time; and H. Leslie has been active in broadcasting for only half as long as Schreiber. Moreover, although H. Leslie has had more substantial experience than either Frank or Harriet, very little of it has been in the field of television; Schreiber, on the other hand, was for 10 years the general manager of a television station, and, as the examiner found, guided the development of the station from its infancy. The experience of Illiway's Baisch and Mazzie includes that of general manager (not included in the broadcast experience of the Atlases), and their experience in program production has been of a longer duration and more concentrated than that of the Atlases. The experience of the latter has been greater in sales and covers a larger period of time. As between Midland and Illiway, the latter is to be preferred. However, the combined experience of Illiway's Baisch and Mazzie does not match that of Schreiber. The latter's experience as general manager and in broadcasting generally has been far more extensive in point of time, and, though Schreiber has not specialized in programing as has Mazzie, he had as general manager overall responsibility for the production and presentation of locally originated programs; Mazzie's experience in producing such programs has been far more limited. Community's Wodlinger has not had experience comparable to that of the Atlases, Schreiber, or of Baisch and Mazzie; his broadcasting career has been primarily devoted to sales. Hence, Community will be rated fourth in the area of broadcast experience. We disagree with the examiner that Wodlinger's experience in sales in the Moline area entitles Community to a preference over all or any of the three applicants thus far considered; whatever significance may be attributed to experience in the locale cannot outweigh the very limited nature of such broadcast experience compared to that represented by Moline, Illiway, and Midland. Tele-Views' principals have no broadcast experience, and hence Tele-Views' rank is last in the area of broadcast experience.

CONCLUSION

17. On the basis of the showing made by each of the applicants under the various criteria, it is the Commission's judgment that Moline has made a better overall showing than any of the other applicants. It has a pronounced superiority over Tele-Views in the areas of broadcast experience and integration of ownership and management, and its superiority in these areas far outweighs the slight preference accorded to Tele-Views in the area of local residence and the very slight preference in the area of diversification of ownership of mass media of communications. Moline is likewise to be preferred over Midland. Though the latter makes a superior showing in the area of integration of ownership and management, with a very slight added preference in the area of diversification of mass media, it is not controlled by local residents, as is Moline, and its broadcast experience does not match that of Moline. Moline also makes a better showing than Illiway. Though the differences between these two applicants are small, Moline made a better showing in each of the areas in which differences were found to be present. Moline also makes a better showing than Community. It makes a substantially better showing than Community in the area of broadcast experience. While, as we have indicated, Community makes a somewhat better showing in the areas of integration, local residence, and diversification of mass media, the differences between Moline and Community in these areas are slight and do not, in the Commission's judgment, outweigh the superiority of Moline in the area of broadcast experience.

Other Matters

18. There remains for our consideration a "Petition to Reopen the Record, Remand the Proceeding to the Examiner for Further Hearing, and for Reargument" filed by Community on January 30, 1962. The petition addresses itself to certain alleged changes in the status of the several competitors of Community, claimed to have occurred since the closing of the record, and argued by Community to be of such magnitude as to warrant reopening of same. With those allegations concerning Tele-Views, Midland, and Illiway, we shall not concern ourselves. In this decision, the Commission has selected Moline. The comparative qualifications of the losers could affect such selection only if the petition concerned factors potentially improving their status. Our examination of the petition reveals that determinations under the suggestion made by Community could only maintain their present comparative standing or weaken it. Hence, the petition insofar as the three named applicants are concerned will be denied. The petition, insofar as it concerns Moline, is, of course, on a different standing. The allegations, if sufficiently deleterious and proved, might cause the Commission to change its ultimate determination in this proceeding. We shall, therefore, examine and rule upon them in some detail.

19. It is first alleged that William T. Leonard, 1/2-percent stockholder, director, and member of stockholder committee,³ died on

³ Initial decision, findings 429, 431, 444, 457(m), 469(h).

July 29, 1961, that petitioner cannot find notification to the Commission by Moline, that "It can only be surmised that Moline has declined to advise for fear of 'rocking the boat'" and "*** can *** have no valid excuse for not reporting, ***" and that the record should be reopened to evaluate Moline anew absent Leonard. It is first to be noted that Moline *did* notify the Commission by letter received on September 13, 1961 (4 months before subject petition was filed). While accepting Community's statement that for some reason it was unable to find the report in question, the Commission prefers that counsel confine themselves to a flat statement thereof rather than indulging in speculation, casting unwarranted aspersions, and impugning the good faith of their adversaries. Turning to the merits, it is to be noted that Mr. Leonard's interest was extremely small. Insofar as the local residence criterion (par. 9, *supra*) is concerned, petitioner was ranked first and Moline third, and a reevaluation concerning a 1/2-percent stockholder would scarcely influence this. The Commission's evaluation of the stockholder committees (par. 11, *supra*) eliminates any importance the deceased may have had as a member of such committee.⁴ The advice of the deceased⁵ has already been furnished the applicant. It is thus apparent that Mr. Leonard's potential services reflected in finding 469(h) of the initial decision would be the only operative factor in our decision affected by his death. This, as stated in paragraph 2, *supra*, we consider *de minimis* and decline to reopen on this ground.

20. Next, contended by Community, is that the Commission should reopen to consider the tactics of Moline (in conjunction with Illiway) in the use of private detectives to interview persons concerning the background and experience of Wodlinger, a Community principal. Implicit is the idea that the detectives were employed to suborn falsehoods concerning Wodlinger. The exhibits submitted have been scrupulously examined with this in mind. They fail utterly to bear out such implication. Some statements favorable to Wodlinger were submitted by persons who admit that they got the "impression" that the investigators were favorable to Wodlinger. Aside from the fact that the original statements did Wodlinger no harm, we are not impressed by the testimony of a person who, in effect, confesses that he tailors his utterance to suit his interrogator. The statement of one Anderson is offered to show that a statement submitted in September 1960⁶ was procured by private investigators who did not faithfully render into written form the conversation which Anderson had with them. To further confuse the matter, Anderson denies having signed the statement at all, although Community concedes that he did so. Comparison of what Anderson's signed statement says with what he says he meant fails to reveal any significant difference. It is not to be expected that an interviewer will transcribe every word of an interviewee (unless the document purports to be a *verbatim* transcript, which this did not) and that is the purpose of the interviewee's signature; i.e., to verify the *essential* correctness of the document. In

⁴ *Ibid.*, finding 431.

⁵ *Ibid.*, finding 457(m).

⁶ Moline/Illiway joint petition to reopen record, memorandum opinion and order, Dec. 4, 1960, FCC 60-1459, Mimeo 97391.

sum, we feel that Wodlinger's background and experience in the initial decision, findings 17-27, have fairly reflected all that might have been derived from the most favorable form of the Anderson statement. The allegations concerning Anderson and the private investigators, insofar as they are intelligible, fail to prove any wrongdoing. Lastly, the statement of one Bob Brown submitted in 1960 is vigorously controverted at this time. It is derogatory to Wodlinger but, regardless of its truth, there is nothing to link it to the private investigators. Reopening on the ground of improper activity by Moline-employed private detectives will be refused.

21. Community further alleges that Moline's studio site is now unavailable, a fact conceded by Moline, and that the record should be reopened to explore whether a studio site will be available and to determine why Moline did not report the loss of its commitment. As to the loss of the studio site itself, the Commission has recognized in the past that good-faith commitments on real property cannot be expected to remain in being forever. This application was designated nearly 4 years ago and the site remained available, for aught that appears, until June 28, 1961,⁷ the very day on which the Commission announced its instruction in favor of Moline,⁸ and 26 days after oral argument. We do not know the identity of the interests involved in the Kroger Co., grantee, but the general circumstances fail to convince us that Moline has been guilty of bad faith. In any event, as in *Westinghouse Broadcasting Co.*, 10 R.R. 878 (1955), we refuse to assume that no suitable site can be found in the Moline area. As Moline points out, the studio site was of no decisional significance⁹ so that a reopening and reevaluation, short of a finding that no site at all is available to Moline, would be unproductive. While Moline should have reported the loss of its site, the late state of the proceeding at which such loss occurred renders it a minor dereliction. The petition will be denied on the grounds discussed in this paragraph.

22. Lastly, we consider Community's allegation that Moline has in some manner violated 47 U.S.C. 317 and 508. Not to burden unduly this document, it appears that Waxenberg, a Moline principal,¹⁰ is also president of a grocery supermarket chain, and a subsidiary thereof, an advertising agency. The advertising agency has certain contractual relations with KROS-FM, Clinton, Iowa, for over-the-air advertising and background music for the supermarkets. The intentment appears to be that, since the contractual relation amounts to virtually a lease of all of KROS-FM's time, there has been an unlawful transfer of control to Waxenberg. The brief answer to this contention is that if any violation lies in these circumstances (a matter on which we refrain from opinion), the violation would be KROS-FM's. Next, it is contended that the contractual relationship is a "connection" with an FM station of the type calling for report under question 19(a), section II, FCC Form 301, and that Moline failed to report such. If this be so, then every one-time buyer of a spot announcement has a reportable "connection," differing from the instant one only in magnitude and not in

⁷ Warranty deed, exhibit B, petition of Community.

⁸ Public notice 151 was issued on June 29, 1961.

⁹ Initial decision, conclusion 28.

¹⁰ Initial decision, findings 429, 452, and 457(T).

kind. To state such a proposition is to demonstrate its absurdity. The ultimate contention is that Moline, Waxenberg, the supermarket chain, the advertising agency, and KROS-FM have jointly violated 47 U.S.C. 317 and 508 in that Waxenberg is a principal of Moline, president of the grocery chain, and president of the advertising agency; that KROS-FM by contract with Valley furnishes background music for the supermarkets as well as a public FM broadcast service; and that customary commercial announcements are interspersed "plugging" either (a) brand name products sold at the various supermarkets, or (b) generically identified (e.g., "garden-fresh vegetables") items "from your Eagle Food Shopping Center [the supermarket]." It is further alleged that the supermarkets may make such arrangements as they desire with the food suppliers without liability for any payment to KROS-FM except the sum certain provided in the contract. Thus, contends Community, the food suppliers (i.e., the wholesale distributors of groceries which are the supply depots for the retail supermarkets) are really paying KROS-FM and should be identified as so doing. We cannot agree. The contract in question is clearly between KROS-FM and Valley, and provides for payment of a sum certain for specified services. For a grocery store operating an advertising campaign to receive reimbursement in whole, in part, or not at all from its wholesale supplier (or even the retail outlet's making a profit on the arrangement), does not make the wholesaler a client of KROS-FM. He is insulated therefrom by Valley, the agent, and the retail grocery outlet. Agency and corporation law would be meaningless were we to hold otherwise. In addition, two of the three sample announcements submitted in Community's reply clearly announce the name of the commercial product involved, thereby fully complying with the letter and spirit of 47 CFR 3.289(e) and our public notice of October 10, 1950.¹¹ The third announcement which advises the public to buy "garden-fresh vegetables from your Eagle Food Shopping Center," while it does not contain a brand name, is likewise, in our opinion, open to no reasonable objection. The purpose of the entire statutory and rule mandate, to insure that the public is informed that it is hearing a commercial announcement and not an opinion of the station or announcer, and to know further the identity of the commercial entity which urges it to buy, is being fully complied with in our opinion. The petition alleging nothing of substance on this ground will be denied for the reasons stated.

23. As indicated in paragraph 2, *supra*, there are before the Commission petitions requesting leave to amend applications to reflect the deaths of J. Paul Madison and the substitution of Helen Louise Madison, his wife, in his lieu as stockholder and stock subscriber, and the death of William T. Leonard, and the substitution of his estate sub nom. Audrey Leonard, executrix. Although the subjects of these petitions involve only formal matters, not affecting in any way the applicants' standing or the final determination of this proceeding, for the sake of the orderly disposition of Commission business,

¹¹ FCC 50-12-7, Mimeo 54760.

It is ordered, This 16th day of May 1962, that the petition of August 16, 1961, of Illiway Television, Inc., for leave to amend its application to substitute Helen Louise Madison for J. Paul Madison as a stockholder and stock subscriber, *Is granted;* and

It is further ordered, That the petition of February 27, 1962, of Moline Television Corp. for leave to amend its application to substitute estate of William T. Leonard, sub nom. Audrey Leonard, executrix, for William T. Leonard as a stockholder *Is granted;* and

It is further ordered, That the petition of Community Telecasting Corp. to reopen the record, filed January 30, 1962, and supplemented February 2, 1962, *Is denied;* and

It is further ordered, That the application of Moline Television Corp., for a permit to construct a new television station to operate on channel 8 in Moline, Ill., *Is granted,* subject to the condition that no construction be commenced prior to further order of the Commission to be issued in the event that channel 8 is retained in Davenport, Iowa-Rock Island-Moline, Ill. (see docket No. 11749; order, dated May 12, 1959, in *WIRL Television Co. v. FCC* (cases Nos. 13768, 13769, 13912, C.A.D.C.)); and to the further condition that the permit be automatically rescinded if the channel be not so retained and the applications of Community Telecasting Corp., Tele-Views News Co., Inc., Midland Broadcasting Co., and Illiway Television, Inc., *Are denied.*

APPENDIX

RULINGS ON EXCEPTIONS TO THE INITIAL DECISION

Exceptions of Community Telecasting Corp.

<i>Exception No.</i>	<i>Ruling</i>
1, 2, 3, 4, 24, 33, 39, 40, 46, 50, 58, 113, 129, 131-135, 144.	Granted, and the initial decision is modified to that extent.
5-23, 25-28, 30-32, 34-36, 38, 41, 45, 55-57, 59-87, 89-97, 99-108, 110-112, 114-128, 130, 136-143, 145, 146, 149, 151-153, 156(1).	Denied. The examiner's findings adequately reflect the matters involved, and the additional facts, even if substantially supported by the record, would be of cumulative effect, without any decisional significance.
29-----	Denied. The examiner's rejection of evidence concerning Community's ability to produce occasional color television programs is sustained because this applicant does not propose to offer color programs on any regular basis.
37-----	Granted, and the initial decision is modified accordingly.
42-43, 47-49, 52-54-----	Denied. The examiner's findings here questioned are not contrary to the record, and the proposed changes have no persuasive basis in the record.
44-----	Granted, and the initial decision is modified by eliminating from finding 168 the last 5 words: "and has relied upon them."
51-----	Granted to the extent that the explanation in finding 213 for the item \$45,024 should be "Remote truck, furniture and fixtures, miscellaneous," instead of "Professional fees." The rest of the exception is denied as relating to matters which are either unsupported by the record or are of no decisional significance.

Exceptions of Community Telecasting Corp.—Continued

<i>Exception No.</i>	<i>Ruling</i>
88, 98, 109, 147, 150, 154-155, 156 (2), (3) and (4), 157-160.	Denied. Argumentative—attacking conclusions and inferences from facts, as to which reasonable minds may differ.
148-----	Denied. Inapplicable.

Exceptions of Tele-Views News Co., Inc.

<i>Exception No.</i>	<i>Ruling</i>
1, 3-5-----	Denied. Immaterial in view of the decision herein.
2-----	Denied. The footnote accurately summarizes the record. The sought "finding" is a melange of testimonial recapitulation and conclusions.
6, 17-----	Denied. Immaterial. <i>Sarkes Tarzian</i> cited by exceptor stands for the converse of exceptor's proposition.
7-----	Denied. The plan—not the effort—is the significant factor.
8-----	Denied. No disadvantage has accrued when the quoted words are read in context.
9-----	Denied in view of conclusion 9 herein.
10-----	Denied. "Outstanding" and "active," etc., are not synonyms.
11-----	Denied. See conclusion 8 herein.
12-16, 18, 19-----	Denied. On the basis of the findings, the Commission reaches different conclusions, those proposed by exceptor not being inescapable.

Exceptions of Illinway Television, Inc.

<i>Exception No.</i>	<i>Ruling</i>
1-----	Denied as of no decisional significance.
2-----	Denied. The examiner's findings are supported by the record.
3-6, 8-12, 14-23, 25-26, 29-31, 33-38.	Denied. The examiner adequately discussed these matters and the proposed modification would be of cumulative rather than decisional significance.
7-----	Denied. The record supports footnote 4.
39, 41, 42-----	Granted in substance as reflected by the discussion and conclusions of this decision.
43, 45-47-----	Denied in the light of the decision reached herein.
13-----	Denied. Such finding would be immaterial.
24-----	Denied. The Commission agrees with the examiner's finding.
27, 28-----	Denied. Remarks under these numbers are not exceptions.
32-----	Denied. The absence of a contrary affirmative finding is an implied negative finding.
40, 44, 48-----	Denied. 47 CFR 1.154 not complied with.
49, 50-----	Denied. The Commission concludes differently.

Exceptions of Moline Television Corp.

<i>Exception No.</i>	<i>Ruling</i>
3, 22, 29-----	Denied. The examiner's findings are substantially supported by the record and they are not misleading. A lack of detailed evaluation of the evidence, evidenced by a general mechanical adoption of proposed findings, would be "basic and fatal error," but such adoption per se (provided the proposed finding be accurate) is not.

Exceptions of Moline Television Corp.—Continued

<i>Exception No.</i>	<i>Ruling</i>
2, 5, 7-17, 20, 21, 23, 24, 30-42, 44-52, 54-71.	Denied. The examiner's findings adequately reflect the matters involved, and the additional facts, even if supported by the record, would have cumulative rather than decisional effect in the light of our decision herein.
4 -----	Granted. Findings concerning the religious beliefs of individuals, unrelated to any other activities, are irrelevant. Accordingly, such statements in findings 56, 74, and 77 of the initial decision are deleted as serving no decisional purpose.
6 -----	Granted, and the initial decision is modified by eliminating the first sentence from finding 19.
25-27 -----	Granted, and the initial decision is modified accordingly.
18, 19, 28, 53 -----	Granted in substance, insofar as the record discloses that the written surveys and/or personal contacts of Community Telecasting Corp., Tele-Views News Co., and Illiway to a considerable extent were actually completed after the date of filing of their respective program proposals, the initial decision is modified to that extent. Denied otherwise, as cumulative and of no decisional significance.
72, 73 -----	Granted, and the respective findings in the initial decision are modified to the extent that, except for Midland Broadcasting Co., the other 4 applicants are to be considered substantially equal in the area of local residence and as to civic participation, only a slight decisional preference to Community Telecasting Corp. is warranted in this criterion.
74, 75-78, 80 (in part, as to examiner's conclusion 31).	Denied. Argumentative—attacking conclusions and inferences from facts, as to which reasonable minds may differ.
79, 80 (in part, as to examiner's conclusion 31).	Granted, for the reasons made clear in the decision herein.

Exceptions of Midland Broadcasting Co.

<i>Exception No.</i>	<i>Ruling</i>
1-6 -----	Denied. The factual findings sought are already reflected in the record, and the conclusions sought are not compelled from such findings.

Exceptions of the Broadcast Bureau

<i>Exception No.</i>	<i>Ruling</i>
1 -----	Granted, and finding 59 of the initial decision is modified to show that Clemens A. Werner, a 2-percent stockholder in Community, is a 46-percent stockholder in Walcott Trust & Savings Bank, Walcott, Iowa.
2-5, 7, 9 -----	Granted, as reflected by the discussion and conclusions of this decision.
6, 8 -----	Denied, for reasons stated in the decision.

DISSENTING STATEMENT OF COMMISSIONER FREDERICK W. FORD

The decision of the majority seems to me to place an entirely unwarranted importance on the factor of broadcast experience and does not, therefore, present an adequate basis for granting the application of Moline Television Corp.

The decision recognizes that Community is to be preferred over Moline as to local residence, integration of ownership with management, and diversification of ownership in media of mass communication. Although the broadcast experience of neither is particularly extensive, the applicants seem to me to be quite comparable in this area, with the examiner in fact preferring Community. If any difference in favor of Moline can be justified from the record, it is hardly enough to overcome Community's acknowledged superiority in other areas of comparison.

More importantly, the decision accords to the criterion of broadcast experience an importance which I feel would be erroneous even if a substantial margin of superiority were shown to exist. The Commission has in the past recognized that the opportunity of the newcomer to enter the field would be seriously curtailed if broadcast experience were to be regarded as controlling. *Scripps-Howard Radio, Inc.*, 4 R.R. 525; *McClatchy Broadcasting Co.*, 9 R.R. 1190. Moreover, lack of experience may be only a temporary handicap since it can be removed with the passage of time. On the other hand, local residence and integration of ownership with management carry with them an indication that in the long run the station will be operated in the best interests of the community. I am not persuaded that these factors should be subordinated as they have been in this decision.

This is admittedly a close case, but as indicated by the foregoing I feel on balance that Community is entitled to the grant. In reaching this decision I am persuaded to a considerable degree by the fact that the examiner who presided at the hearing rendered a decision strongly favorable to Community. While this obviously does not preclude the Commission from reaching a different result, the examiner's recommendation is nevertheless a part of the record which the Commission must consider. Since our choice lies between several well-qualified applicants with little margin of difference between them and since none of the parties has demonstrated substantial error in the initial decision, I regard the examiner's recommendation as the determinative factor. Accordingly, I would grant Community's application.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON 25, D.C.

In re Applications of
COMMUNITY TELECASTING CORP., MOLINE, ILL.
TELE-VIEWS NEWS CO., INC., MOLINE, ILL.
MIDLAND BROADCASTING CO., MOLINE, ILL.
ILLIWAY TELEVISION, INC., MOLINE, ILL.
MOLINE TELEVISION CORP., MOLINE, ILL.
For Construction Permits for New Tele-
vision Broadcast Stations

Docket No. 12501
File No. BPCT-2339
Docket No. 12503
File No. BPCT-2367
Docket No. 12504
File No. BPCT-2370
Docket No. 12505
File No. BPCT-2428
Docket No. 12506
File No. BPCT-2440

APPEARANCES

David S. Stevens and *Joseph M. Kittner* (McKenna & Wilkinson),
for Tele-Views News Co., Inc.; *Vincent B. Welch* and *Donald E.
Bilger* (Welch, Mott & Morgan), for Midland Broadcasting Co.;
Reed Miller and *Paul A. Porter* (Arnold, Fortas & Porter), for Com-
munity Telecasting Corp.; *Thomas N. Dowd* and *William S. Green*
(Pierson, Ball & Dowd), for Moline Television Corp.; *Paul Dobin*
and *Stanley B. Cohen* (Cohn & Marks), for Illiway Television, Inc.;
and *Ray Paul* and *Robert J. Rawson*, for Broadcast Bureau, Federal
Communications Commission.

INITIAL DECISION OF HEARING EXAMINER CHARLES J. FREDERICK

(Adopted April 22, 1960)

PRELIMINARY STATEMENT

1. This proceeding involves five competing applications for the
use of television channel 8 in Moline, Ill., only one of which may be
granted. The applications were designated for consolidated hearing
by an order released on June 30, 1958. The issues upon which the
hearing was held were designated by the Commission in said order to
be as follows:

- 1. * * *
- 2. To determine whether a grant of the application of Illiway Television,
Inc., would be consistent with the provisions of section 3.636(a)(1) of the
rules, in view of the overlap which would result between the proposed station
and station WREX-TV, Rockford, Ill.
- 3. * * *
- 4. To determine on a comparative basis which of the operations proposed
in the above-captioned applications would best serve the public interest, con-

32 F.C.C.

venience, and necessity in light of the record made with respect to the significant differences among the applicants as to—

a. The background and experience of each having a bearing on its ability to own and operate the proposed television broadcast station.

b. The proposals of each with respect to the management and operation of the proposed television broadcast stations.

c. The programing service proposed in each of the above-captioned applications.

5. To determine whether Tele-Views News Co., Inc., is financially qualified to construct, own, and operate the proposed television broadcast station.¹

6. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

FINDINGS OF FACT

The Communities Involved

2. The evidentiary hearing for the taking of testimony began on January 26, 1959. The record was closed September 24, 1959.

3. The metropolitan area now popularly known as the "Quint Cities" was once, and is still often referred to as the "Tri-Cities"; namely, Davenport-Rock Island-Moline. As East Moline grew, the area was dubbed the "Quad Cities" and, with the growth of Bettendorf, Iowa—the "Quint Cities." In addition, nearby Silvis and Milan in Illinois and Riverdale in Iowa are developing toward becoming integral parts of the metropolitan complex. The Mississippi River separates the communities in the Iowa sector of the metropolitan area, which lie in Scott County, Iowa, from the communities in the Illinois sector of the metropolitan area, which lie in Rock Island County, Ill. The communities are connected by three automobile bridges across the Mississippi River which annually shuttle more than 14 million cars. Recognized as a single metropolitan area by the U.S. census, the area currently has a combined population of 267,100 persons, the third ranking market in Illinois and ahead of the largest single market in Iowa, the capital city of Des Moines. The area's population is divided with 155,700 people in Scott County, Iowa, and 151,400 in Rock Island County, Ill.

4. The Quint City area contains the Nation's greatest concentration of farm equipment factories, with 32 percent of the industrial payroll related to the production of farm equipment. These factories include Deere & Co., International Harvester, and J. I. Case Co. There is also an Aluminum Co. of America plant and a Ralston Purina plant among the more than 300 industrial plants in the area. The Quint Cities lie in the center of one of the Nation's finest farming areas.

5. In addition to its private industrial and farm importance, the Quint Cities are the home of the Rock Island Arsenal, the Government's largest inland arsenal, lying on an island in the Mississippi between the major cities on the Iowa and Illinois shores. Covering about 1,400 acres, the arsenal is the headquarters for the Ordnance Weapons Command and the District Corps of Engineers. During World War

¹ Issue No. 5 was added by the Commission by memorandum opinion and order, released Feb. 5, 1959, granting in part a petition to enlarge issues filed by Community Telecasting Corp. Issues 1 and 3, not quoted above, became moot by the dismissal of the applications of KSTT Telecasting Co. and Public Service Broadcasting Co. A third applicant, Iowa-Illinois Television Co., also dismissed its application.

II, the arsenal employed upwards of 20,000 people and is still an important stabilizing factor in the area's economy. In 1957 the arsenal employed 5,200 military and civilian personnel, and in 1958 was the third largest employer in the area with an annual payroll of \$28 million. In addition, the Ordnance Corps spends some \$2 million annually in the area for procurement of materials and services. The arsenal is responsible for a growing volume of the Nation's missile program, including the manufacture of the Nike-Hercules launcher.

6. In the area are 59 public grade schools, 18 parochial grade schools, 6 junior high schools, 4 senior high schools, 3 business colleges, 1 parochial high school, 3 private girls' schools—Villa De Chantal, Immaculate Conception, and St. Katherine's, the St. Ambrose Academy for boys, and 4 colleges—Augustana, Marycrest, St. Ambrose, and Moline Community College. The Palmer School of Chiropractic is also located in Davenport. There are several large auditoriums in the Quint Cities, while Davenport maintains a public museum and municipal art gallery. In the music field, the area supports a Tri-City Symphony, the Quad-City Music Guild, and a civic music organization. There are three State parks in and near the area and several fairgrounds, such as the Mississippi Valley Fair Grounds and the Rock Island County Fair Grounds. The urban area contains more than 190 churches, with many additional rural churches on the fringe of the urban area.

7. Daily newspapers in the area are as follows: Moline Dispatch, circulation 28,085; Rock Island Argus, circulation 26,041; Davenport Democrat, circulation 21,205; and Davenport Times, circulation 28,697. There are two weekly newspapers, the Bettendorf Press, circulation 1,575, and the East Moline Herald, circulation 7,000. Davenport has three AM stations and one FM station; namely, KFMA, 500 w power; KSTT, 1 kw power; WOC, 5 kw power; and WOC-FM, 33 kw power. Moline has one AM station—WQUA, 250 w power, while Rock Island has one AM and one FM station—WHBF, 5 kw power, and WHBF-FM, 3.7 kw power. There are six television channels allocated to Davenport-Rock Island-Moline, namely, channels 4, 6, 8, *30 (educational reservation), 42, and 68. Channel 4 is in use by WHBF-TV, Rock Island, while channel 6 is in use by WOC-TV, Davenport. There is an application pending for UHF channel 68 in Davenport, file No. BPCT-2319. All of the applicants in the instant proceeding seek the use of channel 8 to serve the Quint-City area with main studios in Moline, Ill.

Community Telecasting Corp.

8. Community Telecasting Corp. is an Illinois corporation authorized to do business in Iowa as well as Illinois. Of 1,000 shares of authorized common voting stock, 909.09 shares have been subscribed for by 16 stock subscribers. The table below lists the stock subscribers, officers, and directors of the corporation; their city of residence; and the number of shares and percentage of voting stock subscribed for by each:

Name and residence address	Office held	Number of shares subscribed	Percent of voting stock
Mel Foster, Davenport, Iowa.....	President, director.....	90.91	10-
Mark L. Wodlinger, Davenport, Iowa.....	Executive vice president, director, and general manager.....	1 90.91	1 10
G. Rodney Ainsworth, Moline, Ill.....	Vice president, director.....	90.91	10-
Harold W. Hoersch, Bettendorf, Iowa.....	do.....	90.91	10
Clifford I. Josephson III, Rock Island, Ill.....	Secretary, director.....	90.91	10
Benjamin Aster Hartz, Rock Island, Ill.....	Treasurer, director.....	90.91	10-
Clifford I. Josephson, Jr., Moline, Ill.....	Director.....	90.91	10-
Elmer Andrew Underwood, Bettendorf, Iowa.....	do.....	90.91	10
George T. French, Moline, Ill.....	do.....	90.91	10
Clemens A. Werner, Davenport, Iowa.....	.....	18.18	2
Samuel G. Rose, Davenport, Iowa.....	.....	18.18	2
Charles H. Whitmore, Rock Island, Ill.....	.....	18.18	2-
Edward W. Priester, Davenport, Iowa.....	.....	9.09	1
Col. Carl A. Waldmann, Rock Island, Ill.....	.....	9.09	1
William R. Harvey, Bettendorf, Iowa.....	.....	9.09	1
Clarence J. Bendle, Moline, Ill.....	.....	9.09	1
Total.....	.....	909.09	100-

¹ In addition to the 90.91 shares (10 percent) subscribed by Mark L. Wodlinger, Mr. Wodlinger has an option for 5 years from the day the proposed station goes on the air to purchase an additional 90.91 shares. In the event he exercises his option, he would then hold 18.2 percent of the issued stock. The percentages of ownership of the other stock subscribers would correspondingly be reduced as follows: 10 percent subscribers would be reduced to 9.1 percent; 2 percent subscribers: to 1.8 percent; and 1 percent subscribers to 0.9 percent.

Principals of community

9. *Mel Foster*: President and a director of Community was born in Columbus Junction, Iowa, in 1899. He resided in Columbus Junction until 1911 when he moved to Davenport. He has resided in Davenport continuously since 1911. He attended elementary and high school in Davenport and graduated from Brown's Business College, Davenport, in 1916.

10. Since 1921, Mr. Foster has been primarily engaged in the business of real estate and insurance, his principal business being the Mel Foster Co., Inc., of Iowa and Mel Foster Co., Inc., of Illinois, of which he is president, director, and principal stockholder. Mr. Foster is also an officer, director, and stockholder of several other real estate, land development, and construction companies; a director of the Iowa-Illinois Gas & Electric Co., Davenport, a public utility system; and is associated in business with several of the other stockholders of Community, namely, Harold W. Hoersch, William R. Harvey, G. Rodney Ainsworth, Clifford I. Josephson, Jr., Clifford I. Josephson III, Clarence J. Bendle, Charles H. Whitmore, and Edward W. Priester.²

11. Mr. Foster's civic, community, governmental, church, and business association activities have been as follows: In October 1958, he was appointed by the mayor of Davenport to serve on the City's Committee for Urban Renewal; in July 1955, he was appointed by Wendell Barnes, Small Business Administrator, to serve as a member of the

² Mr. Foster's past television interests will be described, *infra*, in conjunction with the findings with respect to Mr. Harold W. Hoersch. In addition to the interests there described, Mr. Foster held a minority interest in radio station KSTT, Davenport, for about 2 years, ending in 1948. When he acquired his interest in that station, the transfer of shares to Mr. Foster and another individual was promptly reported to the Commission by the licensee, KSTT. Inasmuch as the shareholders from whom the stock was acquired had previously held 50 percent each, the transfer involved a negative transfer of control, prior consent for which had not been obtained from the Commission. However, because of KSTT's prompt disclosure of the transfer in its ownership reports and renewal application, consent was thereafter granted by the Commission.

National Board of Field Advisers of the SBA, a post which he still holds; in March of 1958, he was invited to attend the President's Conference on Industrial Safety in Washington; in 1956, he was selected as the community's most distinguished salesman in community building, a civic works award made by the Davenport Sales Executive Board; in 1954, he was given a citation by the National Institute of Real Estate Brokers for outstanding contribution to the literature of real estate brokerage; in 1958, he was awarded a silver plaque by the officers of the Iowa-Illinois Gas & Electric Co. in recognition of 10 years of counsel and advice as a director of the company, the first such award made; on June 14, 1958, he was asked to write an editorial for a local newspaper on the subject "This I Believe" which was reprinted in a number of publications and in the Congressional Record.

12. In the past Mr. Foster has served as: Member and secretary of the Davenport City Plan Commission for 10 years; president of the Davenport PTA; president of the Davenport Chamber of Commerce, 1944 and 1945; president of the Davenport Real Estate Board for 2 years; trustee of the National Real Estate Foundation; director of the Davenport Outing Club; director of the Davenport Club; director of the Community Chest (now working on special gifts committee); director of the Mississippi Valley Fair Association; director of the Iowa Real Estate Board; chairman of the Scott County Postwar Planning Committee, coordinating the work of various civic organizations, headed by the chamber of commerce, to prepare the community and the county for the postwar period of adjustment; general chairman of the Quad-City Better Homes Show for 4 years; member of the Mississippi River Regatta Commission; and member of the State health committee. In addition to the foregoing, over the years he has served in varying capacities on committees and fundraising groups for various organizations.

13. Mr. Foster's current civic community activities include the following: Member of the Episcopal Church; member of the Mississippi River Parkway Commission, having been appointed by the Governor of Iowa in 1954; member of board of trustees of the Davenport YMCA; trustee and treasurer of St. Katherine's School, Davenport; member of the National Citizens' Committee on Rivers and Harbors; member of the Quad-City Industrial Development Committee since 1954, a group of 14 persons representing each of the cities in an effort to foster combined growth as distinguished from individual city growth; trustee for a 9-year term, beginning in 1956, of the Davenport Industrial Development Corporation which raised \$250,000 for industrial development in Davenport (Mr. Foster worked for 3 years on the organization of this group and is also a member of its executive committee); member of the Committee of the Friends of St. Ambrose College Living Endowment Fund; member of the Chamber of Commerce of the United States, Davenport Chamber of Commerce, Davenport Real Estate Board, Iowa Board of Realtors, Quad-City Home Builders' Association, Navy League, Lindsay Park Boat Club, Davenport Club, Town Club, Davenport Country Club, Davenport Outing Club, Rock Island Arsenal Golf Club, YMCA, Bettendorf Chamber of Commerce of Bettendorf, Iowa,

Izaak Walton League, National Association of Real Estate Brokers, Society of Industrial Realtors, National Association of Real Estate Boards, Retail Merchants Association, Scott County Farm Bureau, Iowa Club, Quarterback Club, Elks Club, American Institute of Real Estate Appraisers, Sales Executive Bureau, Davenport Knife & Fork Club, United Commercial Travelers, Iowa Good Roads Association, Iowa Tax Payers' Association, Scott County Sportsmen's Association, and the National Flying Fishermen's Club.

14. In 1946 Mr. Foster handled the negotiations for the Aluminum Co. of America which resulted in obtaining for Davenport (one of several cities under consideration for the plant site) and the State of Iowa their largest industrial facility costing \$150 million. In this effort Mr. Foster traveled 27,000 miles in 3 weeks in making the necessary arrangements, which included, among other things, assembling 45 units of property for the plant site, making arrangements for a railroad siding and river frontage rights, obtaining rights-of-way for roads, and the handling of allocations of materials from the Government. In 1956, as secretary and manager of the Veterans' Housing Corp., Mr. Foster helped in obtaining for Davenport a 57-unit housing project for exclusive rental to veterans.

15. In the event of a grant to Community, Mr. Foster will devote at least 18 hours per week to the station's day-to-day affairs, excluding the usual corporate meetings. During the period of station construction and until the station has been on the air long enough to be operating smoothly, he will devote more time than mentioned above if necessary. Mr. Foster will devote this time to the affairs of the proposed station in his capacities as president and director, chairman of the station's editorial policy board, vice chairman of its community affairs committee, and chairman of the Subcommittee on Davenport Community Affairs. The composition and functions of these boards and committees will be hereinafter described.

16. Mr. Foster took an active part in Community's television plans and preparations, including, among other things, studio planning, site negotiations, equipment negotiations, organization and fiscal plans. Further, he attended and presided over 14 joint stockholder-director meetings held by the applicant between May 16, 1958, and the time of the exchange of the written direct case.

17. *Mark L. Wodlinger*: Executive vice president and general manager of Community. He was born on July 13, 1922, in Jacksonville, Fla. He has resided in the Quint-Cities since 1947 when he moved to Moline, Ill., where he resided until 1949. In 1949 he moved from Moline to Davenport, Iowa, where he has resided continuously since that date. For almost 10 of his 11 years' residence in Moline and Davenport, Mr. Wodlinger has worked for an existing television station in Davenport, WOC-TV, as will be more fully described below.

18. Mr. Wodlinger entered the communications industry as a salesman for radio station WQUA, Moline, in 1948. Shortly after the Commission granted the first television construction permit in the Quint-City area to WOC-TV, Davenport (1948), Mr. Wodlinger obtained a position as salesman for WOC-AM and WOC-FM, Davenport, looking toward the opportunity of serving with the television

operation. When the television station went on the air in 1949, he became a salesman for that station as well and, in 1950, became sales manager for WOC-AM-FM and TV, a position which he held until October 1, 1958, when he resigned to assume full-time duties with Community Telecasting Corp.

19. In the capacity above described, Mr. Wodlinger assisted in putting WOC-TV on the air. He sold the first accounts on WOC-TV and participated in clinics established at the station to educate the businessman and the public to the new medium of television. When the station went on the air he endeavored to obtain as much working knowledge of station operations as possible, working with the station's program director, Mr. Don Bohl, in the actual operations of the studio. He also appeared on the air in programs involving interviews with local businessmen.

20. Mr. Wodlinger also worked with Mr. Bohl in the formulation and preparation of programs bringing ideas to him for program formats. As a result of his saleswork he also made and participated in the making of many programs and local commercials, remote and otherwise. For several years Mr. Wodlinger participated in the actual production of the Salvation Army "Tree of Lights" charity telethon show, working in various production capacities. He also assisted Mr. Bohl in working out the arrangements for a series of programs in cooperation with the State University of Iowa, similar to those proposed in Community's educational program entitled "The Educators Speak," hereinafter described, wherein the university brought to the studio an entire program, created, produced, and directed by the students of the radio and television section of the university's speech department, who served as actors, directors, etc., in "on the air" experience for their closed-circuit operations in the university's own fully equipped television studio.

21. Mr. Wodlinger negotiated an agreement with the "Education Train" sponsored by the Ford Foundation and various manufacturers to bring the train to Davenport for several days in December of 1958—a project promoted and publicized by WOC. He also made all of the arrangements and auditioned and obtained talent for several barn dance programs on WOC-TV, similar in format to the "Illowa Varieties" program proposed by Community Telecasting Corp. Similarly, he worked out the arrangements and auditioned talent for a series of three-per-week $\frac{1}{4}$ -hour live music shows. He also arranged for a series of appearances on WOC-TV of the opera singer, Marguerita Roberti. He sold and arranged the details for a 26-week $\frac{1}{2}$ -hour show for the Illinois Agricultural Association and made various arrangements for WOC-TV's "Rural Roundup" show such as arranging to obtain the daily hog market quotations.

22. Mr. Wodlinger conceived the idea for and instituted live news shows in the three 5-minute breaks in the Dave Garroway "Today" show at WOC-TV. He also instituted a Saturday night newscast at WOC-TV, the only Saturday night news show on television in the Quint-City area. Further, he made arrangements with the Tommy Bartlett Water Ski Show to bring it to Davenport for local appearances, and arranged for a remote telecast of the show.

23. Mr. Wodlinger initiated and handled the negotiations with the Sports Television Network to televise the Big 10 basketball games over WOC-TV; made the arrangements for the televising of the 1958 Iowa State High School Boys' Championship basketball games; worked with the State University of Iowa and other universities and the NCAA in arranging for the telecasts of regional Big 10 football games over WOC-TV which would otherwise not have been carried in the area because of NCAA geographical restrictions; and arranged for a series of golf shows using the Rock Island Arsenal golf pro and other pros.

24. In his capacities with civic organizations, Mr. Wodlinger has handled the publicity and noncommercial spot announcements on both radio and television, including the WOC stations and others, for such organizations as the Scott County Heart Association, of which he has been a director for 3 years; the Red Cross Disaster Committee, for which he has served as the chairman of the information division since 1955; the Sales Executive Club of Davenport, of which he has been a director for 3 years; the Davenport Chamber of Commerce, of which he has been a director since 1956; and the Optimist Club of Davenport, of which he was president in 1950.

25. Over the years Mr. Wodlinger handled WOC-TV's television network negotiations and station relations with the ABC Network, with which Community proposes to affiliate if granted. He also had charge of all clearances of NBC television shows on WOC-TV and handled the major portion of all television film buying for the station since its inception, dealing with the distributors of both feature and syndicated films. As sales manager at WOC-TV he was also responsible for the hiring and supervision of the salesmen and sales promotion manager; supervised the traffic department; and was responsible for recognizing policy problems in sales and other fields of station operations, analyzing them and presenting them to the executive vice president for decision.

26. Since 1950 Mr. Wodlinger has attended most regional and national conventions of the NAB and NARTB, as well as the conventions of the Radio Advertising Bureau and Television Bureau of Advertising. He presented a talk on television sales at the regional NAB meeting in the fall of 1956 in Minneapolis.

27. In addition to his past television experience in the market to be served, Mr. Wodlinger has engaged in a great variety of civic and community endeavors too numerous to detail here, and all highly estimable. He is an Episcopalian and a member of the Masonic Lodge.

28. Mr. Wodlinger will devote full time to the proposed station as its executive vice president, director, and general manager, and in service on its editorial policy board and building committee.³

29. *George Rodney Ainsworth*: Vice president and director of Community, was born in Moline on September 7, 1890, and has resided in Moline and East Moline his entire life. He attended the

³ Mr. Wodlinger rendered programing assistance in a consulting capacity to Community in the preparation of its original application filed in May of 1957. However, he did not become associated with Community as a stockholder, officer, and director until May of 1958, shortly before the final amendments to the application were filed.

public schools and 3 years of high school in Moline and thereafter graduated in 1909 from Oberlin Academy, Oberlin, Ohio (preparatory school). He attended Oberlin College from 1909 to 1910 and thereafter the University of Minnesota from which he graduated in 1914 with a B.A. degree.

30. In 1914 Mr. Ainsworth joined Dimock, Gould & Co., dealers in lumber and building materials in Moline since 1852. Dimock, Gould & Co. has been an Ainsworth family business for 60 years, serving Moline, East Moline, Rock Island, and Bettendorf. He has been a director of the company since 1915, serving in the Army from 1917 to 1919. Mr. Ainsworth thereafter returned to Dimock, Gould & Co. and became president of the company in 1930, a post which he still holds although now semiretired. He has also been a stockholder, officer, and director in other lumber companies. Mr. Ainsworth is also president and director of Wholesale Distributing Co. of Moline, Ill., a division of Dimock, Gould & Co., warehousing and distributing building materials, and is a director and stockholder of the Fifth Avenue Realty Building Corp., Moline office building at 1630 Fifth Avenue.

31. Mr. Ainsworth has been a member of the Rotary Club of Moline since 1914, the year in which it was founded. He has served as secretary of Rotary and as a director for many years. In 1948, he was chairman of the historical committee in the Moline Centennial Celebration, which collected and furnished much of the historical data and material for the pageant and parade; he was also instrumental in the design and execution of the bronze plaque now mounted on a monument on the grounds of the Moline City Hall in commemoration of the centennial. Mr. Ainsworth has been very active in church and community affairs, organizations, and the like. He is a Mason and a member of the Congregational Church.

32. In the event of a grant of construction permit to Community, Mr. Ainsworth expects to spend an average of 8 hours per week on the station's affairs during the periods when he is in Moline. As noted earlier, Mr. Ainsworth is semiretired. It is his practice to spend from 4 to 6 months each year in vacationing and travel. During the remaining 6 to 8 months, he is in Moline and will be available to the station. Since he is semiretired, his time is flexible and he can, if necessary, spend any amount of time on station affairs, as may be required. His work for the station will encompass the following duties: (1) discharging the normal functions of a vice president and director of the corporation; (2) serving on the subcommittee for Moline and East Moline community affairs; (3) serving on the subcommittee for service area affairs; and on the building committee.

33. Mr. Ainsworth has lived on and managed the affairs of a farm in the Moline area for many years and is acquainted with county agents and other farm officials and organizations, particularly in Rock Island County. In his capacity as coordinator for farm affairs for Community, he will maintain a continuing contact with agricultural organizations and interests, and will work with Community's full-time farm director in an effort to assure that the needs of the agri-

cultural interests are properly served by the station's agricultural programing.

34. *Harold W. Hoersch*: Vice president and director of Community, resides in Bettendorf. He was born December 26, 1896, in Davenport, living there until 1945 when he moved to adjoining Bettendorf. He has lived in Bettendorf continuously since that date. He attended elementary and high school in Davenport and thereafter obtained his B.S. degree in economics from the Wharton School of Finance and Commerce of the University of Pennsylvania in 1921. He thereafter attended and obtained his J.D. degree from the State University of Iowa in 1924. He also attended the University of Michigan Law School in graduate work on trial practice. He served as an ensign in the U.S. Naval Reserve during World War I. He has practiced law in Davenport since 1924.

35. In addition to his law practice and certain individual and family-owned real estate properties,⁴ Mr. Hoersch is interested as an officer, director, stockholder, and partner in various Davenport real estate and land development companies and in a Davenport construction company. He is associated in business with Mr. Mel Foster, president of Community, in several of these companies and with Mr. William R. Harvey, another Community stockholder, in the Harvey Construction Co. of Davenport. Mr. Clemens A. Werner, another Community stockholder, is Mr. Hoersch's law partner.

36. Mr. Hoersch's past broadcast interests have consisted of the following: In 1952, Mr. Mel Foster and Mr. Hoersch made application as 60-40-percent partners for a construction permit for channel 7 in Miami, Fla. Because of site problems and inability to find an acceptable proposed general manager for the station, the application was dismissed without prejudice by Commission order of February 16, 1954, in docket No. 10855. In 1953 Mr. Foster and Mr. Hoersch, as 50-percent partners, received a grant of construction permit for UHF channel 36 in Davenport (file No. BPCT-1473). Because of UHF receiver conversion problems, site zoning problems, inability to obtain network programs, and probable unprofitability of the UHF operation, the construction permit was relinquished on November 7, 1953.

37. Mr. Hoersch's civic, church, and community activities, past and present, have been as follows: He was secretary and treasurer of the Scott County (Iowa) Bar Association from 1930 to 1935. He is now president of the Scott County Bar Association. He was secretary of the Davenport Lions Club from 1925 to 1928. From 1926 to 1957 Mr. Hoersch was deacon and elder on the church council of St. Paul's Lutheran Church, Davenport, and chairman of the finance committee of St. Paul's Lutheran Church from 1940 to 1957. He is a member of the BPO Elks of Davenport, the Outing Club of Davenport, and the Rock Island Arsenal Golf Club, Rock Island, Ill.

⁴In 1949 the regional office of the Housing Expediter brought a civil action against Mr. Hoersch and his wife in the U.S. District Court for the Southern District of Iowa, Davenport Division, alleging collection of rent in violation of the Rent Control Act. Mr. Hoersch and his wife had bought the property involved for \$15,000, spent \$25,000 on it, and took the position that, under the wording of the act, it was a new rental unit upon which no rent was fixed. A consent judgment was filed and paid immediately in the amount of \$225.

38. In the event of a grant to Community, Mr. Hoersch will devote approximately 15 hours per week to the affairs of the station until it is on the air and operating smoothly. After that time he expects to devote about 10 hours per week to the station. His work will consist of the usual and necessary corporate executive duties of a vice president and director; service as chief local legal counsel to the corporation in its corporate affairs and necessary legal work in relation to station construction, operation, and fiscal matters; service as director of public relations for the station in which capacity he will supervise and guide the station's official contacts with community, public, governmental bodies.

39. Mr. Hoersch took an active part in Community's plans and preparations to engage in television, performing the legal work incident to the formation of the corporation, working with Mr. Foster on the fiscal arrangements for the corporation and its necessary capitalization, and in negotiating for and performing the legal services in connection with obtaining options on the transmitter and studio sites. He also worked with Mr. Foster in negotiating an equipment proposal for the station—originally with RCA and thereafter with General Electric. The original application, filed May 31, 1957, was also prepared under his overall direction. He thereafter participated in the preparation of the various amendments to the application which were filed, including the working out of the new capitalization of the corporation, stock subscriptions and financing arrangements, employment and stock option agreements for Mr. Wodlinger, and other matters. He also worked with Washington counsel for Community and the other Community stockholders in supervising and working out the details of the various plans and preparations for the comparative hearing, and in performing legal, fiscal, and other services incident to the preparation of the case for hearing.

40. *Clifford I. Josephson III*: Secretary and director of Community, resides in Rock Island. He was born March 21, 1920, in Moline, lived in Moline until 1946 when he moved to Rock Island where he has resided to date. He attended the Moline public schools and is a graduate of the Lake Forest Academy, Lake Forest, Ill. He attended the University of Wisconsin from 1938 to 1942. He served in World War II as a second lieutenant in the Air Force. After the war, Mr. Josephson joined C. I. Josephson Jewelers, which has been in business in Moline under his family's management since 1881. He has been a 20-percent partner in the firm since 1946. He is also vice president and a director of the Fifth Avenue Realty Building Corp.

41. Mr. Josephson is a member of the First Congregational Church, has been a member of the Rotary Club of Moline for about 9 years, and a member of the Elks Club of Moline for 10 years. He is also a member of Chi Psi college fraternity and the Izaak Walton League.

42. In the event of a grant of construction permit to Community Telecasting Corp., Mr. Josephson will devote approximately 12 to 15 hours weekly to the station's affairs. The nature of his work at C. I. Josephson Jewelers is such that he could spend substantially more time than this on an irregular basis if needed. Mr. Josephson will serve the station as secretary and a director of the corporation; member

of Community's subcommittee on Moline and East Moline Community affairs; member of Community's subcommittee on service area affairs; and member of Community's building committee during the period of the station's construction.

43. *Benjamin Aster Hartz*: Treasurer and a director of Community, resides in Rock Island. He was born in Rock Island on June 20, 1892, and has resided in Rock Island continuously since birth. Mr. Hartz was educated in the Rock Island elementary and high schools, attended Augustana College, Rock Island, and Yale University, graduating therefrom with a B.S. degree in 1915.

44. Mr. Hartz is now retired, having spent 43 years in the wholesale drug business in Rock Island. For 14 years he worked in operations, buying and selling for Hartz & Bahnsen, which in 1929 was sold to McKesson & Robbins, Inc., which operates a division in Rock Island. Mr. Hartz served 29 years with McKesson, retiring in 1958 as vice president and division manager of McKesson's Rock Island Division, a post which he had held since 1931. He is also president, director, and stockholder in Hartz & Bahnsen which was retained as a real estate holding corporation after its sale to McKesson. He has been a stockholder in the First National Bank of Rock Island for over 50 years and has served as a vice president of the bank since 1954 and a director since 1938. He is also a member of its executive committee and loan committee.

45. Mr. Hartz has been a member of the Rock Island Chamber of Commerce for about 15 years and a member of the Rock Island Rotary Club for 23 years. From 1940 to 1942 he served two terms as president of the Rock Island Community Chest, also serving on its executive committee. He served as a director of the Chest from 1937 to 1942 and has been a member of its fund drives since the Chest was organized in 1925. He was also a member of the budget committee for the Chest in 1935.

46. Mr. Hartz served as: Chairman of the Navy Relief Fund Drive, Rock Island, in 1942; chairman in 1950 of the St. Anthony's Hospital Fund Drive, Rock Island, which was the largest individual fund-raising effort ever held in Rock Island, raising approximately \$400,000; treasurer in 1952 of the Rock Island YWCA Drive to build a new building which exceeded its goal. He is a member of various trade organizations. He attends Trinity Episcopal Church, Rock Island.

47. In the event of a grant of construction permit to Community, Mr. Hartz will be able, in view of his recent retirement, and prepared to devote as much as 30 to 40 hours per week to the station's affairs. His work for Community will consist of service as (1) Treasurer and director of the corporation; (2) member of the subcommittee on Rock Island Community affairs; (3) member of the subcommittee on service area affairs; (4) member of the religious affairs subcommittee; and (5) director of education for the station.

48. *C. I. Josephson, Jr.*: Director of Community, resides in Moline. He was born in Moline on April 9, 1895, and has resided there continuously. He was educated in the public schools of Moline. He attended and graduated from the University of Wisconsin in 1916 with an

A.B. degree. He is also a graduate of the Northern Illinois College of Ophthalmology, having received a master's degree in ophthalmology in 1917. During World War I, Mr. Josephson was a captain in the Air Service, Armament Division.

49. Mr. Josephson began work for C. I. Josephson Jewelers, Moline, in 1910, and has been a partner in the business since 1919. He is now a 60-percent partner in the business with his sister and his son, C. I. Josephson III, previously mentioned, both of whom are 20-percent partners. His other business interests are as follows: Director of the First National Bank of Moline since 1939 and a vice president thereof since 1958; president and director of the Fifth Avenue Realty Building Corp.; stockholder in the Fifth Avenue Realty Building Corp., as is the estate of C. I. Josephson, of which he is the executor; president, director, and a stockholder in Moline Finance Corp., Moline, Ill., a finance company, from 1927 to February 13, 1958.

50. Mr. Josephson's civic, community, and business association activities, past and present, are and have been extensive. He is a member of the First Congregational Church of Moline and is a Mason.

51. In the event of a grant to Community, Mr. Josephson expects to devote an average of 12 hours per week to the station's affairs on a flexible basis. His work will fall into two categories: (1) discharge of the usual functions of a director, and (2) in the discharge of his duties as director of Community affairs for the station.

52. *Elmer A. Underwood*: Director of Community, has resided in Bettendorf, Iowa, since April 21, 1950. From March 1945 to April 1950, he lived in Davenport. Mr. Underwood was born in 1907 in Tiskilwa, Ill. He attended various rural elementary schools and graduated from high school at Blooming Prairie, Minn., in 1926. He joined Sears, Roebuck & Co. in 1931 and has spent 27 years with that company. On February 1, 1945, he became manager of the Davenport, Iowa, Sears, Roebuck & Co. store. He is now group manager of two Sears' stores—those in Davenport and Moline—as well as a distributing warehouse. He is also a small stockholder in Sears, Roebuck & Co.

53. Mr. Underwood's community and civic activities, past and present, have been, and are, very wide, encompassing almost all ranges of endeavor, civic, social, and religious.

54. In the event of a grant of construction permit to Community, Mr. Underwood will be able and intends to devote approximately 15 hours weekly to the affairs of the station in four areas of effort: (a) attendance at directors' meetings and the performance of usual director's duties; (b) the rendering of advice and assistance to Community's management as Community's director of publicity and sales promotion in matters involving advertising, promotion, and sales; (c) in serving as a member of Community's editorial policy board; and (d) in his capacity as chairman of Community's subcommittee on Bettendorf community affairs.

55. *George T. French*: Director of Community, resides in Moline. Mr. French was born on October 6, 1911, in Davenport, Iowa, where he resided until 1942. In that year, he moved to Moline, where he has resided since. He attended the public schools of Davenport and graduated in 1929 from Phillips Academy, Andover, Mass. He there-

after attended Yale University from which he graduated in 1933. In 1933, he served a brief period on active military duty as a second lieutenant, Field Artillery Reserve.

56. In 1934, Mr. French joined Deere & Co., and has been associated with this company ever since. In 1951, he was elected a director of Deere & Co., and in 1956 was elected to the office of vice president, the position which he now holds. His work in this position entails executive direction of the engineering and manufacturing activities of 12 Deere & Co. plants.⁵ Since 1946, Mr. French has also been treasurer, stockholder, and a director of Central Engineering Co., Davenport, Iowa, a highway construction company. Mr. French has had wide experience and participation in governmental, charitable, and religious activities in the area. He is an Episcopalian.

57. In the event of a grant to Community, Mr. French will be able and intends to devote an average of 10 hours per week (or more, in the beginning) to the affairs of the station on a flexible schedule. He would expect to assist in station supervision and operation by (a) attending at directors' meetings and performing the usual director's duties, (b) assisting the officers and management of Community by rendering executive advice, (c) serving as a member of Community's editorial policy board, and (d) serving as chairman of Community's subcommittee on Moline and East Moline community affairs.

58. *Clemens A. Werner*: Stockholder in Community, resides in Davenport. Mr. Werner was born April 3, 1914, in Walcott, Scott County, Iowa, where he resided until 1941. He graduated from Davenport High School in 1931 after which he attended and obtained a B.S. degree at Northwestern University in 1935. He graduated from the Law School of Northwestern University with a J.D. degree in 1938, practiced law in Davenport from 1939 to 1941, at which time he entered the armed services. Entering the Army as a private in June 1941, Mr. Werner worked his way through the ranks, was commissioned and received his captaincy at Bastogne, Belgium, in December 1945, during the Battle of the Bulge. He was awarded the Bronze Star for "Outstanding Performance of Duty" in the crossing of the Rhine River at Worms, Germany, and the French Croix de Guerre for work done during the Battle of the Bulge. He returned to Davenport after discharge from the service and has resided in Davenport continually since 1945.

59. Mr. Werner served as assistant county attorney for Scott County, Iowa, from January 1, 1946, to July 1, 1948. He thereafter entered the private practice of law, becoming, in 1956, a one-third

⁵ As a result of an informal exchange of information among counsel prior to the hearing, it was stipulated by the parties that in May of 1949 a complaint was filed by the Federal Trade Commission against the Malleable Chain Manufacturers Institute and eight other respondents engaged in chain manufacture, including a division of Deere & Co., alleging violations of the Federal Trade Commission Act. In 1952 a consent order was entered requiring certain respondents, including Deere, to cease and desist certain practices, the order providing that, in consenting, the respondents neither admitted nor denied that they engaged in the practices stated to be in violation of the law. Mr. French, Community's stockholder and director, was not an officer or director of the respondent Deere & Co. at the time the complaint was filed and at the time the violations were alleged to have occurred. At the time of the filing of the complaint he was the manager of the division of Deere involved in the proceeding. There is, however, no evidence that Mr. French individually participated in any of the matters complained of. Upon the facts of record, no conclusion adverse to Mr. French or to the applicant, Community, can be reached.

partner in the firm of Hoersch, Werner & Harbeck. Mr. Werner is also a 46-percent stockholder in Community and has been, since 1949, vice president of the Walcott Trust & Savings Bank, Walcott, Iowa. He has been the half-owner of a 226-acre farm since January 1949, and has managed a 200-acre farm since 1953.

60. Mr. Werner was appointed as director of civil defense for Scott County, Iowa, in 1950 and served in that capacity until 1955. In 1940 Mr. Werner was awarded a special gift for establishing a new record in the YMCA membership drive in Davenport; in 1940, he provided a traveling trophy for the school, sending the winner to the Scott County Spelling Contest and donated cups for the winner and runner-up. Upon return from service in World War II and as a result of Legion membership, he secured the support of the Scott County American Legion organization in donating cups for the winner and runner-up in the annual Scott County Spelling Contest and also secured money from the Scott County bankers organization for each participant in the contest. He has been a member of St. John's Methodist Church since 1946 and since 1947 a member of the official board of trustees of the church; he taught 11th and 12th grade Sunday school classes in 1946 and 1947 and was chairman of the promotional campaign for erection of a \$250,000 additional unit and chapel for the church in 1947 and 1949. He is presently serving on the radio committee, Wills committee, and official board of the church. Mr. Werner has been, and is, extremely active in a wide variety of religious, cultural, veterans', civic, and business affairs and organizations. There is no need to encumber this decision with minutiae concerning his activities.

61. In the event of a grant of construction permit to Community Telecasting Corp., Mr. Werner expects to have available at least 12 hours per week which could be devoted to the affairs of the station on a flexible rather than regularly scheduled basis. He anticipates that he would be required to devote an average of 8 to 10 hours per week to his duties for the station. These duties will consist of service to the station as its assistant legal counsel, assisting his law partner, Mr. Harold Hoersch, vice president and legal counsel for the station, in such legal matters as may arise from time to time and serving in his stead in the event of his unavailability; as a member of the station's editorial policy board; as a member of the subcommittee on Davenport community affairs; as chairman of the subcommittee on service area affairs; and in assisting Mr. Rodney Ainsworth, vice president and coordinator of farm affairs for Community, in maintaining contact and liaison with the agricultural interests in the Iowa segment of the proposed service area. During the periods of the year when Mr. Ainsworth is away from Moline, Mr. Werner will assume his duties as farm coordinator for the station.

62. *Samuel G. Rose*: Stockholder of Community, resides in Davenport, Iowa, where he has lived since 1909. Mr. Rose was born on July 26, 1887, near Rapid City, S. Dak., in what was then the Dakota Territory. He resided in Sioux City, Iowa, from shortly after birth until 1909. He was educated in the elementary and secondary schools of Sioux City, after which he attended the University of Nebraska for

2 years. In 1910, Mr. Rose became associated with the Victor Animatograph Corp. which pioneered the development and manufacture of motion picture cameras and projectors. He has been associated with Victor since 1910, serving as salesman, sales manager, secretary, vice president and president, and director and chairman of the board. He has also been a stockholder of Victor for many years. He retired from the company in 1958. Mr. Rose was directly involved in extensive developmental work by Victor. He also worked with the National Education Association in establishing within it a division of audio-visual instruction. He helped to organize the National Audio-Visual Association composed of distributors of equipment and film library operators, and has been an associate member of that association since 1928. He received a "Pioneer Award" from that organization on July 25, 1958. Mr. Rose has been a member of the Society of Motion Picture & Television Engineers since 1918 and was awarded a 30-year Service Certificate on May 4, 1954. He has been an associate member of the Edison Pioneers since 1956. He was a member of the National Association of Photographic Manufacturers, having served on its organizing committee and as a member of its board from 1945 to 1949, when it worked with the Government on materials allocations. He served on the advisory board of the Film Council of America from 1945-46 which was a movement to promote the use of the picture screen in schools.

63. Mr. Rose's civic and community activities are extensive, including, among others, work in the field of education. He has been a member of the Davenport Board of Education.

64. In the event of a grant of construction permit to Community, Mr. Rose proposes to devote at least 10 hours weekly to the daily affairs of the station and substantially more time if necessary. Having retired from his former business activity, he is in a position to devote at least half of his time to the station if it should be required. The work which he intends to perform for the station will lie in the following areas: He will render advice and working assistance to the station in matters of film selection and procurement, particularly educational, religious, industrial, and documentary films—a field to which he has devoted most of his life. He will maintain contact with producers and distributors of educational, industrial, and religious films, with audio-visual departments, associations, and organizations on a local, State, and national level, and with educators in the Quint-City area, with all of whom he is acquainted through past experience, in an effort to assure an adequate supply of educational, documentary, industrial, and religious films of the type suited for the programs proposed by Community. In the matter of educational films, he will work with Mr. B. A. Hartz, Community's director of education, and with Community's educational director-producer and film director. He will also serve as a member of Community's subcommittee on Davenport community affairs and as a member of Community's subcommittee on service area affairs.

65. *Charles H. Whitmore*: Stockholder of Community, resides in Rock Island. Mr. Whitmore was born June 29, 1914, in Atlanta, Iowa, where he resided until 1936. After residing in Iowa City, Iowa,

Chicago, Ill., and Evanston, Ill., Mr. Whitmore moved to Rock Island, Ill., in April of 1946 where he has since resided. Mr. Whitmore received his B.A. degree from Grinnell College in 1935. He thereafter received his J.D. degree from the State University of Iowa Law School in 1940. From December 1943 to March 1946 he served in the U.S. Navy as a supply officer.

66. From 1937 to 1943 Mr. Whitmore served as assistant counsel and executive operating assistant for the United Light & Power Co. In 1946 he became assistant to the president of the Iowa-Illinois Gas & Electric Co., Davenport, Iowa. From 1948 to 1954 he served as general counsel for the latter firm, and from 1950 to 1954 was a vice president of the company. He has been a director of Iowa-Illinois Gas & Electric since 1950, president of the company since 1954, and chairman of the board since 1956. He owns less than 1 percent of the stock of Iowa-Illinois Gas & Electric. Mr. Whitmore is also a trustee and member of the executive committee of the Power Reactor Development Co., Detroit, Mich., which is developing and building a power reactor for utility systems.

67. Mr. Whitmore's community, civic, and industry-association activities are in the general pattern of the other officers and/or directors or stockholders of Community heretofore mentioned. It may be added that he is a member of the board of trustees of Grinnell College.

68. In the event of a grant of construction permit to Community Telecasting Corp., Mr. Whitmore will have available and intends to devote approximately 5 hours per week to the affairs of the station outside his normal working hours. His work will consist of lending market analysis advice to the management of the station, and in serving as a member of the station's subcommittee on Rock Island community affairs.

69. *Edward W. Priester*: Stockholder of Community, resides in Davenport. Until October 1958, he resided in Bettendorf. He has lived in Bettendorf and Davenport since his birth on April 3, 1923, in Davenport. Mr. Priester attended elementary and high school in Davenport, thereafter spending 2 years in college at the University of Notre Dame and 2 years at St. Ambrose College, Davenport, from which he graduated in 1947 with a B.A. degree. Upon graduation, Mr. Priester worked for 2 years as a salesman for the National Building Supply Co. of Davenport and thereafter as an agent, "troubleshooter," and station master for Ozark Airlines in Moline, Ill. In 1952 he entered the real estate and general insurance field. From 1952 to 1957 he was a salesman with the firm of Ruhl & Ruhl, Davenport. From January 1957 to date, he has served in a sales capacity with the real estate and insurance firm of Mel Foster Co., Inc., Davenport. Mr. Priester has been active in community affairs, principally those concerned with the Catholic Church, of which he is a member.

70. In the event of a grant to Community, Mr. Priester expects to devote from 18 to 20 hours per week to the affairs of the station in the following capacities: (1) Member of the subcommittee on Davenport community affairs; (2) chairman of the subcommittee on religious affairs; (3) member of the service area affairs subcommittee; and (4) part-time salesman for Community Telecasting Corp. Mr.

Priester testified that his work for Mel Foster Co., Inc., is such that he will be able to devote approximately 4 hours per day to direct sales efforts on behalf of the television station, dovetailing this work with other outside real estate and insurance sales efforts.

71. *Carl A. Waldmann*: Stockholder of Community, resides in Rock Island. He is a retired colonel in the U.S. Army, who was born in Rock Island County on September 12, 1887. While his early years (1895-1915) were spent in California and Oregon and his career as an Army officer took him to various other parts of the country, Colonel Waldmann's direct testimony indicates that he has always considered Rock Island as his "family home."

72. During his military career, Colonel Waldmann has been stationed at numerous posts in a number of different capacities. Twice in the 1920's he was stationed at Rock Island Arsenal—once for a period of 3 years and once for 2½ years. Among other assignments, he was on the staff of the commanding general, 5th Corps Area, at Fort Benjamin Harrison, Ind., and at Columbus Barracks, Ohio; served as assistant professor of military science and tactics at the Massachusetts Institute of Technology, Cambridge, Mass.; was in charge of ordnance maintenance in the Office of the Chief of Ordnance, Washington, D.C., for 4 years; and served on the staff of the commanding general, 9th Corps Area, Presidio of San Francisco, Calif. While in the service and in furtherance of his Army education, he attended for 2 years and received his master's degree in business administration from the Harvard Business School of Harvard University. He also attended the Army Industrial College in the 1937-38 school year.

73. From 1938 to 1947, the year in which he retired, Colonel Waldmann was stationed at the Rock Island Arsenal. During the last 3 years of his service, 1944-47, he was commanding officer of the arsenal. Colonel Waldmann was awarded the Legion of Merit Medal in 1946. After retirement from the service, he became manager of the export boxing and materials handling department of Deere & Co., Moline, Ill., in which capacity he served from 1947 to 1954. Since 1954 he has been in retirement and has no other business or financial interests except his present interest in Community.

74. Colonel Waldmann's civic and community activities have been extensive, leaning toward emphasis upon the civic and historical aspects of the general community. He is an Episcopalian.

75. In the event of a grant of construction permit to Community, Colonel Waldmann is prepared to devote from 20 to 40 hours per week to station activities as may be required. His work for Community will consist of serving in the following capacities: (1) Co-ordinator of military affairs; (2) chairman of the subcommittee on Rock Island community affairs; (3) member of subcommittee on religious affairs; (4) member of subcommittee on service area affairs; and (5) member of the editorial policy board.

76. *William R. Harvey*: Stockholder of Community, resides in Bettendorf. Mr. Harvey was born in Stuart, Iowa, on September 29, 1920, and lived in Stuart and Des Moines until graduation from high school. He attended William Penn College in Oskaloosa, Iowa, and

Compton Junior College, Compton, Calif. After working for various architectural firms and serving in the Army in World War II, Mr. Harvey returned to Des Moines, Iowa, in 1946 where he worked as architectural examiner for the Federal Housing Administration until April of 1951. He moved to Bettendorf at that time and has resided there since that date. Upon coming to Bettendorf, Mr. Harvey became 50-percent owner, president, director, and manager of the Harvey Construction Co., Bettendorf, general contractors, which is his only business interest other than his interest in Community Telecasting Corp.

77. Mr. Harvey's community, civic, and trade association activities are considerable, with emphasis upon building and church matters. He is a Methodist.

78. In the event of a grant of construction permit to Community, Mr. Harvey will be able to make an airplane available to, and pilot it for, Community in order to transport Community's personnel and equipment by air to cover emergency or special news events, such as floods, fires, or other disasters, or to cover other special events on short notice when distance and time make air travel desirable. One of two planes available to Mr. Harvey is especially designed for taking aerial photographs. Mr. Harvey's office is located only one-half mile from the airport and his hours are such that he can be available for this purpose at almost any time. Mr. Harvey has available at least 15 hours per week to devote to the station's affairs, if needed, on a flexible basis. He anticipates that he would be required to devote an average of at least 5 hours per week to the station. His work would consist of the air transportation service to the station from time to time as described above; service on the building committee of the corporation during the period of construction; and the discharge of his duties as a member of the station's subcommittee on Bettendorf community affairs.

79. *Clarence J. Bendle*: Stockholder of Community, resides in Moline. Mr. Bendle was born in Moline on March 13, 1900, and has resided there all of his life except for a 4-year period from 1926 to 1930 in Chicago. He attended the public elementary schools and high school of Moline, after which he attended and graduated from the University of Illinois in 1925, having majored in accountancy. Mr. Bendle's principal business is that of public accountant and tax consultant in which he has engaged since 1930 as an individual proprietorship. His other business interests are as follows: President, director, and 100-percent owner since 1951 of Moline Industries, Inc., a payroll service company; vice president and a director since 1944 of the First Federal Savings & Loan Association of Moline; treasurer and director since 1943 of Henry F. Petersen Investment Co., Moline; a director and less than 25-percent stockholder since 1943 of Fifth Avenue Building Realty Corp. of Moline; accountant for the building corporation; secretary-treasurer, director, and 49-percent stockholder since 1953 of Community Realty Corp., Moline, a real estate business; vice president and a director since July of 1938 of Peters Bakery, Inc., Moline; and vice president and a director since 1955 of Powelson Shoe Store, Inc., Moline.

80. Mr. Bendle's civic, community, and business association activities have likewise been extensive. He is a member of the Congregational Church.

81. In the event of a grant of construction permit to Community, Mr. Bendle is able and intends to devote a minimum of 18 hours per week to the station's affairs. If necessary, he can devote additional time. His work will take two forms: First, he will serve as comptroller for the corporation. The executive offices and main studios of the station will be located in the Fifth Avenue Realty Building, in which his accounting firm is also located. It will be his responsibility to supervise the auditing, bookkeeping, and accountancy operations of the corporation. From his experience in rendering similar service to other corporations, he anticipates that this work will require from 2 to 3 hours daily. In this connection, in addition to handling the bookkeeping and accounting for various types of businesses, Mr. Bendle set up the initial distribution of assets and evaluation for radio station WQUA, Moline, and has handled the accounting details for that station since about 1950. He has also handled the accounting of station WQUB, Galesburg, Ill., since its inception. It is anticipated that the major books and ledgers of Community will be kept and maintained by Mr. Bendle in his office, while the station auditor and bookkeeper will keep the daily, current records in the station's offices under Mr. Bendle's daily supervision. Mr. Bendle's other major area of effort on behalf of Community will be in the discharge of his duties as a member of the station's subcommittee on Moline and East Moline community affairs.

Planning for television

82. Prior to the finalization of Community's program schedule in June 1958, the stockholders of Community were individually assigned various civic, community, governmental, agricultural, educational, religious, and other organizations, groups, and persons to be personally visited by the stockholders to explain Community's television plans and to obtain from them their suggestions as to how Community's station might best serve their needs and interests through television programing. The survey was not limited to the Quint Cities but covered the entire service area proposed to be served by Community. In the initial survey almost all contacts made were by personal interview. The programing suggestions of those contacted were recorded on written-report forms and submitted to Mr. Wodlinger for incorporation in the proposed programing of Community.

83. Thereafter, in July of 1958, Mr. Wodlinger prepared draft copies of detailed descriptions of the formats and contents of all of Community's proposed locally originated programs, incorporating the suggestions of the persons contacted insofar as possible. Copies of these drafts were made available to all Community stockholders. Beginning in August of 1958, the stockholders made a second canvass of all persons and organizations previously contacted. Here again, almost all contacts were by personal interview. On the second visit the person contacted was asked to review the written report of the first visit, confirm its accuracy, and to review the draft program de-

scriptions and make further suggestions if desired. In addition to the "second visit" interviews with those previously contacted, a number of other persons and organizations were contacted for the first time in the second phase of the survey. Further, in the second phase of the survey, contacts were especially queried on the subject of special events and remotes as a result of which Community compiled a list of special event and remote possibilities including sketches and diagrams of buildings and facilities at possible remote locations, possible camera positions in some cases, and the availability of 220-volt power if needed.

84. The written reports of the second-phase interviews were returned and discussed at Community's stockholder meetings, which were held on a weekly basis beginning August 18, 1958, after which they were turned over to Mr. Wodlinger for incorporation in the finalized program descriptions presented by Community in these proceedings. In all, the Community stockholders conducted over 300 personal interviews with program contacts in the course of the 2 phases of the survey. In addition, in August 1958, Mr. Wodlinger directed letters to approximately 700 persons, groups, organizations, churches, educators, and others throughout Community's service area, advising them of Community's plans, offering them the cooperation of the station in making the facilities available on a sustaining basis and soliciting their suggestions as to how the station might serve their needs.

85. The record contains names of persons and organizations contacted, the Community stockholder making the contacts, and the method and dates of contact. A tracing of the contact interviews through the program descriptions establishes that the advance survey conducted by Community weighed heavily in forming the basis for Community's proposed local programs.

86. Wodlinger also directed inquiries by letter to 76 companies and organizations to ascertain the availability of various types of film for television, including educational, documentary, religious, etc., and contacted both UP and AP to make tentative arrangements for wire service.

Testimony of cooperation by public witnesses

87. In addition to evidence of the survey work described above, Community presented the sworn written direct testimony of 13 "public" witnesses from the Quint Cities. These 13 witnesses are among those comprising the very top educational and religious leaders of the community. Their testimony is too extensive to be digested here, but it is obvious that they would cooperate fully with this applicant (of course, there is nothing to indicate they would not cooperate with any of the applicants) in a most active way, personally and by making available the resources of the institutions they represent. Many of the suggestions of these leaders have been incorporated in Community's program proposal.

88. In addition to participating in the advance program survey and in further preparation for their roles in television operations, all of Community's stockholders read and approved Community's program

policy statement, including the NAB Television Code; all of them have familiarized themselves in a general way with certain portions of the Communications Act, the Commission's rules, and the so-called "Blue Book" (with all of which Mr. Wodlinger has had working knowledge and familiarity in his past capacity with WOC-TV); almost all of them visited Community's proposed transmitter and studio sites, and visited and observed television operations at WOC-TV in Davenport. Three of them also visited WHBF-TV in Rock Island. Mr. Hoersch also attended a television operations seminar at WTVJ in Miami, Fla., in 1953. In addition, both Mr. Ainsworth and Mr. Werner investigated the transmitter farm site to assure its suitability as an experimental farm for the station.

Stockholder positions and committees

89. Community proposes various stockholder positions and committees by which supervision of and participation in certain of its day-to-day affairs by its stockholders will be effectuated. A description of the positions and committees follows:

(a) *Director of community affairs*—*C. I. Josephson, Jr.*—In this capacity, Mr. Josephson, a director of Community, will have primary and overall working responsibility, subject to the guidance and ultimate policy decisions of the board of directors, to assure that Community's station at all times seeks to serve and does serve the programing needs of the area in all segments of listener interest. To aid in the discharge of this function, a community affairs committee was established with Mr. Josephson as chairman and Mr. Mel Foster, Community's president, as vice chairman. In order to accommodate the unusual situation created by the various separate, yet related, communities in the Quint Cities area, and to provide a mechanism representative of all of these communities, as well as the surrounding area, a group of subcommittees was created—for Davenport, Rock Island, Moline and East Moline, Bettendorf, and for the "service area." A special subcommittee for religious affairs, with Mr. Priester as chairman, was also created to assure that all major faiths receive proportionate representation in air time and that the station and the public will receive the benefit of the sources of programing available in the activities of the churches. To each of these subcommittees various Community stockholders have been assigned. The subcommittee on service area affairs was, in turn, broken down to its individual members by assigning to each member a specific list of counties within the service area for which each would be responsible. The purpose of the committee and subcommittees is to establish and maintain contact with all civic, community, agricultural, religious, educational, governmental, and similar organizations, individuals, and groups within the various Quint Cities and the counties within the service area to assure that their needs are properly served by the station on a continuing basis. The various subcommittees have met, organized, and adopted plans for implementing their work. It will be Community's policy to make continuing surveys of area needs through its stockholder committees after going on the air to assure that the changing needs of the public are served. Mr. Josephson, as director

of community affairs, will also play a part directly in the formulation and supervision of particular program formats. The committees are headed as follows: Director of education, Benjamin A. Hartz; coordinator of farm affairs, G. Rodney Ainsworth; coordinator of military affairs, Col. Carl A. Waldmann; director of public relations, Harold W. Hoersch; and director of publicity and sales promotion, Elmer Underwood.

90. A building committee, consisting of Mark Wodlinger, chairman, and Messrs. Harvey, Ainsworth, and C. I. Josephson III, will be responsible for the implementation and supervision of the building and construction plans for the station in cooperation with management and the board of directors.

91. An editorial policy board, consisting of Mel Foster, chairman, and Messrs. Waldmann, French, Underwood, Werner, and Wodlinger (the chairman of the various subcommittees on community and area affairs), as well as the president and general manager of the station, will establish and assure the maintenance of the station's editorial policy on matters as they arise from time to time, subject to the overall policy power of the board of directors.

92. Community's stockholders and directors have adopted a resolution pledging Community to operate its proposed station in accordance with the NAB television code. In addition, Community has adopted a statement of "Program Plans and Policies" which was affirmed by resolution of the stockholders and directors.⁶ Community's policies may be summarized as follows:

(a) *Educational programs.*—Community will devote a considerable portion of its time to educational programing, maintaining liaison with educational institutions in its service area, and keeping abreast of developments in techniques of educational television.

(b) *Youth programs.*—Community will devote its best efforts in developing programing of wholesale entertainment, information, and guidance for youthful viewers. Teenage discussion programs, safe driving, church activity, and youth guidance programs will be encouraged in an effort to develop good citizenship.

(c) *Community affairs programs.*—Community will attempt through programing to foster harmonious relations and understanding as among the several politically separate but geographically related communities in the Quint Cities complex, emphasizing information and creating awareness of the problems of each and the manner in

⁶ An exhibit entitled "Statement of Program Service" and pertaining to policy matters such as the broadcasting of controversial issue programs, local news, religious and educational programs, was contained in Community's original application for channel 8, filed in May of 1957. The record shows that it was identical with exhibits of the same title filed in the earlier Davenport UHF and Miami television applications of Messrs. Foster and Hoersch. An "Amended Exhibit P-2" on "Program Service" filed with the final June 1958 amended application of Community contains some of the language of the earlier original exhibit, above mentioned, but differs from it in other respects. Mr. Hoersch testified that a draft of the final amended exhibit was discussed by Community's stockholders, paragraph by paragraph, and, after suggestions were made, the exhibit was re-drafted. There was no evidence that use of the same program policy statement by the same principals in different applications was in any way inappropriate, particularly when it is redrafted and accepted as a current statement of policy. Moreover, the "Program Plans and Policies" exhibit submitted in evidence at the hearing, while consistent with the last amended policy exhibit in the application, is a much more complete statement of policy, is in no way a copy of previous statements, and is the ultimate policy statement unanimously adopted and affirmed by all of the stockholders of Community.

which they may best be solved. Programs designed to air problems and issues of the smaller communities throughout the service area will also have a place in Community's programing.

(d) *Controversial issues.*—Community will offer its facilities as a sounding board for controversial issues, seeking out and developing them through its community affairs director. Equal time will be accorded all sides of controversial issues, preferably on the same program in a forum-type format, using an impartial moderator. The station will assure that all participants are responsible individuals and qualified to represent their positions. Where the station has taken an editorial policy on the issue, an impartial moderator from outside the staff will be used with the station represented on the panel if deemed by it to be desirable.

(e) *News and editorial policy.*—Community's policy is to present wide coverage of news, reported factually and without bias. When commentary is employed, it will be so identified. Community proposes to editorialize, adopting an editorial position on subjects on an ad hoc basis as established by its editorial policy board. Equal time will be accorded opposing viewpoints. The station will not align itself with any political party, subject to its right to take an editorial position for or against any public issue with respect to which political parties or candidates have taken a position. Editorials will be identified as such when broadcast.

(f) *Political broadcasts.*—Broadcasts by political candidates will be carried by Community in accordance with section 315 of the Communications Act, and the Commission's rules and policy pronouncements on the subject.

(g) *Religious broadcasts.*—Community will make its facilities available on a sustaining basis to the churches of all major faiths in the Quint Cities and surrounding smaller communities within the service area on a proportionate, rotational basis.

(h) *Agricultural programs.*—It will be Community's policy to assure adequate time on its station to agricultural interests, maintaining continuing contact with them through Community's coordinator of farm affairs. In aid of this policy, Community proposes the use of its 100-acre farm transmitter site as an experimental farm where new and advanced methods of agriculture can be tested and brought to the television audience.

(i) *Armed services programs.*—It will be Community's policy to assure, through its coordinator of military affairs, that the needs of the Rock Island Arsenal and other armed service units are adequately served. Time will be made available to them on a sustaining basis.

(j) *Advertising and commercial standards.*—Community's policy will be to maintain a reasonable balance as between commercial and sustaining types of programing, endeavoring to maintain a continuing ratio approximate to that specified in its application; i.e., 71.81 percent commercial to 28.19 percent sustaining. Community will also assure that its facilities are always available to Government, community, and civic organizations for noncommercial spot announcements. It will follow the NAB code.

Programs

93. Community submitted a proposed program schedule for a typical week of operation, setting forth the schedule of programs which its station would expect to produce as soon as possible after the station is on the air and operating smoothly. While Community may vary the format of its programs from week to week or at more extended intervals to meet new and changing needs or to make room for the televising of special events and remotes, basically it will adhere to the schedule submitted and will assure that its programing, in terms of content, quality, and balance, is produced in conformity with the typical week's schedule. It was stipulated that all applicants in this proceeding propose to affiliate with the ABC network and that an affiliation would be available to the successful applicant. It was also stipulated that descriptions of network programs would not be admissible in evidence in the direct case.

94. Community proposes to broadcast 116 hours and 45 minutes per week, 7:10 a.m. to 12:05 a.m., Monday through Friday; and 8 a.m. to 12:05 a.m. on Saturday and Sunday. An analysis of Community's programing by type and source follows:

<i>Program type</i>	<i>Percentage</i>
Entertainment.....	56.8
Religious.....	4.8
Agricultural.....	4.1
Educational.....	11.6
News.....	8.8
Discussion.....	4.1
Talks.....	9.8
Total.....	100.0

Program log analysis (percentages)

	8 a.m.- 6 p.m.	6-11 p.m.	All other hours	Total
Network commercial (NC).....	23.57	59.29	-----	31.91
Network sustaining (NS).....	2.14	4.28	-----	2.57
Recorded commercial (RC).....	30.00	11.43	59.57	27.41
Recorded sustaining (RS).....	16.43	-----	21.28	11.99
Wire commercial (WC).....	-----	-----	-----	-----
Wire sustaining (WS).....	-----	-----	-----	-----
Live commercial (LC).....	11.55	15.00	10.64	12.49
Live sustaining (LS).....	16.31	10.00	8.51	13.63
Total commercial	65.12	85.72	70.21	71.81
Total sustaining	34.88	14.28	29.79	28.19
Complete total	100.00	100.00	100.00	100.00
Proposed broadcast-hours (per week).....	70	35	11:45	116:45
Number of spot announcements (SA) (per week).....	147	112	35	294
Number of noncommercial spot announcements (NCSA).....	98	49	28	175

95. Community proposes to follow the NAB television code in its practice with respect to the number and length of spot announcements allowed in given periods of time. Not more than one commercial spot announcement and one station identification will be permitted between programs. The following standards for commercial time in programs will be followed:

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Length of program (minutes)	Length of advertising message (minutes and seconds) in—	
	Class A time	All other hours
5.....	1:00	1:15
10.....	2:00	2:10
15.....	2:30	3:00
25.....	2:50	4:00
30.....	3:00	4:15
45.....	4:30	5:45
60.....	6:00	7:00

96. A description of Community's proposed locally originated programs follows:

(a) *Entertainment programs:*

(1) *Music Hour (Part I)*, Entertainment (RC), 9:30-10 a.m., Sunday—A filmed program covering all types of music from symphony to popular, the origin and story of favorite old songs throughout the world.

(2) *Music Hour (Part II)*, Entertainment (LC), 12 noon to 12:30 p.m., Sunday—A live production produced in cooperation with the Tri-City Symphony, the music departments of various school systems in the service area, the Quad-City Music Guild, the Civic Music Association, Handel Oratorio Society, and the music departments of Augustana, St. Ambrose, and Marycrest Colleges.

(3) *Round Up Time (Part I)*, Entertainment (LC), 10:15 to 10:30 a.m., Saturday—This live program, following immediately after "Saturday Cartoons," will feature a singing cowboy, playing the guitar and telling brief stories about the West. He will describe some of the happenings that are going to occur in the following western feature film that starts at 10:30 a.m. Children (including school classes) will be invited to the studio to meet the cowboy and to say hello to their families and friends over television.

(4) *Round Up Time (Part II)*, Entertainment (RC), 10:30 a.m. to 12 noon, Saturday—The third in the consecutive series of Saturday morning children's programs will feature a western film, particularly suited for children's viewing, of full-length duration.

(5) *Story Book Time*, Entertainment (RC), 2 to 2:30 p.m., Saturday—Will consist of children's stories, complete in one episode, using such film series as "Sleepy Joe," a series featuring stories about the famous "Uncle Remus" characters, and the "Hans Christian Andersen Tales." The film story will be preceded by a brief introduction by a female narrator in a home setting.

(6) *Teen Talent Hop*, Entertainment (LC), 2:30 to 3:30 p.m., Saturday—A live studio show with guests selected from the various high schools and junior high schools in the service area, with the help of the various community affairs subcommittees. The teenagers will dance to the recorded music that is played; there will be interviews with the students as to activities and news of their schools. This program will also be used as a vehicle for discovering and developing local talent by inviting young singers, musicians, dancers, actors, etc., to appear and perform. Contests, with scholarship awards to winners, will be conducted.

(7) *Flicker Fantasies*, Entertainment (RC), 4:30 to 5 p.m., Saturday—This filmed show will feature a variety of old silent comedy films. The series will also include sound-on-film comedies, all old vintage.

(8) *Illowa Varieties*, Entertainment (LC), 6:10 to 6:30 p.m., Saturday—This show will feature a group of square dancers, a caller, a master of ceremonies, and guest entertainers. The setting will be in a barnyard.

(9) In addition to the foregoing, Community will present several syndicated and feature film productions as follows: a situation comedy series for

the housewife at 9 to 9:30 a.m., Monday through Friday; an adventure-type series from 10 to 10:30 a.m., Monday through Friday; a full-length feature "Morning Movie" from 10:30 to 12 noon, Monday through Friday; a travelogue series from 12:30 to 1 p.m., Monday through Friday; a "Family Theatre," featuring family shows such as "Life With Father," from 6:30 to 7 p.m., Monday only; a full-length feature film on "Theatre 8" from 10:30 p.m. to midnight, Monday through Sunday; and a Saturday morning cartoon show from 10 to 10:15 a.m., the first of a series of three Saturday morning children's programs.

(b) *Religious programs:*

(1) *Bible Story Time*, Religion (LS), Sunday 9-9:30 a.m.—Will utilize outstanding Bible school teachers from the area who will be rotated among the various faiths. Whenever possible, the Bible school class of the teacher will be present in the studio. From time to time, certain parts of the Bible stories will be enacted by the students of the class. The selection of teachers will be made by the ministerial associations, Catholic churches, Jewish synagogues, and independent church groups working with Community's sub-committee on religious affairs. As a result of the program survey made by Community's stockholders, this program will also cover Sunday school and Bible classes on film at the churches for later viewing on the program.

(2) *This Is the Answer*, Religion (RS), 10:30-11 a.m., Sunday—Filmed religious programs, such as a series called "What's Your Trouble," featuring the Rev. Norman Vincent Peale, and "Man to Man," featuring Rev. Gordon M. Jorgensen, will be used in this program which will be devoted to the theme of the solution to everyday problems through spiritual and religious help. An effort will be made to include films from all major faiths.

(3) *Ministerial Association Hour*, Religion (LS), 11-11:30 a.m., Sunday—All faiths and denominations will be represented on a rotating basis on this program which usually will originate in the studio.

(4) *Religious Film*, Religion (RS), 11:30-12 noon, Sunday—This program of filmed religion will, to the extent possible, be alternated among the various faiths on a proportionate basis, using material from the various church organizations.

(5) *This Is the Life*, Religion (RS), 12:30-1 p.m., Sunday—Half-hour dramatization of a real life problem filmed by the Lutheran Church, Missouri Synod, and similar films.

(6) *The Christophers*, Religion (RS), 4-4:30 p.m., Sunday—An inspirational, filmed half-hour religious series featuring well-known personalities of the entertainment world, along with religious leaders.

(7) *Religion in the Home*, Religion (LS), 7:10-7:15 a.m., Monday through Saturday—A brief prayer and inspirational thought to start the program day.

(8) *Evening Prayer*, Religion (LS), 12 midnight to 12:05 a.m., Monday through Sunday—Like the morning devotional program, this program will be conducted by various clergymen from the service area.

(c) *Agricultural programs:*

(1) *Modern Farming (Part I)*, Agricultural (RS), 1:15-1:30 p.m., Sunday—As a result of Community's contacts with county agents, Community plans that this recorded program will feature films of interest to farmers from the U.S. Department of Agriculture Handbook No. 131 and from Iowa State College, Ames, Iowa, and other midwestern agricultural schools.

(2) *Modern Farming (Part II)*, Agricultural (LS), 1:30-1:45 p.m., Sunday—A live discussion of the telecast in part I, described above. This portion of "Modern Farming" will be conducted by the farm director who will discuss the subject with a county agent, State or Federal farm official, or farmers who have had experience in the subject shown in the film presented in Part I. Part II will sometimes originate live from a farm.

(3) *Farm Roundup*, Agricultural (LC), 7:15-7:30 a.m., Monday through Friday—Conducted by the station's full-time farm director, will present brief news headlines, farm weather report, farm markets and crop conditions, including a summary of the previous day's agricultural commodity markets,

including livestock, grain, poultry, etc. This is a complete type of farm program. Various awards are planned for meritorious farm enterprises.

(4) *Farm Almanac*, Agricultural (LS), 12:15 to 12:30 p.m., Monday through Friday—A noontime service to the farmers and farm families, conducted by the farm director. It is planned that county agents who were contacted in the program survey will appear on this program along with other agricultural officials—county, State, and Federal. A summary of the day's market conditions, important forthcoming events such as county fairs, 4-H Club meetings, livestock auctions, etc., will be announced and discussed. It will include sound on film, as well as remotes of local farm interest; also, home economics events.

(5) *Farm Wife*, Agricultural (RS), 8:15 to 8:30 a.m., Saturday—A series of short subjects on film of interest to the farm wife, on such topics as the freezing of fruits and vegetables, better methods of turkey raising, garden and grass information. Films from educational institutions will be used. Community proposes to work with the various county home economics agents and extension groups in the selection of the films to be aired.

(6) *Farmers' Viewpoint*, Agricultural (LS), 12 noon to 12:30 p.m., Saturday—Although classified as "agricultural," it will take the format of a panel-discussion program, the panel consisting of farmers, county or Federal agricultural officials, businessmen, if the subject involves them, and any other pertinent group.

(7) *Farm Time*, Agricultural (RS), 12:30 to 1:30 p.m., Saturday—Films from The Television Film Catalogue of the U.S. Department of Agriculture Handbook No. 131; State University of Iowa, Extension Division, Bureau of Audio-Visual Instruction; from the University of Illinois Visual Aids Service; and from 4-H and Future Farmers of America sources, and films taken on Community's experimental farm and on farms in the service area will be used.

(d) *News programs:*

(1) *Church News*, News (LS), 8-8:05 a.m., Sunday—This program will give news of the activities of the various churches of the area, their services and special events, with particular emphasis on the "Quint City" churches.

(2) *Rural Church News*, News (LS), 8:15-8:30 a.m., Sunday—News of activities and services of rural churches throughout the service area of the proposed station.

(3) *News and Weather*, News (LC), 8:05-8:15 a.m., Sunday; 8:05-8:15 a.m., Saturday—Ten-minute news and weather shows featuring 8 minutes of local, regional, and national news and 1½ minutes of weather information and forecast, originating in Community's "Window Studio" as a one-camera show.

(4) *News, Weather, Markets*, News (LC), 8-8:15 a.m., 12-12:15 p.m., 6-6:15 p.m., Monday through Friday; 10-10:15 p.m., Monday through Sunday; 3:30-3:45 p.m., Saturday; 1-1:15 p.m., Sunday—News, markets, and weather, produced by the station's news department, with local news gathered by the station's regular news staff and supplemented by part-time reporters and "stringers" throughout the area as needed. Each regular newsmen will be equipped with a silent 16-mm motion picture camera and a Polaroid Land camera. The news department will also have a sound-on-film camera for special interviews and news coverage when sound is advisable. In addition, the sound-on-film camera will be used to record film clips of news off the tube of network newscasts and talks of special interest for later use. Facsimile wire photo still pictures and teletype news ticker service will be used. Community proposes to obtain weather information every hour on the hour with additional data available at 6 a.m., 6 p.m., noon, and midnight.

(5) *Sports News*, News (LC), 6-6:10 p.m., Saturday—A roundup of all final scores of Saturday afternoon football, basketball, and baseball games in season. Incidental film clips and still pictures will be used to illustrate.

(6) *Sports News*, News (LC), 10:15-10:30 p.m., Monday through Sunday—Sports news report each evening conducted by the station's sports

director, featuring up-to-date news from the world of sports, scores of games and contests just completed, interviews with sports personalities, players and coaches from teams in the service area. Incidental film clips will be used of interesting sports events of the day along with still pictures to illustrate.

(7) *This Week in Review*, News (LS), 8:30-9 p.m., Sunday—A review of all local, regional, national, and international news of importance that has occurred during the past week, with news events of especial interest to the viewers in the service area to be emphasized. Prominent persons will discuss the news. This program will be under the supervision of the news director who will act as reporter-commentator and, from time to time, express the editorial position of the station. It will be the news director's responsibility to clear the editorial policy position with the station's editorial policy board.

(e) *Discussion programs:*

(1) *The Light*, Discussion (LS), 10-10:30 a.m., Sunday—A panel discussion of moral, spiritual, and religious problems, under the general supervision of Community's subcommittee on religious affairs, bringing together the religious, spiritual, and lay leaders of the service area on such issues as interfaith understanding and harmony, the religious and moral significance of current events, and related subjects and problems.

(2) *Teenage Viewpoint*, Discussion (LS), 1:45-2 p.m., Sunday—Designed to provide an outlet of self-expression for the teenagers, this panel program will be rotated from among the secondary schools and colleges in the communities served. Teenage problems will be discussed.

(3) *Speak Your Mind*, Discussion (LS), 4:30-5 p.m., Sunday—A panel discussion of a timely topic of local, national, and world interest, with emphasis on local topics. The panel will consist of educators, businessmen, labor leaders, and professional men of the area.

(4) *Letters to the Editor*, Discussion (LS), 9:30-10 p.m., Sunday—Conducted by Community's news director, this program will feature a discussion of local problems submitted by viewers in "letters to the editor," reviewed in advance by the director of community affairs, with the aid of his subcommittees, who will select one or more letters for discussion each Sunday evening. The viewer will also name the local authorities he wishes to have discuss the local questions.

(5) *Panorama Illinois*, Discussion (LS), 9:30-10 p.m., Monday, Tuesday, Thursday, Friday—A series of programs devoted to the use of the many communities throughout the service area in both Illinois and Iowa, designed to stimulate the free expression of opinion and thought on matters of local concern.

(6) *Distaff Side*, Discussion (LS), 1:30-2 p.m., Saturday—A potpourri of discussion tailored to the interest of the women and conducted by Community's woman's director. Community also proposes to use this program for panel discussion of the activities and programs of such organizations as the YMCA, the Scouts, and other youth organizations to acquaint mothers with the facilities available through these agencies.

(f) *Talk programs:*

(1) *Sunday Driver*, Talk (RC), 8:30-9 a.m., Sunday—A film program describing various places in the Middle West and particularly in the service area that the Sunday driver can visit.

(2) *Good Morning Ladies*, Talk (LC), 8:30-9 a.m., Monday through Friday—Under the direct supervision of the woman's director, is scheduled to entertain mother "over the coffee cup." The program will also be used as a vehicle for noncommercial public service announcements of the upcoming activities, meetings, and charity drives of various ladies' groups. Each day the mistress of ceremonies will present one or more local guests for the day from the service area.

(3) *Short Subjects*, Talk (RC), 8:15-8:30 a.m., Monday through Friday—A variety of filmed information ranging from documentaries to sports shorts, travelogs, and U.S. Army films.

(4) *Your Community—Your Government*, Talk (LS), 1-1:15 p.m., Monday through Friday—A live program, conducted under the general supervision of the director of community affairs, featuring interviews of leading citizens and Government officials from throughout the service area, giving an insight into the personalities of these people as well as their jobs and the workings and functions of the organization which they represent.

(5) *Industry in Action*, Talk (RC), 1:15-1:30 p.m., Monday through Friday—The activities of the industries of the area and of the Nation through the medium of film, familiarizing the viewer with the companies operating in the communities in the service area. Films from the National Association of Manufacturers and other sources will also be used to show how various products are made.

(6) *The Arsenal Hour*, Talk (LS), 7-7:30 p.m., Monday—This program will be under the supervision of Community's coordinator of military affairs, the former commanding officer of the Rock Island Arsenal. Each week a segment of the "Arsenal Hour" time will be devoted, on a rotating basis, to one of the armed services, for recruiting and reserve activities and special service functions. This program may vary in format from time to time so as to include films produced by the services and deemed by them to be of particular importance, such as "Your Defense," a film distributed by the Department of Defense.

(7) *The Challenge*, Talk (RC), 8:30-9:30 a.m., Saturday—Films showing some of the health problems of today and the progress being made in the field of medicine, surgery, and dentistry. It is proposed that the program be conducted under the guidance of the medical and dental associations in the communities.

(8) *Kate's Kitchen*, Talk (LC), 9:30-10 a.m., Saturday—This will be done in a kitchen background, with a qualified home economist; recipes from all parts of the world will be featured. It is planned that the foods, eating habits, and customs of a different foreign country or region of our own country will be shown each week.

(9) *Safety First*, Talk (RC), 3:45-4 p.m., Saturday—Produced in conjunction with local police and fire officials, will present films on safety (in all phases of life) from the Illinois Department of Public Safety and the Iowa Safety Commission; the Fire Underwriters Association; fire and casualty insurance companies; the Engineering Extension Service of Iowa State College, Ames, Iowa; the Motor Club of Iowa; and Community's own films taken of local accidents and fires.

(10) *Bowling*, Talk (RC), 5-6 p.m., Saturday—A filmed bowling show featuring the outstanding bowlers of the country in competitive bowling matches.

(g) *Educational programs:*

(1) *Sunrise Semester*, Education (RS), 7:30-8 a.m., Monday through Friday—This is an educational film series presented by Dr. Floyd Zulli, Jr., assistant professor of romance languages at New York University's College of Arts & Sciences. It is produced by Warren A. Kraetzer, director of NYU's office of radio and television. It is a course in modern literature, covering literary selections from the works of Stendhal, Balzac, Dickens, Thackeray, and other authors. Community proposes to develop and telecast college courses for credit in cooperation with certain colleges.

(2) *Humpty Dumpty College*, Education (LS), 9:30-10 a.m., Monday through Friday—This weekday, half-hour, live educational children's program will be conducted by a trained television kindergarten teacher, Mrs. Barbara Gorham, under the supervision of the local school systems.

(3) *The Educators Speak*, Education (LS), 1:30-2 p.m., Monday through Friday—This will be under the supervision of Community's director of education, working in cooperation with the various schools and colleges in the area proposed to be served. It is planned to televise this show directly from the classroom from time to time and to design it on a part-time but regularly scheduled basis for in-classroom viewing, as an aid to actual school instruction. Community thinks it may be possible to arrange for college credit in this series. Students will assist in operating studio facilities.

(4) *Educational Film*, Education (RS), 4-4:30 p.m., Monday through Friday—This series of educational films will be under the sponsorship of the Davenport Community School Board. The series will utilize the educational film library of the Educational Television & Radio Center at Ann Arbor, Mich.

(5) *Children's Educational Film*, Education (RS), 4:30-5 p.m., Monday through Friday—Like the 4-to-4:30 p.m. adult educational film program, this series will utilize such Ann Arbor educational children's films as "Buckskin Bob," "The Friendly Giant," and "Mr. Murgle's Music." The program will be designed for children of all ages, with emphasis on those below high school level.

(6) *Saturday Classroom of the Air*, Education (RS), 4-4:30 p.m., Saturday—This filmed educational program will be a series emphasizing science under the sponsorship of the Quint City school systems and will consist of educational films from the Ann Arbor Center and educational films from other sources such as the Encyclopaedia Britannica Film Library.

Special events and remote programs

97. Community proposes a number of special events and remote programs on an irregular basis to be produced either live or on film or, in some cases, as special studio productions.

Proposed staff

98. Community proposes a full-time staff of 66, consisting of the general manager, Mr. Wodlinger, and 6 others in the general administrative department, 7 in the sales department, 30 in the program and production department, and 22 in the engineering department. The regular staff includes, among others, a sales manager, auditor, sales promotion and publicity manager, program director, production manager, educational director-producer, farm director, women's director, news director, sports director, film and art director, and chief engineer. Community's stockholders will also engage in operational activities, supplementing the regular staff, as hereinbefore shown, in part. It is found that the Community staff is adequate to operate the station and effectuate the programing.

Proposed equipment

99. In addition to the usual nontechnical equipment, such as furniture, fixtures, props, scenery, etc., Community will employ all necessary technical equipment, including every item necessary to operate the station and effectuate the programing.

Proposed studios

100. Community's proposed main studios will be located in the Fifth Avenue Realty Building at 1630 Fifth Avenue, a main business street in the heart of Moline's business district. They will occupy 5,600 square feet of floorspace on the street floor, 1,300 square feet on a mezzanine floor, and 7,000 square feet in the basement. Moreover, under Community's option, it has the right to acquire additional office space in the building up to 2,000 square feet. Further, a portion of Community's business, i.e., its comptroller's functions, will be performed in Mr. Bendle's existing offices in the same building. Community will employ two principal studios and a small window studio. Studio A

will be approximately 38'6" by 38'6", while studio B will measure 23' by 22'6", both having ceiling heights of 16'10". The small window studio will face on the street. It can be doubled in size by office space adjustment if found desirable. The projection and control room will "look through" glass windows into both main studios and a small announcer booth studio with glass "opening" to studio B. Adequate space has been allotted for all necessary executive and staff offices, a boardroom, client room, and street level reception room. At the outset Community does not propose to operate with auxiliary studios in locations other than Moline.

101. It is found that the studio facilities of Community are adequate to effectuate the proposed programing.

Other broadcast and media interests

102. Neither Community nor any of its officers, directors, and stockholders has any present ownership, office, or other interest in any radio or television broadcast station or in any newspaper or other media of mass communications, except for a minuscule stock interest by G. Rodney Ainsworth in American Broadcasting-Paramount Theatres, Inc.

Tele-Views News Co., Inc.

103. Tele-Views News Co., Inc. (referred to herein as Tele-Views), is an Illinois corporation, which is also licensed to do business in Iowa. Its officers, directors, and stockholders at the present time are the following:

Name and residence	Residence in Moline-Rock Island-Davenport area (number of years)	Date and place of birth	Position	Number of shares held	Percent of stock held
Edward E. Janov, 2500 35th Ave., Rock Island, Ill.	13	Sept. 24, 1922; Chicago, Ill.	President and director.	81	33½
Ernest Bauwens, 4504 15th Ave., Rock Island, Ill.	40	May 27, 1914; Brooklyn, Iowa.	Secretary and director.	81	33½
Louis Janov, 2138 Kohler Dr., Davenport, Iowa.	11	Nov. 6, 1901; Yanou, Lithuania.	Treasurer and director.	81	33½

104. In the event that Tele-Views News Co., Inc., is successful in its application for authority to construct and operate a television channel in Moline, Ill., utilizing channel 8, its officers, directors, and stockholders will be as follows:

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Name and residence	Date and place of birth	Position	Percent of stock held
Edward E. Janov, 2500 35th Ave., Rock Island, Ill.	Sept. 24, 1922; Chicago, Ill.	President and director	25.06
Ernest Bauwens, 4504 15th Ave., Rock Island, Ill.	May 27, 1914; Brooklyn, Iowa.	Secretary and director	25.06
Louis Janov, 2138 Kohler Dr., Davenport, Iowa.	Nov. 6, 1901; Yanou, Lithuania.	Treasurer and director	25.06
Jack Schroeder, Indian Hills, Riverdale, Iowa.	Davenport, Iowa	Chairman, board of directors; chairman, executive committee and director.	1.504
Clark O. Filseth, 415 West Garfield, Davenport, Iowa.	Apr. 7, 1901; Jackson, Minn.	Executive committee and director.	1.504
John A. Hobart, 2320 13th Ave., Moline, Ill.	Nov. 20, 1916; Rockford, Ill.	do	2.256
Charles Carp, 1533 7th Ave., Moline, Ill.	Moline, Ill.	do	2.256
Mrs. Flora Schroeder, 903½ West 3d St., Davenport, Iowa.	July 6, 1897; Davenport, Iowa.	do	1.504
Joe Sirota, 214 Fernwood Ave., Davenport, Iowa.	Jan. 15, 1896; Ukraine, Russia.	do	13.536
James B. Bowen, 511 West Lombard St., Davenport, Iowa.	Oct. 20, 1907; Timewell, Ill.	Executive committee and director.	2.256

The stock of Mr. Edward E. Janov, Mr. Louis Janov, and Mr. Ernest Bauwens will be held in a voting trust, with Mr. Edward E. Janov as the voting trustee.

105. Messrs. Bowen, Carp, Filseth, Hobart, Schroeder, and Mrs. Schroeder will acquire their stock interest pursuant to stock subscription agreements filed with the Tele-Views' application as amended. In the event a television station franchise is granted to Tele-Views, the present stockholders will, in accordance with the Tele-Views' application as amended, take the necessary steps to increase the authorized stock of Tele-Views News Co., Inc., by amendment of its articles of incorporation to the extent necessary for the fulfillment of the obligations ensuing from the said stock subscription agreements. As used hereinafter, the term "stockholders," when referring to Tele-Views, includes both the present and proposed stockholders unless the contrary is indicated.

History of Tele-Views and biographical data respecting its officers, stockholders, and directors

106. Tele-Views commenced its business as a partnership in early 1951 by publishing the TV Tele-Views magazine which contained, principally, a week-to-week listing of area television programs, and information of interest respecting television programs and personalities. In mid-1951 Tele-Views became affiliated with TV Forecast, Inc., an organization with an interest in the publication of a television guide magazine in other areas, and Tele-Views changed the name of its publication to TV Forecast. At the same time it first incorporated and commenced the purchase of its own printing equipment. Within the next year or two, Tele-Views changed its affiliation to the TV Guide organization and secured a franchise from that organization for the publication of the TV Guide magazine in the Moline-Davenport-Rock Island area and for all or a portion of eight Midwestern States. Tele-Views published TV Guide magazine from that time until June 1956, at which time it sold its franchise and

publishing rights to S.R.B. Publishing Company, a subsidiary of Triangle Publications, Inc. By agreement with Triangle, Tele-Views has continued as the printer of TV Guide for the areas covered by the previously held franchise as well as for additional midwestern areas. Since sale of its franchise rights to TV Guide and except for the publication of a child's coloring book for a number of months dealing with local television programs and personalities, the business of Tele-Views has been that of a printer rather than a publisher.

107. Tele-Views has grown since 1951 from a small business employing approximately 6 people to a business which in its printing activities alone employs approximately 75 people with an annual payroll of approximately \$270,000.

108. Tele-Views is a member of the Davenport, Rock Island, and Iowa Chambers of Commerce, and is a member of the Lithographers Technical Foundation, Inc., a foundation devoted to research, development of techniques, and the exchange of information, in furtherance of the development of the lithographic arts.

109. Since its inception in 1951, Tele-Views has contributed to worthwhile causes in its area. During the time it held the franchise for the publication of TV Guide, it donated quantities of TV Guide to the Association for the Benefit of Retarded Children for sale on street corners and at other locations in the Moline-Rock Island-Davenport area. All proceeds from such sales went to the association. Similarly, TV Guides were donated to various hospital auxiliaries to assist in their fundraising campaigns. At the time Tele-Views was publishing a TV coloring book, quantities of free copies were donated to local orphanages. Moreover, free ads were regularly provided in TV Guide for a wide diversity of worthwhile activities such as the March of Dimes, the Red Cross, and other community endeavors. In 1953 when the sponsor of a bowling league in the nearby Sterling-Rock Falls area dropped its sponsorship, thereby endangering the continuation of this activity, Tele-Views stepped in and assumed sponsorship of the league, made the necessary arrangements with a national bowling association, and assumed many of the costs involved, particularly for prizes. For the past 8 years it has sponsored a bowling team in the local Centralette League.

110. Tele-Views has, in its employment policies, cooperated with welfare agencies and authorities. During the past year, working closely with Mr. W. A. Trantz of Dubuque, Iowa, who is responsible for parole activities in the Davenport area, Tele-Views has employed four or five parolees who appropriate authorities have felt should be provided the opportunity to rehabilitate themselves and become useful members of society. Recently, the welfare authorities in the area responsible for assisting Hungarian refugees from the unsuccessful revolt against Communist domination of their country needed interim assistance for these refugees. Tele-Views employed three such refugees in order to support these efforts.

111. Tele-Views became interested in applying for a television station in this area back in the UHF days.

112. As publishers of TV Guide magazine for a number of years, and printers of TV Guide for a number of years thereafter, Tele-Views

became familiar with the general program fare being offered by various stations in the area and the scope of operations of various stations.

113. *Jack Schroeder* was born on August 21, 1925, and resides at Mounted Route, Bettendorf, Iowa. His precollege education was in the public school system, Davenport, Iowa.

114. Mr. Schroeder enlisted as a naval aviation cadet prior to high school graduation. After completing flight training in January 1945, he served with units in American and Pacific theaters, and was discharged from service on March 6, 1946.

115. From 1946 until 1949 when he entered Drake University in Des Moines, Iowa, Schroeder operated his family's grocery business in Davenport and attended St. Ambrose College, Davenport, Iowa, for two semesters. He entered Drake University in 1949 and the Law School of Drake University in 1950, graduating with an LL.B degree in 1952. On January 1, 1953, he formed a partnership with Clark O. Filseth in the practice of law which has continued to the present time.

116. Mr. Schroeder was elected a State representative in 1950 while still a student at Drake University Law School, representing the 101,000 residents of Scott County, Iowa. He served a 2-year term and was reelected in 1952. In 1954, Mr. Schroeder was elected to a 4-year term as a State senator, representing the 21st senatorial district in Iowa. He has served on a large number of senatorial committees in both sessions of his first term.

117. During his career as a State legislator, Mr. Schroeder has introduced many bills in the legislature. In the first session of the Iowa 57th General Assembly, he introduced 44 bills, and in the second session, he introduced 53 bills. At least 18 of these bills were passed and signed by the Governor.

118. Mr. Schroeder was honored by the Davenport and U.S. Junior Chamber of Commerce in 1955 with an award for being outstanding in the cause of good government. He organized and served as first president of the Iowa Heart Association for Scott County (1954), and is now a director of the organization.

119. In 1955, Mr. Schroeder represented the Governor of Iowa as a delegate to the White House Conference on Education, and in January 1955, he represented the Governor at a conference of midwest Governors and other State officials in St. Louis where highway problems were considered.

120. Mr. Schroeder is a member of the Davenport Junior Chamber of Commerce, and served for 2 years as chairman of its committee for the entertainment of orphans. He is a member of the Davenport Elks Club (since 1946); a 32d degree Mason (since 1946); a member, American Legion (since 1946); a member, Kaaba Shrine (since 1946); member, board of trustees, Drake University Law School, for a term ending in January 1959; member of the Iowa State Bar Association; member of the National Association of Claimants Counsel; and was vice commodore, Rock Island, Ill., Boat Club (1956-57). He is also a licensed pilot and has been since 1946.

121. Mr. Schroeder is chairman of the planning and zoning commission, town of Riverdale, Iowa. He drafted the first zoning ordinances for the town. He is a member of the Parent-Teachers Association, Riverdale School; president of Drake Alumni of Scott County (since 1953); solicitor of funds for St. Luke's Hospital building fund in Davenport; and solicitor of funds for United Fund of Scott County.

122. Mr. Schroeder is married and the father of two children. He is a member of St. Mark's Lutheran Church, Davenport, and serves as legal counsel for that church and for the Iowa Synod of the United Lutheran Church of America. He also serves as a delegate to synod meetings.

123. Mr. Schroeder will serve as chairman of the board of directors, chairman of the executive committee, and director of Tele-Views.

124. *Edward Earl Janov* resides in Rock Island. He was born September 24, 1922, in Chicago, Ill., and was educated in the public schools of Chicago. Mr. Janov served in the Army Air Corps from September 1942 until March 1946. He took basic training at Wichita Falls, Tex.; was in the air cadet training program in 1943-44; and taught courses in radio communications at Truex Field, Madison, Wis., in 1945.

125. Since 1945 Mr. Janov has been an officer of Belle Blind Co., Davenport, Iowa. In 1950, while still an officer of Belle Blind Co., he became a partner of Tele-Views, which is now a corporation. He is president of that company and has held that office for a number of years.

126. As head of Tele-Views, Mr. Janov instituted certain policies in the operation of the business designed to meet community and civic considerations over and above the business requirements of Tele-Views. These have been described above, and included the support of such agencies as the American Red Cross, National Foundation of Infantile Paralysis, Red Cross blood bank programs, and the Heart Fund; the institution of a company policy to hire parolees in cooperation with probation authorities, in order to help in the rehabilitation of men who had paid for their misdeeds by imprisonment and were believed by proper authorities to be deserving of such assistance; the support of community and area women's bowling teams; the employment of refugees and displaced persons of all creeds in cooperation with local charity agencies; the contribution of TV Guide and children's magazines to local hospital and charity agencies, and for the support of drives of the associations for the assistance of mentally retarded children and cerebral palsy victims; and the organization of a 72-hole medal golf competition outside of Moline, Ill.

127. Recognizing the needs of many charitable endeavors which do not necessarily receive the support of civic organizations, Mr. Janov, in 1957, conceived the plan for the principals of Tele-Views to form a philanthropic foundation. The purpose of this nonprofit foundation is charitable in nature and will benefit primarily individuals and causes which do not enjoy popular and recognized support, although they are nonetheless deserving. The foundation was incorporated in May 1958, and remained dormant for a period of time in connection

with Internal Revenue considerations in determining the tax status of an eleemosynary corporation.

128. Mr. Janov is also an officer in Boetje Foods, Inc., Rock Island, Ill., and a partner in Tele-Views Products, Rock Island. He is a 32d degree Mason; member, Masonic Lodge; member of the Rock Island Chamber of Commerce; and a member of the Davenport Chamber of Commerce. Mr. Janov is married and the father of three children. His religious affiliation is with the Tri-City Jewish Center, Rock Island.

129. *Clark O. Filseth* resides in Davenport. He was born April 7, 1901, in Jackson, Minn., was educated in the public school system of Jackson, Minn.; the University of Minnesota (prelegal); and Drake University, LL.B. (1928). He was a member of the Minnesota National Guard from 1919-22.

130. Mr. Filseth entered the practice of law in 1928 in Davenport, Iowa; served as assistant county attorney, Scott County, Iowa, 1930-39; served as Scott County attorney 1939-53; reentered private practice in 1953 in partnership with Jack Schroeder and has continued in that capacity until the present time. He is also vice president, Central Loan Co., Davenport, Iowa.

131. During Mr. Filseth's tenure as county attorney he was in charge of law enforcement officers of Scott County, Iowa. As such, he presided over the enforcement of law which pertained to the violation of State laws in the State of Iowa committed in Scott County. As county attorney he was also legal adviser and attorney for all county officials in performing the functions of their respective office.

132. During the time that he served as county attorney of Scott County, Iowa, Mr. Filseth served a term as vice president and also a term as president of the County Attorneys Association of the State of Iowa.

133. Mr. Filseth now is, and has been, active in a wide variety of civic, cultural, charitable, and professional matters, locally and nationally. He is married and has one son. His religious affiliation is with the St. Paul's Lutheran Church, Davenport.

134. *Ernest Gaston Bauwens* resides in Rock Island. He was born May 27, 1914, in Brooklyn, Iowa; attended public and parochial schools in Davenport and St. Ambrose College, Davenport.

135. Mr. Bauwens was a member of the 185th Field Artillery, Iowa National Guard (1937-41); was a staff sergeant, and instructed in telephone matters for 1 year and in various field instruments for 1½ years. His employment was in the printing trade until 1951 when he became partner and later vice president of Tele-Views, an office he holds at the present time. He was the delegate to the Tri-City Federation of Labor, representing the Tri-City Typographical Union, from 1947 to 1954.

136. Mr. Bauwens is an officer of the Belle Blind & Drapery Co., Davenport, Iowa; officer, Boetje's Foods, Inc., Rock Island; and partner, Tele-Views News Products Co., Rock Island.

137. Like others in this applicant, and the other applicants to this proceeding, Mr. Bauwens is, and has been, very active in a wide variety of community affairs. He is married and has four children.

His religious affiliation is with the Sacred Heart Roman Catholic Church, Rock Island, Ill.

138. *Louis Janov* resides in Rock Island. He was born on December 21, 1902, in Lithuania, and attended the public schools of Chicago. He has been a citizen of the United States since July 7, 1916. Mr. Louis Janov [the father of Edward E. Janov] was employed and self-employed in Chicago food markets until 1945 when he moved to Davenport to establish the business firm known as Belle Blind Co. In 1951 he became a partner in Tele-Views News Co. and later became treasurer of Tele-Views. He is also treasurer, Belle Blind & Drapery Co., Inc., Davenport, and treasurer, Boetje's Foods, Inc., Rock Island.

139. Mr. Louis Janov is a 32d degree Mason and a member of the B'nai B'rith. He is married and has three children.

140. *Charles Carp* resides in Rock Island. He was born on August 9, 1917, in Moline, Ill., and attended the Rock Island public schools.

141. Mr. Carp entered the U.S. Army on April 8, 1944; took basic training at Camp Fannin, Tex.; and then joined the 87th Infantry Division. He went overseas to the European Theater of Operations on October 19, 1944; served with infantry divisions in France, Belgium, and Germany; sustained a shrapnel wound on February 5, 1945, in Prum, Germany; and was hospitalized for 18 months and honorably discharged on August 25, 1946. In addition to area campaign medals, he was awarded the Purple Heart Medal.

142. Mr. Carp was employed in a Rock Island clothing store from 1934-37, starting at a salary of \$7 per week. He worked as salesman, window trimmer, stock clerk, etc. He was employed by People's Furniture Co. as a salesman from 1937-41, and he became a half-owner of the business in 1941. He took a leave of absence from 1944 to 1946 for service in the Armed Forces and returned as an active partner in 1946. In 1955, he became sole owner of the business which is located in Moline.

143. Mr. Carp has been a member of the Moline Association of Commerce since 1956. In addition, he has a creditable record of civic and charitable activity. He is a Mason and a member of the Tri-City Jewish Center. He is married, and has a daughter.

144. *John A. Hobart* resides in Moline. He was born on November 20, 1916, at Rockford, Ill.; attended the Rockford public schools, graduating from Rockford High School in 1933; and the University of Illinois, 1934-38, graduating from the College of Commerce with a bachelor of science degree.

145. Mr. Hobart entered the U.S. Navy in the fall of 1943 with a commission as ensign in the Supply Corps; served 28 months overseas aboard a destroyer tender as supply officer; saw service in the Aleutians, Hawaiian Islands, and Okinawa. He was released from active duty in March 1946, with the rank of lieutenant (junior grade).

146. Mr. Hobart joined the Eddy Paper Corp., Cedar Rapids, Iowa, in 1938. In the fall of 1941 he became assistant manager of Newhouse Paper Co., Moline, Ill., and in 1943 became manager. He held that position until 1943 when he entered service. In April

1946, he started a branch office alone for the C. J. Duffey Paper Co. in Moline, and moved the office to Rock Island in 1947. He now serves as vice president of the C. J. Duffey Paper Co. and manager of the Rock Island Paper Division. The Rock Island Division now has annual volume running into millions, serves a radius of 160 miles, and has 16 employees.

147. Mr. Hobart is a member of several business, sports, and social organizations. He is married, has one son, and his religious affiliation is with the Trinity Lutheran Church, Moline, Ill.

148. *James B. Bowen* resides in Davenport. He was born on October 30, 1907, at Timewell, Ill., and educated in the public school system, Galesburg, Ill.; at the University of Illinois; and at Brown's Business College, Galesburg. Mr. Bowen taught bookkeeping and accounting at Brown's Business College for 3 years; worked as office manager for retail furniture stores until 1938 when he joined State Furniture Co. as office manager, a post he has held to present time. He is also vice president, Dixon Savings Bank, Dixon, Iowa, and owner of the Bowen-Dixon Insurance Agency, founded in 1953.

149. Mr. Bowen served from December 1943 until November 1945 as quartermaster instructor at Army Quartermaster School, Camp Lee, Va., and is a member of American Legion Post, No. 353. He is married and his religious affiliation is with St. Anthony's Roman Catholic Church, Davenport, Iowa.

150. *Mrs. Flora Marie Schroeder* resides in Davenport. She was born on July 6, 1897, in Davenport, and was educated in the Davenport public schools. She operated Schroeder's Market in Davenport with her husband for 27 years and now is retired.

151. Mrs. Schroeder is a member, Danish Brotherhood Society; member, Pythian Sisters; member, Turners Society; member, Masonic Auxiliaries; member, Auxiliaries of St. Mark's Lutheran Church; and her religious affiliation is with the St. Mark's Lutheran Church. She has two children.

Executive committee-advisory committee stockholder participation in operation of proposed station

152. In the event that the application of Tele-Views for authority to construct a television station is granted, Tele-Views will reorganize its operational pattern along the following lines:

153. An executive committee will be created. Mr. Jack Schroeder will be chairman of the board of directors of Tele-Views, and chairman of the executive committee. In addition to Mr. Schroeder, the membership of the executive committee will include Messrs. Clark O. Filseth, John A. Hobart, James Bowen, Charles Carp, and Edward E. Janov. The executive committee will be responsible for the operation of the television station, the making of both day-to-day and long-range policy decisions for the station, and the exercise of a general supervision over the station and its operations. In this fashion the direction of the station operation from the ownership level will be separated from the other business affairs of the applicant, with its direction and decision-making process being clearly understood.

154. An advisory committee has been created and will also be relied upon by the executive committee for assistance and guidance. This advisory committee will consist of outstanding citizens in various walks of life in the area, each of whom is identified in the record and has agreed to serve. It will be added to from time to time in the light of operational experience. The advisory committee will meet with the executive committee and its chairman from time to time, with formal meetings at least on a monthly basis, to discuss and consider with the executive committee the particular matters which appear to warrant the special attention of the station, and the ways in which such attention can best be provided.

155. The applicant will not delegate to the advisory committee control of its proposed station or the authority to make program decisions. However, it has the most serious intent to utilize and rely upon the services of the advisory committee as greatly as possible, and on a regular basis, as one important means for securing the advice and area cooperation needed to fulfill its proposals effectively.

156. The stockholders and directors of Tele-Views News Co., Inc., will assume and discharge an overall continuing and regular responsibility with respect to the operation of the station and the determination of its policies.

157. The chairman of the executive committee will normally consult with the general manager on a daily basis. The executive committee will meet frequently for the determination of station policies, consultation with the general manager of the station and other appropriate personnel, and resolution of station problems. In addition, each member of the executive committee, as well as other stockholders, normally will be available whenever any particular matters require special meeting or consideration. Each one of the stockholders and members of the executive committee will be able to devote as much time as may be required for the television station, and will bring his own background to bear on a continuing basis.

Staff, consultant, facilities, and equipment

Staff and consultant

158. The parties to this proceeding have all stipulated that a competent staff would be available to the successful applicant. Tele-Views will, if it is successful in its application, secure the most competent staff available, with preference being accorded local residents to the extent they possess the necessary qualifications. Tele-Views has retained as its television consultant for program and operational advice and assistance, both in this hearing proceeding and for subsequent construction and operation, Mr. Paul Burnham Mowrey, an authority of national and widespread experience in the television field. One of the functions to be performed by Mr. Mowrey in the event that Tele-Views is successful in its application will be that of assisting the permittee in the evaluation and selection of prospective personnel. All employees will be U.S. citizens. Whenever practical, residents of the local area, if properly qualified, will be given preference.

159. The Tele-Views staff will be as follows:

- | | |
|-----------------------------|------------------------------------|
| 1. General Administration : | 5 Producer-directors. ¹ |
| 1 General manager. | 5 Announcers. |
| 1 Comptroller. | 2 Newscasters. |
| 2 Secretaries. | 1 News editor. |
| 2 Receptionist-secretaries. | 1 Photographer. |
| 2 Janitors. | 1 Film editor. |
| 2. Sales : | 2 Film technicians. |
| 1 Commercial manager. | 2 Secretaries. |
| 4 Salesmen. | 1 Artist. |
| 2 Traffic clerks. | 4. Technical : |
| 2 Continuity clerks. | 1 Chief engineer. |
| 4 Secretaries. | 17 Engineers. |
| 3. Production : | 3 Utility-maintenance |
| 1 Program manager. | engineers. |
| 1 Executive producer. | |

¹ One producer-director will be the director and liaison officer for community and area activities, and will report to the general manager as well as the program manager.

160. The only staff member already selected is Mr. Herbert Weinberg, the producer-director who will serve as public service director. Mr. Weinberg resides in Rock Island. He was born on June 2, 1926, in Philadelphia, Pa.; educated in the public schools of Camden, N.J., graduating from Camden High School in June 1944; and attended Gratz College (1943-44, 1946-47), Philadelphia, Pa.

161. Mr. Weinberg is married. His religious affiliation is with the Tri-City Jewish Center, Rock Island, Ill. He has had a wide variety of military, civic, cultural, and journalistic experience.

162. Mr. Weinberg's duties as public service director of Tele-Views will be as follows: He will report both to the general manager and the program director and be responsible for all public service programming. He will be the liaison between the advisory committee, the general manager, and program director, and it will be his responsibility to see that the public service commitments of the station are carried forth. He will work with the executive producer and producer-directors. He will, from time to time, act in the role of moderator for discussion programs and will appear on a regular weekly talk program Saturday evenings. It will be his responsibility to keep informed on all public service happenings, personalities, and events that would be of interest to the viewers in the proposed coverage area.

Studio facilities

163. The proposed studios of Tele-Views will be located on Seventh Street in Moline. The building is adaptable for conversion to a television plant, and for use as a television studio facility. It is presently occupied by a restaurant and provides adequate entrances and exits, toilet facilities, power and light. The proposed site also provides ample parking facilities.

164. It is the plan of the applicant to utilize part of the extensive property surrounding the proposed studio building for experimental and demonstration farm activities in conjunction with the applicant's agricultural programming.

165. The proposed studio building will house two studios (A and B), master control, telecine, and provide considerable office space for the applicant's operation. Halls and stairways are ample for the heavy traffic in television operations. The present building has two dumbwaiters, running from the basement floor to the second floor. It is the plan of the applicant to utilize these dumbwaiters to expedite film handling from the basement to the master control room, located on the first floor. Spacious rehearsal hall facilities have been provided, allowing the applicant sufficient room for extra rehearsal time. The control room of studio A will be raised to allow the technical and production crew to have a clear line of sight into studio A.

166. The art and carpentry shop will be at one end of the scenery prop area. The telecine room will be located in the master control room. The telephone company terminal and equipment space will be assigned to the storage area beneath studio A. Air-conditioning and heating equipment will also be assigned to this same area. The mail and receiving room will be located in the basement area presently allocated to film storage. The receptionist and PBX switchboard will be located on the left-hand side of the lobby, off the main entrance of the proposed studio. Garage facilities will be made available adjacent to the studio on the proposed property. It is found that the studio facilities will be adequate to effectuate the operation and programing proposed.

Technical facilities

167. The operation proposed by Tele-Views on channel 8 will include two live television studios, a master control room, a telecine room, transmitter, antenna, and a remote unit. Equipment facilities employed in these areas will in all cases meet the required standards of the Federal Communications Commission. It is found that the technical facilities will be adequate to effectuate the operation and programing proposed.

Program and related proposals—general preparation

168. The basic program proposals presented by Tele-Views in its application and in this proceeding, in terms of classification of programs by type and source, resulted from the general knowledge and experience of Tele-Views in its community and area, the experience and general knowledge gained by Tele-Views through its publication of TV Guide, the advice of its counsel, and the advice of Mr. Paul Burnham Mowrey, television consultant for Tele-Views. In addition, it has made numerous "contacts" with persons in virtually all significant areas of community and area activity in order to secure the benefits of their experience and talents, and has relied upon them.

169. Discussions and meetings have been held by present and proposed stockholders of Tele-Views for the purpose of determining the policies that will govern the operation of the station for which Tele-Views seeks an authorization from the Federal Communications Commission. Considerable attention has been given to the community and area role that might be played by a new station. In this connection, both the present and proposed stockholders (referred to hereafter as the stockholders) have been apprised of basic rules and

policies of the Federal Communications Commission respecting the construction and operation of television stations and of the general content and purpose of the television code of the National Association of Broadcasters (NAB).

General policy

170. It will be a basic policy of Tele-Views to pinpoint clearly the responsibilities for compliance with applicable FCC rules and policies, as well as other applicable legal requirements, to devise its records with this in mind, to take such other steps as may be needed to remain apprised of Commission and other requirements, and to assure compliance with them. The stockholders recognize that a grant of the Tele-Views' application would, in effect, place upon them a public trust requiring strict adherence to the rules specified by the responsible authorities. The stockholders have agreed that the principles relating to overall policies of a television station contained in the television code of the NAB are generally desirable. Tele-Views proposes to become a member station of the association and be guided by its code.

171. Tele-Views will provide a local transmission service to all significant communities and areas within its coverage pattern. It proposes to come into the community as a television operation "with a strong, positive, and vital approach to public service." It will affirmatively endeavor to bring about extensive use of the station and its facilities by community and area civic, cultural, and similar interests. It will initiate activities off-camera that tie into the public service program efforts of the station and the community and area interests involved.

172. It will be a basic policy of Tele-Views to spotlight and direct public attention to matters of important area interest; to support affirmatively measures necessary for continued community improvement; to select subjects for special attention on the basis of community and area civic and political importance rather than the popularity or unpopularity of the subject; to comment and editorialize, taking all steps necessary to assure (1) accuracy and reliability of the data and information upon which reliance is placed, and (2) full presentation of opposing viewpoints. All such station comment and editorialization will clearly be labeled as such. One program, "Topics of the Day," will be the "editorial page" through which the station can take a publicly identified position.

173. If Tele-Views is the successful applicant, it proposes to be affiliated with the American Broadcasting Co.

174. The proposed typical week's programs reflected in the Tele-Views' schedule does not take into consideration special community and area events, one-time public service programs in support of community drives, elections, etc. Nor does it provide for such special programs as these based upon county fairs, agricultural week, and other typical community or area activities which occur throughout the year on a one-time or occasional basis. However, it is the intention of Tele-Views to provide coverage for such special events and activities even though this may require rearrangement of regular schedules to permit effective coverage of such special events.

Program classifications proposed

175. Tele-Views proposes the following program structure in terms of the definitions and classifications contained in section IV of FCC Form 301:

	Percent
1. Entertainment	66.18
2. Religious	3.81
3. Agricultural	3.96
4. Educational	6.67
5. News	7.92
6. Discussion	4.17
7. Talks	7.29

	8 a.m.- 6 p.m.	6-11 p.m.	All other hours	Total
	<i>Percent</i>	<i>Percent</i>	<i>Percent</i>	<i>Percent</i>
Network commercial (NC).....	23.88	73.57		34.79
Network sustaining (NS).....	1.49			.83
Recorded commercial (RC).....	30.60	8.57	55.09	27.85
Recorded sustaining (RS).....	2.24		.46	1.32
Wire commercial (WC).....	2.24	4.29	6.95	3.54
Wire sustaining (WS).....				
Live commercial (LC).....	11.07	7.14	26.85	12.29
Live sustaining (LS).....	28.48	6.43	10.65	19.38
Total commercial.....	67.79	93.57	88.89	78.47
Total sustaining.....	32.21	6.43	11.11	21.53
Complete total.....	100.00	100.00	100.00	100.00
Proposed broadcast-hours (per week).....	70	35	15	120
Number of spot announcements (SA) (per week).....	160	170	65	395
Number of noncommercial spot announcements (NCSA) (per week).....	160	100	65	315

Religious programming

176. Tele-Views will provide free air time to the various religious denominations in the area and will encourage use of the station's facilities and personnel by them. It will not sell time for local religious programs.

177. The scheduling of nonnetwork religious programs proposed by Tele-Views is as follows:

Day	Title	Time	Total
Sunday.....	Religion for Sunday.....	9:30-10 a.m.....	½ hour.
	Religious program.....	10:30-11:30 a.m.....	1 hour.
Sunday through Saturday.....	Religion.....	2:30-3 p.m.....	½ hour.
	Prayer.....	12:25-12:30 a.m.....	35 minutes.
Monday through Friday.....	Meditation.....	6:30-6:35 a.m.....	25 minutes.
Tuesday and Thursday.....	Religious program.....	11:30-12 noon.....	1 hour.
Saturday.....	Meditation.....	9:30-9:35 a.m.....	5 minutes.
	Religious program.....	11-11:30 a.m.....	½ hour.

Weekly total hours, 4 hours 35 minutes.

178. A summary of the nonnetwork religious programs proposed by Tele-Views is as follows:

(1) *Meditation-Prayer and Religion for Sunday*, 6:30-6:35 a.m., Monday through Friday; 9:30-9:35 a.m., Saturday; 12:25-12:30 a.m., Sunday through Saturday; 9:30-10 a.m., Sunday, Religious (LS). "Meditation" and "Prayer" will offer a brief religious message at the open and

close of each telecasting day, coordinated with and rotating among the various faiths in the area. "Religion for Sunday" (9:30-10 a.m.) will present a live studio sermon delivered by an ordained member of the clergy with appropriate musical background to supplement the spiritual message.

(2) *Religious Program*, 10:30-11:30 a.m., Sunday, Religious (LS). This will be a weekly series of religious programs presented by the various faiths in the coverage area.

(3) *Religious Program*, 2:30-3 p.m., Sunday, Religious (LS). This will be a series of religious programs planned and coordinated with the various religious groups in the coverage area. For example, mass could be televised for this series, or programing could be adapted to cover religious themes such as: Special church and temple ceremonies, special observances of Holy Days, special religious rites such as ordinations, weddings, christenings, bar mitzvahs, communion and baptisms, and Bible instruction.

(4) *Religious Program*, 11:30-12 noon, Tuesday and Thursday, Religious (LS). These programs will be designed to promote the religious institutions in the area by presenting news and features concerning their services.

(5) *Religious Program*, 11-11:30 a.m., Saturday, Religious (RS). This program will present religious films of top quality and good taste, endeavoring to meet the needs of all faiths in the area.

179. The programs proposed by Tele-Views in the category of religion reflect and accommodate the suggestions secured through program contacts with religious leaders in the area.

Agricultural programing

180. The schedule of nonnetwork agricultural programs proposed by Tele-Views is as follows:

Day	Title	Time	Total
Sunday.....	Agriculture of the Week.....	10:30-11 p.m.....	½ hour.
Monday through Friday.....	Farm Program.....	6:35-6:45 a.m.....	50 minutes.
Tuesday and Thursday.....	.....do.....	7:30-8 a.m.....	1 hour.
Wednesday, Thursday, and Friday.....	.....do.....	2:30-3 p.m.....	1½ hours.
Saturday.....	.....do.....	9:35-10 a.m.....	25 minutes.
	.....do.....	11:30-12 noon.....	½ hour.

Weekly total hours, 4¾ hours

181. A summary of the nonnetwork agricultural programs proposed by Tele-Views follows: Tele-Views has developed its agricultural program plans in consultation with agricultural authorities in that area. Tele-Views will continue to do so and to utilize such persons to the greatest possible extent in its agricultural programing.

(1) *Agriculture of the Week*, 10:30-11 p.m., Sunday, Agriculture (LC). Each week this program will present county agents in the area and other figures of significance in the field of agriculture in a series of interviews and discussions on local farm problems and practices. The National Grange, the Farmers Union, the Future Farmers of America (FFA), the 4-H Clubs, etc.; county agents, the Farm Bureau, and the Rock Island County Farm will be utilized. Also invited to participate in this series will be representatives of the farm equipment industry to present and demonstrate the newest innovations in the field of farm machinery.

(2) *Farm Program*, 6:35-6:45 a.m., Monday through Friday, Agriculture (LC). This will be a news-weather-market report show for the agricultural families designed to be of special interest to farm interests.

(3) *Farm Program*, 7:30-8 a.m., Tuesday and Thursday; 9:35-10 a.m., Saturday, Agriculture (LS) (Tuesday and Thursday), Agriculture (LC)

(Saturday). This program will be directed to the social and civic activities taking place in rural areas. The format will be one in which a host or hostess presents guests, officials, school authorities, businessmen, etc., from the various rural towns and areas within the service area of the station whose economy is based principally on agriculture.

(4) *Farm Program*, 2:30-3 p.m., Wednesday, Thursday, and Friday, Agriculture (I.C). This program, while aimed specifically at the farm audience, will be so designed as to appeal in content to as wide a general audience as possible. It will be both an informative and a "do-it-yourself" type of program dealing with vocational agriculture in its broadest sense.

(5) *Farm Program*, 11:30 a.m.-12 noon, Saturday, Agriculture (LS). This weekly program will be produced with the cooperation of the various departments of agriculture in the coverage area. It will feature home demonstration clubs and material from other sources, with the aim to provide homeowners with ideas which can be adapted to their own homes and gardens.

182. It is the plan of the applicant to utilize part of the extensive property surrounding the proposed studio building for experimental and demonstration farm activities in conjunction with the applicant's agricultural programming.

183. The "agricultural" proposals of Tele-Views reflect and accommodate the suggestions received through program contacts with agricultural authorities in the area.

Educational programming

184. Tele-Views proposed in its educational programming to work closely with authorities at all levels of educational activity in order to provide and improve both home and school educational opportunities for those within its service area. In its proposals herein, Tele-Views has sought to recognize and accord weight to the views and suggestions of the many educational authorities in its area with whom contacts have been made, and to the availability of assistance and talents indicated by these contacts. Tele-Views has as one of its objectives for the coverage area of its proposed station the introduction, on a substantial basis, of courses for credit and the development of programs that will serve usefully as an in-school aid to teaching. They would also be designed for general appeal.

185. The schedule of nonnetwork educational programs proposed by Tele-Views is as follows:

Day	Title	Time	Total
Sunday.....	Educational Program.....	11:30-12 noon.....	½ hour.
	.....do.....	3-3:30 p.m.....	Do.
Monday through Thursday...	.....do.....	8-8:30 a.m.....	2 hours.
Monday through Friday.....	.....do.....	1:30-2 p.m.....	2½ hours.
Monday.....	Time for Teen Agers.....	4:30-5 p.m.....	½ hour.
Friday.....	Children's Program.....	8-8:30 a.m.....	Do.
Saturday.....	Educational Program.....	10-10:30 a.m.....	Do.
	.....do.....	10:30-11 a.m.....	Do.

Weekly total hours, 7½ hours.

186. A summary of the nonnetwork educational programs proposed by Tele-Views follows:

(1) *Educational Program*, 11:30 a.m.-12 noon, Sunday, Education (LS). This program will be a Sunday Bible class on the air. It will be conducted

under the auspices and direction of such institutions as the Augustana Theological Seminary in Rock Island, Ill.

(2) *Educational Program*, 3-3:30 p.m., Sunday, Education (LS). This program will be a series devoted to the general field of art. It will be planned and directed under the supervision of the Municipal Art Gallery of Davenport, Iowa. Art classes would be held, in addition to basic instruction in oils, pen-and-ink sketches and watercolors, in portraits, mosaics, and ceramics.

(3) *Educational Program*, 1:30-2 p.m., Monday through Saturday, Education (LS). This series of programs will be devoted to the field of education and instruction, planned and coordinated with and presented by or on behalf of recognized institutions of learning in the coverage area. It will be designed to appeal to the widest and broadest interests of the viewing public as well as to institutions of learning with a view to its use as part of in-class instruction. The Monday-through-Thursday segment of this series would be a "TV College" program. This TV College of the Air would be conducted by various colleges and universities in the area. The participating institutions would plan the series in order to assure educational soundness.

187. Various suggestions by representatives of schools of higher learning have been brought forward for consideration in connection with courses to be taught. The following curriculum is typical of that proposed for this program:

(1) Monday—*Course in Agriculture*:

Swine production:

- a. Selection of sow and boar.
- b. Care of bred sow.
- c. Care of sows and pigs at weaning time.
- d. Care and feeding of baby pigs.
- e. Fattening of hogs.
- f. Marketing.

This program would be produced by or on behalf of the Extension Department of the School of Agriculture, University of Illinois, whose cooperation has been promised. The series as planned would also include the cooperation and interest of the farm implement industry.

(2) Tuesday—*Course in Consumer Economics*.—This would be a series of educational programs devoted to the general and broad aspects of consumer economics. (Produced by or on behalf of Marycrest College, Davenport.)

(3) Wednesday—*Language Course*.—This would be a course in basic conversational language, produced under the auspices of Knox College of Galesburg or other educational institutions in the area. Dr. Herman R. Muelder, dean of Knox College, has suggested a course in the Russian language as one of several that he, as an educator, would deem excellent for the television classroom.

(4) Thursday—*Course to be presented by Moline Community College*.—This would be a series of studies planned and conducted by the Moline Community College, Moline.

(5) Friday—*Course in Music Appreciation*.—This would be a series of programs planned and conducted by the music department of the public school system of Davenport, Iowa. It would be a series devoted to music, instruments, compositions, composer, etc., with the participation of school system's music, instructors, and students. The Rock Island, Ill., public school system has indicated a desire to participate in a series as has the Catholic parochial schools of Rock Island, and the Moline public schools. This series would be of an instructional nature rather than a general type of school program. The programs would be designed so that they could be aired by all schools in the coverage area as a supplement to in-class instruction.

188. The format of the educational series in which area schools have indicated a desire to participate will be designed by the schools them-

selves. Matters pertaining to courses, texts, instructors, and general policies will be developed by the schools involved in close liaison with the station.

(1) *Educational Program*, 10-10:30 a.m., Saturday, Education (LS). This program will be coordinated with the board of education and will feature a vocational shop instructor from one of the public schools in the coverage area. It will be primarily a "do-it-yourself" session, presented by or on behalf of local educational organizations.

(2) *Educational Program*, 8-8:30 a.m., Monday through Friday, Education (LS). These programs will be especially designed for preschool children and will feature such activities as playing games, singing, arts and crafts, storytelling and other similar nursery school projects. It will be conducted by a fully qualified teacher and will be presented by or on behalf of local educational organizations.

(3) *Time for Teen-Agers*, 4:30-5 p.m., Monday, Educational (LS). This program will be presented by or on behalf of local educational organizations and will emphasize vocational guidance and consideration affecting the choice of a particular vocation or career. It will feature vocational guidance counselors from area high schools and educational institutions, as well as laymen.

(4) *Educational Film*, 10:30-11 a.m., Saturday, Education (RS). This program will schedule educational films produced and distributed by colleges and universities throughout the country.

News programming

189. It will be the policy of Tele-Views to emphasize news coverage. Timely and important news events, either locally, regionally, nationally, or internationally, will be aired promptly and, if the matter involved is of sufficient importance, regular programs will be interrupted, rescheduled, or canceled in order to accomplish this objective. Tele-Views will utilize news facsimile machines, its own local news department, and at least two news services.

190. The local news department will utilize "stringers" in the outlying areas so that as local happenings occur in those areas, these "stringers" will be able to feed the news to the station immediately. The "stringers" will be equipped with 16-mm motion picture sound cameras and Polaroids to enable them to shoot both sound and still pictures. When news of an important nature occurs in the coverage area, Tele-Views will be prepared to send its mobile unit to the scene and, whenever possible, will transmit, directly, live news as it is happening. The news department will have auxiliary equipment such as a 16-mm Ciné-Kodak Special and a single system Orthicon. It will also utilize national news.

191. The schedule of nonnetwork news programs proposed by Tele-Views is as follows:

Day	Title	Time	Total
Sunday.....	News in Review.....	10-10:30 a.m.....	½ hour.
	News and Weather.....	10-10:15 p.m.....	¼ hour.
Monday through Friday.....	News.....	8:30-9 a.m.....	2½ hours.
	News and Weather.....	6:45-7 a.m.....	1½ hours.
Monday through Saturday....	News, Weather, and Market.	12-12:15 p.m.....	1½ hours.
	News.....	10-10:15 p.m.....	Do.
Monday.....	Area Program.....	11:30-12 noon.....	½ hour.
	News.....	10:15-10:30 p.m.....	¼ hour.

Weekly total hours, 8¼ hours.

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192. A summary of the nonnetwork news programs proposed by Tele-Views follows:

(1) *News in Review*, 8:30-9 a.m., Monday through Friday; 10-10:30 a.m., Sunday, News (LC) (Monday through Friday), News (LS) (Sunday). This will be an informative, up-to-the-minute news presentation, evaluated by a staff newscaster, emphasizing, primarily, events and actions in the Quad Cities area, supplemented by films and slides, and produced locally by the station. Also included will be a review of current happenings on the national and international scene. On Sunday, the format of this program will include a summary of the highlights of the past week and matters which appear to be heading for news importance in the coming week.

(2) *News-Weather*, 10-10:15 p.m., Sunday; 10:15-10:30 p.m., Monday, News (LC). This will be a comprehensive late summary of news and weather.

(3) *News-Weather-Market Reports*, 6:45-7 a.m., Monday through Friday; 12 noon-12:15 p.m., Monday through Saturday; 10-10:15 p.m., Monday through Saturday, News (WC). This will be a 15-minute program of up-to-date news coverage and weather bulletins, including both national and local news, drawn from a national wire service as well as local production, and presented voice over film by a staff announcer. Market reports will receive greater attention on Monday, Wednesday, Friday, and Saturday.

(4) *Area Program*, 11:30 a.m.-12 noon, Monday, News (LC). On Mondays this program will be devoted to special news coverage of local nature and of "feature" type.

Discussion-Talk-Editorializing

193. Tele-Views will, as a matter of basic policy, present a thorough and carefully planned program of talk and discussion programs dealing with matters of National, State, and local interest, civic, cultural, and social activities, sporting events, etc. Special care will be taken to assure full and fair presentation of controversial matters through qualified representatives of the opposing viewpoints and through the station's own efforts.

194. The schedule of nonnetwork discussion programs proposed by Tele-Views is as follows:

Day	Title	Time	Total
Sunday.....	Discussion Program.....	6-6:30 p.m.....	½ hour.
Monday, Wednesday, and Friday.	do.....	10:30-11 a.m.....	1½ hours.
Monday, Tuesday, Thursday, and Friday.	Guest for Today.....	6-6:15 p.m.....	1 hour.
Tuesday.....	Panel Time.....	4:30-5 p.m.....	½ hour.
Wednesday.....	Guest for Today.....	6-6:30 p.m.....	Do.
Saturday.....	Discussion Program.....	4-4:30 p.m.....	Do.

Weekly total hours, 4½ hours.

195. A summary of nonnetwork discussion programs proposed by Tele-Views follows:

(1) *Discussion Program*, 6-6:30 p.m., Sunday, Discussion (LS). This will be a roundtable type of presentation, with a qualified moderator. Participating will be civic leaders in the community, representatives of various municipal and county offices, prominent medical and public health officials, educators and such visiting celebrities, and others whose special expertise and accomplishments qualify them to contribute constructively to the consideration of subjects of importance to the area, as well as of national and international significance.

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(2) *Discussion Program*, 10:30-11 a.m., Monday, Wednesday, Friday, Discussion (LS). These programs will be designed to inform the general public of the services, activities, Government officials and agencies, social welfare organizations, service clubs, and business and industry groups and their importance and needs from a community and area viewpoint. A panel format will be used.

(3) *Guest for Today*, 6-6:15 p.m., Monday, Tuesday, Thursday, Friday; 6-6:30 p.m., Wednesday, Discussion (LS). This program would be designed to present, in an informal manner, persons of interest from various walks of life in the coverage area of the station.

(4) *Panel Time*, 4:30-5 p.m., Tuesday, Discussion (LS). This would be a panel-type program with area youth participating in discussions on topics of particular interest to young people, ranging from dating to reading and voting. From time to time the panel would include experts in the field of teenage behavior and problems.

(5) *Discussion*, 4-4:30 p.m., Saturday, Discussion (LS). This program will be planned with the cooperation of librarians in the coverage area and will be basically a "book showcase."

196. The schedule of nonnetwork talk programs proposed by Tele-Views is as follows:

Day	Title	Time	Total
Sunday.....	Topics of the Day.....	12-12:30 p.m.....	½ hour.
	Sports of the Week.....	10:15-10:30 p.m.....	¼ hour.
Monday through Friday.....	Women's Program.....	11-11:30 a.m.....	2½ hours.
Monday.....	Preview Time.....	2:30-3 p.m.....	½ hour.
Tuesday through Saturday.....	Sports.....	10:15-10:30 p.m.....	1½ hours.
Wednesday and Friday.....	Area Program.....	11:30-12 noon.....	1 hour.
Saturday.....	Talk.....	6:15-6:30 p.m.....	¼ hour.

Weekly total hours, 6¼ hours.

197. A summary of the nonnetwork talk programs proposed by Tele-Views follows:

(1) *Topics of the Day*, 12 noon-12:30 p.m., Sunday, Talk (LS). This will be a live, sustaining program regarded by Tele-Views as one of particular importance in its proposed program schedule. It will be a basic policy of Tele-Views vigorously and aggressively to spotlight and direct public attention to matters of important area interest.

(2) Areas of programing proposed are: (a) Metropolitan or area planning; (b) industrial expansion; (c) youth program; (d) school organization, facilities, and personnel; (e) scholarship funds for worthy students; (f) an annual public affairs forum; (g) special reports by elective and appointive officials; (h) encouragement of local symphony, art, and theater endeavors; and (i) community and area information projects, tours, etc.

198. The above are illustrative of the type of subject matter that the station would explore, publicize, present fully from a factual viewpoint, and editorialize about in this program segment.

199. *Sports of the Week*, 10:15-10:30 p.m., Sunday, Talk (LC). This program will feature a popular local sportscaster in a presentation of sports news, interviews, and editorials.

200. *Women's Program*, 11-11:30 a.m., Monday through Friday, Talk (LS). This will be a program comprised of various matters of feminine interest such as home management, beauty culture, child care and psychology, cooking, gossip columns, fashions, market tips, family health problems, and women's clubs and organizations and their projects.

201. *Preview Time*, 2:30-3 p.m., Monday, Talk (LC). This program will be devoted to a résumé of the week's program features, special events, functions, and exhibitions scheduled to take place in the coverage area.

202. *Sports Today*, 10:15-10:30 p.m., Tuesday through Saturday, Talk (LC). This will be a concise commentary on local and national sports presented live by a staff announcer with some interviews and film "flashbacks."

203. *Area Program*, 11:30-12 noon, Wednesday and Friday, Talk (LS). On Wednesdays and Fridays this program will present a "Community Calendar of Events."

204. *Talk*, 6:15-6:30 p.m., Saturday, Talk (LS). This weekly program will be the equivalent of a column on entertainment activities in the coverage area—radio, television, nightclubs, theaters, movies, and social events.

205. The schedule of nonnetwork entertainment programs proposed by Tele-Views is as follows:

Day	Title	Time	Total
Sunday	Sunday Movie	12:30-2:30 p.m.	2 hours.
	Movie	11-12:25 a.m.	1 hour 25 minutes.
Monday, Wednesday, and Friday	Information Program	7-8 a.m.	3 hours.
Monday through Friday	Syndicated Film	12:15-1:30 p.m.	3¼ hours.
	Feature Film	9-10:30 a.m.	7½ hours.
Monday, Wednesday, and Friday	Musical Program	2-2:30 p.m.	1½ hours.
Monday through Saturday	Movie	10:30-12:25 p.m.	11½ hours
Tuesday and Thursday	Information Program	7-7:30 a.m.	1 hour.
	Syndicated Film	10:30-11 a.m.	Do.
Tuesday and Thursday	Information Program	12:15-1 p.m.	1½ hours.
	Syndicated Film	1-1:30 p.m.	1 hour.
Tuesday and Thursday	do	2-2:30 p.m.	Do.
Tuesday	Preview Time	2:30-3 p.m.	½ hour.
Wednesday, Thursday, and Friday	Teen Program	4:30-5 p.m.	1½ hours.
Saturday	Movie Time	12:15-2 p.m.	1¼ hours.
	Syndicated Film	4:30-5 p.m.	½ hour.
	Information Program	5-5:30 p.m.	Do.
	Syndicated Film	5:30-6 p.m.	Do.

Weekly total hours, 41 hours 25 minutes.

206. A number of these programs, in addition to entertainment, emphasize informational and discussion aspects.

Financial qualifications of Tele-Views

207. Tele-Views proposes to construct a new television broadcast station on channel 8 with the main studios at Moline, Ill. The equipment will be purchased from RCA at a cost of \$686,965, broken down as follows:

(a) Transmitter, antenna and transmission line	\$305, 757
(b) Transmitter input and monitoring equipment	13, 818
(c) Microwave system and color monitor equipment	17, 669
(d) Tower equipment and services	127, 152
(e) Line studio equipment	58, 427
(f) Film room equipment	70, 170
(g) Control room equipment	27, 823
(h) Remote equipment	58, 480
(i) Test equipment	7, 667

Total 686, 965

The cost of equipment includes a charge of \$60,610 for the installation of the ground system and the erection of the tower, including the footings, foundation, and guy anchors.⁷ This installation charge—\$60,610—must be paid coincident with the downpayment. In addition to the equipment items and installation costs in the RCA proposal, an additional expenditure totaling \$31,367, which includes freight, installation of technical equipment, clearing land, hardware items, photographic equipment and supplies, prop materials and miscellaneous carpentry and maintenance tools, will be required before the station commences operation.

208. Tele-Views proposes to locate its transmitter on a tract of land containing 30 acres. Although the corporate applicant itself does not have an option to purchase the land, the tract is available to the applicant through one of its stockholders, Schroeder, who has an option to purchase the tract of land for a consideration of \$400 per acre, or a total consideration of \$12,000.⁸

209. In its application, Tele-Views budgeted the sum of \$25,000 for acquiring, remodeling, or constructing buildings. The transmitter building which will be constructed near the base of the tower will cost \$15,000. The studio location was specified for a site to be determined within the city limits of Moline. On February 12, 1958 (approximately 4 months prior to the time the instant applications were designated for hearing), Tele-Views entered into an option to lease a building for its studio at a monthly rental of \$1,500 during the first year of operation and for \$2,000 per month each year thereafter during the period of the lease. With regard to alterations and remodeling of the building, the lease contained the following provision:

(b) Any alteration or improvement may be done with the express consent of the First Party [the lessor] at the expense of the Second Party [the lessee]. However, it is expressly agreed that if both parties shall agree as to the nature and extent and the expense of alterations which shall be necessary for the operation of the Second Party's business, the First Party will pay for such alteration and improvements which shall be repaid by the Second Party plus interest at the rate of six percent (6%) per annum to be paid on a monthly basis, prorated over the term of the lease, with the first payment due and payable on the first day of the first month after the exercise of the option by the Second Party.

The building which Tele-Views proposes for its studios and offices is presently used as a restaurant and is a two-story structure with a basement. Remodeling is necessary to the extent that the present restaurant and bar facilities must be removed; installation of partitions to afford two studios, a master control room, administrative offices, staff offices, prop and storage rooms, film rooms, and maintenance shops; the acoustical treatment of the ceiling and walls of the studios and master control room; installation of electrical circuits to provide proper current for equipment, convenient outlets, and additional lighting fixtures; and installation of additional ducts for air conditioning.

⁷ This item is a part of the \$127,152 cost item for "Tower equipment and services."

⁸ The consulting radio engineer for Tele-Views stated that 11 or 12 acres would be necessary for the tower and required guys. The applicant, however, has not submitted evidence to show that it could purchase only a part of this land.

210. After an inspection of the building, a local contractor, Ward R. Larson, submitted an estimate of \$24,627, including the subcontracts for electrical and duct work. In the opinion of the architect, the construction and acoustical treatment reflects reasonable and sound construction practice and would provide effective soundproofing. The builder considered his estimate a firm bid and would perform the construction thereunder if Tele-Views' application is granted.⁹

211. To defray partially the cost of remodeling, Tele-Views will use the \$10,000 remaining in the account budgeted for buildings and remodeling. Tele-Views will request the owner of the property to pay the balance of the cost of remodeling under the terms of the lease as set forth above. The owner of the property will bear the expense of remodeling the building under the terms of the option if (1) Tele-Views is financially responsible to carry out his obligations under the contract at the time the request is made, and (2) provisions for a lease after the exercise of the option are satisfactorily resolved.¹⁰

212. The applicant's costs incurred in connection with the prosecution of its application for legal, engineering, and consultant's fees were approximately \$30,000 as of June 2, 1959. Although additional legal costs will be incurred, further engineering and consultants' costs will not be incurred until the time for construction of the proposed station, and would be payable, in the principal amount, after the commencement of operation. In addition to the costs for professional service, Tele-Views will have a preoperational expense of \$15,000, broken down as follows:

General manager-----	\$1, 200
Secretary-----	240
Program direction-----	500
Chief engineer-----	13, 332
Engineers-----	5, 908
Power, light, heat-----	1, 000
Rent on studio-----	3, 000
Advertising-----	1, 000
Telephone-----	200
Postage-----	200
Freight or express-----	270
Office supplies-----	150
Total-----	15, 000

⁹ In response to cross-examination with respect to the proposed studio plans, a witness for Tele-Views [the television consultant] set forth *contemplated* plans for remodeling the building. He pointed out that no detailed plans and specifications had been made. He stated that, in order to divide the interior of the building into the studios, control room, storage rooms, and offices as set forth in the studio plans, the applicant contemplated the installation of cinder-block walls and half-paneling partitions constructed with lightweight metal. On the basis of the contemplated plans as set forth by the television consultant, two building contractors submitted as rebuttal evidence estimates of \$39,211 and \$43,860, exclusive of electrical and duct work which amounted to \$15,500 and \$6,000, respectively. In a subsequent consultation on estimated costs of remodeling, Larson advised Tele-Views to substitute frame walls with lath and plaster on both sides for the cinder-block partitions and the half-paneling partitions on the grounds that such construction would be more economical. The Larson estimate was made on the basis of the contemplated plans as set forth by television consultant on cross-examination, with exception of the substitution of the material for the walls and partitions.

¹⁰ The monthly rental and the term of years for the lease are set forth in the option.

213. On the basis of the foregoing costs, the total construction is estimated to be \$815,606, broken down as follows:

Equipment from BCA.....	\$126,355
Additional miscellaneous items.....	31,617
Installation charge by RCA.....	60,610
Land	12,000
Building and remodeling.....	25,000
Preoperational expense.....	15,000
Professional fees.....	45,024
Total.....	815,606

214. Under its plan to finance the construction and operation of the proposal, Tele-Views proposes to finance the proposal from subscription for additional capital stock in the amount of \$275,000, a bank loan in the sum of \$300,000, and deferred payment credit on equipment in the amount of \$626,335. Joa Sirota has subscribed to \$150,000 worth of the new stock. An unsecured loan in the amount of \$200,000 is available to Mr. Sirota for this purpose. Mr. Charles A. Carp had a net worth of \$219,000, as of April 24, 1958, and has available to him a bank loan in the amount of \$25,000 to provide liquid assets to meet his commitment of \$25,000. Under the stock subscription, Messrs. Schroeder, Filseth, and Mrs. Schroeder are committed to purchase, in the aggregate, \$50,000 of the new stock. They have a collective net worth of at least \$185,000 as of April 24, 1959. A bank loan in the amount of \$50,000 is available to them to enable them to have liquid assets to meet the commitment. Messrs. James B. Bowen and John A. Hobart have each subscribed to \$25,000 of the new stock. Mr. Bowen has a net worth of \$85,810 as of April 24, 1958, of which \$38,825 represents current liquid assets. Mr. Hobart has a net worth of \$59,500 as of April 24, 1958. A bank loan in the amount of \$25,000 is available to him which assures him current liquid assets to meet the commitment.

215. On the basis of the balance sheet and operating statements of Tele-Views as of February 11, 1959, the Exchange National Bank of Chicago has agreed to loan the applicant \$300,000 for the proposed construction. The loan will bear interest at the rate of 6 percent per annum and is payable in 48 equal monthly installments commencing 1 year from the date of the loan.

216. The equipment proposed by Tele-Views may be purchased with a downpayment of 25 percent, with the balance payable in 48 equal monthly installments at 5 percent per annum. After deducting the installation charge, the equipment for which deferred payment credit is available will cost \$626,355. The equipment will be shipped and installed in such a manner that the first monthly payment will not be due until the station commences operation.

217. During the first year of operation the following represents an estimated operating cost summary of the station :

Administration :		
Salary -----		\$33, 060
Expenses -----		122, 570
		<u>155, 630</u>
Sales :		
Salary -----		46, 920
Expenses -----		20, 200
		<u>67, 120</u>
Programing :		
Salary -----		92, 760
Expenses -----		125, 400
		<u>218, 160</u>
Technical :		
Salary -----		106, 840
Expenses -----		48, 200
		<u>155, 040</u>
Total -----		<u>595, 950</u>

In addition to the above expenses, the monthly payments on the equipment will be \$10,302.

218. Tele-Views' television consultant stated that on the basis of his study of the market and past experience, the applicant could expect network revenue for the first month of operation in excess of \$20,000, and that local revenue would build up gradually so that by the end of the third month the total revenues should approximate \$40,000. The following revenues were estimated for the first year of operation :

Income :		
Network -----		\$300, 000
National -----		250, 000
Regional -----		110, 000
Local -----		275, 000
		<u>935, 000</u>
Program sales : Film, sets, rehearsal, talent, news service, artwork -----		300, 000
Total -----		1, 235, 000

Midland Broadcasting Co.

219. Midland Broadcasting Co., an Illinois corporation authorized to do business in Iowa, has an authorized capital of 50,000 shares of stock, \$5 per share par value, of which, as of November 12, 1958, 5,150 shares had been issued and 44,850 shares subscribed for by 12 stockholders. The officers, directors, and stockholders are as follows:

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Name	Office	Percentage of ownership	Shares of stock	
			Held	Subscribed
H. Leslie Atlass, Jr.	President, director	37	1,850	16,650
Lester R. Stone	Vice president, director	3	150	1,350
Joseph B. Oakleaf	Vice president, secretary, director	3	150	1,350
Adolph Estess	Treasurer, director	8	500	3,500
Joseph R. Rosborough	Assistant secretary, director	3	200	1,300
Paul C. Johnson	Assistant treasurer, director	3	150	1,350
Frank Atlass II	Director	15	750	6,750
Harriet Jane Atlass	do.	15	750	6,750
C. Richard Evans	do.	4	200	1,800
Manley R. Hoppe	do.	3	150	1,350
John M. Burrows	do.	3	150	1,350
John C. Lujack	do.	3	150	1,350

Qualifications of Midland's officers, directors, and stockholders

220. H. Leslie Atlass, Jr., president, a director, and 37-percent stockholder of Midland, was born on November 22, 1919, in Lincoln, Ill. In 1924 he moved to Chicago, and he has resided there since, with the exception of 1 year in California as a college student and the years he spent in military service. He was graduated from Lake Forest Academy in 1936 and from the University of Chicago in 1940. He served in the U.S. Army from 1941 to 1945, receiving the Legion of Merit while with the Office of Strategic Service, as well as six battle stars.

221. Mr. Atlass has been exposed to and connected with the broadcast industry virtually all of his life. His father, H. Leslie Atlass, and his uncle, Ralph L. Atlass, started radio station WBBM in Lincoln, Ill., in 1922, moving the station to Chicago in 1924 after having previously operated an amateur station, 9DFC, in Lincoln. In 1945, Mr. Atlass was employed by Columbia Broadcasting System in Chicago as head of its television department, later becoming a local salesman for WBBM (AM) in Chicago when activities in connection with the CBS television department were suspended. He was employed at WBBM (AM) until 1948.

222. In February 1948, Mr. Atlass was employed at radio station WIND in Chicago as program director, a position he held until the facility was sold to Westinghouse in December 1956. From September 1953 until December 1956, he was also treasurer, a director, and a stockholder of WIND, Inc.¹¹ During the time that Mr. Atlass was program director of WIND, the station audience rose from fifth to first place in the Chicago area, and was, according to the Nielsen, Pulse, and Hooper surveys, continuing to increase its dominance of the market when Westinghouse assumed control. This increasing public acceptance of WIND's programming was, in Mr. Atlass' opinion, based, at least in part, upon the high degree of selectivity in clientele, the content and delivery of commercial messages, and a proper balance of service and entertainment in relation to commercial time. During the time Mr. Atlass was associated with WIND, awards were received

¹¹ Mr. Atlass owned 890 shares of 9,000, and he was the voting trustee for 890 shares owned by his sister and 890 shares owned by his brother. Mr. Atlass presently owns 9,000 shares of stock in Westinghouse Electric (which is the parent company of Westinghouse Broadcasting) and 100 shares of ABC-Paramount. He holds no stock in any radio or television broadcast station.

for programing from the Chicago Council on Foreign Relations, Ohio State, and the Chicago Federated Advertising Club, among others.

223. In 1950, Mr. Atlass, along with his sister, Harriet Jane Atlass, and his brother, Frank Atlass II, formed a corporation known as Atlass Amusement Co., a purpose of which was to serve in advisory and consultive capacities to broadcast facilities. Each of the three owned one-third of the company.¹² In April 1950, Atlass Amusement Co. entered into a contractual arrangement, which was modified in June of 1950, with Monona Broadcasting Corp., the licensee of WKOW in Madison, Wis., whereby certain advisory and consultive services would be rendered by the former. A small amount of stock was later acquired.¹³

224. On August 1, 1950, the Commission directed a letter to Monona Broadcasting Corp., a copy thereof being sent to Atlass Amusement Co., requesting comments upon the degree of participation by Atlass Amusement Co. in the affairs of Monona. On November 7, 1951, WKOW was designated for hearing with respect to its application for renewal of license (docket 10085) upon the premise that an unpermitted transfer of control might have occurred.

225. The stock purchased by Atlass Amusement Co., or its nominees, in Monona Broadcasting Corp., supra, was resold to the corporation in November 1952, and the consultant's agreement between the two concerns was terminated that same month. The renewal application of WKOW was granted, without any determination having been made as to whether or not a transfer of control had occurred.

226. In 1949, Ralph Atlass formed a corporation known as AC Radio Co., Inc., in which H. Leslie Atlass, Jr., was secretary, a director, and 5-percent stockholder. This company performed consultive and advisory functions for WMCA of New York pursuant to a contractual agreement dated February 14, 1949.¹⁴ On August 1, 1950, the Commission requested comments from WMCA, Inc., with respect to the possibility that an illegal transfer of control had been consummated between that company and AC Radio. H. Leslie Atlass, Jr., testified that he had never seen nor was aware of the aforesaid letter from the Commission. He was connected with AC Radio from February 1949 through October 1950. In any event, no renewal of license for WMCA was withheld or denied by virtue of the said Commission request of WMCA, and Ralph Atlass remained a director of WMCA, Inc., from January 31, 1949, to on or about January 30, 1958.

227. H. Leslie Atlass, Jr., also was a director of a company known as AM Radio Sales from February 1952 to February 1957. He owned no stock therein. AM Radio Sales is a sales organization, representing various radio stations with respect to the sale of time and talent.

228. Mr. Atlass became associated, beginning in May 1957, along with his brother and sister, with the nine local stockholders presently

¹² Neither Frank Atlass II nor his sister, Harriet Jane Atlass, was active in Atlass Amusement Co. H. Leslie Atlass, Jr., was president, secretary, and a director of the company from 1950 to 1954, and from 1954 to date he has been president, treasurer, and a director.

¹³ Mr. Atlass owned 45 shares out of 2,700.

¹⁴ AC Radio had no stock interest in WMCA, Inc., or, in fact, any other broadcast ownership interest.

comprising a part of the applicant corporation, and he has, since June 1957, devoted his full time and attention to the affairs of Midland. Among his civic interests are the radio-TV section of the Community Fund in Chicago, the Chicago Civil Defense Corps from its inception in 1954 to date, and the Chicago Park District Police Benevolent Association.

229. Mr. Atlass has no present financial interest in any radio or television station, newspaper, or any other medium of mass communication, except small ownership interests in ABC-Paramount and Westinghouse Electric, noted supra. Should Midland be granted a construction permit, he plans to move immediately to the Quint City area, and to devote all of his time to the operation of channel 8. He is proposed as general manager of the station.

230. *Lester R. Stone* is vice president, a director, and 3-percent stockholder of Midland. He was born in Rock Island County, Ill., in 1909, attending Moline public schools until his graduation from high school in 1929. He attended the University of Illinois during 1930 and 1931, and Augustana College in Rock Island during 1932 and 1933. In 1935, Mr. Stone played professional football with the Chicago Bears. Since that date, he has been engaged in dairy and fruit farming in Rock Island County, and presently owns and operates a 310-acre farm (Illinievek) in Hampton Bluff.

231. Mr. Stone is quite active in civic, school, agricultural, and youth affairs. He is, illustratively, a member of the Moline Consistory; the Clementine chapter, OES, of Colona, Ill.; the After Dinner Club of Moline; the Blackhawk Hikers Association; and the Agriculture Committee of the Rock Island Chamber of Commerce.

232. Mr. Stone has appeared on several television shows, some of which were televised from his farm. For example, the Illinois Agricultural Association produced a half-hour film on Mr. Stone's dairy operation. He appeared on this program, and both he and his wife appeared on a program entitled "Farm Bureau," which was televised by WOC-TV in Davenport.

233. Mr. Stone has no business interests other than his farming operation, and he is not identified with nor financially interested in any broadcast facility or other medium of mass communication. He has read the NAB code and the "Public Service Responsibility of Broadcast Licensees," and he is continuing to familiarize himself with the television industry. He intends to be active in the actual operation of channel 8 should Midland acquire the construction permit, devoting a minimum of 20 to 30 hours weekly in his capacity as farm director and as a member of the board of directors.

234. *Joseph B. Oakleaf*, vice president, secretary, a director, and 3-percent stockholder of Midland, was born in Moline in August 1910. He attended the Moline public schools, graduating from Moline High School in 1928. Mr. Oakleaf received a bachelor of arts degree from Augustana College in Rock Island, and spent 2 years at Michigan Law School. After leaving law school, Mr. Oakleaf entered the insurance department of his father's law firm in Moline, and he managed that department until 1948 when it was merged with the Earl Tarbox Agency, a local insurance firm, to form a new firm called

Oakleaf Tarbox Agency, Inc. From 1948 to 1957, he was secretary and treasurer of that corporation, and he is now the president and sole stockholder. Mr. Oakleaf's business interests, in addition to his interest in the Oakleaf Tarbox Agency, Inc., include his directorship of Frank Foundries Corp. in Moline, which he has held since March 1958. In addition to owning a fractional stock interest in that corporation, he has been a voting trustee of 14 percent of the stock since April 1958. Mr. Oakleaf is secretary, treasurer, a director, and 3.27-percent stockholder in the Moline Building Corp., which owns and leases real estate. From 1952 to 1958, Mr. Oakleaf was secretary, treasurer, director, and 20-percent stockholder in Moline Assets Corp., which owned and leased real estate for industrial purposes.

235. Mr. Oakleaf has devoted much of his time to civic activities and charitable activities. Among his other activities, Mr. Oakleaf has been a member of the Moline Zoning Board of Appeals since 1943, and he has been its chairman since 1948.

236. Mr. Oakleaf is Midland's associate civic director, and he plans to devote a minimum of 25 hours per week to the station's affairs. Included in his responsibilities is the program "Our Towns," which he will arrange for and direct. He has no previous experience in the broadcast industry, and has no interest in any medium of mass communication, but he has read the NAB code and "The Public Service Responsibility of Broadcast Licensees."

237. *Adolph Estess* is treasurer, a director, and 8-percent stockholder of Midland. He was born in Russia in 1903, moving to Davenport when he was 6 months old. He is a naturalized American citizen.

238. From the time he was in grammar school, Mr. Estess worked at many different jobs. He sold newspapers on street corners, for example, and he started a retail cigar, candy, and soda business in Davenport when he was 15 years old. He also worked as a real estate salesman, and as an employee of a dress store chain, opening his own dress shop in Joliet, Ill. Mr. Estess acquired the New York Store in Moline, a department store, in 1947, and in 1957 he opened a new department store in Rock Island. He also owns a real estate firm in Rock Island called 124-18th St., Inc.

239. Mr. Estess has civic and fraternal interests, too many to mention here, and all highly creditable. He is a member of B'nai B'rith. Mr. Estess has no identification of any nature with the broadcast industry or with any other medium of mass communication. He has read the NAB code, the booklet entitled "The Public Service Responsibility of Broadcast Licensees," and other publications. It is his intention to devote a minimum of 25 hours per week to Midland's proposed station, principally in his capacity as news director and as a member of the board of directors.

240. *Joseph R. Rosborough* was born on January 13, 1911, in Moline, Ill., where he has resided all of his life. He is assistant secretary, a director, and a 3-percent stockholder of Midland. He attended the Moline public schools, being graduated from Moline High School in 1929. Mr. Rosborough received a bachelor of science degree in 1933 from the University of Illinois, and, in 1935, he re-

ceived a bachelor of laws degree from that school. Upon completing his legal education, Mr. Rosborough practiced law in Moline. From 1942 to 1945, he served on active duty in the U.S. Navy, retaining his Reserve commission as a lieutenant commander since his release from active duty. Following World War II, he returned to Moline to resume the practice of law, and he has continued to practice in that area since then. In addition to his legal practice, Mr. Rosborough is secretary and a stockholder of the Moline Tool Co., the sole owner of Cherry Hill Addition, a subdivision development, and a one-third owner in Seven Hills First and Second Additions, another subdivision development. He also has other miscellaneous real estate interests.

241. Indicative of his interest in community affairs, Mr. Rosborough has served on the board of directors of Bethany Home, a child welfare agency for the Moline area, for 20 years. He has been a member of the Moline Rotary Club for a like period, and he currently is a director thereof. He has also served as a director and president of the Moline Community Chest, and he was its general drive chairman in 1954. His other similar activities are extensive.

242. Mr. Rosborough is Midland's proposed discussion director, and he expects to devote a minimum of 25 to 30 hours each week to station affairs. He has no interest in or connection with any radio or television station, newspaper, or other medium of mass communication. While he has had no practical experience in television, he has read the "Blue Book," the NAB code, and other articles and periodicals dealing with the television industry.

243. *Paul C. Johnson*, assistant treasurer, a director, and 3-percent stockholder of Midland, was born near Fulton, Ill., on November 14, 1907. He moved to Rock Island in 1918, and was graduated from Rock Island High School in 1925. He has lived in Moline since 1937. After graduation from high school, Mr. Johnson worked as a time-keeper until 1928, when he became a salesman. From 1928 to 1944, he worked as a salesman for various companies in the Moline area. In 1944, he founded his own insurance and real estate business in Moline, in which he is currently active. Mr. Johnson has no other business interests.

244. Mr. Johnson has been a member of several lodges and fraternal organizations. He was a director of New Industries, Inc., in 1956 and 1957, and served as president from 1954 to 1955 of the Illinois Municipal League. Mr. Johnson was a Moline alderman from May to September of 1951, and he served as mayor of that city from 1951 to 1957.

245. Mr. Johnson is Midland's proposed civic director, and he expects to devote at least 24 hours per week to the affairs of the station. He has no previous experience in the broadcasting industry, except for various appearances on radio and television programs, and he is not connected with any broadcast station, newspaper, or other medium of mass communication. He has read the NAB code and the booklet entitled "The Public Service Responsibility of Broadcast Licensees."

246. *Frank Atlas II*, a director and 15-percent stockholder of Midland, was born on November 5, 1930, in Chicago, Ill., and he presently resides in that city. He was graduated from the Wheaton Com-

munity High School in 1948, and attended the University of Arizona for 1 year. In 1949, Mr. Atlass was employed by the Chicago Daily News as a classified space salesman, working in that capacity until March of 1950 when he joined the Columbia Broadcasting System. He has worked in various departments and divisions of CBS in Chicago, including sales promotion and as an account executive in connection with local sales at WBBM and WBBM-TV. He has also acted as producer, writer-producer, and executive producer, as well as program manager at WBBM-TV. Presently, Mr. Atlass is sales manager of WBBM-TV. Mr. Atlass produced, and in certain cases wrote and produced, a weekly half-hour television presentation on the CBS network entitled, "Susan's Show." In his capacity as program manager at WBBM-TV in Chicago, he was responsible also for the daily programming schedule and all programming and production personnel. In this connection, he supervised all local shows with respect to preparation and presentation. During the past 2 years, while Mr. Atlass has been executive producer and program manager at WBBM-TV, both Mr. Atlass personally and the WBBM program department have received various awards for outstanding performances in television programming and production.

247. Mr. Atlass has been a member of the B'nai B'rith since 1953, and he has served since 1954 as a member and patron of the Juvenile Protective Association of Chicago, an organization devoted to the welfare of mistreated or neglected children. He has also been actively interested in organizations promoting the television, radio, film, and recording industries in Chicago. To that end, he has been actively associated with Chicago Unlimited, an organization devoted to the stimulation of business in these industries. He has been a director since 1956, vice president in 1947, and chairman of the executive committee in 1958.

248. Mr. Atlass was one of the founders of the Chicago chapter of the Academy of Television Arts & Sciences, an organization designed to advance the arts and sciences of television in fostering creative leadership in the television industry throughout the United States. In 1958, he was cofounder, first vice president, chairman of the executive committee, and a member of the board of governors. As a member of the U.S. Naval Reserve since 1950, Mr. Atlass traveled to Europe in 1957 to produce and direct a documentary recruiting film for the Navy. The film, entitled "Mediterranean Patrol," was made in cooperation with the Sixth Fleet, and Mr. Atlass received a letter of commendation for this film from the Under Secretary of Navy. Mr. Atlass has been a member of the Navy League since 1958.

249. In 1953 Mr. Atlass acquired 890 shares out of 9,000 shares of stock in radio station WIND in Chicago, and he relinquished these shares in 1956. From 1950 to 1952 he owned 45 shares out of 2,700 shares of stock in radio station WKOW in Madison, Wis. He is vice president, a director, and one-third stockholder in Atlass Amusement Co., Inc., a radio and television consultation and production firm, and he owns approximately \$4,000 worth of stock in Sonora Electronics, Inc., a television set and organ manufacturing company. Mr. Atlass also owns a small stock interest in Westinghouse Electric.

250. Mr. Atlass is proposed as Midland's program manager. In the event Midland is the successful applicant, he plans to move to Moline, and to devote his full time and effort to fulfilling his duties in that capacity.

251. *Harriet Jane Atlass* was born September 26, 1933, in Chicago. She is a director and 15 percent stockholder of the applicant. After attending public schools in Wheaton, Ill., Miss Atlass attended Rollins College in Florida, receiving a bachelor of arts degree from that institution in 1955. After graduation from college, Miss Atlass traveled in Europe for 3 months, and, upon her return, she was employed by CBS in Chicago. She is presently public affairs director of WBBM and WBBM-TV.

252. Miss Atlass began her employment with CBS as a production assistant in the program department, serving as an assistant to the producer of various productions in such capacities as rehearsal timings, script preparations, programing arrangement, music clearances, the ordering of properties and scenery, and other activities. Miss Atlass later became the producer of the programs entitled "Shopping With Miss Lee," a daily 15-minute women's service show; "Luncheon With Billy," a 15-minute daytime musical program; and a nighttime diskjockey show entitled "The Howard Miller Show," which was later changed to a variety program format.

253. Since 1956 or early 1957, Miss Atlass has devoted full time, creatively, to the public affairs field, dealing with only the highest class personalities and institutions, in religious, educational, and scientific fields. In the summer of 1956, Chicago was stricken with a polio epidemic. A portion of Miss Atlass' program "Shopping With Miss Lee" was devoted to the promotion of inoculations, the staff traveling with mobile units and working closely with the board of health. For this service, McCall's Magazine awarded Miss Atlass an award for outstanding service in that year. In 1957, Miss Phillip, talent, and Miss Atlass received a similar award for a series of programs entitled "The Unwed Mother, the Unwanted Child."

254. Miss Atlass has also produced various special interest shows from time to time. Illustratively, upon the death of Samuel Cardinal Stritch, the Catholic leader of the Chicago Archdiocese, a special program entitled "Tribute to the Late Samuel Cardinal Stritch" was broadcast within 2 hours of his death. As the producer of this program, Miss Atlass received a "Distinguished Achievement Award for Television News Reports" from the Radio-Television News Director's Association and the Medill School of Journalism, Northwestern University. As a result, at least in part, of the efforts of Miss Atlass, WBBM and WBBM-TV have received a number of outstanding awards.

255. Among the civic interests of Miss Atlass are her memberships in the Chicago Foundlings Home and the Chicago Heart Association. She is also a member of the American Academy of Television Arts & Sciences, a member of Fashion Group, a member of the Evaluation Committee of the Chicago Rabbinical Association Television Commission, and a member of American Women in Radio & Television.

256. In 1953, Miss Atlass acquired 890 shares of WIND stock, which she relinquished in 1956. From 1950 to 1952, she owned 45 shares of WKOW stock. She is a director and one-third stockholder of Atlass Amusement Co., Inc.

257. Miss Atlass presently has no financial interest in any radio or television station, newspaper, or other medium of mass communication, except for a small stockownership interest in Westinghouse Electric. She plans to be Midland's public affairs director, and she will move to Moline and devote her full time to her duties in this connection should the application of this applicant be granted. She presently resides in Chicago, Ill.

258. *C. Richard Evans*, a director and 4 percent stockholder of Midland, was born on August 3, 1902, in Moline, Ill. He attended Moline public schools, and studied engineering for several years at Illinois Wesleyan University, transferring to the law college from which he was graduated.

259. In July 1926, Mr. Evans was employed by the International Harvester Co. He took a 2-year executive training course, and, at its conclusion, became the employment manager for that company's Farmall Tractor Works in Rock Island. Later, when his company built a new plant in East Moline, Mr. Evans was placed in charge of industrial relations there. In 1937, he was assigned to International Harvester's newly constructed plant at Indianapolis as its manager of industrial relations. In 1940, International Harvester loaned Mr. Evans' services to the U.S. Department of Labor on a dollar-a-year Presidential appointment basis as Director of Training Within Industry for District 14. In that same year, Mr. Evans was elected president of the Indianapolis Personnel Association. In 1941, Mr. Evans accepted a position with the George Evans Corp. in Moline, becoming a director and vice president. During the first 9 months after joining that company, he received another Presidential appointment on a dollar-a-year basis as a Panel Consultant for Training Within Industry under the Illinois district director, and he served in that capacity until June of 1942. In 1955, he became president and general manager of the George Evans Corp., and he is currently acting in those capacities. He presently owns approximately 11 percent of the stock of that company. He has no other business interests. Mr. Evans is quite active in civic, charitable, commercial, and fraternal affairs.

260. Mr. Evans is Midland's proposed religious director, and he plans to devote a minimum of 20 to 25 hours each week to Midland's affairs. He has no interest in any radio or television station, newspaper, or other medium of mass communication. He has read the NAB code and the publication entitled "Public Service Responsibility of Broadcast Licensees."

261. *Manley R. Hoppe* was born in Groton, S. Dak., on November 28, 1910. He is a director and 3 percent stockholder of Midland. He attended public schools in Groton and Aberdeen, S. Dak., and was graduated from North High School in Des Moines, Iowa, in 1928. In 1932, he received a bachelor of science degree in chemical engineer-

ing from Iowa State College, and he joined its faculty for the school year 1932-33.

262. Mr. Hoppe was employed in 1933 by the Burgess Battery Co. of Freeport, Ill., as chief analytical chemist, and, later, as a chemical engineer. He returned to Iowa State College in 1934, serving 2 years as an instructor in the department of chemical engineering, and received a master of science degree in 1935. The following year, he obtained additional academic credits toward a doctorate.

263. In 1936, Mr. Hoppe was employed by Parr Instrument Co., Moline, as chief chemist, becoming vice president of that firm in 1942. In 1942, he accepted a commission as a captain in the U.S. Army, serving in the Armed Forces until his release from active duty in 1946. He returned to the Parr Instrument Co. in 1946, and was reelected to his former position as vice president. In 1957, he was elected the company's president, a position which he currently holds. Mr. Hoppe is a registered professional engineer in the State of Illinois. He owns 5.1 percent of Parr Instrument Co. stock, but he has no other business interests. He has resided in Moline since 1936, except for his military service.

264. Mr. Hoppe has been prominent in Rotary Club affairs in Moline, and in professional matters generally. In addition, he has taken part in various community projects. He is a member of the Congregational Church.

265. Mr. Hoppe is proposed as Midland's associate educational director, as well as the producer and master of ceremonies for a 15-minute, Monday-through-Friday program, entitled "Science Time." He will spend a minimum of 26 hours per week at these, as well as other Midland activities. He has no other broadcast interests, and he is not connected with any medium of mass communication. In an effort to become acquainted with the responsibilities and duties of a television licensee, he has read the NAB code and "Public Service Responsibility of Broadcast Licensees."

266. *John M. Burrows*, a director and 3 percent stockholder of Midland, was born on October 18, 1912, at Davenport, Iowa. He attended Davenport public schools through the elementary grades, and in 1931 he was graduated from Mercersburg Academy, Mercersburg, Pa. In 1935, he received a bachelor of arts degree from Amherst College in Amherst, Mass.

267. Mr. Burrows was employed by the Ralston Purina Co. in 1935, and he has remained with that company continuously except for a period of military service. Since 1945, he has been manager of the Davenport plant. He entered the Navy in 1943, and served on active duty until 1945. Mr. Burrows currently resides in Davenport. In addition to his position with the Ralston Purina Co., Mr. Burrows has been a director of the First Federal Savings & Loan Association in Davenport since 1957, and its assistant treasurer since 1958. He is a director and stockholder since 1958 of a real estate development company, 4000 Brady Street Corp. Mr. Burrows is quite active in many civic and charitable affairs. Mr. Burrows has been the official representative of his company to the Associated Industries of the Quad Cities since 1949, was a director of that organization

from 1956 to 1958, its vice president from 1957 to 1958, and is currently its president.

268. Mr. Burrows is Midland's proposed educational director, and he intends to spend at least 20 to 25 hours per week on affairs of the station. He is not associated with other broadcast interests, newspapers, or other media of mass communication. He has read the NAB code, the publication entitled "Public Service Responsibility of Broadcast Licensees," and other documents which concern the television industry.

269. *John C. Lujack*, a director and 3-percent stockholder of Midland, was born in Connellsville, Pa., on January 4, 1925. He was graduated from public high school in that city in 1942. During his last year in high school, Mr. Lujack was president of the senior class and class speaker, as well as captain of the basketball and football teams. He won nine letters in high school, and was a member of the National Honor Society, a scholastic honor organization, for 2 years.

270. In 1942, Mr. Lujack entered the University of Notre Dame. He received honorable mention for All-American honors in football the following year. In 1943, he served as an apprentice seaman in the V-12 Navy program, and in 1944 and 1945 he served on active duty in the Navy, being discharged with the rank of ensign in 1946. He returned to Notre Dame in 1946, and during 1946 and 1947 he received many football awards. In the latter year, he was a unanimous choice on every All-American football team.

271. After graduation from Notre Dame in 1948, Mr. Lujack played professional football with the Chicago Bears until 1951, again receiving several football awards. In 1949, he was, for 13 weeks, the summer replacement for the radio show "Jack Armstrong, the All-American Boy." He broadcast three ½ hour shows per week entitled "The Adventures of Johnny Lujack" over the Mutual Broadcasting System, station WGN, in Chicago. Throughout his college and professional football years, Mr. Lujack was called upon frequently to speak at various civic affairs, and he appeared on many occasions on both radio and television. During the "off-season" while with the Chicago Bears, he worked as a salesman in Chicago for the Equitable Life Assurance Society of the United States.

272. In 1952 and 1953, Mr. Lujack was backfield football coach at Notre Dame, and in 1953 he also appeared for 13 weeks as a panel member of a radio sports show called "Ask Me Another." In 1954, he entered the automobile business in Davenport, but he continued his television experience by such activities as an 8-week sports program called "Football Roundup" for CBS in New York in 1956. He also assisted in televising the Gator Bowl football game in Jacksonville, Fla., in 1956. In 1957, he assisted in televising the Green Bay Packers' home and away football games for the CBS regional network, and on New Year's Day in 1958, he assisted in televising the Orange Bowl football game from Miami, Fla., over the CBS network. During the 1958-59 football season, he acted as host for a CBS network production entitled "Pro Football Kickoff." Mr. Lujack presently is a 30-percent owner of Lujack-Schierbrock Chev-

rolet Co. in Danvenport, and a 50-percent owner of Lease-a-Car Co. in that city. He has no other business interests.

273. Mr. Lujack has been active in a number of religious, charitable, and civic matters in Davenport.

274. Mr. Lujack is proposed as Midland's sports director. He will devote a minimum of 25 hours a week to the station's affairs in that capacity and in his capacity as a sports commentator. Mr. Lujack has no other interest in any broadcast facility, newspaper, or other medium of mass communication.

Staff, studios, and equipment

275. Midland proposes a staff of 106 employees, not including "talent," divided as follows:

Administrative -----	9
Sales -----	9
Programing -----	39
Production -----	16
Engineering -----	33

The following individuals have already been selected as members of Midland's staff:

President and general manager-----	H. Leslie Atlass, Jr.
Chief engineer-----	Carroll K. Neltnor.
Program director-----	Frank Atlass II.
Public affairs director-----	Harriet Jane Atlass.
News director-----	Adolph Estess.
Sports director-----	John C. Lujack.
Farm director-----	Lester R. Stone.
Educational director-----	John M. Burrows.
Associate educational director-----	Manley R. Hoppe.
Religious director-----	C. Richard Evans.
Discussion director-----	Joseph R. Rosborough.
Civic director-----	Paul C. Johnson
Associate civic director-----	Joseph B. Oakleaf.
Women's director-----	Donna Mease.
Publicity and promotion director-----	Richard T. Balzer.

Eleven of the selected staff members are local residents of the Quint Cities, and the remainder plan to move to Moline if Midland is the successful applicant.

276. The proposed chief engineer, Carroll K. Neltnor, is presently serving as the engineer-in-charge of technical operations of WBBM-TV, Chicago, and he has a 15-year record of technical experience. Richard P. Balzer, the proposed publicity and promotion director, has been employed in various positions at WHBF and WHBF-TV in Rock Island for 7 years. Miss Donna Mease, Midland's proposed women's director, is a graduate of Drake University in drama and speech education. She is an experienced continuity writer, and she has participated in the televising of women's programs. The remaining selected staff members are all stockholders.

277. Midland has analyzed its personnel requirements with respect to the number of individuals assigned to each phase of its proposed operation, and it has devised specific schedules for individual programing and production personnel. Announcers, directors, floormen, technicians, and carpenters are all assigned on a 5-day, 40-hour week basis. Each of them is given 2 consecutive days off, and the workday

is arranged to call for 8 out of a total of 9 hours, with a minimum of 12 hours between the end of 1 day's work schedule and the beginning of the succeeding day. Masters of ceremony and producers are given program assignment schedules.

278. In addition to the job assignments already specifically scheduled by Midland, the testimony reflects an intention to schedule the office personnel on a 40-hour week basis. Supervisory personnel, such as the general manager and program director, will be on call at all times. The photographers will also be on call for news stories, although their regular schedule will be a 40-hour week overlapping to the extent necessary to cover the entire week. Similarly, the sales manager and the salesmen will be operating essentially on a 40-hour week. Deliberately not so scheduled are staff members assigned as "producer and/or MC"; Midland believes that the time required to produce a given program should best be left to the discretion of the assigned producer rather than be restricted to an hourly schedule, although it is anticipated that the required duties for each could be accomplished within a 40-hour week.

279. Midland has also scheduled all technical personnel for the first year of proposed operation, the assignments being keyed to the first year's proposed weekly program schedule. In addition to specifically planning and setting forth the working hours in tabular form of each technical individual throughout a 7-day period, Midland has scheduled each technician by types of work, studio location, rehearsal and air time, and by program throughout each day. Job descriptions for both key nontechnical and technical personnel have also been set forth by Midland.

280. For its main studio, Midland proposes to erect a two-story building on the main business street of Moline, Fifth Avenue. It possesses options for a frontage of approximately 100 feet at that location, the land extending some 150 feet in depth. The building will be 65 feet by about 140 feet, and adjacent to the structure a 190-foot self-supporting tower will be erected, which will support microwave equipment for STL, connections with the Davenport studio, and remote telecasts. A parking area, which will be surfaced with asphalt, will also be provided.

281. Bus service is supplied by the Rock Island-Moline City Lines, Inc., buses passing in front of the proposed main studio on a frequent basis. In addition, the airport bus stops one and one-half blocks from the proposed studio location, and the Greyhound Bus Line maintains a terminal two blocks away.

282. Midland intends to have two studios in its main studio building; two control booths; an announcer booth; a makeup room; a technical shop; a music library; a mail and Mimeograph room; a reception area and lounge; storage and janitorial space; secretarial accommodations; a newsroom; a sales, promotion, and publicity room; a telecine room; and a darkroom, as well as various offices for its managing personnel. The applicant has also supplied blueprints and building specifications relating to the proposed construction of its main studio building, which cover such items as structure, walls, windows,

finish, heating, air conditioning, plumbing, electricity, telephone, design conditions, and miscellaneous items.

283. The applicant also plans to erect a one-story building on Switz Street in Davenport to house an auxiliary studio and control room with a reception area and facilities for two salesmen, plus a utility room. The structure will be some 45 feet wide and about 63½ feet in depth. As with the main studio building, Midland has supplied building specifications and blueprints. The location is one-half block from River Drive, a major street in both Bettendorf and Davenport.

284. In addition to the auxiliary studio building, Midland proposes to construct a storage building and garage at the rear of and connected to the auxiliary studio, the building to be about 22 feet wide and 30 feet deep. Blueprints have been prepared for this building. A 40-foot tower is also planned for the optioned land upon which the auxiliary studio and storage buildings will be erected, the tower to receive and transmit microwave signals with respect to the main studio location in Moline and possible remote pickup points. A parking area approximately 23 feet by 35 feet is also planned for this location.

285. The auxiliary studio building is less than 1 mile from downtown Davenport and approximately 2 miles from Bettendorf. It is about 4 miles from the main studio site. Public transportation facilities are available at frequent intervals within one-half block of the proposed buildings.

286. Midland has secured an option on some 40.9 acres of land bordering U.S. Highway 150 upon which it plans to construct a transmitter building and a tower to support its antenna. The site is 16.9 miles from the main studio location, 20.9 miles from the auxiliary studio location, and 13.3 miles from the Quint City airport. The land is presently part of a farm.

287. The transmitter building will be about 44½ feet by 35 feet, and it will house the transmitter proper, the technical shop, the utility room, and a washroom. The ceiling height is planned to be 9½ feet. Midland has supplied scaled drawings of the floorspace available in all three of its studios, and sketched in the placement of the sets necessary for the production of its local programs. Midland also submitted charts or diagrams which indicate the proposed locations of various office furnishings and operating equipment in both main control rooms, the auxiliary control room, and the transmitter building on a floor plan basis.

288. The applicant's first year technical proposal consists of six separate lists, covering facilities required by the technical operations department, the art department, the carpenter shop, the production department, the film department, and the news department. The RCA broadcast equipment proposal lists the technical equipment used in the various technical areas of Midland's proposed station, including all of the transmitter and main antenna system equipment. Midland has modified some of the manufacturer's package arrangements to suit the particular technical demands of its custom-designed installation. Midland has gone to considerable lengths in detailing items of equipment believed to be necessary in its proposed operation. Midland has also illustratively itemized its nontechnical equipment needs,

and it has indicated how such equipment will be related to the areas in which it is to be used.

289. Midland produced exhaustive evidence of its proposed technical equipment, going into all phases of television production, color, monochrome, photographic, etc. There can be no doubt, from the facts, and it is so found, that Midland can effectuate its planned programming from a technical standpoint. The same is found with respect to staffing and studios.

Proposed programming

290. The record indicates that Midland proposes to adhere to the precepts of the NAB code, and to impose upon itself additional operational standards which it believes will best provide for the public interest, convenience, and necessity of the population to be served by its station. It plans to review each script or recorded material in advance of telecasting, and to provide monitoring personnel during all broadcast periods to prevent the presentation or continuation of improper material.

291. Midland intends to become a community institution and to participate in the area's public-service activities, devoting some 35.8 percent of its total broadcast time to public-service programs and special features. Its presentations are tailored to meet particular community needs. Its concept of the basic responsibility of a potential licensee of a broadcast facility is that it should provide a needed service, and, to that end, upon the basis of a survey conducted, its programming will satisfy requirements of the viewing public.

292. The applicant also intends to supplement its regularly scheduled telecasts with special presentations relating to the holidays celebrated in the Quint City area. Midland also will provide coverage for recognized charitable endeavors and local promotion campaigns, such as those organized on behalf of Arrowhead Ranch, the Community Chest, and the United Fund. It proposes to take an active part in safety drives and efforts to beautify the local area, as well as paying particular attention to those activities devoted to the assistance of the area's youth. Attention has also been paid to adult education.

293. Midland conducted a survey of potential film sources, contacts having been made with suppliers of film in the fields of religion, education, Government, industry, agriculture, and entertainment. Its film proposals include both syndicated films and feature pictures, and they compose slightly more than one-third of the proposed program schedule.

294. The applicant plans to originate some of its major live programming efforts in the fields of religion, education, talks, agriculture, and discussion from its auxiliary studio in Davenport. Midland has placed into evidence four lists of remote program possibilities in its coverage area, one each for Moline, Rock Island, Davenport, and Bettendorf, and what it terms the "outside area." It has indicated the areas within which it considered microwave relays to be necessary in view of the terrain characteristics. Midland's programming proposal indicates a single 30-minute remote program per week, to be

telecast on Sundays, but this is the result of illustrating a typical week. It proposes to televise other remote events as they occur, not limiting itself to the single remote program set forth.

295. As a basis for its views and attitude toward educational cooperation and educational programing, Midland stockholders contacted on a personal basis about 100 educational leaders in its area, and its educational director communicated with the Joint Council on Educational Television, the National Education Association of the United States, the Chicago Educational Television Association, and the Iowa Joint Committee on Educational Television. Midland has also formulated five advisory groups composed of local leaders in the fields of religion, education, agriculture, and civic activities. It presently has a 7-member religious program council, a 7-member educational program council, a 7-member agricultural program council, and a 7-member discussion program council, the 28 members representing various localities within the proposed service area. The chairmen of the four councils comprise the program advisory board.

296. The program advisory board maintains consultive and advisory liaison with the president and general manager, the program director, the executive director, and the public affairs director. The religious program council consults with and advises the religious director and his assistant; the educational program council consults with and advises the educational director and his associate; the agricultural program council consults with and advises the farm director and his assistant; and the discussion program council consults with and advises the discussion director. Each council is responsible to the program advisory board.

297. Midland has also arranged for what it terms a "suggestion box." Through the use of visual slides and audio announcements, it plans to request from the viewing audience constructive criticism and suggestions relating to the improvement of its service. Suggestions thus received will be given to the various programing councils for consideration. Midland plans to award prizes periodically for the best suggestions received, and, where appropriate, to introduce winners on telecasts.

298. An analysis of Midland's program schedule is as follows:

	Commercial	Sustaining	Total
	<i>Percent</i>	<i>Percent</i>	<i>Percent</i>
Entertainment.....	50.0	8.3	58.2
Religious.....	.9	5.2	6.1
Agricultural.....	.1	5.7	5.8
Educational.....	.4	6.8	7.2
News.....	6.8	.5	7.3
Discussion.....	.4	6.7	7.1
Talks.....	4.7	2.6	7.3
Total.....	64.2	35.8	100.0

	8 a.m.- 6 p.m.	6-11 p.m.	All other hours	Total
	<i>Percent</i>	<i>Percent</i>	<i>Percent</i>	<i>Percent</i>
Network commercial (NC).....	18.7	64.3		30.6
Network sustaining (NS).....	.7	1.4		.9
Recorded commercial (RC).....	28.7	4.3	56.9	24.1
Recorded sustaining (RS).....	12.8	.7	26.3	10.5
Wire commercial (WC).....				
Wire sustaining (WS).....				
Live commercial (LC).....	8.3	12.6	7.3	9.5
Live sustaining (LS).....	30.8	16.7	9.5	24.4
Total commercial.....	55.7	81.2	64.2	64.2
Total sustaining.....	44.3	18.8	35.8	35.8
Complete total.....	100.0	100.0	100.0	100.0
Proposed broadcast-hours (per week).....	69:35	35:00	11:25	116:00
Number of spot announcements (SA) (per week).....	270	134	34	438
Number of non-commercial spot announcements (NCSA) (per week).....	186	54	22	262

299. Midland's typical week program schedule contains 59.2 percent of programs classified as "Entertainment," almost 6 of every 10 hours on the air. It does not, however, contain any local live entertainment presentations, this situation being expressly predicated upon the applicant's belief that the variety of network entertainment programs as such is initially sufficient to satisfy local requirements. Midland intends to concentrate a major share of its production effort on the remaining program types. The applicant does propose to incorporate entertainment features into several of its other program types, utilizing from time to time entertainment talent and formats. Midland has indicated that it will use, where appropriate, music groups, art shows, theatrical presentations, and other civic affairs involving entertainment. Midland has prepared for each of its local live programs a typical telecast, indicating assigned personnel, rehearsal and air time, and presentation formats. Summaries of its local live program proposals are as follows:

(a) *Religious Programs:*

(1) *Opening Prayer*, 7:55 to 8 a.m., Monday through Saturday; 8:25 to 8:30 a.m., Sunday. The station's broadcast day is commenced by this 5-minute period of prayer and meditation. Religious leaders of the various faiths will be featured on a rotating basis.

(2) *Morning Devotion*, 8:45 to 9 a.m., Monday through Friday. This program is intended to present a thoughtful message of inspiration, hope, and religious devotion.

(3) *Church Calendar*, 8:50 to 9 a.m., Saturday. This program is designed to inform viewers of the weekend's scheduled religious activities. It will include announcements of sermons, guest speakers, and unusual events connected with church services. Occasionally, films or still pictures will be utilized.

(4) *Our House of Worship*, 9 to 9:30 a.m., Sunday. This is an adult religious program which highlights ceremonies, concepts, and activities of the various local religious organizations. The program will be produced by Midland's religious director, C. Richard Evans, a stockholder.

(5) *TV Sunday School*, 11:30 to 12 noon, Sunday. This program is designed to acquaint youngsters with the meaning and beauty of religion and the significance of the important precepts of all religions. It is also produced by Midland's religious director.

(6) *Benediction*, 12:40 to 12:45 a.m., Monday through Friday; 12 to 12:05 a.m., Saturday and Sunday. The final 5 minutes of each broadcast day will be devoted to the deliverance of a benediction by a religious leader selected upon a rotating basis.

(b) *Agricultural Programs:*

(1) *Today's Farm Picture*, 6:05 to 6:15 p.m., Monday through Friday; 6:10 to 6:15 p.m., Saturday. This program is composed of a final report of farm news, market activity, market trends, and the weather.

(2) *Farm Markets and Weather*, 8:05 to 8:15 a.m., Monday through Saturday. This is a daily report of information believed to be of significance to farmers at the beginning of their working day.

(3) *RFD #8*, 12 to 12:45 p.m., Monday through Friday. This program is considered by the applicant to be its mainstay weekday service to agricultural interests. It reports current farming information, including market and weather reports, pertinent agricultural news, and investigations of current subjects of particular interest to the farming population. An exchange of programs with farm directors from other area stations is contemplated. The program is divided into three segments: "Markets and Weather," "Today's Farm Story," and "Farm News."

(4) *Youth on the Farm*, 10 to 10:30 a.m., Saturday. Concerned with the farm youth of the area, this program features their activities and achievements. Exhibits and demonstrations of their projects are planned, and it is expected that farm youth will take an active part in the planning, preparation, and presentation of the material.

(5) *The Blackhawk Farmer*, 5:30 to 6 p.m., Sunday. This program explores and reports in detail the various agricultural subjects felt to be of current importance to area farmers. The subject matter is geared to the seasons when the topics discussed are of immediate concern in actual farm processes. The program format is sufficiently flexible to permit all types of presentations, ranging from a discussion group composed of prominent farm leaders to demonstrations of agricultural machinery and new processes or methods. It will be produced and MC'd by Midland's farm director.

(6) *Farm News & Weather*, 10:15 to 10:20 p.m., Sunday. This is a summary of the week's significant market information, and a report of local weather conditions. It will also include a special farm news feature story.

(c) *Educational Programs:*

(1) *Beginner's Journey*, 1:30 to 2 p.m., Monday through Friday. This is a program designed for preschool youngsters and those attending school through the third grade. Many of the planned activities are similar to those children of this age group normally do at home, and participation by these children is anticipated. Some of the activities will be drawing, clay modeling, identification of pictures or models, operation of devices, and the acting out of safety dramas, all of which will be presented with a view to the establishment of acceptable habit patterns. This program will be produced by Midland's public affairs director, Harriet Atlass, a stockholder, and it will be conducted by Midland's women's director, Donna Mease.

(2) *Science Time*, 4:30 to 4:45 p.m., Monday through Friday. This is a presentation of simple, easily understood demonstrations of the processes of nature, and the resultant effects upon day-to-day living. While the programs will be directed primarily to young people, an attempt will be made to hold the interest of adults. It is produced and MC'd by Midland's associate educational director, Manley Hoppe, a stockholder.

(3) *World of Learning*, 9:30 to 10 p.m., Monday, Tuesday, Thursday, and Friday. The purpose of this program is the presentation of specific educational topics on an adult level. The program will be produced by area institutions of higher learning, and much of the talent found there will be utilized.

(4) *College Workshop*, 10 to 10:30 a.m., Sunday. This program is a television college seminar designed to illustrate the effect that higher education has in the world of practical affairs. A comparison of practical concepts and methods with their theoretically ideal counterparts is planned. Out-

standing persons in various fields will be utilized. It will be produced and MC'd by Midland's educational director, John Burrows, a stockholder.

(5) *Our Schools*, 4 to 4:30 p.m., Saturday. The program will present a view of the local school systems, not only with respect to an explanation of teaching methods employed but with demonstrations thereof. Both teachers and members of boards of education will participate. This program will also be produced and MC'd by Midland's educational director.

(6) *Homemaker's Seminar*, 9:20 to 9:30 a.m., Monday through Friday. This program is concerned with basic homemaking skills, and it is designed to be of interest primarily to women. The format includes information, instruction, and suggestions on topics most interesting to the area's homemakers. The program will be produced and MC'd by Midland's women's director.

(d) *News Programs:*

(1) *News*, 8 to 8:05 a.m., Monday through Saturday. This early-morning program will be a capsule roundup of the most important news stories of the preceding day, with particular emphasis upon news which occurred during the night. When available, films and news pictures will be shown.

(2) *Weekly Round-up—News & Weather*, 12:30 to 12:45 p.m., Saturday. This is a report of the latest news, and a review of the week's major stories, as well as a complete weather report utilizing the weekend forecast.

(3) *News*, 10 to 10:15 p.m., Monday through Sunday. This late-evening's news telecast will be Midland's major news-reporting service of the day, reflecting the availability of family audience composition. News concerning the most important international, national, and local events will be presented. Midland's news director, Mr. Estess, a stockholder, will supervise the production of the program Monday through Friday.

(e) *Discussion Programs:*

(1) *Our Towns*, 4:45 to 5 p.m., Monday through Friday. This program will present topics associated with local business and recreational opportunities, its purpose being to acquaint the area's youth with community activities. The program will be produced by Midland's associate civic director, Joseph Oakleaf, a stockholder.

(2) *Channel 8 Press Conference*, 2 to 2:30 p.m., Saturday. This program is designed to acquire and to develop an interesting news story on camera. A panel of local newsmen will interview guests who are selected principally for their connection with or views on local issues. This program is produced and moderated by Midland's discussion director, Joseph Rosborough, a stockholder.

(3) *Let's Talk About It*, 10:30 to 11 p.m., Monday through Friday. This program provides a platform for the discussion of subjects of significance and interest in the Quint City area, but not necessarily those of a controversial nature. One series, for example, may deal with recent medical advancements, public health, etc. Another may feature basic legal concepts of interest to the layman.

(4) *Quint-City Forum*, 3:30 to 4 p.m., Monday through Friday; 1:30 to 2 p.m., Sunday. On this program, participants representing various points of view on a particular topic will balance their concepts, one against the other, in order that viewers may better evaluate the merits of opposing or conflicting theories. Subjects under consideration will usually be those of a local nature.

(f) *Talk Programs:*

(1) *On the Town*, 1:30 to 1:45 p.m., Saturday. This is an interview program devoted to talks with prominent and interesting personalities, principally, but not necessarily, of the area. When the use of visual material, such as slides or pictures, will enhance the presentation, it is planned to use them. This program will be produced by Midland's civic director, Paul Johnson, a stockholder.

(2) *Outdoors*, 11 to 11:10 p.m., Monday through Friday. This is Midland's presentation devoted to those sports which are ordinarily considered

to be of an individual, noncompetitive nature, such as hunting and fishing. The program will feature guests and demonstrations, as well as news of outdoor activities. This program will be produced and MC'd by Midland's sports director, John C. Lujack, a stockholder.

(3) *Do It Yourself*, 9:30 to 10 p.m., Saturday. This program is aimed at the man of the house, its objective being to assist him in the performance of various household repair and construction tasks.

(4) *Eye on the Quint Cities*, 4 to 4:30 p.m., Sunday. This is Midland's regular remote telecast. The program is intended to present a live picture of the various phases of community life which cannot be portrayed adequately in a studio, covering such events as key meetings of various civic groups, fairs, athletic events, and rallies. It will be produced by Midland's public affairs director, Miss Atlass.

(5) *Sports Final*, 10:20 to 10:30 p.m., Monday through Sunday. This program is a daily report of scores and other events in the world of sports. To supplement the verbal reports, news pictures and films will be shown. The program will be produced and MC'd Monday through Saturday by Mr. Lujack.

(6) *Congress Reports*, 1:45 to 2 p.m., Saturday. This is a public service presentation which features Illinois and Iowa Congressmen and Senators giving periodic talks to their constituents. The reports will be on film. The program will be produced by Midland's civic director, Mr. Johnson.

(7) *Sports Review*, 6:15 to 6:30 p.m., Saturday. This is a roundup of the latest competitive sports news and scores, featuring interviews with leading athletes. It will be produced and MC'd by Mr. Lujack.

(8) *Bulletin Board*, 9:15 to 9:20 a.m., Monday through Friday; 8:15 to 8:20 a.m., Saturday. This program will be produced on behalf of and for local organizations in order to present to the viewers community organizational activities, announcements of forthcoming events, and news of general interest with respect to participating groups.

(9) *Weather*, 10:15 to 10:20 p.m., Monday through Saturday. This is a 5-minute comprehensive report of current and forecasted weather conditions on a national, regional, and local basis.

(10) *Women's Homemaker*, 10 to 10:30 a.m., Monday through Friday. This is the applicant's primary women's service program. It is intended to be informative with instructional overtones, covering the accomplishment of household duties, the activities of local women's groups, fashion shows, shopping guides, vacation surveys, literary reviews, interviews with people who are of particular interest to women, and the like. Many of the features will be special events, while others will be presented on a recurring basis. The program will be produced and MC'd by Midland's women's director, Miss Mease.

300. In addition to its local live programming, Midland has also scheduled extensive use of religious film, and plans to utilize considerable film coverage in other categories.

Participation of Midland's stockholders in the preparation and presentation of Midland's case

301. The record indicates that all of Midland's exhibits, with the exception of six technical presentations, were prepared by or under the direction and supervision of Midland's stockholders, each stockholder having personally collaborated on and worked in connection with the preparation of the exhibits which he or she introduced.

302. H. Leslie Atlass, Jr., testified, and it is found, that he had devoted all of his time to Midland's application and plans for its proposed operation from June 1957 through, at least, October 1958, and that, during that period, he made more than 30 trips to Moline, spending in excess of 15 weeks in the local area. He assisted in designing, along with Midland's chief engineer and an RCA repre-

sentative, a custom technical installation for Midland, discussed an ABC affiliation in New York, assisted in the acquisition of Midland's transmitter site, and participated in a television familiarization program at WBBM-TV in Chicago for Midland's stockholders.

303. Mr. Stone testified, and it is found, that he selected the members of the agricultural program council, and that he arranged for the acquisition of market quotations for Midland's programming. He attended all but 1 of 15 formal meetings of the Midland group, and he estimated that he had devoted between 600 and 700 hours to Midland as of November 12, 1958.

304. Mr. Oakleaf indicated that during the period from April 1957 to November 12, 1958, he spent approximately 750 hours on Midland's affairs. In addition to assisting in the preparation of Midland's application, compiling information for presentation to the Commission, and assisting in the preparation of Midland's exhibits, Mr. Oakleaf assisted in the search for a suitable transmitter site and proper studio locations. He also contacted the architectural firm engaged by Midland, and reviewed the architectural plans, suggesting changes in the interim drawings.

305. Among other things, Mr. Oakleaf assisted in securing data from local contractors with respect to building construction and water supplies, and he secured applicable zoning clearances. He has been quite active in various matters concerned with the applicant.

306. Mr. Estess has devoted some 700 hours to Midland's affairs. He has attended the meetings held by the applicant.

307. Mr. Rosborough testified, and it is found, that he was instrumental in Midland's efforts to secure a studio site in Moline, and that he selected the members of Midland's discussion program council. He also requested and obtained approval from the Moline City Engineer and Building Commission for removal of certain height restrictions then applicable to Midland's Moline studio site, and corresponded with the Moline Zoning Board. He attended most of Midland's meetings.

308. Mr. Johnson estimated, and it is found, that he devoted at least 500 hours to Midland activities prior to November 12, 1958. He has attended most of Midland's meetings.

309. Mr. Frank Atlass II devoted a great deal of his time to the discussion of Midland affairs and problems with his sister, Harriet Jane Atlass, and his brother, H. Leslie Atlass, Jr. He also arranged meetings with suppliers of syndicated film to discuss the availability of their products in the Quint City area, and worked, as did all of the stockholders, on exhibit preparation, both in Chicago and in Moline.

310. Miss Atlass worked extensively in connection with Midland's public service presentations, preparing many of the formats and scripts thereof. She visited Moline upon different occasions in connection with Midland activities, and maintained liaison contact with Midland's religious, educational, and civic directors with regard to Midland's proposed programming.

311. Mr. Evans selected the members of the religious program council, and attended two formal meetings of that organization, in

addition to a general meeting of clergy prior to formation of the council. He was active in the preparation of Midland's program proposals, particularly as they dealt with religious programs.

312. Mr. Hoppe spent not less than 600 hours in the development of educational programs to be presented by Midland, and to making contacts chiefly with educators in the proposed service area. He has attended all but two of the formal meetings of the applicant, and he has participated in numerous informal meetings. He was instrumental in arranging a meeting of local educators, which subsequently led to the formation of Midland's educational program council.

313. Mr. Burrows became a director of the applicant on November 6, 1957, and has attended most of the formal and informal meetings held by Midland since that date. In connection with his contacts, exhibit preparation, and other activities, Mr. Burrows spent a minimum of 10 hours per week on problems concerning Midland during the period from his association with the applicant to November 12, 1958.

314. Mr. Lujack began to work actively on behalf of Midland sometime in January 1958, and devoted a minimum of 250 hours to Midland activities from that time until November 12, 1958.

Program contacts

315. With respect to program contacts, most of Midland's stockholders participated in an extensive canvass of the proposed service area, the aggregate contacts numbering 454. The breakdown of contacts made by individual stockholders, as well as by program classification, is as follows:

Stockholder	Entertainment	Religious	Agricultural	Educational	News	Discussion	Talk	Remotes	Total
H. L. Atlass, Jr.	30			22	2	4	8		66
L. Stone			37				1		38
J. Oakleaf						38	10		54
A. Estess					13			2	15
J. Rosborough	1					33		1	35
F. Johnson			1			18	1	3	23
F. Atlass			1						1
H. Atlass				1					1
C. R. Evans		68					2	3	74
M. Hoppe				25		1	1	10	37
J. Burrows	2			36		2	1	62	103
J. Lujack	1						6		7
Total	34	68	39	85	15	96	30	87	454

316. In the field of education, in excess of 80 school principals, school superintendents, and schoolteachers were contacted. Representatives of all school levels, from the lower grades to postgraduate, were contacted, and both city and rural school representatives were included in the survey. Midland made 68 contacts with religious leaders of the Quint City area, representatives of almost every faith present there.

317. In addition to contacting individual farmers and organizations such as 4-H groups and the local Farm Bureau in the proposed area, Mr. Stone made several professional trips to discuss agricultural programing with agricultural leaders.

318. Midland contacted in excess of 30 individuals and groups with respect to its survey of local talent, including a range of musical talent from "combo" type groups to the Tri-City Symphony and the Civic Music Association. Notwithstanding such contacts, however, the record reflects that Midland is of the opinion that the majority of its entertainment programs should emanate from the ABC network, providing that the discovery and promotion of talented local people is not overlooked.

319. More than 85 remote contacts were made by Midland's stockholders, and the testimony shows that Midland devoted considerable time to contacting individuals and organizations with respect to the practicality of specific remote telecasts and the availability of cooperation and assistance from those contacted. Additionally, Midland representatives personally checked telecast feasibility from the sites of proposed remotes.

320. Midland intends to accord programing representation to the various denominations in its proposed service area in accordance with discussions with its religious program council and the various ministerial groups and associations. It believes that it has attained assurances of the cooperation necessary to insure the presentation of its proposed religious program schedule, including both live and filmed remote presentations.

321. It appears that in every phase of its programing, Midland has made ample contacts, and, in large part, the proposed programing resulted therefrom or is consistent with the results of the contacts.

TV workshop and other stockholder preparation for broadcast activities

322. Nine of Midland's stockholders took part in what was termed a "TV Workshop symposium" on January 4 and 5, 1958, at the WBBM-TV studios in Chicago. Included among the members of the WBBM-TV staff who actively participated in the arrangements and briefings were the production manager and his assistant, the lighting director, the executive director, the engineer in charge of operations, and the farm director. Most, if not all, of the elements of television operation were exhibited and explained. A "mockup" simulating actual operating conditions in Midland's proposal was put in operation at WBBM-TV and 24 scripts from the various program categories (as proposed by Midland) were "run through." The various directors who would have charge of the real programs participated in the WBBM-TV venture. A number of Midland's stockholders who will be active in the station have visited other television stations to prepare themselves for their duties.

323. Additional planning factors (not previously mentioned) studied (and, in some cases partially crystallized) by Midland include: printing processes and machinery, basic furnishing materials, music copyright laws, preoperational payroll plans, Bell Telephone video and audio lines, special lighting equipment, air conditioning, insurance, depreciation schedules, and well digging.¹⁵

¹⁵ It is obvious that Midland seeks a preference for "planning for television," hence some evidence appears to be duplicative.

Illiway Television, Inc.

324. The following is a list of the officers, directors, and stockholders of Illiway, together with their holdings:

Name and residence	Office	Percentage of voting stock
Oscar W. Ellis, East Moline, Ill.....	President, director.....	21.0
William E. Bettendorf, Bettendorf, Iowa.....	Vice president, director.....	6.8
Joseph M. Baisch, Rockford, Ill.....	Executive vice president, director.....	4.5
Stanley H. Guyer, Rockford, Ill.....	Secretary, director.....	18.0
Robert W. Boeye, Rock Island, Ill.....	Treasurer, director.....	3.6
B. H. Ryan, East Moline, Ill.....	Director.....	1.0
Lambert I. Engdahl, Monmouth, Ill.....	do.....	4.5
Kenneth G. Sturtevant, Rock Island, Ill.....	do.....	6.8
F. H. Schlerbrock, Davenport, Iowa.....	do.....	4.5
Charles F. Carpentier, East Moline, Ill.....	.....	2.7
John T. Mazzie, Rockford, Ill.....	.....	1.0
George Von Maur, Davenport, Iowa.....	.....	1.0
Harry H. Cleaveland, Rock Island, Ill.....	.....	3.6
M. R. Beckstrom, Moline, Ill.....	.....	1.8
S. P. Durr, Rock Island, Ill.....	.....	4.5
Richard V. Van Alstyne, Davenport, Iowa.....	.....	1.8
Ray I. Klingbiel, East Moline, Ill.....	.....	1.0
John H. Ruhl, Davenport, Iowa.....	.....	1.0
Ruth H. Davis, Rockford, Ill.....	.....	4.5
J. Paul Madison, Table Grove, Ill.....	.....	4.5
Estate of C. Arthur Ruhl, ² Bettendorf, Iowa.....	.....	1.8

¹ Mr. Baisch also has an option to acquire 1,000 additional shares. If he exercises this option, he will own 8.7 percent of the voting stock. Mr. Baisch has testified as to his intention to exercise this option.

² C. Arthur Ruhl, who was formerly a director, passed away while the hearing was in progress. His wife is executrix of his estate.

325. *Oscar Ellis* is president, director, and a 21-percent stockholder in Illiway. He was born in 1891 and has lived in the Moline area all his life. He is a member of local civic organizations.

326. Mr. Ellis is president, director, and a 26-percent stockholder in Moline Consumers Co., engaged in the sand, gravel, and building material business in Moline. Moline Consumers Co. has many subsidiaries, which it controls, or affiliated companies in which it has a stock interest. Mr. Ellis is an officer and/or director of many of these companies. The record shows his other business interests to be in excess of 20 companies, mostly located in Illinois. They include primarily businesses concerned with cement, stone, and beer and liquor distribution.

327. Because of the number of companies with which Mr. Ellis is connected, he doesn't remember, without consulting records, his exact connection with each company or its exact ownership. Mr. Ellis was asked questions about tavern owners and his relations with them. He supplied full information in response to these questions and none of the information elicited has any relevance to the questions presented in this case.

328. The Illiway application and the direct case of Illiway listed only the following business interests for Mr. Ellis:

Moline Consumer Co.....	President and 26.6-percent stockholder.
Missouri Gravel Co.....	Treasurer.
Central Stone Co.....	Do.
Rock Island Ready-Mix Concrete.....	President.
LeClair Hotel, Inc.....	Do.
LeClair Theater Bldg., Inc.....	Do.

329. The failure of Mr. Ellis to list all his business interests is explained as follows: Mr. Ellis had received a blank form prepared by Boeye to collect the necessary information for the application. Although the form (p. 2) requested all the necessary information, there was only room for a few lines of information. Mr. Ellis filled out the form himself in his own handwriting and listed the six companies referred to above. He listed six of his major companies and thought that was sufficient. He felt he had listed the primary companies, particularly Moline Consumers Co., which is the primary company. At the time he was filling out the form, Mr. Ellis didn't know how many companies he was an officer in. He didn't know he was supposed to list all the companies he was connected with. Mr. Ellis didn't know his answer had been incomplete until he was notified about it by his Washington broadcast attorney who asked him to make a complete list of his business interests. This did not happen until January or February of 1959; he did not know that a complete listing of business interests was necessary when his direct testimony was prepared in October 1958. Ellis then had such information prepared and Illiway, through counsel, voluntarily furnished additional information on Mr. Ellis' business interests to the counsel for the other applicants. Before the hearing, Mr. Ellis discovered other companies that were missing from the list and voluntarily supplied these for the record. It is found that Mr. Ellis' failure to list all his business interests was unintentional and was not done to conceal information from the Commission. The evidence does not reflect adversely on Mr. Ellis or Illiway.

330. After Mr. Ellis became president of Illiway, he took part in all aspects of its plans and proposals and devoted much time to its affairs; he has attended all director and stockholder meetings and has had many conferences with individual stockholders concerning its plans. His main responsibility related to financial matters. He conducted the negotiations with Baisch, leading to Baisch's becoming general manager of Illiway. He has received many letters from local persons indicating they would cooperate with Illiway. He was examined as to his knowledge of Illiway's plans and demonstrated familiarity with them. He was acquainted with the NAB code and the policies of Illiway with respect to the code. He will devote one-half day a week to Illiway's affairs if Illiway receives the grant, staying in close contact with Baisch and Mazzie, and also with Bettendorf, whose role in Illiway's affairs is set out elsewhere herein.

331. *William E. Bettendorf* is vice president, a director, and 6.8-percent stockholder in Illiway. He was born in Davenport, Iowa, in 1902 and has lived in Davenport or Bettendorf, Iowa, all his life. He has lived in Bettendorf since 1941. He has been active in local civic affairs, being the organizer and first president of the Davenport Council of the Navy League.

332. Mr. Bettendorf holds a B.S. in mechanical engineering. Upon his graduation from college, he joined the Bettendorf Co. owned by his family, which has been the mainstay and largest industry for many years in Bettendorf, Iowa. The Bettendorf Co. was engaged in many fields of manufacturing and Mr. Bettendorf became active on

an operating basis in the affairs of the company and its affiliate companies. Later he became an officer of the Bettendorf Co. and other local manufacturing and utility companies. After the depression he was instrumental in the economic recovery of the Bettendorf Co. and its manufacturing activities. From 1941 until his retirement he was full-time president of the company. During World War II the company was engaged in the manufacture of Armed Forces products and received a Navy "E" Award. Upon his retirement Mr. Bettendorf maintained an active interest in the Bettendorf Bank & Trust Co., which he founded in 1949; he is president and 45-percent stockholder in the bank. In appreciation of his "outstanding leadership" and contribution to the general welfare and progress of Davenport and Bettendorf, he received a certificate of appreciation from the Davenport and Bettendorf Chambers of Commerce and he was the subject of a laudatory editorial in the Davenport Democrat.

333. Mr. Bettendorf once considered the possible establishment of a radio station in Bettendorf, but at the time did not consider it feasible for himself. He once acquired some stock in WOC-TV and he sold the stock on September 12, 1957, to an officer in the Bettendorf Co.

334. Mr. Bettendorf was examined on his knowledge of broadcasting and Illiway's proposal; he demonstrated familiarity with both. He was generally familiar with the NAB code as it is applicable to Illiway's policies.

335. After Mr. Bettendorf joined Illiway, he became active in the affairs of the corporation. As he became acquainted with its problems, he increased the amount of his activity and was eventually elected a vice president and director. He has devoted a large amount of time to all aspects of the affairs of the corporation. It was as a result, mainly, of Mr. Bettendorf's activity that Illiway has emphasized service to Bettendorf and has proposed an auxiliary studio in that city. He invited a number of members of civic organizations and educators from Bettendorf to the program plans meetings which Illiway had conducted. He attended both program plans meetings conducted by Illiway. In addition, he has received many letters from the local persons indicating that Illiway will have the cooperation of these persons and their organizations in the presentation of its programs.

336. If Illiway receives its construction permit, Mr. Bettendorf will take an active part in the day-to-day operation of the station. He has agreed to serve as an active officer of the company and he will devote on the average of one-third of his time to the affairs of the company. He will particularly aid the general manager and the station manager in the presentation of public service programs and programs for civic organizations and educational institutions. He will serve as a liaison between the station and many of these public service organizations and educational institutions. He will also aid the general manager and the sales manager in the sales activities of the station.

337. *Joseph M. Baisch* is executive vice president, a director, and 4.5 percent stockholder in Illiway. He also owns an option to acquire

1,000 additional shares of stock; when this option is exercised he will own 8.7 percent of the voting stock of Illiway. He was born in Michigan in 1918 and he now lives in Rockford, Ill., where he is a stockholder, director, and general manager of WREX-TV, located in that city. If Illiway receives a grant, he will sever all connection with WREX-TV and move to Moline to serve as full-time general manager of Illiway's proposed station.

338. Mr. Baisch has had extensive operating experience in the film business and in the television business. As a young man he was employed as the manager of movie theaters in Green Bay and Kenosha, Wis. After serving in the Army as a combat flyer, he returned to the movie business and became district manager for Standard Theatre's Central District, supervising seven theaters. A year later, he was promoted to film buyer and head of the booking department for the Standard circuit of 36 theaters. In 1949 he was appointed general manager of Gran Enterprises, which owned real estate and served as management for a number of movie theaters and he also was an officer of that company. Gran Enterprises was controlled by L. F. Gran, who originally was a stockholder in Illiway. Mr. Gran gave Baisch his start in the movie business; they have been associated in various other business ventures together and they are good friends. However, Baisch has not worked directly for Gran since 1954 and since that time has not been under his direction or influence.

339. During the television freeze, as part of his duties for Gran Enterprises, Mr. Baisch became familiar with television and its operating problems in order to prepare himself to become a supervisory official in any television station in which Gran or his company might have an interest. He spent several years visiting television stations, attending industry seminars and meetings, studying at schools, and generally learning about television wherever he could. He prepared market studies and plans for potential television stations in Milwaukee, Green Bay, Duluth, and Rockford where Mr. Gran was interested in applying for television. Gran became connected with corporate applicants in each of these cities and the studies then continued for the applicant corporations.

340. Mr. Baisch's first experience with a television application was in connection with Lakehead Telecasters, applicant for a station in Duluth shortly after the freeze was lifted in 1952. The application was dismissed when Lakehead merged in March 1953 with Ridson, Inc. Initially it was proposed that Baisch would be a member of the Lakehead staff.

341. At about the same time in 1952, Mr. Baisch became connected with an application by Greater Rockford Telecasters, Inc., for a television station in Rockford, Ill. He participated in and helped prepare that application. He also helped prepare an application for Valley Telecasting Corp. which applied in 1952 for a television station in Green Bay, Wis. He did this work in both cases as an employee of Gran Enterprises.

342. Mr. Baisch became connected in 1952 with the application of Milwaukee Area Telecasting Corp. for a television station in Milwaukee. Mr. Baisch was a stockholder, treasurer, and director of

that corporation and was to be assistant general manager. He was involved in every aspect of this application, acting as coordinator in formulating all of the plans and proposals.

343. In May of 1953, Greater Rockford Television, Inc., received a construction permit for WREX-TV, located in Rockford, Ill. Mr. Baisch was employed by Greater Rockford to assist the general manager of that station in laying out, constructing, equipping, and staffing WREX-TV. He worked for Greater Rockford until shortly before the station went on the air commercially on October 1, 1953. He then returned to Milwaukee, at the request of its directors, to resume his full-time duties on the Milwaukee Area Telecasting Corp. proposal. Baisch remained an employee of Milwaukee Area until May of 1954 when the four Milwaukee applicants merged and a CP was granted to WTVW on June 11, 1954.

344. At about the same time as the Milwaukee merger, in May 1954, two stockholders in WREX-TV, Louis E. Caster and Swan Hillman, president and treasurer of WREX-TV, invited Baisch to confer with them in Rockford and offered him the position of general manager of station WREX-TV. His decision to accept the position was his own independent decision. He resigned his position with the channel 12 Milwaukee Area station and moved to Rockford the same month. He immediately entered his duties as general manager of station WREX-TV and he has held that position until this time. Baisch, however, retained his stock interest in the Milwaukee station.

345. In the summer of 1957, Baisch acquired, what appears to have been the beneficial interest in, 1.43 percent of the stock of Greater Rockford Television, Inc. He had acquired an option on this stock in 1954 during which time it was held by Louis Caster, president of WREX-TV, as trustee. When he bought the stock, he paid for it [\$1,500] out of his own funds. The option agreement was not filed by WREX-TV with the Commission until September 20, 1957. Shortly before that time (in August 1957) the stockholders in WREX-TV all agreed to sell their stock to Continental Television. When he learned of the proposed sale, Baisch took steps to finish his acquisition of the stock he had previously started to pay for. The option agreement was not filed with the Commission until after the agreement to sell WREX-TV was entered into. Baisch considered the stock option as a gentleman's understanding. He did not know that it had, in fact, been reduced to writing. In 1954, when the option was created, Mr. Baisch did not know that oral agreements such as this were required to be filed with the Commission. He found out later that agreements such as this were required to be reported, but never gave the filing of the oral agreement any thought; he did not know if it had been filed and did not determine if it had been filed. He first learned of the existence of the written agreement and saw it in the late summer of 1957; he then first found that it had not been filed, and he immediately recommended that it be filed. The WREX-TV lawyers discovered that the trust had not been filed during the negotiations with Continental for the sale of the WREX-TV stock because of the fact that the stock held in trust had to be provided for in the agreement of sale. The trust was filed with the Commission

at that time. By June of 1957, Baisch felt he had acquired ownership of the stock. The sales agreement with Continental, dated August 20, 1957, however, provided for the sale of this stock to Continental from Caster as trustee rather than Baisch as owner. The sale, although approved by the Commission, was never consummated. The trust agreement, therefore, continued in existence during the time the sales agreement was in effect and until it was certain that it had been completely called off late in 1958. In addition, the stock to be sold to Continental was held in escrow under the sales agreement; Baisch, therefore, did not get possession of the certificate because the stock was being held in escrow pending the sale to Continental. In July 1958, Continental notified the FCC that the sale would not be consummated. In September 1958, WREX-TV considered the trust as terminated and reported the acquisition by Baisch of the stock as of June 1957 from Caster as trustee. Baisch recommended it be reported at this time on the basis of discussions with WREX-TV lawyers. He did not acquire possession of the certificate until 1959 when the possibility of a suit arising from the termination of the sale to Continental was ended; the stock escrow continued until that time. He now has the right to vote the stock.

346. Baisch had personally reported his ownership of the WREX-TV stock to the Commission prior to the time a proper ownership report on a form 323 reflecting the purchase was filed by WREX-TV. He expressly reported it in the original Illiway application filed in November 1957, and also included the amounts he expected to receive from Continental for its sale in his statement of assets. The stock was included in his assets in a financial statement submitted to the FCC in January 1958. He included it in his assets in a statement filed by Illiway in August 1958. These actions on his part demonstrate conclusively that there he had no intent of concealing his ownership of the stock from the Commission. Likewise, the WREX-TV stockholders, when they signed the agreement of sale to Continental, which was filed with the Commission, openly revealed the trust agreement. On the basis of the evidence it cannot be concluded that any stockholder in WREX-TV had any intent to conceal any facts from the Commission. Baisch is free to sell his stock in WREX-TV.

347. In the early part of 1958, at the invitation of Louis Caster, largest stockholder (41 percent) in Caster-Robison Television Corp. which controls KOCO-TV, Enid, Okla., Mr. Baisch acquired 2½ percent of the stock in that company. Since that time he has periodically acted as a consultant to the station in connection with its operating problems.

348. During December 1958, at the invitation of L. F. Gran, Mr. Baisch acquired 4 percent of the stock in radio station KGA, Spokane, Wash.

349. In February 1959, Mr. Baisch had also acquired 2 percent of the stock in WDUL-TV, permittee of a television station in Duluth, Minn. He acquired this stock from Mr. Caster. Gran and his son own about 50 percent of the station. Guyer has never had an interest in the station.

350. The only stations Mr. Baisch has ever been connected with are WREX-TV, KOCO-TV, KGA, WTVW, and WDUL-TV. The only operating station he has ever worked for is WREX-TV.

351. As general manager of station WREX-TV, Mr. Baisch is completely responsible for and supervises all of the activities and operations of the station. He is active in and participates on a day-to-day fulltime basis in each of the operations of the station which are roughly classified as programing, engineering, and sales. He has wide discretion and determines what programs will be presented and the content of the programs themselves; what programs will be sponsored or sustaining; which sponsors and continuity will be accepted; and he determines how the station shall be operated from the point of view of engineering and production. He has developed, at Rockford, programs which would serve the needs and interests of communities other than Rockford. Illiway urges that this is important in light of the Illiway proposal to develop comparable programs for many communities other than Moline. He has participated in network contract negotiations and is solely responsible for the day-to-day relation of the station with the networks and the acceptance of network programs.

352. Mr. Baisch has had extensive experience in the selection and purchase of film for television and in developing the use of locally produced film in regular local programing.

353. Mr. Baisch has had extensive experience in the creation and production of a wide variety of local live programs, including remotes. His participation in the creation of these programs is not merely supervisory; he is actively engaged in the creation of the ideas and their implementation. He is also responsible for the selection and supervision of the WREX-TV staff and he supervises the coordination of the different parts of the staff. WREX-TV has received many awards while it has been under the stewardship of Mr. Baisch.

354. Some time after March 11, 1958, when Mr. Gran and his son, Bruce, decided to withdraw from the Illiway group, Oscar Ellis asked Baisch to take a full-time active role in the operation of the Moline television station. After consulting with Mr. Caster, its president, he finally agreed to accept the Moline proposition. He agreed that when Illiway got its grant, he would sever all connections with and dispose of his Greater Rockford Television, Inc., stock. He was then elected executive vice president and director of Illiway, as well as general manager. He became responsible for the determination of plans and proposals, working very closely with Jack Mazzie and the directors of Illiway, especially with respect to locally produced programs. With Mel Beckstrom he discussed the studio plans. He visited the theater building which will serve as Illiway's main studio and carefully examined it. With Mr. Mazzie, he has been responsible for the preparation of all of Illiway's plans and proposals. Mr. Baisch has devoted at least a total of 500 hours to his work for Illiway. He has visited Moline over 10 times and has had many discussions with the other stockholders and directors with respect to its plans and proposals. On most of his visits the stockholders and directors introduced him to various civic and community leaders with whom he has

discussed its proposed programing and plans. On June 26, 1958, Mr. Baisch conducted a programs plans meeting which was held in Moline and attended by at least 25 of the civic leaders of the Quint Cities area. Mr. Baisch has consistently devoted considerable time to participation in civic activities.

355. *Robert W. Boeye* is treasurer, director, and a 3.6-percent stockholder in Illiway. He was born in 1901 and has lived in Rock Island since 1939, practicing law in that city. He has been very active in local civic and governmental affairs and spends an average of a full day a week in such activity. Since 1953 he has been assistant attorney general for the State of Illinois for Rock Island County and he is a former chairman of the Rock Island County Bar Association. Among other things, he is a former chairman of the Rock Island Zoning Board of Appeals.

356. Mr. Boeye was primarily responsible for the organization of the local group in Illiway which now holds about 70 percent of the stock. He has served as local counsel for Illiway since the organization of the group as it is now constituted.

357. Mr. Boeye has been involved in almost every aspect of the corporation's affairs; he has participated in the development of the financial, program, and studio plans. He has attended all stockholder and directors' meetings and he has spent many hours in conferences and conversations with other stockholders, with respect to all of the plans and proposals of Illiway. He has particularly participated in the development of the program plans of Illiway and has had many conversations with Mr. Baisch and Mr. Mazzie with respect to these plans. He has acted as a coordinator for all of the plans of Illiway, transmitting suggestions and ideas of various stockholders to the persons responsible for the effectuation of these plans. He has talked to numerous persons concerning its proposed programs and he has received many letters indicating that Illiway will have the cooperation of local groups in presenting its programs. He is generally familiar with Illiway's proposals. Since he became connected with Illiway he has spent a minimum of one-half day a week involved in its affairs. Mr. Boeye intends to devote a minimum of a half day a week to the affairs of Illiway. He will continue to act as local counsel and he will participate fully as a stockholder, director, and an officer in all of the affairs of the corporation.

358. *Lambert I. Engdahl* is a director and 4.5-percent stockholder in Illiway. He was born in Monmouth, Ill., in 1895 and has lived there all his life. He is engaged in the automobile and farming business in Monmouth. He owns and operates 600 acres of land primarily for cattle feeding. He feeds 600 head of cattle a year and 1,000 head of hogs. He is in constant supervision of these farming operations and spends 3 or 4 days a week on these farms supervising all aspects of the operation. Monmouth lies within the grade A contour of the Illiway station.

359. In connection with his farm activities, Mr. Engdahl is fully acquainted with farm problems in the area and has regularly done business with local representatives of the Department of Agriculture, who act as farm agents and farm advisers in the area. He is a mem-

ber of the Farm Bureau and he has also been active for many years in local civic activities in the Monmouth area. He visits Rock Island frequently and does business there.

360. Mr. Engdahl had been especially interested in the farm programs which Illiway will present, and he has had many conferences and conversations with Mr. Mazzie and Mr. Baisch concerning these programs. He has personally participated in their development and has made suggestions which have been incorporated into the program plans. As a result of his proposal to the Illiway group, the group decided to secure an auxiliary studio which would have adequate land for actual outdoor farming operations.

361. Mr. Engdahl has discussed the program plans with farm agents and farmers in the Monmouth area who have given assurance that they will cooperate in the presentation of Illiway's proposed programs. He has also received many letters to the same effect. He attended the Illiway program plans meeting in January of 1958. Mr. Engdahl intends to spend one-half day a week in the day-to-day operations of Illiway's station, particularly in connection with the development of and participation in the farm programs. He intends to lend whatever technical assistance he can in the presentation of these programs.

362. *Stanley H. Guyer* is secretary, a director, and 18-percent stockholder in Illiway. He was born in 1903 and resides in Rockford, Ill., where he practices law. He has devoted a considerable amount of time to civic activities there and has served as president of the local county bar association.

363. Mr. Guyer is secretary, director, and a 7-percent stockholder of station WREX-TV, located at Rockford, Ill. He is also a minority stockholder in KGA, Spokane, Wash.

364. In 1957, together with others, Mr. Guyer became interested in applying for a television station in Moline. He was one of the prime movers in the organization of the company and he is the second largest individual stockholder. Through Mr. Engdahl, who had joined the group, he became acquainted with Robert Boeye and through his efforts met several people who became interested in joining the group. Ultimately, the group was organized and he was elected a director and secretary of the company. While he fully fulfills his responsibilities as a stockholder, officer, and director of the broadcasting companies, in which he has an interest, he takes no active part in the formulation of any of the broadcasting policies of these companies. He has approved the plans and policies of Illiway. He fully understands the policy of Illiway that there shall be no joint activity between WREX-TV and the Illiway proposed station, and he fully agrees with this policy. When and if Illiway receives its construction permit, he will dispose of his stock in Greater Rockford Television, Inc., resign any position he may then hold in that company, and sever all connection with that company.

365. *Frank H. Schierbrock* is a director and 4.5-percent stockholder in Illiway. He was born in 1899 and he came to the Davenport area in 1933. He has lived in Davenport since that time. Since December 1933, he has been engaged in the automobile sales business. He is at present president and a stockholder of Lujack-Schierbrock Chevrolet

Co., Schierbrock Motors, Inc., a real estate holding company, and Lease-a-Car Co., an auto leasing company. All of these companies are located in Davenport, Iowa.

366. Since he came to Davenport, Mr. Schierbrock has been very active in the civic life of that city. He has been president of the Community Chest. Since 1957 he has been a member of the board of trustees of St. Ambrose College, located in Davenport, Iowa. For 10 years, as one of two lay members, he has served as a trustee of the Sacred Heart Parish, which is the Cathedral Parish of the diocese.

367. Since he became a stockholder, Mr. Schierbrock has taken an active interest in the affairs of the corporation. He feels, and has corroborated to his satisfaction, that the program schedule proposed would serve the needs of the community; he has received letters from local groups indicating that Illiway would have their cooperation. If Illiway receives its permit, he will continue his active interest in the programing activities of the station, particularly serving as liaison between many of the civic and educational organizations of Davenport and the Illiway station. He will devote at least two afternoons each week toward the operation of the station.

368. *Benjamin H. Ryan, Sr.*, is a director and 1-percent stockholder in Illiway. He was born in 1897 and has lived in East Moline since 1910. In 1921 he joined the State Bank of East Moline as a teller and he has worked in the bank since that time. In January 1949, he became president of the bank and he is still serving in that capacity. He devotes a considerable amount of his time to participation in civic and governmental activities in the East Moline community. He has served as an alderman in the East Moline City Council for 8 years; thereafter, he served as city treasurer for 4 years; and during the years 1945 to 1953, he served as mayor of the city of East Moline. He helped organize the local chamber of commerce and the first local Community Chest Drive.

369. Since joining Illiway he has attended directors' meetings, conferences, and informal meetings with respect to the formation of plans and proposals of the company. He attended one of the program planning meetings conducted by Illiway and he invited several persons who also attended that meeting. He has discussed the specific program planning of Illiway with many of the leaders of the East Moline community. He has felt it important that the last remaining channel in the area which was to be in Moline, Ill., provided adequate service to his own community of East Moline. It is his intention, if Illiway receives a construction permit, to devote on an average of 3 hours per week to the affairs of the company. It will be his responsibility to see that East Moline receives the service it needs.

370. *Kenneth G. Sturtevant* is a director and 6.8-percent stockholder in Illiway. He was born in 1901 and has resided in Rock Island since 1923. He was formerly majority stockholder and an officer of the Sturtevant Dairy Products Co., with which he was connected during the years 1923 to 1954. In the latter year the company was sold to the Borden Co. He is also a director and stockholder of the First National Bank of Rock Island, Ill. He is moderately active in local civic affairs.

371. Mr. Sturtevant has attended directors' meetings and participated fully in the formulation of the plans of Illiway, including its programing. He has received letters from local groups indicating that Illiway will have the cooperation of these individuals and their organizations in the presentation of its programs. It is his intention to maintain an active interest in the affairs of Illiway if it receives a construction permit. He will devote on the average of 2 hours a week to the affairs of the company, particularly in connection with sales activities.

372. *John T. Mazzie* is a 1-percent stockholder in Illiway and its proposed station manager. If Illiway receives a grant, he will move to Moline to devote his full time to the station's activities. He was born in 1924 in Omaha, Nebr., and received a B.S. degree from Creighton University in 1950.

373. Mr. Mazzie has had extensive operating experience in the television business, particularly in the creation, presentation, and production of programs. His interest in broadcasting started while he was an undergraduate at Creighton. While at the university he acted as a student instructor in radio technique and he served as student director and stage manager of the Creighton Players. He also, during this time, did commercial radio recordings on a freelance basis.

374. Beginning in October 1947, radio station WOW in Omaha started its work on closed-circuit television in the campus auditorium. Mazzie went to work without pay for this television operation to learn the television business. He served as a prop boy, scenery technician, mike boom operator, set lights, pushed cameras, acted, assisted engineers in setups and teardowns. Before he graduated from college, in August of 1949, he was hired by WOW-TV as floorman. During his work with the station, he learned all aspects of the program operation of a television station. After serving as floorman, he was appointed a director, designing, producing, writing, and directing live television programs. He had, before this time, learned camera operation, film projection, lighting, staging, makeup, and all the other technical aspects of television production; he performed all of these duties from time to time. In 1952, he became executive producer of WOW-TV. In this capacity he supervised the production manager, and inter-related the production activities of the station with the sales and other departments. He worked closely with the program director in the creation and presentation of all programs. He worked for WOW-TV until August of 1953, when he joined WREX-TV as production manager. Early in 1954, he became program director of WREX-TV, and he has held that position until this time. If Illiway gets a construction permit, he will sever his connections with that station and take up his duties with Illiway.

375. As program director at WREX-TV, Mazzie actively supervises and participates on a day-to-day basis in the activities of the production, art, film, news, sports, staging, traffic, and continuity departments. He is directly responsible on a day-to-day basis for the actual creation and final production of all programs. His program ideas and plans are submitted to Baisch and, working closely with him, are inte-

grated into existing program structure. He is responsible for the staffing assignments of the station. He is in close contact with community leaders and groups. When Baisch is away on national sales, he is in charge of all operations in his own departments. He has created many valuable programs described in the record. Mr. Mazzie devotes a considerable amount of time to participation in civic activities. He has addressed many local civic groups.

376. Mr. Mazzie has been involved in the affairs of Illiway since the summer of 1957. The development of Illiway's plans and proposals, particularly before Mr. Baisch was selected as general manager, was primarily his responsibility. Mazzie conferred extensively with the local stockholders to obtain their views for the work both before and after the application was filed. He participated in the program plans meeting held by Illiway in January 1958. He helped select the auxiliary studio and reviewed the equipment and staff proposals, preparing the formal plans in these respects. Mr. Mazzie originally was to be general manager of Illiway's station. Later, when Baisch was selected for the position, he stayed with the company, at Baisch's invitation, and agreed to serve as station manager. Since that time, he has worked continuously with Mr. Baisch on all of the plans and proposals, and together with him prepared the program, staff, and technical plans of Illiway. He has visited Moline several times and has spent in excess of 500 hours in working on the applicant's plans and proposals.

377. *Charles F. Carpentier* is a 2.7-percent stockholder in Illiway. He was born in Moline in 1896 and has lived in the Moline area all his life, and now resides in East Moline. For many years, he has been in the motion picture business in that area. He is a stockholder in two outdoor movie theaters in the Quint Cities area, which have a capacity of 350 autos each. There are, however, 16 other theaters in the area and these theaters are of comparable size.

378. Mr. Carpentier has been very active in the civic affairs of his community and of the State of Illinois. In 1952 he was elected secretary of state of the State of Illinois, and he is now serving his second term. Because of his official duties, he spends much of his time in Springfield and Chicago.

379. Mr. Carpentier has discussed the plans of the station, particularly its programing, with the other stockholders. In the event that Illiway receives a construction permit, he intends to continue his interest in the affairs of the company and will do everything he can to aid in the presentation of programs which will fully serve the Quint Cities area. Because of his official duties, he is unable to estimate the amount of time which he will be able to devote to the affairs of the station, but will devote whatever time is available.

380. *George Von Maur* is a 1-percent stockholder in Illiway. He was born in 1901 in Davenport and has lived there all his life. He graduated from Yale in 1924. Prior to 1937, he was engaged in retail merchandising in the Davenport area, and since that time he has been connected with Quail & Co., investment bankers, in Davenport, Iowa; for the last 15 years he has been a partner in that company and vice

president. He is an allied member of the New York Stock Exchange. All of Mr. Von Maur's time is taken up with his business.

381. Since joining the group, Mr. Von Maur has taken an active interest in the affairs of the company. He invited several persons to one of the program plans meetings conducted by Illiway, and he attended that meeting. He has attended the stockholder meetings. If Illiway is awarded a construction permit, he will continue his interest in its affairs, principally financial.

382. *Harry H. Cleaveland* is a 3.6-percent stockholder in Illiway. He was born in Rock Island in 1926 and has lived there all his life. Since 1951 he has been a partner in the H. H. Cleaveland Agency, engaged in the general insurance business in Rock Island. He is an officer and stockholder in a local office equipment company and a director and stockholder in the Black Hawk Federal Savings & Loan Association. Two years ago he joined with G. LaVerne Flambo in organizing the Knox County Broadcasting Co., which applied for and received a license to operate an AM station in Galesburg. This station, WQUB, has been on the air for about a year. He is vice president, treasurer, and a 10-percent stockholder in that company.

383. Mr. Cleaveland regularly devotes a substantial amount of his time to participation in civic activities in Rock Island and the Rock Island area.

384. After Mr. Cleaveland joined the group, he became fully active in its affairs. He has attended stockholder meetings and he has had many conversations about the affairs of the proposed station with other stockholders. He has been particularly interested in the proposed programing of the station, principally regarding civic affairs. He has conferred with many members of the community about the proposed programing, in order to learn of the type of programs individual organizations would like to present. He attended a program plans meeting conducted by Illiway which took place on January 30, 1958. He would devote on the average of 3 hours a week to the affairs of the station.

385. *Melvin R. Beckstrom* is a 1.8-percent stockholder in Illiway. He was born in 1904 in Moline and has lived there all his life. He attended the University of Illinois and took a degree in architecture in the College of Engineering in 1930. After he graduated he returned to the Moline area and since that time he has been a practicing architect, engaged in his own business. He is vice president of the Quad-City Architects Association and he has been active in the affairs of that association since its creation. Mr. Beckstrom has been a member of the Moline City Planning Commission since 1938 and he is now chairman of the plats committee of that commission and a member of the building codes commission of appeals of Moline. He formerly served as a member of the Moline Zoning Commission for 4 years. Mr. Beckstrom has been active in many civic organizations in the Moline area.

386. Since Mr. Beckstrom joined the Illiway group, he has concerned himself primarily with the work involved in the planning of the proposed studios. He has spent considerable time consulting with both Mr. Baisch and Mr. Mazzie as well as other stockholders concern-

ing the development of these plans, which he designed. He is also interested in civic programing. He will devote on the average of 3 hours a week to Illiway.

387. *Samuel P. Durr* is a 4.5-percent stockholder in Illiway. He was born in 1911 and attended Creighton University of Omaha, Nebr. He received his medical degree at Creighton in 1936. He has practiced medicine in Rock Island since 1937.

388. As a doctor, Durr has devoted a considerable amount of time to local and State medical affairs. He has been particularly active in the Rock Island County Medical Society and the Iowa-Illinois Medical Society, having served as president of both of these organizations, in 1950 and 1952, respectively. He has served on practically every committee of these organizations from time to time and he has served as chairman of most of them. He has been very active in other civic organizations outside the medical field. In the past he has taken an interest in and participated in the broadcasting over radio and TV of health programs and programs dealing with health. He has appeared on local radio stations on several occasions on such programs and he also has appeared on local TV stations three or four times in connection with such programs. On one occasion he became actively interested in the preparation of a regular TV program which would deal with medical affairs and problems. It is his hope that Illiway will be able to present health programs from time to time on some of the regularly scheduled programs set aside for local civic organizations.

389. Dr. Durr expects to take an active role in the program plans of the station in connection with such programs, and he intends to cooperate and advise with Mr. Baisch and Mr. Mazzie about such programs. He intends to spend on the average of 10 hours a month in connection therewith.

390. *Ray I. Klingbiel* is a 1-percent stockholder in Illiway. He was born in Moline in 1901 and moved to East Moline when he was a small child. He has resided in East Moline ever since that time.

391. Mr. Klingbiel received an LL.B. degree from the University of Illinois Law School in 1924. He practiced law in East Moline between the years 1924 and 1945. During the years 1925 and 1939, he served for 12 years as city attorney of East Moline. From time to time he also served as city attorney in various small villages in Rock Island County. In 1945 he was elected to the 14th Judicial Circuit, which covers Rock Island, Whiteside, Mercer, and Henry Counties, and he served as judge in the circuit for 8 years. In 1953 he was elected to the Supreme Court of the State of Illinois and was reelected in 1957. He is serving in that capacity at this time. Since 1946 he has served as a director of the State Bank of East Moline.

392. During the years before Mr. Klingbiel assumed the bench, he was very active in the civic and community life of the city of East Moline. In 1939 he was elected mayor, in which capacity he served between the years 1939 and 1945.

393. Mr. Klingbiel joined the Illiway group because of his interest in good government and public service. He has discussed the plans of the station with Mr. Boeye, Mr. Baisch, and Mr. Mazzie. He attended one of the program planning meetings conducted by Illiway.

394. Although Mr. Klingbiel is required to be in Springfield in connection with his judicial duties between 3 and 4 months of the year, he spends the rest of his time at his home in East Moline. He intends to maintain his interest in Illiway's programming and will consult and serve with the management of the station in such matters and lend whatever assistance he is in a position to provide.

395. *Richard F. Van Alstyne* is a 1.8-percent stockholder in Illiway. He resides in Davenport. He has attended several of the meetings of the stockholders of Illiway Television, Inc., and he has approved the plans and proposals submitted at these meetings.

396. *Ruth H. Davis* is a 4.5-percent stockholder in Illiway. She lives in Rockford, Ill. Her husband is Charles H. Davis, a member of the Supreme Court of Illinois. She is a member of several local Rockford civic organizations.

397. *J. Paul Madison* is a 4.5-percent stockholder in Illiway. He resides in Table Grove, Ill., which is 65 miles from Moline. He was born in Pittsfield, Ill., in 1899. In 1957 he was elected mayor of the village of Table Grove. If Illiway gets its construction permit, it is his intention to act as liaison between the station and the communities near Table Grove which lie within the coverage area of the station.

398. *John H. Ruhl* is a 1-percent stockholder in Illiway. He was the brother of the late C. Arthur Ruhl, who also was a stockholder. He resides in Davenport and has resided there all his life. He is engaged in the investment banking business as a partner in Quail & Co., located in Davenport. He has been a member of the Davenport Chamber of Commerce since 1935.

Past performance and operation of WREX-TV

399. In light of the connection of Guyer and Baisch with WREX-TV, it becomes important to evaluate the record of performance of that station. In addition, Illiway has relied on the experience of Baisch and Mazzie in the television field and has offered detailed evidence as to the nature of their experience in the operation of WREX-TV. The quality and content of the WREX-TV programs and the policies are the responsibility of Baisch and Mazzie. WREX-TV generally follows the NAB code. The station has established a policy created by Baisch of becoming completely integrated into the community life of the viewing area. This meant that the station not only was to be fully integrated into the life of Rockford, but also into the community life of many of the other cities and communities which are served by WREX-TV. The program service which WREX-TV has rendered has continuously served not only Rockford, but other communities such as Beloit, Jonesville, Freeport, etc. By presenting individuals from these communities, promoting local causes and organizations in these individual cities, the station has furthered its policy.

400. Station WREX-TV has regularly accepted sustaining network programs directed toward minority audiences and special network programs. The station interrupts its scheduled programs, both sustaining and commercial, to present such network programs. Because of economic problems, the station frequently is not ordered for

certain commercial network shows. It has now succeeded in obtaining many of these programs on the basis that the commercials will be cut out. WREX-TV utilizes this opportunity by injecting public service spot films and/or slides and "Community Billboard" announcements for national, regional, and local public service activities.

401. It is the policy of the station to screen film content carefully so that objectionable film material will not be presented on the station. The station established and still maintains its own photographic department which uses sound-on-film cameras, Bolex hand cameras, and still cameras. The station also has the necessary development equipment for processing locally produced films, which are used in most types of programs. A basic characteristic of WREX-TV's past performance is the regular presentation of local live produced programs.

402. Under Baisch's direction the station has regularly presented extensive farm programs (including gardening); educational programs on a very wide and thorough basis; religious programing "in depth" on a remote basis and otherwise. In addition, at appropriate seasons the station presents special religious programs. All religions are represented.

403. WREX-TV has presented, on a regular basis, talks and discussions by representatives of civic organizations and other leaders in the area, and it has promoted the discussion of controversial issues in other programs. From time to time the station has presented special series of programs dealing with governmental affairs. Every year, in connection with the Community Chest Drive, the station presents discussions and talks by representatives of the local Community Chest and affiliated organizations. Other similar programs are presented; i.e., youth, safety, symphony orchestra, etc. Under Baisch's supervision and direction, WREX-TV has expanded its news programs. WREX-TV originates four locally produced news programs each day. Local and other sports are well represented. The station cooperates in civic celebrations throughout the service area, at times using remotes.

404. Station WREX-TV has received numerous awards for promotion and related activities. The station has received awards for its public service programs.

405. WREX-TV has a policy of not editorializing on the air with respect to controversial issues. A question was raised during the hearing as to whether WREX-TV, through Baisch, editorialized over the air on the subject of pay-TV or in any other way conducted its operations improperly in connection with this subject. On the basis of the record, it is concluded that WREX-TV did nothing improper, did not take an editorial position on the subject, and handled this controversial issue properly in accordance with its responsibility as a licensee.

406. In January 1958, Mr. Baisch attended a CBS affiliates meeting in Washington, during which pay-TV was discussed. After that meeting WREX-TV presented four programs over the air dealing with pay-TV. The station took no editorial position on the subject over the air. The programs it presented were as follows:

a. A debate between executives of CBS and Skiatron taking opposing points of view on the subject. This was a half-hour network program offered by CBS presented by the station on a delayed basis.

b. A short film program in which Representative Arends, an Illinois Congressman, gave his point of view in opposition to pay-TV. Arends supplied the film to the station at Baisch's invitation. Baisch had heard that the Congressman was interested in the subject; at the time Baisch made the request, he did not know his views and Baisch did not know Mr. Arends' views on pay-TV before he scheduled the program.

c. A short film program in which Representative Allen, local Congressman, gave his point of view in opposition to pay-TV. This statement was carried on a newscast in early 1958 and was filmed for WREX-TV. The statement was invited by WREX-TV. Baisch saw Mr. Allen's statement before it was presented. These statements of the two Congressmen were presented before WREX-TV began a promotion described next below.

d. A Man-on-the-Street broadcast, on March 31, 1958, consisting of interviews of members of the public on the subject of pay-TV presented on the daily "On-the-Spot" program, described above. Six or seven members of the public were chosen at random and various unselected views were expressed. The views expressed were neither edited nor censored. The station presented the program because it felt it should present a discussion by members of the public of this controversial issue.

WREX-TV also ran some local news ads against pay-TV; a mat for one ad was supplied by the CBS Advisory Affiliates Board, but WREX-TV made changes in it. In a promotion advertised in newspapers, people were urged to vote on the question of pay-TV versus free-TV. Ballot boxes were distributed at the place of merchants participating in the promotion. Members of the public could secure a ballot there upon which they could record their vote and enter a limerick contest on the subject of pay-TV. The merchants paid WREX-TV for advertising and received in return display materials, ballots, and spot announcements as part of a package deal. The promotion was run by a commercial firm, which gave WREX-TV an allowance for the ads dealing with the promotion. The limerick contest permitted the contestant to write a line either in favor of or against pay-TV. Three different prizes were awarded on the basis of winners picked by Rockford College; the prizes were awarded in shows carried over the air. In presenting information over the air with respect to its promotion contest, the station did not make known its own views or the views of any other person of the pay-TV issue. The form of the limericks on the ballot or the winning limericks were not presented over the air. Baisch had never seen the winning limericks and doesn't know whether they were for or against pay-TV. The results of the poll were reported by the college to the station, but were never used in any way by the station or reported to anyone for their use.

407. The percentage of time devoted to the various types of programs on station WREX-TV for the composite week 1957 was as follows:

	<i>Percent</i>
Entertainment -----	79.4
Religious -----	2.1
Agricultural -----	2.5
Educational -----	1.2
News -----	5.5
Discussion -----	1.9
Talks -----	7.2
Miscellaneous -----	.2
Total -----	100.0

408. The program log analysis of station WREX-TV for the composite week 1957 (ibid.) was as follows:

	8 a.m.- 6 p.m.	6-11 p.m.	All other hours	Total
	Percent	Percent	Percent	Percent
1. Network commercial (NC).....	44.3	69.2	7.5	47.6
2. Network sustaining (NS).....	18.1	0	15.2	12.3
3. Recorded commercial (RC).....	10.2	12.8	57.8	16.4
4. Recorded sustaining (RS).....	20.3	2.8	12.6	14.2
5. Wire commercial (WC).....	0	0	0	0
6. Wire sustaining (WS).....	0	0	4.4	.5
7. Live commercial (LC).....	3.9	9.2	0	5.1
8. Live sustaining (LS).....	3.2	6.0	2.5	3.9
9. Total commercial (1+3+5+7).....	58.4	91.2	65.3	69.1
10. Total sustaining (2+4+6+8).....	41.6	8.8	34.7	30.9
11. Complete total.....	100.0	100.0	100.0	100.0
12. Actual broadcast-hours (per week).....	68:17	35	13:19	116:36
13. Number of spot announcements (SA) (per week).....	82	138	24	244
14. Number of non-commercial spot announcements (NCSA) (per week).....	198	23	34	255

409. On the basis of the foregoing findings, it is further found that the programing at WREX-TV, while leaning heavily toward entertainment, has been "good" and consistent with the interests of the community (ies) WREX-TV serves.

History of Illiway: Program planning and policies: assurance of local cooperation

410. The history of Illiway shows that the principals and/or stockholders have, since early in 1957 (when Stanley Guyer got the idea of a television station on channel 8 in Moline), made intensive studies of all phases of television as applicable to the community. Thus, those in Moline [the area] who were interested, as well as those from outside the area, analyzed the market, studied station needs, sought for and examined studio locations, and studied existing programing—among other things. Many meetings were held, formal and informal, amongst themselves.

411. It was agreed from the outset that control of the group would be in the hands of those of the group who came from the Quint Cities area. The local group felt that they controlled more than half of the stock on the basis of the original organization. Mr. Engdahl was considered part of the local group. Guyer, the Grans, Mazzie, and Baisch, who were considered not in the local group, were accepted because of their experience in broadcasting upon which the local group would have to rely.

412. After September 9, 1957, Illiway proceeded with the work of completing the group that would apply for the television station. Those from the Quint Cities area who were already in the group talked to their friends in an effort to create as wide a basis as was practical. Among the matters discussed were financing, location of the station, its operation, and programing. Baisch, Mazzie, Gran, and Guyer had come to Moline during this period to discuss these matters with the local group. Particularly Baisch and Mazzie discussed the proposed programing with members of the local group. A final meeting

was held November 6, 1957, when the application was signed. At the same time as the foregoing activities were in progress, Illiway constituted itself in effect as a committee to talk to or to contact as many persons (community leaders, etc.) as possible about its proposed station, and to get as many ideas as possible about the kind of programs it should present. Four to seven forms of letters were prepared for sounding out opinions on different types of programs. The letters were mailed at the end of January 1958. The replies were read by the stockholders who then sent them to Boeye and he, in turn, sent them to Baisch and Mazzie for use in connection with the work they were doing on the programing; the latter discussed the replies with individual stockholders. Mr. Mazzie was at all times in close contact with the stockholders in the Quint Cities and continuously discussed with them the information that was received from the people that were contacted on these matters. Mr. Boeye was also active in making contacts. Through this continuous interchange of ideas and information, the actual content of the programs which Illiway had designed became crystallized and ultimately led to the programs proposed by Illiway.

413. Illiway reasonably relied upon the assurance of cooperation it received. Its planning and preparation in this regard were fully adequate. It is also found that local persons and public service organizations contacted by Illiway will cooperate with Illiway if it is successful. Baisch and Mazzie made a thorough review of Illiway's proposals and prepared a revised program schedule, submitted to the Commission in June of 1958, and the more detailed program proposals submitted at the hearing. This schedule was based upon all of the studies and contacts with local groups which had been made by the stockholders of Illiway.

414. Mr. Guyer, as did Mr. Mazzie, agreed to sever all connections with WREX-TV if Illiway got its grant; if Illiway gets its grant, there will be no connection between the two stations.¹⁶

415. It will be the policy of the station to make time available for the discussion of controversial issues, and Illiway has incorporated such programs into its program schedule on a regular basis. Time will be made available to political candidates and the station will fully comply with the letter and spirit of section 315 of the Communications Act. Illiway recognizes a specific duty to serve the governmental organizations and civic organizations located within its coverage area, and specific programs have been incorporated in its program schedule for this purpose. Illiway Television, Inc., intends to become a member of the NARTB and will subscribe to the NARTB code. It will be the policy of the station to follow the television program code of the NARTB. Beer and/or wine advertising would usually be restricted to hours when children would not be viewing.

Program proposals

416. Illiway proposes to broadcast weekdays from 7:30 a.m. to midnight, on Saturdays from 5:30 a.m. to 12:50 a.m., and on Sundays

¹⁶ Guyer and Baisch are the only stockholders of WREX-TV who are also stockholders in Illiway. It is understood that Guyer and Baisch would not be stockholders in Illiway and WREX-TV at the same time.

from 9:30 a.m. to midnight. It will operate a total of 110 hours 35 minutes a week. Its program schedule includes ABC network programs. All applicants propose an ABC network affiliation and such an affiliation will be available to the successful applicant. Each will have available to it necessary film, record, and wire services.

417. The following is the percentage of time to be devoted to various types of programs in a typical week:

	Percent
Entertainment.....	67.07
Religious.....	3.6
Agricultural.....	3.28
Educational.....	4.00
News.....	7.38
Discussion.....	4.67
Talks.....	10.00
Total.....	100.00

418. The following is the program log analysis for a typical week:

	8 a.m.- 6 p.m.	6-11 p.m.	All other hours	Total
	Percent	Percent	Percent	Percent
1. Network commercial (NC).....	29.74	64.46	0	38.4
2. Network sustaining (NS).....	5.26	1.5	0	3.62
3. Recorded commercial (RC).....	21.3	12.14	74.25	22.75
4. Recorded sustaining (RS).....	13.77	0	5.57	8.64
5. Wire commercial (WC).....	0	0	0	0
6. Wire sustaining (WS).....	0	0	0	0
7. Live commercial (LC).....	13.15	9.52	0	10.92
8. Live sustaining (LS).....	16.78	12.38	20.18	15.67
9. Total commercial (1+3+5+7).....	64.19	86.12	74.25	72.07
10. Total sustaining (2+4+6+8).....	35.81	13.88	25.75	27.93
11. Complete total.....	100.00	100.00	100.00	100.00
12. Proposed broadcast-hours.....	66:30	35:00	9:05	110:35
13. Number of spot announcements (SA) (per week).....	94	98	15	207
14. Number of noncommercial spot announcements (NCSA) (per week).....	80	45	50	175

419. The following is a description of the locally originated programs which will be presented by Illiway:

a. Agricultural programs:

(1) *Rural Review* (LS)—At 11:45 a.m., Monday through Saturday, Illiway will present from its Bettendorf studios a 30-minute program designed especially for agricultural viewers. The program will be composed of four parts, each flowing into the other to make an integrated whole.

(a) Agricultural news, using silent and sound film, still photographs, and live guests;

(b) A graphic presentation of local, regional, and national cattle, hog, sheep, grain, and commodities quotations as well as futures and estimates.

(c) A farm feature in an "on the farm" setting. County agents and farmers will appear on the program. Locally produced film and film clips obtained from educational institutions will also be used.

(d) A comprehensive weather report.

(2) *Youth on the Farm* (LS)—On Saturdays at 10:45 a.m., Illiway will present, from its Bettendorf studio, a 30-minute program for rural youth featuring area 4-H, FHA, FFA, and other rural youth organizations.

(3) *Farm Film* (RC, RS)—On Saturdays at 11:15 a.m., Illiway will present films of interest to rural viewers obtained from industrial firms,

agricultural colleges, and the U.S. Department of Agriculture. The program, normally, will not be sponsored.

(4) *It's Your Town* (25 percent Agricultural) and *Morning in Moline* will contain portions of an agricultural nature.

b. Discussion programs:

(1) *Topic for Today* (LS)—Every weekday Illiway will present a 15-minute discussion program dealing with a topic of current interest to women. The program will be presented at a time when Illiway has a large women's audience.

(2) *Spotlight on Industry/Labor* (LS)—On Tuesday evenings at 9:30 p.m., Illiway will present a 30-minute discussion and talk program directed to both controversial and noncontroversial issues. Locally produced film will be used.

(3) *Community Life* (LS)—On Friday nights at 9:30 p.m., Illiway will present a 30-minute discussion and talk program presenting facts which make up community life in the Quint Cities. Organizations and their contributions to the communities will be highlighted and interpreted.

(4) *Let's Discuss It* (LS)—On Sunday evenings at 9:30 p.m., Illiway will present a 30-minute program devoted solely to discussion of controversial, national, and local issues. During political campaigns, qualified candidates will be invited to present their platforms.

(5) *It's Your Town* (LS)—On Thursdays at 9:30 p.m., Illiway will present a 30-minute program in which area communities will present "their town" to the viewers. City officials will discuss town problems and present proposed projects for city or town betterment. Farm leaders will also be used.

(6) *Morning in Moline* (10 percent discussion) and *Teen Forum* (100 percent discussion) will also present discussions.

c. Education programs:

(1) *The 10:15 Strip* (LS)—Each day at 10:15, Monday to Friday, Illiway will present a 15-minute live sustaining program in cooperation with Quint Cities educators and educational institutions and directed to the preschool youngster. At other times, a "teacher" employed by Illiway would conduct the program. The program would occasionally originate from the Bettendorf studios.

(a) *Let's Make Music* (Monday)—Toy counterparts to "big brother" instruments will be demonstrated and records featuring the instrument of the day will be played. Occasionally adult musicians will demonstrate the "big" instrument; gifted young people will demonstrate their musical proficiency.

(b) *Let's Meet the Animals* (Tuesday)—Beginning with an abbreviated version of an established "animal tale," children would meet the "animal of the day." Generally, these will be film clips appropriate for use in the program.

(c) *Let's Draw a Picture* (Wednesday)—Starting with a simple figure, a picture of a familiar object is drawn. Step-by-step advice is passed on to the young viewer during this process, until identification is made. From time to time safety material will be presented.

(d) *Let's Hear a Story* (Thursday)—A program devoted to the telling of classic children's stories. Kindergarten children will be invited as on-camera audience and help select future stories.

(e) *Let's Have a Party* (Friday)—Preschool youngsters who have celebrated their birthdays during the previous week, or on the date of this telecast, will be invited to a studio party.

(2) *The Four-Thirty Strip*—Every weekday at 4:30 p.m., Illiway will present a half-hour live sustaining program directed toward the teenager and high school student. Local educational institutions will participate in the presentation of these programs which from time to time will be presented from the Bettendorf studio.

(a) *Meet the Team* (Monday)—This will be a presentation of area high school teams and their coaches discussing schedules, future plans, and introduction of team members of note.

(b) *School Days* (Tuesday)—This program will be directed specifically at the students of the immediate pre-high-school age, the "not-quite" or "just barely" teens. Each week will find a different school featured. Questions will be submitted. Counselors will be qualified teachers.

(c) *Teen Forum* (Wednesday)—This part of the strip will feature area teenagers as panel members discussing issues submitted by fellow students and/or viewers. The panel will be selected from the student bodies of area high schools.

(d) *High Time* (Thursday)—"High Time" will spotlight local or area high schools. The station will, by film, visit the featured school, meet the principal or superintendent who will give the background or history of the school, and visit a specific department. A high school bulletin board announcing upcoming area school events will be integrated in this program format.

(e) *The 8 Ball* (Friday)—Primarily a teenage dance party, live and on-stage, this program will serve as showcase for area schools' individual and group talent. One high school will be invited to the ball each week and performers will come from its ranks.

(3) *Mississippi Mural* (LS)—On Saturday at 1:45 p.m., Illiway will present a quarter-hour program devoted to the telling of the rich historical past of the Quint Cities area and the Mississippi River Valley.

(4) *It's Never Too Late* (LS)—On Mondays at 9:30 p.m., Illiway will present a 30-minute program designed to stimulate adult thought and to interest individuals in new areas for personal betterment. Area colleges will participate in this program on a rotating basis.

d. Entertainment programs:

(1) *Talent Parade* (LS)—On Sundays at 5 p.m., Illiway will present a 30-minute showcase for amateur performers in the channel 8 area. Following auditions conducted at publicized periods by qualified channel 8 staffers, successful candidates will compete for a weekly prize. Winners at weekly competitions will meet at the conclusion of regular cycles to vie for a grand championship prize.

(2) *Hayloft Jamboree* (LC)—On Saturday at 12:15 p.m., Illiway will present from its theater-studio a 30-minute informal town and country music program with the accent on melody. Audience participation will be welcomed.

(3) *Kiddie Kartoons* (RS)—At 10:30 a.m. on weekdays, Illiway will present selected cartoons for children. The human element will be eliminated through the use of mechanical animals with prerecorded gimmick voice introductions to cartoons.

(4) *Funny Folk Flicks* (RC)—On weekdays at 12:15 p.m., Illiway will present a luncheon time program for home-from-school children and pre-schoolers, featuring edited silent films of the custard pie-throwing era.

(5) *Sing a Song on Saturday* (RS)—On Saturday mornings, "Blinker," a pleasant appearing octopus-like cartoon character with white glove "legs," will introduce the featured children's recording of the week.

(6) *Morning in Moline* (10 percent entertainment) and *It's Your Town* (5 percent entertainment) will also present entertainment features.

(7) Many recorded film entertainment programs directed toward adult and children audiences will be presented at varying times.

e. News (LS and LC):

At regular intervals each day of the week, Illiway will present news programs, 75 percent to 90 percent of which will be devoted to local news stories in which the viewer will be "taken" to news events. The station will rely, primarily, on its own news staff which will include three photographer-reporters. It is contemplated that about 20 percent of each newscast will make use of film shot by the staff. All news-

casts will be presented with an objective viewpoint. News will be presented with simplicity, directness, and brevity (but long enough to give complete details), combined with color, interest, and good taste. Weather will be presented regularly with visual aids.

(1) *Week in Review* (LC)—On Sunday at 12:15 p.m., Illiway will present a review of the news of the week. Film clips and photographs culled from those shot during the week will be used to recapitulate the recent happenings in the Quint Cities area. An on-camera personality will be seen briefly as the program is introduced and concluded. The accent will be on film, locally produced, supplemented with photographs.

f. Religious programs:

(1) *Hymn for Today* (RS)—On weekdays at 7:30 a.m., the station will present recorded music of all faiths. When applicable, an off-camera announcer will supply such information as news about specific holidays, birth dates of saints, etc.

(2) *Let Us Pray* (LS)—*Meditation* (LS)—On weekdays at 7:55 a.m. and with every closing, Illiway will present a 5-minute inspirational prayer or message delivered live from the studio by ministers, priests, and rabbis of the area. All denominations will be presented on a rotating basis.

(3) *Church Service Bulletin Board* (LS)—Illiway will present every Sunday morning a 10-minute program designed primarily to supply information of church services and activities.

(4) *Church Services* (LS)—On Sunday mornings at 10:30 a.m., Illiway will present a 1-hour live presentation of church services from its studio-theater. These services will be conducted by various denominations on a rotating basis. Of necessity, Illiway plans to do, on the average, one live remote per month from a Quint Cities house of worship.

(5) *TV Sunday School* (LS)—On Sundays at 10 a.m., Illiway will present a 15-minute program devoted to telling or presenting Bible stories or "lessons."

(6) *A Child's Prayer* (LS)—On Saturdays at 9:55 a.m., Illiway will present for its children's audience an appropriate prayer, short talk, or lesson by an area clergyman. Clergy will participate on a rotating basis.

(7) On Sunday mornings, Illiway will also present 45 minutes of recorded film religious programs.

g. Talk programs:

(1) *Program Preview* (LS)—At commencement of programing, Illiway will present a rundown on the day's programing.

(2) *Morning in Moline* (LC)—On weekdays at 8 a.m., Illiway will present a 1-hour "look or listen" program with the accent on information. A complete newscast will begin this 1-hour program. Particular emphasis will be placed upon happenings in the Quint Cities television coverage area. Featured in this first newscast will be complete reports on the opening quotations or estimates at the major cattle, hog, and sheep markets; grain market and opening stock market and commodities exchange quotes, as well as other pertinent information regarding said markets. Capsule newscasts will be scheduled at approximately 8:35 a.m. and again at 8:50 a.m. Bulletins on breaking news stories will be inserted as soon as received. Current weather information will be included in all newscasts. News film, stills, and slides will be used, as well as live interviews and discussions with those making the news, when and as available.

(3) *It's a Woman's World* (LC)—On weekdays at 11 a.m., Illiway will present a 50-minute program of wide variety with something of interest for all homemakers. Live entertainment would be included, organizations boasting choral units, music ensembles, or talented dramatists being invited to appear.

(4) *Quad-City Quotes* (LS)—Every weekday at 10:15 p.m., Illiway will present a 7-minute program consisting of locally produced sound-on-film interviews with citizens of the Quint Cities area. These interviews will

normally produce several answers reflecting the attitude of individuals toward international, national, and local problems and situations.

(5) *It's a Strike* (LC)—On Saturdays at 5 p.m., Illiway will present a bowling show originating live from the bowling alley located adjacent to its main studio.

(6) *Sports* (LC and LS)—At regular intervals during the week, sports results and news, especially of the area, will be presented. In addition, such news will be integrated into all newscasts not located near a regularly scheduled sportscast.

(7) *Topic for Today* (25 percent Talk), *Spotlight on Industry/Labor* (40 percent Talk), and *Community Life* (50 percent Talk) will also present talk features.

h. In addition to the regularly scheduled programs described above, Illiway will from time to time present special individual programs and special series of programs either in connection with regularly scheduled programs or in place of regularly scheduled programs. The exact type of program and its content will be decided after consultation with other persons in the community as these special programs are developed and produced. In addition, Illiway will create and present special series of broadcasts which may run anywhere from 2 times to 13 times, depending on the subject matter of the broadcasts. In this connection, particularly, programs dealing with civic activities, campaign issues, matters of controversial issue, and educational programs would be the subject of such special series.

Staff, studio, and equipment proposal

420. Illiway proposes a staff of 76 persons broken into the following groups:

<i>Department</i>	<i>Number of personnel</i>
General manager -----	1
Administration -----	10
Sales -----	5
Technical -----	22
Program -----	38
Total -----	76

The position of general manager will be filled by Baisch and station manager by Mazzie. Included on the staff are an educational-public service director, a women's director, a farm director, a news director, and a sports director. In addition to the staff of 76 referred to above, individual stockholders, officers, and directors will participate in the day-to-day affairs of the station as indicated hereinbefore. Competent personnel will be available to fill Illiway's staff positions.

421. The engineering and studio operational personnel shown in the work schedules submitted during the hearing are adequate to produce, with adequate rehearsal, the programs proposed by Illiway and adequate plans have been made for duty assignments of personnel in these categories.

422. The technical equipment proposed by Illiway is adequate and available to produce the Illiway proposed program schedule. Two studio cameras are proposed for the Moline studio and two field cameras will be in use at the Bettendorf studio. Film processing services are available in the Quint Cities for the processing of locally

produced film. The two field cameras, together with complete remote equipment, would be used for live remote programs.

423. Illiway submitted detailed studio plans, which were developed by one of its stockholders, Melvin Beckstrom, an architect especially qualified in such work. Mazzie, Baisch, Engdahl, Bettendorf, and Boeye also provided assistance and criticism in the location of the studio and in the studio planning. On the basis of the record, it is clear that the proposed Illiway studios are fully adequate to produce its proposed programs. Ample provision has been made for parking. The main studio of Illiway will be located in downtown Moline readily accessible to the public, by public and private transportation from all parts of the Quint Cities.

424. The directors and stockholders of Illiway have set a policy that the station should serve the special needs of Bettendorf. In connection with the policy, Illiway proposes to maintain an auxiliary studio in Bettendorf to help identify the station with Bettendorf and to make it unnecessary for the people of Bettendorf, particularly children, to have to travel across the river toll bridge in connection with Bettendorf television programs, or to a Davenport station which would be even farther away. The Bettendorf Co. has suitable facilities available for an auxiliary studio. The location is suitable for farm demonstrations.

The overlap issue

425. The Davenport-Rock Island-Moline and the Rockford standard metropolitan areas are separate and distinct areas and are not immediately adjacent, or located in the same general area. At the closest point the two areas are approximately 54 miles apart, and the transmitter sites of Illiway and WREX-TV are 90 miles apart. The cities of Moline and Rockford are also about 90 miles apart.

426. The proposed Illiway operation predicted grade A population is 503,320 in an area of 6,050 square miles; the predicted grade B contour encompasses a population of 968,100 and an area of 11,780 square miles. For WREX-TV, the grade A contour encompasses a population of 452,800 and an area of 4,780 square miles; the grade B contour covers a population of 876,600 and an area of 9,780 square miles. The contours of the stations overlap; there is, however, no overlap of the grade A contour.

427. Considering first the overlap of the two grade B contours, the population in this area is 91,800 and the area is 1,390 square miles. The 91,800 population is 10.5 percent ($91,800/876,600$) of the population in the WREX-TV grade B contour, and 9.5 percent ($91,800/968,100$) of the population in the proposed Illiway Television, Inc., grade B contour. The 1,390 square miles in this overlap area is 14.2 percent ($1,390/9,780$) of the area in the WREX-TV grade B contour, and 11.8 percent ($1,390/11,780$) of the area inside of the proposed Illiway Television, Inc., grade B contour. The population in the area where the WREX-TV grade A contour and the proposed Illiway Television, Inc., grade B contour overlap is 28,100 and the area is 320 square miles. This population is 6.2 percent ($28,100/452,800$) of the population within the WREX-TV grade A contour; the area is 6.7 percent

(320/4,780) of the area within the WREX-TV grade A contour. The population in the area where the Illiway Television, Inc., grade A contour and the WREX-TV grade B contour overlap is 11,300 and the area is 280 square miles. This population is 2.2 percent (11,300/503,320) of the population within the proposed Illiway Television, Inc., grade A contour; the area is 4.6 percent (280/6,050) of the area in the proposed Illiway Television, Inc., grade A contour. The grade A contours do not overlap.

428. In the light of the foregoing, it is clear that no violation of section 3.636(a)(1) of the rules is involved in this case. That section is not applicable in this case because neither Illiway nor the persons controlling it or its individual stockholders, directly or indirectly, own, operate, or control WREX-TV, and neither the licensee of WREX-TV, the persons controlling it, or its individual stockholders control Illiway. The only common ownership is with Baisch and Guyer who control neither corporation and are only minority stockholders in each. Since this section of the rule is concerned solely with mutual ownership or mutual control, it is not applicable here. Moreover, in light of the small amount of overlap involved, without any overlap of the grade A contours, it is clear that no situation is presented here where two broadcast stations serve substantially the same area in violation of the rule. (See *The Enterprise Co.*, 9 R.R. 77, 82; *WGAL, Inc.*, 9 R.R. 110, 116; *National Broadcasting Co., Inc.*, 13 R.R. 374, 379; *Ohio Valley Broadcasting Corp.*, 15 R.R. 41.) At any event, the grant of the Illiway application would not involve any possible violation of the rule since Baisch and Guyer, the only persons owning stock in WREX-TV, will sell any stock they may own in that station and they and Mazzie will sever all connection with WREX-TV if Illiway receives a grant. No interrelationship between the stations would exist after Illiway receives a grant.

Moline Television Corp.

429. Moline Television Corp. is a Delaware corporation, authorized to do business in Illinois. It has 5,000 authorized common shares of \$100 par value, each share having 1 vote. Of these 5,000 shares, 100 have been issued and an additional 3,900 have been subscribed. The list of individuals who have subscribed to the stock of the corporation who own stock in it, and their respective holdings, is shown below. Also indicated are those individuals who are officers of the corporation. All stockholders are directors.

Name and residence	Office held	Number shares		Percent of voting stock
		Now held	Subscribed	
Frank P. Schreiber, 225 Maplewood, Riverside, Ill.	President.....	10	390	10
Francis J. Coyle, 3100 Coaltown Rd., Moline, Ill.	Chairman of board....	12½	487½	12½
Charles G. Agnew, 2600 6th St., East Moline, Ill.	Vice president.....	5	195	5
Victor B. Day, 2903 22½ Ave., Rock Island, Ill.do.....	10	390	10
L. S. Helfrich, 2517 12th St., Moline, Ill.do.....	5	195	5

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Name and residence	Office held	Number shares		Percent of voting stock
		Now held	Subscribed	
Richard Stengel, 2101 29½ St., Rock Island, Ill.	Vice president.....	9	351	9
Samuel M. Gilman, 2417 21st Ave., Rock Island, Ill.	Secretary-treasurer....	5	195	5
Calvin Ainsworth, 1187 27th St., Moline, Ill.	-----	1	39	1
Meredith H. Davis, Aledo, Ill.	-----	½	19½	½
William J. Dowsett, 708 20th Ave., East Moline, Ill.	-----	1	39	1
Robert M. Harper, 777 20th Ave., East Moline, Ill.	-----	1	39	1
George C. Hebel, Aledo, Ill.	-----	½	19½	½
William T. Leonard, 1204 16½ St., Bettendorf, Iowa.	-----	½	19½	½
Harry McLaughlin, 5342 5th Ave., Moline, Ill.	-----	5	195	5
David Parson, 616 Michigan, Evanston, Ill.	-----	10	390	10
Kenneth F. Peterson, 2442 19th St., Moline, Ill.	-----	½	19½	½
Charles G. Rehling, 707½ Jones, Bettendorf, Iowa.	-----	½	19½	½
Philip Sitrick, 2635 Scott St., Davenport, Iowa.	-----	2½	97½	2½
Thomas M. Thomas, 221 Ridge Rd., Lake Forest, Ill.	-----	5	195	5
Paul M. Versluis, 2312 13th St., East Moline, Ill.	-----	5	195	5
Richard Waxenberg, 505 West Dover Ct., Davenport, Iowa.	-----	5	195	5
George Young, 2600 32d St., Moline, Ill.	-----	4	156	4
Glen E. Perkins, 1428 40th Ave., Rock Island, Ill.	-----	1½	58½	1½

Employee stock plan

430. In the event of a grant, Moline Television Corp. will make available 250 shares of stock for purchase by key employees, such as the director of education and public affairs and assistant manager, program manager, chief engineer, etc. This stock will be made available for purchase by these employees at book value, including goodwill at \$1. The company will retain the right to purchase said stock on the same terms when employment of such key executives is terminated, thus keeping said stock available for ownership by key employees of the company.

The committee setup of Moline Television Corp.

431. The everyday management of the corporation will be in the hands of an executive committee composed of Messrs. Schreiber, Coyle, Day, Stengel, Parson, and Waxenberg, representing a total stock ownership of 56.5 percent. Other stockholders will devote themselves to particular areas of station operation through committees as follows: Program committee consisting of Messrs. Gilman, Ainsworth, and Davis; commercial standards committee consisting of Messrs. Leonard, Day, Helfrich, and Rehling; religious committee consisting of Messrs. Dowsett, Sitrick, and Peterson; and the house and maintenance committee consisting of Messrs. Perkins and Versluis. In addition, the program committee will include members of the communities served by the proposed station who have been outstanding in the activities of the community. It will be the pur-

pose of such joint station-community relationship to reflect the changing and various needs of the community.

Principals of Moline Television Corp.

432. *Frank Schreiber* was born December 3, 1901, at Chicago, Ill. He began his experience in news dissemination in 1918 when he became a "stringer" and part-time office employee of the Chicago Tribune. He progressed through various departments of that newspaper and in 1931 became public relations director of WGN, Inc., owned by the Chicago Tribune, and coordinated the station's activities with the Mutual network, which WGN helped to establish. Beginning in 1941 he served in various executive capacities with WGN. He was the general manager of WGN AM-TV for about 15 years, and in that capacity guided the development of the television station from its very infancy.¹⁷ In addition to his connection with WGN, Mr. Schreiber was a director of WPIX, Inc., operator of WPIX-TV, New York City, and a director of the Mutual Broadcasting System. Mr. Schreiber has agreed to move and become a resident of Moline upon the grant of a construction permit to Moline Television Corp. He will devote all of his time to the management of the proposed television station.

433. *Francis J. Coyle* was born November 29, 1899, in Moline, Ill., and has been a resident of that city since. He is chairman of the board of Moline Television Corp. He attended Moline public schools, and St. Ambrose College, Davenport, Iowa, and received his LL.B. from the University of Detroit in 1926. While at college, he was active in varsity football, basketball, and baseball. At the present time, Mr. Coyle is a member of the law firm of Coyle, Stengel & Gilman, Rock Island, Ill. He has served as a member of the Illinois House of Representatives and as circuit judge of the 14th Judicial District of Illinois which encompasses Henry, Mercer, Whiteside, and Rock Island Counties. He has also served as assistant State's attorney for Rock Island County and is a commissioner of the Metropolitan Airport Authority of Moline. Among his other business enterprises are the Harms Hotel, Rock Island, Ill.; the Cities Water Co., Royalton, Ill.; the Midwest Zesto Corp. and Pioneer Transport, Inc., of which he is a secretary. Mr. Coyle belongs to numerous civic and religious organizations in the area.

434. *Charles G. Agnew* was born on August 8, 1914, in Mason City, Ill. He has been a registered pharmacist for over 20 years. He owns and operates the Agnew Drug & Camera Store and the Agnew Bike & Hobby Shop, both in East Moline. He is a member of numerous professional pharmaceutical associations and during World War II was a member of the Rock Island County Rent Control Board. He has served on the East Moline Board of Education for two terms. In

¹⁷ On Feb. 18, 1952, the Federal Communications Commission sent out a form letter to 28 out of the 108 then operating television stations, inquiring as to the percentage of time devoted to various programing categories, as then defined. WGN-TV received such a letter because its application for renewal of license indicated that the station carried no religion or agriculture during its composite week. After the station replied, explaining the circumstances, that it did carry such programs at times other than the composite week, the license of the station was renewed without further questions. Mr. Schreiber was not a stockholder in WGN, Inc., the licensee of WGN-TV, but was a director and officer of that corporation.

addition, he belongs to numerous social and civic organizations in the area. Mr. Agnew helped finance a private survey for the location of a bridge across the Mississippi River. In 1950 he helped underwrite the Western Open Golf Tournament, and he participated in its coverage by WOC-TV. Mr. Agnew has had experience in covering live events and motion picture productions. His firm has been engaged for the past several years in filming high school football games for the board of education. He has also personally filmed Iowa University basketball for a local television station. His firm has also prepared a half-hour sound film covering the entire Dairy Queen (confectionery) operation. Station WOC-TV, Davenport, has during the past 8 years on numerous occasions used high school football film which he personally shot on its sports program, and in 1956 it requested him to film the NCAA basketball tournament at Evanston, Ind., where he personally shot the semifinal and the final games.

435. *Victor B. Day* was born in Davenport, Iowa, on February 3, 1905, and has since been a resident of the Quad City area except for a period of 1929 to 1936 when he resided in Chicago. He is a graduate pharmacist and was employed by Liggett's Drug Co. in Chicago for a number of years. Upon his return to the Quad City area in 1936, he became associated with the Bear Manufacturing Co., of which he has been president since 1953. The Bear Manufacturing Co. is a nationwide distributor of equipment and is the largest manufacturer of auto alinement equipment in the country. He belongs to many organizations and is at the present time metropolitan airport commissioner. He served as a president of the Rock Island Chamber of Commerce and other civic organizations.

436. *Dr. L. S. Helfrich* was born October 28, 1910, in Carthage, Ill. He is a practicing surgeon residing in Moline. He has served as an instructor in the Department of Surgery and the Department of Pharmacology at the University of Illinois, College of Medicine. Following graduate work in surgery at Illinois Research Hospital, he served 33 months in the Medical Corps, U.S. Army, attached to 111th Evacuation Hospital in the European theater, where he received the Bronze Star for his services. He is a member of the American Board of Surgery and of the American College of Surgeons. He has served as president of the staff of Moline Public Hospital and as a member of the executive board of the Moline Lutheran Hospital. He is the president of the Midwest Surgical Association and has been a member of the Moline Rotary Club and the committee of development of the Moline YMCA. He is chairman of the Nurse's Scholarship Committee and is also a member of the Moline Association of Commerce. He has been for several years a member of the Citizens' Advisory Committee which was active in arousing public opinion to secure the passage of a proposal authorizing changes in the school curriculum and the construction of a new high school. He is retained as surgeon in charge of the medical department of East Moline International Harvester Works which employs over 3,000 people. It is the duty of the medical department to handle emergencies and industrial accidents, and to supervise the activities promoting industrial safety.

437. *Richard Stengel* was born on September 17, 1914, in Rock Island, Ill., and has been a resident of that community most of his life. He is a practicing attorney in the firm of Coyle, Stengel & Gilman. He is a director of the Rock Island Sand & Gravel Co., Rock Island. Following his graduation from law school, he served on the staff of the Alien Property Custodian, Department of Justice, and then served in the U.S. Navy. Upon his return from the service, he entered the practice of law and served as an assistant U.S. attorney for the Southern District of Illinois from 1945 to 1948. In 1948 he was elected to the Illinois General Assembly and served four consecutive terms. In 1956 he was the Democratic nominee for the U.S. Senate for the State of Illinois. During his term as a State legislator, he received the Illinois Legislative Correspondents' award as the outstanding legislator in 1953 and 1955. He is a member of the Masons, Shrine, Eagles, Elks, American Legion, and other civic and professional organizations. He is also a member of the board of trustees of Broadway Presbyterian Church and served as a fundraising chairman of the 1957 Muscular Dystrophy Campaign. In 1957 he was appointed for a 4-year term as a member of the Illinois Commission on Higher Education. The commission meets monthly and is required to submit an annual written report to the Governor of the State. Mr. Stengel is at the present time the chairman of the subcommittee which is working on the determination of the need for another medical school for southern Illinois.

438. *Samuel M. Gilman* was born on December 24, 1920, in Davenport, Iowa, and except for the time spent in school and military service, has resided in the Davenport and Rock Island area. He is a graduate of the University of Chicago, Harvard Law School, and is a member of the law firm of Coyle, Stengel & Gilman. He is a member of the American, Illinois, and Rock Island County Bar Associations; a director of Citizens for Good Government; director and past treasurer of the Rock Island Community Chest; a trustee of United Jewish Charities of Rock Island County; past president of B'nai B'rith; and a member of the Elks, American Legion, and chamber of commerce.

439. *Calvin Ainsworth* was born in Moline, Ill., on September 5, 1916. He has been a lifelong resident of that area. He attended public schools in Moline and the University of Iowa and Augustana College. From 1939 to 1940 he was employed as a special agent by New York Life Insurance Co. From 1940 to 1951 he was a partner in Moline Hardware Co., Moline, Ill., except for a period of military service, and since 1951 has served as resident manager of the firm of Stifel, Nicolaus & Co., Inc. His most recent civic activities include membership in Moline Chamber of Commerce where he served as treasurer from 1955 to 1957; membership and former presidency of The Playcrafters, a Quad City little theater group; directorship of the Moline chapter, American Red Cross; cochairmanship of the Moline Red Cross Campaign Fund; and membership on the Moline School Board. In addition, Mr. Ainsworth belongs to such civic and social organizations as the YMCA, Elks, American Legion, Izaak Walton League, etc.

440. *Meredith H. Davis* was born at Aledo, Ill., on May 11, 1905, and has resided there since. He attended the University of Illinois and the John Marshall Law School. Mr. Davis has been engaged in the private practice of law since 1929. He also maintains an insurance business and conducts real estate affairs. He has served two terms as master in chancery of the Circuit Court of Mercer County and has acted as assistant State's attorney for that county. He belongs to local civic and religious organizations and has been a longtime president of Mercer County Infantile Paralysis Society.

441. *William J. Dowsett* was born on June 25, 1918, in Rock Island, Ill. He resides at the present time in East Moline. He is president of the East Moline Metal Products Co., which he founded. This organization manufactures metal products and employs between 40 and 45 employees. He is self-educated, starting out as a machinist. Mr. Dowsett has been active in the East Moline Association of Commerce and has served as a member of its board of directors for 3 years. When the city of East Moline observed its Golden Jubilee Celebration he was elected chairman. In 1954 he served as chairman of the river filtration plan. He is active in the affairs of the Catholic Church and has been awarded the Legion of Honor Award for his activities. He is secretary of the executive board of the Rock Island Deanery of the National Council of Catholic Men. In addition to these organizations, Mr. Dowsett belongs to numerous social, civic, and religious activities in the area.

442. *Robert M. Harper* was born on December 17, 1891, in Monmouth, Ill., and has resided in East Moline since 1913. He is secretary-treasurer, director, and majority stockholder of the Herald Printing & Publishing Co., East Moline, which publishes the East Moline Herald, a weekly publication with a total circulation of 7,200. In 1934 he was elected State senator from the 33d district. He has also served as the employers' representative on the first board of review of the Illinois Unemployment Compensation Commission, and for the period 1940-41 served as a commissioner of the Illinois Commerce Commission. During the war he served as the director of the western and northern Illinois and eastern Iowa district of the Office of Price Administration. Among his civic activities are the past presidency of the local Rotary Club; post commandership of East Moline Post, American Legion; presidency of East Moline Citizens for Good Government and other local civic organizations.

443. *George C. Hebel* was born in Aledo, Ill., on December 13, 1906, and has since been a resident thereof. At the present time he is the judge of the 14th Judicial Circuit of Illinois, the highest court of original jurisdiction in the State. Prior to his election to the bench, he served for 7 years as State's attorney for Mercer County and for 9 years as city attorney for Aledo, Ill. He received his B.A. degree from Washington & Jefferson College, Washington, Pa., and has served on the staffs of the English departments in the University of Oklahoma and the University of Colorado. In 1938 he received his J.D. from the Chicago Kent College of Law where he served as editor of the Law Review. For 7 years he served as a member of the Selective Service Advisory Board and for 3 years as

Government appeal agent for the Selective Service System. He served for 2 years as chairman of the Mercer County Bond Drives and belongs to other civic, social, and religious organizations. He is a member of the advisory council of the U.S. Rivers & Harbors Congress and a member of the drainage and levee law section of the Illinois Bar Association. Aside from his legal activities, Mr. Hebel is an Illinois farmer. He manages eight farms with more than 1,000 acres of land.

444. *William T. Leonard* was born on April 13, 1925, in Moline, Ill. He is now a resident of Bettendorf, Iowa. He has been a lifetime resident of the area, except for a period of military service and employment. He graduated from the University of Iowa in 1949 in journalism-advertising. He was employed in the advertising department of the Davenport Democrat from 1949 to 1951, and later by the land acquisition department of the Stanford Oil Co., Evansville, Ind. Between 1954 and 1956, he was employed by the King Korn Stamp Co., and since 1957 has owned and operated his own advertising agency in Davenport.

445. *Harry McLaughlin* was born in St. Louis, Mo., on February 17, 1897, and has resided in Moline, Ill., since 1926. He learned the trade of patternmaker and draftsman and worked as such for the E. H. Wilson Co., Moline, Ill., until 1932 when he formed the McLaughlin Body Co., Moline, Ill., of which he is the president, director, and majority stockholder. The McLaughlin Body Co. manufactures truck cabs and bodies for International Harvester and Diamond-T Motor Car Co. The organization started out with 10 employees and now employs over 200 people, and his annual volume of business is in excess of \$4 million. Mr. McLaughlin is also president, director, and principal stockholder of the McLaughlin Machine Co., Moline, Ill., rebuilders of Army tanks. He is also vice president, director, and stockholder of McLaughlin Realty Co. This company is a family-owned organization and owns business and commercial property in Moline. Mr. McLaughlin has been active in fundraising campaigns for various religious and civic organizations.

446. *David Parson* was born on February 26, 1924, in Dubuque, Iowa. He currently resides in Chicago, Ill. Mr. Parson was educated at Loras College, Dubuque, Iowa, from which he graduated maxima cum laude. He was employed on a regular basis from 1941 to 1944 as an announcer on radio station WDBQ (then WKBB), Dubuque, Iowa, and during that period of time produced and announced every type of program including man-on-the-street interviews. He received his J.D. from the University of Chicago in 1947 and while there he was a member of the editorial board of the Law Review and president of the Hillel Foundation. Since 1947 he has been engaged in the general practice of law with the firm of Kirkland, Ellis, Hodson, Chaffetz & Masters. He is a vice president and stockholder of the WPM Realty Corp., Indianapolis, Ind., and a director and general counsel of J. P. Michael Co., Indianapolis, a wholesale grocery company over 75 years old. During the period 1948 to 1955, he represented WGN, Inc., in all phases of radio, television, and business law. His civic activities include membership in

the B'nai B'rith, the lawyers division of the Chicago Council of Boy Scouts, and other social, civic, and religious activities. Mr. Parson's family resides in Rock Island, and he visits the city frequently.

447. *Kenneth F. Peterson* was born on August 27, 1910, in Moline and has been a lifelong resident of that city. He served on the Moline Board of Education for 6 years and was president of the board of education for the school year 1956-57. He attended Moline public schools and Augustana College from which he graduated in 1935. He is engaged in the general construction business by virtue of his ownership of one-third of the capital stock of C. E. Peterson Sons Co., Moline, Ill., of which he is vice president, treasurer, and general superintendent. In addition to his construction business, he is a one-third owner of a farm in Rock Island County. The C. E. Peterson Sons Co. has been in business since 1913 and has constructed such buildings as the Augustana Theological Seminary, the First Christian Church in East Moline, the Cambridge High School addition, etc. He is a member of numerous fraternal organizations such as the Elks and Kiwanis, but has devoted most of his time to the problems of youth and education.

448. *Charles G. Rehling* was born on August 31, 1921, in Davenport, Iowa, and is now a resident of Bettendorf, Iowa. He graduated from the University of Iowa and received his J.D. from that university in 1947. While at the university, he was a member of station WSUI where he was in charge of sports and news and personally announced and covered the Big 10 and Navy Seahawks football games. He is presently a member of the law firm of Doerr, Dower & Rehling, Davenport, Iowa. He served as judge of the Seventh Judicial District of Iowa from 1955 to 1957. He was county attorney for Scott County from 1953 to 1955, and prior to that served for 5 years as assistant county attorney. In addition to membership in local civic, social, and religious organizations, he is a member of the board of Friendly House which is devoted to providing recreational activities for underprivileged children. As a member of the judiciary committee of the Iowa State Bar Association, he recommended the adoption of the ABA proposal for judicial reform. He is a member of the Mississippi Valley Fair Board.

449. *Philip Sitrick* was born on June 13, 1893, in Czarist Russia and has been a citizen of the United States since 1916. When he came to this country, he opened up a small corner grocery store which he operated until he entered the life insurance business in 1923. At the present time, he owns his own insurance agency. He has devoted much time to the needs and activities of the Jewish community in the area. He is a member of Temple Emanuel (Reformed), Tri-City Jewish Center (Conservative), and the B'nai Ameth Synagogue (Orthodox). In addition to these religious organizations, he is a member of various social and civic organizations in the area.

450. *Thomas M. Thomas* was born on December 18, 1912, in Chicago, Ill., and is at the present time a resident of Lake Forest, Ill. He is a practicing attorney and is connected with the law firm of Kirkland, Ellis, Hodson, Chaffetz & Masters. Among his civic activities are the Chicago Council Boy Scouts of America and the Old Town Boys'

Club. He is special counsel for the board of education of the city of Chicago, Metropolitan Sanitary District of Greater Chicago, Chicago Park District, and counsel for the Metropolitan Fair and Exposition Authority of Cook County, Ill. Mr. Thomas is a member of social, professional, and civic organizations. He has been accepted as a member of the applicant corporation upon the recommendation given to him by Mr. Parson.

451. *Paul M. Versluis* was born on March 13, 1899, in Ghent, Belgium, and came to this country with his parents in 1904. He attended Sacred Heart School, Moline, Ill., and graduated from the eighth grade in 1913. He started working when he was 16 years old on the C.B. & Q. Railroad as a car checker. He then drove a truck for the Moline Plow Co. and later for Deere & Co. in Moline. He became a car tester for the now defunct Velie Motor Co. From 1920 to 1925 he was construction superintendent for Bjorndahl Construction Co., and in 1933 became maintenance supervisor for the Illinois State Highway Division. Since 1927 he has owned the Versluis Lumber & Supply Co. and is engaged in the development of subdivisions and construction of residential homes. He is president and 48-percent stockholder of the Versluis Home Development Corp. of East Moline and a stockholder in the State Bank of East Moline, Ill. Mr. Versluis has been active in the affairs of the Belgian Catholic Church in East Moline.

452. *Richard Waxenberg* was born in Davenport, Iowa, graduated from the public schools there, and attended St. Ambrose College. He lived in Dubuque, Iowa, for several years and returned to Davenport in 1946. He presently resides in Rock Island, Ill. Mr. Waxenberg's family has been in the grocery business for the past 70 years. His first venture in the supermarket business was in 1938. Now he is president of Eagle United, Inc., which operates 28 supermarkets in Iowa and Illinois and employs approximately 1,500 people. Mr. Waxenberg is active in local social, civic, and religious organizations, and has been active in various fundraising campaigns for the charitable and religious organizations of which he is a member.

453. *George Young* was born on December 16, 1902, in Cincinnati, Ohio. He is a resident of Moline, Ill., and has lived in the area for over 30 years. He has played professional baseball and since 1937 has been the general agent for the United States Fidelity & Guaranty Co. at Moline. He is a member of various civic, social, and religious organizations in the Tri-City area. In addition to these, he is a member of the Rock Island Arsenal Golf Club and the captain of the Velie Cup.

454. *Glen E. Perkins* was born on November 26, 1918, in Forrest, Ill. He is now a resident of Rock Island, Ill., and has resided in the area for the past 12 years. At the age of 19, after graduating from the Chatsworth Township High School, he began to work as a construction foreman for the F. C. Shons Co., Freeport, Ill., and during the next 10 years held similar positions with various building concerns. In 1946 he organized and became half-owner of the Quad-City Construction Co. of Rock Island, which is engaged in the highway construction business. He is half-owner of the Quad-City Equipment Co. of Rock Island which is engaged in the exploitation of an im-

proved model of slip form paver. He has participated in various civic organizations of the area in which he lives. He was a member of Port Byron High School Board and now belongs to various civic, social, and religious organizations.

The creation of Moline Television Corp. and the preparation of its proposals

455. Channel 8 was assigned to the Rock Island-Moline-Davenport area in February of 1957. The interest of Moline Television's stockholders in channel 8 antedated the Commission's final assignment of that channel to the area. Sometime prior to February 1957, Judge Coyle discussed the possibility for applying for channel 8 with his friend, Ray Cundy, and was impressed with the possibility of an operation on that facility. Prior to the Commission's rulemaking proceeding which looked toward the allocation of channel 8 to the area, Dave Parson had been interested in that facility because his family lived in Rock Island, and he had visited the Quad City area at least once a month for the past 17 years.

456. After the Commission's allocation became final, Mr. Parson discussed the feasibility of an operation on this channel with Frank Schreiber and Sam Gilman. Richard Stengel, another stockholder in Moline Television, had known Frank Schreiber since 1951 when Mr. Stengel as a member of the State legislature had investigated the need for and sponsored legislation to compel the University of Illinois to make its football games available for television. Mr. Stengel discussed the possibility of applying for a television station with Dave Parson and Frank Schreiber in July of 1956, and when the Commission did, in fact, allocate channel 8, Mr. Stengel conducted a survey of the two existing stations from a business point of view to determine whether a third station had a reasonable chance of success in that market. As a result of that investigation, Messrs. Stengel, Parson, and Gilman decided that if an organization could be formed having a proper representation of the various business, civic, and charitable activities in the Quad City area and if experienced management could be assured, an application should be filed for channel 8. They discussed this with Judge Coyle and then decided to contact other members of the community to join them in the application. Judge Coyle contacted such stockholders as Mr. McLaughlin, Mr. Versluis, Mr. Agnew, Mr. Young, Mr. Peterson, Mr. Waxenberg, Mr. Leonard, and Mr. Harper. Other stockholders were approached by Mr. Stengel; e.g., Mr. Day and Mr. Ainsworth.

457. Moline Television Corp. was formally incorporated on October 10, 1957. Prior to that time, however, Sam Gilman, Richard Stengel, and Judge Coyle personally discussed from time to time the various aspects of the proposed station with each of the prospective stockholders of the corporation. These stockholders expressed their views and ideas about the proposed operation, and the three exchanged ideas among themselves. In addition, individual stockholders discussed the affairs of the proposed operation among themselves. Similarly, stockholders met and discussed the problems of the operation with Mr. Schreiber as early as the middle of the summer of 1957.

Out of these discussions and others, both formal and informal, emerged the program structure and policy of Moline Television Corp. Various individuals, to the extent indicated, participated in the creation and formulation of these proposals and of that policy:

(a) *Frank Schreiber* contributed his knowledge of broadcasting, his experience with particular programs and format, and evaluated the feasibility of such programs as far as their presentation on the proposed operation. Many programs with which he was familiar from the WGN operation were translated into the proposed Moline Television operation. In the course of the preparation of the instant proposal, Mr. Schreiber made at least 15 visits to Rock Island.

(b) *Francis Coyle*.—In addition to his civic activities, Mr. Coyle's experience as a circuit judge during which time he was riding the circuit impressed him with the necessity of treating the problems of the area on an areawide, unified approach rather than a piecemeal basis. It is this knowledge of the area which has later been translated into the policy of Moline Television Corp.

(c) *Charles Agnew* operates a drug and camera store and a hobby shop. He has recommended that the station carry a monthly program devoted to photography fans in cooperation with local camera clubs. From his experience in the filming of games for various schools in the area, he has also ascertained the availability of satisfactory facilities for the rapid developing of film. The program "Highway to Health" featuring organizations devoted to furthering the public's physical well-being was put into Moline Television Corp.'s schedule as a result of conversations between Mr. Schreiber and Mr. Agnew. In the forming of Moline Television Corp.'s policy, Mr. Agnew was concerned with the policing of drug advertising and urged subscription to FTC releases.

(d) *Victor B. Day* has been active in the affairs of the Blackhawk Industrial Promotion Association which was conceived as a Moline development organization but subsequently developed as an areawide group. In line with this spirit, he has advocated and approved the policy which has been evolved by the members of the corporation to the effect that the proposed station will be a Quad City station. Furthermore, as a result of Mr. Day's training as a graduate pharmacist, he has suggested the creation of a commercial standards committee which would be responsible for the exercise of close supervision over commercial continuity, particularly in the field of medical and personal drug advertising. There is no better business bureau in the Moline area, and it is his opinion that the lack of such agency places an extra responsibility upon the advertising media to protect the public. Mr. Day is the president of Bear Manufacturing Co. which operates the Bear Automotive Safety Service School devoted to the training of technicians in the operation and maintenance of automotive safety equipment. The school is an accredited vocational institution with instructors accredited by the Illinois Department of Education. While the school is primarily operated for the benefit of owners of Bear equipment, it is also available to any person who wishes to prepare himself for this particular trade, and vocational instructors from accredited institutions are trained without tuition

charge. In view of his experience with automotive safety, Mr. Day has stated that he believes that the station should use a series of visual announcements showing the results of careless driving and that these announcements should be used to promote and continue safety programs which can be coordinated with the efforts of all local agencies concerned with this problem.

(e) *L. S. Helfrich*.—As shown in his biography, Dr. Helfrich is a practicing physician and surgeon. His work includes the position of surgeon in charge of the medical department of the East Moline International Harvester Works. One of his duties is the submission of reports designed to reduce the industrial accident rate. From this activity he knows that there is a need for a program of industrial safety which could be instrumental in minimizing deaths and injuries. In view of his interest and activities in this field, he knew that such an effort by the station would receive the support of both industry and labor. He also suggested that such a campaign be keyed to create maximum impact on the weekend, since Monday is the day when workers are most accident prone. He has also suggested that this campaign of industrial safety could be coordinated with farm safety, since one of the prime industries of the area is the manufacture of agriculture machinery. His position as a surgeon and member of various medical societies has led him to serve on the commercial standards committee, since he is particularly interested with the identity of the medical profession with the sponsorship of commercial products, which involves not only the problem of misrepresentation of doctors by nonmembers of the profession, but also the endorsement of products by individual practitioners in a manner which would imply that the profession as a whole has approved the product or service.

(f) *Richard Stengel*.—As previously pointed out, Mr. Stengel conducted a financial survey of the existing television stations in the area. Mr. Stengel has appeared on a series of television programs. He was one of the individuals through whom the ideas of the stockholders were transmitted and coordinated. He has frequently appeared on television.

(g) *Samuel M. Gilman* is a member of various civic, social, and religious organizations in the area. As a result of his civic activities and a lifetime of residence in the area, he has been aware of the fact that the area comprising Rock Island, Davenport, Moline, East Moline, Bettendorf, Milan, and Silvis is badly divided among competing jurisdictions, which competition often causes a mutual loss to the cities involved. It was this knowledge that led him to include among the stockholders of the organization persons from the various areas to be serviced by the proposed station. His knowledge of the various organizations led him to the conclusion that the needs of these organizations change constantly, and since the station would not go on the air until some years later, no commitment could be made either by the corporation or the organizations as to the exact programing which would be most suitable for them when the station went on the air. Furthermore, from his own knowledge, he determined that repetitious contacts with the various organizations at this time would impose an unnecessary and unproductive burden upon the personnel of these

organizations. It was he, together with Dave Parson and Frank Schreiber, who participated in the drawing up of the program proposal as it was submitted to the Commission, and it was he who was responsible for the program descriptions and the statement of policy submitted in the hearing.

(h) *Calvin Ainsworth*.—One of Mr. Ainsworth's primary activities in recent years has been in the Red Cross to whose annual campaigns he has devoted much effort. These campaigns are limited to a month of active public solicitation, but their preparation extends for several months. It is his belief that publicity media could be effectively used on behalf of all chapters in a manner beyond the means of a single chapter.

He has discussed with other stockholders his thoughts about using the station as an areawide publicity medium. He also made the suggestion that insofar as the Red Cross is concerned, it did not appear wise to commit that organization to specific types of programs because in the interval of time between the preparation of the exhibits and the actual broadcasts, the needs of the organization would probably change considerably.

Mr. Ainsworth's civic activities led him to point out that Rock Island County is now divided into two distinct and separate areas for Red Cross activities, Rock Island and Moline, with each area conducting independent but coordinated campaigns for funds. On the other hand, the Scott County Red Cross Chapter, representing Davenport, is a member of the Scott County United Fund Campaign and does not conduct an independent campaign for funds as do the Moline and Rock Island chapters.

It is possible that one or both of the Rock Island County chapters will become members in the United Fund. If this change were to take place, the need of the Rock Island chapter for television time would be considerably different from what it is now. His membership in the Red Cross indicated to him that neither the Rock Island nor Moline chapters is presently equipped to produce live programs, but if regular time were available to them, talent could be secured to produce a limited number of high-quality programs.

Mr. Ainsworth's civic activities also made it clear to him the limitations which can be placed upon civic groups. He has been active for a number of years in The Playcrafters, a local little theater group. He believes that the talent within this group would be available for either dramatic or instructive programs. However, as an active member and former president of that group, he knows that it would be impossible for the members to sustain any extended series of programs. The members of The Playcrafters all participate strictly on a part-time basis, and there is a lack of both time and material for any ambitious dramatic series. He believes, though, that the people who are interested in the little theater activities could produce a series of programs valuable to the Red Cross.

As a member of The Playcrafters as well as an active participant in Red Cross activities, Mr. Ainsworth felt that it was undesirable to secure specific commitments from these organizations as a part of the present program plans because of the uncertainty with respect to

future timetables. Not only will the needs and desires of the organizations change during the interim period, but the personnel responsible for effectuating program plans will undoubtedly change considerably during the interim period, in his belief.

Similarly, the knowledge which Mr. Ainsworth has acquired as a result of the activities of Mrs. Ainsworth has led him to join with other directors in formulating a policy for the station that it shall be the policy of the station to provide time to civic organizations of the area on the same basis as would be provided to commercial sponsors who seem to benefit from repetition. This position is based upon the experience of Mrs. Ainsworth, who in 1957 was in charge of promotion for the junior board of the Tri-City Symphony which presented a series of music appreciation programs over WOC-TV. The series was discontinued because of lack of broadcast time. Last year Mrs. Ainsworth tried to arrange for the broadcast of a regular series of public service programs on behalf of the Moline Community Welfare Council which represents about 75 welfare agencies and which were to be produced in cooperation with the Rock Island Welfare Community Council. Upon the basis of three initial broadcasts the community council arranged for the production of an entire series covering child and family welfare, problems of senior citizens, etc., but it was not possible to secure from either television station in the area commitments for broadcast time, and as a result, the series had to be abandoned.

(i) *Meredith H. Davis* is a resident of a farm area in which there is keen public interest in agricultural fairs. He has recommended that whenever fairs, cattle sales, and shows take place, the station cover these activities by giving them publicity, filming some of them, or carrying some of them on a live basis. His own interest has been in highway safety, and he has recommended to the group that much time, both programwise and through spot announcements, be devoted to the promotion of safety among schoolchildren, the instilling of respect for school patrols, and the reminding of motorists of the schoolbus stop laws.

(j) *William J. Dowsett* has been a member of civic, social, and religious organizations in the area. Among those organizations was his service of chairman of the river filtration plan in 1954, for the adoption of which he personally led the fight. This activity and the growth of the area in East Moline has convinced him that any station which wants to do a good job of serving the public must concentrate on the desires of the people as those desires become important. He has so informed the other directors of the corporation.

(k) *Robert M. Harper* is a director and majority stockholder of the East Moline Herald, a weekly publication with a total circulation of 7,200 which he has been publishing for 33 years. By virtue of his association with the Herald, he has become aware of the changing needs of the area. Aside from the large increase of the new population, there has been a change in the activities in which this population participates. For example, for many years the East Moline Community Festival was an outstanding event in the area. Leading stars of the entertainment world came to the city and performed before

large throngs. That organization has now ceased to exist. Several years ago Frankie Laine appeared at the festival. Despite the drawing name of the performer, the attendance was disappointing and, as a result, additional money had to be raised to cover the deficit, and the entire project was abandoned. It is this kind of activity which has impressed upon Mr. Harper the changing needs and interests of the area, and he made his views known to his fellow stockholders during numerous get-togethers, both formal and informal. The policy of adopting editorial position originated with Mr. Harper.

(l) *George C. Hebel* has been active in civic organizations for a number of years. He has taken a keen interest in the problems of irrigation and drainage of the upper Mississippi area and has appeared before committees of the U.S. Congress testifying on the flood control problem. His activity in flood control and drainage has demonstrated to him the necessity for cooperation between various jurisdictions in a unified effort to control areawide problems. Mr. Hebel is an Illinois farmer managing over 1,000 acres divided into eight farms. In view of his experience with farming, Mr. Hebel has stated and made recommendations to the group that the proposed station place an emphasis on weather reports, that it should intersperse the day with weather announcements at intervals, and that the regular weather programs should devote themselves to the interpretation of the meaning of various phenomena as they are likely to affect the weather in the listening area. He has also stated that the noon news should include a complete summary of the morning's activities on the various exchanges, and the evening news should contain a summary of the number of heads of livestock that were received at various markets and forecasts by commission merchants of prospective runs of cattle. He has also recommended that the station should make time available to persons connected with various agricultural colleges to present a professional point of view on such subjects as feed mixture which, as he has learned from years of living among farmers and operating a farm, is an item of constant conversation and discussion among farmers. In addition, Mr. Hebel has recommended to the group, and passed upon the suitability of, the timing of the Saturday and Monday and Thursday evening programs devoted to farming.

(m) *William T. Leonard* is in the advertising business. From his knowledge of the business, he has become aware of the problem presented by the fact that high television rates often preclude local merchants from promoting their services and wares over that medium. He has, therefore, impressed upon the directors that the station should keep its local advertising rate as low as possible, consistent with the economic operation. He has recommended that the station furnish each advertiser with an affidavit of performance whenever any copy is carried on the air. This is reflected in the policy of the corporation. He has also advised that it would be advantageous for the station to prefilm on occasion certain portions of the program "The Missus Goes to Market." This recommendation is reflected in the proposal of the corporation.

(n) *Harry McLaughlin* impressed the directors with the need to serve all races, creeds, and religions.

(o) *David Parson's* interest, among others, is in traffic safety. In the discussions with the other directors, he proposed to make the station address itself to this problem by presenting filmed 1-minute spots of familiar intersections in the Quad City area as well as out-lying towns where members of the local police force would point out the safety problems involved and deliver a short message on safety. Mr. Parson, when he represented WGN, developed an interest in the televising of courtroom proceedings, which in turn involved him with the provisions of canon 35 of the bar association. He has recommended that the station should attempt to secure a modification of canon 35, but other directors of the corporation, such as Judge Coyle, Judge Rehling, and Judge Hebel, have held contrary views and the corporation has not adopted a policy at the present time on this subject.

(p) *Kenneth F. Peterson* was president of the Moline Board of Education for the school year 1956-57 and served on the Moline Board of Education for a period of 6 years. From his knowledge of the problems of operation of the school board, he believes that the program for preschool children would definitely meet an existing need and that the board's policy of cooperating with all forms of public enlightenment would allow that board of education to cooperate actively with Moline Television Corp. Based on his experience with the board of education, he has approved of the program "Home and School" which would be a means of acquainting the public with the activities of the school, and he has recommended that such a program be adopted. Mr. Peterson's interest in youth has not been limited to its formal education. He has served on the board of directors for Junior Achievement of Rock Island County which helps in the training of "Junior Businessmen." Because of his interest in such youth, he would impress at all times the necessity for the promotion of safety among youth.

(q) *Charles G. Rehling* has been active in social, civic, and religious organizations of the area. He is a member of the Mississippi Valley Fair Board which conducts an annual fair, including horse, cattle, and livestock shows as well as activities devoted to 4-H Clubs and the Future Farmers of America. He has recommended that the 4-H Clubs and Future Farmers of America be utilized in the Saturday program entitled "Farmers of Tomorrow." As a former judge and county attorney, he has taken a great interest in juvenile delinquency since, in Iowa, juvenile cases are handled in the district court. He has, therefore, recommended that the station serve a public need by spotlighting the problem of juvenile delinquency on an areawide basis. As a judge, he has been concerned with the problem of televising court proceedings. It was his personal feeling that the televising of court proceedings should be governed by the provisions of canon 35 of the American Bar Association. While he wholeheartedly approved and recommended telecasting of public hearings and meetings, he does not consider court proceedings as falling within that category.

(r) *Philip Sitrick* has been active in Jewish religious and fraternal organizations. For many years he has belonged to the local Zionist organization and has been a member of its board. He was also chairman of the local United Jewish Appeal and the cochairman of the Israel Bond Drive. These activities have shown to him that no group remains static over the years and that the needs of these groups change with the passage of time. The fluctuation in the memberships and interests in the Zionist organization since the creation of the State of Israel, the increase in the nature of the Israel Bond Drive since the creation of the State of Israel and of the United Jewish Appeal have all convinced him of the necessity of publicizing the needs of these organizations and he has discussed these with the other stockholders. He has stated as a result of his experience in these groups that the station must help the various organizations in the area at the time the help is needed and not now when all that the group can do is make promises.

(s) *Paul M. Versluis* is a builder and contractor. When the Community Chest began in East Moline, Mr. Versluis was its first chairman. He is chairman of the building and grounds committee of the city of East Moline Park Board and was chairman at the time when the present Soule Stadium was constructed. As a developer, he has participated in the expansion of East Moline and is familiar with the conditions resulting from the rapid expansion of that community. As a result of these activities, he has come to realize that it is impossible to foretell the needs of any particular area for years to come. Therefore, he has recognized that the proposed station could not commit itself to any particular group or organization prior to receiving its construction permit. This recognition of constant change has also resulted from his membership in the Belgian Catholic Church where he has seen a change in the composition of the membership and the language in which the service is being conducted. As a result of his acquaintance with the real estate interests of the area, he has proposed programing during the annual Parade of Homes during which time the viewing public would become acquainted not only with the availability of various housing developments in the area but with such informative hints concerning building materials, the selection of a site, the Veterans' Administration's rules for financing, etc. He has been president of the East Moline Builders' Club for 12 years and recognizes that the program would definitely serve a public need.

(t) *Richard Waxenberg* is a member of social, civic, and religious organizations in the area. Having been active in a number of Jewish organizations and having been a responsible officer of both Orthodox and Reformed congregations, he believes that one of the greatest services that can be performed by a television station in the field of religion is the education of persons of all faiths in the beliefs and practices of other faiths. He has discussed these views with Mr. Dowsett as well as other members of the Board. The programing of Moline Television Corp. reflects these views; e.g. "Quint-Cities Church of the Air." From his experience in the supermarket business, which like broadcasting must be responsive to the changing public desires and needs, he has been convinced that the proposed television operation should

not make or accept irrevocable commitments and plans insofar as public organizations are concerned. He believes that if the television station is to be successful, it must be responsive to change, and it cannot be responsive to change if its thoughts and plans are frozen years in advance. The knowledge of supermarket operations was utilized in connection with the program, "The Missus Goes to Market," Mr. Schreiber having discussed with him the feasibility of such program. This program will be available for sponsorship to any advertiser.

(u) *Glen E. Perkins* is in the road construction business, and it is this business association which has made him aware of the rapidly expanding community in which he lives. He has discussed the problems raised by the expansion of the community with his fellow stockholders.

458. The stockholders of Moline Television Corp. were aware of the fact that other competing applicants in this proceeding would conduct, to a various extent, surveys of the area and seeking commitments from various public service organizations. These stockholders were of the opinion that, by virtue of their long residence in the area and their own activities in various civic, cultural, and charitable organizations, they themselves possessed knowledge of the area to assess its community needs. They also knew from their own activities that the needs of the area would probably change in the interim between planning and actual operation. However, upon recommendation of their then Washington counsel,¹⁸ they had initially agreed to conduct conversations with representatives of various local organizations in order to secure commitments from these individuals as to various programs. These conversations were held by Messrs. Schreiber and Stengel, who in turn transmitted the information which they secured to the other stockholders. After more than a dozen of such conversations, it became apparent to the directors that these public service individuals felt that the most opportune time for such arrangements would not be at that stage of their activities, but when the group was ready to go on the air. These public service individuals felt that the lapse of time would bring about many changes which could alter any plans that may have been made. Among the organizations whose representatives were visited were the Rock Island public schools, Moline public schools, Augustana College, St. Ambrose College, Marycrest College, Tri-City Symphony Orchestra, and the Civic Music Association.

459. This expressed feeling of public service organizations led to a decision by the group not to conduct any further conversations with such organizations until such a time as the corporation could make definite commitments. The whole problem of commitments and investigations of the community came up at a meeting in October 1957, at which Messrs. Stengel and Schreiber reported the results of their activities thus far and their feelings that there was no question that the group would get civic cooperation once it was ready to go on the air. Mr. Schreiber, on the basis of his years of experience in broadcasting, had felt from the beginning that these various conversations would have little practical significance because of the time element

¹⁸ Moline Television Corp. was represented during its initial period by counsel other than the one who represented it at the current hearing.

involved and these interviews confirmed his opinion. The stockholders adopted the policy of withholding further conversations upon his recommendation.

Statement of policy, principles, and practices

460. Moline Television Corp. has adopted a statement of policy which calls for editorialization by the station on matters which in the opinion of management are of interest to the public, which require accuracy in such presentation and the diligent search for persons of divergent views to present their sides on the subject.

461. The station, while planning to cooperate with public service organizations, will seek to do so at the minimum expense of time and money to these organizations. The stockholders of the corporation are aware that the personnel of these organizations are often overworked. The station, therefore, will strive not to increase these responsibilities by needless or repetitious requests or contracts. Similarly, the station will offer its cooperation in preparation of public spot announcements where these organizations are too preoccupied to appear personally on the program or when such activity on the part of the station will better serve their purposes. The program policy looks toward cooperation with and fostering of organizations serving the interests of the public in the area.

462. The commercial policy of the station calls for policing of advertising copy to comply with Federal, State, and local regulations against false or misleading advertising and the supervision by the commercial standards committee of such copy. The policy also requires the furnishing of a certificate of performance following the broadcast of commercial copy.

463. The strict supervision of commercial content is in line with the suggestions made by various stockholders and with Mr. Schreiber's experience at WGN-TV where the station maintained a copy acceptance department which screened the advertising on the station. The policy also provides that rates charged by the station to local advertisers shall be as low as practicable and consistent with the economic operation and balanced sponsorship.

Proposed program schedule of Moline Television Corp.

464. *Statistical analysis of proposed programming:*

<i>Hours of operation</i>	
9 a.m.-12:05 a.m., Monday-Thursday-----	60 : 20
9 a.m.-1:30 a.m., Friday-Saturday-----	33 : 00
10:45 a.m.-12:05 a.m., Sunday-----	13 : 20
	<hr/>
	106 : 40
<i>By type</i>	<i>Percent</i>
Entertainment-----	62.6
Religious-----	4.1
Agricultural-----	3.0
Educational-----	6.1
News-----	6.4
Discussion-----	3.0
Talks-----	10.2
Sports-----	4.6
	<hr/>
Total-----	100.0
	32 F.C.C.

By source

	In percentages			
	8 a.m.- 6 p.m.	6- 11 p.m.	All other hours	Total
Network commercial (NC).....	27.8	53.6	-----	33.5
Network sustaining (NS).....	1.6	4.3	-----	2.4
Recorded commercial (RC).....	28.6	15.0	-----	21.3
Recorded sustaining (RS).....	15.5	2.8	84.0	18.0
Wire sustaining (WS).....	0.6	-----	3.2	0.7
Live commercial (LC).....	13.9	10.0	-----	11.3
Live sustaining (LS).....	12.0	14.3	12.8	12.8
Total commercial	70.3	78.6	-----	66.1
Total sustaining	29.7	21.4	100.0	33.9
Complete total	100.0	100.0	100.0	100.0
Proposed broadcast-hours (per week).....	61:15	35:00	10:25	106:40
Number of spot announcements (SA) (per week).....	165	130	40	335
Number of noncommercial spot announcements (NCSA) (per week).....	80	60	20	160

Description of locally originated programs

465. Moline Television Corp. proposes to carry locally originated programs falling within each of the classifications of the Federal Communications Commission as follows:

(a) Agricultural programs:

Agricultural Film—Sunday, 12:45 p.m. (RS)—A program devoted to the interest of the suburban gardener and farmer.

News, Market Reports, and Weather—Monday through Saturday, 12 noon (LC)—Long-range and short-range weather forecasts will be given on this program together with an analysis of the importance of the various phenomena to the immediate area. Also given will be noontime reports of market conditions, livestock shipments, and commodity exchanges.

The Farm Hour—Monday, 7 p.m. (LS)—This program will be devoted to appearances by county agricultural agents, farmers, etc. It will feature demonstration of new machinery, safe operation of both new and old machinery, useful hints on feed mixture and cultivation, as well as market trends and reports.

The Farm Hour—Thursday, 9 p.m. (LS)—This program will approach the farm problem from a business point of view.

Bi-State Farmer—Saturday, 11 a.m. (LC)—This program will be devoted to the interests of farmers on both sides of the Mississippi and will feature a review of the week's price trends in livestock, poultry, produce, etc.

Farmers of Tomorrow—Saturday, 11:30 a.m. (LS)—This program will be devoted to the interests of young farmers—the 4-H'ers, Future Farmers of America, etc.

(b) Discussion programs:

Press Conference—Sunday, 5 p.m. (LS)—This program will present reporters and local civic leaders interviewing men and women prominent in the news. Mr. Harper, a director of Moline Television, will serve either as moderator or one of the interrogators.

Youth Speaks Up—Tuesday and Thursday, 4:30 p.m. (LS)—This will be a series of twice-weekly half-hour programs featuring teenagers discussing their problems. Mr. Charles G. Rehling, one of Moline Television Corp.'s directors, will appear from time to time as moderator on this program.

Municipal Forum—Monday, 6:45 p.m. (LS)—This program will present officials of the various municipalities and jurisdictions within the station's area discussing their problems and achievements and answering questions of interest to the public.

Quint-Cities Forum—Tuesday, 8:30 p.m. (LS)—This will be a townhall-type program with members of various organizations like Elks, Lions, etc., participating in quizzing public officials.

Let's Talk It Over—Thursday and Friday, 9:30 p.m. (LS)—Civic leaders, both local and areawide, will appear on this series of programs to talk over problems faced by the citizens. This program will be supervised and moderated by Mr. Richard Stengel, one of the directors of Moline Television Corp.

(c) *Educational programs:*

Kindergarten Time—Monday through Friday, 10 a.m. (RS)—This program devoted to furnishing educational experience to 4- and 5-year-olds, while at the same time providing a daily demonstration of good teaching. In the event the Chicago Educational Television Association's series is not available by the time the station goes on the air, series of the same character will be utilized.

Home and School—Monday through Friday, 1:30 p.m. (RS)—This filmed program will be produced in cooperation with local educational institutions and boards of education. The showing of films will be arranged so that each day's program is aimed at a particular age and grade level, and the station will attempt to coordinate the viewing by parents and children in school through advance publicity. This approach is in line with the feelings of the superintendent of the Rock Island School System that the schools would most benefit by a public realization of the needs and methods of the public schools.

Arts and Science—Friday, 9 p.m. (LS)—This program will be the station's major effort in class A evening time. The exact format will be at the discretion of the participating schools, universities, and cultural groups. It is anticipated that the program will be carried in series with an individual organization responsible for a group of programs.

Imprint—Saturday, 9:30 p.m. (RS)—This program will present films from the Chicago Educational Television Association dealing with great men and women of our time. Moline Television Corp. has proposed this series on the basis of plans as were present in October 1957. In the event this particular series is not available by the time the station goes on the air, series of the same character will be utilized.

(d) *Religious programs:*

The Christophers—Sunday, 12 noon (RS)—A religious program produced by the Christopher Society.

Evening Prayer Service—Sunday, 6:15 p.m. (LS)—This program will be rotated among the various faiths in the area and will be particularly valuable to those denominations which do not wish to televise their regular services inasmuch as this program will be informal and more flexible in format than full church service.

Quint-Cities Church of the Air—Sunday, 9 p.m. (LS)—This series of programs will offer a service to be conducted by the various churches of the area. The method of selection and frequency of rotation will be governed by the wishes of the various churches. In order to promote tolerance and understanding, the commentator technique will be employed whenever possible in connection with special services and religious holidays so that all viewers may be informed as to the significance and meaning of the services.

Morning Devotions—Monday through Friday, 9:05 a.m. (LS)—This program will be a 10-minute religious program presenting a different clergyman from one of the area churches and will consist of religious music and a brief talk. This program may be live or prerecorded for presentation at that time.

Benediction—Every night (LS)—A 5-minute devotional conducted by local clergymen. Because of the lateness of the hour, this program will be recorded at the convenience of the participant.

The Best of Bishop Sheen—Saturday, 5:30 p.m. (RC)—Selections from the rich treasury of one of America's most beloved religious personalities.

(e) *Talk programs:*

Day's Doings—Daily (LS) (beginning of broadcast day)—This program will present a schedule of the important happenings of the day, special celebrations, meetings, and the program will be devoted to the goings-on in the city. On Sunday it will also include a schedule of religious services.

The Missus Goes to Market—Monday through Friday, 9:30 a.m. (LC)—An interview program produced in the various supermarkets and other general merchandise stores of the area. The station will maintain a backlog of specially prefilmed episodes in order to meet unexpected situations.

Video Kindergarten—Monday through Friday, 11 a.m. (LS)—A program for preschool children to be conducted by a qualified person versed in working with children of kindergarten age. The station will seek the cooperation of various school boards and nursery schools in obtaining such a qualified person.

Your Children—Monday through Friday, 12:45 p.m. (LS)—A program devoted to helping the housewife in the bringing up of her family. It will utilize various experts in the fields of nutrition, child care, etc.

Homemakers Matinee—Monday through Friday, 1 p.m. (LC)—A program featuring decorating hints, recipes, shopping hints, etc. The station's women's director will help the homemaker ease the burdens of her day.

Report From Washington—Monday, 6:30 p.m. (RS)—The station will make time available to the Members of the House of Representatives from the districts covered by the station to address the station's audience on topics of interest to them.

Highway to Health—Tuesday, 9:30 p.m. (LS)—The station will make time available to such organizations as the Medical Society, Dental Society, Society for the Prevention of Blindness, and each organization will be afforded an opportunity to present a program in a manner which it determines most effective for its own purposes.

Your Senator Reports—Saturday, 6:15 p.m. (RS)—The U.S. Senators from the States of Illinois and Iowa will be presented on a consecutive-basis origination (via film or live if available).

(f) *News programs:*

News and Weather—Sunday, 10:50 a.m. (WS)—A live and film program presenting a roundup of the latest news. Although utilizing the services of syndicated news-gathering organizations, the program will also feature news of local happenings and has been classified as wire because the ratio of local and rewritten news is uncertain.

News and Weather—Sunday, 12:30 p.m. (WS)—A live and film program utilizing the services of syndicated news-gathering organizations. The program has been classified as wire because the ratio of local and rewritten news is uncertain.

Midnight Edition—Sunday, 11:45 p.m. (LS)—A 15-minute roundup of the news on which there will be intense coverage of local affairs. Emphasis will be placed, during the appropriate seasons, on sports results.

Morning Edition—Monday through Saturday, 9:15 a.m. (LC)—A program giving full coverage of the morning's news—national, international, and local. The station will be alert for all local news breaks, and intense coverage will be given to the activities of various governmental bodies. Early morning reports of market conditions, etc., will also be given.

News, Market Reports, and Weather—Monday through Saturday, 12 noon (LC)—This program will devote coverage to local, national, and international news. Coverage will be given to various governmental units, and long-range and short-range weather forecasts will be given by the farm director, together with an analysis of the importance of the weather phenomena. Also included will be noontime reports of market conditions, livestock shipments, and commodity exchanges, etc. The Saturday program will feature a summary of agriculture prices.

Three Star Final—Nightly, 6 p.m. (LC)—A program featuring the station's news director giving full coverage of the day's news. A stress will be given to local, regional, and bistate news, the legislatives, school boards, etc. This program will also include long-range and short-range weather

forecasts and interpretations of weather phenomena, closing market reports, commodity exchanges, and other information for the farmer will be included. On Sunday, a member of the staff will present the news with special attention on a summary of the week's events and forecast of the news in the offing. Saturday's program will also emphasize sports results.

Five Star Final—Nightly, 10 p.m. (LC)—A program devoted to the coverage of national, international, and local news. Since many local bodies, particularly the city councils and school boards, have evening sessions, arrangements will be made to cover their activities on this program with the members of these organizations (including the station's directors) advising the news department of their decisions. When warranted, coverage by beeper phone will be utilized. This program too will include local and short-range weather forecasts, an interpretation of weather phenomena, closing reports, livestock shipments, and sports news, with emphasis on local games. Sunday's program will emphasize a summary of the news.

Midnight Edition—Friday and Saturday, 11:45 p.m. (LS)—This late special weekend newscast will take advantage of the time differential to present complete sports summaries, late news developments on the local and regional level. As with all station newscasts, complete weather information will be included.

Final Edition—Friday and Saturday, 1:15 a.m. (WS)—Sports and weather forecasts will be part of this presentation as well as local, national, and international news.

Proposed personnel

466. The proposed full-time staff of Moline Television Corp. is as follows:

Engineering department.....	14
Program department.....	24
Administrative department.....	8
Sales department.....	5
Grand total.....	51

467. In addition to its regularly employed staff, Moline Television Corp. will employ "talent" for such programs as call upon personality productions. The women's director will be such "talent" and will be employed by the station on a "talent" basis. Similarly, commercial or freelance photographers and artists or relief personnel for vacations, etc., will be hired on a part-time or temporary basis.

Physical facilities of Moline Television Corp.

468. The transmitter of Moline Television Corp. will be located on U.S. Highway 150, 2.8 miles south of Orion, Henry County, Ill. The studios will be located at 19th Avenue near 2d Street in Moline, Ill. The studio building will be approximately 120 feet by 80 feet. The dimensions of the proposed studios are:

Studio A, 51 feet by 48 feet.
Studio B, 24 feet by 24 feet.

The proposed studios will be air conditioned. The studio building will also include executive offices, storage areas, dressing rooms, etc. Parking space will be provided in the parking lot adjacent to the building.

Integration of ownership and management

469. The following individuals, all of whom are directors of Moline Television Corp., will participate in the day-to-day operation to the extent indicated:

(a) *Frank Schreiber* will devote all of his time to the managing of the proposed television station.

(b) *Francis J. Coyle* manages his own affairs, and his time is entirely his own. He plans to devote between 2 and 3 hours a day to the affairs of the station in an administrative capacity.

(c) *Charles G. Agnew* investigated the availability of photographic equipment services and personnel to be utilized by the station and will actively supervise the station's local film operations. He has recommended that the station carry a monthly program dealing with hobby photography and has committed himself to moderate such a show. His recommendation of a camera hobby program stems from his acquaintance with many of the members of the camera clubs and his knowledge of their activities.

(d) *Victor B. Day* proposes to devote from 10 to 20 percent of his time to the station in its day-to-day operation. He also proposes to make his knowledge of automotive safety available to the station.

(e) *Richard Stengel* proposes to devote no less than 20 percent of his time to the operation of the station. In addition to handling the various legal problems that may exist, he intends to serve as Mr. Schreiber's right-hand man in establishing the station as a completely local institution. As a result of his previous experience on panel programs as a member of the State legislature and as U.S. Senate nominee, it is his intention to appear and participate in the panel discussion programs produced by the station and to take primary responsibility for the program entitled "Let's Talk It Over."

(f) *Samuel M. Gilman* proposes to devote from 10 to 15 hours per week to the activities of Moline Television Corp. in addition to his duties as secretary-treasurer of the corporation. He will be responsible for the legal and fiscal policies of the station.

(g) *Robert M. Harper* will assist in procuring participants for the station's discussion programs and will personally participate on "Press Conference" scheduled for Sundays at 5 p.m.

(h) *William T. Leonard* would assist in obtaining personnel for "Press Conference" and proposes to devote about 1 day a week to the proposed operation.

(i) *Kenneth Peterson* will devote approximately one afternoon a week to the affairs of the station, contacting school organizations to arrange for programing.

(j) *Charles G. Rehling* will participate as a moderator of programs devoted to youth. He will also assist in the selection of announcers and planning for coverage of local sports. He expects to devote about 4 hours per week to these activities.

These activities do not include the participation of directors in the operations of the various committees to which they belong.

CONCLUSIONS

The overlap issue

1. All of the stockholders in Illiway who have an interest in WREX-TV in Rockford, Ill., have voluntarily stated they would divest themselves of all interests in WREX-TV if the application of Illiway is granted, hence it is concluded that a grant to Illiway, with

a condition of divestment imposed in the grant by the Commission, would eliminate any contravention of section 3.636(a) (1) of the rules.

The financial issue

2. Respecting the financial qualifications of Tele-Views, it is concluded that Tele-Views has the requisite financial qualifications to construct, own, and operate its proposed television station. The total cost of construction is estimated to be \$815,606. Tele-Views will have available the sum of \$300,000 in the form of a bank loan, the sum of \$275,000 to be derived from subscriptions for new capital from subscribers who are financially able to meet their commitments to the applicant, and deferred payment credit for the equipment which totals \$626,355.

3. Before Tele-Views commences operation, the following moneys will have been expended:

Downpayment on equipment.....	\$156, 588
Additional miscellaneous items.....	31, 617
Installation charge by RCA.....	60, 610
Land	12, 000
Building and remodeling.....	25, 000
Preoperational expense.....	15, 000
Professional	45, 024
Total	325, 839

Tele-Views has cash available in the sum of \$575,000. After deducting all of the cash expenses required before operation, the applicant will have available the sum of \$239,161 with which to operate the station the initial period during which revenues cannot normally be anticipated. Since the cost of operation will approximate \$60,000 per month (estimated expenses plus equipment payments), it is concluded that the applicant has more than sufficient funds to operate for a reasonable time (nearly 4 months) without revenue, after which it is reasonable to assume that revenues will be available.

Local residence

4. In the instant proceeding only two of the five applicants, namely Community and Tele-Views, are composed entirely of local residents of the Quint City area. In the case of Moline Television Corp., its president, director, and proposed general manager, Mr. Schreiber, is a resident of the Chicago area, while directors Parson and Thomas are also residents of Chicago. Together they own 25 percent of the stock of Moline, and Mr. Schreiber has an option to obtain an additional 5 to 10 percent. The remaining Moline stockholders have resided in the Quint City area for varying periods of time.

5. Midland Broadcasting Co. is controlled by the Atlases of Chicago. H. Leslie Atlass, Jr., president, director, and general manager of Midland, is a resident of Chicago as is his brother, Frank Atlass II, the proposed program director, and his sister, Harriett Atlass, the proposed public affairs director. Together the nonresident Atlass group owns 67 percent of Midland's stock. With the exception of Mr. Lujack, the remainder of Midland's stock is held by life or long-time residents of the area.

6. In the case of Illiway, Mr. Joseph Baisch, proposed executive vice president, director, and general manager, is a nonresident of the Quint City area, having previously resided in Wisconsin, Michigan, and elsewhere. He is now a resident of Rockford, Ill., which is outside the coverage area of Illiway's proposed station. Mr. Mazzie, Illiway's proposed station manager, is also a resident of Rockford as is Mr. Guyer, secretary and director of Illiway, and Mrs. Ruth Davis, stockholder. Stockholder Madison is also a nonresident of the Quint City area, residing in Table Grove, Ill., which is outside Illiway's proposed coverage area. Together these individuals hold 32.5 percent of Illiway's stock. In addition, two of Illiway's stockholders, Messrs. Klingbiel and Carpentier, while maintaining homes in the Quint City area, are required, by their political positions, to live during certain periods of the year in the capital city of Springfield. Together they own 3.7 percent of Illiway's stock.

7. All of Tele-Views' stockholders have resided in the Quint City area for varying periods of time, and are fully identified with the area. Mr. Sirota was unable to appear when called for cross-examination at the hearing. As a result, it was stipulated by all parties that Tele-Views does not claim and will not be awarded any comparative advantage based upon the participation of Mr. Sirota in the Tele-Views' application. This being the case, no comparative advantage can attach to Mr. Sirota's local residence. Since he will hold about 13 percent of Tele-Views' stock, it must be concluded that Tele-Views' claim to local residence is diminished to some extent.

8. Half of Community's 16 stockholders are lifetime residents of the Quint City area. Mr. Foster, Community's president and director, has resided in the area since 1911 when he was 12 years old; Mr. Rose since 1909; and Mr. Bendle all his life except for 4 years. The remaining stockholders are all longtime residents of the area. It is therefore concluded that a preference must be accorded to Community over the other applicants on the criterion of local residence of its stockholders.¹⁹

Civic participation

9. Except for Mr. Schroeder, 1.504 percent stockholder and chairman of Tele-Views' board, who has been quite active in local civic affairs, the remainder of Tele-Views' stockholders have not been outstanding in participation in local affairs. No credit can be accorded for any civic activity on the part of Mr. Sirota in accordance with the previously mentioned stipulation.

10. In the case of Midland, 67 percent of its stock is owned by the Atlases, nonresidents of the area, who have had no participation in local Quint City civic affairs. While the Atlases have been active in Chicago civic affairs, less weight can be attached to this activity

¹⁹ In reaching this conclusion, consideration has been given to the fact that, in the case of Midland, the Atlases propose to move to Moline in the event of a grant; that, in the case of Moline, Mr. Schreiber proposes to move to Moline in the event of a grant; and that, in the case of Illiway, Messrs. Baisch and Mazzie would propose to move to Moline in the event of a grant. While an intention as to future residence in the community to be served is entitled to some weight, the Commission has consistently refused to accord to it the same weight which it attaches to present residence and longtime past residence.

since it lends no assurance of an insight into the needs of the community to be served. However, several of Midland's small local stockholders have substantial records of civic activity: Mr. Rosborough, Mr. Burrows, Mr. Evans, and Mr. Oakleaf. Together, these men represent 13 percent of Midland's ownership. Mr. Hoppe, Mr. Johnson, and Mr. Estess have also been active in the affairs of their communities. Mr. Stone has been active primarily in farm organizations and Mr. Lujack has contributed of himself considerably.

11. In the case of Moline, Mr. Schreiber, its president and proposed general manager, has no record of civic activity in the Quint Cities. Messrs. Parson and Thomas, also Chicagoans, have had no civic activity in the Quint Cities. Mr. Coyle, Moline's board chairman and largest stockholder, Mr. McLaughlin, Mr. Davis, and Mr. Young have demonstrated participation in civic affairs. Mr. Day, Mr. Stengel, Mr. Gilman, and Mr. Dowsett have participated actively in the affairs of their communities.

12. Illiway's president, director, and largest (21 percent) stockholder, Mr. Ellis, has a limited civic record. Mr. Bettendorf, Illiway's vice president, director, and third largest stockholder, has been intimately connected with the development of Bettendorf, industrially and otherwise. Mr. Baisch, Illiway's executive vice president and proposed general manager, and Mr. Mazzie, the proposed station manager, are nonresidents of the Quint City area and have no record of civic activity there. Mr. Guyer, secretary, director, and second largest stockholder (18 percent) of Illiway, and Mrs. Davis, 4.5-percent stockholder, are nonresidents with no record of civic activity in the Quint Cities. Messrs. Von Maur, Van Alstyne, and Madison have modest civic records. Mr. John Ruhl has been active in the chamber of commerce. Mr. C. Arthur Ruhl is deceased and no record can be claimed for his estate. Most of Mr. Klingbiel's activity probably occurred before he went to Springfield as a judge in 1953. Mr. Sturtevant's civic participation has been relatively modest. Of the remaining Illiway stockholders, Mr. Schierbrock and Mr. Ryan stand out as having been unusually active in the affairs of their communities.

13. The long local residence of all of Community's stockholders is reflected in its record of civic participation. Community's president, Mr. Foster, has been unusually active in civic affairs, devoting his time over the years and currently to a wide variety of civic and community affairs, not only as a member of civic organizations but in assuming civic responsibilities of the highest order. In like fashion, Messrs. Hartz, Ainsworth, C. I. Josephson, Jr., Underwood, French, Werner, Rose, Whitmore, and Waldmann have outstanding records of civic participation in important and substantial positions of responsibility. Messrs. Hoersch, Harvey, and Bendle can also claim good records in this field. Messrs. Priester and C. I. Josephson III, both young men, have been active to a lesser degree. Mr. Wodlinger, Community's proposed executive vice president and general manager, has been active in a wide variety of civic affairs in the Quint City area in positions of responsibility. He has also had the opportunity during his 10 years of experience at WOC-TV in Davenport to work directly with

civic and community organizations in serving their television needs in the area to be served by Community's proposed station.

14. Community deserves a preference in this area of comparison.

Diversification of business interests

15. While a matter of lesser significance than the foregoing, a comparison of the diversification of the business interests of the principals of the applicants is in order. Midland counts among its stockholders a lawyer, a department store owner, a farmer, an insurance man, real estate operator, an automobile dealer, three manufacturers, and three broadcasters. In the case of Tele-Views, most of its ownership is in the printing business. It also counts among its stockholders two lawyers, a furniture store owner, a loan company, a bank, insurance dealer, and paper company. Turning to Moline Television Corp., 8 of its 23 stockholders are lawyers, including 1 judge; 3 are manufacturers; 3 are in the construction business; and 2 are in insurance. The remainder is comprised of a druggist, a stockbroker, a newspaperman, a doctor, an advertiser, a broadcaster-restaurant owner, and a merchant. Illiway contains two broadcasters, a lawyer-broadcaster, a savings and loan-office equipment-insurance-broadcaster, six bankers, or investment bankers, an architect, a doctor, a judge, a lawyer, a housewife, two automobile dealers, a farmer, a mayor, the secretary of state of Illinois, an equipment manufacturer; and Mr. Ellis, who is engaged in the brewery, liquor distributing, hotel, and sand, gravel, and cement businesses. The record does not show what business one of Illiway's stockholders, Mr. Van Alstyne, may be engaged in. In the case of Community, there are found among its stockholders men in real estate; insurance, broadcasting; lumber and building materials; two farmers; two lawyers; an auditor, who is also connected with a loan company, real estate, bakery, and shoestore; film equipment manufacturing; farm machinery manufacturing; the jewelry business; Sears, Roebuck; the drug business; bankers; a public utility (gas and electric); highway construction; other construction; a finance corporation; and the past commander of the Rock Island Arsenal. Among Community's stockholders are found leaders in large business concerns such as Mr. French, a vice president of Deere & Co.; Mr. Whitmore, president of Iowa-Illinois Gas & Electric Co.; and Mr. Hartz, retired vice president of McKesson & Robbins. It is concluded that Illiway, Moline, and Community share a preference over Midland and Tele-Views in this area.

Diversification of media of mass communications

16. Three of the five applicants in this proceeding—Tele-Views, Community, and Midland—have no other media interests. In the case of Moline Television Corp., Mr. Harper, a director of Moline, is the major stockholder, secretary-treasurer, and a director of the Herald Printing & Publishing Co., East Moline, Ill., which publishes the largest of the two weekly newspapers in the Quint City area; namely, the East Moline Herald, serving the eastern portions of Moline, all of East Moline, Silvis, Carbon Cliff, Barstow, and Hampton, with a circulation of 7,000 to 7,200.

17. Illiway's stockholders have several media interests. Mr. Baisch, Illiway's executive vice president, director, 4.5 percent stockholder, and proposed general manager, owned 1.43 percent of the stock of WREX-TV, Rockford, Ill., at the time of the hearing and was its general manager. However, he proposes to sever all connections with WREX-TV in the event of a grant to Illiway. Similarly, Mr. Guyer, secretary, director, and 18 percent stockholder of Illiway, is secretary, director, and 6 percent stockholder in WREX-TV. He likewise will dispose of his WREX-TV connections in the event of a grant to Illiway. However, both Mr. Baisch and Mr. Guyer have other broadcast interests. Mr. Baisch owns 2½ percent of the stock of Caster Robinson Television Corp., which holds all of the stock of Cimarron Television Corp., licensee of KOCO-TV, Enid, Okla. He also owns 4 percent of the stock of Gran Broadcasting Co., licensee of KGA, Spokane, Wash. Mr. Guyer owns 10 percent of the stock of KGA. At the time of the hearing, Mr. Cleaveland, a 3.6-percent stockholder in Illiway, was a 10-percent stockholder, vice president, and treasurer of radio station WQUB, Galesburg, Ill., which is within Illiway's proposed grade A service contour.

18. It is concluded that Community, Tele-Views, and Midland share a preference over Illiway and Moline in the factor of diversification of the media of mass communications.

Broadcast experience of principals

19. *Tele-Views.*—None of Tele-Views' stockholders has had prior broadcast experience. The only person connected in any way with Tele-Views who has prior experience in the industry is Tele-Views' consultant, Mr. Paul Mowrey. It was he, primarily, who developed Tele-Views' application and exhibits for the hearing. Mr. Mowrey proposes to work for the station as a consultant for the first year of its operation. After that period, insofar as the record shows, there will be no one with experience except such experience as shall have been gained with Tele-Views itself.

20. *Midland.*—None of Midland's local stockholders, representing 33 percent of its ownership, have had prior broadcast experience except for Mr. Lujack, who has had some experience as a sports commentator and on panel shows. The Atlases have had broadcast experience in Chicago stations. H. Leslie Atlas, Jr.'s television experience has been his work for about 1 year on CBS color television plans in the Chicago area, although the record indicates CBS had no television station in Chicago at the time. He has worked in radio sales at WBBM, Chicago, and was program director for WIND, Chicago. Frank Atlas has been executive producer and program director at WBBM-TV, Chicago, and at the time of the hearing was about to become sales manager of that station. He has been in the broadcast business since 1950 when he went to work for his father in sales at WBBM, where his father was general manager. Harriet Atlas, who graduated from college in 1955, has worked for her father at WBBM-AM and TV, Chicago, since that date as public affairs director. None of the Atlases have had past broadcast experience in the Quint City market.

21. *Moline Television Corp.*—None of Moline's local stockholders, except for Mr. Rehling, who worked in sports and news at WSUI while in college sometime prior to 1947 has had prior broadcast experience. Mr. Parson, one of the Chicago stockholders, was also a radio announcer while in college in 1941-44. The only Moline stockholder with any degree of meaningful experience is its proposed manager, Mr. Schreiber. Schreiber has had experience in various positions with WGN, Inc., in Chicago, serving as general manager of WGN-AM-TV from 1946 to 1956. He was also an officer and director of WGN; a director of WPIX-TV, New York; and a director of Mutual Broadcasting System.

22. *Illwaco*.—The only two stockholders in Illwaco who bring to it operating experience are Messrs. Mazzie and Baisch.²⁰ Mr. Mazzie was associated with WOW-TV in Omaha from 1949 to 1952. In 1953 he joined WREX-TV as production manager, becoming program director in 1954. Although Mr. Baisch had participated in the ownership of stations previously, he apparently first assumed an operating broadcast position when he became general manager of WREX-TV in 1954. There is evidence in the record as to the public service programming of WREX-TV under Mr. Baisch's management which would reflect favorably on his experience and that of Mr. Mazzie. Mr. Baisch has had no experience in television or radio in the Quint City market.

23. *Community*.—In the case of Community, Mr. Wodlinger, executive vice president, and proposed general manager, is the principal stockholder bringing television experience to the applicant. Mr. Wodlinger has had 10 years of varied experience in the actual market to be served by Community—the Quint Cities. He has worked in virtually all phases of studio operations, except engineering.

24. Summarizing, it may be concluded that all of the applicants, except Tele-Views, have within their organizations as proposed general managers, men with varying quantities of television and radio experience. Since Tele-Views has no principal with television experience, it must suffer a demerit in this area of comparison. In the case of Midland, three of its stockholders have had experience, although one of them, Harriet Atlass, has been in the business a relatively short period of time. The experience of all three Atlases has been obtained in working for their father at CBS. Moline's proposed manager has been out of the business for several years. Messrs. Baisch and Mazzie have creditable records of experience. Mr. Wodlinger of Community has had 10 years of experience in television in the Quint City market. The latter factor compels a preference for Community in this area of comparison.

Planning

25. In the foregoing findings of facts, the various activities of the respective parties are set forth insofar as planning is concerned. There is no need for further or repetitious detail here concerning advisory committees, contacts, surveys, equipment needs, etc. It is

²⁰ Messrs. Bettendorf, Guyer, and Cleveland have held other broadcast interests, but there is no evidence that they have had operating broadcast experience.

concluded that all parties will adequately staff their stations, that studios and transmission facilities will be available and adequate, hence, insofar as planning credit may be given for these factors, little or no preference is indicated, although Midland made the most elaborate showing. Insofar as planning is related to proposed programming, all applicants are about equal except that it may be noted that Moline relies primarily upon subjective factors; i.e., the professed intimate knowledge of its officers, stockholders, and directors of the Moline area rather than objective data gleaned from contacts and observations specifically for the purpose. Moline's position is that by the time of a grant, conditions may be different anyway, hence the continuing knowledge of, and experience with, the changing community by its principals are of as much or more value than present collections of data. No preference is given on planning.

Integration of ownership and management

26. There is no need in these conclusions to set forth again and in detail the names of principals concerned and the percentages of time they will devote to the affairs of the stations—and in what capacities. The facts hereinbefore related speak for themselves, and on the basis of these facts and without rehash, it is concluded that Community and Midland are ahead of the field in this regard, with Community deserving a slight preference over Midland. This conclusion is drawn, at the risk of consequent exception to mixing categories, partially on the basis of Community's local experience and residence (hence more meaningful integration), but, it is also evident from the facts, that Community, by numbers of people owning stock will be 100 percent integrated with management (even though this does not mean 100 percent integration of stockholders' time).

Programming

27. Because of the current national temper, official and unofficial, concerning television programming, the foregoing findings on programming have been unusually detailed for an initial decision, although space requirements would not permit the word-for-word proposals and attendant "puffing up" submitted by the applicants. Moline's proposals are briefest because of reasons, no doubt, sketched in the paragraph, supra, on planning. In the final analysis, Moline's philosophy may be the most realistic, but it leaves much to conjecture. That is not to say that Moline's program proposal is not a bona fide one or one which would not or could not be effectuated; it is only to say that it makes comparison more difficult. All proposals presented are well balanced and deserve commendation, especially in the areas of farm programs and news coverage. A slight preference is awarded, however, to Community on the basis of what appears to be a higher percentage of educational programs, all of high caliber.

Studios, staffing, and equipment

28. The record is replete with descriptions of studios, staffing, and equipment, but it is concluded that, while differences are shown, there is, in none of these regards, such outstanding superiority shown by any applicant that decisional significance should attach.

Policies

29. All applicants express their intention of following the NAB code. In addition, in the findings of fact, other matters of a policy nature have been recited; most of these aim at the station keeping its fingers on the public pulse for the purpose of maintaining timely, appropriate programing. As in the case of planning, some policy proposals are more elaborate than others, but no solid basis for a preference of one over another exists.

Other considerations

30. Charges have been brought of infractions of Federal agency rules and procedures; i.e., OPA, FCC. In retrospect, these appear to be either minor or to have been legally corrected. It is concluded that no action by any person associated with any applicant herein is of such untoward nature as to have adverse implications to any applicant herein. Likewise no stigma should attach to the part any person connected with WREX-TV played in connection with the pay-TV incidents in Rockford. The incidents do not show domination by CBS over the station, and certainly there was nothing illegal or in bad taste involved.

31. On the basis of the foregoing findings of fact and conclusions, it is ultimately concluded that the public convenience and necessity would best be served by a grant of the application of Community Telecasting Corp., and the consequent denial of the other applications.

Accordingly, *It is ordered*, This 22d day of April 1960, that unless an appeal from this initial decision is taken by the parties, or the Commission reviews the initial decision on its own motion in accordance with the provisions of section 1.153 of the rules, the application of Community Telecasting Corp. for a construction permit for a new television broadcast station to operate on channel 8 in Moline, Ill., *Is granted*; and the applications of Tele-Views News Co., Inc., Midland Broadcasting Co., Illiway Television, Inc., and Moline Television Corp. for the same facility *Are denied*.

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REGIONAL RADIO SERVICE, DOCKET No. 14180:

Application of John Coleman, William R. Brown, and Donald R. Williams, d/b as Regional Radio Service, for a construction permit for a new class III standard broadcast station at Rantoul, Ill., to operate on the frequency of 1460 kc with 500 w power, daytime only, and using a directional antenna; granted.

Section 3.28(d) (3).—The 10-percent rule.

Section 3.24(b).—Interference to existing stations.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON 25, D.C.

<p style="text-align: center;">In re Application of JOHN COLEMAN, WILLIAM R. BROWN, AND DONALD R. WILLIAMS, D/B AS REGIONAL RADIO SERVICE, RANTOUL, ILL. For Construction Permit</p>	}	<p style="text-align: center;">Docket No. 14180 File No. BP-13670</p>
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APPEARANCES

Andrew G. Haley, Michael H. Bader, and William J. Potts, Jr., on behalf of Regional Radio Service; *Herbert Dym, Ernest W. Jenness, Edgar F. Czarra, Jr.*, on behalf of Midwest Television, Inc.; and *Ernest Nash*, on behalf of the Chief, Broadcast Bureau, Federal Communications Commission.

DECISION

(Adopted May 16, 1962)

BY THE COMMISSION: CHAIRMAN MINOW ABSENT.

1. Applicant John Coleman, William R. Brown, and Donald R. Williams, d/b as Regional Radio Service, seeks a construction permit to operate a new class III standard broadcast station at Rantoul, Ill., on 1460 kc with power of 500 w, daytime only, using a directional antenna. The four issues specified in the designation order sought determination of: (a) areas and populations which would gain service, and other primary services available to the gain area; (b) extent of interference to station WMBD, Peoria, Ill., or other existing stations, and other primary services available in interference area; (c) interference expected to be received by Regional's operation and whether it would contravene section 3.28(d) (3) of the Commission's rules; and (d) whether a grant would be in the public interest.¹ In his initial decision released December 6, 1961 (FCC 61D-170), Hearing Ex-

¹The designation order released July 5, 1961 (FCC 61-829), further provided that if the application of Regional Radio Service were granted, program tests would not be authorized until the applicant had provided proof that William R. Brown and Douglas R. Williams had severed their connection with station WDWS, Champaign, Ill.

aminer H. Gifford Irion resolved each of these questions in favor of the applicant, and proposed to grant its application. Respondent, Midwest Television, Inc., licensee of class III station WMBD), filed exceptions urging reversal. Oral argument was held before the Commission en banc on March 29, 1962. The Commission's rulings on the exceptions are set forth in the appendix hereto. Subject to the modifications and comments contained herein, the initial decision is adopted.

2. The basic facts as set forth in detail in the initial decision are not in dispute. Briefly, the proposal would provide a first local transmission service to Rantoul, Ill., which has a population of 22,116 persons;² a new service to more than 153,000 persons; and an additional primary signal (2.0 mv/m or greater) to the Champaign-Urbana urbanized area. The entire area to gain service has at least 10 existing primary services, and Rantoul currently receives primary signals from 4 stations. Since Regional's proposal would suffer a loss to only 2.7 percent of the population within its normally protected contour, there is no contravention of section 3.28(d)(3). However, Regional would cause adjacent-channel interference to 12,535 persons (1.8 percent of the population) within WMBD's normally protected 0.5-mv/m contour,³ in an irregular crescent-shaped area of 363 square miles, approximately 62 miles at the nearest point and 83 miles at the most distant point from Peoria, and 1½ miles west of Regional's proposed antenna at the closest point. Nine other stations serve the interference area and no portion has less than 10 services.

3. WMBD urges that Regional's application should be denied under section 3.24(b) of the Commission's rules on the ground that applicant did not show any need for the new service which would outweigh the loss of service to 12,535 persons within WMBD's normally protected contour. This position, namely, that the need does not outweigh the loss, was rejected by the examiner, and the Commission finds nothing in the record or the oral argument which warrants upsetting the examiner's conclusions. Respondent objects primarily to the controlling effect given by the examiner to the presumption of need for a first local service to Rantoul; to the implication that respondent has the burden of rebutting this presumption; and to the insufficient weight accorded the evidence with respect to the number of services available in the gain area; and to the interference which would be caused to WMBD. Respondent argues that the Commission has held that important and desirable as it is for every community to have a transmission facility, this consideration is not an absolute; that the burden is on the applicant to prove need for its facility; that in view of the fact that two of the four stations which provide Rantoul with primary signals are only 15 miles from Rantoul, the presumption is rendered most doubtful; and that the presumption should be held to be rebutted since the applicant's service area is "saturated" with radio services.

² Population figures are based on the 1960 U.S. census.

³ WMBD will also receive an additional interference of 0.9 percent within its 0.5-mv/m contour from station WCVS, thus causing a total loss of 2.6 percent.

4. While the rendition of a first local transmission service to a community is not an absolute consideration, a strong presumption of need for a proposed service arises therefrom regarding which WMBD offered no rebuttal evidence during the course of the hearing.⁴ Its argument that the presumption in favor of a first local outlet is of dubious validity and applicability on the facts in this case, in that (a) the proposed service area now has available at least 10 primary services; (b) 2 of the 4 stations furnishing a primary service to Rantoul are located in communities only 15 miles from Rantoul, and serve the local needs of Rantoul; and (c) the proposal would cause 12,535 persons residing in an area of 363 square miles to lose service from WMBD is not found to be of sufficient weight to overcome the presumption of need. The fact that applicant's proposed service area now has available at least 10 primary services does not decrease the significance of the presumption in favor of a first local outlet. It is true that need for an additional service lessens with the increase in number of services available within a given area, but the number of services is not necessarily determinative, for each case presents a variety of factors which must be considered collectively in determining what constitutes a fair, efficient, and equitable distribution of radio service. *Suburbanair, Inc.*, 29 FCC 953, 19 R.R. 1227 (1960). Nor can it be said that the presumption is rebutted by the fact that two stations situated in communities 15 miles from Rantoul provide primary service thereto. It does not follow therefrom that the local needs of Rantoul are met to the extent that a local Rantoul station would meet them. Although it is clear that a station may not ignore any portion of its service area, it is equally clear that because of demands upon its broadcast time from its principal community and other portions of its service area, a nearby station cannot as effectively meet the needs of another community as can a station situated therein. The Commission has held that service rendered to a community from stations located in other communities, commendable as this service may be, is not to be regarded as an adequate substitute for a local station.⁵

5. Further, several considerations indicate that the presumption in favor of a first local outlet is not in fact lessened in this instance by the interference which the proposal would cause to WMBD. There would be no loss of service to the population within the interference area inasmuch as the proposed service would be substituted for that provided by WMBD. Presumably, WMBD's programming service meets no special needs of the population in the interference area (to whom at least 10 other primary services are available), for it did not seek enlargement of the issues to permit inquiry into the needs of such population for any special programming which WMBD might offer to them.⁶ Significant also is the fact that the interference area

⁴ It is well established that a strong presumption of need exists for a first local transmission service. *Star of the Plains Broadcasting Co. v. FCC*, 105 U.S. App. D.C. 352, 267 F. 2d 629 (1959).

⁵ *Miners Broadcasting Service, Inc.*, 23 FCC 408, 13 R.R. 1163 (1957); *Valley Broadcasting Co.*, 29 FCC 463 (1960), 19 R.R. 231; *Nick J. Chaconas*, 29 FCC 1226 (1960), 19 R.R. 100.

⁶ See *Mid-America Broadcasting System, Inc.*, 19 R.R. 889 (1960); and *Washington Broadcasting Co.*, 32 FCC 525, 22 R.R. 1092 (1962).

lies much closer to Rantoul than to Peoria, as shown in paragraph 2, supra.

6. WMBD points out that in a recent decision the Commission stated that the right of existing stations to render interference-free service within their 0.5-mv/m contours may be invaded only upon convincing showing of need of the proposed new service.⁷ But a convincing showing of need for the service proposed by the applicant has been made. It will provide a first local transmission service to Rantoul, a community of 22,116 persons; it will bring a new service to 153,000 persons; and it will provide an additional primary signal to the Champaign-Urbana urbanized area. It is concluded, therefore, that the need for the service proposed by the applicant outweighs the loss which would be caused by virtue of interference to WMBD, and, further, that a grant of the application would serve the public interest, convenience, and necessity.

Accordingly, *It is ordered*, This 16th day of May 1962, that the application of John Coleman, William R. Brown, and Donald R. Williams, d/b as Regional Radio Service, for a construction permit for a class III standard broadcast station, to operate on 1460 kc, 500 w power, daytime only, using directional antenna, at Rantoul, Ill., *Is granted*, subject to the following conditions:

Program tests will not be authorized until the permittee has submitted evidence to prove that William R. Brown and Donald R. Williams have severed their connections with station WDWS, Champaign, Ill.

Pending a final decision in docket No. 14419 with respect to presunrise operations with daytime facilities, the present provisions of section 3.87 of the Commission's rules are not extended to this authorization, and such operation is precluded.

APPENDIX

RULINGS OF THE COMMISSION ON THE EXCEPTIONS TO THE INITIAL DECISION

Exceptions of Midwest Television, Inc.

<i>Exception No.</i>	<i>Ruling</i>
1, 2, 3, 9, 10-----	Denied for the reason stated in the decision herein.
4-----	Granted. The characterization of the interference as being of relatively low order is hereby deleted.
5-----	Granted. The characterization of the interference from WCVS as "minuscule" is hereby deleted. The Commission in reaching the decision herein recognized the existence of the combined interference to respondent, but nevertheless concluded that the gain engendered by a grant of the application outweighs the resultant loss.
6-----	Denied. See pars. 4 and 5 of the decision herein.
7-----	Granted to the extent that par. 6 of the conclusions in the initial decision is amended to show that four stations (WILL, Urbana, Ill.; WMAQ and WGN, Chicago, Ill., and WDWS, Champaign, Ill.) presently serve Rantoul (population 22,116 persons) with a signal of 2 mv/m or greater.

⁷ *WMAX, Inc.*, 19 R.R. 1086a (1960); *aff'd sub nom. Atlas Broadcasting Co., v. FCC*, U.S. App. D.C. —, F. 2d —, 22 R.R. 2013 (1961).

Exceptions of Midwest Television, Inc.—Continued

<i>Exception No.</i>	<i>Ruling</i>
8-----	Granted. The second sentence of par. 6 of the conclusions of the initial decision is modified by deleting the phrase "and the nearby Champaign-Urbana urbanized area," and by substitution of the verb "is" for "are" in the same sentence.

Exceptions of Regional Radio Service

To findings of fact:

1-----	Granted. The initial decision is modified to reflect that according to the 1960 census the Champaign-Urbana, Ill., urbanized area has a population of 78,014 persons.
2-----	Denied. Cited exhibit does not reflect requested finding.

To conclusions:

1-----	Denied. Regional exhibit No. 1 shows a minimum of ten 0.5-mv/m primary signals serving the area.
2-----	Denied. See ruling on Midwest's exception No. 8.

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON 25, D.C.

<p>In re Application of JOHN COLEMAN, WILLIAM R. BROWN, AND DONALD R. WILLIAMS, D/B AS REGIONAL RADIO SERVICE, RANTOUL, ILL. For Construction Permit</p>	}	<p>Docket No. 14180 File No. BP-13670</p>
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APPEARANCES

Andrew G. Haley, Michael H. Bader, and William J. Potts, Jr., on behalf of Regional Radio Service; *Ernest W. Jenness, Edgar F. Czarra, Jr., and Herbert Dym*, on behalf of Midwest Television, Inc.; and *Ernest Nash*, on behalf of the Broadcast Bureau, Federal Communications Commission.

INITIAL DECISION OF HEARING EXAMINER H. GIFFORD IRION

(Adopted November 30, 1961)

PRELIMINARY STATEMENT

1. The partnership of John Coleman, William R. Brown, and Donald R. Williams, d/b as Regional Radio Service, seeks a construction permit for a new class III standard broadcast station at Rantoul, Ill., operating on 1460 kc with 500 w power, daytime only, and using a directional antenna. On May 16, 1961, Midwest Television, Inc., licensee of station WMBD, Peoria, Ill., filed an informal objection, together with an engineering affidavit. Measurement data submitted by Midwest indicated that Regional's proposal would cause adjacent-channel interference to WMBD. Subsequent to this the Commission released an order designating the Regional application for hearing upon issues which seek to determine the areas and populations which would gain service, the extent of interference to WMBD or other existing stations, the interference expected to be received by Regional's operation and whether it would contravene section 3.28(d) (3), and to determine other primary services available to the areas of gain and of interference. Midwest was made a party to the proceeding. It was also ordered that if Regional's application were granted, program tests would not be authorized until the applicant had provided proof that William R. Brown and Donald R. Williams had severed their connection with station WDWS, Champaign, Ill.

2. A prehearing conference was held on September 7 and the hearing was held on October 24, 1961. The record was closed on the latter date. The applicant, respondent, and Broadcast Bureau filed

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proposed findings of fact and conclusions. Reply conclusions were filed by the applicant.

FINDINGS OF FACT

3. Rantoul, which has a population of 22,116, is located in Champaign County, which has a population of 132,436.¹ Rantoul is located approximately 15 miles from both Champaign and Urbana, Ill., but is not within the Champaign-Urbana urbanized area. At the present time there is no standard broadcast station licensed to Rantoul.

4. The applicant's proposed coverage is shown by the following table:

Contour (mv/m)	Population	Area (sq. miles)
2.0.....	120,385	548
0.5.....	157,725	1,875
Interference from WMBD, Peoria.....	3,332	153
Additional interference from WLXN, Dixon, Ill.....	942	33
Total interference.....	4,274	186
Interference free.....	153,451	1,689

The proposal would provide a first local outlet for Rantoul and would also provide a signal of at least 2.0 mv/m to Champaign and Urbana, Ill. There are three existing stations in those communities.

5. The rural area which would gain a new service from this proposal is served in its entirety by six stations, and five additional stations serve between 75 percent and 99 percent. All the area has at least 10 existing primary services. The city of Rantoul currently receives a primary signal from four stations, including WILL in Urbana and WDWS in Champaign.

6. The operation of Regional would cause interference to no existing stations except WMBD at Peoria, Ill., which operates on 1470 kc with power of 5 kw. The loss to WMBD would lie in an area of 363 square miles where 12,535 persons reside, and the population loss would represent 1.8 percent of all persons residing within the WMBD 0.5-mv/m contour. All of this interference area is served by 9 other stations and no portion of it has less than 10 services.

7. The interference area is an irregularly shaped crescent which at its nearest point is approximately 62 miles from Peoria. The most distant point of interference is about 83 miles from Peoria. At its closest point this area of interference is about 1½ miles west of the proposed Rantoul antenna.

8. The record contains evidence that WMBD would also receive interference from the proposed operation of WCVS at Springfield, Ill.² Interference from the Springfield proposal would involve an additional loss of service to WMBD in an area of 140 square miles where 6,058 persons reside, representing a population loss of 0.9 per-

¹ All population figures are based on the 1960 U.S. census.

² This application of WCVS was the subject of a hearing in docket No. 13647, for which an initial decision was released on Nov. 2, 1961, sub nom. Robert F. Neathery. This decision looks toward a grant of the WCVS application.

cent. The combined population loss from the proposals of WCVS and Regional would amount to 2.6 percent.

9. Regional's proposal, as shown in the foregoing coverage table (par. 4), would suffer interference from WMBD and WIXN within an area of 186 square miles where 4,274 persons reside. This population figure amounts to a loss of 2.7 percent within the proposed interference-free contour.

CONCLUSIONS

1. The facts in this case are relatively simple and are not disputed. Regional proposes a new standard broadcast station at Rantoul, Ill., which would involve interference with station WMBD, Peoria. The Regional proposal itself would suffer interference from WMBD and also from WIXN, Dixon, Ill., but the loss of population within the normally protected contour would amount to only 2.7 percent. In view of this there is no contravention of section 3.28(d)(3).

2. The only other question is whether the application should be denied under section 3.24(b) of the Commission's rules on the ground that the interference to WMBD in Peoria is not outweighed by any need for the new service. Counsel for WMBD says that the applicant has not met its burden of demonstrating such a need. The essential facts are as follows. Regional's proposed operation would provide a new service to more than 153,000 persons, would become the first local outlet for the city of Rantoul, and would provide an additional primary signal to the Champaign-Urbana urbanized area. Nevertheless it would cause interference to an existing station (WMBD). Within the area of gain, furthermore, there are many other available services since every portion has at least 10. From these facts the respondent argues that whatever presumption of need arises out of the first local transmission service to Rantoul is rebutted by the fact that the entire service area is a "saturated" one.

3. There can be little question that the multiplication of AM signals in recent years has had a tendency to diminish the need for new stations in many areas and has also tended to create problems of engineering, economics, and programming. As expressed in a recent speech by Commissioner Ford, cited by respondent:

* * * we are operating in an economy of saturation of radio stations in many populous areas. If we continue present policies for licensing radio stations and the number of radio stations continues to multiply, we may find that in spite of our efforts to create a better climate for improved programming, existing engineering, allocation, or processing policies may neutralize our actions. This may come about by reason of preoccupation by station management with economic survival and a financial inability to concentrate on the needs of their service areas instead of their emptying pocketbooks.³

Thus, as need for new service grows less urgent, it follows that any diminution of existing service should be viewed with increasing concern.

³ The Commission's actions are so characterized by Commissioner Ford in his address before the Kentucky Broadcaster's Association, Lexington, Ky., Oct. 19, 1961, p. 1.

4. On the other hand, respondent brushes over too lightly the strong presumption of need which lies in the fact that Regional would bring to Rantoul its first local outlet. Rantoul, with a population of more than 22,000, is a city of not inconsiderable size and, although it now has primary service from four stations located elsewhere, this fact does not rebut the presumption that the community has a genuine need for a station of its own.

5. It is also to be noted that the interference to WMBD is of an adjacent-channel nature so that the area affected lies much closer to Rantoul than to Peoria. At its nearest point it is 62 miles from the latter city, but a portion lies less than 2 miles from Rantoul. The loss to WMBD is of a relatively low order since it amounts to only 1.8 percent of the population within that station's normally protected contour. In this connection, respondent points out that there is another pending proposal, that of WCVS, Springfield, Ill., which would cause an additional loss to WMBD, affecting 0.9 percent of its population.⁴ Normally the effect of interference from proposals which are in concurrent but separate hearings are considered separately, but since WCVS has passed through the stage of an initial decision, it is believed proper to note its existence. The fact is, however, of very little consequence since the additional interference from WCVS, as proposed, would be minuscule.

6. Viewing the case in full perspective, it is clear that the creation of a first local outlet at Rantoul creates a strong presumption in favor of Regional's proposal, a presumption which respondent made no effort to rebut on the record. *Suburbanair, Inc.*, 29 FCC 953, 19 R.R. 1227. It is further noted that, although the entire service area of Regional may be characterized as a saturation area in view of the many available services, the city of Rantoul itself and the nearby Champaign-Urbana urbanized area are relatively lacking in daytime primary service. These circumstances, coupled with the relatively slight population loss to WMBD in terms of percentage, compel the conclusion that there is a greater need for Regional's new service than for the existing service of WMBD in the interference area. As a consequence, a grant of the application will serve the public interest.

It is ordered, This 30th day of November 1961, that unless an appeal from this initial decision is taken to the Commission, or unless the Commission reviews the initial decision on its own motion in accordance with the provisions of section 1.153 of the rules, the application of John Coleman, William R. Brown, and Donald R. Williams, d/b as Regional Radio Service, for a construction permit (file No. BP-13670) for a new class III standard broadcast station to operate on 1460 kc with 500 w power, daytime only, using a directional antenna, at Rantoul, Ill., *is granted*, subject to the following condition:

Program tests will not be authorized until the permittee has submitted evidence to prove that William R. Brown and Donald R. Williams have severed their connections with station WDWS, Champaign, Ill.

⁴ See par. 8 of the findings of fact.

SUNSHINE STATE BROADCASTING Co., INC., DOCKET No. 14014:

Petition of Sunshine State Broadcasting Co., Inc., for reconsideration; denied.

47 CFR 3.28(d)(3).—Ten percent rule; no justification for waiver shown.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON 25, D.C.

In re Application of SUNSHINE STATE BROADCASTING Co., INC. } (WBRD), BRADENTON, FLA. } For Construction Permit }	Docket No. 14014 File No. BP-13440
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MEMORANDUM OPINION AND ORDER

(Adopted May 16, 1962)

BY THE COMMISSION: CHAIRMAN MINOW ABSENT.

1. The Commission has before it for consideration (a) a petition for reconsideration, filed by Sunshine State Broadcasting Co., Inc. (WBRD), on March 8, 1962, directed to the decision of the Commission released February 9, 1962 (32 FCC 378); (b) an opposition thereto, filed March 21, 1962, by the Chief of the Commission's Broadcast Bureau; and (c) the reply of WBRD, filed March 27, 1962, to the Broadcast Bureau's opposition. The decision denied WBRD's application to extend the facilities of WBRD to permit operation at night with a power of 500 w, nondirectional, because it would receive interference affecting 49.7 percent of the population within its 4.0-mv/m normally protected contour. We concluded that no circumstances were shown to warrant such substantial noncompliance with the 10-percent requirements of section 3.28(d)(3) of our rules. WBRD requests that the Commission reconsider and grant its application.

2. WBRD asserts that strong justification exists for waiver of section 3.28(d)(3). Among the facts urged in support of waiver are: the proposal would bring a second outlet for local expression at night to Bradenton, a choice of local broadcast service would be provided to Bradenton, a second primary service would be provided to 3,521 persons, Bradenton is a rapidly growing community, it is in the hurricane belt and a second radio service is necessary for hurricane and civil defense warnings, WBRD proposes the only frequency usable at night in Bradenton, and no existing station would receive interference from the proposal. These factors were carefully considered in paragraphs 4-7 of the decision. The Commission adheres to the views therein expressed.

3. WBRD argues that the 10-percent rule should be deleted from the Commission's regulatory scheme because its application is unduly

restrictive. It suggests that the sole criterion should be whether the proposed station will be able to serve the public interest, convenience, and necessity without impairing the operation of any existing station and without suffering interference to such an extent that its service would be so reduced as to constitute an inefficient utilization of the frequency. Apart from the fact that such a contention should more properly be contained in a request for rulemaking, the fact remains that a serious degradation of 1420 kc would result from the operation proposed, a condition which the 10-percent rule is designed to prevent. In short, WBRD has failed to show any considerations which either outweigh the undesirable effects of its proposed inefficient operation or negate our holding in the *Matter of Revision of the Ten Percent Rule* (10 R.R. 1595, 1598, footnote 2, and 10 R.R. 1600, 1600e) that assignments must be restricted to avoid appreciable degradation of overall service by the unrestricted addition of a larger number of new stations whose interference, while individually negligible, is not negligible when viewed as a whole. See *WPET, Inc.* (FCC 62-470, released May 7, 1962).

4. WBRD urges a new factor in support of its request for waiver which concerns a recent hurricane survey, a report on which was submitted with its petition for reconsideration. The survey is a report from a U.S. Army District Engineer to the Chief of Engineers in Washington purporting to present information regarding past hurricanes, with a brief discussion of the problems associated with hurricanes in Florida coastal areas. In summary, the report urges local, county, and State officials to give serious consideration to measures which would, among other things, afford adequate hurricane warning and emergency evacuation plans. We do not mean to minimize the need for such notifications, but, as we stated in our decision, important as the needs may be for hurricane and civil defense warnings, they do not overcome the inefficiency shown to exist in WBRD's nighttime proposal. The Commission's rules (sec. 2.405) provide for the emergency operation of stations during periods of emergency when normal communication facilities are disrupted by hurricanes or similar disasters.

Accordingly, *It is ordered*, This 16th day of May 1962, that the petition for reconsideration filed March 8, 1962, by Sunshine State Broadcasting Co., Inc. (WBRD), *Is denied* in all respects.

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TOWN AND COUNTRY BROADCASTING Co., INC. (WREM), DOCKET No. 13049:

Initial decision granting application for construction permit to increase the power of class III station WREM, Remsen, N.Y., from 1 kw to 5 kw, and to operate daytime only on 1480 kc; became final in accordance with section 1.153 of the Commission's rules.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON 25, D.C.

In re Application of TOWN AND COUNTRY BROADCASTING Co., INC. (WREM), REMSEN, N.Y. For Construction Permit	}	Docket No. 13049 File No. BP-13104
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APPEARANCES

John H. Midlen and *Donald K. Smith*, for applicant; and *Earl C. Walck*, for the Chief, Broadcast Bureau, Federal Communications Commission.

INITIAL DECISION OF HEARING EXAMINER HERBERT SHARFMAN
(Effective May 3, 1962, pursuant to sec. 1.153)

PRELIMINARY STATEMENT

1. This proceeding involves the application of Town and Country Broadcasting Co., Inc., for a construction permit to increase the power of class III station WREM, Remsen, N.Y., from 1 kw to 5 kw, and to operate daytime only on 1480 kc. By order released August 12, 1959, the Commission designated its application and many other applications for hearing in a multiparty proceeding bearing lead docket No. 13010, *Mid-America Broadcasting System, Inc.* As a result of various severances, the Town and Country application, previously in "Group VII," lead docket No. 13016, was heard separately. In its order released August 12, 1959, the Commission found Town and Country legally, technically, and otherwise qualified to construct and operate its proposal, except as indicated by the specified issues. The issues pertinent to the WREM application, as restated in the Commission's order released July 13, 1960, are as follows:

* * * * *

2. To determine the areas and populations which may be expected to gain or lose primary service from each of the instant proposals for a change in facilities of an *existing* standard broadcast station, and the availability of other primary service to such areas and populations.

3. To determine the nature and extent of the interference, if any, that each of the instant proposals would cause to and receive from each other and all other existing standard broadcast stations, the areas and popula-

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tions affected thereby, and the availability of other primary service to the areas and populations affected by interference from any of the instant proposals.

4. To determine whether the interference received from any of the other proposals herein and any existing station would affect more than 10 percent of the population within the normally protected primary service area of any one of the instant proposals in contravention of section 3.28(c)(3) [now 3.28(d)(3)] of the Commission rules, and, if so, whether circumstances exist which would warrant a waiver of said section.

* * * * *
15. To determine whether Charles B. Axton (BP-12763) and Town and Country Broadcasting Co., Inc. (BP-13104), are financially qualified to construct and operate their stations as proposed.

16. To determine the type and character of program service which would be broadcast by Town and Country Broadcasting Co., Inc. (BP-13104), and whether the program service would be in the public interest.

* * * * *
23. To determine, in the light of section 307(b) of the Communications Act of 1934, as amended, which of the instant proposals would best provide a fair, efficient, and equitable distribution of radio service.

* * * * *
25. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which, if any, of the instant applications should be granted.

2. After its application was designated for hearing, WREM filed a petition on August 19, 1959, requesting leave to amend its application in several respects, including the financial and programing portions. There was no opposition to the petition, and by order released September 2, 1959, the hearing examiner granted the petition and accepted the amendment.

3. Prehearing conferences were held on the WREM application, together with other applications, on September 16, 1960, and June 20, 1961, and at the latter conference the WREM application was severed. On December 5, 1961, WREM filed a petition requesting leave to amend its application to change the type of transmitter and to change its programing proposal, and on January 3, 1962, it filed a petition requesting leave to amend the financial portion of its application. There being no objection, these petitions were granted and the amendments accepted by the hearing examiner's orders released December 19, 1961, and January 5, 1962, respectively. Hearing was held on January 8, 1962, when the record was closed. The Broadcast Bureau filed proposed findings of fact and conclusions on February 28, 1962. On March 12 applicant filed a reply suggesting some additions to and minor changes in the Bureau's proposals. The findings of fact and conclusions substantially follow the Broadcast Bureau's pleading, with the modifications proposed by applicant.

FINDINGS OF FACT

Engineering

4. Town and Country is the licensee of station WREM at Remsen, N.Y.,¹ which now operates on 1480 kc with a power of 1 kw, daytime only. The licensee proposes to increase the power of WREM to 5 kw.

¹ According to the 1950 U.S. census there were 483 persons in Remsen. The 1960 U.S. census lists the population as 567.

5. Based on radiation of 191 mv/m for 1 kw and 427 mv/m for 5 kw and the conductivity given in figure M-3 of the Commission's rules, the coverage—present and proposed—is:

Contour (mv/m)	Present		Proposed	
	Area (sq. miles)	Population ¹	Area (sq. miles)	Population
2-----	416	11,022	846	96,786
0.5-----	1,453	47,797	3,139	166,545

¹ Population data based upon 1950 census.

With the proposed increase in power, the service area of WREM would be expanded 10 miles in all directions to an additional area of 1,686 square miles. A new primary service would be afforded 118,748 persons, including an additional 31,262 residents of Rome, N.Y., and an additional 40,612 residents of Utica, N.Y.²

6. Neither the present nor the proposed operations of WREM receive interference from any existing station, and proposed WREM would not cause interference to any existing station.³

Financial qualifications—Issue 15

7. WREM would continue to operate at the same location. The only change in facilities is an increase of power from 1 to 5 kw. The cost of construction consists of the purchase and installation of a 5-kw transmitter, including tubes, for \$13,700, and engineering and legal fees and miscellaneous expenses of \$2,200—a total of \$15,900.

8. WREM proposes to purchase its transmitter from ITA Electronics Corp. at the standard ITA financing terms of 25-percent downpayment (\$3,425), with the balance payable in 36 months at ITA's then prevailing rate of interest. In addition to the deferred credit extended by the equipment supplier, WREM proposes to finance its proposal by a loan of \$20,000 from James S. Girmonde, Utica, N.Y. Mr. Girmonde's statement of assets and liabilities, as of October 1, 1958, reflected a net worth of more than \$120,000, consisting mainly of bank accounts, marketable securities, and real estate holdings. By verified letter dated December 22, 1961, Mr. Girmonde reaffirmed his offer to extend a loan of \$20,000 or less to WREM, to bear interest at 6 percent a year, and stated that there had been no significant change in the sources of funds shown in his statement of assets and liabilities. As of December 27, 1961, Mr. Girmonde's personal bank account was in excess of \$25,000. Mr. Girmonde has no broadcast interests or connections.

9. WREM's 1-kw operation has incurred deficits of \$8,758.09 and \$2,279.26 for 1959 and 1960, respectively, and its balance sheet as of

² Remsen is approximately 15 miles northeast of Rome and some 16 miles north of Utica. Remsen's Onondaga County had a 1960 population of 264,401.

³ Although a minute overlap of pencil-line thickness would occur between the 0.5-mv/m contours of proposed WREM and WOLF, Syracuse, N.Y., a class IV station authorized to employ a power of 1 kw during daytime hours on the adjacent-channel frequency of 1490 kc, it may be stated that for all practical purposes there is no interference. As the proposal does not involve any interference, a showing of other services in the gain area is not necessary.

October 31, 1961, shows current liabilities exceeding current assets by \$6,624.82, and a deficit of net worth of \$4,191.74. WREM has been handicapped in that operating with power of 1 kw, it does not provide primary service to the nearby cities of Utica (100,410 persons, 1960 U.S. census) and Rome, N.Y. (51,646 persons, 1960 U.S. census). Operating, however, with power of 5 kw, WREM will render primary service to 75 percent of Rome and 40 percent of Utica. On the basis of informal commitments, the station's expected monthly income with power of 5 kw will be \$6,113, and the average monthly expenses are estimated to be \$3,980.17.

Program service—Issue 16

10. As the preliminary statement reflects, WREM amended the programming shortly after the application was designated for hearing and, again, shortly before the hearing. The area which will gain primary service from WREM's 5-kw operation includes persons with the same general customs and social habits as those in the present WREM service area. The areas benefiting primarily from the proposed increased service are (1) Utica (40 percent) and Rome, N.Y. (75 percent); (2) rural areas in Oneida, Herkimer, Madison, and Lewis Counties; and (3) the southern portion of the Adirondack Mountains area.

11. WREM's proposed programming is derived, without change, from its program logs for a week in August 1961. The percentages of time to be devoted to types and classes of programs are as follows:

<i>Type</i>	<i>Percent</i>
Entertainment.....	62.7
Religious.....	5.1
Agricultural.....	16.6
Educational.....	1.1
News.....	10.1
Discussion.....	.3
Talks.....	4.1
Total.....	100.0

Class

	8 a.m.- 6 p.m.	6-11 p.m.	All other	Total
	<i>Percent</i>	<i>Percent</i>	<i>Percent</i>	<i>Percent</i>
Recorded commercial.....	70.2	45.1	37.1	61.1
Recorded sustaining.....	10.4	36.9	8.5	13.4
Wire commercial.....	6.9	13.3	8.6	7.9
Wire sustaining.....	4.0	40.4	5.4	10.2
Live commercial.....	8.5	4.7	5.4	7.4
Live sustaining.....	8.5	4.7	5.4	7.4
Total commercial.....	74.2	45.1	77.5	71.3
Total sustaining.....	25.8	54.9	22.5	28.7
OPERATING HOURS AND ANNOUNCEMENTS				
Proposed broadcast-hours (a week).....	70	12:30	18:35	101:05
Number of spot announcements (a week).....	418	31	99	548
Number of noncommercial spot announcements (a week).....	136	38	28	192

WREM signs on on weekdays throughout the year at 4:55 a.m. and plans to do so with its proposed 5-kw operation, subject to any notification from the Commission in accordance with section 3.87(b) of the rules. WREM's license prescribed signoff as early as 4:30 p.m. in November and December, and as late as 7:45 p.m. (8:45 p.m., eastern daylight saving time) in June and July. Its typical week, which consists of a week's programming in August 1961, has a weekday signoff time of 8 p.m. and was submitted as more representative than one showing a 6 p.m. signoff. A typical week's schedule curtailed to a signoff of 6 p.m. would result in a change in entertainment, news, and religious programs to 61, 9, and 5.6 percent, respectively, with a proportionate increase in the percentages for the remaining types of programs.

12. WREM's proposed programming consists basically of music and news. It is WREM's policy to suit the type of music to the audience listening at that particular time, and its objective is to serve all "major" musical tastes in the area. At best listening times for farmers, country music is presented; show tunes are broadcast in the late morning; and popular music in midafternoon for housewives. Polkas are also broadcast in midafternoon, and teenage music in the late afternoon after high school is let out.

13. Responsible representatives of various viewpoints on public issues have been invited in the past, and WREM proposes to continue to invite them. Religious leaders in the service area have been and will be invited to participate in the daily 15-minute program designed to inform listeners about their various faiths and activities. Candidates for local and county public office are offered free time when both candidates can appear on the station to state their platforms. The station has cooperated with every charitable and civic campaign in the service area. It is planned to continue the policy, which is carried out through noncommercial spot announcements and interviews with campaign leaders. During the past 3 years WREM has received from many organizations, without solicitation, letters and certificates of appreciation of the support and cooperation extended them. For 1961 these organizations were: Utica Kiwanis Club; Rome Rotary Club; Dolgeville Rotary Club; New York State Future Farmers Association; Utica District Office, Department of Health, Education, and Labor; Fort Stanwix Council, Boy Scouts of America; Remsen Central School; West Canada Valley Central School System; and Utica District Office, New York State Tax Commission.

Efforts to determine programming needs

14. Mr. Slusarczyk, president, treasurer, 90-percent stockholder, and director of Town and Country and general manager of WREM, is a native of the area. He was born and lived in Prospect, N.Y., 3 miles from Remsen, until 1948, except for the time he was in the armed services and attended college. Since 1948 he has lived in the Remsen area. He is well acquainted with the extended area of WREM's proposal through his service as county clerk of Oneida County and as county agent in Oneida County, and as president of the Farm Bureau Extension Service. As county agent he used to make

3,000 calls to homes in the area each summer. He has been active in the Utica Chamber of Commerce, knows the civic leaders and community organizations, and is familiar with all the campaigns, drives, and other activities. Mr. Slusarczyk has discussed the program needs of the extended area with many civic and community organization representatives, some of whom are now users of WREM's radio service, while others propose to use it if the service area of the station is extended. Some prospective users are reluctant to spend time to prepare special programs because WREM's present service covers only a part of the area they would like to reach. Representatives of some Lewis and Herkimer County organizations, which now use direct mail, community meetings, and newspapers, told Mr. Slusarczyk that if they could get adequate radio coverage, it would be a simpler job to reach the public. As examples, the State welfare department believes that WREM's extended coverage would justify broadcast of its activities; the Oneida County Board of Supervisors would like to use WREM to reach the southern portion of the county with broadcasts about taxes, bills and resolutions, future plans, and meetings; and various farm organizations want to reach the additional portions of the counties to receive service from WREM's proposal. WREM personnel have appeared at many activities and organization meetings, and have talked with persons in the proposed new coverage area in an attempt to determine the programing needs of the gain area.

Promise versus performance and proposed programing

15. When the Commission processed WREM's application it raised a question about the applicant's programing promise and performance and addressed a letter to WREM on July 2, 1959, reading, in part, as follows:

"It is noted that at the time of your original grant on August 4, 1958, you proposed to devote 67.5 percent of the time to commercial programs, 65.5 percent to recorded programs, and 18.2 percent to live programs.

Your instant application indicates that you have not followed your proposed programing of less than a year ago and are now devoting 72.7 percent of the time to commercial programs, 87 percent to recorded programs, and only 1.6 percent to live programs.

Moreover, it is further noted that at the time of your original grant you proposed to broadcast 375 commercial spot announcements per week and 95 noncommercial spot announcements per week, but that you are now broadcasting 1,219 commercial spot announcements and only 64 noncommercial spot announcements per week.

It is required that you submit a detailed explanation of why your present programing differs so greatly from the representations made in your original application for a construction permit.

The requested explanation had not been made at the time the application was designated for hearing on August 12, 1959. Mr. Slusarczyk testified that WREM contracted with a promotion agency to sell spot announcements on a packaged basis, three spots a day for 6 days a week, for 26 weeks, for a stipulated amount. The promoter signed up people so fast that the number of announcements got out of hand. When the station became aware of the large number of spots being sold, it called a halt, but had to honor the contracts already executed. The deficiency in the actual amount of live programing promised is

attributable to the time it took in the initial operational stage to develop the proposed programs. Mr. Slusarczyk also testified that although in its original application WREM showed that the station had not broadcast any discussion or talk programs, many discussion programs were included under agricultural because they involved agricultural personnel, and sports programs were included under news instead of talks.

16. On May 25, 1960, WREM filed its application for renewal of its broadcast license (BR-3653), which was granted on July 13, 1960. Its performance, based on the 1959 composite week, with respect to the categories previously questioned by the Commission, was as follows: Commercial programs, 41.6 percent; recorded, 79.8 percent; live, 11.3 percent; and spot announcements for a broadcast week of 93.5 hours were: commercial 324, and noncommercial 155. WREM represented its proposed programming for the new license period would in pertinent part be as follows: Commercial programs, 66.4 percent; recorded, 80.6 percent; live, 10.7 percent; and proposed spot announcements for a broadcast week of 102 hours 35 minutes were: 828 commercial and 323 noncommercial.

17. At the request of the Broadcast Bureau, WREM supplied the analysis of its programming, as to type and class, for the week of November 27–December 2, 1961. The percentage of time devoted to local live programming (16.6 percent) and the number of commercial spot announcements (315) are comparable to WREM's program proposal set forth in paragraph 11, above (which constituted its actual programming for a week in August 1961), taking into account the difference in hours of operation—101:05 for August and 78:05 for November–December.

CONCLUSIONS

18. The Commission found WREM qualified in all respects to construct and operate its proposed station, except as specified in the issues set forth above. With the proposed increase in power to 5 kw, WREM would more than double its service area and provide a new service to 118,748 persons and continue to serve all the 47,797 persons within its present service area. The proposal would cause no interference to or receive any interference from existing stations. This disposes of the "10 percent rule" issue (No. 4). There is therefore no engineering impediment to a grant of the application, and the questions remaining for resolution concern the applicant's financial qualifications and a determination whether the program service would be in the public interest.

19. The immediate cash required by WREM to effectuate its proposal consists of the downpayment on equipment of \$3,425, and engineering and legal fees and miscellaneous expense of \$2,200, or a total of \$5,625. To meet these expenses WREM has a loan commitment of \$20,000. Recognizing that WREM's 1-kw operation reflected a deficit and its October 31, 1961, balance sheet shows that WREM's current liabilities exceed its current assets by \$6,621.82, it is concluded that WREM has sufficient funds available to construct and operate its proposal for a reasonable time, and accordingly is finan-

cially qualified. In this respect it should be noted that since WREM is an existing operation, it may be expected that it will have income available to it during the initial operating period of its proposed operation. (See, moreover, par. 9, above, last sentence.)

20. With the recent amendment of its programing proposal, WREM proposes a program service identical to that broadcast during a week in August 1961. The analysis of the programing as to type and class indicates reasonable balance, and the proposal is comparable to the programing of WREM's renewal application, which was granted by the Commission on July 13, 1960. WREM's programing consists basically of music and news, with the aim of serving all "major" musical tastes in the area. The record shows that WREM has tried to serve the various needs of the area and proposes to continue its efforts in this respect. Evidencing past efforts are the letters of appreciation which the station has received, unsolicited, from various users of the station. Taking into consideration the many contacts of present and prospective users of WREM's service made by the applicant to ascertain needs and the fact that the gain area includes persons of the same general customs and social habits, it is concluded that the program service proposed would be in the public interest and that the extension of WREM's service area by a grant of its application to increase power from 1 kw to 5 kw would serve the public interest, convenience, and necessity.

21. When the Commission processed the present application, the great disparity between promise and performance, with respect to commercial and live programing and spot announcements, raised a serious question of licensee responsibility and reliability. Applicant's explanation for its failure to live up to its original promises was fully explored and explained on the record. It is concluded that applicant's programing following the correction and resolution of the problem gives assurance to the Commission that this error in judgment will not be repeated and that WREM can be relied upon for the future to carry out its proposed programing.

22. Accordingly, *It is ordered*, This 13th day of March 1962, that unless an appeal from this initial decision is taken to the Commission by a party, or the Commission reviews the initial decision on its own motion in accordance with the provisions of section 1.153 of the rules, the above-captioned application of Town and Country Broadcasting Co., Inc., for a construction permit to increase the power of class III station WREM, Remsen, N. Y., from 1 kw to 5 kw, and to operate daytime only on 1480 kc, *Is granted*.

32 F.C.C.

CROSBY COUNTY BROADCASTING Co., DOCKET No. 14268:

Initial decision conditionally granting application for construction permit for a new AM station to operate on 1530 kc, 1 kw, D, in Ralls, Tex.; became final in accordance with section 1.153 of the Commission's rules.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON 25, D.C.

<p>In re Application of DARRELL WILLIS, W. R. BENTLEY, PHIL CRENSHAW, GALEN O. GILBERT, AND LEW D'ELIA, D/B AS CROSBY COUNTY BROADCASTING Co., RALLS, TEX. For Construction Permit</p>	}	<p>Docket No. 14268 File No. BP-14864</p>
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APPEARANCES

Russell Rowell, Esq., and *Joseph F. Hennessey, Esq.*, for Crosby County Broadcasting Co.; and *Ernest Nash, Esq.*, and *Robert D. Pelouquin, Esq.*, for Chief, Broadcast Bureau, Federal Communications Commission.

INITIAL DECISION OF HEARING EXAMINER JAY A. KYLE

(Effective May 4, 1962, pursuant to sec. 1.153)

PRELIMINARY STATEMENT

1. This proceeding originally involved the mutually exclusive applications of Henry Holmes and Elvis Leo Roberts, d/b as Holmes-Roberts Broadcasting Co. (Holmes-Roberts), docket No. 14254, file No. BP-13837; and Darrell Willis, W. R. Bentley, Phil Crenshaw, Galen O. Gilbert, and Lew D'Elia, d/b as Crosby County Broadcasting Co. (Crosby County), docket No. 14268, file No. BP-14864.

2. Holmes-Roberts through its application was seeking a construction permit for a new standard broadcast station at Slaton, Tex., to operate on 1530 kc, 1 kw, daytime only. Crosby County's application is for a construction permit for a new standard broadcast station at Ralls, Tex., to operate on 1530 kc, 1 kw, and daytime only.

3. By order released September 18, 1961, the above applications were designated for hearing in a consolidated proceeding and the applicants, except for the matters involved in issues set out below, in all respects were found qualified to construct and operate their respective proposals. The Commission provided that the following matters were to be considered in connection with the issues specified below:

1. The applicants' proposed cochannel 1 kw operation in cities 25 miles apart, and are mutually exclusive.

32 F.C.C.

2. Galen O. Gilbert and Phil Crenshaw, who have a combined ownership interest of 65 percent in the subject Ralls, Tex., application, own 100 percent of station KUKO, Post, Tex. Post, Tex., is 25 miles from the Ralls site and the proposed operation would involve extensive overlap of service contours with the existing operation of KUKO. Additionally, KUKO provides primary service (0.5 mv/m) to the city of Ralls (population 2,229 according to 1960 census). It will be necessary to determine in hearing whether grant of the Ralls application would contravene the provisions of section 3.35(a) of the Commission rules. It appears appropriate to consider the size, extent, and location of the areas served and to be served; the extent of the overlap involved; the number of persons served, the number of persons residing within the overlap area; the classes of stations involved; the extent of other competitive service to the areas in question; the extent to which the stations will rely on the same revenue and program sources; the nature of the programming that the stations will present with particular reference to the particular needs of the communities they are designed to serve; the advertising practices of the stations; the source of program material and talent for each station; and such other factors as will tend to demonstrate that the overlap involved will or will not be in contravention of section 3.35(a) of the Commission rules.

The issues designated were as follows:

1. To determine the areas and populations which would receive primary service from each of the proposed operations, and the availability of other primary service to such areas and populations.

2. To determine whether a grant of the instant proposal of Crosby County Broadcasting Co. would be in contravention of the provisions of section 3.35(a) of the Commission rules.

3. To determine, in the light of section 307(b) of the Communications Act of 1934, as amended, which of the instant proposals would better provide a fair, efficient, and equitable distribution of radio service.

4. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which, if either, of the instant applications should be granted.

4. The application of Holmes-Roberts was dismissed with prejudice for failure to prosecute by order of the Chief Hearing Examiner under date of October 17, 1961, pursuant to section 1.140 of the Commission's rules. A prehearing conference was held on October 26, 1961, and the evidentiary hearing on January 30, 1962, at which time the record was closed. On March 6, 1962, the applicant filed a petition for leave to amend its application, to reopen the hearing record, and accept its proffered exhibits Nos. 34, 35, 36, and 37. The petition was granted by order of the hearing examiner dated March 12, 1962 (FCC 62M-371). Proposed findings of fact and conclusions of law were not filed by either Crosby County or Chief, Broadcast Bureau.

FINDINGS OF FACT

5. Darrell Willis, W. R. Bentley, Phil Crenshaw, Galen O. Gilbert, and Lew D'Elia, d/b as Crosby County Broadcasting Co., seek a construction permit for a new standard broadcast station at Ralls, Tex., to operate daytime only on 1530 kc with power of 1 kw. Originally, Holmes-Roberts Broadcasting Co. was an applicant herein, but its application was dismissed by the Chief Hearing Examiner for failure to prosecute. No consideration was paid or promised, directly or indirectly, by Crosby County to Holmes-Roberts respecting dismissal of the latter's application.

6. Crosby County has already been found by the Commission in its order released September 18, 1961, to be legally, technically, financially, and otherwise qualified to construct and operate its new proposal, except as indicated by the issues specified above.

7. Ralls, Tex., has a population of 2,229¹ persons, according to the 1960 U.S. census. Its growth from 1950 to 1960 represents an increase of 28 percent. The local form of Government is the mayor-council plan. The city of Ralls owns its own water public utility and there are eight churches representing various denominations. Civic groups in Ralls include a Rotary Club, Lions Club, Ralls Study Group, Amity, Boy Scouts, Girl Scouts, and Masons. Ralls is located at the junction of U.S. Highways 82 and 62, connecting Wichita Falls with Lubbock, Tex., and Altus, Okla., with Lubbock. Ralls is on a branch line of the Santa Fe Railroad. It has an I.C.X. Freight Line Terminal and the city is also served by the Texas, New Mexico & Oklahoma Bus Line. A county airport is proposed in the county to be located between Ralls and Crosbyton. While farming is the principal industry in the area, there are a number of industrial firms at Ralls. Cotton is the principal agricultural commodity raised in the area. Ralls is the principal city in Crosby County, Tex., and is the banking, educational, and shopping center of the county. It is located 28 miles east of Lubbock, 125 miles south of Amarillo, 180 miles west of Wichita Falls, and about 150 miles north of Abilene.

8. Crosby County, Tex., in 1960, according to the U.S. census, had a population of 10,347 persons, which indicated a growth in population of about 8 percent in a decade. There are 711 square miles in the county, with a population density of 11.2 persons per square mile. Most of the population of the county is situated in the towns of Ralls, Crosbyton, Lorenzo, and Idalou. The economy of the county is primarily agricultural, with cotton as the dominant crop.

9. Post, Tex., is the county seat of Garza County and is the adjoining county to the south from Crosby County, Tex. The population of Post in 1960 shows a count of 4,663. It is an incorporated municipality with its own school system, churches, and other municipal facilities. It is there that radio station KUKO is located. This station operates on assigned frequency 1370 kc, 500 w, daytime only, but there is pending an application to increase power to 1 kw. In the order of designation it is indicated that the distance between Ralls and Post is 25 miles. However, the parties stipulated in the evidentiary hearing that the correct distance between these two cities is 32.5 miles. Likewise, it was stipulated that the distance between the transmitter of KUKO at Post and the proposed transmitter site here involved at Ralls is 32.7 miles.

10. Radio Station KUKO, Inc., is the licensee of station KUKO at Post, Tex. Galen O. Gilbert is the owner and holder of 160 shares of capital stock representing 66 $\frac{2}{3}$ percent stock interest, while Phil Crenshaw is the owner and holder of 80 shares, which represent 33 $\frac{1}{3}$ percent stock interest. Elnora Gilbert, wife of Galen O. Gilbert, although an officer and director of the KUKO Corp., holds no stock,

¹ The record reflects a slightly inaccurate population figure which, however, is immaterial here.

which is true of Ruth Crenshaw, wife of Phil Crenshaw. J. R. Kincaid, father of Elnora Gilbert, is a director of the corporation but has no stock interest.

11. Station KUKO encompasses an area of 6,210 square miles with a population of 44,469 within its present interference-free contour. Its proposal to increase power to 1 kw would enlarge KUKO's interference-free contour to an area of 8,510 square miles with a population of 76,616 persons.

12. Ralls lies between the 2.0-mv/m and the 0.5-mv/m contours of station KUKO. With a population of 2,229, all of Ralls receives primary service from KUKO.

13. Crosby County's proposal would encompass an area of 5,620 square miles with a population of 62,427 within its interference-free contour.

14. With KUKO operating at its present power of 500 w, its interference-free contour would overlap the interference-free contour of Crosby County's proposal in an area of 2,840 square miles with a population of 30,661. This overlap area would represent 69 percent and 49 percent of the populations served by KUKO and to be served by the Crosby County proposal, and 45.7 percent and 50.5 percent of their respective interference-free areas. With KUKO operating at its proposed increased power of 1 kw, the overlap area of the interference-free contours would be increased to 3,490 square miles with a population of 48,704. This would represent 63.7 percent and 78.1 percent of the populations to be served by KUKO and Crosby County, and 41 percent and 62 percent of their respective interference-free areas.

15. All of the overlap area within the interference-free contours of existing KUKO and the Crosby County proposal is served by Texas stations KCRS, Midland; KDAV, Lubbock; KGNC, Amarillo; and KFYO, Lubbock. Three stations—KFLD, Floydada; KSEL, Lubbock; and KCAS (CP), Slaton—serve portions amounting to 75 to 99 percent of the overlap area; four stations—KPET, Lamesa; KBUY, Amarillo; KLLL, Lubbock; and KCBD, Lubbock—serve from 50 to 75 percent, while six additional stations provide service to portions of less than 50 percent. No part of the overlap area receives service from less than five standard broadcast stations and more than half of the overlap area receives service from at least nine stations. More than 75 percent of the overlap area also lies within the grade B contours of two television stations, KCBD-TV and KDUB-TV, both in Lubbock.

16. KUKO with an increase to 1 kw would enlarge the overlap area by an additional 650 square miles where a minimum of five services are available. A portion of the additional overlap area to the west receives 15 services. The two television stations also serve 75 percent of the additional overlap area.

17. As related in paragraph 10, supra, two of the partners in Crosby County, namely, Crenshaw and Gilbert, own 100 percent of station KUKO. Their combined interest here is 65 percent ownership. Darrell Willis, another member of the applicant partnership, is an employee of KUKO. In the spring of 1961 William McGlaun, chair-

man of the civic affairs committee of the Ralls Chamber of Commerce, contacted Willis respecting the possibility of establishing a radio station at Ralls. Willis introduced McGlaun to Crenshaw, after which McGlaun made arrangements for Crenshaw to appear before the Rotary Club in Ralls to discuss the possibility of establishing a station at Ralls. This led to other conferences and contacts with various citizens of Ralls by members of the partnership. Station KUKO established a studio at Ralls and offers diversified local service to Ralls and the rest of Crosby County, Tex., under the direction of Willis. For instance, it programs county local news twice daily, at 10 a.m. and 2 p.m., Monday through Friday. In the event the proposed new station is established at Ralls, Willis will be the station's full-time station manager. Willis moved his family to Ralls on June 30, 1961, and has maintained his residence there since that time. He devotes his time to servicing county accounts for KUKO, as well as for gathering and broadcasting local program material.

18. The application, as originally filed with the Commission, clearly contravenes the provisions of section 3.35(a)² of the Commission's rules. However the applicant was given leave to amend its application by order dated March 12, 1962 (FCC 62M-371), which substantially changes the application from its original form. By the amendment Crosby County proposes that in the event the application herein for the station at Ralls is granted: (1) Messrs. Gilbert and Crenshaw will dispose of their interests in Radio Station KUKO, Inc., licensee of KUKO at Post, Tex., and Gilbert and Crenshaw, as well as their respective wives, Elnora Gilbert and Ruth Crenshaw, and J. R. Kincaid, father of Mrs. Gilbert, will sever all connections with the Post station; (2) that the five partners, namely, Darrell Willis, W. R. Bentley, Phil Crenshaw, Galen O. Gilbert, and Lew D'Elia, will construct the radio station at Ralls and place said station in operation; (3) Darrell Willis, a member of the partnership here involved, now an employee of the Post station, will sever all connections with radio station KUKO; and (4) that the applicant will accept a construction permit for the new station at Ralls, subject to the following condition:

The grant is made subject to the condition that Phil Crenshaw, Galen O. Gilbert, Ruth Crenshaw, Elnora Gilbert, and J. R. Kincaid will, with prior Commission consent, dispose of their entire interest in and, together with Darrell Willis, will sever all connection with radio station KUKO at Post, Tex., prior to the date on which the Ralls, Tex., station is authorized to commence operation.

CONCLUSIONS

1. Darrell Willis, W. R. Bentley, Phil Crenshaw, Galen O. Gilbert, and Lew D'Elia, d/b as Crosby County Broadcasting Co., has been

² Pertinent provisions of sec. 3.35 read as follows:

"No license for a standard broadcast station shall be granted to any party (including all parties under common control) if:

"(a) Such party directly or indirectly owns, operates, or controls another standard broadcast station, a substantial portion of whose primary service from the station in question, except upon a showing that public interest, convenience, and necessity will be served through such multiple ownership situation."

found by the Commission in its order of designation to be legally, technically, financially, and otherwise qualified to operate its proposed facilities, except as appeared in the issues specified above. Originally, Holmes-Roberts Broadcasting Co. was an applicant herein, but its application was dismissed by the Chief Hearing Examiner for failure to prosecute. No consideration was paid or promised, directly or indirectly, by Crosby County to Holmes-Roberts respecting dismissal of the latter's application.

2. Crosby County proposes to bring to Ralls, the principal city in Crosby County, Tex., its first local transmission system. The 1960 population of Ralls is 2,229 while Crosby County, Tex., has a population of 10,347 persons. Ralls is located at the junction of U.S. Highways 82 and 62, connecting Wichita Falls with Lubbock, Tex., and Altus, Okla., with Lubbock. Ralls is located 28 miles east of Lubbock, 125 miles south of Amarillo, 180 miles west of Wichita Falls, and about 150 miles north of Abilene. It is on a branch line of the Santa Fe Railroad. The Texas, New Mexico & Oklahoma Bus Line serves the city and there is an I.C.X. Freight Line Terminal located there.

3. With the dismissal of the Holmes-Roberts application heretofore mentioned, the only remaining issue to be resolved is issue No. 2.

4. Two members of the partnership here involved, Messrs. Phil Crenshaw and Galen O. Gilbert, own 100 percent of station KUKO, which is located at Post, Tex. Their combined interest in Crosby County Broadcasting Co. is 65 percent ownership. Darrell Willis, another member of the applicant partnership, is an employee of KUKO and it is proposed that if the Crosby County application is granted he will be its station manager.

5. The distance between Ralls and Post is 32.5 miles, while the distance between the transmitter of KUKO at Post and the proposed transmitter site for the Ralls station is 32.7 miles. At the present time station KUKO encompasses an area of 6,210 square miles with a population of 44,469 within its present interference-free contour. It currently has pending an application to increase its power to 1 kw, which if granted would increase KUKO interference-free contour to an area of 8,510 square miles with a population of 76,616 persons. All of Ralls with its population of 2,229 receives primary service from KUKO, as it lies between 2.0-mv/m and 0.5-mv/m contours of the Post station. The Crosby County proposal would encompass an area of 5,620 square miles, with a population of 62,427 persons within its interference-free contour.

6. It is apparent from the findings that with KUKO operating at its present power of 500 w, its interference-free contour would overlap the interference-free contour of Crosby County's proposal in an area of 2,840 square miles with a population of 30,661. This overlap area would represent 69 percent and 49 percent of the populations served by KUKO and to be served by the Crosby County proposal, and 45.7 percent and 50.5 percent of their respective interference-free areas. With KUKO operating at its proposed increased power of 1 kw, the overlap area of the interference-free contours would be increased to 3,490 square miles with a population of 48,704. This would represent

63.7 percent and 78.1 percent of the populations to be served by KUKO and Crosby County, and 41 percent and 62 percent of their respective interference-free areas.

7. All of the overlap area within the interference-free contours of existing KUKO and the Crosby County proposal is served by Texas stations KCRS, Midland; KDAV, Lubbock; KGNC, Amarillo; and KFYO, Lubbock. Three stations—KFLD, Floydada; KSEL, Lubbock; and KCAS (CP), Slaton—serve portions amounting to 75 to 99 percent of the overlap area; four stations—KPET, Lamesa; KBUY, Amarillo; KLLL, Lubbock; and KCBD, Lubbock—serve from 50 to 75 percent, while six additional stations provide service to portions of less than 50 percent. No part of the overlap area receives service from less than five standard broadcast stations and more than half of the overlap area receives service from at least nine stations. More than 75 percent of the overlap area also lies within the grade B contours of two television stations, KCBD-TV and KDUB-TV, both in Lubbock.

8. KUKO with an increase to 1 kw would enlarge the overlap area by an additional 650 square miles where a minimum of five services are available. A portion of the additional overlap area to the west receives 15 services. The two television stations also serve 75 percent of the additional overlap area.

9. It is manifestly clear that if the original application of Crosby County were granted, it would contravene the provisions of section 3.35(a) of the Commission's rules. There is no showing here that the public interest, convenience, and necessity would warrant a waiver of the multiple-ownership situation. There would be a substantial overlap of the contours between the proposed station and the existing Post station, which would offend the multiple-ownership rule. See *Westbrook B/Casting Co., Inc.*, 17 R.R. 312 (1959).

10. The recent amendment to the application tendered by Crosby County materially alters the situation surrounding the establishment of a standard broadcast station at Ralls, Tex., as proposed herein. Messrs. Gilbert and Crenshaw, by the amendment, will dispose of their interests in KUKO, Inc., licensee of KUKO at Post, Tex., and Gilbert and Crenshaw, in addition to their respective wives, Elnora Gilbert and Ruth Crenshaw and J. R. Kincaid, father of Mrs. Gilbert, will sever all connections with the Post station. In addition, Darrell Willis, a member of the partnership here involved, now an employee of the Post station, will sever all connections with the Post station and the applicant will accept a construction permit for the new station at Ralls, subject to the following condition:

The grant is made subject to the condition that Phil Crenshaw, Galen O. Gilbert, Ruth Crenshaw, Elnora Gilbert, and J. R. Kincaid will, with prior Commission consent, dispose of their entire interest in and, together with Darrell Willis, will sever all connection with radio station KUKO at Post, Tex., prior to the date on which the Ralls, Tex., station is authorized to commence operation.

11. Through amending its application outlined above, Crosby County, by a grant of its amended application, will not contravene the

multiple-ownership rule of the Commission; namely, section 3.35 (a).

12. In view of the foregoing findings of fact and conclusions and upon consideration of the entire record in this proceeding, it is concluded that a grant of the application of Darrell Willis, W. R. Bentley, Phil Crenshaw, Galen O. Gilbert, and Lew D'Elia, d/b as Crosby County Broadcasting Co., for a construction permit for a new standard broadcast station to operate on 1530 kc, 1 kw, daytime only, at Ralls, Tex., would serve the public interest, convenience, and necessity, with the following condition:

The grant is made subject to the condition that Phil Crenshaw, Galen O. Gilbert, Ruth Crenshaw, Elnora Gilbert, and J. R. Kincaid will, with prior Commission consent, dispose of their entire interest in and, together with Darrell Willis, will sever all connection with radio station KUKO at Post, Tex., prior to the date on which the Ralls, Tex., station is authorized to commence operation.

Accordingly, *It is ordered*, This 14th day of March 1962, that unless an appeal to the Commission from this initial decision is taken by any of the parties, or the Commission reviews the initial decision on its own motion in accordance with the provisions of section 1.153 of the rules, the application of Darrell Willis, W. R. Bentley, Phil Crenshaw, Galen O. Gilbert, and Lew D'Elia, d/b as Crosby County Broadcasting Co., for a construction permit for a new standard broadcast station to operate on 1530 kc, 1 kw, daytime only, at Ralls, Tex., *is granted*, conditioned upon the following:

The grant is made subject to the condition that Phil Crenshaw, Galen O. Gilbert, Ruth Crenshaw, Elnora Gilbert, and J. R. Kincaid will, with prior Commission consent, dispose of their entire interest in and, together with Darrell Willis, will sever all connection with radio station KUKO at Post, Tex., prior to the date on which the Ralls, Tex., station is authorized to commence operation.

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RUSSELL D. MAWSON (7W0437), DOCKET No. 14450:

Order revoking citizens radio station license, effective June 25, 1962.
 Section 1.76 of the rules.—Failure to reply to official communications concerning a violation of rules.

**BEFORE THE
 FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON 25, D.C.

<p>In the Matter of RUSSELL D. MAWSON, HALLANDALE, FLA. Order To Show Cause Why There Should Not Be Revoked the License for Radio Station 7W0437 in the Citizens Radio Service</p>	}	Docket No. 14450
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MEMORANDUM OPINION AND ORDER

(Adopted May 16, 1962)

BY THE COMMISSION: CHAIRMAN MINOW ABSENT.

1. By order to show cause released December 19, 1961, the Commission, pursuant to section 312 (a) (4) and (c) of the Communications Act of 1934, as amended, directed Russell D. Mawson of Hallandale, Fla., to show cause why the license for his citizens radio station 7W0437 should not be revoked for repeated violations of section 1.76 of the rules (47 CFR 1.76).

2. The order to show cause alleged that respondent had repeatedly violated section 1.76 of the rules in that he failed to respond to an official notice of violation mailed May 18, 1961, and a followup letter dated June 20, 1961. The official notice of violation charged that respondent had operated radio station 7W0437 in violation of sections 19.17, 19.72(a), 19.92, and 19.102 of the Citizens Radio Service rules. The notice expressly requested respondent to reply within 10 days. The Commission's letter dated June 20, 1961, advised the respondent of his failure to reply to the official notice of violation and requested that a response be submitted within 15 days from the date of that letter. No reply was received to the Commission's letter.

3. In addition to the foregoing, the order to show cause detailed the procedural rights of the respondent, including his right to a waiver of hearing, if he so desired, and to submit a statement in mitigation or justification. No reply to the order to show cause was received.

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Accordingly, by order released March 1, 1962, the Acting Chief Hearing Examiner terminated the proceeding and certified the matter to the Commission in accordance with section 1.78 of the rules.

4. The official notice of violation, mailed May 18, 1961; the followup letter of June 20, 1961; and the order to show cause were sent to the respondent at the address he furnished in his application for station license. The official notice of violation was not returned to the Commission by the post office. However, the followup letter was returned with the notation that although notification thereof had been left at the respondent's address, it was unclaimed. The order to show cause, which was duly published in the Federal Register (26 F.R. 12261), was returned with the Post Office Department notation that the respondent had moved but left no forwarding address.

5. All of the Commission correspondence referred to herein, including the order to show cause, was directed to the address furnished by the respondent in his application for operating authority and represented by him to be his address of record. However, the followup letter and the order to show cause were returned undelivered. The duty devolved upon respondent to take all reasonable precautions to insure that official correspondence directed to him at such address would come to his attention promptly. We have previously held, and we expressly reaffirm herein, that it is incumbent upon all licensees to provide a mailing address where they can be reached at all times and that licensees are legally chargeable with the receipt of communications by reason of delivery to their address of record. (*John Vella*, 29 FCC 800, and *Florida Marine*, 30 FCC 517.) Accordingly, in view of the circumstances, we find that service was made on respondent. (See sec. 1.56 of the rules.)

6. In view of the above, there can be no other conclusion than that the respondent has repeatedly violated section 1.76 of the Commission's rules as charged in the order to show cause in this proceeding.

7. In view of the respondent's failure to reply to the above-described communications and to the order to show cause, the Commission has no basis upon which to predicate a finding that the respondent is interested in the continued use of his radio station or that such station will be operated in compliance with law in the future. It is, of course, axiomatic that the orderly and effective administration and regulation of the Safety and Special Radio Services, virtually all of which involve the shared use of frequencies, require that licensees operate their radio stations in accordance with the applicable rules and regulations. The optimum and efficient usage of frequencies compels it. It is equally essential that licensees respond promptly and satisfactorily to all Commission communications, and particularly so when such communications involve alleged rule violations. Under the circumstances of this case, the Commission cannot condone the actions of respondent in failing to notify the Commission of a change of address and to reply to Commission correspondence, nor can it justify any

action less than revocation of station license as contemplated by the order to show cause.

Accordingly, *It is ordered*, This 16th day of May 1962, that the license of Russell D. Mawson for radio station 7W0437 in the Citizens Radio Service *Is revoked*, effective June 25, 1962, and that a copy of this order of revocation be served upon the said licensee at his last known address, 411 SW 10th Terrace, Hallandale, Fla.

32 F.C.C.

RALPH M. BOYD (1W1324), DOCKET No. 14449:

Order revoking citizens radio station license, effective June 25, 1962.
Section 1.76 of the rules.—Failure to respond to official notice of violation
 and other official communications.

**BEFORE THE
 FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON 25, D.C.

In the Matter of RALPH M. BOYD, SPRINGFIELD, MASS. Order To Show Cause Why There Should Not Be Revoked the License for Citizens Radio Station 1W1324	}	Docket No. 14449
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MEMORANDUM OPINION AND ORDER

(Adopted May 16, 1962)

BY THE COMMISSION: CHAIRMAN MINOW ABSENT.

1. By order to show cause released December 19, 1961, the Commission pursuant to section 312 (a) (4) and (c) of the Communications Act of 1934, as amended, directed Ralph M. Boyd of Springfield, Mass., to show cause why the license for his citizens radio station 1W1324 should not be revoked for repeated violations of section 1.76 of the Commission's rules (47 CFR 1.76).

2. The show-cause order alleged that respondent had repeatedly violated section 1.76 of the rules in that he failed to respond to an official notice of violation mailed on February 4, 1960, and a followup letter dated April 13, 1960. The official notice of violation charged that respondent had operated radio station 1W1324 in violation of section 19.61 of the Citizens Radio Service rules. Such notice expressly requested respondent to reply within 10 days. The Commission's letter dated April 13, 1960, advised the respondent of his failure to reply to the official notice of violation and requested that a response be submitted within 15 days from the date of that letter. No reply was received to the Commission's letter.

3. In addition to the foregoing, the show-cause order detailed the procedural rights of the respondent, including his right to a waiver of hearing, if he so desired, and to submit a statement in mitigation or justification. No reply to the show-cause order was received by the Commission, and accordingly by order released March 1, 1962, the Acting Chief Hearing Examiner terminated the proceeding and certified the matter to the Commission in accordance with section 1.78 of the rules.

4. The official notice of violation mailed on February 4, 1960, the followup letter, and the order to show cause were sent to the respondent

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at the address furnished by him in his application for station license. The official notice of violation was forwarded by the post office to a second address and thereafter returned by them with the notation: "Moved; no forwarding address." The followup letter also was sent to the respondent's address of record, forwarded, and eventually returned to the Commission with the post office notation: "Notified 4-20; unclaimed." Thereafter the Commission made several unsuccessful attempts to locate the respondent and to serve a copy of the official notice of violation on him. The order to show cause, also sent to him at his address of record, was likewise returned by the post office. No response has been received to any of the Commission's correspondence or to the order to show cause. We have previously held that it is incumbent upon all licensees to provide a mailing address where they can be reached and that a licensee is chargeable with the receipt of official communications delivered to his address of record (*John Vella*, 29 FCC 799; *Florida Marine Corp.*, 30 FCC 517), and we reaffirm our holdings in this regard. (See sec. 1.56 of the rules.)

5. In view of the above, there can be no other conclusion than that the respondent has repeatedly violated section 1.76 of the Commission's rules as charged in the order to show cause in this proceeding.

6. In view of the respondent's failure to provide the Commission with a mailing address where he can be contacted and his consequent failure to reply to the above-described communications and to the order to show cause, the Commission has no basis upon which to predicate a finding that the respondent is interested in the continued use of his radio station or that such station will be operated in compliance with law in the future. It is, of course, axiomatic that the orderly and effective administration and regulation of the Safety and Special Radio Service, virtually all of which involve the shared use of frequencies, require that licensees operate their radio stations in accordance with the applicable rules and regulations. The optimum and efficient usage of frequencies compels it. It is equally essential that licensees respond promptly and satisfactorily to all Commission communications, and particularly so when such communications involve alleged rule violations. Under the circumstances of this case the Commission cannot condone the actions of respondent in failing to reply to Commission correspondence, nor can it justify any action less than revocation of the station license as contemplated by the order to show cause.

Accordingly, *It is ordered*, This 16th day of May 1962, that the license of Ralph M. Boyd for radio station 1W1324 in the Citizens Radio Service *Is revoked*, effective June 25, 1962, and that a copy of this order of revocation shall be served upon the said licensee at his last known address, 330 Chapen Terrace, Springfield, Mass.

32 F.C.C.

BERKSHIRE BROADCASTING CORP. ET AL., DOCKETS NOS. 13069 AND 13071 :

Application of Berkshire Broadcasting Corp. for construction permit for new standard broadcast station at Hartford, Conn.; dismissed. Application of Grossco, Inc., for construction permit for new standard broadcast station at West Hartford, Conn.; granted.

Public Law 86-752 and rules promulgated thereunder.—Applicability to cases in process.

Section 307(b) of the act.—Applicability to lone remaining applicant.

Section 311(c) (3) of the act and former section 1.363(b) of the rules.—

Withdrawal of competing applicant and merger with remaining applicant.

Section 3.24(b) of the rules.—Interference to existing stations.

Section 3.28(d) (3) of the rules.—The 10-percent rule.

Section 3.182(a) (1) (ii) of the rules.—Protection to class I-B stations.

Section 3.186 of the rules.—Adequacy of field intensity measurements.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON 25, D.C.

<p>In re Applications of BERKSHIRE BROADCASTING CORP., HARTFORD, CONN. GROSSCO, INC., WEST HARTFORD, CONN. For Construction Permits</p>	}	<p>Docket No. 13069 File No. BP-12917 Docket No. 13071 File No. BP-13141</p>
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APPEARANCES

Stanley S. Neustadt, for Berkshire Broadcasting Corp.; *Edgar W. Holtz* and *Howard F. Roycroft*, for Grossco, Inc.; *Philip G. Loucks*, *Maurice M. Jansky*, and *Carl H. Imlay*, for Interstate Broadcasting Co., Inc.; and *Kenneth A. Finch*, for Chief, Broadcast Bureau, Federal Communications Commission.

DECISION

(Adopted May 23, 1962)

BY THE COMMISSION: COMMISSIONERS MINOW, CHAIRMAN; AND BARTLEY NOT PARTICIPATING; COMMISSIONER HYDE DISSENTING.

1. The subject applications were severed for separate hearing from a larger proceeding originally involving a total of eight applications for new standard broadcast facilities.¹ The two applicants are no longer in competition; rather, they seek dismissal of Berkshire and grant of Grossco, the former to have an option to purchase a 25-percent interest in the latter. Because of possible objectionable interference by Grossco to station WBAZ, Kingston, N.Y., the permittee of that station was

¹ See orders herein released on Aug. 10, 1959 (FCC 59-853), and Oct. 3, 1960 (FCC 60-1147).

made a party respondent to the proceeding.² Pursuant to direction of the U.S. Court of Appeals, Interstate Broadcasting Co., Inc., licensee of station WQXR, New York, N.Y., was subsequently added to the proceeding as a party respondent.³

2. By her initial decision released herein on September 13, 1961 (FCC 61D-140), Hearing Examiner Annie Neal Huntting would approve the Grossco-Berkshire merger arrangement and associated details, would dismiss the Berkshire application, and would grant that of Grossco. Oral argument before the Commission en banc was held March 1, 1962, on exceptions filed by Interstate and the Commission's Broadcast Bureau.⁴ Subject to the comments and modifications set forth below and in the appendix hereto, the examiner's initial decision is adopted.

3. Grossco seeks to construct a new class II standard broadcast station in West Hartford, Conn., the station to operate daytime only on the frequency 1550 kc at a power of 1 kw. It would bring a first transmission service and a seventh reception service to West Hartford, a "New England town" with a 1950 urban population of 41,452 persons. Within its normally protected contour it would serve 482,458 persons in 676 square miles.⁵ None of these persons presently has fewer than seven other primary services. The Grossco proposal would cause objectionable interference to only one existing station, station WBAZ, Kingston, N.Y. (See footnote 2, supra.) This interference, which would be cochannel in nature, would affect 350 persons in 11 square miles, the figures representing 0.4 percent and 1.35 percent of WBAZ's present populations and areas. The affected persons are presently served by a minimum of nine other stations.

4. Under the foregoing circumstances, there is no question but what the need for Grossco's service outweighs the need for the service to be lost by reason of interference. Cf. *Red River Valley Broadcasting Corporation v. F.C.C.*, 106 U.S. App. D.C. 333, 272 F. 2d 562, 19 R.R. 2028 (1959); *Interstate Broadcasting Company, Inc. v. F.C.C.*, 105 U.S. App. D.C. 224, 265 F. 2d 598, 18 R.R. 2083 (1959). The examiner reached this result, but did so independently of the first-transmission feature of the Grossco proposal. This exclusion by the examiner is the basis of Bureau's two exceptions to the initial decision, Bureau being of the view that the latter feature is the most significant aspect of Grossco's application. Although a grant to Grossco is in order whether or not it is given credit for the transmission aspects of its proposal, the Commission deems the question of sufficient importance to warrant some elaboration here.

² The permittee of WBAZ is Big River Broadcasting Corp. WBAZ was originally represented by Berkshire's counsel. Prior to hearing on Grossco's application, such counsel withdrew his representation of WBAZ and informed WBAZ of the upcoming hearing. WBAZ indicated that no one would represent it at the hearing, and it did not participate further in the proceeding.

³ See *Interstate Broadcasting Co., Inc. v. F.C.C.*, 109 U.S. App. D.C. 260, 286 F. 2d 539, 20 R.R. 2121 (1960), and the order herein released on Apr. 7, 1961 (FCC 61-455).

⁴ The Bureau does not except to the examiner's ultimate result.

⁵ A grant in the Newton-Dedham, Mass., proceeding could reduce Grossco's service figures to either 477,403 persons in 663 square miles or 449,577 persons in 475 square miles. See initial decision of Examiner Huntting in *Newton Broadcasting Company*, released May 3, 1961 (FCC 61D-62). And see, also, memorandum opinion and order in the proceeding, released Apr. 30, 1962 (FCC 62-437), reopening the record on enlarged issues.

5. The Commission's designation order of August 10, 1959, contemplated only a standard section 307(b) comparison between Berkshire's application for Hartford and Grossco's application for West Hartford. A "separate communities" issue was added by the Commission on its own motion by memorandum opinion and order herein released on April 22, 1960 (FCC 60-413).⁶ It is Bureau's position that not only the standard section 307(b) issue (issue 13) but also the separate communities issue (issue 12) are moot with a dismissal of the Berkshire application. However, because "consideration of 307(b) factors is necessarily implicit where one of the ultimate questions to be decided is whether the need for the new service is greater than the need for the service to be lost by reason of interference," the examiner viewed the separate communities issue as "still relevant and material to the Grossco application." Accordingly, on the basis of her assessment of the *Huntington Park* case⁷ and what Bureau terms a "thumbnail 307(b) sketch" of Hartford and West Hartford, she concluded that such locations "may not be considered as separate communities for section 307(b) purposes." The effect of her ultimate grant to Grossco is that although a station may be located in West Hartford, only the reception features of such a station may be considered for any 307(b) purpose.

6. We agree with Bureau that the *Huntington Park* aspects of the case disappear with a dismissal of the Berkshire application.⁸ It is important to note here that no party to this proceeding has sought the addition of a disqualification issue based on section 3.30(a) of the rules. Accordingly, West Hartford must be regarded as eligible for standard broadcast facilities, and the Commission is satisfied that West Hartford is of sufficient size and importance to warrant the establishment of a class II station there.⁹ This being so, Grossco is entitled to be given full credit for the transmission aspects of its proposal in the section 3.24(b) determination necessary in this proceeding.¹⁰ For the foregoing reasons the substance of Bureau's exceptions is granted, and paragraphs 6 through 11 of the initial decision should be regarded as modified hereby.

⁶In another memorandum opinion and order herein released on the same day (FCC 60-412), the Commission denied as an untimely filed petition to enlarge issues a pleading filed Oct. 6, 1959, by Berkshire, such pleading raising the question as to the separateness of Hartford and West Hartford. At the time of these two actions there was pending before the examiner a petition by Berkshire (filed Apr. 6, 1960) to dismiss its application, the petition making mention of the fact of the merger agreement between Berkshire and Grossco. Had the Commission been aware of this petition, it would have been appropriate to condition the addition of the issue in question on a denial of such petition.

⁷*Huntington Broadcasting Company*, 5 R.R. 721, 6 R.R. 569, affirmed sub nom. *Huntington Broadcasting Company v. F.C.C.*, 89 U.S. App. D.C. 222, 192 F. 2d 33, 7 R.R. 2030 (1951).

⁸Cf. *Northwest Broadcasters, Inc.*, 30 FCC 896, 21 R.R. 743 (1961), where the failure of the Seattle, Wash., applicant to comply with sec. 3.28(c) [now 3.28(d)] of the rules rendered it unnecessary to determine whether suburban Bellevue was a separate community.

⁹In the *Northwest Broadcasters* case (see footnote 8), Bellevue, with a population of 10,600 persons, was assigned a class II station. As previously pointed out, the population of West Hartford exceeds 40,000 persons.

¹⁰Cf. *Charles J. Lanphier*, 31 FCC 212, 20 R.R. 282 (1961), where the applicant for a class II station for suburbs of Minneapolis, Minn., would have been entitled to a "first local" preference except for the special circumstances of his specifying suburban location. And see *WPGC, Inc.*, 30 FCC 646, 20 R.R. 1053 (1961), where an application by a class II station in a suburb of Washington, D.C., to identify as a Washington station was denied, in part, because a grant would have deprived the county involved "of the one transmission facility presently available therein."

7. As previously indicated, Interstate Broadcasting Co., Inc., licensee of class I-B station WQXR, New York, N.Y. (1560 kc, 50 kw, U), was made a party to the proceeding by order released April 7, 1961. (See par. 1 and footnote 1, supra.) It had sought intervention by petition of October 16, 1959, but this petition was denied by order of the Chief Hearing Examiner, released October 30, 1959 (FCC 59M-1444). On petition for review, filed by Interstate on November 6, 1959, the Commission sustained the Chief Hearing Examiner by memorandum opinion and order released January 29, 1960 (FCC 60-116). Interstate's court appeal was filed on February 12, 1960, and by order released February 19, 1960 (FCC 60-166), the Commission denied a request by Interstate that the scheduled hearing herein be stayed pending court action on such appeal. The court opinion allowing intervention by Interstate was released on December 22, 1960. Meanwhile, Berkshire filed its petition to dismiss its application on April 6, 1960; the examiner accepted an amendment to the Grossco application looking toward a merger of the Grossco and Berkshire interests by order released April 19, 1960 (FCC 60M-686); the Commission severed the Grossco and Berkshire applications from the larger proceeding by order released October 3, 1960; and the hearing on the latter two applications was completed on October 26, 1960.

8. Following Interstate's being made a party to the hearing, the examiner apprised the parties of the issues she regarded as still applicable to the proceeding.¹¹ Among those labeled as moot by the examiner were a city-coverage issue as to Berkshire (issue 6), a standard 307(b) issue as to Berkshire and Grossco (issue 13), and a contingent comparative issue as to Berkshire and Grossco (issue 14). When it became clear that only the Grossco application was to be prosecuted, those issues which contemplated an application by Berkshire ceased to be pertinent in the proceeding, and the examiner's ruling was the only one possible. This announces no new rule of law by the Commission as examination of past cases will affirm. See, e.g., *Suburban Broadcasting Corp.*, 29 FCC 969, 19 R.R. 853 (1960); and *Cal-Coast Broadcasters*, 29 FCC 1009, 20 R.R. 906 (1960), and 30 FCC 631, 20 R.R. 910 (1961).

9. The case came on for further hearing on June 28, 1961, and the examiner proceeded de novo on the surviving issues.¹² Grossco submitted anew the whole of its direct case, and Interstate was accorded full rights of cross-examination and rebuttal. In her initial decision thereafter issued, the examiner considered Berkshire's petition to dismiss and the merger arrangement under the provisions of section 1.363 (b) and (c) as it was in effect at the time the petition to dismiss was filed (April 6, 1960). She determined the arrangement and associated

¹¹ Among them was the "separate communities" issue heretofore considered.

¹² By memorandum opinion and order herein released June 23, 1961 (FCC 61-776), the Commission denied a petition by Interstate seeking authority to introduce evidence as to the extent and nature of the interference to be suffered by WQXR between its normally protected contour (0.5 mv/m and its 0.1-mv/m contour and as to existing and proposed programing in such interference area. By order herein of June 28, 1961 (released June 30, 1961; FCC 61-385), the Commission denied a request by Interstate for temporary stay of hearing. By memorandum opinion and order herein released July 25, 1961 (FCC 61-910), the Commission denied a petition by Interstate seeking consolidation into one hearing of all pending applications which would cause interference to WQXR between the above contours.

details to be consistent with the public interest, dismissed the Berkshire application and granted that of Grossco.¹³

10. Interstate is troubled by all of the foregoing, the trouble deriving from the following sequence of events: (a) on September 30, 1960, there was enacted into law Public Law 86-752, effecting amendments to certain sections (including secs. 309 and 311) of the Communications Act, the amendments relating, among other things, to the designation of applications for hearing, to notice requirements for broadcast applications, and to agreements for the withdrawal of mutually exclusive applications. (b) By report and order of November 16, 1960 (FCC 60-1381), the Commission amended section 1.362 of its rules (effective December 12, 1960) to implement the new act requirements as to designation of applications for hearing and notice requirements by broadcast applicants.¹⁴ (c) By report and order released January 13, 1961 (FCC 61-56, 20 R.R. 1669), the Commission amended sections 1.311, 1.312, 1.316, and 1.363 of its rules (effective February 20, 1961), thereby establishing new procedures to be followed in the event of a proposed withdrawal of a mutually exclusive application.

11. On the basis of the foregoing act and rules changes, and on the basis of language appearing in the court opinion allowing intervention¹⁵ and language appearing in the Commission opinion severing the Grossco and Berkshire applications,¹⁶ Interstate would push the Commission, the examiner, Grossco, and Berkshire back beyond the original hearing by the examiner, beyond the severance order, beyond the Berkshire petition to dismiss an associated merger agreement, beyond the Commission's original designation order, and apparently as far as the original filings by Berkshire and Grossco, canceling, mootng, or otherwise rendering ineffective virtually everything that has taken place since the proceeding's inception. Among other things, Interstate would require (a) that the Commission redesignate the Grossco and Berkshire applications on such issues as still obtain as to such applicants, notifying them and all known parties in interest of such issues [sec. 309(e) of the act (as amended) and sec. 1.103 of the rules];¹⁷ (b) that, following such designation for hearing, Grossco and Berkshire be required to give local notice of the hearing in the presently prescribed form [sec. 311(a)(2) of the act (as amended)]

¹³ As previously pointed out, she resolved the sec. 3.24(b) interference issues in favor of Grossco. (See par. 4, supra.) Additionally, she concluded that there would be no violation of sec. 3.28(c)(3) [now sec. 3.28(d)(3)], and that Grossco's antenna system would not constitute a hazard to air navigation.

¹⁴ By public notice released May 12, 1961 (FCC 61-609, 21 R.R. 591), the Commission announced that the required notice must be given in all cases designated for hearing on or after Dec. 12, 1960, even if the application was filed prior to that date.

¹⁵ "The order denying intervention is therefore reversed and the Commission is directed to allow Interstate to intervene in the comparative proceeding."

¹⁶ "Berkshire's petition to dismiss is not before us for consideration; hence, we are not ruling on the merits of that petition, nor have we considered, in the light of sec. 311(c), as amended by Public Law 86-752, 86th Cong., the agreement underlying that petition."

¹⁷ The Commission's original designation order, of course, specified the issues for the hearing; following the Commission's order making Interstate a party, Interstate formally indicated that it would "appear and participate in the hearing to be held on the issues stated, and as they may be modified or enlarged"; Interstate duly appeared at and participated in the prehearing conference and hearing session announced by and held by the examiner; and Interstate evidenced an awareness of all issues previously specified and was informed by the examiner as to the issues she regarded as "still relevant and material." (See par. 8, supra.) Thus, the Interstate contentions as to "no notice" reduce to and repeat the claim that the Commission and the parties must retrace the steps previously taken. As to the sufficiency of Interstate's notice generally, see *Technical Radio Laboratory v. Federal Radio Commission*, 59 U.S. App. D.C., 125, 127, 36 F. 2d 111, 113 (1929).

and section 1.362 of the rules];¹⁸ and (c) that Berkshire and Grosso be required to file a joint request for approval of the agreement prior to filing a written petition to dismiss the Berkshire application, such agreement to be considered, in the first instance, by the Chief Hearing Examiner [sec. 311(c) of the act (as amended) and secs. 1.311, 1.312, 1.316, and 1.363 of the rules].¹⁹ Thereafter, apparently, the examiner would be permitted to reconduct the hearing forming the basis of her initial decision.

12. A person whose claim of intervention rights is upheld by the court is, of course, entitled to a full hearing upon remand of the case to the Commission.²⁰ This means that he must be accorded "the right to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts."²¹ It does not mean, however, "as appellant seems to think, that a party may require retracing all steps taken before the stage at which his right to come in arises or that he may wander through the record upon issues affecting other parties, but not himself substantially."²² Such an intervenor cannot be permitted to "run away with the hearing, nullify all that has gone before the intervention, or unduly extend the hearing beyond what fair protection of his rights and the public interest may require."²³

13. A review of the procedures followed by the Commission and the examiner after the remand by the court of appeals—detailed here and in the initial decision—makes it clear that Interstate has not had less than the full hearing to which it was entitled. Reading the remand opinion in the light of the authority above referred to, there can be no question but what Interstate took the proceedings before the examiner as it left them when it was first denied intervention, and subject to such progress, action, and events occurring in its absence as did not affect its own rights in any substantial manner. When Interstate was denied by the Chief Hearing Examiner, the Grosso and Berkshire applications had already been set for hearing on specified issues in accordance with all required procedures. The

¹⁸ In support, Interstate cites *Nicholasville Broadcasting Co.*, FCC 61-692. But there, the applications were designated for hearing after the 311 amendments and after Dec. 12, 1960 (see footnote 13, supra), and the argument here presupposes that the Commission was required to redesignate the applications for hearing after the court remand. Thus, this contention merges into the previous one.

¹⁹ Here Interstate relies on *William R. Packham*, FCC 60-1457, 20 R.R. 1048; *S&W Enterprises, Inc.*, FCC 60M-2101, 20 R.R. 1134; FCC 61M-113, 21 R.R. 91; FCC 61M-217, 21 R.R. 95; FCC 61-457, 21 R.R. 96(a); and *Martinsburg Broadcasting Co.*, FCC 61M-157, 21 R.R. 96(e). These cases involved bare dismissal agreements and not merger agreements, and in each case the agreement was filed after the 311(c) amendments. In the first case (released Dec. 13, 1960), the Commission noted that merger agreements are initially considered by the hearing examiner pursuant to sec. 1.363 of the rules. It went on to prescribe an interim procedure for the consideration of dismissal agreements prior to the promulgation of revised rules under the sec. 311(c) amendments, specifying that such agreements should be initially considered by the Chief Hearing Examiner. In the later cases, the Chief Hearing Examiner was acting in accordance with such interim procedure.

²⁰ *Elm City Broadcasting Corporation v. U.S. et al.*, 100 U.S. App. D.C. 255, 235 F. 2d 811, 13 R.R. 2199 (1956); *Virginia Petroleum Jobbers Association v. F.P.C.*, 105 U.S. App. D.C. 172, 265 F. 2d 364 (1959). *Public Service Commission v. F.P.C.*, 109 U.S. App. D.C. 66, 284 F. 2d 200 (1960), also cited by Interstate, adds no more, it merely stating that where a party appeals a denial of intervention, the Commission cannot destroy the court's jurisdiction by taking final action in the proceeding while the appeal is pending.

²¹ *U.S. v. Storer Broadcasting Co.*, 351 U.S. 192, 202, 13 R.R. 2161, 2168 (1956).

²² *National Broadcasting Co., Inc. v. F.C.C.*, 76 U.S. App. D.C. 238, 254, 132 F. 2d 545, 561 (1943).

²³ *Ibid.* at pp. 255 and 562, respectively.

various severances, issues, changes, and other interlocutory actions taken while the appeal was pending concerned Interstate in no respect. Similarly, the filing of the petition to dismiss and related documents by Berkshire and Grossco and the examiner's acceptance of the amendment to the Grossco application resulted in no prejudice to Interstate, and it was free to contest the dismissal petition or otherwise attack the propriety of the entire merger arrangement, the whole of the matter continuing to be before the examiner. The only circumstance of possible prejudice to Interstate was the holding of the original evidentiary hearing, and the examiner fully removed any such prejudice by proceeding de novo in this respect upon Interstate's admission to the hearing. From the fact that the court directed intervention "in the comparative proceeding" [emphasis added] Interstate seeks to infer that the opinion had the effect of canceling all that had transpired in Interstate's absence, including the Berkshire petition to dismiss. However, there is no evidence that the court had been informed of such petition, and, in any event, the proceeding continued to be "comparative" in that the petition had not as yet been acted upon.

14. Nor do we read the Communications Act amendments as imposing retrospective requirements on the Commission or its applicants so as to necessitate the redoing of things lawfully done on the basis of previous authority. In light of congressional awareness that any amendment to the act finds the hundreds of Commission cases in various stages of progress or completion, we cannot believe that retrospective intent—with its resultant cancellation of vast numbers of actions lawful when taken—would be left by Congress to inference or speculation. As to the applicability in a particular case of the various act amendments and the rules amendments effected thereunder, the only reasonable test is whether the applications involved have proceeded beyond the stage contemplated by such amendments. Applying this test to the instant case, it can be seen, for example, that the applicants need not be required to publish the notices of the hearing contemplated by section 311(a) of the act and section 1.362 of the rules, and that the merger agreements need not be resubmitted in the form specified by section 311(c)(2) of the act and section 1.316 of the rules.²⁴ On the other hand, the agreements in question have not heretofore been considered by the Commission, and the application of section 311(c)(3) of the act to this phase of the proceeding is entirely appropriate.

15. The Commission has reviewed the record with respect to the circumstances and agreements pertaining to the proposed dismissal of the Berkshire application, the proposed payments by Grossco to Berkshire, and the proposed merger of the Grossco and Berkshire interests. In such record there is no basis for disturbing the examiner's findings and conclusions in the foregoing regards, and Interstate does not suggest otherwise. Accordingly, such findings and conclusions are hereby expressly affirmed.

²⁴ Such agreements having been previously and properly submitted to the examiner, no purpose but delay would have been served by rechanneling them to the Chief Hearing Examiner under the new sec. 1.363 of the rules.

16. A number of Interstate's exceptions are directed to the examiner's admission of and reliance on 1950 census data at a time when 1960 census data was available to the parties. The Commission is in accord with the examiner's position in this matter, but would add the grounds for distinguishing *Creek County Broadcasting Company*, FCC 61-913, 21 R.R. 816 (1961), and *Radio Crawfordsville, Inc.*, FCC 61-914, 21 R.R. 818 (1961), cases relied upon by Interstate. In each of those cases the 1960 data were not available to the petitioning parties prior to the closing of the record, and such parties advanced allegations that the new data would materially affect the evidence under the interference issues. Here, the 1960 data were available, but Interstate chose not to take advantage of the examiner's offer to admit it on rebuttal; additionally, at no time has Interstate done more than speculate as to whether the new figures would significantly alter the population showings made by Grossco. Under the foregoing circumstances, Interstate cannot be heard to complain.

17. A similar result must be reached with respect to those exceptions going to Grossco's engineering testimony and the hearsay nature of some of such testimony. Not only did Interstate fail to avail itself of the examiner's offer to subpoena the engineer who actually took the measurements in question, but also it submitted no evidence whatever controverting Grossco's technical data or the analyses based thereon. Cf. *Finley Broadcasting Co.*, 31 FCC 41, 43, 21 R.R. 422, 422d (1961), and *Monocacy Broadcasting Co.*, 28 FCC 301, 313, 19 R.R. 137, 138(1) (1960). The Commission has independently reviewed the engineering exhibits and testimony in the record and is persuaded that there has been substantial compliance with the requirements of section 3.186 of the rules, and that such exhibits may be fully relied upon for the purposes intended.²⁵ Cf. *Sunbury Broadcasting Corporation*, 31 FCC 734, 737, 22 R.R. 383, 387 (1961).

18. Interstate's remaining exceptions and arguments repeat contentions previously advanced to us, and concern themselves with Interstate's attempts to submit evidence as to the adjacent-channel interference to be suffered by WQXR beyond that station's 0.5-mv/m contour from the Grossco proposal, and from a number of other proposals pending before the Commission. Such evidence includes the areas and populations which would lose the WQXR signal beyond such contour, and the programing offered these areas and populations by WQXR. These contentions were fully considered and rejected by the Commission in its memorandum opinions and orders herein of June 23 and July 25, 1961 (see footnote 12, supra), and such actions are hereby affirmed. In light of the foregoing, and in light of our recent decision in *Patchogue Broadcasting Company, Inc.*, 32 FCC —, — R.R. — (1962), wherein the Interstate position in matters of this

²⁵ In reaching these conclusions no weight has been given to the opinions of the engineering witnesses as to the latitude permitted by the rules with respect to the taking of measurements, or as to the degree of compliance with such rules. Such opinions relate to legal interpretations of the rules, and such interpretations are within the particular province of the Commission itself. This ruling does not extend to those opinions as to whether the measurements were sufficient to permit a reliable determination of the ground conductivities and the inverse distance fields, since such opinions are technical rather than legal in character.

nature was again thoroughly considered and rejected, further treatment here of such position is neither necessary nor appropriate.

Accordingly, *It is ordered*, This 23d day of May 1962, that the application of Berkshire Broadcasting Corp. for a construction permit for a new standard broadcast station at Hartford, Conn. (1500 kc, 500 w, D), *Is dismissed*; and that the application of Grossco, Inc., for a construction permit for a new standard broadcast station at West Hartford, Conn. (1550 kc, 1 kw, D), *Is granted*, subject to the following conditions:

Permittee accepts any interference which may result from any grant in the Newton-Dedham, Mass., standard broadcast proceeding (dockets nos. 13067-13068).

Pending a final decision in docket No. 14419 with respect to presunrise operation with daytime facilities, the present provisions of section 3.87 of the Commission's rules are not extended to this authorization, and such operation is precluded.

APPENDIX

RULINGS ON EXCEPTIONS TO THE INITIAL DECISION

Exceptions of Commission's Broadcast Bureau

<i>Exception No.</i>	<i>Ruling</i>
1-2 -----	Granted in substance. (Decision, par. 6.)

Exceptions of Interstate Broadcasting Co., Inc.¹

1-3, 6, 8, 26, 30, 32-----	Denied. (Decision, pars. 10-15.)
4, 7-----	Denied. (Decision, par. 8.)
5 -----	Denied, except as to the applicability of sec. 311 (c) (3) of the Communications Act. (Decision, pars. 10-15.)
9-10, 27, 28(b), 29-----	Denied. (Decision, par. 16.)
11-13, 14 (a), 15, 19-22---	Denied. (Decision, par. 17.)
14 (b)-(d)-----	Denied. The examiner's findings adequately reflect the record.
16-17 -----	Granted to the extent set forth in decision, footnote 26.
18, 23, 25-----	Denied. (Decision, par. 18.)
24 -----	Denied. The Newton-Dedham applicants are not "existing stations" within the meaning of secs. 3.24 (b) and 3.28 (d) of the Commission's rules. <i>Columbia River Broadcasters, Inc.</i> , 32 FCC 761, — R.R. — (1962).
28 (a), (c), (d)-----	Granted in part and denied in part, as reflected in decision, pars. 6 and 8.
31 -----	Denied in light of the decision.

¹ Interstate's exceptions to conclusions are numbered 1 through 6. Herein they are regarded as numbered 27 through 32.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON 25, D.C.

In re Applications of BERKSHIRE BROADCASTING CORP., HARTFORD, CONN. GROSSCO, INC., WEST HARTFORD, CONN. For Construction Permits	}	Docket No. 13069 File No. BP-12917 Docket No. 13071 File No. BP-13141
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APPEARANCES

Stanley S. Neustadt,¹ for Berkshire Broadcasting Corp.; *Edgar W. Holtz* and *Howard F. Roycroft*, for Grossco, Inc.; *Philip G. Loucks*, *Maurice M. Jansky*, and *Carl H. Imlay*, for Interstate Broadcasting Co., Inc.; and *Kenneth A. Finch*, for Chief, Broadcast Bureau, Federal Communications Commission.

INITIAL DECISION OF HEARING EXAMINER ANNIE NEAL HUNTING

(Adopted September 7, 1961)

PRELIMINARY STATEMENT

1. The above-captioned applications were designated for consolidated hearing with six other applications for new standard broadcast stations in the New England area (*County Broadcasting Corporation*, docket No. 13064 et al.) by order of July 29, 1959, released August 10, 1959 (FCC 59-853). On April 6, 1960, Berkshire Broadcasting Corp. (Berkshire) filed a petition to dismiss its application without prejudice, contingent upon the acceptance of an amendment to the application of Grossco, Inc. (Grossco), providing for a merger of the Berkshire and Grossco interests. The amendment was accepted by order released April 19, 1960. Subsequently, pursuant to joint petition filed July 1, 1960, the applications of Berkshire and Grossco were severed from the original proceeding but retained in hearing on the issues applicable to them by memorandum opinion and order of the Commission en banc, released October 3, 1960 (FCC 60-1147). In that opinion, the Commission stated: "Berkshire's petition to dismiss is not before us for consideration; hence we are not ruling on the merits of that petition, nor have we considered, in the light of section 311(c), as amended by Public Law 86-752, 86th Congress, the agreement underlying that petition."

¹Mr. Neustadt also represented Big River Broadcasting Corp. (station WBAZ) at the first prehearing conference held Oct. 2, 1959. At the hearing session held Oct. 26, 1960, he stated that he had withdrawn as counsel for WBAZ; that WBAZ had been informed of the holding of the proceeding, and had indicated that no one would represent WBAZ at the proceeding.

2. Since it appeared that Grossco would involve objectionable interference with station WBAZ, the Commission made Big River Broadcasting Corp., permittee of station WBAZ, Kingston, N.Y., a party respondent to the proceeding. Subsequently (see par. 5, *infra*), Interstate Broadcasting Co., Inc. (Interstate), was permitted to intervene.

3. The issues specified in the Commission's original order of designation were amended by memorandum opinions and orders released December 1 and December 23, 1959, and April 22, 1960 (2). Some of the issues were rendered moot by the severance of the Grossco and Berkshire applications, and some were rendered moot by Berkshire's petition to dismiss. The issues as presently constituted,² which are still relevant and material to the Grossco application, are as follows:³

(1) To determine the areas and populations which would receive primary service from the instant proposals, and the availability of other primary service to such areas and populations.

(2) To determine the nature and extent of the interference, if any, that each of the instant proposals would cause to and receive from each other and all other existing standard broadcast stations, the areas and populations affected thereby, and the availability of other primary service to such areas and populations as are involved in interference among the proposals.

(3) To determine whether the interference received from any of the other proposals herein and any existing stations would affect more than 10 percent of the population within the normally protected primary service areas of any one of the instant proposals in contravention of section 3.28(c)(3) of the Commission rules, and, if so, whether circumstances exist which would warrant a waiver of said section.

(4) To determine whether the instant proposal[s] of Grossco, Inc. * * * would involve objectionable interference with station[s] WBAZ, Kingston, N.Y., * * * or any other existing standard broadcast stations, and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other primary service to such areas and populations.

(8) To determine whether the antenna system proposed by * * * Grossco, Inc., would constitute a hazard to air navigation.

(12) In the light of their location and urban and industrial characteristics, and other relevant factors, to determine whether Hartford and West Hartford, Conn., may be considered as separate communities for the purposes of section 307(b) of the Communications Act of 1934, as amended.

(15) To determine, in the light of the evidence adduced pursuant to the foregoing issues, which, if any, of the instant applications should be granted.

4. Under the provisions of section 1.363(c) of the Commission's rules, which were in effect at the time the petition to dismiss was

² Petitions filed by Interstate to clarify or enlarge issues and to consolidate various proceedings with this proceeding were denied by the Commission en banc. See memorandum opinions and orders, released June 23, 1961 (FCC 61-776), and July 25, 1961 (FCC 61-910). Interstate made offers of proof at the hearing as to evidence which would have been offered had these petitions been granted. See transcript, pp. A-199-204.

³ Rulings as to mooted issues were made by the hearing examiner at the prehearing conference on Apr. 18, 1961, see transcript, pp. A-26-44. Contentions by Interstate that issues 6, 13, and 14 had not been rendered moot were rejected. These issues related to the Berkshire application, to a choice between the Berkshire and Grossco proposals under sec. 307(b) of the Communications Act, and to a comparative evaluation of the Berkshire and Grossco proposals. See *Cal-Coast Broadcasters*, 29 FCC 1006, 1007 (1960), and 30 FCC 631, 633 (1961). Interstate's contention that it was not adequately apprised either of the issues designated for hearing or the scope of those issues is rejected.

filed,⁴ the hearing examiner is also required to consider herein the issue of whether a grant of the Grossco application would be in the public interest in the light of the arrangements between Grossco and Berkshire looking to a consolidation of their interests.

5. Prehearing conferences and hearing sessions were held during 1959 and 1960, and the record was first closed on October 26, 1960. However, on December 22, 1960, the U.S. Court of Appeals for the District of Columbia Circuit reversed the Commission's order (FCC 60-64) released January 29, 1960 (19 R.R. 608), denying review of an order of the Chief Hearing Examiner released October 30, 1959 (59M-1444), wherein he denied a petition for intervention in the above-captioned proceeding filed by Interstate Broadcasting Co., Inc., licensee of station WQXR, New York, N.Y. In view of the court's decision in *Interstate Broadcasting Company, Inc. v. FCC*, 286 F. (2d) 539, the Commission, on April 7, 1961, ordered Interstate made a party to the proceeding (FCC 61-455). A prehearing conference was held on April 18, 1961; hearing de novo⁵ was held on June 28, 1961, and that record was closed on the last-mentioned date.

6. Proposed findings of fact and conclusions were filed by the Commission's Broadcast Bureau and by Interstate,⁶ and a reply was also filed by Interstate.

FINDINGS OF FACT

Engineering matters

7. Grossco seeks to construct a new class II standard broadcast station in West Hartford, Conn., to operate on 1550 kc, during daytime hours only, with a power of 1 kw. Grossco's proposed 5-mv/m contour ("principal city grade signal"⁷ to residential areas) would cover Hartford, Conn., as well as West Hartford. The record does not show the extent to which Grossco's 25-mv/m contour ("principal city grade signal" to business and industrial areas) would cover the business and industrial areas of Hartford.

8. The center of West Hartford is approximately 4 miles from the center of Hartford. The urbanized portion⁸ of the town of West

⁴ Although the Commission's rules have been amended subsequently to provide different procedures, the rules in effect at the time the petition was filed provided as follows:

"§ 1.363 * * * (b) Where the applicants in a consolidated hearing for a broadcast facility by option, merger, or like arrangement effect a consolidation of their respective interests, the application which is to be prosecuted should be amended to reflect the arrangements between or among the applicants, and as amended will be retained in hearing along with the other applications, which will be dismissed by the hearing examiner's initial decision.

"(c) In all cases arising under pars. (a) and (b) of this section, the hearing examiner will consider in the initial decision the issue of whether a grant of the remaining application or applications to be prosecuted would be in the public interest in the light of the arrangement whereunder the parties effected a consolidation of their respective interests or the competing applications were either dismissed or amended and removed from hearing."

The Commission's memorandum opinion and order, released Oct. 3, 1960, states, in footnote 1, p. 1: "Berkshire's petition to dismiss is pending before the hearing examiner." At the hearing held June 28, 1961, the hearing examiner ruled that the petition to dismiss would be handled in accordance with the rules in effect at the time it was filed. See transcript, pp. A-113-114. The objections to this procedure by Interstate were overruled.

⁵ See transcript, p. A-95.

⁶ Grossco's motion to strike Interstate's proposed findings and conclusions was denied by order dated Aug. 22, 1961.

⁷ See *Manchester Broadcasting Co.*, 24 FCC 199, 221 (1958), and *Broadcasters, Inc.*, 23 FCC 705, 710 (1957).

⁸ The town of West Hartford is a minor civil division, partly rural and partly urbanized. The Commission has recognized the unique nature of New England "towns," and for pur-

Hartford is contiguous to the western boundary of the city of Hartford (population 177,397),⁹ and is part of the Hartford urbanized area. Of the 44,402 persons within the town of West Hartford, 41,452 persons reside in the urbanized portion. The Hartford urbanized area, including the city of Hartford, has a population of 300,788 persons. Hartford and West Hartford, each, have their own municipal government, governmental organizations, schools, churches, and civic and charitable organizations. The West Hartford post office is a branch of the Hartford post office, and the banks located in West Hartford are branches of Hartford banks. Both Hartford and West Hartford have substantial residential areas and numerous industries. Hartford has two daily newspapers, the Courant, a morning and Sunday newspaper, and the Times, an evening paper. West Hartford has no daily newspaper but has a weekly paper, the News.

9. All of the town of West Hartford receives primary service (2 mv/m or greater) from stations WCCC, WTIC, WPOP, WDRC, Hartford, Conn.; and WKNB, WHAY, New Britain, Conn. There are no standard broadcast stations assigned to West Hartford, but studios of standard broadcast station WKNB, New Britain, Conn. (840 kc, 1 kw, daytime only), are located in West Hartford. Hartford has the following standard broadcast stations: WDRC, 1360 kc,¹⁰ 5 kw, U; WPOP, 1410 kc,¹⁰ 5 kw, U; WTIC, 1080 kc,¹¹ 50 kw, U; and WCCC, 1290 kc,¹⁰ 500 w, D.

10. If no other proposals in the original consolidated proceeding were granted, Grossco's proposed station would provide primary service to the following areas and populations:

Contour (mv/m)	Area (sq. miles)	Population
2.0.....	187	367,925
0.5 ¹	676	482,458

¹ Normally protected and interference free.

However, Grossco has agreed to accept interference from the proposed stations of Newton Broadcasting Co., Newton, Mass. (docket No. 13067), and Transcript Press, Inc., Dedham, Mass. (docket No. 13068).¹² The effect of this interference is considered below.

11. For the purpose of determining engineering data with respect to its proposal, field strength measurements were taken on behalf of Grossco during the month of January 1960 between the hours of approximately 9 a.m. and 3 p.m. on the signals of (1) station WHDH, Boston, Mass. (850 kc, 50 kw, DA-2, U), along a radial path bearing 243° true toward Hartford, Conn.; (2) station WBAZ, Kingston, N.Y. (1550 kc, 500 w, daytime), along a radial path bearing 102° true toward Hartford, Conn.; and (3) station WCCC, Hartford, Conn. (1290

poses of sec. 3.22(d), 3.28(c), and 3.188(b) of its rules considers the city, town, or community, as the terms are used in those rules, as not including the rural portion of such New England "towns." See *Manchester Broadcasting Company, supra*, 221.

⁹ All population data are based on the 1950 U.S. census.

¹⁰ Class III station, regional channel.

¹¹ Class I station, clear channel.

¹² See memorandum opinion and order (FCC 60-1147) released Oct. 3, 1960. The Grossco application was severed from the proceeding in which the above two applications are involved.

kc, 500 w, daytime), along a radial path bearing 283° true toward Kingston, N.Y. Exhibits, based on the data so obtained, were offered in evidence and were objected to by Interstate; the objections were overruled by the hearing examiner; and the exhibits were received in evidence. Interstate argues that the measurements violate section 3.186 of the Commission's rules both in respect to spacing of the measurements and the number of measurements taken. It also objects to the measurements on the grounds of hearsay.

12. The hearsay objection will be considered first. The engineering exhibits in support of Grossco's application were qualified for admission in evidence through Robert E. L. Kennedy, Grossco's expert engineering witness. He was allowed to testify concerning the manner in which the measurements depicted therein were taken, although he was not present when the measurements were taken, and James R. Croy, the engineer who took them, was not called as a witness or offered for cross-examination. Croy was an employee of Kennedy and took the measurements under his supervision and direction. Kennedy's testimony included explanations of topographical and physical obstructions in the path of the measurement radials which prevented the taking of measurements at certain positions.

13. With respect to the procedures followed, Kennedy testified as follows at page A-143 of the transcript:

Well, I initially laid out the radial paths on topographic maps that were to be run by an engineer in my employ. He was dispatched to the Hartford area and began making the measurements along the paths that I had indicated. Each evening he called me on the telephone and gave me the data that he had measured during that day. I plotted that data myself and during the conversation of the succeeding evening would tell him whether I was satisfied that he had sufficient data. If there were obstructions in the way of getting data, I wanted to know why he couldn't get in to make the observations, and demanded a reasonable explanation for any shortcomings or any blank intervals that might occur in the radial path. He was simultaneously plotting the data as he was making it, and we were comparing figures, but it was under my direction. I was the one in authority to say whether there was sufficient data, whether I deemed it adequate, and whether it would serve the purposes for which it was intended.

Full opportunity was afforded Interstate for cross-examination of Kennedy, and Interstate did not request that Croy be subpoenaed as a witness. Nor did Interstate introduce evidence on rebuttal to show that any of the factual data relied upon by Kennedy was incorrect.

14. While Kennedy's testimony constituted hearsay upon which to the matters reported to him by the engineering employee working under his direction, it was the type of reliable hearsay upon which "responsible persons are accustomed to rely in serious affairs"¹³ and was admissible in evidence.¹⁴

15. With regard to taking field strength measurements, section 3.186 (a) (1) of the Commission's rules provides as follows:

Beginning as near to the antenna as possible without including the induction field and to provide for the fact that a broadcast antenna not being a point source of radiation (not less than 1 wavelength or 5 times the vertical

¹³ See *NLRB v. Remington Rand*, 94 F. (2d) 862, 873 (1938), cert. den. 304 U.S. 576; and *John Bene & Sons v. FTC*, 299 F. 468, 471 (1924).

¹⁴ See *On the Air, Inc.*, 6 R.R. 309, 322a (1951); and *Finley Broadcasting Co.*, 31 FCC 41, 43 (1961).

height in the case of a single element, i.e., nondirectional antenna or 10 times the spacing between the elements of a directional antenna), measurements shall be made on 8 or more radials, at intervals of approximately one-tenth mile up to 2 miles from the antenna, at intervals of approximately one-half mile from 2 miles to 6 miles from the antenna, at intervals of approximately 2 miles from 6 miles to 15 or 20 miles from the antenna, and a few additional measurements if needed at greater distances from the antenna. Where the antenna is rurally located and unobstructed measurements can be made, there shall be as many as 18 or 20 measurements on each radial. However, where the antenna is located in a city where unobstructed measurements are difficult to make, measurements shall be made on each radial at as many unobstructed locations as possible, even though the intervals are considerably less than stated above, particularly within 2 miles of the antenna. In cases where it is not possible to obtain accurate measurements at the closer distances (even out to 5 or 6 miles due to the character of the intervening terrain), the measurements at greater distances should be made at closer intervals. * * *

16. Station WHDH employs a three-tower in-line directionalized antenna, spaced 386 feet between adjacent towers or 772 feet between the end towers. The vertical height of the nondirectionalized antenna of station WBAZ is 160 feet, and that of station WCCC is 210 feet. Measurements on station WHDH should not begin closer to its transmitter site than 10 times the spacing between elements of its directional antenna system or 1.46 miles (10×772 feet); and, on stations WBAZ and WCCC, not closer than 5 times the vertical height of their respective nondirectional antennas, or 0.15 mile and 0.2 mile, respectively.

17. The following table shows the number of measurements taken on each station between critical distances and the number which should have been taken if the rules could have been complied with to the letter :

Station	From 1.46 miles (WHDH), 0.15 mile (WBAZ), and 0.2 mile (WCCC), to and including 2 miles		From 2 to 6 miles, number taken	Number prescribed, if possible	From 6 to 20 miles, number taken	Number prescribed, if possible ¹
	Number taken	Number prescribed, if possible				
WHDH.....	2 3	7	3 10	12	13	8
WBAZ.....	4 7	18	5 6	12	14	7
WCCC.....	6 7	18	7 7	12	8	7

¹ Rules also provide that additional measurements should be made in this category where it is not possible to obtain accurate measurements at the closer distances.

² This includes a measurement at 1.4 miles. Measurements were also taken at 0.65, 0.9, and 1.05 miles from the transmitter site. Additional measurements between 1.46 miles and 2 miles were not made because of a swampy area.

³ Additional measurements were not made because of Pine Hill and inaccessible areas.

⁴ Additional measurements were not made because of rugged terrain and lack of accessible roads at every 1/10-mile interval.

⁵ Additional measurements were not made because of rugged terrain on banks of the Hudson River and because the Hudson River crossed the radial.

⁶ Additional measurements were not made because of a housing development which limited accessibility to measurement locations. However, Kennedy admitted that some additional measurements might have been made on a lane into a country club between point 1 at 0.7 mile and point 2 at 1.35 miles.

⁷ Additional measurements were not made in between 2 points (point 9 at 2.9 miles and point 10 at 4.2 miles) because of inaccessible terrain due to a range of hills. Kennedy did not know why an additional measurement was not made on a trail between 2 other points (points 14 at 5.2 miles and 15 at 6.8 miles).

With respect to *total* measurements, however, the rules provide that where the antenna is rurally located and unobstructed measurements

can be made, there shall be as many as 18 or 20 measurements on each radial. This *total* was complied with on each radial.

18. The expert engineering witness of the Commission's Broadcast Bureau was of the opinion that the Commission's rules permit some latitude in deciding where and how many measurements to take; that the above measurements were sufficient to permit determination of the ground conductivity and inverse distance fields on each of the pertinent radials; and that the factual information developed from the above measurements was reliable. Both the expert engineering witness of Grossco and the expert engineering witness of the Commission's Broadcast Bureau expressed the opinion that the above field strength measurements substantially comply with the specifications in section 3.186 of the rules.¹⁵

19. No engineering evidence or testimony was offered by Interstate. Interstate did not challenge the accuracy of the measurement data analysis or the location of pertinent field strength contours derived from the measurements.

20. On the basis of the foregoing, it is found that the above field strength measurements are acceptable and should be relied upon in the absence of any contradictory evidence in the record.

21. On the basis of the field strength measurements taken on station WHDH to establish the ground conductivity on a path between Newton and Dedham toward the proposed site of Grossco, the areas and populations affected by the Newton and Dedham proposals are as follows:

Source of interference	Area (sq. miles)	Percent ¹	Population	Percent ¹
From Newton.....	201	29.5	32,881	6.83
From Dedham.....	13	1.9	5,055	1.05

¹ Percentage of the area and population within the proposed 0.5-mv/m normally protected contour of Grossco.

The Newton and Dedham proposals are mutually exclusive and only one can be granted. Interference from the Newton proposal would encompass the area of interference imposed by the Dedham proposal.

22. Primary service (0.5 mv/m or greater) is provided by standard broadcast stations to each area of expected interference from the proposals of Newton and Dedham in the proportions indicated below, together with the minimum and maximum number of services available to various portions of the area:

¹⁵ The court has indicated that the permissible deviation from absolute letter compliance with sec. 3.186 is a matter upon which expert engineering testimony is appropriate. In *Heckscher v. FCC*, 253 F. (2d) 872, 874 (1958), the U.S. Court of Appeals for the District of Columbia Circuit said: "There is a direct conflict, therefore, as to what constitutes compliance with sec. 3.186 of the regulations. This conflict involves problems and practices in radio engineering. The issue is, of course, ultimately the legal issue of compliance, but the legal result must flow directly from resolution of the technical engineering questions involved. No authority construing the permissible deviation from the true radial under sec. 3.186 has been cited to us, and we have found none. Commonsense dictates that a technical regulatory standard, written by persons skilled in the profession of radio engineering, to be followed by others skilled in the same profession, should be construed, at least in the first instance, by radio engineers. * * * " Also see *Suburban Broadcasting Co., Inc.*, 31 FCC 16, 18 (1961).

Portions of area served (percent)	Source of interference	
	From Newton (number of stations)	From Dedham (number of stations)
100.....	5	8
75-100.....	3	1
50-75.....	1	2
25-50.....	5	0
Less than 25.....	3	2
Minimum.....	7	8
Maximum.....	11	9

23. The area, in which Grossco would provide a new primary service (0.5 mv/m or greater), receives a maximum of 14 and a minimum of 7 such services in its various portions.

24. On the basis of the field intensity measurements taken on station WBAZ in the direction of West Hartford and on station WCCC¹⁶ in the direction of Kingston, the proposed station of Grossco would receive no interference from station WBAZ but would cause interference to station WBAZ in an area of 11 square miles, including 350 persons, representing 1.35 percent of the area (818 square miles) and 0.4 percent of the population (86,333 persons) within the 0.5-mv/m normally protected contour of station WBAZ. All of the proposed interference area receives primary service (0.5 mv/m or greater) from 7 other stations, and there are a minimum of 9 and a maximum of 14 other services available to the various portions of the area.¹⁷ Grossco's proposed station would not cause objectionable interference to any other existing station, including WQXR.¹⁸

25. Interstate also objected to all the population data contained in Grossco's engineering exhibits on the basis that 1950 census data are no longer relevant, and that a determination of populations that would be served and affected in the year 1961 and thereafter should be based on 1960 population data. Although the proposed exhibits were discussed in prehearing conference over a month before the hearing, and it was apparent at that time that the exhibits, having been prepared for the hearing held in October 1960, were based on 1950 census figures, Interstate raised no objection to the use of 1950 rather than 1960 census data until the very day of the hearing. The hearing examiner overruled the objection, as untimely, in view of the special circumstances of the case; but offered Interstate an opportunity to supply data based on 1960 census figures on rebuttal. Interstate did not furnish such data for the record. (See transcript, pages A-73-83 and A-128-130.)

¹⁶ The transmitter site of station WCCC is located approximately 0.6 mile north of the transmitter site proposed by Grossco.

¹⁷ The various field strength contours of the proposed station, except for interference to station WBAZ, were determined on the basis of ground conductivities and antenna radiation as determined by use of figs. M-3 and 8, respectively, of the rules. Pertinent field intensity contours of the several other stations, except interference from station WBAZ, were based on antenna radiations for nondirectional operations obtained from the Commission's "Official List for Information Setting Forth Notified Assignments of Standard Broadcast Stations of the United States," and for directionalized stations, from directional antenna patterns on file with the Commission.

¹⁸ The question of interference to the proposed Newton and Dedham stations is not a factor in this proceeding in view of the Commission's action in severing Grossco from the proceeding involving those two applicants.

26. While it is true the Commission has required 1960 census data in some cases,¹⁹ it has also refused to consider 1960 census data in lieu of 1950 census data, even though such data became available before final decision, where the facts would not be materially affected by application of more current data.²⁰ This record contains no basis for concluding that more current data here would materially affect the facts in this case. Accordingly, Interstate's objection to the 1950 census data is without merit.

Hazard to air navigation

27. A communication from the Antenna Survey Branch of the Commission, dated August 28, 1959, states that the proposed antenna system of Grossco would not constitute a hazard to air navigation.

Merger of Grossco and Berkshire interests

28. Under release date of April 19, 1960, and upon the petition of Grossco, an order was issued by the hearing examiner accepting an amendment to the Grossco application to reflect the circumstances, terms, and conditions by which a merger of Grossco's and Berkshire's interests is to be effected. The agreement between Grossco and Berkshire, dated March 18, 1960, recites that it was brought about to eliminate or reduce the uncertainties, delays, and costs inherent in the prosecution of mutually exclusive applications, and that it seeks to resolve the differences between the applicants to the end that an additional broadcast service will be provided the West Hartford-Hartford area at the earliest possible time. The agreement provides, inter alia, that Berkshire will file a petition requesting dismissal of its application, that Grossco will file a petition requesting leave to amend its application to include the merger agreement, and that Grossco will continue the prosecution of its application as so amended.

29. The agreement further provides that Grossco is to reimburse Berkshire for the costs it has incurred in the preparation and prosecution of its application to the date of the agreement, a sum of \$10,256.87. An affidavit executed by an officer of Berkshire is appended to the merger agreement and establishes that the only consideration to be received by Berkshire for dismissing its application is that shown in the agreement. The affidavit lists the expense items incurred by Berkshire, which total \$10,256.87.²¹ An affidavit executed by an officer of Grossco recites that such items of expense appear to have been reasonably and prudently expended, and are supported by vouchers.

30. Under the terms of the agreement, Berkshire has acquired an option to purchase a 25-percent interest in Grossco. Berkshire's

¹⁹ See *T. M. Raburn, Jr., tr/as Creek County Broadcasting Company*, memorandum opinion and order, released July 24, 1961 (FCC 61-913), in docket No. 13341 et al.; and *Radio Cranfordville, Inc.*, memorandum opinion and order, released July 21, 1961 (FCC 61-914), in docket No. 12798 et al.

²⁰ *Suburban Broadcasting Co., Inc., supra*, p. 17.

²¹ Berkshire expense items are as follows:

Legal expenses.....	\$5,088.74
Engineering expenses.....	1,774.43
Travel, hotel expense, and related charges.....	2,350.00
Option on land.....	500.00
Photographs, telephone, telegraph, and out-of-pocket expenses.....	543.70
Total.....	10,256.87

right to purchase this interest is expressly made on the same basis and for the same considerations applicable to the present Grossco stockholders. As shown by the agreement, an exercise of the option would affect the capitalization of Grossco (as it is set forth in the application) in the following manner. The total issued common voting stock would amount to 9,333 shares, of which Berkshire would own $2,333\frac{1}{4}$; total issued debentures would amount to \$80,000, of which Berkshire would hold \$20,000; and 2,400 shares of nonvoting common stock, of which Berkshire would own 600, representing a 25-percent interest in Grossco in each case. The total capital of the corporation, in those circumstances, would consist of \$46,665 paid in capital for the common voting stock, of which Grossco stockholders would have paid \$35,000 and Berkshire stockholders \$11,665; and \$80,000 in loans, of which the Grossco stockholders would have advanced \$60,000 and the Berkshire stockholders \$20,000, representing 75-percent and 25-percent contributions to capital, respectively, in each case. The nonvoting common stock is issued proportionately with the debentures. Berkshire will have the right to elect one director and one officer of Grossco upon its exercise of the option and so long as it owns a minimum of 25 percent of Grossco's voting stock.

CONCLUSIONS

1. The matters for determination relate to (1) compliance with section 3.28 (c) of the Commission's rules regarding interference received; (2) air hazard; (3) interference to station WBAZ, Kingston, N.Y. (including question of whether West Hartford is a separate community from Hartford); and (4) the merger of the Grossco and Berkshire interests.

Section 3.28(c)

2. The findings show that no violation of section 3.28(c) of the Commission's rules²² would be involved since the interference received would be less than the 10 percent permitted under the rules.

Air hazard

3. The findings show that the proposed antenna system would not constitute a hazard to air navigation.

Interference to station WBAZ

4. Section 3.24(b) of the Commission's rules provides that if a proposed station will cause objectionable interference to an existing station, the proposed station will not be authorized unless it is shown that the need for the additional service outweighs the need for the service which will be lost as a result of objectionable interference.

5. Grossco proposes to operate a new standard broadcast station on 1550 kc with a power of 1 kw, daytime only, in West Hartford, Conn. Grossco's interference to station WBAZ, Kingston, N.Y., would occur in an area of 11 square miles, including 350 persons, constituting 0.4 percent of the population within the 0.5-mv/m normally protected contour of station WBAZ. There are a minimum of 9 and a maximum

²² This former sec. 3.28(c) was redesignated sec. 3.28(d), effective July 5, 1961.

of 14 other services available to the various portions of the interference area.

6. At the outset, question arises under issue 12 as to whether Grossco may be preferred on the question of need because of providing a first local outlet to West Hartford, or whether West Hartford may not be considered as a community separate from Hartford for purposes of section 307(b) of the Communications Act of 1934, as amended.

7. In *Huntington Broadcasting Company*, 6 R.R. 569, 572,²³ the Commission stated:

Hence, it is the Commission's view, as shown by our decisions, that where a principal city and a suburb are competing for a frequency, and both applicants propose to serve substantially the same areas and populations, the term "communities" as used in § 307(b) is not limited in definition to that of legal municipalities, cities, and States, but may include other community organizations, such as metropolitan districts, depending upon the facts of the proceeding. As further shown by our decision, the Commission has always viewed the question of what constitutes in any specific case, a community within the meaning of § 307(b) in the light of a combination of factors, such as (1) the type of frequency involved, (2) the coverage proposals of the respective applicants, (3) the definition and description of the use of standard broadcast stations as prescribed by the Commission's Rules and Regulations and Standards of Good Engineering Practice, (4) the definition and description of communities used by the Census Bureau, and (5) the facts adduced at the hearing concerning the proposed use of a particular frequency including the relationship and the distance between the cities where the competing applicants propose to establish their respective stations.

8. The Commission has pointed out that "there is no hard-and-fast rule by which it can be ascertained whether a particular population grouping is to be classified as a community for 307(b) purposes, and that all of the relevant facts in each case must be weighed."²⁴ Indeed, the same population grouping might be considered as one community, if a class II or III frequency were involved, and two communities, if a class IV frequency were involved, since different principles may be applied, depending on the nature of the frequency requested.²⁵ In determining the composition of the "community" involved, for purposes of section 307(b) or in connection with the definition of local outlets, the Commission has also drawn distinctions on the basis of the relative size of the two places sought to be considered as one community;²⁶ the provision of "local broadcast service" to both cities to be considered as one community, as distinguished from "local broadcast service" to one and "primary service" to the other;²⁷ and whether a smaller minor civil division is included in the boundaries of a larger minor civil division which is specified as the station community in an outstanding station license.²⁸

²³ See *Huntington Broadcasting Company*, 5 R.R. 721, 6 R.R. 569 (1950), affirmed sub nom. *Huntington Broadcasting Company v. FCC*, 192 F. (2d) 33 (D.C. Cir. 1951); and *Rossmoyne Corp.*, 7 R.R. 117 (1951).

²⁴ See *Manchester Broadcasting Co.*, supra, 224 (1958), and cases cited.

²⁵ See *Manchester Broadcasting Co.*, supra, 225; *Broadcasters, Inc.*, supra, 711; and *Rossmoyne Corp.*, supra, 142. Cf. *Wayne M. Nelson*, 26 FCC 539, 551 (1959); petition for rehearing granted, FCC 60-438.

²⁶ See *Wayne M. Nelson*, supra, 550 (relationship of 1:7—Dallas and Gastonia, N.C., located 3 miles apart, held not to be one community); *Sanford A. Schaftz*, 24 FCC 363, 380 (1958) (relationship of 5:3—Lorain and Elyria, Ohio; station in Elyria not considered as local outlet for Lorain although communities were partly contiguous).

²⁷ See *Sanford A. Schaftz*, supra, 379.

²⁸ See *WGLI, Inc.*, 24 FCC 388, 399 (1958).

9. In the instant case, the frequency applied for is 1550 kc, a class II frequency. Wide area coverage concomitant with the intended use of class II facilities is contemplated. Thus, Grossco's 5-mv/m contour will cover all of Hartford as well as West Hartford. West Hartford is contiguous to Hartford, and both are a part of the Hartford urbanized area. The population ratio of Hartford to West Hartford is about 4 to 1. The center of West Hartford is about 4 miles from the center of Hartford. Although West Hartford does not have a standard broadcast station assigned to it, there are three class III and one class I stations assigned to Hartford.

10. In view of the type of frequency involved, Grossco's proposed coverage, and the location and urban and industrial characteristics of Hartford and West Hartford, it is concluded that, with respect to the Grossco application, Hartford and West Hartford may not be considered as separate communities for section 307(b) purposes.²⁹ Thus, in determining the relative need for the proposed Grossco service as against the need for the WBAZ service to be lost by reason of interference, Grossco may not be given a preference on the basis of providing a first local transmission outlet for a community.

11. However, there are other persuasive reasons which impel the conclusion that the need for Grossco's service outweighs the need for the service to be lost by reason of interference to station WBAZ. The interference to station WBAZ is not substantial, affecting only 350 persons, constituting 0.4 percent of the population within its normally protected contour. The area of interference is well served, having a minimum of 9 and a maximum of 14 other services available. Operating as proposed, Grossco would provide a new primary service to at least 449,577 persons in an area of at least 475 square miles³⁰ which now receive primary service (0.5 mv/m or greater) from a minimum of 7 and a maximum of 14 stations. The need of over 400,000 persons for a new service (although presently receiving 7 to 14 services) outweighs the need of 350 persons, having a minimum of 9 other services available, for the service to be lost by reason of interference to station WBAZ. See *Westminster Broadcasting Co.*, 28 FCC 375, 377 (1960); *Suburbanair, Inc.*, 29 FCC 953, 956 (1960); *Knorr Broadcasting Corp.*, 25 FCC 1291, 1305 (1958); and *B. L. Golden*, 23 FCC 201, 207 (1957).

Merger of Grossco and Berkshire interests

12. The facts concerning the merger agreement have been set forth in the findings, and it is concluded that the agreement is consistent with the public interest. The sole consideration for the dismissal of the Berkshire application is that set forth in the merger agreement. Berkshire has incurred or paid expenses totaling \$10,257.87 in connec-

²⁹ Although the issue relating to a choice between Grossco and Berkshire under sec. 307(b) was mooted by Berkshire's petition to dismiss, the Commission has held that consideration of 307(b) factors is necessarily implicit where one of the ultimate questions to be decided is whether the need for the new service is greater than the need for the service to be lost by reason of interference. *Newport Broadcasting Company*, 13 R.R. 236c, 236g (1958).

³⁰ More persons in a larger area would be served in the event of the grant of the Dedham rather than the Newton proposal. See par. 21 of the findings, supra.

tion with the preparation and prosecution of its application. The expenses appear to have been legitimately and prudently incurred or expended. The record contains no evidence to the contrary. The total amount of these expenses will be paid to Berkshire by Grosseco upon the dismissal of its application and grant of the Grosseco application.

Public interest, convenience, and necessity

13. In view of the foregoing, it is concluded that public interest, convenience, and necessity will be served by the dismissal of the Berkshire application and by a grant of the Grosseco application, subject to the condition that the permittee accept any interference which may result from a grant of the applications of Newton Broadcasting Co. (Docket No. 13067, file No. BP-12884) and/or Transcript Press, Inc. (docket No. 13068, file No. BP-12901).

ORDER

Accordingly, *It is ordered*, This 7th day of September 1961, that unless an appeal to the Commission from this initial decision is taken by any of the parties, or the Commission reviews the initial decision on its own motion in accordance with the provisions of section 1.153 of the rules, the application of Grosseco, Inc., for a construction permit to operate a new standard broadcast station at West Hartford, Conn., on 1550 kc, with a power of 1 kw, daytime only, *Is granted*, subject to the condition that the permittee accept any interference which may result from a grant of the applications of Newton Broadcasting Co. (docket No. 13067, file No. BP-12884) and/or Transcript Press, Inc. (docket No. 13068, file No. BP-12901); and the application of Berkshire Broadcasting Corp., for a construction permit to operate a new standard broadcast station at Hartford, Conn., on 1550 kc, with a power of 500 w, daytime only, *Is dismissed*.³¹

³¹ This action is taken pursuant to the provisions of sec. 1.363 (b), of the Commission's rules which were in effect at the time the petition to dismiss was filed. See footnote 4 of the findings, *supra*.

WIRELIN RADIO, INC., DOCKET No. 13972:

Application of Wireline Radio, Inc., for renewal of license of station WITT, Lewisburg, Pa.; granted to the extent that the license is renewed for a term of 1 year.

Unauthorized transfer of control.—Discussed.

Qualifications as licensee.—Discussed.

Violations of Commission's rules.—Discussed.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON 25, D.C.

In re Application of WIRELIN RADIO, INC., LEWISBURG, PA. For Renewal of License of Station WITT, Lewisburg, Pa.	}	Docket No. 13972 File No. BR-3511
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APPEARANCES

Arthur Stambler, Esq. (Sharfeld, Segal, Baron & Stambler), on behalf of Wireline Radio, Inc.; and *Thomas B. Fitzpatrick, Esq.*, *Ernest Nash, Esq.*, and *Donald Rushford, Esq.*, on behalf of the Chief, Broadcast Bureau, Federal Communications Commission.

DECISION

(Adopted May 23, 1962)

BY THE COMMISSION: COMMISSIONER BARTLEY DISSENTING FROM THE DECISION AND VOTING TO DENY THE APPLICATION; COMMISSIONER CRAVEN NOT PARTICIPATING.

1. On December 29, 1961, Hearing Examiner Asher H. Ende released an initial decision (FCC 61D-182) in the above-captioned proceeding proposing grant of the application of Wireline Radio, Inc., for renewal of license of station WITT for a term of 1 year. Exceptions to the initial decision were filed by the applicant and by the Chief of the Commission's Broadcast Bureau; neither party requested oral argument on such exceptions before the Commission en banc.

2. Wireline Radio, Inc., filed on March 16, 1962, a petition for immediate final decision renewing its license for a term of 1 year. To this end, Wireline asserted that it would withdraw its limited exceptions to the initial decision. The Chief, Broadcast Bureau, does not oppose the relief requested by Wireline; nor does Wireline have any objection to deletion of paragraphs 51, 52, and 53 of the findings of fact of the initial decision as requested in the Broadcast Bureau exceptions. In view of this agreement and since such findings of fact are not essential to the initial decision, they are deleted.

32 F.C.C.

3. With these deletions it is appropriate to make the initial decision effective. It is concluded, upon consideration of the matters of record herein, that the public interest will be served by grant of the application of Wireline Radio, Inc., for renewal of license of station WITT for a term of 1 year.

4. In view of the foregoing, *It is ordered*, This 23d day of May 1962, that the petition of Wireline Radio, Inc., filed March 16, 1962, for immediate final decision renewing the license of station WITT for a term of 1 year *Is granted*;

It is further ordered, That, with the modifications noted herein, the initial decision of Hearing Examiner Asher H. Ende, released December 29, 1961, *Is made effective*; and

It is further ordered, That the application of Wireline Radio, Inc., Lewisburg, Pa., for renewal of license of station WITT *Is granted* to the extent that said license *Is renewed* for a term of 1 year.

32 F.C.C.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON 25, D.C.

In re Application of WIRELINE RADIO, INC., LEWISBURG, PA. For Renewal of License of Station WITT, Lewisburg, Pa.	}	Docket No. 13972 File No. BR-3511
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APPEARANCES

Arthur Stambler, Esq. (Sharfeld & Baron), on behalf of Wireline Radio, Inc.; and *Ernest Nash, Esq.*, and *Donald Rushford, Esq.*, on behalf of the Chief, Broadcast Bureau, Federal Communications Commission.

INITIAL DECISION OF HEARING EXAMINER ASHER H. ENDE

(Adopted December 22, 1961)

PRELIMINARY STATEMENT

1. This proceeding involves the application of Wireline Radio, Inc. (Wireline), for renewal of license for its station WITT (WITT), Lewisburg, Pa., filed on July 8, 1960. Upon consideration of this application the Commission was unable to find that a grant thereof would serve the public interest, convenience, or necessity.¹ It therefore adopted an order, released on March 14, 1961, designating the application for hearing on specified issues. These issues were concerned with the question of whether there had been an unauthorized transfer of control of station WITT; whether there had been violation of various Commission rules, relating to operating and engineering practices; and whether, in connection with the foregoing, the licensee misrepresented facts or was lacking in candor.

Background

2. *General.*—It is to be noted that there have been various interlocutory pleadings in this matter, including appeals from rulings of the examiner, requests for bills of particulars and for postponements, filed by the applicant, as well as other requests filed by the Commission's Broadcast Bureau, the only other party to the proceeding. In view of the nature of these pleadings, the relief sought therein and the apparent importance attached thereto, it appears to the exam-

¹It is to be noted that originally, by action of Jan. 25, 1961, the Commission granted Wireline a renewal for a limited period or until May 1, 1962. Thereafter, by letter dated Feb. 23, 1961, the Commission advised Wireline that for reasons set forth therein, it was setting aside its action and, thereafter, required the return of the instrument of authorization.

iner that it would be useful and pertinent to review briefly herein each of the requests made and the disposition thereof.

3. *Petition for reconsideration and grant without hearing.*—In the course of the first prehearing conference held herein on April 4, 1961, then counsel² for the applicant stated for the record that he proposed to file a petition for reconsideration and grant without hearing. Accordingly, the examiner issued an order and supplemental order after prehearing conference, released, respectively, on April 5 and 10, 1961, the effect of which would have been to postpone the hearing herein without date, provided that counsel for the applicant would file the aforementioned petition no later than April 21, 1961. The then counsel did not file the petition for reconsideration within the time specified in the supplemental order but, instead, on April 26, 1961, filed a request for deletion of specified date for filing petition. A partial opposition to this request was filed on behalf of the Broadcast Bureau on May 2, 1961. In an order released on May 9, the examiner noted that it was alleged that then counsel for the applicant had not been served with a copy of the aforementioned supplemental order,³ and did not learn of its contents until April 24, or 3 days after the April 21 deadline; that the Broadcast Bureau in its partial opposition opposed an extension of time for the filing of the petition for reconsideration beyond May 10, but apparently had no objection to consideration of such a petition on its merits if it were filed before that date; and that on May 4, then counsel for the applicant, in fact, filed his petition for reconsideration and grant without hearing with the understanding that, upon grant of renewal, the license would be assigned to Susquehanna Radio, Inc., and in this connection had alleged that an application for approval of transfer would be tendered for filing "in the immediate future." Under these circumstances, the examiner provided in his order of May 9, 1961, for the deletion of the requirement that the petition for reconsideration be filed before April 21, 1961, and postponed the hearing without date pending a ruling by the Commission on said petition for reconsideration.

4. Thereafter, on May 17, 1961, counsel for the Broadcast Bureau filed an opposition to the applicant's petition for reconsideration. Finally, on May 29, 1961, then counsel for the applicant filed a reply to the Broadcast Bureau's opposition. No application for the Commission's consent to the assignment of the WITT license to Susquehanna Radio, Inc., was filed. Instead, by letter of June 16, 1961, then counsel for the applicant advised the Commission that he and the firm with which he was associated were withdrawing as counsel for Wireline, and stated, in this connection, that they had been retained by the applicant for the purpose of presenting and prosecuting a petition for reconsideration and grant without hearing of the renewal application, which petition specifically contemplated (as noted here-

² The applicant was originally represented by Edward F. Kenehan, Esq. (Spearman and Roberson).

³ It is to be noted that then counsel for the applicant did not file a timely notice of appearance herein but, on Apr. 4, 1961, filed a petition to accept late appearance. This late appearance was accepted by order of the Chief Hearing Examiner, released Apr. 10, the same day the hearing examiner's supplemental order fixing the Apr. 21, 1961, date was released. This may account for the failure to serve counsel with a copy of the examiner's order released on Apr. 10, 1961.

inabove) the assignment of the renewed license to a new corporation, Susquehanna Radio, Inc. It was further stated in this letter that then counsel had learned that an assignment of the WITT license to this corporation "is not a likely possibility and this development has prompted us to withdraw as counsel."

5. On June 20, 1961, counsel for the Broadcast Bureau, after making reference to the aforementioned withdrawal by then counsel and noting the fact that no application requesting the Commission's consent to the assignment of applicant's license for station WITT had been filed, moved that the petition for reconsideration and grant without hearing be dismissed. On June 23, 1961, the Commission released a memorandum opinion and order denying the petition for reconsideration and grant without hearing.

6. *Further prehearing conferences.*—Upon consideration of the matters hereinabove described, the hearing examiner on his own motion issued an order, released on June 23, 1961, setting a further prehearing conference herein for July 5, 1961. WITT was not represented at this conference. However, in the course thereof the examiner was advised by counsel for the Broadcast Bureau that Arthur Stambler, Esq., the current counsel, had just been retained by the applicant. As a courtesy and convenience to such counsel, who was unable to attend this conference, such conference was postponed for 1 day, or until 9 a.m. on July 6. At the further prehearing conference held on July 6, Mr. Stambler noted an appearance on behalf of WITT. He stated that, having been retained only recently, he was entirely unfamiliar with the proceeding. Accordingly, he requested that the prehearing conference be adjourned for a week to 10 days and that the hearing itself be put off for a considerably longer period in order that he might be in a position to prepare a case in response to the issues set forth in the Commission's order of designation herein released on March 14, 1961. For the reasons set forth more fully in the examiner's memorandum opinion and order issued after this prehearing conference, and released July 10 (FCC 61M-1178), the examiner denied the request of WITT for a postponement of the further prehearing conference for a week or 10 days and, instead, scheduled a further prehearing conference for July 10.⁴

7. At the July 10 conference, counsel for WITT again requested further postponement of both the prehearing conference and the hearing itself. He indicated that he intended to file a petition for a bill of particulars, and requested that the hearing be postponed until such time as the Commission had acted on such a petition or, in the alternative, that it be postponed until such time as the Commission might act on a motion to postpone further proceedings pending action on a petition for a bill of particulars. Counsel for the Broadcast Bureau opposed these requests, but offered to cooperate with counsel for WITT by furnishing such particulars regarding the circumstances surrounding the alleged unauthorized transfer of control at issue herein as might reasonably be requested by him.

⁴ In the memorandum opinion and order the examiner rescheduled the hearing for July 13, but noted that, because of a change in his calendar, he would entertain a motion for a hearing date later in July.

8. Upon consideration of these arguments and for the reasons more fully set forth in the aforementioned memorandum opinion and order, the examiner found that good cause had not been shown for the postponements requested but that, instead, prompt and orderly disposition of the issues raised by the order of designation, when viewed in light of the circumstances which transpired since its release, required denial of such requests. The examiner, therefore, required in an order, released July 11, that a further prehearing conference be held on July 14, at which time the parties should be fully prepared to discuss all matters necessary to assure prompt and orderly procedures at the hearing and stated that it was expected, in the interim, both counsel would consult regarding the particulars that counsel for Wireline might desire to pursue regarding the alleged unauthorized transfer of control involved in this proceeding. In addition, the examiner ordered the hearing postponed until July 24, 1961.

9. At the fifth prehearing conference held on July 14, counsel for Wireline made a further motion for a 2-week postponement of the hearing on the ground that he required additional time to prepare, in the light of the Bureau's request for a change of hearing situs.⁵ Upon consideration of the views advanced by counsel for Wireline and the opposition of Bureau counsel, the examiner by order released July 18, 1961, denied the request for a 2-week postponement, but granted a postponement of 1 week, to July 31, 1961, in order to afford counsel for Wireline additional time to prepare in light of the problems allegedly raised because of the Broadcast Bureau's petition for change of situs, filed only a few days before the hearing was scheduled to start.

10. *Various interlocutory pleadings.*—While the prehearing conferences were being held and partly because of the rulings made by the examiner, the parties between them filed three additional sets of interlocutory pleadings, the first two of which required action by the Commission and the last one by the Chief Hearing Examiner. The pleadings may be summarized as follows:

(a) A "Petition for Immediate Review of the Examiner's Order Denying Continuance and Request for Postponement of Hearing Date for Preparation and Further Proceedings," filed on July 11, 1961, by Wireline; an opposition to such petition filed on July 17 by the Broadcast Bureau; and a supplement to the petition filed July 17 by the applicant.

(b) A "Petition for Commission Bill of Particulars of Charged Violations, Revision and/or Clarification of Hearing Issues and Procedures and Other Relief," filed on July 13, 1961, by Wireline; an opposition thereto filed on July 19 by the Broadcast Bureau; and a reply to the Bureau's opposition, filed on July 24, by Wireline; and

(c) The "Broadcast Bureau Petition for Change of Hearing Situs," from Washington, D.C., to Lewisburg, Pa., filed on July 12, 1961, and an opposition thereto filed on July 17 by Wireline.

11. On July 19, 1961, the Chief Hearing Examiner heard oral argument on the Bureau's petition for change of hearing situs. After such argument, he issued an order, released July 19, wherein he granted said petition and changed the place of hearing from Washington, D.C.,

⁵ As will be set forth more fully below (see pars. 10(c) and 11), counsel for the Bureau filed a petition on July 12, 1961, for change of hearing situs from Washington, D.C., to Lewisburg, Pa.

to Lewisburg, Pa. In his order he stated that a request by Wireline that any order for a field hearing should provide for at least a 2-week delay in the hearing was not properly before him, but noted that the presiding examiner had already granted a 1-week delay in his order released July 18. (See par. 9 above.)

12. On July 26, 1961, the Commission adopted a memorandum opinion and order (released on August 3 (FCC 61-941)), wherein it denied the applicant's petition for review of the examiner's order refusing a continuance of the length sought by applicant and wherein it also denied the request of applicant addressed to the Commission for a postponement of the hearing date. In this memorandum the Commission took cognizance of the petition for a bill of particulars, filed by applicant on July 13, and stated in this connection: "If the Commission ultimately grants the request for a bill of particulars, any rights accruing to the applicant as a result of such action will be preserved." On November 1, 1961, the Commission released its memorandum opinion and order (FCC 61-1273), wherein it denied the petition for a bill of particulars.

13. *Further relief sought by Wireline.*—On July 27, 1961, the applicant filed a motion with the Motions Commissioner requesting an immediate stay of the hearing pending Commission action on the request for a bill of particulars of alleged violations. This motion was denied in a memorandum opinion and order released July 28, 1961 (FCC 61M-1300).

14. *The hearing.*—Hearings herein were held at Lewisburg, Pa., on July 31 and August 1, 1961. In all, 10 different witnesses testified, 3 of whom were called by the applicant and 7 by the Broadcast Bureau, and compiled a transcript of about 500 pages. At the close of the hearing on August 1, the record was left open to allow time for the filing of certain exhibits, no later than August 11, 1961, by both the applicant and the Broadcast Bureau. The Bureau filed its exhibits timely. Applicant filed a document on August 16 in lieu of the exhibit discussed at the hearing. By memorandum opinion and order, released August 31 (FCC 61M-1421), the examiner, after noting that the Bureau did not object to its receipt, accepted this document as Wireline Exhibit No. 3, subject to the terms and conditions specified in such memorandum, and finally closed the record. Proposed findings and conclusions were filed by both parties on October 10, 1961.⁶ Replies thereto and memoranda of law, prepared pursuant to the examiner's request, were filed by the parties on October 24.

The Designated Issues

15. In its order of designation herein, the Commission noted the following:

It appearing that on or about December 15, 1959, the applicant relinquished operational control of station WITT to Robert L. Wilson and/or Central Pennsylvania Broadcasting Co., contrary to the provisions of section 310(b) of the Communications Act of 1934, as amended, and the Commission's rules and policies promulgated thereunder; and

⁶ The date originally set for such filings was Sept. 12. However, three successive postponements, the first two at the request of applicant and the last one at the request of the Bureau, were granted to Oct. 10.

It further appearing that, on September 16, 1960, the Commission issued an official notice of violation (FCC Form No. 793) to the subject station specifying instances of noncompliance with the rules and regulations of the Federal Communications Commission; and

It further appearing that, in answer to said official notice, the licensee by letter dated October 7, 1960, represented to the Commission that certain corrective action had been taken and would be taken to insure compliance with the Commission's rules; and

It further appearing that, as a result of another inspection of station WITT on February 7, 1961, Wireline Radio, Inc., was served with another official notice of violation specifying instances of noncompliance with the Commission's rules, six of which had been the basis of similar citations following the prior inspection in September 1960; and

It further appearing that the licensee's statements to the Commission with respect to the above matters contained misrepresentations and were lacking in candor; and

It further appearing that, after consideration of the foregoing, the Commission is unable to find that a grant of the subject application would serve the public interest, convenience, or necessity; and that said application must be designated for hearing on the issues specified below;

It then ordered that the application should be set for hearing on the following issues:

(1) To determine whether or not the licensee transferred control of Wireline Radio, Inc., and station WITT without obtaining the Commission's prior consent as required by section 310(b) of the Communications Act of 1934, as amended, and the Commission's rules and policies promulgated thereunder;

(2) To determine whether or not the licensee, during the period from September 1960 to February 1961, inclusive, violated the following sections of the Commission's rules and regulations: 3.39(d) (1) (VII), 3.40(b) (3) (IV), 3.46 (a) and (b), 3.47, 3.56, 3.57(a), 3.58, 3.65, 3.67, 3.93 (a) and (c), 3.111, 3.931, 17.25(a) (2), 17.38, and 17.44;

(3) To determine whether or not, in its written and oral statements to the Commission with respect to the above matters, the licensee misrepresented facts to the Commission and/or was lacking in candor;

(4) To determine whether, in light of the evidence adduced with respect to the foregoing issues, Wireline Radio, Inc., possesses the requisite qualifications to be a licensee of the Commission;

(5) To determine whether, in light of all of the above, a grant of the above-captioned application would serve the public interest, convenience, or necessity; and if so, the term for which said application should be granted.

Position of the Parties

16. *Wireline.*—Wireline takes the position that the various arrangements into which it entered did not constitute such unauthorized transfer of control as would violate the Communications Act or the Commission's rules and regulations. It is further argued that, even if there was in fact a technical violation in this respect, the surrounding circumstances indicate such a degree of mitigation and justification as to require a renewal of WITT's station license. It is pointed out that any technical unauthorized transfer took place innocently, as a result of action taken on the advice of counsel, rather than intentionally; that the facts were candidly and openly set forth to the Commission so that there was no concealment, misrepresentation, or evasion; that since Wireline would not realize any net cash after paying debts from the sale, there could be no motivation of personal profit or personal gains to Wireline's principals; and that there was no harm whatever caused

to the listening public. It is also argued on behalf of Wireline that, while it is true that there were numerous technical violations of the Commission's rules with respect to engineering, these do not afford a basis for the denial of its application for renewal. It is pointed out that, although the first two inspections showed several items of non-compliance, the most recent inspection made by the Commission indicated compliance with all relevant rules, and an evaluation on the part of the Commission's inspector that the overall operating condition was "good." It is then alleged that there is no showing in the record that any of the violations resulted in a degradation of service to the public or interference to other services. Finally, it is argued that the items of noncompliance resolve themselves into a single violation; namely, that of failure to advise the Commission of the existence of operating conditions which deviated from Commission requirements. In this connection, it is alleged that there was no need for WITT to secure prior or post Commission approval for the operations reflecting such deviations. It is also argued that there were no willful misrepresentations on the part of WITT with respect to the engineering violations; that the principals of the corporate entity had no technical experience in or knowledge of radio operations; that while immediately aware of the reports of violations as a result of the Commission's inspections, they properly left the operational aspects of these technical matters to their then experienced general manager and chief engineer; and that the technical violations resulted primarily from substantial difficulties of a financial nature which constantly beset the prominent local citizens who had been attempting to operate WITT as a community facility. In view of all the foregoing, it is alleged that the surrounding circumstances, namely, inexperience of the principals, financial difficulties, candor with the Commission, and recent improvement, all indicate that the public interest would best be served by a regular renewal of WITT's license.

17. *The Bureau.*—It is the position of the Bureau that while Wireline was organized by local citizens to provide their community with a broadcast facility, these good intentions were accompanied by a complete lack of experience or know-how. It is alleged that the officers and directors have followed a course of action, the net result of which has been to leave the operation of the station to employees and others willing to assume responsibility. The Bureau points out that, because of initial financial difficulties, Wireline has been insolvent for most of its existence and that, since late 1958, its directors and stockholders have exerted most, if not all, of their energies toward finding someone who would purchase their unprofitable venture. It is the position of the Bureau that, in their first attempt to dispose of station WITT, the officers and directors in effect abdicated their responsibility as licensees to another because they were either unwilling or incapable of performing their responsibilities in this respect. The Bureau further argues that more recently the stockholders advanced additional funds to enable the station to go back on the air only because two individuals were willing to assume complete responsibility for the operation of the station pending the outcome of the instant proceeding. It is urged that the pattern of unauthorized transfers has thus evolved from the time

WITT commenced operations. It is concluded that, as of now, the licensee is financially exhausted and its directors are individuals without experience or the capacity to operate a broadcast facility.

18. The Bureau points to the numerous violations of the Commission's engineering and operating rules found in two inspections of station WITT. It is noted that, while this "bad performance" was undoubtedly due to lack of funds, it is difficult to accept Wireline's assurances that there will be no violations in the future. The Bureau also charges the licensee with misrepresentations in that various matters which it sought to indicate had been or were being corrected were found to be present on a subsequent inspection and concludes that, in this respect, Wireline was far from candid.

19. In summary, the Bureau contends that there has been a relinquishment of control of the broadcast facility; that violations with respect to which corrective action was reported to have taken place were subsequently found to exist; that the licensee has been virtually insolvent since commencement and is still overwhelmed with unpaid debts; and that the stockholders, officers, or directors have been either unwilling or unable to operate a broadcast station, and have delegated their responsibilities to others. The Bureau, therefore, concludes that Wireline has not properly conducted itself as a licensee and that there is little upon which to base any expectation that, even if given the opportunity, it could do so in the future. On the basis of the foregoing, it is urged that the Commission cannot, consistent with its obligations under the Communications Act, find that Wireline possesses the requisite qualifications to be a licensee or that a grant of its application for renewal would serve the public interest, convenience, or necessity. Accordingly, the Bureau recommends that Wireline's application for renewal should be denied.

FINDINGS OF FACT

20. *General.*—There are two basic questions to be resolved in this matter. The first relates to the question of whether there have been any unauthorized transfers of control in violation of section 310(b) of the Communications Act of 1934,⁷ as amended, and the Commission's rules issued pursuant thereto and, in this connection, whether the licensee misrepresented facts to the Commission or was lacking in candor. The second relates to the question of whether the licensee is guilty of violations of numerous provisions of the Commission's rules relating to engineering and operation of its station⁸ and, in this connection, whether it misrepresented facts to the Commission or was lacking in candor. If these two questions are answered in the negative, it would appear to follow that its application for renewal should be granted. If, on the other hand, either or both of these questions

⁷ Insofar as is relevant hereto, sec. 310(b) of the Communications Act of 1934, as amended (47 U.S.C. 310(b)), provides as follows:

"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 * * *"

⁸ See par. 15, *supra*.

should be resolved in the affirmative, a further problem would arise as to whether the violations were of sufficient magnitude to indicate that Wireline does not possess the qualifications necessary in order to be a licensee of the Commission, or whether other or different sanctions should be applied against the licensee. Accordingly, this initial decision will be concerned first with an evaluation of the evidence of record to determine the basic factual circumstances. And secondly, if it is determined that violations have taken place, an evaluation must be made of the magnitude of such violations and of the nature of the sanctions to be imposed as a result thereof in the light of applicable precedents heretofore established by the Commission. In connection with this matter, appropriate consideration will be given to the questions of misrepresentation and candor or the lack thereof with regard to the alleged unauthorized transfers and to the alleged violations of the Commission's engineering and operating rules and regulations.

21. It further appears to the examiner that it would be useful, before attempting to consider the issues herein, to review briefly the factual background surrounding this matter. Accordingly, a brief summary of the locality involved and the past history of the station will be set forth.

22. *Background data.*—Station WITT, the broadcast facility at issue herein, is located in Lewisburg, Pa. That city is the county seat of Union County and is near the geographic center of the State of Pennsylvania. According to the 1960 U.S. census,⁹ the population of Lewisburg was 4,523, while the Lewisburg area including the suburbs had a population of approximately 10,000. Union County with a population of 25,646 is largely an agricultural area, but is also the site of a number of diversified manufacturing activities. It may be noted that Bucknell University and the U.S. Northeastern Penitentiary, a Federal penal institution, are located in Lewisburg.

23. WITT is the only local broadcast station in Lewisburg, and in Union County. According to the record, such nearby communities as Sunbury, Northumberland, Mifflinburg, Middleburg, Selingsgrove, and Milton are within the area served by station WITT. None of these, other than Milton and Sunbury, have their own local radio station. Aside from WITT, the only other locally owned communications medium in Lewisburg is a weekly newspaper.

24. Wireline, the corporation owning station WITT, was organized in 1957 for the stated purpose of constructing and operating a broadcast station at Lewisburg. According to the record, the persons organizing the corporation were motivated by the desire to have a local radio station available for local public service broadcasts and local advertising. Most of the stockholders purchased and own relatively small blocks of stock. At the time of the hearing herein, there were, in all, 44 different stockholders, no one of whom owned more than 600 of the 4,000 shares outstanding. Virtually all of the stockholders live either in Lewisburg or in the surrounding communities.

25. Broadcast operations pursuant to authorization granted by the Commission were begun on September 4, 1957. Apparently, most

⁹ All population figures are, unless otherwise stated, taken from the 1960 U.S. census reports.

members of the organizing group had no experience in the management or operation of a broadcast station. Accordingly, they engaged William D. DeWire, one of their number, who was a former time salesman for a radio station located near Lewisburg, to manage the station and conduct its day-to-day operations. Mr. DeWire, in addition to being an original organizer and stockholder, also became a director of Wireline. Although at the outset Wireline had a cash balance in excess of \$13,500, the other officers and directors discovered by the fall of 1958 that, under Mr. DeWire's management, all of this balance had been expended and that the station had, in addition, incurred debts of about \$16,000. Mr. DeWire was removed as manager and eventually resigned as an employee of the corporation some time in November 1958.

26. It quickly became clear to the management of Wireline that the station was approaching insolvency. However, WITT continued to be operated with a greatly reduced staff under the direction of one Peter E. Farrell, a director and stockholder. Matters did not improve. Accordingly, the directors of Wireline in reviewing the situation determined that the station, which had never been financially successful, had never in any given period made any profits, had never paid any dividends, and had never made any return on capital, should be disposed of to a proper purchaser in order to insure its continued and effective operation. As a result of the determination to sell this unprofitable venture, and in the stated hope that the local outlet might be continued as a source of service to the community, the officers and directors began a search for possible purchasers who might meet their standards. As will be seen, the subsequent difficulties which occasioned the transfer-of-control issue in this proceeding resulted from the attempts of the officers of Wireline to extricate themselves from their situation, as owners of an unprofitable, if not insolvent, station, while attempting to maintain what they allegedly felt was the type and grade of service appropriate for their community.

27. Both parties to the proceeding agree, and the record clearly shows, that Wireline was never able to overcome its initial financial setbacks. Furthermore, because of its principals' lack of broadcast experience and its difficulty in recruiting other capable and experienced staff, its aggregate deficit continued to grow. At the time of the hearing, this deficit increased from some \$16,000 at the end of 1958 to some \$38,000 by the middle of 1961. More than half of the current aggregate deficit is in the form of recorded judgments and the rest is comprised of such matters as back salaries, tax liens, and other bills. It is quite clear that at the time of the hearing Wireline was insolvent and, as admitted by a witness for Wireline in response to a question of its own counsel, "* * * the WITT investment is worthless and has no liquidation value as of today." This was then and is now the status of Wireline and WITT.

28. *Unauthorized transfer of control—general.*—As noted above, it was testified that the directors of Wireline were determined to assure continued operation of the station by finding an appropriate purchaser who would undertake to carry on the operations in such fashion

as to effectuate their original plan of providing the community with an appropriate local broadcast facility. One of the numerous attempts to effectuate a sale resulted in the set of circumstances which gave rise to the original unauthorized transfer-of-control issue. In addition, certain other circumstances arising more recently from the attempts of the current owners of the station to restore service after it had been cut off the air gave rise to a second set of circumstances which also pose the question of whether there was a further unauthorized transfer of control. In the following paragraphs, each of these sets of circumstances will be analyzed and evaluated.

29. *The Wilson transaction.*—After approaching a number of prospects the Wireline directors concluded an agreement in December 1959 with Robert L. Wilson, owner of Central Pennsylvania Broadcasting Co. (Central), the licensee of station WKVA, Lewistown, Pa., for the sale of the license and assets of Wireline to Central for \$26,100. According to the evidence of record, at the insistence of Wireline¹⁰ which felt that it was essential for it to have expert management, the following provisions were included in the agreement of sale:

6. Concurrently with the execution of this agreement, Manager shall assume the responsibilities of management of radio station WITT. Toward this end, Seller agrees to give Manager Seller's complete cooperation. In the event that during the term of Manager's tour of duty as Manager it becomes necessary for Manager or Buyer to advance funds for the operation of the said radio station, it is understood and agreed that Manager or Buyer, whoever shall advance said funds, shall receive forthwith at the time of such said advance, Seller's judgment note executed by officers duly thereunto authorized given to secure the same and providing for the payment of said sum or sums upon demand and with interest at 6 percent per annum.

During Manager's tour of duty as Manager, it is understood and agreed that all proceeds from the operation of radio station WITT shall be deposited in a new bank account or bank accounts to be opened with Lewisburg Trust & Safe Deposit Company with all checks and orders to pay on said account to be issued only upon Manager's signature, the proceeds of said accounts to be regarded as property of Manager.

30. Copies of the above-cited agreement were filed with the Commission on January 11, 1959, as part of the application for the approval of the transfer of the license and assets of Wireline. Thereafter on January 25, 1960, an amendment to this agreement, dated January 20, 1961, was filed with the Commission. This amendment provided in effect that it was the understanding of the parties that Mr. Wilson was to be manager under the direction and supervision of the Wireline directors and in it any intention to transfer control of the radio station or license prior to approval by the Commission was specifically disclaimed.

31. The record shows that Mr. Wilson assumed his responsibilities under the agreement with Wireline at station WITT on December 14, 1959, and functioned in his capacity as manager for some 26 weeks,

¹⁰ It is noted that Wireline alleges that Mr. Wilson's role in the management of the station was as much at his insistence as Wireline's. The record references made by Wireline to Mr. Wilson's testimony do not support this position. It is Mr. Wilson's unequivocal testimony that Wireline directors stipulated that this clause be put into the agreement.

or until June 13, 1960. It appears that, on June 8, 1960, the Commission by a so-called 309(b) letter¹¹ advised both Wireline and Central that, since an inquiry then conducted indicated that complete operational control of station WITT had been relinquished by Wireline to Central, the Commission was unable to determine that a grant of the application for assignment of license would serve the public interest, and that, unless the Commission were satisfied by a reply, the matter would have to be set for hearing. Upon receipt of this letter from the Commission, Mr. Wilson by letter dated June 13, 1960, advised the Commission that Central wished to withdraw its application for transfer of control.¹² Accordingly, the application was withdrawn and the agreement for sale terminated. It is pertinent to note that the Commission had never approved the application for transfer, but instead, as noted above, had raised questions with respect to it and indicated it might have to be set for hearing.

32. It is clear from the agreement (see par. 29 above) that the parties intended to give Mr. Wilson the broadest possible latitude in managing and operating the station, and specifically pledged themselves to give him their "complete cooperation." On the other hand, it also appears that, after signing the original agreement, the parties themselves became concerned with the implications inherent in its broad language and adopted an amendment thereto (see par. 30 above), disclaiming any intention to transfer control and retaining the right to supervise the activities of Mr. Wilson as the manager of the station for Wireline. Under these circumstances it appears to the examiner that it is first necessary to determine the nature and extent of the control exercised by Mr. Wilson over WITT during the 6 months he functioned as its manager¹³ under the agreement, and the supervision or authority over Mr. Wilson retained by the officials of Wireline. After these facts have been determined, it can be decided whether or not they result in an unauthorized transfer of control.

33. One of the indicia of control is the power over the purse. The evidence of record is clear in this respect. Mr. Wilson was authorized to and did establish a new account for the station, subject to his control. Only he or his designee could draw upon this account. No countersignature of any representative of Wireline was required on the checks drawn on this account. All receipts of WITT for billings subsequent to the time Mr. Wilson assumed his functions were deposited in this account. Mr. Wilson or his agent paid all bills of WITT

¹¹ This section (47 U.S.C. 309(b)) has since been amended. As then in effect, it provided as follows:

"(b) If upon examination of any application the Commission is unable to make the finding specified in subsec. (a), it shall forthwith notify the applicant and other known parties in interest of the grounds and reasons for its inability to make such finding. Such notice, which shall precede formal designation for a hearing, shall advise the applicant and all other known parties in interest of all objections made to the application as well as the source and nature of such objections * * *"

¹² Under the agreement with Wireline, Mr. Wilson could withdraw his application and declare the agreement void if the Commission had not approved the transfer within 6 months after the date the agreement had originally been made, or by June 11, 1960.

¹³ There is some dispute in the record as to the title Mr. Wilson held. The agreement quoted above refers to him as "Manager." He called himself "management consultant" at times. However, the true aspects of his authority and functions, not the name given him, are controlling herein. For the purposes of clarity and uniformity, the examiner will adopt the title given Mr. Wilson in the agreement—"manager."

(with certain specified exceptions),¹⁴ incurred after he assumed responsibility for the account. Finally, under the agreement the proceeds of the account were "to be regarded as property of the manager."¹⁵ Mr. Wilson was also obligated, if necessary, to advance funds for the operation of station WITT, and did so in the sum of some \$3,000. These funds were secured only by judgment notes from Wireline, then an admittedly insolvent corporate entity. The only reasonable prospect for repayment which Mr. Wilson had, therefore, would be out of the proceeds of the sale of the station to him.

34. There are also other indications of the nature and extent of Mr. Wilson's control over collateral matters affecting finances of the station. He ordered statements, billheads, and letters printed for WITT which had a format identical with that used by his station in Lewistown. The billing form has the name "The Central Pennsylvania Broadcasting Company" under the caption WITT Radio, Lewisburg. Mr. Wilson explained this to be the result of careless instructions on his part to his printer. That is, Mr. Wilson gave his printer the form used by Central's station and told him that he wanted the same thing for station WITT, without specifically telling him to delete "Central Pennsylvania Broadcasting Company" from the caption. However, the very failure to remember to give the necessary instruction is in itself revealing of Mr. Wilson's own attitude and the relationship he felt he had to station WITT. It is also worthy of note that Central made a new agreement with the landlord of the premises occupied by WITT and entered into special arrangements with the telephone company to assure prompt payment of the WITT telephone bills and prevent a discontinuance of service. Thus Mr. Wilson assumed financial responsibility for the rent and telephone bills of WITT.

35. Another of the indicia of control relates to the power over programming. The record shows that Mr. Wilson changed the programming of WITT so that it conformed "more or less to the format at WKVA" (a station owned by Mr. Wilson's Central Pennsylvania Broadcasting Co.). When asked to describe specific changes made in programming, Mr. Wilson testified that they were so numerous "* * * it would take almost the rest of the morning to tell you what they were."

36. There was considerable controversy as to the nature and extent of Mr. Wilson's authority to make the changes in question. Mr. Wilson testified that he had discussed the matter of programming with the Wireline board or some members thereof regarding programming and format, and arrived at an understanding of what was to be done even before their agreement was signed. To this extent then, the Wireline directors or some of them may have been aware of the nature of the changes Mr. Wilson proposed to make. It is, however, significant to note that Mr. Wilson testified that none of the consultations

¹⁴ The exceptions relate to certain services which Wireline had contracted for (i.e., UPI Wire Service), which Mr. Wilson did not desire to continue and, therefore, remain obligations of Wireline. In addition, exceptions included certain salaries (discussed below), of persons performing services for WITT which were paid by Mr. Wilson or organizations he owned. These exceptions, in the opinion of the examiner, emphasize rather than detract from the extent of Mr. Wilson's control over the financial operations and obligations of WITT.

¹⁵ A witness for Wireline expressed the view, in the absence of objection, that in his opinion had there been any balance in the account at the time such account was closed, it would not have "gone to Mr. Wilson."

relating to programing took place between December 11, 1959, and January 20, 1960, the crucial 6-week period during which station WITT came under Mr. Wilson's management and in which the program changes under consideration were for the most part accomplished.¹⁶

37. Wireline attempted to show that it maintained some residual control over programing. However, it was admitted that none of the Wireline directors ever disapproved of anything Mr. Wilson did with respect to the operation of WITT, so there was no occasion to attempt to determine what authority, if any, Wireline had to require changes. There apparently was no agreement between Mr. Wilson and the Wireline board covering this matter, nor did the Wireline board adopt a minute or take any other formal action to indicate its position regarding this matter.¹⁷

38. The final indication of control relates to the power exercised by Mr. Wilson in the management and operation of the station. It appears clear to the examiner that Mr. Wilson acted as if he were already the owner of WITT with full powers in its management and operations. Thus, since Mr. Wilson could not be present in Lewisburg personally¹⁸ to manage the station, he appointed a Mr. Robert Hyle, a longtime employee of Mr. Wilson's Central Pennsylvania Broadcasting Co., to act for him in managing WITT. The record shows that Mr. Wilson gave Mr. Hyle "full control as manager." This control included the power to hire and fire all employees, subject to Mr. Wilson's approval. He also had the power to incur obligations for the station and purchase supplies. Mr. Hyle was not put on the WITT payroll. Instead, during the entire period of his service at WITT, Mr. Hyle remained an employee of Central and was paid by that company. The record shows that Mr. Hyle operated only under Mr. Wilson's orders. He did not report to the Wireline board of directors or officers.¹⁹ Instead, he communicated with Mr. Wilson by telephone at least once a week and received his instructions. In addition, he visited Lewistown from time to time and while there conferred with Mr. Wilson. Mr. Wilson, in turn, made clear it was his intention to retain Mr. Hyle as his manager after the sale was consummated. In addition, Mr. Wilson indicated that after the sale, he intended to have Mr. Hyle continue to operate the station in the same manner as in the interim period because he felt that no further changes in the operation of WITT would be necessary.

39. There was considerable discussion on the record as to the authority of Mr. Peter Farrell, a stockholder of Wireline and former man-

¹⁶ This is also the period before the signing of the amendment to the agreement allegedly designed to assert the retention of control over WITT by Wireline.

¹⁷ One witness for Wireline, a member of its board of directors, attempted to testify as to what in his opinion the board would have done if it had disapproved of any action of Mr. Wilson. The examiner sustained objection to this line of testimony.

¹⁸ Mr. Wilson continued to live in Lewistown where his station WKVA is located. According to the record, Mr. Wilson made weekly visits to Lewisburg for the first month or so after signing the agreement to purchase, but thereafter did not come there more than a few times during the remaining 5 months the agreement was in effect.

¹⁹ There was some testimony that Mr. Hyle knew and spoke to officers and directors of Wireline from time to time, but those conversations appear to have related primarily, if not solely, to the question of when the Commission would approve the transfer so that Wireline would "get out of it."

ager of WITT. Wireline took the position that Mr. Farrell was in essence its representative who shared responsibility with Mr. Hyle for managing and operating the station. This position is based on testimony that Mr. Hyle consulted with Mr. Farrell regarding management and operation of the station, and in certain instances took his advice or changed his [Hyle's] mind after listening to Mr. Farrell's arguments.

40. In the examiner's opinion, the record viewed as a whole does not support the contentions regarding Mr. Farrell's authority. In the first place, it was Mr. Wilson's testimony that "Mr. Farrell's salary during this particular period was paid for by Central Pennsylvania Broadcasting Co." It is difficult to conceive that a man on Mr. Wilson's payroll would be the one who exercised control and supervision over him on behalf of Wireline. Secondly, the record does not contain any intrinsic evidence that Wireline authorized Mr. Farrell to act as its agent with supervisory power, or that Mr. Wilson conceived of him in such capacity.²⁰ Instead, Mr. Wilson described Mr. Farrell's relationship to the operations of WITT in the following terms:

You understand that Mr. Farrell was consulted in each instance, because Mr. Farrell is virtually a native here now and can tell us whom we should hire and whom we shouldn't.

41. It would appear then that Mr. Wilson, new in Lewisburg and faced with the responsibility of operating a station with an unbroken history of losses, instructed his agent, Mr. Hyle, to consult with Mr. Farrell, a man familiar with the local scene, on all matters where Mr. Farrell could be of assistance. Apparently, to insure himself of Mr. Farrell's devotion and good will, he placed Mr. Farrell on the Central payroll. Mr. Farrell apparently performed his duties conscientiously and faithfully. However, he was in the position of a valued and trusted adviser to Mr. Wilson or his agent, Mr. Hyle. There is no showing that he was required to or did consult with the Wireline officials before giving advice to Mr. Hyle or that such advice was suggested to him by the Wireline officials. In view of the foregoing and in the absence of any showing that Mr. Wilson was required to adopt Mr. Farrell's suggestions or that Mr. Farrell could veto Mr. Wilson's proposed activities, the activities of Mr. Farrell at the station cannot be taken as proof that Wireline retained control or supervision over Mr. Wilson.

42. Wireline has attempted to describe and designate Mr. Wilson as a "management consultant"; i.e., a person in an advisory capacity without power to act and to demonstrate that he acted only in such capacity. The record belies the connotation implicit in this description. Mr. Wilson himself admitted that, when he acted in such a consultative capacity, he in no way controlled the operations of those who came to him for advice and that they were free to reject his advice if they so desired. It is clear to the examiner that whatever Mr. Wilson called himself, he was far more than a consultant in the usual sense of the word. In any event, the actions taken rather than the titles used are determinative herein.

²⁰ There is some testimony that Mr. Wilson instructed Mr. Hyle that, if there was disagreement between him and Mr. Farrell, the two were to come to Mr. Wilson to talk it over. If necessary, they would go to the Wireline board. Mr. Wilson could not recall any occasion when he went to the board with any such problem.

43. The crucial question must now be faced; namely, did all of the foregoing constitute or result in a transfer of control of station WITT without consent of the Commission as required by law and the applicable provisions of the Commission's rules. It appears clear to the examiner that Mr. Wilson enjoyed all the prerogatives of control and assumed all of the obligations which flow from control of the station. Receipts were under his control; current expenses were payable on his check; he was obligated to make advances necessary to keep WITT operating; he, rather than Wireline or WITT, assumed liability for the rent and the telephone bills. Mr. Wilson's nominee managed the station with full power to hire and fire and to incur obligations; such manager reported only to him and not to the Wireline board; and the person who allegedly represented the Wireline board had no defined powers beyond consultation and, further, was on the payroll of Wilson's Central Pennsylvania Broadcasting Co., so that he could not by any stretch of the imagination be held to be a significant factor for retaining control in the hands of the Wireline board. The programming was changed to approximate that which Mr. Wilson would have continued had the sale been consummated, and operations generally were conducted in such fashion that few if any changes would have been necessary had the sale taken place.

44. It is true that legal title as such had never passed to Mr. Wilson or Central and that, furthermore, the agreement for the sale was amended so as to specify that Wireline retained control and did not relinquish it to Mr. Wilson. While the retention of legal title and a formal disclaimer of intent cannot, on the one hand, be brushed aside lightly, they cannot, on the other hand, be permitted to obscure the facts or distort the actions of the parties. Section 310(b) is not aimed merely at transfers of legal titles. It is couched in the broadest possible language (see footnote 7, supra), and is aimed at preventing the transfer of substantive control rather than only legal title or authority. The Commission has had several opportunities to consider this very problem. For example, in *Town and Country Radio, Inc.*, the Commission stated:²¹

The Commission has repeatedly held that passage of control need not be legal control in a formal sense, but may consist of actual control by virtue of the special circumstances presented. *Station KPAB*, 6 R.R. 1137; *Western Gateway Broadcasting Corp.*, 6 R.R. 1325; *ABC-Paramount Merger Case*, 8 R.R. 541, 617. * * *

In one of the earlier cases cited above, *Station KPAB*, the Commission addressed itself to the very problem now before the examiner and stated:²²

3. The passage of de facto control without Commission consent is as much a violation of section 310(b) as the passing of de jure control without consent.

It is to be noted the actions in the *Station KPAB* case which resulted in a finding of transfer of control closely parallel those involved

²¹ 15 R.R. 1035, at p. 1057.

²² 6 R.R. 1137, at p. 1143(b).

herein. Thus the Commission found that the de facto transfer existed because persons other than the licensee²³—

* * * supervised employees, hired and discharged personnel, collected accounts, and Tish [not the licensee], made up deficits, and generally exercised the rights and responsibilities of a broadcast licensee. * * *

45. In view of all of the foregoing, it is found that Wireline, the licensee of station WITT, transferred control of that station to Mr. Wilson, without obtaining the Commission's prior consent as required by section 310(b) of the act, and the Commission's rules and policies promulgated thereunder.

46. There is evidence of record of two other attempts by Wireline to sell the station after the withdrawal of Mr. Wilson. Neither of these, however, give rise to any question of the transfer of control contrary to the requirements of law and there is no need to consider them further at this point.

47. After the failure to consummate any sales agreement a crisis arose in the affairs of station WITT which culminated in a series of actions which the Bureau concludes resulted in a second unauthorized transfer of control. The factual context may be summarized as follows:

(a) In the year after Mr. Wilson's withdrawal, the condition of the station worsened continuously.²⁴ Finally, Mr. Farrell, who had reassumed responsibility as manager after the Wilson interlude, resigned because he had not been paid for a substantial period of time. Furthermore, the telephone company forced the station off the air on June 1, 1961, by discontinuing service because of unpaid bills.

(b) At that point, a group of three persons formerly associated with WITT approached the Wireline directors to discuss the restoration of service and operation of the station. These were Richard Fenstermacher and William Dyer, local residents and former employees of the station, and Joseph Pelletier, its original consulting engineer and still a stockholder, who lived and worked in Philadelphia. A meeting was held between certain of the directors and Mr. Fenstermacher as a result of which Mr. Pray, the treasurer, Wireline board member, and the person most active in its affairs, paid the telephone bill and the other two prepared the station for the resumption of operations.

(c) The Wireline directors who had originally decided that, if the renewal without hearing was not granted, they would surrender the WITT license, changed their minds. According to the evidence of record, this change was motivated by the following considerations:

- i. The strong response of local Lewisburg people during the time WITT was off the air indicating the compelling need for the local service and their strong support for it;
- ii. The renewed feeling that Lewisburg needs and deserves its own local broadcast facility;
- iii. The availability of new and experienced management personnel who showed promise of effective and solvent operations;
- iv. A feeling of obligation to creditors and former and/or present employees to meet, insofar as possible, debts owed to them;

²³ *Ibid.*

²⁴ The Bureau proposed various findings with respect to the quality of service provided by WITT in this period. No findings are being made with respect thereto, as no issues concerning programing, quality of service, or financial qualifications were included in the order of designation. The examiner considers himself bound by such order and barred from considering such matters, from making findings thereon, or from reaching conclusions in this regard. While these matters may have a bearing on other qualifications of the applicant, or upon his financial ability to continue to serve, the examiner feels that he cannot in light of the specific and narrow issues set forth in the order of designation give any consideration thereto.

v. The availability for the first time of its own independent communications counsel to prosecute its position before the Commission;²⁵

vi. The desire not to quit under fire from the FCC and to defend themselves against what are believed to be unjust accusations of impropriety which have prevented the consummation of conventional assignments of license; and

vii. The consensus that some additional moneys to WITT for these purposes was now reasonably justified.

(d) Apparently no firm instructions were given by the Wireline board of directors as to future operations. Mr. Fenstermacher indicated that he was instructed to program the station in a manner suitable to the area and to make it salable.

Apparently Messrs. Dyer and Pelletier proceeded to hire the necessary staff, certain of whom were former employees and certain of whom were new, and to fix their salaries. The programing was prepared by Mr. Dyer who left shortly thereafter. Such programing was characterized as different from that carried immediately before the station went off the air, but basically it was similar to what had been programed by the station in the past.

(e) The station was restored to the air and apparently was operated at close to a break-even basis. Originally no salaries were fixed for either Mr. Pelletier or Mr. Fenstermacher, although they discussed the matter among themselves. After working without any pay whatever for a few weeks, Mr. Fenstermacher started paying himself a salary of \$40 per week. Although the check for this salary was signed by Mr. Pray, the Wireline treasurer, the record does not show there was any particular discussion of or authorization for this salary level. In general, it also appears that there was no formal understanding of what was to be done with receipts in excess of operating expenses, nor even any discussion of or limitations on the use of receipts by the management group. This has been explained as unnecessary for the present because, so long as the station does no better than operate at the break-even point, there could be no significant sum available after expenses are paid.

48. The Bureau urges that the actions, described above, when considered in connection with the fact that Mr. Pelletier, the ostensible manager, had not, between the reopening of the station and the time of the hearing, met with the Wireline board, demonstrate again a willingness of the board to abnegate its responsibility and give control over operations to others. The examiner will now review the above-described actions of the Wireline board to determine if such a finding is justified.

49. It appears to the examiner that the instant situation differs markedly from the Wilson matter. Certainly insofar as control over and responsibility for finances are concerned, there is no evidence that the Wireline officials surrendered control. To the contrary, such control over and responsibility for these functions clearly remained with the Wireline corporate entity. Thus the board members themselves made available the money necessary to put the station back on the air; to pay salaries in June when receipts were lagging; and to secure counsel to prosecute the instant proceeding. They are also making arrangements for further loans to pay for the equipment originally bought and

²⁵ Apparently in all previous instances where Wireline sought Commission approval for the transfer of control of its station, it relied upon the services of counsel for the intended purchaser. There was no claim that Wireline was unable to find other counsel to represent it. The dual representation in each case was apparently at the request of Wireline to enable it to save the fees involved in securing counsel for itself. The record shows that there is no claim of impropriety or failure of counsel who did appear for Wireline to discharge the limited functions for which such counsel was retained.

to pay off certain other obligations.²⁶ There is some uncertainty in the record as to the extent to which the individual Wireline board members will continue to advance personal funds to the corporate entity or personally endorse obligations of Wireline to guarantee their payment. It is clear, however, that they will undertake reasonable additional advances and guarantees so long as it appears to them that there is a reasonable chance that the station can be brought to or maintained at least at a break-even point. This appears to be a proper position, as the examiner has not been cited any authority which would require more than this to demonstrate good faith on the part of officers of a corporate entity or their intent to maintain control over its activities. At any rate the situation here is diametrically opposite that which obtained in the case of the Wilson transactions. There, Mr. Wilson was obligated to and did advance funds needed for the operation of the station, and there he guaranteed payment of the telephone bill and the rent. Here, neither Mr. Pelletier nor either of his associates undertook to or did advance any funds;²⁷ here, as noted above, Mr. Pray rather than the Pelletier group paid the telephone bill; and here another director, and not the Pelletier group, advanced the money needed to pay the June salaries.

50. Further, unlike the Wilson situation, control of the WITT checking account remained in Wireline. The record shows that the checking account in which receipts were deposited is maintained in the name of Wireline. Checks are payable only upon the signature of Wireline officials rather than upon the signature of any of the Pelletier group. In fact, the record shows that Mr. Fenstermacher prepares the checks needed to pay obligations and takes them to Mr. Pray weekly or oftener if necessary for signature. At such times he may be called upon to explain or justify the check he has drawn. Here too, the situation is entirely different from that in the Wilson matter where, as noted above, Mr. Wilson had a separate account and could draw checks on his signature rather than that of the Wireline officials.

51. On other matters the record is not clear as to the extent of the authority given to or exercised by the Pelletier group. Apparently they consider themselves as employees. Thus Mr. Fenstermacher made a report of the June operations to the Wireline board in July and proposes to make weekly written reports in the future. He discusses various station problems with Mr. Pray at the time the checks are signed. Mr. Bechtel, the president of Wireline, discusses station matters, primarily relating to finances, informally from time to time. Another director also indicated that he listened regularly to the station and discusses station matters with Mr. Fenstermacher. All appear to be satisfied with operations and all were primarily concerned with the station's pressing financial problems.

52. A wide degree of authority was given the Pelletier group in staffing, everyday operations, and programing. However, a grant of

²⁶ All this was done either by having individual board members advance money to Wireline from their own resources or by having Wireline borrow money on notes endorsed by board members who thus assumed personal responsibility for repayment.

²⁷ While as noted above there was some question as to the extent that the directors of Wireline might assume further personal liability for corporate obligations, there was no question whatever that the corporate entity was the one responsible for all legitimate expenses of the station incurred by the Pelletier group.

wide latitude while retaining ultimate control is not unheard of among broadcast licensees. The examiner is aware and takes notice of the fact that it is not unknown for inexperienced or absentee owners, particularly corporate entities primarily engaged in other endeavors, to hire competent managers and under only the broadest overall supervisory standards leave all facets of station operation under the control of such managers.²⁸ While the examiner does not intend by such notice to indicate approval of these practices, or otherwise pass upon the merits of such procedure, he does indicate that, until and unless the Commission finds such practices improper or illegal, he is bound by them. It appears to the examiner that the nature and extent of the control retained by the Wireline board over Mr. Pelletier and Mr. Fenstermacher, even if the relationship is to be viewed in its most adverse light, is greater than that maintained by some absentee owners. This finding is based on the frequent meetings, the report given, and the reviewing of each check by a board member before payment. It should also be noted that the circumstances involved here were highly unusual. The station was "off the air" and emergency action was necessary. The failure to cover the various contingencies by instructions is therefore understandable and further mitigates against a conclusion that control was improperly transferred particularly since, at the time, Wireline was already on notice that the instant hearing was pending.

53. There is one final matter to be considered herein. That relates to the fact that the Pelletier group may not have acted out of pure altruism in assisting in putting the station back on the air. Apparently they have an interest in buying the station should its license be renewed and should it be offered for sale. However, all parties stated on the record that there is no agreement, express or implied, that any shares would be sold by Wireline to them. In fact, Wireline witnesses denied any present intentions of selling the station. This interest of the Pelletier group may explain its offer to put the station back on the air, and the willingness to work at the station without payment. However, this does not in itself show that there was an unauthorized transfer of control. The examiner notes in this connection that it is not unknown for persons to seek experienced assistance under promise of a share of the ownership should the help given prove fruitful.

54. On the basis of all of the foregoing, the examiner cannot find that there was a transfer of control to the Pelletier group in violation of the provisions of section 310 of the Communications Act or the applicable Commission rules.

55. *Candor with respect to control issue.*—There is no evidence of record that the applicant or any of its officers attempted to conceal or misrepresent any of the transactions or activities described above. To the contrary, the record shows that the agreement with Mr. Wilson filed with the Commission indicated the nature of the control which he was to have. While the Bureau in its proposed findings urged that applicant "was far from completely candid" in other matters, it did not allege any lack of candor with respect to the control issue. Ac-

²⁸ *Radio and Television Broadcasting Co. of Idaho*, 6 R.R. 629, and *E. A. Mahoney*, 5 R.R. 702c.

ordingly, it is found that in its written and oral statements to the Commission with respect to the transfer-of-control issue, the applicant did not misrepresent facts to the Commission and was not lacking in candor.

56. *Violation of specified sections of parts 3 and 17 of the rules.*—The record shows that there had been three inspections of WITT held, respectively, on September 16, 1960, February 7, 1961, and July 29, 1961. In the first two instances, the inspectors found several instances of noncompliance with the Commission's rules and cited the station accordingly. In all, 12 different infractions were cited after the September inspection and 11 different infractions were cited after the February inspection, many of which were similar to or identical with the September infractions. The July inspection did not reveal any instances of noncompliance. To the contrary, the Commission's inspector testified that the station appeared to be operating in compliance with the Commission's rules and that he had not found any violations of such rules.²⁹

57. There is no dispute as to the facts cited by the Commission's inspectors, and counsel for Wireline³⁰ in his proposed findings specifically stated:

32. In all but a few, minor instances, WITT's engineering witness freely and candidly admitted both to the FCC inspectors and on the witness stand the accuracy of the inspection notices, and the existence of such instances of noncompliance at the time of inspection * * *.

58. In view of the foregoing, it is found that inspections in September 1960 and February 1961 revealed that on one or the other and in certain instances both dates, Wireline was in violation of the following sections of the Commission's rules and regulations: 3.39(d) (1) (VII), 3.40(b) (3) (IV), 3.46 (a) and (b), 3.47, 3.56, 3.57(a), 3.58, 3.65, 3.67, 3.93 (a) and (c), 3.111, 3.931, 17.25(a) (2), 17.38, and 17.44. It is to be noted that the two inspections did not reveal identical violations in each case. In several instances the matters cited in September were not repeated in February, or matters were cited for the first time in February. In addition, there is uncontradicted testimony in the record that certain of the matters cited both times had been repaired in the interim and had broken down before the second inspection. Accordingly, the examiner cannot and does not make this finding in the terms of the issue that "* * * the licensee *during the period* from September 1960 to February 1961, inclusive, violated * * *." [Emphasis supplied.]

59. *Candor with respect to rules violation issue.*—The question of candor and misrepresentation arises largely because of the fact that, after the September inspection, a letter of response to the citations was drafted by Mr. Farrell, the then general manager of the station,

²⁹ It is to be noted that the inspector's testimony regarding full compliance was given as part of the Bureau's direct case and that the inspection itself was apparently made at the Bureau's request. The examiner is of the opinion that the Bureau is to be commended for its thoroughness and fairness in this respect. Throughout the proceeding Bureau counsel appeared determined to elicit all relevant facts without regard as to the effect they would have on the applicant herein. In other words, the Bureau counsel pursued facts favorable to the applicant as zealously as those unfavorable to the applicant.

³⁰ Wireline did offer various explanations and exculpations for its violations. These will be evaluated hereinbelow when consideration is given to the question of whether Wireline possesses the requisite qualifications to be a licensee.

in which certain allegations were made as to remedial measures taken or to be taken to satisfy the citations. At the time of the subsequent inspection, certain of the matters allegedly remedied or to be remedied were still found to exist. In the subsequent paragraph, these matters will be considered to determine whether Mr. Farrell, as a duly employed agent of Wireline, upon whom they depended, did make misrepresentations or was lacking in candor.

60. *Full-time operator.*—One of the matters for which the station was cited in its September inspection was for violation of section 3.93 (a) of the Commission's rules; i.e., that the station had no full-time employee who held a first class radiotelephone operator's license. In his response of October 7, 1960, Mr. Farrell stated:

The station does have a full-time employee who holds a first class radiotelephone license. At the time of Mr. Broughman's inspection, his request for a verification card was in the Buffalo office of the Federal Communications Commission. It was returned to him some time shortly thereafter because an incorrect request form had been used. He has since re-applied. Mr. William Nesbitt, our engineer, was hired on September 1, 1960, to replace Mr. James Herb; * * *.

61. The evidence of record indicates, as is admitted by the applicant in its proposed findings, its first-class chief engineer was then employed on only a part-time basis, working on the average of only 1 day a week subject to being on call if required. In fact, this employee was not hired as a full-time chief engineer until shortly after the second inspection in February 1961, when it was revealed that Wireline still did not have a full-time first-class operator. The station manager, Mr. Farrell, alleged that he did not understand and was not advised by the FCC inspector that the Commission's rules required that, in order to qualify as full-time employees, personnel were required to be employed approximately 40 hours per week. He further stated that he believed that the citation regarding noncompliance related to the fact that the engineer was then having some difficulty with the Commission regarding verification of his first-class license. Mr. Farrell alleged that the last part of the quotation from his letter made clear this misunderstanding, and explained that the chief engineer had taken the appropriate steps to clarify this matter. It was further alleged that when at the time of the February inspection he understood what the FCC meant by full time, this engineer was placed on a full-time basis.

62. *Conelrad receiver.*—At the time of the September 1960 inspection, the station was also cited for violation of section 3.931 of the rules in that the conelrad alert system was inadequate because the operator alarm did not function; the receiver was not at the transmitter control location; and the receiver was not tuned in to the monitoring frequency. In the aforementioned letter of October 7, Mr. Farrell alleged:

Conelrad alert system has been repaired and the entire system placed at the transmitter location; * * *.

At the February inspection, the station was again cited for violation of section 3.931 in that the conelrad receiver had been removed from

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operating position to the business office and was not being utilized to receive conelrad alerts.

63. Mr. Farrell and Wireline's engineer both testified that, at various times between September and February, this receiver had in fact been properly working and properly located as required by the Commission's rules. It was further claimed that the receiver which they had originally purchased had never worked and that the replacement Wireline had was difficult to tune accurately to distant conelrad signals and, when not properly tuned, emitted a loud disturbing sound which could be heard over the air. Accordingly, it was alleged that, during the periods when it was not operating properly, the receiver had been removed to the business office some 30 feet away. It was further alleged that, immediately following the February inspection, the chief engineer had personally obtained and installed another conelrad receiver of his own which has since worked effectively, was properly tuned and was located as required with the transmitter control. Apparently this last is an accurate description because, as noted above, in the final July 1961 inspection, there is no citation with respect to any violation of section 3.931.

64. *Remote control operations and operating logs.*—In the course of the September inspection, the station was cited for violation of sections 3.111 and 3.67(a) (3) for failure to keep operating logs; for failure to keep operators at the transmitter site; and failure of remote control meters to operate properly. In his letter of October 7, Mr. Farrell alleged:

Operating logs are now being kept with readings being taken at the transmitter; parts have been ordered to again put the remote unit in proper operating and monitoring condition. When the remote unit is again in proper operating condition, readings will be continued from the remote unit; * * *

At the time of the February inspection, the station was again cited for violation of sections 3.39, 3.67, and 3.111 in that the remote control meters were not being checked against regular meters as required; in that the remote control meters were defective; and in that regular readings were not being taken for the operating log as a result of actual checks at the transmitter but were reutilized constands.

65. Wireline employees explained this situation in the following terms:

(a) The remote control meter had become inoperative some time during August 1960, probably as a result of being hit by lightning and was not working at the time of the September inspection.

(b) Prior to the February inspection, the remote control meter was inoperative allegedly because of the local telephone company's failure to maintain an adequate remote control line from the transmitter to the studio.

(c) Obviously, then, the indicated remote control readings on WITT's logs were not being made as required at half-hour intervals in its studio.

(d) Because of lack of personnel and funds, it was impossible to station personnel at the transmitter location to make the readings.

(e) During the period, some qualified employee went to the transmitter site at least once a day to make readings.

(f) The half-hour entries made in WITT's operating logs allegedly reflected what the remote control meter would have read if it had been properly operative and was in line with the individual daily readings taken at the transmitter.

(g) The remote control line was repaired as soon as the telephone company could be prevailed upon to do it which was shortly after the February inspection, and is now working properly with all operating entries being made in the log. It was further alleged in this connection that the half-hour readings and log entries were being made and correspond closely to those made on an estimated basis when the meter was inoperative.

66. *Tower light.*—At the September 1960 inspection, the station was cited for violation of sections 17.25 and 17.44 in that a tower light at the half level of the tower structure was burned out. In the October 7 letter, it was alleged that—

The tower light was replaced the night of Mr. Broughman's visit and has since gone out again. A new electric socket (as this seems to be the problem), will be installed, along with another bulb as soon as possible. High winds have made its installation difficult since the second bulb burned out; * * *.

In the February 1961 inspection, the station was again cited for violation of tower light requirements in that one of the center lights was inoperative.

67. The continued failure to remedy the tower light problem was explained in the following terms:

(a) Originally it was believed that the difficulty was due to burned-out bulbs and Mr. Farrell had several times climbed the tower to replace the bulb which burned for only a time.

(b) It then appeared that the difficulty was electrical in nature and Mr. Farrell was unable to accomplish the necessary repairs.

(c) It was not possible to obtain any local repairman to climb the tower to a height well in excess of 100 feet and fix the socket because of the cold and windy conditions which obtained in the fall and winter of the year.

(d) That a repairman was finally prevailed upon to do the job in May 1961, and the light which was then fixed has thereafter operated properly.

(e) There is no requirement, as admitted by Commission personnel, to report the existence of an inoperative tower light and the Commission is seldom advised regarding such matters.

68. *Doors to transmitter.*—In the course of the September inspection, Wireline was cited for violation of section 3.40 of the rules in that the locks on doors to the tuning house at the transmitter site were broken. In the October 7 letter, Mr. Farrell alleged:

A second padlock has been added to the transmitter building to secure the second of the two doors. One was padlocked prior to Mr. Broughman's visit.

At the February inspection, the station was again cited for violation of section 3.46 in that one door to the transmitter house was unlocked and ajar fully within view of the main highway.

69. The apparent discrepancy in Mr. Farrell's allegation and the finding at the February inspection was explained in the following terms:

(a) At the time of the September inspection, the lock on one of the doors of the transmitter house, which is a converted trailer, had fallen out.

(b) After the inspection, Mr. Farrell had obtained a new padlock and had himself attached it to the door.

(c) The door was in fact ajar at the time of the February inspection because, on that very morning, Mr. Farrell had gone to the transmitter in order to warm tubes so that the station might commence operations; having difficulty in opening the frozen lock [because of the extremely cold weather] to get inside he had, upon leaving, not repadlocked the door so

that he could get in more easily should it be necessary to repeat the warming-operations.

(d) Strong winds then prevailing had apparently blown the doors open.

(e) The door was locked and padlocked that night and has customarily since then been kept padlocked.

70. It appears to the examiner from the above review that, in at least three instances, namely, those with respect to the conelrad receiver, the tower light, and the doors to the transmitter house, the explanations given on the record fully explain the apparent inconsistency between the allegations made in the October 7 letter and the violations again discovered in the February inspection. In light of the explanations it may quickly be determined that the repetition of each of the violations in light of the allegation that repairs or remedial action had been or was being taken does not give rise to any question of misrepresentation or lack of candor.

71. The other two matters, i.e., of full-time operator and maintenance of operating logs, require further consideration and analysis. It is, of course, possible that Mr. Farrell might have assumed that the difficulties envisioned by the citation related to the verification of the engineer's license. Under ordinary circumstances, the examiner would find it difficult to put full credence in such an explanation, particularly in view of Mr. Farrell's intelligence and alertness as observed on the witness stand. There are, however, circumstances herein which, as will be set forth below, impel the examiner to give Mr. Farrell the benefit of the doubt which exists in the examiner's mind.

72. To a large extent, the comments made with respect to the problem of the full-time engineer would appear to be applicable in some degree to the matter of the maintenance of logs. In his response of October 7, Mr. Farrell did not state that half-hourly readings were being made at the transmitter. (See par. 64 above.) He merely alleged that "readings" were being taken there. Technically, this was true in that, according to apparently uncontradicted testimony, daily observations were made and the half-hourly entries were at least related to the daily observations. It would appear to the examiner, on the one hand, that the station personnel made a reasonable attempt within the limitations of available funds and staff to follow the spirit of the requirement. On the other hand, it might appear that in couching his reply in the terms he did, Mr. Farrell was seeking to give the impression that half-hourly readings were being taken at the transmitter site. Such an impression would be contrary in fact and would, if standing alone, seem to require at least a finding of lack of candor if not outright misrepresentation. However, as will be set forth below, other circumstances again mitigate against such an interpretation of Mr. Farrell's actions.

73. The circumstances referred to by the examiner relate, first, to the remarkable candor of Mr. Farrell with the Commission inspector in the course of the February inspection, as well as his demeanor as a witness. At the time of the inspection, there were high snowdrifts between the road and the site of the transmitter and transmitter house. Under these conditions, the Commission inspector did

not visit the site, but asked Mr. Farrell to tell him about conditions there. At that point, Mr. Farrell advised the inspector that the antenna ammeter was not operative and that the tower light was out. This evidence of good faith when considered in light of the second circumstance, i.e., the general frankness and candor with which Mr. Farrell, as well as other officials and employees of the station testified, induce the examiner to give the benefit of reasonable doubt to Wireline³¹ in this instance. Therefore, while it appears that in its report with respect to the full-time operator and operating logs Wireline approached the dividing line, the examiner does not in these instances find that Wireline willfully misrepresented facts to the Commission to any significant degree or lacked the candor normally expected of licensees. Instead, it would appear that, if the replies were not as informative as might be expected, it was primarily due to the financial pressures then upon the station.

74. *Qualifications to be a licensee.*—It is clear, as found herein, that in one instance Wireline did transfer control of its station without obtaining the Commission's prior consent and that, in the course of either the September 1960 inspection or the February 1961 inspection, or both, its station was found to be operating contrary to the requirements of numerous provisions of the Commission's rules and regulations relating to engineering and operational standards. It must now be determined whether, in light of such violations, Wireline possesses the requisite qualifications to be a licensee of the Commission.

75. The Bureau takes the position, insofar as unauthorized transfers are concerned, that the responsible officials of Wireline have never really discharged their duties as licensees in maintaining control over the station. It is contended that a pattern of unauthorized transfers has evolved from the time WITT commenced operations. Its original manager allegedly operated without direction or control, and wasted most of its assets. Accordingly, it is argued that the station never recovered from this setback; that the directors of Wireline then expended most of their efforts in attempting to find a purchaser; that the Wilson incident followed; that, thereafter, operations were delegated to the Pelletier group which has staffed and programed the station; that, at best, the directors are only informally apprised of what is being done; and that the control being exercised by Wireline, if any, is limited to station finances. The Bureau then urges that Wireline is now financially exhausted and is being operated on a hand-to-mouth basis under the specter of unsatisfied judgments, unpaid debts,

³¹ The examiner has not differentiated between Mr. Farrell and Wireline in the consideration of the questions of misrepresentation and candor. It appears that none of the officers of Wireline have any technical radio knowledge and, although immediately aware of the citation for violations, left the entire matter to be taken care of by their manager and engineer. The Wireline officers did not follow up to see if matters were actually remedied "because one assumed that our general manager was there to be able to take care of it for us." Having chosen such a course, the officials of Wireline must be imputed to have constructive knowledge of all their manager did and to assume responsibility for any of his shortcomings, errors, or violations. The examiner, therefore, specifically rejects Wireline's argument that the noninvolvement of Wireline's principals in Mr. Farrell's representations is a significant factor or that, if an adverse conclusion is to be reached concerning Mr. Farrell's Oct. 7 letter, the matter should not be wholly chargeable to Wireline. When one gives an agent authority to act and has an opportunity and obligation to review the agent's acts, one cannot exculpate oneself from responsibility in the agent's acts by saying, "I did not choose to review the acts of the agent because I relied on him."

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and a depleted bank account, and that its directors are persons without the experience or capacity to operate a broadcast facility and have delegated their responsibility to others.

76. Insofar as the engineering and operating violations are concerned, the Bureau stresses the two occasions on which violations were found. It argues that, while the bad performance was undoubtedly due to lack of funds and personnel, it is difficult, in view of the past record and continuing financial problems, to accept assurances that there will be no violations in the future. The Bureau points to the admission made by Wireline in a pleading filed before the hearing herein, that it had "fallen short of desirable standards with respect to the operation of WITT and perhaps, because of its shortcomings, it should not be permitted to continue as a licensee." It alleges that the facts of record support this admission. On the basis of all of the foregoing, the Bureau alleges that there is little to base any expectation that, given the opportunity, Wireline would in the future conduct itself as a licensee of the Commission should. It is, therefore, urged that the examiner cannot find that Wireline possesses the requisite qualifications to be a licensee.

77. While impressed with the forcefulness of the argument and the apparent persuasiveness of the interpretation put upon the evidence of record, the examiner cannot agree that the picture painted by the Bureau accurately reflects the situation. The original manner of conducting operations, from which all later problems stemmed, resulted from the fact that the group of people seeking to establish a local radio outlet turned to the only one of their number, a major stockholder and a director who allegedly had radio experience, to act as general manager for the station. This appears to be a normal and reasonable action rather than a surrender of authority. The fact that the stockholder and director upon whom they relied did not perform efficiently and effectively is again no proof of failure to exercise control, particularly since, as soon as the facts became painfully clear, this person was removed from office. The examiner specifically rejects any implication that Wireline ab initio engaged in the pattern of conduct charged by the Bureau.

78. The record does not justify the finding suggested by the Bureau that at present the Wireline directors are without "experience or capacity to operate a broadcast facility." The record shows Mr. Farrell, for many years the manager of the station, is a major stockholder and director. Mr. Pray, the treasurer and a director, exhibited considerable awareness regarding certain facets of station operation. Mr. Doebler, the vice president and a director of Wireline, served as the "early morning man" on the station for an 8-month period in 1959, being on the air from 6 a.m. to anywhere from 9 to 11 a.m., 5 days a week. In addition, he has apparently announced all Bucknell football games both home and away since WITT has been on the air. Mr. Bechtel, the president and a director, testified that he drops in on the station at least once a month, talks to the WITT salesman every day, and discusses station matters with Mr. Pray every day except Sunday.

79. The examiner further cannot agree that the control now exercised over WITT is limited to station finances. As set forth above, the Wireline board does considerably more. Furthermore, the Pelletier group should not be viewed as complete strangers. Mr. Pelletier is an original stockholder who still owns his shares of stock. Mr. Fenstermacher is a former employee of WITT who, in fact, is owed several hundred dollars for services performed in the past. These men can properly be expected to be familiar with station policies and practices, and conversely, the directors can be expected to be familiar with the activities of these people and know the extent to which responsibility may be delegated to them while ultimate control is maintained in Wireline.

80. As set forth above, the examiner believes the issues herein to be narrow and that he may not make findings or reach conclusions on financial qualifications or quality of programing, or any matter relevant to the fitness of the licensee other than the questions of unauthorized transfer or violations of certain rules, and misrepresentation or lack of candor with respect to these two matters. However, insofar as these other matters impinge on either the control issue or compliance with the specified rules, they are of course legitimate subjects for inquiry. In this light then, the examiner will address himself to the financial status of the station.

81. There is no doubt that lack of funds was what led the directors to seek a purchaser for the station. However, it does not appear to the examiner that Wireline tried to sell without regard to the effect on the station or in hopes of realizing a substantial or indeed any profit. According to uncontradicted testimony, the directors set and maintained certain standards; i.e., that the station should continue to operate as a local outlet and meet the standards required to serve a central Pennsylvania community. It appears that Mr. Wilson's bid was not the highest made at the time for the station, but it was determined that it should be accepted because, after talking to Mr. Wilson, the Wireline officials felt he would operate the type of station "that would have been what we wanted here in town."

82. It is also clear that the actions of Wireline in the Wilson matter were not motivated by the desire or opportunity to make a substantial profit. To the contrary, the record shows that the sums which would have been received from the Wilson sale agreement, had it been consummated, would have only paid off the accumulated debts of Wireline and would not have enabled the stockholders to receive back any share of their respective investments, much less realize any profit. The motivation then was continuation of service and repayment of corporate obligations, particularly to employees, rather than personal gain. It is true that noble motives do not excuse violation of law. They are, however, very relevant to the assessment of what penalties, if any, are to be imposed for the violation.

83. The examiner agrees with the Bureau's evaluation that lack of funds and lack of experience among the directors rather than willful intent to evade legal requirements are probably the causes of Wireline's derelictions insofar as the commission's operating and engineering rules are concerned. The examiner does not agree, how-

ever, that these conditions continue to exist or that, if its license is renewed, there is nothing upon which to base an expectation that Wireline will be able to operate in keeping with its responsibilities.

84. It is to be noted first that at the most recent inspection conducted by the Commission, the station was found to be fully in compliance with the rules. The Commission's engineer who had characterized and evaluated the operating conditions at the February 1961 inspection as "very poor" stated that, as a result of the July inspection, he would characterize the station's operating condition with the adjective "good." He stated that this represented a complete turnabout and that he would consider this a high or good rating.³²

85. The fact that the station operations could show such improvement at the very time that it was at the nadir of its financial plight indicates to the examiner that there is ample ground upon which to base an expectation that future operations will be in keeping with the licensee's responsibility. This finding is buttressed by the fact that Wireline now has a full-time engineer; that it is approaching or at the break-even point so that the financial stringency which mitigated against compliance has been eased if not removed; and that the present general manager, Mr. Pelletier, is also a qualified radio engineer. Finally, it is to be noted that there is no evidence that any of these violations resulted in a degradation of service to the public or caused interference to other services.

86. In summary, there is before the examiner a situation where the licensee acting in good faith, without hope of profit, and on advice of counsel entered into an agreement, since terminated, which constituted or resulted in a transfer of control without Commission authorization. The licensee has since reassumed control and, insofar as the present record is concerned, has had no issue presented regarding the quality of its programming or other facets of operation. Furthermore, licensee is the only station serving the particular community involved. It is relevant to note that the person to whom the unauthorized transfer was made is also the holder of a radiobroadcasting license from the Commission. When the Commission considered his application for renewal, it passed upon the question of whether his participation as transferee of WITT without Commission consent affected his qualifications to be a licensee. The Commission gave him a short-term renewal to afford him a reasonable opportunity to demonstrate that he could operate in full compliance with the act and the Commission's rules.

87. It appears to the examiner that such action has ample precedent in that, while the Commission has not hesitated to refuse renewal where there was deliberate attempt to flout the law (*Station KPAB*, 6 R.R. 1137), the Commission has not denied renewal when the transfer was not willful or where the applicant acted promptly to reassume control and otherwise operate in the public interest. For example, the Commission renewed a license where there was misrepresentation without willful purpose to deceive, *KICD*, 5 R.R. 229, and *St. Joseph*

³² It is to be noted that this evidence was freely elicited by Bureau counsel as part of the Commission's direct case. (See footnote 28, *supra*.)

Valley Broadcasting Corp., 8 R.R. 766. See also *Radio and Television Broadcasting Corporation of Idaho*, 6 R.R. 629.

88. The examiner regards as particularly relevant, *East Texas Broadcasting Co.*, 8 FCC 479 (1941), where the Commission permitted a licensee, which apparently had transferred legal control without authorization, to continue to operate upon proof that the transaction had been rescinded. In the instant case, the transfer of control was not willful, was disclosed, and was done on advice of counsel. The arrangement was terminated as soon as the parties became aware that the Commission questioned it. Under those circumstances the examiner feels there are mitigating factors which preclude a finding by him that because of such activity, Wireline fails to possess the requisite qualifications to be a licensee of the Commission.

89. The examiner likewise cannot find that the engineering and operating citations furnish grounds for a finding that Wireline does not possess the requisite qualifications. The Commission, in a parallel case, set aside an order of revocation when it found the station in compliance with statutory and regulatory requirements, although in a 4-year period the Commission had issued 12 official and 4 advisory notices citing some 98 instances of improper operation (*Radio Station WINZ*, 5 R.R. 715). See also *Mark Twain Broadcasting Co.*, 21 R.R. 238, and *Inter-American Radio Corp.*, 7 R.R. 676.

CONCLUSIONS

1. The examiner has thus far found—

(a) That in one instance Wireline transferred control of station WITT without obtaining the Commission's prior consent;

(b) That such transfer was not willful and was fully disclosed;

(c) That there was no lack of candor and no misrepresentation in connection with such unauthorized transfer;

(d) That the September 1960 and February 1961 inspections revealed violations of certain sections of the Commission's rules relating to engineering and operating matters, but even then, there was no contention that service to the public was adversely affected or other stations were subjected to interference;

(e) That the most recent inspection revealed that all violations had been remedied and the Commission's engineer characterized operations as "good";

(f) That station finances were improving so that there is reasonable ground to find that the aforesaid violations primarily based on financial stringency would not be repeated;

(g) That there was no lack of candor and no misrepresentation in connection with such engineering and operating matters; and

(h) That neither of the violations required a finding that Wireline did not possess the requisite qualifications to be a station licensee.

2. The examiner is of the opinion, however, that exculpation of deliberate wrongdoing is not the ideal standard against which one should measure licensees. Persons desiring the use of this rare and precious natural resource should offer more than the minimum in order to be licensed. The standard of public interest should entail affirmative showings rather than the absence of negative findings. The most that the examiner can say for the licensee here is that the record indicates that it should be given a final opportunity to demonstrate that it has learned its lesson and will hereafter furnish affirmative evidence of

its ability to operate in the public interest. This conclusion is premised on the fact that Wireline's motives were consonant with the public interest in that it sought to preserve the only local outlet, and at the same time, to raise sufficient money to meet the corporate obligations to employees and creditors without hope of gain or even recovery of original investment.

3. It appears to the examiner that Wireline should be able to make the requisite showing in a relatively short period of time. Furthermore, the Commission should, within a reasonably short period of time, be in a position to review Wireline's activities and accomplishments and to determine whether it should be continued as a licensee. It is therefore concluded that the public interest, convenience, and necessity will be served by a grant of the application herein for a limited period of 1 year from the effective date hereof.³³

ORDER

Accordingly, *It is ordered*, This 22d day of December 1961, that unless an appeal from this initial decision is taken to the Commission by either of the parties, or unless the Commission reviews this initial decision on its own motion in accordance with the provisions of section 1.153 of the rules, the application of Wireline Radio, Inc., Lewisburg, Pa., for renewal of license, file No. BR-3511, for station WITT *Is denied* insofar as it requests the regular 3-year term, but *Is granted* to the extent that the license shall be renewed for a term of 1 year from the effective date of this decision.

³³ *Eleven Ten Broadcasting Corp.*, 22 R.R. 699, 739.

SULLIVAN TRAIL COAL CO., DOCKET No. 14277:

Decision revoking the license of special industrial radio station KGF-213, but without prejudice to the filing of a new application 60 days after effective date of revocation.

47 CFR 1.76.—Failure to respond to notices of violations.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON 25, D.C.

In the Matter of SULLIVAN TRAIL COAL CO., WEST PITTSBON, PA. Order To Show Cause Why There Should Not Be Revoked the License for Special Industrial Radio Station KGF-213	}	Docket No. 14277
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APPEARANCES

Morey M. Myers (Gelb, Carey & Myers, Esqs., Scranton, Pa.), on behalf of the respondent, Sullivan Trail Coal Co.; *Violet L. Haley*, on behalf of the Safety and Special Radio Services Bureau, Federal Communications Commission.

DECISION

(Adopted May 23, 1962)

BY THE COMMISSION: COMMISSIONERS MINOW, CHAIRMAN, AND CRAVEN VOTING TO PERMIT FILING OF APPLICATION AFTER 90 DAYS.

1. This proceeding involves a show-cause order issued by the Commission on October 2, 1961, to above-named respondent to show why its license should not be revoked for alleged violations of the provisions of 47 CFR 1.76 concerning the answering of the notices of violations.

2. An initial decision by Hearing Examiner David I. Kraushaar was released on January 16, 1962 (FCC 62D-7), proposing to revoke the license, without prejudice to respondent's applying for a new license after 60 days from the effective date of revocation. The respondent and the Safety and Special Radio Services Bureau (Bureau) excepted to the initial decision. In brief, the respondent argues that it was not grossly negligent and its explanation was sufficiently mitigating to preclude a revocation of its license. Bureau excepted to the examiner's failure to propose an outright revocation of respondent's license for failing to mitigate the violations, and for not showing that the violations have been rectified and office procedure corrected. It also took exception to the examiner's finding and conclusion that, by inference, the respondent will prevent recurrence of the violations.

3. The initial decision has been considered in light of the exceptions filed, and we hereby adopt the findings and conclusions of the initial

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decision insofar as they find that respondent has repeatedly violated section 1.76 of the rules, with the modifications, corrections, and deletions noted herein or in the appendix.

Accordingly, *It is ordered*, This 23d day of May 1962, that the license for special industrial radio station KGF-213 *Is revoked*, effective June 4, 1962, and that a copy of this order of revocation shall be served upon the licensee; and

It is further ordered, That such revocation shall be without prejudice to respondent's applying for a new license after 60 days from the effective date of revocation, notwithstanding the provisions of 47 CFR 1.551, which *Are, to the extent necessary, waived*.

APPENDIX

RULINGS ON EXCEPTIONS TO THE INITIAL DECISION

Exceptions of Sullivan Trail Coal Co.

<i>Exception No.</i>	<i>Ruling</i>
1,2-----	Denied, in view of the Decision herein.

Exceptions of the Safety and Special Radio Services Bureau

1-----	Denied. There is no inconsistency between the witness's admission <i>at hearing</i> of awareness of certain correspondence, and his denial of awareness of it at an indefinite time <i>in the past</i> .
2-----	Denied. Immaterial in view of the decision herein.
3-----	Granted. The initial decision is modified to find that respondent has given no assurance of future compliance with rules and requirements, and no proof of new procedures to obviate the recurrence of violations.
4, 8-----	Denied. The Commission agrees with the examiner.
5, 6-----	Denied. The examiner saw and heard the witness. The inferences are fair ones in the circumstances set out by the examiner.
7-----	Granted to the extent that these words are deleted from footnote 5: "while as a familiar aphorism," etc., through "no excuse."
9-----	Granted. See ordering clause herein.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON 25, D.C.

<p>In the Matter of SULLIVAN TRAIL COAL CO., WEST PITTSTON, PA. Order To Show Cause Why There Should Not Be Revoked the License for Special Industrial Radio Station KGF-213</p>	}	Docket No. 14277
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APPEARANCES

Morey M. Myers (Gelb, Carey & Myers, Esqs., of Scranton, Pa.), on behalf of the respondent, Sullivan Trail Coal Co.; *Violet L. Haley*, on behalf of the Safety and Special Radio Services Bureau, Federal Communications Commission.

INITIAL DECISION OF HEARING EXAMINER DAVID I. KRAUSHAAR

(Adopted January 15, 1962)

PRELIMINARY STATEMENT

1. This proceeding was initiated by a Commission show cause order released October 2, 1961 (mimeo No. 10624), directing the respondent, Sullivan Trail Coal Co., which is the licensee of special industrial radio station KGF-213, to show cause why its license should not be revoked for repeatedly violating 47 CFR 1.76 (failure to respond to violation notices).¹ The order recites that written notice of violation of the Communications Act, as amended, and of the Commission's rules had been served on respondent, pursuant to 47 CFR 1.76, by letter dated June 5, 1961, which alleged an apparent unauthorized transfer of control of the licensee corporation in violation of section 310(b), 47 U.S.C., and a violation of 47 CFR 11.6 "by reason of the licensee's sharing the facilities of its special industrial radio station KGF-213 with another without authority from the Commission"; that respondent received the Commission's letter but failed to reply; that the Commission sent another letter, dated July 26, 1961, to respondent which again brought the matter to respondent's attention and requested that respondent reply within 10 days of its receipt, failing which the institution of revocation proceedings might ensue; and that respondent failed to respond to the second letter (which had been

¹ Rule 1.76(a) provides, in pertinent part, that "Any licensee who appears to have violated any provision of the Communications Act or any provision of this chapter shall be served with a written notice calling the facts to his attention and requesting a statement concerning the matter * * *." Par. (b) requires the licensee to respond in writing, in duplicate, to the office of the Commission originating the notice of violation.

mailed by "Certified Mail—Return Receipt Requested" and receipt of which had been acknowledged by the signature of licensee's agent on July 27, 1961).

2. Respondent by its counsel filed a written statement of appearance in conformity with 47 CFR 1.77 and consequently this case was set down for hearing by order of the Acting Chief Hearing Examiner released November 17, 1961 (FCC 61M-1802). Hearing was scheduled originally to commence January 3, 1962. By order released November 21, 1961 (FCC 61M-1809), the hearing examiner scheduled a prehearing conference for the purpose of affording the parties an opportunity "to discuss possible stipulations of fact and ways in which the evidence may be presented in a manner most expeditious to the early disposition of this case." The prehearing conference, which was scheduled originally for December 8, 1961, was postponed until December 15 at respondent's request and was held on the latter date. Counsel reached a stipulation of fact during the prehearing conference which, at the suggestion of the hearing examiner and with consent of counsel, was promptly reconvened as a hearing session. A witness for respondent testified in mitigation and was cross-examined, and a stipulation and an affidavit were presented in evidence and the record duly closed on December 15. Both parties filed proposed findings of fact and conclusions of law.

FINDINGS OF FACT

3. By stipulation, identified in evidence as "Bureau's Exhibit No. 1," respondent Sullivan Trail Coal Co. conceded the basic facts concerning its receipt of the Commission's letters and its failure to reply as alleged in the show cause order and as summarized in the preliminary statement hereof. These facts are therefore found as stipulated. Further, it is found that the Commission's letter to respondent dated June 5, 1961 (see par. 1, "Preliminary Statement," supra), after calling attention to possible violation of section 310(b) of the Communications Act which "prohibits the assignment of a radio station license, or transfer of control of a licensee corporation, or the assignment or transfer of any right in a radio station without express authority from the Commission," and of 47 CFR 11.6 which "requires authority from the Commission for sharing radio station facilities," *directed specific interrogatories to respondent in regard to and pertinent to the questions raised concerning the possibility that respondent may have violated these requirements of law.* It appears that respondent had previously filed an application for modification of its license and had written a letter, dated March 24, 1961, which raised the questions and precipitated the inquiry in the Commission's June 5, 1961, letter, and that this circumstance is mentioned in the opening paragraph of the Commission's June 5 letter.²

² In addition to the two letters mentioned in the text, respondent admittedly received a telegram dated Mar. 8, 1961, and a letter dated Apr. 14, 1961, concerning the same matters; i.e., whether there had been an unauthorized assignment or transfer of control by respondent and an unauthorized sharing of the facilities of its radio station. Respondent's failure to respond to these communications is further proof of its negligent disregard of its responsibility as a licensee. While in a sense, as the Bureau seems to contend, the additional failures to respond aggravate the offense charged in the show-cause

4. In mitigation, respondent, through the affidavit and testimony of James J. Tedesco, its secretary-treasurer, pleaded the following, which, not being contradicted, are accepted and found to be substantially in conformity with the facts—

* * * that in 1957, Sullivan Trail Coal Co. made application to the Federal Communications Commission for radio authorization in the Special Industrial Radio Service; that the basis of the application was that Sullivan Trail Coal Co. was engaged in the mining business and the Special Industrial Radio Service was needed for the safety and efficiency of the mining operation in controlling vehicles used to mine and haul coal; that the station was established at Tremont, Schuylkill County, Pa., and remained there at all times up to sometime in March of 1961; that on January 25, 1961, the Federal Communications Commission was advised by letter, which letter was received on January 30, 1961, by the Federal Communications Commission that Sullivan Trail Coal Co. made application for transferring base station KGF-213 from Tremont, Pa., to Bartonsville, Pa.; that accompanying said letter of January 25, 1961, was exhibit B, which indicated that the reason for the transfer was to control vehicles used for improvement and construction of roads under a Pennsylvania Highway Department contract awarded to No. 1 Contracting Corp.; that No. 1 Contracting Corp. is an affiliate of Sullivan Trail Coal Co. and the same persons are the executive officers of each corporation; that the Federal Communications Commission returned the application form (FCC) 1034 to Sullivan Train Coal Co.; that on February 8, 1961, a new application and new exhibit B was forwarded to the Federal Communications Commission, which application and exhibit were received by the Federal Communications Commission on February 10, 1961; that on February 28, 1961, Sullivan Trail Coal Co. again inquired of the Federal Communications Commission of the status of its application and indicated in said letter, which was received by the Federal Communications Commission on March 1, 1961, that highway construction located at Bartonsville, Monroe County, Pa., had commenced; that on March 24, 1961, a letter was forwarded to the Federal Communications Commission, which was received on March 27, 1961, amending the application for radio station authorization covering the transfer of the base station from Tremont, Pa., to Bartonsville, Pa.; that at all times prior to March 1961, Sullivan Trail Coal Co. used the Special Industrial Radio Service for its own purposes and not for profit; that from sometime in March 1961, and thereafter, the Special Industrial Radio Service was used by No. 1 Contracting Corp. at no charge to it by Sullivan Trail Coal Co.; that at all times Sullivan Trail Coal Co. made full disclosure of its use and intended use of the Special Industrial Radio Service and informed the Federal Communications Commission of the intention of No. 1 Contracting Corp. to use the Special Industrial Radio Service at Bartonsville, Pa., for its highway construction; that at no time did Sullivan Trail Coal Co. consult counsel or any one else for the preparation of the necessary application forms to be filed with the Federal Communications Commission; that neither Sullivan Trail Coal Co. nor No. 1 Contracting Corp. has any other rights, privileges, licenses, proceedings, or experience before the Federal Communications Commission; that all of the correspondence to the Federal Communications Commission was signed by James J. Tedesco, secretary-treasurer of Sullivan Trail Coal Co., but James J. Tedesco had only limited knowledge of the pending application before the Federal Communications Commission, and no knowledge of their request for additional information; that James J. Tedesco, in March of 1961, became active in the efforts of the anthracite industry to obtain contracts for supplying the fuel require-

order, it is nonetheless sufficient from the standpoint of the validity of the allegations in that order that respondent conceded those particular charges, which are grave enough by themselves. There is no need here to "beat a dead horse" and respondent's additional omissions to act in accordance with its plain duty do not of themselves detract from circumstances in mitigation which the examiner considers are entitled to some weight. (See text, par. 7.)

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ments of the U.S. Army in West Germany; that James J. Tedesco had numerous conferences with officials at the Pentagon, State Department, White House, and Members of Congress; that James J. Tedesco was in Washington on numerous occasions during the pendency of Federal Communications Commission application, and if he had known of the existence of this matter, would have contacted the Federal Communications Commission directly; that neither James J. Tedesco nor any other official of Sullivan Trail Coal Co., nor any one else intended to willfully disregard the requirements from the Federal Communications Commission or violate any of the statutes of the United States or rules and regulations of the Federal Communications Commission; * * *

5. Mr. Tedesco's testimony discloses also that as secretary-treasurer of respondent, it was his responsibility to see that respondent's modification application was properly filed; that he was aware of the Commission's June 5 letter but was so involved in "other activities of the business" that he fell behind on routine office matters, including this item; that his "other activities" consisted of efforts on behalf of the coal industry in northeastern Pennsylvania, a "distressed" area, to convince the Government that it should buy American anthracite for use of U.S. Armed Forces in West Germany in lieu of German coke; and that these negotiations began in March and continued until some time in October and involved trips back and forth to Washington, D.C. Mr. Tedesco's testimony reveals that respondent is a closely held family-type business which has other officers and employees (about 15 or 20 employees in its office) besides himself, although Tedesco personally answers most of its mail; that the company maintains only one office; that station KGF-213 was in fact moved from Tremont to Bartonsville, Pa., without awaiting Commission authorization for the move; that he knew he had to obtain Commission authorization and mere filing of an application would not suffice.

6. The evidence discloses that No. 1 Contracting Corp., mentioned above in the quote from Mr. Tedesco's affidavit as an "affiliate" of respondent, with which respondent concededly shared respondent's radio facility without Commission authorization, is likewise a small family-type corporation engaged in the road construction business, which is owned by virtually the same stockholders as respondent. No. 1 Contracting Corp., moreover, shares the same management and office with respondent. Respondent has been involved in no previous violation of Commission rules.

7. Mr. Tedesco evinced complete candor in straightforwardly admitting the basic facts in issue and that his only real excuses for the omissions were his personal involvement in business with the Government and the inadequacies of administrative procedure at his company's office which did not provide for "followthrough by somebody else in my absence." He also expressed regret. While Mr. Tedesco was not asked, and consequently there is no clearcut expression in his testimony that respondent would take the steps necessary to prevent a recurrence of such omissions, it may be inferred from the general tenor of his testimony, and his cooperative attitude while testifying (T. 9-11), that Tedesco would see to it that appropriate steps to prevent recurrence would be taken.

CONCLUSIONS

8. The conclusion is compelling—from the facts as admitted and found above—that respondent has repeatedly violated rule 1.76. It is just as clear that respondent has permitted another corporation to share in the use of its radio facility without prior Commission authorization in violation of rule 11.6 and section 310(b) of the Communications Act, and that if not outrightly willful (as the foregoing findings show, Mr. Tedesco knew that prior authorization was necessary and in fact had filed a modification of license application with the Commission to obtain such authorization), these latter acts constitute gross neglect of responsibilities incumbent upon every licensee of this Commission. Considered by itself, however, the repeated failure of the respondent, as charged explicitly by the order initiating this proceeding, to answer official correspondence is a serious dereliction which cannot be condoned.³ “Supervision, adequate to make certain that rules and regulations of the Commission are complied with by subordinates, is a responsibility which cannot be shirked by a licensee.” *Patterson Shrimp Co., Inc.*, 29 FCC 1049, at page 1052 (1960). The Commission, moreover, in several recent decisions has reiterated that⁴—

It is, of course, axiomatic that orderly and effective administration requires that licensees operate their radio stations in accordance with the applicable rules and regulations. *The optimum and efficient usage of frequencies compels it, particularly in the Safety and Special Radio Services, virtually all of which involve the shared use of frequencies. It is equally essential that licensees respond promptly and satisfactorily to all Commission communications, and particularly so when such communications involve alleged rule violations.* [Emphasis supplied.]

Under the circumstances the factors urged in mitigation by respondent are deemed to be completely insufficient to justify action other than the revocation of the station license as contemplated by the show-cause order. *Patterson Shrimp Co., Inc., supra.*

9. The expression of regret by respondent's agent ought not to go unnoticed, however. Nor does the hearing examiner consider that the complete candor of Mr. Tedesco, his direct and unambiguous responses to questions damaging to the interest of his closely held family-type corporate business,⁵ and the likelihood, inferred from the general

³ The Communications Act, 47 U.S.C. sec. 312(a)(4), authorizes the Commission to revoke a license for mere repeated violations of its rules. In the present instance the violation was aggravated—not mitigated—by what appears in the record to have been the equivalent of either gross neglect or willfulness by respondent resulting in a violation of rule 11.6 and 47 U.S.C. sec. 310(b).

⁴ See memorandum opinion and order, *In re James Lemon*, 31 FCC 557, at p. 558 (September 1961); and to the same effect see memorandum opinion and order, *In re Robert E. McCarthy*, 31 FCC 559, and memorandum opinion and order, *In re H. Hall Montague*, 31 FCC 561.

⁵ Naturally, witnesses testifying before this Commission or its officials are always to be expected to be straightforward without thought of reward. In this instance the hearing examiner feels, however, that Mr. Tedesco's candor should be considered in the light of the fact that a small business in an apparently distressed industrial area of the country is involved, that the unauthorized transfers which have admittedly taken place occurred as between two closely held family-type corporations which operate from the same office, and that it was the licensee itself which by letter had disclosed the state of affairs which precipitated the present proceeding. While as a familiar aphorism goes, “ignorance of the law is no excuse,” the examiner believes that substantial justice and the public interest will best be served under such circumstances by not exacting the full measure of effect the penalty of revocation involves from this particular licensee respondent.

character of his testimony, that there will be no recurrence of the acts complained of, coupled with the fact that no previous violations have been ascribed to the respondent, should be entirely disregarded. Therefore, it is the further recommendation of the hearing examiner, subject of course to Commission approval, that permitting respondent to apply for a new license at the expiration of 60 days will be in conformity with the public interest and substantial justice. See *Patterson Shrimp Co., Inc.*, 29 FCC at page 1052 (par. 9).⁶

Accordingly, *It is ordered*, This 15th day of January 1962, that unless an appeal from this initial decision is taken to the Commission, or unless the Commission reviews the initial decision on its own motion pursuant to 47 CFR 1.153, the license of Sullivan Trail Coal Co. for special industrial radio station KGF-213 *Is hereby revoked*;

It is ordered further, Subject to Commission review as mentioned hereinabove, that such revocation shall be without prejudice to respondent's applying for a new license after 60 days from the effective date of revocation.

⁶ Cf. *Morrow Radio Manufacturing Co. et al.*, 30 FCC 499, 501, 502 (1961), wherein the respondents' conduct was aggravated by the fact that an unknown number of purchasers of radio equipment might have been affected adversely thereby, the violations were repeated several times, and the factors advanced in mitigation were generally in the nature of rationalizations, post litem motam, which the Commission classified as factors not so much as in "mitigation" of the offenses charged as in "nonaggravation" of same. Outright revocation was decreed, but even in such case one Commissioner dissented, urging that a less drastic penalty (revocation but leave to file for a new license in 6 months) was called for.

ANTHONY C. MORICI ET AL. (TRANSFERORS) AND CAPITOL BROADCASTING CO. (TRANSFEREE), DOCKET NO. 14112:

Application for consent to transfer of control of KGMS, Inc., licensee of station KGMS, Sacramento, Calif., to Capitol Broadcasting Co.; granted.
47 CFR 3.35(a).—Multiple ownership; overlap.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON 25, D.C.

<p>In re Application of ANTHONY C. MORICI, ALFRED A. MORICI, CAROL McNAMEE, MARIANNE AIASSA, AND ABRAHAM R. ELLMAN (TRANSFERORS), AND CAPITOL BROADCASTING Co. (TRANSFEREE) For Transfer of Control of KGMS, Inc., Licensee of Station KGMS, Sacra- mento, Calif.</p>	}	<p>Docket No. 14112 File No. BTC-3622</p>
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APPEARANCES

Jack P. Blume, on behalf of Anthony C. Morici, Alfred A. Morici, Carol McNamee, Marianne Aiassa, and Abraham R. Ellman (transferors); *Vernon L. Wilkinson*, on behalf of Capitol Broadcasting Co. (transferee); *Thomas B. Fitzpatrick* and *John F. Reilly*, on behalf of the Broadcast Bureau, Federal Communications Commission.

DECISION

(Adopted May 23, 1962)

BY THE COMMISSION: COMMISSIONER FORD DISSENTING AND ISSUING A STATEMENT IN WHICH COMMISSIONERS MINOW, CHAIRMAN; AND BARTLEY JOIN.

1. The application herein seeks consent to transfer control of KGMS, Inc., licensee of station KGMS, Sacramento, Calif., to Capitol Broadcasting Co. (Capitol). The initial decision of Hearing Examiner H. Gifford Irion would grant the application. Exceptions to the initial decision were filed by the Commission's Broadcast Bureau and oral argument before the Commission en banc was held on March 1, 1962. The Commission's rulings on the exceptions are contained in the appendix to this decision.

2. The background and history of this proceeding are set forth in the initial decision and these facts need not be repeated here. We have carefully examined the initial decision in light of the exceptions filed thereto, and, except as modified herein and in the appendix, agree with and adopt the initial decision.

3. The principal question for determination is whether acquisition of station KGMS by Capitol would contravene the provisions of 47 CFR 3.35(a).¹ The necessity for this determination arises from the overlap of primary service contours which would result from Capitol's controlling interest in station KGMS and in two other California standard broadcast stations—stations KFAX and KFIV in San Francisco and Modesto, respectively. As the examiner found, there would be overlap daytime of the 0.5-mv/m contours of all three stations; no nighttime overlap of the primary service areas would exist; there would be no daytime overlap of the 2.0-mv/m primary service contours of any of the three stations; and no one of the three stations would provide a primary signal into the principal community of either of the others. There is no dispute regarding these facts.

4. On the facts before us regarding the areas of overlap of 0.5-mv/m contours, we see nothing which presents any substantial question under section 3.35(a). In no sense can the area of overlap of 0.5-mv/m contours involving KGMS and KFIV and the common overlap area involving KGMS-KFAX-KFIV be considered as coming within the prohibition of section 3.35(a). Only relatively small areas and populations are involved in these areas of overlap.

5. Nor does the overlap of 0.5-mv/m contours involved between KGMS and KFAX preclude a grant. The findings show that the KFAX and KGMS daytime interference-free 0.5-mv/m contours overlap in an area of 2,040 square miles and serve a common rural population of 55,217 persons. These figures represent 16.3 percent of the area and 1.48 percent of the population within the KFAX total service area, and 41.5 percent of the area and 8.52 percent of the population within the KGMS service area. Assuming, but not deciding, that the percentages of area overlap shown approach the substantial standard specified in section 3.35(a), the facts in this proceeding nonetheless dispel any doubts regarding propriety of grant when the basic purposes of section 3.35(a) are considered.² Not only is the distribution of population widespread in the 2,040-square-mile overlap area as demonstrated by the nature of the area and by the fact that in overlap area both stations would serve a common rural population of only 55,217 persons, but also of significance is the showing that all of such area is served by each of 12 standard broadcast stations, including 5 stations in San Francisco, 1 in Modesto, and 3 in Sacramento. Other stations, in addition, serve portions of such area. These facts, together with other indicia of separateness of the two communities—e.g., the programing format of the two stations will not be similar; no joint talent or joint programing is proposed; each station will have a local manager and separate staff; the use of joint advertising rates is

¹ § 3.35 *Multiple Ownership*.

"No license for a standard broadcast station shall be granted to any party (including all parties under common control) if—

"(a) Such party directly or indirectly owns, operates, or controls another standard broadcast station, a substantial portion of whose primary service area would receive primary service from the station in question, except upon a showing that public interest, convenience, and necessity will be served through such multiple-ownership situation."

² The findings of fact are expanded to indicate that Sacramento is separated from San Francisco by the sparsely populated, rolling Diablo foothills, and by the northern end of San Francisco Bay. Two-thirds of the distance between Sacramento and San Francisco is primarily open country, with wheat, rice, and sugarbeet farms situated therein.

not contemplated at this time; and neither of the stations has any listeners in the community of the other—persuade us that the public interest will be served by grant of the instant application.

Accordingly, *It is ordered*, This 23d day of May 1962, that the application of Anthony C. Morici, Alfred A. Morici, Carol McNamee, Marianne Aiassa, and Abraham R. Ellman, and Capitol Broadcasting Co. for transfer of control of KGMS, Inc., licensee of KGMS, Sacramento, Calif., *Is granted*.

APPENDIX

RULINGS ON EXCEPTIONS OF BROADCAST BUREAU

<i>Exception No.</i>	<i>Ruling</i>
1-----	Denied. Degree of common ownership is relevant in this proceeding. See <i>Courier-Journal and Louisville Times Co.</i> , 14 FCC 150, 5 R.R. 348 (1949).
2-----	Denied as irrelevant, inasmuch as the Bureau's supporting contentions, presented in its brief, are concerned with a contravention of 4 CFR 3.35(b) which is not in issue in this proceeding.
4-----	Denied. There is support in the record for the statement made.
5-----	Granted. The last sentence of par. 5 of the conclusions of the initial decision is deleted.
3, 6-----	Denied. The question of whether Capitol should have ascertained the program needs of Sacramento is irrelevant in the context of this proceeding.
7, 8 and 9-----	Denied, in view of the decision herein.

DISSENTING STATEMENT OF COMMISSIONER FREDERICK W. FORD IN WHICH COMMISSIONERS MINOW, CHAIRMAN, AND BARTLEY JOIN

I would deny this application. By any standard the area of primary service overlap must be considered substantial. Since the stations involved are under common control, there exists a prima facie violation of section 3.35(a) of our rules. For the most part, the factors relied on in the decision for justifying a grant do not, in my judgment, constitute the showing called for by the rule that the public interest "will be served through such multiple-ownership situation." Rather, they tend to show merely that the situation is no worse than it appears to be on its face.

While the Commission has in other factual situations countenanced extensive overlap between stations under common control, I am not persuaded that it should do so here. Considerable overlap already exists between the Modesto and San Francisco stations controlled by Capitol. In view of the large area within the KGMS primary service contour which already receives service from these stations, and considering that at one point the primary service areas of all three stations overlap, it seems to me that the acquisition of KGMS by Capitol creates a multiple-ownership situation in violation of section 3.35(a) that is unredeemed by any substantial public-interest consideration.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON 25, D.C.

In re Application of ANTHONY C. MORICI, ALFRED A. MORICI, CAROL MCNAMEE, MARIANNE AIASSA, AND ABRA- HAM R. ELLMAN (TRANSFERORS), AND CAPI- TOL BROADCASTING Co. (TRANSFEEE) For Transfer of Control of KGMS, Inc., Licensee of Station KGMS, Sacra- mento, Calif.	}	Docket No. 14112 File No. BTC-3622
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APPEARANCES

Jack P. Blume, on behalf of Anthony C. Morici, Alfred A. Morici, Carol McNamee, Marianne Aiassa, and Abraham R. Ellman (transferors); *Vernon L. Wilkinson*, on behalf of Capitol Broadcasting Co. (transferee); *Thomas B. Fitzpatrick* and *John F. Reilly*, on behalf of the Broadcast Bureau, Federal Communications Commission.

INITIAL DECISION OF HEARING EXAMINER H. GIFFORD IRION

(Adopted October 31, 1961)

PRELIMINARY STATEMENT

1. This proceeding involves an application for consent to control of KGMS, Inc., licensee of station KGMS, Sacramento, Calif. The transferee is Capitol Broadcasting Co. and since its stockholders have interests in two other California stations, an overlap question was raised and the matter was designated for hearing on May 11, 1961, on the following issues:

1. To determine whether a grant of the instant proposal would be in contravention of section 3.35(a) of the Commission's rules.
2. To determine, in the light of the evidence adduced pursuant to the foregoing issue, whether a grant of the instant application would serve the public interest, convenience, and necessity.

Except as indicated by these issues, no question was raised as to the qualifications of the parties.

2. A prehearing conference was held on June 9, 1961, and the hearing session was held on July 26, 1961, at which time the record was closed. Proposed findings and conclusions were filed by Capitol Broadcasting Co. and the Broadcast Bureau. Inasmuch as the Broadcast Bureau recommended a denial of the application, Capitol filed a reply statement on September 7, 1961.

32 F.C.C.

FINDINGS OF FACT

3. The sole question posed by the issues in this case is whether acquisition of station KGMS, Sacramento, Calif., by Capitol Broadcasting Co. would contravene section 3.35(a).¹ There are three California stations which would be under common ownership as a result of such acquisition and, as will be set forth later, there would be overlap of the primary service areas. The stations involved, in addition to KGMS, are KFAF in San Francisco and KFIV in Modesto.

4. KFAF in San Francisco is a class II station licensed to operate unlimited hours (L-KYW) on the clear-channel frequency of 1100 kc with a power of 1 kw, nondirectional. Nevertheless it has an outstanding construction permit authorizing KFAF to increase its daytime power to 50 kw and the overlap showing was made with reference to that power. KFIV in Modesto is a class III station licensed to operate unlimited time on 1360 kc with 1 kw power, employing different directional antenna patterns day and night. KGMS in Sacramento is a class III station licensed to operate unlimited time on 1380 kc with a power of 1 kw, using a directional antenna at night. The approximate distances between the communities (in miles) are shown in the following tabulation:

	Airline distance ¹	Distance by road ²
San Francisco to Modesto.....	78	92
Modesto to Sacramento.....	70	76
Sacramento to San Francisco.....	75	92

¹ "Airline Distances Between Cities in the United States," U.S. Department of Commerce, Special Publication No. 238 (1947).

² Rand McNally Official Road Mileage Book (1961).

5. KGMS, Inc., is the licensee of station KGMS. In the original application filed December 9, 1960, it was proposed for tax and other reasons that the individual stockholders of KGMS, Inc., would first transfer their stock to Capitol and immediately thereafter that KGMS, Inc., would be merged into Capitol. By an amendment it was provided that if the sale were to be approved by the Commission and consummated prior to January 1, 1962, the sellers could elect to have the assets of KGMS, Inc., assigned directly to Capitol in one rather than two steps.

6. A. J. Krisik, Theodore J. Wolf, A. Judson Sturtevant, Jr., and Herbert W. Dustin own 100 percent of the subscribed stock of Capitol Broadcasting Co., the proposed transferee of station KGMS. They also own 53.25 percent of the issued and outstanding stock of Argonaut Broadcasting Co., licensee of KFAF, San Francisco, Calif. Dustin has the voting rights on an additional 3 percent of the stock.²

¹ "Sec. 3.35 *Multiple Ownership*.—No license for a standard broadcast station shall be granted to any party (including all parties under common control) if—

"(a) Such party directly or indirectly owns, operates, or controls another standard broadcast station, a substantial portion of whose primary service area would receive primary service from the station in question, except upon a showing that public interest, convenience and necessity will be served through such multiple ownership situation; * * *"

² These percentages will not be changed by an application now pending before the Commissioner of Corporations of California requesting permission for Krisik to distribute 500 of the 5,400 shares held by him among the other 3 named stockholders.

Krisik, his wife, Wolf, and Sturtevant own 100 percent of the issued and outstanding stock of KFIV, Inc., licensee of KFIV, Modesto, Calif. Krisik is president and director of all three corporations, and Wolf is an officer and a director of all three. Seven of the ten stockholders in Argonaut (KFAF), holding 48 percent of the voting stock, do not have any interest in station KFIV, and five of these same stockholders (holding 43.75 percent of the KFAF stock) have no interest in Capitol.

7. The operation of these three stations as authorized does not involve any overlap of the interference-free contours during nighttime hours. Furthermore, it does not involve any overlap of the 2.0-mv/m contours. It does, however, involve overlap of the daytime 0.5-mv/m contours so that there are common primary service areas. There are four such areas which are shown by the following table:

Service common to—	Population	Area (sq. miles)
No. 1 KFAF, KGMS, and KFIV.....	3,552	72
No. 2 KFAF and KGMS.....	51,665	1,968
No. 3 KFAF and KFIV.....	42,187	1,442
No. 4 KGMS and KFIV.....	5,542	162

8. The KFAF and KGMS daytime interference-free 0.5-mv/m contours overlap in an area of 2,040 square miles (areas Nos. 1 and 2) and serve a common rural population of 55,217 persons. These represent 16.3 percent of the area and 1.48 percent of the population within the KFAF total service area; they also represent 41.5 percent of the area and 8.52 percent of the population within the KGMS service area. Overlap between KFAF and KFIV service areas (areas Nos. 1 and 3) represents an area of 1,514 square miles with a rural population of 45,739 persons. These figures represent 12.1 percent of the area and 1.23 percent of the population within the KFAF service area, and 28 percent of the area and 12.8 percent of the population within the KFIV service area. As between KGMS and KFIV, the common service area (areas Nos. 1 and 4) includes 234 square miles with a common rural population of 9,014 persons. These represent 4.76 percent of the area and 1.39 percent of the population within the KGMS service area, and 4.32 percent of the area and 2.51 percent of the population served by KFIV.

9. The area which would receive primary service from all 3 stations consists of 72 square miles wherein a rural population of 3,552 persons reside. This lies in the San Joaquin Valley and, at the nearest points, is about 20 miles south of Sacramento, 18 miles northwest of Modesto, and 45 miles northeast of San Francisco. There is primary service available to all of this common overlap area from 25 stations, including 6 in San Francisco, 2 in Modesto, and 5 in Sacramento. Portions of the area are served by other stations. The overlap area which is common only to KFAF and KGMS extends westward from Sacramento for a distance of about 45 miles and to the south of the city for a distance of about 25 miles. At its closest point the area is approximately 40 miles from San Francisco. All of the area common only to KFAF and KGMS is served by each of 12 stations, including 5 in

San Francisco, 1 in Modesto, and 3 in Sacramento. The area where overlap occurs only between KFAQ and KFIV is an elongated area roughly 22 miles wide and 75 miles long lying closer to Modesto than to San Francisco. All of this common area is served by each of 13 stations, including 5 in San Francisco, 1 in Modesto, and 2 in Sacramento. The area common only to KGMS and KFIV lies roughly at one-third the distance from Sacramento to Modesto. It is elongated and extends in a general east-west direction for some 33 miles with about 5 miles width. Each of 19 stations serves this area, including 5 in San Francisco, 2 in Modesto, and 5 in Sacramento. There are other stations which serve portions of each of the four foregoing areas.

10. The following findings, which have been requested in one instance by the Broadcast Bureau and in the other by Capitol, are illustrations of the overlap picture in terms of percentages. As has been noted, the existing overlap between KFAQ and KFIV affects a rural population of 45,739 persons and this figure represents 1.23 percent of the total KFAQ population and 12.8 percent of that served by KFIV.³ Acquisition of KGMS by Capitol would result in additional overlap in an area of 2,130 square miles (areas Nos. 2 and 4) with a rural population of 57,127. In the aggregate the total overlap would extend over an area of 3,644 square miles wherein reside 102,866 persons. As compared to the existing primary service overlap, these new figures would represent an increase of 140 percent in area and 125 percent in population.

11. Each of the three communities involved is separate and distinct from the other two. The San Francisco-Oakland metropolitan area includes the counties of Marin, Solano, Contra Costa, Alameda, San Mateo, and San Francisco. Sacramento County is a separate metropolitan district, but Modesto has not been designated by the Census Bureau as a metropolitan district or area since the city's population does not exceed 50,000. Modesto, and Stanislaus County in which it is situated, have never been treated by the Census Bureau as part of the Sacramento or San Francisco-Oakland districts. The separate metropolitan area of Stockton in San Joaquin County lies between Modesto and Sacramento. Pertinent 1960 census figures for the three communities are tabulated below :

	City	County	Urbanized area	SMSA ¹
San Francisco.....	740,316	740,316	2,430,663	2,783,359
Sacramento.....	191,667	502,778	451,920	502,778
Modesto.....	36,585	157,249	-----	-----

¹ Standard metropolitan statistical area.

12. Each of the three cities involved here has radio stations affiliated with the ABC and CBS networks, those in San Francisco being 50-kw stations. Each city is located in a different congressional and State legislative district. Each has its own local government, civic, and community organizations.

³ On Nov. 8, 1960, the Commission granted the application of KFAQ to increase power to 50 kw, thus resulting in the overlap described above.

13. Sacramento is the State capital and lies in the heart of the agricultural Sacramento Valley. During the past decade, however, it has almost doubled in population and is tending to become an industrial and commercial center. A deep water port is under construction and new or expanded industries amounted to more than \$35 million in 1960. More than 17,000 persons are currently employed in rocket and missile plants alone.

14. Stanislaus County, of which Modesto is the principal city, is basically agricultural, being part of the irrigated San Joaquin Valley. This area is devoted to cultivation and production of diverse fruits, vegetables, seed crops, nursery products, livestock and dairy products. Stanislaus County ranks ninth in the Nation in agricultural income as shown by the 1959 Agricultural Census.

15. The city of San Francisco is quite different from either of the other cities, being a highly industrialized metropolis with very little agriculture in the immediate environs. There are 75 large establishments with national headquarters in San Francisco having combined assets in excess of \$40 billion. The city's population includes a variety of national and ethnic groups, including both European and Oriental. In terms of population San Francisco is the 6th largest city in the Nation, whereas Sacramento is 50th. The rating of Modesto does not appear in the record.

16. Looking at the broadcast services available, it is found that San Francisco has 9 other AM stations and there is a total of 18 such stations licensed to communities within the San Francisco-Oakland standard metropolitan statistical area. The same area has 25 FM stations and 4 television stations. Within the KFAK 2.0-mv/m contour, there are 29 AM stations. Three metropolitan daily newspapers are published in San Francisco and one in Oakland. In Sacramento there are five AM stations in addition to KGMS, eight FM stations and three television stations. The city has two daily newspapers. Within the KGMS 2.0-mv/m contour five other AM stations are situated. In Modesto there are two AM stations besides KFIV, two FM stations and no operating television stations. The city has one daily newspaper. Within the KFIV 2.0-mv/m contour, six other AM stations are situated. The Audit Bureau of Circulation figures indicate that newspapers published in any one of these communities have only a very limited circulation in either of the others.

17. In each of the three markets in which Capitol's stockholders either have or will have an interest in the event of a grant, they will be in competition with several groups having multiple broadcast interests. In Sacramento and Modesto this includes the McClatchy group, which has AM and FM outlets in both cities. In San Francisco these multiple-ownership groups include the three networks and a television licensee which owns a newspaper.

18. The programing formats of the three stations present certain differences. Capitol proposes to continue the present programing of station KGMS which is described as a balanced format with emphasis on higher quality popular music on the order of the Broadway musicals. It does not present "hillbilly" nor the "top 40" tunes. KFAK in San Francisco has specialized to the extent of concentrating on

news, religious, and foreign language programs. KFIV, on the contrary, uses a balanced format with special emphasis on news, weather, and other matters of interest to the urban and rural population of the Modesto area. Only one of the three stations (KFIV) is or proposes to become affiliated with a network. Each will have its own local manager and separate staff. No joint talent or joint programming is proposed and each will have its own rate card. Capitol disavows any present intention of using joint or combination rates.⁴ Mr. Krisik, who is president, director, and principal stockholder of KFIV, KFAX, and Capitol, testified that he did not believe it advisable to sell the stations as a package inasmuch as the programming formats are different and would not appeal to a single buyer. Exhibit 8 of the applicant's direct case also contains the following statement:

While it is the intention of the proposed purchasers of KGMS, in the event the instant sale is approved, not to offer joint, package, or discount rates on the three stations here involved, and they have heretofore indicated their willingness to accept a grant so conditioned, the practicalities of competing against other multiple station ownership groups who operate in these three markets and who do offer combination and discount rates may make it necessary for the Capitol group at some future date to request the Commission to waive this commitment—particularly with respect to KGMS and KFIV because of the McClatchy operations in these markets and their package practices.

When questioned about this by Broadcast Bureau counsel, Mr. Krisik admitted that competition from other groups owning several stations in the area might force him to reconsider joint rates, but he stated: "At the present time we certainly do not contemplate it."

19. KFAX now has its main studio at the transmitter site in San Francisco. Under its 50-kw daytime operation, daytime programs will originate from the new transmitter site across the bay in Hayward, Calif. KFIV's main studio is in Modesto. KGMS has its main studio in Sacramento and this would be continued by Capitol. It is not proposed that any of the three stations would maintain an auxiliary studio in either of the other cities.

20. During the year June 1, 1960, to May 31, 1961, the advertising carried by each of the stations was distributed as shown in the following tabulation:

Station	National	Regional	Local
	Percent	Percent	Percent
KFAX.....	13.47	16.9	69.61
KGMS.....	12.1	10.8	77.1
KFIV.....	6.6	9.5	83.9

21. There was no duplication of buying by any local accounts, but 6.8 percent of national accounts and 9.52 percent of regional accounts were duplicated on all three stations. KGMS duplicated 33.3 percent of the national accounts and 30.3 percent of the regional accounts carried by KFIV. It likewise duplicated 12.1 percent of the national

⁴ KFAX and KFIV have no common advertising discounts at present nor have they ever been sold in combination.

and 15.15 percent of the regional accounts carried by KFAF. KFIV duplicated 37.9 percent of the national and 21.4 percent of the regional accounts carried on KGMS. It duplicated 13.7 percent of the national and 23.8 percent of the regional accounts carried on KFAF. KFAF duplicated 11.4 percent of the national and 11.3 percent of the regional accounts carried on KGMS. It duplicated 11.4 percent of the national and 22.7 percent of the regional accounts carried by KFIV.

22. Inasmuch as none of these stations places even a 0.5-mv/m signal in any portion of the cities to which the other stations are licensed, there is obviously no primary service furnished to such cities. As heretofore noted, the city of Stockton lies approximately midway between Sacramento and Modesto. Audience index reports were placed in evidence to show that neither KFIV nor KGMS has any measurable audience in Stockton. Likewise, neither KGMS nor KFIV has any listeners in the San Francisco Bay area. Similarly KFAF has no listeners in either Modesto or Sacramento. There was no evidence to show that any of the three stations made claims to advertisers of covering the main communities served by the others.

CONCLUSIONS

1. The sole issue in this proceeding is whether the acquisition of control of station KGMS, Sacramento, Calif., by Capitol Broadcasting Co. would result in a violation of section 3.35(a) of the Commission's rules. The essential elements of this section are (a) ownership or control of a broadcast station which (b) has substantial primary service overlap with another station owned or controlled by the same party.⁵ The first question posed is easily answered inasmuch as the group owning Capitol Broadcasting Co. are also majority stockholders of two other California stations: KFAF in San Francisco and KFIV in Modesto. Turning to the second question, the findings revealed the following factual situation: (1) There is no question of any nighttime overlap of primary service areas; (2) there is no overlap of the 2.0-mv/m contours of any of the three stations concerned; (3) no one of the three stations would provide a primary signal into the principal community of either of the others; and (4) there would be overlap of the 0.5-mv/m contours of all three. Bearing in mind the language of section 3.35(a), it becomes necessary to determine whether this overlap encompasses "a substantial portion" of the primary service areas.

2. As enunciated in previous Commission statements of policy and decisions, the objective of this rule is to implement congressional policy against monopoly, to prevent undue concentration of economic power contrary to the public interest, and to promote diversification of program and service viewpoints. Report and order in docket No. 8967, 9 R.R. 1563; *Ponce TV Partnership*, 15 R.R. 333; *Westbrook Broadcasting Co.*, 17 R.R. 312. In determining whether there is substantial overlap, the Commission decisions appear to indicate that normally an overlap of the 0.5-mv/m contours does not come within the pro-

⁵ The language of the rule is set forth in footnote 1 of the findings of fact.

hibition of the rule. In the *Westbrook* case the rule was applied where there was overlap of the 2.0-mv/m contours and where a Portland station owned by the applicant would provide a primary service (2.0 mv/m) to a portion of Saco, Maine, in which the proposed station was to be located. Nevertheless there have been decisions in which overlap of the 2.0-mv/m contours has been allowed and even where a primary signal was furnished to the principal community of another station under common ownership. *Allen T. Simmons*, 3 R.R. 1029; *Stanislaus Broadcasters, Inc.*, 13 R.R. 1077; *Knorr Broadcasting Corp.*, 14 R.R. 925; *Booth Broadcasting Company*, 18 R.R. 934; *May Broadcasting Company*, 19 R.R. 795. It is apparent from these cases that the physical facts of overlap, that is, the size, extent, and location of the overlapping service areas, are not solely controlling. Other factors enter as variables in determining whether a particular overlap situation is substantial. These factors were enumerated in the Commission's order of designation and they include the following: The populations residing in the overlapping service areas; the classes and power of the stations involved; the extent of other competitive service to the areas in question; the distribution of population within the overlapping service areas; the location of trade areas, metropolitan districts, and political boundaries; the areas and populations to which the service of each station is directed; the manner in which the business affairs of the station are conducted, including any plans the transferee may have for the use of joint rates or discounts for multiple use of the stations under common control; the program plans of the proposed transferee for each station with respect to, among other things, diversification of presentations, prospective use of similar or identical programs for broadcast by the stations under common control; a comparison of program plans of the transferee as compared with the existing programming of the station; ⁶ coverage claims made or which the transferee anticipates will be made with respect to the joint operation of the stations involved; statistical data on the audience preferences for other standard broadcast stations operating in the area, with a view toward establishing the percentage of the population in the overlap area that will rely on the service of the stations under common control; the planned location of main and secondary studios; factors relating to the use of local talent, program sources, broadcast of local news, and availability of facilities for local public service programs; and plans for management (personnel) for each of the stations involved.

3. In the present case stations KGMS and KFIV are class III-B stations, while station KFAX is a class II station operating with 50 kw daytime, limited on station KWY. Each is situated in a city which is separate and distinct from either of the others, both in a geographic and economic sense. San Francisco is the hub of one of the largest metropolitan areas in the United States and is a city of distinctive industrial, commercial, and ethnic characteristics. Both Sacramento and Modesto are located in the heart of agricultural regions which, however, have different characteristics. Sacramento has also shown recent industrial growth and it is, in addition, the

⁶ This is with reference specifically to station KGMS.

capital of California. It lies in the Sacramento Valley whereas Modesto is situated in the San Joaquin Valley, but separating the two is the city of Stockton and the Stockton standard metropolitan statistical area (SMSA).

4. The evidence shows that the programming formats of the three stations vary from one another and each is designed for the needs of its own locality. Each of the three cities has other local broadcast outlets in a number reasonably proportionate to its size, and the areas of overlap are amply supplied with other standard broadcast primary service.⁷ Although KGMS, KFIV, and KFAV would be under common majority stockownership, they would be in competition with other broadcast stations and newspapers for advertising revenue. Such competition includes broadcasters owning chains of stations in California and elsewhere. Listener surveys taken in the past indicate that each of these stations has a reasonable listenership in its own community, but has no measurable listenership in the communities of either of the others. Separate statistics for the specific areas of overlap are not available, but the plenitude of other broadcast signals in those areas insures that radio listeners there have a wide choice of service.

5. One of the fundamental purposes of section 3.35, as indicated above, is to provide diversity of program and service viewpoints. While complete program showings were not made on this record, there is evidence to show that variations do exist in the formats of the three stations. Only KFIV will be affiliated with a network, and KFAV is a specialized type of service. Thus the objective of diversity would not be frustrated by common ownership of the stations. It is also to be noted that the main studios in each instance are located in the principal city served and no secondary studios are proposed for other cities in which the stockholders of Capitol have broadcast interests. As already noted, station KGMS does not place a primary signal of 2.0 mv/m or greater in either Modesto or San Francisco, nor do the stations located in those cities place a primary signal in Sacramento. In short, this case presents a far less objectionable situation under the overlap rule than do either the *Stanislaus* or *May* cases cited above.

6. Insofar as the operation of the stations is concerned, it is proposed to have separate programming, separate staffs, including a different local manager in each instance, and separate rate cards. Speaking for Capitol Broadcasting Co., its president, Mr. Krisik, distinctly disavowed any present intention of having joint rates or discounts for the sale of advertising time. In this connection the Broadcast Bureau has charged that Capitol's showing is "somewhat less than unequivocal." In substance, Mr. Krisik's testimony was that his company did not contemplate the use of joint rate cards or advertising discounts, and that it was willing to accept a grant conditioned on their not doing so. He did, however, state that if competition from other chains of stations in that same region made it necessary, he would apply for a waiver of that condition from the Commission. In view of this express declaration it is quite apparent that the use of

⁷ See pars. 9 and 16 of the findings of fact.

joint rates by these stations would remain within the Commission's discretion and the policy toward them could not be reversed arbitrarily by the transferee.⁸

7. The evidence shows that no local accounts which are carried by KGMS, KFAX, and KFIV are duplicated on either of the other stations. Certain of the national and regional accounts, however, are duplicated.⁹ This is significant for the reason that a national or regional advertiser would not normally be interested in presenting his message over two stations covering the same market (leaving aside a saturation campaign), but would, instead, buy stations where such message would not, in the commercial sense, be duplicated. This fact tends to support the conclusion that the three markets and the service areas of the three stations are as a practical matter separate and distinct.

8. The Broadcast Bureau, in urging a denial of the application, has observed that Mr. Krisik's testimony showed he had taken no affirmative steps to ascertain the needs of the areas served by KGMS. In essence, he merely proposed to continue the present style of programming with more emphasis on news, but he did not outline any thoroughly developed plan. The reason that this matter was not gone into more deeply was, of course, that the hearing order contained no issue relating to the ascertainment of needs. As a consequence this matter is irrelevant and could not be assigned as a ground for denying the application.

9. Reviewing all of these facts, it must be concluded that the degree of overlap, notwithstanding its existence in purely technical terms, is much less than substantial and therefore does not transgress section 3.35(a) of the rules. As a consequence it must be found that the proposed transfer of control to Capitol Broadcasting Co. would serve the public interest.

It is ordered, This 31st day of October 1961, that unless an appeal from this initial decision is taken to the Commission, or unless the Commission reviews the initial decision on its own motion in accordance with the provisions of section 1.153 of the rules, the application (file No. BTC-3622) of Anthony C. Morici, Alfred A. Morici, Carol McNamee, Marianne Aiassa, and Abraham R. Ellman (transferors), and Capitol Broadcasting Co. (transferee) for transfer of control of KGMS, Inc., licensee of KGMS, Sacramento, Calif., *is granted*.

⁸ As demonstrated by the evidence, there are other stations in these communities which are under common control and which do employ joint rates or discounts. No rule or policy statement was cited which would prohibit such a practice. In the light of this competition and the absence of a prohibiting rule, the hearing examiner does not regard it as within his prerogative to establish a policy against such rates, hence no condition to this effect will be appended to the initial decision.

⁹ See par. 21 of the findings of fact.

CARTER MOUNTAIN TRANSMISSION CORP., DOCKET NO. 12931 :

Petition of Carter Mountain Transmission Corp. for reconsideration with respect to the Commission's decision released February 16, 1962; denied.

Petition of National Community Television Association, Inc., to file brief in support of petition for reconsideration; granted.

Brief submitted considered.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON 25, D.C.

In re Application of CARTER MOUNTAIN TRANSMISSION CORP., CODY, WYO. For Construction Permit To Install an Additional Transmitter, To Transmit on Frequency 6387.5 Mc. Location: Copper Mountain, 40 Miles South of Worland, Wyo.	}	Docket No. 12931 File No. 2463-C1- P-58
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MEMORANDUM OPINION AND ORDER

(Adopted May 23, 1962)

BY THE COMMISSION: COMMISSIONER BARTLEY NOT PARTICIPATING; COMMISSIONER CROSS DISSENTING AND ISSUING A STATEMENT.

1. The Commission has before it a petition for reconsideration filed March 15, 1962, by Carter Mountain Transmission Corp. (Carter); petition for leave to file a brief in support of said petition for reconsideration (with supporting brief attached), filed March 19, 1962, by the National Community Television Association, Inc. (NCTA); statement of Chief, Common Carrier Bureau, filed March 28, 1962, setting forth its position on radio communications common carriers as applied here and in general; statements in response to NCTA's petition; and oppositions to the arguments advanced by Carter, NCTA, and Common Carrier Bureau, filed by KWRB-TV, National Association of Broadcasters, and the Broadcast Bureau.

2. The history of the case and the prior proceedings leading to the present petition are fully set forth in the Commission's decision released February 16, 1962 (32 FCC 459, 22 R.R. 193), are incorporated herein by reference, and will not be repeated. The Commission has fully considered the matters of record in this proceeding, the decision of February 16, supra, and the pleadings described in paragraph 1 of this document, and with the exception of those matters discussed and disposed of hereinafter, we conclude that nothing new has been submitted warranting further consideration; that our decision properly reflects the evidence of record; that the findings therein support the conclusions reached in our decision.

3. The Commission in its decision denied the application of Carter and granted the protest of Joseph P. Ernest and Mildred V. Ernest, d/b as Chief Washakie TV, licensee of station KWRB-TV (KWRB-TV), thus reversing the recommendation of the hearing examiner. Carter, in its petition requesting that this decision be reconsidered, repeats, verbatim, many statements contained in a brief submitted by it on February 28, 1961, with respect to issues 3, 4, 5, and 6. The Commission rejected these arguments when it reversed the examiner in the first instance and we find no new argument being presented at this time which would warrant a change in our position.

4. Carter further contends that the Commission denied its application because of the economic and competitive impact the same would have on a local broadcast station, urging that this position is contrary to the Commission's determinations in other proceedings. Carter's contention in this instance is incorrect. The Commission's course of action as set forth in the decision was not dictated by the adverse effect the grant would have on the local station, but rather by the resultant effect the same would have on the public interest. As was pointed out by the case of *Carroll Broadcasting Co. v. FCC* (C.A.D.C. 1958), 103 U.S. App. D.C. 346, 258 F. 2d 440, 17 R.R. 2066, cited by the Commission, injury to a licensee is not necessarily injury to the public, nor is the private economic injury to a licensee by any means always, or even usually, reflected in public detriment. Thus, the economic injury to the licensee standing alone was not the motivating factor which warranted the action taken by the Commission in this proceeding. However, when the economic impact is of such a nature as to result in an adverse effect on the public interest, then it is incumbent upon the Commission to make a determination as to where the best overall public interest lies. The Commission made such determination after a careful evaluation of all of the factors.

5. In view of the unusual circumstances presented in this proceeding, and in view of the fact that the Commission is desirous of having all of the arguments before it for consideration, the NCTA's petition is granted and the brief submitted therewith considered. However, neither the NCTA nor the Common Carrier Bureau has presented any arguments which have not been previously considered by the Commission and which have not in substance been answered by the Commission's decision. The Commission does not agree that there is insufficient evidence to warrant a conclusion that the economic impact is of such magnitude as to cause the possible demise of station KWRB-TV with the resultant injury to the public. Nor is there any indication any place that the licensee of the existing station is mismanaging the station in any fashion. On the contrary, the examiner's findings point to the fact that the station is well operated in the public interest. It would therefore appear that this argument on the part of NCTA is extraneous and based on conjecture and supposition.

In light of the above, *It is ordered*, This 23d day of May 1962, that the petition filed by the National Community Television Association, Inc., on March 19, 1962, seeking leave to file a brief in support

of the instant petition for reconsideration, *Is granted*, and the brief submitted therewith *Is accepted*; and

It is further ordered, That the instant petition for reconsideration, filed by Carter Mountain Transmission Corp. on March 15, 1962, *Is denied* in all respects.

DISSENTING STATEMENT OF COMMISSIONER CROSS

I dissent to the refusal of the majority to reconsider the decision issued February 16, 1962, in this proceeding, and its refusal to grant the Carter Mountain Transmission Corp. application. My reasons therefor are set forth in my dissenting statement appended to the February 16 decision, and are buttressed by the persuasive arguments advanced in Carter Mountain's petition for reconsideration, the National Community Television Association, Inc., brief, and the Common Carrier Bureau statement in support of Carter Mountain's petition.

32 F.C.C.

RARITAN VALLEY BROADCASTING Co., INC. (WCTC), DOCKET No. 14415:

Initial decision granting application for construction permit to authorize increase in daytime power of class IV station WCTC at New Brunswick, N.J., from 250 w to 1 kw; became final in accordance with section 1.153 of the Commission's rules.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON 25, D.C.

In re Application of RARITAN VALLEY BROADCASTING Co., INC. } (WCTC), NEW BRUNSWICK, N.J. } For Construction Permit	Docket No. 14415 File No. BP-14494
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APPEARANCES

Norman E. Jorgensen and *Robert A. Woods* (Krieger & Jorgensen), on behalf of Raritan Valley Broadcasting Co., Inc. (WCTC); *Leonard H. Marks*, *Stanley S. Newstadt*, *Roy F. Perkins, Jr.*, and *Martin J. Gaynes* (Cohn & Marks), on behalf of Continental Broadcasting, Inc.; and *Larry M. Berkow*, on behalf of Chief, Broadcast Bureau, Federal Communications Commission.

INITIAL DECISION OF HEARING EXAMINER FOREST L. McCLENNING
(Effective May 10, 1962, pursuant to sec. 1.153)

PRELIMINARY STATEMENT

1. By Commission order of November 29, 1961, pursuant to the provisions of section 309(e) of the Communications Act of 1934, as amended, the application of Raritan Valley Broadcasting Co., Inc., to increase the daytime power of class IV station WCTC, New Brunswick, N.J. (1450 kc, 250 w, U), from 250 w to 1 kw, was designated for hearing. The hearing issues specified are as follows:

1. To determine the areas and populations which may be expected to gain or lose primary service from the proposed operation of station WCTC, and the availability of other primary service to such areas and populations.
2. To determine whether the instant proposal of WCTC would cause objectionable interference to station WNJR, Newark, N.J., or any other existing standard broadcast stations, and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other primary service to such areas and populations.
3. To determine whether overlap of the 2- and 25-mv/m contours would occur between the instant proposal of WCTC and the existing operation of station WNJR, Newark, N.J., in contravention of section 3.37 of the Commission rules, and, if so, whether circumstances exist which would warrant a waiver of said section.
4. To determine, in the light of the evidence adduced pursuant to the foregoing issues, whether a grant of the instant application would serve the public interest, convenience, and necessity.

The order of designation provides, however, that in the event of a grant of the subject application, the construction permit shall contain the condition that construction shall not be commenced until a decision has been reached in the proceeding in docket No. 13528 et al., and that in the event that the applications therein are granted, station WCTC shall not commence program tests until the stations therein involved are similarly authorized.¹ Continental Broadcasting, Inc., licensee of station WNJR, Newark, N.J., was made a party to the proceeding.

2. A prehearing conference was held on January 10, 1962, and in conformance with the agreements reached therein, the written sworn exhibits constituting the direct case of the applicant were exchanged among the parties on an informal basis and subsequently on a formal basis. Hearing was held on February 15, 1962, and the record closed on this date. At commencement of the hearing, Continental Broadcasting, Inc., withdrew from the proceeding. The remaining parties waived the right to file proposed findings of fact and conclusions of law and the right to file corrections to the transcript.

FINDINGS OF FACT

3. The following tabulation sets forth the areas and populations within the pertinent daytime contours of the present and proposed operation of station WCTC:

Contour (mv/m)	Present ¹		Proposed ¹	
	Population	Area (square miles)	Population	Area (square miles)
2.0.....	404,028	231.3	683,188	417.1
0.5.....	505,976	740.7	848,438	1,423.3
Interference from stations WNJR, WILM, WNAB, and WFPG.....	24,163 (4.77%)	144.1	36,041 (4.24%)	364.0
Interference free.....	481,813	596.6	812,397	1,059.3
Interference from WNJR and proposed WILM, WNAB, WFPG, WKIP, and WPAM ²	60,087 (11.87%)	310.9	101,980 (12.02%)	705.3
Interference free ³	445,889	429.8	746,458	718.0

¹ Percentage figures represent percent of population within the 0.5-mv/m contours subject to objectionable interference.

² Class IV stations WILM, WNAB, WFPG, WKIP each has a pending application to increase power daytime from 250 w to 1 kw. Station WPAM, also a class IV cochannel station, has an outstanding construction permit to increase daytime power to 1 kw.

³ Adjacent-channel interference, 10 kc removed, from proposed stations in Mount Holly and Burlington, N.J. (file Nos. BP-13952, BP-13871, BP-12580), would lie wholly within the area of cochannel interference, from stations WILM and WFPG.

The gain of 185.8 square miles within the 2-mv/m contour would include city and urban areas having a population of 246,718 persons and rural areas having a population of 32,442 persons. Without

¹ On Mar. 5, 1962, a decision was released *In re Applications of Washington Broadcasting Company et al.* (docket Nos. 13528-13534), which would grant the seven applications therein each of which seeks an increase in daytime power for a class IV station from 250 w to 1 kw. Under the grants there made, interference to station WCTC would be increased in an area having a population of 17,848 persons. These grants, however, were subject to the following condition, *Inter alia*:

"That the permittees shall accept such interference as may be imposed by other existing 250 w class IV stations in the event they are subsequently authorized to increase power to 1 kw; * * *"

reference to other pending class IV applications or outstanding construction permits, gain within the 0.5-mv/m contour would be 462.6 square miles having a population of 330,584 persons. Eight existing stations provide primary service to 100 percent of this area, with 37 other stations serving portions thereof. The minimum number of services in any portion is 15 and the maximum number 29. Assuming all the aforementioned stations and WCTC operating with 1 kw power daytime, gain within the 0.5-mv/m contour would be 288.2 square miles having a population of 300,569 persons. Eight existing stations provide primary service to 100 percent of this area, with 32 other stations serving portions thereof. The minimum number of services in any portion is 15 and the maximum number 29. No area presently receiving service from station WCTC would lose such service. In the event of denial of the WCTC proposal and grant of the other class IV applications, WCTC would lose an additional area to that presently under interference of 166.8 square miles having a population of 35,924 persons. Population within the interference areas would represent 7.1 percent of total population within the 0.5-mv/m contour for a total percentage of 11.87. Eight existing stations provide primary service to 100 percent of this area, with 34 other stations serving portions thereof. The minimum number of services in any portion is 15 and the maximum number 29.

4. The proposed operation would cause limited objectionable interference to the existing and proposed operations of cochannel class IV stations WILM, WNAB, WFPG, WPAM, and WKIP. Each has an outstanding construction permit or pending application for increase in daytime power to 1 kw. Adjacent-channel interference (20 kc removed) to station WNJR would be increased from an area of 1.6 square miles having a population of 8,877 persons to an area of 6.08 square miles having a population of 26,707 persons. The area of interference immediately surrounds the transmitter site of station WCTC and the population therein represents 0.3 percent of the total population within the 2-mv/m contour of station WNJR.² A minimum of 8 other stations serves the increased interference area in its entirety, with a maximum of 21 serving portions thereof. The service of station WCTC would be substituted for that of station WNJR within the increased area of interference. No other existing or proposed operations would receive objectionable interference from the proposal herein.³

5. The WNJR 2-mv/m contour wholly encompasses the present 25-mv/m contour of station WCTC and would wholly encompass the 25-mv/m contour of station WCTC operating as proposed. The WNJR 2-mv/m contour encompasses almost all of the city of New

²Total population and area within the 0.5-mv/m contour of station WNJR were not computed.

³A small area of interference would be caused station WBAB, Babylon, N.Y., operating on 1440 kc with 1 kw power, nondirectional. The interference occurs on Long Island and is entirely inside the New York urbanized area. The WBAB signal in this area is less than 2 mv/m and accordingly, under Commission standards, does not provide primary service to this area. Two applicants for operation on 1460 kc in Mount Holly, N.J., and one applicant for this frequency in Burlington, N.J., would receive adjacent-channel interference in a small area from the proposed operation herein. This area, however, lies wholly within a greater area of interference (cochannel) from station WVOX, New Rochelle, N.Y., which operates on the frequency 1460 kc.

Brunswick. The present WCTC 2-mv/m contour does not reach the WNJR 25-mv/m contour by 2 miles. The proposed WCTC 2-mv/m contour would penetrate the 25-mv/m contour of station WNJR to a maximum depth of 2,000 yards (approximately $\frac{3}{4}$ miles). Thus the present operations of these stations constitute a violation of section 3.37 of the Commission's rules, and this violation would continue under the proposed operation of station WCTC.

6. Raritan Valley Broadcasting Co., Inc., became licensee of station WCTC on May 1, 1957. It has never received a complaint of cross-modulation of the signals of stations WCTC and WNJR, nor has a report of such interference come to it. Additionally, its consulting engineer ran a series of tests to determine whether cross-modulation between the existing operations could be detected. These tests consisted of measurements for spurious radiations on the frequencies 1470 kc and 1410 kc and measurements of the signal intensity of stations WCTC and WNJR.⁴ Measurements were made at 21 specified locations selected at random within the present 25-mv/m contour of station WCTC and at 8 points within the 25-mv/m contour of station WNJR. A radio receiver was also tuned to the frequency of the weaker station. No trace of cross-modulation could be detected at any point either on the program of the weaker station or through generation of 1410 kc or 1470 kc spurious radiations. At some locations adjacent-channel interference could be heard. (See par. 4, supra.) Based upon the failure to detect the existence of any trace of cross-modulation from the existing operations, it is the conclusion of applicant's consultant that the proposed increase in power could not increase cross-modulation from an undetectable level to an undesirable level.

CONCLUSIONS

1. Under Commission policy of upgrading of all class IV stations to the maximum permissible power (report and order, 17 R.R. 1541, report and order 20 R.R. 1661), the interference considerations detailed in the findings of fact constitute no bar to a grant of the proposed operation. Station WNJR, a class III station, would receive additional adjacent-channel interference to the extent noted in the findings of fact. This interference area, however, lies wholly within the immediate area of New Brunswick, would be served by station WCTC which is licensed to that city, and the population involved represents only a slight fraction of 1 percent of the total population within the interference free contour of station WNJR.

2. Overlap of the 2-mv/m and 25-mv/m contours of stations WCTC and WNJR has existed for many years. The files for station WCTC show no record of any complaint of cross-modulation throughout the

⁴ Measurements were made on the frequencies 1470 kc and 1410 kc for the reason that it has been the experience of the consulting engineer that a "very sensitive" indication of the existence of external modulation can be found by making observations on a frequency determined by the lower frequency station minus the difference in operating frequencies, or on a frequency determined by the higher frequency station plus the difference in operating frequencies. In the absence of strong signals from other stations on these frequencies, if cross-modulation exists, spurious radiations will be detected on these frequencies. In the instant case a signal of less than 200 uv/m was present from a station in Allentown, Pa. (Commission records show that station WSAN operates on frequency 1470 kc at Allentown), and frequency 1410 kc was found to be free of strong signals.

5-year period of its operation by the present licensee. There is no indication that such records appear in the files for station WNJR, the licensee of which was made a party to this proceeding and thereafter withdrew. *In re Bridgeport Broadcasting Co.*, 18 R.R. 285, and *In re Vincent G. Cofey and Benjamin A. Oswalt*, 19 R.R. 441, waiver of the provisions of section 3.37 of the Commission's rules was found warranted on the basis of such showing. There is in addition to the instant proceeding the uncontroverted showing of applicant, and the conclusions of applicant's consultant are reasonable. *In re Suburban Broadcasting Company, Inc.*, 20 R.R. 375, 382b. Upon the basis of the evidence adduced herein, it is concluded that interference due to cross-modulation has not been found to exist under the presently authorized operations of stations WNJR and WCTC, and that no such interference should occur under the proposed operation of WCTC. Waiver of the provisions of section 3.37 of the Commission's rules is, therefore, warranted.

3. As reflected in the findings of fact, a new service will be provided to areas having a substantial population, and the service of station WCTC will be upgraded in those areas served under its presently authorized operation. In granting applications for power increases by class IV stations, the Commission has, however, required that the permittee accept interference from class IV stations that are subsequently authorized to increase daytime power to 1 kw. To more effectively implement Commission policy as it concerns the upgrading of all class IV stations, a grant herein must be similarly conditioned. In view of the foregoing findings of fact and conclusions and upon consideration of the entire record in this proceeding, it is concluded that a grant of the application herein of Raritan Valley Broadcasting Co., Inc., subject to the subsequently specified conditions, would serve the public interest, convenience, and necessity.

Accordingly, *It is ordered*, This 20th day of March 1962, that unless an appeal to the Commission from this initial decision is taken by a party, or the Commission reviews the initial decision on its own motion in accordance with the provisions of section 1.153 of the rules, the application herein of Raritan Valley Broadcasting Co., Inc., for a construction permit to increase daytime power of station WCTC from 250 w to 1 kw, *Is granted*, subject to the following conditions:

(1) Program tests will not be authorized until the stations involved in the proceedings in docket No. 13528 et al. are similarly authorized.

(2) Permittee shall accept such interference as may be imposed by other existing 250-w class IV stations, in the event they are subsequently authorized to increase power to 1,000 w.

ROTHA L. CHEERS (WH-2778), DOCKET No. 14549:

Order revoking ship radio station license, effective July 2, 1962.

Section 1.76 of the rules.—Failure to reply to the official notice of violation and correspondence.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON 25, D.C.

In the Matter of ROTHA L. CHEERS, KEY WEST, FLA. Order To Show Cause Why There Should Not Be Revoked the License for Ship Radio Station WH-2778 aboard the Vessel <i>Betty Ann</i>	}	Docket No. 14549
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MEMORANDUM OPINION AND ORDER

(Adopted May 23, 1962)

BY THE COMMISSION.

1. The Commission on March 6, 1962, released an order pursuant to section 312 (a) (4) and (c) of the Communications Act of 1934, as amended, directing the respondent to show cause why his license for radio station WH-2778 aboard the vessel *Betty Ann* should not be revoked for repeated violations of section 1.76 of the Commission's rules (47 CFR 1.76).

2. The order to show cause spelled out the violations and detailed the procedural rights of the respondent, including his right to a hearing or to waive hearing if he so desired and to submit a statement in mitigation or justification. The respondent on March 28, 1962, replied to the order to show cause waiving his right to a hearing and submitting a written statement. Accordingly, by order released April 4, 1962, the Chief Hearing Examiner terminated the proceeding and certified the case to the Commission in accordance with section 1.78 (c) of the rules.

3. Our records indicate that on September 18, 1961, the Commission sent the respondent an official notice of violation alleging that on August 19, 1961, the radio station aboard the *Betty Ann* was operated in violation of sections 8.366 (e) and 8.364 (a) in that there was a failure to change from the calling frequency 2182 kc/s to an authorized working frequency for the transmission of other than distress messages, and there was a failure to transmit the station's authorized call sign at the beginning and end of each exchange of communications. This notice was sent to respondent at his mailing address of record. When no reply was received, a followup letter was sent to him on October 26, 1961, at the same address, again advising him of the violations and warning that failure to reply within 15 days of receipt might result in the institution of proceedings for the revocation of his license. This letter was twice mailed and twice returned by the Post Office with the notation: "Unclaimed."

4. In his written statement, respondent admitted the receipt of the official notice of violation, but explained that at the time the violations occurred his shrimp trawler *Betty Ann* was under the command of Capt. Richard Simmons; that notice was forwarded to Captain Simmons for reply; and that Simmons advised him that it had been answered. Respondent denied receipt of the followup letter of October 26, 1961.

5. The respondent's assertions that he sent the official notice of violation to the master of the vessel and thereafter was assured that corrective action had been taken and the Commission advised, and his allegation that the followup letter was not received are not sufficient to warrant our withholding the sanction of revocation in this case. As we stated in *Patterson Shrimp Company, Inc.*, 29 FCC 1049 (1960), failure of a licensee to comply with lawful requirements cannot be condoned, and supervision adequate to make certain that rules and regulations of the Commission are complied with by subordinates is a responsibility that cannot be shirked by a licensee. Moreover, the respondent here is chargeable with receipt of the Commission's letter of October 26, 1961, sent to the mailing address furnished by him to the Commission. We have previously held that it is incumbent upon all licensees to provide a mailing address where they can be reached and that a licensee is chargeable with the receipt of official communications delivered to his address of record (*John Vella*, 29 FCC 799; *Florida Marine Corp.*, 30 FCC 517), and we reaffirm our holdings in this regard (see sec. 1.56 of the rules).

6. It is, of course, axiomatic that the orderly and effective administration and regulation of the Safety and Special Radio Services, virtually all of which involve the shared use of frequencies, require that licensees operate their radio stations in accordance with the applicable rules and regulations. The optimum and efficient usage of frequencies compels it. It is equally essential that licensees respond promptly and satisfactorily to all Commission communications, and particularly so when such communications involve alleged rule violations. Under the circumstances of this case, the Commission cannot condone the actions of the respondent in failing to reply to Commission correspondence, nor can it justify any action less than revocation of the station license as contemplated by the order to show cause. However, inasmuch as this case appears to fall into the category of a first offense, nonaggravated failures to respond to an official notice of violation and correspondence, and respondent has promised future compliance, leniency in the application of the sanction of revocation is appropriate (*Alfred J. Henderson*, 30 FCC 685, 1961).

Accordingly, *It is ordered*, This 23d day of May 1962, that the license of Rotha L. Cheers for radio station WH-2778 aboard the vessel *Betty Ann* is revoked, effective July 2, 1962, and that a copy of this order of revocation be served upon the licensee at Route No. 1, Box 314, Shallotte, N.C.

It is further ordered, That such revocation shall be without prejudice to consideration of an application for a new radio station license no less than 30 days from the effective date of this order, notwithstanding the provisions of 47 CFR 1.551, which, to the extent necessary, *Are waived*.

DAVID L. KURTZ, DOCKET No. 13346 :

Petition of Concert Network, Inc., for reconsideration of the Commission's decision released February 19, 1962; denied.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON 25, D.C.

In re Application of DAVID L. KURTZ, PHILADELPHIA, PA. For Construction Permit	}	Docket No. 13346 File No. BPH-2774
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MEMORANDUM OPINION AND ORDER

(Adopted May 29, 1962)

BY THE COMMISSION.

1. The Commission on February 19, 1962, released its decision¹ in the above-captioned proceeding, granting the application of David L. Kurtz for a new class B FM broadcast station in Philadelphia, Pa. A petition for reconsideration of the decision, filed by Concert Network, Inc. (Concert), on March 21, 1962, is now before us for consideration. Oppositions thereto have been filed by Kurtz and the Chief of the Commission's Broadcast Bureau.

2. Concert, which at the time of the hearing was an applicant for a new class B FM broadcast station in Trenton, N.J., was named a party to this proceeding since Kurtz, operating as proposed, would cause adjacent-channel interference to Concert's proposed operation. Our decision found that Concert's participation as a party herein and its exceptions to the decision had become moot inasmuch as its application for Trenton had been denied in *WBUD, Inc.*, 32 FCC 93, 23 R.R. 135 (1962).

3. In the instant petition, Concert contends that our decision erred in granting the Kurtz' application; in not resolving the issues therein; and in failing to rule on its exceptions. Concert argues that its participation in this proceeding is not moot inasmuch as it has filed a timely petition for reconsideration in *WBUD, supra*, and that it will continue to retain its status as party respondent until its petition in *WBUD* has been disposed of and all appellate rights have been exhausted.

4. By memorandum opinion and order released May 11, 1962 (FCC 62-497), the Commission denied Concert's petition for reconsideration in *WBUD*. Even assuming that Concert's status as a party respondent here continued until disposition of its petition for reconsideration in the *WBUD* proceeding, it is clear, in view of our action there, that Concert no longer has an interest in the outcome of the instant pro-

¹ 32 FCC 487, — R.R. —.

ceeding. We cannot agree that we are required to treat Concert as a party respondent until all appellate rights in the *WBUD* proceeding have been exhausted. Concert's instant petition for reconsideration is, therefore, without merit and must be denied.

5. In view of the foregoing, *It is ordered*, This 29th day of May 1962, that the petition for reconsideration of Concert Network, Inc., filed March 21, 1962, *Is denied*.

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WILMER E. HUFFMAN ET AL., DOCKETS NOS. 13469, 13470, 13471 :

Petitions for reconsideration filed by Francis C. Morgan, Jr., and Pier San, Inc.; denied.

Availability of FM and TV services in AM licensing proceedings; considered.

Section 307 (b).—Considered.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON 25, D.C.

<p>In re Applications of WILMER E. HUFFMAN, PRATT, KANS. FRANCIS C. MORGAN, JR., LARNED, KANS. PIER SAN, INC., LARNED, KANS. For Construction Permits</p>	}	<p>Docket No. 13469 File No. BP-12021 Docket No. 13470 File No. BP-12749 Docket No. 13471 File No. BP-12750</p>
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MEMORANDUM OPINION AND ORDER

(Adopted May 29, 1962)

BY THE COMMISSION: COMMISSIONER BARTLEY ABSTAINING FROM VOTING; COMMISSIONER LEE DISSENTING; COMMISSIONER CROSS DISSENTING IN PART AND CONCURRING IN PART AND ISSUING A STATEMENT.

1. The Commission has under consideration: (a) its decision released January 9, 1962 (32 FCC 1, 22 R.R. 820); (b) a petition for reconsideration and rehearing, filed by Francis C. Morgan, Jr. (Morgan), on February 8, 1962; (c) a petition for reconsideration, filed by Pier San, Inc. (Pier San), on February 8, 1962; and (d) related pleadings and all other matters of record.

2. Our decision granted Wilmer E. Huffman's (Huffman) application to operate a class III standard broadcast station at Pratt, Kans. (1290 kc, 5 kw, day, and 500 w, night, unlimited time). It denied both Pier San's and Morgan's applications to operate a new station at Larned, Kans. (1290 kc, 500 w, daytime only). Both Morgan and Pier San seek reconsideration of that decision.

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3. Morgan's petition is, in reality, a petition to reopen the record. He urges that the record should be reopened to: (a) determine whether Larned receives any nighttime primary service; (b) consider the FM and TV services available to the two communities; (c) weigh the fact that Pratt's existing station [KWSK] is licensed to operate as early as 5:15 a.m. and as late as 8:15 p.m. (Commission records show 8 p.m. as the latest hour that KWSK operates) during June and July; and (d) to determine whether Pratt is able to support a second station.

4. Morgan's petition will be denied. His contentions have no merit since: (a) neither Larned applicant proposes a nighttime operation; (b) we have previously ruled that the availability of FM and TV services in AM licensing proceedings is not a controlling factor;¹ (c) the fact remains that KWSK is a daytime only station; and (d) KWSK did not seek to become a party to the proceeding to challenge the alleged economic impact on the Pratt community resulting from a Huffman grant. Moreover, assuming, arguendo, that Morgan could show that Pratt was unable to support a second station, it does not follow that the region involved here could not support the class III facilities sought. More important, Morgan's petition will be denied since his contentions could—and should—have been advanced at the proper time either as evidence under existing issues or as grounds for enlargement of issues.

5. In essence, Pier San makes two arguments. It claims that the Commission misapplied section 307(b) of the Communications Act of 1934, as amended, when it preferred Pratt over Larned. And further, it claims that the Commission's decision was illegally entered being made by less than a majority of the Commissioners present and considering the matter at that time.²

¹ See *Tupelo Broadcasting Co., Inc.*, 12 R.R. 1231, 1250 (1956); and more recently *Suburban Broadcasters*, 20 R.R. 52, 53 (1960), and *Monocacy Broadcasting Co.*, 29 FCC 717, 727, 19 R.R. 165, 174 (1960). In *Tupelo*, the Commission stated "that section [307(b)] contemplates an equitable distribution of broadcast service in each class of service. It cannot be contended that television is a substitute for a standard broadcast service for it is a separate, distinct, and entirely different type of service." In *Suburban*, the Commission stated: "Each of these services is a separate and distinct class of broadcast service and the availability of one class of broadcast service to an area, we have held, is not a controlling factor in determining need for another class of broadcast service to the same area."

² Three Commissioners (Hyde, Craven, and Ford) voted for Huffman's application; two Commissioners (Lee and Cross) voted against Huffman; and two Commissioners did not vote (Bartley abstained and Chairman Minow was absent).

6. Pier San's 307(b) claims are not new. They are almost identical to those raised in its exceptions and at oral argument. It did not then, nor does it now offer any authority for the proposition that a daytime-only applicant bringing a first local transmission service to a smaller community must be preferred over an unlimited time, more efficient applicant bringing a second competitive daytime station, a first nighttime transmission service, and a first primary nighttime reception service to a larger community. In fact, Pier San has already argued that the Commission has never decided a case involving this combination of factors. Pier San now volunteers that our decision belittles the importance of Larned's need for an outlet for local self-expression, and that it overemphasizes the importance of the nighttime white area that the Pratt proposal would eliminate. Our decision did neither; instead, we considered all the advantages of the Larned proposals, but concluded that they were outweighed by the advantages the Pratt proposal offered. Pier San tells us that our rationale about nighttime white areas here conflicts with our rationale in *Sunbury Broadcasting Corporation*, 31 FCC 734, 22 R.R. 383 (1961). There is no conflict in rationale. In *Sunbury* we described the created white area as "undesirable," but concluded that the many benefits flowing from a grant outweighed the loss. The facts there presented public-interest determinations totally unlike those presented here.³

7. It is unnecessary to decide Pier San's contentions that our vote was illegally entered, for the Commission has considered Pier San's petition for reconsideration. Upon such consideration Pier San's petition for reconsideration will be denied and the Commission's decision of January 3, 1962 (32 FCC 1, 22 R.R. 820), will be readopted.

Accordingly, *It is ordered*, This 29th day of May 1962, that our decision (32 FCC 1) adopted on January 3, 1962, *Is readopted*; and

It is further ordered, That the petitions for reconsideration filed by Francis C. Morgan, Jr., and Pier San, Inc., on February 8, 1962, *Are denied*.

³ In *Sunbury*, the applicant proposed to change from a class IV operation on 1240 kc, 250 w, unlimited time, to a class II operation on 1070 kc, 10 kw, daytime, and 1 kw nighttime, DA-2, with a new transmitter site. Among other things, a white area was eliminated and another created, a situation not present here.

**STATEMENT OF COMMISSIONER CROSS DISSENTING IN PART AND CONCURRING
IN PART**

I dissent to the refusal to grant the Pier San petition, but concur in the denial of the Morgan petition. My reasons for so holding are set forth in my dissenting statement appended to the January 9, 1962, decision in this case.

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ROUNSAVILLE OF LOUISVILLE, INC. (WLOU), DOCKET No. 14209:

Application of Rounsaville of Louisville, Inc. (WLOU), for construction permit for operation nighttime of standard broadcast station WLOU; denied. *Section 3.24(b) of the rules.*—Interference to existing stations. *Section 3.18(o) of the rules.*—Calculation of RSS limitation.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON 25, D.C.

In re Application of
ROUNSAVILLE OF LOUISVILLE, INC. (WLOU), Docket No. 14209
LOUISVILLE, KY. File No. BP-13545
For Construction Permit

APPEARANCES

Vincent A. Pepper, on behalf of Rounsaville of Louisville, Inc.; *Arthur H. Schroeder* and *John P. Bankson, Jr.*, on behalf of WEZY, Inc.; and *Donald L. Rushford* and *Thomas B. Fitzpatrick*, on behalf of the Chief, Broadcast Bureau, Federal Communications Commission.

DECISION

(Adopted June 6, 1962)

BY THE COMMISSION: CHAIRMAN MINOW NOT PARTICIPATING.

1. Rounsaville of Louisville, Inc., presently operates class III station WLOU, Louisville, Ky., on 1350 kc, with power of 5 kw, daytime only. It seeks here authority to also operate at night, with the same frequency and power, and utilizing a directional array. In an initial decision released December 12, 1961 (FCC 61D-173), Hearing Examiner Basil P. Cooper would deny the application. Subject to the comments below, the initial decision is adopted.

2. Operating as proposed, WLOU would increase the nighttime RSS limitation of class III station WEZY (1350 kc, 1 kw), Cocoa, Fla., from a present 15.92 mv/m to 19.15, mv/m.¹ As a result, WEZY would suffer objectionable interference affecting 2,289 persons in 11 square miles. These persons are presently without other primary service, and the examiner properly concluded that WLOU's overall showing is insufficient to justify creation of the above white area.

3. WLOU's first six exceptions to the initial decision are to the effect that, for purposes of determining the actual, objectionable interference to be caused WEZY, subparagraph (5) rather than subparagraph 4 of section 3.182(o) of the Commission's rules must be utilized. On the basis of the 50-percent exclusion method provided for in subparagraph (5), WLOU would have us eliminate from consideration two interfering signals previously considered, and arrive at a new

¹ As WEZY points out in its exceptions, par. 3 of the examiner's conclusions incorrectly states the present limitation to be 15.88 mv/m.

nighttime RSS limitation for WEZY of 15.88 mv/m, a drop of 0.04 mv/m from the present level of 15.92 mv/m. There is no merit to WLOU's position. By the language of subparagraphs (3) and (4), and by illustration in subparagraph (6), the Commission has made clear that subparagraph (4) is to be utilized in determining the effect of a new proposal upon the RSS limitation of an existing station. While it is true that, if WLOU were granted, the nighttime limitation of WEZY would be computed in accordance with subparagraph (5), utilizing the 50-percent exclusion method, such method does not give a true picture of the interference which WEZY would receive. This is the anomaly which the use of subparagraph (4) is designed to cure. Thus, although an existing station's received interference would not actually be decreased through the addition of another strong interfering signal, use of the 50-percent exclusion method embodied in subparagraph (5) could have the effect of lowering the nighttime limitation, thereby giving an inaccurate presentation of the physical facts. Accordingly, subparagraph (4) must be utilized "to provide the Commission with more realistic information regarding gains and losses in service." In connection with the foregoing, see *S. H. Patterson*, 7 R.R. 932, 932a (1952), and *On the Air, Inc.*, 6 R.R. 309, 317, 322b (1951), where contentions identical to WLOU's were specifically rejected.

4. WLOU's remaining exceptions are to the effect that, notwithstanding a rejection of its RSS contentions, a grant of its application is appropriate under section 3.24(b) of the rules. The examiner gave adequate consideration to the bases for grant urged by WLOU, and correctly applied the Commission's policy with respect to the creation of white areas. As to WLOU's position that weight should be afforded to the presence of secondary or skywave service in the white area involved, see *John K. Rogers*, 30 FCC 785, 790, 20 R.R. 522, 524(c) (1961).

5. For the reasons set forth above, all of WLOU's exceptions are denied. For the same reasons, the substance of the Broadcast Bureau's single exception and those of WEZY are granted; provided, however, that those portions of WEZY's exceptions which call for additional findings of fact are denied for want of decisional significance.

Accordingly, *It is ordered*, This 6th day of June 1962, that the above-captioned application of Rounsaville of Louisville, Inc., for a construction permit for nighttime operation of station WLOU, Louisville, Ky., *Is denied*.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON 25, D.C.

In re Application of
ROUNSAVILLE OF LOUISVILLE, INC. (WLOU), } Docket No. 14209
LOUISVILLE, KY. } File No. BP-13545
For Construction Permit

APPEARANCES

Vincent A. Pepper, on behalf of Rounsaville of Louisville, Inc.,
Arthur H. Schroeder and *John P. Bankson, Jr.*, on behalf of WEZY,
Inc.; and *Donald L. Rushford* and *Thomas B. Fitzpatrick*, on behalf
of the Chief, Broadcast Bureau, Federal Communications Commission.

INITIAL DECISION OF HEARING EXAMINER BASIL P. COOPER

(Adopted December 6, 1961)

PRELIMINARY STATEMENT

1. In this proceeding, Rounsaville of Louisville, Inc., licensee of station WLOU, Louisville, Ky., which presently operates daytime only on the frequency 1350 kc, with power of 5 kw, requests authority to operate at night on the same frequency with power of 5 kw with a directional antenna at a site different from that used for daytime operation.

2. The Commission by order dated July 26, 1961, released August 3, 1961, found that except as indicated by the issues, the applicant was legally, technically, financially, and otherwise qualified to construct and operate the instant proposal, and designated the application for hearing on the following issues:

1. To determine the areas and populations which may be expected to gain or lose primary service from the proposed operation of station WLOU, and the availability of other primary service to such areas and populations.

2. To determine whether the instant proposal would cause objectionable nighttime interference to station WEZY, Cocoa, Fla., or any other existing standard broadcast stations, and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other primary service to such areas and populations.

3. To determine, in the light of the evidence adduced pursuant to the foregoing issues, whether a grant of the instant application would serve the public interest, convenience, and necessity.

WEZY, Inc., licensee of station WEZY, Cocoa, Fla., was made a party to the proceeding.

3. A prehearing conference was held on September 7, 1961, and the evidentiary hearing was held on October 9, 1961. The record was

closed on October 9, 1961. Proposed findings of fact and conclusions of law were filed by all of the parties on November 13, 1961.

4. All population figures used in this initial decision reflect those shown in the 1960 U.S. Census of Population.

FINDINGS OF FACT

Issue 1

5. Station WLOU now operates on the frequency 1350 kc with power of 5 kw, daytime only, employing a nondirectional antenna system. In the proposal involved in this proceeding, station WLOU contemplates the installation of an eight-tower directional antenna system which will be located at a different site from the one presently used for nondirectional operation. Operating as proposed, station WLOU would receive objectionable interference at night from stations WEEK and KRNT to such an extent that the proposed operation would be limited to the 7.55-mv/m interference-free nighttime contour. Within the proposed 7.55-mv/m interference-free nighttime contour of station WLOU, there is an area of 150 square miles within which there is a population of 541,482 persons. The proposed operation will provide the fourth primary service to an urban area of 6.8 square miles with a population of 28,847 persons, and to a rural area of 16 square miles with a population of 2,682 persons.

6. As station WLOU does not now operate at night, all of the above figures refer to gained areas. The 7.55-mv/m nighttime contour of station WLOU operating as proposed encompasses by far the greater part of all of the city of Louisville, Ky.

7. All of the area to be gained at night now receives primary service from stations WHAS and WAVE, Louisville. Station WAKY, Louisville, serves between 75 percent and 99 percent of both the urban and rural areas, whereas station WKLO, Louisville, serves between 75 percent and 99 percent of the urban area and between 50 percent and 74 percent of the rural area. Station WINN, Louisville, serves less than 25 percent of both the urban and rural areas to be gained. Other stations serving parts of the area are station WLW, Cincinnati, Ohio, which serves 100 percent of the rural area and less than 25 percent of the urban area, and station WXVW, Jeffersonville, Ind., which serves less than 25 percent of both the urban and rural areas. The maximum number of services presently available to the area to be gained are: Urban, six stations; rural, five stations; the minimum number of services, both urban and rural, is three.

Issue 2

8. Cocoa, Fla., site of station WEZY, is located on the west bank of the Indian River approximately midway down the east coast of the Florida Peninsula. Moving from Cocoa to the east, there are in

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consecutive order the Indian River, Merritt Island, the Banana River, the Cape Canaveral Peninsula, and the Atlantic Ocean.

9. Station WEZY, Cocoa, Fla., operates on the frequency 1350 kc with power of 1 kw, using a directional antenna. The site of the transmitter is approximately 1.5 miles northwest of the center of the built-up section of Cocoa. The directional array of station WEZY throws its major lobe toward the east. The nighttime 15.92-mv/m interference-free contour encompasses an area of 62.5 square miles within which there is a population of 29,614 persons. The 15.92-mv/m interference-free nighttime contour encompasses all of the city of Cocoa as well as the land areas to the east between Cocoa and the Atlantic Ocean.

10. The stations whose skywave signals enter into the computation of the nighttime RSS limitation to station WEZY are WSMB, New Orleans, La.; WAVY, Portsmouth, Va.; WADC, Akron, Ohio; and the proposed nighttime operation of station WLOU, Louisville, Ky. In computing the interference to station WEZY, the applicant's engineer ascertained the basic data and thereafter made the computations by means of a computer or calculator. The basic data supplied the calculator and the sources thereof were outlined in the applicant's exhibit 1, figure 7, and in the transcript of this proceeding.

11. The present RSS limitation to section WEZY computed by the "50 percent exclusion" method of section 3.182(o) (1) of the rules is 15.92 mv/m. This is shown by the following table:

Station and location	Individual interfering signal (mv/m)	RSS
WSMB, New Orleans, La.....	11.78	15.92
WAVY, Portsmouth, Va.....	7.939	
WADC, Akron, Ohio.....	7.177	

The RSS of the interfering signals of station WSMB (11.78 mv/m) and station WAVY (7.939 mv/m) amounts to 14.2 mv/m. The interfering signal of station WADC is included in the total RSS for the reason that its magnitude, 7.177 mv/m, is slightly more than 50 percent of 14.2 mv/m.

12. The interfering signal to station WEZY from station WLOU, Louisville, Ky., would amount to 10.65 mv/m. As this signal is more than 50 percent of the existing RSS to station WEZY and at the same time is greater than the interference to station WEZY from station WADC, the signal from proposed station WLOU must be included in computing the new RSS limitation to station WEZY. The new RSS limitation to station WEZY, computed as required by section 3.182(o) (4) of the rules, is 19.15 mv/m. This is shown by the following table:

Station and location	Individual interfering signal (mv/m)	RSS
WSMB, New Orleans, La.....	11.78	
WAVY, Portsmouth, Va.....	7.939	
WADC, Akron, Ohio.....	7.177	
WLOU, Louisville, Ky. (proposed).....	10.65	19.15

13. Section 3.182(o) (5) of the Commission's rules provides, insofar as may be applicable to this proceeding, that if the new signal proposed by station WLOU is ultimately authorized, the RSS value of interference to station WEZY will thereafter be calculated by the "50 percent exclusion" method without regard to the alternate method of calculation. Thus, if the Commission grants the WLOU application, the RSS limitation to station WEZY computed as required by section 3.182(o) (1) and (5) of the Commission's rules would be 15.88 mv/m. This is shown by the following table:

Station and location	Individual interfering signal (mv/m)	RSS
WSMB, New Orleans, La.....	11.78	
WLOU, Louisville, Ky.....	10.65	15.88

One-half of the computed RSS of 15.88 mv/m is 7.940 mv/m. The interfering signal of station WAVY is excluded from the new RSS computations by reason of the fact that its magnitude, 7.939 mv/m, is slightly less than 7.940 mv/m.

14. The areas and populations within the 15.92-mv/m and the 19.15-mv/m contours of station WEZY are as shown below:

Contour (mv/m)	Area (sq. miles)	Population
15.92.....	62.5	29,614
19.15.....	51.5	27,325

From the above, it will be seen that between the 15.92-mv/m and the 19.15-mv/m contours, there is an area of 11 square miles within which there is a population of 2,289 persons. Much of the interference area is in sparsely settled marshland, with the affected population located largely in the southern section of the village of Rockledge, south of Cocoa City, and in the village of Cocoa Beach located on the Atlantic Coast.

15. The 19.15-mv/m contour of station WEZY encompasses all of the area and population within the city limits of Cocoa, Fla.

16. No station other than WEZY furnishes primary service of 0.5 mv/m or better to any part of the land area between the 15.92-mv/m and the 19.15-mv/m contours of this station. The only broadcast service in this area, other than that of station WEZY, is secondary or skywave service from seven U.S. clear-channel stations.

17. The area and population within the 15.88-mv/m contour of station WEZY, while not shown in the record, would be slightly larger than the area and population within the 15.92-mv/m contour.

CONCLUSIONS

1. In this proceeding, Rounsaville of Louisville, Inc., licensee of station WLOU, Louisville, Ky., which presently operates daytime only on the frequency 1350 kc with power of 5 kw, requests authority to operate at night on the same frequency with power of 5 kw with a directional antenna at a site different from that used for daytime operation.

2. Operating as proposed, station WLOU would gain within its nighttime interference-free 7.55-mv/m contour an area of 150 square miles within which there is a population of 541,482 persons. Station WLOU would become the sixth local station providing nighttime service to the city of Louisville. The proposed operation would provide the fourth primary service to an urban area of 6.8 square miles with a population of 28,847 persons, and to a rural area of 16 square miles with a population of 2,682 persons. The maximum number of services presently available in the area to be gained are: Urban, six stations; rural, five stations; the minimum number of services, both urban and rural, is three.

3. The determination of whether station WLOU operating as proposed will or will not cause objectionable nighttime interference to station WEZY, Cocoa, Fla., raises the question of which of two subsections of section 3.182(o) of the Commission's rules should be applied. Present interference to station WEZY, computed as required by section 3.182(o)(1), is 15.88 mv/m. If the new RSS of station WEZY is computed as required by section 3.182(o)(4) of the rules while WLOU is an applicant, the new RSS nighttime limitation will be 19.15 mv/m. On the other hand, if the WLOU application is granted, the new RSS nighttime limitation of station WEZY, computed as required by section 3.182(o)(5) of the rules, would be 15.88 mv/m. From the foregoing, it will be seen that under the rules, the computed RSS nighttime limitation to station WEZY depends on whether WLOU is treated as an applicant or as an existing station.

4. The applicant asserts that what constitutes "objectionable interference" cannot be determined merely by the order in which applications are granted. Had the applications for stations WSMB and WLOU been, respectively, the first and second applications granted, the nighttime limitation of station WEZY, computed as is required by the "50 percent exclusion" method of section 3.182(o)(1), would be 15.88 mv/m, and had the applications of stations WAVY and WADC been granted thereafter, the computed RSS nighttime limitation for station WEZY would have remained the same, 15.88 mv/m, for the reason that section 3.182(o)(2) provides, in part, that "The RSS value will not be considered to be increased when a new interfering signal is added which is less than 50 percent of the RSS value of the interference from existing stations, and which at the same time is not greater than the smallest signal included in the RSS value of interference from existing stations."

5. The Broadcast Bureau contends that the provisions of section 3.182(o)(4) control and in the event the WLOU application is granted, station WEZY will be limited to its 19.15-mv/m nighttime contour and a white area of 11 square miles within which there is a population of 2,289 persons will be created. The applicant responds by contending that the RSS value of interference computed as required by section 3.182(o)(4) gives merely a "theoretical" or "paper" value which must yield to the "actual" or "realistic" values of the interference which would be found to exist if and when station WLOU is on the air.

6. Station WLOU operating as proposed would send into the existing service area of station WEZY a skywave signal of an intensity substantially in excess of the intensities of the signals of either station WAVY or station WADC. The objectionable interference which station WEZY would suffer from the station WLOU signal would not be diminished solely by the fact that under the "50 percent exclusion" rule, the interfering signal of station WAVY is excluded by reason of the fact that it is computed on a calculator as 7.939 mv/m rather than as 7.94 mv/m, a figure which would have been obtained had a slide rule been used.

7. The flow of interfering signals into the nighttime service area of station WEZY is governed by the law of physics—not the point of time of authorization of the stations from which the interfering signals emanate or the manner in which the magnitude of the interference is calculated. It is necessary to conclude that the addition of a new and powerful skywave interfering signal of 10.65 mv/m from station WLOU will increase the amount of objectionable interference now suffered by station WEZY, and will deprive areas and populations of the only primary nighttime service now available.

8. In *The Monocacy Broadcasting Co. et al.*, Docket 12477 et al., 28 FCC 301 at 306, 19 R.R. 137 at 138d, the Commission, confronted with the choice of granting the application of The Price Broadcasters, Inc., which would bring the second primary service to the city of Frederick, Md., and granting the application of the Times & News Publishing Co. to change the facilities of station WGET at Gettysburg, in paragraph 14 of the conclusions, stated, in part, as follows:

14. In denying the Price application we are denying a choice of local daytime service to a community of impressive population, commercial, and growth statistics. However, in preferring the Gettysburg applications, we are serving the Commission's extremely important end of eliminating white and gray areas—a purpose inherent in section 307(b) of the act. * * *

9. The Commission, on occasion, has denied applications for new facilities when such facilities operating as proposed would deprive other areas and populations of their only existing primary service. *Enterprise Publishing Co.*, 3 R.R. 1758 (1947), and *Southwestern Publishing Co.*, 7 R.R. 243 (1951).

10. The Commission, in its report and order *In the Matter of Amendment of Part 3 of the Rules to Permit Extended Hours of Broadcasting for Daytime Standard Broadcast Stations*, adopted September 19, 1958, 25 FCC 1135 at page 1137, stated that the rules which were adopted to provide for the assignment of standard broadcast stations to specific frequencies seek to achieve to the greatest possible extent the following three objectives:

- (a) To provide some service of satisfactory signal strength to all areas in the nation;
- (b) To provide as many program choices to as many listeners as possible;
- (c) To provide locally originated service to as many communities as possible.

11. In section 3.24 of the rules, the Commission provides, in part, that an authorization to increase the facilities of an existing station will be granted if, among other things, the need for the proposed service outweighs the need for the service which will be lost by reason of such interference as may result from the proposed operation. While station WLOU operating as proposed would bring a new service to a substantial area and population and would not prevent station WEZY from serving all of the city of Cocoa, Fla., no part of the area which would be gained now receives less than three primary services and a grant of the WLOU application would create a white area. The creation of new white areas is not consistent with Commission policy which seeks to provide some service of satisfactory signal strength to all areas in the nation.

12. For the reasons enunciated in the preceding several paragraphs of these conclusions, the hearing examiner finds that the public interest, convenience, and necessity will not be served by granting the presently pending application of Rounsaville of Louisville, Inc., to

authorize station WLOU to operate at night with power of 5 kw as proposed.

It is ordered, This the 6th day of December 1961, that unless an appeal to the Commission from this initial decision is taken by any of the parties, or the Commission reviews the initial decision on its own motion in accordance with the provisions of section 1.153 of the rules, the application of Rounsaville of Louisville, Inc., for a construction permit to operate station WLOU, Louisville, Ky., at night on the frequency 1350 kc with power of 5 kw with a directional antenna at a site different from that used for daytime operation, *Be and the same is hereby denied.*

32 F.C.C.

FRANCIS M. FITZGERALD, DOCKET No. 13205, AND E. RAYMOND PARKER, DOCKET No. 14389 :

Initial decision granting applications of Francis M. Fitzgerald for construction permit to operate a new class II station at Greensboro, N.C., on the frequency 1510 kc, with power of 1 kw (250 w-CH), daytime only, and E. Raymond Parker for construction permit to operate a new class II station at Gaffney, S.C., on the frequency 1500 kc with power of 1 kw (250 w-CH), daytime only; became final in accordance with section 1.153 of the Commission's rules.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON 25, D.C.

<p>In re Applications of FRANCIS M. FITZGERALD, GREENSBORO, N.C. E. RAYMOND PARKER, GAFFNEY, S.C. For Construction Permits</p>	}	<p>Docket No. 13205 File No. BP-13979 Docket No. 14389 File No. BP-14301</p>
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APPEARANCES

Ray R. Paul and *D. F. Prince*, on behalf of Francis M. Fitzgerald; *Andrew G. Haley* and *Michael H. Bader*, on behalf of E. Raymond Parker; and *Larry M. Berkow*, on behalf of the Chief, Broadcast Bureau, Federal Communications Commission.

INITIAL DECISION OF HEARING EXAMINER BASIL P. COOPER

(Effective May 31, 1962, pursuant to sec. 1.153)

PRELIMINARY STATEMENT

1. In this proceeding, Francis M. Fitzgerald (Fitzgerald) requests a permit to construct a new standard broadcast station to operate on the frequency 1510 kc with power of 1 kw (250 w-CH), daytime only, at Greensboro, N.C., and E. Raymond Parker (Parker) requests a permit to construct a new standard broadcast station to operate on the frequency 1500 kc with power of 1 kw (250 w-CH), daytime only, at Gaffney, S.C.

2. The Fitzgerald and Parker applications constituted 2 of the 13 applications designated for hearing in a consolidated proceeding by a Commission order adopted November 15, 1961, released November 21, 1961. Four of the thirteen applicants requested the dismissal of their respective applications, and the Acting Chief Hearing Examiner, by appropriate orders, dismissed the application of John Blake, James H. Lee, and James W. Harman, Jr., d/b as Lee-Blake Broadcasting Co. (docket No. 14387), for a station at Spartanburg, S.C.; the application of James P. Poston (docket No. 14392) for a station at Kernersville, N.C.; the application of Stuart W. Epperson (docket No. 14383)

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for a station at Wakefield, Va.; and the application of Boyce J. Hanna (docket No. 14386) for a station at East Gastonia, N.C.

3. The dismissal on February 16, 1962, of the application of Boyce J. Hanna for a permit to construct a new standard broadcast station to operate on the frequency 1510 kc with power of 5 kw (500 w-CH), daytime only, at East Gastonia, N.C., severed the link connecting the Fitzgerald and Parker applications with the other applications remaining in the consolidated proceeding.

4. Of the 18 issues specified by the Commission in its order adopted November 15, 1961, released November 21, 1961, the following are relevant to the Fitzgerald and Parker applications:¹

(3) To determine the areas and populations which would receive primary service from each of the subject applications for new stations, and the availability of other primary service to such areas and populations.

(5) To determine the nature and extent of the interference, if any, that each of the instant proposals would cause to and receive from each other and the interference that each of the instant proposals would receive from all other existing standard broadcast stations, the areas and populations affected thereby, and the availability of other primary service to the areas and populations affected by interference from any of the instant proposals.

(7) To determine whether the interference received by each instant proposal from any of the other proposals herein and any existing stations would affect more than 10 percent of the population within its normally protected primary service area in contravention of section 3.28(d)(3) of the Commission rules, and, if so, whether circumstances exist which would warrant a waiver of said section.

(17) To determine, in the light of section 307(b) of the Communications Act of 1934, as amended, which of the instant proposals seeking operation on 1500 kc, 1510 kc, 1520 kc, and 1540 kc would best provide a fair, efficient and equitable distribution of radio service.

(18) To determine, in the light of the evidence adduced pursuant to the foregoing issues, which, if any, of the instant applications should be granted.

It was further ordered that any grant of the Francis M. Fitzgerald application will be conditioned upon the permittee's acceptance of any interference received as a result of a subsequent grant of the application (BP-14348) of WIDU Broadcasting, Inc.

5. Prehearing conferences were held on December 26, 1961, and February 26, 1962. An evidentiary hearing was held on March 7, 1962. At the conclusion of the evidentiary hearing on March 7, 1962, the hearing examiner closed the record with respect to the Fitzgerald and Parker applications. Subsequently, by memorandum opinion and order dated March 12, 1962, released March 13, 1962, these applications were severed from the consolidated proceeding. By order dated April 2, 1962, released April 4, 1962, the record in both cases was reopened to receive affidavits of no consideration following which the record was again closed. Proposed findings of fact and conclusions of law were filed on behalf of E. Raymond Parker on March 9, 1962, on behalf of Francis M. Fitzgerald on April 2, 1962, and on behalf of the Chief, Broadcast Bureau on April 2, 1962.

6. The locations of all pertinent contours and the populations shown therein were computed in accordance with the requirements of the Commission's rules.

¹ The issues are as numbered in the Commission order adopted Nov. 15, 1961, released Nov. 21, 1961

7. Subsequent to the release of the order designating these applications for hearing, the Commission, by an order dated January 25, 1962, released January 29, 1962, *In the Matter of Amendment of Section 3.87 of the Rules With Respect to Pre-Sunrise Operation by Standard Broadcast Stations*, docket No. 14419 (FCC 62-98), directed that pending resolution of that proceeding, all grants of construction permits for daytime facilities for class II and class III stations will be expressly subject to the condition that no presunrise operation will be permitted under Section 3.87.

FINDINGS OF FACT

Francis M. Fitzgerald—Docket No. 13205

8. Francis M. Fitzgerald proposes a new class II standard broadcast station at Greensboro, N.C., to operate daytime on the frequency 1510 kc with power of 1 kw, except that power will be reduced to 250 w during the two critical hours after local sunrise and before local sunset.

9. At the present time, there are four standard broadcast stations licensed to the city of Greensboro; namely, stations WBIG, WPET, WGBG, and WCOG. Thus the proposed Fitzgerald operation will represent the fifth transmission facility assigned to Greensboro, a city which has within its urbanized area a population of 123,334 persons.

10. Operating as proposed, the Fitzgerald station would provide primary service when operating with power of 1 kw and 250 w as shown in the following table:

Contour (mv/m)	1 kw		250 w (CH)	
	Area (square miles)	Population	Area (square miles)	Population
2.5 (normally protected).....	398	177, 915	222	145, 579
Interference from—	1, 350	259, 256	732	191, 119
Proposed Winston-Salem, N.C.....	46	9, 423 (3.6% ¹)	19	2, 635 (1.4% ¹)
Proposed Asheboro, N.C.....	12	912 (0.3% ¹)	-----	-----
Interference free if both Winston-Salem and Asheboro granted.....	1, 292	248, 921	713	188, 484

¹ The figures in parentheses represent the percentage ratio which the population in the interference area bears to the population within the normally protected 0.5-mv/m daytime contour.

11. The area to be gained during normal hours by the proposed Fitzgerald station now receives primary service of 0.5 mv/m or better from stations as follows: 100 percent, from stations WSJS, WPTF, WTNC, WBBB, WPET, WGBG, and WBIG; 75 to 99 percent, from stations WDNC, WHPE, WCOG, and WBUY; 50 to 74 percent, from stations WKIX, WBAG, WREV, and WMFR; 25 to 49 percent, from stations WPAQ, WAAA, WGWR, WTOB, WNOS, and WFRG; and 14 other stations serve less than 24 percent of the area. During normal hours of operation, there are a minimum of 12 and a maximum of 21 services available to all parts of the area to be gained, whereas during

critical hours of operation, the minimum and maximum are 13 and 20 services, respectively.

12. Interference from the proposed Winston-Salem, N.C., station will occur in a crescent-shaped area approximately 14 or more miles to the west of the center of Greensboro (approximately 12 miles west when operating at 250 w-CH). The interference referred to would be first adjacent-channel interference which would be caused to the proposed Fitzgerald operation if the Commission grants the presently pending application of Stuart W. Epperson for a permit to construct a new station to operate on the frequency 1500 kc with power of 1 kw, DA-D, at Winston-Salem, N.C. This application (file No. 14909, docket No. 14391) is one of the applications set for hearing in the Commission order adopted November 15, 1961, released November 21, 1961.

13. All of the area which will receive first adjacent-channel interference from the proposed Winston-Salem operation now receives primary service of 0.5 mv/m or better from 17 stations when the Fitzgerald station operates with power of 1 kw, and from 16 stations when operating during critical hours.

14. The station proposed by Fitzgerald will cause objectionable first adjacent-channel interference to the station proposed by Stuart W. Epperson² over an area of 59 square miles in which there is a population of 6,850 persons when the Fitzgerald station is operating with a power of 1 kw, and over an area of 29 square miles in which there is a population of 4,300 persons when the Fitzgerald station is operating with a power of 250 w. This objectionable interference amounts to 3.33 and 2.09 percent, respectively, of the 205,260 persons in the normally protected 0.5-mv/m contour of the proposed Epperson station. This interference is in a crescent-shaped area approximately 15 miles or more from the center of Winston-Salem and, in the main, overlaps a large portion of the area in which the Fitzgerald station will receive similar interference.

15. Counsel for Francis M. Fitzgerald has stated on the record that Fitzgerald is willing to accept the interference which will be caused by the station proposed by Stuart W. Epperson, and counsel for Stuart W. Epperson has also stated on the record that Epperson is willing to accept the interference which would result from the operation of the station proposed by Fitzgerald.

16. The interference from the proposed Asheboro, N.C., station will occur in a crescent-shaped area approximately 19 or more miles to the south of the center of Greensboro. The interference referred to will be second adjacent-channel interference which will be caused to the proposed Fitzgerald operation if the Commission grants the presently pending application of WIDU Broadcasting, Inc., for a permit to construct a new station to operate on the frequency 1530 kc with power of 1 kw (250 w-CH), daytime, at Asheboro, N.C. This applica-

² Findings in this paragraph are based on exhibit No. 1 of Stuart W. Epperson (docket No. 14391) which was received in evidence prior to the severance of the Fitzgerald application.

tion (file No. BP-14348, docket No. 14581) was designated for hearing by a Commission order dated March 21, 1962, released March 26, 1962.³

17. All of the area within which the proposed Fitzgerald station would receive objectionable interference from the station proposed by WIDU Broadcasting, Inc., now receives primary service of 0.5 mv/m or better from 15 stations.

18. With the dismissal of the application of Boyce J. Hanna for a new station to operate on the frequency 1510 kc at East Gastonia, N.C., issue 17, the 307(b) issue, became moot. Francis M. Fitzgerald has not paid or promised any consideration to Boyce J. Hanna for the dismissal of his application in docket No. 14386.

E. Raymond Parker—Docket No. 14389

19. E. Raymond Parker proposes a new class II standard broadcast station at Gaffney, S.C., to operate daytime only on 1500 kc with power of 1 kw, except that power will be reduced to 250 w during the 2 critical hours after local sunrise and before local sunset.

20. At the present time, station WFGN is the only standard broadcast station licensed to the city of Gaffney which, according to the 1960 census, has a population of 10,435 persons. Thus the proposed Parker station will represent the second local transmission facility assigned to Gaffney.

21. Operating as proposed, the Parker station would provide primary service when operating with power of 1 kw and 250 w as shown in the following table:

Contour (mv/m)	1 kw		250 w (CH)	
	Area (sq. miles)	Population	Area (sq. miles)	Population
2.....	211	32,300	105	22,500
0.5.....	785	85,693	400	47,500

22. The area to be gained by the proposed Parker station now receives during normal hours of operation primary service of 0.5 mv/m or better from stations as follows: 100 percent, from stations WSPA, WOHS, WORD, and WBT; 50 to 74 percent, from station WBBO; 25 to 49 percent, from stations WTBE, WFGN, WKMT, and WESC; and 13 other stations serve less than 24 percent of the area. During normal hours of operation, there are a minimum of 5 and a maximum of 11 services available to all parts of the area to be gained, whereas during critical hours of operation, the minimum and maximum are 5 and 9 services, respectively.

³ As shown in par. 4, supra, the Commission order adopted Nov. 15, 1961, released Nov. 21, 1961, designating the Fitzgerald application for hearing specified that any grant of the Fitzgerald application will be conditioned upon the permittee's acceptance of any interference received as a result of a subsequent grant of the application (BP-14348) of WIDU Broadcasting, Inc. In the Commission order dated Mar. 21, 1962, released Mar. 26, 1962, designating the WIDU Broadcasting, Inc., application for hearing (docket No. 14581), the Commission specified that in the event of the grant of the application of WIDU Broadcasting, Inc. the construction permit shall contain a condition that the permittee shall accept such interference as may be received in the event of a grant of the applications of Francis M. Fitzgerald, BP-13979, and Wilkes Broadcasting Co., BP-14288.

23. The station proposed by Parker will not receive objectionable interference from any existing or proposed station and, in turn, will not cause objectionable interference to any existing or proposed station.

24. The Parker application, as previously stated, was designated for hearing because of interference to and from the station originally proposed by Boyce J. Hanna at East Gastonia, N.C. (docket No. 14386). With the dismissal of the Boyce J. Hanna application, issue 17, the 307(b) issue, became moot. E. Raymond Parker has not paid or promised any consideration to Boyce J. Hanna for the dismissal of his application in docket No. 14386.

CONCLUSIONS

1. Francis M. Fitzgerald proposes a new class II standard broadcast station at Greensboro, N.C., to operate daytime on the frequency 1510 kc with power of 1 kw, except that power will be reduced to 250 w during the 2 critical hours after local sunrise and before local sunset.

2. The Fitzgerald station, operating as proposed, will have within its normally protected 0.5-mv/m contour an area of 1,350 square miles and 259,256 persons when operating with power of 1 kw, and 732 square miles and 191,119 persons when operating with power of 250 w during critical hours. In the event the Commission grants the presently pending application of Stuart W. Epperson (docket No. 14391) for a new station at Winston-Salem, N.C., the proposed Fitzgerald operation will receive objectionable first adjacent-channel interference affecting 9,423 persons during normal hours of operation, and 2,635 persons during critical hours of operation, the population affected amounting to 3.6 percent and 1.4 percent of the persons within the normally protected 0.5-mv/m contour of the proposed operation. In the event the Commission grants the presently pending application of WIDU Broadcasting, Inc. (docket No. 14581), for a new station at Asheboro, N.C., the proposed Fitzgerald operation will receive objectionable second adjacent-channel interference affecting 912 persons during normal hours of operation, a figure constituting 0.3 percent of the total population within the Fitzgerald normally protected contour. Thus, in the event the Commission grants the presently pending application of Stuart W. Epperson for his proposed Winston-Salem, N.C., station and the application of WIDU Broadcasting, Inc., for the proposed Asheboro, N.C. station, the proposed Fitzgerald operation will receive objectionable adjacent-channel interference affecting a maximum of 10,335 persons representing 3.9 percent of the population within its normally protected contour. Thus, the proposed Fitzgerald operation which will render interference-free service to an area of not less than 1,292 square miles and 248,921 persons during normal hours of operation, and to 713 square miles and 188,484 persons during critical hours will not contravene the 10-percent provision of section 3.28(d) (3) of the Commission's rules. All of the area to be gained receives primary broadcast service of 0.5 mv/m or greater from a minimum of 12 and a maximum of 21 stations.

3. The station proposed by Fitzgerald will cause objectionable first adjacent-channel interference to the station proposed by Stuart W. Epperson at Winston-Salem, N.C. Epperson, however, has agreed to accept the slight interference which may be caused by the proposed Fitzgerald operation. The proposed Fitzgerald station will also cause some slight objectionable interference to the station proposed by WIDU Broadcasting, Inc. This interference is so trivial that the Commission has determined that the interference to that proposed station would not be a bar to the grant of the Fitzgerald proposal.

4. With the dismissal of the application of Boyce J. Hanna (docket No. 14386) for a new station at East Gastonia, N.C., the 307(b) issue as applied to the application of Francis M. Fitzgerald has become moot. Francis M. Fitzgerald has not paid or promised any consideration to Boyce J. Hanna for the dismissal of his application in docket 14386.

5. From the foregoing, it is seen that all of the issues pertaining to the application of Francis M. Fitzgerald have been resolved in his favor. It follows, therefore, that a grant of the Fitzgerald application will serve the public interest, convenience, and necessity.

6. E. Raymond Parker proposes a new class II standard broadcast station at Gaffney, S.C., to operate daytime only on 1500 kc with power of 1 kw, except that power will be reduced to 250 w during the 2 critical hours after local sunrise and before local sunset.

7. The Parker station, operating as proposed, will have within its normally protected 0.5-mv/m contour an area of 785 square miles and a population of 85,693 persons when operating with power of 1 kw, and 400 square miles and a population of 47,500 persons when operating with power of 250 w during critical hours. The Parker station will not receive objectionable interference from any existing or proposed station and, in turn, will not cause objectionable interference to any existing or proposed station. All of the area to be gained by the proposed Parker operation receives primary broadcast service of 0.5 mv/m or greater from a minimum of 5 and a maximum of 11 standard broadcast stations.

8. With the dismissal of the application of Boyce J. Hanna (docket No. 14386) for a new station at East Gastonia, N.C., the 307(b) issue as applied to the application of E. Raymond Parker has become moot. No consideration has been paid or promised, directly or indirectly, by E. Raymond Parker to Boyce J. Hanna for the dismissal by Hanna of his application in docket No. 14386.

9. All of the issues pertaining to the application of E. Raymond Parker having been resolved in his favor, it follows that a grant of the Parker application will serve the public interest, convenience, and necessity.

It is ordered, This the 10th day of April 1962, that unless an appeal to the Commission from this initial decision is taken by any of the parties, or the Commission reviews the initial decision on its own motion in accordance with the provisions of section 1.153 of the rules, the application of Francis M. Fitzgerald for a permit to construct a new class II standard broadcast station at Greensboro., N.C., to operate on the frequency 1510 kc with power of 1 kw (250 w-CH),

daytime only, and the application of E. Raymond Parker for a permit to construct a new class II standard broadcast station at Gaffney, S.C., to operate on the frequency 1500 kc with power of 1 kw (250 w-CH), daytime only, *Be and the same are hereby granted;*

It is further ordered, Pursuant to the Commission order dated January 25, 1962, released January 29, 1962, in docket No. 14419, further identified in paragraph 7 of the basic findings, that the grant of each construction permit is subject to the following condition:

Pending a final decision in docket No. 14419 with respect to presunrise operation with daytime facilities, the present provisions of section 3.87 of the Commission rules are not extended to this authorization, and such operation is precluded.

It is further ordered, Pursuant to the Commission order of designation adopted November 15, 1961, released November 21, 1961, that a grant of the application of Francis M. Fitzgerald shall be subject to the following condition:

Permittee shall accept such interference as may be received as a result of a subsequent grant of the application of WIDU Broadcasting, Inc. (WIDU), Asheboro, N.C., for a new standard broadcast station (file No. BP-14348).

32 F.C.C.

WASHINGTON STATE UNIVERSITY, DOCKETS Nos. 13442, 13443, AND 13444:

Petition of The First Presbyterian Church of Seattle, Washington, for reconsideration of decision awarding nighttime hours previously reserved for its use to competing applicant, Washington State University, or in the alternative, for stay of the effectiveness of the decision pending further hearing; denied.

Section 307(b) of the act.—Comparative showings reviewed.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON 25, D.C.

In re Applications of WASHINGTON STATE UNIVERSITY, PULLMAN, WASH. For Renewal of License of Station KWSC For Modification of License of Station KWSC THE FIRST PRESBYTERIAN CHURCH OF SEATTLE, WASHINGTON, SEATTLE, WASH. For Renewal of License of Station KTW	}	Docket No. 13442 File No. BR-58 Docket No. 13443 File No. BML-1789 Docket No. 13444 File No. BR-64
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MEMORANDUM OPINION AND ORDER

(Adopted June 13, 1962)

BY THE COMMISSION: COMMISSIONER CRAVEN ABSENT.

1. The Commission has before it a petition for reconsideration filed by The First Presbyterian Church of Seattle, Washington, on February 15, 1962, directed to the decision of the Commission released January 16, 1962 (32 FCC 127). The decision granted the applications of Washington State University for renewal of license of class III station KWSC (and aux.) at Pullman, Wash. (1250 kc, 5 kw, S-KTW (night)), and for modification thereof to permit unlimited time operation, except for the hours from 11:15 p.m. to 6:30 a.m. which University does not propose to utilize. It also granted the application of Church for renewal of license of station KTW at Seattle, Wash. (1250 kc, 5 kw-D, 1 kw-N, S-KWSC (night)), limiting it, however, to daytime-only operation, except that it be permitted to operate with 1 kw during nighttime hours after 11:15 p.m. and before 6:30 a.m.

2. We adhere to the conclusion reached in our decision that the need of Pullman, Wash., for a nighttime standard broadcast facility is greater than the need of Seattle, Wash., for an additional nighttime standard broadcast facility. The bases of this conclusion are fully set forth in the decision. Only because University does not operate between the hours of 11:15 p.m. and 6:30 a.m. did we authorize Church to operate nighttime during these hours with 1 kw as proposed in its

application. Our decision is, we are satisfied, in complete harmony with the principle underlying two cases¹ cited by Church—namely, that once broadcasting privileges have been granted to a licensee, they may not be withdrawn arbitrarily and without compelling reason.

3. A major objection raised by Church to the Commission's decision is based upon an erroneous interpretation of the decision as requiring it to leave the air at 6:30 a.m. in those months of the year in which local sunrise does not occur until after that time. The decision does not require that it do so. Church's application for daytime authorization was granted, and under section 3.87 of the Commission's rules, this authorization carries with it the right to operate as early as 4 a.m. with its daytime facility.² To be sure, under the express provisions of section 3.87, the authority to operate presunrise may be withdrawn upon notification by the Commission that such operation causes undue interference. Church has been operating presunrise for the last 3 years, and at no time has University objected on grounds of interference.³ Hence, Church's objection that it has been denied the right to operate during the winter months from 6:30 a.m. to local sunrise is premature. Should its right to do so be withdrawn in the future because such operation causes undue interference, the resulting hardships of which Church complains do not stem from capricious action on the Commission's part, as Church suggests, but rather from the fact that as between mutually exclusive applications for Seattle and Pullman, the application for Pullman is to be preferred in view of the mandate of section 307(b) of the Communications Act, as amended, that there be a fair, efficient, and equitable distribution of radio service.

4. A few minor matters remain. Church states that station KOFE, a daytime station in Pullman, Wash., begins broadcasting at 6 a.m., and hence it is not true that University would provide the only local outlet for Pullman between 6:30 and local sunrise in the winter months. We do not think that such operation by station KOFE requires a modification of our basic 307(b) determination that Pullman has a greater need than Seattle for an additional station. Church also asserts that University's budgetary limitations prevent the latter from utilizing the additional hours for which it has applied. The transcript reference and exception on which Church relies in support of this assertion relate solely to the hours after 11:15 p.m., when, under our decision, University will in any event not be broadcasting. Moreover, prior to designation, University was found to be financially qualified, at no time did Church request that the issues be enlarged to determine University's financial qualifications, and Church has presented no data—newly discovered or otherwise—to support its bland assertion that University will be unable to utilize the extra hours granted to it by our decision. Under the circumstances, its

¹ *Chicago Federation of Labor v. FCC*, 41 F. 2d 422 (1930); *Evangelical Lutheran Synod v. FCC*, 105 F. 2d 793 (1939).

² The order released Jan. 29, 1962 (FCC 62-98, Mimeo 14775), which provides for limiting under certain circumstances the privileges granted by sec. 3.87 of the rules, is not applicable to the instant proceeding, since our decision herein was released prior to the adoption of that order.

³ Although University, in its opposition to the petition for reconsideration, states that its applications are "in effect, a complaint" against such presunrise operation, the Commission does not regard this statement as a basis for notifying Church to refrain from presunrise operation.

contention as to University's financial qualification must be rejected.

5. Church also asserts that there is no need for University's programming, and it requests that the proceeding be remanded to the hearing examiner for the adduction of evidence as to the need for University's programming. The findings of the hearing examiner reflect the fact that each of the parties was given ample opportunity at the hearing to show relative programming needs, and Church advances no persuasive reason in support of its request that it be given a second opportunity to make such showing. As indicated in our decision, we are in agreement with the hearing examiner that no persuasive showing was made by Church that the programming needs of Seattle are not adequately being met by other stations. Since University will provide the first local nighttime outlet for Pullman, it cannot persuasively be asserted that there is no need for University's proposed programming, and Church does not contend that other stations now provide University's service area with programs of the type and character which University would broadcast.

6. One final matter requires our attention. Church contends that the Commission erred in denying its petition filed prior to issuance of the initial decision requesting dismissal of University's application for unlimited time on the ground that it conflicted with a still-pending 1945 application to change frequency.⁴ We disagree for the same reasons we denied Church's original request. The 1945 application relates to operation on a clear-channel frequency; action on such applications has been deferred; and to forbid existing licensees who in good faith filed applications for those clear-channel frequencies from filing modifications affecting their existing licenses many years subsequent, would be a harsh and unwarranted penalty.

Accordingly, *It is ordered*, This 13th day of June 1962, that the petition filed February 15, 1962, by The First Presbyterian Church of Seattle, Washington, for reconsideration *Is denied* in all respects.

⁴ 21 R.R. 306 (1960).

ISADORE PAUL GILLENSON (WA6KCI), DOCKET No. 14103:

Order suspending amateur radio operator license; reinstated.
47 CFR 12.162.—Obtaining license by fraudulent means.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON 25, D.C.

In the Matter of

ISADORE PAUL GILLENSON, BURBANK, CALIF. Suspension of Amateur Radio Operator License (WA6KCI)	}	Docket No. 14103
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APPEARANCES

Isadore Paul Gillenson, pro se, and *Howard I. Cogan*, for respondent; and *Violet L. Haley*, for the Safety and Special Radio Services Bureau of the Federal Communications Commission.

DECISION

(Adopted June 13, 1962)

BY THE COMMISSION: COMMISSIONER CRAVEN ABSENT.

1. By order released April 7, 1961 (Mimeo No. 2993), the Commission suspended the technician class amateur radio operator license of Isadore Paul Gillenson for the remainder of the license term (to July 7, 1965), based upon the alleged violation by the licensee of 47 CFR 12.162 in attempting to obtain a general class amateur radio operator license by fraudulent means, in that, on December 21, 1960, one Bernard Kirschner, at Gillenson's instigation and with his knowledge and consent, took the prescribed general class examination at the Commission's Los Angeles office using the name of Gillenson. Upon request, by order released April 28, 1961 (26 F.R. 3902), the Commission designated the matter for hearing on issues as to whether Gillenson violated 47 CFR 12.162, and, if so, whether the facts or circumstances in connection therewith would warrant any change in the suspension order. The initial decision of Hearing Examiner Elizabeth C. Smith (FCC 61D-177) released on December 13, 1961, recommended that the Commission's order of suspension be reinstated. Gillenson filed exceptions to the initial decision, but did not request oral argument before the Commission en banc.

2. Except for any modifications and comments contained herein, the initial decision is adopted as the Commission's decision. The examiner found and concluded that Kirschner did take the examination in the name of Gillenson for the purpose of upgrading the latter's license at his inspiration and with his knowledge and consent in violation of 47 CFR 12.162; that statements admitting this which both men

made to the Commission were voluntary and were reaffirmed by them in subsequent letters to the Commission; and that their testimony during the hearing repudiating these admissions is not supported by the evidence nor lent credence by their demeanor on the witness stand.

3. In his exceptions, Gillenson alleges that his and Kirschner's "confessions," without which Gillenson claims the initial decision would be invalid, were improperly admitted into evidence because they were made under coercion and a promise of leniency. These allegations were not made at the hearing; no objection was made by respondent to the admission of the statements at the hearing; the record contains no evidence whatever to support such allegations; and, while such would be highly irregular, respondent has not even at this juncture offered evidence by affidavit or in any other form to support his claim of coercion or promise of leniency. We shall not consider the same further, and, therefore, Gillenson's exceptions are denied. We agree with the examiner that the order of suspension should be reinstated.

Accordingly, *It is ordered*, This 13th day of June 1962, that the Commission's order of suspension released April 7, 1961 (Mimeo No. 2993), suspending the amateur radio operator license (WA6KCI) of respondent, Isadore Paul Gillenson, for the remainder of the license period, *Is reinstated*.

32 F.C.C.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON 25, D.C.

In the Matter of ISADORE PAUL GILLENSON, BURBANK, CALIF. Suspension of Amateur Radio Operator License (WA6KCI)	}	Docket No. 14103
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APPEARANCES

Isadore Paul Gillenson, the respondent-licensee, in his own behalf; and *Violet L. Haley*, on behalf of the Safety and Special Radio Services Bureau of the Federal Communications Commission.

INITIAL DECISION OF HEARING EXAMINER ELIZABETH C. SMITH

(Adopted December 11, 1961)

PRELIMINARY STATEMENT

1. The Commission, by order adopted April 6 and released April 7, 1961, suspended the technician class amateur radio operator license of Isadore Paul Gillenson for the remainder of the license term; that is, until July 7, 1965. The basis for this suspension was the alleged violation by the licensee of section 12.162 of the Commission's rules governing the Amateur Radio Service, in attempting to obtain a general class amateur radio operator license by fraudulent means, in that, on December 21, 1961, one Bernard Kirschner, with Gillenson's knowledge and consent, appeared at the Commission's Los Angeles, Calif., office and under the name and guise of Isadore Paul Gillenson took the prescribed examination for the purpose of upgrading Gillenson's amateur operator license to general class.¹ The order of suspension provided a 15-day period within which the licensee could request a hearing on the matter; and further provided that, if the licensee requested a hearing, the order of suspension would be held in abeyance until the conclusion of hearing proceedings relative thereto. By letter dated April 24, 1961, Isadore Paul Gillenson requested a hearing. Pursuant to such request, the Commission, by order dated April 28,

¹ There was adopted and issued concurrently with the suspension order involved in this proceeding an order of suspension involving the amateur license of Bernard Kirschner (docket No. 14104) involving the same subject matter as is under consideration herein; i.e., the examination taken by Kirschner in the name, and on behalf, of Gillenson. An initial decision in the Kirschner proceeding is being released concurrently herewith.

1961, and released the same date, designated the matter for hearing upon the following issues:

- (1) To determine whether the licensee committed the violations of the Commission's rules as set forth in the Commission's order of suspension;
- (2) If the licensee committed such violations, to determine whether the facts or circumstances in connection therewith would warrant any change in the Commission's order of suspension.

By subsequent orders, and pursuant to request of Mr. Gillenson, the hearing was set for Los Angeles, Calif. The hearing was held in Los Angeles on October 17, 1961, and the record closed on that date. The respondent appeared in his own behalf without counsel. Proposed findings of fact and conclusions of law were timely filed by counsel for the Safety and Special Radio Services Bureau. None were filed by the respondent.²

FINDINGS OF FACT

2. Isadore Paul Gillenson, the respondent in this proceeding, was born in New York, N.Y., on December 6, 1911, and thus was, at the time of the examination in question, more than 49 years of age. He holds a technician class amateur radio operator license.

3. On December 21, 1960, Bernard Kirschner, the holder of a general class amateur radio operator license, appeared at the Commission's office in Los Angeles, Calif., and under the name of Isadore P. Gillenson made written request to take the Commission's prescribed written examination and code test for the purpose of upgrading the technician class amateur radio operator license held by Isadore Paul Gillenson. He also requested that the examination papers be graded then and there so that the technician class license of Isadore Paul Gillenson could be upgraded immediately to general class license.

4. Subsequently, the examination papers were graded and on the basis thereof the license was upgraded to "general class." This upgrading, however, was never validated because soon thereafter, Walter W. Wallace, an electronics engineer employed by the Los Angeles field office of the Federal Communications Commission, received a telephone call from an unidentified person, who stated that within the past 2 months someone impersonating another had appeared at that office and taken the general class amateur radio operator examination for purposes of upgrading a technician class license. A check of the files revealed that the applicant most nearly meeting the description received during the telephone conversation was Isadore Paul Gillenson. An investigation was then conducted, from which Mr. Gillenson's place of employment was learned.

5. Lawrence D. Guy, another electronics engineer, the employee of the Los Angeles field office who had given the examination, visited the radio laboratories where Gillenson was employed and arranged to observe Gillenson at work in order to determine whether he could

² The filing of proposed findings and conclusions was not ordered by the hearing examiner, but left to the option of the parties.

recognize him as the person who took the examination for general class amateur radio operator license under that name on December 21, 1960. After observing Mr. Gillenson, Mr. Guy was convinced that he was not the person who had taken the examination in question. In a further investigation of the matter, it was learned that a Bernard Kirschner, employed by the same radio laboratories, was acquainted with Mr. Gillenson and possibly was the person who took the examination.

6. On December 29, 1960, while the Commission's Los Angeles office was arranging for Mr. Guy to be shown through the department where Mr. Kirschner was employed, in an effort to determine whether Kirschner was the person who had taken the examination in Gillenson's name, Mr. Wallace received a telephone call from Isadore Paul Gillenson, requesting an opportunity to appear at the Commission's office that day, at noon, to discuss the matter. At about 12 o'clock that day, Mr. Gillenson, accompanied by Mr. Kirschner, appeared at the office. They both then freely admitted that Kirschner, at Gillenson's request, had appeared at the Commission's office on December 21, 1960; signed all of the necessary documents in Gillenson's name, and taken the examination in the name of Gillenson. They were asked to make written statements to that effect and both did make written statements which, after being typed, were signed by them and witnessed by Messrs. Wallace and Guy. Both Gillenson's written statement and Kirschner's written statement set forth clearly and unequivocally that Kirschner took the examination at Gillenson's request.

7. In a letter addressed to the Commission's Los Angeles office, under date of April 5, 1961, Gillenson asked that his written statement of December 29 be "corrected" by the addition of the word "complete" in a sentence not directly pertaining to the examination here in question, and for that purpose he attached a copy of the December 29 statement with the additional word therein inserted, but in all other respects he affirmed his statement of December 29, 1960.³ Likewise, in a letter dated June 9, 1961, to the Commission concerning the hearing in docket 14104, Kirschner affirmed his written statement of December 29, 1960.

8. Bernard Kirschner, in his testimony, admitted taking the examination and signing the necessary papers in Gillenson's name. He then stated, however, that Gillenson had not requested that he do this, except, "jokingly," to remark, "Why don't you go and take the test for me," and that he took the examination for Gillenson without Gillen-

³ Gillenson's statement of Dec. 29, 1960, as corrected in his letter of Apr. 5, 1961, reads as follows:

"I, Isadore P. Gillenson, residing at 1045 N. Parish Place, Burbank, California, was born in New York City on December 6, 1911.

"On December 21, 1960, I persuaded Bernard Kirschner, K2HMP, to take the general examination for me. There was no financial remuneration or any other deal involved.

"I was signed off on my Technician's Class examination without having taken the [complete] test in the presence of an examiner.

"This was, no doubt, the most stupid thing I've ever done."

son's knowledge or consent. He attempted to explain this action by saying that he had been trying to teach Gillenson and was feeling sorry for him, so before Gillenson spent a lot of money on radio equipment for Christmas, he decided to take the examination for him. In order to get Gillenson's license to take to the examination, he told Gillenson that he wanted to have it laminated.

9. On the witness stand, Gillenson claimed to have been surprised that Kirschner had taken the examination for him, denied that he had seriously requested him to do so, and claimed that his first knowledge of the matter came to him when another amateur told him that the FCC was investigating the matter; and that he and Kirschner then decided that "the only thing to do was to go down there and tell them what actually happened." He explained his written statement by saying,

I wrote that statement feeling that I should absorb some of the guilt, by suggesting to him that he should go down and do it, and I did write a few paragraphs and Mr. Wallace said it didn't seem to be enough, was there anything more that I could write on there—actually, I didn't know what I was writing * * * whatever entered my head, I put down, I wrote down * * * and that statement wasn't true.

His testimony on the witness stand must be viewed in the light of the circumstances surrounding the visit to the field office, which are uncontradicted; namely, that he went to the Los Angeles field office on December 29, 1960, voluntarily and pursuant to an appointment which he had requested; that he first made the statement orally and then reduced it to writing and, after it was typed, signed it. It is also significant that more than 3 months later, on April 5, 1961, he wrote a letter to the Commission in which he repeated the substance of his December 29 statement, requesting only that a word be inserted not relevant to the case herein. (See footnote 3, supra.) According to Gillenson's own testimony, it was not an isolated instance when he had "jokingly" asked Kirschner to take the examination for him. In his own words,

Well, you see, I had been working on this for quite a while and—well, you know, you reach a point of frustration, and I would reach that point of frustration every once in a while and I would say, "Why don't you go down and take the exam?" And I would say that in a pretty kidding sort of way * * * I just couldn't absorb it for some reason or other, and, oh, I don't know, 9 or 10 times I had these spells of frustration and so I said jokingly, "Why don't you go down and take the exams, Bernie?"

10. He also admitted that he was familiar with section 303⁴ of the Communications Act of 1934, as amended, and with section 12.162 of the Commission's rules, both containing prohibitions against

⁴ Section 303, among other provisions, gives the Commission authority to suspend the license of any operator upon proof sufficient to satisfy the Commission that the licensee "has obtained or attempted to obtain, or has assisted another to obtain or attempt to obtain, an operator's license by fraudulent means."

attempt to obtain a license by fraudulent means.⁵ After being interrogated as to his knowledge of these prohibitions, Gillenson volunteered the following statement:

But I still say that he went down without my knowledge and consent, and I just merely jokingly suggested, "Why don't you take the exam for me?" I just said it when I was at the point of frustration, I didn't mean anything by it, it was just a joking matter, and I had no knowledge that he went down there and took it.

Whether or not Gillenson was aware of the exact date Kirschner took the examination is immaterial. He admitted that he had asked Kirschner to take the examination on numerous occasions and had given Kirschner his [Gillenson's] technician class amateur license, which was necessary in order to take the examination.⁶

11. Mr. Gillenson, a man 49 years of age, holds a responsible position with a radio laboratories company, for which he has security clearance. He serves as a Cub Scout master and is also an adviser to a group of older boys. At the time of the examination, he had known Bernard Kirschner—a man 22 years his junior—about a year, or year and a half, and they visited in each other's homes. They were also employed by the same company, but did not work together.

CONCLUSIONS

1. It is clear from the evidence that Kirschner did in fact, on December 21, 1960, take an examination in the name of Gillenson and for the purpose of upgrading the latter's amateur radio license. Gillenson, as well as Kirschner, has made sharply conflicting statements relative to the circumstances surrounding the examination taken fraudulently by Kirschner. Within less than 10 days after the date of the examination in question, Gillenson took the initiative in arranging a conference with the staff of the Los Angeles field office of the Commission,⁷ voluntarily appearing at such office, and made both an oral and a written statement at such time, in which he admitted that he had persuaded Kirschner to take the examination in question. The evidence further shows that he wrote his December 29 statement out in longhand and, then, after it had been typed, signed it in the presence of witnesses; and that several months later he wrote a letter to the Commission in which he asked only that one word be inserted in the statement for clarity, but did not in any way repudiate the statement as to his complicity in the December 21 examination. Despite these actions, Gillenson denied on the witness stand that he had

⁵ Sec. 12.162 provides that—

"No licensed radio operator or other person shall obtain or attempt to obtain, or assist another to obtain or attempt to obtain, an operator license by fraudulent means."

⁶ According to the testimony of both Gillenson and Kirschner, Gillenson had given his technician license to Kirschner because the latter had stated that he would like to have it laminated or plasticized in order to preserve it.

⁷ This was no "unprodded conscience" act of contrition, but occurred only after he knew the matter was being investigated.

persuaded Kirschner to take the examination in question, and further asserted that he had no knowledge Kirschner had taken it until he [Gillenson] learned of the investigation being conducted by the staff of the Commission in connection therewith. It is noteworthy that, even on the witness stand, Gillenson did not categorically deny that he had asked Kirschner to take the examination for him. In fact, he admitted that he had done so "on 9 or 10" occasions, but he gave as his rather lame explanation that these numerous requests had all been made in jest.

2. Gillenson, the respondent herein, was fully cognizant of the prohibitions of section 303 of the Communications Act of 1934, as amended, and of section 12.162 of the Commission's rules against obtaining or attempting to obtain a radio operator license by fraudulent means.

3. Gillenson's allegation that he was pressured or rushed into making the statement in the Commission's Los Angeles office on December 29, 1960, or that he did not know what he was saying or writing is not supported by the evidence. It is undisputed that Gillenson and Kirschner went to the Los Angeles office voluntarily and, at Gillenson's own request for an interview, after having received knowledge that an investigation of the matter was underway. Not only did both men then make both oral and written statements confirming the fact that Kirschner had appeared and taken the examination for Gillenson at Gillenson's request, they both reaffirmed such statements in all material aspects several months later by separate letters written to the Commission. Gillenson's testimony on the witness stand, and Kirschner's attempted corroboration thereof, are not sufficient, when viewed in the light of the other evidence, to nullify their previous oral and written statements as to the circumstances surrounding the examination which Bernard Kirschner took on December 21, 1960, under the name of Gillenson. Moreover, the demeanor of Gillenson and Kirschner on the witness stand did not lend credence to their late-found explanations of what happened in connection with the examination and the steps leading up thereto.

4. In this proceeding a young boy of tender age without maturity of judgment is not involved, as was the case in *Michael Alan Kaufman*, 25 FCC 1459. On the contrary, Isadore Paul Gillenson, the respondent herein, is a man of mature age who occupies a responsible position in industry and in the civic life of the community and who holds himself out as one qualified to advise and counsel boys of tender years. Gillenson deliberately violated section 12.162 of the Commission's rules by inspiring, or otherwise causing, a much younger man, Bernard Kirschner, to report to the Federal Communications Commission, falsely represent himself to be another person, under oath sign a false name to an application, and take an examination for general class radio operator license on behalf of another; namely, Gillenson, and

thereafter attempted to mislead the Commission relative to his complicity in connection therewith.

5. The evidence in this record clearly supports the conclusion that Isadore Paul Gillenson deliberately and knowingly attempted to obtain a general class amateur radio operator license by fraudulent means in violation of section 12.162 of the Commission's rules, and no facts or circumstances in connection therewith have been shown which would warrant any change in the suspension order.

Accordingly, *It is ordered*, This 11th day of December 1961, that unless an appeal to the Commission from this initial decision is taken by one of the parties, or the Commission reviews the initial decision on its own motion, in accordance with the provisions of section 1.153 of the rules, the general class amateur radio operator license (WA6KCI) of respondent, Isadore Paul Gillenson, is suspended for the remainder of the license period, viz, until July 7, 1965, and that the Commission's order of suspension herein, released April 7, 1961, *Be and the same is hereby reinstated.*

32 F.C.C.

KWTX BROADCASTING Co. (KWTX) ET AL., DOCKETS Nos. 14404, 14405:

Initial decision granting applications of KWTX Broadcasting Co. (KWTX) and Kerrville Broadcasting Co. (KERV) to increase daytime power of their respective class IV AM stations at Waco and Kerrville, Tex., from 250 w to 1 kw while continuing to operate unlimited time on 1230 kc with 250 w nighttime power; became final in accordance with section 1.153 of the Commission's rules.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON 25, D.C.

In re Applications of KWTX BROADCASTING Co. (KWTX), WACO, TEX. KERRVILLE BROADCASTING Co. (KERV), KERR- VILLE, TEX. For Construction Permits	}	Docket No. 14404 File No. BP-13806 Docket No. 14405 File No. BP-14050
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APPEARANCES

Edward F. Kenehan and Henry R. Goldstein, for KWTX; *Eugene L. Burke*, for KERV; *Keith E. Putbrese and Thomas W. Fletcher*, for respondent Queen City Broadcasting Co. (KDLK) until it withdrew from participation; and *Larry M. Berkow*, for the Chief, Broadcast Bureau, Federal Communications Commission.

INITIAL DECISION OF HEARING EXAMINER HERBERT SHARFMAN

(Effective June 8, 1962, pursuant to sec. 1.153)

PRELIMINARY STATEMENT

1. This proceeding involves the applications of the licensees of two existing class IV stations, KWTX Broadcasting Co. (KWTX), Waco, Tex., and Kerrville Broadcasting Co. (KERV), Kerrville, Tex. Each now operates on 1230 kc, 250 w, unlimited time. They seek authority to increase the daytime power of their respective stations from 250 to 1,000 w while continuing to operate unlimited time, with nighttime power of 250 w, on 1230 kc.

2. By order released November 27, 1961 (FCC 61-1396), the Commission designated the applications for hearing because the KERV proposal would cause interference within the normally protected service area of class IV station KDLK, Del Rio, Tex., which is near the Mexican border and under treaty and section 3.21 of the Commission's rules cannot increase power. Moreover, the KWTX proposal to increase power to 1 kw would cause interference within the existing service area of station KERV unless the proposal of KERV to increase power should also be granted.

3. The applications were set for hearing upon the following issues:

(1) To determine the areas and populations which may be expected to gain or lose primary service from each of the instant applicants and the availability of other primary service to such areas and populations.

(2) To determine the nature and extent of the interference, if any, that each of the instant proposals would cause to and receive from each other, and the interference that each of the instant proposals would receive from all other existing standard broadcast stations, the areas and populations affected thereby, and the availability of other primary service to the areas and populations affected by interference from any of the instant proposals.

(3) To determine whether the instant proposal of KWTX Broadcasting Co. would cause objectionable interference to station KERV, Kerrville, Tex., or any other existing standard broadcast stations and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other primary service to such areas and populations.

(4) To determine whether the instant proposal of Kerrville Broadcasting Co. would cause objectionable interference to stations KWTX, Waco, Tex., and KDLK, Del Rio, Tex., or any other existing standard broadcast stations and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other primary service to such areas and populations.

(5) To determine, in the light of section 307 (b) of the Communications Act of 1934, as amended, which of the instant proposals would better provide a fair, efficient, and equitable distribution of radio service.

(6) To determine, in the light of the evidence adduced pursuant to the foregoing issues, which, if either, of the instant applications should be granted.

Both applicants were found legally, technically, financially, and otherwise qualified except as indicated by the issues.

4. A prehearing conference was held on January 4, 1962. At a second prehearing conference on January 24, 1962, KDLK agreed to accept any interference to be caused by KERV's proposed increase of power, withdrew from the proceedings, and stated that no consideration was involved in the withdrawal. A formal notice of withdrawal and an affidavit of no consideration were filed on February 20, 1962. The hearing was held on March 12, and the record closed by order released April 10, 1962. Initial proposed findings of fact and conclusions were filed by the Broadcast Bureau on April 13, 1962. On April 16 the applicants filed a joint document adopting as their own the Bureau's proposed findings of fact and conclusions. The following findings and conclusions are adapted with little change from the Bureau's pleading.

FINDINGS OF FACT¹

5. The population of Waco is 97,808, and that of the Waco urbanized area 116,163. Kerrville has a population of 8,901 and is not part of any urbanized area.

6. As stated above, the Commission in its order found it necessary to designate the application of station KERV for hearing principally because it appeared that operation as proposed would result in objectionable interference to KDLK, Del Rio, Tex., a class IV station which, because it is near the Mexican border, cannot increase operating power above 250 w pursuant to treaty provisions and rule 3.21. The application of station KWTX was consolidated in the same proceeding

¹ All population data based on 1960 U.S. census.

since it appeared that unless the KERV proposal were granted there would be mutual interference between the two proposals, as well as interference from proposed KWTX to the present operation of station KERV. As will be demonstrated below, despite the objectionable interference to station KDLK a grant of the KERV application would be in the public interest. Other than interference to existing class IV stations and class IV stations seeking an increase in operating power, including the present and proposed operation of station KERV, no interference would be involved with any other station by the proposal of station KWTX.

7. Station KERV operating daytime with a power of 250 w receives interference only from KDLK. Primary service is provided 24,623 persons in an area of 2,624 square miles.² Operating as proposed with a power of 1,000 w and assuming KWTX were also to employ a power of 1,000 w, KERV would provide primary service to a total of 44,537 persons in 4,272 square miles. By the proposed power increase KERV would not only continue to provide service to all of its present service area without loss but in addition would make a new primary service available to some 19,914 persons in 1,684 square miles. A minimum of 7 and a maximum of 16 stations serve various portions of the gain area.

8. Within the 0.5-mv/m normally protected contour of KDLK there are 23,237 persons in an area of 2,080 square miles. Interference from proposed KERV to KDLK would affect a total of 1,900 persons in 624 square miles, or 8.2 percent of the population and 30 percent of the area within the KDLK 0.5-mv/m contour.³ The indicated interference would occur in a crescent-shaped rural area extending from the Mexican border approximately 28 miles northwest of Del Rio clockwise to 28 miles southeast, terminating on the Mexican border. The area is about 10 miles across at its widest point, 20 miles northeast of Del Rio, and 85 miles southwest of Kerrville. The city of Del Rio is about 2.5 miles from the Mexican border. Stations WOAI and KENS, San Antonio, Tex., serve all of the interference area, while portions of the area are served by stations KEPS, KTSA, and KMAC. A minimum of two and a maximum of five stations serve various portions of the area. The area receiving only 2 services includes 150 persons. KDLK has agreed to accept any interference that would be caused by KERV's proposed increase of power (Tr., vol. 2, p. 15). Apart from interference to station KDLK and other class IV stations or proposals of class IV stations seeking an increase in power, including KWTX, no interference would be involved with any other class of station.

² Actually, primary service is rendered to a little larger population and greater area, but the exact amount cannot be determined on this record. The evidence shows that existing KDLK and proposed KWTX (1,000 w) would subject existing KERV to a combined loss of 600 persons in 178 square miles. Since KWTX does not now cause interference to KERV and proposed KWTX would cause interference to KERV in an area equal to that imposed by KDLK, it would appear that the interference received from KDLK alone would be approximately one-half the combined loss. On this basis KERV may be assumed to provide primary service to an additional 300 persons in 88 square miles. The figures used in the text above are considered to be sufficiently accurate for the purposes of this proceeding.

³ KERV did not show whether its existing operation now causes interference to KDLK.

9. Although KWTX made a showing indicating that, if a grant of its proposal to increase power to 1 kw were granted, it would increase the population served,⁴ KWTX made no showing as to areas and populations now served, areas and populations to be served if its proposal were granted, or interference the KWTX proposal would cause to the existing operation of KERV. The entire case of KWTX consisted of a showing that it would cause no interference to other than class IV stations and that a grant of its proposal to increase power to 1 kw would to some extent increase the population served.

CONCLUSIONS

10. Neither proposal would involve interference with any existing station other than class IV or class IV stations seeking to increase operating power. The only impediment to a grant of both applications requiring resolution hinges principally upon whether the need for the proposed service of station KERV outweighs the need for the service of station KDLK, Del Rio, Tex., to be lost by virtue of objectionable interference from proposed KERV (rule 3.24(b)). Station KDLK is a class IV station which by reason of its proximity to the Mexican border cannot increase power pursuant to treaty provisions and rule 3.21. KDLK has agreed to accept any interference that would be caused by KERV's increase of power to 1 kw.

11. Operating as proposed, station KERV would not only continue to provide primary service within its present service area but would bring a new primary service to some 19,914 persons in 1,684 square miles, a portion of which receives primary service from at least 6 stations. As a countervailing factor, proposed KERV would cause interference to station KDLK in an area of 624 square miles including 1,900 persons, representing 30 percent of the area and 8.2 percent of the population within the normally protected service contour of station KDLK. A portion of the area in which 150 persons reside receives 2 primary services, while other portions receive as many as 5. The area in question is about 20 miles northeast of Del Rio and 85 miles southwest of Kerrville.

12. Although the interference area is less abundantly served than the gain area, no white or gray areas would be created. The need for service to at least 19,914 persons balanced against 1,900 persons who would be deprived of service from station KDLK and receive a lesser number of other services alone might not weigh the scale significantly in favor of KERV. But when this is considered together with the Commission's policy encouraging class IV stations to increase power so that maximum benefit can be obtained from the use of local channels, it must be concluded that the public interest would be better served by grant of the KERV application than by denial. (See *Washington Broadcasting Co. (WOL)*, 32 FCC 527.) Since the only question as to the KWTX proposal was the interference to be caused the present KERV operation if KERV's request to increase power should

⁴This showing was based upon 1950 U.S. census figures and was offered merely to establish that there would be a gain.

be denied, a grant to KERV automatically removes the impediment to a grant of the KWTX application.

13. It is therefore concluded that a grant of both applications would serve the public interest, convenience, and necessity.

14. Accordingly, *It is ordered*, This 17th day of April 1962, that unless an appeal from this initial decision is taken to the Commission by a party, or the Commission reviews the initial decision on its own motion in accordance with the provisions of section 1.153 of the rules, the above-captioned applications of KWTX Broadcasting Co. (KWTX) and Kerrville Broadcasting Co. (KERV) *Are granted*. Each grant is subject to the following conditions:

(1) Permittee shall accept such interference as may be imposed by other existing 250-w class IV stations in the event these stations are subsequently authorized to increase power to 1 kw.

(2) Permittee shall submit with its application for license antenna resistance measurements made in accordance with section 3.54 of the Commission rules.

The KWTX grant is subject to the following condition:

Permittee shall accept any interference that may be received in the event of a grant of the application, file No. BP-14452, of Bartlesville Broadcasting Co., requesting an increase in power of station KZEE, Weatherford, Tex.

32 F.C.C.

LORD BERKELEY BROADCASTING Co., INC., DOCKET No. 14480:

Initial decision granting application of Lord Berkeley Broadcasting Co., Inc., for a new AM station to operate on 950 kc, 500 w, daytime, in Moncks Corner, S.C.; became final in accordance with section 1.153 of the Commission's rules.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON 25, D.C.

In re Application of
LORD BERKELEY BROADCASTING Co., INC.,
MONCK'S CORNER, S.C.
For Construction Permit

} Docket No. 14480
} File No. BP-14123

APPEARANCES

Robert L. Heald and *Henry R. Goldstein*, for applicant; and *James F. Marten*, for the Chief, Broadcast Bureau, Federal Communications Commission.

INITIAL DECISION OF HEARING EXAMINER HERBERT SHARFMAN

(Effective June 13, 1962, pursuant to sec. 1.153)

FINDINGS OF FACT, CONCLUSIONS, AND ORDER

1. Lord Berkeley Broadcasting Co., Inc., has applied for a construction permit for a new standard broadcast station at Moncks Corner, S.C., on 950 kc, 500 w power, daytime. Its application was consolidated for hearing in an order released January 9, 1962, with the competing application of Grand Strand Broadcasting Co. (docket No. 14481, file No. BP-14403), for Myrtle Beach, S.C. Lord Berkeley and Grand Strand entered into an agreement, however, providing for the withdrawal of Grand Strand's application and the payment of \$1,000 to Grand Strand in partial reimbursement of its expenses. By order released April 3, 1962, the Chief Hearing Examiner, pursuant to section 311(c) of the Communications Act Amendments, 1960, and rule 1.316, approved the agreement, dismissed Grand Strand's application (with prejudice), and referred Lord Berkeley's application to the hearing examiner for appropriate disposition.

2. The Grand Strand dismissal has rendered moot all the issues in the designation order except the following:

5. To determine whether the Lord Berkeley Broadcasting Company, Inc. is financially qualified to construct and operate its proposed station.

Apart from this issue, the Commission has not questioned Lord Berkeley's qualifications.

3. A prehearing conference had been held on February 6, 1962. The hearing, which was indefinitely adjourned on March 21 to await the Chief Hearing Examiner's action, was rescheduled for April 12, when it was held and the record closed. Lord Berkeley filed proposed findings of fact and conclusions on April 19, 1962, after having submitted them for examination to counsel for the Broadcast Bureau in accordance with an understanding at the April 12 hearing. Counsel for the Bureau has informed the hearing examiner that he will not file a reply.

4. The costs of construction of Lord Berkeley's proposed station will be:

Transmitter	\$4, 750
Antenna system.....	3, 700
Frequency and modulation monitors.....	1, 550
Equipment	2, 500
Buildings	7, 500
Other	1, 750
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Total	21, 750
Payment of expenses to dismissing applicant.....	1, 000
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Total cost.....	22, 750

The application discloses that an additional \$9,000 will be required to operate the proposed station for a period of 3 months, assuming no income is received during that time.

5. The applicant has the following assets available to finance the cost of construction, payment and initial expenses of operation:

Prepaid expenses.....	\$1, 135
Cash	6, 000
Loan	20, 000
Deferred credit.....	9, 400
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Total	36, 535

6. Applicant will get necessary funds as follows: (1) J. Olin Tice, Sr., has subscribed to 200 shares of stock at \$30 a share, for a total contribution of \$6,000. His balance sheet shows that he has over \$7,000 in cash and \$12,000 in bonds to meet this commitment. (2) An additional \$20,000 will come from a loan by J. Olin Tice, Jr., who has agreed to lend the applicant corporation this sum for a 5-year period at 6 percent interest, repayable on a monthly basis. Mr. Tice's balance sheet shows cash in excess of \$26,000 as well as substantial other assets. (3) Finally, Collins Radio Co., of Cedar Rapids, Iowa, has indicated that a deferred credit of \$9,400 (with a cash downpayment of \$3,100) will be available to applicant for the purchase of equipment.

7. It is apparent that Lord Berkeley is financially qualified. Its assets, including the deferred credit, substantially exceed the total cost of construction and expenses of operation for an initial 3-month period, even assuming no revenues during that time. Cash outlay for construction and operation during the first 3 months, and the \$1,000 reimbursement, will not exceed \$22,350 (with a \$3,100 downpayment for equipment, etc.), as against \$26,000 available cash, not to mention prepaid expenses, and again assuming no revenues.

8. Accordingly, because public interest, convenience, and necessity will be served thereby, *It is ordered*, This 23d day of April 1962, that, unless an appeal from this initial decision is taken by a party to the Commission, or the Commission reviews the initial decision on its own motion in accordance with the provisions of section 1.153 of the rules, the above-captioned application of Lord Berkeley Broadcasting Co., Inc., for a new standard broadcast station at Moncks Corner, S.C., on 950 kc, 500 w, daytime, *Is granted*.

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SYLLABI INDEX

ABBREVIATIONS USED IN SYLLABI INDEX

AM—Amplitude Modulation.

C.A.—Communications Act of 1934, as amended, 47 U.S.C. 151 et seq.

CP—Construction Permit.

FCC—Federal Communications Commission.

FM—Frequency Modulation.

NARBA—North American Regional Broadcasting Agreement.

Rule—Rules and Regulations of the Federal Communications Commission.

TV—Television.

UHF—Ultra High Frequency.

VHF—Very High Frequency.

ADJACENT CHANNELS.

A class I station is not protected against adjacent-channel interference beyond its 0.5 mv/m contour, and hence any adjacent-channel interference which it would receive beyond this contour does not constitute a modification of its license. *Patchogue Broadcasting Co., Inc., (WAPC)*, 896.

ADJUDICATORY PROCESS.

An adjudicatory proceeding is not the appropriate forum for reconsideration of the reasons underlying the deletion of the unique service rule or for reinstating this rule. *Patchogue Broadcasting Co., Inc., (WAPC)*, 896.

ALLOCATION.

The Commission conditionally granted an application for a new class B FM station for a city of 114,000 persons, where one FM station is already being operated, on the grounds (1) that the grant would be consonant with the Commission's allocation plan, (2) that the proposed station would serve 1,500,000 persons in an area of 1,500 square miles, (3) that the proposed station would bring a second FM reception service to about 5,000 persons and a third such service to about 7,000 persons, and (4) that the interference which the proposed station will receive, as well as that which it will cause to existing stations, is of minor significance (the interference caused by the proposed station would occur only on the fringes of their service area.) *Peoples Broadcasting Corp.*, 853.

ANTENNA. (*See also* Increase of Power, Conditional Grant.)

In granting an application by a class IV station for increase of power from 250 w to 1 kw, the Commission waived sec. 3.188(d) of its rules, on the grounds

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that no suitable *grounds* site was available, but attached the condition that applicant must satisfy any legitimate complaints of blanket interference which might result from its use of a roof top antenna. *WMRC Inc., (WBIR) et al.*, 59.

In granting an application of a class IV AM station for increase of daytime power from 250 w to 1,000 w, the Commission waived section 3.188(d) of the rules prohibiting the use of roof top antennas by stations with power in excess of 500 w, on the ground that applicant was unable to locate another site and can probably operate without modulation problems. *Washington Broadcasting Co., (WOL)*, 525.

In granting an application of a class IV AM station for increase of power from 250 w to 1 kw, the Commission, upon appropriate showing, waived sec. 3.188(d) of the rules concerning roof antenna systems. *Mid-America Broadcasting Co., Inc., et al.*, 636.

APPLICATION.

On the basis of the evidence introduced, the Commission concluded that an application for a new AM station was filed in good faith, and not for the purpose of hindering and obstructing the grant of an application for renewal of the license of another station or the assignment of that license. *James E. Walley, et al.*, 545.

BLANKET INTERFERENCE. (*See Increase of Power, Transmitter Site, Antenna.*)

BROADCAST EXPERIENCE. (*See also Comparative Proceedings.*)

Where one of the competing applicants for a new class B FM station has acquired, in four separate transactions, four FM stations, between 1955 and 1958, and the other applicant has been operating one AM station since 1947, the Commission did not give preference to either applicant on account of greater broadcast experience. *WBUD, Inc., et al.*, 93.

The Commission preferred one applicant for a new TV station over his competitors, *inter alia* on the ground that he had long broadcast experience as a *general manager*, while his competitors had been engaged only in different specialized broadcast activities. *Community Telecasting Corp., et al.*, 923.

In a comparative proceeding involving applications for a new TV station, the Commission did not give any preference to an applicant for making provision for the participation as advisers by stockholders who did not have any broadcast experience. *Community Telecasting Corp., et al.*, 923.

BURDEN OF PROOF.

The rendition of a first local transmission service in a community creates a strong presumption for a proposed service there, and the burden of rebutting this presumption is upon respondent. *John Coleman, et al., d/b as Regional Radio Service*, 1073.

CENSUS.

In denying a petition directed against the Commission's denial of nighttime operation on the ground of gross noncompliance with sec. 3.28(c) (3) of the rules, the Commission stated that the 1960 population figures were unacceptable since petitioner has not shown the effect of the 1960 data on population which would be lost by interference nor advanced any other reasons for a waiver of that rule. *WPET, Inc., (WPET)*, 910.

CIVIC ACTIVITIES. (*See also Broadcast Experience, Local Needs.*)

Where all applicants for a new TV station were identified closely with the community and had participated in its activities, the Commission gave no preference to any applicant on the basis of the number of stockholders participating in such activities. *Community Telecasting Corp. et al.*, 923.

CLASS I STATIONS. (See Adjacent Channels.)

CLASS IV STATIONS. (See Increase of Power, Need for Service Conditional Grant, Directional Antenna, Separation of Frequencies.)

CLEAR CHANNELS.

To forbid existing licensees who in good faith filed applications for clear channel frequencies (such applications having been deferred) from filing modifications affecting their existing licenses many years subsequent, would be harsh and unwarranted. *Washington State University, et al.*, 1215.

COMMISSION ACTION.

When one petitions for reconsideration and states that the Commission voted illegally, the Commission will find it unnecessary to review such contentions, due to the fact that they are considering the petition for reconsideration. *Wilmer E. Huffman, et al.*, 1193.

COMMUNITY ANTENNA.

Upon protest by C, the owner of a local TV station, the Commission denied A's application to supply microwave radio relay pickup TV signals to B's community antenna system, without prejudice to A's refiling said application when A will be able to show that B's operation will avoid the duplication of C's programming and that B will carry C's local signal. *Carter Mountain Corp.*, 459.

COMPARATIVE PROCEEDINGS. (See also Programming, Broadcast Experience, Equitable Distribution "Principal" of a Station.)

In a comparative proceeding involving two applications for a new Class B FM station, the Commission held that the preferences to be given A on account of integration and ownership, local residence and civic activities, programming, planning, and preparation, outweighed the slight preferences to be given to B on account of areas and populations to be served, diversification of business interests, and its wholly nonduplicative FM format. *WBUD Inc., et al.*, 93.

In a comparative proceeding involving five applications for a new TV station, the Commission, upon weighing each of the standard comparative criteria awarded the grant to the applicant whose demonstrated superiority over its competitors will most probably assure the effectuation of its proposal. *Florida Gulfcoast Broadcasters Inc.*, 197.

In a comparative proceeding the criteria of integration of ownership and management, area familiarity, and broadcast experience become less significant where each applicant has a past broadcast record. *Florida Gulfcoast Broadcasters Inc.*, 197.

In a comparative proceeding involving mutually exclusive applications for a new AM station, the Commission preferred applicant A over applicant B, on the grounds that A made a better showing than B in the factors of local residence, integration of management and ownership and diversification of ownership of communications media (no preference could be given to either applicant with

respect to civic participation, diversification of business interests in the local community, staffing, studios, or engineering proposals.) *James E. Walley, et al.*, 545.

Where the Commission has determined that an applicant for a construction permit does not meet the minimum qualifications of a licensee, it will not order a comparative hearing (applicant had tampered with the adjudicatory process in a corrupt way). *Biscayne Television Corp., et al.*, 918.

Where no significant differences existed among five applicants for a new TV station in the areas of local residence, civic participation, planning, studios, staffing, equipment and policies, and A, B, and C had only a slight preference over D and E in the area of diversification of mass media, the Commission granted E's application on the ground that E made the best showing in the area of broadcast experience. *Community Telecasting Corp., et al.*, 923.

CONDITIONAL GRANT. (*See also* Increase of Power, Need for Service, Multiple Ownership.)

The Commission attached to its grant of a construction permit for a new TV station the condition that permittee shall accept any interference which might result to its operation from a cochannel Jacksonville, Fla., station operating with maximum facilities at a site less than the minimum mileage separation from permittee's site, in the event the Commission determines, to allocate channel 10 to Jacksonville, Fla. *Florida Gulfcoast Broadcasters Inc.*, 197.

The Commission attached to its grant of applications by class IV AM stations for increase of power the conditions that (1) all of the permittees shall accept such interference as may be imposed by other existing 250 w class IV stations in the event they are subsequently authorized to increase power to 1 kw; (2) that, in addition to the above, one of the permittees shall take appropriate steps that may be necessary to prevent cross-modulation or reradiation with the present operation of another station, and shall cooperate with said station in eliminating any problems that may occur in the event of a grant of an application which proposes a daytime power increase for that station. *Washington Broadcasting Co., (WOL)*, 525.

The Commission attached to its grant of A's application for increase of daytime power of its class IV AM station the condition that he shall accept such interference as may be imposed by other existing 250 w class IV stations in the event they are subsequently authorized to increase power to 1,000 w, and to its simultaneous grant of B's application for a new daytime only AM station the condition that, pending a final decision with respect to presunrise operation with daytime facilities, the present provisions of sec. 3.87 of the Commission's rules are not extended to the present grant, and that such operation is precluded. *Kenneth G. Prather and Misha S. Prather, et al.*, 864.

The Commission attached to its grant of an application for a new class III AM Station the conditions that (a) program tests will not be authorized until the permittee has submitted evidence to that two of its partners have severed their connection with another station and (b) pending a final decision in docket No. 14419 with respect to presunrise operations with daytime facilities, the present provisions of sec. 3.87 of the Commission's rules are not extended to this authorization, and such operation is precluded. *John Coleman, et al., d/b as Regional Radio Service*, 1073.

The Commission granted authorization to upgrade a class IV station from 250 w to 1 kw on the conditions that the station accept any interference which

may come about from subsequent upgrading to 1 kw of other existing class IV stations. *Raritan Valley Broadcasting Co., Inc.*, 1184.

CONSTRUCTION OF A STATION.

Sec. 319(b) of the Communications Act contemplates a good faith intent by permittees to proceed with construction. *Plains Radio Broadcasting Co.*, 811.

The Commission denied applications for extension of time to construct FM stations and for assignment of construction permits, *inter alia* on the ground that proposed assignor, while its applications for construction permits were pending, had given up any intention of constructing the stations without advising the Commission of his change of plans. *Plains Radio Broadcasting Co.*, 811.

CONTROL OVER A STATION. (See also responsibility of License.)

The word "control" is not limited to majority ownership, but includes actual working control in whatever manner exercised. *Iralee W. Bennis, tr/as Sheffield Broadcasting Co., et al.*, 755.

Under the special circumstances of the case, the Commission held that the president and general manager of a station exercised control over it, although he owned only 12 percent of the corporation's stock. *Iralee W. Bennis, tr/as Sheffield Broadcasting Co., et al.*, 755.

Where the only connection between Mrs. X and her son in the broadcast field was that the son, who held interests in *other* stations, gave her engineering advice in the technical operation of her stations, the Commission stated that in the absence of a showing of control over the business affairs of one family member by other members, mere family relationship was insufficient ground for giving consideration to other broadcast interests held by family members. *Iralee W. Bennis, tr/as Sheffield Broadcasting Co., et al.*, 755.

CROSS MODULATION. (See Conditional Grant, Increase of Power.)

DELETION OF ISSUES.

Where the competing applicant is voluntarily dismissed, the "separate communities" issue disappears. Therefore, the community remaining will be regarded by itself and the transmission properties as to that Community are of first importance. The examiner viewed the "separate communities" issue as still relevant even upon dismissal of the other applicant, for she held it implicit in the Sec. 307(b) issue under the *Huntington Park* case. The Commission held this interpretation to be erroneous. *Berkshire Broadcasting Corp., et al.*, 1105.

DIRECTIONAL OPERATION.

The Commission conditionally granted an application for a new class III AM daytime only station which would provide the first local outlet for a city of 15,000, although the proposed directional antenna system did not conform to the best engineering practice, and condoned under the special circumstances of the case the selection of a site which would place a portion of the city to be served in an area of maximum signal suppression. *Radio Quests Inc., et al.*, 509.

The Commission's report and order of May 4, 1961, (FCC-61-601) does not impose an *obligation* upon applicants for increase of power of their class IV station to propose the use of directional antennas in order to avoid objectionable interference to other than class IV operations. *Iowa Great Lakes Broadcasting Co., et al.*, 907.

DISMISSAL. (*See also* Amendment, Increase of Power, Need for Service, Renewal of License, Amateur Operator & Station License, Merger.)

Where A, the successful applicant for change of facilities had requested cancellation of his construction permit (see sec. 1.312(c) of the rules), and this cancellation was not prompted by any agreement between A and B, the previously unsuccessful applicant for a mutually exclusive new AM station, the Commission set aside its grant to A, dismissed A's application and granted B's application, on the ground that B had previously been found qualified and that the earlier denial of B's application had been based solely on sec. 307(b) of the Communications Act. *John K. Rogers, et al.*, 629.

DIVERSIFICATION.

In a comparative proceeding involving two applications for new class B FM stations, the Commission regarded the fact that A's diversification of business interests was superior to B's only as a factor of "secondary importance", especially since this diversification was "completely non-local." *WBUD Inc., et al.*, 93.

In a comparative proceeding for a new TV station, the Commission stated that the evils of concentration of ownership would be less likely to occur if the channel in question were awarded to one of the twelve AM licensees in the area involved rather than to the owner of the area's second largest newspaper. *Florida Gulfcoast Broadcasters Inc.*, 197.

ECONOMIC INJURY. (*See also* Competition, UHF.)

In passing upon A's application to supply microwaves radio relay pickup TV signals to B's Community Antenna system, the Commission regarded as decisive the probability that the only existing local station would be destroyed economically by B's improved service. *Carter Mountain Corp.*, 459.

In the absence of A's allegations that the economic injury it would suffer would tend to impair its ability to serve the public such economic injury—though sufficient to give *standing*—is not to be taken into account in determining whether or not B's application for a new station should be granted. *Patchogue Broadcasting Co., Inc. (WAPC)*, 896.

EQUITABLE DISTRIBUTION. (*See* Need for Service, Comparative Proceeding. Reconsideration, Share Time Stations.)

In terminating a share-time agreement entered into by A and B concerning nighttime operation, the Commission granted both A's application for renewal and modification of license (to the extent that A be permitted to operate on an unlimited time basis except during the hours from 11:15 P.M. to 6:30 A.M., when A did not propose to operate), and also B's application for renewal of license (limiting B to daytime operation, with nighttime operation only between 11:15 P.M. and 6:30 A.M.), *inter alia* on the grounds that (1) it is more equitable that X, a city of 12,000 persons in which A operates, be provided with first local nighttime service for two additional nights (thus giving it service for seven nights a week), than that Y, a city of 470,000 persons in which B operates, retain B's service for two nights a week, and that (2) B failed to prove that Y is not adequately served by the 11 full time stations presently operated there. *Washington State University, et al.*, 127.

The Commission has held in numerous instances that the need for a *first* local outlet in a community of substantial size outweighs the need for an *additional* local transmission outlet in a substantially larger community with substantially

Where the financial issue is limited to the question of whether an applicant for a new AM station would be able to secure credit for a new AM station, the applicant is not required to make a presentation of its equipment supplier, situation. *Columbia River Broadcasters Inc.*, 761.

The Commission regarded an applicant for a new class B FM station as financially qualified, on the ground that his assets and sources of credit are sufficient to cover the expenditures needed to station and to operate it, for the first three months, without regard to anticipated revenue. *John M. Barrick*, 794.

The Commission granted an application for a new AM daytime only station finding that applicant was financially qualified since it had enough cash to meet both the \$21,000 construction cost and the \$18,000 initial cost of operation. *Quests, Inc.*, 891.

The Commission regarded an applicant for a new TV Station as financially qualified where the total cost of construction is estimated to be \$815,000 and the applicant will have available for his use \$300,000 in the form of bank loans; \$275,000 from subscription for new capital by financially responsible subscribers; and \$626,000 in deferred payment credit for the equipment. *Community Tele-casting Corp., et al.*, 923.

In granting an application of an AM station for increase of power the Hearing Examiner held that applicant had sufficient funds to construct and operate its proposal for a reasonable time, especially since applicant is in operation. *Town & Country Broadcasting Co., Inc.*, 1084.

Initial decision granting application for a new AM station in Moncks Corner, S.C., became final in accord with sec. 1.153 of the rules. Applicant was found to have the necessary finances, and credits required to operate the station. *Lord Berkeley Broadcasting Co., Inc.*, 1233.

FM. (See also Allocations, Comparative Hearings, Need for Service.) In a comparative hearing for new class B FM stations, the Commission gave A's proposed FM programs are wholly nonduplicative, while B's proposed FM a slight (though not determinative) preference to A over B, on the ground that A's proposed FM programs duplicate its AM programs. *WBUD, Inc., et al.*, 93.

Upon elimination of the question of mutual exclusivity with other applicants, the Commission granted an application for a new FM station. *Lakeshore Broadcasting Co., Inc.*, 883.

HEARING.

Where the Court of Appeals had set aside a decision of the Commission dismissing a protest directed against the grant without hearing of an application for a new AM station, holding that protestant did not have standing to protest, and where the Court stated "we are deciding merely that (protestant's) allegations were sufficient to entitle it to a hearing. . . . We emphasize the fact that we intimate no opinion on the merits of the protest," the Commission ordered oral argument before it, and held that, since none of the matters which protestant advanced were relevant to the ultimate public interest determination, protestant was not entitled to an evidentiary hearing. *Patchogue Broadcasting Co., Inc. (WAPC)*, 896.

INCREASE OF POWER. (See also Conditional Grant, Ten Percent Rule, Interference, Antenna, Need for Service, Multiple Ownership, Separation of Frequencies.)
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The Commission granted eight applications filed by class IV stations for increase of daytime power from 250 w to 1 kw on the grounds that the proposed operations will result in increased signal strength and provide new services to a combined population of 280,000, that no persons will lose the service they presently receive from applicants and that the interference caused to other existing stations will be insignificant; to each of the grants, the Commission attached the condition that permittee shall accept such interference as may be imposed by other existing 250 w class IV stations in the event they are subsequently authorized to increase power to 1 kw with an additional condition to one of the grants that "a complete nondirectional proof of performance shall be submitted before the issuance of program test authorization to prove that the effective radiation at 1 mile is essentially 206 mv/m for 1 kw, as proposed." *WMRC Inc., (WBIR) et al.*, 59.

In conditionally granting four applications by class IV stations for increase of daytime power from 250 w to 1 kw, the Commission rejected respondent's request that one of the applicants insert a resistor in its tower, on the grounds that this could not be effected without a loss of service to part of the population presently served by this applicant and that there is no likelihood that cross-modulation will occur. *Clinton Broadcasting Corp., (KROS) et al.*, 367.

The Commission conditionally granted four applications by class IV AM stations for increase of daytime power from 250 to 1 kw, *inter alia* on the ground that the gain of service to 571,000 persons outweighed the disadvantage of increased interference to class III stations on adjacent channels, especially since the interference area is served by many other stations. *Clinton Broadcasting Corp., (KROS) et al.*, 367.

A licensee of an existing class IV AM station who applies for increase of power is entitled to a presumption of having met the minimal signal requirement. *Washington Broadcasting Co. (WOL) 525.*

In granting an application of a class III AM station for increase in daytime power from 500 w to 1 kw, the Commission waived sec. 3.37 of the rules, on the ground that the harmful effects this section seeks to prevent are not likely to occur and that the denial of the present application would result in additional interference involving 15,600 persons and in precluding applicant from gaining 76,000 persons in its interference-free area. *Mid-America Broadcasting System Inc., et al.*, 636.

The Commission granted three applications of class IV AM stations for increase of daytime power from 250 to 500 w and 1 kw respectively, on the ground that the proposed operations would result in a gain of service to a considerable number of persons, while causing only minor interference to areas which receive abundant services from other stations. *The Fort Hamilton Broadcasting Co., (WMOH) et al.*, 674.

Upon severance from other applications which were designated for hearing, the Commission granted an application of a class IV station for increase of daytime power from 250 w to 500 w in accordance with its nationwide policy of upgrading class IV AM stations, since the proposed operation would cause only minor interference to only one existing station. *Batavia Broadcasting Corp., (WBTA) .*, 685.

The Commission conditionally granted the applications of A and B for increase of daytime power of their class IV stations from 250 to 1,000 w, on the ground that applicants' proposed operations will result in an essential improvement of their services, and rejected C's petition to make the grant to A coincident

with the grant of C's own application for power increase, on the ground that C failed to show that the *public* interest would suffer unless the grant to C was timed to coincide with the grant to A. *Value Radio Corp., (WOSH) et al., 783.*

In simultaneously granting A's application for a new AM daytime only station for a city of 37,000, and B's application for increase of daytime power of its class IV AM station from 250 w to 1,000 w, the Commission waived sec. 3.37 of the rules, holding that the facts that B's proposed operation would involve a considerable overlap of its 2 mv/m contour with A's proposed 25 mv/m contour and that A's and B's operations would cause some interference to existing stations were outweighed in A's cause by the need for a second local outlet in the rapidly growing city, and, in B's case, by the gain of service to 59,000 persons. (Denial of its application would cause B to suffer a competitive disadvantage and would deprive it of protection against nearby class IV stations seeking increase of power.) *Kenneth G. Prather and Misha S. Prather et al., 864.*

The overall public benefit to be derived from a nationwide chain of local power increases by class IV stations is of significant importance in passing on applications requesting such increases. *Iowa Great Lakes Broadcasting Co., et al., 907.*

The Commission granted an application of a daytime only AM station for increase of power from 1 kw to 5 kw, on the ground that applicant will thereby more than double its service area and provide a new service for 119,000 persons. *Town & Country Broadcasting Co., Inc., 1084.*

The Commission allowed two class IV standard stations to upgrade power to 1,000 W days and 250 W nights, due to the fact that sizeable areas would get new service and if one were allowed to increase power without increasing the other, the interference factor would be harmful to the 2d station. This upgrading is also in line with the Commission policy to increase the power of class IV standard broadcast stations. Both grants were made subject to accepting interference from subsequent increases in power by other class IV stations. *KWTX Broadcasting Co., et al., 1227.*

INTERFERENCE. (See also Need for Service, Increase of Power, Ten Percent Rule, Allocations.)

The Commission granted an application of a class II AM station for increase of daytime power from 1 kw to 5 kw and two applications for new class II daytime only AM stations, on the ground that the considerable gain of service outweighs the limited interference which the proposed operations will cause to two existing stations, especially since the interference areas are served by many other stations. *Cornbelt Broadcasting Co., (WHOW) et al., 361.*

The Commission denied an application for a new AM station, holding that the fact that the proposed station would provide the first local outlet for a city of 9,700 persons did not outweigh the fact that, due to interference from three existing stations, 48.64% of the population within the normally protected 0.5 mv/m daytime contour would not receive service from the proposed station, especially since the city presently receives primary service from three, and the rural area from between 5 and 12, other stations. *Herman E. Sayer, tr/as Sayer Broadcasting Co., et al., 493.*

The Commission granted the applications of four class IV AM stations for increase of daytime power from 250 w to 1 kw, *inter alia* on the ground that the simultaneous grant of all four applications will provide a new service to

a total of 149,000 persons, residing in an area of 374 square miles, while the interference thus caused to other stations would result in a loss of service to only 7,000 persons. *Mid-America Broadcasting Co., Inc., et al.*, 636.

Where A's application for a new AM station was severed from a consolidated hearing with B's application, and granted, upon A's acceptance of interference from B, the Commission in passing on B's application for a new AM station no longer regarded A's station as an existing station within the meaning of Secs. 3.24(b) and 3.28(d) of the rules. *Columbia River Broadcasters, Inc.*, 761.

The Commission granted A's and B's applications for new class III daytime only stations, finding that their operations would not be mutually exclusive, and that there was a need for a first local outlet in the community X (population: 1,800), where A proposed to operate, and for a second outlet in city Y (population: 11,000), where B proposed to operate, especially since the small area in which B would cause interference to A receives services from five existing stations, and the Commission attached to the grant to A the condition that program tests will not be authorized until the permittee submits data to establish that the proposed transmitter meets the requirements of secs. 3.48 and 2.524 of the Commission's rules. *Clarence Everett Jones, et al.*, 885.

The Commission granted an authorization where the proposed station would cause objectionable interference to the normally protected contour of an existing station of only 11 square miles (350 persons). There were 9 to 14 other services available to this area. *Berkshire Broadcasting Corp., et al.*, 1105.

The Commission granted authorization to operate a new class II daytime station which would serve 1,292 square miles and 248,921 persons during normal hours of operation and to 713 square miles and 188,484 persons during critical hours. Such grant will not contravene the 10-percent rule [3.28(d) (3)] of the Rules where 3.9 percent of its normally protected contour would be lost to interference. *Francis M. Fitzgerald, et al.*, 1207.

INTERVENORS.

The right of an intervenor is a restricted one. He cannot be permitted to run away with the hearing, nullify all that has gone before the intervention, or unduly extend the hearing beyond what fair protection of his rights and the public interest may require. Nor does the Commission read the Communications Act, its amendments, and court cases as imposing retrospective requirements on the Commission or its applicants so as to necessitate the redoing of things lawfully done on the basis of previous authority. *Berkshire Broadcasting Corp., et al.*, 1105.

JURISDICTION.

Jurisdiction over an order of the Commission remains with the Commission until the time for appeal has expired. *Biscayne Television Corp., et al.*, 918.

LOCAL NEEDS. (*See* Need for Service, Responsibility of Licensee, Spot Announcements).

In a comparative proceeding involving two applications for a new class B FM station for the same city, the Commission preferred applicant A over applicant B, *inter alia* on the ground that A, through its operation of an AM station in that city for many years is more familiar with local needs than B, none of whose officers and directors and directors either resided in the city, or have made any investigations concerning local needs. *WBUD, Inc., et al.*, 93.

Non-local civic activities and business interests have little if any relevance to the question of area familiarity. *Florida Gulfcoast Broadcasters Inc.*, 197.

The Commission preferred applicant A for a new class III AM station over applicants B and C for the same facility, *inter alia* on the ground that A showed more familiarity with the local needs than B and C, and more complete integration of ownership and management. *William S. Halpern, et al., d/b as Greater Princeton Broadcasting Co., et al.*, 389.

The Commission denied applications for extension of time to construct five FM stations and for consent to assign the construction permits, *inter alia* on the grounds that the proposed assignee made no efforts to relate the proposed program service to the needs of the communities. *Plains Radio Broadcasting Co.*, 811.

LOCAL RESIDENCE. (See Broadcast Experience.)

Upon remand by the Court of Appeals, the Commission preferred applicant A for a new TV station over applicant B, *inter alia* on the ground that B's *de facto* principal will not reside in the community and has no record of civic activities there; A's additional advantage in diversification of business interests was also emphasized. *Radio Associates, Inc., et al.*, 166.

In denying a petition for reconsideration filed by A, the unsuccessful applicant for a new class B FM station, the Commission restated that B, the successful applicant for similar facilities, was to be preferred over A on the ground of B's local residence and familiarity with local conditions, which A failed to investigate. *WBUD, Inc.*, 915.

Where each of several applicants for a new TV station would be firmly controlled by local residents, the Commission did not award a substantial preference to anyone of them on the basis of the *percentage* of ownership held locally. *Community Telecasting Corp., et al.*, 923.

MEASUREMENTS.

The Commission upheld the Hearing Examiner's refusal to permit the substitution of field intensity measurement for the earlier submitted soil map computations on the ground that this substitution was offered after all parties had put in their engineering evidence. *Herman Sayer, tr/as Sayer Broadcasting Co., et al.*, 493.

MERGER. (See also Amendment, Dismissal of Application.)

In granting A's application for a new class III AM daytime only station, the Commission held that a merger agreement between A and B, under which B acquired a one-third ownership interest in A and, in addition, B's two principals were given employment contracts for a period of one year at salaries of \$12,000 and \$6,000 respectively, did not violate sec. 311(c) of the Communications Act or sec. 1.363 of the rules. *Mid-American Broadcasting Co., Inc., et al.*, 636.

The Commission found no contravention of sec. 1.363c where two applicants merged into one company. The predominant group was to pay \$10,257.87 to the other applicant for legitimate expenses (Legal, Engineering, Travel, Land Option, Photos). *Berkshire Broadcasting Corp., et al.*, 1105.

MISREPRESENTATION. (See also Revocation.)

The Commission denied applications for renewal of license of an AM station and for a license to cover the construction permit authorizing 50 kw power,

inter alia on the ground that in order to deceive the Commission, the program logs were altered to reflect programs which were not actually broadcast. *Eleven Ten Broadcasting Corp.*, 706.

MULTIPLE OWNERSHIP. (*See also* Reconsideration.)

In granting A's and B's applications for increase of power of their class IV AM stations from 250 w to 1,000 w the Commission did not apply sec. 3.35 of the rules on the ground that, under the special circumstances of the case, no concentration of control in violation of that section could result from any possible exercise of control over B by A. *Mid-America Broadcasting Co., Inc., et al.*, 636.

In a comparative proceeding involving mutually exclusive applications for a new AM station, the Commission preferred applicant A over applicant B, *inter alia* on the ground that with the grant of its present application B would control four northern Alabama AM stations within a radius of less than 100 miles, while A would control only three stations of which one is located 100 miles from the city where the new station would be operated and the other 135 miles away in another state. *Iralee W. Benns, tr/as Sheffield Broadcasting Co., et al.*, 755.

The Commission refused to grant an authorization to operate radio station A within 32.5 miles of station B under Rule 3.35. The 100% owners of station B held 65% of station A. The overlap of service by the same parties would be 3,490 square miles (78.1%) and a population overlap of 48,704 (62%). Upon amendment of the application the Commission granted authority to operate station A with the condition that the principals would divest themselves of all ownership in station B, before A went on the air. *Crosby County Broadcasting Co.*, 1092.

The Commission found that there would not be a contravention of sec. 3.35(a) of the rules, i.e., multiple ownership and overlap of said stations where; (1) There is no question of any nighttime overlap of primary service areas; (2) there is no overlap of the 2.0-mv/m contours of any of the three stations concerned; (3) no one of the three stations would provide a primary signal into the principal community of either of the others; and (4) there would be overlap of the 0.5-mv/m contours of all three. For the cities to be served are completely separate both in a geographical and economic sense, the programming formats are separate and distinct for each, and there are no local accounts which are duplicated. *KGMS, Inc.*, 1179.

NEED FOR SERVICE. (*See also* Increase of Power, Interference, Ten Percent Rule, Allocations, Amendment, Financial Qualifications, Coverage, UHF. Local Needs, Burden of Proof, Directional Antenna, Equitable Distribution.)

In a comparative proceeding involving the licensing of a new class II AM station, the Commission preferred A, who would operate at 5 kw by day and 500 w by night from a city of 7,500 persons, over B and C, who would both operate only during the day and at 500 w from a city of 4,400 persons, *inter alia* on the grounds that (1) A would bring a first primary nighttime service to over 9,000 persons (thus removing a substantial white area) and the first local nighttime outlet to the city from which he operated. (2) A's proposal would provide this city with a second competitive daytime station. (3) A's daytime proposal will serve 33,000 persons more than B's and C's proposals, and (4) A's proposal will

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make full use of the power authorized for class III stations under the Commission's rules, holding that the facts in (1) to (4) outweighed the fact that the second involved city did not have any local station while the first involved city already had one daytime only station. *Wilmer E. Huffman, et al.*, 1.

The Commission granted A's application for a new AM station on the grounds that (1) the programs proposed by A would better serve the needs of the population residing in the area of the adjacent-channel interference resulting from A's operation than would the present programs of B (In this area, A's service would substitute for B's service; the interference area would encompass only 3.2% of the total of the persons presently served by B); (2) the proposed station would provide the first local outlet to a city of 3,000 persons; and (3) in said interference area, between four and nine other primary services are available. *Wayne and M. Nelson, Et al.*, 35.

The Commission granted an application for a new AM daytime only station on the ground that the proposed station will provide a new AM service to 239,000 persons and a third local outlet for a city of 50,000 persons, while causing only minor interference to the service of one proposed station and no *new* interference to an existing station. *Television Corp. of Mich.*, 54.

The Commission granted an application for a new daytime only class II AM station on the ground that the proposed station would provide new service to 550,000 persons and a third local outlet for a city of 32,000 persons, while causing only insignificant adjacent-channel interference (the interference area is presently served by at least 19 other stations). *Gordon A. Rogers*, 331.

The Commission granted an application for a new class II daytime only station with power of 10 kw, finding that the proposed station would provide an additional service to more than 660,000 persons, with no overlap of the 25 mv/m contour in contravention of sec. 3.37 of the rules. *Maricopa County Broadcasters, Inc.*, 355.

The Commission granted an application for a new class B FM station, on the grounds that the proposed station would bring a new class B FM service to about 3,200,000 persons and would neither cause interference nor receive any from any existing station. *David L. Kurtz*, 487.

The Commission conditionally granted an application for a new class III AM daytime only station *inter alia* on the grounds that the proposed station would provide the first local outlet to a city of 15,000, a first daytime primary service to 4,000 and a new primary service to a total of 832,000 persons and that these facts outweighed the minor loss of the service which will be caused to an existing station through interference. *Radio Quests Inc., et al.*, 509.

The Commission granted an application of an AM station for change of facilities from 1570 kc 1 kw power, daytime only, to 1330 kc 1 kw night and 500 w local sunset, using a different directional antenna day and night unlimited time, *inter alia* on the grounds that (1) the proposed operation would (a) provide a city of 13,400 persons with the first local nighttime service and a new nighttime service to 231,000 persons, (b) not cause any objectional daytime interference, (c) remove objectionable interference now caused daytime to another station in an area of 274 square miles with a population of 8,000 persons, and that (2) all of the area which will be lost by the grant of the present application is being served daytime by 11 other stations. *Radio Quests Inc., et al.*, 509.

The Commission granted applications for new class III daytime only stations and for increase of power of a class IV AM station, holding that the gain of service to a considerable number of persons outweighed the losses caused to existing

stations through interference. *Mid-America Broadcasting Co., Inc., et al.*, 636.

The Commission granted an application of a class IV AM station for increase of daytime power from 250 w to 1,000 w, *inter alia* on the ground that the proposed operation would provide a new primary service to 61,000 persons while causing the loss of service from another station to only 18,000 persons to whom between 12 and 22 other primary services were available, and that no specific need for the lost service had been demonstrated. *Washington Broadcasting Co., (WOL)*, 525.

In granting the applications of A and B, licensees of class IV AM stations, for increase of daytime power from 250 w to 1000 w and the application of C, licensee of a class III AM station, for increase of daytime power from 500 w to 1000 w, the Commission (1) waived the 10% rule in C's case, *inter alia* because of the considerable gain of service which the proposed operation would bring forth, and, (2) in A's and B's cases, waived sec. 3.188(d) of the rules, *inter alia* on the ground that the roof antenna operation is not likely to have adverse effects. *The Jet Broadcasting Co., Inc., (WJET)*, 668.

The Commission granted an application of a class IV station for increase of daytime power from 250 w to 1,000 w, holding that the need for the new service which the proposed operation would provide to 47,000 persons outweighed the loss of service which 6,300 persons would suffer through interference with a class II station. *Newton-Conover Broadcasting Co., Inc.*, 790.

The Commission granted an application for a new FM station which would be the first local FM station in a city of 68,000 persons and would serve a population of about 242,000 persons on the ground that operating in conformity with its amended proposal with effective radiated power of 4.0 kw, instead of 6.19 kw as originally proposed, the station will not cause interference within the 1-mv/m contour of any existing or proposed FM station and will not be affected by any interference within its own proposed 1-mv/m contour. *Kenosha Broadcasting Inc.*, 800.

The Commission granted an application for change of facilities and increase of daytime power from 1 kw to 5 kw, on the ground that under the proposed operation the applicant's normally protected contour would include an additional 240,000 persons with no objectionable interference to any existing station while only minor interference would be caused to applicant's proposed operation. *Virginia-Kentucky Broadcasting Co., Inc.*, 805.

The Commission granted an application for a new AM station daytime only station, finding that there was need for a second local outlet in a city of 24,000 persons. *Quests, Inc.*, 891.

The Commission denied A's petition for reconsideration directed against its grant to B for increase of power of its class IV station; *inter alia* on the ground that A failed to petition for enlargement of issues to include the issue of whether the need for A's service outweighed the needs of the areas to be gained by permittee's expansion of service (sec. 3.24(b) of the rules), since the Commission had held in its grant to B that A would not meet special needs of the population in the interference area. *Iowa Great Lakes Broadcasting Co., et al.*, 907.

In granting an application for a new class III AM station for a city of 22,000, the Commission held that the need for a first local outlet in that city outweighs its loss of 12,000 persons which respondent will suffer by adjacent-channel interference. *John Coleman, et al., d/b as Regional Radio Service*, 1073.

The facts that applicant's proposed service area has available at least 10 primary services and that two of the stations furnishing this service are located in communities only 15 miles from the city where applicant proposes to operate a new class III AM Station do not rebut the presumption in favor of a first local outlet for that city of 22,000 persons. *John Coleman, et al., d/b as Regional Radio Service*, 1073.

Service rendered to a community by stations located in other communities is no adequate substitute for a local station. *John Coleman, et al., d/b as Regional Radio Service.*, 1073.

The Commission granted, under sec. 1.153, an authorization for the first local transmission in Ralls, Texas, a county seat with a population of 10,347 persons. *Crosby County Broadcasting Co.*, 1092.

The Commission granted an authorization for a new service when, operating as proposed, such facility would provide a new primary service to at least 449,577 persons in an area of at least 475 square miles which now receive primary service (0.5 mv/m or greater) from a minimum of 7 and a maximum of 14 stations. The need of over 400,000 persons for a new service (although presently receiving 7 to 14 services) outweighs the need of 350 persons, having a minimum of 9 other services available, for the service to be lost by reason of interference. *Berkshire Broadcasting Corp., et al.*, 1105.

The Commission denied an application to operate during nighttime, which would give a new service to 541,482 persons, who already have from three to six services; due to the fact that such operation would create a sizable white area (2,289 persons in eleven square miles). *Rounasville of Louisville, Inc., (WLOU)*, 1197.

The Commission granted authorization to operate a new class II daytime station which would serve 785 square miles and 85,693 persons during normal hours of operation, and to 400 square miles and 47,500 persons during critical hours. *Francis M. Fitzgerald, et al.*, 1207.

NOTICE OF HEARING.

The Commission granted an application for a new daytime only AM station, holding that applicant has met the requirements of sec. 311(a)(2) of the Communications Act, and substantially, the pertinent provisions of sec. 1.362 of the rules. *The Seward Broadcasting Co.* 449.

The Commission granted an application for a new class II AM station, finding that no consideration was given for the dismissal or default in the prosecution of a competing application, and that the publication of the notice of hearing complied with sec. 1.362 of the rules. *John M. Bryan, et al., d/b as Champion Electronics*, 597.

ORAL ARGUMENT.

The Commission regarded oral argument as waived, where the request for it was made only after public notice of the Commission's preliminary instructions concerning the disposition of the proceeding (sec. 1.154(c) of the rules. *Sunshine State Broadcasting Co., Inc.*, 378.

OWNERSHIP AND MANAGEMENT. (See also Local Needs.)

The commission considers as integrated only those owners who propose to participate in the day-to-day operation of the station by performing specified duties. *Florida Gulfcoast Broadcasters Inc.*, 197.

Where neither the city council nor the city manager will be active in the day-to-day operation of a new TV station, the Commission rated the applicant city last, vis-à-vis its competitors as far as integration of ownership and management is concerned, especially since the city has failed to demonstrate a superior part broadcast record. *Florida Gulfcoast Broadcasters Inc.*, 197.

PAGING SERVICE.

In a comparative proceeding involving applications for one-way paging service, the Commission preferred applicant A over applicant B, on the grounds that A would devote his full time to the proposed operation, while B would give it no more than 10-15 hours per week, that A is more familiar with the community involved than B, and that A has a larger immediate customer potential than B. *David I. and Isabel P. Flood, d/b as Telephone Answering Service of Trenton*, 837.

PRECEDENT.

In granting an application for a new class III daytime only station, the Commission did not regard as a precedent an Initial Decision which became effective automatically when no exceptions were filed. *Columbia River Broadcasters, Inc.*, 761.

PRE SUNRISE OPERATION. (See Conditional Grant.)

"PRINCIPAL" OF A STATION.

Where A, a 1½% stockholder in applicant's corporation agreed to lend \$300,000 to the corporation for the construction and operation of the proposed station and with this loan secured his participation and exercise of essential influence in its operation, he, rather than B, the 62% stockholder and president and general manager of the station, should be regarded as its principal, and therefore, A's but not B's qualifications should be determinative in a comparative proceeding. *Radio Associates, Inc., et al.*, 166.

PROGRAMMING. (See also Comparative Proceeding, Community Antenna, FM, Need for Service.)

Where each of the applicants for a new TV Station proposed a well balanced program schedule, the Commission did not consider the offering of educational programs by one applicant as deserving a preference. *Community Telecasting Corp., et al.*, 923.

PROMISE AND PERFORMANCE. (See also Responsibility of Licensee, Transfer.)

In granting an application of an AM station for increase of power the Hearing Examiner stated that applicant's failure to live up to its original promises was fully explained, and that the Commission may expect no repetition of the applicant's errors of judgment in programming. *Town & Country Broadcasting Co., Inc.*, 1084.

RECONSIDERATION. (See also Census, Commission Action.)

The Commission refused to consider the question whether or not the grant of an application for a new AM station was in violation of sec. 3.35(a) of the rules where no such issue was designated for hearing and where this question was raised for the first time in a petition for reconsideration directed against the Commission's final decision. *Iralee W. Bennis tr/as Sheffield Broadcasting Co., et al.*, 755.

The Commission refused to consider a petition to reconsider from an applicant who questioned the right of the FCC to consider economic impact upon already existing stations: In its denial, the Commission stated that the public interest, i.e., need for service, and not the profit making ability of the station was the decisive factor. At petition from the National Community Television Associations, Inc., to file a brief concerning this case was accepted, however. *Carter Mountain Transmission Corp.*, 1181.

When party to a Comparative Hearing is denied a grant, he also would lose any standing he would have in other hearings where he is a party due to adjacent channel interference. "We cannot agree that we are required to treat (this party) as a party respondent until all appellate rights in the (Comparative) proceeding have been exhausted". Therefore the petition to reconsider in the adjacent channel hearing is denied. *David L. Kurtz*, 1191.

The Commission denied a petition for reconsideration stating that there is no necessity under 307b, of the Communications Act of 1934, as amended, to decide that a daytime only applicant bringing a first local transmission service to a smaller community must be preferred over an unlimited time, more efficient applicant bringing a second competitive daytime station, a first nighttime transmission service, and a first primary nighttime reception service to a larger community. *Wilmer E. Huffman, et al.*, 1193.

The Commission denied a Petition for Reconsideration in a comparative hearing which urged that the record be open to (a) determine the nighttime primary service available; (b) consider the FM & TV services available to the two communities; (c) weigh the fact that an existing station in one of the communities operates from 5:15 am to 8:15 pm; (d) to determine whether the community is able to support a second station; on the grounds that: (a) neither applicant proposes a nighttime operation; (b) we have previously ruled that the availability of FM and TV services in AM licensing proceeding is not a controlling factor; (c) the fact remains that the existing service is a daytime only station; and (d) the existing service did not seek to become a party to the proceeding to challenge the alleged economic impact on the community resulting from a grant in this proceeding. More importantly the petition will be denied, since the contentions could—and should—have been advanced at the proper time either as evidence under existing issues or as grounds for enlargement of issues. *Wilmer E. Huffman, et al.*, 1193.

RENEWAL OF LICENSE. (See also Misrepresentations.)

In granting a renewal application for only one year, the Commission found that the licensee during a certain time period did effect a transfer of the control of the station, but such transfer was not willful, had been fully disclosed and licensee had not lacked candor at the hearing. There were some engineering infractions also, but they had not caused a loss of service to the public. Due to the above, plus improving financial condition and the apparent good faith of the licensee, renewal will not be denied and a one year chance to affirmatively demonstrate its ability will be granted. *Wireline Radio Inc.*, 1127.

The Commission denied applications for renewal of license of an AM station and for a license to cover the construction permit authorizing 50 kw power, *inter alia* on the ground that two contests conducted by licensee were fraudulent in the sense that various clues broadcast over the station were knowingly deceptive. *Eleven Ten Broadcasting Corp.*, 706.

REPORTS TO THE COMMISSION.

The Commission denied A's petition to reopen the record on the basis of B's failure to report the loss of its studio site, since the loss occurred at the same time as the Commission's announcement of its instructions in favor of B's application for a new TV Station. *Community Telecasting Corp., et al.*, 923.

RESPONSIBILITY OF THE LICENSEE. (See also Renewal, Transfer.)

The licensee is under a continuing obligation to make efforts in good faith to implement the proposals made in his application and, where the licensee seeks to sell his station after a short period of time, he could not have made these efforts. *Amendment of Part I of the Commission's Rules adding sec. 1.365 concerning Application for Voluntary Assignment or Transfer of Control*, 689.

In denying an application for renewal of license, the Commission stated that retention of control over the station's management and operation is the licensee's fundamental obligation, and that his lack of familiarity with station operation and management may be tantamount to lack of actual control. *Eleven Ten Broadcasting Corp.*, 706.

REVOCAION. (See also Citizens Radio Station Commissioners.)

The Commission revoked the license of a radio station in the Citizens Radio Service, on the ground that respondent failed to answer to official notices of violation and to an order to show cause to the same effect:

William S. Howard, 769.

To the same effect:

Eugene R. Burbank (involving the license for a radio station aboard a vessel)	771
Al Turdriaro.....	773
Harold A. Mararian.....	775
Eugene M. Moody.....	777
Marshall W. Jones.....	779
Floyd Construction Co. Inc. (involving the license for Special Industrial Radio Station).....	781
Jack E. Larson.....	831
Art Leonardson and Owen Cleverly.....	832
James H. Withrow.....	834
William Wright Newman.....	850
George L. Scott (involving the license for a radio station aboard a vessel)	913
Russell D. Mawson.....	1100
Ralph M. Boyd.....	1103
Sullivan Trail Coal Co. (involving the license for Special Industrial Radio Station).....	1160
Rotha L. Cheers (involving the license for a radio station aboard a vessel)	1184

The Commission revoked the license of a Citizens radio station on the ground that licensee has repeatedly violated sec. 19.33 of the rules by operating his station with frequency deviation in excess of the tolerance specified in that section; but, in view of mitigating circumstances, the Commission waived sec. 1.550 of the rules and permitted licensee to apply, under certain conditions, for a new license after 90 days from the effective date of revocation. *Randall G. Schaub*, 334.

The Commission revoked the license of an AM station, *inter alia* on the grounds that, in spite of warning by the Commission, the licensee continued to have an outside radio engineering firm on call 24 hours per day instead of employing a first class radio telephone operator on a full-time basis *at the station* (see sec. 3.93(c) of the rules) and that licensee had made misrepresentations to the Commission concerning the full-time employment of a first class engineer, and had induced two employees to make similar misrepresentations. *Leo Joseph Theriot*, 599.

The Commission revoked the license of an AM station, *inter alia* on the ground that licensee had willfully violated (1) sec. 3.47 of the rules by failing to maintain yearly equipment measurement; (2) sec. 3.931 by failing to maintain the conelrad receiver properly; (3) sec. 3.111(b) by failing to make proper plate and antenna current entries in the operating log; (4) sec. 3.40(b) by failing to take the necessary protective measurements; and (5) sec. 1.76 by failing to respond to Commission Notices. *Leo Joseph Theriot*, 599.

The Commission revoked the license of a radio station aboard a vessel for repeated failure to reply to official notices of violation, but, in view of the fact that this was the first offense, permitted the respondent to apply for a new radio station license no less than 30 days from the effective date of revocation, notwithstanding the provisions of sec. 1.551 of the rules, which were waived. *Hydie R. Peterson*, 631.

The Commission revoked the license for a citizen radio station, on the ground that licensee was not a U.S. citizen at the time his application for the station was granted. *Isaac Russell, d/b as Isaac Russell's Taxi*, 634.

SEPARATION OF FREQUENCIES. (See Increase of Power.)

In conditionally granting four applications by class IV AM stations for increase of daytime power from 250 w to 1 kw, the Commission waived section 3.37 of the rules (on minimum separation between stations), *inter alia* on the grounds that the grant of the applications will result in a gain of service to 570,000 persons and that the kind of interference which the rule seeks to prevent has not occurred in the past, in spite of existing overlaps and is not likely to occur in the future. *Clinton Broadcasting Corp., (KROS) et al.*, 367.

In granting an application for a new AM station the Commission waived sec. 3.37 of the rules on separation of frequencies, on the ground that there will be no interference of the sort this rule is designed to prevent. *James E. Walley, et al.*, 545.

The purpose of sec. 3.37 of the rules on separation of frequencies is to prevent the possible creation of a type of interference between broadcast stations that is not susceptible to delineation by the use of interference ratios and which results from the nonselectivity of broadcast receivers, external cross-modulation, and internal cross-modulation. *James E. Walley, et al.*, 545.

SEVERANCE. (See also Interference.)

The Commission granted a petition for severance of an application for a new AM daytime only station from a consolidated proceeding, on the ground that petitioner's application is not mutually exclusive of the other applications involved in this proceeding, and granted said application. *Arthur W. Arundel, et al.*, 667.

SHARE TIME STATIONS. (*See also* Equitable Distribution.)

The Communications Act does not exclude proposals of existing stations which operate on a share-time basis from the mandate of sec. 307(b). *Washington State University, et al.*, 127.

STANDING.

A party whose own application has been properly denied as lacking qualifications for receiving a grant is without standing to challenge the grant to another applicant for a permit he seeks. *Biscayne Television Corp., et al.*, 918

SUSPENSION.

The Commission suspended A's general class amateur license for the remainder of the license period on the ground that, A had fraudulently taken the Commission's prescribed examination for general class amateur radio operator license under the name and guise of B for the purpose of upgrading B's technician class amateur radio license to general class (sec. 12.162 of the rules). *Bernhard Kirschner*, 452.

The Commission suspended a technical class amateur license on the grounds that the licensee had attempted to upgrade his license to general class thru fraudulent means; in that, the person to whom the license was issued, was not the person who took the General Class test, a switch having occurred. Such action being investigated by the licensee to upgrade his license. *Isadore Paul Gillenson*, 1218.

TARIFFS

The Commission terminated the investigation into the legality of certain tariff regulations relating to the interconnection of telephone company facilities with the communications facilities of certain right-of-way companies (including railroad companies), in view of the filing of revised tariff schedules and lack of record support for finding of unjust discrimination. *American Telephone & Telegraph Co.*, 337.

TELPAK.

The Commission remanded to the Hearing Examiner the proceedings concerning the question of whether the TELPAK rates under the suspended revised tariff schedules are unlawful under sec. 202(a) of the Communications Act, concluding that it would not determine the ultimate question of unjust discrimination in a case involving volume rates solely by reference to a difference in cost of furnishing service and without regard to the degree of competitive necessity. *American Telephone & Telegraph Co.*, 344.

TEN PERCENT RULE. (*See also* Coverage, Interference, Increase of Power Census.)

The Commission denied an application by a class III daytime only AM station for unlimited time operation, on the grounds that the proposed operation would receive interference affecting 49.7% of the population within the 4 mv/m normally protected nighttime contour, that a grant of the application would result in a serious degradation of the frequency involved, that none of the gain area is without primary service, and that neither the fact that a second primary service would be furnished to 3,500 persons nor the fact that no existing station would receive objectionable interference is a reason for waiving sec. 3.28(d) (3) of the rules. *Sunshine State Broadcasting Co., Inc.*, 378.

Where the only bar to a grant of A's application for increase of power of its class III AM station in Norwalk, Conn., lies in the fact that the proposed operation would result in interference to 13.91% of the population within the normally protected contour of B, an applicant for the first local outlet in Princeton, N.J., the Commission waived sec. 3.28(d) of its rules, and granted both A's and B's applications (the grant of B's application will raise the interference to be received by A and other stations to 11.77%) *William S. Halpern et al., d/b as Greater Princeton Broadcasting Co., et al.*, 389.

The Commission is reluctant to base a daytime waiver of the 10% rule solely or principally on nighttime situations. *Herman Sayer, tr/as Sayer Broadcasting Co., et al.*, 493.

The Commission denied an application for a new AM station, on the grounds that, due to interference from existing stations, the proposed station would not serve, daytime, 17.5%, and, nighttime, 67.3%, of the population within the normally protected contour and that under these circumstances the fact that white areas would be eliminated at nighttime does not justify a waiver of sec. 3.28 (d) (3) of the rules. *Herman E. Sayer, tr/as Sayer Broadcasting Co. et al.* 493.

The Commission denied a petition for re-consideration of its refusal to extend the facilities of a daytime only station to nighttime operation, on the ground that this operation would receive interference affecting 49.7% of the population within its 4.0 mv/m normally protected contour, and that applicant has failed to show sufficient reasons for a waiver of the 10% rule. *Sunshine State Broadcasting Co. Inc., (WBRA)*, 1082.

TRAFFICKING. (*See also* Responsibility of Licensee, Transfer.)

In denying applications for extension of time to construct FM stations and for assignment of construction permits, the Commission held that the recovery of sums exceeding actual expenses in the assignment of a construction permit is indicative of "trafficking". *Plains Radio Broadcasting Co.*, 811.

In denying applications for extension of time to construct FM stations and for assignment of construction permits, the Commission stated that "trafficking" involves both the intent to use the permit for gain and the absence of intent to render service to the public and that such intent may be proved by circumstances as well as by declaration of the parties. *Plains Radio Broadcasting Co.*, 811.

Where the proposed assignor failed to offer an appropriate amendment, the Commission denied application for extension of time to construct five FM stations and for consent to assign the construction permits, even though the assignors declared at the hearing that it would accept the actual expenses for these 5 stations if the inclusion of the costs for the prosecution of a sixth, now dismissed application, was considered improper by the Commission. *Plains Radio Broadcasting Co.* 811.

TRANSMITTER SITE. (*See* Directional Antenna.)

TRANSFER OF CONTROL. (*See* Renewal, Responsibility of Licensee.)

In the absence of compelling circumstances, the transfer or assignment of a broadcast license which was held for less than 3 years is *prima facie* inconsistent with the duties of a licensee and with the public interest, and an application for such transfer or assignment will be granted *without hearing only* where applicant makes an affirmative showing of circumstances which are specified in the new sec. 1.365 of the rules. *Amendment of Part I of the Com-*

mission's Rules adding sec. 1.365 concerning Application for Voluntary Assignment or Transfer of Control, 689.

With respect to applications filed after the three-year period provided for in the new sec. 1.365(c) of the rules, the Commission directed the Chief of the Broadcast Bureau (1) to examine carefully such applications on a case-to-case basis to determine whether any characteristics of trafficking remain; and (2) if so, to seek additional information by letter inquiries to the applicants, such as that which will be required to be developed and tested in the hearing process with respect to stations held less than 3 years. *Amendment of Part I of the Commission's Rules adding section 1.365 concerning Application for Voluntary Assignment or Transfer of Control, 689.*

WAIVERS.

The Commission decides the question as to whether or not a rule should be waived in the light of the relevant circumstances of the case and not upon alleged similarities to other cases. *James E. Walley, et al., 545.*

WAIVER OF RULES.

Where the application for a new FM station, the hearing thereon, the proposed findings and replies, the oral argument before the Commission, and the Commission's instruction to the staff to prepare a document granting the application, preceded the promulgation of the new interim processing rules on FM applications, the Commission waived sec. 1.356 of the rules on processing of FM and noncommercial educational FM broadcast applications, and denied respondents' request to delay the decision pending the rule-making proceedings on the revision of the FM allocation system. *Peoples Broadcasting Corp., 853.*

WESTERN UNION DIVESTMENT.

The Commission found the supplemental agreement between Western Union and American Securities Corp. consistent with its decision of March 6, 1961, as modified by memorandum opinion and order of June 27, 1961, and therefore did not interpose any objection thereto; the Commission denied the American Communications Association's request to reopen the record. *Divestment of Western Union, 441.*

WHITE AREAS. (See also Need For Service.)

The Commission denied an application to operate at nighttime due to the fact that the proposed operation would create a "white area" of 2,289 persons in eleven square miles. There was nothing shown by the applicant which would justify the creation of such an area. *Rounsaville of Louisville, Inc., (WLOU), 1197.*

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