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FEDERAL COMMUNICATIONS COMMISSION

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F.C.C. 73-1016

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of

AMENDMENT OF PARTS 2 AND 87 OF THE RULES TO PROVIDE 25 KHZ CHANNEL SPACING IN THE AERONAUTICAL MOBILE (R) VHF BAND 117.975–136 MHz	Docket No. 19647

REPORT AND ORDER

(Adopted October 3, 1973; Released October 11, 1973)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT.

1. At the request of the Department of Transportation, Federal Aviation Administration (FAA) to consider changes to the rules to provide for additional frequencies in the Aeronautical Mobile (R) band 117.975–136 MHz, a Notice of Proposed Rule Making (NPRM) was released by the Commission on 12/4/72. The Notice was published in the the Federal Register on 12/9/72 (37 FR 26347). The period for comments and reply comments has passed.

2. The NPRM proposed to provide for the availability of more frequencies by the provision, in the rules, of frequencies with a separation of 25 kHz rather than the present 50 kHz spacing. This channel splitting also required amendment to equipment technical specifications in order to allow for utilization of the narrower channels without unacceptable interference. Such amendments were proposed and the effective dates for availability of the new frequencies and for the new equipment tolerances were presented in the proposal.

3. Earlier, in Docket No. 18931, the Commission adopted a Report and Order released August 23, 1971, which provided for 25 kHz channel spacing for a portion of the band now being considered in this docket. That portion was the non-Government sub-band 128.825–132.025 MHz which is used for aircraft operation control message transmission (aeronautical enroute). The rest of the 117.975–136 MHz band is used primarily for air traffic control (ATC). The ATC frequencies were not subject to the proceeding at that time. The conditions of equipment modification and the time needed for implementation of split operational control channels were more easily determined and the effect of splitting the channels more easily analyzed as to technical and financial impact.

4. Docket No. 18931 generated responses to its Notice of Proposed Rule Making and Notice of Inquiry which, for the most part, treated the entire band 117.975–136 MHz in consideration of channel splitting,

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not just the operational control sub-band. Manufacturers gave indications that there was an urgent need for additional frequency channels in the entire band. This has been supplemented by the FAA request and supported by the Office of Telecommunications Policy (OTP). However, the Aircraft Owners and Pilots Association (AOPA) specifically expressed concern that such channel splitting in the operational control sub-band might set a precedent for the remainder of the band.

5. At that time the FAA stated:

> The present allocation of channels in the VHF Aeronautical Mobile Band (118.0–136.0 MHz) provides 253 frequencies spaced 50 kHz apart for air traffic control purposes. Approximately 3800 assignments on these channels plus another 1000 on common channels have been made within the conterminous 48 states by the FAA. In order to make this number of assignments, the level of protection against interference afforded many of the selections is substantially lower than is normally desirable. Forecasts of future air traffic trends indicate at least a 50% increase of the frequency requirements within the next ten years. If action is not taken in the near future to permit transition to 25 kHz spaced channels in the ATC portion of the VHF band, the anticipated growth in air traffic will either be suppressed or accomplished at a cost of even greater derogation in the quality of communications.

6. In order to alleviate this critical situation, the FAA has concluded that implementation of 25 kHz spaced channels will be necessary. Present predictions suggest that similar congested conditions will exist ten years from now, even with the added frequencies, if, in addition, improved techniques and technological advances are not also introduced. The FAA's decision that there is a need for 25 kHz channel spacing reflects a change in policy since 1964, at which time the FAA responded to FCC Docket No. 14452. At that time, the FAA acknowledged that the normal growth of aviation would require communication capability in excess of that to be provided by 50 kHz channel spacing; however, the FAA represented that it planned to achieve this capability by means other than 25 kHz channel spacing. In response to the Commission's request for additional statistical and technical information used by the FAA in arriving at their conclusion concerning this matter, FAA stated their intention to improve the utilization of air traffic control channels by exploring use of such techniques as radio trunking, ground switching necessary to assign one frequency per flight plan, time division multiplex, and digital data transmission.

7. The problem of combined system error tolerance was discussed by the respondents in Docket No. 18931 with suggestions and recommendations that the frequency stability for both the airborne and ground units be tightened to insure against interference. The FAA Statement of Requirements, as revised, is as follows:

> In order to operate satisfactorily in a 25 kHz environment, the total combined tolerance for the frequency stability of the transmitter and receiver should be maintained at .006% or 60 parts per million or less. The VHF transmitters presently in use at FAA ground stations have a frequency stability tolerance of 50 ppm or 20 ppm, depending upon their vintage. The frequency stability tolerance required of aircraft transmitting stations is 50 ppm at this time. The bandwidth of FAA 50 kHz VHF ground receivers is ±18 kHz at the −6dB points. Therefore, although an aircraft transmitter may be emitting at one extreme of its allowable tolerance and the receiver tuned to the other extreme, the signal will be received.

This condition will not hold for receivers designed to operate on a 25 kHz spaced channel. The bandwidth for such receivers may be ±9 kHz or less at the −6dB points. The presently permissible frequency stability tolerance 50 ppm for aircraft stations will not permit suitable operation using 25 kHz channels.

At this time the FAA is investigating means of bringing its ground transmitters within a 20 ppm frequency stability tolerance and expects to have this accomplished by modification of most existing transmitters and replacement of those units not capable of being satisfactorily modified. We do not believe many of the receivers can be modified and plan upon replacing them. A decision has been made within the FAA to buy 25 kHz receivers on all future procurements. It is anticipated that some new receivers will be available prior to January 1976 and that the use of 25 kHz channels can be introduced on a selective basis as the equipment becomes operational.

8. In Docket No. 18931 concerning the allowable frequency tolerance, the Commission, treating only the operational control sub-band 128.825–132.025 MHz, determined as stated in paragraph 7 of that document:

The concern expressed as to the suitability of our present frequency tolerances for ground and aircraft transmitters operating with 25 kHz channel spacing is noted. However, these frequency tolerances are not a factor which is decisively applicable to this proceeding or sufficient reason to deny ARINC authority to operate now with 25 kHz channel spacing. The question of the suitability of our present frequency tolerances for 25 kHz channel spacing was considered by us in 1964 in Docket No. 14452. That Docket was a Part 87 Rule Making proceeding to implement certain requirements of the 1959 Geneva Radio Regulations regarding frequencies, frequency stability and definitions. After exhaustive study and review of technical information and consideration of 274 comments filed in response to the Notice of Proposed Rule Making released in that proceeding, we concluded, in part: "A 0.005% tolerance for ground and aircraft transmitters, together with suitable receivers, will allow for an unrestricted use of 50 kc/s channel spacing and may permit use of 25 kc/s channeling"; and that, A 0.003% tolerance for all equipment is, of all the alternatives, the most favorable to extensive use of 25 kc/s channel spacing. [Paragraph 9(b) and (d), Second Report and Order, adopted July 29, 1964.] Although, as indicated above, we found the .003% tolerance for all equipment to be the most favorable to extensive use of 25 kc/s channeling, we compromised then in order to ease the economic impact on the aircraft licensee and specified in the rules a frequency tolerance of .003% for ground stations and .005% for aircraft stations taking into consideration that the .005% tolerance would also permit the use of 25 kc/s channeling. Thus, we believe tolerances contained in our rules will not prevent ARINC from instituting the 25 kHz channel operation as requested.

Notwithstanding the foregoing, FAA has stated in their request for rule amendments that the present rules are not wholly compatible with a 25 kHz system.

9. The 7th Air Navigation Conference (7 ANC) of the International Civil Aviation Organization (ICAO) recommended that additional frequencies in the 117.975–136 MHz sub-band be provided by implementing the 25 kHz channels. Upon regional agreement, 25 kHz assignments may be made as of July 1, 1976, however, 25 kHz spacing may be used prior to that date provided the deployment of frequencies at 25 kHz channel spacing does not cause harmful interference to users of equipment designed for 50 kHz channel spacing (Rec. 10/1, 7 ANC). The 7 ANC also made various recommendations concerning equipment performance characteristics, i.e., frequency stability. Additionally, the Radio Technical Commission for Aeronautics (RTCA) is working toward the establishment of recommendation for "U.S. National Stand-

ard for VHF A/G Communications Systems" applicable to equipment to be used in the 25 kHz channel spacing environment.

10. Preliminary discussions with representatives of ARINC, FAA, and OTP indicate that they consider the conversion to 25 kHz channelization to be a needed step forward to improve the existing system. They advocate the availability of 25 kHz channels on a permissive basis for a period of time adequate to allow for total conversion or replacement of existing equipment. Additionally, they present information which provides evidence that the utilization of the split channels will be technically and operationally improved by changing the equipment allowable frequency tolerance to a total allowable error of .004% or .005%. As previously stated, the FAA is presently investigating means of bringing its ground transmitters within a 20 ppm frequency tolerance.

11. The FAA's change in policy toward 25 kHz channel spacing has also caused them to reevaluate their earlier decision as to the interference potential of equipment with the presently prescribed frequency tolerance. The FAA does not presently agree with the Commission's 1964 decision that the tolerance of .003% for ground stations and .005% for aircraft stations will permit the use of 25 kHz channel spacing without quality degradation. They do, however, believe that a mixed environment of the existing .008% and the proposed .005% total allowable frequency tolerance will be acceptable during the implementation period. Adjacent channel interference is not expected to be an insurmountable problem nor is it expected to degrade voice communications.

12. When responding to the Notice of Docket No. 18931, the Aircraft Owners and Pilots Association (AOPA) did not object to 25 kHz channelization of the operational control sub-band but proposed the permissive use of 50 kHz equipment for a period of five years, asserting that this would provide a reasonable time period to accommodate smaller airlines and larger general aviation aircraft that utilize those operational control frequencies. AOPA did, however, state their concern that channel splitting of the operational control sub-band would be a precedent to the subsequent 25 kHz channeling of other aeronautical bands which might work a hardship on general aviation aircraft owners.

13. The increasing requirement for more frequencies dedicated to the Aeronautical Mobile (R) Service probably cannot be solved for the entire period of the coming decade simply by channel splitting. Thus, it is apparent that additional improvements must be found. The advent of data link will undoubtedly provide greatly improved efficiency in the use of the frequencies, but the development and implementation of such improved methods of communication are beyond the scope of this Docket. It does appear that the only immediate method of improving the capacity of the existing frequency band is to introduce 25 kHz channel spacing in order that conversion to the narrow channels can proceed and to provide for the permissive use of 13A9 emission in order that data link development and implementation can go forward.

14. Regarding the previous decision that the existing frequency tolerance regulations are satisfactory for use in a 25 kHz system we now

consider the time appropriate to review our position. Information received in response to this proceeding provided an adequate basis for a decision regarding the required tolerance, time for full implementation and cost effectiveness. It appears from the information received that there is a need for improved frequency tolerances. Preliminary investigations give indications that approximately four years will be required by the air carriers to modify the audio filters, the offset carriers (Climax) networks, and the receiver IF filters. A longer period will be required by general aviation. FAA's implementation period remains uncertain.

15. The above information was presented in the Notice of Proposed Rule Making in this proceeding which was adopted November 29, 1972 and released December 4, 1972. Comments on the NPRM were formally submitted by: Aerospace and Flight Test Radio Coordinating Council (AFTRCC); Aircraft Owners and Pilots Association (AOPA); Aircraft Radio Corporation (ARC); Aeronautical Radio, Inc. (ARINC); Bendix, Avionics Division (Bendix); Collins Radio Company (Collins); General Aviation Manufacturers Association (GAMA); General Electric Company (GE); Narco Avionics (NARCO); and RCA Corporation (RCA). Reply comments were filed by: ARINC; AOPA; and by the Air Transport Association of America (ATA). Several informal comments were received from pilots or individual citizens concerned with aviation radio. Additionally, during the period immediately following the time for reply comments, the FAA requested the Commission to withhold final action on the proposal since final conclusions on FAA implementation of 25 kHz channel spacing has not been determined. Subsequently the FAA has, however, indicated that they intend to implement the upper airspace first. They have given no indication of their planning to integrate 25 kHz channels into terminal areas in the three major areas of severe congestion, but indicate their recognition that certain congested areas may require 25 kHz channel implementation in the high altitude route structure on a case-by-case basis. FAA states that the implementation of new channelization below the high altitude route sections will remain the subject of further study. Significantly, they indicate that satisfaction of the high altitude (above 18,000 feet) en route requirements on 25 kHz spaced channels starting at the upper end of the air traffic control spectrum is their only action presently programmed. It appears that the requirements in the low altitude route structure and at terminals and flight service stations may be accommodated on 50 kHz channels for a number of years after introduction of 25 kHz spacing into the high altitude structure.

16. In the formal comments, all commentators, including AOPA, recognized the need for and inevitability of 25 kHz separation. AOPA's opposition was based on the proposed implementation time frame and the financial burden resulting from legalized obsolescence of airborne equipment. Among other recommendations by AOPA, one specific recommendation appears to be particularly appropriate. It says in part, "All the dates specified in this rule making should be made contingent on implementation of the ground system by the FAA on a reasonable and timely basis. If the FAA does not obtain the nec-

essary funds to accomplish their part, then the non-government section should be given additional time for their transition . . ." We agree with AOPA that it is not reasonable to expect general aviation to expend their estimated replacement cost of approximately $350 million for new equipment for air traffic control (ATC) if FAA does not supply them with ATC from 25 kHz ground transmitters. Further, we believe that it is not reasonable for us to establish a termination date, and thus make obsolete the existing 110,000 general aviation aircraft VHF transmitters, lacking a definitive FAA implementation plan. Particularly in view of FAA's determination, in agreement with our 1964 decision, that 50 kHz equipment and 25 kHz equipment can live together during the implementation period.

17. ARINC considered the dates in the NPRM to be wrong and recommended we defer the establishment of dates until FAA established and provided public notice of the introduction of 25 kHz into the National Airspace System. They support the proposals to authorize the emission 13A9 throughout the band and to require more representative range of temperatures for type-acceptance measurements related to frequency stability. We do not agree with ARINC's recommendation to withhold action awaiting the notification of dates for FAA's implementation. The airline industry is facing a problem uniquely of concern to aircraft utilizing the Offset Carrier (Climax) Network. These are primarily Air Carrier aircraft so the subject of reconfiguration of the Climax Network is of little concern to some general aviation or to FAA. The implementation of 25 kHz channels, and the revision of the offset carrier system for both the ARINC ground stations and the users airborne equipment on a timely basis is critical to the Climax system. Aircraft utilizing offset carrier must, if engaged in international operations, conform to the system in the area they are flying. It is particularly necessary, therefore, to make the 25 kHz channels and equipment standards available as soon as possible in order that airlines can expeditiously proceed with the conversion of their fleets prior to the January 1, 1974 deadline established by the Seventh Air Navigation Conference of the International Civil Aviation Organization (ICAO). Preliminary inquiries made by the ICAO have revealed that, of those states worldwide employing Climax type offset carrier systems, only five have indicated they have difficulties in meeting the January 1, 1974 deadline. We, therefore, intend to make the 25 kHz frequencies available for early use and to specify the termination date of January 1, 1974 for the present offset carrier equipment with the old frequency tolerance. This is in consideration of the fact that airlines or other users of offset carrier networks can proceed with implementation at a pace that will allow them to satisfy their needs in accordance with ARINC implementation of the network in the U.S. and with the implementation of the countries into whose airspace they fly. Additionally, we now will make specific provision in the rules for the use of offset carrier techniques. Presently the rules do not make specific provision to permit the continued operation of stations utilizing offset from the assigned frequency, although the offset and tolerances were prescribed in Docket No. 14452, Second Report and

Order, 1964, published in the Federal Register on August 5, 1964 (29 FR 11269).

18. AFTRCC welcomed the proposal and stated their specific need for additional flight test frequencies citing at least a twofold increase in required flight test frequencies. AFTRCC points out that their need for additional usable frequencies has become acute because of the expanded usage of flight test frequencies by the many eligible educational institutions engaged in aeronautical programs, the substitution of 121.95 MHz for the previously available frequency 123.1 MHz, and the growing number of ground and aircraft instructional stations sharing 123.3 MHz and 123.5 MHz with flight test licensees. Additionally, AFTRCC recommends the retention of Section 87.331(b) in its present form which makes certain flight test frequencies available exclusively to aircraft manufacturers. In that same vein, they recommend the provision of frequencies for itinerant use of various airports and for the exclusive use of 123.3 and 123.5 MHz for aviation instructional purposes. We agree with AFTRCC that their recommendations would improve the coordination processes of both AFTRCC and the FCC and reduce unavoidable interference now encountered. We have incorporated those recommendations into the rules.

19. The comments from equipment manufacturers referred basically to the problems involved in conversion to the new configuration of equipment and the required time frame. Bendix asked for clarification of a footnote. ARC suggested an increase in the manufacturers grandfather lead time for items in inventory. Collins indicated their belief that there is need for clarification with respect to installation of airborne equipment with frequency tolerances greater than 0.003 percent after the proposed first expiration date for new equipment. They pointed out the normal practice for fleet operators is to standardize equipment for aircraft types. Collins continues to produce older generation transmitters to meet needs of fleet operators to replenish spare equipment pools and for added aircraft. We have rewritten Section 87.65(a)(5) and footnotes to better convey the meaning of the rule. GAMA requests we recognize that it is imperative to ensure that adequate provisions be made to protect the users of 50 kHz equipment during the transition period and that 25 kHz adjacent stations be geographically separated adequately. They do recognize that the actual assignments will be a part of FAA's implementation plan.

20. GE expressed particular interest in two specific areas and commented as follows:

> There are two areas of particular interest to us and upon which we would like to comment:
>
> 1. The tighter transmitter frequency tolerances proposed for both land and airborne transmitters certainly seem in order, particularly over the reduced −20° C to +50° C temperature range. These new frequency tolerances, of ±0.002% for the land transmitters and ±0.003% for the airborne transmitters, are still considerably less stringent than the ±0.0005% requirement placed on both mobile and base stations operating above 50 MHz in the various land Mobile Services under parts 21, 89, 91, 93 and 95 of the Commission's rules. Of course, we recognize that the use of multi-crystal, mixing-type, frequency synthesizers to achieve the multi-channel operation required in the aircraft radios have, in the past, complicated the frequency stability problem. However, we would expect

new aircraft radio equipment to use the more modern digital frequency synthesis technique which generally requires only one crystal oscillator. In light of this development, it also seems quite reasonable to require improved frequency stability of these transmitters. In fact, even tighter stability, than the proposed specifications, would seem to be justified if spectrum usage could be improved by such specification.

2. We feel that the system oriented discussions in the Notice concerning: (1) combined transmitter and receiver frequency tolerance, and (2) receiver bandwidth are clearly in order. In dockets like this one where system technical standards are being considered for change, this type of discussion allows all participants in the rule making procedure to visualize the total system problem. This certainly is in the public interest. Further, when past dockets of this type (i.e., channel splitting) have been finalized, history shows that the radio communications manufacturers generally have a good record with respect to quickly providing receiving (as well as transmitting) equipment which is fully suitable for use in systems designed for the closer channel spacing. In fact, over the years, many other improvements in receiver specifications (spurious and intermodulation response rejection are good examples) have been made by the manufacturers as the state-of-the-art has permitted. All of this has allowed increasing usage of the spectrum while generally keeping interference in check. It is clear to us that the long-standing FCC policy of setting technical standards for transmitter performance, but leaving receiver performance unregulated (except for oscillator radiation) has been in the public interest, insofar as communication equipment is concerned. With a minimum of formal regulation, it has provided the radio communications user with full performance communications systems, at his option, while protecting other users of the spectrum from interference caused by his equipment. Therefore, we are pleased that the Notice of Proposed Rule Making, while discussing receiver performance, stops short of dictating receiver performance levels. We support the continuation of this policy by the Commission.

The GE comments presented above directly address several points which we feel are of interest to the aeronautical community so they are presented here in direct quotation.

The Commission agrees that it is presently quite reasonable to require even further frequency stability than proposed in this docket. Technically, it is entirely feasible. We do not agree, however, that it is economically feasible particularly for general aviation to require a wholly new program of implementation based on equipment not necessarily compatible, during the implementation period, with the existing 50 kHz equipment. This could require immediate obsolesence of the present equipment. We call the attention of interested parties to the comments in regard to modern digital frequency synthesis techniques and hope that such new advances in state-of-the-art will be utilized to the best degree that is truly cost effective. We hope that advances and improvements to aeronautical radio will not be in any way restricted by the minimums which are necessarily set in a rule as the basic criteria to protect the system from unacceptable interference. We also hope that any fears entertained by interested parties as to the capability of manufacturers to meet the new, more restrictive, tolerances for the 25 kHz equipment are alleviated. Several informal comments and questions in this regard have been received.

21. Narco referred to the fact that they have delivered over 100,000 aircraft communications systems and 2,500 airport radiotelephone (Unicom) systems since the Commission established the 0.005% criteria. They urged the Commission to provide fairly for the equity that General Aviation operators have in this vast amount of equipment.

Narco did not consider the proposed implementation dates to be feasible. They called the Commission's attention in particular, to the existence of thousands of airport advisory radiotelephone installations operated by fixed base operators on 122.8 MHz and 123.0 MHz. Narco noted that those small operators would have less than three years to amortize their investments in their Unicom ground stations. Narco suggested that the problem could be alleviated by making a temporary exception to the frequency spacing and stability requirements for those components. Additionally, they presented information in regard to their beliefs concerning the technical aspects of the transition from 50 kHz to 25 kHz channels. Their comments in part are:

> We have considered equipment design parameters applicable to the transition period with care, for the transition period will be much more demanding than the eventual "pure 25 kHz" environment. During the transition period a receiver must have sufficient bandwidth to faithfully receive intelligible communication from 0.005% stable transmitters and at the same time have a sufficiently narrow skirt as to reject an unstable transmitter on the adjacent 25 kHz. Selectivity shape factors closely approaching units can be theoretically justified if this entire job is left to the receiver designer. Fortunately it is possible to operate the system with today's receiver selectivity characteristics provided adjacent 25 kHz spaced channels are geographically separated by air-to-air line of sight. We find it of the utmost importance that geographical site separation of this magnitude be maintained during the transition period and observe that if it cannot be maintained, air-to-air interference will reduce communications effectiveness and consequent safety.
>
> Finally we are confident that it does not escape the attention of the FAA that the design of their ground communications receivers for this transition period must not get so involved with adjacent 25 kHz channel rejection and center frequency stability as to neglect the band width necessary for intelligible reception of transmitters with a frequency error of up to 0.005%.
>
> If these equipment design and frequency management disciplines are strictly maintained by the system managers during the interim period cost and/or performance benefits for the users of the system will be accrued and can be realized at the end of the transition period.

We agree with Narco's concern for the aircraft and Unicom equipment owners. We now make the frequencies available for the utilization of the 25 kHz separation without providing an end date for the operation of 50 kHz equipment. It is our concern to improve the aeronautical communication systems in order to better serve the users. Since it is evident that a dual environment is possible, and lacking a definitive FAA implementation program establishing a time of total system conversion, it is our opinion that a progressive conversion can take place by equipment attrition. We consider that this can be achieved by the establishment of a date for cutting off the type acceptance of new equipment utilizing 50 kHz channels if such is supplemented by widespread knowledge, by the users of the availability of equipment capable of utilizing 25 kHz frequencies. For this reason we are taking more than usual pains in this Report and Order to acquaint all concerned with the facts relevant to the conversion. We trust that the FAA will do the same and that their implementation program, when established, will take into account the geographic separation requirements needed during the implementation period.

22. RCA put emphasis on the relative ratio of airborne sets versus the ground transmitters and the financial advantage to providing for greater stability for ground transmitters while maintaining the 0.005% for airborne. They state:

A ground transmitter frequency tolerance of 0.0005 percent or less would afford the airborne receiver designer a much wider choice of equipment performance versus cost trade-offs relative to local oscillator frequency tolerance and selectivity than would be possible with a tolerance of 0.002 percent. Also, by tightening the ground equipment frequency tolerance and permitting the airborne tolerance to remain unchanged, the overall transition to 25 kHz channeling would be much easier to manage. The FAA needs to modify each of its transmitter receivers in any case, and the frequency tolerance tightening can be accomplished without much added effort or cost. In particular, many 50 kHz airborne equipments could provide usable service for a number of years to come if their frequency tolerances are not changed.

We have given consideration to the different possible combinations of frequency stabilities including that suggested by RCA. With the exception of aircraft participating in international flights and utilizing the offset carrier system (Climax) this would, of course, be the most cost effective method and the easiest way of achieving the goal of providing more frequencies by establishing the split channel system. We feel, however, that the international aspect and the climax system as well as FAA's notification, more than two years ago, that they were henceforth buying only 25 kHz equipment preclude the possibility of leaving airborne equipment tolerances at 0.005 percent on a permanent basis. We also recognize that a tighter ground transmitter tolerance would put a bigger financial burden on the small ground station operators as well as the FAA. The FAA's budgeting for total implementation of their equipment program may well be a factor in the time frame for total system implementation in any case, and the ultimate cost will certainly come from the taxpayers if not directly from the users, which is more likely. The key factor, however, is the capability that we see to proceed with the upgrading of the total system on a long term basis without undue financial stress to the separate sectors of the aviation community. And without the undesirable development of two different systems to serve the aircraft flying internationally or using offset carrier while others remain at 50 kHz capability. This was previously discussed in the paragraphs dealing with the ARINC comments.

23. In summary, we are amending the rules to provide for a virtual doubling of the frequencies in the aeronautical mobile (R) band 117.975–136 MHz by providing for 25 kHz channel spacing. We are changing the frequency tolerances of both new ground transmitting and new airborne transmitting equipment to 0.002 and 0.003 percent respectively. The emission 13A9 will be authorized throughout the operational control band. We are establishing a cut-off date for the type acceptance of new ground and airborne transmitters but not for the utilization of existing equipment. We are leaving this Docket open pending the finalization of FAA's implementation plan and of proven evidence that continued use of 50 kHz configured equipment in the system causes unacceptable interference to the aeronautical community. We are providing the 25 kHz frequencies and the new tolerances to make it possible for manufacturers, station operators and users to proceed with the improvement of the system. We are providing for amendments which will allow better coordination and fuller usage of the flight test frequencies. In our opinion these amendments will allow for and assist in improvements to the existing aeronautical mobile (R) service in a manner most suitable to the early needs of air car-

riers to modify the offset carrier system, the financial needs of general aviation for adequate amortization time, and the FAA's implementation of the air space above 18000 feet. Lacking a definitive FAA implementation program it would be unreasonable for the Commission to impose cut-off dates on aircraft operators which, quite conceivably, would result in a considerable expenditure for new equipment of no improved value for lack of improved ground equipment with which to communicate.

24. In addition to the rule changes described above, a change to Section 87.65 is included to change frequency tolerances for emergency locator transmitter and emergency locator test stations. The tolerances included are those specified in the Radio Technical Commission for Aeronautics (RTCA) Document No. DO–145 and are similar to those applicable to survival craft stations. It has been brought to our attention that a frequency stability of .005% would be more satisfactory for emergency locator transmitters. We agree with this and have established 100 kHz guardband. This will provide for improved operation of equipment and facilitate Search and Rescue in the current and foreseeable future environment which will be composed primarily of 50 kHz equipment.

25. In view of the foregoing, IT IS ORDERED, That pursuant to the authority contained in Sections 4(i), 303(r), and 318 to the Communications Act of 1934, as amended, Parts 2 and 87 of the Commission's rules, ARE AMENDED, effective November 16, 1973, as set forth in the attached Appendix.

26. IT IS FURTHER ORDERED, That, the proceeding in this Docket be held open pending further action which may be required when a definitive implementation program is developed by the Federal Aviation Administration.

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

APPENDIX

Part 2 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

1. Section 2.106 is amended by changing the footnote reference in column 10 for the frequency bands 118 through 135.975 MHz from NG34 to NG67 and to change columns 7, 10, and 11 to read as follows:

7	10	11
• •	• •	• • •
117.975–121.9625	118.0–121.400 (NG67)	Airdrome Control.
	121.5	AERONAUTICAL MOBILE (Emergency).
	121.600–121.925 (NG67)	Aeronautical utility mobile.
		Aeronautical utility land.
	121.950 (NG67)	Flight test.
121.9625–123.0875	121.975–123.075 (NG67)	Private aircraft.
123.0875–123.5875 (NG67)	123.100	Aeronautical Search & Rescue.
	123.125–123.275	Flight test.
	123.300	Aviation Instructional.
	123.325–123.475	Flight test.
	123.500	Aviation Instructional.
	123.525–123.575	Flight test.
123.5875–128.8125	123.600–128.800 (NG67)	AERONAUTICAL MOBILE.
128.8125–132.0125	128.825–132.000 (NG67)	AERONAUTICAL MOBILE.
132.0125–136	132.025–135.975 (NG67)	AERONAUTICAL MOBILE.
• •	• •	• • •

Part 87 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

2. Section 87.65(a) (5) and footnote 1 are amended and new footnote 2 is added to read as follows:

§ 87.65 Frequency Stability.

(a) * * *

(5) Band—100 to 136 MHz:	
Land Stations	[1] 0.002
Emergency Locator Transmitter Test Stations	0.005
Mobile Stations:	
Survival Craft Stations	0.005
Emergency Locator Stations	0.005
Aircraft and all other Mobile Stations	[2] 0.003
Radio Navigation Stations	0.005

* * * * * * *

[1] The tolerance shown is applicable to all types of transmitters first authorized after January 1, 1974. Those types of transmitters meeting a tolerance of 0.005 percent which were licensed before January 1, 1966 and those types of transmitters meeting a tolerance of 0.003 percent first authorized during the period January 1, 1966 to January 1, 1974 may continue to operate, Provided, however; That stations using offset carrier techniques must comply with 0.002 tolerance after January 1, 1974.

[2] The tolerance shown in the Table is applicable to all types of transmitters first authorized after January 1, 1974. No applications for type acceptance of transmitters which fail to meet this requirement will be accepted after January 1, 1974. Transmitters with 0.005 percent tolerance authorized before January 1, 1974, may continue to be used until further notice.

* * * * * * *

3. In Section 87.67(b) (1), footnotes 5, 6 and 7 are amended to read as follows:

§ 87.67 Types of Emissions.

* * * * * * *

(b) * * *

(1) * * *

[5] In the band 117.975–136 MHz, wherever footnote NG 67 applies, the authorized bandwidth is 25 kHz after January 1, 1974, for all transmitters type accepted after that date.

[6] This emission may be authorized only for audio phase and frequency shift keying and carrier phase and frequency shift keying for digital data link purposes in the band 117.975–136 MHz when the channel on which the signal is transmitted is not used for voice communications, or if the channel is used for voice communication the emission is authorized as specified herein, provided it is multiplexed on the voice carrier without derogation to voice signals. Use of this emission by ground stations must be approved by the Commission prior to operation.

[7] Applicable only to Survival Craft Stations, and to the emergency locator transmitters and emergency locator transmitter test stations employing modulation in accordance with that specified in Section 87.73(h) of the rules. The specified bandwidth and modulation requirements shall apply to emergency locator transmitters for which type acceptance is granted after April 23, 1973; and to all transmitters used as ELTs first installed after October 21, 1973

* * * * * * *

4. Section 87.79(a) is amended to read as follows:

§ 87.79 Type acceptance of equipment.

(a) A manufacturer of a type of transmitter intended for use in these services may request type acceptance for such transmitter by following the type acceptance procedure set forth in Part 2, Subpart F, of this chapter. (Airborne transmitters intended for use in these services shall be tested with ambient temperature variation from −20° to +50° centigrade.)

* * * * * * *

5. Section 87.183(i) and Footnotes are amended to read as follows:

§ 87.183 Frequencies Available.

* * * * * * *

(i) These frequencies are available for air traffic control operations:

MHz	*MHz*	*MHz*	*MHz*	*MHz*
118.000	119.450	120.900	124.175	125.625
118.025	119.475	120.925	124.200	125.650
118.050	119.500	120.950	124.225	125.675
118.075	119.525	120.975	124.250	125.700
118.100	119.550	121.000	124.275	125.725
118.125	119.575	121.025	124.300	125.750
118.150	119.600	121.050	124.325	125.775
118.175	119.625	121.075	124.350	125.800
118.200	119.650	121.100	124.375	125.825
118.225	119.675	121.125	124.400	125.850
118.250	119.700	121.150	124.425	125.875
118.275	119.725	121.175	124.450	125.900
118.300	119.750	121.200	124.475	125.925
118.325	119.775	121.225	124.500	125.950
118.350	119.800	121.250	124.525	125.975
118.375	119.825	121.275	124.550	126.600
118.400	119.850	121.300	124.575	126.025
118.425	119.875	121.325	124.600	126.050
118.450	119.900	121.350	124.625	126.075
118.475	119.925	121.375	124.650	126.100
118.500	119.950	121.400	124.675	126.125
118.525	119.975	121.600A	124.700	126.150
118.550	120.000	121.625A	124.725	126.175
118.575	120.025	121.650A	124.750	126.200
118.600	120.050	121.675A	124.775	126.225
118.625	120.075	121.700A	124.800	126.250
118.650	120.100	121.725A	124.825	126.275
118.675	120.125	121.750A	124.850	126.300
118.700	120.150	121.775A	124.875	126.325
118.725	120.175	121.800A	124.900	126.350
118.750	120.200	121.825A	124.925	126.375
118.775	120.225	121.850A	124.950	126.400
118.800	120.250	121.875A	124.975	126.425
118.825	120.275	121.900A	125.000	126.450
118.850	120.300	121.925A	125.025	126.475
118.875	120.325	123.600	125.050	126.500
118.900	120.350	123.625	125.075	126.525
118.925	120.375	123.650	125.100	126.550
118.950	120.400	123.675	125.125	126.575
118.975	120.425	123.700	125.150	126.600
119.000	120.450	123.725	125.175	126.625
119.025	120.475	123.750	125.200	126.650
119.050	120.500	123.775	125.225	126.675
119.075	120.525	123.800	125.250	126.700
119.100	120.550	123.825	125.275	126.725
119.125	120.575	123.850	125.300	126.750
119.150	120.600	123.875	125.325	126.775
119.175	120.625	123.900	125.350	126.800
119.200	120.650	123.925	125.375	126.825
119.225	120.675	123.950	125.400	126.850
119.250	120.700	123.975	125.425	126.875
119.275	120.725	124.000	125.450	126.900
119.300	120.750	124.025	125.475	126.925
119.325	120.775	124.050	125.500	126.950
119.350	120.800	124.075	125.525	126.975
119.375	120.825	124.100	125.550	127.000
119.400	120.850	124.125	125.575	127.025
119.425	120.875	124.150	125.600	127.050

MHz	*MHz*	*MHz*	*MHz*	*MHz*
127.075	128.225	132.575	133.725	134.875
127.100	128.250	132.600	133.750	134.900
127.125	128.275	132.625	133.775	134.925
127.150	128.300	132.650	133.800	134.950
127.175	128.325	132.675	133.825	134.975
127.200	128.350	132.700	133.850	135.000
127.225	128.375	132.725	133.875	135.025
127.250	128.400	132.750	133.900	135.050
127.275	128.425	132.775	133.925	135.075
127.300	128.450	132.800	133.950	135.100
127.325	128.475	132.825	133.975	135.125
127.350	128.500	132.850	134.000	135.150
127.375	128.525	132.875	134.025	135.175
127.400	128.550	132.900	134.050	135.200
127.425	128.575	132.925	134.075	135.225
127.450	128.600	132.950	134.100	135.250
127.475	128.625	132.975	134.125	135.275
127.500	128.650	133.000	134.150	135.300
127.525	128.675	133.025	134.175	135.325
127.550	128.700	133.050	134.200	135.350
127.575	128.725	133.075	134.225	135.375
127.600	128.750	133.100	134.250	135.400
127.625	128.775	133.125	134.275	135.425
127.650	128.800	133.150	134.300	135.450
127.675	132.025	133.175	134.325	135.475
127.700	132.050	133.200	134.350	135.500
127.725	132.075	133.225	134.375	135.525
127.750	132.100	133.250	134.400	135.550
127.775	132.125	133.275	134.425	135.575
127.800	132.150	133.300	134.450	135.600
127.825	132.175	133.325	134.475	135.625
127.850	132.200	133.350	134.500	135.650
127.875	132.225	133.375	134.525	135.675
127.900	132.250	133.400	134.550	135.700
127.925	132.275	133.425	134.575	135.725
127.950	132.300	133.450	134.600	135.750
127.975	132.325	133.475	134.625	135.775
128.000	132.350	133.500	134.650	135.800
128.025	132.375	133.525	134.675	135.825
128.050	132.400	133.550	134.700	135.850
128.075	132.425	133.575	134.725	135.875
128.100	132.450	133.600	134.750	135.900
128.125	132.475	133.625	134.775	135.925
128.150	132.500	133.650	134.800	135.950
128.175	132.525	133.675	134.825	135.975
128.200	132.550	133.700	134.850	

A—Available on a secondary basis to its primary use as an Airport Utility Frequency.

B—[Delete]

C—[Delete]

D—[Delete]

* * * * * * *

6. Section 87.201(b) is amended to read as follows:

§ 87.201 Frequencies Available.

* * * * * * *

(b) The frequencies are available to private aircraft for air traffic control operations:

MHz	*MHz*	*MHz*	*MHz*	*MHz*
121.975	122.175	122.375	122.575	122.775
122.000	122.200	122.400	122.600	122.825
122.025	122.225	122.425	122.625	122.875
122.050	122.250	122.450	122.650	122.925
122.075	122.275	122.475	122.675	122.975
122.100	122.300	122.500	122.700	123.025
122.125	122.325	122.525	122.725	123.075
122.150	122.350	122.550	122.750	

* * * * * * *

7. Section 87.295(b) is amended by adding the frequency 128.825 MHz to the beginning of the frequency list, and new Section 87.295(c) added as follows:

* * * * * * *

(c) A telecommunications system of interconnected aeronautical enroute stations which provides communications over an area of air route(s) may employ the offset carrier technique. The use of the offset carrier technique is limited to discrete VHF carrier frequencies grouped around a frequency listed in (b) above. Until January 1, 1974, the carrier frequency of the individual transmitter of such systems shall not be offset with respect to the authorized frequency by more than ±12 kHz. After January 1, 1974, the carrier frequencies of the individual transmitters of such systems shall not be offset with respect to the authorized frequency by more than ±8 kHz. The tolerance set forth in § 87.65 for transmitters first authorized after January 1, 1974, shall be applicable to the offset carrier frequency when employed. Prior to the use of offset techniques, the Commission must be notified by letter as to the precise offset from the authorized frequency.

8. Section 87.331, lists of frequencies in paragraphs (a) and (b) are amended, and footnote 3 of paragraph (a) is deleted to read as follows:

§ 87.331 Frequencies Available.

(a) The following frequencies are available for assignment to ground and aircraft flight test stations:

3281 kHz(1)	123.225 MHz	123.400 MHz
123.175(2) MHz	123.375 MHz	123.425 MHz
123.200 MHz		

* * * * * * *

(b) The following additional frequencies are available for assignment only to flight test stations of aircraft manufacturers:

MHz	*MHz*	*MHz*	*MHz*
123.125(1)	123.275	123.450	123.550
123.150	123.325	123.475	123.575(2)
123.250	123.350	123.525	

(1) This frequency will not be assigned to base stations and is available only to stations used in itinerant operations, which require that the stations be transferred from time to time to various locations.

* * * * * * *

9. Section 87.341(a) is amended to read as follows:

§ 87.341 Frequencies available.

(a) The frequencies 123.3 and 123.5 MHz are available exclusively for assignment to ground and aircraft instructional stations. Normally, one frequency will be assigned to each stations at a fixed location; mobile stations will be assigned both of these frequencies. The frequency 121.95 MHz is also available to instructional stations. The Commission, as a matter of policy, will attempt to maintain a 1 mile separation between transmitters on 121.95 MHz and adjacent channel receivers. Applicants for authority to use 121.95 MHz should, therefore, coordinate their proposal with the appropriate FAA regional offices prior to submitting their application. A statement of the coordination effected should accompany the application.

* * * * * * *

10. Section 87.401, paragraph (a) and paragraph (c) are amended, and paragraph (a), footnote (c) is deleted to read as follows:

§ 87.401 Frequencies Available.

* * * * * * *

(a)

MHz	*MHz*	*MHz*	*MHz*	*MHz*
118.000	119.025	120.050	121.075	123.900
118.025	119.050	120.075	121.100	123.925
118.050	119.075	120.100	121.125	123.950
118.075	119.100	120.125	121.150	123.975
118.100	119.125	120.150	121.175	124.000
118.125	119.150	120.175	121.200	124.025
118.150	119.175	120.200	121.225	124.050
118.175	119.200	120.225	121.250	124.075
118.200	119.225	120.250	121.275	124.100
118.225	119.250	120.275	121.300	124.125
118.250	119.275	120.300	121.325	124.150
118.275	119.300	120.325	121.350	124.175
118.300	119.325	120.350	121.375	124.200
118.325	119.350	120.375	121.400	124.225
118.350	119.375	120.400	121.600A	124.250
118.375	119.400	120.425	121.625A	124.275
118.400	119.425	120.450	121.650A	124.300
118.425	119.450	120.475	121.675A	124.325
118.450	119.475	120.500	121.700A	124.350
118.475	119.500	120.525	121.725A	124.375
118.500	119.525	120.550	121.750A	124.400
118.525	119.550	120.575	121.775A	124.425
118.550	119.575	120.600	121.800A	124.450
118.575	119.600	120.625	121.825A	124.475
118.600	119.625	120.650	121.850A	124.500
118.625	119.650	120.675	121.875A	124.525
118.650	119.675	120.700	121.900A	124.550
118.675	119.700	120.725	121.925A	124.575
118.700	119.725	120.750	123.100B	124.600
118.725	119.750	120.775	123.600	124.625
118.750	119.775	120.800	123.625	124.650
118.775	119.800	120.825	123.650	124.675
118.800	119.825	120.850	123.675	124.700
118.825	119.850	120.875	123.700	124.725
118.850	119.875	120.900	123.725	124.750
118.875	119.900	120.925	123.750	124.775
118.900	119.925	120.950	123.775	124.800
118.925	119.950	120.975	123.800	124.825
118.950	119.975	121.000	123.825	124.850
118.975	120.000	121.025	123.850	124.875
119.000	120.025	121.050	123.875	124.900

MHz	*MHz*	*MHz*	*MHz*	*MHz*
124.925	126.500	128.075	132.850	134.425
124.950	126.525	128.100	132.875	134.450
124.975	126.550	128.125	132.900	134.475
125.000	126.575	128.150	132.925	134.500
125.025	126.600	128.175	132.950	134.525
125.050	126.625	128.200	132.975	134.550
125.075	126.650	128.225	133.000	134.575
125.100	126.675	128.250	133.025	134.600
125.125	126.700	128.275	133.050	134.625
125.150	126.725	128.300	133.075	134.650
125.175	126.750	128.325	133.100	134.675
125.200	126.775	128.350	133.125	134.700
125.225	126.800	128.375	133.150	134.725
125.250	126.825	128.400	133.175	134.750
125.275	126.850	128.425	133.200	134.775
125.300	126.875	128.450	133.225	134.800
125.325	126.900	128.475	133.250	134.825
125.350	126.925	128.500	133.275	134.850
125.375	126.950	128.525	133.300	134.875
125.400	126.975	128.550	133.325	134.900
125.425	127.000	128.575	133.350	134.925
125.450	127.025	128.600	133.375	134.950
125.475	127.050	128.625	133.400	134.975
125.500	127.075	128.650	133.425	135.000
125.525	127.100	128.675	133.450	135.025
125.550	127.125	128.700	133.475	135.050
125.575	127.150	128.725	133.500	135.075
125.600	127.175	128.750	133.525	135.100
125.625	127.200	128.775	133.550	135.125
125.650	127.225	128.800	133.575	135.150
125.675	127.250	132.025	133.600	135.175
125.700	127.275	132.050	133.625	135.200
125.725	127.300	132.075	133.650	135.225
125.750	127.325	132.100	133.675	135.250
125.775	127.350	132.125	133.700	135.275
125.800	127.375	132.150	133.725	135.300
125.825	127.400	132.175	133.750	135.325
125.850	127.425	132.200	133.775	135.350
125.875	127.450	132.225	133.800	135.375
125.900	127.475	132.250	133.825	135.400
125.925	127.500	132.275	133.850	135.425
125.950	127.525	132.300	133.875	135.450
125.975	127.550	132.325	133.900	135.475
126.000	127.575	132.350	133.925	135.500
126.025	127.600	132.375	133.950	135.525
126.050	127.625	132.400	133.975	135.550
126.075	127.650	132.425	134.000	135.575
126.100	127.675	132.450	134.025	135.600
126.125	127.700	132.475	134.050	135.625
126.150	127.725	132.500	134.075	135.650
126.175	127.750	132.525	134.100	135.675
126.200	127.775	132.550	134.125	135.700
126.225	127.800	132.575	134.150	135.725
126.250	127.825	132.600	134.175	135.750
126.275	127.850	132.625	134.200	135.775
126.300	127.875	132.650	134.225	135.800
126.325	127.900	132.675	134.250	135.825
126.350	127.925	132.700	134.275	135.850
126.375	127.950	132.725	134.300	135.875
126.400	127.975	132.750	134.325	135.900
126.425	128.000	132.775	134.350	135.925
126.450	128.025	132.800	134.375	135.950
126.475	128.050	132.825	134.400	135.975

* * * * * * *

A—Available on a secondary basis to its primary use as an Airport Utility Frequency.

B—The frequency 123.1 MHz is available for air traffic communications by airdrome control stations at special aeronautical events on the condition that no harmful interference is caused to search and rescue operations in the locale involved.

C—[Delete]

(c) 121.600, 121.625, 121.650, 121.675, 121.700, 121.725, 121.750, 121.775, 121.800, 121.825, 121.850, 121.875, 121.900, 121.925 MHz; these airport utility frequencies are available to airdrome control stations for communications with ground vehicles and aircraft on the ground. The antenna heights shall be restricted to the minimum necessary to achieve the required coverage.

* * * * * * *

11. Section 87.431 is amended to read as follows:

§ 87.431 Frequencies Available.

The frequencies 121.600, 121.625, 121.650, 121.675, 121.700, 121.725, 121.750, 121.775, 121.800, 121.825, 121.850, 121.875, 121.900, 121.925 and 121.950 MHz are available for use by aeronautical utility mobile stations.

F.C.C. 73-1018

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
ASSOCIATED STUDENTS OF THE UNIVERSITY OF ARIZONA (ASUA), COMPLAINANT
v.
AMERICAN TELEPHONE & TELEGRAPH CO. (A.T. & T.), DEFENDANT

MEMORANDUM OPINION AND ORDER

(Adopted October 3, 1973; Released October 11, 1973)

BY THE COMMISSION: CHAIRMAN BURCH ABSTAINING FROM VOTING; COMMISSIONER ROBERT E. LEE ABSENT; COMMISSIONER JOHNSON DISSENTING AND ISSUING A STATEMENT.

1. The Commission has before it for consideration a formal complaint filed on February 5, 1973 pursuant to Section 208 of the Act by the Associated Students of the University of Arizona (hereinafter "ASUA") against the American Telephone and Telegraph Company (hereinafter "AT&T"). ASUA is an organized association of approximately 28,000 students at the University of Arizona in Tucson, Arizona which appropriates over $150,000 yearly from student fees to provide various services for its student members. ASUA's complaint concerns ASUA's request for interstate Wide Area Telecommunications Service (WATS), as offered in AT&T's Tariff F.C.C. No. 259, and AT&T's refusal to provide WATS service for ASUA's use. ASUA requested WATS service so that it could make WATS available for use by its student members. AT&T contends in its responsive pleading that the provision of WATS service to ASUA is precluded by Section 2.2.1 of AT&T's Tariff F.C.C. No. 259 which provides:

USE OF SERVICE BY THE CUSTOMER

The service is provided only for communications in which the customer has a direct interest and shall not be used for any purpose for which a payment or other compensation shall be received by him from any other person, firm or corporation for such use, or in the collection, transmission or delivery of any communication for others.

This prohibition shall not apply to a customer who is engaged as a communications common carrier in a public telegram message business.

AT&T alleges that the personal use of WATS service by the student members of ASUA would be violative of the above-quoted WATS tariff provision since (a) ASUA would not have a "direct interest" in the personal communications of its student members and (b) the service would be used by ASUA for the transmission of communications for others for which ASUA would recover compensation, i.e., for

the transmission of personal student communications and not for the transmission of communications relating to ASUA's functions. ASUA contends that (a) it has the required "direct interest" in the communications of its student members since ASUA exists both to control and to finance student activities at the University of Arizona and that (b) WATS service would not be used by ASUA for the transmission of communications for others since only ASUA's student members would be permitted to use the WATS service.

2. By letter, dated June 8, 1973, we requested additional information from ASUA relating to how ASUA operates "both to *control* and to *finance* student activities at the University of Arizona" (emphasis added) and relating to how ASUA has *control* over student telephone calls. ASUA responded on July 20, 1973, submitting information regarding the history of ASUA, the services offered to students by ASUA, ASUA's financing, its governing structure, and the activities of its student senate. Upon due consideration of all of the information submitted by ASUA, the contentions of both parties, and the presently effective tariff language of Section 2.2.1 of AT&T's Tariff F.C.C. No. 259 (Paragraph 1), we conclude that AT&T's provision of WATS service to ASUA as the customer of AT&T for use by ASUA's student members would be violative of the language appearing in Section 2.2.1 with particular reference to the provision that "(t)he service is provided only for communications in which the customer has a direct interest . . . ." Notwithstanding the fact that ASUA appears to have a legitimate interest in the amounts students must pay for telephone calls, just as it has a similar interest regarding how much its students pay for housing, we do not see how this general concern of ASUA about the financial welfare of its student members can be reasonably interpreted as satisfying the "direct interest" requirement of Section 2.2.1. We arrive at this conclusion because the only reasonable interpretation of the tariff language, in our view, is that *each WATS customer must have an interest in the content of each of the communications made over the WATS line and not merely in the amount of the charges therefor.* Under the facts and circumstances before us herein we fail to see any relationship between ASUA's legitimate interest regarding the level of charges for student telephone calls and the content of each of the personal telephone calls that ASUA's student members might place over the WATS line. However, we realize that there could be occasions where the content of some student telephone calls placed over the WATS line might actually relate to ASUA's functions. In regard to those occasions, ASUA still would not have the required "direct interest" because in order to claim a "direct interest" ASUA must have an interest that relates to the content of all of the telephone calls placed over the WATS line, not an interest which arises by chance in only a few of the student telephone calls placed over the WATS line. Although the tariff provision applicable in this matter is not a model of clarity, it appears to us to be incapable of being reasonably construed as ASUA desires. Accordingly, since the tariff is binding upon the carrier and customer alike until changed either upon the initiative of the carrier or by an order of this Commission after opportunity for a hearing, or by an order of a court of competent jurisdiction, it fol-

lows that we must sustain AT&T's decision not to provide WATS service to ASUA for the purposes sought by it.

3. However, our decision is not to be interpreted as approving the structure of the present WATS service offering of AT&T or as finding the tariff provision in question to be just, reasonable or non-discriminatory. Our decision merely holds that *under the present language* of AT&T's WATS tariff ASUA has not shown that it is entitled to WATS service if ASUA intends to make such service available for use by its student members for their own personal calls. We have designated for hearing in the latter stages of Docket No. 19129 questions concerning the lawfulness of the interstate WATS. We believe that it would be appropriate that this proceeding give consideration to the reasonableness of the existing restrictive language in the WATS tariff. Accordingly, we direct the Trial Staff in Docket No. 19129 to give consideration to such matter in connection with further proceedings in that case.

4. In view of the foregoing, IT IS ORDERED, That ASUA's complaint IS, HEREBY, DISMISSED.

5. IT IS FURTHER ORDERED, That the questions raised in this complaint are referred to the Trial Staff of the Common Carrier Bureau in Docket No. 19129 for such action as may be appropriate in the further stages of the proceedings in that case.

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

DISSENTING OPINION OF COMMISSIONER NICHOLAS JOHNSON

The "Associated Students of the University of Arizona" (ASUA) is a bona fide association of 28,000 named individuals who support an annual budget of $150,000. As such, it is entitled to and has applied for, "WATS" service from AT&T. The company has refused to comply with its tariff. The Commission has refused to provide the Association with the relief it seeks in the formal complaint before us. The reasons? It boils down to the typical child's response: "just because, that's why."

WATS (or "Wide Area Telecommunications Service") is a telephone service Bell offers customers with heavy long distance traffic. Rather than pay for each call separately, a WATS customer pays a flat fee (say $2,000 or $3,000 a month) for the privilege of making as many long distance calls as it wishes over a single line. (If a customer has a need to make more than one long distance call at a time, it must either pay for additional WATS lines or pay for additional calls on a call-by-call basis.) "WATS" generally refers to an outward service—that is, the ability to make calls *from* the customer's phones. Bell also offers an "inward WATS" service—the ability to make calls *to* the customer's phones at no cost to the caller. This service is what makes possible the increasingly popular "800" (toll free) numbers advertised by many hotels, other firms, and government agencies. (*See*, N. Johnson, "We Need a Free Phone Link to Our Government," *Parade*, Sept. 24, 1972, p. 18.) What is before us in this case is "outward WATS."

AT&T's FCC Tariff No. 259, Section 2.2.1, provides:

> The service is provided only for communications in which the customer has a direct interest and shall not be used for any purpose for which a payment or other compensation shall be received by him from any other person, firm or corporation for such use, or in the collection, transmission or delivery of any communication for others.
>
> This prohibition shall not apply to a customer who is engaged as a communications common carrier in a public telegram message business.

It is noteworthy that the FCC cannot begin to allege that the ASUA request for service in any way conflicts with the tariff's prohibitions.

The Tariff provides—quite properly under the current telephone pricing and revenue collection scheme—that a WATS customer cannot *sell* access to its WATS line. ASUA does not propose to sell access to its WATS line, either to members of the Association or to outsiders. The tariff prohibits WATS being used "in the collection, transmission or delivery of any communication for others." Putting aside the fact that the tariff then goes on to *permit* such use for a particular class of *corporate* customer in instances that serve Bell's interest, we are left with the fact that ASUA fully complies with the tariff in this respect as well.

The *only* provision that AT&T and the FCC can strain to find remotely applicable—and it is not a prohibition, but throw-away language in a tariff clause the Commission acknowledges is "not a model of clarity"—is the "direct interest" language. The WATS tariff provides that the service can only be provided for "communications in which the customer has a direct interest."

In my own view, ASUA is qualified for WATS service under *any* reasonable interpretation of the "direct interest" language. But I'll come to that in a moment. For now, I wish simply to note that the *most reasonable* interpretation of the language—under all standard canons of construction of the legal language found in legislation, contracts, wills (and tariffs)—is that "direct interest" modifies, refers to, and is modified by that language which follows it in the *very same sentence* in which it is to be found. That is, the tariff is designed to exclude those uses involving the delivery of messages for others, or the collection of money for the use of the WATS line. Such messages would be communications in which the customer would not have a "direct interest." Presumably, however, any communication from an employee, member, etc., of a "customer" would, by definition, be a communication in which the customer *does* have a direct interest. When (1) members of the student association, the customer, (2) use a WATS line of the association, which they have paid for, (3) for the purpose for which the association acquired the line, that is, in my view, a use in which the association has a "direct interest."

Putting aside the possible hostility to college students generally—which would be the most easily understood basis for today's decision—when the ATT/FCC gets around to trying to *explain* its decision it falls into the corporate mind set that affects so much of its view of the world.

Corporations *are* one kind of WATS customers. Corporations have a general interest in money making as their principal purpose. That's

altogether appropriate. *If* money making is a telephone customer's principal purpose, *then* its "direct interest" in calls made on its WATS line *could* be said to turn on whether or not the call contributes to the firm's profit. (I emphasize *could* because I think a corporation's interest in its WATS line is as subject to its *definition* of interest as a student association's interest in *its* WATS line is subject to the association's definition. Thus, offering all employees access to a WATS line in the off-peak evening hours for personal calls might well serve a corporate purpose of personnel relations, morale and recruitment. This would be sufficient, in my view, to give it an adequate "direct interest" in those "personal" calls—even under the standard ATT/FCC interpretation of "direct interest.")

But whatever may be said of corporations, they are not the *only* customers for WATS service. And profit making is not the only customer purpose giving rise to a "direct interest."

An association may exist to get information to its members. The National Farmers Organization, for example, has inward and outward WATS lines that are used by the members for other than what might be thought of as "association business" in the most limited sense. And yet surely the NFO has an adequate "direct interest" in those calls.

Professional associations, churches, and fraternal organizations would be in a similar position. An organization devoted to counseling by telephone (such as Alcoholics Anonymous) might very well use a WATS line for nothing but "personal calls" in which the association had a "direct interest." Groups like Foster Parents might have programs devoted to regular telephoning for no purpose other than personal contact. Some organizations regularly call the aged and infirm to visit, and check on their well being.

None of these telephone customers would have a corporate, profit-making purpose in the use of their WATS line, yet all would clearly qualify under the tariff as I read it.

Nor can one object to the mere number of students involved—28,000. While a significant number, it is much smaller than the 200 million who are free to use all "800" inward WATS numbers, and the number of members of many national associations, or employees in corporations with access to WATS lines. They are, at least, clearly designated and identifiable. The ASUA WATS line will not be available to anyone who walks in off the street to use it. Its use will be limited to a finite number of known, dues-paying members of the association—an association whose purposes give it a "direct interest" in the long distance calls of its members. Its interest, and its members' interest, is not merely what is paid for those calls—though I would see nothing wrong with such an interest, it being the principal corporate motive for using WATS. The interest is in maintaining relationships with friends, loved ones, and parents—both foster and natural—that are essential to productive attitudes toward education when artifically separated by distance during one's college years.

The Commission concludes that "since the tariff is binding . . . until changed . . . by an order of this Commission . . . it follows

that we must sustain AT&T's decision . . . ." Surely such vacuous reasoning need be no more than repeated to be refuted.

The telephone company has been perpetually embarrassed by its unending—and losing—battle with young people who seek to use the services it offers. See, *e.g.*, Simon Winchester, "Phone Phreaks Hold a Convention." reprinted from the Manchester Guardian in Washington Post, Oct. 7, 1973, p. G–1. Some of these youthful innovations have been downright criminal—though also of a technical ingenuity far surpassing the capabilities of Bell Labs. That they have often been accomplished by youngsters who have not yet entered high school, let alone college, must give us pause—both as to the capacity of Bell's professionals, and also as to the young people's future. Bell, quite legitimately, objects to providing them telephone service at no charge. But the college students before us are no pranksters. They have fairly caught Bell in its own tariff; they do not want to tamper with the equipment, they just want to make legitimate use of it—and pay the full posted price for the privilege. I think the Association is entitled to its WATS line, or lines, and that the telephone company's refusal to accept its $30,000 to $150,000 a year is but another example of inexplicable company intransigence, to be included in the next edition of "For Whom Does Bell Toil?" Reprinted at, *In Re Petition of American Telephone and Telegraph Company*, 26 F.C.C.2d 523, 540 (1970).

Accordingly, I dissent.

F.C.C. 73R-352

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of ROBERT E. THOMAS AND FERRIS A. MALOOF, D.B.A. CLICK BROADCASTING CO., BLUE RIDGE, GA.	Docket No. 18526 File No. BP-17409
ROBERT P. JOSEPH AND JACQUELINE A. JOSEPH, D.B.A. R-J CO., CLARKESVILLE, GA. For Construction Permits	Docket No. 18527 File No. BP-17691

APPEARANCES

Ray R. Paul and *James I. Wilson*, on behalf of Click Broadcasting Company and Habersham Broadcasting Company, Inc.; *William M. Barnard*, *John P. Bankson, Jr.*, and *Robert P. Schwab*, on behalf of Copper Basin Broadcasting Company, Inc.: and *Philip V. Permut*, on behalf of the Chief, Broadcast Bureau, Federal Communications Commission.

DECISION

(Adopted October 9, 1973; Released October 12, 1973)

BY THE REVIEW BOARD: BERKEMEYER, NELSON, AND KESSLER.

1. This proceeding involves the mutually exclusive applications of Robert E. Thomas and Ferris A. Maloof, d/b as Click Broadcasting Company (Click), and Robert P. Joseph and Jacqueline A. Joseph, d/b as R-J Co. (R-J), for construction permits to establish new standard broadcast stations at Blue Ridge and Clarkesville, Georgia, respectively. Both applicants propose to construct new Class II standard broadcast stations to operate on the frequency 1500 kHz, daytime only. By Memorandum Opinion and Order, 17 FCC 2d 375, 16 RR 2d 1, released April 28, 1969, the applications were designated for hearing by the Commission to resolve financial, forgery and misrepresentation issues against Click, financial and *Carroll*[1] issues against R-J and areas and populations and Section 307(b) issues. The *Carroll* issue was specified against R-J at the request of Habersham Broadcasting Company, Inc. (Habersham),[2] which was made a party to the

[1] *Carroll Broadcasting Co.* v. *FCC*, 103 U.S. App. D.C. 346, 158 F.2d 440, 17 RR 2066 (1958).

[2] Habersham is the licensee of Stations WCON (AM) and WCON-FM, Cornelia, Georgia. Cornelia is located about eight miles south of Clarkesville, and, like Clarkesville, is in Habersham County.

proceeding in the designation Order. Subsequently, the Review Board added *Suburban* issues against both applicants.[3]

2. In an Initial Decision, FCC 72D–39, released June 16, 1972, the late Administrative Law Judge Millard F. French recommended a grant of R–J's application and a denial of Click's. Both applicants were found qualified and the case was resolved under the 307(b) issue. Among other things, the Presiding Judge concluded that Habersham had not met its heavy burden under the *Carroll* issue; the Judge held that, based on the record, no conclusion could be reached other than that WCON is presently a profitable station, and will continue to be. See paragraphs 14–33 of the Initial Decision. In reaching his ultimate decision, the Presiding Judge found that, although Click would provide a fourth AM and aural service to 1,179 and 879 persons,[4] respectively, these facts are insufficient to overcome the fact that Blue Ridge currently has one broadcast outlet whereas Clarkesville has none. Therefore, the Presiding Judge recommended a grant of R–J's application because it would provide a first local transmission service. See paragraphs 36–40 of the Initial Decision.

3. The proceeding is now before the Review Board on exceptions filed jointly by Click and Habersham. The exceptors challenge the Presiding Judge's favorable resolution of the *Suburban* and *Carroll* issues designated against R–J, and his determination to grant R–J's application under the 307(b) issue. The Broadcast Bureau supports the Initial Decision. No record request for oral argument was made and an oral argument does not appear to be warranted. We have reviewed the Initial Decision in light of Click's and Habersham's exceptions, the Broadcast Bureau's reply and our examination of the record, and are satisfied that, except as modified by our rulings on the exceptions, the findings of fact and the conclusions fairly reflect the record and fully support the ultimate conclusion reached by the Administrative Law Judge, and that no useful purpose would be served by further discussion here. Therefore, except as modified in the rulings on exceptions contained in the attached Appendix, and upon finding that the public interest would be served thereby, the Initial Decision is hereby adopted.

4. Accordingly, IT IS ORDERED, That the application of Robert P. Joseph and Jacqueline A. Joseph, d/b as R–J Co. (BP–17691) for a construction permit for a new standard broadcast station at Clarkesville, Georgia, IS GRANTED, and the application of Robert E. Thomas and Ferris A. Maloof, d/b as Click Broadcasting Company (BP–17409), IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
DONALD J. BERKEMEYER, *Member, Review Board.*

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[3] The Board added a *Suburban* issue against Click by Memorandum Opinion and Order, 18 FCC 2d 797, 16 RR 2d 929, released July 30, 1969, and a *Suburban* issue against R–J by Memorandum Opinion and Order, 19 FCC 2d 497, 17 RR 2d 164, released September 4, 1969.

[4] The exhibits from which these figures are derived were prepared prior to grant of Station WPPL–FM, Blue Ridge, Georgia (construction permit granted November 4, 1970), and, therefore, no longer accurately reflect aural services. However, the significance of this fact need not be determined in light of the ultimate conclusion reached herein.

APPENDIX

RULINGS ON EXCEPTIONS OF CLICK BROADCASTING CO. AND HABERSHAM BROADCASTING CO., INC.

Exception No.	*Ruling*
1, 3	Denied. The Presiding Judge's findings accurately and adequately reflect the record.
2	Denied. The Initial Decision contains the 1967–69 revenue and expense figures for WCON AM–FM, and the Presiding Judge's findings and conclusions premised upon these figures are supported by the record. In short, the record shows that WCON has always been a profitable operation and that it should continue to be so in the future even if R–J enters the market.
4, 9	Denied. The Presiding Judge's findings and conclusions are correct and are based on record evidence. Habersham's claim, that the total advertising revenue potential in the area would only be 10% above what WCON presently receives, is merely an unsupported assertion made by its principal, John Foster, at the hearing. The claim is based solely upon his personal belief; therefore, the Presiding Judge did not err in disregarding it. *Cf. P.A.L. Broadcasters, Inc.*, 40 FCC 2d 546, 552, 27 RR 2d 311, 319 (1973).
5	Denied. The record reflects that Habersham solicited businesses in the area which did not regularly advertise on WCON *only* when he was aware that there might be a possibility they would want to advertise and that they were not solicited on a regular basis.
6, 7, 8	Granted in substance. The record establishes that substantial portions of the Broadcast Income Payment to Principals was paid to the Fosters as salaries and therefore, characterizing these payments as "net profits" is contrary to general accounting practice that "net profits" represent the excess of revenues over operating costs. *A Dictionary For Accountants*, Prentice-Hall, Inc., 1958. Nevertheless, the record shows that the Fosters have received substantial income from WCON.
10	Denied. The Administrative Law Judge's conclusions with respect to the *Carroll* issue are supported by the record. Habersham simply failed to meet its heavy burden of proof. See *KSIG Broadcasting Co., Inc.* v. *FCC*, 144 U.S. App. D.C. 228, 445 F.2d 704, 21 RR 2d 2144 (1971), affirming *Rice Capital Broadcasting Co.*, 17 FCC 2d 759, 16 RR 2d 332 (1969).
11, 12	Denied. The Administrative Law Judge correctly found and concluded that R–J has complied with the requirements of the Commission's *Primer on Ascertainment of Community Problems by Broadcast Applicants*, 27 FCC 2d 650, 21 RR 2d 1507 (1971). From R–J's demographic study, which was compiled from data obtained from the Georgia Institute of Technology and the State Department of Industry and Trade, it can be determined that the community leaders interviewed by R–J reflect the composition of the community to be served. Furthermore, although it did not list separately community leaders and persons interviewed from the general public, this deficiency is not fatal (see *Phil D. Jackson*, 33 FCC 2d 928, 931, 23 RR 2d 1023, 1027 (1972)), and the record shows that R–J did interview a cross-section of the general public. The Commission has held that an applicant is required to use his own judgment in determining who

Exception No.	*Ruling*
	should be consulted about community problems, and unless it is shown that the applicant has abused his discretion in selecting community leaders, his judgment in this regard will not be questioned. See *Committee for Community Access*, —— FCC 2d ——, 28 RR 2d 156 (1973); *Miners Broadcasting Service*, 20 FCC 2d 1061, 18 RR 2d 203 (1970). No abuse of discretion was shown by the exceptors in R–J's choice of representatives from the agricultural and business communities. Finally, contrary to exceptors' assertions, the *Primer* does not require the applicant to propose a specific program for each and every need or problem ascertained. See *WKBN Broadcasting Corp.*, 30 FCC 2d 958, 971, 22 RR 2d 609, 623 (1971). *Cf. Middle Georgia Broadcasting Co.*, 30 FCC 2d 796, 22 RR 2d 534 (1971). The proposed programs R–J set forth in its *Suburban* showing appear to adequately provide opportunities to deal with problems of concern to all significant groups within the community including farmers and businessmen.
13	Denied. Resolution of the 307(b) issue encompasses comparative consideration of the need of the respective service areas for a new reception service and the need of the specified communities for a new transmission facility. *Kent-Ravenna Broadcasting Co.*, FCC 61–1350, 22 RR 605; *Tri-County Broadcasting Company*, 40 FCC 2d 167, 26 RR 2d 1580 (1973). The Presiding Judge was correct in preferring R–J under the transmission service aspect of the 307(b) issue because the need for a first local outlet in Clarkesville outweighs the rather insignificant gain to sparsely served areas that Click's proposal would provide.
14, 15	Denied. The Presiding Judge properly concluded that Habersham did not meet its burden of proof under the *Carroll* issue, that both applicants have met the qualifying issues specified against them, and that the application of R–J should be granted under the 307(b) issue.

F.C.C. 72D-39

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of	
ROBERT E. THOMAS AND FERRIS A. MALOOF, D.B.A. CLICK BROADCASTING CO., BLUE RIDGE, GA.	Docket No. 18526 File No. BP-17409
ROBERT P. JOSEPH AND JACQUELINE A. JOSEPH, D.B.A. R-J CO., CLARKESVILLE, GA.	Docket No. 18527 File No. BP-17691
For Construction Permits	

APPEARANCES

Ray R. Paul and *James I. Wilson*, on behalf of Click Broadcasting Company and Habersham Broadcasting Company, Inc.; *Eugene F. Mullin, Jr.* and *J. Parker Connor*, on behalf of R-J Co.; *William M. Barnard, John P. Bankson, Jr.* and *Robert P. Schwab*, on behalf of Copper Basin Broadcasting Company, Inc.; and *Philip V. Permut*, on behalf of the Chief, Broadcast Bureau, Federal Communications Commission.

INITIAL DECISION OF HEARING EXAMINER MILLARD F. FRENCH

(Issued June 13, 1972; Released June 16, 1972)

PRELIMINARY STATEMENT

1. On April 23, 1969, the Commission adopted a Memorandum Opinion and Order designating the applications of Robert E. Thomas and Ferris A. Maloof, d/b as Click Broadcasting Company (hereinafter Click) and Robert P. Joseph and Jacqueline A. Joseph, d/b as R-J Co. (hereinafter R-J) for hearing. Click is seeking authorization for a new standard broadcast facility at Blue Ridge, Georgia, while R-J is seeking authorization for a new standard broadcast facility at Clarkesville, Georgia. Both applicants propose daytime-only operations on the frequency of 1500 kHz; Click's application specifies power of 500 watts, while R-J's specifies power of 5,000 watts, with a reduction to 500 watts during critical hours.

2. The designation order specified nine issues. Two additional issues inquiring into both applicants' efforts to ascertain community needs and interests were later designated by the Review Board by orders released July 30, 1969 and September 4, 1969. The issues are quoted below, with original Issue 9 being renumbered as Issue 11, and the issues added by the Review Board in July and September 1969 being numbered as Issue 9 and Issue 10, respectively:

1. To determine the areas and populations which would receive primary service from the proposed operations and the availability of other primary service to such areas and populations.

2. To determine whether the purported signature of Raymond Akins found on the advertising statement filed with the application of Click Broadcasting Company is, in fact, Raymond Akins' signature.

3. To determine, in the event issue 2 is resolved in the negative, whether Click Broadcasting Company made an intentional misrepresentation to the Commission.

4. To determine, in light of the evidence adduced pursuant to issues 2 and 3, above, whether Click Broadcasting Company has the requisite qualifications to be a licensee of the Commission.

5. To determine, with respect to the application of Click Broadcasting Company:

(a) The sources of additional funds necessary to meet the costs of construction and operation of the proposed station during the first year.

(b) In light of the evidence adduced pursuant to (a) above, whether this applicant is financially qualified.

6. To determine, with respect to the application of R–J Co.:

(a) Whether a loan of $30,000 is available to the applicant.

(b) The sources of additional funds necessary to meet the costs of construction and operation of the proposed station during the first year.

(c) In light of the evidence adduced pursuant to (a) and (b) above, whether this applicant is financially qualified.

7. To determine whether there are adequate revenues available to support an additional standard broadcast station in the area proposed to be served by R–J Co., without a net loss or degradation of broadcast service to such area.

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

9. To determine the efforts made by Click Broadcasting Company to ascertain the community needs and interests of the area to be served and the means by which the applicant proposes to meet such needs and interests.

10. To determine the efforts made by R–J Co. to ascertain the community needs and interests of the area to be served and the means by which the applicant proposes to meet such needs and interests.

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

For convenience of reference, Issue 1 is referred to herein as the coverage issue; Issues 2, 3 and 4 as the forgery issues; Issue 5 as the Click financial issue; Issue 6 as the R–J financial issue; Issue 7 as the *Carroll* issue; Issue 9 as the Click ascertainment issue; and Issue 10 as the R–J ascertainment issue.

3. In addition to the applicants, there are two other parties to this proceeding, Habersham Broadcasting Company, Inc. (hereinafter Habersham), licensee of WCON and WCON–FM in Cornelia, Georgia, approximately eight miles from Clarkesville, and Copper Basin Broadcasting Company, Inc. (hereinafter Copperhill), licensee of WLSB, Copperhill, Tennessee, approximately twelve miles from Blue Ridge. As shown in the designation order, the forgery issues against Click arose out of a pre-designation petition to deny filed by Copperhill, while the *Carroll* issue was added at the instance of Habersham. The designation order placed on Habersham both the burden of proceeding with the introduction of evidence on the *Carroll* issue and the burden of proof on that issue.

4. The hearing began October 27, 1969 and the record was closed November 16, 1971. Proposed findings and conclusions were filed by Copperhill, the Broadcast Bureau, R–J and jointly by Click and

Habersham on January 17, 21 and 24, 1972, respectively. Reply findings were filed by Copperhill and R–J on February 7, 1972.

FINDINGS OF FACT

Coverage Issue—Issue 1

5. Click Broadcasting Company seeks authorization to construct a new Class II standard broadcast station at Blue Ridge, Georgia, on 1500 kHz with 500 watts power, daytime only. R–J Co. requests authorization to operate a new Class II station at Clarkesville, Georgia, on 1500 kHz with 5,000 watts power, daytime only, reducing power to 500 watts during critical hours. Although the two service areas do not overlap, the applications are mutually exclusive because of only 50-mile separation between communities.

Click Broadcasting Co., Blue Ridge, Ga.

6. Blue Ridge, Georgia, population 1,602, is the county seat of Fannin County, population 13,357, based on 1970 U.S. Census. It lies in the extreme northern part of the state eight miles south of the intersecting boundaries of Georgia, Tennessee and North Carolina. It is not a part of any urbanized area. The only broadcast outlet in the community is FM Station WPPL (Channel 280, 103.9 MHz, 3 kw, 240 feet, Class A).

7. Coverage data for both applicants are based on 1960 U.S. Census. The proposed coverage of Click Broadcasting Company, based on an effective field of 131 mv/m and ground conductivity values from Figure M–3 of the Rules, is as follows:

Contour (mv/m)	Population	Area (square miles)
0.5	20,814	623
Interference from WVSM, Rainsville, Ala.	191	8
Interference-free	20,623	615

8. Station WFLI, Lookout Mountain, Tennessee, provides primary service of 0.5 mv/m or greater to all of the area proposed to be served, nine stations serve portions and from three to five or more stations serve any one portion thereof. In addition, three FM stations provide 1.0 mv/m service to parts of the area. No urban areas would be served. The sparsely served areas are as follows:

Existing services	Population	Area (square miles)
3 AM	1,179	56
4 AM	4,575	168
3 Aural [1]	879	47
4 Aural [1]	2,807	108

[1] Not including educational station WSMC-FM

9. Stations WGGA, Gainesville, Georgia, WLSB, Copperhill, Tennessee, WCVP and WKRK, Murphy, North Carolina, and WFLI, Lookout Mountain, Tennessee, provide primary service of 0.5 mv/m or greater to the community of Blue Ridge daytime.

R–J Co., Clarkesville, Ga.

10. Clarkesville, Georgia, population 1,294, is the county seat of Habersham County, population 20,691, based on 1970 U.S. Census data. It is situated in the northeastern part of the state about 50 miles east-southeast of Blue Ridge and 32 miles south of the Georgia-North Carolina state line. It is not within the limits of any urbanized area. No broadcast facilities are authorized in the community.

11. The proposed coverage of R–J Co., based on effective fields of 392 mv/m for 5,000 watts and 124 mv/m for 500 watts and ground conductivity values from Figure M–3 of the Rules, is as follows:

Contour (mv/m)	Population	Area (square miles)
	Midday	
0.5	61,284	1,697
	Critical hours	
0.5	25,246	514

Station WGGA, Gainesville, Georgia, provides primary service of 0.5 mv/m or greater to all of the rural areas proposed to be served during midday hours, seventeen stations serve portions and a minimum of four and a maximum of eight AM services are available to various portions thereof. In addition, five FM stations provide 1.0 mv/m service to portions of the area so that from none to five such services are available. Combining AM and FM services, from four to thirteen aural services are available. Three small areas not receiving five or more AM or aural services are located in mountainous areas which are unpopulated. During critical hours, at least five AM services are available to various portions.

12. Cornelia, Georgia (population 3,014) is the only urban area proposed to be served. Stations WCON, Cornelia, WLET and WNEG, Toccoa, and WGGA and WNRJ, Gainesville, Georgia, provide primary service of 2.0 mv/m or greater to the community daytime. In addition, Stations WCON–FM in Cornelia, WLET–FM in Toccoa, and WFOX–FM and WDUN–FM in Gainesville, provide 1.0 mv/m service thereto.

13. The applicant's community of Clarkesville receives primary service daytime of 0.5 mv/m or greater from Stations WCON, Cornelia, WLET and WNEG, Toccoa, WNRJ and WGGA, Gainesville, and WRWH, Cleveland, Georgia. In addition, Stations WCON–FM, Cornelia, WLET–FM, Toccoa, and WFOX–FM and WDUN–FM, Gainesville, Georgia, provide 1.0 mv/m service thereto.

Forgery Issues—Issues 2, 3, and 4

14. Click, when it first filed its application, submitted various "advertising commitments" as part of its financial showing. One of these was a form from Chastain-Pack Funeral Home allegedly signed by Raymond Akins. On March 30, 1967, Copper Basin Broadcasting Company, Inc., licensee of WLSB–AM, Copperhill, Tennessee, filed a petition to deny or designate application for hearing. Attached to that document was an affidavit of Raymond Akins stating that the form allegedly from Chastain-Pack submitted by Click bore a forged signature. Akins reaffirmed this statement in an affidavit filed with Copperhill's reply to opposition to petition to deny. Because of this allegation, an issue was designated against Click to determine the actual facts and Copperhill was made a party to the proceeding.

15. In preparing to file Click's application, Maloof and Thomas, on July 18, 1966, spoke to Mr. Daniel McClure at WJES, Johnston, South Carolina. The purpose of the trip was to discuss some technical aspects of a radio station. During this conversation McClure showed them an advertising commitment form he had used before the Commission in showing the financial situation of WJES. He informed them that his application had been granted. Thomas copied the form and had copies made of it so that he also could utilize it in preparing his application.

16. Maloof and Thomas then proceeded to prepare a list of merchants in the area who they felt to be economically prominent. They divided the list between them, assigning the one who was most familiar with the individual merchant the task of contacting him. In some instances both spoke to the merchant.

17. Whenever Thomas contacted a merchant he followed a general procedure. He would introduce himself and state his intent to apply for a new AM radio station in Blue Ridge, Georgia. He then explained that he was seeking to show to the Commission that there were sufficient advertising revenues available to support this new station. He then requested that the merchant fill out and sign the form showing the amount that he felt that he realistically would spend for advertising on the new facility during its first year of operation. The only time he varied this procedure was when he contacted his father-in-law. His father-in-law requested that he fill out the form for him and he did.

18. When Maloof contacted the merchants assigned to him he used a somewhat different procedure. Maloof's procedure differed in that he filled out the form after consultation with the merchant and just had the merchant sign it. When Maloof and Thomas both spoke to the merchant then Maloof's procedure was the procedure followed.

19. During this period Thomas lived in Buford, Georgia. He was working for the *Decatur-DeKalb News* in Decatur, Georgia. He was only able to interview merchants on Saturdays. The Click application was filed on August 12, 1966 which was a Friday. Thus, Thomas would have interviewed Akins either on July 23, 1966, July 30, 1966 or August 6, 1966. Thomas cannot remember which date it actually was.

20. When Thomas went to see Akins he took his brother, Ronald S Thomas, and a friend of his brother with him. This was done because Ronald knew Akins since he had played in a band that performed at a

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teenage canteen supervised by Akins. Thomas met Akins at the funeral home. He had one of the advertising commitment forms with him.

21. When Thomas went into the reception room at the funeral home, he was introduced to Akins by his brother, Ronald. Thomas told Akins that he was planning to apply for a radio facility and was seeking his support as a merchant. Thomas testified that Akins requested to look at the form which Thomas had in his hands. Thomas explained that he wanted him to state what amount of money he would spend on advertising on the new facility during the first year of its operation. Akins and Thomas then went into a private office where Akins filled out the form and signed it. Thomas told Akins that the form was not a binding contract. After the form had been filled out they returned to the reception room and left after a brief conversation.

22. Thomas testified that at the time he was preparing the application and getting these advertising commitments that he was attempting to make positive that everything was perfect. This state of mind was created by his belief that WLSB and R–J would be scrutinizing the application with great care. He believed this because both parties had contacted his partner, Maloof, and tried to discourage Maloof from going into business with him. Maloof testified that he had received such calls from WLSB and R–J and, as a result, was very concerned that everything be just right. He had told Thomas of the gist of the calls.

23. Akins, however, in his testimony denied that he ever signed the advertising commitment sent to the Commission as part of the Click application. Akins claimed that in August 1966 Thomas came to his funeral home and informed him of his plans to construct a radio station in Blue Ridge, Georgia. Thomas wished to know what amount of advertising the funeral home did. Akins informed him that the funeral home only had an obituary column on the radio and a bible quiz on WLSB. Thomas then changed the topic of the conversation. Akins does remember Thomas mentioning advertising but denies ever being handed anything to sign. Akins testified that he never saw the advertising commitment form and thus never signed it. According to Akins, the first time he saw the form was in February 1967 at a lawyer's office when he prepared his first affidavit denying the authenticity of his signature.

24. Akins testified that one of the reasons he was sure that he did not fill out the form was the fact that the form alleged to be filled out by him has the name "Chastain-Pack Funeral Home" printed on it and he always wrote "Chastain-Pack Funeral Homes, Inc." He testified that he *always* put the "s" on "Home" and added the "Inc."

25. On February 2, 1966 Akins signed a contract for advertising with Fannin County Broadcasting for $1,300 worth of spots. When asked about the contract by Bureau counsel, Akins did not remember it. However, after being shown it, he acknowledged his signature. The contract has printed on it, in Akins' printing, "Chastain-Pack Funeral Homes."

26. John H. Orr was called by Click to testify on the question of whether or not the signature on the advertising form submitted by Click was made by Akins. Commencing in the latter part of the 1920's, Orr apprenticed and engaged in the study of handwriting identification, typewriting, watermarks, alterations, erasures and other types of questioned documents for approximately four years. In 1934 Orr was qualified and gave expert testimony in the United States District Courts and other courts of law. He established the first Technical Laboratory for processing and examining all types of questioned documents in the United States Postal Inspection Service. He headed this unit until August 1939. In August 1939 Orr received an appointment to the position of Examiner of Questioned Documents and Fingerprint Expert with the Veterans Administration and established their first Questioned Document Laboratory, which he headed until 1942. Orr served as a Commissioned Officer in Military Intelligence, AUS, from 1942 to 1945, as the only handwriting expert in the European Theatre. He returned to the Veterans Administration and retired in 1963. He has been qualified as an expert in U.S. District Courts and other courts of law and administrative hearings in many states.

27. Orr testified that he studied the signatures "Raymond Akins" appearing in Click Exhibit 1–A on pages 2–7 and stated that in his expert opinion the same individual who signed those also signed the Click advertising commitment. He also studied the printing in those exhibits and stated that in his expert opinion the person who printed these also did the printing in the Click advertising commitment. Akins testified that the signatures and printing in Click Ex. 1–A, except for Click Ex. 1–A, page 1, which is the questioned advertising commitment, are his.

28. Gordon R. Stangohr was called as a witness by the Bureau. Stangohr is a Questioned Document Analyst in the Crime Laboratory, Bureau of Chief Postal Inspector, Washington, D.C. He has engaged in this work since 1946. His duties entail the examination of all aspects of physical documents. This includes the examination and comparisons of handwritings and typewriting alterations and other aspects related to documents. All of his working time is devoted to this. Mr. Stangohr has available to him in his work optical aids, including microscopes, ultraviolet light, infrared light, measuring instruments and various photographic aids such as enlarger cameras.

29. Mr. Stangohr is a member of the International Association for Identification and The American Academy of Forensic Sciences. He has regularly testified in federal, state and military courts since 1950. He has testified on previous occasions before the Federal Communications Commission in *Radio Broadcasters, Inc.*, Docket 18709, and *Clayton W. Mapoles tr/as Milton Broadcasting Co.*, Docket 17613.

30. Mr. Stangohr studied Broadcast Bureau Ex. 1, Click Ex. 1–A, and Akins' two affidavits submitted in this proceeding, all stated examples of Akins' writing and printing, and the questioned document.

Based upon his examination, comparison and evaluation of the documents it is his expert opinion that the same person wrote and printed all of the materials given to him.

Click Financial Issue—Issue 5

31. The Commission, in designating a financial issue against Click, found that $42,518.00 was required to construct and operate the station. This figure was reached, however, prior to the time that Click decided to rely on a bank loan. Thus, to the original figure, a sum of $7,500.00 must be added to include expenses for professional fees and various miscellaneous expenses and, (assuming a high interest rate of 8.5% on the loan), a figure of $4,700.00 to represent the interest payable on the bank loan for the first year. Thus, an amount of $54,718.00 would be required for Click to construct and operate the station for a year.

32. To meet these expenses Click has available $4,886.00 in paid in capital and a $55,000.00 loan commitment from the National Bank of Georgia. The loan is for a five-year period at the rate in effect at the time the loan is placed. The bank has required as security for the loan a promissory note signed by Click and secured by the personal endorsement of Robert E. Thomas, Ferris A. Maloof, Maurice N. Maloof and Nassir (Louis) A. Maloof, and by property owned by N. A. (Louis) Maloof at 4990–5000 Roswell Road, N.W., Atlanta, Georgia. Click has supplied statements from all of the above-named individuals that they will personally endorse the promissory note. Further, N.A. (Louis) Maloof has agreed to put up as security the property described in the bank loan.

R–J Financial Issue—Issue 6

33. The Commission, when it designated R–J's application for hearing, determined that the amount of $44,601.00 was required by R–J to cover construction costs and the first year's operation. R–J, since the designation of its application, procured a bank loan of $40,000.00. The interest charge is to be at the "prime rate." In view of the now fluctuating nature of the "prime rate," R–J assumed a high "prime rate" of 8.5%. Thus, $3,400.00 must be added to R–J's financial requirements. R–J must show $48,001.00 in assets to be found financially qualified.

34. R–J has procured from the Buford Commercial Bank of Buford, Georgia, a bank letter committing a sum of $40,000.00 to be loaned to R–J's principals to build the proposed facility. Interest is to be at the prime rate charged by the major New York banks. Interest only shall be due during the first year of the operation of the station.

35. The personal balance sheet of the applicant's principals (husband and wife) reflects the following:

Assets

Cash:	
Checking Account	$328.43
Savings Account—Boulevard National Bank	3,123.50
Savings Account—Flager Federal Savings	10,000.00
Savings Account—Biscayne Federal S & L	10,000.00
Savings Account—First Federal Savings & Loan	10,000.00
Life Insurance (cash value)—Metropolitan Northwestern Mutual	3,276.00
Bank stocks:	
Morgan Guaranty Trust (16 shares)	984.00
First National City (28 shares)	945.00
Conill Corporation (23 shares)	807.88
Total	2,736.88
Radio Stations WDYX (AM) and WGCC (FM) 1½ times gross income based on 1970 taxable year, plus real estate and special equipment	198,350.00
Prepaid expenses for application and hearing	2,637.20
Property (3½ acres Clarkesville, Ga.)	2,300.00
Insurance loss—cash due from Grain Dealers Mutual Insurance Co., Indianapolis, Ind	2,512.00
Other assets:	
Household furnishings	3,750.00
Jewelry and precious stones, silver and china	4,675.00
Nassau County, Fla., acreage	4,750.00
Total	13,175.00
Total Assets	258,439.01

Liabilities and Net Worth

Liabilities:	
100% of Radio Stations WDYX–WGCO (Granger Associates, Buford Commercial Bank, Accounts Current (Payable))	$33,426.23
Note payable—Buford Commercial	15,000.00
Expenses (unpaid) R–J application and hearing	5,725.00
Personal accounts payable	600.00
Total Liabilities	54,751.23
Net Worth	203,687.78
Total Liabilities and Net Worth	258,439.01

36. The record shows that the liabilities listed above include all liabilities of Bulford Broadcasting, Inc., a "Subchapter S Corporation," as well as liabilities of R–J, and all personal obligations of R–J's principals. The liabilities of WDYX and WGCO are being paid out of current operating income of Buford Broadcasting, Inc. The current portion of this amount is $15,678, consisting of: (a) 12 monthly payments of $310 to Granger Associates for FM equipment for WGCO;

(b) 12 monthly payments of $261 to Buford Commercial Bank on a $10,000 note; (c) $4,220 payable to Buford Commercial Bank for FM construction; (d) $4,606 in current accounts payable for Buford Broadcasting, Inc. The current portion of the $15,000 Buford Commercial note due and payable within a year is $4,106. This note was for purchase of stock in Buford Broadcasting, Inc.

Carroll Issue—Issue 7

37. Habersham Broadcasting Company, Inc., an intervenor in this proceeding at whose request the question of economic injury was added, operates Station WCON (1450 kHz, 250 watts, 1 kw-LS, U, IV) and WCON-FM (Channel 257, 99.3 MHz, 1.35 kw, 420 feet, Class A) at Cornelia, Georgia. The community lies about eight miles south of Clarkesville and is also in Habersham County. Station WCON provides daytime primary service to 44,072 persons in 832 square miles. During midday hours, the 0.5 mv/m contour of R-J Co. would have a reach of 22 miles in all directions, completely encompassing the 0.5 mv/m contour of Station WCON which has a radius of 16 miles. The midday 2.0 mv/m contour of R-J Co. would extend six miles beyond Cornelia. Thus, R-J would provide primary service to all of WCON's primary service area and to an additional 17,212 persons in 865 square miles. Most of the area within the WCON-FM 1.0 mv/m contour would be enclosed within the midday 0.5 mv/m contour of R-J Co. During critical hours, the 0.5 mv/m contour of R-J Co. would overlap substantial portions of the service areas of WCON and WCON-FM, and the 2.0 mv/m contour would include a substantial portion of the community of Cornelia.

38. Mr. John Foster is the president and general manager and majority stockholder (98%) of Habersham Broadcasting Company, Inc., licensee of WCON-AM-FM. Foster's wife also works at the station as office manager. In 1969 Foster was paid a salary of approximately $20,000, plus the use of two company cars, and his wife received a salary of approximately $3,900.

39. WCON-AM, although licensed for unlimited hours of operation, operates only from 5:30 a.m. to 9:30 p.m. WCON-FM simulcasts with the AM facility from 5:30 a.m. to 8:35 a.m. and from 5:30 p.m. to 9:30 p.m. WCON-AM-FM also simulcast Mutual news on the half-hour and various special programs. The FM facility has been on the air for approximately six years. The AM and FM financial statements are combined. The FM has continually sustained losses.

40. Habersham County, the county in which both Clarkesville and Cornelia are located, has experienced a continuous population growth. The following are the U.S. Census figures for Habersham County from 1930 to 1970:

Year:	*Population*	Year:	*Population*
1930	12,748	1960	18,160
1940	14,771	1970	20,691
1950	16,553		

41. The record discloses that in 1966 WCON had nine part-time employees and eight full-time employees whose salaries aggregated $43,446.65. Of this amount $12,680.00 was paid to Foster and his wife. In 1967 WCON had six part-time employees and seven full-time employees. The total amount of salaries paid was $42,295.41. Foster and his wife received $11,745.00 of this amount. In 1968 WCON had six part-time employees and seven full-time employees. Foster and his wife received $24,445. The other employees' salaries aggregated $25,416.96.

42. On January 23, 1968, March 17, 1969 and March 17, 1970 WCON filed with the Commission its annual FCC Form 324. These forms show the following:

	1967	1968	1969
Broadcast Revenues	$96,967.00	$107,190.00	$107,723.00
Broadcast Expenses	79,020.00	81,429.00	103,679.00
Payment to Principals Included in Broadcast Expenses	11,745.00	24,445.00	29,959.00
Broadcast Income After Payment to Principals	17,947.00	25,761.00	4,044.00
Broadcast Income Before Payment to Principals	29,692.00	50,206.00	34,003.00
Depreciation	8,606.86	10,938.50	12,373.00

43. The financial situation of WCON, as of October 31, 1969, was as follows:

Assets:	
Cash	$1,196.46
Accounts Receivable	14,606.53
Less: Reserve	438.20
Total	14,168.33
Land and Buildings	62,520.46
Other Depreciating Assets	82,758.46
Less: Accu. Depreciation	37,024.19
	45,734.27
Total	123,619.52
Liabilities:	
Accounts Payable	3,788.56
Notes Payable	6,000.00
Accrued Taxes	5,095.00
Capital Stock	10,000.00
Paid in Surplus	98,735.96
	123,619.52

At the end of the calendar years 1967, 1968 and 1969, WCON had a paid-in-surplus of $105,835.42, $108,848.90 and $102,826.39, respectively.

44. The retail sales of Habersham County have continually increased in the last few years. In 1967 the retail sales totaled $30,374,000. In 1968 the retail sales increased approximately 10% to $34,683,000. In

1969 it again increased by approximately 10% to $38,218,000. Along with this steady increase in retail sales there has been a steady increase in WCON's local advertising revenue.

	1966	1967	1968	1969
Regional and National Advertising Revenue	$5,140	$8,716	$14,314	$5,370
Local Advertising Revenue	80,791	88,251	92,876	102,353

45. In the last three years WCON AM and FM has invested some of its capital in purchasing new equipment. It has purchased an FM transmitter for $5,331.28, an antenna for $1,933.33, a stereo modulation monitor for $2,187.56, an FM console for $2,523.50, a spot master for $1,982.75, turntables for $875.50, an AM console for $2,054.85, and automobiles for $11,591.80. The total amount expended was $28,480.57.

46. Mr. Foster submitted a list of about 180 businesses in the area and stated that they were solicited for advertising continuously by WCON–AM–FM, but not on a weekly basis however. He also named 28 of the total businesses that could advertise on the radio stations but did not do so at the time of the hearing. About 6 of the 28 had, however, advertised on WCON within the past two years. WCON solicited the business of these 28 potential advertisers whenever it was thought there was a possibility that they might wish to advertise. Such solicitation was made every month or so, but not on a regular basis.

47. In 1968 WCON derived 16% of its total revenues (approximately $16,762.00) from advertisers within the city limits of Clarkesville. In 1969 and in the first six months of 1970 WCON derived 15% (approximately $16,375.00 and $8,419.00, respectively) of its total revenues from advertisers from within the city limits of Clarkesville. WCON had three employees working full time selling time on the two facilities. The bulk of its sales revenues come from Habersham County. WCON also has a salesman who, on a weekly basis, solicits advertising in Stephens County. WCON further actively solicits business in Gainsville, Georgia, Hall County and Banks County.

48. There are other various advertising media in the service area of WCON which also actively seek advertising revenue from similar sources as WCON. The following is a list of WCON's competitors:

Competitor and City

WLET–AM–FM, Toccoa, Georgia
WNEG–AM, Toccoa, Georgia
WRWH–AM, Cleveland, Georgia
WMRJ–AM, Gainesville, Georgia
WFOX–AM, Gainesville, Georgia
WGGA–AM, Gainesville, Georgia
WDUN–AM–FM, Gainesville, Georgia
Tri-County Advertiser, Clarkesville, Georgia
Northern Georgian, Cornelia, Georgia
The Daily Times, Gainesville, Georgia
Banks County Journal, Homer, Georgia
Tri-County Advertiser, Clarkesville, Georgia
Two billboard companies,
White County News, White County, Georgia

49. Foster testified that it was his belief that the total advertising revenue potential in the area would only be 10% above what WCON presently receives. However, this estimate was based solely on his experience selling advertising time on his own facilities.

50. Mr. Foster attempted to predict the WCON advertisers who would divert some of their advertising budget to a new radio station, and how much would be lost to WCON by reason of such diversion. He compiled a list of about 90 advertisers who would shift part or all of their advertising budget to the new facility, and on this basis concluded that there would be an estimated loss of $3,061.38 per month to WCON. The record shows that the only advertiser he actually spoke to about the effect of a new facility was Gold's Department Store, and was told that it would split its advertising budget between the two stations, without giving any dollar estimate. On the basis of this statement, Mr. Foster estimated that Gold's Department Store would divert 25% of its advertising budget from WCON. However, no basis for this estimate was given. Similarly, using only his personal judgment, he undertook to predict the amount of advertising revenue WCON would lose per month from the remaining 90-odd advertisers on the list. The record further shows that four of the listed advertisers had already been lost by WCON, and that some on the list only used the station once a year, yet were listed as monthly advertisers. Assuming, *arguendo*, that Mr. Foster's estimates are accurate, WCON would lose approximately $2,900 in revenue each month if a new radio station began to operate in Clarkesville.

51. WCON broadcasts various programs which it considers to be "Public Service Programming." The following is a list of such programs and a description of each:

Home Room.—A weekday five-minute program at 6:25 a.m. featuring the Habersham County Superintendent of Schools discussing school activities. WCON aids in its production. Sponsors are sought for this program.

Education Today.—A thirty-minute program aired each Saturday at 10:00 a.m. concerning various school activities. This program is partly produced by WCON. Sponsors are sought for this program.

Essa Weather.—A five-minute program broadcast twice each day, Monday through Saturday at 6:55 a.m. and 11:55 a.m., giving a weather summary. Sponsors are sought for this program.

The Lunch Menu.—A feature each weekday morning giving the high school menu for the day, broadcast between 7:00 and 8:00 a.m.

Home Ec Tips.—A three-minute weekday program between 10:45 and 11:00 a.m. in cooperation with the Habersham County Agriculture Department which gives various tips for housewives. This program is received from the University of Georgia at no cost. It is not sponsored.

FHA News.—A monthly fifteen-minute program broadcast at 9:45 a.m., discussing ways the FHA can be of service to farmers. This program is no longer broadcast over WCON.

Georgia Outdoors.—A fifteen-minute program broadcast each Saturday at 6:35 p.m., presented by the State Game and Fish Commission giving tips to sportsmen. This program is no longer broadcast over WCON.

Washington Report.—A weekday three-minute report produced by the American Security Council at 7:46 p.m. This program is given free of charge to WCON. Sponsors are sought for this program.

What's Your Problem.—A weekly fifteen-minute program from June through November 11th produced by the Veterans Administration, answering questions for Veterans. This program is given to WCON free of charge. Sponsors are not sought for this program.

A Visit With the Governor.—A weekly five-minute program on Tuesdays at 11:10 a.m., featuring the Governor of Georgia discussing State problems. This program is given to WCON free of charge. Sponsors are not sought for this program.

Commentary by Fulton Lewis, Jr.—A weekday fifteen-minute program discussing national and international current events at 7:00 p.m. Sponsors are sought for this program.

Senator Herman Talmadge.—A weekly five-minute program, Monday at 11:10 a.m., discussing senatorial action related to Georgia.

Georgia's Commissioner of Agriculture.—A weekly five-minute program each Wednesday at 11:10 a.m. discussing problems facing Georgia's farmers. Sponsors are not sought for this program. It is given free of charge to WCON.

A Word for the Day.—A daily three-minute feature between 1:45 and 2:00 p.m. to inform listeners about word meanings. Sponsors are not sought for this program. It is given free of charge to WCON.

The Swap Shop and Trading Post.—Two five-minute programs broadcast six days per week where listeners can list items for sale, rent, etc. Sponsors are sought for this program.

Master Control.—A weekly thirty-minute program produced each Tuesday at 1:00 p.m. by the Southern Baptist Convention. Various topics of public interest are discussed. This program is sent to the station free of charge. Sponsors are not sought for this program.

Unshackled.—A weekly thirty-minute drama with a moral produced by the Pacific Garden Mission. This program is given free to the station. Sponsors are not sought for this program.

Grand Old Gospel Hour.—A thirty-minute weekly program presented by the Colored people in the area. This program is sent free of charge to the station. Sponsors are not sought for this program.

Children's Bible Hour.—A weekly thirty-minute program presented Saturdays at 5:00 p.m., of quizzes, songs and stories. Sponsors are not sought for this program.

Baptist Hour.—A weekly thirty-minute program produced by the Southern Baptist Hour. It is sent to the station free of charge. Sponsors are not sought for this program.

Old Fashioned Revival Hour.—A thirty-minute weekly program. It is sent to the station free of charge. Sponsors are not sought for this program.

The Hour of Decision.—A weekly thirty-minute program produced by the Billy Graham Evangelistic Group, Sunday at 5:00 p.m. It is sent to the station free of charge. Sponsors are not sought for this program.

Voice of Salvation.—A weekly thirty-minute program produced by the area's Churches of God, Sunday at 7:35 p.m. It is sent to the station free of charge. Sponsors are not sought for this program.

Sunday Morning Church.—A weekly hour program of services at various Cornelia churches. The individual church pays for the remote line charge.

52. WCON broadcasts approximately 250 public service announcements per week. It also broadcasts each day various local and national news (supplied by the Mutual Radio Network) programs and various weather reports. WCON also broadcasts various religious programs. These programs, with the exception of those named above, are programs sponsored by the church or the individual minister.

53. WCON has stated that if R–J were to construct its proposed facility several methods would be employed to cut its expenses. One of these actions that would be taken is to drop various programs. WCON has stated it would drop *Georgia Outdoors* for a savings of $8.00 per week; *Georgia Agriculture and Consumer Report* for a savings of $4.25 per week; *Home Ec Tips* for a savings of $15.00 per week; and *FHA News* for a savings of $8.00 per week.

54. The cash figures do not represent the cost of these programs but rather the value of the radio time if it were sold. *Georgia Outdoors*

and *FHA News* have already been dropped by WCON. All of the programs which have been listed as ones which would be dropped if necessary are programs which are received by WCON free of charge. These programs are also available to other stations.

55. Interview and discussion type programs would also be reduced because of a necessary reduction in able personnel. There is no out-of-pocket expense associated with these programs. WCON does not have any interview and discussion programs scheduled on a regular basis. Such programs are done when it is felt that a need exists for them.

56. A further reduction of costs would be accomplished by replacing well-paid station personnel with less costly personnel. WCON proposes to drop one part-time secretary who has a salary of $40 per week. A salesman-announcer who has a salary of $150 per week would also be dropped. A news director-announcer position now being paid $150 per week would be changed to a similar position but paying only $100 per week. A $65 per week part-time announcer would be replaced by a $40 per week part-time announcer.

57. WCON has also planned to shift various programs in an attempt to save money. *Education Today* would be shifted from Saturday at 10:00 a.m. to Monday at 10:00 a.m. The amount alleged to be saved by this is $6.00. This would be accomplished by using less expensive personnel. *A Visit With The Governor* would be shifted from Tuesday at 11:00 a.m. to 2:35 p.m. The amount alleged to be saved by this is $4.25. *Senator Talmadge Reports* would be shifted from Wednesday at 11:10 a.m. to Wednesday at 2:35 p.m. The saving would amount to $4.25. The savings from shifting the programs *A Visit With The Governor* and *Senator Talmadge Reports* would actually come about only from selling the vacated time segments. However, Foster testified that he probably would not be able to sell the time.

58. In order to further lower expenses, WCON has alleged that it will drop its affiliation with the Mutual Network which costs $225.00 per month. If it dropped Mutual, WCON would rely on a wire service. WCON's affiliation with Mutual allows it to receive newcasts on the hour and half-hour; daily public affairs commentary; *The World Today*, a daily 25-minute public affairs-news program; various specials and sports programming. Mutual further delivers to WCON several news programs per day in which it is allowed to sell the spots to local advertisers, and Foster does sell such spots. Mutual also broadcasts the Fulton Lewis program for which WCON can sell local advertisers. WCON derives revenues (approximately $340) from selling these time slots given to it by Mutual which exceed the monthly affiliation expense. WCON also contemplates the dropping of the *Essa Weather Service* for a saving of $25.00 per month.

59. Presently free programs are regularly given to various religious groups. These include *Words To Live By* given to the Habersham County Ministerial Association, time valued at $40.00 per week; *Sunday Morning Worship Service* given to Cornelia Ministerial Association, time valued at $27.50 per week; *Children's Bible Hour*, time valued at $15.00 per week; *Hour of Decision*, time valued at $15.00 per week; *Baptist Hour*, time valued at $15.00 per week; *The Joyful Sound*, time valued at $15.00 per week; *Voice of Salvation*, time valued

at $15.00 per week; *Grand Old Gospel Hour* time valued at $15.00 per week; *Master Control*, time valued at $15.00 per week; *Unshackled*, time valued at $15.00 per week; and *The Word and Music*, time valued at $15.00 per week. These programs would be discontinued. However, these alleged savings can only be realized if the time is sold. In view of Foster's testimony on his ability to sell the time made available by shifting various programs, any projected revenue is highly speculative. Further, any savings would be lessened by the expense incurred by WCON in procuring alternate programs.

60. Approximately forty percent of the public service announcements broadcast by WCON are produced and written by itself. This service would have to be curtailed somewhat. WCON would be required to produce them with high school students.

61. The findings reveal that WCON's 0.5 mv/m contour is totally encompassed by R–J's 0.5 mv/m contour. The area which will be served by R–J, which is not served by WCON, constitutes parts of four separate counties: Georgia Hall County, White County, Stephens County and Franklin County. Robert P. Joseph, a partner in R–J, testified that R–J intends to be active in soliciting advertising from these counties, and contemplates generating approximately 20% of its advertising revenues from this area.

307(b) Considerations—Issue 8

62. Many of the findings relative to this issue are contained in paragraphs 5 through 13 hereinbefore. However, the following additional findings are made respecting the two communities.

Blue Ridge, Ga.

63. Blue Ridge is governed by a mayor and five councilmen. It has a four-man police force and a volunteer fire department. The consolidated school system of Fannin County (including Blue Ridge) consists of two high schools and five elementary schools with a total enrollment of 3,081 in 1960. In addition, there is a vocational high school serving Fannin and Gilmer Counties. There are seven churches in Blue Ridge, representing most of the major religious denominations. The community has nine civic and service organizations, to wit: Kiwanis, Masonic Order, VFW, Junior Chamber of Commerce, Merry Makers, Fannin Frolickers, Blue Ridge Women's Club, Blue Ridge Garden Club and Homemakers Club.

64. Manufacturing employment in Blue Ridge and Fannin County in 1967 amounted to about 600 persons, with Blue Ridge having five businesses employing twenty-five or more persons and eighteen businesses employing less than twenty-five. Communication media in Blue Ridge consist of an FM broadcast station, two weekly newspapers and a CATV system operated by the Blue Ridge Telephone Company.

Clarkesville, Ga.

65. Clarkesville has a police force of two uniformed officers and two patrol cars. The sheriff and three deputies operate throughout Habersham County in two patrol cars and regularly patrol the community.

The fire department consists of two paid firemen, twenty volunteers, three fire engines and one rescue unit. The Habersham County School System operates all public schools in the county (including Clarkesville) and consists of two high schools, nine elementary schools and one combination school (grades 1–12). Three of the above-mentioned elementary schools, two for white children and one for Negroes, and one white high school are located in Clarkesville. Negro high school students attend high school at Cornelia, about eight miles away. The community is also the site of North Georgia Area Technical-Vocational School which offers six-month to two-year courses in 23 building and technical trades. Five denominations hold religious services in Clarkesville, i.e., Presbyterian, Baptist, Methodist, Episcopal and Catholic, while Jewish services are held in Athens.

66. Manufacturing employment in the Clarkesville area in 1964 amounted to 1,735 persons, with Clarkesville having seventeen businesses employing twenty-five or more persons and twenty-seven businesses employing less than twenty-five. Communication media in Clarkesville consist of two weekly newspapers, one of which is published in Cornelia. The community has no radio station, however, WCON and WCON–FM are in Cornelia, about eight miles away.

Click Ascertainment Issue—Issue 9

67. The principals of Click, using their own personal knowledge and using materials supplied by various state and federal agencies, ascertained the racial and ethnic composition of Blue Ridge and surrounding area. They determined that there are 13,182 white, 138 Blacks and 37 "other" citizens of Fannin County. With the assistance of officers of the Chamber of Commerce, Click ascertained who were considered to be the leaders of the political, civic, social, educational and religious life of the community. The mayors of Blue Ridge, Georgia and Copperhill, Tennessee were contacted. A member of the Fannin County Commissioners was contacted. Other officials of state agencies—tax collector, Department of Labor, Health Department, Department of Agriculture, State Highway Patrol—were contacted. Local educators were interviewed. Several local business leaders, including the president of the Chamber of Commerce, were interviewed. In addition, a random sample of citizens drawn from the telephone book were interviewed. A total of fifty-two individuals from all segments of the population were interviewed either in person or by telephone. These persons were given or were read over the telephone a questionnaire which was designed to determine what the interviewee deemed a community problem.

68. The following persons were interviewed by the applicant during May 1971 in its efforts to ascertain the community needs and problems. The first sixteen of said interviews were personal contacts, the balance were by telephone.

Tucker Fry, McCaysville, Cities Services, Chairman Republican Party of County.
Blake Stiles, Blue Ridge, U.S. Postal Service, member of Kiwanis.
Robert K. Ballew, Blue Ridge, attorney, Mayor of Blue Ridge.
A. L. Stepp, Blue Ridge, County Commissioner.
Roland L. Barnes, Jr., Blue Ridge, State Department of Agriculture, manager of State Farmers Market.
Charlie Bonds, Blue Ridge, manager, Levi Strauss & Co.

Corporal Ray Lents, Blue Ridge, State Patrol.
Robert E. McFarland, owner, Feed and Farm store.
Marty Kell, Blue Ridge, P. R. Cities Service.
Charles L. Smih, Blue Ridge, vocational high school supervisor.
Donald German, McCaysville, student.
Windell Davis, Mineralbluff, Fannin County Tax Collector.
Wilson Cobb, Blue Ridge, partner T & H Office Supply Company, member Upper Hiawassee Watershed.
H. L. Halsey, Blue Ridge, Georgia Department of Labor.
Reverend Allen McKee, Epworth, St. Marks Episcopal Church, Tri-State Recreation Commission.
Tom Campbell, McCaysville, local chemical worker union.
R. E. Barclay, Copperhill, Mayor of Copperhill, Cities Service.
Cecil Stewart, Blue Ridge, Fannin County Nursing Home.
Charles Arp, McCaysville, McCaysville Elementary School Principal.
Robert Skelton, McCaysville, owner, McCaysville Pharmacy, vice president Chamber of Commerce.
Mrs. Odell Herrot, Blue Ridge, Health Department of Blue Ridge.
Dallas Chastain, Blue Ridge, Rescue Squad.
Carolyn Donaldson, McCaysville, clerk.
Hazel Collis, Blue Ridge, Blue Ridge City Hall.
Mrs. David Haight, Jr., Blue Ridge, housewife, member Frolickers.
Mrs. Jordan, Blue Ridge, Teacher's Aide, Blue Ridge Kindergarten, member Home Econ. Club.
John Keeman, Copperhill, Tri-State Elect Co-op.
Don Currier, Blue Ridge, Copper Ridge Memorial Gardens.
Charles Kiker, Jr., Blue Ridge, Fannin County Hospital Authority.
Larry Cope, Mineralbluff, Georgia Forestry Commission.
Barbara Davenport, McCaysville, Welfare Recipient.
Mrs. Frank Ensley, Epworth, Welfare Recipient.
Berthena Huskins, McCaysville, Welfare Recipient.
Carman Hyde, Kingstown, Welfare Recipient.
Lonas Patterson, Blue Ridge, Welfare Recipient.
Frank Anderson, Blue Ridge, Welfare Recipient.
Ora Rucker, Blue Ridge, Welfare Recipient.
Mrs. Ruth Jones, Copperhill, housewife.
Bo Rymer, Copperhill, teen-ager.
Linda Rogers, teen-ager.
Jack Roper, Epworth, Social Security Recipient.
Mrs. Ella Franklin, Blue Ridge, housewife, Social Security Recipient.
Mrs. Lake Aubrey, Morgantown, housewife, senior citizen.
Kathy Butt, Blue Ridge, teen-ager.
Margaret Jabaly, Blue Ridge, teen-ager.
Glenda Culberson, Copperhill, teen-ager.
Riley Milam, Blue Ridge, teen-ager.
Jack Myers, Blue Ridge, teacher.
Mrs. W. E. Adams, Blue Ridge, housewife.
Mrs. Frank Falls, Hurst, housewife.
Mrs. J. E. Adams, Blue Ridge, middle income family.
Mrs. Fred Gannes, Jr., Morgantown, housewife, low income family.

69. The needs and problems found by Click as a result of the foregoing survey were as follows:

Air and water pollution control.
Recreational facilities, including a swimming pool.
Extend and improve water and sewage system.
Revision of tax structure.
More industry.
Improve schools.
Consolidate high schools.
Construct a new hospital facility in Fannin County.
Improved health care.
Need more trained personnel in health services.

Drug problem in local schools.
More police and fire protection.
Need more police and fire personnel.
Need more housing, especially low-rent housing.
Road surface improvement.
Need to improve and enforce zoning ordinances.
Improve downtown parking.
Need to stop emigration of area young people.

70. Click proposes the following programs to serve the needs of the area ascertained in its survey:

Click Thinking, 2 minutes, 12:20 p.m., Monday–Friday

Needs to be met: 1. School and educational problems, i.e., need for more vocational training.
2. Recreational needs and problems.
3. Environmental pollution problems.
4. Governmental issues, i.e., because of the unique governmental and physical structure of the area, the emphasis here would be to provide a forum for closer Georgia-Tennessee local and state governmental cooperation.
5. Public safety problems.
6. Housing needs.
7. Street and road improvements.

Students in the Know, 30 minutes, 1:00 p.m., Saturdays

Needs to be met: Pros and cons of school consolidation, advantages of staying in non-urban areas after graduation, pros and cons of more and better school counseling, drug problems in the schools. The format will be a round table or discussion among students; students and educators; and students and local officials.

Forum of the Air, 30 minutes, 3:00 p.m., Saturdays

Needs to be met: Needs for more doctors, dentists and other qualified help in the area, ways to improve fire and police in the area, what the local industry-hunting boards are doing in the way of attracting new industry, what is being done about pollution control, housing needs and the needs for more recreational facilities. The format of this program will be a discussion with community leaders and/or groups dealing with economics, governmental or ecological.

Political Forum, 30 minutes—debates, 5 to 15 minutes—equal time, will be conveniently scheduled during political campaigns.

Tri-State Agricultural Review, 5 minutes, 12:25 p.m., Monday–Saturday

Needs to be met: County agents will give reports on agricultural happenings. Also included in the reports from the agents will be planting times, new and better ways of gardening and other information deemed important.

Farm Market Report, 5 minutes, 12:30 p.m., Monday–Friday

Needs to be met: Reports from wire service on daily broiler market, hog and cattle quotations in the state of Georgia as well as specialized farm reports.

Safety—The Only Way, 15 minutes, 3:05 p.m., Wednesdays

Needs to be met: Discussing need for more personnel, better equipment, public cooperation, latest traffic fatalities, other items deemed important by speaker. The format will be a talk program featuring available representative from either the State Patrol, County Sheriff's Department, City Police or Fire Department.

School Information You Need To Know, 2 minutes, 6:05 a.m., 7:05 a.m., 7:35 a.m., Monday–Friday (during school year)

Needs to be met: Openings or closings of area schools, current road conditions.

Click Community Events (Community Bulletin Board), 5 minutes, 7:10 a.m., 3:40 p.m., Monday–Sunday

Needs to be met: Local church and civic happenings, dates and times of local meetings, such as PTAs, school booster club, etc.

The Informed Citizen, 30 minutes, 10:00 a.m., Saturdays monthly; however, if sufficient interest and response, will be biweekly.

Needs to be met: Pollution control; changes that the local citizenry should be made aware of such as new industry acquired (how many persons will be

employed, what type of industry, etc.), new health or recreational services being offered in the area, and items such as a local bond election, etc.

Sports Scope, 5 minutes, 7:15 a.m., 12:15 p.m., 5:15 p.m., Monday–Saturday

Needs to be met: Wire service coverage of major sporting events. Local coverage of sporting schedules, scores of local games, times of local sporting meets, etc.

R–J Ascertainment Issue—Issue 10

71. The principals of R–J received the information written by the Commission concerning the ascertainment of community needs, and examined the demographics of the area as supplied by the Georgia Institute of Technology and the State Department of Industry and Trade. Mr. and Mrs. Joseph had been in touch with many of the persons surveyed in connection with their prior surveys in Clarkesville, and again consulted these persons to obtain assistance in compiling a list of community leaders. In September 1969 a total of 103 persons were interviewed, including whites, Blacks, women, students, young people, white and blue collar workers, and members of religious and educational institutions. Sixty-one of such interviews were participated in by either Mr. or Mrs. Joseph, and the balance were conducted by two persons hired for the specific purpose. All but one of the interviews were personal contacts.

72. More than half of the interviews were with residents of Clarkesville and its immediate environs, and the survey covered eleven other communities within a radius of sixteen miles from Clarkesville. The following persons were interviewed during the aforesaid survey:

C. Dewey Duncan, Clarkesville, Mayor of Clarkesville.

Duane E. Black, Clarkesville, city councilman for the city of Clarkesville; member, Bethlehem Baptist Church; member, Bobcats Booster Club; secretary, athletic program for youth.

Frank Hemphill, Clarkesville, secretary and past president, Chamber of Commerce; past president, Lions Club; director, Georgia Mountain Planning and Development Commission; member of Methodist Church and active in church school work; manager, Habersham Rural Electric Co-op.

Fred B. Hamilton, Clarkesville, city engineer.

Henry A. Davis, Clarkesville, Negro community leader; member, Farm Bureau; chairman, Board of Stewards, Day Chapel Methodist Church.

Miss Polly Wilkbanks, Clarkesville, city clerk.

Claude H. Marcus, Clarkesville, Chief of Fire Department.

Lonnie M. Gragg, Clarkesville, assistant fire chief.

Ed Carroll, Clarkesville, Rescue Squad captain, Clarkesville Volunteer Fire Department.

Leroy F. Church, Clarksville, Habersham County jailer and deputy.

James Brabson, Clarkesville, clerk, Habersham County Court.

Eulis Williams, Clarkesville, Negro community leader; retired; member, Mount Pleasant Baptist Church.

Hoyt Adair, Clarkesville, tax commissioner for past 17 years for Habersham County.

Sandy C. Gunnels, Clarkesville, county agent for Habersham County.

Grady Brooks, Clarkesville, superintendent of Habersham County schools; member, Kiwanis and Lions Clubs.

Frank J. Hill, Clarkesville, field representative for the Ninth District Office of Economic Opportunity; senior deacon, Clarkesville Masonic Lodge; member, VFW in Cornelia; member, Hill's Crossing Baptist Church near Clarkesville; formerly chief of Clarkesville Fire Department.

Aubrey Moty, III, Habersham, secretary of Junior Chamber of Commerce; member, Kiwanis Club; assistant superintendent, Habersham Mills; director and

vice chairman, Habersham Chapter of American Red Cross; trustee of Piedmont College.
Sanford K. Blackburn, Cornelia, city manager; formerly city commissioner; member of Kiwanis Club and Chamber of Commerce.
William P. McNeely, Cornelia, teacher at Alto Educational and Evaluation Center (state institution for juvenile offenders).
C. D. Cooper, Alto, associate superintendent of Georgia Industrial Institute at Alto.
A. L. Crawford, Cornelia, Mayor of Cornelia.
Tom Martin, Alto, Mayor of Alto.
Clarence Shore, Baldwin, Mayor of Baldwin.
J. R. Rosser, Cornelia, Negro community leader; member of Municipal Planning Board for Cornelia; secretary, Biracial Committee.
Reverend Thomas Gragg, Cornelia, pastor, Flat Creek Missionary Baptist Church, Lake Rabun.
W. W. Coffee, Demorest, former principal of Demorest High School; member, Kiwanis Club; chairman, Board of Deacons, Demorest Baptist Church.
Mrs. Elizabeth Roundtree, Demorest, president, Business and Professional Women's Club and Demorest Women's Club; member, Piedmont Faculty Club; librarian, North Georgia Regional Library in Clarkesville.
Eugene B. Dalton, Baldwin, postmaster.
Dr. John Bridges, Demorest, Professor of Sociology, Piedmont College.
Tom E. Fountain, Hollywood, member of Hollywood Baptist Church.
Randy Reeves, Clarkesville, student at North Habersham High School.
Howard W. Chambers, Clarkesville, principal of North Habersham High School; director of Lions Club and member of First Baptist Church of Toccoa.
J. A. Griggs, Cornelia, attorney.
Randy Holcomb, Clarkesville, college student.
Corbett Hames, Jr., Clarkesville, owner of Clarkesville Feed Supply; Habersham County commissioner; Clarkesville city councilman; member of Methodist Church and Masonic Lodge.
Reverend Richard Canavesi, Clarkesville, assistant pastor of St. Mark's Catholic Church.
Reverend M. McMahon, Clarkesville, pastor of St. Mark's Catholic Church.
Miss Brenda Roper, Clarkesville, student, North Habersham High School.
J. R. Reeves, Clarkesville, merchant, member of Lions Club and Methodist Church.
Miss Angie Dunson, Clarkesville, student, North Habersham High School.
Miss Patricia Cathey, Clarkesville, member of Girl Scouts and Clarkesville Baptist Church.
Calvin Watts, Clarkesville, service station attendant.
Miss Karen Reeves, Clarkesville, member of Girl Scouts and Clarkesville Methodist Church.
Mrs. Aldene Caudell, Turnerville, nurse.
W. H. Scott, Sr., Tallulah Falls, manager of Georgia Power Company in Tallulah Falls; member of Lions Club; director of Tallulah Falls Production, Inc.; zoning chairman; and chairman of Board of Education and Habersham Chapter of American Cancer Society.
Dr. L. G. Harden, Clarkesville, pharmacist and former member of Lions Club.
Miss Gidget Johnson, East Point, Georgia, student.
Sam Irvin, Mt. View Community, grocer and store owner.
Floyd Revels, Clarkesville, Negro, service station attendant and member of Mt. Zion Baptist Church.
Butch Henderson, Tallulah Falls, student.
Franklin J. Glore, Clarkesville, sergeant, Cornelia Police Department; member of Antioch Baptist Church and Georgia Police Association.
Mrs. Flora G. Hicks, Clarkesville, postmaster, member of Chamber of Commerce and Order of Eastern Star.
Mrs. Stella Gragg, Cornelia, housewife.
Miss Lynn Gragg, Cornelia, student.
Mrs. Marcille Cantrell, Cleveland, bookkeeper.
Harvey G. Henry, Tallulah Falls, student.
Mrs. Marion Holbrook, Clarkesville, part-time sales clerk and member of PTA.

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Harold Franklin, Clarkesville, city councilman; owns and operates service station; member, Masonic Lodge.
Mrs. Henry Davis, Clarkesville, housewife, Negro.
M. F. Cowan, Clarkesville, contractor.
G. P. Short, Clarkesville, Mayor pro-tem and present city councilman, employed at Clarkesville Mills.
Ralph Raper, Demorest, owner of record store.
Mrs. Ed Carroll, Clarkesville, homemaker and owner of fabric shop.
Mrs. R. J. Blog, Clarkesville, nurse, member of Catholic Church and PTA.
Reverend Richard Horne, Clarkesville, pastor of Victory Baptist Church.
Mrs. Lillie Mae Kidd, Clarkesville, Negro, member of PTA.
Truie H. Miller, Clarkesville, member of Wylie Church of God, Georgia Sheriff's Association and Georgia Peace Officers Association; captain of Police Department.
Mrs. Marion Stribling, Habersham Mills, homemaker; director of Junior Choir at United Methodist Church.
Miss Carol Holcomb, outside city limits of Clarkesville, secretary.
Miss Linda Fisher, Clarkesville, college student and secretary at Habersham County Courthouse.
Mrs. Jan Anderson, Clarkesville, secretary.
D. P. Vandiver, Robertstown, retired, member of Helping Hand Society, The Oral Roberts Prayer Group and the Holiness Church of God.
Mrs. Tom H. Gilbert, Jr., Clarkesville, legal secretary.
Jack S. Reeves, Clarkesville, merchant and vice president of Reeves Hardware; president of North Habersham Band Boosters; member of Lions Club and United Methodist Church.
Stephen Frankum, Clarkesville, attorney.
Maurice McCurry, Toccoa, manager of men's store in Clarkesville; member of Lions Club.
Mrs. Ross Davis, Demorest, substitute postal clerk; member of Demorest Women's Club.
L. R. Turpen, Jr., Clarkesville, druggist; member of Lions Club.
Douglas Batson, Demorest, grocer; member of Demorest Baptist Church.
Miss Daisy Blackburn, Cornelia, salesclerk.
Chakri Soralum, Demorest, student at Piedmont College.
Claude Batson, Demorest, grocer.
John Bouwsma, Demorest, college student.
Dr. R. L. Thomas, Cornelia, chiropractor; city commissioner; past president of Chamber of Commerce; and member of Lions Club and antique auto club.
William W. Hershaw, Cornelia, correctional officer and member of Church of the Brethern.
Mrs. Ruth Webb, Alto, widow; member of Alto Baptist Church.
Alfred Robinson, Cornelia, drives school bus and manages an oil company station.
Boyd McDuffie, Alto, operates a service station-grocery.
Mrs. John Bridges, Demorest, homemaker.
Allan Russell, Jr., Clarkesville, Negro, student.
Howard Wheeler, Clarkesville, owner of hardware store; member of city council and Clarkesville First Baptist Church.
Reverend Jack B. Ward, Clarkesville, pastor of First Baptist Church.
Miss Connie Fuller, Tallulah Falls, student.
Mrs. V. J. Lovell, Clarkesville, salesclerk.
George C. Jackson, Clarkesville, pharmacist; member of Habersham County Rotary Club and Clarkesville First Baptist Church.
W. H. Ramsey, Clarkesville, grocer.
James H. Marlowe, Clarkesville, director of North Georgia Technical and Vocational School.
Loyd Edward Free, Cornelia, instructional supervisor at Georgia Industrial Institute at Alto.
Mrs. Clinton M. White, Cornelia, secretary at Georgia Industrial Institute at Alto; treasurer of PTA and member of First Baptist Church.
Brother Curtis Kedley, Clarkesville, Brother connected with St. Mark's Catholic Church.

Mr. George De More, Clarkesville, plant superintendent at Scoville.
Hall Woods, Clarkesville, owner of furniture store.
Mrs. L. F. Driver, Hollywood, member of Saque Garden Club, the Grace Episcopal Church in Clarkesville, the VFW Auxiliary and the DAR.

73. The problems and needs found by R–J as a result of the above survey are:

Expanded recreational facilities for all age levels.
Tourism information.
Annexation.
More tax dollars.
More diversified base in the industrial field.
Expanded day-care centers.
Aid for those unable to help themselves.
County-wide fire protection.
County-wide water system.
More diversified industry.
County-wide sewage system.
More religious programs.
More community acknowledgment.
More towns promoted.
More town involvement.
Closer working relationship between students and faculty.
Closer working relationship between schools and communities.
Need to stop young people from leaving communities.
Lack of communication.
Make the public more aware of local issues.

74. R–J proposes the following programs in response to the problems and needs ascertained in its survey:

Youth Speaks, 30 minutes, once per week, Saturday AM
Needs to be met: More recreational facilities, keep young people in the community. The purpose of this program is to unite youth with community, assist in bringing youth's problems and needs to general public.

The Forum, 30 minutes (sometimes longer), once a month on Sunday afternoon; more frequently as the need arises, as determined by station management
Needs to be met: To make the general public more aware, increase communication, assist in solving community problems.

Speak Up, 30 minutes, 9:30–10:00 a.m., Wednesday
Needs to be met: Serve the general public, become a communication facility, make broadcast station meaningful. The purpose of this program is to unite the audience with the radio station and public officials, bring needs to forefront.

Salute, 60–120 seconds duration, 2 times per day, 5 days per week
Needs to be met: To unite communities in coverage area. To make a better spirit of cooperation and competitiveness. The purpose is to recognize achievements of individuals and groups and encourage citizens to improve community.

Football, Basketball, etc., regularly during season, 15 minutes per week
Needs to be met: Bring more cooperation of schools to area. The purpose is to recognize achievements of youth, school, coaches, and communities.

Tour Guide, 120–240 seconds, 3 programs per day, 7 days per week
Needs to be met: Increase industry and publicize local attractions. The purpose is to inform visitors as to features available, increase tourism, give publicity to area.

Morning Devotional, 15 minutes, between 8:30 and 9:30 a.m., Monday through Friday
Needs to be met: Fulfill religious needs of community. The purpose is to afford religious organizations opportunity to have air time without charge.

Your Senator Speaks, 10 minutes per senator, once per week.

Needs to be met: Increase communications and bring news as it happens. The purpose is to keep the general public more aware and informed, and more closely in contact with their elected officials.

4–H Time, 5 minutes per week, afternoon midweek

Needs to be met: More youth activities for youth (organized), community involvement, interest to agriculturally-oriented listeners. The purpose of this program is to bring youth activities to forefront, promote worthwhile organization that encourages youth leadership in community.

ULTIMATE FINDINGS AND CONCLUSIONS

1. The designation order specified a financial issue, a forgery and misrepresentation issue, and a *Suburban* or ascertainment issue against Click. The same order specified a financial issue, a *Carroll* issue, and a *Suburban* issue against R–J. In the event both parties are found to possess the necessary requisite qualifications to be a licensee, the Commission ordered that the choice between them be made on the basis of 307(b) considerations.

Click Financial Issue—Issue 5

2. The Commission, when it designated Click's application, found that Click required $42,518 to construct and operate the station. Since that time $7,500 has been required for professional fees and various miscellaneous expenses and $4,700 for interest on loan charges. Thus, to be financially qualified, Click requires $54,718 in current assets.

3. To meet this requirement, Click has shown $4,886 in paid-in-capital and a loan commitment for $55,000. Thus, Click has available $59,886 to operate and construct the proposed facility. This gives Click a cushion of approximately $5,000. On this basis, it is concluded that Click is financially qualified to be a licensee of this Commission.

Forgery and Misrepresentation Issues—Issues 2, 3, and 4

4. The question to be resolved is simply whether or not Raymond Akins did, in fact, sign an advertising commitment for Click. Raymond Akins testified that he did not sign such a commitment. He further alleged that he had never been handed the form to sign and never saw the form until February 1967, approximately six months after he was supposed to have signed it. He testified not that he did not remember whether he did or not, but that he did not. In an attempt to buttress his statement he pointed out that the form had printed on it "Chastain-Pack Funeral Home" and that he always wrote "Chastain-Pack Funeral Homes, Inc." He *always* put the "s" on "Home" and added the "Inc." This, however, was disproved when Bureau counsel produced a February 2, 1966 advertising commitment signed by Akins on which he wrote "Chastain-Pack Funeral Homes."

5. Thomas testified that he met Akins at his business address and gave him the advertising commitment to fill out. Thomas further testified that Akins filled out the entire form in his own handwriting and printing.

6. Faced with a conflict of testimony, the Bureau called as a witness Gordon R. Stangohr, a nationally known and highly respected expert on questioned documents. Mr. Stangohr concluded, after studying known specimens of Akins' writing and printing, that Raymond Akins had, indeed, filled out the entire Click advertising commitment.

7. Click produced as a witness John H. Orr, another expert on questioned documents. Mr. Orr's testimony agreed with Mr. Stangohr's. No questioned documents' expert was called to testify by Copperhill, although attempts were made to do so.

8. On the basis of the above, it must be concluded that Raymond Akins' testimony is incorrect and Thomas' testimony is true. It is, therefore, concluded that the writing and printing on the advertising commitment filed by Click with its application was, in fact, filled out entirely by Raymond Akins.

Click Ascertainment Issue—Issue 9

9. The findings disclose that Click determined the composition of the community utilizing data published by various state and federal agencies. It determined the racial and ethnic composition of its area. Based on this information and with the assistance of personnel of the Chamber of Commerce, a list of community leaders was created. These individuals were then interviewed by the applicant. The individuals were representatives of business, education, women, young people, labor unions and religious organizations. Representatives of local government were interviewed. A random sample, drawn from the telephone book, of the general population was interviewed by telephone. A total of fifty-two persons were interviewed either in person or by telephone.

10. The results of these interviews were analyzed, and a list of community problems and needs was compiled. To meet these needs and problems, Click designed eleven programs. Click described the programs by title, proposed schedule, frequency of broadcast and duration, and provided a brief description of each. The needs to be met were also described for each program. Therefore, it is concluded that Click has adequately ascertained the community needs and problems, listed the needs and provided a list of programs to meet those needs.

R–J Financial Issue—Issue 6

11. The Commission in designating the R–J application found that R–J required $44,601 to cover construction costs and the costs of the first year's operation. Since that event R–J has procured a bank loan of $40,000. This loan will require R–J to pay $3,400 in loan charges. Thus, to be financially qualified, R–J must show assets exceeding current liabilities in the amount of $48,001.

12. R–J has the following current assets and current liabilities:

Current Assets

Checking Account	$328.43
Savings Accounts	33,123.50
Stocks	2,736.88
Total	36,188.81

Current Liabilities

Liabilities of WDYX–WGCO	$15,678.00
Note Payable	4,106.00
Unpaid Expenses	5,725.00
Personal Accounts Payable	600.00
Total	26,109.00

13. R–J has $10,079.81 in net current assets it is able to expend in the construction and operation of the proposed facility. It also has a $40,000 bank loan. R–J has shown the availability of $50,079.87. On this basis, it is concluded that R–J is financially qualified to be a licensee of this Commission.

Carroll Issue—Issue 7

14. In order for Habersham, licensee of WCON, to prevail on the *Carroll* issue, it must show not just economic injury resulting from the creation of a new competitor but that the alleged injury will be of such severity as to impair WCON's service to the public. Further, it must show that the proposed station will be unable to fill the resulting gap in service coverage. *KSIG Broadcasting Company, Inc.* v. *FCC*, 21 RR 2d 2144, 2148 (1971).

15. Habersham County, in which both Clarkesville and Cornelia are located, has experienced a continuous population growth. It has grown from a population of 12,748 in 1930 to 20,691 in 1970. In the last twenty years its population has increased by approximately 25%. With this continuous increase in population there has also been a steady increase in the retail sales. In 1967 the retail sales totaled $30,374,000. In 1968 the figure had been increased by approximately 10% to $34,683,000. In 1969 it again increased approximately 10% to $38,218,000.

16. The above figures reflect anything but a stagnant economic area. The population has continuously increased, as has the amount of money spent by that population. These increases in retail sales and population usually bring with it an increase in advertising revenue for the advertising media in the area. This is shown in the steady increase in the total advertising revenue received by WCON. In 1966 its total revenues were $85,981.00. In 1967 that figure had increased approximately 15% to $96,967.00. In 1968 WCON's total revenues had increased approximately another 10% to $107,190.00. In 1969 the figure remained almost constant and was $107,723.00. The great majority of this money came from local advertising. In 1969 for every dollar spent by a regional or national advertiser on WCON, $20 were spent by a local advertiser.

17. A review of WCON's FCC Forms 324 for the years 1967, 1968 and 1969 show the following:

	1967	1968	1969
Broadcast Revenues	$96,967.00	$107,190.00	$107,723.00
Broadcast Expenses	79,020.00	81,429.00	103,679.00
Payment to Principals Included in Broadcast Expenses	11,745.00	24,445.00	29,959.00
Broadcast Income After Payment to Principals	17,947.00	25,761.00	4,044.00
Broadcast Income Before Payment to Principals	29,692.00	50,206.00	34,003.00
Depreciation	8,606.86	10,938.50	12,373.00

18. As can be readily seen from the above, not only have the revenues increased but also the profits. In 1967 the station had a net income of $29,692.00 and depreciation of $8,606.86. It returned $11,745.00 to its principals plus the use of two company cars. In 1968 the net profit was $50,206.00, almost double that of 1967, and also depreciation of $10,938.50. WCON's principals received $24,445.00 that year, or almost 50% of the net profits. In 1969 the station had a net profit of $34,003.00. WCON's principals received $29,959.00 that year or approximately 88% of the net profits. As also can be readily seen, WCON had retained earnings of $47,752.00 for that three-year period, which also had depreciation of $31,918.36.

19. The financial well being of WCON is also reflected in its balance sheet. In 1967 it had a paid-in-surplus figure on its balance sheet of $105,835.42, in 1968 such figure was $108,848.90 and in 1969 it was $102,826.39. At no time was any deficit figure shown. Further, during this same period WCON has expended $28,480.57 for radio equipment and automobiles.

20. From all of the above, no conclusion is possible except that the station has been a profitable operation. Further, it is situated in an area which has experienced continuous growth for over forty years. This would seem to also make its future appear bright. Despite this bright financial picture, past, present and future, Habersham alleges that it will have serious problems if a new station comes into the market.

21. Habersham alleges that the total potential advertising revenue in the area is only 10% above what WCON currently receives. This figure was determined by Foster's own personal belief based on his experiences. No weight can be given to this estimate. No serious attempt was made to accurately determine the area's potential advertising revenue in the present and the future. The steady increase in the area's population and retail sales would seem to argue for the view that the advertising revenue in the area will also experience a steady increase. Further, there has been no showing that a continuous concerted effort is being made by WCON to increase its advertising revenue. Foster admitted that the businesses who presently do not advertise on the station are contacted by salesmen whenever it is thought that there is a possibility that they might now wish to advertise and not on a regular basis.

22. The above clearly shows a financially successful past and augurs well for the future financial success of Habersham Broadcasting Company. This, however, becomes even more significant when it is realized what competition the station had to compete with to become this successful. When asked to list its present competitors for advertising revenue, WCON listed 7 AM stations, 2 FM stations, 6 newspapers, and 2 billboard companies. It would thus appear that WCON's market is quite competitive but despite this, or perhaps because of it, the station has continued to grow.

23. Habersham alleges that the introduction of a new radio facility in the market will greatly reduce its revenues, resulting in a reduction in its service to the public. In its Exhibit 1, Habersham states which advertisers, presently advertising on WCON, would switch a part or all of their advertising budget to the new broadcasting facility.

These figures show a revenue reduction of slightly under $3,000 per month for the station, or approximately $36,000 a year. This list of advertisers who would shift part or all of their advertising budgets to the new station and the amount of the shift was based only on Foster's personal belief. Foster only spoke to one of the advertisers on the list as to what he would do if a new broadcast service came to the area. Moreover, Foster's belief does not take into consideration the real possibility that advertisers would increase their budget in order to obtain adequate coverage on both stations. Thus, no real weight can be given to this figure. It must be concluded that the amount of any loss in advertising revenues suffered by Habersham due to the introduction of a new broadcast service in the area is not known.

24. WCON has come forward with its plan as to what it would be required to do in order to survive despite its projected loss of revenues. Various programs would have to be dropped from the schedule. WCON, in its exhibits, listed four programs that would be dropped: *Georgia Outdoors*, *Georgia, Agriculture and Consumer Report*, *Home Ec Tips* and *FHA News*. It was alleged that savings that would result from these actions would amount to $35.25 per week. However, two of these programs had already been dropped between the time the exhibits had been prepared and Foster's oral testimony. Thus, the savings would now amount only to $19.25 per week. This saving is, however, illusionary. All of the above listed programs are received free and if there is an intention to replace them with other programs the cost incurred by WCON could actually increase. Further, the monetary saving attributed to the dropping of the programs is derived by computing the value of the time. However, there has been no showing that this "new" time could be sold. In fact, Foster candidly admitted to holding a pessimistic view of the station's ability to sell more radio time. Finally it must be noted that all of the above programs are available to any stations that wish them. No showing has been made that even if WCON is forced to discontinue them that they would not be broadcast by other radio stations. Thus, no loss of service to the public has been shown.

25. WCON also stated that it would be forced to reduce its interview and discussion programs to save money. The station, however, does not have any such programs regularly scheduled. Such programs are broadcast when a need is felt to exist. Habersham presented no data to show how many of these programs had been broadcast in the last few years or what the projected savings would be. Thus, no loss of service to the public nor saving to WCON has been proven.

26. Habersham also alleges it will be required to replace well-paid personnel with less costly personnel. While this may be required, the licensee of WCON has failed to show how this would affect its service to the public.

27. Habersham also plans to shift various programs on WCON to other time periods so as to save money. The savings that would result would amount to $14.50 per week. These savings are, however, potential savings inasmuch as they result only if the vacated time segments can be sold. Foster testified that he probably would be unable to do

that. Further, the shifting of programs from one time to another does not deprive the public of any service.

28. Habersham stated that the station's affiliation with the Mutual Network will be dropped if necessary, but such action is somewhat bewildering. The Mutual Network supplies WCON with news programs, public affairs programs, special programs, sports and the Fulton Lewis program. The total cost of the affiliation is $225 per month. Mutual allows WCON to sell time on some of these programs, and the monthly revenue derived from selling these spots exceeds the monthly affiliation fee. Thus, it would appear that the dropping of the network might result in a loss of income to WCON. In order to derive any savings from this action WCON would be required to replace all these programs for a total cost of less than $225.00 per month and still be able to sell the same amount of advertising time. No such showing has been made. Further, it is entirely possible that the Mutual Network would be sought out by another station in the area with no resulting loss of service to the public.

29. WCON has listed various programs that it broadcasts free of charge, however, these programs also do not cost the licensee anything. The saving that would result from the discontinuance of the programs is alleged to be $202.50 per week. This saving would result only if other free programs are put on the air to replace them and the resulting advertising time is sold. Foster's own candid testimony on his ability to sell time made available by shifting various programs casts great doubt on his ability to effectuate this saving. Further, there has been no showing that any or all of these programs would not reappear on another local station.

30. WCON alleges that out of an average of 250 public service announcements a week, it produces and writes approximately 40% of them. It states this service would have to be curtailed somewhat because the station would be required to produce them with high school students. While the quality may or may not suffer, WCON has not alleged that the total amount of public service announcements it broadcasts would decrease to any great extent.

31. In evaluating the above information it must also be remembered that R–J's proposed station encompasses population within its 0.5 mv/m contour which is not encompassed by WCON's 0.5 mv/m contour. R–J proposes to generate 20% of revenues from such "outside" population.

32. The burden of proving that a new station's entry into a market will cause such substantial economic injury to the existing station as to result in impairing the existing station's service to the public is a difficult burden. To prevail under the *Carroll* issue not only does that burden have to be met but also the burden of showing that the proposed station will be unable to fill the resulting gap in service. The Court of Appeals in *Carroll Broadcasting Co.* v. *FCC*, 103 U.S. App. D.C. 346 at 350, 258 F.2d 440 at 444, held:

> . . . the public is not concerned with whether it gets service from A or from B or from both combined. The public interest is not disturbed if A is destroyed by B, so long as B renders the required service. The public interest is affected when service is affected.

33. Habersham has failed to meet either of these burdens. From the record facts no conclusions, other than the fact that WCON is presently a profitable station, and will continue to be, can be reached. Habersham has further failed to show, assuming *arguendo* that the above conclusions are wrong, that the proposed station cannot fill the resulting service gap. Thus it must be concluded that there are adequate revenues available to support R–J's proposed station without a net loss or degradation of broadcast service to such area.

R–J Ascertainment Issue—Issue 10

34. The findings hereinbefore set forth show that R–J determined the composition of the proposed service area by reviewing the information written by the Commission and by examining the data supplied by the Georgia Institute of Technology and the State Department of Industry and Trade. Based on this information and by consulting persons previously surveyed in Clarkesville, R–J compiled a list of community leaders. These leaders were consulted in person as to the community needs and problems. A total of 102 persons were interviewed personally, and one individual by telephone, in R–J's ascertainment efforts. In addition to Clarkesville and vicinity, persons were interviewed in eleven nearby communities. The interviewees included whites, Blacks, students, women, young and old persons, white and blue collar workers, and members of religious and educational organizations.

35. The problems and needs ascertained from the foregoing interviews were compiled and analyzed, and a program schedule to meet such needs was proposed. R–J listed the programs by title, proposed schedule, duration, frequency of broadcast, and provided a brief description of each such program and the needs and problems each would meet. On the basis of the foregoing, it is concluded that R–J has adequately ascertained the needs and problems of the proposed service area, has listed such needs, and has provided programs to meet those needs.

307(b) Considerations—Issue 8

36. In the foregoing paragraphs, it has been concluded that both applicants possess the requisite qualifications to be licensees of this Commission. Therefore, the choice between them must be made on the basis of the 307(b) issue.

37. Click Broadcasting Company and R–J Co., two mutually exclusive applicants, each proposes operation of a new Class II standard broadcast station on 1500 kHz. The former would operate at Blue Ridge, Georgia, with 500 watts power, daytime only, and the latter at Clarkesville, Georgia, with 5,000 watts power, daytime only, reducing power to 500 watts during critical hours.

38. Blue Ridge, Georgia, with a population of 1,602, is the seat of Fannin County (population 13,357). The community lies in the extreme northern part of Georgia eight miles south of the Tennessee and North Carolina boundaries. FM Station WPPL is the only broadcast outlet. Click Broadcasting Company would serve 20,623 persons in

615 square miles. No urban areas would be served. A fourth AM service would be provided to 1,179 persons in 56 square miles and a fourth aural service to 879 persons in 47 square miles. Five AM stations serve Blue Ridge daytime.

39. Clarkesville, Georgia, with a population of 1,294, is the seat of Habersham County (population 20,691). The community lies 50 miles east southeast of Blue Ridge and 32 miles south of the North Carolina boundary. Clarkesville has no broadcast outlet. R–J Co. would serve 61,284 persons in 1,697 square miles during midday hours and 25,246 persons in 514 square miles during critical hours. From four to eight AM and from four to thirteen aural services are available during midday hours and at least five AM services are available during critical hours. Six AM and four FM stations serve Clarkesville daytime. Five AM and four FM stations serve the community of Cornelia, Georgia (population 3,014), the only urban area proposed to be served. It is located about eight miles south of Clarkesville in Habersham County.

40. As noted above, a fourth AM and aural service would be provided to 1,179 and 879 persons, respectively, by Click Broadcasting Company, and the community of Blue Ridge with a population of 1,602 would be provided with a first AM outlet and a second aural outlet. No persons would receive a fourth AM or aural service from R–J Co., but a first aural broadcast outlet would be provided to Clarkesville with a population of 1,294. The slight difference in sparsely served areas is not considered sufficient to overcome the fact that Blue Ridge presently has one FM outlet whereas Clarkesville has no broadcast outlet whatsoever. It is concluded, therefore, that under Section 307(b) of the Communications Act, there is a greater need for a first aural broadcast outlet at Clarkesville than a second and competitive aural broadcast outlet at Blue Ridge.

41. Accordingly, upon the basis of the entire record in this proceeding, it is concluded that the public interest, convenience and necessity will be served by a grant of the application of R–J Co., and a denial of the application of Click Broadcasting Company.

Therefore, IT IS ORDERED that unless an appeal to the Commission is taken by any of the parties or the Commission reviews this Initial Decision on its own motion in accordance with the provisions of Section 1.276 of the Rules, the application of Robert P. Joseph and Jacqueline A. Joseph, d/b as R–J Co., for a construction permit for a new standard radio broadcast station to operate on the frequency of 1500 kHz, with power of 5,000 watts and reduction to 500 watts during critical hours, daytime only, at Clarkesville, Georgia, IS GRANTED, and the application of Robert E. Thomas and Ferris A. Maloof, d/b as Click Broadcasting Company, for a facility on the same frequency at Blue Ridge, Georgia, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
MILLARD F. FRENCH, *Hearing Examiner.*

F.C.C. 73-1035

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF SECTION 73.202, TABLE OF ASSIGNMENTS, FM BROADCAST STATIONS (CAPE GIRARDEAU, DEXTER, PORTAGEVILLE, CARUTHERSVILLE, AND MALDEN, MO.).	Docket No. 19842 RM-2005, RM-2117

NOTICE OF PROPOSED RULE MAKING

(Adopted October 3, 1973; Released October 10, 1973)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT.

1. The Commission has before it petitions for rule making filed by Communications Systems, Inc. ("CCI") and by Tri-County Broadcasting Co. ("T-CB"). The CCI petition has been opposed by New Madrid County Broadcasting Company.

2. CCI operates a station (KFMP) on one of the two FM channels assigned to Cape Girardeau, Missouri. Because its site was on the east side of the Mississippi River in Zone I, KFMP was considered to be a Class B station. As such, its facilities were limited to 50 kW at 500 feet AAT. If CCI operated from a site on the Missouri side of the river in Zone II, KFMP would be considered a Class C station, able to operate with 100 kW and a height of 2000 feet. This is precisely what CCI has in mind, and under ordinary circumstances, no rule making would be involved. Waiver of the short-spacing was granted and the station now operates from a site in Zone II with limited facilities. This authority was granted to permit operation during the pendency of the rule making proceeding. However, in reliance on CCI's status as a Class B station, other assignments have been made. Thus, CCI's proposed solution is to change the channel of one operating station, to substitute a channel for another one now vacant and to delete a third channel. The operating station which would have to change channel supports the change as representing a more efficient arrangement of the assignments involved.[1] The T-CB proposal, to assign a first channel at Malden, Missouri, does not conflict with the CCI proposal, but it does conflict with other possible approaches to resolving the issues raised by the CCI proposal. Because they thus coincide, we will join these petitions for action in this proceeding.

3. In the chart which is set forth in the Appendix, it can be seen that there are five choices before us. The first is denial of both petitions

[1] It is not clear from the agreement whether the station is to get payment in excess of its expenses in making the change. If so, the amount is clearly unacceptable and in conflict with our decisions in this regard. However, it may be that the items in question are just property to be substituted for a cash payment for an expense in making the change or are otherwise to be donated in a manner unconnected with reimbursement. The parties are requested to clarify this point.

(i.e. preservation of the status quo); the second is denial of CCI's petition but grant of T–CB's (i.e., the status quo plus the addition of a Malden channel); the third is following CCI's approach (which would include a channel for Malden but removal of Portageville's vacant channel); and the fourth and fifth are two other possibilities derived from Commission staff study of the pattern of assignments. In one, Caruthersville would lose its vacant channel; in the other, Malden would be unable to obtain a channel. If the CCI proposal is to be favored, the inevitable result is to leave one of the three other affected communities without a channel. The fourth channel that is assigned to Dexter, is already occupied; none of the choices would do more than change this channel. Assuming that CCI has made a persuasive case of the need to accommodate its change to a Class C operation, we would then have to decide which community had the lowest priority. Conversely, if its case is less than persuasive, the other communities would all be able to have channels.

4. Although we believe it appropriate to seek comments on the various possibilities for resolving the issues which have been raised, this should not be taken as an expression of any conclusion in this regard. The record as it now stands is incomplete and this notice is intended to provide an opportunity to get the facts to enable us to weigh the comparative merits of the approaches. In the following discussion, we are simply adverting to certain of the distinctions to be drawn and the consequences to be anticipated from the various courses of action open to us and are not stating that these are necessarily the points upon which our decision will rest. On behalf of its proposal, CCI points to the significant extension of coverage that Class C facilities would make possible.[2] Since this gain could not be achieved without some cost, we need to know how important this additional coverage would be. Would a first or second service be provided by CCI's improved facilities? Or would it merely supplement ample existing services? Are there other reasons sufficient to outweigh the loss of an otherwise possible assignment in one of the other communities?

5. As the Appendix shows, the three communities that might be without a local channel can be differentiated in several ways. The populations differ notably, ranging from Portageville (the smallest) at 3,117 persons to Caruthersville (the largest) at 7,350. Though Portageville is the smallest, an applicant has already stepped forward to put the channel to use. Malden, the middle-sized community, has a petitioner who presumably could be expected to file at some time soon if its petition were granted. Caruthersville's channel was put in several years ago pursuant to the request of the opponent of CCI's petition, but it has yet to file an application. If timing were the crucial factor, Malden would be in the weakest position; if size, then Portageville would be; if sleeping on an opportunity counted most, Caruthersville

[2] Since CCI makes much of the advantages of a Class C operation, we should note that our willingness to consider the matter is in part premised on use of full-fledged Class C facilities. Tentatively, we would require a 100 kW operation at a substantial height above average terrain. In fact, CCI should indicate whether it could utilize the tower of Cape Girardeau Television Station KTVS–TV and in any event state its willingness to proceed on the understanding here expressed. Its engineering showing should, of course, be based on such facilities.

would be. The point of this discussion is merely to show that a plausible basis could be found for favoring (or disfavoring) any of the communities. The data now before us is totally inadequate to permit the making of any final judgment. At present we only know the population of the towns, that of their counties, their increase or decrease between censuses and the AM stations operating in each. More is clearly needed.

6. Accordingly, each of the parties wishing to comment [3] should address the questions before us so that we will have a basis for determining which course to follow. One choice is between Cape Girardeau and the others, but if Cape Girardeau prevails there is the sub-choice to be made between affected communities. Malden's need for the assignment also has to be addressed, since even if CCI's petition were denied, it would still be possible to make the requested assignment at Malden.

7. *Cutoff-procedure.* As in other recent FM rule making proceedings, the following procedures will govern:

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments.

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given, as long as they are filed before the date for filing initial comments herein. If filed later than that they will not be considered in connection with the decision herein.

8. In view of the foregoing and pursuant to authority found in Sections 4(i), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, IT IS PROPOSED TO AMEND Section 73.202(b) of the Commission's Rules and Regulations, the FM Table of Assignments, by one of the alternatives set out in the attached Appendix.

9. Pursuant to applicable procedures set out in Section 1.415 of the Commission's Rules and Regulations, interested parties may file comments on or before November 16, 1973, and reply comments on or before November 26, 1973. All submissions by parties to this proceeding or persons acting on behalf of such parties, must be made in written comments, reply comments, or other appropriate pleadings.

10. In accordance with the provisions of Section 1.419 of the Rules and Regulations, an original and 14 copies of all comments, reply comments, pleadings, briefs, and other documents shall be furnished the Commission. These will be available for public inspection during regular business hours in the Commission's Public Reference Room at its Headquarters, 1919 M Street, N.W., Washington, D.C.

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

[3] The existing station in Dexter would be left on its present channel or be changed as it has already agreed to do. It is under no obligation to file to protect its rights, but it is welcome to file should it wish to do so.

APPENDIX

City	County	Population		AM facilities	Alternatives				
		City	County		No. 1 [present FM assignments]	No. 2	No. 3	No. 4	No. 5
Cape Girardeau	Cape Girardeau	31,282	49,350	3 (2 daytime)	*246C, 275B*	246C, 275B	246C, 275C	246C, 275C	246C, 275C
Caruthersville	Pemiscot	7,350	26,373	1 (daytime)	276A	276A	288A		288A
Dexter	Stoddard	6,024	25,771	1 (daytime)	*272A* [1]	*272A*	292A	292A	292A
Portageville	New Madrid	3,117	23,420	1 (daytime)	[292A] [2]	[292A]		288A	224A
Malden	Dunklin	5,374	33,742	1 (daytime)		224A	224A	224A	

[1] Italics indicates channel is presently in use.
[2] Brackets indicate that an application is pending for use of the channel.

EFFECTS OF THE VARIOUS ALTERNATIVES

No. 1—Denial of both petitions, retention of the status quo.
No. 2—Denial of CCI petition, grant of T–CB petition.
No. 3—Grant of CCI and T–CB petitions, Portageville loses its channel.
No. 4—Grant of CCI and T–CB petitions, Caruthersville loses its channel.
No. 5—Grant of CCI petition, denial of TC–B petition.

F.C.C. 73–1019

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Cease and Desist Order Directed Against	
GULF COAST TELECEPTION, INC., PORT CHARLOTTE, FLA.	Docket No. 19834 CSC–29 (FL053)
GULF COAST TELECEPTION, INC., PUNTA GORDA, FLA.	Docket No. 19835 CSC–31 (FL055)
GULF COAST TELECEPTION, INC., NORTH PORT CHARLOTTE, FLA.	CSC–30 (FL052)

ORDER TO SHOW CAUSE

(Adopted October 3, 1973; Released October 11, 1973)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT.

1. On October 24, 1972, Broadcasting-Telecasting Services, Inc., licensee of Station WBBH–TV, Fort Myers, Florida, filed petition for order to show cause directed against Gulf Coast Teleception, Inc., operator of cable television systems at Port Charlotte, North Port Charlotte, and Punta Gorda, Florida, for alleged violation of Section 76.91 of the Commission's Rules.[1] On November 24, 1972, Gulf Coast filed an "Objection to Petition for Order to Show Cause" for each of these three systems. On December 22, 1972, Broadcasting filed a "Reply to Objection to Petition for Order to Show Cause," agreeing to a dismissal of its petition as to the North Port Charlotte System.

2. Gulf Coast operates twelve channel cable television systems in the above-capitioned communities, and carries the following television signals on all three systems:

WBBH–TV (NBC), Fort Myers, Florida
WINK–TV (CBS), Fort Myers, Florida
WLCY–TV (ABC), Largo, Florida
WXLT–TV (ABC), Sarasota, Florida

[1] Section 76.91 provides in relevant parts:
(a) Any cable system operating in a community, in whole or in part, within the Grade B contour of any television broadcast station, or within the community of a 100-watt or higher power television translator station, and that carries the signal of such station shall, on request of the station licensee or permittee, maintain the station's exclusivity as an outlet for network programming against lower priority duplicating signals, but not against signals of equal priority, in the manner and to the extent specified in §§ 76.93 and 76.95.
(b) For purposes of this section, the order of priority of television signals carried by a cable television system is as follows:
(1) First, all television broadcast stations within whose principal community contours the community of the system is located, in whole or in part;
(2) Second, all television broadcast stations within whose Grade A contours the community of the system is located, in whole or in part;
(3) Third, all television broadcast stations within whose Grade B contours the community of the system is located, in whole or in part.

WEDU (Educ.), Tampa, Florida
WFLA–TV (NBC), Tampa, Florida
WTOG (IND), St. Petersburg, Florida
WTVT (CBS), Tampa, Florida
WUSF–TV (Educ.), Tampa, Florida

Port Charlotte and Punta Gorda, Florida, are within the predicted Grade A contour of WBBH–TV, and within the predicted Grade B contour—but beyond the predicted Grade A contour—of WFLA–TV, Tampa, Florida, another NBC affiliate.

3. Gulf Coast admits that it does not always afford WBBH–TV's network programming simultaneous exclusivity against WFLA–TV's network programming, even though Broadcasting has requested exclusivity protection for WBBH–TV's signal pursuant to Section 76.91 of the Rules.[2] Gulf Coast argues that it need not afford WBBH–TV exclusivity protection because (a) the notification provided by WBBH–TV pursuant to Section 76.93(a) of the rules is inadequate; (b) WBBH–TV's signal is sometimes of inferior quality; (c) WBBH–TV abruptly ceases to broadcast for indefinite periods; and (d) WBBH–TV may not claim exclusivity protection for the "Today Show" because it often begins operations after 7:00 A.M.

4. Neither arguments (a) nor (b) are sufficiently supported to be of decisional weight; however, it is clear that arguments (c) and (d) if adequately established could serve largely to excuse Gulf Coast's admitted violations of the program exclusivity requirements. Gulf Coast fails, however, to provide sufficient documentation in support of its arguments to allow us to reach an informed decision.[3] In these circumstances, we believe it appropriate to issue the requested Order to Show Cause.

In view of the foregoing, IT IS ORDERED, That pursuant to Sections 312(b) and (c) and 409(a) of the Communications Act of 1934, as amended, 47 U.S.C. 312(b) and (c), and 409(a), Gulf Coast Teleception, Inc., IS DIRECTED TO SHOW CAUSE why it should not be ordered to cease and desist from further violation of Section 76.91 of the Commission's Rules and Regulations on its cable television systems at Port Charlotte and Punta Gorda, Florida.

IT IS FURTHER ORDERED, That Gulf Coast Teleception, Inc., IS DIRECTED to appear and give evidence with respect to the matters described above at a hearing to be held at Washington, D.C., at a time and place before an Administrative Law Judge to be specified by subsequent Order, unless the hearing is waived, in which event a written statement may be submitted.

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[2] In *Gulf Coast Teleception, Inc.*, FCC 70–16, 20 FCC 2d 1002 (1970), we denied Gulf Coast a waiver of the program exclusivity rules on its systems in Port Charlotte and Punta Gorda, Florida, in relation to WBBH–TV and WINK–TV.

[3] Section 76.7(a)(1) provides in relevant part:

"It [the petition] shall state fully and precisely all pertinent facts and considerations relied on to demonstrate the need for the relief requested and to support a determination that a grant of such relief would serve the public interest."

104–013—73——5

IT IS FURTHER ORDERED, That Broadcasting-Telecasting Services, Inc., and Chief Cable Television Bureau ARE MADE parties to this proceeding.

IT IS FURTHER ORDERED, That the Secretary of the Commission shall send copies of this Order by Certified Mail to Gulf Coast Teleception, Inc.

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

F.C.C. 73R-349

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of	
WILLIAM K. HOISINGTON AND ALLEN U. HOLLIS, D.B.A. H & H BROADCASTING CO., STEAMBOAT SPRINGS, COLO.	Docket No. 19750 File No. BPH-7723
COLORADO WEST BROADCASTING, INC., STEAMBOAT SPRINGS, COLO.	Docket No. 19751 File No. BPH-7807
BIG COUNTRY RADIO, INC., STEAMBOAT SPRINGS, COLO.	Docket No. 19752 File No. BPH-7811
For Construction Permits	

MEMORANDUM OPINION AND ORDER

(Adopted October 5, 1973; Released October 10, 1973)

BY THE REVIEW BOARD.

1. This proceeding involves the mutally exclusive applications of H & H Broadcasting Company, Colorado West Broadcasting, Inc., and Big Country Radio, Inc. (Big Country) for authorization to construct a new FM broadcast station at Steamboat Springs, Colorado. The applications were designated for hearing by Commission Order, 38 FR 14881, published June 6, 1973. Now before the Review Board is a request for enlargement of issues, filed June 20, 1973, by the Broadcast Bureau, seeking the addition of a Rule 1.65 issue against Big Country.[1]

2. The Bureau's request is based on Big Country's alleged failure to timely report other applications pending before the Commission in which John H. Gayer, president and 20% stockholder of Big Country, has ownership interests.[2] In particular, the Bureau asserts that the applicant delayed approximately nine months in reporting the filing of an application for an FM construction permit in Vail, Colorado; over five months in reporting the filing, grant, and consummation of a transfer application for Station KAAT, Denver, Colorado; and nine months in reporting the grant and consummation of a transfer affecting Station KFNF, Shenandoah, Iowa.[3] According to the Bureau, the failure to timely disclose the filing of the Vail application is especially

[1] Also before the Board are: (a) opposition, filed July 11, 1973, by Big Country; (b) Broadcast Bureau's reply, filed July 23, 1973; and (c) affidavit of John H. Gayer, filed August 6, 1973, by Big Country.

[2] The Bureau points to the requirement of Section II, Question 19(b) of Big Country's application requesting information as to other applications pending before the Commission in which parties to Big Country's application might have an interest.

[3] Big Country voluntarily reported these transactions in an amendment filed June 4, 1973, and granted by Order of the Administrative Law Judge (FCC 73M-771, released June 29, 1973).

significant because of prohibited overlap of the 1 mv/m contours of the Vail and Big Country proposals. However, the Bureau offers no engineering data to support this contention.

3. In opposition, Big Country first contends that its failure to promptly amend its application was inadvertent and unintentional. As evidence thereof, Big Country alleges that the transactions involved were known by or promptly reported to the Commission,[4] and further points out that it voluntarily amended its application. Big Country also submits an affidavit of John Gayer,[5] in which he states that the failure to timely report these transactions was "completely inadvertent" and due to his preoccupation with the construction and operation of Station KAAT in Denver. Therefore, argues Big Country, a Rule 1.65 issue is not warranted, citing *Auburn Publishing Company*, 34 FCC 2d 134, 24 RR 2d 29 (1972). Next, the applicant contends that the omissions with regard to KFNF and KAAT were not significant enough to warrant designation of an issue, citing *Salem Broadcasting Co., Inc.*, 39 FCC 2d 501, 26 RR 2d 922 (1973). As to the Vail application, Big Country submits an engineering statement showing that there would be no prohibited overlap between the two proposals. In reply, the Broadcast Bureau argues that Big Country's reliance on *Auburn, supra*, is misplaced because the Board in that case *first* concluded that the omission was not substantial and *only then* decided the failure had been inadvertent. The Bureau also argues that, unlike the situation in *Salem, supra*, where there were only two isolated reporting delays, the failures in the instant case, repeated over a course of nine months, suggest a pattern of disregard for timely disclosure.

4. The Review Board will deny the requested issue. The Board is of the view that the three omissions are not sufficiently serious to warrant an evidentiary inquiry. The failure to timely report the KFNF and KAAT transfer applications is analogous to the situation in *Salem Broadcasting Co., Inc., supra*, where the Board found not significant a greater delay in reporting a grant of another broadcast application. With regard to the Vail application, the Board notes that the Bureau does not dispute the engineering statement, attached to Big Country's opposition, stating that there would be no prohibited overlap between the Vail and Big Country proposals. It appears from John Gayer's affidavit that Big Country's failure to timely report the foregoing matters was inadvertent and unintentional. In this regard, it is important to note that the applicant voluntarily amended its application and that Big Country "had little or nothing to gain" by concealing the above-mentioned transactions. *Auburn Publishing Company*,

[4] In support, Big Country attaches a copy of the letter of April 2, 1973, reporting to the Commission the consummation of the transfer application for Station KAAT and the letter of transmittal of September 14, 1972, reporting the consummation of the transfer application of Station KFNF. The applicant further contends that the Vail application revealed that the application of Big Country for Steamboat Springs was pending.

[5] The affidavit of Mr. Gayer was not filed with the opposition due to his absence from the country, but was furnished upon his return on August 6, 1973. There is no opposition to acceptance of the affidavit.

supra. In light of the foregoing, the Board will not add the requested Rule 1.65 issue. See *Auburn Publishing Company, supra.* See also *Lexington County Broadcasters, Inc.*, 40 FCC 2d 694, 27 RR 2d 416 (1973); *Harvit Broadcasting Corp.*, 32 FCC 2d 656, 23 RR 2d 328 (1971).

5. Accordingly, IT IS ORDERED, That the request for enlargement of issues, filed June 20, 1973, by the Broadcast Bureau, IS DENIED.

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

F.C.C. 73-1003

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Cease and Desist Order Directed Against HOOSIER TELECABLE CORP., PERU, IND.	Docket No. 19830 File No. CSC-21 IN 003

ORDER TO SHOW CAUSE

(Adopted September 26, 1973; Released October 4, 1973)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT.

1. On August 2, 1972, Indiana Broadcasting Corporation, licensee of Station WISH-TV, Indianapolis, Indiana, filed a "Petition for Order to Show Cause" directed against Hoosier Telecable Corporation,[1] operator of a cable television system at Peru, Indiana, for alleged violation of Section 76.57 of the Commission's Rules by denying requested carriage of Station WISH-TV.[2] On September 1, 1972, Hoosier filed an "Opposition to Petition for Order to Show Cause", and on September 21, 1972, WISH-TV filed a "Reply of Indiana Broadcasting Corporation."

2. Peru, Indiana, is located wholly outside all television markets. Hoosier operates a 12-channel cable television system and provides the following television signals:

WFLD-TV (Ind.), Chicago, Illinois
WGN-TV (Ind.), Chicago, Illinois
WTTW (Ind.), Chicago, Illinois
WKJG-TV (NBC), Fort Wayne, Indiana
WPTA (ABC), Fort Wayne, Indiana
WANE-TV (CBS), Fort Wayne, Indiana
WRTV (NBC), Indianapolis, Indiana
WLWI (ABC), Indianapolis, Indiana
WTTV (Ind.), Bloomington, Indiana
WSBT-TV (CBS), South Bend, Indiana
WNDU-TV (NBC), South Bend, Indiana

WISH-TV does not place a predicted Grade B or better contour over

[1] On May 17, 1973, Hoosier Telecable filed an application (CAC-2568) for a Certificate of Compliance; however, Hoosier did not propose carriage of Station WISH-TV.

[2] Section 76.57 provides in pertinent part: Provisions for systems operating in communities located outside of all major and smaller television markets:

A cable television system operating in a community located wholly outside all major and smaller television markets, as defined in § 76.5, shall carry television broadcast signals in accordance with the following provisions:

(a) Any such cable television system may carry or, on request of the relevant station licensee or permittee, shall carry the signals of:

(4) Commercial television broadcast stations that are significantly viewed in the community of the system. See § 76.54.

(b) In addition to the television broadcast signals carried pursuant to paragraph (a) of this section, any such cable television system may carry any additional television signals.

Peru, but is "significantly viewed" in Miami County where Peru is located.[3]

3. We initially adopted the significant viewing test in order to insure that cable carriage of signals corresponded to actual viewing patterns. Only the most compelling showing could justify failure to carry a significantly viewed signal, and Hoosier has not made that showing. Hoosier argues that previously authorized distant signals possess a vested right to carriage, that its full channel capacity precludes carriage of an additional signal, that carriage of WISH–TV would create insurmountable technical difficulties for an integrated plant serving two communities, and that duplication of programming and disruption of viewing habits would result.

4. Hoosier misinterprets the intent of Section 76.65 of the Rules,[4] which allows continued carriage of signals authorized pursuant to our former rules. We never contemplated, and Section 76.65 does not provide, that a cable television system may deny mandatory carriage in favor of a distant signal. Whether Hoosier meets its carriage obligation by channel expansion, deletion of a signal, or composite carriage is a matter for its own decision. Possible duplication of programming and disruption of viewer habits do not justify Hoosier's failure, since it already carries two or three affiliates of each network and has requested authorization to substitute distant signals. We will therefore issue the requested Order to Show Cause.[5]

Accordingly, IT IS ORDERED, That pursuant to Sections 312(b) and (c) and 409(a) of the Communications Act of 1934, as amended, 47 U.S.C. 312(b) and (c), and 409(a), Hoosier Telecable Corporation IS DIRECTED TO SHOW CAUSE why it should not be ordered to cease and desist from further violation of Section 76.57 of the Commission's Rules and Regulations on its cable television system at Peru, Indiana.

IT IS FURTHER ORDERED, That Hoosier Telecable Corporation, IS DIRECTED to appear and give evidence with respect to the matters described above at a hearing to be held at Washington, D.C. at a time and place before an Administrative Law Judge to be specified by subsequent Order, unless the hearing is waived in which event a written statement may be submitted.

IT IS FURTHER ORDERED, That the Indiana Broadcasting Corporation and Chief, Cable Television Bureau ARE MADE parties to this proceeding.

IT IS FURTHER ORDERED, That the Secretary of the Commission shall send copies of this Order by Certified Mail to Hoosier Telecable Corporation.

FEDERAL COMMUNCATIONS COMMISSION,
VINCENT J. MULLINS, *Acting Secretary.*

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[3] WFLD–TV, WGN–TV, WTTW, WKJG–TV, WPTA, and WANE–TV are distant signals on the Hoosier system. In addition to broadcast signal carriage, one channel is used by local educational authorities.

[4] Section 76.65 provides in pertinent part: Grandfathering provisions:
"The provisions of §§ 76.57, 76.59, 76.61 and 76.63 shall not be deemed to require the deletion of any television broadcast or translator signals which a cable television system was authorized to carry or was lawfully carrying prior to March 31, 1972."

[5] In order to avoid any subsequent argument whether the Administrative Law Judge may order immediate carriage of Station WISH–TV by Hoosier Telecable on its cable television systems at Wabash and Peru, Indiana, Section 76.11 of the Rules is herewith waived to permit such carriage.

F.C.C. 73-1021

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re	
HORNELL TELEVISION SERVICE, INC., HORNELL, N.Y.	CSR-162
	NY154
NORTH HORNELL, N.Y.	CSR-162A
THATCHERVILLE, N.Y.	CSR-162B
CANISTEO, N.Y.	CSR-162C
Request for Special Relief	

MEMORANDUM OPINION AND ORDER

(Adopted October 3, 1973; Released October 12, 1973)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT.

1. On July 6, 1972, Hornell Television Service, Inc., operator of cable television systems at Hornell, North Hornell, Thatcherville, and Canisteo, New York, filed a "Petition for Special Relief" (CSR-162/162C) requesting a waiver of Section 76.57(a)(1) of the Commission's Rules[1] insofar as it requires Hornell Television to carry the signal of Station WENY-TV, Elmira, New York. On July 31, 1972, WENY, Inc., licensee of Station WENY-TV, Elmira, New York, filed its "Opposition to Petition for Special Relief." On August 22, 1972, Hornell Television filed a "Reply to Opposition for Petition for Special Relief."

2. Hornell, North Hornell, Thatcherville, and Canisteo, New York, are located outside all television markets. Hornell Television operates a twelve-channel cable television systems in each community, and uses a common headend for all four systems. Each system currently carries the following broadcast television signals, in addition to a shared part-time origination channel:

WGR-TV (NBC), Buffalo, New York
WBEN-TV (CBS), Buffalo, New York
WKBW-TV (ABC), Buffalo, New York
WROC-TV (NBC), Rochester, New York
WHEC-TV (CBS), Rochester, New York
WOKR (ABC), Rochester, New York
WXXI (Educ.), Rochester, New York
WSYE (NBC), Elmira, New York

[1] Section 76.57(a)(1) provides in pertinent part that:
"A cable television system operating in a community located wholly outside all major and smaller television markets, as defined in § 76.5, shall carry television broadcast signals in accordance with the following provisions:
"(a) Any such cable television system may carry or, on request of the relevant station licensee or permittee, shall carry the signals of:
"(1) Television broadcast stations within whose Grade B contours the community of the system is located, in whole or in part;"

WNEW–TV (Ind.), New York, New York
WOR–TV (Ind.), New York, New York
WPIX (Ind.), New York, New York

WENY–TV places a predicted Grade B contour over all four communities.

3. Nevertheless, Hornell Television argues that it should not be required to carry WENY–TV pursuant to Section 76.57(a)(1) of the Rules. Though it asserts that it intends to expand its channel capacity to twenty channels within the near future, Hornell Television maintains that carriage of WENY–TV would force it to delete either an authorized signal or its origination channel which, it contends, would be inconsistent with the public interest.

4. This case thus is very similar to our recent decision in *Staunton Video Corporation*, FCC 73– , —— FCC 2d —— (Adopted September 25, 1973) wherein we held that Section 76.65's grandfathering provisions[2] do not immunize a cable television system from deleting an authorized signal in order to afford mandatory carriage; instead, as we noted there, that section gives a system of choice between deleting an authorized signal and expanding its channel capacity. The same principle governs this case.

5. Section 76.11 of the Rules normally would require Hornell Television to secure a Certificate of Compliance in order to carry WENY–TV. As in *Staunton Video Corporation*, *supra*, however, we *sua sponte* waive compliance with Section 76.11 of the Rules for Hornell Television as to carriage of WENY–TV; provided, however, that Hornell Television will be expected to file an application for Certificate of Compliance within thirty (30) days of its initial carriage of WENY–TV.

Accordingly, IT IS ORDERED, That the "Petition for Special Relief" (CSR–162) filed by Hornell Television Corporation IS DENIED.

IT IS FURTHER ORDERED, That Hornell Television Corporation SHALL CARRY the signal of Station WENY–TV on its cable television systems at Hornell, North Hornell, Thatcherville, and Canisteo, New York within thirty (30) days of the release date of this Memorandum Opinion and Order.

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

[2] Section 76.65 provides in pertinent part that:
"The provisions of §§ 76.57, 76.59, 76.61 and 76.63 shall not be deemed to require the deletion of any television broadcast or translator signals which a cable television system was authorized to carry or was lawfully carrying prior to March 31, 1972."

F.C.C. 73R-351

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of KALT-FM, INC., ATLANTA, TEX.	Docket No. 19782 File No. BPH-7881
GLORIA D. HERRING AND A. T. MOORE, D.B.A. CASS COUNTY BROADCASTING CO., ATLANTA, TEX. For Construction Permits	Docket No. 19783 File No. BPH-7948

MEMORANDUM OPINION AND ORDER

(Adopted October 9, 1973; Released October 12, 1973)

BY THE REVIEW BOARD.

1. This proceeding involves the mutually exclusive applications of KALT-FM, Inc. (KALT) and Gloria D. Herring and A. T. Moore, d/b as Cass County Broadcasting Company (Cass County) for construction permits for a new FM broadcast station in Atlanta, Texas. By Commission Order, FCC 73-726, 38 FR 19283, published July 19, 1973, the applications were designated for hearing on various issues, including an issue "To determine . . . whether the partners [of Cass County] are willing to endorse the $75,000 bank loan, and, in light thereof, whether the applicant is financially qualified." Now before the Review Board is a motion to enlarge issues, filed August 3, 1973, by KALT, seeking addition of the following issues:

(a) To determine whether full disclosure has been made as to the terms of the bank loan commitment to Cass County Broadcasting Company from Commercial National Bank of Texarkana, Arkansas, dated Februray 12, 1973, including the facts as to whether such commitment is conditioned upon an endorsement or guaranty of the loan by any person besides Gloria D. Herring and A. T. Moore, or upon any security other than as stated in the letter from said bank.

(b) To determine the *bona fides* of said bank loan commitment, and whether such bank loan will actually be made with only Gloria D. Herring and A. T. Moore as endorsers.

(c) To determine in the light of the evidence adduced under the foregoing issues whether Gloria D. Herring and A. T. Moore, d/b as Cass County Broadcasting Company have the requisite character and financial qualifications to be licensees.[1]

2. In support of its request, KALT attaches a copy of the bank letter signed by George W. Peck, president of the Commercial Na-

[1] Also before the Review Board are the following related pleadings: (a) letter, filed August 6, 1973, by KALT; (b) opposition, filed August 13, 1973, by the Broadcast Bureau; (c) opposition, filed September 7, 1973, by Cass County; and (d) reply, filed September 17, 1973, by KALT.

tional Bank of Texarkana, Arkansas, dated February 12, 1973, and submitted as Exhibit G–6 of Cass County's application. This letter states, in pertinent part:

> Mrs. Gloria D. Herring and A. T. Moore, d/b/a Cass County Broadcasting Company, have a line of credit with this Bank in the amount of $75,000.00. . . . The loan is to be secured by the endorsement of Mrs. Gloria D. Herring and Mr. Moore.[2]

Next, KALT submits the affidavit [3] of David Wommack, Jr., one of its principals, who states that he learned, through a telephone conversation with Kenneth Schnipper, an officer of the Commercial National Bank, that there is a third guarantor of Cass County's note whose name, however, Schnipper will not reveal. Wommack further states that he knows Ms. Herring's uncle, Robert Dowd, to be a director of the bank. Noting that no third guarantor is mentioned in the bank letter or elsewhere in Cass County's application KALT charges Cass County with a serious and deliberate non-disclosure of material fact contrary to the requirements of FCC Form 301, Section III, paragraph 4. Petitioner also questions the *bona fides* of Cass County's alleged loan, claiming that Moore and Ms. Herring have less than $10,000 in liquid assets between them, and that no bank would lend $75,000 merely on the personal guaranties of individuals with such meager resources. According to KALT, the fact that Ms. Herring's uncle is a director of the bank lends support to "the inference that the uncle's connection with the bank motivated the giving of a letter purporting to promise a loan which the bank would not—and probably could not—give upon the terms stated in the letter."

3. The Broadcast Bureau, in opposing the motion, points out that the allegations contained therein are not supported by affidavits of individuals having personal knowledge of the facts. Rather, the Bureau urges, the motion is based merely on hearsay and speculation, and, therefore, must be denied. The Bureau notes, however, that the bank letter relied upon by Cass County expired on August 12, 1973, raising a question as to whether its loan is still forthcoming. Cass County, in its opposition, agrees with the Bureau that Wommack's allegations are insufficient to sustain KALT's motion, and goes on to deny the truth of those allegations as well. Cass County submits a copy of a letter from another officer of the Commercial National Bank, executive vice-president Boyce B. Lanier, who states that his colleague, Schnipper, is in error and that "there is no understanding, written or oral, that any third person would be a guarantor of [the] loan." However, Lanier continues, Robert Dowd has agreed to guarantee the loan if, in the future, the bank finds it desirable to look to him; Lanier emphasizes, though, that the bank has no such desire "at this time". An affidavit by Dowd states the same thing. Cass County further states that it filed an amendment to its application on September 7, 1973, which includes a new bank letter extending the bank's commitment

[2] The existing issue against Cass County was specified because Moore and Ms. Herring failed to include in their application a statement affirming their intent to endorse such a note.

[3] KALT's motion includes a telephone transcription of Wommack's statement; however, its letter of August 6, 1973, contains an original copy, properly signed and sworn. See note 1, *supra*.

through August, 1974, as well as statements by Moore and Ms. Herring promising to personally guarantee the loan.[4]

4. In its reply, KALT charges that the documents accompanying Cass County's opposition actually confirm its suspicion as to Dowd's role. Lanier's statement that the bank does not require Dowd's guaranty "at this time" is dismissed as "sheer semantics" by KALT, since in its view, no guaranty becomes necessary unless and until the loan is taken up upon a grant of the Cass County application. Thus, according to KALT, "there can be no doubt" that there is an understanding that Dowd will guarantee the loan. At a minimum, petitioner asserts, the admissions of Lanier and Dowd raise an issue of material fact which must be explored at the hearing.

5. The Review Board will deny KALT's motion. We agree with the Broadcast Bureau that KALT has failed to support its allegations with affidavits of those having personal knowledge of the facts, as required by Section 1.229(c) of the Commission's Rules. See *Colorado West Broadcasting, Inc.*, —— FCC 2d ——, 28 RR 2d 199 (1973). KALT's allegations concerning the *bona fides* of the loan (for example, that "banks simply don't make loans" on the terms specified in Cass County's bank letter) are based on speculation and surmise and are, therefore totally unacceptable. Petitioner's main contention, that there is an undisclosed guarantor for Cass County's loan, is supported only by hearsay which has been directly rebutted. Indeed, the only attested facts within the personal knowledge of KALT's affiant are that Robert Dowd is Gloria Herring's uncle and that he is a director of the Commercial National Bank. Petitioner claims, however, that the responsive pleading of Cass County and the documents attached thereto reinforce its position and compel the addition of an issue to determine Dowd's role. We cannot agree. In our view, Lanier's letter and Dowd's affidavit indicate that, whatever part Dowd may play in the future, he is *at present* under no obligation to guarantee Cass County's loan. That being so, Cass County is not required as of this date to report information about him to the Commission, and a nondisclosure issue is therefore unwarranted.

6. Accordingly, IT IS ORDERED, That the motion to enlarge issues, filed August 3, 1973, by KALT–FM, Inc., IS DENIED.

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

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[4] The amendment was accepted by Order of the Administrative Law Judge, FCC 73M–1079, released September 20, 1973.

F.C.C. 73R-350

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of	
KEY BROADCASTING CORP., LEXINGTON PARK, MD.	Docket No. 19410 File No. BPH-6540
SOUND MEDIA, INC., LEONARDTOWN, MD.	Docket No. 19411
For Construction Permits	File No. BPH-6886

MEMORANDUM OPINION AND ORDER

(Adopted October 5, 1973; Released October 10, 1973)

BY THE REVIEW BOARD.

1. This proceeding involves the mutually exclusive applications of Key Broadcasting Corporation (Key) and Sound Media, Inc. (Sound) for authorization to construct a new FM broadcast station in Lexington Park and Leonardtown, Maryland, respectively. By Memorandum Opinion and Order, FCC 72-78, 37 FR 2804, published February 5, 1972, the Commission designated this proceeding for hearing on various issues, including a limited financial qualifications (loan availability) issue against Sound. Now before the Review Board is a motion to enlarge issues, filed July 2, 1973, by Key,[1] requesting a general inquiry into the financial qualifications of Sound.[2]

2. Noting that on January 24, 1973, Sound filed an application for nighttime authority for its existing AM station in Leonardtown, Maryland, and that the AM proposal allegedly contemplates a costly directional antenna system, Key contends that "the burden is on Sound Media, Inc., to demonstrate that it has the funds to construct and operate both its proposed FM station and its proposed unlimited time AM facilities," citing *Nelson Broadcasting Company*, FCC 64R-505, 4 RR 2d 87 (1964). Key asserts that Sound's cost estimates for the engineering proposals in both its AM and FM applications are "grievously inadequate," attaching in support of this an affidavit from a professional engineer. In his affidavit, the engineer assumes that Sound plans to use four in-line towers for its AM station and a separate tower for FM, and that no provision has been made for a field intensity

[1] Also before the Review Board are the following related pleadings: (a) opposition, filed July 12, 1973, by Sound; (b) opposition, filed July 17, 1973, by the Broadcast Bureau; (c) erratum, filed July 24, 1973, by the Bureau.

[2] On February 2, 1973, the Broadcast Bureau requested the addition of a general financial issue against Sound to determine its ability to finance its proposed FM station, as well as a proposed increase in its existing AM operation, Station WKIK, Leonardtown, Maryland. That petition was dismissed as moot by the Review Board after Sound substantially amended its application; however, the Board observed that its decision did not bar the Bureau or Key from filing further petitions to enlarge if either was of the view that Sound's amendments failed to establish its financial qualifications. *Key Broadcasting Corporation*, —— FCC 2d ——, 27 RR 2d 1327 (1973).

meter. He then calculates the cost of the AM proposal at $50,378 and that of the FM proposal at $28,745, compared to Sound's estimates of $39,190 and $23,967 respectively. Key also disputes Sound's reliance on $9,120 on "profits from existing operations," claiming that Sound has not adequately shown that this amount exists unencumbered by other obligations.

3. In its opposition, Sound argues that Key's objections are answered in a new amendment to its application.[3] This specifies, according to Sound, that its FM antenna is to be attached to one of the four towers proposed for the AM installation. The amendment also contains a letter of clarification from Sound's equipment supplier in which it is noted that the equipment proposal includes a field intensity meter and an increase in its bank loan commitment, as well as a profit and loss statement for 1972. These, Sound asserts, clarify its financial position and demonstrate that it is able to construct both the FM station and the unlimited time AM operation.

4. The Broadcast Bureau, in its opposition, points out that Key's allegations of inadequate cost estimates are based upon incorrect assumptions about Sound's engineering proposal, and states that in its view, Sound's cost estimates appear reasonable. The Bureau is also of the view that Sound has adequate financial resources to prosecute its FM application, and that this is the only matter at issue in this proceeding, since Sound has elected to give priority to its FM proposal.[4] Thus, the Bureau states that Sound's most recent amendment reflects a bank loan commitment of $38,000 and a deferred credit arrangement with an equipment supplier, as well as a copy of Sound's 1972 Form 324 which shows broadcast profits of $9,120 over and above salaries and interest paid to the applicant's principals.

5. The Review Board will deny Key's request for a general financial issue against Sound. As an initial matter, Sound's estimate of $31,717 for the construction and operation of its FM proposal is in excess of that amount alleged to be requisite by petitioner. Next, where an applicant may have sufficient assets to meet the cost of one, but not two separate broadcasting proposals, it can avoid having financial issues added in both proceedings either by earmarking funds for one proposal or the other, or "by indicating which of the two proposals is to have first call upon its available funds." See *Nelson Broadcasting Company*, *supra*, 4 RR 2d at 90. Here, Sound has indicated that its FM proposal is to have first call upon its funds and it has demonstrated that it has available funds in excess of that required for that proposal. Thus, it is not required to demonstrate its ability to finance its AM proposal, as well, in this proceeding. However, since, according to the terms of the most recent loan commitment letter, it is unclear as to whether the loan is contingent upon grant of both of Sound's proposals, there is a

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[3] This amendment was accepted by Order of the Administrative Law Judge on August 9, 1973 (FCC 73M–922).

[4] In a previous amendment to its application, Sound states that its FM application will have priority over the AM application, and that whatever resources are necessary for the construction and operation of the FM facility will be utilized therefor.

question as to whether or not the loan will, in fact, be available to the applicant. This is a matter, however, which can be appropriately explored under the existing limited financial qualifications issue designated against Sound.

6. Accordingly, IT IS ORDERED, That the motion to enlarge issues, filed July 2, 1973, by Key Broadcasting Company, IS DENIED.

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

F.C.C. 73-1012

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
LIABILITY OF KMAP, INC., LICENSEE OF RADIO STATION KWAC, BAKERSFIELD, CALIF.
For a Forfeiture

MEMORANDUM OPINION AND ORDER

(Adopted September 26, 1973; Released October 2, 1973)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT.

1. Now under consideration are: (a) our letter of May 16, 1973, notifying KMAP, Inc. (KWAC), licensee of Station KWAC, Bakersfield, California, of its apparent liability for a forfeiture of $2,500; (b) a response to that letter filed June 14, 1973, signed by counsel and adopted by KWAC as its response by letter dated September 4, 1973; and (c) a letter from counsel for Community Service Organization and United Farm Workers (petitioners). The petitioners have also filed a petition to deny the pending renewal application for Station KWAC.

2. The Notice of Apparent Liability was issued prior to consideration of the pleadings associated with the renewal application because the statute of limitations was about to run as to some of the statutory and rule violations uncovered during a field investigation of KWAC. The petitioners are concerned, however, that our consideration of KWAC's response to the Notice at this time, ". . . will tend to condition the Commission's attitude toward the petitioners, their petition to deny, and the extent of KWAC culpability in the practices alleged in the petition to deny." As a remedy to this alleged prejudice, the petitioners request that their comments on KWAC's response be considered. We have done so. However, it should be noted that our consideration of the facts and arguments pertaining to the forfeiture does not preclude our subsequent consideration of the same facts and arguments in the renewal proceeding. Moreover, the statutory standard by which the pleadings in the renewal proceeding will be judged remains the same. Accordingly, we wish to indicate that we do not believe that the issuance of the Notice of Apparent Liability and the consideration of KWAC's response to the Notice at this time are prejudicial to the petitioners in the renewal proceeding.

3. As detailed in the Notice of Apparent Liability, KWAC broadcast 50 announcements promoting a "JBA Ninth Annual Barbeque" in the period from May 23 through June 4, 1972. The announcements stated that there would be a prize drawing at the barbeque for a color television set and specifically stated, "Donation, $2—adults; $1.25—

juniors."[1] KWAC concedes that it has violated the lottery statute, 18 U.S.C. 1304, but urges that we take into consideration in assessing the amount of the forfeiture the fact that the announcement in question were public service announcements for which it received no compensation.

4. KWAC was also cited for violating the lottery statute by broadcasting 12 commercial announcements on June 16 and 17, 1972, promoting a pre-Father's Day dance. KWAC states that it no longer has a copy of the dance announcements (the tape cartridge was turned over to our investigators) and cannot determine with certainty whether all elements of a lottery were present in the announcements broadcast by the station. We note that the tape was translated from Spanish by KWAC's program director, Ramon Garza, Sr., before our investigators and before Edward R. Hopple, President, Treasurer and 38.55 per cent owner of KWAC. Our own translation of the tape cartridge, which is in all essential ways the same as the translation provided by Mr. Garza, is as follows:

> On the night before Fathers' Day, there will be a fantastic dance at the Juarez Ballroom on the 17th of June and you will dance to the Fabulous Movements from nine to one p.m. and someone at the dance, some lucky person will win $50. Remember, the admission is only $1.75 and the first 25 young ladies will be admitted absolutely free of charge. An Orozco production.

5. Although 25 young ladies were apparently admitted free of charge, the remainder of those attending were required to pay an admission fee, which constitutes consideration, *Birch Bay Broadcasting Company, Inc.*, 38 FCC 2d 988, 26 RR 2d 561 (1973). And the fact that "some lucky person will win $50," states the elements of chance and a prize. Thus, all three elements necessary to establish a lottery are present.

6. KWAC states that these announcements "may well come within the broad language" of 18 U.S.C. 1304, but contends that newspapers make similar references to door prizes and lucky numbers in their advertisements, that the lottery statute applicable to newspaper (18 U.S.C. 1302) is essentially the same as that applicable to broadcast stations, and that the statutes should be similarly interpreted, citing *FCC* v. *American Broadcasting Company*, 347 U.S. 284 (1954). However, KWAC has cited no cases to support its conclusion that different interpretations of the two statutes have been made and has not indicated whether consideration was required in order to be eligible for the prize in the newspaper advertisements to which it refers. Since we find all three elements of a lottery present in the announcements broadcast by KWAC, we conclude that there has been a repeated violation of 18 U.S.C. 1304.

7. KWAC announcers received money from listeners who requested programs dedicated to friends or relatives. These paid dedications were made over a long period of time, but specific examples were found during the week of June 12, 1972, and on June 18 and 19, 1972. There was no announcement at the time the dedication was made or at any

[1] It is clear from this quoted statement that persons attending the barbeque were expected to pay the specific amounts stated, and that such payments constitute consideration.

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other time that the broadcasts were paid for or sponsored, in violation of Section 317(a) of the Communications Act of 1934, as amended, and Section 73.119(a) of the Rules. Moreover, letters between KWAC's counsel and its President, made available to our investigators by KWAC indicate that KWAC was aware that the announcers were receiving money, that announcement should have been made, that appropriate entries should have been made in its logs, and that KWAC elected to ignore the requirements of the Act and the Rules. Because KWAC was aware that announcers were receiving money for the didications, announcements pursuant to Section 317(b) of the Act and Section 73.119(c) of the Rules should have been made, and entries made in the program logs pursuant to Section 73.112(a)(2) of the Rules.

8. KWAC states that the station itself, as opposed to its announcers, never accepted money for the musical dedications, and that the required sponsor identification announcements would be "crass commercialism, unacceptable culturally to persons of Mexican heritage." KWAC states that it presently screens all incoming mail and, where money is enclosed, returns the money to the sender. If the sender's address cannot be determined, KWAC states the money is placed in its scholarship and charity fund. We note, however, that the violations were intentional and that KWAC could have avoided any problems it anticipated from its listeners by adopting its present practices long ago. Accordingly, we find that KWAC has willfully and repeatedly violated Section 317 (a) and (b) of the Communications Act and Sections 73.119(a), 73.119(c) and 73.112(a)(2) of our Rules.

9. In regard to the amount of the forfeiture, we note that the lottery statute makes no exceptions based on the characteristics of the sponsor of the particular lottery involved. Moreover, in determining the amount of a forfeiture, we consider several factors, including the number of statutory and rule requirements that have been violated, the duration of the violations, the seriousness of the violations and the financial position of the licensee. We have considered these factors in this case, and believe that the amount set out in the Notice of Apparent Liability is appropriate.

10. In view of the above, we are not pursuaded to mitigate or remit the forfeiture.

11. Accordingly, IT IS ORDERED, That KMAP, Inc., licensee of Station KWAC, Bakersfield, California, FORFEIT to the United States two thousand five hundred dollars ($2,500) for repeated violations of Title 18, Section 1304 of the United States Code, and for willful and repeated violations of Sections 317(a) and 317(b) of the Communications Act of 1934, as amended, and Sections 73.119(a), 73.119(c) and 73.112(a)(2) of the Commission's Rules. Payment of the forfeiture may be made by mailing to the Commission a check or similar instrument drawn to the order of the Federal Communications Commission. Pursuant to Section 504(b) of the Communications Act of 1934, as amended, and Section 1.621 of the Commission's Rules, an application for mitigation or remission of forfeiture, signed by an

officer of the licensee, may be filed within thirty (30) days of the date of receipt of this Memorandum Opinion and Order.

12. IT IS FURTHER ORDERED, That the Acting Secretary of the Commission send a copy of the Memorandum Opinion and Order by Certified Mail—Return Receipt Requested to KMAP, Inc.

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

F.C.C. 73–1043

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re MIDWEST VIDEO CORP., POPLAR BLUFF, Mo. Request for Special Relief	CSR–169 MO 039

MEMORANDUM OPINION AND ORDER

(Adopted October 3, 1973; Released October 12, 1973)

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

1. Midwest Video Corporation operates a cable television system at Poplar Bluff, Missouri. The system is located in a smaller television market, and serves approximately 4,700 subscribers with the following television signals:

WPSD–TV (NBC), Paducah, Kentucky
KFVS–TV (CBS), Cape Girardeau, Missouri
WDXR–TV (Ind.), Paducah, Kentucky
KTVI (ABC), St. Louis, Missouri
KMOX–TV (CBS), St. Louis, Missouri
KSD–TV (NBC), St. Louis, Missouri
KPLR–TV (Ind.), St. Louis, Missouri

On July 10, 1972, a "Petition for Special Relief" (CSR–169) was filed by Turner-Farrar Association, licensee of satellite Station KPOB–TV (ABC), Poplar Bluff, Missouri and its parent Station WSIL–TV (ABC), Harrisburg, Illinois. Turner-Farrar asks that the Commission order Midwest Video to terminate carriage of Station WDXR–TV (Ind.), Paducah, Kentucky, on the ground that it never received Midwest Video's notification (pursuant to former Section 74.1105 of the Rules) that it intended to carry WDXR–TV.[1] Petitioner states that it has no record or recollection of having received the notification, and maintains that by the time it learned of Midwest Video's plans the time to invoke the mandatory stay provisions of former Section 74.1105 of the Rules had expired. And without the claim of grandfathered status, Turner-Farrar argues that carriage of WDXR–TV on the Poplar Bluff system would be inconsistent with Section 76.59 of the Rules. This section allows cable systems operating in smaller markets to carry one distant independent signal if no independent signals are available locally. WDXR–TV was the second independent signal carried by the system, which would not now be permitted by Section 76.59 unless such carriage was authorized by the

[1] Midwest Video alleges that the notification was mailed to petitioner January 24, 1972.

provision of former Section 74.1105.[2] Oppositions were filed both by Midwest Video, and by WDXR–TV, Inc., carriage of whose signal is at issue.

2. In response to petitioner's assertion, Midwest Video relies on its affidavit of service (which states that Station KPOB–TV was served with an appropriate 74.1105 notification); refers to a copy of the notification allegedly sent to petitioner on January 24, 1972; notes that petitioner has not alleged that the notification was never mailed; and relies on the rule that a letter mailed is presumed to have been received, citing *El Paso Cablevision, Inc.*, 27 FCC 2d 835, 836 (1971); *Delaware County Cable Television Co.*, 13 FCC 2d 899, 900 (1968). Thus, Midwest Video asserts that its carriage of Station WDXR–TV was valid prior to March 31, 1972, and is therefore grandfathered. WDXR–TV, Inc., argues that the existence of satellite Station KPOB–TV in Poplar Bluff does not create a separate market, but should be considered as extending the Cape Girardeau, Missouri-Paducah, Kentucky-Harrisburg, Illinois television market (#69) into Poplar Bluff. Under this theory, carriage of WDXR–TV would be required by Section 76.63(a) of the Rules.

3. In *El Paso Cablevision, Inc.* and *Delaware County Cable Television Co., supra*, we rejected arguments substantially identical to those presented by petitioner, and we now hold, consistent with the cited cases, that a letter of notification mailed is presumed received. We conclude that Midwest Video fully satisfied the requirements of former Section 74.1105 of the Rules, and consequently that Station WDXR–TV's signal was lawfully carried on the Poplar Bluff system prior to March 31, 1972. The signal is therefore grandfathered, and Turner-Farrar Association's petition for special relief will be denied.[3] In view of this ruling, it is technically unnecessary to address WDXR–TV, Inc.'s argument; however, were we to do so, we would reject it on the basis of *Midwest Video Corporation*, 40 FCC 2d 441 (1973).

In view of the foregoing, the Commission finds that a grant of the requested special relief would be inconsistent with the public interest.

Accordingly, IT IS ORDERED, That the "Petition for Special Relief" (CSR–169) filed by Turner-Farrar Association IS DENIED.

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

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[2] Section 76.59 of the Rules provides, in pertinent part:

"(b) Any such cable television system may carry sufficient additional signals so that, including the signals required to be carried pursuant to paragraph (a) of this section, it can provide the signals of a full network station of each of the major national television networks, and of one independent television station: *Provided, however,* That, in determining how many additional signals may be carried pursuant to paragraph (a)(1) of this section, shall be considered to be operational for a period terminating 18 months after grant of its initial construction permit. The following priorities are applicable to the additional television signals that may be carried:

"(1) *Full network stations.* A cable television system may carry the nearest full network stations or the nearest in-state full network stations;

"(2) *Independent station.* A cable television system may carry any independent television station: *Provided, however,* That if a signal of a station in the first 25 major television markets (see § 76.51(a)) is carried pursuant to this subparagraph, such signal shall be taken from one of the two closest such markets, where such signal is available.

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

[3] Section 76.65 of the Rules provides in part that:

"The provision of §§ 76.57, 76.59, 76.61 and 76.63 shall not be deemed to require the deletion of any television broadcast or translator signals which a cable television system was authorized to carry or was lawfully carrying prior to March 31, 1972."

F.C.C. 73-1025

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of PANHANDLE BROADCASTING CO., INC. (WDTB-TV), PANAMA CITY, FLA. Application for License	Docket No. 19836 File No. BLCT-2237

MEMORANDUM OPINION AND ORDER

(Adopted October 3, 1973; Released October 12, 1973)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT; COMMISSIONER JOHNSON DISSENTING AND ISSUING A STATEMENT; COMMISSIONERS H. REX LEE AND HOOKS CONCURRING IN THE RESULT.

1. We have before us for consideration: (a) the captioned application; (b) the request of Panhandle Broadcasting, Inc. (Panhandle), for program test authority (PTA) for station WDTB-TV, filed in conjunction with the license application together with a request for partial waiver of condition attached to the grant; and (c) an informal objection from WJHG-TV, Inc., licensee of WJHG-TV, Panama City, Florida, opposing grant of PTA and requesting that the license application be designated for hearing.

2. On April 5, 1972, the Commission by Memorandum Opinion and Order, *In re Application of Panhandle Broadcasting Company, Inc.*, 34 FCC 2d 460, granted Panhandle's application for permit to construct a new television broadcast station on channel 13, in Panama City, subject to the condition that no operating authority would issue until Denver T. Brannen and members of his immediate family dispose of their interests in stations WDLP(AM) and WPAP(FM) in Panama City.[1] On April 14, 1972, the Commission granted the assignment of license of station WDLP(AM) to Dae Broadcasting Company which grant was consummated. Additionally, an application to assign the license of station WPAP(FM) to the Deltona Corporation is now on file with the Commission.

3. Subsequent to the Commission's action granting Panhandle's construction permit, information was brought to the Commission's attention in July 1973, which indicated that Panhandle's application involved either a possible violation of the conflict of interest regulations (section 107.1004) of the Small Business Administration (SBA) or that Panhandle may have misrepresented facts as to its ownership to the Commission in its application for construction permit. The SBA,

[1] The condition was imposed in order to bring Panhandle into compliance with the Commission's one to a market rule (section 73.636) which provides, in pertinent part, that no license for a VHF television broadcast station will be granted if the Grade A contour of the proposed television station would encompass the entire community of license of a commonly owned, operated or controlled AM or FM broadcast station.

which was also made aware of these facts, investigated the matter and as a result has advised the Commission that any allegations as to violation of section 107.1004 of its regulations is unfounded. The background facts, briefly, concern whether Mr. L. Charles Hilton, listed as a 25 percent shareholder in Panhandle was, in fact, the real party in interest, or whether he was merely the nominee of the Small Business Assistance Corporation of Panama City, Florida (SBAC), of which he was then president, which is a Small Business Investment Company (SBIC) licensed by SBA in which he also owned an interest through his ownership of stock in West Florida Bank Holding Company, Inc., the parent company of SBAC. The SBA regulations referred to, prohibit an SBIC from providing financing directly or indirectly to any of its officers, stockholders or other associates. Thus, if, in fact, Mr. Hilton, then president and stockholder in SBAC owned the Panhandle stock, it would have been a violation of the SBA regulations unless an exception had been granted.

4. Mr. Denver T. Brannen, chairman of the Board of Panhandle, and together with his wife, 40 percent stockholder and the prime mover in Panhandle, filed a sworn affidavit with the license application in which he states that at the time of incorporation, the initial issuance of stock included a 25 percent share to SBAC; that prior to filing the application, J. R. Arnold, president and majority stockholder of the holding corporation owning 100 percent of SBAC, and then a director and one of original incorporators of Panhandle, advised he was dropping out and that Mr. Hilton would take the stock; that Mr. Brannen assumed that Hilton was holding the stock for his own benefit; that he did not realize until January 1973, that Hilton was merely the nominee of SBAC; that there was never any intent to deceive the Commission; and that failure to disclose was merely an attempt to avoid the considerable time, difficulty and effort to gather all the information relative to the shareholders of SBAC and that the misrepresentation was an error of inadvertence.

5. WJHG–TV, in its letter urges that no operating authority should be issued and that the license application must be set for hearing. In support, WJHG–TV contends that since station WPAP(FM) still remains in the hands of the Brannen family, the divestiture condition has not been satisfied. Moreover, WJHG–TV asserts that there is a clear misrepresentation of facts to the Commission which Mr. Brannen's affidavit does not cure. In this connection, WJHG–TV argues that while the SBA was being advised that SBAC was the true owner of 25 percent of Panhandle's stock, this information was not filed with the Commission in order to avoid reporting to the Commission information regarding SBAC and its holding company. WJHG–TV also contends that even assuming the misrepresentation was not intentional, the explanation as to why it was perpetuated for two years is unsatisfactory and fails to show that Brannen could not have obtained the information or that other principals of Panhandle, who had actual knowledge, could not have supplied the information.

6. Despite the affidavit of Mr. Brannen, the Commission is of the view that substantial questions are raised by the facts before it as to

the actual circumstances, whether there was a misrepresentation, and whether such misrepresentation was willful or repeated, and that these questions can only be resolved via a hearing in which evidence as to the facts and circumstances surrounding the matter may be adduced. Accordingly, the application for license will be designated for hearing upon appropriate issues.

7. We turn now to Panhandle's request for partial waiver of condition and for program test authority for station WDBT–TV. Our determination in this regard involves balancing the public's need for the proposed service against the necessity for resolution of Panhandle's qualifications and the policy involved in imposing the condition. There is presently only one television station (WJHG–TV, ABC) providing a local service to Panama City; thus, a grant of PTA would provide Panama City with its second local television outlet and its third network service (NBC).[2] Under the circumstances, we believe that the public interest is best served by permitting the introduction of this needed second local service subject to whatever action we may deem appropriate as a result of the hearing ordered herein. In so doing, we preserve the Commission's flexibility of action and, at the same time, do not impose an undue financial burden which could jeopardize the institution of a second local service to Panama City.[3] We also wish to make clear that in granting PTA to Panhandle, we have waived the condition on WDTB–TV's construction permit only to the extent of the timing of compliance not as to the condition.

8. Accordingly, IT IS ORDERED, That pursuant to section 309(e) of the Communications Act of 1934, as amended, the captioned application IS DESIGNATED FOR HEARING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine the facts and circumstances which led to the listing of L. Charles Hilton as a 25 percent stockholder in Panhandle Broadcasting Company, Inc., rather than Small Business Assistance Corporation of Panama City, Florida.

2. To determine whether Panhandle Broadcasting Company, Inc., or any of its officers and directors knew or should have known the actual facts concerning the relationship of the Small Business Assistance Corporation and L. Charles Hilton to Panhandle Broadcasting Company, Inc.

3. To determine in the light of the evidence adduced pursuant to the above issues whether Panhandle Broadcasting Company, Inc., or its officers and directors complied with the requirements of section 1.615 of the rules to report the true facts as to actual ownership as soon as these facts were known.

4. To determine in light of the evidence adduced pursuant to the foregoing issues whether Panhandle Broadcasting Company, Inc., or officers and directors misrepresented facts as to the ownership of Panhandle Broadcasting Company, Inc., and, if so, whether such misrepresentation of fact were willful, material or repeated.

5. To determine in light of the evidence adduced pursuant to the foregoing issues whether Panhandle Broadcasting Company, Inc., has the requisite qualifications to be a licensee of the Commission and whether grant of its application for license would serve the public interest, convenience and necessity.

9. IT IS FURTHER ORDERED, That, if on the basis of evidence adduced under issue (4) above, Panhandle Broadcasting Company, Inc., is determined to have willfully or repeatedly violated section 308

[2] Station WTVY, Dothan, Alabama, provides predicted CBS service to the Panama City area.

[3] Panhandle has completed construction of the station in accordance with the specifications in the construction permit, has hired a staff and is ready to operate.

of the Communications Act or section 1.615 of the Commission's rules, it shall also be determined whether an Order of Forfeiture pursuant to section 503(b) of the Communications Act, in the amount of $10,000 or some lesser amount shall be issued.

10. IT IS FURTHER ORDERED, That this document also constitutes a Notice of Apparent Liability for violation of the Communications Act and the Commission's rules, but that inclusion of this notice does not in any way indicate what the initial or final disposition of the case should be, and that the Administrate Law Judge shall base his decision on the facts of the case above.

11. IT IS FURTHER ORDERED, That the burden of proceeding with the introduction of evidence and the burden of proof shall be on Panhandle Broadcasting Company, Inc.

12. IT IS FURTHER ORDERED, That to avail itself of the opportunity to be heard, the applicant pursuant to section 1.221(c) of the Commission's rules, in person or by attorney, shall within twenty (20) days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

13. IT IS FURTHER ORDERED, That the Secretary of the Commission send copies of this Order by Certified Airmail-Return Receipt Requested to Panhandle Broadcasting Company, Inc.

14. IT IS FURTHER ORDERED, That the divestiture condition attached to the construction permit IS WAIVED in part and the request for program test authority, for station WDTB–TV, Panama City, Florida, IS GRANTED subject to whatever action the Commission may deem appropriate as a result of the hearing ordered herein.

IT IS FURTHER ORDERED, That the informal objections filed by WJHG–TV, Inc., ARE GRANTED to the extent indicated herein and DENIED in all other respects.

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

DISSENTING OPINION OF COMMISSIONER NICHOLAS JOHNSON

The Commission has today granted Program Test Authority to a television station permittee while simultaneously ordering him into hearing (on issues involving material misrepresentations in the permittee's ownership report) to determine whether the permittee ". . . has the requisite qualifications to be a licensee of the Commission and whether grant of the application would serve the public interest, convenience and necessity." Thus, while the Commission has serious questions about the applicant's qualifications to operate as a *licensee*, it has no qualms about allowing it to operate, perhaps for years during the hearing process, as a *permittee*.

The logic of this reasoning escapes me. I know of no regulation, rule of law, or of reason which warrants such a result.

Nor do I believe that the Commission's rationalization—that the public somehow has an immediate need for its second local TV outlet and its third network service—mitigates the unreasonableness of its decision. It seems to me far more important that we are satisfied that an applicant has met the basic, statutorily-mandated qualifications *before* we grant him authority to operate than it is to rush to provide a third or even second service to a community when to do so means we are authorizing operation by an applicant who has never satisfied us that he has the requisite qualifications to be a Commission licensee.

I believe the Commission should have denied the Program Test Authority until the questions concerning misrepresentations have been resolved. Accordingly, I dissent.

F.C.C. 73-1071

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
REQUEST FOR WAIVER OF THE OFF-NETWORK RESTRICTION OF THE PRIME TIME ACCESS RULE (SECTION 73.658(k)(3) OF THE COMMISSION'S RULES) IN CONNECTION WITH THE CARRIAGE OF THE NATIONAL GEOGRAPHIC PROGRAM (STATION WTEN, ALBANY, N.Y.)

MEMORANDUM OPINION AND ORDER

(Adopted October 12, 1973; Released October 15, 1973)

BY THE COMMISSION: COMMISSIONERS ROBERT E. LEE AND JOHNSON ABSENT; COMMISSIONER H. REX LEE DISSENTING.

1. The Commission here considers a request for waiver of the off-network restriction of the prime time access rule (Section 73.658(k)(3) of the Commission's Rules), filed on September 26, 1973 by Albany Television Inc. (Albany), licensee of Station WTEN(TV), Albany, New York, and its full-time satellite, WCDC(TV), Adams, Massachusetts. Albany wishes to carry programs from the *National Geographic* series on Saturday evening from 7:00 to 8:00 p.m. E.T., during the 1973–74 season. This request is identical to similar requests which have been considered recently by the Commission.[1]

2. It appears that the facts in this case are the same as those dealt with in the recent decisions cited above. Therefore, no further discussion is necessary and waiver appears to be appropriate in this instance also.

3. Accordingly, IT IS ORDERED, that the request for waiver of the off-network restriction of the prime time access rule (Section 73.658(k)(3) of the Rules) by Albany Television Inc., licensee of Albany, New York, and its full-time satellite, WCDC(TV), Adams, Massachusetts, IS GRANTED, in order that these stations may carry programs of the *National Geographic* series during prime time without their counting toward the permissible three hours of network and off-network material, during the period through September 30, 1974.

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

[1] *National Geographic* (1973–74), FCC 73-707, released July 2, 1973; FCC 73-949, released September 14, 1973.

F.C.C. 73-1028

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
PETITION FOR WAIVER OF THE RADIO DUAL NETWORK RULES (SECTIONS 73.137 AND 73.237 OF THE COMMISSION'S RULES) BY MUTUAL BROADCASTING SYSTEM, INC., FOR SIMULTANEOUS BROADCAST OF NATIONAL LEAGUE BASEBALL CHAMPIONSHIP PLAY-OFF GAMES AND NEWS PROGRAMS

MEMORANDUM OPINION AND ORDER

(Adopted October 3, 1973; Released October 12, 1973)

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

1. The Commission here considers a petition for waiver of the radio dual network rules (Sections 73.137 and 73.237 of the Commission's Rules) filed September 21, 1973 by the Mutual Broadcasting System, Inc. (Mutual). The dual network rules, which prohibit the simultaneous broadcast of programs in the same area by a network organization which operates more than one network of stations, were adopted to deal with network practices in existence when radio was the primary means of commercial broadcasting. Abusive practices were found in the operations of numerous national and regional networks, but primarily, in the multiple network area, from the simultaneous operation by the National Broadcasting Company (NBC) of two national networks, the "Red" and "Blue" networks.[1] In recent years the American Broadcasting Companies, Inc. (ABC) and Mutual have created non-simultaneous multiple network operations which have received approval from the Commission and have continued under our observation.[2]

[1] *Report on Chain Broadcasting*, Commission Order No. 37, Docket No. 5060, May 1941. The rules adopted at that time, now Sections 73.137 for AM and 73.237 for FM, provide that no station will be licensed if it is affiliated with a network company which operates two or more networks, but that this prohibition does not apply where the networks do not serve the same area or do not operate simultaneously. On September 19, 1973, the Commission granted Mutual a similar waiver to permit simultaneous news and football-game broadcasts in a market.

[2] ABC operates four specialized radio networks—Contemporary, Entertainment, Information and FM—all of which are scheduled in such a way that there is no simultaneous operation. We authorized this operation, which initially included a small amount of simultaneous broadcast, in *Four New Specialized American Radio Networks*, 11 FCC 2d 163, released December 29, 1967, and affirmed that decision in *Mutual Broadcasting System, Inc.*, 17 FCC 2d 508, released May 9, 1969. In 1972, Mutual received authorization to operate three non-simultaneous networks consisting of its regular MBS network, "Mutual Reports" (now Mutual Black Network) which is a Black-oriented network news service, and a separate Spanish-language news service. *Mutual Broadcasting System, Inc. (Three Radio Networks)*, 34 FCC 2d 823, released May 4, 1972 (the Spanish-language network is not operational).

2. Mutual seeks a waiver of this rule, which prohibits simultaneous operation of multiple network operations, in order that its affiliates may carry, on a delayed basis, three to five-minute Mutual news broadcasts, which have been previously taped, at the same time that other stations in the same market are carrying baseball games also fed by Mutual. Mutual will carry broadcasts of the National League Baseball Championship Play-off games during the period October 7 through October 11, 1973, beginning at approximately 4 p.m. E.T. The competing teams have not as yet been determined, so the precise dates and times are not known. The series is the best three out of five games, so it is conceivable that Mutual could carry broadcasts of the games on October 7, 8, 9, 10 and 11, 1973.

3. The petition lists some 25 markets in which Mutual has one or more regular affiliates of one or both its networks, and where the baseball games will be carried by other stations (there may be additions later), which are not Mutual affiliates. Many of the regular MBS and Black Network affiliates, which have refused to carry the games, wish to continue to present Mutual news every hour (3 to 5 minutes) as they do regularly, necessitating the waiver. Since the network line during these baseball game periods will be used for the games, the plan is for these stations to record earlier Mutual newscasts and run them at the usual times while the game is in progress on other stations in the markets. Mutual has insisted that where both of its networks are operating regularly, the news be broadcast at the usual time, so as to avoid simultaneity between the two regular affiliates.

4. *Waiver of the policy limiting a network company's affiliations in the same market.* Mutual lists three markets (Pottsville, Pennsylvania; San Angelo, Texas; and Beckley, West Virginia) where there are fewer than four stations and where the regular Mutual affiliate has refused the baseball games, and Mutual proposes to feed to another non-affiliated station in the market. To do so would conflict with the limitation contained in the order granting Mutual permission to operate its multiple-network operation, limiting a network company to only one affiliation in markets with fewer than 5 AM stations.[3] Mutual asks for a waiver of this policy in these three markets.

5. Mutual makes several arguments as to why its petition should be granted: (1) By allowing the carriage of both baseball games and of news, we would be contributing to program diversity. (2) News broadcasts are in the public interest, and we should not act to prevent their presentation. (3) It is impractical to interrupt the games every hour for a three to five minute news broadcast. (4) The Commission has recently granted the same type of waiver to Mutual for college and professional football games, and the principle here is identical. (5) Mutual finally says that it would contribute to the "larger and more effective use of radio" to allow both the games and the news to be broadcast under the proposed plan.

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[3] *Mutual Broadcasting System, Inc. (Three Radio Networks)*, supra., footnote 2. The same condition was imposed upon the ABC multiple network operation. *Mutual Broadcasting System*, supra, footnote 2.

DISCUSSION AND CONCLUSIONS

6. Upon consideration of these matters, we are of the view that this petition should be granted. There is precedent for the grant of a limited amount of overlapping dual network broadcasts in our initial decision upon the ABC four network proposal (which we subsequently affirmed). We allowed a five to ten minute simultaneous broadcast overlap for the program *Breakfast Club* and the regularly scheduled network news which was carried on the ABC networks at that time.[4] In that situation, one affiliate would be carrying the regularly scheduled news for that particular network, while another affiliate in the market was carrying the *Breakfast Club* program. The situation under consideration here is that the regular affiliate wishes to carry the regular network news at the same time that another station, usually one not regularly affiliated with Mutual, is carrying a baseball game fed by Mutual. Also the simultaneous broadcast period here is limited to, at most, five minutes each hour for three hours on not more than five days, which is not so great an overlap as to require denial. Finally, a grant of this petition will add to the diversity of programming, thus increasing the program selection available to the public, and it does thereby contribute to the larger and more effective use of radio. It is noted that there is not involved here the simultaneous presentation of the same *type* of material such as news or commentary.

7. We do, however, impose a condition upon this waiver, that the regular affiliates of the Mutual Broadcasting System or Mutual Black Network, which do not carry the baseball games, and who wish to carry the regular Mutual network news programs, must do so at their normally scheduled times, so that the possibility of simultaneous carriage of these news broadcasts is eliminated. In other words, we will require those affiliates who will be carrying taped news programs to schedule these news broadcasts as they normally would, even though these particular programs are being taped and then replayed by the station rather than directly fed by the network.

8. We are further of the view that the policy of limiting to one the number of affiliates in a market (defined as the entire Standard Metropolitan Statistical Area, or SMSA, of which a certain community is a part, or, if the community is outside an SMSA, the individual community) which has four or fewer stations, should be waived so that Mutual may feed the baseball games on the dates in question to a station which is not a regular affiliate and the regular affiliate may carry, simultaneously, the taped news broadcasts of Mutual. The limited extent of the necessary waiver is, again, the basis upon which we grant the request. In addition, one of the reasons we imposed this smaller-market limitation upon the networks was that their programming consisted almost entirely of news and news analysis, and we were concerned about the situation of virtually all of the news and commentary in a market being derived from a single source. This is not the prob-

[4] The overlap resulted from the carriage of this program on a delayed basis on stations in the Central, Mountain, and Pacific time zones along with the regularly scheduled network news programs. *Four New Specialized American Radio Networks* and *Mutual Broadcasting System, Inc.*, supra, footnote 2.

lem in this particular petition because the programming involved is news on some affiliates and entertainment (sports) on others.

9. In view of the foregoing, IT IS ORDERED, That the petition for waiver of the radio dual network rules (Sections 73.137 and 73.237 of the Commission's Rules) filed by the Mutual Broadcasting System, Inc. on September 21, 1973, IS GRANTED, in order that stations affiliated with Mutual Broadcasting System or its Mutual Black Network, which do not carry National League Baseball Championship Play-off games otherwise to be presented by the network from October 7 through October 11, 1973, MAY PRESENT the hourly Mutual network news programs; PROVIDED, that these network news programs are presented at their regularly scheduled times within each hour.

10. IT IS FURTHER ORDERED, That the prohibition contained in paragraph 6 of our Memorandum Opinion and Order released May 4, 1972 (34 FCC 2d 823) IS WAIVED, with respect to the markets contained in the list attached to the September 21 petition only, in order that stations affiliated with the Mutual Broadcasting System or its Mutual Black Network, which do carry the National League Baseball Championship Play-off games otherwise to be presented by the network from October 7 through October 11, 1973, MAY PRESENT the hourly Mutual network news programs, and other stations in these same markets MAY PRESENT the baseball games.

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

F.C.C. 73-1027

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of RADIO MEDFORD, INC., KLAMATH FALLS, OREG. For Construction Permit for New FM Radio Broadcast Translator Station	File No. BPFT-99

MEMORANDUM OPINION AND ORDER

(Adopted October 3, 1973; Released October 12, 1973)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT.

1. The Commission has before it for consideration the above-captioned application of Radio Medford, Inc., licensee of station KTMT(FM), channel 229 (93.7 MHz), Medford, Oregon, requesting a construction permit for a new 10-watt FM translator station to serve Klamath Falls, Oregon, by rebroadcasting station KTMT(FM) on output channel 265 (100.9 MHz). The Commission also has before it for consideration a petition to deny, filed June 20, 1973, pursuant to section 309(d) of the Communications Act of 1934, as amended, by 960 Radio, Inc., licensee of standard radio station KLAD, 960 kHz, and permittee of station KLAD-FM, channel 223 (92.5 MHz), both Klamath Falls, and various pleadings filed in connection therewith.[1]

2. Petitioner claims standing as a "party in interest" within the meaning of section 309(d) of the Communications Act of 1934, as amended, on the grounds that it would compete for audience in Klamath Falls with the proposed translator station and would suffer economic injury to the extent that audience is diverted. We find that petitioner has standing. *Federal Communications Commission* v. *Sanders Brothers Radio Station*, 309 U.S. 470, 60 S. Ct. 693, 9 RR 2008.

3. Klamath Falls is within the predicted 1 mV/m contour of station KTMT(FM) and, according to the applicant, the purpose of the proposed translator station is to improve reception in that part of its service area which, because of hills on the west side of the community, is unable to receive the signals of station KTMT(FM) directly. Both the petitioner and the objector oppose grant of the application on competitive impact grounds, specifically private economic injury; there is no effort to demonstrate injury to the public interest. Neither the petitioner's station (KLAD-FM) nor the objector's station (KAGM (FM)) has been built. The Commission is entitled to demand much more than mere unsupported conclusions that competition would re-

[1] On June 20, 1973, Klamath Broadcasting Company, licensee of standard radio station KAGO and permittee of station KAGM(FM), channel 253 (98.5 MHz), both Klamath Falls, filed a letter objecting to grant of the application. The applicant filed an opposition to the petition to deny and the informal objection on July 9, 1973, and petitioner filed a reply thereto on July 16, 1973.

sult in economic injury to an unbuilt station.[2] *Roger D. Olsen*, FCC 73–905, released September 14, 1973. Station KTMT(FM), the proposed primary station, is neither a "distant" station, as petitioner contends, nor is it without an obligation to provide news and other programming to meet the needs, tastes and interests of the people of Klamath Falls. The applicant here seeks to discharge the obligation which the Commission imposes upon all broadcast licensees to provide satisfactory service to the entire area within its predicted service contours. *Shen-Heights TV Association*, 11 FCC 2d 814, 12 RR 2d 407; *Central Coast Broadcasters, Inc.*, 18 FCC 2d 203, 16 RR 2d 697; *Liberty Television, Inc.* (*K11GT*), 18 FCC 2d 531, 16 RR 2d 805; *Oregon Broadcasting Company* (*K13JQ*), 20 FCC 2d 246, 17 RR 2d 751; *The Spartan Radiocasting Company*, 20 FCC 2d 1084, 18 RR 2d 176; *Quality Telecasting Corporation*, 31 FCC 2d 639, 22 RR 2d 959. In short, the application is consistent with the Commission's rules and policies and represents the use for which translators were intended. We think that one more observation is pertinent here. Petitioner believes that the applicant ". . . should be required to prove that its 1mV/m contour does indeed cover Klamath Falls." We are unable to reconcile this belief with petitioner's admission, in its petition to deny, that, "The predicted KTMT 1mV/m contour does encompass Klamath Falls." Note 1 to section 74.1232(d) of the rules states that:

> "The 1mV/m field strength contour of an FM radio broadcast station, for the purposes of this Subpart, shall be the contour as predicted in accordance with section 73.313(a) through (d) of this chapter."

In our view, this is dispositive of petitioner's argument.

4. We find that the petitioner and the objector have raised no substantial or material questions of fact. We further find that the applicant is qualified to construct, own and operate the proposed new translator station and that a grant of the application would serve the public interest, convenience and necessity.

Accordingly, IT IS ORDERED, That the petition to deny filed herein by 960 Radio, Inc., and the objections filed herein by Klamath Broadcasting Company, ARE DENIED, and the above-captioned application of Radio Medford, Inc., IS GRANTED, in accordance with specifications to be issued.

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

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[2] The following radio stations are assigned to Klamath Falls: KLAD, 960 kHz; KAGO, 1150 kHz; KFLS, 1450 kHz; KLAD–FM, channel 223, 92.5 MHz (unbuilt); KAGM(FM), channel 253, 98.5 MHz (unbuilt); KTEC(FM), channel 201, 88.1 MHz (noncommercial educational).

104-013—73——7

F.C.C. 73-1022

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of SANTA FE CABLEVISION CO., SANTA FE, N. MEX. For Certificate of Compliance	CAC-957 NMO17

MEMORANDUM OPINION AND ORDER

(Adopted October 3, 1973; Released October 12, 1973)

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

1. Santa Fe Cablevision Company operates a 3,996 subscriber cable television system at Santa Fe, New Mexico, which is located outside of all major and smaller television markets. The system has been constructed with a capacity of 27 channels and currently provides its subscribers with the following television broadcast signals:[1]

KOB-TV (NBC, Channel 4), Albuquerque, New Mexico
KNME-TV (Educ., Channel 5), Albuquerque, New Mexico
KOAT-TV (ABC, Channel 7), Albuquerque, New Mexico
KGGM-TV (CBS, Channel 13), Albuquerque, New Mexico
KHJ-TV (Ind., Channel 9), Los Angeles, California
KTLA (Ind., Channel 5), Los Angeles, California
KTTV (Ind., Channel 11), Los Angeles, California
KCOP (Ind., Channel 13), Los Angeles, California

On September 25, 1972, Santa Fe Cablevision filed an application for a Certificate of Compliance requesting certification of its proposal to add the following broadcast station:

XEPM-TV (Spanish Language, Channel 2), Juarez, Chihuahua, Mexico

2. In an opposition to this application filed on September 25, 1972, Spanish International Communications Corporation, licensee of Station KMEX-TV (Spanish Language), Los Angeles, California, argues that carriage of Mexican stations should be prohibited where domestic Spanish-language programming is available to the cable operator, either off-the-air or via microwave. In support of this argument, Spanish International submits that Santa Fe Cablevision already carries four Los Angeles independent signals via common carrier microwave, and that the Los Angeles Spanish-language signal (KMEX-TV) can

[1] The community of Santa Fe has a population of 44,000. The cable system commenced operations in September, 1970, and currently has 27 channels available for carriage of broadcast and access services. Of these channels, eight are used for television signal carriage and two for automated program originations (a time-weather channel and a news ticker channel). In addition, one channel is used for both automated and non-automated originations, and eight FM stations are carried.

and should be carried in lieu of, or in addition to, one of the distant Los Angeles independents.[2] Moreover, Spanish International argues, the economic viability of domestic Spanish language stations may be threatened by cable importation of Mexican signals because domestic stations rely on Mexican programming and pay substantial charges and duties to obtain that programming which often is not made available until as much as a year or more from the date of its first Mexican transmission.

3. We have previously considered and rejected Spanish International's general arguments in connection with the cable television rulemaking proceeding in Docket 18397 et al, and will not repeat our rationale here. *Mickelson Media, Inc.*, FCC 73–119, 39 FCC 2d 602 (1973). Turning to the specifics of Spanish International's present opposition, we note first that KMEX–TV is not local to the Santa Fe system, being some 706 miles distant, and, thus, has no "right" to carriage. Second, as in *Mickelson Media, Inc., supra*, there is no showing that Spanish International or KMEX–TV will be harmed by the granting of this application; essentially Spanish International repeats arguments that we have already rejected. Since Spanish International has not met its substantial burden in attempting to prevent signal carriage consistent with our rules, its opposition will be denied. *Mickelson Media, Inc., supra.* We will also deny Spanish International's request that all certificate applications involving the carriage of Mexican signals be consolidated for Commission action. See *Mickelson Media, Inc., supra* at 603 n. 2.

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

Accordingly, IT IS ORDERED, That the "Opposition to Application for Certification" filed September 25, 1972, by Spanish International Communications Corporation, IS DENIED.

IT IS FURTHER ORDERED, That the "Application for Certification" (CAC–957) filed by Santa Fe Cablevision Company, IS GRANTED, and an appropriate certificate of compliance will be issued.

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

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[2] It appears that carriage of KMEX–TV in lieu of XEPM–TV would require the building of 17 more microwave hops (since Los Angeles is about 436 miles farther from Santa Fe than is Roswell, New Mexico, the existing microwave hop closest to Santa Fe) at substantial additional cost. See American Television Relay, Inc., File Nos. 3650–3654–C1–P–67 (proposed Roswell-Santa Fe microwave system). To carry KMEX–TV in lieu of one of the Los Angeles signals would also require all of ATR's 28–30 other cable customers on its Los Angeles-Santa Fe microwave route to take KMEX–TV instead of one of the Los Angeles signals that they are receiving. No applications are presently pending to add KMEX–TV as an additional channel on ATR's microwave route.

104–013—73——8

F.C.C. 73-1026

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of	
SOUTHEASTERN MASSACHUSETTS UNIVERSITY, NORTH DARTMOUTH, MASS.	File No. BPED-1, 398
Requests: 90.5 MHz, No. 213; 10 Watts	
CONNECTICUT COLLEGE BROADCAST ASSOCIATION, INC., NEW LONDON, CONN.	File No. BPED-1, 475
Requests: 91.5 MHz, No. 218; 10 Watts	
DEAN JUNIOR COLLEGE, FRANKLIN, MASS.	File No. BPED-1, 489
Requests: 91.3 MHz, No. 217; 10 Watts	
WALPOLE PUBLIC SCHOOLS, WALPOLE, MASS.	File No. BPED-1, 531
Requests: 91.5 MHz, No. 218; 10 Watts	
BRYANT COLLEGE OF BUSINESS ADMINISTRATION, SMITHFIELD, R.I.	File No. BPED-1, 556
Requests: 91.5 MHz, No. 218; 10 Watts	
ROCKLAND PUBLIC SCHOOLS, ROCKLAND, MASS.	File No. BPED-1, 570
Requests: 91.5 MHz, No. 218; 10 Watts	
STONEHILL COLLEGE, INC., EASTON, MASS.	File No. BPED-1, 601
Requests: 91.3 MHz, No. 217; 10 Watts	
CURRY COLLEGE, MILTON, MASS.	File No. BPED-1, 626
Requests: 91.5 MHz, No. 218; 10 Watts	
EMERSON COLLEGE, BOSTON, MASS.	File No. BPED-1, 628
Has: 88.9 MHz, No. 205; 5 kW; 55 Feet	
Requests: 88.9 MHz, No. 205; 895 Watts (H & V); 740 Feet	
For Construction Permits	

MEMORANDUM OPINION AND ORDER

(Adopted October 3, 1973; Released October 11, 1973)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT.

1. The Commission has before it (a) the above applications; (b) petitions to deny each of the applications filed by WGAL Television, Inc., licensee of television broadcast station WTEV, channel 6, New Bedford, Massachusetts; (c) pleadings in opposition and reply; and (d) additional related pleadings filed in regard to the application of Connecticut College Broadcast Association, Inc. (Connecticut College), including a motion to strike, an opposition to that motion, a supplemental petition to deny, and pleadings in opposition and reply to the supplemental petition.

2. The petitioner (WTEV) asserts that operation as proposed by each of the above applicants would result in potential interference to

the reception of its channel 6 signal in areas which, in some instances, cannot be precisely defined, but is expected to occur only within the immediate vicinity of the proposed FM transmitter site. WTEV alleges that the area of potential interference to be caused by Southeastern Massachusetts University (Southeastern) would have a radius of 0.445 miles from Southeastern's transmitter, while Connecticut College would cause interference within a radius of 1.15 miles of its FM transmitter, and the proposals of Bryant College of Business Administration (Bryant), Curry College (Curry), and Stonehill College, Inc. (Stonehill), would cause interference to the reception of WTEV's signal within a radius of less than one mile of their proposed FM transmitters. The petitioner admits that the potential interference areas to be affected by the proposals of Dean Junior College (Dean), Walpole Public Schools (Walpole), and Rockland Public Schools (Rockland) cannot be specified, but that interference can be expected in the immediate vicinity of their proposed FM transmitters. In regard to the application of Emerson College (Emerson), WTEV alleges that Emerson's proposed changes in the facilities of station WERS would result in an increase in the degree of interference within the existing area of potential interference to station WTEV as well as a slight extension of the existing radius of potential interference. In light of the foregoing assertions, WTEV alleges that the viewability of its station is threatened and that the predicted interference to its television signal must be prevented in order to preserve the integrity of the VHF television spectrum.

3. The petitioner bases its claims of potential interference on Report No. R–6702 "Calculations for Educational FM Channel Assignments in Areas Served by TV Channel 6," which was released on July 14, 1967, by the Research Division, Office of the Chief Engineer, Federal Communications Commission. However, it should be made clear that this report has never been adopted by the Commission as part of its rules and is without binding effect in contested cases. Also, pursuant to a Notice of Inquiry in Docket No. 19183, the Commission has solicited current data and recommendations concerning various kinds of interference to television reception. Comments have been filed by interested parties and the entire matter is under staff consideration.

4. Insofar as our present policy in this area of FM interference to television signals is concerned, whenever an FM station causes interference to the reception of a television signal due to radiation of spurious emissions from its FM transmitter, we have consistently maintained that it is the responsibility of the FM licensee to add filters or take other corrective measures at its transmitter to eliminate the interference problem. In this regard, see the Commission's Public Notice released on September 1, 1967, entitled *FM Interference to TV Reception*. Other types of FM interference to television reception are generally considered to be attributable to a lack of selectivity in the individual television receivers, which is primarily a problem of receiver design. Whatever the cause of the interference, however, FM licensees are expected to cooperate in the solution of any such problems that might arise. For the reasons set forth below, we believe the captioned applications should be granted. Each of the applicants will be

required to comply with specific procedures designed to determine and to eliminate any interference to television stations. These procedures are outlined on page 2 of the above-noted public notice (*FM Interference to TV Reception*). Although WTEV has offered to withdraw its petition to deny some of the above applications if the applicants agree to meet certain conditions, we believe these conditions to be overly burdensome and that compliance with the provisions of the public notice and the letter of instruction customarily sent to applicants such as the ones before us will suffice to handle any foreseeable interference problems.

5. Section 309(d)(1) of the Communications Act of 1934, as amended, requires a party who files a petition to deny an application to include specific allegations of fact sufficient to show that a grant of the application would be *prima facie* inconsistent with the public interest. As indicated in the foregoing discussion, it is unclear whether any significant interference problems will actually occur and the matter is not one which is capable of being resolved by the hearing process. Further, as noted in the previous paragraph, each of the above applicants, pursuant to the requirements of our public notice, *supra*, must conduct certain equipment tests to determine possible interference to WTEV and report these results to us, along with corrective measures taken to alleviate any interference, before it receives authority to conduct program tests. Moreover, in each of the instant cases, if interference to the reception of station WTEV, channel 6, should occur, it appears that very few viewers would be affected. All of the areas where WTEV claims the proposed FM stations will cause interference to WTEV's reception also receive service from station WCVB–TV, Boston, Massachusetts. Since stations WTEV and WCVB–TV are both ABC network affiliates, it appears that the public interest would be better served by the institution of new, and in one instance improved noncommercial educational FM service, than by assuring the availability of two television signals carrying the same network programming to a limited number of viewers in potentially affected areas. This conclusion is especially clear insofar as the alleged interference area surrounding Connecticut College's transmitter is concerned, since that area receives service from two other ABC network affiliates besides station WTEV; namely, station WCVB–TV, Boston, and station WTNH–TV, New Haven, Connecticut. Station WTNH–TV provides a grade A signal to the area to be served by Connecticut College and would appear to be more attuned to the needs of that area than WTEV, which is licensed to New Bedford, Massachusetts, and provides a grade B signal to the area which Connecticut College proposes to serve.

6. In addition to the foregoing considerations, we believe the extent to which WTEV is viewed in the areas of concern is a relevant consideration. Subpart D, part 76, of the Commission's rules provides for compulsory carriage of certain television broadcast signals by cable television systems according to the type of television market in which the cable system is located. One class of commercial television stations that must be carried in all markets includes those stations which are significantly viewed in the community in which the system is located.

Section 76.54(a) of the rules states the following:

> "Signals that are significantly viewed in a county (and thus are deemed to be significantly viewed within all communities within the county) are those that are listed in Appendix B of the Memorandum Opinion and Order on Reconsideration of the Cable Television Report and Order (Docket 18397 et al.), FCC 72-530."

In addition, section 76.5(k) of the rules defines a "significantly viewed" network station as one that is viewed in other than cable television households during the following periods:

> "—a share of viewing hours of at least 3 percent (total week hours), and a net weekly circulation of at least 25 percent;" [1]

Appendix B of the above-referenced Memorandum Opinion and Order lists five television stations as being significantly viewed in Norfolk County, Massachusetts, the county in which Dean, Walpole, and Curry propose to operate. As mentioned in paragraph 2 of this Order, WTEV alleges that the area of potential interference surrounding the transmitter of Curry will have a radius of less than one mile, while the areas of potential interference surrounding the transmitters of Dean and Walpole cannot be specified, although WTEV anticipates that interference will occur in the immediate vicinity of those transmitters. Station WTEV is not one of the five television stations listed as being "significantly viewed" in Norfolk County. Furthermore, former station WHDH–TV, which was existing station WCVB–TV's predecessor as licensee of television channel 5, Boston, was originally listed as being significantly viewed in that county. On September 6, 1973, station WCVB–TV was substituted for station WHDH–TV in our county lists of significantly viewed television stations. As we have previously noted, both stations WTEV and WCVB–TV are ABC affiliates. Thus, the facts that WTEV is not significantly viewed in Norfolk County, and that ABC Network programming is available to viewers in the area from WCVB–TV, are additional reasons for granting the applications of Dean, Walpole, and Curry for new noncommercial educational FM stations.

7. Emerson proposes to move the transmitter site of station WERS, Boston, to another location in Suffolk County, Massachusetts, reduce power, and increase antenna height. These changes will result in a slightly increased service area. WTEV alleges that the degree of interference within the existing area of potential interference to station WTEV will increase as a result of the proposed operation, and that the radius of potential interference will be extended by more than 1.6 miles. Although WTEV asserts that the potential radius of interference from the existing operation of WERS(FM) is 38.7 miles, it has not submitted any data to indicate that actual interference has been experienced by viewers in the Boston area or that stations WTEV or WERS have received any complaints in this regard. Furthermore, WTEV notes that it assumed an effective antenna height of 100 feet for WERS in calculating the area of potential interference from that

[1] As used in this paragraph, "share of viewing hours" means the total hours that noncable television households viewed the subject station during the week, expressed as a percentage of the total hours these households viewed all stations during the period, and "net weekly circulation" means the number of noncable households that viewed the station for five minutes or more during the entire week, expressed as a percentage of the total noncable television households in the survey area.

station's existing facilities even though WERS' existing antenna height is only 55 feet, and that the existing radius of potential interference is thus somewhat less than 38.7 miles. Whatever the area of potential interference for WERS' existing facilities is, we have noted that there is no indication that any complaints concerning existing interference have been received from television viewers in the Boston area, and there is no reason to believe that the situation will be materially altered by a grant of WERS' application. In short, WTEV has not submitted sufficient facts to raise a *prima facie* question as to whether the grant of WERS' application for changes in its facilities would be inconsistent with the public interest. Furthermore, Appendix B of our Memorandum Opinion and Order on Reconsideration of the Cable Television Report and Order (Docket 18397, et al.), 36 F.C.C. 2d 326 (1972), lists five Boston television stations as being significantly viewed in Suffolk County, the county in which WERS is situated. Station WTEV is not so listed. Moreover, station WCVB–TV, Boston, another ABC affiliate, is now included in the list of television stations which are significantly viewed in Suffolk County. Thus, even if actual interference is discovered, it would occur in an area where WTEV's signal is not significantly viewed and where similar network programming is provided by station WCVB–TV, which has the responsibility of serving primarily the needs and interests of Boston since it is licensed to that city.

8. Station WTEV identifies itself as a New Bedford, Massachusetts-Providence, Rhode Island, television station and provides programming which is responsive to the needs of both of those cities and their surrounding communities. Station WTEV is listed in Appendix B of the above-referenced Order as being significantly viewed, along with seven other television stations, in Bristol and Plymouth Counties, Massachusetts, and Providence County, Rhode Island. Southeastern and Stonehill are located in Bristol County, while Rockland is located in Plymouth County. Bryant is located in Providence County, Rhode Island. Both station WCVB–TV and station WTEV provide ABC network programming to all three of these counties. We observe that Rockland is approximately 39 miles from the transmitter site of station WTEV and about 20 miles from the transmitter site of station WCVB–TV, while Stonehill is located approximately 32 miles from the transmitter site of station WTEV and about 19 miles from the transmitter site of station WCVB–TV. Thus, it would appear that since both Stonehill and Rockland are considerably closer to station WCVB–TV than station WTEV, and since television viewers in Stonehill and Rockland might well find a Boston television station more attuned to their needs and interests, that station WCVB–TV can be considered to provide local service to the areas of alleged potential interference surrounding Stonehill's and Rockland's transmitter sites. On the other hand, it appears evident that television viewers in the vicinity of Bryant and Southeastern receive local service from station WTEV, since Bryant is near Providence, Rhode Island, and Southeastern is within five miles of New Bedford, Massachusetts, and since station WTEV provides programming directed at the community problems of Providence and New Bedford.

9. Despite the fact that station WTEV is significantly viewed in the areas of alleged interference surrounding the proposed transmitter sites of Southeastern, Stonehill, Rockland, and Bryant, we observe that the areas of alleged interference outside of the college campuses to be served by Southeastern, Stonehill and Bryant have relatively sparse populations and have a radius of less than one mile, while the area of potential interference surrounding Rockland's transmitter site cannot be accurately determined, although it will allegedly occur in the immediate vicinity of the transmitter. Thus, since the areas of alleged interference surrounding the transmitter sites of Bryant and Southeastern which receive local service from station WTEV are relatively sparse in population, and since all four of the areas of alleged interference are so small that no significant impact on station WTEV's television signal is likely to occur, it does not appear that the public interest would be served by protecting WTEV's signal to the extent of precluding the institution of these new noncommercial educational FM facilities.

10. Furthermore, as previously noted, the nine applicants involved herein, whether or not they propose to be located in areas where WTEV is significantly viewed, will be required to comply with the procedures delineated in our Public Notice of September 1, 1967, entitled *FM Interference to TV Reception.* We believe that compliance with the provisions of that public notice and the letter of instruction which will be sent to each of the applicants will be sufficient to handle any foreseeable interference problems with station WTEV's television signal.

11. In light of the foregoing discussion, we find that the petitions and related pleadings filed by WGAL Television, Inc., licensee of television broadcast station WTEV, channel 6, New Bedford, Massachusetts, have failed to raise any substantial and material questions of fact in regard to the applications listed above which would warrant a hearing. Furthermore, we have examined the proposals and find that the applicants are fully qualified to construct and operate their proposed stations, and that grants of their applications would serve the public interest, convenience, and necessity.

12. Accordingly, IT IS ORDERED, That the above petitions to deny and other related pleadings filed by WGAL Television, Inc., licensee of television broadcast station WTEV, channel 6, New Bedford, Massachusetts, ARE DENIED, and that the applications of Southeastern Massachusetts University (BPED–1,398), Connecticut College Broadcast Association, Inc. (BPED–1,475), Dean Junior College (BPED–1,489), Walpole Public Schools (BPED–1,531), Bryant College of Business Administration (BPED–1,556), Rockland Public Schools (BPED–1,570), Stonehill College, Inc. (BPED–1,601), Curry College (BPED–1,626), and Emerson College (BPED–1,628), ARE GRANTED, in accordance with specifications to be issued.

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

F.C.C. 73-1015

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF PART 83 TO REDUCE THE MINIMUM REQUIRED POWER OUTPUT AND DESIGNATE THE PRIMARY SUPPLY VOLTAGE TO BE USED TO DETERMINE THE MINIMUM POWER REQUIRED FOR COMPLIANCE WITH TITLE III, PART III OF THE COMMUNICATIONS ACT AND TO DESIGNATE THE NOMINAL PRIMARY SUPPLY VOLTAGE FOR TYPE ACCEPTANCE	Docket No. 19706

REPORT AND ORDER

(Adopted October 3, 1973; Released October 11, 1973)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT.

1. On March 19, 1973, we released a Notice of Proposed Rule Making in this Docket. The Notice was published in the Federal Register on March 26, 1973 (38 F.R. 7816). The Notice provided for the filing of comments and reply comments by specified times that have now passed.

2. Comments were filed by Columbian Hydrosonics, Inc. (CHI), Land Mobile Section, Communications and Industrial Electronics Division, Electronic Industries Association (EIA), and by NARCO KONEL (Konel). No reply comments were filed.

3. CHI suggested that the nominal primary supply voltage should be 13.6 V., since the inclusion of other power consuming devices such as blowers or lights and losses in filters, antenna changeover circuitry, etc., can raise the power consumption over 6 amperes and the 13.6 V. would be more realistic. They also suggest that the test voltage be measured at the interface between the equipment and the power cord.

4. EIA agrees in principle with the proposals, however, they believe some of the rules are unnecessarily restrictive. EIA also proposes, in parallel with the recommended standard recently adopted by the Radio Technical Commission for Marine Services,[1] that 13.6 V. be adopted for uniformity. EIA recommends that 80% of the nominal voltage (11.0 V.) be adopted. They also state that there are other environmental conditions which affect the power output, and while regulator circuitry may stabilize the output at 15 watts, other conditions may cause the power to drop below 15 watts. EIA asserts that transmitters without regulator circuitry have power outputs of less than 15 watts but over 10 watts under conditions of 85% voltage. This reduced power

[1] See "Minimum Standards for VHF Receivers in the Maritime Mobile Service," Radio Technical Commission for Marine Services.

would only represent a degradation of approximately 3% of the nominal 30 mile range.

5. Konel suggested that the Commission adopt the standard power supply voltage of 13.6 V. Konel refers, also, to the above mentioned VHF receiver standard of the Radio Technical Commission for Marine Services and the value of 13.6 V. set forth therein, and proposes the Commission adopt this value (13.6V.) to prevent confusion. Konel objected to the use of 85% of 13.8 V. (11.73) rather than 12.0 V. which the emergency source of energy aboard a vessel could readily meet. Konel believes that the Commission inspector might require a demonstration at the 11.73 V. when there is 12.0 V. available and to avoid this possibility proposed to add a phrase in the proposed section 83.518 (c) (2) as follows:

> "The transmitter has been demonstrated, or is of a type which has been demonstrated, to the satisfaction of the Commission as capable with a primary voltage equal to (a) 85% of the nominal value; or in lieu thereof, has (b) demonstrated in accordance with the requirements of section 83.524 of delivering not less than 15 watts . . ."

Konel states that there have been similar misinterpretations by inspectors when performing tests on SSB transmitters under section 83.517. They further suggest that the Commission resolve problems relating to sections 83.517 and 83.518 at the same time. While amendment of section 83.517 falls outside of the scope of this proceeding, we concur with Konel that changes to section 83.518 are necessary to avoid such misinterpretations and to clarify the various matters involved. Accordingly, much of subject matter considered in the following pages and rule changes set forth in the attached Appendix are directed to implementing Konel's suggestion.

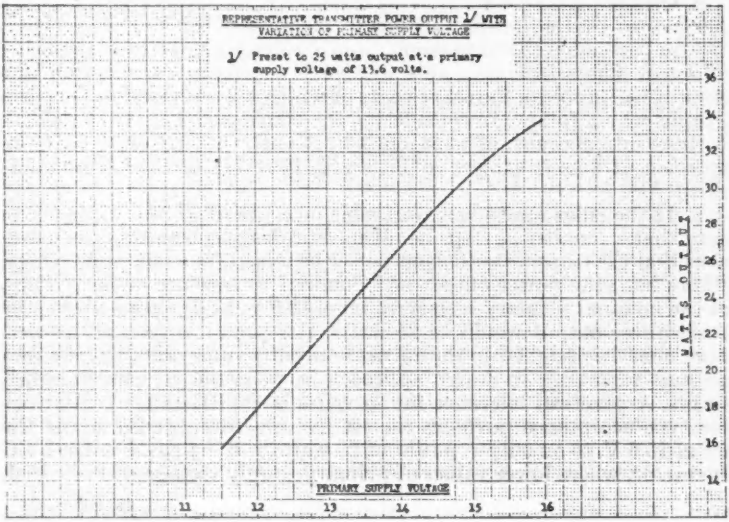
6. On the basis of comments by CHI, EIA and Konel and the work performed by the Radio Technical Commission for Marine Services, we are persuaded that a primary supply voltage of 13.6 volts should be adopted. The selection of this voltage is a satisfactory solution to a part of the problem, the other parts of which are discussed in the paragraphs which follow. In considering the whole problem, it is necessary to take into account, as mentioned by Konel, the matter of FCC inspection of vessels subject to Title III, Part III of the Communications Act.

7. If the rules are to be enforceable on a practical basis, it is necessary that a number of steps be taken. For design purposes, it is necessary that the transmitter output power be related to a nominal voltage, where both the power output and nominal voltage are defined. Thus, at the nominal primary supply voltage, 13.6 V. as discussed above, the transmitter output would be 25 watts. For practical reasons, a tolerance must be assigned to the 25 watt output power value, to take into account variations in design approach between the various manufacturers. A practical tolerance for 25 watts is +0 dB and −1 dB, thus, for type acceptance purposes the set manufacturer would adjust the set at 13.6 V. to an output power of 25 watts, +0 −1 dB. For the FCC Inspector, where lower values of primary supply voltage will be noted,

he will require a sliding scale for power output, depending upon the primary supply voltage existing aboard the vessel being inspected. The matter of this sliding scale is discussed in paragraphs 16 and 17, below.

8. Since the FCC inspector, in inspecting a radio installation installed pursuant to Part III of Title III of the Communications Act, will infrequently if ever find the supply voltage to be 13.6 V., it is necessary to provide a basis for determining the acceptability of an installation when the primary supply voltage is other than 13.6 V. It is evident that a wide range of primary supply voltages will be encountered, depending on whether the engine/generator/voltage regulator is operative or inoperative, or the vessel's battery is in use and charged or discharged. As discussed above, at voltages above 13.6 V. we can expect full output power from the transmitter to be available. The problems in the past have all concerned output power available with a primary supply voltage of less than 13.6 V., that is, when the transmitter is being operated from the battery.

9. The FCC Inspector, in measuring the output power for compliance with the minimum output power permitted by the rules, can expect to find, with a supply voltage variation from 11.5 to 16 volts, a measured output power approximating that set forth in the following representative curve, which we believe is reasonably representative of much of the solid-state VHF equipment currently installed and in use or available in the maritime services. While this curve, applicable to transmitters where the output amplifier is not regulated, has been prepared from actual transmitter measurements, it has been adjusted to coincide with 25 watts output at 13.6 V. and, above 14.5 V., has been rounded-off to apply to a less exacting design.



10. Returning now to EIA comments, it is pointed out that in EIA Standard RS–152–B,[2] allowance is made for output power degradation due to decrease in primary supply voltage (10%=3 dB, 20%=6 dB), humidity (3 dB), and temperature (3 dB). As set forth in RS–152–B, these values are the maximum departures which are permitted. Although not specifically so related in EIA comments, it is permissible to assume that these degrading effects are additive, so that, starting from 25 watts at 13.6 volts, we have:

Degradation attributed to	Degradation (dB)	Output (W)
(At 13.6 volts)	0	25
Decrease from 13.6 to 10.88 V	−6	6.25
Humidity	−3	3.125
Temperature	−3	1.5625

11. EIA Standard RS–152–B does not require that these degrading effects be measured on an additive basis, that is, when measuring a humidity of 90% at 50° C, the primary supply voltage need not be varied from 10.88 V. to 13.6 V. Under the EIA Standard the humidity test called for is to be made with a primary supply voltage of 13.6 V. Since EIA does not require these degrading affects to be added to each other, we see no compelling reason why the Commission should do so, since the effect of such an action would be to severely penalize VHF equipment design, would increase the cost of solid-state VHF equipment available to the maritime services, and permit the use of a minimum output power of 1.5625 watts, which is substantially less than we find acceptable. For these reasons we are not in this proceeding including in the rules provision for the additive degradation in output power due to the three degrading effects set forth above.

12. It is, however, necessary to make provision for the degradation of power output due to the decrease in primary supply voltage. While a comprehensive survey has not been carried out for all types of VHF sets available to the maritime services, the limited information available indicates that with a degradation in primary supply voltage of from 13.6 to 11.5 V. (15%) the output power degradation is between 1.2 and 1.6 dB. This is reflected in the curve appearing in paragraph 9, above. While this has no impact upon RS–152–B, it is a substantial commendation to VHF set manufacturers.

13. In considering degradation due to decrease in primary supply voltage, we presume that the input voltage to the output amplifier of most solid-state VHF sets currently available is not regulated. At the same time, we presume the voltage to the receiver local oscillator(s) and to the transmitter oscillator(s) is regulated. Available information, while limited, indicates the voltage to the receiver local oscillator(s) and transmitter oscillator(s) is regulated at between 9.0 and 9.5 volts. While there are a variety of ways in which the voltage may be regulated, we believe that such regulation can be effected if the input

[2] Minimum Standards for Land Mobile Communication FM or PM Transmitters 25–470 MHz, February 1970.

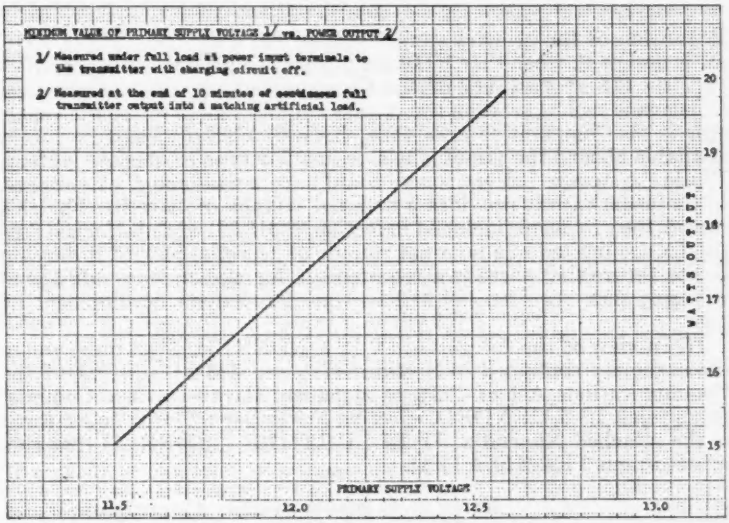
voltage to the regulator is 1.5 volts higher (as in the case of integrated circuit regulators) than the output regulated voltage. Thus, the regulated voltage (9.5 V.) plus the higher increment (1.5 V.) in which to effect regulation produces 11.0 V., to which must be added a tolerance (2%) for the measuring meter accuracy. This produces a required primary supply voltage of 11.22 volts, which can be rounded off to 11.5 V., to provide a degree of safeguard. In accordance with this approach, it will be noted that at its lower extremity the curve appearing in paragraph 9, above, starts at 11.5 V.

14. It is appropriate at this point to consider the matter of voltage drop over the conductors carrying primary supply power to the VHF installation. We believe it is reasonable and necessary to provide a line of demarcation between the VHF set manufacturer, who must be responsible for set performance, and voltage drop due to vessel wiring, which is the responsibility of the boat owner. It is necessary that the boat owner supply a primary supply voltage to the VHF set location which, under full load, is equal to or greater than a specified minimum. In looking at the performance of a VHF transmitter with an unregulated output amplifier, it is our view that it would be unreasonable to expect the VHF set designer to meet the required minimum output power requirements where the vessel primary supply voltage to the VHF set, under full load, is less than 11.5 volts. It is apparent, of course, that selection of 11.5 volts will impose upon the boat owner the requirement to provide primary power conductors of sufficient size to minimize voltage drop and, further, to employ a battery(s) which is capable of retaining an adequate charge. The tables provided below illustrate the affects of adequate and inadequate conductors. For example, 50 feet (25 feet in each direction) of No. 16 wire at 6 amperes provides a voltage drop of from 12.7 to 11.35 volts, which is below 11.5 volts and, therefore, unsatisfactory.

AWG wire size (No.)	Length of (single) conductor (feet)	Voltage drop at amperes			Resistance (ohms) at 50° C
		5A	6A	7A	
10	25	0.14	0.17	0.19	0.0279
	50	.28	.33	.39	.0558
	100	.56	.67	.78	.1116
12	25	.22	.27	.31	.0444
	50	.44	.54	.62	.0888
	100	.89	1.07	1.24	.1176
14	25	.35	.42	.49	.0705
	50	.71	.85	.99	.1411
	100	1.41	1.79	1.97	.2822
16	25	.56	.67	.78	.1122
	50	1.12	1.35	1.57	.2245
	100	2.24	2.69	3.14	.4490

15. Since it is unlikely that at the time of FCC inspection of a vessel the primary supply voltage will be 11.5 volts, it is necessary to provide a sliding scale, as mentioned in paragraph 7, above, so that the voltage measured, and transmitter output power, may be related to 11.5 volts and 15 watts, for the VHF transmitter with regulated output amplifier. At its lower limit the sliding scale is fixed by the values of 11.5 volts and 15 watts. In examining the matter of the other, or upper voltage, limit of the sliding scale, it is apparent that

voltages above approximately 12.6 volts will be available only if the engine/generator/voltage regulator are operative. The first objective of FCC inspection of the vessel is to assure that the minimum required output power is provided. The fact that the VHF installation will, with the higher primary supply voltages, provide an output power at the upper levels is of secondary interest. Further, in time of emergency it is probable that the vessel's engine may not be operative and the only primary supply voltage is that available from the battery source. In view thereof, the upper voltage which should be included in the sliding scale is that of a fully charged storage battery, or approximately 12.6 volts. The slope of the sliding scale should, as a practical matter, be parallel to the curve appearing in paragraph 9, above, thus providing an upper limit at 12.6 volts and 19.85 watts. A sliding scale drawn on this basis has been prepared and appears below. Further, in order that the VHF set manufacturer and FCC Inspector may have access to a common reference, this graph has been included in section 83.518(d)(5), as set forth in the attached Appendix.



1. The FCC inspector in using this curve will employ the following procedure:

—With the vessel's generator/voltage regulator inoperative (not charging the battery) and with power supplied to the VHF set by only the vessel's battery;

—An output watt meter, properly terminated, will be connected to the VHF transmitter output;

—The VHF transmitter will be placed in the full output position and full power output maintained for 10 continuous minutes;

—Without interrupting full power output, at the end of 10 minutes:

—Measure the primary supply voltage at the power input terminals to the VHF set; and

—Measure the power output from the VHF transmitter.

—At the measured primary supply voltage, determine that the power output of the VHF transmitter is equal to or greater than the value shown on the curve of paragraph 16.

—If the primary supply voltage, as measured above, is 11.5 volts or more and the output power is equal to or above the output power shown on the curve of paragraph 16, the output power level required by section 83.518 shall be deemed to have been met.

—Conversely, the VHF installation shall not be approved:

—If the primary supply voltage, as measured above, is less than 11.5 volts; or

—If the output power, for a primary supply voltage at or above 11.5 V., as measured above, is less than that shown on the curve of paragraph 16.

16. EIA Standard RS–152–B includes a wide range of primary supply voltages, half or more of which will not be available from a storage battery source aboard ship. The range of voltages appearing in section 2.2.1 of RS–152–B are as follows:

Nominal power supply voltages	Test voltage	Nominal power supply voltages	Test voltage
6 V DC	(Function of)	64 V DC	72.0 V
12 V DC	(Current drawn)	110 V DC	110.0 V
24 V DC	26.4 V	120 V AC	121.0 V
32 V DC	36.0 V	208 V AC	211.0 V
48 V DC	52.5 V	240 V AC	242.0 V

Regardless of the primary supply voltage for which the marine VHF set is designed, when that VHF set is installed aboard a vessel subject to Title III of Part III of the Communications Act, the practical situation is such that when the vessel's engine is inoperative the generator is also inoperative and, thus, the only electrical energy source available aboard the vessel is one or another type of storage battery. While the storage battery source could have a wide range of voltages, in the usual case it provides a nominal voltage of 12 volts. For this reason, the provisions included in section 83.518(d) of the attached Appendix are limited to a nominal voltage of 12 volts. Should it develop in the future that there is a requirement for one or more additional voltages, such requirement will be considered upon development of need.

17. In view of the foregoing, IT IS ORDERED, That pursuant to the authority contained in Sections 4(i) and 303(e) and (r) of the Communications Act of 1934, as amended, Part 83 of the Commission's rules, IS AMENDED, effective November 16, 1973, as set forth in the attached Appendix. IT IS FURTHER ORDERED that this proceeding is TERMINATED.

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

APPENDIX

Part 83 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

1. Section 83.134(f) is amended to add a new footnote 3 to read as follows:

§ 83.134 Transmitter power.

* * * * * * *

(f) Ship station transmitters using F3 emission in the band 156–162 MHz shall not exceed a carrier power of 25 watts[1 2 3] and, additionally, shall include the capability to reduce, readily, the carrier power to one watt or less.

* * * * * * *

[3] For purposes of type acceptance (see Volume II, Part 2, Subpart F), the 25 watts carrier power limit shall be determined at a primary supply voltage of 13.6 volts DC, ±1%, for equipment designed to employ a conventional 12 volt lead acid storage battery as a source of primary power.

* * * * * * *

2. Section 83.518 is revised to read as follows:

§ 83.518 Very high frequency transmitter.

(a) The transmitter shall be capable of effective transmission of F3 emission on 156.800 MHz, 156.300 MHz, and on the ship-to-shore working frequency as necessary for communication with one or more public coast stations serving the area in which the vessel is navigated.

(b) The transmitter shall be adjusted so that the transmission of speech normally produces peak modulation within the limits 75 percent and 100 percent.

(c) The transmitter shall be of a type which has been demonstrated in the process of type acceptance as being capable of delivering a power of at least 20 watts, but not more than 25 watts, on each of the frequencies 156.300 MHz, 156.800 MHz and on any one of the ship-to-shore public correspondence channels, into 50 ohms effective resistance, when operated with an applied primary supply voltage of 13.6 volts DC.[1] In addition, for transmitters type accepted after January 1, 1974, which are intended to be usable for the purpose of this subpart and which are designed to operate from a nominal power supply voltage of 12 VDC, the application for type acceptance shall include a showing of compliance with the power output graph of paragraph (d) (5) of this Section.

(d) When an individual demonstration of the capability of the transmitter is deemed necessary in the judgment of the Commission, the requirements and procedures for determining compliance with the output power requirements prescribed in this paragraph, with the radiotelephone installation normally installed on board ship, shall also be met.

(1) Measurements of primary supply voltage and transmitter output power shall be made with the equipment drawing energy only from the ship's battery, in accordance with the following procedures.

(2) The primary supply voltage, measured at the power input terminals to the transmitter, and the output power of the transmitter, terminated in a matching artificial load, shall be measured at the end of 10 minutes of continuous, uninterrupted operation of the transmitter at its full power output.

(3) The primary supply voltage, measured in accordance with the procedures of this paragraph, shall be not less than 11.5 volts.

(4) The transmitter output power, measured in accordance with the procedures of this paragraph, shall be not less than 15 watts.

(5) For primary supply voltages, measured in accordance with the procedures of this paragraph, of greater than 11.5 volts but less than 12.6 volts, the required transmitter output power shall be taken from the graph of this subparagraph. To apply this graph, enter the graph, at the bottom, at the point corresponding to the measured primary supply voltage, read vertically to intersect the drawn line, then read horizontally to the right to the scale of "watts output." The resultant value of watts output is the minimum transmitter output power required by this section, that is, the transmitter output power, measured in accordance with the procedures of this paragraph, must be equal to or in excess of the resultant value.

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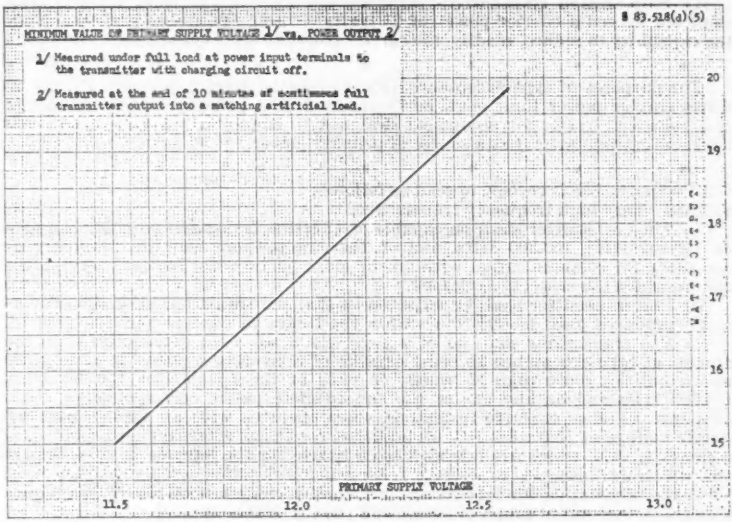
[1] Sets operating from other values of primary supply voltage, such as 26.4 VDC, 36.0 VDC, or 117 VAC shall meet this requirement for operation at their respective primary supply voltage, in lieu of 13.6 VDC.



(e) The transmitter shall be capable of being adjusted for efficient use with an actual ship station transmitting antenna meeting the requirements of Section 83.526.

F.C.C. 73-1030

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
AMENDMENT OF PART 73 OF THE COMMISSION'S RULES AND REGULATIONS TO CONFORM THE FM TABLE OF ASSIGNMENTS FOR FM BROADCAST STATIONS (SECTION 73.202(b)) TO THE AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE UNITED MEXICAN STATES CONCERNING FREQUENCY MODULATION BROADCASTING, AND TO MAKE OTHER RELATED AMENDMENTS

ORDER

(Adopted October 3, 1973; Released October 10, 1973)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT.

1. The Governments of Mexico and the United States have concluded an Agreement [1] concerning the allotment and use of frequency modulation broadcast (FM) channels in the 88 to 108 MHz band in the area within 199 miles (320 kilometers) of the common border between the two countries. A Public Notice announcing that the Agreement went into effect August 9, 1973, was issued by the Commission August 16, 1973 (Mimeo 05769).

2. The Agreement requires changes in the channel assignments for some communities in Arizona, California, New Mexico, and Texas listed in the Table of Assignments for FM broadcast stations (Section 73.202(b) of the Commission's Rules and Regulations). Since these changes conform to an Executive Agreement with a foreign nation and none of the channels required to be changed are presently authorized for use by any permittee or licensee, neither a Notice of Proposed Rule Making to amend the FM Table of Assignments pursuant to Section 4 of the Administrative Procedure Act (5 U.S.C. 553(a)(1)), nor an Order to Show Cause, pursuant to Section 316 of the Communications Act of 1934, as amended, is necessary, and amendment of the FM Table of Assignments may be made effective on publication of this Order in the Federal Register.

3. The Agreement also includes in the allotment plan (Annex II Table B), Class A, B, and C noncommercial educational FM channels (201–220) for various communities in the four states. It is deemed appropriate to reflect this in Subpart C of Part 73 of the Commission's

[1] "Agreement between the United States of America and the United Mexican States Concerning Frequency Modulation Broadcasting in the 88 to 108 MHz Band", popularly referred to as the "United States-Mexico FM Broadcasting Agreement".

Rules and Regulations (governing noncommercial educational FM broadcast stations) by the addition of Section 73.507.[2]

4. Accordingly, IT IS ORDERED, That, pursuant to authority found in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, Section 73.202(b) of the Commission's Rules and Regulations IS AMENDED as concerns Arizona, California, New Mexico, and Texas to reflect the changes required by the aforementioned Agreement, as set forth in the attached Appendix A. IT IS FURTHER ORDERED, That Part 73 IS AMENDED by the addition of Section 73.507 and making concomitant changes in Sections 73.202 and 73.501 as set forth in the attached Appendix B. These changes in the Commission's Rules and Regulations are effective October 17, 1973.

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

APPENDIX A

1. Amend § 73.202(b) to read as follows for the states of Arizona, California, New Mexico, and Texas:

Arizona

	Channel No.		Channel No.
Ajo	252A	Miami	276A
Apache Junction	296A	Nogales	252A
Benson	249A	Page	228A
Bisbee	221A	Phoenix	233, 238, 245, 254, 268, 273
Casa Grande	288A	Prescott	252A
Claypool	252A	Safford	231, 256
Clifton	237A	San Manuel	269A
Coolidge	280A	Show Low	228A
Cottonwood	240A	Sierra Vista	265A
Douglas	237A	Sun City	292A
Eloy	292A	Tempe	250
Flagstaff	225, 230	Tolleson	264
Glendale	222	Tucson	221A, 225, 229, 235, 241, 258
Globe	262	Wickenburg	288A
Holbrook	221A	Willcox	252A
Kingman	224A	Winslow	236, 247
Lake Havasu City	240A	Yuma	226, 236
Mesa	227, 284		

California

Alameda	224A	Bishop	264
Alturas	233	Blythe	262
Anaheim	240A	Brawley	233, 241
Anderson	232A	Burney	291
Apple Valley	272A	Calexico	249A
Arcata	228A	Calipatria	265A
Arroyo Grande	237A	Camarillo	240A
Auburn	266	Carmel	269A
Bakersfield	231, 243, 268, 300	Carlsbad	240A
Banning	269A	Cathedral City	276A
Barstow	232A	Chico	229, 236
Berkeley	231, 275	Coachella	229

[2] Not included are seven Class D noncommercial educational stations in California in the allotment plan. In this respect, all existing Class D facilities in the border area are provided for with existing facilities except Station KTAI, Kingsville, Texas, which is being required to change its operation from Channel 220 to Channel 216A.

Crescent City ---------- 232A
Delano ---------- 253, 287
Dinuba ---------- 255
El Cajon ---------- 227
El Centro ---------- 253
Escondido ---------- 221A
Eureka ---------- 222, 242
Fairfield ---------- 237A
Fallbrook ---------- 296A
Ft. Bragg ---------- 224A, 237A
Fowler ---------- 244A
Fremont ---------- 285A
Fresno ---------- 229, 238, 250, 266, 270, 274, 290
Garden Grove ---------- 232A
Gilroy ---------- 232A
Glendale ---------- 270
Hanford ---------- 279, 298
Hemet ---------- 288A
Hollister ---------- 228A
Holtville ---------- 261A
Imperial ---------- 257A
Indio ---------- 252A
Inglewood ---------- 280A
Jackson ---------- 232A
Kernville ---------- 272A
King City ---------- 221A
Lancaster ---------- 292A
Lemoore ---------- 285A
Livermore ---------- 269A
Lodi ---------- 249A
Lompoc ---------- 224A
Long Beach ---------- 250, 272A, 288A
Los Altos ---------- 249A
Los Angeles ---------- 222, 226, 230, 234, 238, 242, 246, 254, 258, 262, 266, 274, 278, 282, 286, 290, 298
Los Banos ---------- 240A
Los Gatos ---------- 237A
Madera ---------- 221A
Mammoth Lakes ---------- 292A
Manteca ---------- 244A
Mariposa ---------- 284
Marysville ---------- 260
Merced ---------- 268
Modesto ---------- 272A, 277, 281
Mojave ---------- 249A
Monterey ---------- 245
Morro Bay ---------- 283
Mt. Shasta ---------- 237A
Needles ---------- 250
Newport Beach ---------- 276A
Oakdale ---------- [1] 236
Oceanside ---------- 271
Ojai ---------- 288A
Ontario ---------- 228A
Oroville ---------- 249A
Oxnard ---------- 252A, 284
Pacific Grove ---------- 285A
Palm Springs ---------- 284
Paradise ---------- 244A
Pasadena ---------- 294
Paso Robles ---------- 232A
Porterville ---------- 259
Quincy ---------- 240A
Red Bluff ---------- 240A, 272A
Redding ---------- 251, 282
Redlands ---------- 244A
Redondo Beach ---------- 228A
Ridgecrest ---------- 224A
Riverside ---------- 224A, 248, 256
Roseville ---------- 228A
Sacramento ---------- 223, 241, 245, 253, 263, 286, 293, 300
Salinas ---------- 264, 273, 280A
San Bernardino ---------- 236, 260
San Clemente ---------- 300
San Diego ---------- 231, 235, 243, 247, 251, 264, 268, 275, 279, 287, 293
San Fernando ---------- 232A
San Francisco ---------- 227, 235, 239, 243, 247, 251, 255, 259, 267, 271, 279, 283, 287, 291, 295
San Jose ---------- 222, 253, 262, 293
San Luis Obispo ---------- 227, 241
San Mateo ---------- 299
San Rafael ---------- 265A
Santa Ana ---------- 244A, 292A
Santa Barbara ---------- 229, 248, 260, 277
Santa Clara ---------- 289
Santa Cruz ---------- 256
Santa Maria ---------- 256, 273
Santa Monica ---------- 276A
Santa Paula ---------- 244A
Santa Rosa ---------- 257A, 261A
Seaside ---------- 296A
Sierra Madre ---------- 296A
Sonora ---------- 224A
South Lake Tahoe ---------- 261A, 276A
Stockton ---------- 257A, 297
Susanville ---------- 224A
Taft ---------- 280A
Thousand Oaks ---------- 224A
Tracy ---------- 265A
Truckee ---------- 269A
Tulare ---------- 235, 294
Turlock ---------- 226
Twentynine Palms ---------- 239
Ukiah ---------- 233, 277
Ventura ---------- 236, 264

[1] Any application must specify maximum power and antenna height, or the equivalent considering terrain.

104-013—73——9

New Mexico

Texas

Terrell	296A	Victoria	221A, 236, 254
Terrell Hills	292A	Waco	238, 248, 260, *296A
Texarkana	251, 273	Weslaco	285A
Tulia	285A	Wichita Falls	225, 236, 260, 277
Tyler	226, 257A, 268	Winnsboro	285A
Uvalde	237A		
Vernon	272A		

APPENDIX B

1. Section 73.202(a) is amended by adding the following language at the end of the section to read as follows:

§ 73.202 *Table of Assignments.*

* * * * * * * * * * *

* * * There are specific noncommercial educational FM assignments (Channels 201–220) for various communities in Arizona, California, New Mexico, and Texas. These are set forth in § 73.507.

2. In § 73.501 a new par (c) is added to read as follows:

§ 73.501 *Channels available for assignment.*

* * * * * * * * * * *

(c) There are specific noncommercial educational FM assignments (Channels 201–220) for various communities in Arizona, California, New Mexico, and Texas. These are set forth in § 73.507.

3. Section 73.507 is added to read as follows:

§ 73.507 *Noncommercial educational channel assignments under the United States–Mexico FM Broadcast Agreement.*

(a) The Governments of Mexico and the United States are parties to an Agreement providing a table of allotments of FM channels in the area within 199 miles (320 kilometers) of the common border. The following table sets forth the assignments of Class A, B, and C noncommercial educational FM channels (201–220) to communities in the affected portions of Arizona, California, New Mexico, and Texas:

Arizona

	Channel No.		*Channel No.*
Ajo	220	Phoenix	202, 208A, 212A, 218
Douglas	201, 205A, 211A	Prescott	208A, 214
Globe	211A	Safford	215, 220A
Kingman	211A, 220	Tucson	213
McNary	201A	Wickenburg	209A
Nogales	217	Yuma	201A, 205A
Parker	211A		

California

Claremont	204A	Riverside	209A
Long Beach	201A	San Bernardino	220
Los Angeles	205A, 214, 218	San Diego	202A, 208
Northridge	203A	Santa Barbara	218
Pasadena	207	Santa Monica	210
Redlands	206A		

New Mexico

Alamogordo ---------- 201, 208A
Artesia ---------- 219A
Carlsbad ---------- 211A, 215
Deming ---------- 218A
Hobbs ---------- 211A
Las Cruces ---------- 209A, 214
Lordsburg ---------- 220A
Lovington ---------- 220A
Roswell ---------- 213, 217A
Silver City ---------- 212, 217A
Socorro ---------- 208A, 216
Truth or Consequences ---------- 220A

Texas

Alpine ---------- 219
Andrews ---------- 209A
Austin ---------- 204A, 208, 214A
Ballinger ---------- 211A
Beeville ---------- 218A
Big Lake ---------- 211A
Big Spring ---------- 203, 207A
Boerne ---------- 210A
Bracketville ---------- 212A
Brady ---------- 213A
Brownsville ---------- 202A
Brownwood ---------- 205, 212A
Carrizo Springs ---------- 201A
Coleman ---------- 220A
Colorado City ---------- 211A
Corpus Christi ---------- 212, 220A
Cotulla ---------- 203A
Crane ---------- 205A
Crystal City ---------- 214A
Cuero ---------- 210A
Del Rio ---------- 204, 214A
Eagle Pass ---------- 208, 213A
Edinburg ---------- 203A
Eldorado ---------- 219A
El Paso ---------- 203, 208A
Falfurrias ---------- 218A
Fort Stockton ---------- 201, 206A
Fredericksburg ---------- 201A
Freer ---------- 214A
Goliad ---------- 216A
Gonzales ---------- 201A
Harlingen ---------- 205A
Hebbronville ---------- 220A
Hondo ---------- 202A
Junction ---------- 212A
Kenedy-Karnes ---------- 220A
Kermit ---------- 212A
Kerrville ---------- 216A
Kingsville ---------- 216A
Lamesa ---------- 210A
Laredo ---------- 201A, 210
Llano ---------- 203A
Marfa ---------- 203A
Midland ---------- 211A
Monahans ---------- 210A
New Braunfels ---------- 202A
Odessa ---------- 213A, 217
Ozona ---------- 213A
Pearsall ---------- 213A
Pecos ---------- 205A

F.C.C. 73-1013

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of WALTER E. WEBSTER, JR., RECEIVER (ASSIGNOR) and STERLING THEATRES CO. (ASSIGNEE) For Assignment of the Licenses of Stations KTW-AM and FM Seattle, Wash.	Files Nos. BAL-7494, BALH-1618

MEMORANDUM OPINION AND ORDER

(Adopted September 27, 1973; Released October 11, 1973)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT; COMMISSIONER JOHNSON DISSENTING; COMMISSIONER H. REX LEE DISSENTING AND ISSUING A STATEMENT; COMMISSIONER WILEY NOT PARTICIPATING.

1. We have before us, (a) the above-referenced applications, (b) a petition to deny, filed by Norwood and Gloria Patterson, S. H. Patterson, and Nordawn, Inc., (c) a motion to deny, filed by J. W. LeTourneau, Jr., Chairman of the Committee for Preservation of Religious Broadcasting, (d) informal objections of Byron D. Coney to a grant of the applications, and (e) responsive pleadings of the applicants and petitioners.[1] Also before us are (f) our letter of November 22, 1972, deferring action on the applications until the Ninth Circuit U.S. Court of Appeals had decided a pending appeal challenging the Receiver's authority and indicating that in any event a hearing would be required on three issues, (g) certain amendments to the applications filed by Sterling on January 11, 1973, which are said to resolve the proposed hearing issues, (h) our letter of January 23, 1973 again deferring action until the appeal in Item (f) was decided, (i) Sterling's letter of April 11, 1973 indicating that the appeal referred to in Item (f) has now been dismissed, and requesting action on the merits of the applications, (j) Nordawn's Supplement to Petition to Deny, filed April 23, 1973, (k) Sterling's opposition (and supplement thereto) to Nordawn's supplemental petition, (l) the Receiver's opposition to Nordawn's supplemental petition, (m) The Committee's comment in support of the supplemental petition and (n) the Broadcast Bureau's letter of June 14, 1973 requesting additional information and the responses and comments of the parties thereto.

[1] Hereinafter, we shall sometimes refer to the Pattersons and Nordawn, Inc., as "Nordawn", to Sterling Theatres Co., as "Sterling", the Committee for Preservation of Broadcasting as "The Committee", Walter E. Webster, Jr., Receiver, as "Receiver", and Byron D. Coney as "Coney".

2. The applications and objections thereto have been before us twice before. It is thus necessary to set out the background respecting our earlier limited consideration of the applications.

3. Nordawn—all of whose stock is owned by the Pattersons—was formerly the licensee of the KTW stations. In 1969, the Superior Court in King County (Washington) appointed Walter Webster Receiver and authorized him to file applications for involuntary assignment of the licenses, (The principal creditor in the Receivership was David M. Segal, who had sold the KTW stations to the Pattersons). Applications for transfer of the licenses to the Receiver were filed and granted, and after intervening lawsuits not relevant here,[2] the Receiver took possession in August, 1970. Subsequently, the Superior Court with jurisdiction over the receivership approved an agreement for sale of the stations by the Receiver to Sterling. The applications covering assignment of the KTW licenses to Sterling are the subject of the petitions and objections considered hereinafter.

3a. Preliminary examination of the Nordawn's petition to deny indicated the pendency before the U.S. Court of Appeals for the Ninth Circuit of an appeal by Nordawn from the Federal District Court's dismissal of Nordawn's petition for a Chapter X Reorganization. While Nordawn claimed reversal of the District Court would require ouster of the Receiver and vacating the State Court Order on which his jurisdiction rested, that claim was unsupported. Moreover, the applicants' responsive pleadings did not adequately consider what effect reversal of the District Court might have on the Receiver's authority to sell. Our concern here was that the legal status of the KTW licenses not be exposed to unnecessary hazards. The applicants and Nordawn were accordingly requested to address themselves to this matter. The responses, based on opinions of Washington state counsel experienced in matters of State and Federal bankruptcy laws, took divergent views on what effect reversal of the District Court might have on the Receiver's authority. Additionally, on November 6, 1972, Nordawn filed with the Commission an alleged $800,000 loan agreement between Nordawn, certain of its principals, and the Mercantile Financial Corporation. Allegedly, the loan proceeds were to be used to pay off creditors and thus bring about an end to the receivership.

4. On the basis of the responses, the Commission concluded on November 22, 1972 that it would be best to defer action until the Ninth Circuit Court of Appeals had decided Nordawn's appeal. Nordawn and the Receiver were urged to press for an early decision on the appeal. At the same time, while the Commission did not reach the substantive merits of the applications and objections thereto, it indicated in its November 22nd letter that it had determined a hearing would be needed on three issues raised by the petitions.[3] The November 22nd letter specifically noted no effect was given to the copy (unsigned) of Nordawn's alleged loan agreement with Mercantile Finance.

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[2] Until recently, one lawsuit—a challenge in the Federal Courts to the Receiver's jurisdiction—was relevant and served twice as the basis for our earlier refusal to act on the applications. This lawsuit is considered more fully below.

[3] These issues—the *bona fides* of Sterling's ascertainment survey, the adequacy of Sterling's compliance with Primer requirements, and apparent violation of the nonduplication rule—are considered below.

5. Following this, the State Court authorized an extension of the contract between Sterling and the Receiver to January 30, 1973. On January 11, 1973, Sterling filed substantial amendments to the applications, which were claimed to obviate the need for a hearing, and a Request for Immediate Grant. The Request, *inter alia*, reargued the possible impact of the pending Federal Court appeal, and requested action before the then imminent expiration date of the contract. The Request was opposed by Nordawn. On January 23, 1973, the Commission again concluded that consideration of the merits of the applications should be deferred until the Ninth Circuit Court had rendered its decision.

6. In the meantime, negotiations looking to ending the receivership took place between the Pattersons, Segal (prior owner of the stations), and others. The negotiations rested on the possibility of obtaining the $800,000 loan from the Mercantile Finance Corporation, referred to above. On February 12, 1973, the negotiating parties entered three agreements. The first of these (hereinafter the "Basic Agreement") provided Segal would accept $300,000 in cash in settlement of his claims, provided payment was made on or before March 15, 1973. The Basic Agreement required the Pattersons to place in escrow (a) a signed Stipulation and Order of Dismissal covering Nordawn's then pending appeal in the Ninth Circuit Court, (b) an agreement not to appeal or contest actions of the Receiver in the receivership proceedings, and (c) an agreement not to appeal or contest the proposed Sterling assignment. The Basic Agreement provided that if cash payment was made by March 15, 1973, the escrow agent was to redeliver the agreements not to contest the receivership proceedings and the Sterling assignment to the Patterson's attorney, and the stipulation for dismissal of the Ninth Circuit appeal to Segal. The Basic Agreement further provided that if for any reason cash payment of $300,000 was not made by March 15th, all escrowed documents were to be delivered to Segal, who could then use them in any manner he saw fit.

7. The second agreement of February 12, 1973 merely extended the closing date of the Basic Agreement to March 31, 1973.

8. The third agreement of February 12, 1973 is entitled "Agreement Not to Appeal, or Contest Sale of Radio Stations KTW–AM and FM". Under this, the Pattersons agreed not to "oppose in any manner whatsoever, either directly or indirectly" the assignment of the licenses from the Receiver to Sterling, or to oppose the grant of the applications by the Commission. The Pattersons further agreed not in any way to seek reconsideration or appeal from any Commission decision or order granting the assignment applications to Sterling, and agreed also to cooperate fully in prosecuting the applications to obtain Commission consent, and to cooperate in consummation after such consent.

9. The required documents were placed in escrow. On February 15, 1973, a hearing was held before Judge Warren Chan of the King County Superior Court and on that day Judge Chan entered an order authorizing the Receiver to enter an agreement extending the time for obtaining Commission consent under the Receiver/Sterling contract to May 31, 1973. The order also took into account the Segal/Patterson agreements by providing that the May 31st date would terminate if

on or before March 31, 1973 the defendants paid Segal $300,000 in cash and made further provision for compromising other creditor claims and receivership expenses. Upon such payment, Judge Chan's order further required the Receiver to cooperate in transferring all of the then assets to Nordawn, and on completion of such transfer, the receivership would terminate.

10. Just before the March 31st termination date of the Segal/Pattersons agreements, it became apparent the loan from Mercantile Finance might not be forthcoming. On March 30, 1973, Pattersons' counsel filed with Judge Chan a motion to modify the February 15th order. The motion alleged the lessor of the KTW transmitter site had given notice of termination of the lease covering such site, which made it impossible to meet conditions of the Merchantile Finance loan. On March 30, 1973, Judge Chan entered an order providing for a hearing on the motion to modify on April 2, 1973.

11. At the hearing on April 2, 1973, Judge Chan ruled that he could not modify the order of February 15, 1973 without the consent of Segal and Sterling and its president, and that Segal had advised the Court he would not give his consent. An order denying the Patterson's Motion to Modify the February 15th order was entered on May 2, 1973. A copy of that order has been furnished to the Commission.

12. Meanwhile, the Mercantile Finance loan—which was central to the Pattersons' obtaining funds to pay Segal—fell through. The escrowed documents were delivered to Segal, who filed the Stipulation and Order of Dismissal with the Ninth Circuit Court of Appeals on April 3, 1973. On that same day, the Ninth Circuit Court of Appeals, acting pursuant to the stipulation, entered an order dismissing Nordawn's appeal.

13. On April 11, 1973, Sterling filed with the Commission copies of the Segal/Patterson agreements referred to above, and a certified copy of the Ninth Circuit Court of Appeals order dismissing Nordawn's appeal. Sterling noted there was no longer any pending litigation challenging the validity of the assignment. Accordingly, Sterling urged that the merits of the applications should now be considered. On April 23, 1973, Nordawn filed its "Supplement to Petition to Deny", which is opposed by both Sterling and the Receiver.

14. Before turning to the merits of the applications and the petitions, certain threshold matters must be disposed of. First, Nordawn's Supplement to Petition to Deny must be dismissed. As the Receiver correctly points out, such a Supplement is not a "pleading of right" under the Rules, and leave must be sought and granted before such a pleading may be filed. See Sections 1.580(j) and 1.45(c) of the Rules. Apart from the fact Nordawn has not sought leave to file the Supplement, the allegations of fact in the Supplement are not supported by affidavit of a person or persons with personal knowledge thereof, as required by Section 309(d) of the Communications Act and Section 1.580(j), *supra*. However, we shall hereinafter treat the alleged new matters in the Supplement as informal objections. The only aspect of the Supplement which requires consideration at this stage is the suggestion that the Pattersons' motion to extend the March 31st deadline of the Segal/Patterson agreements is still under advisement by Judge

Chan. But an affidavit from Segal's counsel in the proceedings before Judge Chan irrefutably establishes Judge Chan ruled that he did not have authority to extend the March 31st deadline of the Segal/Patterson agreements because Segal had refused to give his consent. (Superior Court order of May 2, 1973). Thus, the only application we have before us (and the only one we can consider under the limitations of Section 310(b) of the Comunications Act) is the proposed assignment of the KTW licenses from the Receiver to Sterling.

15. The second threshold matter involves standing of the three petitioners. Without belaboring the point, Nordawn and its stockholders have standing. The threatened loss of their investment in the stations gives them an obvious economic stake in the outcome of these proceedings.

16. We also conclude that The Committee for Preservation of Religious Programming has standing. In so doing, we recognize there are allegations respecting the *bona fides* of The Committee. For instance, both Sterling and the Receiver advert to the "strange" relation between The Committee's Chairman, Mr. LeTourneau, and Nordawn's principals. They note further LeTourneau is not even a Seattle resident, but rather, a resident of Fresno, California, and both question the validity of the signatures on The Committee's petition and the manner in which those signatures were obtained. The Receiver further points out LeTourneau is the son-in-law of Norwood and Gloria Patterson, and was formerly manager of the KTW stations under Nordawn's ownership. The Receiver also charges that when he asked LeTourneau to stay on as station manager in 1970, LeTourneau said his allegiance was solely to Norwood Patterson and he would in no way cooperate with the Receiver. The Receiver alleges that the relations between LeTourneau and Norwood Patterson suggest that The Committee's Motion to Deny, far from being a spontaneous community movement, may be a carefully contrived vehicle to achieve Nordawn's personal ends. Both applicants also suggest that in asking Seattle area pastors to obtain signatures for the Motion to Deny, LeTourneau's statements may have created the impression the KTW stations were the sole source of religious programming in the Seattle area.

17. Replying to these charges, The Committee relies on *Citizens Committee v. Federal Communications Commission*, 141 U.S. App. D. C. 109, 436 F2d 263 (1970) in support of standing. The Committee readily admits LeTourneau is related by marriage to the Pattersons, and is presently a Fresno resident. But in view of the managerial role he formerly had at KTW, The Committee claims LeTourneau was aware of the need for religious programming in the Seattle area. Attached to The Committee's reply are affidavits from Seattle area clergymen, indicating that whatever LeTourneau's personal interest might be, the religious leaders joined in opposing the format change because of their own and their parishioner's interests in continuing the KTW religious format.

18. While the applicants have raised questions respecting The Committee, we think any latent dispute inherent in these questions has been adequately explained. There is, for example, no longer any factual dispute concerning LeTourneau's relationship to the Pattersons,

or his residency in Fresno. And whatever inferences might be drawn from LeTourneau's alleged personal motives in returning to the Seattle area to gather support in opposition to the format change, such personal motives are outweighed by the three-thousand Seattle area signatories who support The Committee.[4]

19. Coney neither has nor claims standing, and his letters will be considered as informal objections to the applications.

20. Proceeding now to the merits, we turn first to Nordawn's petition. Given dismissal of Nordawn's appeal in the Ninth Circuit Court of Appeals, it is no longer necessary to consider what effect a decision favorable to Nordawn might have on the Receiver's authority. However, there remain to be considered Nordawn's allegations that the Receiver failed to disclose, in the application, the pendency of litigation in Washington state (including Nordawn's then-pending Ninth Circuit Court appeal).

21. The facts here are that in answering the application question which seeks information as to whether the assignor is a party to any litigation affecting the assignment, the Receiver responded: "Previous litigation respecting KTW–AM–FM occurred. The Commission was kept fully advised of this by assignor, via letters to the Commission's Secretary." Nordawn points out the Receiver made no mention of (a) a pending suit involving the transmitter site of the stations,[5] and (b) Nordawn's pending appeal in the Ninth Circuit Court of Appeals. In reply, the Receiver concedes his omission, but explains it on the ground that in view of the extensive litigation spawned by the receivership, the omission, though regrettable, is understandable. He also contends Nordawn has not shown any willful intent to deceive, and there would be no motive for deception. Nordawn takes issue with this explanation.

22. We are not persuaded the Receiver intended to deceive the Commission by failing to note the litigation involved. Admittedly, his response might have been made with greater care. But the allegations must be viewed in context. The State receivership gave rise to a number of lawsuits in the State and Federal Courts, instituted by Nordawn and its principals. In fact, in our letter of September 4, 1970 to Nordawn and Norwood Patterson dismissing a petition for reconsideration of our action granting the applications for assignment of the licenses to the Receiver, we noted the existence of earlier challenges to the Receiver's authority and the then-pendency of Nordawn's abortive efforts to obtain a Chapter X Reorganization. In view of the litigation which surrounded the receivership, the Receiver's oversight is understandable. Apart from this, we recognize a receiver holds the license only until a final disposition can be made, and as a general rule, receivers do not have the same working familiarity with the Commission's requirements that is expected of licensees. This being the case, we are not inclined to

[4] Of course, a "distant-city" petitioner who is unable to establish any significant ties to the locale of the station whose application is being considered does not have standing. See *Whitney*, 28 FCC 2d 736. LeTourneau's prior links to Seattle and the KTW stations clearly distinguish this case from Martin-Trigona's assertions of standing in *Whitney*.

[5] The transmitter site litigation is no longer pending. On February 24, 1972, the Washington State judge having jurisdiction over the State receivership provided any claims of Norwood Patterson and his California corporation respecting the site should be transferred to the proceeds of the KTW–AM–FM sale. New allegations by Nordawn in its Supplemental Petition concerning termination of the transmitter site lease are considered below.

find that the Receiver's omission raises any substantial and material question of fact requiring a hearing.

23. We consider next the matters relating to Sterling's anti-trust record in the theatre field.[5a] In this regard, there are several distinct but related questions which must be considered. These are: 1) The manner in which Sterling revealed its anti-trust record in the application; 2) whether Sterling's anti-trust record in the theatre field raises a substantial question of fact as to possible use of these stations in the future for anti-competitive purposes; and 3) the claims that Sterling's acquisition of the KTW station will give it the opportunity of furthering its economic control of the movie theatre industry in the Seattle area. Each of these questions will be dealt with separately below.

24. Nordawn contends in essence that Sterling's failure to reveal the full extent of its anti-trust record as required by our application, coupled with what it claims to be false and misleading statements in the responses as filed, requires that a hearing be held on issues relating to Sterling's candor before this Commission.

25. At the time the subject application was filed, a jury in, *Anderson* v. *Sterling Theatres Company*, Civil Action 6207, U.S.D.C., Western District of Washington (1968), had concluded that Sterling, among others, had violated Sections 1 and 2 of the Sherman Act, and that in *State of Washington* v. *Sterling Theatres Co. et al.* (Superior Court, Kings County, Case No. 604074), a state anti-trust action, Sterling had entered into a consent decree. Question 10(b) of Section II of the application asks in essence whether the applicant has been found guilty of violating the federal anti-trust laws and Question 10(d) asks, in part, the same question with respect to similar state laws. Question 10(h) states: "If the answer to any of the foregoing parts of this paragraph is 'yes', submit as Exhibit No. — a full disclosure concerning the persons and matters involved, identifying the court and the proceeding (by dates and file numbers), stating the facts upon which the proceeding was based or the nature of the offense committed, and the disposition of the matter." Sterling responded "no" to question 10(b) and (d) and to 10(h) stated: "Although all answers are negative note Exhibit #8."

26. In its opposition to the Petition to Deny, Sterling made no attempt to explain why it had answered questions 10(b) and (d) in the negative or why it had not included all the information required by 10(h) in its Exhibit 8. Rather, it argued generally that its responses to these questions were entirely accurate and proper. As a consequence, in our letter of June 14, 1973 we requested a full and complete explanation for Sterling's apparent failure to answer these questions properly.

27. In response to our letter and Nordawn's comments Sterling submitted statements from the law firm that has represented it in all its

[5a] The anti-trust violations related to practices in the licensing and distribution of motion picture films in the Seattle metropolitan area. In resolving the questions raised by Petitioner with respect to those activities we have considered: 1) the complaints, including the prayers for relief; 2) the jury instructions in the Anderson case; 3) the jury verdict on special interrogatories; 4) *Andersons* proposed judgment; and 5) the courts final judgment.

anti-trust litigation and its communications counsel. With respect to this matter counsel states that Sterling's negative answers to questions 10(b) and 10(d) were based on the advice of anti-trust counsel.[6] The reasons for this advice was predicated on their understanding of the meaning of the term "Found Guilty" as used in the Washington Federal and State Courts. This term, according to counsel, generally connotes criminal action, and such was not the case in either the *Anderson* or *State of Washington* cases. Explaining further, with regard to the *Anderson* suit, counsel states that the prayer for relief included a request for treble damages and injunctions and acknowledges that, had injunctive relief been granted, guilt could be inferred. In this case however, while the jury found that Sterling had violated the Sherman Act, both in injunctive relief and damages, other than nominal damages, were denied. Consequently, according to Counsel's view of the verdict, it constituted only a technical violation of the Sherman Act and therefore an affirmative answer to question 10(b), which included the phrase "found guilty", would not have been appropriate. With regard to the *State of Washington* case *supra* counsel states that it constituted neither a finding nor an admission of anti-trust violations by Sterling and therefore in their view a negative answer to question 10(d) was also proper as to the *State of Washington* suit. As to Sterling's failure to provide the full information required by Section 10 (h), counsel states that Exhibit 8 was not intended to comply with the provisions of that question since their responses to questions 10(b) and (d) were in the negative. Rather, Sterling believed that, even though it had answered questions 10(b) and (d) properly and thus technically was not required to file any response to 10(h), the Commission should be informed of this past anti-trust litigation. Consequently the brief description of these actions was included in Exhibit 8 on the assumption that if the Commission desired additional information it would ask for it.

28. Nordawn, in its comments on these later Sterling submissions. continues to raise questions with regard to the timing of Sterling's full disclosures of these anti-trust matters and who, what and where questions with regard to the advice of counsel that "No" answers to questions 10(b) and (d) were appropriate and also continues to press its claim that the manner in which the anti-trust matters were revealed in the application constitute deliberate concealment and misrepresentation on the part of Sterling. While the former would indeed be appropriate questions to ask in the course of a hearing, the narrow threshold question which must be determined is whether, based on all the information before us, a substantial question of fact remains unresolved. Here we are seeking to determine whether the manner in which Sterling responded to question 10(b) and (d) and the brief nature of its disclosures in Exhibit 8 to the application raise a substantial question as to Sterling's candor with this Commission. Even granting Nordawn's contentions that these would have been better and less controversial ways for Sterling to have revealed how it came to respond to the questions in the manner it did, the fact remains that some dis-

[6] The particular member of the firm who gave that advice died in February, 1973.

closure was made by Sterling as to past anti-trust litigation. While we believe Sterling was mistaken in responding "No" to question 10(b)[7] and failing to respond fully to question 10(h), nothing in the record before us would raise even an inference that these responses were made with the intent to conceal facts from this Commission. Had Sterling failed to make any showing with regard to past anti-trust litigation, the result might indeed be quite different. However, such a showing was made and this fact alone resolves in Sterling's favor any question of intentional concealment. We therefore conclude, that Nordawn's allegations with respect to the manner in which Sterling answered questions 10(b), 10(d) and 10(h) do not raise a substantial question of fact requiring a hearing.

29. We turn next to Nordawn's allegations that Sterling in Exhibit 8 concealed and misrepresented facts to the Commission with regard to the nature and outcome of these anti-trust proceedings. With regard to the Anderson case, the pertinent part of Exhibit 8 states:

> On special interrogatories, the jury found that the motion picture distribution system, including applicant's participation as a motion picture exhibitor, did restrain trade in film but that no damage had been sustained by the complainant, and therefore no money judgment was awarded to the complainant. There was no proof of *intent* to violate any law. The complainant appealed and discussions were held among the attorneys concerning settlement of the appeal, in the course of which complainant indicated that his main objective was to sell his theater. Accordingly, in order to end the proceedings, applicant bought the theater at the fair market price.

Nordawn contends that three aspects of this statement constitute affirmative misrepresentations by Sterling. They are:

(1) That Anderson sustained no damage and no money judgment was awarded;

(2) That there was no proof of intent to violate any law; and

(3) That during settlement negotiations Anderson indicated his main objective was to sell his theater.

Sterling denies these contentions and argues to the contrary, that Exhibit 8 was an accurate characterization of these matters. Again we emphasize, that in dealing with allegations of this kind, technical inaccuracies or semantic differences are not the test of whether a question exists as to affirmative misrepresentations. Rather, we must determine, after reviewing all the information before us, if inaccuracies do exist, whether they are so material and substantial as to constitute apparent affirmative misrepresentations.

30. Sterling's statement in Exhibit 8, that the jury found no damage was sustained and therefore, no money judgment was awarded, was not technically accurate. The jury in response to special interrogations 3 and 4 found that Sterling's violations of Sections 1 and 2 of the Sherman Act caused Anderson financial loss. It then found in response to special interrogatory that damages could not be reasonably approximated and therefore in fact did not award Anderson any damages.

[7] We consider Sterling's "No" response to question 10(d) coupled with a disclosure of the existence of the consent decree to have been proper. Since, unless the decree itself contains an admission or finding of anti-trust violations, a consent decree does not constitute a finding of guilt. We do not regard Sterling's payment of a $15,000 "penalty" as an admission of anti-trust violations.

The court thereafter interpreted the jury verdict to be a finding of nominal damages and awarded Anderson $30 ($10 trebled) plus attorneys' fees.

31. Initially we would note that in cases of private civil anti-trust litigation it is the nature of the defendant's conduct and usually not the extent of the damages resulting from that conduct which is of material concern to us in determining an applicant's qualifications to be a licensee.[8] Here, while the jury did find Anderson had suffered financial loss it in fact did not award him any damages as a result of that loss. The award by the court of nominal damages following the jury verdict, is not, in our view, so far removed from Sterling's statement to raise a question of affirmative misrepresentation.

32. We next take up Nordawn's contention that Sterling's statement that "There was no proof of intent to violate any law", constitutes an affirmative misrepresentation. In resolving this question we have not only considered the special interrogations to the jury, but in addition we have reviewed the jury's instructions, Anderson's prayer for relief, the proposed judgment offered the court by Anderson and the judgment which issued from the court. Upon careful consideration of all this material we conclude that, while Sterling could have used a better choice of language, its characterization is not necessarily inaccurate and certainly not such an inaccurate characterization as to raise a substantial question of fact regarding Sterling's candor. Our reasons are set forth below.

33. The jury in response to Special Interrogatory No. 1 found that Sterling had monopolized *or* attempted to monopolize some part of trade or commerce of the United States. As Sterling correctly points out under the Court's instructions to the jury only in the case of a finding of an attempt to monopolize was the jury required to find a specific intent to violate the antitrust laws. Consequently, the jury verdict itself was unclear as to this finding. We therefore must look to other things, in this instance the action of the Court itself who also heard all the evidence, to determine whether it was reasonable for Sterling to infer, and so advise the Commission, that there was no proof, as a result of the Anderson litigation, that it intended to violate any law. Anderson's prayer for relief, in addition to requesting substantial damages and attorneys' fees, sought to have Sterling and the other defendants enjoined from certain acts which were claimed to be illegal and adversely affected Anderson's business as a theatre operator. Following the jury verdict, Anderson submitted a proposed judgment to the court which was comprised primarily of provisions enjoining Sterling from committing virtually all the Acts which Anderson had claimed caused him financial loss in his business. The court did not accept either Anderson's prayer for injunctive relief or his proposed judgment. Rather, it issued a simple judgment awarding Anderson nominal damages and attorneys' fees. Taking into considera-

[8] An intentional violation of the anti-trust laws, even if no damages were established, would be considered much more serious in evaluating an applicant's qualifications than an unintentional violation which resulted in an award of substantial damages. See *Report on Uniform Policy as to Violations by Applicants of Laws of the United States*, Vol. 1, part 3, Pike & Fischer Radio Regulations 91 : 495, 498.

tion the jury instruction, the equivocal nature of the verdict with regard to specific intent and in particular the Court's refusal to enjoin Sterling in the future from committing the same acts, we conclude that Sterling's advice to us, that there was no proof of intent to violate any law, was not an unreasonable interpretation of the verdict and judgment in the Anderson case and therefore is not a misrepresentation.

34. We next consider Sterling's anti-trust record and its possible impact on Sterling's qualification to become the licensee of KTW and KTW–FM. In our *Uniform Policy Statement supra* we indicated that we would examine all violations of federal law, particularly those involving the anti-trust laws, to determine the impact of these violations on the qualifications of an applicant to be a licensee. In that policy statement (p. 498) we indicated that a single violation or even a number of them would not necessarily disqualify an applicant and that other factors might outweigh the record of unlawful conduct. We also emphasized that our prime concern was whether such conduct appeared to be willful (*ibid.*). A year later in *Paramount Pictures* 8 RR 135 (1952) we took the opportunity to further clarify some aspects of the *Uniform Policy Statement supra*. There we stated that as to existing licensees, we would not inquire into past anti-trust violations in fields unrelated to broadcasting where the violations resulted from acts committed more than three years before the filing of the application under consideration. Our reasons were sound ones. The purpose of making such an inquiry into past anti-trust violations was to assist us in determining whether we could expect the applicant to utilize a broadcast facility in an anti-competitive manner. The manner in which the licensee had been operating his broadcast stations is therefore much more germane to this determination than activities in unrelated fields which occurred some time in the distant past. These policy statements will therefore be the framework within which we proceed to evaluate Sterling's anti-trust activities.

35. Radio broadcasting, unlike some aspects of television, is, within our terms of reference, unrelated to the business of exhibiting motion pictures in theatres—the field where the anti-trust activity occurred. The damage period in the *Anderson* case extended to 1964. Similarly, the monetary penalty, which formed part of the consent decree in the *State of Washington* case, was for *alleged* anti-trust violations which occurred prior to April, 1964. Thus, the anti-trust violations which Nordawn alleges require a hearing on Sterling's qualifications all occurred approximately seven years before the subject applications were filed in a field unrelated to radio broadcasting. Since Sterling, through subsidiaries and affiliates, has been a licensee of this Commission since 1966 we would normally, as stated in *Paramount supra*, look principally to Sterling's record as a broadcast licensee.

36. Nordawn, however, argues that evidence in the *Anderson* case and the sweeping nature of the injunctive provisions in the consent decree of the *State of Washington* case established that Sterling's conduct was in willful violation of the law and therefore a hearing is necessary. To support this contention Nordawn relies on selective portions of the record in the *Anderson* case. Sterling, in opposition, also

relies on selected portions of the record to support its claim of lack of willfulness. We do not believe that reliance by either party on selective bits of evidence to support its position is the proper basis for determining this question. It is the record as a whole, as seen and heard by both the trier of fact and law, which we deem critical in resolving this question. As discussed in paragraphs 33 and 34 *supra*, the jury's verdict was formed in such a manner that it could not be determined whether it found Sterling's anti-trust violations to be willful. The court's refusal to grant injunctive relief, even though requested, is, in our view, a strong indication that it could not (nor can we), conclude that Sterling had acted willfully. Considering that these violations occurred over seven years ago, were in a field unrelated to radio broadcasting and the tenuous nature of the question of willfulness, we conclude that the *Anderson* anti-trust action does not raise a substantial or material question of fact requiring a hearing on Sterling's qualifications, particularly where we have Sterling's record as a broadcast licensee to look to in determining this question.

37. With regard to the *State of Washington* consent decree, the most that can be inferred from it is that Sterling, in paying a monetary penalty, admitted anti-trust violations prior to April, 1964. Certainly, it does not support the inference of willful violation where these inferred violations related to the same activities during the same period encompassed by the *Anderson* case.

38. In the course of determining this matter we have examined our records of the stations licensed to Sterling, or its subsidiaries or principals. As previously noted, Sterling's principals became broadcast licensees in 1966 (KALE, Richland, Washington). Since that time it has acquired four other radio stations, the last in 1971 (KASH, Eugene, Oregon). The examination of our records of all these stations did not reveal a single complaint or allegation that these licensees had or were utilizing their broadcast facilities in an anti-competitive manner. In view of the foregoing we conclude that the anti-trust litigation in which Sterling was involved raises no substantial or material question of fact requiring a hearing on this matter.[9]

39. Nordawn and Coney also claim that acquisition by Sterling of KTW and KTW–FM will give it an unfettered opportunity to further its economic control over the movie industry in the Seattle area. As discussed in paragraph 35 *supra* Sterling's theatre interests are unrelated to radio broadcasting. Further, neither Nordawn nor Coney has shown how the acquisition of a broadcast facility, unrelated to Sterling's other business interests, would enhance their economic control over the movie industry. These allegations, therefore, rest on nothing more than speculation and surmise and need not be considered.

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[9] On February 16, 1973, Sterling gave timely notice that a suit alleging violation of Federal antitrust laws had been filed against Sterling Theatres, Frederic and Selma Dans, and others, *S. F. Burns et al.* v. *Sterling Theatres Co., et al.* Complaint No. 58–73C2, U.S. Dist. Court, Western Dist. of Washington. Coney has not commented on this new litigation, but in its so-called Supplement to Petition to Deny, Nordawn urges this current antitrust suit as an additional ground for denying the assignment application. Contrary to Nordawn's claim, the pendency of private-civil anti-trust litigation is not grounds for denying an assignment application. However, as is our usual practice, we will make this grant subject to the outcome of that proceeding.

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John Hay Whitney, 28 FCC 2d 736, 745–751; *Time Life Broadcast, Inc.*, 33 FCC 2d 1099, 1128.

40. Nordawn next notes in its petition that Frederic Danz (President of Sterling) and/or members of the Danz family (through various Danz subsidiaries) own three AM stations in Washington (KALE, Pasco; KEDO, Longview; and KBFW, Bellingham) and two AM stations in neighboring Oregon (KODL, The Dalles; and KASH, Eugene). Nordawn claims the acquisition of KTW–AM & FM in Seattle would result in undue concentration of control of mass media, because the Danz family would have a nearly continguous band of coverage stretching from northwestern Washington down into central Oregon. This concentration is said to be further aggravated by Danz family theater interests in the Seattle area and elsewhere in Washington, and in California.

41. Sterling denies undue concentration would result from acquisition of the stations and in response to the Commission request of June 14, 1973 made a full showing required by Section 73.35(b) of our rules. It notes there is no prohibited overlap between contours of any of the Danz stations, that it would not obtain the asserted continguous coverage band because there are significant voids in the coverage areas, and each market served by a Danz station is widely served by other broadcast stations.[10]

42. The allegations on this point are without substance. It is true the Danz family stations serve areas in both Washington and Oregon. But their coverage, both in terms of population and contiguity is not of the proportions outlined by Nordawn. It is clear Sterling has nothing even remotely approximating a monopoly of mass media interests in the markets where Danz stations are located, because each area is abundantly served by other competing broadcast stations. And the acquisition of the AM–FM combination in Seattle (which is also amply served by competing stations) does not so alter the balance as to require a finding of undue concentration.

43. Both Nordawn and The Committee attack Sterling's decision to eliminate the specialized religious format presently carried over the stations.[11] Nordawn additionally questions the *bona fides* of Sterling's survey and whether the link between ascertained needs and proposed programs complies with the Primer.

44. While the Commission rendered no formal decision when the applications were before it on November 22, 1972, the applications and pleadings were nevertheless thoroughly examined with a view to alerting the applicants to potential problems. On the basis of our earlier examination, we concluded that the allegations of Nordawn and The Committee raised a substantial and material question of fact respecting the *bona fides* of Sterling's ascertainment survey.

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[10] The coverage maps prepared by Norwood Patterson and attached to Nordawn's reply do not establish overlap prohibited by the multiple ownership rules. For the purposes of the multiple ownership rules, the significant contours are those delineated by a 1.0 mv/m signal not the 0.5 mv/m contours depicted in Exhibit A of Appendix A, or the 50.0 Mv/m contour of KTW–FM depicted in Exhibit B, or coverage maps predicated on listener letters, relied on in Exhibit C, D and E.

[11] KTW was first licensed to the First Presbyterian Church in 1922. Except for a two year period under a prior owner who unsuccessfully attempted a Rock & Roll format, the KTW stations have placed heavy emphasis on religious programming.

45. The basic question raised by petitioners' allegations was whether the decision to change the religious format of the stations had been made before community problems were ascertained, or after (as represented in the application). The charges here rested on a statement made by Sterling's local counsel (Merwin Casey) at a receivership hearing of September 30, 1971. The Committee alleged that Casey had ". . . stated in open court on or about September 30, 1971, that should Mr. Danz or the Sterling Theatre Company acquire the licenses of KTW–AM and KTW–FM, that all religious programming and the religious format would be discontinued." In its Opposition (p. 7) to the petition, Sterling denied Casey had any knowledge of programming plans, denied Casey made the statement, and reiterated ". . . that proposed programming was not determined until after the very extensive survey of the assignee was completed." Annexed to the Opposition was an affidavit from Casey, which stated, *inter alia*, that while Casey attended the receivership hearing on September 30, 1971, he had reviewed his notes, the Court's Order, and his own recollection and still had no recollection of future programming having been mentioned as a primary or collateral subject, or any recollection of having made any statement on the subject of future programming. Casey stated the transcript of the September 30th hearing should be reviewed to determine the content and context of participants' statements. No extracts from the transcript were furnished at that time.

46. In its Reply to Sterling's Opposition, Nordawn attached a transcript extract in which Casey, in cross-examination of the Receiver, asked the following question:

> Q. (By Mr. Casey) Have you been informed by me that Mr. Danz has no intention of following the religious and political oriented advertising format?
> A. Yes.
> Mr. CASEY: I have no further questions.
>
> * * * * * * *

On the basis of this showing, Nordawn claimed that not only did this official record require an issue on the good faith of Sterling's survey, but Sterling's Opposition required a further issue concerning alleged misrepresentations made therein respecting the timing of the survey.

47. On the record we had before us when the pleadings were first examined, we had no choice other than to propose the issues requested. The transcript extract appeared substantially to impeach the explanation in Sterling's Opposition and seemed further to suggest an evasiveness by Sterling and Casey which needed exploring. A full explanation of the setting for Casey's statement has now belatedly been furnished by Sterling in the material filed January 11, 1973.

48. In the first affidavit, Sterling's president (Frederic Danz) attests that Danz has been interested in acquiring a Seattle station since 1967, but had no firm convictions on programming; that Casey serves as Sterling's local counsel who handles non-communications aspects of station purchases, with communications matters being handled by Washington, D.C. counsel; that programming itself was never discussed with Casey, although Danz did tell Casey he did not favor the existing advertising program of the KTW stations because it involved block sales of time, a policy Danz considered detrimental to proper

development of the stations and one in conflict with a licensee's responsibility for program content. Danz further unequivocally states that at no time prior to completing Sterling's survey did he make a decision to change the existing formats.

49. The second affidavit comes from Casey, and attached to it is the official transcript of the hearing in which his disputed statement was made. The gist of this affidavit is that Casey's activities were confined solely to technical problems of negotiating the price and terms of the sale, and drafting legal documents of sale. Casey's statement was made in cross-examination of the Receiver regarding the existing list of advertisers. (At that time, religious and conservative political advertisers were the main station advertisers.) The concern of the Court was with the fairness of Sterling's offer, and the matter at issue when Casey asked his question was whether station income from existing advertisers justified a higher purchase price. The point of Casey's question was to establish that station income from religious and conservative political groups should not be considered a factor in establishing value, when the new station's *advertising* format might be different. Casey states he had no intention of discussing *program* content (as opposed to advertising formats), or of implying any changes in program format. While Casey concedes he knew from prior discussions with Danz of possible changes in the advertising format—i.e., elimination of block sales of time—he avers changes in program format were not considered at the receivership hearing.

50. On the basis of these affidavits, Sterling contends no hearing is needed on the *bona fides* of its survey because the affidavits establish (a) program proposals were decided only *after* the survey and without participation by Casey, (b) Casey had no knowledge of *program* plans at the Court hearing and made no reference to *program* formats, (c) Sterling's Opposition and Casey's affidavit thereto did not misrepresent facts because they were concerned only with mistaken allegations made by The Committee concerning proposed programming rather than advertising, (d) if there had been an intention to hide any statements, Casey would not have directed attention to the transcript, and (e) if there have been any misrepresentations, they come from The Committee, through the allegation that a statement had been made in open court that all religious programming would be abandoned.

51. We have carefully examined the affidavits and Sterling's explanation and we are satisfied a proposed issue on the *bona fides* of Sterling's survey is no longer necessary. We are at a loss to know why the full setting of Casey's statement was not made earlier. But notwithstanding this, that statement is the sole basis for The Committee's and Nordawn's charges that format change decisions preceded the survey and the full explanation offered by Sterling removes the doubts which earlier led us to propose an issue on this point.

52. In our November 22nd letter, we also indicated an issue would be needed on whether the linkage between Sterling's ascertained community problems and proposed programming complied with Primer requirements. This proposed issue requires a brief discussion of the proposed station formats and the original state of the applications.

(The propriety of the format changes is considered below.) As earlier noted, the KTW stations for years have followed essentially a religious programming format. Following the ascertainment of community problems, Sterling determined the format should be changed to 100 percent news-"talk" programming for KTW, with duplication of some KTW programs over KTW–FM and separate music programming for KTW–FM mainly in the hours (local sunset to 11:15 p.m.) when KTW goes off the air under the shared time conditions of its license. While community problems ascertained by the survey were clearly listed in the pertinent exhibits, the manner in which these community problems would be treated under Sterling's program proposals was unclear. The relevant exhibits were vague and were justified by Sterling principally on the ground the news-talk format (which Sterling viewed as one totally committed to community problems) required giving the licensee full discretion in how needs would be met. The vagueness of Sterling's original proposals was challenged by Nordawn, which claimed the linkage between ascertained problems and proposed programming required by the Primer was lacking here.

53. Again, the state of the applications on November 22nd left the Commission with no choice other than proposing an appropriate issue. At that time, Sterling's commitments were so vague they raised a substantial question as to whether the Primer requirements (and especially the linkage requirement discussed in Question 29) had been ignored. In the amendment filed January 11, 1973, Sterling has undertaken to clarify its proposals and demonstrate the "specific linkage between our proposed programming and the ascertained community needs." (Request for Immediate Grant, p. 5.) The amendment indicates how the basic conversation format of the stations will be used to treat ascertained problems, and also identifies additional programs (commentaries, documentaries and editorials) for further coverage of such problems. The amendments also discuss the manner in which community problems will be treated over KTW–FM.

54. In our judgment, Sterling's amendments remove the need for a proposed issue on linkage because the applications now clearly link ascertained problems to programs formulated in response thereto. In light of this, Nordawn's allegations respecting compliance with the Primer no longer raise a substantial and material question of fact.

55. This brings us to Sterling's proposal to change the station formats. In order to determine whether the petitioners' objections to the format change have any validity under the standards recently announced in *The Citizens Committee to Keep Progressive Rock v. FCC*, —— U.S. App. D.C. ——, —— F2d —— (1973), we will set out the three grounds which The Committee claims requires a denial of the applications. The Committee alleges:

a. Sterling has failed to take into account religious, spiritual and moral needs of the community, has failed to ascertain such needs, and has failed to propose any programs to meet such community needs.

b. Through its attorney Merwin Casey, Sterling stated in open court that if Sterling acquired the KTW stations, all religious programming and the religious format would be discontinued.

c. KTW has been meeting religious, spiritual and moral needs of the community since 1922 when the station was first licensed to the First Presbyterian Church of Seattle, and termination of this influence to the community would have an adverse effect on the religious, spiritual, and moral aspects of the community.

56. Assuming *arguendo* that the first allegation raises questions of fact, such facts are neither material nor relevant to the format change. Ascertainment procedures are not concerned with discovering program preferences, but rather, with uncovering community problems. See *Lakewood Broadcasting Service, Inc.*, v. *FCC*, —— U.S. —— App. D.C., —— F2d —— (1973). Accordingly, the first allegation raises neither a material nor substantial question of fact.

57. The allegation respecting Casey's statement at the receivership hearing does involve matters of fact. Indeed, on the record before us when we first considered the applications in November, 1972, we concluded we had no choice other than to specify an issue on this point. But on the basis of the substantial amendments to the application, we have already determined the facts here are no longer substantially in dispute, and we have inferred that Casey's statement, referring as it did to *advertising* formats, did not support a conclusion that Sterling's decision to change the format antedated its Ascertainment Survey. See Paragraphs 37 to 43, *supra*. Accordingly, the facts here do not require a hearing.

58. The Committee's third allegation—that terminating KTW's long-standing influence on religious and spiritual needs of the community would have a detrimental effect on the community—brings into play the matter of alternative program sources. In its opposition to Nordawn's petition, Sterling contends its ascertainment survey indicated a much greater need for news and talk programs in the Seattle area than there is for the existing religious format of the stations. Sterling notes that presently there is no Seattle area station presenting a predominantly news and talk format. On the other hand, the Seattle area is now served by two AM stations (KGDN and KBLE) and one FM station (KBLE–FM) with predominantly religious formats. Sterling has attached to its opposition program schedules of these three stations, which confirm the basic religious orientation of these stations' formats.[12] While KGDN and KBLE are daytime stations, KBLE–FM's hours are until 11:05 p.m. on Sundays, 11:15 p.m. on Saturdays, and until 12:05 p.m. Monday through Fridays. Moreover, KBLE–FM's religious programs are heavily concentrated in the evening hours (after 6 p.m.) on Saturdays and Sundays, and from mid-afternoon until sign-off on weekdays. In addition to religious programs of these three stations, Sterling's opposition lists religious programming available over 14 other Seattle area broadcast stations, on Sundays and other days of the week.

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[12] KGDN, located in the Seattle suburb of Edmonds, is licensed to King's Garden, Inc., a non-profit, multi-denominational religious and charitable organization. Commission records indicate KGDN's most recent renewal application proposed a format which would devote 78% of broadcast time to inspirational programming. Our records further indicate KBLE proposed in its most recent renewal application to devote 80% of broadcast time to its religious format, and KBLE–FM proposed to devote 50% of its time to religious programs.

59. Nordawn's reply to this is that the religious programming on other Seattle area stations is an inadequate substitute for that of KTW AM & FM because of the alleged superior coverage of those stations. Nordawn further notes that when Webster filed the most recent renewal application for KTW–FM in 1971, he stated that even with the proposed reduction of religious programming over KTW–FM from 87% to 80%,[13] the station would contribute to overall diversity in the Seattle area because no other FM station in the area used the religious format as extensively as that proposed in the KTW–FM renewal application.

60. The Committee's reply respecting alternative sources of religious programs in the area reiterates the charge that Sterling decided to change the format before the ascertainment survey. The Committee also claims KTW AM and FM's religious programs are broadcast in periods when no other religious programming is available from other Seattle stations. The Committee (like Nordawn) refers to the broad coverage of the KTW stations. And finally, The Committee doubts that the program schedules of KGDN and the KBLE stations furnished by Sterling are current or accurate.

61. Unlike the situation in *Citizens Committee to Keep Progressive Rock*, neither the petitioners nor the applicants raise any questions regarding the economic feasibility of a predominantly religious format.[14] The Receiver is selling the stations because of his mandate to obtain funds to pay off creditors' claims. Sterling makes no claims the format change is dictated by economic considerations. Rather, its decision rests on its conclusion that there was a greater need for a news-talk format in the Seattle area than there was for the present religious format of the KTW stations.

62. In the *Progressive Rock* case *supra*, and in earlier format change cases, the court recognized that generally the decision as to what type of programming format is to be utilized is left to the discretion of the proposed licensee. An issue is raised in those situations where the applicant proposes to eliminate the only available source of a particular kind of programming. However, there is no substantial question here that alternative sources of religious formats and programs exist in the Seattle area. Apart from the KTW stations, three other area stations have predominantly religious formats, and other area stations partially serve as additional sources of religious programs. See Parag. 58, *supra*. There is accordingly no basis for claiming the KTW stations provide a "unique" program service, and petitioners themselves have at no point made claims based on uniqueness.

63. Even petitioners admit the presence of alternative sources of religious and spiritual programs in the Seattle area. Their responses are limited to questioning the adequacy of these sources. On this point, Nordawn's reply refers to "the far superior coverage of the [KTW]

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[13] While the Receiver's renewal proposals do not show any substantial reduction in religious programs over KTW–FM, we do not consider his proposals decisive here, because the Receiver is only an interim license holder.

[14] Whether the KTW stations went into receivership because of the religious format or for other reasons is not before us. However, as demonstrated above, it is apparent that the Seattle area can and does support several stations with religious formats.

stations", with the sweep of the AM station extending as far away as Fresno (where Mr. LeTourneau is a listener). In its arguments respecting inadequacy of alternative sources, The Committee also refers to the "exceptional coverage" of KTW and asserts religious programs are available on both KTW AM and FM in periods when no other religious programming is to be had in Seattle.

64. In light of the contentions of the parties and the failure of both to submit engineering studies with respect to the extent of the coverage of other religious formated stations in the areas served by KTW and KTW–FM, we have undertaken a study of our license files. This study revealed that during daytime hours station KGDN (630khz, daytime only) provides service to the entire population served by KTW AM & FM. At night, however, approximately 1200 people within the 1mv/m contour of KTW AM & FM does not receive comparable service from any of the other stations utilizing a religious format in the Seattle area.[15]

65. Of course, we recognize that after the format change, some listeners may not have religious programs at all times. But this is not the test. As recognized in the *Lakewood Broadcasting* decision, supra, the Commission cannot guarantee that every broadcast need or interest will be perfectly met on a fixed frequency, twenty-four hours per day. (Slip Opinion, p. 9). Here, the record establishes that religious programming is available from other stations in the market. Consequently, the loss of the particular religious programming on KTW through the change in format does not raise a substantial question of fact.

66. The final point on which we earlier proposed a hearing issue involved proposals for KTW–FM which appeared to violate the 50% non-duplication limit of Section 73.242 of the Rules. The proposed issue was justified because the original proposals clearly suggested that at least in the winter months, the 50% limit would be exceeded. Sterling has now amended its application and unequivocably states it will not simulcast more than 50% (a 9 hour maximum based on the proposed flat 126 hour broadcast week of KTW–FM) of KTW–AM's programs over the FM outlet. In view of this commitment, Nordawn's allegations that Section 73.242 of the Rules would be violated no longer raise an issue.

67. We consider finally the matters raised in Nordawn's Supplement to Petition to Deny, which, as we noted earlier, would be treated as informal objections.[16] The alleged "new grounds" for denying the applications raise no substantial or material questions of fact and need be discussed only briefly.

68. Nordawn correctly points out that given dismissal of Nordawn's Ninth Circuit Court appeal, the applications and petitions are now ripe for decision. Of course, objections raised in the earlier petitions have been considered above.

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[15] Other stations with a religious format in the Seattle area are: KGDN and KBLE AM & FM. The alleged superior coverage of KTW–AM has significant nighttime restrictions. It must leave the air between local sunset and 11:15 p.m. since it shares this frequency with a Pullman, Washington educational station.

[16] The Committee has filed comments stating it supports Nordawn's supplemental petition.

69. Nordawn suggests Judge Chan still has under advisement the motion to extend the March 31st deadline of the Segal/Patterson agreements. This is not the case, because Judge Chan's ruling of April 2nd, confirmed by his order of May 2, 1973, makes it clear Judge Chan felt he had no power to extend the deadline without Segal's consent. Accordingly, Sterling did not mislead the Commission when it stated in its letter of April 11, 1973 that there was no longer any pending litigation affecting the validity of the assignments.[17]

70. Nor does the dispute between the Receiver and Big Wind Broadcasting over renewal of the KTW's transmitter site lease require further deferral. As the Receiver correctly points out, the dispute will culminate in one of two ways: either KTW will retain the right to use its present site, or will not. If it loses, then the KTW licensee, whoever it may be, will have to seek a new site. We agree with the Receiver that the matter was not one of such "decisional significance" as to require reporting under Section 1.65 of the Rules.

71. Nor did Sterling violate Section 1.65 by failing to report the transmitter site dispute and by failing to give notice of whether it would elect to proceed with the contract if the transmitter site is unavailable. Sterling is not a party to the transmitter site dispute. Moreover, under the contract, Sterling has a right to wave the lease assignment requirements. But this does not require it, as Nordawn seems to suggest, to state whether it will proceed under the contract before it has definite knowledge that the lease will not be assigned. And the arguments respecting a potential conflict of interest by Sterling's attorneys (who at one time also represented Big Wind Broadcasting) are totally without merit.

72. Finally, for reasons earlier discussed, we have concluded the new antitrust suit against Sterling Theatres raises no substantial questions.

73. In view of the foregoing, we find that the petitioners and the objector (Coney) have raised no substantial and material questions of fact which require a hearing. We further find a grant of the applications, subject to the condition noted, would serve the public interest, convenience, and necessity.

74. Accordingly, IT IS ORDERED, That the Petition to Deny filed by Norwood and Gloria Patterson, S. H. Patterson and Nordawn, Inc., IS DENIED; and IT IS FURTHER ORDERED, That the Motion to Deny filed by The Committee for Preservation of Religious Programming IS DENIED; and IT IS FURTHER ORDERED, That the informal objections filed by Byron D. Coney, and the Supplement to Petition to Deny filed by Nordawn *et al.*, ARE DISMISSED, and IT IS FURTHER ORDERED, That the applications for the assignment of the licenses of KTW–AM and KTW–FM,

[17] The alleged "plan" under the Segal/Patterson agreements to return the stations to Nordawn no longer exists. Even had Segal been paid off, the Receiver would have had to file appropriate applications to put the stations back in Nordawn's hands. Any such applications would have required resolution of character issues concerning Norwood Patterson, one of Nordawn's principal stockholders. Pleadings filed in response to the supplemental petition indicate Norwood Patterson is presently in a Federal prison, as a result of a conviction arising out of violation of Federal laws pertaining to the withholding of employees income taxes.

BAL–7494 and BALH–1618, from Walter E. Webster, Jr., Receiver, to Sterling Theatres Co., ARE GRANTED, subject to the outcome of the suit pending in the United States District Court, Western District of Washington, styled *S. F. Burns, d/b/a Bel-Kirk-Evergreen Point Drive-In et al.* v. *Sterling Theatres Co., et al.*, Case No. 58–73C2.

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

DISSENTING STATEMENT OF COMMISSIONER H. REX LEE

I must dissent to the majority's approval of the pending applications to assign the licenses of Stations KTW–AM–FM, Seattle, Washington, from Walter E. Webster, Jr., Receiver, to Sterling Theatres Co. Stations KTW–AM–FM were formerly licensed to Nordawn, Inc., all of whose stock is owned by Norwood and Gloria Patterson and S. H. Patterson. In May of 1969, the Washington State Superior Court for King County appointed Walter E. Webster, Jr., receiver for Nordawn, Inc. and authorized him to file applications for the involuntary assignment of the station licenses.[1] On April 23, 1970, applications for the assignment of the KTW–AM–FM licenses to the receiver were granted. Subsequently, the Superior Court approved an agreement for the sale of the stations to Sterling Theatres Co., and the pending applications implement that agreement. Petitions to deny the assignment applications were filed by the Pattersons and Nordawn, Inc. and by J. W. LeTourneau, Jr., Chairman of the Committee for Preservation of Religious Broadcasting, and informal objections to the sale were submitted by Byron D. Coney.

While Sterling Theatres Co., the proposed assignee of the KTW–AM–FM licenses, is not a Commission licensee, it is controlled by members of the Danz family, who own three standard broadcast stations in Washington (KBFW, Bellingham; KALE, Pasco; and KEDO, Longview) and two in Oregon (KODL, The Dalles; and KASH, Eugene). In addition, the Danz family has extensive motion picture theatre interests in the Seattle area, the site of the KTW stations, elsewhere in Washington and in California. In its application, Sterling proposes to abandon the present religious program format of the Seattle stations and to substitute a news-talk format.[2]

In approving the assignment applications, the majority concludes that no substantial and material questions of fact have been raised which require an evidentiary hearing. I simply cannot agree. Several aspects of the assignment applications concern me, including matters that could reflect on the basic qualifications of the assignee to be a broadcast licensee, and should be explored by the Commission through the hearing process. For example, a serious question is raised about

[1] The principal creditor in the state receivership action is David M. Segal, who had sold the Seattle stations to the Pattersons.

[2] Nordawn, Inc., the former licensee of KTW–AM–FM, had challenged the authority of the state-appointed receiver, based on a claim that it was entitled to a reorganization under the federal bankruptcy laws. Commission action on the assignment applications has been deferred pending decision by the Ninth Circuit Court of Appeals on an appeal by Nordawn from a federal district court's dismissal of a petition for a Chapter X reorganization. On April 3, 1973, the Ninth Circuit Court of Appeals dismissed Nordawn's appeal, and therefore the assignment applications can be considered by the Commission.

Sterling's candor in light of its failure to disclose properly its antitrust record in response to questions contained in the assignment application. Even though Questions 10(b) and 10(d) of FCC Form 314 ask whether the applicant has been found guilty of violating federal and/or state antitrust laws, Sterling responded in the negative. In response to Question 10(h), which requires the submission of an exhibit containing full disclosure of any relevant antitrust matters *if* Questions 10(b) and/or 10(d) are answered in the affirmative, Sterling stated: "Although all answers are negative note Exhibit No. 8." At the time of the filing of the assignment applications, a jury in a civil antitrust action, *Anderson* v. *Sterling Theatres Company*, Civil Action 6207, U.S.D.C., Western District of Washington (1968), had concluded that Sterling had violated Sections 1 and 2 of the Sherman Act by monopolizing or attempting to monopolize the theatre business trade in the Seattle area and in *State of Washington* v. *Sterling Theatres Co.*, Case No. 604074, Superior Court, King County, Washington, a state antitrust action against various theatre owners in the Seattle area, the defendants, including Sterling, had agreed, pursuant to a consent decree, to restrict their expansion of theatre interests in specified areas.

Sterling claims that its responses to Questions 10(b) and 10(d) were based on the advice of antitrust counsel, who construed the inquiries to refer to *criminal* antitrust actions; that neither the *Anderson* case nor the *State of Washington* case was a criminal action; that since injunctive relief and damages, other than nominal damages, were denied in *Anderson*, the jury verdict involved only a technical violation of the Sherman Act; that the consent decree in the *State of Washington* proceeding did not constitute a finding or admission of antitrust violations; and that Exhibit 8, which referred only generally to the two antitrust actions, was not intended to comply with the requirements of Question 10(h)—since responses to Questions 10(b) and 10(d) were in the negative—but was meant to inform the Commission of Sterling's past antitrust record so that the Commission, if it so desired, could ask for additional information. In spite of Sterling's claims, it is clear that the assignee should have answered Questions 10(b) and 10(d) in the affirmative since it had been found guilty of violating the Sherman Act in the *Anderson* case and had entered into a consent decree in a state antitrust proceeding, which apparently is still open in Washington.[3] Also, the assignee failed to provide the full disclosure required by Question 10(h) concerning details of the antitrust actions such as the court and case number, the nature of the offense, etc.

Sterling's belated attempt to rely on the advice of its antitrust counsel is not very persuasive since the assignee presumably had communications counsel available at the time it filed the assignment application

[3] The majority seems to imply that an applicant need not disclose the existence of an antitrust consent decree since such a decree does not constitute a finding of guilt or an admission of violation. On this basis, the majority, at note 7, finds that Sterling's negative response to Question 10(d), coupled with its disclosure of the existence of the consent decree in Exhibit 8, was proper. Of course, the existence of an antitrust consent decree should be disclosed in the application form, and, the majority's position notwithstanding, a negative response to Question 10(d) in such circumstances is clearly incorrect.

and since its principals have interests in several Washington and Oregon AM stations, which militates against any claim of unfamiliarity with application requirements. Moreover, in its 1951 *Report on Uniform Policy as to Violation by Applicants of Laws of the United States*, Volume 1 (Part Three) Pike and Fischer Radio Regulation 91: 495, the Commission clearly indicated its concern about antitrust matters, whether civil or criminal in nature and whether broadcast-related or not, and the effect thereof on an applicant's basic qualifications. The *Policy Statement* effectively demonstrates that an applicant's involvement in antitrust actions may be of decisional significance in an assessment of its basic qualifications and that, therefore, its responses to questions on the application form should be candid and complete. Moreover, an applicant should refrain from relying on technical distinctions about the nature of antitrust violations and decrees to support a failure to disclose all relevant information to the Commission. The majority is apparently content to rely on the fact that Sterling made "some disclosure" of its past antitrust history in Exhibit 8 for its ultimate conclusion that Sterling did not attempt to conceal pertinent information from the Commission. I cannot believe that the majority intends to create a disclosure test which would, in effect, permit applicants to give incorrect answers so long as some information submitted with the application form alerts the Commission to the real situation.

Some aspects of Exhibit 8 also raise a question as to whether the information submitted by the assignee was an accurate characterization of the antitrust matters. For example, Sterling's statement that the jury in the *Anderson* case found no damage had been sustained by the complainant and, therefore, no money judgment was awarded is not technically accurate as the majority concedes. The jury did find that Sterling's antitrust violations had caused financial loss to Anderson; however, since the jury could not approximate the real damages, the court awarded only nominal damages. In spite of Sterling's claim in Exhibit 8 that there was no proof of an intent to violate the law in *Anderson*, the fact is that the jury, in response to a special interrogatory, did find that Sterling had monopolized *or* attempted to monopolize trade. This finding was made by the jury after the court had instructed it that a specific intent to violate the antitrust laws was only required to support a conclusion of attempted monopolization. The majority's attempt to rationalize away the impact of Sterling's statements by reference to the "equivocal nature" of the jury verdict and to the court's refusal to grant injunctive relief against the assignee is unfortunate. Clearly, the purpose of Question 10(h) is to obtain a full and candid disclosure of an applicant's antitrust record in order to permit an informed assessment of its qualifications. Not only is Exhibit 8 "technically deficient" for its failure to supply the specifics of Sterling's antitrust record (*e.g.*, the nature of the offense, duration of the violation, mitigating circumstances, etc.), but it also contains inaccurate statements. In such circumstances, it is impossible to assess the impact of Sterling's conduct or to find, as the majority apparently does, that the antitrust violations were not intentional. A hearing is

required to develop the full facts about the assignee's antitrust record and its candor in informing the Commission of that record.

I believe that the Commission should also consider the impact of Sterling's antitrust record on its qualifications to be the licensee of Stations KTW–AM–FM. Even though the actual or alleged antitrust activities at issue in the *Anderson* and *State of Washington* cases concerned motion picture distribution in the 1960's, the nature of Sterling's conduct cannot be easily dismissed, especially in light of the assignee's failure to disclose fully its antitrust record in the pending assignment application and of the further fact that another civil antitrust action has recently been filed against Sterling and members of the Danz family. *S. F. Burns* v. *Sterling Theatres Co.*, Complaint No. 58–73C2, U.S.D.C., Western District of Washington. While I recognize that the activities, which formed the basis for these antitrust actions, did not arise out of the operation of broadcast stations, the factual background here raises a serious question about Sterling's pattern of conduct that could have relevance in any determination of its licensee qualifications. If we are to adhere to the position taken in the *Uniform Policy Statement*, then we should be willing to explore these matters in an evidentiary hearing.

Another substantial question is raised concerning the *bona fides* of Sterling's ascertainment survey. The petitioners claim that the assignee's decision to change the Seattle stations' program format from religious-oriented to news-talk was made *before* community problems, needs and interests were ascertained. There is an attempt by Sterling to show that its program proposals were developed only *after* the ascertainment survey and that a statement by its local counsel, Merwin Casey, at a receivership hearing on September 30, 1971, concerned only a possible change in *advertising* format. According to the assignee, the point of Casey's statement was to establish that income from religious and political groups should not be considered a factor in establishing a value for the stations when the advertising format might be changed. However, at the very least, Casey's statement raises a question about whether his use of the phrase "religious and political oriented advertising format" was not, in fact, based on a decision to change the program format of the stations. If the assignee did not favor the existing advertising practice of block sales of time, then why did Casey refer specifically to the religious and political orientation of the advertising format? Also, why did Sterling wait to furnish further information about Casey's statement and his knowledge of (or lack thereof) program policies until after the Commission advised the assignee that the *bona fides* of its ascertainment survey and the decision to change program format required exploration in hearing? These questions, contrary to the majority's position, remain unanswered and should be addressed in an administrative proceeding.

The issue of the assignee's survey effort is compounded by the objections raised against the program format change by the Committee for Preservation of Religious Broadcasting, which is supported by the signatures of 3,000 Seattle area residents. Contrary to the majority's conclusion, I believe that the Court of Appeals' recent decision in

The Citizens Committee to Keep Progressive Rock v. *FCC*, —— U.S. App. D.C. ——, 27 RR 2d 463 (1973), requires an evidentiary hearing on the assignee's proposal to abandon the existing program format of KTW–AM–FM. It appears that public reaction to the proposed change is significant and that questions exist concerning the extent of support for the religious format to be abandoned and the news-talk format to be instituted and the availability of alternative sources of religious programming in the Seattle area. While, under ordinary circumstances, ascertainment procedures are intended to uncover only community problems as opposed to *program preferences*, it is more than apparent that an applicant who proposes a change in program format, especially a format which has garnered substantial public support, should ascertain local reaction. This obligation assumes increased significance here where the assignee has made no claim that the format change is dictated by economic considerations and where the stations' religious programming is broadcast during periods when no other comparable service is available from area stations. As the Court of Appeals has held, the public has an interest in the diversity of entertainment formats, and the Commission must consider the effect of a proposed format change on desired diversity, especially if questions are raised about the extent of public support for the change and the availability of alternative program sources. My disagreement with the majority's position in this regard is reinforced by the issues which have been raised about the good faith of Sterling's ascertainment survey and its decision to change the Seattle stations' program format.

Therefore, several serious questions are raised concerning the proposed assignment of the licenses of KTW–AM–FM to Sterling, which can only be resolved through the hearing process.[4] Since the majority disagrees, I dissent.

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[4] Nordawn also claims that Sterling's acquisition of the Seattle stations would result in an undue concentration of control of mass media since the Danz family would have a band of coverage stretching from northeastern Washington into central Oregon and that such concentration would be aggravated by the Sterling theatre interests. The majority's opinion disposes of this issue without any substantial analysis of such relevant factors as the size, extent and location of areas served by Danz interests, the number of people served, the class of stations involved and the extent of other competitive services in the areas in question. Since I would favor a hearing on the assignment application in any event, I would also explore the multiple ownership ramifications of the proposed acquisition, especially in light of Sterling's antitrust record.