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Pages 325 to 502

Reported by the Commission

FEDERAL COMMUNICATIONS COMMISSION

DEAN BURCH, Chairman

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F.C.C. 73-1091

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of THE AGINTOUR CORP. (ASSIGNOR) AND LEISURE TIME COMMUNICATIONS, INC. (ASSIGNEE) For Commission Consent to the Assignment of License for Radio Station WDMV-AM, Pocomoke City, Md.	BAL-7827

MEMORANDUM OPINION AND ORDER

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

BY THE COMMISSION: COMMISSIONERS BURCH, CHAIRMAN; H. REX LEE AND HOOKS CONCURRING IN THE RESULT; COMMISSIONER ROBERT E. LEE ABSENT; COMMISSIONER JOHNSON DISSENTING; COMMISSIONER WILEY NOT PARTICIPATING.

1. Presently before us for consideration is: a) the above captioned assignment application; b) a timely filed Petition to Deny the application, filed by Public Service Enterprises, Inc.[1] c) a joint Opposition filed by the assignee and assignor; and d) a Reply filed by Petitioner.

2. Radio Station WDMV-AM is a daytime only station which operates with 500 watts on 540 kHz. The city of license, Pocomoke City, Maryland, had a 1970 population of 3,573 and is located on Maryland's Eastern Shore in the southwestern corner of Worcester County, Public Service Enterprises, Inc. is the licensee of standard broadcast Station WETT-AM, Ocean City, Maryland. WETT operates at 1590 kHz with 1,000 watts day and 500 watts at night. Ocean City had a 1970 population of 1,493 and aside from the subject station, is the only other broadcast facility in Worcester County, Maryland (1970 population 24,442). Pocomoke City is approximately 30 miles southwest of Ocean City.

3. Public Service Enterprises, Inc. petitions to deny the assignment application on grounds that the assignee has failed to disclose material facts to the Commission which nondisclosure adversely affects its basic qualifications to be a Commission licensee and that the proposed transaction raises material and substantial questions of fact regarding assignee's financial qualifications, its proposed programming and area concentration of control.

4. Petitioner claims standing to file its Petition due to the business and financial interests of assignee's principals which "will materially enhance WDMV's ability to compete against WETT." (Petition-page

[1] One week after filing its Petition to Deny, Petitioner filed a "Supplemental Petition to Deny" before the Opposition pleading was filed.

2), Petitioner alleges that it competes with WDMV "for audience in Worcester County and for advertisers on the Eastern Shore." *Ibid.* The assignee claims that "WDMV's signal in Ocean City is so marginal that the station does not claim to serve that community, although to do so would be highly desirable because of its popularity as a summer resort." (Opp page 2). Assignee also submits that WETT's signal is directionalized toward the east resulting in primary service confined to Ocean City and nearby Berlin, Maryland. In its last renewal application, Petitioner specifically admitted that its "signal is weak in towns other than Ocean City and Berlin." Assignee argues that standing will be accorded actual competitors who can demonstrate some economic injury of a direct, tangible or substantial nature. But here assignee contends that Petitioner has failed to demonstrate economic injury from a grant of the subject application. Assignee further contends that competition does not exist between the two stations due to both the distance of 30 miles betwen them and the fact that neither station puts a listenable signal over the other.

5. To qualify as a party in interest under Section 309(d) of the Communications Act, one must establish that a grant of the application complained of will result in or be reasonably likely to result in some injury of a direct, tangible or substantial nature, not injury that is only nominal or speculative. *WGAL Television, Inc.*, 13 RR 2d 1131 (1968) and *Northco Microwave, Inc.*, 1 FCC 2d 350 (1965). We will not dispose of the matter on the question of standing, but will address ourselves to the substantive matters of the petition. This approach is consistent with our actions in other cases where even a holding adverse to Petitioner on the question of standing has not foreclosed an examination on the merits. *Clay Broadcasters, Inc.*, 21 RR 2d 442 (1971).

6. Turning now to the substantive matters, essentially, Petitioner has raised four issues which they allege indicate that a grant of the subject application would not serve the public interest: 1) non-disclosure of relevant information called for in the application; 2) area concentration of control of mass media along the Eastern Shore; 3) inability of the assignee to financially qualify; and 4) inadequate community survey and related proposed programming.

Nondisclosure

7. Petitioner alleges that "the gravity of the [Assignee's] non-disclosure is magnified by the nature of the facts which were concealed." (Petition-page 6). Specifically, the Petitioner lists, in both its Petition to Deny and Supplement, the following other business interests of the assignee's principals which were not included in Table II of the application:

Paul C. Stokes (20% owner of the assignee, Vice Preisdent, Director)-Stokes is listed as President and 35% shareholder of Anderson-Stokes, Inc. ("A–S") but no mention is made that he is also Chairman of the Executive Committee and a director of the corporation.

Anderson-Stokes, Inc. was represented in the application to be involved in "real estate construction and development" but according to A–S's Annual Report filed on April 28, 1972 with the Securities and Exchange Commission, A–S business interests also include: 1) real estate brokerage and rentals; 2) mobile and modular homes; and 3) "other leisure operations" including publishing, insurance and appliance distributorships.

A–S's 80% subsidiary, Coastal Communications, Inc., publishes eight weekly newspapers along the Eastern Shore area and Paul Stokes is its President; this subsidiary was not listed in Table II.

Petitioner believes that the Exchange and Savings Bank, Berlin, Maryland has been acquired by A–S.

On September 14, 1972, a petition for rulemaking was filed by Leisure Time Broadcasting (believed by Petitioner to be predecessor of the assignee) requesting amendment to the FM Table of Assignments to allocate a new Class A channel to Rehoboth Beach, Delaware.

A–S has recently formed another subsidiary corporation, Leisure Reservations, Inc., which is described as "the complete leisure property rental service" having six rental offices.

A–S announced the acquisition of T. B. O'Toole, Inc. based in Wilmington, Delaware which is a general real estate brokerage firm.

Petitioner believes that A–S may have been directly or indirectly involved in still other businesses including restaurants and furnishings within the past five years. References are also made in Notes to A–S's January 31, 1972 Consolidated Financial Statements to i) other corporations in which A–S has acquired controlling interests: Bond's Investors, Inc. (real estate) and Anderson-Stokes-Faust, Inc.; ii) certain minority investments in and advances to or notes receivable from "Various Land Development Corporate Joint Ventures"; and iii) guarantees of the securities of seven other entities.

Charles R. Jenkins (20% owner of the assignee, Vice President, Director).

100% owner of U.S. Oil Co., Inc. and Quality Oil Co., Inc. both of Berlin, Maryland distributors of Citgo and BP oil products for the Eastern Shore area.

100% owner of Skyline Development Corp. (which was listed) and Petitioner believes that Skyline owns the Jolly Roger Amusement Park, Ocean City, Md. (which was not disclosed).

8. Further, the Annual Report filed by A–S with the SEC discloses that in the fiscal year ending January 31, 1972, A–S derived only 32% of its revenues from real estate development and construction enterprises. The remainder of its revenue was derived from real estate brokerage and rental (28%), mobile and modular homes (31%), and other leisure operations (9%). "In short, by no stretch of the imagination could it be contended that Anderson-Stokes, Inc., is only *principally* engaged in the 'Real Estate Construction and Development' business as was reported to the FCC. For the representations made to the SEC (but concealed from the FCC) would belie any such claim." (Supp. page 3). Petitioner concludes by stating that only after a hearing could the Commission discover the true facts surrounding the applicant's basic qualifications.

9. Initially, the assignee has amended the subject application in the following respects:

Mr. Paul C. Stokes is a Director of A–S and through a "typing error" this fact was omitted from the original application.

Section II Table II of the application as amended gives the "full business interests" of A–S including publishing interests and the acquisition of T. B. O'Toole, Inc.[2]

Mr. Charles R. Jenkins has a 50% interest in two oil distributors on the Eastern Shore area and these interests were "overlooked" in the original application.[2]

Mr. Jenkins' interests in Skyline Development Co. is amended to include Skyline's interest in an amusement park operation in Ocean City.[2]

[2] The assignee argues that to raise these points amounts to engaging in "trivia" by Petitioner. "The Commission has never required an applicant to list every detail of every business in which it has an interest. To do so would be burdensome and needless." (Opp. page 15). The assignee continues by stating that it has always been sufficient to describe "in general terms the principal line of business" and this is what they've done. *Ibid.*

10. The assignee argues that its original description of A–S was accurate since historically real estate construction and development have accounted for the major portion of its income. In 1972, development and construction plus the related activities of brokerage and rental accounted for 60% of its revenues. At present, the modular home subsidiary has been discontinued and 75% of the mobile home operations have been sold as was reported to the SEC; and these two subsidiaries accounted for 31% of A–S's 1972 revenues. Therefore, the assignee argues that its description of A–S contained in Table II was accurate in that it described the principal business of the company, namely, "real estate development and construction." To "eliminate doubt," the assignee has amended the application to reflect A–S's publishing interests as noted above.

11. The assignee states that the publishing interests of A–S were not mentioned.

> . . . because it accounts for such a demonstrably small portion of Anderson-Stokes business that Mr. Stokes simply did not believe it came within a brief, accurate description of his company when he filled out the questionnaire, furnished by counsel, upon which Table II was based. This oversight is understandable. (Opp. page 8).

In this connection assignee points out that the entire "other leisure operations," including the newspaper publishing, insurance and a G.E. distributorship accounted for only 9% of all A–S's revenues in 1972. Thus, assignee contends, that its original description of A–S's operation, which omitted reference to the newspapers, "was consistent with the company's operations and, at worst, no more than an oversight." *Ibid.*

12. Petitioner finds that the assignee's attempt to rationalize its failure to fully disclose the nature of A–S's business interests is without merit.[3] The assignee simply listed A–S's business interests as "Real Estate Construction and Development" but admitted in its Opposition that other lines of business activities do exist. Petitioner faults the assignee for arguing that A–S's "Real Estate Construction and Development" interests are related and similar to its brokerage and rental interests. While the assignee failed to mention the latter activities in the application, Petitioner contends that these two lines of business "are clearly separate and distinct." (R. page 10). The brokerage and rental subsidiaries do serve its parent, but they also assist in marketing properties other than those of A–S.[4] "Thus, assignee's transparent effort to treat these two separate lines of business as one ball of wax is plainly misleading." (R. page 10).

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[3] Petitioner notes that although the "assignee strives mightily to downplay the massive concealment of the business interests of its principal, Stokes" (R. page 7) it has failed to disclose Stokes as Co-Chairman of the Executive Committee of A–S. This omission is material since by this position, Stokes holds at least negative control of this publicly held corporation. As reported to the Commission, one could infer that Stokes' 35% stock interest gives rise to less than a controlling interest which is contrary to the facts. Additionally, while Stokes was not originally listed as a Director of A–S, the Opposition amendment to correct the error is not supported by affidavit of any person with personal knowledge of this fact.

[4] Petitioner points out that this subsidiary maintains ten brokerage and rental offices in Delaware, Maryland, North Carolina and Washington, D.C.

13. While the assignee asserts that all but 9% of A–S's revenue comes from construction and development and related brokerage activities, Petitioner finds that "the impression which the assignee is attempting to create is hardly consistent with its obligation of full disclosure." (R. page 11). In particular, the mobile and modular homes line of business constituted 47% and 31% of A–S's revenues in 1971 and 1972 respectively and it could easily be argued that these activities constituted A–S's principal line of business. The assignee's explanation for the publishing omissions is also without evidential support, argues the Petitioner, since A–S told the SEC that it exerts a "major influence" in publishing along the Eastern Shore. A–S's balance sheet lists an investment of $207,875 in publication, circulation and subscription rights and Petitioner finds that these facts "belie assignee's contention that the publishing subsidiary constituted a 'demonstrably small portion' of the A–S business." (R. page 12).

14. Failure to report newspaper interests, the Petitioner argues, necessitates a hearing to ascertain the full circumstances surrounding the non-disclosure including the question of intent. Petitioner finds assignee's explanation that the Commission never requires "every detail of every business to which (the applicant) has an interest" to be erroneous both as a matter of fact and as a matter of law. As a matter of fact, Stokes failed to disclose the total business interests of A–S including the formation of Leisure Reservations, Inc. as an A–S subsidiary in the fall of 1972. As far as the law is concerned, Petitioner points out that the Review Board has consistently required full disclosure of every applicant's business background, which, in this case, would include Stokes' connection with Coastal Communications, Inc. *William R. Gaston*, 35 FCC 2d 624 (1972). "Although the fact of concealment may very well be more significant than the facts concealed in this case, it is manifest that assignee had a motive to conceal the communication interests of its principal." (R. page 16).

15. Petitioner's allegations surrounding the non-disclosure of certain other business interests of Mr. Stokes and Mr. Jenkins center on Section II, Table II of the assignment application (FCC Form #314). The purpose of Table II is to obtain information concerning other business and financial interests of each member of the assignee for both the present time and during the past five years. In this regard, each party is to list "principal occupations and businesses" in which the party is presently engaged or has been engaged in at any time during the past five years. Additionally, each party is to state any other business or financial enterprise in which such party has now or within the past five years has had either a 25% or greater interest or any official relationship. In each case, the nature of the business engaged in is to be described.

16. In the present case, Paul C. Stokes is listed as President and 35% shareholder of Anderson-Stokes, Inc., a "Real Estate Construction and Development" company. As noted by Petitioner above, the complete nature of A–S's business was not disclosed in the application and other business interests of Charles R. Jenkins were similarly not listed. As noted above, these initial omissions in the application have

been corrected by the assignee with its explanation for their failure to include them.

17. The omissions relating to Mr. Jenkins have been admitted by the assignee and are described as being an oversight in completing Table II. While we do not deem it acceptable for applicants to file incomplete applications in the face of specific instructions to the contrary, we do believe that in Mr. Jenkins case, his oversight is insufficient to raise substantial or material questions of fact surrounding the assignee's qualifications to become a Commission licensee.

18. The omission of A–S's 80% subsidiary's newspaper interest fails to raise a substantial issue. However, we believe that the instructions on Table II are quite clear in requiring the assignee's principals to disclose all business interests in which they have either a 25% or greater interest or "any official relationship." Mr. Stokes' explanation for the omission that the portion of A–S's revenues generated from publishing is relatively insignificant and that "The Commission has never required an applicant to list every detail of every business in which it has an interest." (Opp. page 15), is reasonable. However, Mr. Stokes is President of Coastal Communications, the publishers of the newspapers in question, and that "official relationship" clearly was required to be reported in Table II of Section II of the application.

19. The specific publishing interests of Coastal encompass three weekly newspapers and five "shoppers". These interests we have found do not amount to a concentration of control of mass media (see paragraphs Nos. 25–28 below) and this decision will not be altered with the addition of WDMV–AM. While we do not find Mr. Stokes' excuse for the non-disclosure acceptable, when all matters are considered there is no apparent reason to conclude that these omissions are sufficient to raise substantial or material questions of fact regarding the assignee's qualifications to become a broadcast licensee. The lack of any undue concentration of control of mass media resulting from a grant of this application obviates any reason not to disclose Coastal's publishing interests. Therefore, we conclude that there was no motive for not disclosing the newspaper interests and that these omissions were not an attempt to intentionally mislead or deceive the Commission.

Concentration of Control

20. Petitioner argues that if the Commission were aware that the assignee's principal "already controlled virtually all of the publication interests in the Eastern Shore area" a concentration of control issue would surely arise necessitating a hearing (Petition-page 6). The Communications interests held by Coastal Communications, Inc. include three weekly newspapers and five other publications which together place Stokes in a position of "undisputed dominance over mass media along the Maryland and Delaware coast." (Supp. page 7). In assessing Stokes' dominance over Eastern Shore media, Petitioner alleges that:

> **There is no commercial television station licensed to serve any Worcester County, Maryland or Essex County, Delaware community;**
>
> **The only local commercial television station serving eastern Maryland and southern Delaware is UHF station WBOC–TV, Salisbury, Maryland (Wicomico County) affiliated with all three networks:**

The only FM station licensed to serve a Worcester County community (Ocean City) is WBOC–FM, which is operated in conjunction with WBOC–AM–TV in Salisbury and "as a practical matter is more attuned to serving the needs and interests of Salisbury and Wicomico County than Ocean City (Supp. page 8);
The only Worcester County publications independent of Stokes are the *Worcester County Democrat* and the Maryland *Coast Press;* and
The only AM stations licensed to serve a Worcester County community are WETT and WDMV.

21. In view of these non-disclosures and the existing media interests of the assignee's principal, Petitioner submits that substantial and material questions of fact arise concerning both the assignee's motives to conceal and the resulting concentration of control that would arise if the subject application were to be granted. In addition, Petitioner alleges that the "proclivity for cross-promotion" between Stokes' publications and WDMV would work to the detriment of WETT and the public interest.

22. The assignee argues that the print media interests of A–S do not give rise to a media concentration issue and have termed Petitioner's allegation to that effect as "frivolous." Coastal Communications, Inc. publishes three weeklies and only one has significant circulation in Worcester County. It also publishes five "shoppers" which are distributed free and consist chiefly of advertising; only two of these have substantial distribution in Worcester County. The assignee lists eight other weekly newspapers published in the area that compete with Coastal's weeklies. In particular, assignee points out that Pocomoke City has its own weekly and that Washington and Baltimore dailies have circulation in the area. Moreover, assignee claims that these Washington and Baltimore papers have "a greater circulation in the county (when Sunday editions are considered) than the total of all the Coastal regular papers." (Opp. page 12). Additionally, the assignee submits that the following broadcast stations serve Worcester County: WBOC–AM–FM–TV; WICO–AM–FM and WJDY–AM Salisbury, Maryland. The Ocean City CATV system has 3,500 subscribers and carries three Baltimore network affiliates and one Washington independent and the Pocomoke City system carries the same signals to 1,718 subscribers. Based on these factors, the assignee concludes that neither A–S nor Paul Stokes "so dominates the media in Worcester County, that a grant of this application would be contrary to the public interest." (Opp. page 13). Assignee concedes that while A–S exerts a "major influence in the newspaper publication field" along the Delaware-Maryland coastline, "It certainly does not dominate the media." (Opp. page 12).

23. Petitioner believes that the facts as developed in the assignee's Opposition strengthen their allegation that a grant of the application would place Stokes in a position of "undisputed dominance over mass media along the Maryland and Delaware coastline." (R. page 16). According to the assignee in its Opposition, the publication interests of A–S have a total circulation between 70,000 and 80,000 which is almost twice the figure reported by A–S in its Annual Report to the SEC. Also in Worcester County alone, A–S publications have a circulation of between 14,000 and 23,000 [depending upon the season] and since the total population of Worcester County is 24,442, Petitioner

argues, it is clear that A–S publications have the "potential" to reach nearly 100% of the county residents. While the assignee attempts to dilute the dominance of the A–S publications by referring to eight other weeklies which purportedly are "within the area (WETT) claims Paul Stokes dominates", Petitioner points out that by assignee's own admission two of these have recently merged. However, Petitioner alleges that five of the remaining six newspapers are not located along the Maryland-Delaware coastline but are published in communities ranging from 15 to 25 miles from the Eastern Shore. Further, the assignee has not alleged that these newspapers have any significant circulation in communities where A–S publications are distributed and no allegation that these other publications have a "significant impact on media distributed along the Delaware-Maryland coastline" which is the area of A–S Media domination. (R. page 18).

24. Petitioner alleges that while the assignee refers to the circulation of Salisbury, Washington, and Baltimore dailies in Worcester County they fail to indicate the extent to which these papers provide news and information concerning the Eastern Shore. Additionally, assignee fails to supply information as to the extent to which other broadcast facilities devote attention to the problems and needs of the Eastern Shore. Petitioner argues that the "paucity" of media serving the Eastern Shore distinguishes this case from past cases involving possible media concentration issues. (R. page 19).

25. Petitioner has alleged existing print media domination by the assignee's principal along the Eastern Shore and has further alleged that a grant of the subject application would not serve the public interest due to this media ownership. While the assignee has attempted to discount its media holdings by pointing to other competing weeklies and dailies along the Eastern Shore, the Petitioner contends that the assignee has failed to demonstrate that these other newspapers have any significant competitive impact on the A–S media distributed along the Delaware-Maryland coastline.

26. Attachment A indicates the 0.5 mvm contour of WDMV–AM. Within the coverage area, the following newspapers are published:

Paper and location:	*Circulation* [5]
Eastern Shore Times, Ocean City	2,761
Worcester Democrat, Pocomoke City	2,800
Democrat Messenger, Snow Hill	3,197
Times, Crisfield	2,782
Advertiser, Salisbury	3,942
Total	15,482

[5] Circulation figures are taken from *Ayer Directory of Publications*, 1972.

On the fringe area of this contour, the following two newspapers are published:

Delmarva News, Selbyville, Del	4,028
State Register, Laurel, Del	4,370

27. Of the seven newspapers listed above that are published within the 0.5 mvm contour of WDMV (total circulation 23,880), two are controlled by Coastal Communications having a circulation of 6,798 (i.e. Delmarva News and Eastern Shore Times). However, while the Delmarva News principally covers Selbyville and Millsboro, Delaware,

only Selbyville is within WDMV's 0.5 mvm contour. Essentially, then, only the Eastern Shore Times, published in Ocean City, is located within the affected area, and at that, close to the outer edge of the area. There are a total of four weekly papers with combined total circulation over 12,500 that are published closer to Pocomoke City than any of Coastal's other papers which would therefore provide ample competition for any of Coastal's newspapers circulated within the affected area. Finally, on top of this local competition, the Washington and Baltimore daily newspapers experience meaningful circulation within WDMV's 0.5 mvm contour.

28. Aside from the other print media competition in the area, mention must also be made of the broadcast competition. In addition to Petitioner's station, the assignee will have to compete for listeners and revenues with the three AM's and two FM's licensed to Salisbury, Maryland which is 17 miles to the north of Pocomoke City. Further competition for broadcast advertising dollars will also come from the Salisbury TV.

29. We are therefore presented with the situation where the assignee controls one and possibly two newspapers within WDMV's 0.5 mvm countour—a situation that Petitioner labels a concentration of control of the media of mass communication. Due to the other competing media, both print and broadcast, and the peripheral nature of the assignee's media interests in relation to the affected area, we conclude that a grant of the application will not raise substantial or material questions of fact indicating a concentration of control by the assignee's principal in the media of mass communications within WDMV's 0.5 mvm contour.

FINANCIAL QUALIFICATIONS

30. Petitioner argues that the assignee is not financially qualified since it has failed to disclose material facts surrounding the sources of its funds for acquisition. The assignee, in its Opposition pleading, amended the subject application to show that the Second National Building and Loan, Inc., Ocean City, Maryland has $103,000 on deposit in the assignee's name for acquisition purposes. Based on this amendment, the assignee concluded that its financial qualifications are no longer in issue.

31. The subject application as amended in the parties' Opposition pleading raises no substantial or material questions of fact surrounding the assignee's financial qualifications. The contract of sale provides for a total consideration of $250,000 of which $98,429.12 will be required from the assignee during the first year of its operation. The assignee's amendment dated April 30, 1973, indicates that it has over $100,000 in liquid funds on deposit which will more than meet its expenses of the first year without consideration of any station revenues. We therefore find the assignee fully financially qualified.

COMMUNITY SURVEY AND PROPOSED PROGRAMMING

32. Petitioner points out that the assignee's survey of community needs was not conducted by its principals,

> . . . but rather by purportedly management level personnel of WDMV who will be retained by the station. Absent specificity the Commission cannot be confident

that the assignee complied with the strictures of paragraph 11 of the *Primer*. (Pet. p. 10)

Also the assignee's selection of community leaders and members of the general public is questioned by Petitioner since there is no indication that those selected are truly representative of the significant Black population in the area. Also the assignee has failed to set out the time, duration and frequency of the programs it proposes to broadcast and has failed to relate these programs to problems ascertained in the community.

33. The assignee argues that its survey of community needs fully complies with the standards of the Commission's *Primer*, 27 FCC 2d 650 (1971) in that it was conducted by employees of the station who will occupy management level positions. Finally, to erase all possible doubt surrounding the representativeness of its community leader survey, the assignee has amended the application to include additional surveys of ten Black leaders. The assignee terms the allegations raised by Petitioner regarding the proposed programming for WDMV as "technicalities which are answered in the amendment." (Opp. p. 17)

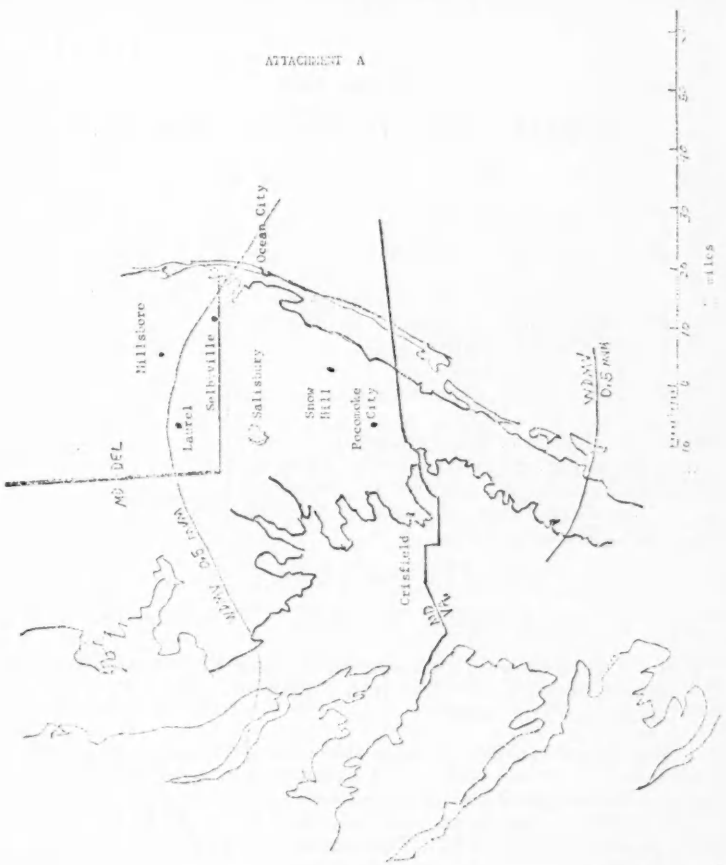
34. Petitioner alleges that the assignee has failed in its Opposition to cure the deficiencies in its ascertainment procedures and programming proposals. While three out of the five principals of the assignee reside on the Eastern Shore and all five own property there, none of them participated in the ascertainment process. Petitioner finds that those prospective employees of WDMV who conducted the community leader survey did not comply with the substance of paragraph 11 of the Commission's *Primer*. Finally, Petitioner finds that the assignee's amended proposed programming description is "Prima facie inconsistent with ascertainment requirements" due to the lack of specificity as to which ascertained need each program will cover (R. page 22).

35. We find that Petitioner's objections to assignee's community survey and programming proposals raise no substantial or material questions of fact. The city of license has a non-white population of approximately 20% and Worcester County has a non-white population of approximately 33%. The assignee interviewed 40 community leaders (12 non-white) who were representative of a wide cross section of the areas to be served by the subject station. The individuals conducting the survey fully complied with the guidelines of the Commission as set down in our *Primer supra*. The assignee's proposed programming reasonably relates to the needs and interests of the area citizens as ascertained by the assignee in its community survey. We, therefore, hold that there exists no substantial or material questions of fact surrounding these aspects of the application.

In conclusion, we find that the Petitioner in its pleadings has failed to raise substantial or material questions of fact that would show that a grant of this application would not be in the public interest. ACCORDINGLY, IT IS ORDERED, That the Petition to Deny filed by Public Service Enterprises, Inc., IS DENIED and that, the application for the assignment of the license for radio Station WDMV–AM, Pocomoke City, Maryland from the Agintour Corporation to Leisure Time Communications, Inc., IS GRANTED.

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

ATTACHMENT A



F.C.C. 73-1086

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of (1) A. H. BELO CORP. (ASSIGNOR) AND BEAUMONT TELEVISION CORP. (ASSIGNEE) For Assignment of License of WFAA-AM-FM-TV, Dallas, Tex. AND (2) A. H. BELO CORP. (TRANSFEROR) AND JAMES M. MORONEY, JR., JOSEPH M. DEALEY AND MYRON F. SHAPIRO, VOTING TRUSTEES For Transfer of Control of Beaumont Television Corp., Licensee of KFDM-TV, Beaumont, Tex.	Files Nos. BAPL-430, BAPL-156, BALCT-505 File No. BTC-7073

MEMORANDUM OPINION AND ORDER

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

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

1. By letters of May 23, 1973 the Commission granted the above captioned *pro forma* assignment and transfer applications and responded to informal objections filed by Civic Telecasting Corporation and WADECO, Inc. *Beaumont Television Corp.*, 41 FCC 2d 245, 41 FCC 2d 249; 41 FCC 2d 251. The date of release of the text of the letters was May 31, 1973. Pre grant petitions to deny do not lie against *pro forma* assignment and transfer applications under Secs. 309(c)(2)(B) and 309(d)(1) of the Commission's Rules, but the Commission now has before it a timely filed petition for reconsideration, filed by Civic Telecasting Corporation.[1] Civic Telecasting, which filed petitions to deny the August 1, 1971 renewal applications for all four stations, had, as noted above, filed a pre grant informal objection to the

[1] Civic has requested a stay of the effectiveness of the grants pursuant to Sec. 1.106(n) of the Rules. Its statement of "good cause" in support of its request is that Belo claims that the purpose of the applications is to prevent the automatic transfer of control which would otherwise occur upon termination of the G. B. Dealey Trust, but since the trust does not terminate until 1976, there is no immediate need to effect the assignment and transfer. This is not a showing of irreparable injury to warrant staying the effectiveness of the grants. "The grant of an assignment or a transfer of control will not be stayed pending action on a petition for reconsideration where the transfer has already been consummated . . . and no irreparable injury is shown." *Desert Telecasting Co.*, 1 RR 2d 325 (1963).

above captioned assignment and transfer applications. Its principals are parties to an antitrust suit against the licensee of WFAA–TV.

2. The applications were for assignment of license of WFAA–AM–FM–TV from A. H. Belo Corporation to Beaumont Television Corporation and for transfer of control of Beaumont Television Corporation, licensee of KFDM–TV, from A. H. Belo Corporation to James M. Moroney, Jr., Joseph M. Dealey and Myron F. Shapiro, Voting Trustees. Beaumont, the licensee of KFDM–TV, was a wholly owned subsidiary of Belo, the licensee of WFAA–AM–FM–TV, and Belo was controlled by James M. Moroney, Jr., Joseph M. Dealey and Joseph A. Lubben as trustees of the G. B. Dealey Trust, which owned about 68% of the stock of Belo. Thus the effect of the applications was to place all the stations under one licensee, Beaumont, and for Moroney, Dealey and Shapiro to control that licensee directly. The applications did not change the beneficial ownership of the stations or control of the licensees since Moroney and Dealey, who constitute a majority of the voting trustees of the trust in which the stock of Beaumont was placed, constitute a majority of the trustees of the G. B. Dealey Trust, which voted 68% of the outstanding stock of Belo. The transactions were consummated on May 24, 1973.

3. Civic bases its claim to standing to file a petition for reconsideration on the showing it made in its petition to deny the four renewal applications and states that the *pro forma* applications will cause significant changes in the renewal applications. The opposition opposes this claim based on the argument made in opposing the Civic renewal petitions and notes further that the Commission in its letter of May 23 to Messrs. Moroney and Shapiro informing them of the grant of the *pro forma* applications states that "the grant of these applications has been made without prejudice to whatever action we may deem appropriate to the pending license renewal applications." 41 FCC 2d 245, 246. However, we need not determine whether Civic has standing to petition for reconsideration since, as will be shown below, it has failed to establish a substantive basis for reconsideration. *The Jackson Television Corp.*, 26 FCC 2d 613 (1970).

4. We will now discuss the substantive allegations of the petition. Civic's first argument, that the *pro forma* assignment and transfer will enable the licensee of WFAA–AM–FM–TV to escape revocation of its licenses under Sec. 313 of the Communications Act [2] and a corollary argument, that the applicant misrepresented the true purpose of the applications, which was to escape revocation of the licenses, were

[2] Sec. 313 provides in part, "Whenever in any suit, action, or proceedings, civil or criminal, brought under the provisions of any of said [antitrust] laws or in any proceedings brought to enforce or to review findings and orders of the Federal Trade Commission or other governmental agency in respect of any matters as to which said Commission or other governmental agency is by law authorized to act, any licensee shall be found guilty of the violation of the provisions of such laws or any of them, the Court, in addition to the penalties imposed by said laws, may adjudge, order and/or decree that the licenses of such licensee shall, as of the date the decree or judgment becomes finally effective or as of such other date as the said decree shall fix, be revoked, and that all rights under such license shall thereupon cease." As we noted in our order designating the renewal application for WFAA–TV and the mutually exclusive application of WADECO, Inc., for hearing, a civil antitrust suit was filed on September 9, 1970, by principals of Civic, *UHF, Inc.* v. *A. H. Belo Corporation*, charging it with attempting to monopolize the television industry in the Dallas-Ft. Worth area. The relief sought includes revocation of licenses. Belo is also the defendant in another antitrust suit brought by the publisher of a suburban newspaper in the Dallas area.

made in its pre grant objection and were rejected by us in granting the application. *Beaumont Television Corp.*, 41 FCC 2d 249 (1973).

5. Civic's theory, is that since A. H. Belo Corporation is no longer the licensee of WFAA–AM–FM–TV by virtue of the *pro forma* change, if it is found guilty of the violations specified in Sec. 313, revocation of the licenses of WFAA–AM–FM–TV can be avoided. Civic does not explain how a mere *pro forma* change could possibly avoid the operation of Sec. 313's provisions, and it cites no cases to support its theory. Nor does it explain why it cannot join the new licensee of WFAA–AM–FM–TV as a party defendant in its anti-trust suit under Rule 25(c) of the Federal Rules of Civil Procedure, which deals with substitution of parties in case of transfer of interest. See for example *Moody* v. *Albermarle Paper Co.*, 50 F.R.D. 494 (E.D. N.C. 1970). Since Petitioner has failed to demonstrate how our action could affect its rights in the pending anti-trust suit and further since court rulings under the Federal Rules of Civil Procedure clearly indicate that such would not be the case, we find no reason to disturb our earlier ruling. In light of the above discussion, it is also clear that avoidance of revocation was not an underlying purpose for the filing of these applications and hence no misrepresentation is present.

6. Civic refers to allegations it previously made of prohibited *ex parte* presentations made by Mr. Shapiro, who is manager of WFAA–TV, to Commissioner Hooks when he interviewed the Commissioner for a broadcast of a guest interview program. Civic states that the assignment and transfer applications cannot be granted until these charges are resolved. The Commission was aware of the allegations when it acted on the assignment and transfer applications and stated in the order designating for hearing WFAA–TV's renewal application and the mutally exclusive application of WADECO, Inc. issued on the same day: "Moreover, when action is taken on [Civic's] petition to deny, we will also consider the allegations raised by Mr. James T. Maxwell, President of Civic Telecasting Corporation that A. H. Belo Corporation has engaged in prohibited *ex parte* presentations." 40 FCC 2d 1131, 113, n. 3. Granting the *pro forma* applications in no way deprived Civic of any opportunity to be heard on the alleged *ex parte* presentations, and did not prejudice the Commission's future course of action in dealing with these allegations.

7. Civic made a number of allegations based on the pending lawsuit brought by Gordon Dealey Jackson, Gilbert Stuart Jackson, and Henry Allen Jackson against trustees Dealey and Moroney, A. H. Belo Corporation, and Beaumont Television Corporation and others seeking an injunction against the setting up of voting trusts and other relief. As we discussed at greater length in our companion Memorandum Opinion and Order, denying a petition for reconsideration of the *pro forma* transfer and assignment applications, which was filed by the Jackson brothers, these issues are for the local court to decide and do not pose a bar to our earlier action.

8. Civic suggests that an untimely delay, in violation of Sec. 1.65 of the Commission's Rules, in informing the Commission of the Jackson lawsuit, which was filed on May 18, resulted in the Commission's May 23, 1973 grant of the assignment and transfer applications with-

out benefit of a full disclosure by the applicant. Civic states that the Jackson suit was filed on May 18, that the letters of notification, filed in connection with Belo's renewal applications are dated May 24, and were filed on May 29, by Washington counsel. It stated that Belo was obviously in possession of a detailed description of the lawsuit since it published such a description in its newspaper, the Dallas *Morning News*, on the morning of May 23. The opposition agrees with Civic's dates. It states that May 22 was the first day on which any of the defendants were served, that the amendments were drafted in Washington by counsel and forwarded to Dallas to be made final and signed, that they were signed in Dallas on May 24 and mailed to counsel in Washington for filing, and that they were filed on May 29, the Tuesday after the Memorial Day holiday. Considering the holiday which occurred between the date applicants had notice and the date of their filing this amendment with the Commission, we think it clear that the applicants acted as promptly as possible under the circumstances. Therefore, no substantial or material question of fact is raised by these allegations.

9. In view of the foregoing, IT IS ORDERED that our May 23, 1973 grant of the assignment and transfer applications for WFAA–AM–FM–TV and KFDM–TV IS HEREBY AFFIRMED and the petition for reconsideration filed by Civic Telecasting IS HEREBY DENIED.

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

F.C.C 73-1087

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of A. H. BELO CORP. (ASSIGNOR) AND BEAUMONT TELEVISION CORP. (ASSIGNEE) For Assignment of License of Stations WFAA-AM-FM-TV, Dallas, Tex. AND A. H. BELO CORP. (TRANSFEROR) AND JAMES M. MORONEY, JR., JOSEPH M. DEALEY AND MYRON F. SHAPIRO, VOTING TRUSTEES (TRANSFEREES) For Transfer of Control of Beaumont Television Corp., Licensee of KFDM-TV, Beaumont, Tex.	Files Nos. BAPL-130, BALH-156, BALCT-505 File No. BTC-7073

MEMORANDUM OPINION AND ORDER

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

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

1. By letters of May 23, 1973 the Commission granted the above captioned *pro forma* assignment and transfer applications and responded to informal objections filed by Civic Telecasting Corporation and WADECO, Inc. *Beaumont Television Corp.*, 41 FCC 2d 245; 41 FCC 2d 249; 41 FCC 2d 251. The date of release of the text of the letters was May 31, 1973. Presently before the Commission is a timely filed petition for reconsideration filed by Gordon Dealey Jackson, Gilbert Stuart Jackson, and Henry Allen Jackson [1] and responsive pleadings. The Jacksons, who are brothers, are among the beneficial owners of the stations.

2. The applications were for assignment of license of WFAA-AM-FM-TV from A. H. Belo Corporation to Beaumont Television Corporation and for transfer of control of Beaumont Television Corporation, licensee of KFDM-TV, from A. H. Belo Corporation to James M. Moroney, Jr., Joseph M. Dealey and Myron F. Shapiro, Voting

[1] On the same day that the Commission granted the *pro forma* assignment and transfer applications for WFAA-AM-FM-TV and KFDM-TV it designated for hearing the renewal application for WFAA-TV and the mutually exclusive application of WADECO, Inc. for WFAA-TV's facilities in Docket Nos. 19744-45 (40 FCC 2d 1131). The Jacksons filed a Petition to Amend the Commission's Hearing Order and a Petition For Leave to Intervene in the proceeding. Both petitions have been denied.

Trustees. Beaumont, the licensee of KFDM–TV was a wholly owned subsidiary of Belo, the licensee of WFAA–AM–FM–TV, and Belo was controlled by James M. Moroney, Jr., Joseph M. Dealey and Joseph A. Lubben as trustees of the G. B. Dealey Trust, which owned about 68% of the stock of Belo. Thus the effect of the applications was to place all the stations under one licensee, Beaumont, and for Moroney, Dealey and Shapiro to control that licensee directly. The applications did not change the beneficial ownership of the stations or control of the licensees since Moroney and Dealey, who constitute a majority of the voting trust in which the stock of Beaumont was placed, constitute a majority of the trustees of the G. B. Dealey Trust, which voted 68% of the outstanding stock of Belo. The transactions were consummated on May 24, 1973.

3. We turn now to the substantive allegations of the petition.[2] The controlling stockholder of A. H. Belo Corporation is the G. B. Dealey Trust, a testamentary trust. The trust is due to expire by its terms on August 25, 1976, five years after the death of the testator's last surviving child. The Jacksons are beneficiaries of the trust and thus beneficial owners of the station, as are trustees Dealey and Moroney. The effect of the voting trust arrangement proposed in the *pro forma* applications is to extend the control of Dealey and Moroney over the stations from 1976 until December 31, 1982, since that is the date when the voting trust expires unless terminated earlier by a majority of the voting trustees and the holders of voting trust certificates representing at least ¾ of the stock of the corporation. The petitioners argue that the transfer and assignment were misrepresented to the Commission as *pro forma* when actually they affected the substantive rights of the trust beneficiaries by extending the control of Dealey and Moroney over the stations beyond the date of termination of the Dealey trust. This view of misrepresentation is mistaken. To the Commission the transfer of control to the voting trustees is *pro forma* because the same persons who have controlled the stations in the past will continue to control them through the voting trust. The legal effect of such an action on the substantive rights of beneficiaries has traditionally been left to the local courts to determine.

4. On May 18, 1973 the petitioners filed suit in a Texas state court against Dealey, Moroney and Lubben as trustees of the G. B. Dealey Trust, A. H. Belo Corporation, and Beaumont Television Corporation and others asking for a permanent injunction against the setting up of voting trusts and other relief. A motion for a temporary restraining order was heard on May 25 and was denied.[3]

5. The petitioners argue that the Commisson should evaluate the allegations in the suit before approving the applications and argue further that the applications are not in the public interest because the vot-

[2] The opposition does not dispute the Jacksons' standing to file a petition for reconsideration. Accordingly, there is no need to discuss this question.

[3] On June 4 the court stayed the proceedings until all the beneficiaries of the Dealey Trust had been joined and served as parties and had entered appearances.

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ing trust might not benefit all of the Dealey beneficiaries.[4] Whether the trustees acted properly in setting up the voting trust is a matter for the state court to decide, not the Commission. In *Triangle Broadcasting Co.*, 3 RR 2d 836 (1964), a petitioner for reconsideration of an assignment application made allegations of breach of fiduciary obligations and fraud against officers, directors, and other stockholders of the assignor. These allegations had also been made in a complaint pending in the state court seeking an injunction prohibiting the assignor from transferring corporate assets and other relief. The Commission found no reason to set aside the grant on the basis of general allegations of bad faith and stated that resolution of the issues should be left to the local court. The same reasoning is applicable here. Further, in view of the Texas court's denial of petitioners' motion for a temporary restraining order, the Commission will not reconsider its grant of the applications. CF *American Security Council*, 41 FCC 2d 377 (1973).

6. In view of the foregoing IT IS ORDERED that our May 23, 1973 grant of the applications for WFAA–AM–FM–TV and KFDM–TV IS HEREBY AFFIRMED and the petition for reconsideration filed by Gordon Dealey Jackson, Gilbert Stuart Jackson, and Henry Allen Jackson IS HEREBY DENIED.

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

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[4] The Jacksons also state that the *pro forma* changes will be harmful to WFAA–TV's position in the comparative hearing but do not explain why this is so.

F.C.C. 73-1050

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF PART 81—TO EXPAND THE POINTS OF COMMUNICATIONS OF ALASKA-PUBLIC FIXED STATIONS ON FREQUENCIES SUBJECT TO THE CONDITIONS OF USE SET FORTH IN SECTION 81.708(b)(20)	Docket No. 19769

REPORT AND ORDER

(Adopted October 11, 1973; Released October 16, 1973)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT; COMMISSIONER JOHNSON DISSENTING.

1. A Notice of Proposed Rule Making in the above-captioned matter was released on June 18, 1973, and was published in the Federal Register on June 25, 1973 (38 F.R. 16663). The dates for filing comments and reply comments have passed. In an Order released on August 2, 1973, the Chief, Safety and Special Radio Services Bureau, denied a Motion for Extension of Time, filed by RCA Alaska Communications, Inc.

2. Timely comments were filed by the Central Committee on Communication Facilities of the American Petroleum Institute (API). Late comments were filed by RCA Alaska Communications, Inc. (RCA), together with a Petition for Acceptance of Late Filed Comments, which is hereby granted. Late reply comments were filed by API, together with a Petition for Leave to File Late Reply Comments, which also is hereby granted.

3. In their comments API endorsed and fully supported the proposed amendment of Section 81.708(b)(20) of Part 81. Further, API urged that Alaska Zone 5 be added to the other Zones included in the proposed amendment of Section 81.708(b)(20), on the basis that it appears "possible that exploration drilling activity may be undertaken in Zone 5 in 1974, and additional communication capability will become essential at that time." API expresses willingness, however, to file a Petition for Rule Making should it be determined that the inclusion of Zone 5 is outside of the scope of this proceeding. From a procedural point of view, Zone 5 may be included in this proceeding, however, we are concerned regarding the adequacy of basis for such inclusion. More specifically, while API has provided the Commission with their best estimate regarding the potential development of need during 1974 in Zone 5, the status of planning appears to be less than mature. In view thereof, we are not in this proceeding including in Section 81.708(b)(20) provision for the use of these frequencies in Zone 5. This decision does not prejudge future action which the Com-

mission may take following the maturing of need in Zone 5 and the filing of a Petition for Rule Making by API for such use.

4. In their comments, RCA refers to and urges the inclusion of a condition of use which prior to release, on October 26, 1971, of the Report and Order in Docket No. 18632 (36 F.R. 20949), appeared on station authorizations employing the frequencies to which Section 81.708(b)(20) is applicable. This condition of use is as follows:

> This supplemental authorization is issued to expire February 20, 1972, or until Common Carrier Service is provided to the Prudhoe Bay area, whichever occurs first. Renewal and/or continued use of this authority will depend upon the availability and reliability of the Common Carrier Service which is to be provided.[1]

5. In support thereof, RCA sets forth various reasons why (the substance of) this condition of use should be included in Section 81.708 (b)(20). Significantly, RCA states that inclusion of this condition of use "clearly serves the public interest in Alaska." Further, RCA strongly opposes the adoption of Section 81.708(b)(20) if the substance of the above condition of use is omitted. In their reply comments, API opposes the inclusion of this condition of use for various reasons and requests that the Commission unequivocally reject RCA's proposal.

6. The thrust of RCA's argument in support of inclusion of the above condition of use is that common carrier facilities should be employed where available between concerned terminals; that high frequency radio circuits, if authorized parallel to these common carrier facilities, will have an adverse effect upon the economic capability of the communications common carrier to (a) maintain the level of existing facilities, or (b) to add new facilities to meet expanding public need. RCA gives a number of examples and cites several pertinent references.[2]

7. The thrust of API's opposition to RCA's proposal is primarily that imposition of the above condition of use would lead to useless controversy over the availability and/or reliability of common carrier facilities, or would impose delays upon API users in initiating new and needed services awaiting the availability of common carrier facilities.[2]

8. In amplification, API states that these frequencies are required, first, where there is need to install facilities to meet requirements at new locations pending availability of common carrier facilities and, second, to provide back-up in the event of failure of common carrier facilities. API points to the fact that API users prefer to employ common carrier higher quality circuits when they are available. Lastly, API expresses the view that "the petroleum industry is entitled to employ its own privately licensed facilities on the Alaskan North Slope, as it is elsewhere, until such time as the [communications common] carrier is truly ready, willing and able to provide service at new sites."

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[1] This condition of use was not included in the Notice of Proposed Rule Making, Docket No. 18632, released August 25, 1969 (34 F.R. 13929). The comments filed did not request that it be included in the rules. It was not included in the Report and Order in that proceeding. No requests for reconsideration of the Report and Order were filed.

[2] While each argument, supporting statement, or reference raised by RCA and API has been carefully considered, we are not in this Report and Order commenting in detail on each of those points. The filings of RCA and API in this proceeding are available for public inspection in the Commission's Public Reference Room. See, also, arguments given in Issues 6–9, Report and Order, Docket No. 11866, adopted July 29, 1959 (27 FCC 359).

9. In looking at the matter of the petroleum, or other, industry being entitled to use of high frequencies for point-to-point communications, it is appropriate to note that with regard to the 48 contiguous states, it has been and continues to be the policy of the United States that high frequencies shall not be used for internal (domestic) point-to-point communications. This policy is based on two elements; first, the numbers of high frequencies are limited, are shared by all countries and are essential for international communications and, second, land lines (microwave)[3] are available to meet domestic needs. While this policy also extends to the mobile services, this has no applicability to the matter at hand. It is appropriate to note, however, that the implementation of this policy within the contiguous 48 states has had a major impact upon national communications. It is pertinent, also, that in Docket No. 18632[4] the Commission expressed its intent to bring the rules applicable to Alaska into accord with rules for the other 49 states, to the extent practicable.

10. Long lines services are not available in Alaska on a basis comparable to that within the contiguous 48 states, however, we see no reason why, as such services become available, the policy applicable to the contiguous 48 states should not be applicable to Alaska. Thus, as common carrier, or other, facilities are provided between points served by the high frequencies of Section 81.708(b)(20), we expect the use of high frequencies to be discontinued or used for back-up purposes as discussed above. In this manner the frequencies of Section 81.708(b)(20) can be available to meet the new, changing, or expanding requirements of API and others for communications between points or areas where common carrier, or other, facilities are not available.

11. Turning now to the substance of this matter, two points regarding the use of the frequencies of Section 81.708(b)(20) may be quickly disposed of, that is, these frequencies should be available:

> For back-up communication in the event of failure of common carrier facilities; and
>
> For use between terminals where common carrier facilities are not available.

To examine this disposition for adequacy or reasonableness, we can view both points from the reverse direction, that is, would it be reasonable to take the position that the frequencies of Section 81.708(b)(20) should not be available for use for back-up or in the absence of common carrier facilities. This reverse position could be reasonable if there were alternative means by which the required communications could be obtained, however, in the matter under consideration no alternative means are available. Accordingly, it is the view of the Commission that it is reasonable and necessary that the frequencies of Section 81.708(b)(20) be available for use (a) for back-up communications and (b) between terminals where common carrier facilities are not available.

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[3] Carriers often employ an intermixture of land lines and microwave.

[4] See paragraph 4, Report and Order, Docket No. 18632, released October 26, 1971 (36 F.R. 20949).

12. The last and main issue involves the situation where (a) common carrier facilities are available between the terminals concerned, (b) other communication media is not available, and (c) the frequencies of Section 81.708(b)(20) are installed, or desired to be installed. The matter of use of high frequencies, with normal propagation far beyond the boundaries of the United States, provides a more than adequate basis to differentiate that usage from other media, such as microwave. In that regard, we are not here involved with a need to review or to reaffirm the policies set forth in the Commission's decisions in Docket No. 11866,[5] or in Docket No. 16218.[6] The decisions developed and set forth in those proceedings resolved, among other things, the matter of private versus common carrier use of microwave systems and are as applicable in Alaska as they are in the contiguous 48 states.

13. The substance of the matter here involved concerns the use of high frequencies for internal Alaska point-to-point communications. It is clear that by shifting traffic from the high frequencies of Section 81.708(b)(20) to common carrier facilities as they become available, or to other facilities (such as microwave) where they are available, that it will be possible to minimize the number of high frequencies which will have to be provided to meet an expanding need for point-to-point communication in Alaska. Further, to the extent circumstances permit, this will permit the Commission to continue to adhere to the long standing United States policy that high frequencies are not to be used for domestic point-to-point communication. Accordingly, as set forth in the Appendix, we are requiring that the use of the high frequencies of Section 81.708(b)(20) be discontinued, except for back-up purposes as discussed above, at such time as common carrier facilities become available, or the applicant has access to, or installs, private long lines facilities. Further, these high frequencies will not be authorized for use between terminals where common carrier facilities are available, or a private long lines system is available to which the applicant has access.

14. In view of the foregoing, IT IS ORDERED, That pursuant to the authority contained in Sections 303 (c), (f), (g) and (r) of the Communications Act of 1934, as amended, Part 81 of the Commission's Rules IS AMENDED, effective November 23, 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.*

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[5] Report and Order, Docket No. 11866, adopted July 29, 1959. *In the matter of allocation of frequencies in the bands above 890 Mc* (27 *F.C.C.* 359).

[6] Report and Order, Docket No. 16218, adopted July 13, 1966. *In the matter of amendment of Parts 87, 89, 91 and 93 of the Commission's rules to permit expanded sharing of Operational Fixed Stations* (4 *F.C.C. 2d 406*).

APPENDIX

Part 81 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

1. Section 81.708(b) is amended to read as follows:

§ 81.708 Frequencies available.

* * * * * * *

(b) * * *

(20) Available for communications over distances of not less than 300 miles between Zones 2 and 6, 3 and 6, and within Zone 6, subject to the following limitations and conditions:

(i) The frequency is available for back-up communications in the event of failure of common carrier facilities, or between terminals where common carrier facilities are not available.

(ii) The frequency is not available for use between terminals where common carrier facilities are available, or where microwave or other non-common carrier facilities are available to which the applicant has access directly or through cooperative arrangements.

(iii) The transmitter output power employed shall be the minimum necessary for satisfactory communication and in no event shall exceed a maximum, for radiotelephony of 1,000 watts peak envelope power, or, for radiotelegraphy, of 1,000 watts carrier power.

(iv) Available for radiotelephony with emissions 2.8A3A and 2.8A3J: Provided, however, That the additional emission of 2.8A3H may be employed until January 1, 1974.

(v) Available for radiotelegraphy with emission F1 with frequency shift keying having a total frequency shift of 170 c.p.s. Radioteletype transmitters which were authorized prior to December 1, 1971, for use of a suppressed carrier frequency-shifted tone modulated emission with an authorized bandwidth of 3.0 kHz may continue to be authorized until January 1, 1974. Radioteletypewriter transmitters authorized after December 1, 1971, shall employ 0.3F1 emission with an authorized bandwidth of 0.5 kHz and shall comply with the emission limitations set forth in § 81.140(a)(3).

F.C.C. 73-959

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of Applications of AMERICAN SATELLITE CORP. For Section 214 Authorization To Lease From Telesat Canada Transponder Channels on Telesat's ANIK Satellites and for Authority To Construct Four Earth Stations	Files Nos. P-C-8554, 65-DSE-P-71, 67-DSE-P-71, 68-DSE-P-71, 70-DSE-P-71

MEMORANDUM OPINION, ORDER AND AUTHORIZATION

(Adopted September 12, 1973; Released September 12, 1973)

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

1. On February 8, 1973, American Satellite Corporation (ASC) filed an application for authority, pursuant to Section 214 of the Communications Act, to lease from Telesat Canada transponder channels for temporary use with the above-captioned applications for earth stations to be located in the area of New York City, Chicago, Dallas and Los Angeles, to provide domestic communications satellite services. In response to the Public Notice of March 8, 1973 with respect to ASC's proposal, the Commission has received a "Petition to Dismiss or Designate for Evidentiary Hearing" from Western Union Telegraph Company (Western Union), a "Petition to Deny" from the Network Project; opposition pleadings by ASC and Western Union International, Inc., (WUI), replies by Western Union and the Network Project; and a motion by WUI for permission to file an additional pleading.[1]

ASC PROPOSAL

2. ASC's proposal for domestic communications satellite facilities envisions a three phase approach. Phase I consists of the short term lease of transponder channels from Telesat Canada for use with the above-captioned earth stations; Phase II consists of the procurement and operation of three 12 transponder satellites for use with eight or more earth stations to be owned by ASC; and Phase III consists of the procurement and operation of 24-transponder satellites. On February 14, 1973 the Commission granted ASC a waiver pursuant to

[1] Although the reply of Western Union and the additional pleading of WUI were untimely filed, they will be considered in the interest of a full record. Western Union's request to file a further reply is hereby denied. The material already on file appears adequately to reflect the position of Western Union. The "Petition to Deny" of the Network Project, although untimely filed, will be considered.

Section 319(d) of the Communications Act to permit it to procure the Phase II satellites. On March 1, 1973 ASC and Hughes Aircraft Company entered into a contract for construction of the Phase II satellites at a price of approximately $25 million. The first two satellites are scheduled for delivery in late 1974, and the National Aeronautics and Space Administration has committed launch dates for these satellites in that time frame.

3. Pending activation of its Phase II system, ASC proposes to lease satellite capacity on Telesat Canada's ANIK satellites. Under the terms of a service Agreement between ASC and Telesat, dated May 16, 1973, ASC is committed to lease two transponder channels for full period use at a cost per transponder of $2.5 million per year ($208,333 payable monthly). Payments for the first transponder are to be commenced no later than December 1, 1973 for a term of one year. Payments for the second transponder will commence no later than March 1, 1974 for a period that will terminate with the first transponder. ASC is also committed to use a minimum of 300 hours of occasional use service on the Telesat satellite at a rate of $800 per hour (total cost $240,000). The Agreement is for a one year period with two options to renew for six months. The four earth stations and connecting terrestrial microwave facilities for the proposed Phase I operation are estimated to cost approximately $12.2 million. Each station would have a 33 foot diameter antenna.

4. According to ASC:

> **By commencing its short-term Phase I operation during the latter part of 1973 on the Telesat ANIK satellite—which is almost identical to the 12 channel satellite to be procured by American Satellite for use during Phase II of its system—American Satellite will be able to demonstrate at an early date the technical characteristics of its own system while providing commercial services. Also, operating experience will be gained and system performance verified at an early date.**

ASC states that it intends to provide the following services during each phase of its satellite system growth:

> **(i) Private leased-line circuits for voice, data, alternate voice/data, facsimile and teletype transmissions; and for closed-circuit television transmission.**
> **(ii) Public switched data and record, and alternate voice/data/record services.**
> **(iii) Distribution and assembly of television program material on a regular and occasional basis.**
> **(iv) Interconnection of television systems.**
> **(v) Others to be announced.**

5. ASC was initially owned jointly in equal amounts by Fairchild Industries, Inc. (Fairchild) and WUI, Inc. (WUI). As a result of recent negotiations between Fairchild and WUI, their respective ownership positions have been revised so that Fairchild now owns 80.0001% of the common stock and WUI owns 19.9999%.[2] The equity contributions of Fairchild and WUI are $1,100,000 and $600,000. Fairchild has also authorized to ASC an additional $5.4 million against which ASC has drawn cash advances of $764,000 to April 30, 1973. The $25

[2] ASC and WUI have recently entered into a long-term agreement whereby WUI will lease one transponder channel on the Phase II satellite system of ASC over a seven year period and will have a minority ownership interest in one of the ASC system earth stations.

million contract with Hughes for procurement of Phase II satellites has been unconditionally guaranteed by Fairchild and it is expected similarly to guarantee ASC's contract with NASA for launch vehicles and services. ASC expects that funds required to meet its schedule of obligations for the Phase I and II systems will be forthcoming from either or both parents until such time as outside financing is satisfactorily arranged. Negotiations for outside participation are in process with a selected number of financial institutions.[3] Fairchild's balance sheet as of March 31, 1973 shows current assets totalling approximately $114 million and current liabilities of about $53.4 million.

WESTERN UNION OPPOSITION

6. In its "Petition to Dismiss or Designate for Evidentiary Hearing" Western Union claims that:

(a) The use of foreign satellites in providing domestic common carrier communications service is not in the national interest;
(b) The application is premature and deficient in information and material required by the Communications Act and the Commission's rules and policies; and
(c) Substantial questions are unresolved concerning competition between international and domestic record communications carriers and the applicability of Section 222 of the Communications Act.

7. In contending that the applications are deficient in information, Western Union asserts that ASC has not applied for the Chicago and Los Angeles earth stations or for terrestrial microwave facilities for interconnection to any of the four proposed earth stations; that ASC has not supplied a copy of its Agreement with Canada or shown the existence of an intergovernmental Understanding to permit such service; that ASC has not submitted any environmental impact reports; that its costs are deficient for failure to indicate any charge for occasional use of the Telesat satellite and a breakdown of earth stations costs into components; and that the balance sheet of ASC does not establish financial qualification.

8. Western Union further urges that the Commission may not grant ASC's application without resolving the question of whether Section 222 of the Communications Act constitutes a bar to WUI, and consequently ASC, operating a domestic record common carrier service. Western Union notes that WUI has previously argued that Section 222 constitutes a total bar to a Western Union offering of services in competition with the international record carrier in opposing Western Union's proposal for Mailgram service between the Mainland and Hawaii, and its proposal for a domestic satellite earth station in Hawaii. Western Union states that if the Commission should decide that Section 222 imposes such restraints on Western Union, then a serious question would be raised as to whether these restraints should

[3] By letter dated June 19, 1973 ASC stated that the $5.4 million committed by Fairchild and any additional funds that may be committed by Fairchild or WUI prior to a major financing are advanced to ASC on a loan (debt) basis and are to be repaid by ASC at the time of a major financing. However, since the relative equity positions of Fairchild and WUI are open to change at the time of a major financing, there is a possibility that part or all of the funds already advanced by Fairchild and which may be advanced by Fairchild or WUI prior to the date of a major financing could be converted into equity contributions, particularly if such is necessary or desirable to effectuate the most favorable financing package.

apply also when international record carriers propose to enter the domestic sphere of operations. Western Union further asserts that the Commission will be in the best position to resolve the Section 222 questions as to ASC and WUI after it acts on the pleadings pertaining to Western Union's proposal for Mailgram service to Hawaii.

9. In response to this argument, ASC and WUI claim that the Commission specifically ruled in the *Second Report* in Docket No. 16495 that RCA Global Communications, Inc.—an international record carrier—was not disqualified, that this ruling applies with equal, if not greater, force to ASC—a purely domestic entity whose stock is only partially held by WUI. ASC and WUI further urge that Western Union's argument concerning the reciprocal application of Section 222 is not demonstrated by the legislative history of the statute. They assert that Congress was not concerned with insulating Western Union from competition. Rather, Section 222 was enacted in 1943 to create a special antitrust exemption for Western Union to acquire Postal Telegraph-Cable Company and to prevent the resulting domestic telegraph monopoly, which at that time also owned and operated international communications facilities in competition with other record carriers, from dominating the competitive international record carrier industry. Moreover, the so-called "gateway provision" in Section 222(a)(5) was incorporated within the Act as proposed by the international carriers in order to secure their rights to continue to maintain telegraph offices in major United States cities. Hearings on S. 2445 before a Subcommittee of the Senate Committee on Interstate Commerce, 77 Cong., 2d Sess., page 67 (1942). There is no suggestion that Section 222 was intended to restrict operations of international record carriers. Indeed, Western Union's then president objected to the language of Section 222(a)(5) on the ground that the statute did not "prevent international carriers from operating circuits between cities in the United States." Hearings before a Subcommittee of the Committee on Interstate and Foreign Commerce, pursuant to S. 2598, 77 Cong., 2d Sess., page 71 (1942).

OPPOSITION OF THE NETWORK PROJECT

10. In its Petition to Deny the Network Project claims standing as a party in interest because it is an association dedicated to research and action in the communications field, a user of library and other educational facilities with an interest in the potential of domestic satellites for information retrieval and a producer of radio documentaries. The Network Project claims that the ASC applications are deficient for failure to show the specific community or types of communities to be served, or to ascertain the problems, needs and interests of such communities. The Network Project asserts that ASC has totally neglected some communities of interest it should serve, which are not limited to geographic units but include also discrete ethnic, professional, occupational and behavioral groups. The ASC applications, the Network Project states, cannot be granted consistently with the requirement in Section 307(b) of the Communications Act that the Commission allocate frequencies, hours of operation and power so as

to make a fair, efficient and equitable distribution of radio service to each of the several States and communities. In this regard, the Network Project argues, the Commission is obligated to require that the licensee serve all the communities within range of "broadcast coverage," since various communities may be left without service, or be unable to afford the applicant's rates. The Commission has a duty to determine what types of services are to be afforded as well as to ensure that all significant communities are served, rather than leaving such determinations to private considerations of willingness to serve and ability to pay. Further, the ASC application should be denied on antitrust grounds in view of the ownership interest of Fairchild Industries, Inc., of two AM and one FM radio stations, as well as its role as a supplier of satellite communications equipment.

11. By way of relief the Network Project requests the Commission to condition any grant to ASC upon requirements that:

(a) ASC provide as many Earth station channels and satellite transponder channels as are needed for unrestricted public use without charge;
(b) In the case of television and cable television program transmission, all television viewers and cable subscribers served by the ASC system will be guaranteed reception;
(c) ASC finance from its revenues from commercial services such public Earth station channels and satellite transponders, and further contribute 50% of its revenues to a program production fund; and
(d) Access to such public channels will be determined in accord with the number of signatures of the general public accompanying a particular proposal for use (i.e., the more signatures, the more use in terms of capacity and time, with a fixed outside limit), to be administered by an individual or individuals chosen and paid for by ASC.

The Network Project also requests that the ASC applications be designated for evidentiary hearing.

DISCUSSION AND CONCLUSIONS

12. The contention of Western Union that the use of foreign satellites for domestic service is not in the public interest was resolved by our Memorandum Opinion and Order on the instant applications released on April 19, 1973 (73–427) which adopted a policy of permitting temporary use of Telesat satellites by qualified applicants under the terms and conditions set forth in the November 8, 1972 inter-Governmental Understanding with Canada (Department of State Bulletin, Vol. LXVIII No. 1754, pages 145–148).

13. With respect to Western Union's allegation of deficiencies in the subject applications, the deficiencies have been cured by subsequent ASC filings or are otherwise lacking in merit. Thus, the Chicago and Los Angeles Earth stations have been filed and put on public notice without occasioning any opposition pleadings. ASC has filed copies of its Agreement with Telesat, environmental impact information for all four Earth stations, and cost information reflecting the breakdown of Earth stations into components and Telesat's charge for occasional service. We have previously taken cognizance of the November 8, 1972 inter-Governmental Understanding with Canada (see paragraph 12 above). In its May 18, 1973 filing ASC set forth a detailed description of the proposed terrestrial interconnection arrangements for the four

Earth stations, and stated that the microwave applications would be filed shortly. Further, the circumstance that the balance sheet of ASC shows assets of only $2.7 million does not demonstrate a lack of financial qualification since ASC is relying primarily on funds to be supplied by predominant parent (80%), clearly has the ability to finance the Phase I and II systems, and the substantial expenditures already made or guaranteed by Fairchild on behalf of ASC are sufficient indication that it is likely to continue to supply funds as needed.

14. Upon consideration of the views expressed by Western Union and ASC/WUI, we are of the opinion that ASC is not disqualified under Section 222 to provide domestic satellite services by virtue of the fact that WUI owns almost 20% of its stock. While the *Second Report and Order* in Docket No. 16495 did not disqualify any of the pending applicants and reserved decision only with respect to the applicability of Western Union's proposed earth station in Hawaii (35 FCC 2d 844, 851; 34 FCC 2d 1, 48–49), we will address the merits of Western Union's contentions here.

15. The language of Section 222 does not on its face require disqualification of ASC. Section 222 (b) (1) provides in pertinent part that "no domestic telegraph carrier shall effect a consolidation or merger with any international telegraph carrier, and no international telegraph carrier shall effect a consolidation or merger with any domestic telegraph carrier." As defined by Section 222 (a) (1), the term "consolidation or merger" is sufficiently broad to include a stock acquisition of 20%. However, while WUI clearly falls within the definition of "international telegraph carrier" in Section 222 (a) (2), ASC does not come within the definition of the term "domestic telegraph carrier" which means "any common carrier by wire or radio, the major portion of whose traffic and revenues is derived from domestic telegraph operations * * *" (Section 222(a) (2)). ASC is a new carrier which proposes to offer a variety of specialized communications services. There is no basis before us for concluding at this time that the major portion of ASC's traffic and revenues will be derived from "domestic telegraph operations" which Section 222 (a) (5) defines as "record communications by wire or radio." In light of the Section as a whole, particularly the reference to Section 222 (c) (2) to "telegraph operations theretofore carried on" and the provisions of Section 222 (e) relating to the distribution of telegraph traffic by the merged carrier, we think that the term "record communications by wire or radio" was intended to embrace those types of services being carried on by Western Union at the time of merger. For, it was message telegram service that constituted the principal international business of Western Union at the time of merger. Thus, in the absence of some basis for concluding that the major portion of ASC's traffic and revenues will be derived from the transmission of message telegrams or similar activities, the acquisition by WUI of 20% of the stock of ASC does not constitute the type of consolidation or merger expressly proscribed by Section 222.

16. Nor do we think that the legislative history of Section 222 shows a legislative intent to bar the kind of competition posed by ASC.

Section 222 was enacted to deal with a particular situation, i.e., to permit the merger of Western Union and Postal Telegraph-Cable Company into a domestic telegraph monopoly upon condition that Western Union divest itself of those international telegraph operations it theretofore carried on (Section 222 (b)(1) and (2) and (c)(2)). In requiring such divestment Congress was concerned that "the problem of distributing traffic to the international carriers by the domestic monopoly is infinitely more complicated so long as that domestic monopoly competes for international business with an ununified international industry," for the "factor of self interest * * * might influence the domestic monopoly to prefer its own international department over its competitors in the international field." Hearings on S. 2498 before a subcommittee of the House Committee on Interstate and Foreign Commerce, 77 Cong., 2d Sess., pages 91–92; 89 Cong. Rec. 1092, 78 Cong., 1st Sess. The legislative intent was not to protect Western Union from competition in the domestic communications market. Rather it was the intent of Congress to preserve the then existing competition in international communication which might otherwise be lessened or extinguished by the creation of the domestic telegraph monopoly authorized by Congress.

17. Moreover, it would be contrary to the public interest and our domestic satellite policies to construe Section 222 so broadly as to require disqualification of ASC. Unlike with respect to domestic message telegraph service, Western Union has no monopoly position in the field of domestic specialized communications. It now faces domestic terrestrial competition not only from AT&T but also from new carriers authorized pursuant to the policies adopted in *Specialized Common Carrier Services*, 29 FCC 2d 870. The Commission there determined that the public would benefit from the entry of new specialized carriers to "provide users with flexibility and a wider range of choices as to how they may best satisfy their expanding and changing requirements for specialized communication service" (29 FCC 2d at 909). The question of competition to Western Union was specifically addressed at 29 FCC 2d pages 913–914. Moreover, our domestic satellite policies have the objective of affording a "reasonable opportunity for multiple entities to demonstrate how any operational and economic characteristics peculiar to the satellite technology can be used to provide existing and new specialized services more economically and efficiently than can be done by terrestrial facilities" (*Second Report and Order* in Docket No. 16495, 35 FCC 2d 844, 846). In order to ensure that the "incentive for competitive entry by financially responsible satellite system entrepreneurs to develop specialized markets" is "meaningful and not just token," we have precluded AT&T from providing specialized services via domestic satellites during the first three years of its operation of such facilities (35 FCC 2d at 847–848; 38 FCC 2d 665, 676–680). Our efforts to provide a meaningful opportunity for competition in the provision of specialized services via domestic satellite facilities would be substantially undercut if Western Union were permitted to use a strained construction of Section 222 to gain protection from competition by one or more of the limited number of would-be entrants.

18. Apart from Western Union, the only domestic satellite system proposals now being actively pursued before the Commission are those of ASC, the RCA applicants (RCA Global Communications, Inc. and RCA Alaska Communications, Inc.) AT&T/Comsat, Hughes/GTE and CML Satellite Corporation. RCA Global Communications, Inc. is an international record carrier. Disqualification of ASC and the RCA applicants under Section 222 would not achieve a strict separation of international and domestic communications operations. Comsat and AT&T are engaged in extensive international operations, and Comsat is a one-third owner of CML Satellite Corporation. Moreover, WUI's 20% ownership of ASC does not present any problem of unfair competition such as underlay the requirement for divestment of Western Union's international telegraph operations. Disqualification of ASC would serve only to lessen the opportunity for competition in the provision of specialized communications services via domestic satellite—a result which, in our judgment, would not serve the public interest.

19. If future developments should indicate that a "major portion" of ASC's traffic or business is being derived from "domestic telegraph operations" within the meaning of Section 222 (a)(2), we will, of course, take appropriate steps to require WUI to divest itself of its stock ownership of ASC. We perceive no reason to be concerned at this time, but will condition our authorizations herein appropriately.

20. The contentions of the Network Project are practically identical to those raised in opposition to the applications of National Satellite Services for domestic satellite facilities, and are rejected for the reasons there given (In the Matter of Application of National Satellite Services, File No. 5–DSS–P(3)–71, FCC 73–961 September 12, 1973), with the following amplification. Unlike in the case of National Satellite Services, the arguments of the Network Project are raised here in the context of common carrier service to the public and for that reason have even less merit. While private entrepreneurs like National Satellite Services may select the members of the public they chose to serve, communications common carriers offer service to all members of the public without discrimination in accordance with their published tariffs. Moreover, common carriers do not originate or produce the context of the communications, but rather transmit the communications of their customers. Thus, the Network Project's reliance upon precedents in the broadcast field is misplaced. ASC proposes to offer a broad spectrum of communications services and there is no indication that it would decline to provide any type of service desired by the public or that it would refuse to serve any area of the country desiring service once its proposed Phase II system is operational. The Phase I operation is temporary, largely developmental in nature, and understandably on a more limited basis. In any event ASC as a common carrier will have statutory responsibility to provide service upon reasonable demand (see Section 201 of the Communications Act) and we have ample authority under Section 214 (e) to require it to provide service. With respect to the request for a requirement for the provision of "public channels" without charge, we stated in Docket No. 16495 that we would consider rate making for service to educational entities

at free or reduced charges when the domestic satellite systems become operational; however, it is "premature to expect applicants, several years in advance of their operational date, to have sufficient cost and other information available to set forth their rate proposals with specificity." See *Memorandum Opinion and Order* in Docket No. 16495 December 22, 1972, 38 FCC 2d 665, 700. Finally, we see no useful purpose to be served by granting the request for evidentiary hearing.

21. We find that ASC is legally, technically, financially and otherwise qualified to construct the proposed earth stations and that a grant of the above-captioned applications would serve the public interest, convenience and necessity.[4] Further, it appears that these facilities would not have any significant adverse impact on existing services of WUI, or on its financial or technical ability to continue to provide its international services; and that ASC has made a satisfactory showing of compliance with the policies with respect to radiation levels and environmental protection set forth at paragraphs 94–95 of the *Memorandum Opinion and Order* in Docket No. 16495 issued on December 22, 1972 (38 FCC 2d 665, 703–704).

22. Accordingly, IT IS HEREBY ORDERED that:

a. The above-captioned applications ARE GRANTED and ASC IS AUTHORIZED to construct the earth stations in conformity with the specifications and parameters set forth in the construction permits and to lease transponders from Telesat Canada for temporary use with such earth stations, upon the following conditions: (i) that ASC obtain prior approval of this Commission before exercising any option to renew its Agreement with Telesat Canada pursuant to Article 13 of that Agreement, and (ii) that WUI shall divest itself of any stock ownership in ASC upon a determination by the Commission, after appropriate notification and opportunity to be heard, that the major portion of ASC's traffic and revenues derives from domestic telegraph operations within the meaning of Section 222(c)(2) of the Communications Act.

b. The "Petition to Dismiss or Designate for Evidentiary Hearing" filed by Western Union and the Petition to Deny filed by the Network Project ARE DENIED.

c. The construction of the earth stations shall be completed, in accordance with the technical specifications listed in the construction permits, "no later than 18 months after the date of issuance of this authorization" and failure to complete construction within such time period shall result in automatic forfeiture of this authorization unless such construction period is extended by the Commission upon good cause shown.

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[4] While the applications for earth stations make a general request for certification as necessary pursuant to Section 214 of the Communications Act, we think that Section 214 authorization should be by way of a separate application.

d. In the event that the operation of the domestic satellite facilities authorized herein should prove unprofitable, the loss shall not be used to justify any rate increase for any other services now provided by WUI.

e. This authorization shall take effect only upon receipt of written acceptance by WUI of the condition specified in subparagraph (a) (ii) of the above ordering clause.

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

43 F.C.C. 2d

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F.C.C. 73–1051

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of ARCO COMMUNICATIONS, INC. To Establish Operational Fixed Stations in the Petroleum Radio Service Between Houston, Tex., and the Chicago, Ill., Area	File Nos. 608 through 652–IP–74X and 653 through 658–IW–74X.

MEMORANDUM OPINION AND ORDER

(Adopted October 11, 1973; Released October 24, 1973)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT.

1. We have before us for consideration the "Petition to Deny or Designate for Hearing," filed by United Video, Inc. (United Video) on August 27, 1973; the "Opposition to 'Petition to Deny or Designate for Hearing,'" submitted September 11, 1973, by ARCO Communications, Inc. (ARCO); and United Video's September 21, 1973, "Reply to Opposition to Petition to Deny or Designate for Hearing."

2. In its petition, United Video alleges that the private microwave system proposed by ARCO will be operated on a cooperative, cost-sharing basis, with participation by a number of major petroleum companies; and it contends that arrangements of this type are under review in our inquiry and rule-making proceeding in Docket No. 19309 (*Preston Trucking Company*, 31 FCC 2d 766 (1971)); that, for this reason, we should either dismiss ARCO's applications or defer action on them until that proceeding is resolved; and, in general, that the arrangements ARCO proposes do not comply with our existing policies and the rules governing the cooperative use of stations in the fixed service.[1]

3. We have reviewed ARCO's applications in light of the sharing plan it proposes to use; and we can find nothing whatsoever in them that conflicts with our rules and regulations governing the shared use of fixed stations. See Section 91.9 of the Rules. Further, the reliance placed by United Video on the *Preston* case is not well founded. In

[1] In its "Reply," United Video questions the "rate" to be charged some users and contends that, with the "rate" or charge specified, ARCO "may well be subsidizing the communications services which it is providing to others." We see no merit in this contention. While ARCO is prohibited from profiting out of the cooperative arrangement, it may offer its services at no charge; or at a cost less than is incurred by itself; or, based upon an equitable formula, each user may be asked to contribute a proportionate share. In any event, each year ARCO must file a detailed report, outlining how costs were shared during the period covered by the report. See Section 91.9(h) of the Rules. At this time, its fiscal arrangements with others are reviewed to give assurance that the licensee did not profit out of the arrangement. Accordingly, United Video's concern on this feature of the sharing plan is ill-founded.

fact in that case we expressly reviewed and acknowledged the propriety of the cooperative arrangements of the type here under consideration, distinguishing them from the sharing plans of the kind proposed by Preston. *Preston* case, *supra*, at page 773. Thus, although we have imposed a "freeze" on applications proposing arrangements similar to those involved in the *Preston* case, the "freeze" does not apply to traditional cooperative arrangements for the shared use of private microwave systems.

4. Accordingly, IT IS ORDERED, That the "Petition to Deny or Designate for Hearing," filed herein by United Video, Inc., on August 27, 1973, IS DENIED.

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

F.C.C. 73-999

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF PART I OF THE COMMISSION'S RULES, PRACTICE, AND PROCEDURE, WITH RESPECT TO THE ASSIGNMENT OF NEW AND MODIFIED CALL SIGNS TO AM, FM, AND TV BROADCASTING STATIONS	Docket No. 17477

ERRATUM

(Adopted September 26, 1973; Released October 1, 1973)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT.

1. By Report and Order adopted June 21, 1973, in the above-captioned proceeding (FCC 73-677; 38 FR 17006), Section 1.550 of our Rules was extensively revised. Among other things, Section 1.550(c)(1) was changed to read as follows:

> A statement that a copy of the request has been served upon each standard, FM *or* television broadcasting station licensed to operate, or whose construction has been authorized, in communities wholly or partially within a 35-mile radius of the main post office of the applicant's community of license, and a list of the call signs and locations of all stations upon which copies of the request have been served (emphasis supplied).

2. The word "or", italicized above, has been widely interpreted by call sign applicants as requiring that only licensees in their particular broadcast service (AM, FM, or TV) need be notified. This misunderstanding has, in turn, generated unnecessary inquiries and correspondence.

3. The use of the word "or" in this context was inadvertent and apparently has altered the intended meaning of the subparagraph, which was intended to continue to require notification of *all* broadcasting stations (AM, FM, *and* TV) within the 35-mile radius.

4. Accordingly, Section 1.550(c)(1) IS HEREBY CORRECTED by substituting the word "and" for the word "or" in the manner noted.

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

F.C.C. 73-908

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of B & F BROADCASTING, INC., MILWAUKEE, WIS. For Construction Permit For New Television Broadcast Station	File No. BPCT-4597
B & F BROADCASTING, INC., MILWAUKEE, WIS. For Authority To Conduct Subscription Television Operations	File No. BSTV-9

MEMORANDUM OPINION AND ORDER

(Adopted September 6, 1973; Released September 10, 1973)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT.

1. We have before us for consideration: (a) a request for reconsideration, filed June 20, 1973, by Mr. Robert P. Kordus, Chairman of the Common Council's Utilities and Licenses Committee, Milwaukee, Wisconsin (Kordus), of our action of June 13, 1973, granting the above-captioned applications of B & F Broadcasting, Inc. (Broadcasting), and (b) an opposition, filed July 2, 1973, by Broadcasting.

2. In our prior action, we granted Broadcasting's application (BPCT-4597) for a construction permit for a new commercial television broadcast station to operate on channel 24, Milwaukee, Wisconsin, and its application (BSTV-9) for authority to conduct subscription television (STV) operations in conjunction with the conventional operation on channel 24.[1] Kordus did not file a pre-grant petition to deny the STV application. Section 1.106 of the Commission's rules provides that a party who fails to file a pre-grant petition to deny is required, in its petition for reconsideration, to show "good reason why it was not possible for him to participate in the earlier stages of the proceeding." Kordus has offered no explanation for his failure to file a pre-grant petition to deny and, therefore, his request for reconsideration will be dismissed. Nevertheless, we will briefly consider the merits of the reconsideration request.

3. Kordus asserts that our action authorizing a pay television station in Milwaukee is inconsistent with other Commission policies, circumvents local determination of public interest, and severely restricts localities in their efforts to develop effective and comprehensive legislation with respect to cable television (CATV). It is contended that at a time when the Commission is urging local governments to carefully consider cable franchising through innovation and experimentation,

[1] The reconsideration request is specifically directed against the Commission's grant of the STV application.

our authorization of an STV station in Milwaukee severely limits the capability of that city to fully consider the development and implementation of sound cable legislation. Kordus states that since a Milwaukee CATV system is required under Commission rules to carry the signals of all Milwaukee television stations, it would also be forced to carry the signal of a pay television station, and he maintains that such a result would undermine the efforts of local government in Milwaukee to plan and determine the design and development of cable communications and the related matter of pay television.

4. Initially, it should be noted that to the extent that Kordus now contests our authority to establish and regulate over-the-air STV on a nationwide basis, this challenge comes far too late. Thus, after extensive proceedings before the Commission, which commenced in 1955 and culminated in 1968, the Commission, in its *Fourth Report and Order* in Docket No. 11279, 15 FCC 2d 466 (1968), established an over-the-air STV service and adopted rules to govern the service. Our action in this regard was upheld by the United States Court of Appeals for the District of Columbia Circuit, in *National Association of Theatre Owners, et al.* v. *FCC*, 420 F. 2d 194 (1969), *cert. denied*, 397 U.S. 922 (1970). Therefore, the authority of the Commission to authorize over-the-air pay television is no longer subject to challenge, and we believe that no useful purpose would be served by an extended discussion of the merits of STV. It is sufficient to point out that we have sought to adopt policies and rules that will permit the orderly development of conventional TV and over-the-air STV. Our STV rules are designed to establish STV as a valuable supplement to, not a replacement for, conventional television. With respect to the matter of CATV carriage of STV signals, Kordus' assertion that present Commission rules would require a Milwaukee CATV system to carry the scrambled subscription signal of a Milwaukee pay television station is incorrect. In our *Fourth Report and Order*, *supra*, we specifically stated that carriage of an STV signal would not now be required.[2]

5. In view of the foregoing, IT IS ORDERED, That the request for reconsideration filed by Mr. Robert P. Kordus IS DISMISSED and our prior action granting the applications of B & F Broadcasting, Inc., IS REAFFIRMED.

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

[2] However, this matter is now the subject of a rule-making proceeding in which we have invited comments on a proposal to require CATV carriage of STV signals. *Third Further Notice of Proposed Rule Making in Docket No. 11279*, 15 FCC 2d 601 (1968).

F.C.C. 73-1075

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF PART 15 OF THE COMMISSION'S RULES AND REGULATIONS TO PERMIT BIOMEDICAL RADIO TELEMETERING IN THE BAND 38–41 MHz	Docket No. 19846 RM 1945

NOTICE OF PROPOSED RULEMAKING

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

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT.

1. On March 28, 1972, a petition (RM 1945) was filed by Cardiac Electronics, Inc. (Cardiac) requesting amendment of Part 15 of the Commission's Rules and Regulations to permit the use of low-power biomedical telemetering systems in the frequency band 40–42 MHz. Petitioner states that its proposed system cannot operate satisfactorily in the higher VHF bands recently provided for low-power biomedical telemetering in Docket No. 19231.[1]

2. The unique feature of the Cardiac system is a low-cost disposable low-power transmitter small enough to be taped directly to a patient's body. This capability, according to Cardiac, provides greater comfort and convenience to the patient as well as considerably lower costs. Other systems, Cardiac says, generally utilize larger, more powerful transmitters with sufficient range for use by ambulatory patients. Cardiac's unit, on the other hand, is very limited in power (producing a field of less than 10 uV/m at 50 feet) and intended for use only in cases involving heart patients who are either bedridden or restricted to a very small area. The intended effective range of the transmitter is 10 to 15 feet.

3. According to Cardiac, its objectives of cost and size for the proposed unit could not be achieved if the transmitter were required to operate in the higher VHF range (174 to 216 MHz). Oscillator instability at that order of frequency, it says, would necessitate the use of crystal controlled transmitters resulting in prohibitive increases in circuit complexity, battery drain, size and cost.

4. Petitioner claims to have tested the heart monitoring system in several cities and found the requested band to be acceptably free of interference. At 200 kHz per channel, the 40–42 MHz band would provide up to 10 channels, allowing several simultaneous monitoring operations within the same hospital and providing a certain degree of flexibility in selecting channels to avoid local sources of interference

[1] FCC Report and Order, adopted March 8, 1972, published in the Federal Register, March 16, 1972, 37 FR 5497.

that may exist in the band. The proposed band is presently allocated primarily to Government radio services, with a provision for industrial, scientific and medical (ISM) equipment of the type regulated under Part 18 of the Commission's Rules.[2] Also, a small segment of the band is allocated on a secondary basis to the space research service for space-to-earth transmission pursuant to footnote US 94 of Section 2.106 of the Rules.

5. Because the proposed band is allocated for use by agencies of the Federal Government, the petition was coordinated with the Office of Telecommunications Policy (OTP). The Interdepartment Radio Advisory Committee, which advises the OTP on such matters, concurred in the proposal but recommended use of the band 38–41 MHz in lieu of the band proposed by Cardiac. The new band is more compatible with Government requirements and, being three megahertz wide instead of two, would provide additional channel capacity in certain areas. However, it should be recognized that the 39–40 MHz non-Government portion of this band is heavily used in many areas by non-Government land mobile systems and that there are also a significant number of Government stations (some of high power) operating in the Government segments of the band, 38–39 and 40–41 MHz.

6. The band segment 38–38.25 MHz is also used for radio astronomy observations pursuant to footnote US 81 of § 2.106. Although such operations are very sensitive to interference from electromagnetic emitters, it appears that interference from the proposed telemetering device would be negligible because of the extremely low power and restricted usage contemplated. Therefore, we are not proposing any special geographical limitation on the use of the Cardiac system such as had been proposed in Docket No. 19231 in connection with the use of higher power Part 15 medical telemetering devices in other radio astronomy bands.[3]

7. In its comments, the IRAC also expressed concern that the heart monitoring system should incorporate adequate safeguards to minimize the risk of harm being caused to a patient due to interference from regularly authorized stations in the band. In this connection, Cardiac has informed the Commission that the telemetering system is specifically designed to reduce its susceptibility to interfering signals. For example, the receiver and antenna combination is designed for use in very close proximity to the transmitter and is therefore insensitive to most interfering signals, which in effect would appear to be weaker. Interference is further minimized in the receiver by the use of audio band pass filtering and a broad band FM discriminator demodulator. Cardiac further states that, in the unlikely event interference does occur, the usual result would be a false alarm. If this happens frequently the transmitter unit is simply replaced with one on another channel.

The only potential danger, according to Cardiac, exists when the interference causes a normal reading during a time when a patient is

[2] The proposed Cardiac device is a telecommunication device and is therefore not included within the definition of ISM equipment as found in Part 18 of the Rules.

[3] The final rules adopted in Docket No. 19231 did not provide for operation on frequencies used for radio astronomy in order to avoid interference to that service.

actually experiencing an abnormal heart condition. But the probability of this situation occurring it says, is very remote.[4]

8. Based on the information now before us it would appear that the proposed rule changes are justified and in the best interest of the public. Accordingly, we are proposed to amend Part 15 of the Commission's Rules and Regulations to provide for the operation of low power biomedical telemetering equipment in the band 38–41 MHz. Conditions and limitations on the use of such systems are covered in the proposed rules as set forth in the Appendix.

9. The proposed amendment to the rules, as set forth in the Appendix, is issued pursuant to authority contained in Sections 4(i) and 303(e), (f) and (g) of the Communications Act of 1934, as amended.

10. Pursuant to applicable procedures set forth in Section 1.415 of the Commission's Rules, interested parties may file comments on or before November 30, 1973 and reply comments on or before December 11, 1973.

11. All relative and timely comments and reply comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision in this proceeding, the Commission may also take into account other relevant information before it, in addition to the specific comments invited by this notice. Responses will be available for public inspection during regular business hours in the Commission's Broadcast and Docket Reference Room at its headquarters in Washington, D.C.

12. In accordance with the provisions of Section 1.419 of the Commission's Rules, an original and 14 copies of all statements, briefs, or comments filed shall be furnished the Commission.

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

APPENDIX

Part 15 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

1. § 15.201 is amended by adding a new paragraph (e) to read as follows:

§ 15.201 Frequencies of operation.

* * * * * * *

(e) Biomedical telemetering devices may be operated on the frequencies and under the conditions set out in § 15.216.

2. § 15.216 is amended by deleting the present text of paragraphs (a), (b) and (c) and inserting the following new text:

§ 15.216 Biomedical telemetering devices.

(a) Biomedical telemetering devices may be operated in the following frequency bands: 38–41 MHz; 174–216 MHz.

Operation in these bands is not subject to the duty cycle limitation in § 15.211 (a) (3).

NOTE.—Section 15.3 requires that a biomedical telemetering device operating under the provisions of this section must accept harmful interference. Adequate safeguards shall be incorporated into any such biomedical telemetry system (as

[4] This matter was detailed in correspondence to the Commission from the petitioner, dated December 13, 1972, which has been made part of the public record of this proceeding.

a cardiac monitoring system) to minimize the risk of harm to the patient as a result of interference received by such a system from any authorized radio service.

(b) Biomedical telemetry devices may operate with a bandwidth of 200 kHz subject to the conditions in paragraph c of this section.

(c) The emissions from a biomedical telemetering device shall not exceed the field strength limits given below.

Operating Frequency MHz	Field Strength	
	on the operating frequency	on harmonics and other spurious emissions on frequencies outside the authorized bandwidth
38–41	10 uv/m @50'.	10 uv/m @10'.
174–216	150 uv/m @100'.	15 uv/m @100'.

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F.C.C. 73-1040

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of FORMULATION OF POLICIES RELATING TO THE BROADCAST RENEWAL APPLICANT, STEMMING FROM THE COMPARATIVE HEARING PROCESS	Docket No. 19154

SECOND FURTHER NOTICE OF INQUIRY

(Adopted October 3, 1973; Released October 9, 1973)

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

1. Notice is hereby given for additional comments in the above-captioned matter.

2. In our *Notice of Inquiry*, 27 FCC 2d 580 (1971), and *Further Notice of Inquiry*, 31 FCC 2d 443 (1971), we invited comments on a proposal of establishing quantitative standards in the areas of local programming and informed electorate (informational) programming. The purpose underlying our inquiry was to determine whether it would be appropriate to adopt such standards to give some *prima facie* indication of what constitutes substantial service in these two important programming areas.

3. In our initial *Notice*, the following tentative figures were set out as representing substantial service: [1]

(1) With respect to local programming, a range of 10–15% of the broadcast effort (including 10–15% in the prime time period, 6–11 p.m., when the largest audience is available).

(2) The proposed figure for News is 8–10% for the network affiliate, 5% for the independent station (including a figure of 8–10% and 5%, respectively, in the prime time period), respectively.

(3) In the Public Affairs area, the tentative figure is 3–5%, with, as stated, a 3% figure for the 6–11 p.m. time period.

4. In our *Notice*, several caveats were noted regarding these proposed standards. First, we noted the absence of information on prime time Public Affairs programming, resulting in the selection of the above-noted 3% figure which appeared to us to be both a reasonable and realistic one. Second, we noted that the applicability of the standards might well depend on the financial posture of stations and, for this reason, we excluded independent UHF stations until they become profitable. Third, we noted that there was a close relationship between News and Public Affairs programming, which raised a question whether these two categories should be viewed together with one over-

[1] In setting forth tentative figures for news, public affairs and local programming, we did not specify whether commercial material was to be included or excluded in percentage calculations.

all figure and leeway for the licensee to make judgments within that figure.

5. There is a growing consensus among the Commission that the broad principle of establishing definitive guidelines for the concept of substantial service is fundamentally sound. At the same time, we recognize that the implementation of the principle raises some very pragmatic problems— such as, for example, the categories of programming selected, the precise definitions of these categories, whether exact percentages or percentage ranges should be used to reflect substantial service, the applicability of the standards to various groups of stations, etc. The comments and reply comments already received, as well as the remarks of parties during oral argument on May 4 and 5, 1972, basically related to the broad principle as to whether we should establish any quantative standards in an effort to define substantial service; few commenting parties addressed themselves to the more pragmatic problems noted above. As a consequence, in a matter of this importance, we believe it would be advisable to solicit further comments on these and related problems so as to have the fullest exploration of all options.[2]

6. Our initial *Notice* included several statistical tables indicating the current actual performance levels of commercial television stations in the programming categories selected for the proposed percentage guidelines—i.e., News, Public Affairs, and Local. These statictics represented composite week data taken from the latest available renewal applications for the years 1968, 1969 and 1970. In order to update this data and make certain that the statistics are still representative of performance levels in these critically important areas, concurrent with the issuance of this *Second Further Notice of Inquiry* we are issuing a specially designed questionnaire to all commercial television licensees (including, for informational purposes, UHF independents). This questionnaire solicits statistics regarding programming during the Commission's 1972–73 composite week.[3]

7. 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 12*, 1973, and reply comments on or before *November 28*, 1973. In view of our desire to expedite consideration of this matter, no extensions of time within which to file comments and reply comments is anticipated. All relevant and timely comments and reply comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may also take into account other relevant information before it in addition to the comments invited by this *Second Further Notice of Inquiry*.

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[2] In proposing percentages that should be used to reflect substantial service, parties should indicate whether commercial matter should be included in the calculation of those percentages.

[3] Statistics regarding news, public affairs and local programming, (a) including commercial matter and (b) excluding commercial matter, will be solicited by the questionnaire.

8. In accordance with the provisions of Section 1.419 of the Rules and Regulations, an original and 14 copies of all comments, replies, briefs, and other documents shall be furnished the Commission.

9. Authority for this *Notice* is contained in Section 4(i), 303, 307(d), 309, and 311(a) of the Communications Act of 1934, as amended.

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

F.C.C. 73-1056

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
AMENDMENT OF PART 78, SUBPART B, OF THE COMMISSION'S RULES AND REGULATIONS CONCERNING PROCEDURES IN THE CABLE TELEVISION RELAY SERVICE AND RELATED MATTERS

ORDER

(Adopted October 11, 1973; Released October 16, 1973)

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

1. In an effort to keep abreast of the changes involved in the regulation of the communications industry generally and the cable television industry specifically, an informal study of Part 78 of the Commission's Rules by the Cable Television Bureau staff has identified a number of provisions that need amendment.

2. The amendments lessen the adverse impact of the Rules upon the application process by eliminating some confusing, redundant, or unnecessary requirements. The amendments will diminish the work load of the Commission without any substantive changes in the effects of the Rules upon interested persons.

3. For the reasons given the following changes are made:

(a) Section 78.15(a) is amended to delete the requirement that the applicant state the current number of subscribers on each cable television system to be served. This data is available on a current basis elsewhere in the Commission's records [1] and the deletion lightens the burden on the applicants and the Commission with no effect upon the ready availability of cable system size statistics.

(b) Sections 78.23 and 78.25 are amended to delete the requirements that notification must be given to the Commission and its District Engineer in Charge when a permittee begins equipment tests (78.23) or program tests (78.25) on any class of Cable Television Relay Station. Such notifications are no longer needed or useful for administrative purposes, and elimination of the requirement relieves both the permittee and the Commission of an unnecessary paperwork burden.[2]

(c) Section 78.15(b) is deleted. Its effect is to provide direct notice to a class of interested parties of the pendency of an application to provide television

[1] FCC Form 325 annual report required by § 76.401 of the Commission's Rules.
[2] Cf. Order, FCC 73-694, 41 FCC (2d) 634, deleting a similar requirement from Part 74 of the Rules.

broadcast programming to the attendant cable television system(s). This notice is now provided for in Part 76,[8] and the redundancy should not be perpetuated.

4. The amendments adopted are intended merely to remove redundant requirements from the rules, or relate to rules of agency organization, procedure, or practice. Accordingly, we conclude that prior notice of rule making and public procedure thereon are unnecessary, pursuant to the Administrative Procedure and Judicial Review provisions of 5 U.S.C. 553(b)(3).

5. Authority for the rule amendments adopted herein is contained in Sections 2, 3, 4(i) and (j), 5(b) and (d), 301, 303, 307, 308, and 309 of the Communications Act of 1934, as amended.

6. Accordingly IT IS ORDERED, That effective October 24, 1973, Part 78 of the Commission's Rules and Regulations IS AMENDED as set forth in the attached Appendix.

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

APPENDIX

Chapter 1 of the Title 47 of the Code of Federal Regulations is amended as follows:

A. Part 78–Cable Television Relay Service

1. In § 78.15, paragraph (a) is revised to read as follows:

§ 78.15 Contents of applications.

(a) An application for a new cable television relay station or for changes in the facilities of an existing station shall specify the call sign and location of any television, standard, or FM broadcast stations or instructional television fixed stations to be received and the intended source and general nature of any cable-casting to be relayed, the location of the point at which reception will be made, the number and location of any intermediate relay stations in the system, the location of the terminal receiving point(s) in the system, the name or names of the communities to be served by the cable television system or systems to which the programs will be delivered, and the name of any other licensee to whom the same program will be delivered through interconnection facilities. An application for a new LDS station or for changes in the facilities of an existing station shall specify in detail the precise nature and technical operation of any service other than the relay of television broadcast signals proposed to be provided on the LDS facilities, including any sections of this part for which waiver is sought.

* * * * * * *

§ 78.15 [Amended]

2. In § 78.15, paragraph (b) is deleted.

3. In § 78.23, paragraph (a) is revised to read as follows:

§ 78.23 Equipment tests.

(a) During the process of construction of a cable television relay station, the permittee, may, without further authority of the Commission, conduct equipment tests for the purpose of such adjustments and measurements as may be neces-

[8] The parties who are now entitled to receive direct notice pursuant to Part 76 of the rules are identical to those now receiving direct notice pursuant to Part 78 of the rules. This duality serves no useful purpose, particularly in light of the more inclusive notice to the public which the Commission gives for all applications in the Cable Television Relay Service (§ 78.20(c)). A formal rule making is unnecessary prior to making this change because no interested persons will suffer prejudice or injury as a result of the change. Nor do we feel that the delay associated with a formal proceeding to delete this redundant provision would serve the public interest.

sary to assure compliance with the terms of the construction permit, the technical provisions of the application therefore, the rules and regulations, and the applicable engineering standards.

* * * * * * *

4. In 78.25, paragraph (a) is revised to read as follows:

§ 78.25 Service or program tests.

(a) Upon completion of construction of a cable television relay station in accordance with the terms of the construction permit, the technical provisions of the application therefore, and the rules and regulations and applicable engineering standards, and when an application for station license has been filed showing the station to be in satisfactory operating condition, the permittee of such station may, without further authority of the Commission, conduct service or program tests.

* * * * * * *

F.C.C. 66–1084

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of	
AMENDMENT OF PARTS 89, 91, 93, AND 95 (FORMERLY 10, 11, 16, AND 19) OF THE COMMISSION'S RULES TO REDUCE THE SEPARATION BETWEEN THE ASSIGNABLE FREQUENCIES IN THE 450–470 MC/S BAND AMENDMENT OF PARTS 2, 87 (FORMERLY 9), 89, 91, 93, 95, AND 21 OF THE COMMISSION'S RULES TO REALLOCATE FREQUENCIES IN THE 460–470 MC/S BAND AND TO MAKE ADDITIONAL FREQUENCIES AVAILABLE FOR ASSIGNMENT IN THE 450–470 MC/S BAND AMENDMENT OF PARTS 89, 91, AND 93 OF THE COMMISSION'S RULES TO PROHIBIT THE USE OF FREQUENCIES IN THE 450–470 MC/S BAND BY FIXED STATIONS OTHER THAN CONTROL STATIONS USED FOR THE SECONDARY CONTROL OF MOBILE RELAY STATIONS	Docket No. 13847

The following statement of Commissioner Johnson is to be associated with First Report and Order, FCC 66–1084, 5 FCC (2d) 799, in the above entitled proceeding:

STATEMENT OF COMMISSIONER NICHOLAS JOHNSON CONCURRING IN PART AND DISSENTING IN PART

I generally concur in the Commission's channel-splitting proposal for the mobile radio frequencies involved in this proceeding. It will make possible greater use of these frequencies, and greater economic and social contributions from radio. It may not be clear what the impact of this decision will be, how the new frequencies will be used, what we are doing to encourage future channel-splitting efforts, or how this relates to other attempts to encourage frequency efficiency and rational frequency allocation. Nonetheless, it remains, presumably, a step forward.

For our opinion to make reference to the Commission majority's present views regarding new frequency assignments, however, seems to me a disservice both to these applicants and all others involved.

Few if any problems currently confronting the Commission better illustrate the need for planning than the needs for mobile radio, now largely unmet because of congested or unavailable frequencies.

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To give *ad hoc* attention and encouragement to each new proposal that comes along (in this instance the "Aviation Terminal Radio Service" and the "Industrial Protection Radio Service") only intensifies the problem.

Neither of these services are currently deprived of communications facilities. Business mobile and citizens band frequencies are available. The applicants prefer frequencies that are less congested. This is a preference, one should note, that is currently held by, among others, every major police department in the country (institutions engaged in the same kind of activity as the private security companies requesting the "Industrial Protection Radio Service").

There are hundreds of other unfulfilled or inadequately served uses for mobile radio in thousands of American communities. Each day our nation pays an increasing price—irretrievably lost gross national product—for our failure to get the highest possible return from our limited and very valuable national resource known as "spectrum space." There is simply no valid basis for giving the two proposals before us today a special consideration apart from competing national needs for the same resource.

When technical standards permit, of course we should make efforts to use this scarce resource as intensively as possible. Channel-splitting seems to serve that end, and therefore I concur in that action. I dissent, however, to the Commission's expression regarding the establishment of new services in the absence of a clearly articulated explanation of the implications of such action for overall spectrum utilization in the national interest.

Someday the crisis of confusion and waste may reach such proportions as to bring it to national consciousness and ultimate resolution.

Whether we seek to avert such a day, or merely prepare for it, I would prefer to see the Commission playing a greater role contributing to a lasting solution than exacerbating the problem.

F.C.C. 73-1049

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF PARTS 2 AND 95 OF THE COMMISSION'S RULES TO REQUIRE TYPE ACCEPTANCE OF TRANSMITTERS USED BY CLASS B AND CLASS D STATIONS IN THE CITIZENS RADIO SERVICE	Docket No. 17196 RM-807

REPORT AND ORDER

(Adopted October 11, 1973; Released October 16, 1973)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT.

1. In response to a petition (RM-807) filed by the Hallicrafters Company, the Commission, on February 16, 1967, released a Notice of Proposed Rule Making in the above-entitled proceeding. The Notice was published in the Federal Register on February 21, 1967, (32 FR 3105). The period allowed for interested persons to file original and reply comments expired on March 27, 1967, and April 10, 1967, respectively.

2. Timely filed comments were received from the following: Central Florida Electronics; Browning Laboratories, Inc; Electronics Communications, Inc; Midland National Corporation; Hammerlund Manufacturing Company; Lafayette Radio Electronics Corporation; Raytheon Company; Demco Electronics, Inc; E. F. Johnson Company; Tram Electronics, Inc; Park L. Bedford; Bobby Glover; and California Citizens Band Association, Inc. A number of late comments and informal letters were also received. All were fully considered by the Commission. Generally, almost all the comments supported the concept of compulsory type acceptance for Class D station transmitters; however, almost all requested clarification or changes in particular sections of the proposals. As a result, they have been modified in a number of respects. The most important changes are discussed below.

3. The proposed changes to Part 2 have been deleted. The requirements therein have been modified as described in paragraph 4 herein, and are being incorporated into Part 95 of the rules.

4. A number of comments took exception to the proposed Section 2.584(h) which would prohibit the manufacturer from making any change in transmitter design or construction without prior authorization from the Commission. This paragraph has been deleted. In lieu thereof, proposed paragraph (g), re-designated paragraph (e) of Section 95.35, has been modified to permit the manufacturer to make the same kind of changes that are permitted to be made in trans-

mitters type accepted for other services except that no additional accessory device, switch, or external control may be provided and no modification to increase the number of transmitting channels may be made without prior written authorization from the Commission.

5. Most of the comments expressed concern over the Commission's proposed timetable for requiring type acceptance. The Commission had proposed that all Class D station transmitters purchased after expiration of the six months period following adoption of the new rules would not be licensed unless they had been type accepted. Non-type accepted transmitters purchased prior to that date or under license on the effective date of the new rules would be licensed only for the period ending five years after the effective date of the rules. Many equipment manufacturers stated that this would not allow them sufficient time to clear their manufacturing pipelines of stock currently on order. Although some comments suggested longer periods, the consensus appeared to be that type acceptance should be required on all new equipment one year from the date of adoption.

6. Upon review, the Commission is adopting the following time schedule. Transmitters for which type acceptance is applied for on or after May 24, 1974 must meet all requirements, including the new additional requirements herein adopted. However, if type acceptance has been obtained prior to this date, the manufacturer and purchaser may be assured of the continued acceptability for licensing of transmitters so type accepted. All transmitters first licensed for use in Class D stations on or after November 22, 1974 will be required to be type accepted. This requirement is being tied to the licensing of the station rather than to the purchase of the equipment, as proposed, since the Commission may more easily determine the former date. Finally, all transmitters used at Class D stations will be required to be type accepted after November 23, 1978. In this connection, it should be noted that this proceeding was initiated prior to the enactment of Section 302 of the Communications Act and the adoption by the Commission of Section 2.805 of our rules. Under this rule, all manufacturers of Class D Citizens Radio Service transmitters have been prohibited from marketing such equipment unless it complied with the applicable technical standards presently contained in Part 95. Thus, manufacturers should have no difficulty in meeting the mandatory type acceptance requirements within the above time periods, since the rules adopted in this proceeding make no substantial changes in these existing technical standards. While this marketing prohibition has continuing effect, there appears to be no basis for claims of economic hardship in the marketing of such equipment simply by reason of the requirement for type acceptance within the date set forth. Similarly, the licensing of non-type accepted equipment until November 22, 1974 will permit the marketing of existing equipment and inventories which comply with existing applicable technical standards.

7. The comments were also generally critical of the proposed Section 95.35(d) as being overly restrictive. As proposed, subparagraph (1) of this section would have prohibited the internal or external connection or addition of any part, device, or accessory not originally included by the manufacturer with the transmitter for its type ac-

ceptance. Subparagraph (2) woud have prohibited the replacement of any component of a type accepted transmitter with components not approved therefor by the manufacturer of the transmitter.

8. Subparagraph (1) has been clarified to indicate that this restriction is not intended to apply to the external connections of antennas, transmission lines, antenna switches, matching networks or radio frequency measuring devices or the replacement of microphones. Since transmitters for which type acceptance is requested after May 24, 1974 will be required to have a modulation limiter, the replacement of the microphone with a model different from that furnished by the manufacturer should not cause improper operation as might be the case without the limiter. Subparagraph (2) continues to prohibit modification of the transmitter in any way not specified by the manufacturer or approved by the Commission, however, two new subparagraphs have been added. Subparagraph (3) prohibits the replacement of any part by a part of different electrical characteristics and ratings to that being replaced unless such part is specified as a replacement by the transmitter manufacturer. The effect of this new paragraph is to permit the manufacturer to specify changes in a unit after it has been manufactured and to permit the replacement of parts by the licensee with parts of equal electrical characteristics and ratings. The new subparagraph (4) permits the replacement of any crystal with one which the crystal or transmitter manufacturer has determined as capable of operating in the particular model transmitter on any authorized frequency and within the required tolerance limits.

9. Section 95.43, as adopted, has been revised and clarified. For single sideband transmitters and other transmitters employing a reduced carrier, a suppressed carrier, or controlled carrier modulation, the applicable transmitter power is the peak envelope power. For all other Class D transmitters, the applicable transmitter power is the carrier power rather than the mean power as proposed. The purpose of this change is to allow, in effect, the same power that is currently permitted for double sideband transmitters. The maximum peak envelope power has been increased from 8 to 12 watts in order to allow single sideband transmitters essentially the same mean power output as double sideband transmitters. The rule also specifies that the output power of all transmitters be measured when operating into a load which is matched so as to obtain maximum output power from the transmitter.

10. In Section 95.51, the proposed paragraph (a), which limits the maximum audio frequency to 3000 Hz, was re-designated as paragraph (c) and adopted as proposed. This requirement is consistent with the requirements of the other mobile services, and should not present any burden to the equipment manufacturers. Lafayette Radio Electronics Corporation stated that it believed that proposed 70 percent minimum modulation required in proposed paragraph (b), now paragraph (a), was unnecessary and would add needless cost to the circuitry. The Commission concurs and this requirement has been deleted.

11. The Commission had proposed that applications for type acceptance would not be granted for use of any Class D transmitter which was equipped for operation on any frequency not available to

Class D stations. Lafayette Radio Electronics Corporation, California Citizens Band Association, Inc., and the National Headquarters, Civil Air Patrol (which filed late comments) objected to this limitation as being arbitrary and not serving the public interest by requiring two transmitters in a few cases when only one may be needed. Upon review, the Commission has not adopted this limitation. However, several safeguards have been provided in the amended rules to restrict the possibility of a citizens radio licensee operating on a frequency which is not authorized by his station license. Subparagraph (4) of Section 95.55(c) provides that a transmitter which is equipped to operate on any frequency not available to Class D stations may not be installed at, or used by, any Class D station unless there is a station license posted at the transmitter location, or a transmitter identification card (FCC Form 452–C) attached to the transmitter, which indicates that operation of the transmitter on such a frequency has been authorized by the Commission. Even though the transmitter may be equipped for operation on other than Class D frequencies, it is still restricted to a maximum of 23 frequencies. Further, if the transmitter is intended for use on any frequency or frequencies in addition to frequencies for Class D stations, Section 95.57(d) requires that it also be type accepted for use in the radio service or services for which such additional frequencies are authorized if type acceptance in the additional services is required.

12. Section 95.58 lists requirements for type acceptance of transmitters which are in addition to the technical standards for power, frequency tolerance, emission limitations, and modulation requirements. Included is a requirement that single sideband transmitters and other transmitters employing reduced, suppressed, or controlled carrier must have a means of automatically preventing the transmitter power from exceeding the maximum permissible peak envelope power. Other transmitters, having a power of 2.5 watts or more must automatically prevent modulation in excess of 100 percent on positive and negative peaks. All transmitting crystals must be internal to the transmitter and may not be readily accessible from the operating panel or exterior of the cabinet. Every single sideband transmitter must be capable of transmitting the upper sideband. The capability of transmitting on the lower sideband may also be included, if desired. This requirement will insure at least minimal compatibility of single sideband transmitters of different manufacturers.

13. With regard to the proposed provision in Section 95.58(e) (now Section 95.58(c)(5)) for limiting transmitter power handling capacity, the comments stated that the I.C.A.S. ratings of semiconductors are not consistent and are not always provided. In addition, there was an expression of need to consider the effect of temperature on semiconductors. We have considered the comments carefully, and do not wish to encourage power handling capability in excess of that allowed for use by Class D stations under Part 95. Instead of the proposed 10 watt limit on the power output rating, the Rules adopted place a 10 watt limit on the power dissipation rating of the device. In addition, we are permitting the de-rating of semiconductors to a device temperature of 50° centigrade.

14. The intended purpose of the proposed Section 95.58(f) (now Section 95.58(d)) which limited external controls and connections was widely misunderstood. It was intended, of course, to apply only to transmitter controls and connections and not to the receiver section. The rule was not intended as an absolute prohibition to controls in addition to those listed. Requests for additional controls and connections will be considered by the Commission in connection with the request for type acceptance.

15. Section 95.58(e) requires that an instruction book for the user be furnished with each transmitter sold and that a copy be forwarded with each request for type acceptance. The latter copy may be a draft or preliminary copy, providing a copy of the final book is forwarded to the Commission when completed.

16. It was proposed to provide for type acceptance of transmitters used at Class B stations. However, the Commission by its Second Report and Order in Docket No. 13847 decided to terminate the operation of all Class B stations effective November 1, 1971. Accordingly, this proposal was not adopted.

17. The Notice of Proposed Rule Making in this proceeding stated that interested persons could file comments on the question of type acceptance of transmitters in kit form either in this proceeding or addressed to the petitions (RM–1093 and RM–1164) filed by the Heath Company. This matter is presently under consideration, and will be acted upon in a future proceeding.

18. The rules set forth in the attached Appendix also include editorial changes necessitated by amendments adopted previously in Docket No. 13847. Among other things, these amendments, as of November, 1971, terminated the operation of Class B stations and imposed upon all Class A stations the technical requirements necessary for operation with 25 kHz channel seperation in the 450–470 MHz band.

19. Although these amendments may have less effect than we would like against the prevailing flagrant abuses of station operating privileges, we conclude that the amendments adopted herein are in the public interest because they should help to reduce the violations of technical regulation which are now occurring. Authority for these amendments is contained in Sections 4(i) and 303 of the Communications Act of 1934.

20. Accordingly, IT IS ORDERED, That, effective November 23, 1973, Part 95 of the Commission's Rules IS AMENDED as set forth in the attached Appendix and that this proceeding IS TERMINATED.

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

APPENDIX

I. Part 95 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

1. In Section 95.3 paragraph (b) is amended, ***Bandwidth occupied by an emission*** is deleted from paragraph (c) and definitions are added in appropriate alphabetical order to read as follows:

Section 95.3 Definitions

* * * * * * *

(b) * * *

Class A station. A station in the Citizens Radio Service licensed to be operated on an assigned frequency in the 460–470 MHz band with a transmitter output power of not more than 50 watts.

Class B station. (All operations terminated as of November 1, 1971.)

* * * * * * *

Class D station. A station in the Citizens Radio Service licensed to be operated for radiotelephony, only, on an authorized frequency in the 26.96–27.23 MHz band and on the frequency 27.255 MHz.

* * * * * * *

(c) * * *

Authorized bandwidth. The maximum permissible bandwidth for the particular emission used. This shall be the occupied bandwidth or necessary bandwidth, whichever is greater.

Carrier power. The average power at the output terminals of a transmitter (other than a transmitter having a suppressed, reduced or controlled carrier) during one radio frequency cycle under conditions of no modulation.

Double sideband emission. An emission in which both upper and lower sidebands resulting from the modulation of a particular carrier are transmitted. The carrier, or a portion thereof, also may be present in the emission.

Mean power. The power at the output terminals of a transmitter during normal operation, averaged over a time sufficiently long compared with the period of the lowest frequency encountered in the modulation. A time of $\frac{1}{10}$ second during which the mean power is greatest will be selected normally.

Necessary bandwidth. For a given class of emission, the minimum value of the occupied bandwidth sufficient to ensure the transmission of information at the rate and with the quality required for the system employed, under specified conditions. Emissions useful for the good functioning of the receiving equipment, as for example, the emission corresponding to the carrier of reduced carrier systems, shall be included in the necessary bandwidth.

Occupied bandwidth. The frequency bandwidth such that, below its lower and above its upper frequency limits, the mean powers radiated are each equal to 0.5% of the total mean power radiated by a given emission.

Peak envelope power. The average power at the output terminals of a transmitter during one radio frequency cycle at the highest crest of the modulation envelope, taken under conditions of normal operation.

Single sideband emission. An emission in which only one sideband is transmitted. The carrier, or a portion thereof, also may be present in the emission.

2. In Section 95.35 the headnote and introductory text are changed, par (c) is amended, and new pars (d) & (e) are added as follows:

Section 95.35 Changes in transmitters and authorized stations.

Authority for certain changes in transmitters and authorized stations must be obtained from the Commission before the changes are made, while other changes do not require prior Commission approval. The following paragraphs of this section describe the conditions under which prior Commission approval is or is not necessary.

(a) * * *

(b) * * *

(c) Proposed changes which will not depart from any of the terms of the outstanding authorization for the station may be made without prior Commission approval. Included in such changes is the substitution of transmitting equipment at any station, provided that the equipment employed is included in the Commission's "Radio Equipment List," and is listed as acceptable for use in the appropriate class of station in this service. Provided it is crystal-controlled and otherwise complies with the power, frequency tolerance, emission and modulation percentage limitations prescribed, non-type accepted equipment may be substituted at:

(1) Class C stations operated on frequencies in the 26.99–27.26 MHz band;

(2) Class D stations until November 22, 1974.

(d) Transmitting equipment type accepted for use in Class D stations shall not be modified by the user. Changes which are specifically prohibited include:

(1) Internal or external connection or addition of any part, device or accessory not included by the manufacturer with the transmitter for its type acceptance.

This shall not prohibit the external connection of antennas or antenna transmission lines, antenna switches, passive networks for coupling transmission lines or antennas to transmitters, or replacement of microphones.

(2) Modification in any way not specified by the transmitter manufacturer and not approved by the Commission.

(3) Replacement of any transmitter part by a part having different electrical characteristics and ratings from that replaced unless such part is specified as a replacement by the transmitter manufacturer.

(4) Substitution or addition of any transmitter oscillator crystal unless the crystal manufacturer or transmitter manufacturer has made an express determination that the crystal type, as installed in the specific transmitter type, will provide that transmitter type with the capability of operating within the frequency tolerance specified in Section 95.45(a).

(5) Addition or substitution of any component, crystal or combination of crystals, or any other alteration to enable transmission on any frequency not authorized for use by the licensee.

(e) Only the manufacturer of the particular unit of equipment type accepted for use in Class D stations may make the permissive changes allowed under the provisions of Part 2 of this chapter for type acceptance. However, the manufacturer shall not make any of the following changes to the transmitter without prior written authorization from the Commission:

(1) Addition of any accessory or device not specified in the application for type acceptance and approved by the Commission in granting said type acceptance.

(2) Addition of any switch, control, or external connection.

(3) Modification to provide capability for an additional number of transmitting frequencies.

3. In § 95.43 the headnote & text are revised to read as follows:

Section 95.43 Transmitter power.

(a) Transmitter power is the power at the transmitter output terminals and delivered to the antenna, antenna transmission line, or any other impedance-matched, radio frequency load.

(1) For single sideband transmitters and other transmitters employing a reduced carrier, a suppressed carrier or a controlled carrier, used at Class D stations, transmitter power is the peak envelope power.

(2) For all transmitters other than those covered by subparagraph (1) of this paragraph, the transmitter power is the carrier power.

(b) The transmitter power of a station shall not exceed the following values under any condition of modulation or other circumstances.

Class of Station:	*Transmitter power in watts*
A	50
C—27.255 MHz	25
C—26.995–27.195 MHz	4
C—72–76 MHz	0.75
D—Carrier (where applicable)	4
D—Peak envelope power (where applicable)	12

4. Section 95.45 is amended as follows:

Section 95.45 Frequency tolerance.

(a) Except as provided in paragraphs (b) and (c) of this Section, the carrier frequency of a transmitter in this service shall be maintained within the following percentage of the authorized frequency:

Class of Station	Frequency tolerance	
	Fixed and Base	Mobile
A	0.00025	0.0005
C		0.005
D		0.005

(b) Transmitters used at Class C stations operating on authorized frequencies between 26.99 and 27.26 MHz with 2.5 watts or less mean output power, which are used solely for the control of remote objects or devices by radio (other than devices used solely as a means of attracting attention), are permitted a frequency tolerance of 0.01 percent.

(c) Class A stations operated at a fixed location used to control base stations, through use of a mobile only frequency, may operate with a frequency tolerance of 0.0005 percent.

5. In Section 95.47 paragraph (d) is amended as follows:

Section 95.47 Types of emission.

* * * * * * *

(d) Transmitters used at Class D stations in this service are authorized to use amplitude voice modulation, either single or double sideband. Tone signals or signalling devices may be used only to actuate receiver circuits, such as tone operated squelch or selective calling circuits, the primary function of which is to establish or maintain voice communications. The use of any signals solely to attract attention or for the control of remote objects or devices is prohibited.

* * * * * * *

6. In Section 95.49 paragraphs (c) and (d) are amended as follows:

Section 95.49 Emission limitations.

* * * * * * *

(c) The authorized bandwidth of the emission of any transmitter employing amplitude modulation shall be 8 kHz for double sideband, 4 kHz for single sideband and the authorized bandwidth of the emission of transmitters employing frequency or phase modulation (Class F2 or F3) shall be 20 kHz. The use of Class F2 or F3 emissions in the frequency band 26.96–27.28 MHz is not authorized.

(d) The mean power of emissions shall be attenuated below the mean power of the transmitter in accordance with the following schedule:

(1) When using emissions other than single sideband:

(i) On any frequency removed from the center of the authorized bandwidth by more than 50 percent up to and including 100 percent of the authorized bandwidth: At least 25 decibels;

(ii) On any frequency removed from the center of the authorized bandwidth by more than 100 percent up to and including 250 percent of the authorized bandwidth: At least 35 decibels;

(2) When using single sideband emissions:

(i) On any frequency removed from the center of the authorized bandwidth by more than 50 percent up to and including 150 percent of the authorized bandwidth: At least 25 decibels;

(ii) On any frequency removed from the center of the authorized bandwidth by more than 150 percent up to and including 250 percent of the authorized bandwidth: At least 35 decibels;

(3) On any frequency removed from the center of the authorized bandwidth by more than 250 percent of the authorized bandwidth: At least 43 plus 10 $\log_{10}$ (mean power in watts) decibels.

* * * * * * *

7. Section 95.51 is amended as follows:

Section 95.51 Modulation requirements.

(a) When double sideband, amplitude modulation is used for telephony, the modulation percentage shall be sufficient to provide efficient communication and shall not exceed 100 percent.

(b) Each transmitter for use in Class D stations, other than single sideband, suppressed carrier, or controlled carrier, for which type acceptance is requested after May 24, 1974, having more than 2.5 watts maximum output power shall be equipped with a device which automatically prevents modulation in excess of 100 percent on positive and negative peaks.

(c) The maximum audio frequency required for satisfactory radiotelephone intelligibility for use in this service is considered to be 3000 Hz.

(d) Transmitters for use at Class A stations shall be provided with a device which automatically will prevent greater than normal audio level from causing

modulation in excess of that specified in this subpart; *Provided, however,* That the requirements of this paragraph shall not apply to transmitters authorized at mobile stations and having an output power of 2.5 watts or less.

(e) Each transmitter of a Class A station which is equipped with a modulation limiter in accordance with the provisions of paragraph (d) of this section shall also be equipped with an audio low-pass filter. This audio low-pass filter shall be installed between the modulation limiter and the modulated stage and, at audio frequencies between 3 kHz and 20 kHz, shall have an attenuation greater than the attenuation at 1 kHz by at least:

$$60 \log_{10}(f/3) \text{ decibels}$$

where "f" is the audio frequency in kHz. At audio frequencies above 20 kHz, the attenuation shall be at least 50 decibels greater than the attenuation at 1 kHz.

(f) Simultaneous amplitude modulation and frequency or phase modulation of a transmitter is not authorized.

(g) The maximum frequency deviation of frequency modulated transmitters used at Class A stations shall not exceed ±5 kHz.

8. Section 95.55 is amended as follows:

Section 95.55 Acceptability of transmitters for licensing.

Transmitters type approved or type accepted for use under this part are included in the Commission's Radio Equipment List. Copies of this list are available for public reference at the Commission's Washington, D.C. offices and field offices. The requirements for transmitters which may be operated under a license in this service are set forth in the following paragraphs.

(a) Class A stations: All transmitters shall be type accepted.

(b) Class C stations:

(1) Transmitters operated in the band 72–76 MHz shall be type accepted.

(2) All transmitters operated in the band 26.99–27.26 MHz shall be type approved, type accepted or crystal controlled.

(c) Class D stations:

(1) All transmitters first licensed, or marketed as specified in Section 2.805 of Part 2 of this chapter, prior to November 22, 1974, shall be type accepted or crystal controlled.

(2) All transmitters first licensed, or marketed as specified in Section 2.803 of Part 2 of this chapter, on or after November 22, 1974, shall be type accepted.

(3) Effective November 23, 1978 all transmitters shall be type accepted.

(4) Transmitters which are equipped to operate on any frequency not included in Section 95.41(d)(1) may not be installed at, or used by, any Class D station unless there is a station license posted at the transmitter location, or a transmitter identification card (FCC Form 452–C) attached to the transmitter, which indicates that operation of the transmitter on such frequency has been authorized by the Commission.

(d) With the exception of equipment type approved for use at a Class C station, all transmitting equipment authorized in this service shall be crystal controlled.

(e) No controls, switches or other functions which can cause operation in violation of the technical regulations of this part shall be accessible from the operating panel or exterior to the cabinet enclosing a transmitter authorized in this service.

9. In Section 95.57 the headnote and paragraphs (a) and (b) are amended and paragraph (d) is added as follows:

Section 95.57 Procedure for type acceptance of equipment.

(a) Any manufacturer of a transmitter built for use in this service, except non-crystal controlled transmitters for use at Class C stations, may request type acceptance for such transmitter in accordance with the type acceptance requirements of this part, following the type acceptance procedure set forth in Part 2 of this chapter.

(b) Type acceptance for an individual transmitter may also be requested by an applicant for a station authorization by following the type acceptance procedures set forth in Part 2 of this chapter. Such transmitters, if accepted, will not normally be included on the Commission's "Radio Equipment List", but will be individually enumerated on the station authorization.

* * * * * * *

(d) Transmitters equipped with a frequency or frequencies not listed in Section 95.41(d)(1) will not be type accepted for use at Class D station unless the transmitter is also type accepted for use in the service in which the frequency is authorized, if type acceptance in that service is required.

10. A new Section 95.58 is added as follows:

Section 95.58 Additional requirements for type acceptance.

(a) All transmitters shall be crystal controlled.

(b) Except for transmitters type accepted for use at Class A stations, transmitters shall not include any provisions for increasing power to levels in excess of the pertinent limits specified in Section 95.43.

(c) In addition to all other applicable technical requirements set forth in this part, transmitters for which type acceptance is requested after (six months after the effective date of these rules), for use at Class D stations shall comply with the following:

(1) Single sideband transmitters and other transmitters employing reduced, suppressed or controlled carrier shall include a means for automatically preventing the transmitter power from exceeding either the maximum permissible peak envelope power or the rated peak envelope power of the transmitter, whichever is lower.

(2) Multi-frequency transmitters shall not provide more than 23 transmitting frequencies, and the frequency selector shall be limited to a single control.

(3) Other than the channel selector switch, all transmitting frequency determining circuitry, including crystals, employed in Class D station equipment shall be internal to the equipment and shall not be accessible from the exterior of the equipment cabinet or operating panel.

(4) Single sideband transmitters shall be capable of transmitting on the upper sideband. Capability for transmission also on the lower sideband is permissible.

(5) The total dissipation ratings, established by the manufacturer of the electron tubes or semiconductors which supply radio frequency power to the antenna terminals of the transmitter, shall not exceed 10 watts. For electron tubes, the rating shall be the Intermittent Commercial and Amateur Service (ICAS) plate dissipation value if established. For semiconductors, the rating shall be the collector or device dissipation value, whichever is greater, which may be temperature de-rated to not more than 50°C.

(d) Only the following external transmitter controls, connections or devices will normally be permitted in transmitters for which type acceptance is requested after May 24, 1974, for use at Class D stations. Approval of additional controls, connections or devices may be given after consideration of the function to be performed by such additions.

(1) Primary power connection. (Circuitry or devices such as rectifiers, transformers, or inverters which provide the nominal rated transmitter primary supply voltage may be used without voiding the transmitter type acceptance.)

(2) Microphone connection.

(3) Radio frequency output power connection.

(4) Audio frequency power amplifier output connector and selector switch.

(5) On-off switch for primary power to transmitter. May be combined with receiver controls such as the receiver on-off switch and volume control.

(6) Upper-lower sideband selector; for single sideband transmitters only.

(7) Selector for choice of carrier level; for single sideband transmitters only. May be combined with sideband selector.

(8) Transmitting frequency selector switch.

(9) Transmit-receive switch.

(10) Meter(s) and selector switch for monitoring transmitter performance.

(11) Pilot lamp or meter to indicate the presence of radio frequency output power or that transmitter control circuits are activated to transmit.

(e) An instruction book for the user shall be furnished with each transmitter sold and one copy (a draft or preliminary copy is acceptable providing a final copy is furnished when completed) shall be forwarded to the Commission with each request for type acceptance or type approval. The book shall contain all information necessary for the proper installation and operation of the transmitter including:

(1) Instructions concerning all controls, adjustments and switches which may be operated or adjusted without causing violation of technical regulations of this part;

(2) Warnings concerning any adjustment which, according to the rules of this part, may be made only by, or under the immediate supervision of, a person holding a commercial first or second class radio operator license;

(3) Warnings concerning the replacement or substitution of crystals, tubes or other components which could cause violation of the technical regulations of this part and of the type acceptance or type approval requirements of Part 2 of this chapter.

(4) Warnings concerning licensing requirements and details concerning the application procedures for licensing.

11. The present text of Section 95.59 is deleted. The headnote is revised and new text inserted, to read as follows:

Section 95.59 Submission of non-crystal controlled Class C station transmitters for type approval.

Type approval of non-crystal controlled transmitters for use at Class C stations in this service may be requested in accordance with the procedure specified in Part 2 of this chapter.

12. In Section 95.63 the introductory text is amended as follows:

Section 95.63 Minimum equipment specifications.

Transmitters submitted for type approval in this service shall be capable of meeting the technical specifications contained in this part, and in addition, shall comply with the following:

* * * * * * *

§ 95.69 [Deleted]

13. Section 95.69 is deleted and shown as reserved.

14. In Section 95.97 the introductory text of paragraph (c) is amended as follows:

Section 95.97 Operator license requirements.

* * * * * * *

(c) Except as provided in Section 95.53 and in paragraph (d) of this section, no commercial radio operator license is required to be held by the person performing transmitter adjustments or tests during or coincident with the construction, installation, servicing, or maintenance of Class C transmitters, or Class D transmitters used at stations authorized prior to (six months after the effective date of these rules): *Provided*, That there is compliance with all of the following conditions:

* * * * * * *

F.C.C. 73-648

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of COMMUNICATIONS SATELLITE CORP. Investigation Into Charges, Practices, Classifications, Rates, and Regulations	Docket No. 16070

MEMORANDUM OPINION AND ORDER

(Adopted June 25, 1973; Released June 27, 1973)

BY THE COMMISSION:

1. The Commission has before it: (a) Tariff F.C.C. No. 7 filed by the Communications Satellite Corporation (Comsat) under Transmittal 210 on May 22, 1973 and currently scheduled to become effective June 26, 1973; (b) a petition filed by RCA Global Communications, Inc. (RCA) on June 13, 1973 which seeks a one-day suspension of the above-referenced tariff to permit the imposition of an accounting order covering any charges made by Comsat thereunder; and (c) a petition filed on June 19, 1973 by the Secretary of Defense on behalf of the United States Department of Defense (DOD) requesting the Commission to investigate the lawfulness of the rates set out in the tariff and to establish just and reasonable rates.

2. Under this tariff, Comsat offers leased voice-grade channels to authorized common carriers for use in establishing communications paths, via an appropriate communications satellite, between the Comsat earth station at Jamesburg, California and an earth station on Kwajalein, Marshalls Islands District, Trust Territory of the Pacific Islands (Kwajalein). In developing the rates set out in the tariff, Comsat applied its "guideline" rates applicable to Western Pacific points.[1] For the uplink (between Comsat's Jamesburg earth station and a Pacific basin satellite) the guideline rate is $4,900 per month. For the downlink (between the satellite and Kwajalein), the guideline rate was allegedly adjusted to reflect the fact that RCA will provide the earth station on Kwajalein. Comsat allocates .6666 of its guideline rates to the space segment and the balance to the earth station. Further, Comsat applies a "rate adjustment factor" of 2.5 to the space segment to compensate for the fact that the RCA earth station is of less than standard size and therefore requires a greater portion of available satellite capacity. The resulting tariff rate for both links is $13,050 per month. The present rate structure is based on the determination

[1] *See* Comsat Tariff F.C.C. No. 1.

by the Common Carrier Bureau that Kwajalein should be regarded as a United States point since, although it is a trust territory, it has been placed under U.S. administration by a United Nations Security Council mandate.

3. The DOD petition raises several challenges to the reasonableness of the Comsat rates in Tariff No. 7 and asserts that investigation will prove the rates to be unjustified. First, DOD attacks the reasonableness of the guideline rate as it is applied to the Kwajalein route. DOD states that this rate does not accurately reflect Comsat's cost for either the uplink or the downlink. Second, DOD asserts that the Comsat rate base is inflated by the inclusion of some high-value items which should not be included therein. If these items were removed, DOD believes the resulting rate of return (estimated by DOD to be 22%) would be unconscionably high. DOD then requests the Commission to institute an investigation into the reasonableness of the rates, to make DOD a party to that investigation, and, after hearing, to set reasonable charges for the service.

4. RCA's petition requests the Commission to suspend the Comsat tariff for one day to permit an accounting order to be imposed so that, in the event the Commission determines that the rate is excessive, it can order a refund of the overcharges. Primarily, RCA attacks the determination of the Common Carrier Bureau, acting under authority delegated by the Commission, that Kwajalein should be treated as a United States point for Comsat rate-making purposes. RCA believes that this determination was erroneous and states that it intends to seek Commission review of it. The carrier believes that Kwajalein should be regarded as a foreign point to which the INTELSAT utilization charge applies. The purpose of the accounting order is to permit RCA to recover overcharges, in the event its petition for review is granted, and to pass those refunds on to its customer. Without this relief, RCA contends that its only other remedy, an action at law for damages, is inadequate since the outcome would not be known until after the tariff had expired by its own terms.

5. The rate-making principles and assumptions used by Comsat in constructing the subject tariff rates are, in large measure, the same as those used in developing other Comsat rates which are currently under investigation in Docket No. 16070. Indeed, Comsat's Transmittal specifically bases its rate on the provisions of its Tariff F.C.C. No. 1. In view of this, we believe that the question of the reasonableness and lawfulness of these rates should, just as those in its Tariff F.C.C. No. 1, be included in the investigation in Docket No. 16070. We shall therefore enlarge that proceeding to include consideration of the charges, practices, classifications, rates and regulations contained in Tariff F.C.C. No. 7. Among the issues to be investigated in connection with this tariff are: (a) whether Comsat, which will furnish the space segment capacity between the satellite and the RCA Kawajalein earth station, should separately tariff such charges, and if so, at what rate (in this regard see *Establishment of Regulatory Policies Relating to Authorizations under Section 214 of the Communications Act of 1934*, 23 F.C.C. 2d 9 (1970) as clarified by Memorandum Opinion and Order, 30 F.C.C. 2d 513 (1971)); (b) whether RCA should be authorized to acquire such

units of satellite utilization relating to the link between the satellite and Kwajalein at the INTELSAT charge or at another charge, and if so, what that charge should be; and (c) what, if anything, should be ordered with respect to the charge for the downlink, in light of the Commission's decision, if any shall have been issued, on the question whether Kwajalein is a United States point for the purposes of this tariff (*See* Paragraph 6, *infra.*).

6. The course of action taken herein will safeguard the interests of all interested entities by enabling us to investigate the lawfulness, *ab initio*, of the rates contained in Tariff No. 7. We will then be in a position to make appropriate findings as to what is the proper rate that should have been charged.[2] This action will not disrupt the orderly prosecution of Docket No. 16070, since the evidence already taken on the reasonableness of the rate-making principles employed by Comsat will be equally applicable to Tariff No. 7. The issue of whether Kwajalein is a United States point for the purposes of the tariff can be resolved when RCA files the petition for review, and therefore need not be addressed herein. Any findings we make or conclusions we reach on this issue upon such petition will of course be applicable herein insofar as relevant.

7. We turn now to RCA's petition for suspension and accounting order. We note at the outset that RCA seeks what we believe to be an inappropriate remedy. Section 204 of the Act provides that the Commission may order carriers to account for amounts they receive by reason of an increase in tariff rates. The section is silent as to the question of accounting orders when there is a new rate rather than an increase in an existing rate. We do not think that, in the present situation, it is necessary for us to decide whether the statute covers new rates as well. The purpose of an accounting order is to assure that, in the event the Commission were to find all or any part of a rate increase to be unjustified, the persons who would be entitled to a refund would receive the amount to which the Commission finds they would be entitled. In the present case, since RCA is the only customer for the service, we can accomplish the same end by determining whether the rates set forth in Tariff No. 7 have been just and reasonable, and therefore lawful, from the effective date of the tariff. If we find that they were not, we shall be in a position, as we are with respect to all tariff schedules at issue herein, to order appropriate refunds. Since RCA's interests will receive the same protection under this procedure that they would receive under an accounting order, there is no need to grant the relief in the form requested or to address ourselves in the present factual context to the question of the scope of Section 204. We shall therefore order that RCA's petition be denied.

Accordingly, IT IS ORDERED, That the investigation herein is enlarged, pursuant to Sections 203, 205, and 403 of the Communications Act of 1934, to include consideration of the investigation into the

[2] In this respect, this matter is no different from the other rates under investigation herein where we reserve the right to order refunds. Comsat Tariff F.C.C. No. 1, 38 F.C.C. 1286, 1294–5 (1965). We of course expect the Administrative Law Judge to address himself to this matter and to afford us the benefit of his conclusions.

lawfulness under Sections 201 and 202 of the Communications Act of 1934 and Sections 201(c)(2) and 201(c)(5) of the Communications Satellite Act of 1962, of Communications Satellite Corporation's Tariff F.C.C. No. 7 and any amendments thereof, as well as any successive issues of such tariff, as may hereafter be made until the close of the record herein.

IT IS FURTHER ORDERED, That the petition to suspend the above tariff and to institute an accounting order filed by RCA Global Communications, Inc. is hereby DENIED; and

IT IS FURTHER ORDERED, That, to the extent provided for herein, the petition filed by the United States Department of Defense seeking investigation of the above-referenced tariff IS GRANTED.

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

43 F.C.C. 2d

104-014- 73 ---5

F.C.C. 73-1055

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of COMMUNITY TELEVISION OF UTAH, INC., SALT LAKE CITY, UTAH For a Certificate of Compliance	CAC-810 (UT006) SR-97106

MEMORANDUM OPINION AND ORDER

(Adopted October 11, 1973; Released October 23, 1973)

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

1. Pending before the Commission is an application for a cable television system Certificate of Compliance (Part 76 of the Commission's Rules) filed by Community Television of Utah, Inc., on June 30, 1972. Community Television operates an existing cable system in Salt Lake City now carrying the signals of:

KSL-TV, CBS, Salt Lake City, Utah.
KCPX-TV, ABC, Salt Lake City, Utah.
KUED-TV, Educ., Salt Lake City, Utah.
KUTV, NBC, Salt Lake City, Utah.
KBYU-TV, Educ., Provo, Utah.

Its proposal, in the pending application, is to add carriage of the signals of three independent television broadcast stations (KWGN-TV of Denver, Colorado and KMUV-TV and KTXL-TV of Sacramento, California) pursuant to Section 76.61(b) of the rules. Timely objections to this application were filed by Screen Gems Stations, Inc., a licensee of Station KCPX-TV, Salt Lake City, and by Western TV Cable Corporation, a Salt Lake City cable television system operator. The Screen Gems opposition, which concerned a subsequently deleted proposal to add the signal of Television Station KTVU, Oakland, California, is now moot and will be dismissed. Western TV Cable has objected to any grant of a Certificate of Compliance to Community Television until the Commission has first acted on its earlier filed special relief petition concerning the operation of this system.

2. It appears that Community Television's application is in full compliance with the rules and no suggestion is made in the objection of Western TV Cable that this is not the case.[1] Rather, Western TV's objection raises, by incorporating an earlier filed special relief peti-

[1] Because the system is in operation, the franchise standards of the Rules, Section 76.31, need not be complied with until March 31, 1977. The signal carriage proposed is consistent with Section 76.61(b) of the rules. In compliance with Section 76.251, Community Television indicates it will provide the required, public, government, education, and leased access channels. A dual trunk system with an initial capacity of 27 channels is proposed.

tion, the question of whether Community Television should be allowed until August 10, 1975 to dissolve a prohibited cross-ownership relation with Broadcast Station KSL–TV, Salt Lake City or whether further expansion and operation of this system should be ordered terminated prior to that date.

3. In order to understand the nature of the issue raised, some history of the development of the cross-ownership rules will be helpful. Under the rules [2], common ownership or control of a television broadcast station and a cable television within the station's predicted Grade B contour is prohibited. The rule was adopted on June 24, 1970 [3] and it provided that ownership interests in existence on or before July 1, 1970 did not have to be divested until August 10, 1973. In response to petitions for reconsideration of the rules, this divestiture date was extended to August 10, 1975.[4] Although reconsideration petitions seeking the repeal of the rule were denied, the Commission recognized that the divestiture requirement was a harsh remedy and invited the filing of petitions "for waiver of the mandatory-divestiture requirement (fully supported by pertinent facts, views, arguments, and data) from all cross owners et al. of co-located television stations and cable television system who believe that grandfathering would be appropriate in their case." [5]

4. Community Television of Utah, the applicant here, is owned in equal part by Tele-Communications, Inc., and by Broadcast Services, Inc. In turn Broadcast Services, Inc., is controlled by Bonneville International Corporation, which is the majority stockholder of KSL, Inc., licensee of Station KSL–TV, Salt Lake City. A prohibited cross-interest thus exists.[6] However, because the interest arose prior to July 1, 1970, it need not be terminated until August 10, 1975.

5. Western TV Cable acknowledges in both its opposition and in its special relief petition that the rules do not require a separation of the KSL–TV and Community Television interests at this time but urges that a special order be issued pursuant to the special relief provisions of the rules [7] either ordering Community Television not to construct any additional CATV facilities in Salt Lake City or, alternatively, not to carry the signal of any television station on any cable television system in Salt Lake City not constructed or under construction on August 10, 1971. In support of this request three basic points are made. First, that although the Community Television cable system is in operation it is at best a pilot operation in one small area of the city with few subscribers. The purpose of the grace period between the adoption of the rule and the divestiture date, it is said, was to provide "time to accomplish orderly divestiture" and that Community Television's expansion "is not consistent with the reason given by the Commission for authorizing a three year divestiture period." Second,

[2] Section 76.501.
[3] *Second Report and Order in Docket 18397*, 23 FCC 2d 816 (1970).
[4] *Memorandum Opinion and Order in Docket 18397*, FCC 73–80, — FCC 2d — (1973).
[5] *Supra.*, at paragraph 51.
[6] Although not discussed by Western TV, cross-interests also exist between Community Television and KUTV, Inc. licensee of Television Station KUTV, Salt Lake City. KUTV Inc., is owned by the Standard Corporation and Communications Investment Corporation. These corporations also own approximately 15 percent of the stock of Tele-Communications, Inc., which owns 50 percent of the stock of Community Television.
[7] Section 76.7.

that because of the divestiture requirement and the cable system's cross-interest with local broadcasters, significant incentives exist for the construction of a technically inferior system. Thus, it is said, a company soon to be forced out of the cable television business should not be making decisions on what kind of equipment to install nor should such decisions be made by those who will shortly be in competition with the cable system. Finally, it is said that Community Television's expansion of its cable plant as a prelude to divestiture raises a trafficking problem. In support of this proposition, *RKO General, Inc.*, 28 FCC 2d 683 (1971) is cited. In that decision, the Commission refused to allow a television station licensee to improve the facilities of a station that it was about to sell, stating that "such a grant would disproportionately enhance the value of [the station] which would, in this situation we believe, amount to trafficking." For all these reasons, Western TV Cable urges that we issue the requested order. No injury to the public will occur, it is said, because it stands ready to provide cable service to those who would otherwise have been served by Community Television.

6. Community Television has responded, stating that its operation is completely consistent with the Commission's rules, that issuance of the requested order would allow its competitor to obtain an undue competitive advantage, would subject it to substantial and serious loss by reasons of existing contractual commitments and ordinance requirements, and would substantially prevent its stockholders from making an appropriate sale or exchange of their stock in the system in order to recover their investment.[8] In response to the trafficking argument Community states that it appears clear from the language of the report adopting the cross-ownership rules "that the sale or exchange of franchises by licensees or their stockholders would not be frowned upon by the Commission and would not constitute a trafficking in licenses as suggested by Western, but rather, that the grace period was to permit franchisees and related persons to take such steps as were necessary to comply with the rules. It is submitted that a reasonable opportunity was to be afforded to recover the values of properties in which investments had been made or to take any other steps that would be indicated."

7. The Commission adopted its rules prohibiting cross-ownership of co-located television stations and cable television systems after giving the matter extended and careful consideration. In doing so, considerable attention was focused on the question of whether existing interests should be grandfathered. The Commission determined that no such grandfathering policy should be adopted but that a three-year grace period should be provided as to ownership interests "if such interests were in existence on or before July 1, 1970, (e.g., if a

[8] In its October 16, 1971, reply to Western TV's special relief request, Community Television stated that it had "expended nearly $600,000 for fixed assets and for the purpose of obtaining appropriate legal rights, including contracts necessary for the operation of the cable television facilities in the market it proposes to serve." In a petition filed May 31, 1973, by KUTV, Inc., for waiver of the cross-ownership rules (CSR–404(x)) it is stated that a total of $993,000 had been expended by Community Television through April 30, 1973. It appears that both of these figures include monies expended both on the Salt Lake City cable venture and on others in nearby communities including Ogden and Provo.

franchise were in existence on or before July 1, 1970)." In response to petitions for reconsideration of the rules we gave further extended consideration to the question of whether existing interests should be grandfathered. The determination was made not to adopt such a policy but to further extend the grace period and to consider individual waiver petitions.

8. In light of this history we believe it would be quite inappropriate at this time to issue any order restricting Community Television's continued operation during the grace period unless specific facts are available that persuades us that application of the general rule is inappropriate in the circumstances here involved.[9] We are unable, in Western TV's special relief petition, to find any such facts. Both the argument concerning trafficking and that going to Community Television's possible anti-competitive incentives during the grace period are considerations that might have weighed against adoption of such a period but tell us nothing as to why the general rule, once adopted, should not apply to Community Television. There are, in addition, countervailing considerations presented by the facts of this case that would give Community Television incentives contrary to those suggested by Western TV, including the existence of a 50 percent owner that is one of the country's largest cable television system owners and operators, the necessity of competing with another system operator in the community, and the possibility that the quality of its technical plant may shortly be subject to careful appraisal in connection with the sale or exchange of the prohibited cross-interests. Each of these considerations might tend to assure that the quality of the system installed is consistent with the state of the art. These are, however, considerations relevant to the desirability of the general rule and do not suggest the inapplicability of it; nor do they address the equitable considerations that prompted us to adopt a rule permitting Community Television and others similarly situated until August 10, 1975 to come into compliance with the rules. No other facts being revealed that would show why the general rule should not apply to Community Television, we will deny the Western TV petition for special relief (SR–97106) and its objection to the certificate of compliance application.[10]

9. In view of the foregoing and the complete compliance of the captioned application with the requirements of the Commission rules, we find that a grant would be consistent with the public interest.

Accordingly, IT IS ORDERED, That the "Application for Certificate of Compliance" (CAC–810) filed June 30, 1972, by Community Television of Utah IS GRANTED, and an appropriate certificate of compliance will be granted.

IT IS FURTHER ORDERED, That the "Petition for Special Relief" filed September 15, 1971, by Western TV Cable Corporation (SR–97106) IS DENIED.

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[9] Compare *Plymouth CATV Services, Inc.*, 37 FCC 2d 1040 (1972).

[10] Although we are denying the special relief requested by Western TV, we think it pertinent to point out, lest our decision be misconstrued, that any further investment by Community Television in this cable television operation is entirely a matter of its own decision and is not something that we will look at hereinafter as creating equities to be weighed in ruling on cross-ownership waiver petitions involving this system. The risk of such further investment is entirely on Community Television.

IT IS FURTHER ORDERED, That the "Objection of Western TV Cable Corporation to Application of Community Television of Utah, Inc., for Certificate of Compliance" filed August 21, 1972, by Western TV Cable Corporation IS DENIED.

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

F.C.C. 73-1077

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
COMPARABLE TELEVISION TUNING } Docket No. 19722

REPORT AND ORDER

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

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT.

1. *Introduction.* A Notice of Proposed Rule Making in this proceeding was released on April 20, 1973 (FCC 73-405, 40 FCC 2d 675, 38 F.R. 10466, April 30, 1973). In the Notice, the Commission proposed to amend Section 15.68(d)(3) of the comparable television tuning rules, which states requirements, effective July 1, 1975, for television receivers equipped with a 70-position UHF tuner. Comments were requested on the specific modification of § 15.68(d)(3), on the industry's capability in general to meet the 1975 requirements, and on new developments in the tuning art. Comments were filed by the Consumer Electronics Group of the Electronic Industries Association (EIA), Mitsubishi International Corporation, GTE Sylvania, Inc., Sarkes Tarzian, Inc. (Tarzian), Standard Components, and Kaiser Broadcasting Corporation. Reply comments were filed by EIA, Zenith Radio Corporation, and General Instrument Corporation (GI). We have also considered a November 7, 1972 letter from GI, a petition for rule making filed by EIA shortly before the Notice of Proposed Rule Making was issued, and supplemental comments filed by Tarzian.[1]

2. The proposed modification of Section 15.68(d)(3) specified two methods for achieving comparable tuning in receivers utilizing a 70-position UHF detent tuner. The first method, applicable to color and monochrome receivers, invoved eliminating the need for routine fine tuning. In the Notice, we stated that a 70-position tuner accurate to ±1 MHz, combined with AFC circuitry now in use, is considered to eliminate the need for routine fine tuning. We also stated that any combination of AFC with a channel selection mechanism capable of positioning the tuner within the pull-in range of AFC would meet the requirement and, finally, that any method which eliminated routine fine tuning would be acceptable. We now add, in case it is not clear from the foregoing, that any method which produces and maintains detented tuning accuracy of the same order as the specific methods mentioned also meets this requirement. This provision is simply a

[1] Tarzian's supplemental comments consist primarily of a response to matters raised initially by GI in its reply comments. Tarzian's Motion for Leave to File Supplemental Comments is granted.

restatement of the present requirement in terms of the result to be achieved rather than a specific means of reaching it.

3. The second method, applicable to monochrome receivers only, required that the UHF channel selection controls position the tuner within ±1 MHz of correct frequency and that UHF and VHF fine tuning speed be the same. This provision would eliminate the present requirement of AFC in monochrome tuning but would add the fine tuning speed requirement.

4. The proposed modification reflected the development by GI of a 70-position tuner accurate to within ±1 MHz of correct frequency and a demonstration of receivers utilizing that tuner to the Commission's staff. In the demonstration, the receivers produced a very satisfactory monochrome picture on all 70 UHF channels without AFC and without fine tuning, and a very satisfactory color picture on all 70 channels with AFC and without fine tuning. There was no perceptible difference in picture quality among the 70 UHF channels or between UHF and VHF channels.

5. *The Comments.* After considerable study of the EIA petition for rule making and comments, we think its position can fairly be summarized as follows:

(1) EIA does not think that the Commission should impose an accuracy standard stricter than ±3 MHz until one year after the receiver manufacturing industry is given adequate assurance that tuning equipment meeting the stricter standard will be available from at least two sources in production quantities sufficient to meet total industry demand. Working models of tuners should be available now in connection with design of 1975 receivers. Since a working model is available now from only one tuner manufacturer, it is too early to impose a stricter standard. The rule should be deleted until a second complying tuner is made available.

(2) The use of AFC should be optional for both color and monochrome receivers. The availability of a lower-cost color option to the customer is more important than AFC, even if use of AFC with an accurate channel selection mechanism is required to achieve comparable UHF color tuning. Moreover, if the receiver manufacturer voluntarily equips the receiver with AFC, the Commission should not regulate the performance of that receiver.

(3) The industry is concerned that use of the GI tuner will not assure compliance with the proposed rules—that tuning error may be greater than ±1 MHz in the receiver environment and that the combination of AFC with a tuner accurate to ±1 MHz may not eliminate the need for routine fine tuning in all circumstances—and consequently that it may not be able to certificate receivers as complying with the rule. These problems would be overcome if the Commission were to require use of a tuner accurate to ±1 MHz in monochrome receivers and to require the combination of AFC with such a tuner in color receivers, without requiring that routine fine tuning be eliminated.

(4) The Commission should not require the same fine tuning speed for UHF and VHF tuning. The optimum fine tuning speed for one tuner is not necessarily (or even likely to be) the same as the optimum speed for another. The mechanics of VHF memory fine tuning, for example, require very slow fine tuning (e.g., 4 kHz per degree of rotation), but the fine tuning speed for nonmemory V's is about 25 kHz per degree, and for U's ranges from 40–160 kHz per degree. EIA suggests that the Commission delete the fine tuning speed requirement or simply require that it be such that the customer can easily tune to an accurate setting.

6. EIA and Mitsubishi take the position that the public is satisfied with a UHF tuner accurate to ±3 MHz and that, therefore, presumably, there is no point in requiring use of a more accurate tuner.

Mitsubishi expresses skepticism concerning the ability of tuner manufacturers to mass produce (to maintain a reasonable yield of) tuners accurate to ±1 MHz. It believes a cost increase would be inevitable. It also opposes the requirement that UHF and VHF fine tuning speeds be the same. It states that VHF fine tuning speeds are now about 30 kHz per degree, compared to 100–200 kHz per degree for UHF.

7. Sylvania expresses basic agreement with the proposal, except that it opposes the monochrome fine tuning speed requirement and shares EIA's concern regarding adoption of requirements before an adequate supply of tuners is demonstrably available to meet them. The figures for tuning speeds it provides are 3 kHz per degree of rotation for VHF memory fine tuning and 22 kHz per degree for the slowest available UHF tuner. It suggests a requirement that UHF tuning speed not be greater than 30 kHz per degree.

8. In its reply comments, Zenith supports the position taken by EIA. It states that GI has indicated to Zenith that its improved tuner assures accuracy within ±1 MHz only as to the GI tuner, as produced, and not as to that tuner mounted in a receiver. It fears repetition of the same problems experienced when the ±3 MHz accuracy requirement was first imposed. It notes that tuner manufacturers other than GI have not indicated plans to produce tuners accurate to ±1 MHz and that they would have to redesign and retool their product to do so. It states that added costs associated with the improved 70-position tuner might cause manufacturers to use 6 and 8-position tuners. To keep costs within practical limits, it suggests a relaxed tolerance for channels above channel 69 (±2 MHz if the requirement for lower channels is ±1 MHz). Such a relaxation, it says, would significantly enchance the technical and economic feasibility—and therefore the availability—of an improved 70-position tuner.

9. Tarzian, in its comments, states that the Commission is moving too fast toward a reduction in the alignment error of the 70-position tuner. It suggests that receiver manufacturers may be unable to comply and, in that event, would turn to other "less desirable tuners." It considers that the Commission has no assurance that the GI tuner can be mass-produced to meet the ±1 MHz accuracy specification, or that such a tuner will be available in sufficient quantity at reasonable cost. It thinks that the cost of testing tuners for compliance will add materially to receiver costs and that the Commission should obtain data concerning such costs before adopting a rule. Concerning its own capabilities, Tarzian states that 27% of current production meets a limit of ±1 MHz and that 98% meets a ±2 MHz limit, but that 100% conformance to a ±1 MHz limit cannot be achieved with its current product, and that there is no assurance that the ±1 MHz limit could be met with a modified product at reasonable cost. It stresses that tuner alignment accuracy alone cannot assure that the need for fine tuning will be eliminated and that other factors (wear and tear, temperature and voltage changes, etc.) can alone produce a tuning error in excess of ±1 MHz and beyond the pull-in range of AFC under worst case circumstances. (The worst case argument is also made by EIA.) Tarzian contends that a requirement should not be

imposed until the feasibility of meeting that requirement has been established on the receiver production line.

10. Kaiser expresses disappointment in the fact that fully comparable UHF tuning capability has not yet been achieved. It believes the requirement for eliminating the need for routine fine tuning of color receivers is a relaxation of the current rule requiring the combination of AFC with an accurate channel selection mechanism, and in this respect stresses the importance of AFC not only in pulling in but in holding a good color picture. It urges that the AFC requirement be maintained and that the Commission not in the future grant waiver of the rules or extend their effective date.

11. In response to Kaiser, EIA stresses that performance standards are preferable to design specifications in that they allow the manufacturer flexibility in meeting a stated goal—i.e., by use of AFC or in other ways producing equally satisfactory results. It maintains, in addition, that a bar on waiver or extension of the rules ignores the practicalities of product redesign and the dependency of manufacturers on the state of the tuner art.

12. In its reply comments, GI offers the following information and suggestions concerning its capabilities and the feasibility of the proposed rule:

(1) GI agrees that receiver manufacturers should not have to depend on a single source of complying tuners. It believes that other tuner manufacturers would respond to a demand for such tuners created by a requirement for their use. GI is prepared to assist other tuner manufacturers in this respect, by licensing them to produce its product and providing technical assistance.

(2) Concerning its capability to produce complying tuners in production quantities, GI notes that its improved tuner is a modification of an existing product, of which over a million have been made to specifications and sold, and that no receiver manufacturer has been required to request a waiver from the Commission due to a failure in either the quality or quantity of that product. It notes further that over 100 samples of the improved tuner have been built, using over 95% production tooled parts, the remaining parts, representing the modification, having been fabricated from temporary tools; and that the tuners were aligned by production type personnel using production alignment procedures. Two samples were submitted to each receiver manufacturer, and in each case a favorable verbal or written report was received confirming the achievement of ±1 MHz accuracy as measured utilizing procedures prescribed by the Commission in Bulletin OCE–30. In addition, a receiver manufacturer made a statistical study of 20 samples indicating that ±1 MHz accuracy was feasible. Permanent tools are being made. Pre-production quantities of the tuner should be available during the last quarter of 1973, and production quantities should be available early in 1974.

(3) Concerning the performance of its tuner in the receiver environment, GI discounts the theoretical worst-case error argument made by EIA and Sarkes Tarzian, noting that testing it has done to date has indicated a "one to one relationship between tuner accuracy and receiver performance." It also discounts EIA's concern that deactivating AFC and tuning manually may be required to obtain the optimum picture under special circumstances, noting that this is also true of VHF tuning and is in any event a minor matter.

GI nevertheless shares the concern of receiver manufacturers over the certification of receivers to meet the ±1 MHz requirement. In spite of the fact that tests show that very accurately aligned tuners require little or no fine tuning, the exact performance of a specific receiver or receiver model using that tuner cannot be predicted in advance of tests, and a failure to meet the ±1 MHz requirement would be cata-

strophic. It recommends that certification be based on measurement of the tuner under specified conditions relating to receiver operating conditions.

(4) On the matter of cost, GI has quoted customers a price which adds a 5% to 8% premium—about 30 cents—to the base price of its present product.

(5) On the question of fine tuning speeds, GI states that the fine tuning speeds of currently used VHF tuners are as follows—VHF memory tuners, 3–5 kHz per degree; non-memory VHF tuners, 20–45 kHz per degree—and suggests that a UHF tuner accurate to ±1 MHz is properly compared with the non-memory VHF tuner. It recommends that the Commission require equal fine tuning speeds when the UHF tuner is combined with a non-memory VHF tuner, and that we settle for UHF fine tuning speed of 20–40 kHz per degree in combination with a VHF memory tuner.

13. In its supplementary comments, Tarzian states that GI's confidence and its offer of assistance and licensing to other tuner manufacturers cannot allay the industry's concern about the availability of tuners and the certifiability of receivers utilizing those tuners, and that such concerns cannot be allayed until the tuner has been mass produced and tested in receivers. Tarzian repeats its worst case argument—that it is possible for conditions to exist under which a receiver could not be certificated, even if the tuner is perfectly aligned. It notes that tuners used in GI's demonstration were aligned within ±0.5 MHz and expresses no surprise that good results were demonstrated in receivers equipped with those tuners. It suggests that the validity of the demonstration would be enhanced if tuners aligned to the precise ±1 MHz limit had been used. It reasons that the 5% to 8% cost premium indicated by GI cannot be for materials and must cover extra alignment time, that alignment operators are in short supply, and that new operators require extended training. Tarzian endorses GI's suggestion that certification be based on tuner, rather than receiver, measurements. Tarzian opposes GI's suggested tuning speed requirement, noting that they appear to be based on the design of GI tuners, whereas Tarzian tuners, which do not meet such requirements, are nevertheless very satisfactory in use. Tarzian also opposes Sylvania's suggestion that fine tuning speed not exceed 30 kHz per degree. It notes that UHF and VHF tuner mechanisms are entirely different, that fine tuning accuracy depends on factors other than speed (e.g., backlash, torque, hand effect, knob diameter) and that optimum fine tuning speed varies appreciably among tuning mechanisms. It recommends that the choice of fine tuning speed be left to the manufacturer.

14. The Standard Components comments describe a new tuning system and ask the Commission to authorize its use. In this system, VHF and UHF varactor tuners are coupled to a common detented channel selection mechanism with a common knob, and are individually displayed. Reset accuracy is sufficient to eliminate routine fine tuning. In remote control operation, the tuners are driven by a single motor. As so described, this tuning system would comply with the comparable tuning rules. However, receiver manufacturers have expressed concern about customer acceptance of the knob-turning burden associated with a unitary 82-position tuner. To overcome this difficulty, Standard Components proposes to reduce the number of positions

from 82 to 36. This version would tune and display one VHF channel at each of the first twelve positions and three or less UHF channels at each of the remaining 24 positions. Any of the three UHF channels at each position could be memory fine tuned and thereafter selected without fine tuning. Although three numbers would be displayed at each position, Standard Components contends that this version of its tuner is fully consonant with the spirit of the all channel receiver law, in that fewer knob clicks are required to tune from one available UHF station to another and that confusing and costly setup procedures involving use of channel number inserts are not required. It notes that motor drives for 70-position UHF tuners are "virtually nonexistent" and that the need, in remote control applications, for a tuning system such as it proposes is becoming acute. It requests the Commission to authorize use of a UHF tuning system which displays the 70 UHF channel numbers in groups of three or less, if any one of the three channels can be memory fine tuned to correct frequency, and if reset accuracy is sufficient to eliminate the need for routine fine tuning.

15. *Discussion.* Some of the comments, we think, display a misunderstanding of the reasons for Commission regulation of television tuning and of the nature of such regulation. The Commission entered upon the regulation of tuning in 1969 because assurances of improved UHF tuning given by the industry following enactment of the all-channel receiver law in 1962 had not borne fruit and because we doubted that individual manufacturers, who stressed price competition, would improve UHF tuning if all manufacturers were not required to do the same. The nature of such regulation has not been to impose requirements involving simply the use of equipment which was already being mass produced and had been proven in use. It has instead been to stimulate development and production of superior equipment not in common use but believed to be within the state of the art, by imposing a requirement for its use and thereby creating or expanding the market for such equipment. In short, the requirement is adopted, the tuner manufacturer responds by developing the necessary hardware, and the receiver manufacturer is called upon to use it. We have recognized that time must be allowed for the development and production of new equipment and for its incorporation in receivers, that effective dates must sometimes be viewed as target dates, and that compliance must in the end be proven feasible. To be effective, the requirement must be reasonably achievable. Accordingly, we have held out the possibility that effective dates may be extended, that requirements may be relaxed, and that waivers based on the problems faced by individual firms may be granted, provided there is a good faith effort to meet the requirement.

16. We are well satisfied with the results of this regulatory program and consider Kaiser's disappointment in the progress to be without justification. At the very beginning of this program we imposed a schedule for achieving compliance, running from July 1, 1971 (10% compliance) to July 1, 1974 (100% compliance), which is well on its way to being met. As part of this program, industry has developed and we have authorized the use of a 70-position UHF tuner having a tun-

ing accuracy of ±3 MHz, which provides a separate detented position for each of the 70 UHF channels. This 70-position tuner was authorized on representations by tuner manufacturers that tuners could be mass produced to meet the ± 3MHz tuning accuracy requirement in quantities required to meet industry demand, without certainty that this could be done within the time schedule that we had imposed, and in spite of misgivings expressed by receiver manufacturers. After adoption of the rule, tuner and receiver manufacturers moved with energy and at considerable expense to meet its requirements. There were nevertheless problems. For a period, one manufacturer was unable to supply a tuner meeting the accuracy requirement in sufficient quantity. Receiver manufacturers were forced to apply for waiver of the rules, and the Commission was in effect obliged to grant such applications, the alternative being to shut down production. In each instance, however, the waiver request was carefully scrutinized and the relief granted was the minimum required to avoid hardship. In addition, manufacturers were pressed for a full explanation and were queried as to steps being taken and the progress expected in overcoming the difficulties underlying the waiver request. Albeit after considerable travail, all problems relating to the quality or quantity of the ± 3 MHz 70-position tuner appear to have been resolved, and the great bulk of tuners being produced are considerably more accurate than ± 3 MHz. The point is that a reasonable though optimistic goal was set and that flexible enforcement eventually led to full compliance without undue hardship.

17. We would look for similar results in the case of the ±1 MHz requirement, though hopefully without resort to the burdensome waiver process. A stricter accuracy standard was originally imposed on November 30, 1971, to take effect July 1, 1974.[2] The effective date was subsequently extended to July 1, 1975, it appearing that progress had been made but that tuning equipment required for compliance would not be available in time for use in 1974.[3] GI now appears to have developed tuning equipment consonant with our objective, and we have accordingly initiated this proceeding to conform our requirement to its use. We reject the proposition, advanced by some, that requirements should not be imposed until the receiver manufacturer has iron-clad assurance that tuning equipment meeting those requirements will be available in desired quantities from at least two sources. That proposition is inconsistent with the entire concept of tuning regulation, as discussed above, which is to stimulate development of a superior product necessary to meet a statutory objective. We appreciate the desirability of multiple sources of components and would not adopt rules requiring the use of components which can be furnished only by a single supplier (e.g., where a patent holder refuses to license others to make that product). It is in the public interest, however, to establish requirements reflecting an advance in the state of the art by a single supplier where other suppliers have reasonable access to that advance.

[2] Report and Order in Docket No. 19268, FCC 71–1177, 32 FCC 2d 612, 36 F.R. 23563.
[3] Memorandum Opinion and Order in Docket No. 19268, FCC 72–795, 37 FCC 2d 253, 37 F.R. 19372.

We also reject the proposition submitted by Kaiser, that extensions and waivers should be ruled out as a future possibility. In the absence of absolute assurance that a requirement can reasonably be met, the possibility of modification, extension or exception must be preserved. Obviously, no sensible purpose is served by insisting on compliance with a requirement which is not achievable.

18. We accept the fact that a receiver manufacturer should have a working model now of a tuner to be used in a receiver to be produced in 1975, to allow time for necessary modification of the receiver and for testing and certification. We are informed that in the case of the modified GI tuner, this should not pose a problem, since receiver manufacturers have for some time had working models of this modified tuner. We are informed further that the modified tuner is slightly larger than tuners currently in use, but not significantly so. It would appear that in a large number of receivers, the current tuner can be replaced with the modified tuner without a redesign of the receiver. It would appear therefore that, insofar as receiver manufacturers who are regularly supplied with tuners by GI are concerned, there is ample time for such manufacturers to incorporate the modified GI tuner in their receivers to be produced in 1975

19. Manufacturers who depend on tuners not supplied by GI, however, are in an entirely different position. So far as we know, other tuner manufacturers have not developed a 70-position non-memory UHF tuner accurate to ±1 MHz. They cannot therefore supply a working model to receiver manufacturers. The receiver manufacturer cannot design his receiver to accommodate a non-existent product, and cannot rely on the availability of production line quantities for use in 1975. This being the case, the prudent receiver manufacturer concerned with meeting a 1975 requirement would presumably turn to GI as a supplier, modifying his receiver as necessary to accommodate the GI product. Potential second sources would tend to be frozen out, leaving GI, as the single source, in a monopoly position. All those involved, including GI, agree this is not a desirable result, an additional adverse factor being that it is not known whether GI could meet total industry demand. As an alternative possibility, the far-sighted receiver manufacturer, perceiving this result, could resist the temptation to switch to GI, the predictable result in this instance being a large influx of waiver requests. While we are prepared to impose a requirement without certain knowledge that immediate compliance is possible, we are not prepared to impose a requirement where every indication in advance is that it will have to be waived on a large scale. In view of these circumstances, we have settled on a compromise solution, which should provide incentive for improvement without fostering monopoly or large scale waiver requests. The requirement for July 1, 1975 will be accuracy within ±2 MHz of correct frequency. The modification of § 15.68(d)(3) proposed herein will go into effect July 1, 1976, with changes discussed below. Relief beyond that date, if required, will be considered only on individual waiver requests. Tarzian reports that 98% of its present product meets a ±2 MHz requirement now. It should be possible to bring this up to 100% by 1975. Since the requirement is achievable with tuners now in use, re-

ceiver manufacturers should not be troubled with redesign problems in the immediate future. At the same time, the 1976 date should allow time for Tarzian and others to develop a modified product meeting a ±1 MHz accuracy standard, especially if they accept GI's offer of licensing and technical assistance, and should provide the necessary incentive for doing so.

20. In respect to GI's capability to mass produce a tuner accurate to ±1 MHz in a receiver environment, it has of course to be acknowledged that we cannot be sure of such capability until tuners have been mass produced and tested in receivers. We do, however, think that there is a good prospect for achieving such results and sufficient basis for retaining the requirement. We would note in any event that manufacturers who opt for use of the ±1 MHz tuner in meeting the ±2 MHz 1975 requirement will develop measurement data for certification and for their quality control programs which will disclose with certainty, well before 1976, whether that turner will meet the ±1 MHz standard in the receiver. If the capability does not exist, we will state once more that it cannot be required, and that the ±1 MHz standard would have to be replaced by a feasible requirement. Even if this should prove necessary, we note, we still have every reason to believe that use of this tuner will provide quite satisfactory subjective results. We prefer this approach to that of measuring the tuner alone, apart from the receiver, and assuming compliance by a receiver equipped with a complying tuner. We are not at this time adopting Zenith's suggestion of a less strict standard for channels 70–83, first, because we are not at all certain deviation from correct frequency on those channels will be typically larger for an improved tuner and, secondly, because we think the ±1 MHz standard can be met on all channels. We are not, however, ruling such an approach out for future consideration, should problems arise and should that approach appear to offer a solution.

21. In view of the prices being quoted by GI (a 30 cent or 5–8% increase), concerns expressed about the cost of an improved tuner seem not to be justified. Our understanding is that the additional tuner cost reflects the cost of the additional blade, tooling, test equipment and, as Tarzian suggests, some additional labor cost for aligning the tuner. The increased labor costs follow from a larger number of alignment adjustments made to closer tolerances. However, the design of the modified tuner materially simplifies the alignment process, and not much more time or skill is required. Probably some additional alignment personnel would require some initial training and, during the early stages of production line work, would not be expected to produce the same quantity of tuners as experienced personnel. With a new tuner and a stricter accuracy standard, we would agree with Tarzian that manufacturers will need to test a larger number of receivers for compliance, particularly during the introductory period. It does not seem to us, however, that burdens and costs associated with use of the improved product are in any sense excessive, and we have no indication that they are such as to influence manufacturers to use other tuning systems.

22. Some of the comments express concern about the meaning of the phrase, "The need for routine fine tuning * * * is eliminated." This

is, of course, a subjective term, dependent on the demands of the viewer, and presents problems for the manufacturer in certificating compliance. To resolve this problem, we have amplified this provision, by specifiying that the use of tuning equipment meeting given specifications (heretofore mentioned only in the Notice of Proposed Rule Making) and tuning equipment producing tuning accuracy of the same order as such specified equipment is considered sufficient to eliminate the need for routine fine tuning. This approach should provide the objective standard needed for certification while preserving the performance standard (rather than design specification) characteristics of the rule. With regard to the word "routine," where routine fine tuning is eliminated by use of AFC, the occasional need to deactivate AFC and tune manually, due to characteristics of the broadcast signal or other special circumstances, does not constitute routine fine tuning. The occasional need to take an action under special circumstances is not a routine need to take that action.

23. EIA takes the position that we should not require the use of AFC in color or monochrome receivers, and the modified rule, of course, does not specify the use of AFC as the means of eliminating the need for routine fine tuning. We would stress, however, that the change is not designed to accommodate the manufacture of a lower cost non-comparable color receiver, but rather is simply a statement of the rule as a performance requirement. Kaiser's belief that this restatement is a relaxation of the present rule is mistaken, and its concern that the color picture will drop out or switch in and out if AFC is not used is misplaced. The need for routine fine tuning has not been eliminated if the receiver does not hold a satisfactory color picture. What the modified rule provides is that means other than AFC, if and when developed, may be used in achieving the tuning results now achievable on a non-memory UHF tuner combining AFC with an accurate channel selection mechanism. In contending that we should not regulate the performance of receivers voluntarily equipped with AFC, EIA seems to be saying that we should not concern ourselves with the accuracy of the channel selection mechanism or with the overall tuning performance. However, we are concerned about these matters and therefore reject this EIA proposition.

24. On consideration of the comments relating to the requirement that UHF and VHF fine tuning speeds be the same, we are persuaded that such a requirement is unnecessary and would be counter-productive. It has been deleted. The accuracy of settings obtainable with the fine tuning controls is dependent on numerous mechanical characteristics of the fine tuning mechanism, of which speed is only one, and the optimum trade-off between speed and precision varies among tuner types. Whereas speeds on the order of 200 kHz per degree of rotation mentioned in the comments for tuners accurate to ±3MHz would appear to be excessive for tuners accurate within ±1MHz of correct frequency, and speeds of 40 kHz per degree or lower as suggested by GI and Sylvania, would appear to be closer to optimum, we think the better course in this case is to refrain from imposing a requirement and to leave the question of fine tuning speed to the manufacturer's judgment. Since fine tuning speed has little or no bearing on the cost

or size of the tuning equipment, we have every reason to believe that the manufacturer will select, for a given tuner, a tuning speed he considers will best meet the needs and preferences of the viewer.

25. The tuning system developed by Standard Components (described in para. 14, *Supra*) has many attractive features. These include one knob channel selection and fine tuning, memory tuning, superior reset accuracy, and adaptability to all-channel remote control operation. The 82-position version of this tuning system presents no problem, but use of the 36-position version (on which three or less UHF channel numbers are displayed at each of 24 detented UHF settings) would conflict with Section 15.68(b) (3) of the Rules. The availability of UHF tuning equipment suited for remote control operation has been a problem, and use of the Standard Components product would clearly resolve that problem. The 36-position version of that product is preferred by receiver manufacturers and would, they believe, be preferred by their customers. The question then is whether we should authorize use of the 36-position version to encourage use of the product, particularly in remote control applications. In seeking an answer to that question, we contacted Kaiser, the only UHF television broadcasting interest to file comments in this proceeding, and were advised that they would welcome use of such a tuner that the many advantages, in effect, far outweighed relatively minor disadvantages associated with access to three channels and the display of three channel numbers at one detent setting. We are in agreement with Kaiser and Standard Components on this question and are accordingly amending Section 15.68(b)(3) to accommodate use of the 36-position Standard Components tuning system.

26. Authority for the amendment set out in the attached Appendix is set out in Section 4(i), 303(r) and (s), and 330 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r) and (s), and 330.

27. In view of the foregoing, IT IS ORDERED, effective November 30, 1973, that Part 15 of the Rules and Regulations is amended as set forth in the attached Appendix, and that this proceeding is TERMINATED.

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

APPENDIX

Part 15 of Chapter I of Title 47 of the Code of Federal Regulations is amended to read as follows:

§ 15.68(b)(3) & subparagraph (d)(3) are revised, and subparagraph (d)(4) is added to read as follows:

§ 15.68 *All-channel television broadcast reception; receivers manufactured on or after July 1, 1971.*

* * * * * * *

(b) * * *

(3) *Tuning controls and channel read-out.* UHF tuning controls and channel read-out on a given receiver shall be comparable in size, location, accessibility and legibility to VHF tuning controls and readout on that receiver. If any television receiver utilizes continuous UHF tuning for any function (e.g., as the basic tuning mode, for presetting a detent mechanism for repeated access at dis-

104-014—73——6

crete tuning positions, or for tuning a channel which cannot be assigned a discrete tuning position), that receiver shall be equipped to display the approximate UHF television channel the tuner has been positioned to receive. If any television receiver is equipped to provide repeated access to UHF television channels at discrete tuning positions, the manufacturer shall provide for the display of the precise UHF channel selected or shall provide to the user a means of identifying the precise channel selected without the use of tools: *Provided, however,* that the 70 UHF channel numbers may be displayed in groups of three or less at each of 24 settings, if

(i) The tuning mechanism uses a single control to select the VHF and UHF channels;

(ii) any one of the three channels simultaneously displayed can be precisely tuned to the correct frequency; and

(iii) the reset accuracy (with AFC, if provided) is sufficient to eliminate the need for routine fine tuning.

* * * * * * * * *

(d) * * *

(3) On or after July 1, 1975, a 70-position nonmemory UHF detent tuning system may be used to meet the requirements of this section provided the channel selection mechanism shall be capable of positioning the tuner to receive each UHF channel at its designated detent position, with maximum deviation from correct frequency on any detent setting not exceeding ± 2MHz, when approached from either direction of rotation.

(4) On or after July 1, 1976, a 70-position nonmemory UHF detent tuning system may be used to meet the requirements of this section, providing either of the following two conditions is met:

(i) *For any television receiver (monochrome or color).* The need for routine fine tuning of UHF channels is eliminated.

NOTE: This requirement will be considered met in each of the following circumstances:

The receiver is provided with AFC and a channel selection mechanism that is capable of positioning the tuner to receive each UHF channel at its designated detent position with a maximum deviation from correct frequency on any detent setting not exceeding ± 1 MHz, when approached from either direction of rotation.

The receiver is provided with AFC and a channel selection mechanism that is capable of positioning the tuner to receive each UHF channel at its designated detent position within the pull in range of the AFC, when approached from either direction of rotation.

The receiver is provided with any other tuning system that produces and maintains detented tuning accuracy of the same order as the above specified systems.

(ii) *For monochrome receivers only.* The UHF channel selection mechanism is capable of positioning the tuner to receive each UHF channel at its designated detent position, with maximum deviation from correct frequency on any detent setting not exceeding ± 1 MHz, when approached from either direction of rotation.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENTS OF SUBPARTS C, G, H, AND I OF PART 21 OF THE COMMISSION'S RULES TO REDUCE THE SEPARATION BETWEEN ASSIGNABLE FREQUENCIES IN THE 450–470 MC/S BAND FOR DOMESTIC PUBLIC RADIO SERVICES (OTHER THAN MARITIME MOBILE)	Docket No. 17023

ERRATA TO REPORT AND ORDER 11 FCC (2d) 977

(Released March 18, 1968)

The Report and Order, FCC 68–243, in the above matter, adopted March 6, 1968, and published in the Federal Register on March 15, 1968, 33 FR 4577, is corrected to read as follows:

1. On page 1 after the phrase "By the Commission:" the participation should read "Chairman Hyde absent; Commissioner Johnson concurring and issuing a statement."

2. The attached statement of Commissioner Johnson should be added to the Report and Order.

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

CONCURRING OPINION OF COMMISSIONER NICHOLAS JOHNSON

I concur in the Commission's order which divides those channels in the 450–470 mhz (megahertz) band which are now used by communications common carriers. By its action the Commission provides that two channels will be available where there was one before—users being required to use half the amount of frequency per channel. I concur because the Commission is providing for more intensive use of this part of the spectrum, but I am troubled about certain aspects of the decision. I have commented previously about the adequacy of the Commission's decisional processes with regard to frequency management but there are a few additional points I want to make in the context of this decision. (See Channel-Splitting in the 400–470 Mc/s Band, 8 P & F Radio Reg. 2d 1629, 1633 (1966); Frequency Allocations—450–470 Mc/s Band, 10 F.C.C. 2d 885, 897 (1967); Channel-Splitting, FCC 68–128 (1968).)

The Commission is, in effect, creating "new" spectrum space in a highly congested frequency band. In earlier actions the Commission has made rough judgments as to how new channels should be allocated.

It has not always given the newly created channels to previous users. In this case the Commission says that the question of reallocations is beyond the scope of this proceeding, and then proceeds to give all new channels to those who had the old channels. It may be that such an allocation of new channels is the most appropriate by whatever standards one might apply. But such a result is not warranted by our present analysis.

The most fundamental defect, of course, is that this Commission simply does not have a decisional scheme that would allow it rationally to compare the needs of alternative potential users of new channels.

Most of the frequencies affected by this decision are used by common carriers to provide mobile telephone systems—a variety of "land mobile" service. This is a land mobile service much different from services provided by the private use of frequencies in a taxicab dispatch service or a public safety service for police. Some work is now being done on common carrier systems that would combine several channels into a trunking-switching system with automatic multiple access to many channels. In such a system, if one channel is busy, a search is automatically made for an alternate channel, much as a telephone switching system searches for an available land route. The advantage of such a system is that situations in which unused and overloaded private channels exist side by side are eliminated. Users have a greater chance of getting a free channel. It may be that the use of radio channels under different peak needs could be much more efficient with systems of multiple-access switching—where a given channel is switched between uses for a taxicab, then a mobile car telephone, and then a television repair truck, and so forth. But we have not really allocated sufficient adjacent channels to common carrier users to test such ideas fully.

If the Commission is unable to make even elementary systematic comparisons between like users within a small band of frequencies one can imagine how much more impossible it would be for the Commission to make rational decisions as to basic reallocations between users, or systems of use (such as common carrier and private users). This is an era of burgeoning spectrum use, and rapidly changing technology. This Commission, however, has been reduced to searching for ways that growing needs can be met by methods and decisions that will hurt no present user—a course which promises only temporary and unsatisfactory spectrum management results. I regret we have not made more of the opportunity presented by this case.

F.C.C. 73-1073

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of	
ERWIN O'CONNER TRADING AS ERWIN O'CONNER BROADCASTING CO., DAYTON, TENN.	Docket No. 18547 File No. BPH-6408
NORMAN A. THOMAS, DAYTON, TENN.	Docket No. 18548
For Construction Permits	File No. BPH-6479

MEMORANDUM OPINION AND ORDER

(Adopted October 17, 1973; Released October 23, 1973)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT.

1. The Commission has under consideration: (a) a Review Board Decision in the above-captioned proceeding, 37 FCC 2d 983, released November 7, 1972; (b) an application for Review, filed December 8, 1972, by Norman A. Thomas; (c) an application for Review, filed February 20, 1973, by Erwin O'Conner[1]; (d) the various responsive pleadings to each application for review; (e) Motion to Strike Unauthorized Pleading, filed January 23, 1973, by Norman A. Thomas; and (f) Motion to Strike Late Filed Pleading, filed March 16, 1973, by Erwin O'Conner.

2. We have examined the entire record in this matter and find no error in the Review Board's disposition. We likewise find little, if any, merit in either party's application for review. Nevertheless, we feel that the deficiencies in the respective financial showings of O'Conner and Thomas may have been more of form than substance, and we believe that swifter initiation of a new FM service to the public in Dayton, Tennessee may result from the procedure we are adopting herein.

3. Accordingly, IT IS ORDERED, That this proceeding, on the Commission's own motion, IS REOPENED and REMANDED to the Administrative Law Judge who presided at the hearing for further evidentiary hearing at such time as he may direct consistently with his calendar; and

4. IT IS FURTHER ORDERED, That both parties shall submit explicit showings of financial ability to construct and operate their proposed stations. See *Ultravision Broadcasting Co.*, 1 FCC 2d 344 (1965); and

5. IT IS FURTHER ORDERED, That O'Conner and Thomas ARE GRANTED leave to amend their applications in this respect not later than 60 days following the release of this order; and

[1] O'Conner having petitioned the Review Board for reconsideration, the time for filing his above application for review was tolled.

6. IT IS FURTHER ORDERED, That the Administrative Law Judge, after the conclusion of the further evidentiary hearing, shall evaluate the financial showings and if he finds only one applicant is financially qualified he shall grant that application. If he finds both applicants are financially qualified, the Administrative Law Judge shall then determine which of the proposals would on a comparative basis better serve the public interest, and shall grant that application; and

7. IT IS FURTHER ORDERED, That, in view of the above disposition, the above-described Motions to Strike and applications for review of Thomas and O'Conner ARE DISMISSED as moot.

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

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint by
CLUB PALMACH RIFLE AND PISTOL CLUB, NEW YORK, N.Y.
Concerning Fairness Doctrine Re Station WNBC–TV

OCTOBER 11, 1973.

CLUB PALMACH RIFLE AND PISTOL CLUB,
c/o David I. Caplan, Esq.,
250 West 94th Street,
New York, N.Y. 10025

DEAR MR. CAPLAN: This will refer to your letter of August 16, 1973 concerning the fairness doctrine obligations which you believe were incurred by Station WNBC–TV, New York, New York, as a result of its broadcast of the program "Not For Women Only" on April 27, 1973. In particular you state that in response to the question by the program moderator as to whether there was any use in carrying a concealed weapon as protection against muggings, one of the guest panelists replied that he was opposed to people carrying or having guns because of the problem of accidents in the home. You contend that the issue of whether or not women should carry concealed weapons as protection against mugging is a controversial issue of public importance "because it goes to the ability of women to defend themselves against the depredations of the 'muggers' and rapists who prey upon defenseless women" and that licensee's refusal to entertain your request to afford anyone an opportunity to present contrasting viewpoints on this issue constitutes violation of the fairness doctrine.

In a response to you dated May 8, 1973, NBC stated that the program in question "was concerned with what society and its institutions, law enforcement, judicial administration, etc. could do" about muggings and that "only the first few minutes of the discussion was concerned with what the individual himself might do . . ." NBC further stated that "a passing reference to the possibility of arming one's self against possible muggers in the context of a larger discussion concerned with other aspects of the mugging problem does not require the presentation of contrasting views." Licensee concluded by stating that "whether or not individuals should carry guns for the purpose of defending themselves against would-be muggers" is not a controversial issue of public importance, and that it "know[s] of no significant body of responsible opinion that advocates defensive arms as an acceptable solution" to the problem.

The selection and presentation of specific program material are responsibilities of the station licensee, and under the provisions of Sec-

tion 326 of the Communications Act the Commission is specifically prohibited from censoring broadcast material.

However, if a station presents one side of a controversial issue of public importance, it is required to afford reasonable opportunity for the presentation of contrasting views. This policy, known as the fairness doctrine, does not require that "equal time" be afforded for each side, as would be the case if a political candidate appeared on the air during his campaign. Instead, the broadcast licensee has an affirmative duty to encourage and implement the broadcast of contrasting views in its overall programming which, of course, includes statements or actions reported on news programs. Thus, both sides need not be given in a single broadcast or series of broadcasts, and no particular person or group is entitled to appear on the station, since it is the right of the public to be informed which the fairness doctrine is designed to assure rather than the right of any individual to broadcast his views. It is the responsibility of the broadcast licensee to determine whether a controversial issue of public importance has been presented and, if so, how best to present contrasting views on the issue. The Commission will review complaints to determine whether the licensee can be said to have acted reasonably and in good faith. For your further information, we are enclosing a copy of the Commission's Public Notice of July 1, 1964, entitled "Applicability of the Fairness Doctrine in the Handling of Controversial Issues of Public Importance."

You contend that the comments made during the "Not For Women Only" program opposing the carrying of concealed weapons for protective purposes presented one side of the issue, "Whether women should carry weapons as protection against muggings." NBC, on the other hand, has stated that it does not believe that the foregoing in and of itself constitutes a controversial issue of public importance, but rather is a viewpoint in connection with the larger issue of gun control legislation. In this regard, your June 16 letter to WNBC stated that your complaint was not concerned with licensee's failure to afford reasonable opportunities for the presentation of contrasting views on the carrying of a weapon for protection against muggers. The Commission stated in *In re Petition of NBC* (AOPA) 25 FCC 2d 735 (1970), that "the fairness doctrine requires reasonable opportunity for the discussion of conflicting viewpoints on issues, but this does not mean that balance may be required as to every statement or assertion made during the discussion of a controversial issue." Moreover, the Commission stressed therein that the "licensee must be given considerable leeway for exercising reasonable judgment as to what statements or shades of opinion do require offsetting presentations. If every statement, or inference from statements or presentations, could be made the subject of a separate and distinct fairness requirement, the doctrine would be unworkable . . . a policy of requiring fairness, statement by statement or inference by inference, with constant governmental intervention to try to implement the policy, would simply be inconsistent with the profound national commitment to the principle that debate on public issues should be 'uninhibited, robust, wide-open.' "

We believe that the foregoing is applicable to your complaint, and that NBC was not unreasonable in concluding that the issue of carrying weapons as protection against crime in and of itself is not a controversial issue of public importance, but is a viewpoint related to the issues of gun control, the "mugging problem" and/or law enforcement. You have not shown that WNBC–TV in its overall programming has failed to present contrasting views on these issues.

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

Sincerely yours,

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

F.C.C. 73-979

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
AMENDMENT OF SECTION 73.202(b), TABLE OF ASSIGNMENTS, FM BROADCAST STATIONS. (TOMS RIVER, N.J.)

MEMORANDUM OPINION AND ORDER

(Adopted September 19, 1973; Released October 19, 1973)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT.

1. The Commission has before it (a) the letter petition filed by GCC Communications of Philadelphia, Inc. ("GCC"), seeking reconsideration of the Commission's action, taken by delegated authority, returning GCC's petition for rule making; (b) oppositions to the petition for reconsideration filed by Seashore Broadcasting Corporation and Newark Broadcasting Corporation, and (c) GCC's reply.

2. The complained of action was the return by staff letter of GCC's petition. The letter held the petition to be defective and inconsistent with the Commission's rules and as such unacceptable for filing. GCC contends that it was entitled to consideration of its petition on the merits (hopefully leading to issuance of a Notice of Proposed Rule Making). It thinks this is particularly necessary in this instance since one of the alternative forms of relief it sought did not involve a violation of the Commission's rules. GCC acknowledges that the other form of relief would involve such a violation, but it argues that waiver should have been granted. To the extent that GCC wishes consideration of its petition on the merits, our action herein is responsive to that request. Even though the petition for reconsideration was in letter form and did little more than explain and retender the original petition as an attachment, for reasons which will become clear from the subsequent discussion, we think it appropriate to give the petition full consideration on the merits. As a consequence we shall not insist on or examine the petition for compliance with all technical requirements applicable to such petitions. Before dealing *seriatum* with the issues presented by the petition and providing our reasons for resolving these issues as we shall, we turn to a description of the factual context in which these issues arose.

3. GCC is licensee of Philadelphia FM Station WIFI(FM) and operates it with maximum Class B facilities (50 kW ERP, 500 feet AAT) from a site about 18 miles from Philadelphia. GCC increased the station's facilities to the maximum not long after its 1970 acquisition of the station. Even so, GCC found its signal level in the center-city area of Philadelphia to be at a low level because of shadowing

caused by a number of tall buildings. As GCC describes it, the station's signal is so reduced that it fails to provide the minimum signal level over the community required by the Commission's rules. This situation, said to put GCC at a serious competitive disadvantage, has led it to consider various means of correction. It described its effort, undertaken at no small cost, to construct and operate an on-channel booster, only to find that it left the problem uncorrected. It also explored use of a possible new site which is already being utilized by the Pennsylvania state police for its own transmissions. But this too was apparently to no avail. Thus, this petition is the latest step in the series of efforts that began with the increase in facilities at the present site.

4. GCC's predicament is not surprising considering the distance of the station's site from Philadelphia and the expectable shadowing effect of the taller buildings there. One possible method of alleviating this problem from the current site would be an increase in antenna height above average terrain with a compensatory decrease in power. We have not been told whether this approach would be feasible or whether it could be expected to offer any significant improvement. GCC has chosen another method: changing site to the Philadelphia antenna farm. In the abstract this approach appears like a sensible response to GCC's problem and might well be curative of it. The point at issue is not this step in itself but the question of whether the gains thus achievable are sufficient to overcome concern with the ensuing consequences.

5. Ordinarily a site change is not a major matter requiring the initiation of a rule making proceeding. Here, however, the situation is different because of spacing restrictions on WIFI(FM). In fact, the station could only move a short distance toward Philadelphia without violating the spacing requirements of the Commission's rules, a move not large enough to much alter the situation. GCC's response to this is to urge us to require Station WOBM(FM) in Toms River, New Jersey, to change channels from 224A to 261A. Seashore Broadcasting Corporation ("Seashore"), licensee of that station, is one of the opponents to the petition. If the change were made, the spacing problem for Station WIFI(FM) would be removed and it could make use of the antenna farm. However, if Station WOBM(FM)'s channel were changed, it would find itself short-spaced to Station WVNJ–FM in Newark, New Jersey. WVNJ–FM's licensee, Newark Broadcasting Corporation ("Newark"), also has objected. GCC urges us to sanction the short-spacing or to require a change in Station WOBM(FM)'s site sufficient to remove the short-spacing that would otherwise result from the proposed channel change.

6. To support the need for the relief it seeks, GCC points to its inability to provide a satisfactory signal to center-city areas of Philadelphia, with the result that its programs or public service announcements directed to people living in these areas are unable to reach their intended audience. It says that the situation is aggravated by the high signal level of a station, four channels removed.[1] GCC also points to

[1] Any problem in this regard is evidence of a receiver problem as stations four channels removed are considered able to co-exist in a given community.

the competitive disadvantage it faces on this account. In its view, these are important enough matters to sanction a minor short-spacing between Stations WOBM(FM) and WVNJ–FM or to require a change in Station WOBM(FM)'s site. According to its engineering showing, the effect on these stations would not be great. GCC states that no 1 mV/m interference would result and that on the new channel Station WOBM(FM) would have an improved interference-free service area. GCC asserts that the affected areas for the stations are not ones in which either has listeners. Finally, GCC asserts that much of the interference area for Station WOBM(FM) is already receiving interference from Station WXUR–FM.[2]

7. GCC suggests that if the Commission is not disposed to follow the short-spacing approach, it instead could order Station WOBM (FM) to change site to remove this shortage; GCC contends that a site for this purpose would be available. GCC indicates that it is willing to accept whatever costs are involved in this site change and urges us to reject the oppositions to it as based on private interest considerations alone. Moreover, GCC sees favorable action on its petition as consistent with Commission action in other cases and contends that the fact that no site change such as this has ever been ordered before is no reason for not doing so here.

8. Expectedly, Newark and Seashore see matters in a quite difference light. They charge that creating a short-spacing here is unwarranted and in violation of the purposes of the Commission's rules and policies governing the making of FM assignments. Moreover, they charge that any such action would run directly counter to the Commission's action in the *Matter of FM Rule Making Portland, Tennessee*, 35 F.C.C. 2d 601, 25 RR 2d 1631 (1972). In that case, even the fact that a first assignment would have been made possible did not warrant creation of short-spacing. The opponents state that no support exists here for requiring a change in site of an existing station in order to avoid a short-spacing not of its own making. This, they insist, would be violative of public and private rights as well as creative of a multitude of problems.

9. As we observed in the *Portland FM* case, *supra*, a recognition of the importance of the objective cited by the petition (in that case a first local assignment) does not mandate pursuit of that objective regardless of its consequences. In the present case, there is no dispute that Station WIFI's position is less than ideal. Due to shadowing, perhaps the station is even in violation of the Commission's rules regarding principal city coverage. While improvement in this situation is clearly desirable, we have to examine all pertinent factors, not just deficiencies in Station WIFI's signal level. Nor can we overlook the fact that Philadelphia has 12 other commercial FM stations serving it, as well as 11 AM stations. While this does not lessen the station's degree of private interest in the matter, it is certainly pertinent to evaluating the impact any inadequacy in WIFI's coverage has on the public. GCC may well be correct when it charges that the objectors base much of

[2] Now that the operation of Station WXUR–FM has been terminated such significance as this point might once have had no longer exists.

their argument on their own private interests but the charge can just as well be made about GCC's arguments. While GCC refers to its inner-city oriented programs, it has not asserted that its offerings to the inner-city area are in any way unique or that the many other stations in Philadelphia leave the inner-city population unserved or even underserved.

10. In terms of equity, we are constrained to note that GCC knew or should have known of the station's coverage deficiencies when it was purchased. Any lack of wisdom in this regard must be its responsibility, not that of the Commission to correct. In fact, GCC acknowledges that the station was moved, by a prior licensee, from its in-town site to one far removed. While improvident, this move voluntarily made, hardly provides a basis for equitable relief. That Station WIFI's coverage leaves something to be desired is clear, but the proposed means of correcting this would have the effect of creating worse problems. However, before detailing our views on its proposed solutions, we should point out that GCC would be on much stronger ground if it were only seeking to change the channel on which another station operated. On any number of occasions we have required such a change, normally to permit a new assignment rather than improved coverage. GCC is correct that we have even expressed a willingness to explore the possibility of making an assignment that would require changing the channels of six operating stations. That proceeding remains unresolved, but even without such a precedent, it is clear that if GCC had suggested a change only in channel (not requiring a change in transmitter site as well) that met the spacing requirements, the proposal might well be worth exploring. That, however, is not the situation before us.

11. One of GCC's proposals is to simply change the channel on which Station WOBM(FM) operates, thus creating a 1.9 mile shortage between that station and Station WVNJ–FM in Newark. Our view in such matters was stated in the *Portland, Tennessee*, case, *supra*. We need not repeat all the discussion here. In essence, we insisted on giving recognition to the impact of the proposal on the public interest, detrimental impact as well as beneficial. There, even though a first assignment would have been possible for a community of some size, we refused to proceed when the result would have been the creation of short spacings for existing stations. We explained the reasons why we had never knowingly created a short-spaced assignment, even though we have on occasion tolerated minor shortages when applications were filed. Simply put, when an assignment is made it is intended to further the purposes of the FM Table and the standards on which the Table rests. Sometimes, because of unanticipated problems, even properly made assignments cannot be effectuated in compliance with the spacing requirements. In such instances, where the deviation is minor, exceptions have been made. This is a far cry from an intention to make an assignment where there is no possibility of compliance. By any reasonable test, GCC is in a weaker position than the Portland petitioner. Unlike Portland, Tennessee, Philadelphia has a multiplicity of local services, AM and FM (TV too for that matter). In the absence of special justification, something we do not find in GCC's

arguments, there is no public interest basis for favorable action on this proposal. GCC has failed to offer information which if true would show that the rule should not be applicable to the present circumstance or to show that its proposal is in any way consistent with the purpose of the rule specifying minimum mileage separations.[3] One of the points made by GCC, that since a serious shortage already affects WVNJ–FM, the proposed shortage would have little impact, cannot be given any weight. Whatever importance this might once have had, the fact is that the other station is no longer in operation, and even if it were, there would still have been an incremental impact even by GCC's calculations. In sum, the short-spacing approach is bereft of real value in serving the public interest.

12. In approaching the question of requiring a change in Station WOBM's transmitter site we are faced with a case of first impression. The fact that we have never taken such an action before is not in itself an answer to the request to do so here. Such an argument could be used against any new step, however much warranted it might be. There is a value, however, in exploring the reasons for our not having done so before. This step is not a mere extension of the rationale used in changing an existing station's frequency. The two actions differ markedly in degree. While it is true that even a change in channel causes some disruption, this consists primarily of engineering work (principally in connection with the antenna and in changing the crystal) and in informing the public of where to tune in on the dial in the future. On a number of occasions we have concluded that such disruption has only a limited public impact, so that when there are clear public gains to be had thereby, those gains were found to override the private impact on the affected station. Cost is not a problem, as it is knowable and finite, and reimbursement is provided by the party benefiting from the change. When it comes to requiring a change in site as well, even if the cost were to be accepted by the petitioning party, the situation is quite different.

13. To all the changes necessitated by the change in frequency alone are added several matters of public impact as well as a series of unknown factors which affect the station and perhaps the public as well. Among the unknowns are: Is a site available for use? Is it priced within reason?[4] Is the land suitable for FM tower construction? Do aeronautical considerations restrict antenna height and hence coverage? Are there intervening hills that could cause shadowing? The mere fact that there is an area in which the station theoretically could relocate provides no answer. While it could be argued that we always face the problem in rule making of not knowing about the site to be used, there is a difference. In the ordinary case it is the prospective operator who faces the problem. If he fails in the quest for a satisfac-

[3] It is mileage, not the presence or absence of interference, that governs. To deviate from this standard is to undermine the balance struck in the FM rules between variety of services and effective coverage. Such action is not warranted here.

[4] GCC's willingness to accept the costs cannot be taken as being without limit so that this factor may be of importance. For example, if the only available land were to be used for a shopping center, so that the whole parcel would have to be bought at a higher price than the developer would pay, this might well exceed GCC's willingness to pay.

tory site no public loss is occasioned. At worst, the public will not be able to receive the hoped-for gain. Here, however, an existing operation would be affected in unknown ways. GCC has offered no showing that the cost, terrain and aeronautical factors (or anything else for that matter) are consistent with effective operation by the station in question. How we could possibly sanction such a step without this data is beyond understanding.

14. GCC acts as if there would be no public impact flowing from the proposed change in site, but that is not the case. Inevitably some listeners will be lost. Others might well be gained. Nothing is said of the loss of listeners or of the impact on these listeners. Unlike a frequency change alone where the audience remains, here members of the public will lose the service not just have to turn the dial to look elsewhere for it. Another problem in this case results from the current use by WOBM(FM) of its transmitter site for its main studio location. Would GCC have us require the maintenance of two separate operations? (And would it forever assume the cost?) Or would it have us sanction a deviation from rule procedures governing studio location. There is not a shred of supportive data on any of these aspects. In the absence of satisfactory answers to all of these questions, in all of the areas of concern, we find no basis for concluding that the public would be served by the proposals before us. In fact, since all indications are to the contrary, no useful purpose would be served by issuance of a Notice of Proposed Rule Making.[5]

15. Therefore, IT IS ORDERED, That the subject petition for reconsideration IS DENIED and the previous action returning the petition IS AFFIRMED.

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

[5] Arguably, under Sections 1.401 and 1.403 GCC's petition should have been assigned a Rule Making number, but Section 0.281(bb) suggests the contrary if a petition plainly does not warrant consideration by the Commission. In any event, the failure to assign a Rule Making number is without practical effect, as there was a Public Notice of the filing of the petition for reconsideration and responsive comments on it were filed. This served the same purpose as assigning a number and the Commission has before it information sufficient for resolution of the matters in dispute. Thus, no purpose would be served by assigning a number and GCC's request that we do so will be denied.

F.C.C. 73–1088

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF SECTION 73.202(b), TABLE OF ASSIGNMENTS, FM BROADCAST STATIONS. (MONTE RIO, CALIF.)	Docket No. 19848 RM–2089

NOTICE OF PROPOSED RULEMAKING

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

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT.

1. The Commission has before it a petition for rule making filed by Communications Associates ("C.A."); an opposition to the petition filed by Redwood Empire Stereocasters ("Redwood") licensee of Station KZST(FM), Santa Rosa, California, and C.A.'s reply to the oppostion. Various informal filings have also been received.

2. C.A. seeks the assignment of Channel 249A at Monte Rio, California. The proposed assignment would meet all applicable spacing requirements and would not require any changes in existing assignments. Monte Rio, an unincorporated community about 16 miles west of Santa Rosa, has no current FM assignments. The dispute between the parties centers on two points; the adequacy of service in the area and Monte Rio's need for an FM assignment.

3. According to C.A., Monte Rio's population is 1,200 while Redwood contends that the figure is only 900. Since the 1970 Census reports list all unincorporated communities over 1,000 population and since Monte Rio was not listed, it appears that Monte Rio's population was not then 1,000. This, of course, does not tell us what Monte Rio's population was in 1970 or what it is today. Accordingly, we need more precise information on this score, as well as a better defined sense of the community's boundaries. Maps of appropriate scale would be beneficial in resolving this point. Even the larger figure supplied by C.A. is rather low and leaves unsettled the question of whether the community is large enough to warrant an assignment. To help us resolve this question we need more data on several points. In addition to the population of Monte Rio, we need to know about other nearby population centers and information on area business activities. By this we do not mean just the number of businesses in the area (as to which the parties have supplied widely divergent figures) but a better notion of the volume of business they do. Apparently, this is a tourist area, but the data on the number of tourists who visit the area and the length of the tourist season is scanty.

4. C.A. asserts that a first FM service could be brought to 15,248 persons but Redwood disputes this. Redwood apparently agrees that

some first FM service could result. Although we would welcome any additional showings on this point, it is not central to the case as matters now stand. Rather, since some first FM service would result, the question is one of using Monte Rio as the location for a station to provide it. Thus, we need to consider not only Monte Rio's viability but the possibility of other locations as well. Even though we reserve judgment on all of the points at issue, we do believe that the subject warrants exploration, and comments on the proposal are invited.

5. *Showings required.* All parties, including the petitioner, should file comments with respect to the need of the proposed assignment. Failure of the petitioner to file any further pleadings may lead to a denial of its request.

6. *Cut-off procedure.* 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 proposal in this Notice, they will be considered as comments in this proceeding, and Public Notice to that 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.

7. In view of the foregoing and pursuant to authority contained in Sections 4(i), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, we propose for consideration the following revisions in our FM Table of Assignments (Section 73.202(b) of the rules) with respect to the city listed below:

City	Channel No.	
	Present	Proposed
Monte Rio, California		249A

8. 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 30, 1973, and reply comments on or before December 11, 1973. All submissions by parties to this proceeding or persons acting on behalf of such parties, shall be made in written comments, reply comments, or other appropriate pleadings.

9. In accordance with the provisions of Section 1.419 of the Commission's Rules and Regulations, an original and 14 copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission. All filings made in this proceeding will be available for examination by interested parties 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, *Secretary.*

43 F.C.C. 2d

104-014—73——7

F.C.C. 73–1060

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of FOUR STATES TELEVISION, INC., GALLUP, N. MEX., AND WINDOW ROCK, ARIZ. For Construction Permit for New VHF Television Translator Station	File No. BPTTV–4757

MEMORANDUM OPINION AND ORDER

(Adopted October 11, 1973; Released October 16, 1973)

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

1. The Commission has before it for consideration the above-captioned application of Four States Television, Inc., licensee of television station KIVA–TV, channel 12, Farmington, New Mexico (NBC), requesting a construction permit for a new 100-watt VHF television broadcast translator station to serve Gallup, New Mexico, and Window Rock, Arizona, by rebroadcasting station KIVA–TV on output channel 10.[1] On May 23, 1973, Hubbard Broadcasting, Inc., licensee of television station KOB–TV, channel 4, Albuquerque, New Mexico (NBC), filed an "opposition" to the application, which we construe to be an informal objection filed pursuant to section 1.587 of the Commission's rules because it does not purport to be a statutory petition to deny nor does it comply with the statutory requirements for a petition to deny. On July 2, 1973, the applicant filed a reply thereto and no further pleadings were filed.

2. Window Rock and Gallup are beyond the predicted Grade B contours of both stations KIVA–TV and KOB–TV; both are NBC affiliates. Window Rock is 140 miles from Albuquerque and 85 miles from Farmington; Gallup is 125 miles from Albuquerque and 85 miles from Farmington. Television service is provided to the Gallup area principally by translators licensed to the City of Gallup and rebroadcasting Albuquerque, New Mexico, television stations as follows: K70AZ, rebroadcasting KOB–TV; K78AV, rebroadcasting KOAT–TV; K83AG, rebroadcasting KGGM–TV; and K74AZ, licensed to the Gallup McKinley County Public Schools and rebroadcasting noncommercial educational station KNME–TV, Albuquerque. In addition, a number of VHF translators serve neighboring areas[2].

[1] Channel 10 is listed in the television table of assignments (section 73.606(b) of the Commission's rules) for Gallup, New Mexico, and is unused by any television broadcast station.

[2] K11CD, Zuni Pueblo, New Mexico, licensed to the Zuni Tribe, and rebroadcasting KOB–TV; K11GV, Sheep Springs, Naschitti Schools, Coyote Canyon Schools, Tohatchi, Mexican Springs, and area west of Dezza Bluff, New Mexico, licensed to the Navaho Tribe, and rebroadcasting KOAT–TV; K09FR, Zuni Pueblo, New Mexico, licensed to the Zuni Tribe, rebroadcasting KOAT–TV; K09GU, same communities as K11GV, licensed to the Navaho Tribe, rebroadcasting KGGM–TV. There are other translators serving these communities on output channels which are not affected by this proceeding.

Because the applicant proposes to operate on assigned and unused channel 10, the objector fears that interference will be caused to the operation of the channel 9 and channel 11 translators listed in footnote 2, below. This is the heart of the objections.

3. The channel on which the applicant proposes to operate is listed in the table of assignments and it is, therefore, a frequency which ". . . is considered reserved in (the) area and, as with a regular television station operating on such a channel, translators so operating are entitled to protection." *Report and Order* in Docket No. 18861, 23 RR 2d 1504; *Nevada Radio-Television, Inc.*, 39 FCC 2d 555, 25 RR 2d 1197. Section 74.703(a) of the rules specifically provides:

> VHF and UHF translator stations operating on channels not listed in the television table of assignments shall not be entitled to protection from interference by translators operating on channels listed in the television table of assignments but shall, in all cases, protect translators operating on listed channels from interference.

Accordingly, it seems to us, the rule, designed to meet precisely this type of situation, is dispositive of this matter.

4. The objector also states that authorization of a VHF translator to serve Gallup would be inconsistent with section 74.732(d) of the rules which prohibits a VHF translator to serve an area which receives satisfactory service from a UHF television station or a UHF translator unless such intermixture can be justified. This rule was never intended to apply to translators operating on VHF channels listed in the Television Table of Assignments because as we pointed out in the preceding paragraph, the frequency represented by a listed channel is considered reserved in that area. A listed channel is assigned to a community specifically for use by a VHF television station whether or not the area is otherwise a UHF area, and the Commission long ago found that it would be in the public interest to allow the use of such a channel by a 100-watt translator if no television station were operating on the channel. See *Report and Order* in Docket No. 15858, 1 FCC 2d 15, 5 RR 2d 1702 (1965). For many years, the Commission has been authorizing 100-watt VHF translators on listed channels in communities which were served by UHF translators. See, for example, *WLUC, Incorporated*, 13 FCC 2d 406, 13 RR 2d 508 (1968) and *The Montana Network*, 9 FCC 2d 705, Flagstaff, Arizona (K13JI); Alamosa, Colorado (KØ3CO); Logan, Utah (K12HT). Consequently, we find that the application is consistent with section 74.732(d) of the rules.

5. Lest it be concluded that we are indifferent to the possibility of interference by the proposed translator to the Zuni and Navaho adjacent channel translators, despite the clear provisions of the rules that they are not entitled to protection by the 100-watt translator, we have carefully considered this possibility and have concluded that it is remote. The proposed translator site is about six miles northeast of Gallup with main radiation lobes oriented at 209 degrees true to serve Gallup and 283 degrees true to serve Window Rock. The communities served by the Navaho translators (KØ9GU and K11GV) lie generally north of Gallup and the proposed translator's signals would,

therefore, be directed away from those communities. The closest of these communities (Mexican Springs) to the proposed translator site is 14 miles, but it is only 8 miles from the site of the Navaho translators. It is not likely that the service areas could overlap. The Zuni translators (K09FR and K11CD) serve Zuni Pueblo, which is nearly 30 miles south southwest of Gallup and their transmitting antennas are oriented at 240 degrees true (southwest), away from Gallup. Zuni Pueblo is 38 miles from Gallup and nearly 44 miles from the proposed translator site. Consequently, it appears that the possibility of interference is not such as to warrant concern.[3]

6. We find that the objections filed herein [4] are without merit. We further find that the applicant is qualified to construct, own and operate the proposed translator station, that the application is consistent with the Commission's rules, and that a grant of the application would serve the public interest, convenience and necessity.

Accordingly, IT IS ORDERED, That the objections filed herein by Hubbard Broadcasting, Inc., ARE DENIED, and the above-captioned application of Four States Television, Inc., IS GRANTED, in accordance with specifications to be issued.

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

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[3] The proposed translator transmitting antenna to serve Gallup is mounted atop a 50-foot tower with radiation center 7,905 feet AMSL; effective radiated visual power toward Gallup would be 356 watts. Zuni Pueblo, about 44 miles away, is 6,300 feet AMSL in terrain just west of the Continental Divide.

[4] Attached to the Hubbard objections were letters from the City of Gallup, the Pueblo of Zuni, and the Navaho Tribe, all addressed to the Commission, all objecting to a grant of the application, and, with the exception of the Navaho letter, all appearing to be originals. Only the Navaho letter was ever filed with the Commission and that was subsequently recanted by the Tribe with the statement that the original letter of objection was unauthorized and contrary to the Tribe's position and that its author had been released. We have considered these letters as a part of the Hubbard objections.

F.C.C. 73–1085

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re	
G–F CABLE TV, INC., GRAND FORKS, N. DAK., EAST GRAND FORKS, MINN.	CAC–884 (ND002) CAC–885 (MN047)

MEMORANDUM OPINION AND ORDER

(Adopted October 17, 1973; Released October 25, 1973)

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

1. G–F Cable TV, Inc., filed on July 25, 1972, the above-captioned applications for certificates of compliance to add two television broadcast signals to its existing cable television systems now serving Grand Forks, North Dakota, and East Grand Forks, Minnesota.[1] G–F's current carriage consists of the following:

KXJB–TV, CBS, Ch. 4, Valley City, North Dakota.
WDAY–TV, NBC, Ch. 6, Fargo, North Dakota.
KFME, Educ., Ch. 13, Fargo, North Dakota.
KTHI–TV, ABC, Ch. 11, Fargo, North Dakota.
CBWFT, CBC, Ch. 3, Winnipeg, Canada.
CBWT, CBC, Ch. 6, Winnipeg, Canada.
CJAY–TV, Ind., Ch. 7, Winnipeg, Canada.
WDAZ–TV, NBC, Ch. 8, Devil's Lake, North Dakota.
KCND–TV, ABC, Ch. 12, Pembia, North Dakota.

Proposed additional signals consist of the following:

WTCN–TV, Ind., Ch. 11, Minneapolis, Minnesota.
WVTV, Ind., Ch. 18, Milwaukee, Wisconsin.

G–F's application and current carriage are opposed by Spokane TV, Inc., licensee of Station KTHI–TV, Fargo, North Dakota, in its "Petition to Deny and to Order Termination of Unauthorized Service," filed September 8, 1972.

2. Spokane TV contends that Grand Forks, North Dakota, and East Grand Forks, Minnesota are within the specified 35-mile zone of the Fargo-Grand Forks-Valley City, North Dakota market, the result of which would require G–F's carriage to comply with Sections 76.63 and

[1] The communities of Grand Forks and East Grand Forks have populations of 40,060 and 8,740, respectively, and G–F was serving a total of 4,746 subscribers as of January 1, 1973. The cable systems commenced operations in November, 1970, and currently have 20 channels available for carriage of broadcast and access services. Of these channels, nine are used for television signal carriage, one for non-automated program originations, and two for automated program originations (a time-weather channel and a news ticker channel). In addition, all-band FM is carried.

76.251 of the Rules. Accordingly, Spokane TV argues since G–F Cable is already carrying three independent distant stations from Canada, it may not add additional independent stations. Furthermore, Spokane TV contends it was never notified of G–F's intention to carry CBWT–TV and CJAY–TV, nor is there notice in Commission files of the intention of G–F to carry the signal of CBWFT, pursuant to former Section 74.1105 of the Commission's Rules, and as a result, carriage of these signals should be discontinued.

3. In its reply, G–F states that both Grand Forks and East Grand Forks are outside of all specified 35-mile zones; carriage is, therefore, controlled by Section 76.57 of the Rules. In response to Spokane TV's claim of non-notification, G–F avers it did comply with the requirements of Section 74.1105 by sending notifications of intended carriage of CBWT and CJAY–TV to all required parties, including copies thereof to the Commission, on July 3, 1969, and by sending notifications of intent to carry CBWFT to all required parties in October, 1971. In both instances, G–F states that KTHI–TV was considered as a required party to be notified, and includes copies of the notifications sent to KTHI–TV.

4. On June 26, 1972, prior to the filing of G–F's application for certification under the Commission's current rules, the Commission removed the city of Grand Forks, North Dakota from the Fargo-Grand Falls-Valley City, North Dakota market (#98).[2] Accordingly, Grand Forks, North Dakota, and East Grand Forks, Minnesota, are outside of the specified 35-mile zone of all markets, and therefore, the carriage rules of Section 76.57, *not* Sections 76.63 and 76.251, apply. G–F's carriage is consistent with Section 76.57.

5. Turning to Spokane TV's complaint of non-notification, this claim is based on a search by KTHI–TV of both Commission files and KTHI–TV files which resulted in failure to find any copies of notices concerning the carriage of the distant Canadian signals. However, Commission records do contain copies of the Section 74.1105 notifications, dated July 3, 1969, and marked received by the Commission on July 16, 1969, informing all required parties, including KTHI–TV, of G–F's intention to carry several signals, including CJAY–TV and CBWT. Furthermore, Commission files contain copies of similar notifications informing all required parties, including Spokane TV, of G–F's intention to carry the signal of CBWFT. These notifications were dated October 22, 1971, and received by the Commission on October 26, 1971.

6. Commission rulings have established that neither an objector's inability to recall receipt of a Section 74.1105 notification, nor his allegation that he is unable to find such notification, serves to invalidate that notification. The rule the Commission has adopted is that a letter mailed is presumed to have been received.[3] We therefore find G–F's notification to be in compliance with Commission rules, and it follows

[2] See *Reconsideration of the Cable Television Report and Order*, FCC 72–530, 36 FCC 2d 326 at 375.

[3] *Delaware County Cable Television Co.*, FCC 68–684, 13 FCC 2d 899 at 900 (1968); *El Paso Cablevision, Inc.*, FCC 71–65, 27 FCC 2d 835 at 836 (1971); *Midwest Video Corporation*, FCC 73–1043, — FCC 2d —.

that G–F's carriage of these Canadian signals is authorized.[4] In any event, because the subject communities are outside the specified zone of all television markets, carriage of the challenged Canadian signals is permitted under Section 76.57.

In view of the foregoing, we find that a grant of G–F's application would be consistent with the public interest.

Accordingly, IT IS ORDERED, That the "Petition to Deny and to Order Termination of Unauthorized Service," filed by Spokane TV, Inc., licensee of Station KTHI–TV, Fargo, North Dakota, IS DENIED.

IT IS FURTHER ORDERED, That "Application for Certification" filed by G–F Cable TV, Inc., IS GRANTED and an appropriate certificate of compliance will be issued.

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

[4] *Cable Television Report and Order*, FCC 72–108, 36 FCC 2d 143 n. 58.

F.C.C. 73-1080

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF PART 64 OF THE COMMISSION'S MISCELLANEOUS RULES RELATING TO COMMON CARRIERS IN ORDER TO GRANDFATHER CABLE TELEVISION SYSTEMS OPERATING IN THE OPERATING AREAS OF AFFILIATED TELEPHONE COMPANIES.	Rm. 2172

MEMORANDUM OPINION AND ORDER

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

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT.

1. Our Memorandum Opinion and Order (FCC 73-717) in Rm. 2172, released July 10, 1973 denied a request by the Denver and Ephrata Telephone Company to "grandfather" all currently operating, dually controlled, telephone and CATV companies. Our Order, in paragraphs 9 and 10 also discussed the rule, Section 64.602 [1], which allows for waiver of our proscription against dual ownership. It is apparent that paragraphs 9 and 10 of our July 10 Order have been the source of some perplexity to affiliated telephone companies presently operating CATV systems. This was brought to light in a Petition for Reconsideration, submitted August 8, 1973 by the United States Independent Telephone Association (USITA) and a letter of Clarification submitted July 20, 1973 by Jeremiah Courtney and Arthur Blooston attorneys for the parties responsible for the issuance of our July 10 Order. The position set forth in these two documents is that language contained in paragraphs 9 [2] and 10 [3] of the order are in essence rulemakings and if allowed to stand would have been instituted without any of the procedural safeguards of the Administrative Procedure Act.[4] The basis for this rulemaking claim is the assertion that paragraphs 9 and 10 amend Section 64.602 of the Commission's Rules.[5] More particularly, it is asserted that paragraphs 9 and 10 of our order eliminate one of the two criteria that the Commission, in Rule 64.602,

[1] 47 C.F.R. 64.602.

[2] "We were, of course, mindful of the burden we were imposing on our staff by requiring that all waivers be handled on a case-by-case basis. However, we decided that in this way we would insure that our policy would be implemented *except in those specific cases where implementation would deny a community access to cable television.*" (Emphasis added).

[3] "We stress that no application for waiver will be granted unless supported by a satisfactory showing, with appropriate documentation of the efforts made by applicant to divest itself of ownership and control of its cable television service and that its failure to come into compliance with the divestiture requirement is not due to any dereliction on the part of applicant in exploring and pursuing alternative arrangements. Based upon applicant's showing in this respect, we will determine whether the waiver should be granted, and, if so, the terms of any such waiver."

[4] 5 U.S.C. 553.

[5] Supra, note 1.

said it would look to in determining whether a waiver of Rule 64.601 should be allowed.

2. Rule 64.602 sets down two criteria that the Commission said it would look to in determining the justification for a waiver of Rule 64.601, they are:

"where CATV service demonstrably could not exist except through a CATV system related to or affiated with the local telephone common carrier and *upon other showing of good cause.*

The language in paragraph 9 and 10 of our July 10, 1973 Order seems to indicate that our policy will be to only allow waivers in a situation where but for the local telephone company there would be no CATV service. Such a conclusion was wholly unintended. These words were not written to express general application, they express a policy to be applied mainly in the situation wherein the applicant intends to base his claim of waiver on the theory that no CATV service could exist except it be "affiliated with the local telephone common carrier." When a carrier bases his claim of waiver on this theory, fairness to carriers who have sold their CATV systems demands that the threshold question of the good faith of the waiver applicant be considered before any consideration be given to the merits of his claim. What paragraphs 9 and 10 established is a test of good faith the Commission will apply when confronted with the "except through" type of waiver application. Therefore, we stress that it was not our purpose in paragraphs 9 and 10 of our July 10 Order to eliminate the "other showing of good cause" basis for a waiver.

3. The provisions of Section 64.602 of our Rules remain in effect as promulgated and modified by our Memorandum Opinion and Order of April 20, 1970.[6] Moreover, since waivers are to be considered on a case-by-case basis, we will continue to reach our public interest determination based on the particulars of each case as illuminated by the petition for waiver and comments on or oppositions to the petition as now provided by Section 64.602 of our Rules.

4. Accordingly, IT IS ORDERED, That the petition for reconsideration filed August 7, 1973 by the United States Independent Telephone Association IS DENIED.

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

[6] 22 F.C.C. 2d 746.

F.C.C. 73–926

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of Applications of GTE SATELLITE CORP. For Authorization To Lease Satellite Transponders and To Construct Five Earth Stations To Provide Domestic Communications Satellite Services.	Docket No. 19812 Files Nos. 14–DSE–P–71, 15–DSE–P–71, 16–DSE–P–71, 17–DSE–P–71, 14–DSE–P–73

MEMORANDUM OPINION AND ORDER

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

BY THE COMMISSION: COMMISSIONERS ROBERT E. LEE, JOHNSON AND H. REX LEE DISSENTING.

1. One of the domestic satellite system proposals considered by the Commission in the domestic satellite proceeding (Docket 16495) was a proposal by GTE Service Corporation and various GTE operated companies to provide interstate message toll telephone service (MTT) and private line services by means of satellite facilities leased from Hughes Aircraft Company, now National Satellite Services, Inc. (NSS) and earth stations owned by GTE. Following the issuance of the *Second Report and Order* in Docket 16495, GTE Service Corporation formed a separate corporate subsidiary, GTE Satellite Corporation (GSAT), to engage in domestic satellite operations and transferred the pending applications to that entity. NSS proposes to use the remainder of the satellite capacity now used by GSAT to provide interconnection service to public broadcasting interests without charge and to engage in its own private venture for distributing programming to the cable television industry. The two proposals are interdependent in that NSS represents that it cannot proceed and will abandon its application if the GSAT proposal is not authorized.

2. In the *Second Report and Order* on domestic satellites in Docket No. 16495 (38 FCC 2d 844, 853–854, paragraphs 27–30), the Commission left open the question of whether GSAT should be authorized to provide interstate MTT service via domestic satellite and determined that GSAT would, in any event, be under the same restriction as AT&T with respect to the provision of private line and other specialized services. Concerning MTT service, the Commission stated:

> 27. * * * in encouraging multiple entry and the development of competition in the supply of domestic communications, we have maintained a distinction between the so-called monopoly switched telephone services now being furnished by AT&T and all other classes of existing and potential specialized services. We have made this distinction not for the purpose of protecting any established position that AT&T occupies in the MTT field. Rather, it has been our purpose

and concern to protect the public in the availability of efficient and economic switched MTT services—an interest that might well be adversely affected by unnecessarily fragmenting responsibility for the planning and provision of the facilities required for this integrated service. On the other hand, we should not reject any proposal that might prove feasible and beneficial to the public simply because it represents some departure from the established scheme. This is particularly true when the proposal comes from an entity, such as GTE, which already is a significant participant in the furnishing of MTT facilities and services, although essentially as a carrier which originates, terminates, and switches large volumes of MTT traffic rather than in the provision of long lines transmission facilities.

28. At least potentially, GTE's proposal offers several advantages. It would introduce more directly, although on a limited scale, the perspective and experience of another responsible entity into the planning and operation of the interstate MTT network, which heretofore has been the sole responsibility of AT&T. It could provide a basis for regulatory comparison of the relative efficiencies and cost advantages of somewhat different technologies represented by AT&T's proposal and GTE's proposal. It could also tend to lessen AT&T's dominance and economic influence in the domestic communications field.

29. Notwithstanding these potential public benefits, there are a number of uncertainties, not dispelled by the information contained in the record before us, that must be resolved before we can make the required statutory finding that GTE's proposal will serve the public interest. Accordingly, before determining whether this portion of the Hughes/GTE applications should be authorized, we will require a showing of the nature described by the staff (paragraphs 98–99) concerning: what potential benefits might be achieved by affording GTE access to the satellite technology for this purpose; whether its proposal is economically justified from the standpoint of the public in terms of costs and prospective fill; the effect on GTE's present contracts for settlement with AT&T; GTE's plans for handling traffic in case of temporary outages or catastrophic failure of its satellite system facilities; how the costs of such facilities would be treated for ratemaking and accounting purposes; and the kinds of data it will gather and report to the Commission to assist our evaluation of the efficiency and economy of any authorized operations compared to continued exclusive reliance on the interstate switched telephone facilities of AT&T.

3. Further, if GSAT's domestic satellite proposal is authorized, the *Second Report* did not foreclose the possibility that GSAT would be the designated entity to provide MTT service to Hawaii if it showed that the cost of using its facilities would be less than or approximately equivalent to the cost of utilizing AT&T facilities (*Second Report*, 38 FCC 2d at 858, paragraph 39).

4. Neither GSAT nor NSS sought reconsideration of the *Second Report*. Instead GSAT filed amendments to the pending applications on October 16, 1972, which purported to make the showings required by the Commission. The staff afforded AT&T an opportunity to comment on the GSAT amended proposal, and AT&T filed its comments on November 27, 1972. Subsequently, GSAT filed a reply and AT&T filed supplemental comments.

5. The Commission has given careful consideration to the showings made by GSAT in support of its application with respect to the remaining issues specified in paragraph 29 of the *Second Report and Order* quoted above, as well as to the comments filed by AT&T and GSAT's replies thereto. It is the Commission's view that its resolution of these issues and the pleadings with respect thereto would be assisted by an oral argument at an early date as hereinafter designated with our final decision issued immediately thereafter.

6. Since no parties other than GSAT and AT&T have filed data and pleadings concerning the GSAT applications, we are limiting the arguments herein to those two parties. We are not concerned with the NSS aspects of the applications in this matter.

7. IT IS THEREFORE ORDERED, That an oral argument will be held before the Commission *en banc* at its offices in Washington, D.C., on September 11, 1973, at 9:30 a.m.

8. IT IS FURTHER ORDERED, That GSAT and AT&T shall each limit themselves to the issues as quoted above from paragraph 29 of the *Second Report and Order* in Docket 16495 and to the context of data and pleadings heretofore filed by said parties.

9. IT IS FURTHER ORDERED, That each party shall have 60 minutes of argument and GSAT shall have the right to open and close said argument.

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

F.C.C. 73-995

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of PREPARATION FOR THE ITU WORLD ADMINISTRATIVE RADIO CONFERENCE FOR MARITIME MOBILE TELECOMMUNICATIONS TO BE CONVENED APRIL 22, 1974	Docket No. 19325

SECOND REPORT

(Adopted September 26, 1973; Released October 23, 1973)

BY THE COMMISSION: COMMISSIONERS BURCH, CHAIRMAN; JOHNSON, REID AND WILEY CONCURRING IN THE RESULT; COMMISSIONER ROBERT E. LEE ABSENT.

1. On June 13, 1973, the Commission adopted its Third Notice of Inquiry in this proceeding, preparatory to a World Administrative Radio Conference for Maritime Mobile Telecommunications (WARC–MAR) to be convened April 22, 1974, and requested comments to be filed on or before July 16, 1973, and reply comments on or before July 25, 1973. By Order released July 6, 1973, in response to a pleading filed by the Radio Technical Commission for Marine Services, the Commission extended each date by one week to July 23 and August 1.

2. Comments were timely filed by the Radio Technical Commission for Marine Services (RTCM), Communications Satellite Corporation (COMSAT), American Telephone and Telegraph Company (AT&T), Aeronautical Radio, Inc. (ARINC), Association of American Railroads (AAR), American Institute of Merchant Shipping (AIMS), Lake Carriers' Association, North Pacific Marine Radio Council (NPMRC), William N. Krebs, Northern California Marine Radio Council (NCMRC), the land mobile section of the Electronic Industries Association (EIA), American Waterways Operators, Inc. (AWO), the Central Committee on Communication Facilities of the American Petroleum Institute (API), National Marine Electronics Association, Inc., Tug Communications, Inc., Northwest Towboat Association, and the Hawaiian Marine Radio Council. Additionally, comments which were timely filed by the NPMRC in response to the Commission's Second Notice of Inquiry in this proceeding, but which through inadvertence were not properly associated with the other comments, have been considered. Timely reply comments were filed by counsel for the Associated Public Safety Communications Officers, Incorporated (APCO). Reply comments were filed late by the Hawaiian Marine Radio Council and the Southern California Marine Radio

Council. However, both address *in toto* subjects treated in other comments.

3. Like the earlier Preliminary Views, the Draft Proposals of the U.S. for the WARC–MAR which were attached to the Third Notice of Inquiry in this proceeding were afforded wide distribution abroad through the Department of State in order to elicit the views of other administrations.

4. The comments filed by AT&T addressed only the matter of operation on 2182 kHz, with particular reference to the period commencing with the coming into force date of the Final Acts of the referenced conference and ending with the completed conversion to single sideband radiotelephony operation. The working group within which AT&T continues to be a participant had concluded subsequent to the completion of the Draft Proposals that an adjustment to the proposed modifications to MOD No. 984, MOD No. 992, MOD No. 996 and MOD No. 1323 should be made to facilitate operation in the interim period. While the AT&T filing treats only the first three Radio Regulations cited above, we are suitably modifying our proposals for all four to coincide with those recommended by the working group and, coincidentally, by AT&T's comments.

5. Appendix 19B of the Draft Proposals included a requirement for on-board communications facilities that it shall be possible to reduce, readily, the transmitter carrier power to 50 milliwatts. Such a requirement does not accord with the Commission's proceeding in Docket No. 19665. The EIA filing was devoted only to this matter and contained a statement that this requirement would obsolete all existing portables from use in this connection. API similarly stated *inter alia* that this requirement would obsolete much existing equipment. AIMS afforded what it described as its strong feeling that this provision is both unreasonable and not economically feasible, and would obsolete much existing equipment. The Commission concurs that much existing equipment would be obsoleted, and the 50 milliwatt proposal is withdrawn from consideration in connection with our preparatory work. In its stead and in consonance with Docket No. 19665 we propose internationally that control and telemetry signals emitted by on-board facilities shall be coded in such a manner as to minimize the possibility of false response to interfering signals. The benefits of excluding false responses are immediately evident upon considering the anchor control function of two nearby vessels, one of which may be under way. Lastly, since no Appendix 19A has been proposed, Appendix 19B is renumbered Appendix 19A and consequential editorial changes are being made.

6. The RTCM recommended that former Appendix 19B be expanded to insure that the receivers operating thereunder meet certain technical criteria so as to minimize harmful interference which might otherwise be caused to adjacent and co-channel users of the frequencies made available to on-board facilities. The last paragraph in the revision of Appendix 19A proposed by the RTCM states:

> **Receiver characteristics shall otherwise conform to those in Appendix 19.**

However, all relevant receiver characteristics are specified prior to that paragraph which is therefore considered unnecessary. Otherwise, for the reasons specified by the RTCM, the modifications it has proposed to Appendix 19B will be incorporated into the U.S. Proposals.

7. In filings by API and the NPMRC (as well as the NPMRC filing in response to the Second Notice of Inquiry in the Docket), attention was drawn to what were thought to be the difficulties and dangers attendant to a geographical distress signal. NPMRC points to the possibility of a distressed vessel being near the boundary of a given area while the nearest vessels are in the adjacent area. Secondly, the possibility of human error in setting the associated decoders exists. Either circumstance could result in otherwise available aid not being furnished the stricken vessel. The NPMRC comments were supported by Tug Communications, Inc., and by Northwest Towboat Association. Further, AIMS views this provision as being neither practical nor realistic. We find these arguments persuasive. The proposal that the digital distress call shall be confined to the geographical area in which the ship is operating is withdrawn by suitable modifications of ADD No. 9991.3.

8. AAR supported the proposal given in the Draft Proposals at MOD No. 287, and agrees that MOD No. 287 as shown in the Preliminary Views should be the subject of a separate rulemaking proceeding. On the other hand, the NCMRC and the NPMRC opted for the Preliminary Views version which would eventually require land mobile and remote pickup stations to vacate the bands given in the second paragraph of MOD No. 287, which in turn contain the frequencies appearing in Appendix 18 of the international Radio Regulations. As noted in the Third Notice of Inquiry, and in response to AAR, APCO, NAB and the Public Safety Communications Council (PSCC), the Commission confirms that a draft NPRM dealing with the national use of the Appendix 18 frequencies is already in preparation, will be released as a separate matter from this Docket as soon as practicable and will deal with their concerns. Further, the national implementation of the results of the 1974 WARC related to this matter, will be treated in separate rulemaking, as necessary. In connection with the second paragraph of No. 287 MAR, certain of the specific frequencies shown therein require editorial correction as noted earlier by the NPMRC so as to correspond to channel edges rather than channel centers, and the requisite correction will be incorporated into the Proposals. The frequency 162.025 MHz is assignable to U.S. Government stations, and through coordination with the Government Agencies, this frequency is being corrected to 162.0375 MHz for editorial purposes only.

9. Provision has been made in the Preliminary Views and subsequently the Draft Proposals to make 8 UHF channels available for on-board communications. This represents a growth factor of 4 over the 2 channels now appearing in the international Radio Regulations for internal operational communications on-board ships. No dissent from the proposed users has been received as regards these 8 channels.

Those users with which the channels would be shared presently experience sharing. Certain tests have suggested that UHF may provide a superior service, particularly below deck. Unlike UHF, the separation of only 100 kHz between VHF Channels 15 and 17 removes the possibility of improving the on-board facility's performance by using a repeater: Thus, as regards the comments by API, AIMS and Tug Communications, Inc., we find for the foregoing reasons that the on-board proposals given in the Draft Proposals will be incorporated into the Proposals and ADD No. 39A has been modified. As regards the statement by AIMS that it has petitioned the Commission to permit usage of these two VHF channels for on-board communication purposes, no petition has been received although the aforementioned fourfold growth factor will accommodate any foreseeable expansion. We note too that Tug Communications, Inc., by inference from its support of the NPMRC comments which seek the reinstatement of the proposed modification of No. 287 given in the Preliminary Views is the only commenter seeking to make additional primary channels available to the maritime mobile service which would have the effect of replacing those which would be made available under its comment which would provide VHF channels for on-board facilities. The need for additional channels under these circumstances would perhaps appear to be contrived.

10. Mr. Krebs proposes that, "Narrow-band frequency modulation be authorized for use on any frequency of the maritime mobile service below 30 MHz under such conditions as each administration shall decided for itself, solely for determining the relative effectiveness of this class of emission, upon the express condition that such use of narrow-band frequency modulation shall not at any time create harmful interference to any station of this service or any other radio service authorized by the Radio Regulations". The Commission will introduce this matter into the national CCIR preparatory forum inasmuch as this proposal would lack acceptance by the 1974 WARC without the prior endorsement of the CCIR.

11. COMSAT continues its support, noting that the Draft Proposals continue with the objective of providing a flexible preparatory framework. ARINC comments that the concerns of the aviation community have been substantially accommodated, but reiterates its position that representatives of aviation interests should be included in the United States Delegation to the Conference. The composition of that Delegation will, as in the past, be a matter for the Department of State to decide.

12. Paragraph 1 of the Third Notice of Inquiry in this proceeding indicated that the NPMRC's comments filed in response to the Second Notice were not properly associated with other comments received. The question raised in that filing as regards MOD No. 287 has been treated in paragraph 8 *supra*. The NPMRC recommended the suppression of No. 287A Spa. The reasons advanced by the NPMRC for this recommendation are conjectural in nature and lack supporting evidence. Additionally, adoption of this recommendation appears unwarranted in view of the proposals. The NPMRC comments directed to restricting aircraft power to one watt, as opposed to the recom-

mendatory nature of ADD No. 952B, would work an unwarranted hardship on the numerous existing stations fitted with five watt equipments. The requirement that a power of one watt or less shall be used to the maximum extent possible appears reasonable, noting the other restrictions proposed to be levied additionally upon potential aircraft station users.

13. The NPMRC contends that use of the words "THIS IS" in radiotelephony procedure is unnecessary and may be omitted. The question of the possible attendant confusion, noting that possible correspondents may not be of the same mother tongue or that conditions may be difficult, versus the small saving in time involved appears resolvable only in favor of retaining the requirement to use the phrase "THIS IS". This appears especially true where a possibly distressed vessel or where newer operators or both may be involved.

14. With respect to the NPMRC's comments regarding the digital selective calling proposals, there appears to be concern as to the possibility of too many ancillary features being mandatorily imposed. It is assumed that the NPMRC here refers to the basic capability set forth in ADD Article 28B. The proposed basic capability is intended to provide the minimum essential capability that would eventually permit discontinuance of aural watch on voluntarily fitted vessels. This would be at some future time when it may become practicable to make the digital system mandatory if radiotelephone is fitted on such vessels. In such cases any vessel fitting radiotelephone would become a part of the safety system, as is now the case where any vessel fitting radiotelephony must guard channel 16 aurally, and also 2182 kHz if medium frequency equipment is installed. We, therefore, find that an abridged system would not be acceptable. Similarly, as regards the parallel aural and digital selective calling watches that would be kept during the transition period obtaining until all vessels fitted with radio also are fitted with the digital system, we find it will be necessary that the present aural watch safety system be maintained. The digital system would, nonetheless, permit the discontinuance of aural watch on working frequencies in many instances, and improve watchkeeping moreover on frequencies where an aural watch is now maintained as use of the digital system grows. The NPMRC comments as regards a possible inconsistency involving the use of an area digital distress call following an all ships distress call by other than digital selective calling is met by the modification to the proposed ADD No. 999I.3 treated in paragraph 7 *supra*. In commenting on the language of ADD No. 999G.7 of the Draft Proposals, the NPMRC requests clarification as regards the reset feature of the digital selective calling system decoder. To provide clarity, new proposals ADD No. 999G.9 and ADD No. 999G.10 are adopted which respectively provide that distress calls shall be retained in the decoder display and the aural alarm shall continue until the decoder is manually reset and further that calls other than distress stored in a decoder shall not prevent reception and display of distress calls. With respect to the clarification sought by the NPMRC as regards ADD No. 999I of the Draft Proposals, it should be noted that ADD No. 999I is constructed as a conditional regulation for vessel stations inasmuch as the requirements for international

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watch maintenance are prescribed under the International Convention for the Safety of Life at Sea (London, 1960) and national requirements by the administration within whose waters a ship may be operating. The International Telecommunication Union does not have the prerogative to establish which ships shall be fitted mandatorily with radio for distress purposes. With regard to the NPMRC comment that the aural alarm signifying distress should be distinguishable from that for urgency and safety, we find that the distress alarm should be separate to be consistent with present distress autoalarm systems and practices. Paragraphs ADD No. 999G.7 and ADD No. 999G.8 of the Draft Proposals are being correspondingly revised.

15. The NPMRC notes that some administrations assign half of a duplex pair given in Appendix 18 for simplex operation, and recommends that, when this is done, the letter "A" be suffixed to the channel designator if the lower half of a duplex pair is used or the letter "B" if the upper half is used. The NPMRC believes that such a proposal is worthy of consideration in the international forum because it believes confusion arises between stations of different nationalities, including ship stations, where a duplex pair is not being used by both stations in the manner indicated in Appendix 18. We tend to disagree. Appendix 18 presently prescribes the international usage format contemplated. It would apparently seem inappropriate, therefore, to modify that Appendix to reflect national usage which does not fully accord with the international plan.

16. The NPMRC also take note of the fact that the frequency 160.9 MHz is not dedicated within Appendix 18, even though it is fully within the designated band limits, and recommends that it replace environmental transmissions now appearing on channel 15 thereby relieving the latter channel for two-way use. The frequency 160.9 MHz is not regularly assignable by the Commission. However, the frequencies 160.890 and 160.905 MHz are regularly assigned in many states in the Railroad Radio Service noting that railroad rights-of-way may tend to parallel navigable inland waterways, and both of these channels would overlap a channel centered on 160.9 MHz. Additionally, the conversion from channel 15 to 160.9 MHz would be expensive and time-consuming, and an interim procedure would have to be developed with the attendant risk of loss of important environmental bulletins by potential users. For these reasons, we have not adopted the NPMRC suggestion.

17. The API sought the replacement of the proposal that on-board communication stations not use a carrier power in excess of 2 watts by the constraint that effective radiated power of such a station not exceed 2 watts. This would accommodate, according to API, the use of so-called "lossy" antenna systems such as distributed coaxial cable as regards the below-deck operations of on-board stations. Taking note of these comments together with our action recently in Docket No. 19665, we are amending the Appendix 19A proposals such that the transmitter power of the on-board stations shall not exceed 4 watts carrier and 2 watts ERP.

18. The Final Acts of the World Administrative Telegraph and Telephone Conference (WATTC), Geneva, 1973, reflect action taken by that duly authorized body which impinge on the accuracy of cur-

rent provisions of Article 40 and Appendix 22 of the Radio Regulations. As has been the custom in the past, actions must be taken to conform pertinent provisions of the two international agreements. The proposals that we have adopted as regards Article 40 recognize that the accounting procedure formally fixed by the provisions of the Telegraph Regulations is now the subject of Recommendations of the C.C.I.T.T. The proposed revision of Article 40 is editorial, but recognizes the recommendatory nature of the C.C.I.T.T. provisions. Appendix 22, concerning the payment of balance of accounts, also requires modification to align it with the provisions of Appendix 1 to the Final Acts of the World Administrative Telegraph and Telephone Conference. Our proposals for Appendix 22 is designed to bring about that alignment.

19. The Ship Navigation Service evoked considerable comment, mostly constructive. It would appear that the proposal for this Service may not have been fully understood by those offering comments. Nevertheless, with the general comment being that too many channels would be designated for a safety service with possibly attendant adverse effects on the access to these channels by non-safety services, the Ship Navigation Service is being restyled. As was the case in our Preliminary Views, no change is proposed regarding No. 37, the definition of the present Port Operations Service, and the major column heading in Appendix 18 as regards single frequency and two frequency operation will be "Port Operations". Concerning the notes referring to the table therein, we do not now propose to change footnote b) in comparison to the existing footnote. Footnote k) is proposed to be added against channels 11 through 14 and is proposed to be worded as follows:

The Ship Navigation Service (see ADD No. 37A) will use channels 11 through 14. Administrations may designate additional such channels for this purpose. Frequencies of this service not designated for this use in a particular area may be used by the port operations service.

Add No. 37A is proposed to read as shown below:

Ship Navigation Service: A maritime mobile safety service between coast stations and ship stations or between ship stations for advising or controlling the movement of vessels. Messages which are of a public correspondence nature shall be excluded.

In all other respects, except other consequential editorial amendments, the Draft Proposals as regards the Ship Navigation Service will be incorporated into the U.S. Proposals. We believe that the foregoing responds appropriately to the comments received in light of the existing situation.

20. As stated earlier in this Docket, this is not a rulemaking proceeding. Its purpose has been to serve as a means for eliciting public comment in the development of the United States Proposals which will be subject to change up to and during the WARC to be convened next year. The United States Proposals are herewith adopted.[1]

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

[1] U.S. Proposals for the 1974 WARC are available for reference purposes in the Commission's Docket Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

F.C.C. 73-1078

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF PART 81 OF THE COMMISSION'S RULES TO PROVIDE FOR THE USE OF MARITIME MOBILE REPEATER STATIONS IN THE STATE OF ALASKA	Docket No. 19700

REPORT AND ORDER

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

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT

1. A Notice of Proposed Rule Making in the above-captioned matter was released on March 12, 1973, and was published in the Federal Register on March 20, 1973 (38 F.R. 7342). The dates for filing comments and reply comments have passed.

2. Comments were filed by the Central Committee on Communication Facilities of the American Petroleum Institute (API), Radio-Call, Inc. (RADIOCALL), and Service Electric Co., Inc. (SECO). Informal comments were filed by RCA Alaska Communications, Inc. (RCA).

3. API comments, on the basis of many years of experience in the operation of mobile repeater installation in the land mobile service, that in order to avoid unintended activation of the relay transmitter by other signals, a system of "tone coding" should be employed. At the same time, API recognizes that the use of tone coding would require the retrofitting of vessels already equipped with VHF and that to do so would probably be impractical, since the proposed use of maritime mobile repeaters is an interim arrangement pending availability of adequate VHF facilities in Alaska. The Commission agrees with both points, that is, that a system of tone coding would be preferred and that the retrofitting of currently fitted vessels would be impractical.

4. Since tone coding for repeater activation appears impractical, API expresses the view that the geographic spacing between repeaters should be adequate to assure that a vessel does not activate more than one repeater at a time. In that regard, API mentions limiting to one the number of repeaters which may be installed in each Alaska Zone, with additional provision for the granting of waivers for other repeaters at location(s) where it is shown that these additional repeaters would not be activated by signals intended for an existing repeater. We agree that only one repeater should be activated at a time, and this was the underlying reason for including paragraph (e) in proposed Section 81.330. This paragraph requires the plotting of contours at

the +17 dBu distance. Additionally, it requires at and beyond the +17 dBu contour, the provision of a 12 dB ratio of desired to undesired signal strength from any other station. The combined requirements of Sections 81.802(c) and 81.811 should provide, under normal conditions, a separation distance between maritime mobile repeaters such that only one repeater will be activated at a time. Nonetheless, we feel there is merit to API's view, since reflections from elevated terrain, temperature inversions, etc., can be normal for a given location and can result in the undesired but simultaneous activation of two or more repeaters by a ship station. While exceptional circumstances of this type should be avoided, we feel it would be improper to impose upon users at all locations an excess of precautions against simultaneous activation of two or more repeaters, when such precautions are actually required at only one or a few locations. Accordingly, as set forth in the attached Appendix, paragraph (e) of Section 81.330 is amended to cover the cases of an exceptional nature.

5. API introduces the matter of Commission consideration of the desirability of increasing the number of frequency pairs in Alaska which would be available for use by maritime mobile repeater stations. On the basis of information currently available, no adequate basis exists to conclude that more than one frequency pair is required. Further, considering the limited number of frequency pairs which are available to the maritime services, we have grave doubts that it would be appropriate to give encouragement, even for the interim period here involved, to the use of more than one frequency pair for this type of repeater. Finally, on a continuing or long term basis, it is our view that if remotely controlled repeaters are to be employed, the remote control function should be effected on operational fixed frequencies. Accordingly, we are not in this proceeding making available more than one frequency pair for maritime mobile repeater stations in Alaska.

6. API recommends that access to maritime mobile repeater stations "also be made available to (VHF) limited coast Class III–B applicants in those areas where the Commission has received no application from an applicant proposing to furnish a common carrier service." Under the conditions set forth by API, we believe such an arrangement would offer additional encouragement to implement VHF in Alaska and it is, therefore, being adopted as set forth in the attached Appendix.

7. API further recommends that "where the facility is to be authorized as a limited coast Class III–B station, the Commission should include provisions in its rules to permit the station to be licensed for shared use through a cooperative association or corporation, or otherwise provide for the multiple licensing of the station so that it may be used by all requiring such service." With regard to this recommendation, it goes substantially beyond the current provisions regarding cooperative use of facilities set forth in Section 81.352. We concur that a maritime mobile repeater station should provide intercommunication between vessels of the same or different companies, however, we see no provision in the current rules which would prohibit such intercommunication. We concur, also, that a maritime mobile repeater could be

used by multiple public coast Class III–B stations, for public correspondence, or by multiple limited coast Class III–B stations, for non-public correspondence, however, we are not persuaded that it is timely or that sufficient information is available to amend Section 81.352. Further, since we intend to examine each such arrangement for cooperative use of a facility on a case-by-case basis, this recommendation of API is not being adopted.

8. The comments of RCA are directed to paragraph (c) of proposed Section 81.330. The proposed wording requires the applicant to "include a full and complete statement showing why the operational fixed frequencies set forth in Subpart P cannot be employed." RCA requests this paragraph be amended to require the applicant to "include a full and complete statement showing why the applicant has not applied for operational fixed frequencies set forth in Subpart P." It is apparent that if paragraph (c)[1] were to be amended as requested by RCA that any simple statement would satisfy the requirements of that paragraph and that little, if any, information useful to the Commission would be obtained. On the other hand, we feel that the section as proposed would cause the applicant to give mature consideration to the use of the operational fixed frequencies, before submitting an application for a maritime mobile repeater station. Accordingly, as set forth in the attached Appendix, we are adopting paragraph (d) without change.

9. SECO expresses the view that while there may be a few uses for the relay of ship to shore communications, the majority requirement for maritime mobile repeater stations in Alaska is for the relay of ship to ship communications. In that regard, SECO raises the question of use which would or could be made of the maritime mobile repeater station described in the Notice of Proposed Rule Making. In an effort to more clearly illustrate the intended uses, we have prepared the following table or flow chart:

Ship (MHz)	Maritime Mobile Repeater (MHz)	Ship or Coast (MHz)
Transmit: 157.275 →	Receive: 157.275 Transmit: 161.875 →	Receive: 161.875
Receive: 161.875 ←	Receive: 157.275 ← Transmit: 161.875	Transmit: 157.275

In looking at this table, it is clear that the relayed transmissions from the repeater (on 161.875 MHz) can be received by either a ship station or by a coast station. Similarly, it is clear that an incoming transmission (on 156.275 MHz) to the repeater will be retransmitted on 161.875 MHz. On this basis, one ship would be able to communicate with another ship, or with a concerned coast station. With regard to avoiding interruption of communication in progress between two vessels, it will be possible to avoid such interruption by monitoring 161.875 MHz.

[1] The reference paragraph "(c)" is changed to paragraph (d) in the attached appendix.

If an exchange of communications is observed as being in progress, the second user should wait until those communications have been completed before initiating his call to another ship or coast station.

10. In their comments RADIOCALL requested that the Commission provide for the use of maritime mobile repeater stations in the state of Hawaii. In support thereof, RADIOCALL states that all of the reasons for establishing maritime mobile repeater stations in Alaska are equally applicable to the state of Hawaii. RADIOCALL requests, therefore, that provision for use of these repeater stations in Hawaii be included in the instant proceeding, or, alternatively, that the Commission "issue a Further Notice of Proposed Rule Making for that purpose so that the amendment of Part 81 making the service available in both the state of Alaska and the state of Hawaii may be adopted simultaneously."

11. On the basis of the limited information included in the comments of RADIOCALL, we are unable to determine that the degree of need in Hawaii is the same as or is similar to that in Alaska; or if it would be in the public interest to permit the use in Hawaii of maritime mobile frequencies on an interim basis for this type of operation. There are, of course, substantial differences between conditions in Alaska and those in Hawaii. We are not, therefore, including Hawaii in the instant proceeding or issuing a Further Notice of Proposed Rule Making to include Hawaii, as requested by RADIOCALL. This leaves open to RADIOCALL and others the alternative to file a petition to amend the rules to permit the use of maritime mobile repeater stations in Hawaii. We would expect such petition to include sufficient information to permit us to make an informed decision with regard to why repeater facilities are required, why the relay cannot be supplied on operational fixed frequencies under the existing rules, how it is proposed that such repeater facilities would be operated, etc.

12. In view of the foregoing, IT IS ORDERED, That pursuant to the authority contained in Sections 4(i) and 303(b), (c), (g) and (r) of the Communications Act of 1934, as amended, Part 81 of the Commission's rules, IS AMENDED, effective November 30, 1973, as set forth in the attached Appendix. IT IS FURTHER ORDERED that this proceeding IS TERMINATED.

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

APPENDIX

Part 81 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

1. In Section 81.3, a new paragraph (t) is added to read as follows:

§81.3 Maritime mobile service.

* * * * * * *

(t) Maritime mobile repeater station. A land station at a fixed location established for the automatic retransmission of signals emanating from maritime coast and mobile stations in order to extend the range of communication of both ship and coast stations.

2. A new Section 81.330 is added to Subpart I to read as follows:

§ 81.330 Maritime mobile repeater stations in Alaska.

(a) Maritime mobile repeater stations will be licensed, primarily, in connection with public coast III–B stations (VHF) to extend the range of communication between the public coast station located in Alaska and ship stations.

(b) On a secondary basis, maritime mobile repeater stations may be authorized to the licensee of a limited coast III–B station:

(1) In those areas where VHF common carrier service is not available;

(2) In an area where an application to provide VHF common carrier service has not been received; and

(3) Any authorization to operate a maritime mobile repeater station shall automatically expire 60 days after inauguration of service by a Class III–B public coast station in the area involved.

(c) An authorization for a maritime mobile repeater station may be granted to a licensee of Class III–B public or limited coast station in Alaska and only during the interim period prior to the development of an adequate VHF public coast station service in any particular area of Alaska. The existence of a maritime mobile repeater station in an area shall not preclude consideration of the establishment of a VHF public coast station in that area.

(d) Each application for a maritime mobile repeater station shall include a full and complete statement showing why the operational fixed frequencies set forth in Subpart P of this part cannot be employed.

(e) The standard technical requirements set forth in Subpart E shall be also applicable to a maritime mobile repeater station. The provisions relating to duplication of service set forth in Section 81.303 shall be also applicable to maritime mobile repeater stations. The Commission will prescribe additional technical measures to be applied at any location where terrain, environment, or other conditions result in the simultaneous activation by a ship station of two or more maritime mobile repeater stations.

(f) The following frequencies may be authorized for use by a maritime mobile repeater station in Alaska:

Receive: 157.275 MHz Transmit: 161.875 MHz

(g) The rules applicable to public coast III–B stations requiring capability to transmit and to receive on 156.800 MHz [81.104(b)(2), 81.104(c)(2) and 81.191(c)(2)] are not applicable to the maritime mobile repeater stations in Alaska.

(h) A public or limited coast III–B station, the licensee of which has been authorized to use a maritime mobile repeater station, may be authorized to transmit on the frequency 157.275 MHz and to receive on 161.875 MHz. In an area where a maritime mobile repeater station is authorized, the frequencies 157.275 and 161.875 MHz (Channel 85) are not available for assignment to Class III–B public coast stations.

(i) Each maritime mobile repeater station shall be so designed and installed that:

(1) The transmitter is deactivated automatically within 5 seconds after the signals controlling the station cease; and

(2) During periods when it is not controlled from a manned fixed control point, it shall be provided with an automatic time delay or clock device that will deactivate the station not more than 20 minutes after its activation by a mobile unit.

F.C.C. 73-1057

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of	
MONTACHUSETT CABLE TELEVISION, INC., FITCHBURG, MASS.	CAC-1254, CSR-264, MAO15
MONTACHUSETT CABLE TELEVISION, INC., GARDNER, MASS.	CAC-1255, CSR-263, MAO16
MONTACHUSETT CABLE TELEVISION, INC., LEOMINSTER, MASS.	CAC-1258, MAO17
For Certificates of Compliance	

MEMORANDUM OPINION AND ORDER

(Adopted October 11, 1973; Released October 17, 1973)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT.

1. Montachusett Cable Television, Inc., operates cable television systems at Fitchburg (Pop. 42,906), Gardner (Pop. 19,513), and Leominster (Pop. 32,709), Massachusetts, communities located within the Boston-Cambridge-Worcester, Massachusetts major television market (#6). The Fitchburg and Leominster systems presently carry the following television broadcast signals:

WBZ-TV (NBC, Ch. 4), Boston, Massachusetts.
WCVB-TV (ABC, Ch. 5), Boston, Massachusetts.
WNAC-TV (CBS, Ch. 7), Boston, Massachusetts.
WSBK-TV (Ind., Ch. 38), Boston, Massachusetts.
WGBH-TV (Educ., Ch. 2), Boston, Massachusetts.
WGBX-TV (Educ., Ch. 44), Boston, Massachusetts.
WKBG-TV (Ind., Ch. 56), Cambridge, Massachusetts.
WSMW-TV (Ind., Ch. 27), Worcester, Massachusetts.
WMUR-TV (ABC, Ch. 9), Manchester, New Hampshire.[1]
WRLP (NBC, Ch. 32), Greenfield, Massachusetts.[2]
WENH (Educ., Ch. 11), Durham, New Hampshire.
WPRI-TV (CBS, Ch. 12), Providence, Rhode Island.
WJAR-TV (NBC, Ch. 10), Providence, Rhode Island.

The Gardner system, in addition to the above-listed signals, also carries the signal of:

WTIC-TV (CBS, Ch. 2), Hartford, Connecticut.

On September 20, 1972, Montachusett Cable Television filed an "Application for Certificate of Compliance for Additional Television Sig-

[1] The Fitchburg system is also located within the specified zone of Manchester, New Hampshire, a smaller television market. Pursuant to Section 76.61(f) of the Rules, the major television market signal carriage rules of Section 76.61 apply.

[2] The Gardner system is also located within the specified zone of Greenfield, Massachusetts, a smaller television market. Pursuant to Section 76.61(f) of the Rules, the major television market signal carriage rules of Section 76.61 apply.

nals on Existing Cable Television System and Petition for Special Relief and Waiver" to add two signals to its systems:

WPIX (Ind., Ch. 11), New York, New York.
WOR–TV (Ind., Ch. 9), New York, New York.

Carriage of these two signals is consistent with Section 76.61(c) of the Commission's Rules.

2. Montachusett's systems presently operate with a twelve-channel capacity. With the addition of two independent stations, the capacity of the systems, which is already filled, will be over-extended.[3] A major market cable television system operating prior to March 31, 1972, and wishing to add two distant independent signals to its carriage must also provide public and educational access channels pursuant to Section 76.251(c) of the Rules. In its original applications, Montachusett proposed to fulfill its access obligations by utilizing available channel capacity during periods when programs would be deleted pursuant to the network program exclusivity requirements. The applicant stated that this procedure of using "shared channels" to fulfill access requirements, constituted an interim measure until its systems could be reconstructed. Moreover, while the Gardner system operates from its own headend, the Fitchburg and Leominster systems utilize a common headend and carry identical programming of broadcast or non-broadcast material on the same channel at the same time. Accordingly, Montachusett additionally requested a waiver of Section 76.251(c) of the Rules to provide combined access for Fitchburg and Leominster.

3. On February 15, 1973, Montachusett, in view of the Commission's decision in *Columbus Communications Corporation*, FCC 72–1185, 38 FCC 2d 875 (1972),[4] amended its application. Montachusett now requests the Commission's approval to discontinue temporarily carriage of certain television signals in order to provide channel space for the two New York independent stations and the required access channels. It states that the signals discontinued will be returned to the systems as soon as the reconstruction of the systems is completed. In Fitchburg and Leominster the applicant proposes to continue the carriage of the following in-market signals:

WBZ–TV (NBC, Ch. 4), Boston, Massachusetts.
WCVB–TV (ABC, Ch. 5), Boston, Massachusetts.
WNAC–TV (CBS, Ch. 7), Boston, Massachusetts.
WSBK–TV (Ind., Ch. 38), Boston, Massachusetts.
WSBH–TV (Educ., Ch. 2), Boston, Massachusetts.
WGBX–TV (Educ., Ch. 44), Boston, Massachusetts.
WKBG–TV (Ind., Ch. 56), Cambridge, Massachusetts.

[3] Not all the stations currently carried by Montachusett Cable are carried on a full-time basis. The out-of-markets signals are carried on a shared basis. Additionally, Montachusett Cable uses one channel on its systems for local program originations.

[4] In *Columbus Communications*, the applicant proposed to fulfill its access obligations by the use of certain cable channels made available either on those occasions when the exclusivity rules forbade the carriage of duplicate network programming, or when stations normally carried were not broadcasting. The Commission rejected this proposal, stating that it has "determined that access services will be stimulated by the setting aside of specially designated channels, since such a procedure will foster public identification with a specific channel and will insure its availability for the designated access purpose." *See also Halifax Cable TV, Inc.*, FCC 73–670, —— FCC 2d —— (1973) and *Sammons Communications, Inc.*, FCC 73–634, 41 FCC 2d 526 (1973).

WSMW–TV (Ind., Ch. 27), Worcester, Massachusetts.
WMUR–TV (ABC, Ch. 9), Manchester, New Hampshire.

The applicant seeks authority to discontinue temporarily carriage in Fitchburg and Leominster of the following Stations until reconstruction is completed:

WENH (Educ., Ch. 11), Durham, New Hampshire.
WRLP (NBC, Ch. 32), Greenfield, Massachusetts.
WPRI–TV (CBS, Ch. 12), Providence, Rhode Island.
WJAR–TV (NBC, Ch. 10), Providence, Rhode Island.

In Gardner, the applicant proposes to continue carriage of the above-listed Boston, Cambridge, and Worcester, Massachusetts stations, and Station WRLP, Greenfield, Massachusetts. Montachusett Cable seeks authority to discontinue temporarily carriage in Gardner of:

WMUR–TV (ABC, Ch. 9), Manchester, New Hampshire.
WENH (Educ., Ch. 11), Durham, New Hampshire.
WPRI–TV (CBS, Ch. 12), Providence, Rhode Island.
WJAR–TV (NBC, Ch. 10), Providence, Rhode Island.
WTIC–TV (CBS, Ch. 3), Hartford, Connecticut.

4. In support of its proposal, Montachusett states that despite the uncertainties of financing, it has already commenced work leading to a complete rebuilding of the three systems, which it hopes will be completed within three years. Its plans call for reconstruction to be accomplished on a community-by-community basis and as soon as it is technically feasible, the deleted signals will be restored to each system. Montachusett submits that the complete rebuilding of the three systems will require extensive refinancing. It argues that due to its precarious financial position, the carriage of the New York independent stations is essential to the goal of achieving financial viability for these systems, and "indeed, carriage of these signals is essential to the Applicant's very effort to obtain refinancing." Since commencing operations in 1966, Montachusett submits it has had a retained loss of almost $750,000. During the preceding fiscal year, the three systems showed a combined operating deficit of approximately $258,000. The applicant states that outside refinancing will be necessary in order for it to complete the rebuilding of its systems, and argues that the carriage of WOR–TV and WPIX is essential to the attraction of new subscribers to its systems which are located in an area of heavy television concentration. Montachusett states that despite all efforts on its part it has been unable to increase substantially its number of subscribers.[5] It believes that it must attract another 2,000 to 2,500 additional subscribers before the systems will reach the break-even point. In support of its contentions, the applicant cites Paragraph 90 of the *Cable Television Report*

[5] The table follows:

	Subscribers
Fitchburg	3,961
Gardner	2,107
Leominster	992
Total subscribers as of Dec. 31, 1972	7,060

The applicant states its subscriber penetration rate is merely 38 percent, but estimates with the addition of the New York signals, it can penetrate 60 percent of the homes passed.

and Order[6] where the Commission stated that ". . . it appears that two signals not available in the community is the minimum amount of new service needed to attract large amounts of investment capital for the construction of new systems and to open the way for the full development of the cable's potential."

5. Additionally, Montachusett requests a waiver of Section 76.251(c) to use one access channel to provide both public and educational access on its systems. The applicant proposes to designate cable channel 10 as the access channel and will schedule and publicize this channel for educational access use from 8 a.m. to 6 p.m., and for public access use from 6 p.m. to 12 midnight each day. The applicant states that it will reexamine this schedule in light of the demand for access time and will make whatever appropriate changes most fit the access demands. At the end of this interim period when public familiarity with access availability will increase the demand, the systems will have been rebuilt and separate access channels will be provided in compliance with the Commission's rules. Montachusett believes that this interim proposal will in no way impede the full development and use of these services. The applicant submits that this proposal is necessary because it lacks the channel capacity to provide two separate access channels. Even though it proposes to delete some signals from the systems, it will still carry nine market signals[7] and the two New York independent stations, leaving only one channel available for access purposes. Montachusett states that it considered requesting authority to drop the smaller market overlap stations, so that it would be able to provide a separate channel for public and educational access, but determined that the best interest of its subscribers would be served by retaining all market stations and temporarily dropping only those stations that are out-of-market signals. Montachusett stresses the importance of carriage of the two New York independent stations to the viability of its systems and points out that it is not seeking to avoid its obligations, but rather is seeking temporary relief designed to enable it to meet all of its obligations.

6. Moreover, in its amended application, Montachusett renews its waiver request for shared access, whereby Fitchburg and Leominster will share one access channel. Fitchburg and Leominster are served from one headend located in Leominster. The system penetrates Leominster from several points on different trunk lines, and the applicant asserts that to provide a separate channel of access in each community,

[6] 36 FCC 2d 141, 178 (1972).

[7] Montachusett Cable originally proposed to carry the nine market signals over eight cable channels by a procedure whereby WSMW–TV, Worcester, Massachusetts, and WGBX–TV, Boston, Massachusetts, would share one cable channel. This proposal elicited the objection of the WGBH Educational Foundation, licensee of Station WGBX–TV, which stated that it wished to be carried on a full-time basis. Subsequently, the parties reached an agreement, whereby Montachusett would carry WGBX–TV on its systems' local origination channel at all hours, except from 4 p.m. to 8 p.m. at which time, the systems would conduct local origination programming. It appears that from 4 p.m. to 7 p.m. WGBX–TV simulcasts programming of WGBH–TV, and the programs in the 7 p.m. to 8 p.m. period are all repeats of previous programs during the week. When the capacity of each system is expanded, WGBX–TV will be carried by that system on a channel of its own and not on a shared basis. Based on this agreement, WGBH Educational Foundation withdrew its opposition, contingent upon the Commission's approval of the above-described shared usage. In these circumstances, the Commission has no objection to this agreement, and the objection of WGBH Educational Foundation will be dismissed.

the system has to be redesigned and reconstructed. Citing Paragraph 90 of the *Reconsideration of the Cable Television Report and Order*[8] Montachusett Cable urges that it would not be technically feasible to provide separate channels for each community with its existing facilities, and that it was not the Commission's intent to require existing systems ". . . to undergo radical redesigning. . . ."[9] to accommodate compliance with the access channel rules. The applicant states that this policy was supported by the Commission's decision in *Gerity Broadcasting Company*,[10] where a waiver of the access rules was granted for a "conglomerate" cable system that could not provide adequate channel capacity for individual community access without rebuilding the system. While stressing that Leominster is a bedroom community of Fitchburg and, as such, "each community forms part of a single urbanized area," Montachusett emphasizes that its proposal is merely an interim measure inasmuch as the Leominster system will be the first system rebuilt, and each community will receive separate access channels at the earliest possible date.

7. The Commission has no objection to Montachusett's proposal of the temporary suspension of the carriage of out-of-market signals. The system presently carries these signals by virtue of an unopposed notification of proposed service filed pursuant to former Section 74.1105 of the Rules on September 14, 1966. These signals are thus grandfathered pursuant to Section 76.65 of the Rules. Since Montachusett is proposing to suspend carriage of these stations in an attempt to comply with our access rules, and these stations have no right to carriage under the rules, the Commission will not disturb Montachusett's grandfathering rights. Compare *Midwest Video Corporation*, FCC 73–377, 40 FCC 2d 441 (1973).

8. Montachusett proposes to use temporarily one access channel to provide both public and educational access. The Commission is not unmindful of the financial and technical difficulties faced by Montachusett. We recognize that the problem presented in this case is not unique, but one common to a number of existing cable television systems. The Commission has chosen, in the public interest, to require certain access services of major market systems as *quid pro quo* for taking advantage of the new rules to add distant independent signals. The Commission has generally adopted a liberal approach to enforcing this requirement, recognizing the technical difficulties faced by some established systems. Compare *Cable TV Company of York*, FCC 73–459, 40 FCC 2d 927 (1973). We note that Montachusett has amended its original proposal, and now proposes the use of specially designated channels, which is the touchstone of the access cablecasting rules. *Columbus Communications Corporation, supra; Halifax Cable TV, Inc., supra.* While in other circumstances the Commission has discouraged the use of one access channel to provide both public and educational access (*Metro Cable Company*, FCC 73–89, 39 FCC 2d 169 (1973); compare *Coldwater Cablevision, Inc.*, FCC 73–281, 40

[8] 36 FCC 2d 359 (1972).
[9] *Id.* at fn. 36.
[10] FCC 27–651, 36 FCC 2d 326 (1972).

FCC 2d 58 (1973)), we believe the instant proposal is sufficiently well reasoned and supported, and that viewed in the context of the particular circumstances of this case, the instant waiver is justified. We note that this proposal is merely an interim measure, and that Montachusett has commenced work leading to a complete rebuilding of the three systems. Therefore, we will certify the two signals requested by Montachusett and will allow it to use temporarily one access channel to provide public and educational access. This waiver will extend to March 31, 1977, at which time the systems will have to have been rebuilt in order to comply with our Rules, and Montachusett will have to provide separate access channels.

9. Lastly, Montachusett has requested a waiver of the rules to provide one shared access channel to both Fitchburg and Leominster. These communities are geographically contiguous, and the systems are operated from one headend in a manner such that it would be technically unfeasible to provide separate channels for each community. Also, Montachusett has assured the Commission that the Leominster system will be the first system rebuilt, and that each community will receive separate and distinct access channels at the earliest possible date. The sharing of access channels under these circumstances was specifically envisioned in the *Reconsideration of the Cable Television Report and Order*, *supra*, at p. 359, and we have in the past permitted the practice upon proper showing. *See*, e.g., *Gerity Broadcasting Company*, *supra*, *Coldwater Cablevision, Inc.*, *supra*, and *Halifax Cable TV, Inc.*, *supra*. In this case, the Commission believes that Montachusett has made a proper showing, and accordingly, we will grant its waiver request.

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

Accordingly, IT IS ORDERED, That the "Opposition to Petition for Special Relief," filed by WGBH Educational Foundation, IS DISMISSED.

IT IS FURTHER ORDERED, That Montachusett Cable Television Inc.'s requests for temporary waiver of Section 76.251 of the Commission's Rules (CSR-263, 264) ARE GRANTED.

IT IS FURTHER ORDERED, That the applications for certificates of compliance (CAC-1254, 1255, 1258), filed by Montachusett Cable Television, Inc., ARE GRANTED and the appropriate certificates of compliance will be issued.

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

F.C.C. 73-534

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Request of
NATIONAL RELIGIOUS BROADCASTERS, INC.
For a Declaratory Ruling

MEMORANDUM OPINION AND ORDER

(Adopted May 16, 1973; Released May 21, 1973)

BY THE COMMISSION: COMMISSIONERS JOHNSON, REID AND WILEY CONCURRING IN THE RESULT.

1. *In King's Garden Inc.*, 34 FCC 2d 937, 24 RR 2d 281 (1972),[1] we stated that a station that is licensed to a religious organization may discriminate [2] on the basis of religion in its employment practices as to those hired to espouse the licensee's religious philosophy over the air. We further stated:

> . . . the Commission does not see any reason for a broad interpretation that would permit discrimination in the employment of persons whose work is not connected with the espousal of the licensee's religious views. (34 FCC 2d at 938, 24 RR 2d at 282)

Now under consideration is a letter seeking a ruling as to the applicability of the *King's Garden* decision to various employee categories, filed February 9, 1973, by National Religious Broadcasters, Incorporated (NRB), on behalf of a number of its members. We shall consider the NRB's letter as a request for a declaratory ruling filed pursuant to Section 1.2 of our Rules.

2. In NRB's view, the exemption from the nondiscrimination rules should be interpreted:

> . . . to include those persons responsible for or connected with the planning, preparation, scheduling, presentation, and responses to queries relating to such programs espousing a particular religious philosophy. Illustratively this would include personnel having responsibility for or a direct connection with such programs as writers and research assistants for these religious programs, executive personnel supervising the programs, and the person or persons at the station charged with the responsibility of answering religious type communications stemming from such programs.
>
> In addition, we are advised that some religiously oriented stations include among the station personnel religious counselors (1) answering inquiries on the air and (2) answering mail or telephone inquiries of a religious nature which are not broadcast.

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[1] Affirmed on reconsideration, 38 FCC 2d 339, 25 RR 2d 1030 (1972). King's Garden has filed an appeal from our decisions in the United States Court of Appeals for the Ninth Circuit, Case No. 73-1058.

[2] Our general nondiscrimination requirements are set out in Section 73.125, 73.301, 73.599 and 73.680 of our Rules.

FCC 2d 58 (1973)), we believe the instant proposal is sufficiently well reasoned and supported, and that viewed in the context of the particular circumstances of this case, the instant waiver is justified. We note that this proposal is merely an interim measure, and that Montachusett has commenced work leading to a complete rebuilding of the three systems. Therefore, we will certify the two signals requested by Montachusett and will allow it to use temporarily one access channel to provide public and educational access. This waiver will extend to March 31, 1977, at which time the systems will have to have been rebuilt in order to comply with our Rules, and Montachusett will have to provide separate access channels.

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

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

F.C.C. 73–534

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2. In NRB's view, the exemption from the nondiscrimination rules should be interpreted:

> . . . to include those persons responsible for or connected with the planning, preparation, scheduling, presentation, and responses to queries relating to such programs espousing a particular religious philosophy. Illustratively this would include personnel having responsibility for or a direct connection with such programs as writers and research assistants for these religious programs, executive personnel supervising the programs, and the person or persons at the station charged with the responsibility of answering religious type communications stemming from such programs.
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[1] Affirmed on reconsideration, 38 FCC 2d 339, 25 RR 2d 1030 (1972). King's Garden has filed an appeal from our decisions in the United States Court of Appeals for the Ninth Circuit, Case No. 73-1058.

[2] Our general nondiscrimination requirements are set out in Section 73.125, 73.301, 73.599 and 73.680 of our Rules.

3. We have no difficulty with some of the employee categories listed by NRB. Under the *King's Garden* decision, writers and research assistants [3] hired for the preparation of programs espousing the licensee's religious views are exempt from the nondiscrimination rules as being connected with the espousal of those views. Similarly, those hired to answer religious questions on a call-in program would be exempt. On the other hand, announcers, as a general category, would not be exempt from the nondiscrimination rules. There is no reason why an announcer must be of a particular faith in order to introduce a program or insert news, commercial announcements, or station identifications during or adjacent to any program.

4. There are other categories listed by NRB which are not so clear cut. As to those categories, which may be defined differently by each licensee, we do not believe that it is advisable to issue a general declaratory ruling such as that requested by the NRB. We have only general information and we are dealing with an area where First Amendment rights are often involved. We believe it would be preferable, therefore, to have specific factual settings presented to us before issuing rulings. We can say generally that our present rules proscribe religious discrimination in employment practices and that the exemption from those rules set out in the *King's Garden* decision is limited to those who, as to content or on-the-air presentation, are connected with the espousal of the licensee's religious views.

5. We wish to emphasize that our decisions in this area are restricted to the *broadcast activities* of licensees that are religious organizations. We cannot and do not make any ruling as to those activities that are not part of broadcast operations. Religious organizations that are licensees may wish to consider whether certain employees are actually part of the broadcast operation or a part of their religious activities generally.

6. In view of the above, IT IS ORDERED, That the request for a declaratory ruling filed by the National Religious Broadcasters, Incorporated, IS GRANTED to the extent indicated above, and IS DENIED in all other respects.

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

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[3] We are dealing with the function of the particular person, not his or her title. Thus, a secretary does not become exempt from the nondiscrimination rules by changing his or her title to "writer" or "research assistant."

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint by
CHUCK COSSIN, SR., FARMINGTON, MICH.
Concerning Personal Attack Re Station
WMUZ–FM, Detroit, Mich.

OCTOBER 11, 1973.

Mr. CHUCK COSSIN, Sr.,
29669 Moran
Farmington, Mich. 48024

DEAR MR. COSSIN: This is in response to your complaint of September 26, 1973 to Chairman Burch, which has been referred to this office for reply. In your letter you state that on three consecutive days, beginning August 1, 1973, Radio Station WMUZ(FM), Detroit, Michigan, broadcast an announcement constituting a personal attack against you. You further state that the licensee broadcast the announcement at half-hour intervals a total of 144 times. You request the Commission to investigate the facts outlined in your letter and direct the licensee to provide you equal time to respond. You enclosed with your letter a transcript of the announcement, as follows:

I'm Don Crawford, President of the Crawford Broadcasting Company, the owner of WMUZ. We announce with regret that we have terminated the services of Chuck Cossin, Sr. as station manager of WMUZ. We have found it necessary, also to terminate the services of other station personnel as well. These decisions were extremely difficult to make but we believe they were fairly made in light of all the circumstances. I can personally assure you there will be no fundamental changes in the programming of WMUZ. The Crawford Broadcasting Company through WMUZ is dedicated to the promotion of the gospel of Jesus Christ. We believe, in faith, that men and women will continue to be blessed and saved through the ministry of WMUZ. We thank you most sincerely for your support of our station and we ask for your understanding in this matter. As always, we welcome your suggestions, comments, and expressions of feeling regarding the programming of WMUZ. Please write to WMUZ, 12300 Radio Place, Detroit, Michigan 48228. Thank you.

Section 73.300(a) of the Commission's Rules and Regulations contains the personal attack provision applicable to FM broadcast stations. It states that when, during the presentation of views on a controversial issue of public importance, an attack is made upon the honesty, character, integrity or like personal qualities of an identified person or group, the licensee shall, within a reasonable time and in no event later than one week after the attack, transmit to the person or group attacked (1) notification of the date, time and identification of the broadcast; (2) a script or tape (or an accurate summary if a script or tape is not available) of the attack; and (3) an offer of a reasonable opportunity to respond over the licensee's facilities. Section 73.300(b)

104-014—73——9

excepts certain statements from the provisions of the personal attack rule.

You have not furnished any information as to whether the announcement in question was broadcast within the context of a discussion of a controversial issue of public importance. However, assuming *arguendo* that such were the case, you have not shown how the statement, "We announce with regret that we have terminated the services of Chuck Cossin, Sr., as station manager of WMUZ," or any other statement in the announcement, constituted an attack on your honesty, character, integrity or like personal qualities. Mere mention of a person or group, or even certain types of unfavorable references thereto, do not constitute personal attacks as defined by the Commission. See *Letter to Eugene McMahon*, 40 FCC 2d 448 (1973). On the basis of the information you have submitted we cannot find that Station WMUZ(FM) broadcast a personal attack. Accordingly, no Commission action appears warranted at this time.

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

Sincerely yours,

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

F.C.C. 73-948

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
REQUEST FOR WAIVER OF THE PRIME TIME ACCESS RULE (SECTION 73.658(k)) IN CONNECTION WITH CARRIAGE OF NETWORK NEWS

MEMORANDUM OPINION AND ORDER

(Adopted September 11, 1973; Released September 14, 1973)

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

1. The Commission here considers the matter of the prime time access rule (Section 73.658(k) of the Commission's Rules) in connection with the carriage of regular network evening news or public affairs programs, including two specific questions: (1) Whether to continue the existing waiver permitting stations to carry a half-hour of network news at the beginning of prime time (7 p.m. E.T., etc.), where it is preceded by a full hour of local news or public affairs programming, without its counting toward the three hours of permissible network prime-time programs, and (2) whether the same principal should be extended to a case where a station (ABC's Philadelphia affiliate, WPVI-TV) seeks to carry a Saturday network public affairs program (the *Reasoner Report*) at 7, preceded by a half-hour of local news and followed by a half-hour local public affairs program.

2. The first type of waiver, which was envisaged in "Footnote 36" of the May 1970 Report and Order adopting the prime-time access rule,[1] has been applied ever since the rule went into effect; under the terms of the last action granting waiver, it runs through the 1972-73 year, or until September 30, 1973. See 30 FCC 2d 577 (June 1971) and 37 FCC 2d 566 (August 1972). In a letter of August 16, 1973, CBS, on behalf of its owned and affiliated stations, asks that this general waiver be continued pending decision in Docket 19622, the overall prime-time access rule proceeding. Station WISH-TV, Indianapolis, in a letter request of August 14, largely relating to another matter, requests that the general waiver be extended for another year, or until September 30, 1974. The second request mentioned above—for extension of the same general principle to Saturdays from 6:30 to 8 p.m., where the network public-affairs program would be presented in between two local news and public affairs programs—is contained in a letter request on behalf of Station WPVI-TV, Philadelphia, dated August 3, 1973.

[1] See 23 F.C.C. 2d 382, 395; 25 FCC 2d 318, 335.

104-014—73——10

3. *The general waiver.* We are of the view that the general waiver, permitting presentation of network news at the beginning of prime time (7 p.m. E.T., etc.) following an hour of local news or public affairs programming, without counting toward the permissible three hours of network prime-time material, should be continued pending overall decision in the general proceeding. This was originally adopted chiefly because stations subject to the rule could and did—some still do—schedule a half-hour of local programming both before and after the network news (6–6:30 and 7–7:30), which would comply with the rule; but there is no reason arbitrarily to force stations to such a scheduling pattern if they wish to present the whole of local news first, followed by network news at 7. It has also been noted that, to the extent that this waiver encourages stations to present a full hour of local news, this serves public-interest objectives in promoting "in-depth" coverage of local affairs and problems. These same considerations still apply.

4. CBS asserts that continuation of the waiver is consistent with the policy we have followed in 1973 up to now, of preserving the *status quo* in connection with administration of the rule and action on waiver requests, pending the overall decision in Docket 19622. This policy was adopted at a time when it appeared that decision would be forthcoming at least by early June 1973, and, as we have noted recently in another case, complete adherence to it is not necessarily appropriate in light of the delay in the overall proceeding. However, we find nothing, in the comments in Docket 19622 or in other circumstances,[2] to indicate that speedy action terminating a general waiver policy—envisaged in the decision adopting the rule, applied since its adoption, and supported by the considerations mentioned above—would be in the public interest. Accordingly, we are extending the waiver for six months, or through March 31, 1974. The course of action for the future beyond that will depend on what is decided in the overall proceeding.

5. *The WPVI–TV request.* Basically, the general waiver discussed above has applied only to Monday-Friday schedules, since very few top 50 market affiliated stations, if any, present network news on Saturday or Sunday at 7 and the full 3 hours of network prime-time material later. The WPVI–TV request seeks to extend the same principle to a Saturday situation. The station wishes to continue its local news at 6:30, and its local public affairs program *Assignment* at 7:30, and to present in between the ABC *Reasoner Report*, which is, at least in general, "public affairs" material, all to be followed at 8 p.m. by the regular 3 hours of ABC prime-time programming. In support of its request, WPVI–TV asserts that the same considerations applicable in the general situation apply here also. Since, like most ABC affiliates, it carries the popular *Wide World of Sports* program until 6:30 on Saturdays, it cannot commence local programming until that time, so that 1½ hours takes it until 8 (whereas on weekdays stations can start

[2] In comments in Docket 19622, only a very few parties (including INTV, the independent station association) urged that this waiver concept be abandoned, because of the impact on the availability of prime time to new sources of non-network material and the argument that stations should not have to be "bribed" to fulfill their public-service responsibility if that entails an hour of local coverage. Some parties supported the concept *as is*; others urged that it be liberalized by permitting network news at 7 if preceded by only a half-hour of local news.

their local or news activities at 6 or before). It could comply with the rule by scheduling *Reasoner* at 6:30 and local news at 7, but it does not want to disrupt its 6:30 news scheduling, the only local news at that hour and a well-rated program, a course which, in its judgment, would adversely affect the potential of all three of these programs. Citing the desirability of presenting a full 90 minutes of news and public affairs material during this period, WPVI–TV claims that the new *Reasoner* program—in depth treatment of the subjects covered—will complement and be complemented by its local newscast, and draw audience from that program; and that the later *Assignment* program will benefit from scheduling after the other two. In sum, here as in the general situation, the rigidity of the rule should not be applied to limit licensee judgment as to the most effective scheduling of news and public affairs material.[3]

6. Upon consideration of this matter, we are of the view that waiver should be granted, as an extension of the general principle that the arrangement of early evening news and public affairs programming (network and local) is best left to the discretion of the licensee, where the programming could be presented consistent with the rule but the licensee in his judgment decides that a different order will be more effective. In reaching this conclusion, we are aware that there is one difference from the week-day situation, in that here the licensee has, to a greater extent, a third "option"—not to carry the network program at all. In other words, virtually all top-50-market affiliated stations are going to carry network news on weekdays at some time in the early evening; the question is *when* they will present it. Here, on the other hand, ABC affiliates have managed to exist for a number of years without any regular network news or public affairs programs on Saturday or Sunday evenings until the *Reasoner Report* started early this year, and not all of them carry that ABC program now. However, we conclude that this difference is not material; and that where the programming involved is a half-hour of network news or public affairs plus an hour of local news and/or public affairs, and the programming could be presented consistent with the letter of the rule if the licensee chose to do so, waiver is warranted to permit the licensee to use his discretion in arranging the most effective scheduling order. We agree with WPVI–TV that the general principle of "footnote 36" should apply in this situation; and that—limited as the station is by ABC late-afternoon programming on Saturdays—it is appropriate to apply the concept to the 6:30–8 p.m. period in this situation. The principles of "footnote 36" should apply. Accordingly, waiver is granted to WPVI–TV for the same period of approximately six months mentioned above, or through March 31, 1974.

7. In reaching this result, we are aware that, as an extension of the "footnote 36" principle, it could be regarded as going beyond the

[3] According to additional information supplied by counsel, up until now the station has filled the Saturday 7–8 period with the 13-program *Black Omnibus* series, plus the syndicated documentary program *Toward the Year 2,000*, plus its local *Assignment* program on an alternate-week basis. However, it is stated that the *Black Omnibus* series is concluding, and so is the *Year 2,000* series with respect to its first run (the licensee wishes to "rest" it before running it again).

maintenance of the *status quo* which has been our policy during 1973 up to now, pending overall decision in the Docket 19622 rule making. However, as mentioned above and in another recent action, in view of the delay in reaching a decision in the overall proceeding until this fall, and the fact that no basic change in the rule is likely before the fall of 1974 in any event, we have concluded that strict adherence to that principle is no longer appropriate. It appears true in this case as in the other situations. But it should also be emphasized that the action taken applies only to one station, WPVI–TV, the only party which has requested it so far, and therefore presumably the only one who seeks to put the arrangement into effect at the beginning of the fall season. Other stations who may wish to seek similar waiver must specifically request it, and such requests may well not be acted on in advance of the overall decision.

8. In view of the foregoing, IT IS ORDERED, That:

(a) During the period ending March 31, 1974, stations in the top 50 markets MAY PRESENT network news or public affairs programming in the first half-hour of prime time (7 p.m. E.T., etc.), without its counting toward the permissible three hours of prime-time network programming each evening, provided such network material is preceded by an hour of local news or public affairs programs, and provided they notify the Chief, Broadcast Bureau, by October 1, 1973 that they will so operate; and

(b) During the period ending March 31, 1974, Station WPVI–TV, Philadelphia, Pa., MAY PRESENT the ABC program *The Reasoner Report* at 7 p.m. E.T. on Saturdays, without its counting toward the permissible three hours of network programming on these evenings, provided the program is preceded and followed by half-hour local news or public affairs programs.

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

F.C.C. 73-962

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
PETITION FOR WAIVER OF THE OFF-NETWORK RESTRICTION OF THE PRIME TIME ACCESS RULE, SECTION 73.658(k)(3) OF THE COMMISSION'S RULES, BY BILL BURRUD PRODUCTIONS, INC., FOR THE PROGRAM "ANIMAL WORLD"

MEMORANDUM OPINION AND ORDER

(Adopted September 19, 1973; Released September 20, 1973)

BY THE COMMISSION: COMMISSIONERS BURCH, CHAIRMAN; REID AND HOOKS DISSENTING.

1. The Commission here considers a Petition for Waiver of the Prime Time Access Rule, filed June 12, 1973, by Bill Burrud Productions, Inc. (Burrud Productions). A Public Notice of this Petition was issued June 20, 1973. Comments of Columbia Broadcasting System, Inc. (CBS) in opposition to this Petition were filed July 9, 1973, and petitioner filed reply comments. Burrud Productions seeks a waiver of the off-network restriction of the prime time access rule, Section 73.658(k)(3) of the Commission's Rules, which prohibits a licensee from presenting programming which has previously appeared on one of the television networks, during the "access period" (the time from which the networks are prohibited in evening prime time). Petitioner seeks waiver of this restriction for twenty-two episodes of the *Animal World* series. It is contemplated that, overall, the fifty-two episodes of this series, to be offered in syndication, will consist of 15 new programs, 15 which have previously been shown but only in syndication, and 22 off-network programs, taken from material which has been shown on a network over the last 5 years in "fringe" time.

2. In support of its Petition, Burrud Productions cites our previous *Wild Kingdom* decision [1] and maintains that its request for *Animal World* is factually similar to, and in some ways stronger than, that case. It is claimed that both programs are similar in content, both are independently produced (*Animal World* is also independently owned by its producers, whereas *Wild Kindom* is owned by its sponsor, Mutual Insurance Company of Omaha), and both requests have been for series which contain a substantial amount of material which is not off-network. (The *Animal World* petition contemplates a greater amount than *Wild Kingdom's* 12 new and 6 other not off-network pro-

[1] *Mutual Insurance Co. of Omaha* (Wild Kingdom) 33 FCC 2d 583, FCC 72-114, released February 7, 1972.

grams). Burrud Productions points out that these programs are produced and owned by an independent producer, and that a major objective of the prime time access rule is to foster a healthy syndication industry composed of independent producers capable of producing prime time quality programs. According to the petitioner, we would be furthering this goal by granting the request in this case. Petitioner further asks that we not defer action on this request, as we did in the *Petition of Hughes Television Network*, et al. (*America* series).[2] In that decision we determined that it would not be appropriate to make a decision during the pendency of the overall decision upon the prime time access rule in Docket No. 19622, and, therefore, held decision upon waiver for the *America* series in abeyance. Petitioner argues that a decision in the overall proceeding was, at that time, expected in May 1973, and that further delay in action upon waiver petitions this close to the 1973–74 broadcast season could have serious consequences for independent producers, who stand in a better position when they are able to offer a fifty-two week run. Petitioner also maintains that there is a difference between the instant request and that for *America* in that this request is for a fifty-two week series, while the latter request was for a thirteen week series, which allowed for a greater degree of flexibility in terms of its sale for syndication later in the year.

3. CBS filed comments opposing this request by Burrud Productions. CBS believes that only repeal of the prime time access rule will resolve the difficulties raised by waiver petitions such as this, because they require the Commission to make judgements as to the merit or worth of programs and that there can be no rational standards upon which to base decisions of this sort. Also, CBS points out that we would not be granting any further waivers during the pendency of Docket No. 19622 absent a showing of "special circumstances which make an earlier decision appropriate in the public interest."[3] It is asserted that the petition under consideration fails to set forth any such "special circumstances", particularly in view of the fact that a decision in the overall proceeding is expected in the near future.[4] Burrud Productions, in its reply comments, urges that a decision may not be forthcoming in the overall proceeding until September, citing our July 17, 1973, decision on the Petition for Reconsideration of the *Wild Kingdom* decision (FCC 73–696). Because of that late date, and because an independent producer would be penalized by a delayed decision in this case, there are sufficient "special circumstances" to justify immediate action and waiver.

DISCUSSION AND CONCLUSIONS

4. Upon careful consideration of the foregoing, we are of the view that decision on the matter is not appropriate at this time, and must await the overall decision in Docket No. 19622. The Petitioner has not made a sufficient showing of "special circumstances" to justify waiver in this case. He does point out that the producer is also the sole owner

[2] 40 FCC 2d 139, FCC 73–323, released March 26, 1973.
[3] *Time-Life Films* 38 FCC 2d 1087, 1095, FCC 72–985, released Nov. 9, 1972.
[4] CBS cites the Notice of Oral Argument, FCC 73–657 released June 18, 1973.

of the program, and that there are more new and "qualified" programs here than in the similar *Wild Kingdom* request. While these are certainly pertinent considerations in connection with the ultimate disposition of this matter, we do not find that they render appropriate a decision at this time, in advance of the overall decision. With 30 "eligible" programs out of the 52-week series contemplated, *Animal World* would appear to be in at least as good a position as other first-run syndicated series offered for sale (including other programs of the same general type), which usually include 26 individual programs. Thus, it does not appear that immediate waiver is necessary for widespread sale of the program, and, in fact, we are informed that it has been sold in 32 of the top 50 markets (plus 36 other markets). While all of the sale in the top 50 markets is not necessarily for access-period use, it appears from trade press reports that the series will be so used at least on 2 CBS-owned stations, one ABC-owned station, and one large-market Westinghouse station. In another action, we have acted at this time to grant waiver for the *America* series (originally filed last January), but in that case the 13-week series is geared to presentation starting September 15, so that action in advance of the overall decision appeared appropriate. It does not appear so here, in connection with this later request.

5. Accordingly, for the reasons stated, the Petition for Waiver of the Prime Time Access Rule, filed June 12, 1973, by Bill Burrud Productions, Inc., IS HELD IN ABEYANCE.

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

F.C.C. 73-963

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
REQUEST FOR WAIVER OF THE "OFF-NETWORK" RESTRICTIONS OF THE PRIME TIME ACCESS RULE (SECTION 73.658(k)(3)) FOR THE "AMERICA" SERIES (PETITION OF HUGHES TELEVISION NETWORK AND NEEDHAM, HARPER AND STEERS ADVERTISING, INC. AS AGENT FOR XEROX CORP.)

SECOND MEMORANDUM OPINION AND ORDER

(Adopted September 19, 1973; Released September 20, 1973)

BY THE COMMISSION: COMMISSIONERS ROBERT E. LEE, JOHNSON AND H. REX LEE DISSENTING.

1. The Commission here considers a request for waiver of the "off-network" restrictions of the prime time access rule (Section 73.658 (k)(3) of the Commission's Rules) filed jointly by Hughes Sports Network, Inc. (Hughes) and Needham, Harper and Steers Advertising, Inc., as agent for Xerox Corporation, with respect to the *America* program series (which ran on NBC in 1972–73). The request was originally made in a petition for waiver filed January 18, 1973; in a decision released March 26, 1973, we did not pass upon the merits of the request but stated that decision must await the decision in the overall prime time access rule proceeding, Docket 19622, and therefore the matter would be held in abeyance for the time being.[1] In a letter of August 7, 1973, Hughes renews its request for action at this time. It points out that the March 1973 decision mentioned envisaged an overall decision in Docket 19622 by May, which did not occur, and that we stated (par. 6 of the March action, 40 FCC 2d 142) that if the general decision is not forthcoming by that time, "we will review this course of action on our own motion." Immediate action is sought on the substance of the waiver request. Copies of this August 7 letter were served on the four parties who opposed the original request; no response thereto has been filed.

2. The arguments pro and con concerning the Hughes-Xerox request have been summarized in our March 1973 decision (and the *Wild Kingdom* decision shortly before) and need not be repeated here at length. (See FCC 73-323, pars. 2-4, 40 FCC 2d 139-141). Very briefly, Hughes urges the importance and meritorious "instructional" character of the *America* series, as shown by expressions from critics, edu-

[1] *Hughes Television Network* et al, FCC 73-323, 40 FCC 2d 139 (March 1973).

cators and parents, and the importance of its presentation at an hour suitable for viewing by children and family groups, such as starting at 7 or 7:30 E.T., rather than the 10 p.m. E.T. starting time which prevailed for its run on NBC (some 185 letters urging these points were attached to the original petition, and the Commission has since received numerous similar letters). Hughes urges also the need for waiver to permit free access to early evening time, the independent character of this program, with the NBC network never having any interest in it aside from being paid for the broadcast time, and that to the many young viewers who can watch it at an early hour but not 10 p.m., it would be "first run" rather than repetition. The four parties who opposed the original petition [2] urged essentially that action on waiver at that time (in advance of the decision in the overall rule making proceeding) would be a fragmentary decision on matters at issue in Docket 19622 and possibly a "pre-judgment" of that proceeding, as well as an unjustified departure from our policy (adopted late in 1972) of granting no "off-network" waivers for new programs prior to that decision in the absence of special circumstances; that waiver is not necessary to the presentation of the program at a desirable time, since early evening is not the hour of maximum children's viewing (which is late afternoon), stations subject to the rule may, if they wish, present the program during prime time if they are willing to preempt network programs, and that this is an argument which has been and can be made with respect to a wide variety of material; and any Commission grant of waiver here will necessarily be based on a view as to the program's "quality" or "merit", and thus improper and likely illegal.

3. It is also appropriate to note certain facts concerning the Hughes-Xerox presentation of the *America* series, which recently developed in connection with a Hughes letter of July 20, 1973, commenting on a request by NBC for waiver of the prime time rule for a Democratic Telethon program on September 15, 1973 (see *Democratic National Committee Telethon*, FCC 73–862, released August 10, 1973). It appears that the Hughes network will present the 13-week *America* series on Saturdays starting September 15.[3] Not having received a waiver of the rule, it has put together a lineup which complies with it, including, in the top 50 markets, some independent stations not subject to the rule, some affiliated stations which will carry the program starting at 6 p.m. E.T. (outside of prime time) and some affiliated stations which will preempt network programs to carry the program from 8 to 9 p.m. E.T. Outside of the top 50 markets, its lineup consists almost entirely of stations which will carry the program during the

[2] CBS (an opponent of the prime time access rule), and National Association of Independent Television Producers, Westinghouse Broadcasting Company, Inc., and Metromedia Producers Corp., all vigorous proponents of the rule.

[3] It appears that the series will not be a "network" presentation in the sense of a "live network feed", since no interconnection is involved (Hughes is furnishing videotapes of the material to each station carrying it). However, it is a "network" program in the sense that Hughes supplies the program and is going to promote it on the basis of presentation on particular days, and one national advertiser (Xerox) provides the advertising support. The Hughes network operation as such is not subject to the prime time access rule; the only problem here is that the material involved is "off-NBC network".

first hour of prime time, 7–8 p.m. E.T. etc.[4] However, according to counsel for Hughes, it still has not been able to make arrangements to clear the program in a few of the top 50 markets and waiver would be helpful in these cases.

DISCUSSION AND CONCLUSIONS

4. Upon consideration of the foregoing matters, the Commission believes that action on the merits of the Hughes *America* waiver request should be taken at this time, and that waiver should be granted. In connection with the first point, as Hughes points out, the "no new waiver pending overall decision" policy was adopted late in 1972, and applied early in 1973, on the assumption that the overall decision in Docket 19622 would be reached by about May of this year, a number of months in advance of the start of the 1973–74 season. This has not occurred, since it appeared desirable to hold oral argument in that proceeding (held July 30 and 31). While a decision is expected in the rather near future, likely by about the end of September, that is hardly in time for the coming season, nor for at least the first few episodes of the planned *America* presentation. Moreover, it appears likely that no fundamental change in the rule, if any is to be adopted, will be effective before the beginning of the 1974–75 season. Therefore it is appropriate at this time to reach a decision concerning the merits of the *America* request. To that extent, and under these circumstances, we are departing from the earlier policy. However, this does not indicate any wholesale abandonment of it. Any new requests for general waiver of the "off-network" restriction will still be subject to the same procedures concerning public notice and opportunity for comment which have hitherto prevailed; it is not anticipated that any such new requests, not now on file, will be granted before the overall decision, and any grants of waivers are subject to whatever decision is reached in the overall proceeding, Docket 19622.

5. As to the merits of the request, it appears that the situation here is not greatly different from that presented in the *Six Wives of Henry VIII* series, where waiver was granted and affirmed on reconsideration during 1972[5]—a series all of which has recently run on a network, but of less than a full year's length (and thus not impinging on the availability of prime time to sources of new non-network material during a full season)[6] and which was independently produced and is independently owned, without network control or interest. In reaching our March 1973 decision concerning the Hughes request, we did not find the similarities so complete as to warrant an early decision in favor of waiver; but basically the two cases are comparable, so as to make the

[4] It appears that the problem raised by NBC's telethon program, conflicting in time with the first Hughes *America* telecast, relates to 9 NBC-affiliated stations in markets outside the top 50, which have been included in the Hughes lineup for the first hour of prime time that evening.

[5] *Time Life Films*, 35 FCC 2d 733 (June 1972) and, on reconsideration, 38 FCC 2d 1087 (November 1972).

[6] The *Six Wives* series was six episodes; *America* is 13. In the latter, there is no possibility of a re-run on commercial television in the near future, because the arrangements with Time-Life under which Xerox acquired the series called for two showings, one of which was on NBC in 1972–73 and the second is that involved here. Thus, the impact on prime time availability is limited to 13 weeks.

same result appropriate, now that decision is to be reached on the merits of the later one for reasons noted above. Moreover, while we have been criticized for assertedly basing these decisions on subjective program "quality" considerations (as to the "worthwhile" or "distinctive" character of the program, etc.), we believe there is also merit in Hughes' contention that we cannot properly shut our eyes to the large number of vigorous expressions, from critics, educators, and parents, concerning the character of the *America* series and the desirability of presenting it at an early evening hour. If the presentation of this material in major markets at a desirable time will be encouraged by waiver, we believe this to be in the public interest.[7]

6. It appears appropriate to impose one condition on grant of waiver in this case, to protect those independent stations, chiefly in the top 50 markets, with whom Hughes has made arrangements for the carriage of the program. This is that waiver not be permitted to jeopardize arrangements which have already been "firmed up", under which the station will carry the program on the Saturday dates contemplated and during the first hour of prime time (7–8 p.m. E.T., etc.). Therefore the waiver set forth below contains this proviso.

7. In view of the foregoing, IT IS ORDERED, That waiver of Section 73.658(k)(3), the "off-network" provision of the prime time access rule, IS GRANTED, to stations in the top 50 markets which are subject to that rule, during the period ending September 30, 1974, to carry the *America* program series during prime time without its counting toward the three hours of permissible network and off-network programs each evening; *Provided*, That this waiver shall not extend to a station in any market in which Hughes Sports Network, Inc. had, as of the close of business on September 5, 1973, a firm arrangement with another station to carry the *America* series on Saturdays starting September 15, 1973, during the first hour of prime time (7–8 p.m. E.T., etc.).

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

[7] We also note the absence of any really specific assertions in the oppositions filed to the original Hughes request, for example as to any specific plans for development of material similar to *America* on which grant of waiver might have an impact. This is certainly a consideration which should be taken into account, and the value of having such information was one reason for adopting the policy concerning public notice and opportunity for comment on requests such as this; but in the absence of any such information here, we conclude that waiver is warranted.

F.C.C. 73-982

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 FOOTBALL GAMES AND NEWS PROGRAMS.

MEMORANDUM OPINION AND ORDER

(Adopted September 19, 1973; Released October 16, 1973)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT; COMMISSIONERS JOHNSON, H. REX LEE AND WILEY 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 5, 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. Mutual requested only waiver of Section 73.137, but from the list of markets involved it appears that in a few cases two FM stations would be involved, necessitating waiver of Section 73.237 as well.

[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 a three to five minute Mutual news broadcast at the same time that other stations in the same market are carrying certain football games also fed by Mutual. Mutual will feed 10 Notre Dame and 4 other college football games on Saturday afternoons from September 15 through December 1, 1973; professional football games on Monday nights, September 17 through December 10, 1973, and on Saturday afternoons, December 8 and 15 (two games each day); and the first round NFL Championship Games on December 22 and 23, 1973.

3. The petition lists some 86 markets in which Mutual has one or more regular affiliates of one or both its networks, and where the college and/or professional games will be carried (there may be additions later). In most cases, the football games are being carried on stations which are not Mutual affiliates (no Black Network outlets are carrying them, and MBS affiliates in only 14 of the 86 markets).[3] 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 football-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. (It is stated that this is feasible because national news stories do not change much during the course of Saturday afternoons or during an evening, and the affiliates will check wire-service material to make sure they are still current at the time of broadcast.) 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. Mutual makes several arguments as to why its petition should be granted: (1) By allowing the carriage of both football 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) 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. It is stated that the first simultaneous broadcasts are scheduled on September 15, 1973, and that Mutual has gotten this petition to the Commission at the earliest date possible under the circumstances.

DISCUSSION AND CONCLUSIONS

5. Upon consideration of these matters we are of the view that this petition should be granted. There is some 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 subse-

[3] The NFL games will be carried in 64 markets and the Notre Dame game and other college games in 58 markets.

quently 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 football 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 two days per week, 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.

5. 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 football 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..

6. *Limitations upon the allowable number of affiliates in a market.* One matter of some importance which was not treated in the Mutual petition is that there is a limitation upon the number of affiliates a network organization may have in certain markets. The Commission's approval of the multiple network operations for Mutual included the condition that it could affiliate with no more than one AM station in markets with four or less stations, and with no more than two AM stations in markets with five stations.[5] (For this purpose, a "market" is 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, then the individual community.) If the stations carrying the football games refused by the regular affiliates are, themselves, considered affiliates for this purpose, then Mutual will exceed the above-stated limitation in eight markets, based on its present list of such "part-time" outlets. Upon consideration of this matter, however, we are of the view that even if those football outlets are regarded as "affiliates", Mutual should receive a limited waiver to cover these

[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 1.

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

somewhat unusual circumstances. We have been assured by Mutual that there will be no further additions to this football and news broadcast combination in any markets where the number of stations involved would exceed the four or five AM station market limitations outlined above. We further note that this deviation from our limitation of affiliations policy is rather minor. The duplicating operation will be temporary and consist of only short periods of time rather than that of several full-time multiple networks. Also, this "violation" is limited to only eight markets, less than 10% of the 86 markets involved. Finally, 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 problem in this particular petition because the programming involved is news on some affiliates and entertainment (sports) on others.

7. 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 5, 1973, IS GRANTED, in order that stations affiliated with the Mutual Broadcasting System or its Mutual Black Network, which do not carry college and professional football games otherwise to be presented by the network from September 15 through December 23, 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.

8. 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 5 petition only, in order that stations affiliated with the Mutual Broadcasting System or its Mutual Black Network, which do not carry college and professional football games otherwise to be presented by the network from September 15 through December 23, 1973, MAY PRESENT the hourly Mutual network news programs, and other stations in these same markets MAY PRESENT the football games.

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

F.C.C. 73–1033

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
REQUESTS FOR WAIVER OF THE PRIME TIME ACCESS RULE (SECTION 73.658(k)) IN CONNECTION WITH CARRIAGE OF THE "NATIONAL GEOGRAPHIC" PROGRAM AND OF THE ABC "REASONER REPORT" PROGRAM

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 PART AND DISSENTING IN PART.

1. The Commission here considers two requests for waiver of the prime time access rule, Section 73.658(k) of the Commission's Rules, filed by the licensees of the two stations mentioned below, both on September 19, 1973. The first is on behalf of Station KPRC–TV, Houston, Texas, asking for waiver of the "off-network" provision of the rule (Section 73.658(k)(3)) to permit it to carry the off-network *National Geographic* program on up to six Sundays during the 1973–74 season, on Sunday evenings when NBC will give back time to its affiliates by running network programs only until 10 p.m. E.T. (9 p.m. Houston time). Waiver is requested to the extent of 30 minutes on these occasions. This request is essentially the same as those considered in an action of September 11, 1973, granting waiver for this program to six other stations; it is virtually identical with the request of WSOC–TV, Charlotte, N.C., considered in that action. The second request is that of Station WTAE–TV, Pittsburgh, Pennsylvania (ABC-affiliated) asking for waiver of the rule to permit it to carry the ABC *Reasoner Report* public affairs program on Saturdays at 7 p.m. E.T., preceded by a half-hour of local news and followed by a half-hour local public affairs program, *Black Chronicle*. This is essentially the same as a request by WPVI–TV, Philadelphia, also favorably considered on September 11.[1]

2. It appears that the facts in these cases are essentially the same as those dealt with in the recent decisions cited. Therefore, no further discussion is necessary, and waiver appears appropriate in these cases also.

[1] See *National Geographic (1973–74)*, FCC 73–949, and *Carriage of Network News*, FCC 73–948, both released September 14, 1973.

3. Accordingly, IT IS ORDERED, That:

(a) The request for waiver of the off-network restriction of the prime time access rule (Section 73.658(k)(3) of the Rules) by Channel Two Television Company, licensee of Station KPRC–TV, Houston, Texas, IS GRANTED, in order that it may carry six programs of the *National Geographic* series during prime time without its counting toward the permissible three hours of network and off-network material, during the period through September 30, 1974.

(b) During the period ending March 31, 1974, Station WTAE–TV, Pittsburgh, Pennsylvania, MAY PRESENT the ABC program *The Reasoner Report* at 7 p.m. E.T. on Saturdays, without its counting toward the permissible three hours of network programming on these evenings, provided the program is preceded and followed by half-hour local news or public affairs programs.

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

F.C.C. 73R–362

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of WILLIAM P. JOHNSON AND HOLLIS B. JOHNSON, D.B.A. RADIO CARROLLTON, CARROLLTON, GA. For Construction Permit	Docket No. 19636 File No. BP–17970
FAULKNER RADIO, INC. (WLBB), CARROLLTON, GA. For Renewal of License	Docket No. 19637 File No. BR–1431

MEMORANDUM OPINION AND ORDER

(Adopted October 18, 1973; Released October 23, 1973)

BY THE REVIEW BOARD:

1. The above-captioned applications were designated for consolidated hearing by Commission Memorandum Opinion and Order, FCC 72–1022, 38 FCC 2d 68, released November 21, 1972. Now before the Review Board is a petition to enlarge issues, filed by Faulkner Radio, Inc. (WLBB) (Faulkner) on June 27, 1973, seeking a hidden ownership and candor issue against Radio Carrollton.[1] More specifically, Faulkner seeks an issue to determine whether William P. Johnson and Hollis B. Johnson, doing business as Radio Carrollton, have failed to reveal the existence of a one-third owner in the application, Al Cohen, and whether they have been candid with respect to the ownership of the applicant.

2. Faulkner alleges that its petition is timely since the facts leading to its filing arose out of the testimony given by William P. Johnson and Hollis B. Johnson during the May 14, 1973, hearing in this proceeding.[2] Because this testimony allegedly, directly contradicts an earlier deposition by Al Cohen,[3] petitioner began investigating and allegedly discovered an undisclosed interest of Cohen in the Radio Carrollton application. According to Faulkner, Cohen deposed that he had never knowingly helped anyone prepare an application for a radio station in Carrollton, including the Johnsons, and that he did not know about their application until it was published or who had assisted them in preparing it. Although the Johnsons minimized Cohen's participation in the preparation and filing of the original application and de-

[1] Also before the Board for consideration are: (a) the Broadcast Bureau's comments, filed July 11, 1973; (b) opposition, filed July 11, 1973, by Radio Carrollton; and (c) reply, filed July 23, 1973, by Faulkner.

[2] Faulkner contends that its petition was expeditiously prepared after receipt of the transcript of the hearing on June 13, 1973.

[3] This deposition was taken in 1969 at a discovery proceeding arising out of a lawsuit Cohen, an ex-Faulkner employee, instituted against Faulkner for unpaid sales commissions he allegedly earned at the Faulkner FM Station WBTR.

nied any ownership interest in the application other than theirs, petitioner contends that they, nevertheless, testified to Cohen's involvement in the application at the May 14 hearing. Specifically, Faulkner avers that the Johnsons testified that Hollis B. Johnson had asked Cohen general questions about the Radio Carrollton application while preparing it, that Cohen had suggested the availability of a frequency to them and had recommended a consulting radio engineer they could hire, and that, furthermore, they had discussed the possibility of Cohen managing their station, as well as a possible future partnership for him. Faulkner contends moreover, that the supporting affidavits it has submitted contradict both the testimony of the Johnsons and the deposition by Cohen. In this connection, petitioner avers that each of the affiants,[4] all of whom know Cohen, state that Cohen either admitted or implied to them that he had an interest in the Radio Carrollton application.[5]

3. In opposition, Radio Carrollton contends that the petition is grossly late since it is based on facts available to petitioner for several years. In this connection, Radio Carrollton notes that Faulkner submits documents and affidavits dating back to July, 1968, and that those 1973 affidavits relied upon relate to purported conversation which occurred years ago. Moreover, Radio Carrollton contends, good cause has not been shown for the untimeliness. With respect to the merits of the petition, Radio Carrollton alleges that the Johnsons and Cohen expressly deny the existence of any ownership agreement regarding an interest by Cohen in the application. As further explanation, Radio Carrollton attaches an affidavit executed by Cohen in which he states that while he had prepared a partnership agreement which would have guaranteed him ownership participation in the Radio Carrollton application and a position as general manager of the station, the Johnsons refused to sign it. In his affidavit Cohen also states that, whenever he spoke with others of his relationship with Radio Carrollton's application, he did so without the Johnsons' knowledge or approval and he always referred to his association with Radio Carrollton as being prospective. Finally, Radio Carrollton argues that the affidavits submitted by Faulkner rely primarily upon impressions about remarks Cohen made regarding "his [own] hopes and aspirations" to participate in Radio Carrollton. The Broadcast Bureau supports granting Faulkner's untimely petition since it contains serious allegations, supported in particular by the Bartons' affidavits, which contradict testimony by the Johnsons, as well as ownership representations contained in Radio Carrollton's application.

[4] Affidavits executed by Sally Barton, Cohen's former wife; her husband, Dave Barton, a onetime co-employee of Cohen at Station WACX, Austell, Georgia; Jack Kirk, a onetime co-employee of Cohen at WBTR–FM; Dan Turner and John Lyons, employees of Faulkner during the period Cohen worked for Faulkner; and Vivian McGee, an acquaintance of Cohen, are attached to the instant petition.

[5] Sally Barton states in her affidavit of May 17, 1973, that she has seen a signed partnership agreement under the name of Radio Carrollton between the Johnsons and Cohen in which Cohen had a one-third interest in the proposed station. David Barton states in his affidavit of the same date that Cohen admitted being a one-third owner of Radio Carrollton and that, furthermore, he once overheard a telephone conversation between Cohen and a person, who he believes was Hollis B. Johnson, in which a written agreement was discussed. The other affiants state that Cohen had admitted to them that he had an agreement to be a part of Radio Carrollton and/or manage the station.

4. Faulkner, in reply, reaffirms that its petition is timely, maintaining that it was only after the conflict in testimony between the Johnsons and Cohen became apparent and it obtained the affidavits of the Bartons, after the dissolution of the Cohen marriage, that it was possible for Faulkner to meet the burden of sustaining its petition. In specific response to the opposition, Faulkner challenges Cohen's statement that his written partnership agreement was never actually signed, arguing that if it had not been signed, it would not have been important enough for Hollis Johnson to have cautioned him to destroy it, as Cohen concedes he did in his affidavit. In any event, petitioner contends, Cohen's deposition, the Johnsons' testimony, and the affidavits petitioner submitted, continue to conflict with one another in spite of the fact that Cohen's affidavit attempts to reconcile the differences.

5. The Review Board agrees with the Broadcast Bureau that good cause has not been shown for the untimeliness of Faulkner's petition. Even assuming, as petitioner does, that the Bartons' affidavits provide a necessary link to Cohen's ownership in Radio Carrollton, petitioner has failed to satisfactorily explain why the information in these affidavits was not available earlier, since it involves matters which allegedly occurred several years ago. However, Faulkner's petition warrants consideration on its merits because it raises serious public interest questions. See *The Edgefield-Saluda Radio Co.* (*WJES*), 5 FCC 2d 148, 8 RR 2d 611 (1966). The allegations by Faulkner that Cohen admitted or implied to the several persons furnishing the affidavits supporting its petition that he had an interest in the Radio Carrollton application are inconclusive and do not, by themselves, justify the addition of the requested issue, particularly in view of the fact that Radio Carrollton, the Johnsons and Cohen steadfastly deny his interest. Moreover, there is no evidence, even if Cohen had made the remarks credited to him, that Cohen was expressing anything but his own aspirations to participate in Radio Carrollton. However, these circumstances, considered in light of the statements by Sally Barton claiming that she saw a signed copy of a partnership agreement between Cohen and the Johnsons, and by Dave Barton that he allegedly overheard Cohen and Hollis B. Johnson discussing the agreement, do raise a substantial question regarding possible undisclosed interest in Radio Carrollton by Cohen which warrants the requested issue. Radio Carrollton has attempted to reconcile the alleged contradictions raised by the Johnsons' testimony, Cohen's deposition, and the several affidavits Faulkner submits, but it has not adequately rebutted petitioner's serious allegations concerning the existence of a signed partnership agreement. Although Faulkner has failed to produce a copy of the partnership agreement between Cohen and the Johnsons, the Board is confronted with conflicting affidavits and testimony in this regard. In our view, the serious questions raised are best resolved on the basis of an evidentiary inquiry. See *Folkways Broadcasting Co., Inc.*, 27 FCC

2d 619, 21 RR 2d 163 (1971).[6] An appropriate issue will therefore be specified.

6. Accordingly, IT IS ORDERED, That the petition to enlarge issues, filed June 27, 1973, by Faulkner Radio, Inc. (WLBB) IS GRANTED; and

7. IT IS FURTHER ORDERED, That the issues in this proceeding are enlarged to include the following:

To determine whether Al Cohen has and/or had a one-third ownership interest in Radio Carrollton, and whether William P. Johnson and Hollis B. Johnson, d/b as Radio Carrollton, have been lacking in candor with the Commission concerning this interest, and, if so, to determine the effect thereof upon the applicant's qualifications to be a Commission licensee.

8. IT IS FURTHER ORDERED, That the burden of proceeding with the introduction of evidence under the issue added SHALL BE on Faulkner Radio, Inc. (WLBB), and the burden of proof under this issue SHALL BE on Radio Carrollton.

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

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[6] Compare *Martin Lake Broadcasting Co.*, 28 FCC 2d 457, 21 RR 2d 631 (1971), where a petition was not supported by affidavits of persons with personal knowledge, and possible minor inconsistencies in a deposition and affidavits did not raise a substantial question as to the existence of a concealed ownership agreement.

F.C.C. 73-1017

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
APPLICATION FOR EXEMPTION OF THE U.S. CARGO VESSEL "SEA ALASKA" FROM THE PROVISIONS OF TITLE III, PART II OF THE COMMUNICATIONS ACT OF 1934, AS AMENDED, WHILE ENGAGED ON A SINGLE, DOMESTIC VOYAGE IN THE OPEN SEA.

MEMORANDUM OPINION AND ORDER

(Adopted October 3, 1973; Released October 5, 1973)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE, ABSENT; COMMISSIONER JOHNSON DISSENTING.

1. The Commission has before it an application, File Number X-1158, filed by Sea Alaska Products, Inc., 1836 Westlake North, Seattle, Washington 98109, on behalf of the United States cargo vessel SEA ALASKA, 3805 gross tons, requesting exemption from the radiotelegraph installation provisions of Title III, Part II of the Communications Act of 1934, as amended, when navigated on a single, domestic voyage from Seattle, Washington to Dutch Harbor, Alaska.

2. The vessel is to be moored in Dutch Harbor, Alaska, while engaged in the shell fish and salmon processing industry. While so engaged the vessel will not be subject to Title III, Part II of the Act. The purpose of the immediate application is to allow the vessel to proceed to this moorage without the necessity of contemporizing the radiotelegraph equipment presently installed which the applicant asserts would place an extreme economic hardship on his company. The applicant states that the vessel will at no time be navigated in the open sea nor more than 50 nautical miles from the nearest land.

3. In further support of this request the applicant says that the movement of the vessel is unique inasmuch as it is a processing plant and that the vessel's categorical identity has been completely removed from merchant fleet classification and services. The applicant also indicates that he is in the process of installing radiotelephone equipment that will meet the communications and safety needs of the vessel and of the Commission.

4. In consideration of the foregoing assertions, it is noted that although the vessel has been certificated by the United States Coast Guard as a "fish processing" vessel which cannot carry cargo or persons other than the navigating crew; it is self-propelled and consequently a cargo vessel within the meanings of Sections 3(w)(1) and 3(w)(3) of Title I of the Communications Act. It is thereby sub-

ject to the radiotelegraph provisions of Title III, Part II of the Act due to its size.

5. Section 352(b) of the Act provides that the Commission may, if it considered that the route or other conditions of the voyages are such as to render a radio installation unreasonable or unnecessary for the safety purposes of Title III, Part II of the Communications Act, exempt any cargo vessel which in the course of its voyages does not go more than 150 nautical miles from the nearest land. The SEA ALASKA clearly comes within this distance limitation and may be considered for exemption.

6. The applicant, however, has erroneously asserted that the vessel, operating at a maximum distance of 50 nautical miles from the nearest land, will be navigated only on the inside passage and not in the open sea. The proposed route from Seattle is through the inside passage of Canada only to Cross Sound, where the vessel will, in fact, embark on an open sea voyage. It will then proceed across the Gulf of Alaska and along the Alaskan Peninsula to Dutch Harbor, clearly an open sea voyage of approximately 1,000 nautical miles.

7. In examining the safety factors involved for the SEA ALASKA while on the proposed voyage, it is generally agreed that a radiotelephone installation would appear to be adequate for safety communication purposes while on the inside passage. The majority of other vessels transiting this passage are equipped with radiotelephone. There are seven Canadian Government coast stations maintaining continuous watch on the radiotelephone distress frequency in the general vicinity of the route in addition to two United States coast stations at Seattle and Ketchikan which continually monitor the distress frequency at the southern and northern portions of the route, respectively.

8. While navigated in the open sea the vessel will proceed along the southern coast of Alaska to its destination. This route is covered by radiotelegraph stations NOJ at Kodiak and NMJ at Ketchikan which maintain watch on the calling and distress radiotelegraph frequency, 500 kHz. It is also covered by seven radiotelephone stations maintaining watch on the calling and distress frequency 2182 kHz. Geography and distances between these stations and the route of the SEA ALASKA, as well as potential support from normal ship traffic in the area, gives an advantage to the radiotelephone safety system in this particular case.

9. In light of the foregoing and in consideration of the fact that the Commission has previously granted exemption to large cargo vessels navigating in the open sea for the purposes of trial and delivery voyages, it would appear that the circumstances herein outlined are sufficient to warrant exercise by the Commission of its exemption authority and, accordingly, it would appear to be unreasonable and unnecessary to compel the SEA ALASKA to comply with the radiotelegraph provisions of Title III, Part II of the Communications Act.

10. Title III, Part II of the Act, and the Commission's rules made pursuant thereto, make provision for a compulsory radiotelephone safety system and establish minimum radiotelephone requirements for cargo vessels between 300 and 1600 gross tons. It would be feasible and

desirable for the SEA ALASKA to meet these requirements and thus enhance the safety of the vessel and other vessels similarly equipped.

11. Accordingly, IT IS ORDERED, That the United States cargo vessel SEA ALASKA, 3805 gross tons, be EXEMPT from the radiotelegraph provisions of Title III, Part II of the Communications Act of 1934, as amended, when navigated on a single voyage on the inside passage of Canada and in the open sea between Seattle, Washington and Dutch Harbor, Alaska, at a maximum distance of 50 nautical miles from the nearest land, for a period beginning on the date of this Order and continuing for not later than twelve months thereafter: Provided, That:

(1) the vessel is equipped with a radiotelephone installation as required by the Federal Communications Commission's rules applicable to cargo vessels of 300 to 1600 gross tons subject to the provisions of Title III, Part II of the Communications Act of 1934, as amended;

(2) the vessel shall carry at least one qualified radiotelephone operator as required by Section 83.155(d) of the rules; and

(3) a continuous radiotelephone watch must be maintained on 2182 kHz while the vessel is being navigated in the open sea or on any tidewater adjacent or contiguous to the open sea in accordance with Section 83.202(b) of the rules.

12. This exemption may be terminated by the Commission at any time, if, in the Commission's discretion, the need for such action arises.

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

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint by
PATTON ECHOLS, ANNANDALE, VIRGINIA.
Concerning Section 315, Political Broadcast Re Station WMAL, Washington, D.C.

OCTOBER 16, 1973.

Mr. PATTON ECHOLS,
4321 Markham Street,
Annandale, Va. 22003

DEAR MR. ECHOLS: This refers to the complaint against Radio Station WMAL, Washington, D.C., filed on October 5, 1973, by you as Republican candidate for Attorney General of the Commonwealth of Virginia.

You state that a thirty-second advertisement on behalf of your candidacy was broadcast by WMAL Radio twice on October 4, 1973; that WMAL then withdrew the announcement stating that it did so on advice of counsel after protests had been received against the spot, and that the station manager later stated in news programs that questions had been raised about the accuracy and fairness of the spot and WMAL had removed it for further study for that reason. Attached to your complaint was the following, which you state is the text of the announcement in question:

1. Hey, did you hear Henry Howell's talking about bussing kids from Northern Virginia into D.C. and kids from D.C. into our schools?
2. If I'd have wanted my kids to go to school in D.C., I would have lived in D.C.!
1. Do you think they'll do it?
2. I don't know. Our Attorney General's too busy politicking to do anything about it.
1. Well, if Pat Echols is elected Attorney General, he'll do everything possible to stop bussing.
2. I know I'd feel a lot better with someone from Northern Virginia as Attorney General. You know, I even send Pat Echols a ten dollar contribution? He's our kind of guy.

ANN: Put a full-time lawyer in the Attorney General's office. Vote for Pat Echols.

LOCAL ANN: Paid for by the Pat Echols Campaign Committee.

The Henry Howell named in the above announcement is Lieutenant Governor of Virginia and presently a candidate for Governor. Appended to your complaint is a transcript of the WTOP-TV "Washington News Conference" of March 26, 1972, as monitored by Radio-TV Monitoring Service, Inc. According to the transcript, the guest on the program was Lieutenant Governor Howell. The first two pages of the transcript deal with his attitude toward school busing, concluding with the following passage:

HILL: When you—when you say that consolidation may be the only answer when you have an all-black or——

HOWELL: Predominantly black school system.

HILL: —nearly all—predominantly black city, you could be talking not only about Richmond; you could also be talking about Washington.

HOWELL: Or Baltimore or Philadelphia, Cleveland——

HILL: Yes, but we're in Washington now, and do you see a precedent in the Merhidge decision that could eventually lead to consolidation of, say the Virginia suburban schools with the Washington, D.C. schools, and would you favor that?

HOWELL: I'd say—first, Don, you've got to realize that the white people of this nation are the great majority. They are the decision-makers; they represent close to 80 per cent of the people, and we've got to get the consent of the governed to move this nation forward. We can't invite revolution. That's the practical side of the problem. We as political leaders have got to do like Governor Reubin Askew is doing; we've got to have some backbone, and there's very little backbone that is showing up on the public X-ray machines that are coming out of the Congress of the United States or the state capital.

We cannot afford a divided society. When you get to Washington, D.C. and want to go over into the lovely, sweet suburbia of the adjacent Maryland and Virginia communities, you get to the most traumatic political question that can be asked in the nation. But we can't afford to let the District of Columbia, the nation's capital, go to pot. We can't afford to lose souls and human beings. And if it's going to be some distribution of the young people of the District of Columbia into Maryland and into Virginia, to save our nation from being a divided black-white nation, then we've got to try this.[1]

With further reference to your advertisement, you state that busing across jurisdictional lines is of great importance to the citizens of Virginia; that Mr. Howell's opinion on the matter is relevant, and that "Access to the media to explain Echols' position on busing, and Howell's position on the subject, is essential if the concept of a 'free marketplace of ideas' is to have real meaning." Although you acknowledge that your own voice was not employed in the announcement, you cite the Commission's ruling in the Stoner case[2] that a candidate cannot be censored if the candidate himself voices his views in a radio advertisement, and ask the Commission "to apply the same reasoning in this instance of a candidate's view expressed by his duly authorized representative." You state further that "It is the candidate's position that is essential" and that "To allow censorship merely because a candidate's voice is not heard on a spot is contrary to the idea of free exchange of ideas."

You assert that "Censorship, under whatever guise, of a candidate's views on a matter of public interest is contrary to the Constitution of the United States and Section 315 of the Federal Communications Act"; that WMAL's own pre-play procedure first allowed the spot to be broadcast and that it was "only after blatant political pressure was applied that WMAL-Radio removed our advertising."

You ask that WMAL immediately reinstate the advertisement and that the Commission "admonish WMAL-Radio against further censorship of M. Patton Echols, Jr., political advertising, subject to those considerations of taste, accuracy, and advertisement quality normally applicable to such advertising."

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[1] According to the *Washington Post* of October 5, 1973, "Howell has since stated that there is no authorization in law to bus across state boundaries, and that he would oppose any consolidation of busing plans that are contrary to law or the will of the people."

[2] *In Re Complaint by Atlanta NAACP Concerning Section 315 Political Broadcast by J. B. Stoner*, 36 FCC 2d. 635 (1972).

Counsel for WMAL has forwarded to the Commission a copy of the following two announcements broadcast on October 5 by the station regarding the subject of your complaint. The one stated to have been broadcast first is as follows:

> One of the radio commercial announcements for the Pat Echols campaign concerned a position on busing allegedly taken by Virginia gubernatorial candidate Henry Howell that raises a serious question of accuracy and fairness. Complaints were received by WMAL raising questions regarding the accuracy and fairness of that announcement. As a result, we discontinued its broadcast until we could study the matter. We have continued to broadcast other announcements provided by the Echols committee and will make a further decision on the broadcast of this particular spot after our study.

The other announcement, stated to have been broadcast after the licensee concluded its study of the matter, is as follows:

> We have found that there is a good deal of public confusion over this matter. As a result, rather than resume broadcasting the announcement, WMAL has decided that the public interest will be best served by providing the appropriate opposing candidates with free time in the near future to discuss the issue.

With respect to your complaint, it should be noted initially that Section 315(a) of the Communications Act of 1934, as amended, which proscribes censorship by a licensee of material broadcast under the provisions of that section, refers to "use" of a broadcasting station by a candidate, and the Commission has always interpreted "use" to mean an appearance by a candidate in person rather than an appearance by someone else on his behalf. This interpretation never has been reversed by the courts, nor has Congress amended Section 315(a) to require any other interpretation. With the sole exception set forth in Section 315 regarding appearances by candidates, licensees are free to exercise their good faith judgment as to what particular material will best serve the public interest. Section 326 of the Communications Act specifically prohibits the exercise by the Commission of "the power of censorship over the radio communications or signals transmitted by any radio station." The Stoner ruling of the Commission to which reference is made in your complaint concerned an appearance by a candidate himself and therefore is inapplicable here.

In a letter to the Commission of October 27, 1972, the Honorable Ronald Reagan, Governor of California, asked the Commission with respect to advertising in support of a ballot proposition, to remind licensees to "screen out all materials which are false and fraudulent . . ." In response, the Commission stated in part,

> Absent certain conditions not here present (e.g., appearance by political candidates) each licensee may exercise its own judgment as how best to serve the public interest by presenting contrasting views, and what particular material is to be presented. Intervention by the Commission regarding specific material being broadcast for or against a proposition, even to the limited degree you urge, might create the impression that the Commission is advocating one viewpoint or attempting to judge the truth or falsity of material being broadcast on either side of a currently controversial issue—a position which would be inappropriate for a government licensing agency. (*In Re Complaint by Hon. Ronald Reagan*, 38 FCC 2d 314 (1972).)

Although the complaint in that case was different from that here, the principle enunciated is applicable to both situations. Here, as in the earlier case, the Commission will not attempt to judge whether statements broadcast on political or other controversial public issues are true or false or whether a licensee was justified in either broadcasting or rejecting them. To do so would be to attempt to place the Commission itself, the government licensing agency, in the role of national arbiter of the "truth." Although we would be most concerned if substantial evidence were presented that a licensee had acted in bad faith or deliberately discriminated against a political candidate, we have no such evidence before us here. We note that the licensee has stated its intention to provide appropriate opposing candidates with free time in the near future to discuss the issue, and according to your advertising agency, the station continued to broadcast the other three announcements submitted by you.

Accordingly, for the reasons stated above, no further action by the Commission on your complaint appears appropriate.

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

Sincerely yours,

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

F.C.C. 73-1048

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of SOUTHERN PACIFIC COMMUNICATIONS Co. For Special Temporary Authority Under Section 214 of the Communications Act of 1934, as Amended To Provide Specialized Communications Common Carrier Service Via Leased Lines Between Los Angeles, Calif., and Tucson, Ariz., for a Period Not to Exceed 6 Months Pending Completion of Construction of Presently Authorized Permanent Facilities and SOUTHERN PACIFIC TRANSPORTATION Co. For Waiver of the Requirements of Part 93 of the Commission's Rules and Regulations To Permit the Limited Lease of 60 4 Khz Circuits on a Cost-Sharing, Not-for-Profit Basis to Southern Pacific Communications Co.	File No. P-C-8699

MEMORANDUM OPINION, ORDER AND TEMPORARY AUTHORIZATION

(Adopted October 11, 1973; Released October 16, 1973)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT.

1. We have before us for consideration the July 20, 1973, request of Southern Pacific Transportation Company (SPTC) for waivers under Part 93 of the Rules, and the application filed by Southern Pacific Communications Company (SPCC) on July 20, 1973, for temporary authority, under Section 214 of the Communications Act of 1934, as amended, and Section 63.04 of the Rules, to provide specialized communications common carrier service between Los Angeles and Tucson, Arizona, utilizing, in part, channels authorized to SPTC for use in its private microwave system between Los Angeles, California, and Tucson, Arizona.[1] The relief asked by SPCC and SPTC is opposed by

[1] The specialized common carrier will be extended from Los Angeles, California to San Francisco utilizing the facilities of SPCC for which it has the necessary authorization. See FCC orders adopted September 13, 1972 (FCC 72-808), and February 21, 1973 (FCC 73-203).

a number of common carriers;[2] and we must decide, in the light of the allegations and arguments of all of the parties, whether a grant of the SPCC–SPTC proposal would be in the public interest.

2. Specifically, SPCC is authorized as a specialized common carrier to provide service between San Francisco and Los Angeles, California, and between Los Angeles and Tucson, Arizona, and to other points, as well. It has completed its microwave system between San Francisco and Los Angeles, or nearly so; but, while it has proceeded with due diligence, its authorized common carrier facilities between Los Angeles and Tucson will not be operational before April, 1974.

3. In these circumstances, to enable SPCC to provide service over these routes at an early date (commencing October 15, 1973), it here applies for temporary authority to do so. It also asks that it be allowed to use facilities licensed in the private services to SPTC. SPTC, in turn, requests waivers under Part 93 of our Rules to permit it to lease 60 4 Khz circuits of its existing Los Angeles to Tucson microwave system to its sister subsidiary (SPCC) on a not-for-profit, cost-shared basis.[3] The term of the lease, as we have indicated, would run between October 15, 1973, and April 15, 1974, a period of six months.

4. As we have said, SPCC's plan is opposed by a number of common carriers. In support of their positions, they advance four major arguments. First, they contend that neither SPCC nor SPTC has made a showing which would warrant favorable action on the requests they have made. Further, they say that a grant of the relief asked would further "blur" the distinction the Commission has traditionally made concerning the use of frequencies allocated to the "public" in contrast to the "private" radio services, citing *Preston Trucking Co., Inc.*, 42 FCC 2d _____ (1973), *Memorandum Opinion and Order* (FCC 73–812), Docket No. 19309, released July 31, 1973, as the first in a series of cases which might lead to the result the carriers predict.[4] Next, they argue that the SPCC–SPTC proposal, if allowed, would set an undesirable precedent, because it might well give rise to numerous requests by specialized common carriers to employ frequencies allocated in the private services. Finally, their fourth point, they say allowing SPCC to commence operation 6 months in advance of the date on which its Los Angeles to Tucson system will be ready for use affords it (SPCC)

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[2] The referenced pleadings are the Petition to Deny, filed August 20, 1973, by Western Tele-Communications, Inc., Opposition, filed August 24, 1973, jointly by the American Telephone and Telegraph Company, The Mountain States Telephone and Telegraph Company, and the Pacific Telephone and Telegraph Company; the Comments filed jointly on August 29, 1973, by Microwave Communications, Inc., and MCI Telecommunications Corporation; the Comments in Opposition to Proposal by Southern Pacific, filed August 31, 1973, by Southern Pacific Communications Company and Southern Pacific Transportation Company; the Reply to Opposition, filed September 13, 1973, by Western Tele-Communications, Inc., and the Further Comments of United Video in Reply to Opposition and Response by Southern Pacific, filed September 14, 1973. In the latter pleading, United Video withdrew its objections to the proposal of SPCC and SPTC, as made.

[3] A question was raised by one of the opponents as to whether all pertinent cost factors had been included in arriving at the charge to be made by SPTC for the use of its equipment. SPCC and SPTC responded, giving the basis of their calculations and advising that both elements for depreciation and the cost of capital had been taken into account. See Opposition in Response, filed August 31, 1973, at p. 14, para. 16.

[4] The *Preston* case, cited in the text, involved a unique set of circumstances not paralleled, here, and it is our view that what was done, there, has no significant bearing on the essential policy question we are called upon to respond to in deciding whether to grant the relief requested by SPCC and SPTC or not to do so. Accordingly, further reference to the *Preston* decision would be inappropriate.

an unfair competitive advantage over other common carriers who are authorized and desire to furnish service in the areas in which SPCC plans to make its facilities available.

5. On the last point mentioned, while favorable consideration of the proposal would allow SPCC to offer interstate, specialized common carrier service to the public 6 months in advance of the date scheduled for completion of its Los Angeles to Tucson links, we do not see, in this, an unfair competitive advantage. If we were to construe its plan in this way, it would follow that we would have to classify any number of other factors as affording our licensees "unfair" advantages. And, to equalize the opportunity for competition, we would have to withhold service by the specialized carriers to some indefinite date in the future on which all could be placed in exact parity with one another. We have not followed such a course of action in the past; and we do not expect to act in this way in the future. Accordingly, we find no merit in this contention.

6. Nor do we find substantive merit in the second and third points urged by the carriers. The distinctions between the private and public radio services, insofar as the present proposal is concerned, are quite clear, and they remain so. In this instance, SPTC is an eligible in the Railroad Radio Service. It has a microwave system which it has constructed and which it uses for purposes consistent with those permitted in the service in which it is eligible. The fact that it would make 60 channels available on a nonprofit, temporary basis to SPCC does not alter the nature of its system or the terms and conditions under which it may make use of it. It merely allows, for the limited time period we have mentioned, a carrier to offer services it has been authorized to provide, using existing facilities licensed in the private services. This can be done, here, without adverse impact on any user or eligible in the private services; and the circumstances presented are such that we do not feel the result would be a "blurring" or obfuscation of the distinctions which exist between the public and private services. Moreover, the situation, here, is so unique, and the proposal is for such a limited period of time, that we do not think a grant of it would establish any precedent of any moment for further actions.

7. Finally, we see no basis for embracing the conjecture of the carriers that giving permission to SPCC to operate on a interim basis using SPTC's system will result in any self-imposed delays in the completion of its common carrier microwave facilities. This is not likely, for SPCC's request is very definite. It is for 6 months only; and it is premised on representations that its common carrier system will be finished in this time period. Accordingly, in these circumstances, weighed in the light of the advantages to the public which would flow out of commencing the previously authorized communications services at the earliest date possible, we conclude that there is ample justification for favorable consideration of the requests made by SPCC and SPTC.

8. Accordingly, IT IS ORDERED, That, consistent with the limitations and conditions expressed in the foregoing opinion, the provisions of Section 93.2 and pertinent requirements of Subpart H of Part 93

of the Rules, ARE WAIVED to permit the lease by Southern Pacific Transportation Company of 60 4 Khz channels on its microwave facilities, authorized in the Railroad Radio Service, between Los Angeles, California, and Tucson, Arizona, to Southern Pacific Communications Company for the period commencing October 15, 1973, and terminating no later than April 15, 1974, on a cost-sharing basis.

9. IT IS FURTHER ORDERED, That Southern Pacific Transportation Company SHALL FILE A REPORT with Commission, not later than May 15, 1974, showing the contributions to capital and operating costs made by Southern Pacific Communications Company for the use of its facilities.

10. IT IS FURTHER ORDERED, That the application (File No. P–C–8699) IS GRANTED, and Southern Pacific Communications Company IS HEREBY AUTHORIZED to lease and operate 60 4 Khz channels from SPTC for the provision of common carrier communication service between Los Angeles, California and Tucson, Arizona for the period commencing October 15, 1973, and terminating not later than April 15, 1974.

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

F.C.C. 73-901

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of TELERENT LEASING CORP., ET AL. Petition for Declaratory Rulings on Questions of Federal Pre-emption on Regulation of Interconnection of Subscriber-Furnished Equipment to the Nationwide Switched Public Telephone Network	Docket No. 19808

MEMORANDUM OPINION AND ORDER

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

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT.

1. The Commission has before it a petition for declaratory rulings filed on August 8, 1973 by North American Telephone Association (NATA) and a number of firms doing business in the States of North Carolina and Nebraska, hereinafter jointly referred to as Petitioners. NATA is a national trade organization of companies engaged in the manufacture, distribution, installation and maintenance of interconnected communications terminal equipment and systems.[1] The primary question raised by the petition is whether and, if so, to what extent the actions which we have taken on interconnection of customer-provided communications equipment to the nationwide switched public telephone network have preempted state action in this area. A ruling is also sought as to whether customers, such as hotels and motels, providing their own communications systems (e.g., PABX) are communications common carriers and therefore subject to regulation as such.

2. On August 15, 1973, we invited persons interested in commenting on the subject petition to file comments on or before September 12, 1973 and reply comments on or before September 24, 1973.[2]

3. In our *Caterfone* decision,[3] we held that the Carterfone [4] filled a need, that its use did not adversely affect the telephone system, that its use was nevertheless precluded by provisions in an American Telephone & Telegraph Company (AT&T) tariff, and that the tariff was

[1] In addition to NATA, Petitioners are comprised of Telerent Leasing Corporation, Crescent Industries, Inc., Long Engineering Co., Petty Communications, Inc., Tele-Sound Company, Inc., and Telephone Interconnect Company, all NATA members in the States of North Carolina or Nebraska.

[2] Public Notice dated August 15, 1973 (Mimeo No. 05725). In an earlier News Release dated August 10, 1973 (Mimeo No. 05612) our Public Information Office called attention to Petitioners' filing as one of a number received of more than routine interest.

[3] *Carterfone*, 13 FCC 2d 420; reconsideration denied, 14 FCC 2d 571 (1968).

[4] The Carterfone is a device used to interconnect mobile radio systems to the interstate and foreign message toll telephone system.

unlawful because it prohibited the use of the Carterfone and other interconnecting devices without regard to actual harm caused to the telephone system. We did not prescribe the terms of a new tariff, but left that to the initiative of the telephone companies, pointing out that they were in no wise precluded from adopting reasonable standards to prevent harmful interconnection. Basic to our holding was a rejection of AT&T's position that because AT&T could not control the interconnected private system, interconnection was by definition a degradation of the message toll telephone system without regard to the quality of the interconnecting device or of the interconnected mobile radio system, i.e., without regard to actual harmful effects. We viewed that position, and the tariff rule embodying it, as unreasonable.

4. As a result of our *Carterfone* decision, AT&T filed new and revised tariffs, presently in effect, which permit the interconnection and use of customer-provided terminal devices or communications systems to the telephone message toll and exchange network subject to certain conditions. One such condition is that any network control signalling unit (NCSU) must be furnished, installed and maintained by the telephone company (except for certain military installations and remote or hazardous locations). In permitting such tariffs to go into effect without formal investigation or hearing, we held that the tariff bar against any customer providing his own NCSU in connection with telephone company facilities was not in conflict with our *Carterfone* ruling.[5] Similarly, we have held that the present restrictions in the interstate MTS and WATS tariffs against customers providing connecting arrangements (CA's) for direct connection of customer-provided equipment (e.g., electrocardiograph, telephotograph and recording devices) to the telephone system also did not violate our *Carterfone* decision.[6]

5. On June 14, 1972, we instituted a Federal-State Joint Board proceeding under Section 410(c) of the Communications Act (Docket 19528) to determine whether there was a public need to go beyond what we ordered in *Carterfone*. We made clear at that time that we were not looking toward any modification of our holding in *Carterfone* and stated:

> We believe that the soundness of our *Carterfone* decision has been amply demonstrated. New markets have been opened to the innovative enterprise of many companies; the public has benefitted from having a wide range of choices available when the individual user selects the terminal device or private system which will best serve his particular communications need; and there has been no actual demonstrable harm to the telephone system or its users. Accordingly, this proceeding will not be concerned with any question relating to whether or not modifications should be made in that decision or in any of the provisions in the interstate MTS and WATS tariff provisions filed in compliance therewith. Our proceeding herein is concerned with the pending and unresolved basic issues now before us as to whether, and to what extent, there is public need for us to go beyond what we ordered in *Carterfone* and permit customers to provide, in whole or in part, the aforementioned NCSU's and CA's in interstate MTS and WATS and, if so, what terms and conditions should apply to protect the telephone system and services of others.[7]

[5] *AT&T*, 15 FCC 2d 605, reconsideration denied, 18 FCC 2d 871, 872.
[6] See *Interstate and Foreign MTS and WATS*, 35 FCC 2d 539, 542.
[7] *Interstate and Foreign MTS and WATS*, 35 FCC 2d 539, 542.

6. On June 29, 1973, the North Carolina Utilities Commission gave notice of a proposed rule (R9–5)[8] which would generally prohibit interconnection of customer-owned or customer-provided equipment to the communications system of any telephone company doing business in North Carolina. It appears that, under the proposed rule, any such telephone company could provide such interconnection for interstate services only over facilities distinct and separate from those used for intrastate service.

7. By letter dated July 11, 1973 to the North Carolina Utilities Commission, the Chief of our Common Carrier Bureau noted that all interstate message toll service is offered over equipment used for both interstate and intrastate service. It was further noted that AT&T Tariff No. 263 on file with this Commission governs the provision of interstate message toll telephone service throughout the nation, and that all subscribers have a right to interconnect their own equipment to such commonly used network facilities under that tariff. Accordingly, the North Carolina Utilities Commission was advised that its proposed rule could not be implemented without a major restructuring of intrastate and interstate service offerings and the tariffs reflecting the terms and conditions of those offerings. It was noted that such a major revision in interstate service offerings would present numerous public interest questions under the Communications Act. It was further noted that the National Association of Regulatory Commissioners had taken the view, in which we have concurred, that because of the commonality of the joint use of telephone company facilities by all subscribers for intrastate and interstate message toll service, matters of interconnection with the message toll network should be treated on a cooperative, coordinate basis and that the pending Federal-State Joint Board proceeding in Docket 19528 was such an effort.

8. By letter dated July 18, 1972 to the Nebraska Public Service Commission, the Attorney General of Nebraska rendered an advisory opinion that our *Carterfone* decision did not prevent a telephone company from prohibiting interconnection of customer-provided equipment or wire interconnection for intrastate use. He also advised, in effect, that a hotel or motel could not interconnect privately-owned communications equipment with the telephone company without a hearing and finding by the Nebraska commission that the telephone company in the area had refused or failed to provide adequate service. (See Attachment B)

9. Petitioners contend that the above described actions of Nebraska and North Carolina, and the probability of similar state actions, threatens the jurisdictional basis of Federal and State authority in our Joint Board proceeding in Docket 19528, compromises Federal-State Joint Board proceedings, imparts uncertainty to other Commission proceedings, and undermines our *Carterfone*, *MCI*[9] and *Specialized Common Carrier*[10] decisions. Petitioners further contend that these actions also threaten the ability of the interconnect industry to

[8] The text of the proposed rule is contained in Attachment A hereto.
[9] *Microwave Communications, Inc.*, 18 FCC 2d 953, reconsideration denied, 21, FCC 2d 190.
[10] *Specialized Common Carrier Services*, 29 FCC 2d 870 (1971).

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furnish equipment and services to users of interstate and foreign communications, and could result in rolling back this service to a point where telephone companies again became the sole source of supply of user services and facilities.

10. On August 22, 1973, the North Carolina Utilities Commission filed pleadings [11] requesting that it be authorized to participate in this proceeding for the limited purpose of contesting our jurisdiction to grant the relief sought by Petitioners. The Utilities Commission stated that the specific relief sought raises serious and substantial constitutional questions with respect to state and federal relations and accordingly should be set for oral argument before this Commission. The Utilities Commission contends that, after hearing oral argument, we should dismiss the subject petition as premature and contrary to the provisions of section 2(b) and 221(b) of the Communications Act (47 U.S.C. 152(b) and 47 U.S.C. 221(b)).

11. We are of the opinion that the above described advisory opinions of the Attorney General of the State of Nebraska and Rule R9–5 proposed by the North Carolina Utilities Commission have created uncertainty concerning whether and, if so, to what extent actions which we have taken, and policies which we have promulgated, in *Carterfone* and related cases with respect to interconnection of customer-provided communications equipment to the nationwide switched public telephone network have pre-empted state action in this area. We are of the further opinion that such uncertainty and the legal issues raised can and should be promptly resolved on the basis of briefs and oral argument before the Commission.

12. Accordingly, IT IS HEREBY ORDERED, Pursuant to Sections 4(i), 4(j), and 403 of the Communications Act and Sections 1.1 and 1.2 of our Rules, That this matter is Designated for Oral Argument before the Commission, *en banc*, in Washington, D.C. on October 30, 1973, at 9:30 a.m.

13. IT IS FURTHER ORDERED, That each person or entity intending to participate in the oral argument shall file a brief on or before October 1, 1973 and a statement of intention to appear, specifying the amount of time requested for oral argument, by no later than October 15, 1973, and may file reply comments on or before October 15, 1973. The Commission reserves the right to limit the number of participants and the time of argument of each participant in the oral argument.

14. IT IS FURTHER ORDERED, That the petition of Telerent Leasing Corporation, *et al.*, IS HEREBY GRANTED to the extent reflected above, and otherwise IS DENIED.

15. IT IS FURTHER ORDERED, That the pleadings described in footnote 11 herein filed by the North Carolina Utilities Commission ARE HEREBY GRANTED to the extent indicated herein and other-

[11] The pleadings were (1) a special appearance for the limited purpose of contesting jurisdiction, (2) an opposition to the petition for declaratory rulings, and (3) a motion to dismiss petition and request for oral argument before the full Commission. Such pleadings, to the extent not acted upon herein, and all comments filed pursuant to our Public Notice of August 15, 1973 will be considered in reaching our decision in this proceeding.

wise SHALL BE HELD IN ABEYANCE pending oral argument and our decision thereafter.

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

Attachment A

PROPOSED RULE FOR RULEMAKING PROCEEDING

Rule R9-5. ***Telephone companies to own, service, and be responsible for all equipment used in telephone service; interconnection of subscriber-owned equipment prohibited.***—(a) From and after November 1, 1973, no telephone company doing business in North Carolina shall provide service over its communications system except through station apparatus and equipment installed, owned and serviced by the telephone company and for which the telephone company takes complete responsibility to its customer. The telephone company shall own, service and be fully responsible for and accountable to the Utilities Commission and to its customer for adequate service and maintenance of all equipment used in telephone service in North Carolina.

(b) Customer-owned or customer-provided equipment installed or interconnected prior to November 1, 1973, under interconnection tariffs on file with the Utilities Commission, may remain in service on a non-transferable basis so long as the customer who installed or interconnected such equipment accepts full responsibility for service and maintenance of said equipment and for protection of the telephone lines from said equipment. Equipment for which a customer has contracted the installation as customer-provided equipment under a tariff on file with the Commission prior to November 1, 1973, may be installed under said tariff and remain in place on a non-transferable basis so long as said customer remains fully responsible for the service and maintenance of said equipment and for the protection of the telephone lines from said equipment.

(c) For the purpose of this section, fire alarm equipment, burglar alarm equipment, and other non-communications equipment not offered for service by a telephone company shall not be deemed to be station apparatus or station equipment, and may be interconnected with the telephone system under duly approved tariffs when insulated from the company lines by interface equipment.

(d) Telephone companies may continue to authorize interconnection of equipment owned by military forces of the United States, so long as adequate protection is provided for the telephone network, and the telephone companies are relieved from all responsibility for service and maintenance of such equipment and communications originating and terminating over said equipment.

(e) All telephone company tariffs authorizing interconnection of customer-provided equipment are hereby closed to new customers effective November 1, 1973, and shall apply only to customer-provided equipment in place or contracted for on November 1, 1973.

(f) This Rule shall not apply to interstate communications service, and any subscriber desiring to interconnect subscriber-owned equipment for interstate communication service separate from his intrastate communications service may apply to the telephone company for interconnection of subscriber-owned equipment for interstate communications service under such Rules as may be prescribed by the Federal Communications Commission.

Attachment B

STATE OF NEBRASKA,
DEPARTMENT OF JUSTICE.
Lincoln, July 18, 1973.

NEBRASKA PUBLIC SERVICE COMMISSION,
1342 "M" Street
Lincoln, Nebr.

GENTLEMEN: You have brought to our attention certain decisions by the Federal Communications Commission respecting telephone communications, operations, and service. One such decision required telephone companies to interconnect

with privately owned two-way radio communication systems. Another decision required an existing telephone company to interconnect with a newly authorized communication facility between Chicago and St. Louis, the latter which would in reality be operating in competition with the existing company. You have requested our opinion as to whether it is the effect of such federal rulings to supersede the constitutional and statutory authority of the Nebraska Public Service Commission over all interconnections of telephonic communications services. We think not, as respects intrastate communications.

Under the federal rulings, a telephone company certificated by the Public Service Commission could be required to interconnect to a privately owned communication facility for the purpose of providing interstate service. However, we do not believe that the rulings prohibit a telephone company from limiting such interconnecting service to interstate communications and to prohibit intrastate use of such interconnection, except as such intrastate interconnection might be authorized by appropriate action of the Commission. The intrastate aspects of interconnecting telephonic communication would seem to be free from Federal Communications Commission regulation, by virtue of the exemptions contained in the Communications Act of 1934. Section 2(b), 47 U.S.C. § 152(b) provides that the Commission shall have no jurisdiction with respect to "charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communications service by wire or radio of any carrier." Further, Section 221(b), 47 U.S.C. § 221(b) provides that the Commission shall have no jurisdiction with respect to telephonic exchange service "where such matters are subject to regulation by a State commission or by local governmental authority."

You have raised a question relating to interconnection in a situation where a telephone company subscriber purchases his own telephone terminal equipment for his own use and for the use of guests or tenants, and interconnects such system with the telephone company. We believe that a business such as a hotel or motel which provides privately-owned communication equipment whereby, through interconnection, there may be out-going and in-coming telephonic communication is a common carrier within the meaning of Section 75–109, assuming it may be said that the communication services are furnished "for hire."

In the case of toll calls it is common practice for a service charge to be assessed in addition to the toll which goes to the telephone company, or to receive a commission from the telephone company. Likewise, it is common practice to make a charge for all out-going local calls. Clearly, such charges constitute the furnishing of a service for hire. Furthermore, even if no such direct and identifiable charges were made, we believe the mere fact that a charge is made to occupy the space within which the communications equipment is available implicitly constitutes a "built-in" charge for the communications service and in reality creates a for hire situation.

Accordingly, it is our opinion that such a privately owned communications system cannot be maintained and operated without appropriate certification by the Public Service Commission. Furthermore, in accordance with the regulated monopoly concept with which the telephonic communication business is imbued, as recently reenunciated in Radio-Phone Inc. v. A.T.S. Mobile Telephone, Inc., 187 Neb. 637, such a certificate should be issued only upon a showing that the existing telephone company in the area in question "refused or has failed to provide adequate service on notice, hearing, and order of the Commission."

Very truly yours,

CLARENCE A. H. MEYER,
Attorney General.

F.C.C. 73-1092

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of TELERENT LEASING CORP., ET AL. Petition for Declaratory Rulings on Questions of Federal Pre-emption on Regulation of Interconnection of Subscriber-Furnished Equipment to the Nationwide Switched Public Telephone Network	Docket No. 19808

ORDER

(Adopted October 19, 1973; Released October 24, 1973)

BY THE COMMISSION: COMMISSIONERS ROBERT E. LEE, JOHNSON AND HOOKS ABSENT.

1. In accordance with our Memorandum Opinion and Order released September 7, 1973, FCC 73-901, as amended herein, oral argument WILL BE held on the Petition for Declaratory Rulings filed by Telerent Leasing Corporation, et al. as set forth in said Memorandum Opinion and Order before the Commission *en banc* on October 30, 1973, commencing at *9:00* a.m. In our previous Memorandum Opinion and Order the time for commencing was set at 9:30 a.m.

2. Having considered the written notices of intention to appear and participate in oral argument, IT IS ORDERED:

(a) That the parties here designated ARE AUTHORIZED to present oral argument in the following order for the times designated:

	Minutes
I. Petitioners:	
North American Telephone Association and Crescent Industries, Inc.	35
Telerent Leasing Corp	10
II. States:	
North Carolina Utilities Commission	30
National Association of Regulatory Commissioners	20
New York Public Service Commission	10
III. Federal Agency:	
U.S. Department of Justice	15
IV. Common Carriers:	
American Telephone & Telegraph Co	30
Continental Telephone Corp	10
GTE Service Corp	10
United Telecommunications, Inc	10
United States Independent Telephone Association	10
Microwave Communications, Inc. and MCI Telecommunications Corp.	10
Data Transmission Co	10

V. Manufacturers and Distributors:
Computer Business Equipment Manufacturers Association and General Electric Co 20
Electronic Industries Association 10
Ericsson Centrum, Inc. and Phone-Mate, Inc 10
International Business Machines 10
VI. Users:
American Petroleum Institute 10
Computer Timesharing Services Section 10
Utilities Telecommunications Council 10
Aeronautical Radio, Inc 10

(b) That the request of Carpenter Radio Company to present oral argument is denied for the reason that it proposes to address questions concerning carrier-to-carrier interconnection which are not in issue herein.

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

F.C.C. 73-1081

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of UNITED WEHCO, INC. For Construction Permits in the Domestic Point-to-Point Microwave Radio Service for 9 New Stations in Arkansas, Louisiana, and Texas.	File Nos. 1876-1883-C1-P-72; 1139-C1-P-73; 788-C1-P-74

MEMORANDUM OPINION AND ORDER

(Adopted October 17, 1973; Released October 19, 1973)

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

1. The Commission has before it the above captioned applications of United Wehco, Inc., which were originally filed on October 1, 1971 and August 11, 1972, in the name of United Video, Inc.[1] A motion for declaratory ruling and a petition to deny were filed by Pine Bluff Video, a CATV system located in Pine Bluff, Arkansas and a potential customer of United Wehco. Responsive pleadings were filed by applicant.

2. In these applications United Wehco proposes the construction of a point-to-point microwave system for the purpose of bringing the signals of television stations KDTV and KTVT to Arkansas communities of Hope, Camden, El Dorado, Pine Bluff, Benton, Jacksonville and North Little Rock; the proposed service to Texarkana, Texas would consist of the signals of KDTV, KTVT and KERA.

3. Pine Bluff asserts that the rates proposed are unreasonably discriminatory against the Pine Bluff cable television system. Pine Bluff opposes the proposed schedule of charges on the ground that it is unlawfully geared to the number of homes in the area under franchise to the CATV systems.[2] Pine Bluff asserts that this method of rate determination bears absolutely no relationship to the traditional rate making principles (i.e., cost of providing the service) and is instead premised on the customer's assumed ability to pay. United Wehco's position is that these allegations are premature and the question raised

[1] On July 26, 1973, amendments were filed to United Video's applications which changed the applicant to United Wehco. United Wehco was formed by and is jointly owned by Research Associates, Inc. (81%) and United Video (19%), each of which had filed competing applications. Upon grant of the United Wehco applications it is requested that the Commission simultaneously dismiss the mutually exclusive applications of Research Associates (File Nos. 1807/1818-C1-P-73).

[2] The proposed rate schedule contains a base charge per channel plus an additional amount per home that potentially can be served by the CATV system in excess of 2,000, up to a maximum of 40,000 homes.

is not sufficient to delay action on the United Wehco applications proposing service to other communities.

4. On September 7, 1973, United Wehco deleted the proposed service to Pine Bluff from the original set of applications, but added it in a newly filed application. In so severing the Pine Bluff proposal, United Wehco seeks action on the remainder of its original proposal to serve the other communities which are not disputing the rate structure. Such severance has been opposed by Pine Bluff as a discriminatory retaliation against a party lodging objections and is contrary to Section 201 (b) and 202 (a) of the Act.

5. In most circumstances we believe a challenge to rates only tentatively outlined in an application for construction permit would be premature. The facilities are unconstructed, final costs unknown and no tariff has been filed. However, Pine Bluff is here challenging a rather novel approach to rate making which would have substantial impact on the rates individual subscribers would pay (although not on total rate of return received by the carrier). Also, it appears that the rate differential between this new approach and that which would be obtained under more traditional methods is quite significant and that Pine Bluff may have no desire to receive service if the indicated new rate structure is upheld. Therefore, the question of rate making principle is relevant to the consideration of any microwave application proposing service to Pine Bluff. Therefore, we reject applicant's contention that it is premature to consider the rate question in conjunction with the applications.

6. The rate making principles being challenged are relatively new and have not been tested under the criteria of Section 201 and 202 of the Communications Act. Another case involving essentially the same issue (with respect to rate making approach) has been designated for hearing, *American Television Relay, Inc.*, (Docket No. 19609), 37 FCC 2d 751. Therefore, until that proceeding is resolved, we will have no definite guidelines on which to resolve the questions posed by Pine Bluff. In view of the pendency of the other proceeding, it would appear to serve no useful purpose to designate this case for hearing. Also, to withhold action on all of these applications, which involve service to a number of other communities besides Pine Bluff, would be unfair to those communities.

7. Therefore, we believe it would be logical and equitable to grant those applications to serve all customers except Pine Bluff. The Pine Bluff application will be retained in a pending status until the proceeding in Docket No. 19609 is resolved. Shortly thereafter, we will be in a position to rule on the merits of Pine Bluff's objections concerning the rate making principles. In doing this we reject Pine Bluff's argument that the severance of the proposal is somehow discriminatory to Pine Bluff. United Wehco is in no way deleting its proposal to serve Pine Bluff or otherwise denying its responsibility for rendering service upon reasonable demand therefor. If at any time, prior to a final ruling on the objection, Pine Bluff decides it definitely wants service regardless of the outcome of the rate question, we are prepared to grant the Pine Bluff application. Such a grant would, of course, be without

prejudice to the right of Pine Bluff to file a complaint against the tariff when it is filed.

8. In view of the foregoing, it is found that the instant proposed facilities would serve the public interest, convenience and necessity, and that United Wehco is technically, financially and otherwise qualified to construct and operate them for the provision of the proposed service. However, such action should not be interpreted as approval (or disapproval) of the rate structure set forth in these applications.[3]

9. Accordingly, IT IS HEREBY ORDERED That the petition to deny and the motion for declaratory ruling of Pine Bluff ARE DENIED to the extent they are inconsistent herewith, but will otherwise be further considered in connection with File No. 788–C1–P–74.

10. IT IS FURTHER ORDERED That the applications of Research Associates (listed in footnote 1) ARE DISMISSED without prejudice.

11. IT IS FURTHER ORDERED That the captioned applications of United Wehco, excepting File No. 788–C1–P–74, ARE GRANTED.

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

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[3] Our action herein is also without prejudice to a decision, on the Commission's own motion, to hold a hearing on the United Wehco tariff after it is filed.

F.C.C. 73R-361

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of WESTERN COMMUNICATIONS, INC. (KORK-TV), LAS VEGAS, NEV. For Renewal of License	Docket No. 19519 File No. BRCT-327
LAS VEGAS VALLEY BROADCASTING CO., LAS VEGAS, NEV. For Construction Permit for New Television Broadcast Station	Docket No. 19581 File No. BPCT-4465

MEMORANDUM OPINION AND ORDER

(Adopted October 17, 1973; Released October 18, 1973)

BY THE REVIEW BOARD: BOARD MEMBER BERKEMEYER ABSENT.

1. This proceeding involves the application of Western Communications, Inc. (Western) for renewal of its license for television broadcast Station KORK-TV, operating on Channel 3, Las Vegas, Neveda, and the mutually exclusive application of Las Vegas Valley Broadcasting Co. (Valley) for a construction permit to establish a new television station operating on the same channel in Las Vegas. By Order, FCC 72-767, 37 FCC 2d 266, released September 1, 1972, the Commission designated the applications for consolidated hearing. Thereafter, by Memorandum Opinion and Order, 39 FCC 2d 1077, 26 RR 2d 1456, released March 9, 1973, the Review Board added an issue inquiring into the availability of a proposed $1,000,000 bank loan to Valley from the Nevada State Bank of Las Vegas.[1] Now before the Review Board is a tenth motion to enlarge issues [2], filed June 18, 1973 by Western seeking addition of the following issues:

(a) To determine the terms and conditions on which RCA credit, if any, will be available to Las Vegas Valley Broadcasting Co., and in light thereof to determine whether, if RCA credit is available to Valley, this would affect the availability to Valley of its proposed loan from Nevada State Bank, or conversely, if the proposed bank loan is available to Valley whether its terms would affect availability of proposed RCA credit to Valley.

[1] The issue, as specified by the Review Board, reads as follows: To determine the terms and conditions of the proposed bank loan from Nevada State Bank relied upon by Valley, whether Valley can meet those terms and conditions, and whether, in light thereof, the proposed loan will in fact be available to it.

[2] Also before the Review Board are the following related pleadings: (a) opposition, filed July 3, 1973, by the Broadcast Bureau; (b) opposition, filed July 10, 1973, by Valley; and (c) reply, filed July 17, 1973, by Western.

(b) To determine whether Las Vegas Valley Broadcasting Co. has failed fully to disclose in timely fashion all relevant and material terms and conditions of its proposed $1 million loan from Nevada State Bank and, if so, whether its failure to do so constitutes misrepresentation or lack of candor or failure to comply with Sections 1.65 and 1.514 of the Rules.

(c) To determine whether Las Vegas Valley Broadcasting Co. has failed fully to disclose in timely fashion conflicting and mutually exclusive terms and conditions of its proposed bank loan and proposed RCA credit and, if so, whether its failure to do so constitutes misrepresentation or lack of candor or failure to comply with Sections 1.65 and 1.514 of the Rules.

(d) To determine whether, in light of the evidence adduced under the foregoing issues Las Vegas Valley Broadcasting Co. is financially or otherwise qualified to be a licensee.

AVAILABILITY OF RCA CREDIT

2. Noting that Valley proposes to rely on a $1,000,000 loan from the Nevada State Bank and on $1,102,500 in deferred credit from RCA, its equipment supplier, Western seeks an issue to determine whether the terms of RCA's proposed credit sale to Valley conflict with the terms of Valley's proposed bank loan and, if so, whether this renders either unavailable. In support of this request, Western alleges that Harley Harmon, President of the Nevada State Bank, testified in a deposition taken in this proceeding on May 31, 1973, that one of the terms and conditions of the proposed bank loan commitment to Valley is that the bank will have a first lien on all of Valley's property, including its technical broadcast equipment and buildings. Western claims that this provision is in direct conflict with the terms of the RCA standard time payment contract and supports its allegation by submitting an affidavit of one of RCA's employees in which the affiant states that it is RCA's practice both to hold title on all equipment sold on a deferred payment basis until the price of the equipment is fully paid, as well as to prohibit any liens to be attached to this property by any other lender to the customer. Accordingly, Western contends that the requested issue is necessary in order for the Commission to determine whether Valley can meet the security terms of its bank loan proposal and its deferred equipment proposal.

3. The Review Board will deny the requested issue.[3] As noted by Valley,[4] Western submits no evidence which calls the availability of

[3] Since Western's motion is based upon depositions taken on May 31, and June 1, 1973, we believe that good cause has been shown for the filing of this motion at this time and we will therefore consider Western's motion on its merits.

[4] Valley filed a timely motion for extension of time to file its opposition. Because the motion was addressed to the Presiding Judge, rather than the Review Board, no action has been taken on the motion. Accordingly, we will grant the motion and consider Valley's opposition in this proceeding.

the RCA line of credit into question; petitioner's contention that the terms of the proposed bank loan will undermine the RCA credit sale is based solely on speculation rather than specific allegations of fact as required by Section 1.229(c) of the Commission's Rules. See *WHOO Radio, Inc.*, FCC 65R–292, 6 RR 2d 10 (1965); *J. T. Parker, Jr.*, 7 FCC 2d 452, 9 RR 2d 897 (1967). *Cf. Western Communications, Inc.*, FCC 73R–278, 28 RR 2d 9, released July 31, 1973. Further, even though it has been established that RCA would retain an exclusive lien on Valley's technical equipment, we do not believe that Western has demonstrated the necessity of the requested issue. As correctly pointed out by the Bureau, the Presiding Judge indicated during the June 25, 1973 hearing that it is necessary to determine under the existing financial issue whether the Nevada State Bank is aware of RCA's security terms and whether this will affect the bank's willingness to go through with its proposed loan to Valley (Tr. 1877). In this connection, he has authorized written interrogatories to Mr. Harmon for clarification of this point. Thus, the question concerning whether RCA's credit arrangement will affect Valley's proposed bank loan may be fully resolved within the scope of the present issue. See footnote 1, *supra*.

BANK LOAN FAILURE TO DISCLOSE—MISREPRESENTATION—LACK OF CANDOR

4. Western next argues that a failure to disclose, misrepresentation and lack of candor issue is warranted because of Valley's failure to timely report one of the essential terms of its proposed bank loan, *i.e.* that its stockholders personally guarantee the proposed Nevada State Bank loan to Valley. In support of this allegation, petitioner points to another deposition of Harley Harmon, President of the Nevada State Bank, which allegedly indicates that although the security provision was a specific condition of the proposed bank loan at the time the loan was originally negotiated (prior to August 23, 1971),[5] it was not reported by Valley until February 22, 1973. Western adds that Valley's silence regarding the personal guarantees raises questions concerning Valley's compliance with Sections 1.65 and 1.514 of the Commission's Rules. In opposition, Valley points out that Harmon subsequently testified under cross examination that there was no specific condition that its stockholders would be required to endorse the note for the proposed bank loan at the time of negotiation, and that as soon as the requirement was specified with finality, it amended its application to reflect this change.[6] The Broadcast Bureau agrees with this assessment.

5. The Review Board will not add the requested failure to disclose, misrepresentation and lack of candor issue against Valley. In our opinion, any ambiguous or equivocating statements made by Harmon in his deposition under direct and cross examination indicate that

[5] The initial commitment letter from the Bank of Nevada, dated August 23, 1971, did not specify a requirement of personal guarantees from the stockholders.
[6] The Petition for Leave to Amend was granted by Order, FCC 73M–423, released on April 5, 1973.

there was no clearly articulated understanding between the bank and Valley concerning the precise conditions of the proposed bank loan at the time the loan was negotiated. Rather, according to Harmon, it was his view that the bank letter filed with Valley's application was intended to be preliminary to a more specific, subsequently filed agreement. Although it may be argued that Valley was remiss in failing to inform the Commission that the 1971 bank letter might be made more specific, we agree with the Bureau that there is no reason to believe that Valley withheld or even had a motive to withhold material information from the Commission in light of Valley's diligence in amending its application and supplying statements from its stockholders indicating their willingness to endorse the bank note after such a provision was specifically required by the bank in February, 1973. Accordingly, a misrepresentation issue is not warranted. Similarly, Western's allegations do not indicate a sufficiently serious omission on the part of Valley to warrant the addition of either a 1.65 or 1.514 issue. See *Harvit Broadcasting Corporation*, 32 FCC 2d 656, 23 RR 2d 328 (1971). *Cf. William R. Gaston*, 35 FCC 2d 615, 24 RR 2d 741 (1972).

RCA CREDIT—BANK LOAN CONFLICTING TERMS

6. Finally, Western seeks addition of a failure to disclose, misrepresentation, lack of candor, Section 1.65 and Section 1.514 issue against Valley, predicated on Valley's failure to disclose the alleged conflict between the terms of the proposed bank loan and the RCA credit proposal. The Bureau opposes the issue arguing that Western has not established that the bank will specifically require a first lien on the RCA equipment, nor has it made a showing indicating that Valley knew that its loan and equipment proposal were mutually exclusive. Valley maintains that it does not consider the two financing arrangements to be in conflict and contends, therefore, that it has nothing to report.

7. We agree with the Bureau that Western has not established that the Bank of Nevada will actually require a first lien on the RCA equipment or that, at least until the May, 1973 deposition of Harmon, Valley had reason to suspect that its bank loan proposal might be incompatible with its RCA deferred payment proposal. Rather, Harmon's deposition testimony indicates that with regard to collateral, the bank loan negotiations were ambiguous; when negotiating the loan Harmon informed Valley that the loan would be "fully collateralized" without further elaboration. As indicated, *supra*, the existing financial qualifications issue encompasses the question of whether the RCA credit proposal will affect the availability of its bank loan proposal. However, there is no basis for adding a misrepresentation issue inquiring into whether or not Valley failed to report the incompatability of the two aspects of its financial proposal.

8. Accordingly, IT IS ORDERED, That the motion for extension of time, filed July 3, 1973, by Las Vegas Valley Broadcasting Co. IS GRANTED; and

9. IT IS FURTHER ORDERED, That the Tenth Motion to Enlarge Issues, filed June 18, 1973, by Western Communications, Inc. IS DENIED.

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