VOL. 47 (2d Series) JUNE 28, 1974 No. 3

FEDERAL COMMUNICATIONS COMMISSION REPORTS
(47 F.C.C. 2d)

Decisions, Reports, Public Notices, and Other Documents of the Federal Communications Commission of the United States

VOLUME 47 (2d Series)

Pages 285 to 446

Reported by the Commission

FEDERAL COMMUNICATIONS COMMISSION

RICHARD E. WILEY, Chairman
ROBERT E. LEE
CHARLOTTE T. REID
BENJAMIN L. HOOKS
JAMES H. QUELLO

UNITED STATES GOVERNMENT PRINTING OFFICE • WASHINGTON, D.C.

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FCC 74-608

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
APPLICATION FOR EXEMPTION FROM CERTAIN PROVISIONS OF REGULATION 1, ANNEXED TO THE GREAT LAKES RADIO AGREEMENT AND WAIVER OF THE REQUIREMENTS OF SECTION 83.542(c) OF THE COMMISSION'S RULES FOR THE U.S. PASSENGER VESSEL *Chippewa* WHEN NAVIGATED IN THE STRAITS OF MACKINAC, MICH.

MEMORANDUM OPINION AND ORDER

(Adopted June 12, 1974; Released June 14, 1974)

BY THE COMMISSION:

1. The Commission has received a request for exemption from the 50 watts carrier output power requirement of Regulation 1, Annexed to the Great Lakes Radio Agreement and waiver of the same requirement contained in Section 83.542(c) of the Commission's rules filed by Arnold Transit Company on behalf of the United States passenger vessel CHIPPEWA, official number 288825.

2. Regulation 1, Annexed to the Great Lakes Radio Agreement requires that all passenger-carrying vessels of over 65 feet in length be equipped with a radiotelephone transmitter with a carrier output power of 50 watts and the Commission, in Section 83.542(c), established the same requirement. The CHIPPEWA is being lengthened to over 65 feet, and after reconstruction will be subject to the Great Lakes Agreement.

3. Arnold Transit Company has requested relief to permit use of the APELCO AE-75M double sideband radiotelephone transmitter, aboard the United States passenger vessel CHIPPEWA, for compliance with the Great Lakes Radio Agreement and thereby avoid the installation of new single sideband equipment for this purpose.

4. Arnold Transit Company submits the following information in support of its request:

a. the vessel is operated and licensed to operate only in the Straits of Mackinac, operating between Mackinac Island and St. Ignace and Mackinac Island and Mackinaw City, all in the state of Michigan, during the spring, summer and fall seasons;

b. the route does not exceed three and one-half miles from shore at any time and does not exceed 32 minutes per voyage; and

c. the vessel is in communication range of other vessels in the area and the U. S. Coast Guard station at St. Ignace, Michigan at all times.

5. Regulation 1, Annexed to the Great Lakes Radio Agreement and Section 83.542(c) of the Commission's rules requires that the radiotelephone transmitter have an output of at least 50 watts carrier power, which gives an effective range of 50 miles over Great Lakes waters. The route of the vessel is at all times within 45 miles of public coast station WLC, Rogers City, Michigan and 7 miles of the United States Coast Guard station at St. Ignace, Michigan. In addition, there are United States Coast Guard stations at Sault Sainte Marie, Michigan and a Canadian public coast station at Sault Sainte Marie, Ontario, Canada within 41 miles of the vessel.

6. The radiotelephone transmitter installed on the vessel has a rated carrier power of 44 watts. On the basis of 44 watts carrier output power as compared to the 50 watts required by the Great Lakes Radio Agreement and the Commission's rules, a reduction of approximately 8% in the ground wave communication range would be expected. This reduction will leave the vessel with an effective communications range of 46 miles which is sufficient for the routes traveled. In addition, we do not feel that this reduction will adversely affect the safety benefits to be derived from the CHIPPEWA as a potential lifeboat for other ships. If relief were not granted, the CHIPPEWA would be required to install an SSB radiotelephone which would become obsolete on May 6, 1975, when the Great Lakes Agreement, 1973, enters into force and establishes VHF as the safety system on the Great Lakes. We find, therefore, that sufficient justification exists in this case to grant the exemption and waiver requested.

7. Article 6 of the Great Lakes Radio Agreement authorizes the Commission to grant exemptions, for a period of up to one year, from the provisions of articles 7, 8, and 9 if it considers that the conditions of the voyage affecting safety, the maximum distance of the vessel from shore, the length of the voyage, and the absence of general navigation hazards are such as to render full application of Articles 7, 8, and 9 unreasonable or unnecessary. Regulation 1, annexed to the Great Lakes Agreement, specifies the technical requirements for the radiotelephone installation provided for compliance with Article 8.

8. Accordingly, IT IS ORDERED, That the United States passenger vessel CHIPPEWA, official number 288825, be exempt from the 50 watt carrier output power requirement of Regulation 1, Annexed to the Great Lakes Radio Agreement and the same requirements of Section 83.542(c) of the Commission's rules are waived when navigated on voyages in the Straits of Mackinac between Mackinac Island, Michigan and St. Ignace, Michigan, and between Mackinac Island, Michigan and Mackinaw City, Michigan for a period beginning on the date of this Order and ending May 6, 1975: Provided, That the vessel is equipped with a radiotelephone transmitter with a rated carrier output of at least 44 watts and a continuous watch is maintained on 2182 kHz while the vessel is being navigated.

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

FCC 74-619

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re AUSABLE COMMUNICATIONS, INC., PLATTSBURG AIR FORCE BASE, N.Y. Request for Special Temporary Authority	CSR-535 NY043

MEMORANDUM OPINION AND ORDER

(Adopted June 12, 1974; Released June 18, 1974)

BY THE COMMISSION:

1. On April 26, 1974, Ausable Communications, Inc., operator of a cable television system at Plattsburg Air Force Base, New York, requested a grant of Special Temporary Authority to continue operating until it can file an application for Certificate of Compliance and obtain final Commission determination on its application.[1]

2. Ausable provides 2,250 subscribers with the following television signals:

WCAX-TV (CBS, Channel 3), Burlington, Vermont
WETK (Educ., Channel 33), Burlington, Vermont
WMTW-TV (ABC, Channel 8), Poland Springs, Maine
WPTZ (NBC, Channel 5), Plattsburg, New York
WVNY-TV (ABC, Channel 22), Burlington, Vermont
GBFT (CBC, French language, Channel 2), Montreal, Canada
CBMT (CBC, Channel 6), Montreal, Canada
CHLT (CBC, French language, Channel 7), Sherbrooke, Canada
CFTM (Ind., French language, Channel 10), Montreal, Canada
CFCF (CTV, Channel 12), Montreal, Canada

3. On October 31, 1972, Ausable's original Department of the Air Force license to construct and operate a cable television system at Plattsburg Air Force Base expired. Ausable did not file an application for a certificate of compliance at that time, and now states that it had no knowledge of the Commission's requirement that it apply for certification. Ausable continued to operate with only interim authority from the Air Force until November 1, 1973, when the Air Force renewed its license. It then filed an unopposed application for a certificate of compliance to add the signal of Station WPIX-TV, New York, New York (CAC-3432).[2] At present that application is incomplete because

[1] Section 76.11 states in pertinent part: "(b) No cable television system lawfully carrying television broadcast signals in a community prior to March 31, 1972, shall continue carriage of such signals beyond the end of its franchise period, or March 31, 1977, whichever occurs first, unless it receives a certificate of compliance."

[2] Vermont New York Television, Inc., licensee of Station WVNY-TV, Burlington, Vermont, has filed an associated Petition for Special Relief asking the Commission to require Ausable to carry its signal on Channel 4 rather than Channel 22.

it does not meet the Commission's standards applicable to a system with a new franchise.[3] Therefore, Ausable filed this request for temporary authority to continue operation and has represented that it will file shortly for certification of its existing operations.

4. We shall grant the request. We are reluctant to require a system to suspend subscriber service unless it is apparent the system operator acted in knowing disregard of our cable television rules. Based on the facts now before us, we are persuaded that Ausable's failure to comply with our certification requirements was inadvertent. Ausable's speedy attempt to bring to our attention and to rectify its violation of our rules is a strong indication that it will make good faith efforts to conform its license and operations to our certification requirements.

In view of the foregoing, the Commission finds that a grant of Special Temporary Authority to Ausable Communications, Inc., to continue cable television operations at Plattsburg Air Force Base is consistent with the public interest.

Accordingly, IT IS ORDERED, That the request for Special Temporary Authority filed by Ausable Communications, Inc., IS GRANTED for 60 days from the release date of this Memorandum Opinion and Order.

IT IS FURTHER ORDERED, That if an application for a certificate of compliance is filed pursuant to Section 76.13(c) of the Commission's Rules within 60 days of the release date of this Memorandum Opinion and Order, this Special Temporary Authority will remain effective until final Commission action on the application.

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

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[3] Section 76.13(c) states:
For a cable television system seeking certification of existing operations in accordance with Section 76.11(b), an application for certificate of compliance shall include:
(1) The name and mailing address of the system, community and area served, television signals being carried (other than those permitted to be carried pursuant to Section 76.61 (b)(2)(ii) or Section 76.63(a) (as it relates to Section 76.61(b)(2)(ii)), television signals authorized or certified to be carried but not being carried, date on which operations commenced, and date on which current franchise expires;
(2) A copy of the franchise, license, permit, or certificate under which the system will operate upon Commission certification (if such franchise has not previously been filed), and a statement that explains how the franchise is consistent with the provisions of Section 76.31;
(3) A statement that explains how the system's plans for availability and administration of access channels and other non-broadcast cable services are consistent with the provisions of Section 76.201 and 76.251;
(4) An affidavit of service of the information described in (c)(1) above on the parties named in paragraph (a)(6) of this section;
(5) A statement that a copy of the completed application has been served on any local or state agency or body asserting authority to franchise, license, certify or otherwise regulate cable television, and that if such application is not made available by any such authority for public inspection in the community of the system, the applicant will provide for public inspection of the application at any accessible place (such as a public library, public registry for documents, or an attorney's office) in the community of the system at any time during regular business hours;
(6) A statement that the filing fee prescribed in Section 1.116 of this chapter is attached.

FCC 74-575

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matters of BELL SYSTEM TARIFF OFFERINGS OF LOCAL DISTRIBUTION FACILITIES FOR USE BY OTHER COMMON CARRIERS; AND LETTER OF CHIEF, COMMON CARRIER BUREAU, DATED OCTOBER 19, 1973, TO LAURENCE E. HARRIS, VICE PRESIDENT, MCI TELECOMMUNICATIONS CORP.	Docket No. 19896

MEMORANDUM OPINION AND ORDER

(Adopted June 5, 1974; Released June 12, 1974)

BY THE COMMISSION: COMMISSIONER QUELLO NOT PARTICIPATING.

1. In a Decision, FCC 74-457, released April 23, 1974, the Commission stated, *inter alia*, that it would initiate a proceeding to determine the lawfulness of the rates specified in the exchange of facilities contracts between American Telephone and Telegraph Company (Bell) and The Western Union Telegraph Company (Western Union) and of the terms and conditions under which Bell provides the same services to the specialized common carriers. In a petition for reconsideration filed May 3, 1974,[1] Western Union argues that our Decision suggests that it could be deprived of the benefits of its exchange of facilities contracts if the Commission "determined no more than that the terms and conditions upon which local distribution facilities are made available to Western Union . . . are more favorable than those afforded the specialized carriers." It contends that this would violate the standard for such a hearing set forth in *Federal Power Commission* v. *Sierra Pacific Power Co.*, 350 U.S. 348 (1956), which held that the terms and conditions of the contract there under consideration could be modified only after a finding that its terms contravene the public interest.

2. Western Union has not alleged that our decision is in error, but only that a future order of this Commission may enunciate an improper legal standard. Thus, the petition is premature since Western Union will have an adequate opportunity to comment on the legal standards to be applied in the proceeding which is to be initiated. We also find that Western Union's arguments in this respect are specu-

[1] Also under consideration are oppositions filed May 15, 1974, by the Chief, Common Carrier Bureau and May 16, 1974, by American Satellite Corporation and the Bell System Companies; and a reply filed May 21, 1974, by Western Union.

lative in that we relied on the *Sierra* decision in making our determination and there is no basis for its contention that we may specify an improper legal standard.

3. Accordingly, IT IS ORDERED, That the Petition for Reconsideration filed May 3, 1974, by The Western Union Telegraph Company, IS DENIED.

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

FCC 74R-219

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

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

MEMORANDUM OPINION AND ORDER

(Adopted June 12, 1974; Released June 13, 1974)

BY THE REVIEW BOARD:

1. The Review Board has before it a petition to enlarge issues in the above-captioned proceeding, filed April 22, 1974, by WADECO, Inc. (WADECO).[1] In its petition WADECO requests that the issues in this proceeding be enlarged as follows:

> (a) To determine the extent to which the employment practices of Belo Broadcasting Corporation discriminate unfairly against racial minorities in the hiring and promoting of personnel at WFAA-TV, Dallas, Texas;
>
> (b) To determine whether Belo Broadcasting Corporation has complied with the provisions of Section 1.65 of the Commission's Rules by keeping the Commission advised of equal employment opportunity complaints which have been filed against the Corporation regarding its employment practices at WFAA-TV, Dallas, Texas;
>
> (c) To determine whether, in light of the facts adduced under the foregoing issues, Belo Broadcasting Corporation is qualified to remain licensee of WFAA-TV, Dallas, Texas.

2. To support its request, WADECO first refers to Section VI, Part III of Belo's application for renewal of license which requires that

> a brief description of any complaint which has been filed before any body having competent jurisdiction under Federal, State, territorial or local law, alleging unlawful discrimination in the employment practices of the applicant, including the persons involved, the date of filing, the court or agency, the file number (if any), and the disposition or current status of the matter . . .

must be submitted to the Commission. WADECO points out that on April 5, 1974, Belo filed an amendment to its application advising the Commission and other parties to this proceeding that an equal em-

[1] The Board also has before it for consideration: (a) an opposition to petition to enlarge issues, filed May 2, 1974, by Belo Broadcasting Corporation (WFAA-TV) (Belo); (b) comments by the Broadcast Bureau, filed May 7, 1974; and (c) a reply, filed May 17, 1974, by WADECO.

ployment opportunity complaint had been filed against the corporation on October 18, 1973, and that the complaint was disposed of January 29, 1974. WADECO also notes that by petition of June 14, 1973 it had requested the addition of issues concerning the employment practices of Belo and that its petition had been denied by the Review Board because of WADECO's failure to raise questions regarding Belo's employment practices or the accuracy of Belo's report thereon to the Commission. Petitioner then argues that Belo's delay in filing the amendment to its instant application disclosing an equal employment opportunity complaint is evidence of Belo's reluctance to comply with the Commission's equal employment opportunity requirements. In further support of its requested issues, WADECO has resubmitted Belo's equal employment opportunity reports for WFAA–TV for the years 1971–73, and argues that those reports demonstrate that Belo's minority employment has consistently been far below the percentage of minority population in the Dallas-Fort Worth area. Therefore, petitioner contends, an issue concerning Belo's employment practices is warranted. Moreover, WADECO urges, Belo's tardy filing of its amendment to advise the Commission of the equal employment opportunity complaint requires the addition of a Section 1.65 issue.[2]

3. The Review Board is of the view that the information supplied with Belo's opposition is sufficient to obviate the need for an equal employment opportunity issue. Belo attaches the determination of Eliazar Salinas, Deputy District Director of the Equal Employment Opportunity Commission in Dallas concerning the complaint of June Gray. In that decision Mr. Salinas states as follows:

> Having examined the entire record, I conclude that there is not reasonable cause to believe that Title VII of the Civil Rights Act of 1964, as amended, has been violated in the manner alleged.

Moreover, WADECO's reference to the 1971–73 WFAA–TV employment reports and the census figures do not warrant the addition of the issue. The statistical analysis, standing alone, provides no basis for such an issue and WADECO has failed to allege any specific discriminatory practice on the part of Belo.[3] Nor is the requested Secton 1.65 issue warranted. Belo submitted the required information voluntarily and, while it was late filed and therefore a technical violation of Section 1.65, the Board has no reason to doubt Belo's explanation that its failure was the result of a misunderstanding of the employee responsible for submitting such information to its Washington, D.C. counsel, and that procedures have been instituted to prevent any future recurrence of such infractions. In these circumstances, further inquiry into this matter is not likely to have any decisional significance in this proceeding.

4. Accordingly, IT IS ORDERED, That the petition to enlarge issues, filed April 22, 1974 by WADECO, Inc. IS DENIED.

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

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[2] WADECO also contends that the amendment does not contain a description of the complaint as required by the application form.
[3] Section 1.229 of the Commission's Rules.

FCC 74-621

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re	
BETTERVISION SYSTEMS, INC., SHINNSTON AND BUCKHANNON, W. VA.	CSR-349, WV086 CSR-433, WV077
TELEPIC, INC., PHILIPPI AND FARMINGTON, W. VA.	CSR-435, WV179 CSR-436, WV178
Request for Special Relief	

MEMORANDUM OPINION AND ORDER

(Adopted June 12, 1974; Released June 17, 1974)

BY THE COMMISSION:

1. On April 12, 1973, Bettervision Systems, Inc., operator of a cable television system at Shinnston, West Virginia, filed a petition for special relief (CSR-349) seeking waiver of Sections 76.91 and 76.93 of the Commision's program exclusivity rules [1], as they would apply to the Shinnston system. On July 23, 1973, Bettervision filed a similar petition for waiver (CSR-433) on behalf of its system operated at Buckhannon, West Virginia. Also on July 23, 1973, Telepic, Inc., operator of cable television systems at Farmington and Philippi, West Virginia, filed petitions for waiver of Sections 76.91 and 76.93 of the Commission's Rules. These four petitions were filed in response to program exclusivity requests submitted to the operators by Withers Broadcasting Company of West Virginia, licensee of Television Broadcast Station WDTV, Weston, West Virginia. The petitions seek waiver of our exclusivity rules insofar as they would require the systems to afford WDTV network program exclusivity.

2. All four systems are located in the Clarksburg-Weston, West Virginia smaller television market. Bettervision's system at Shinnston and Telepic system at Farmington now serve approximately 1500 and

[1] Sections 76.91 and 76.93 of the Commission's Rules provide, in pertinent part, as follows:

Section 76.91—(a) Any cable television system operating in a community, in whole or in part, within the Grade B contour of any television broadcast station, or within the community of a 100-watt or higher power television translator station, and that carries the signal of such station shall, on request of the station licensee or permittee, maintain the station's exclusivity as an outlet for network programming against lower priority duplicating signals, but not against signals of equal priority, in the manner and to the extent specified in Sections 76.93 and 76.95.

Section 76.93—(a) Where the network programming of a television station is entitled to program exclusivity, the cable television system shall, on request of the station licensee or permittee, refrain from simultaneously duplicating any network program broadcast by such station, if the cable operator has received notification from the requesting station of the date and time of its broadcast of the program and the date and time of any broadcast to be deleted, as soon as possible and in any event no later than 48 hours prior to the broadcast to be deleted. On request of the cable system, such notice shall be given no later than the Monday preceding the calendar week (Sunday–Saturday) during which exclusivity is sought.

515 subscribers, respectively, with the following television broadcast signals:

WDTV (CBS, Channel 5), Weston, West Virginia
WBOY–TV (NBC, Channel 12), Clarksburg, West Virginia
WTRF–TV (NBC, Channel 7), Wheeling, West Virginia
WWVU (Educ., Channel 24), Morgantown, West Virginia
KDKA–TV (CBS, Channel 2), Pittsburgh, Pennsylvania
WIIC–TV (NBC, Channel 11), Pittsburgh, Pennsylvania
WTAE–TV (ABC, Channel 4), Pittsburgh, Pennsylvania
WSTV–TV (CBS/ABC, Channel 9), Steubenville, Ohio

The Telepic system at Philippi serves approximately 900 subscribers with the following television broadcast signals:

WDTV (CBS, Channel 5), Weston, West Virginia
WBOY–TV (NBC, Channel 12), Clarksburg, West Virginia
WWVU (Educ., Channel 24), Morgantown, West Virginia
WTRF–TV (NBC, Channel 7), Wheeling, West Virginia
WSTV–TV (CBS/ABC, Channel 9), Steubenville, Ohio
KDKA–TV (CBS, Channel 2), Pittsburgh, Pennsylvania
WTAE–TV (ABC, Channel 4), Pittsburgh, Pennsylvania
WIIC–TV (NBC, Channel 11), Pittsburgh, Pennsylvania
WQED (Educ., Channel 13), Pittsburgh, Pennsylvania

The Bettervision system at Buckhannon delivers the following television signals to approximately 2,500 subscribers:

WDTV (CBS, Channel 5), Weston, West Virginia
WBOY–TV (NBC, Channel 12), Clarksburg, West Virginia
WCHS–TV (CBS, Channel 8), Charleston, West Virginia
WOAY–TV (ABC, Channel 4), Oak Hill, West Virginia
WTRF–TV (NBC, Channel 7), Wheeling, West Virginia
WSVA–TV (ABC/NBC, Channel 3), Harrisonburg, Virginia
WSTV–TV (CBS/ABC, Channel 9), Steubenville, Ohio

3. The systems at Buckhannon and Philippi are well within the predicted Grade A contour of Weston CBS affiliate, WDTV, but beyond the predicted Grade B contours of the other stations on the systems which carry CBS network programming. Similarly, the systems at Shinnston and Farmington are also located within the predicted Grade A contour of Station WDTV, and the other CBS affiliates carried on these two systems place no more than a predicted Grade B contour over these cable communities.

4. The cable operators support their requests for waiver by arguing that: (a) to comply with a belated request for exclusivity, made on behalf of a station in operation for over 13 years, would injure the public interest, and that Withers request is subject to estoppel according to the equitable doctrine of laches; (b) affording program exclusivity to WDTV would result in subscriber dissatisfaction and disruption of service; (c) the provision of exclusivity protection would constitute an extreme economic hardship on the system; and (d) the systems, although serving over 500 subscribers, are relatively "small" systems that should be exempted from exclusivity obligations. Additionally, the operators of the Philippi and Shinnston systems argue that these systems compete with smaller local systems, each with fewer than 500 subscribers; the imposition of program exclusivity obligations on the Bettervision and Telepic systems, but not their competi-

tors, would place the latter at a substantial competitive advantage. Withers has filed oppositions to the above-captioned petitions for waiver.[2]

5. While WDTV has been in operation for several years, only recently did Withers become its licensee. In view of this fact, the Commission's holdings in *Massillon Cable TV, Inc.*, 21 FCC 2d 188 (1970) and *Imperial Broadcasting Co., Inc.*, 19 FCC 2d 791 (1968)[3], and the failure of the systems' operators to substantiate their allegations that either they will be injured by this delayed invocation of exclusivity protection or that WDTV does not need such protection, we must reject the systems' argument. Similarly, the systems' operators have failed to show that exclusivity protection will be disruptive to their subscribers' established viewing habits. Additionally, the Commission recently adopted its *Report and Order in Docket No. 18785*, FCC 74–299, —— FCC 2d ——, which formally amended the cable television rules to include a section exempting from our network program exclusivity provisions all cable systems serving fewer than 500 subscribers.[4] Each of the four subject systems serves over 500 subscribers and is therefore ineligible for special treatment on the basis of size alone. Finally, regarding the assertion that the Shinnston and Philippi systems will be at a competitive disadvantage if required to afford program exclusivity, we note that neither operator has sustained its claim that such an adverse effect will, in fact, be a likely consequence of compliance with our Rules. In view of the foregoing, and consistent with our actions in *Five Channel Cable Company*, FCC 74–500, —— FCC 2d ——, and *Tygert Valley Cable Corporation*, FCC 73–1178, 43 FCC 2d 966, we find that grant of the subject petitions for waiver would not be consistent with the public interest.

Accordingly, IT IS ORDERED, That the petitions filed by Telepic, Inc. (CSR–435, CSR–436) and Bettervision Systems, Inc. (CSR–349, CSR–433) ARE DENIED.

IT IS FURTHER ORDERED, That Bettervision Systems, Inc., IS DIRECTED to comply with the requirements of Sections 76.91 and 76.93 of the Commission's Rules on its cable television systems at Shinnston and Buckhannon, West Virginia.

IT IS FURTHER ORDERED, That Telepic, Inc., IS DIRECTED to comply with the requirements of Sections 76.91 and 76.93 of the Commission's Rules on its cable television systems at Philippi and Farmington, West Virginia.

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

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[2] Additionally, there appears to have been a conflict over the network programming to which Withers seeks protection. In its opposition Withers answered petitioners' assertion that WDTV is a "cherry-picker" which seeks exclusivity protection for programming carried from all three networks. Withers asserts that it is a primary affiliate of CBS and will seek protection for those CBS programs it carries. The station, maintains Withers, is a secondary affiliate of ABC and will seek protection for those ABC network programs it carries on other than a delayed basis. We note that WDTV is the station of highest priority for ABC programming as well as CBS programming. Withers states that WDTV carries no NBC programming and does not desire protection over any NBC station.

[3] In these cases, the Commission stated that its Rules do not require that a request for program exclusivity protection be made at any specific time and found that the respective operators had not been injured by the licensees' delay in making their requests.

[4] Section 76.95(c) of the Commission's Rules now states as follows: "Section 76.95—(c) Any cable television system (as defined in Section 76.5(a)), having fewer than 500 subscribers need not comply with the provisions of Sections 76.91 and 76.93."

FCC 74-602

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of	
JOHN F. BURNS, THOMAS RIEKE, AND RAYMOND VOSS, D.B.A. BURNS, RIEKE, AND VOSS ASSOCIATES, IOWA CITY, IOWA	Docket No. 19596 File No. BP-17838
BRAVERMAN BROADCASTING CO., INC., IOWA CITY, IOWA	Docket No. 19597 File No. BP-19134
For Construction Permits	

ORDER

(Adopted June 12, 1974; Released June 18, 1974)

BY THE COMMISSION:

1. The Commission has considered: (a) an application for review of a Decision of the Review Board (FCC 74R-47, released February 13, 1974, 45 FCC 2d 264), filed March 15, 1974, by Johnson County Broadcasting Corporation; (b) an opposition and motion to dismiss, filed March 26, 1974, by Braverman Broadcasting Company, Inc.; (c) an opposition filed April 1, 1974, by the Chief, Broadcast Bureau; and (d) a reply, filed April 16, 1974, by Johnson County Broadcasting Corporation.

2. IT IS ORDERED That, in accordance with the provisions of Section 115(g) of the Commission's Rules, the Application for Review, filed March 15, 1974, by Johnson County Broadcasting Corporation, IS DENIED.

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

FCC 74-603

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of	
JOHN F. BURNS, THOMAS RIEKE, AND RAYMOND VOSS, D.B.A. BURNS, RIEKE, AND VOSS ASSOCIATES, IOWA CITY, IOWA	Docket No. 19596 File No. BP-17838
BRAVERMAN BROADCASTING CO., INC., IOWA CITY, IOWA	Docket No. 19597 File No. BP-19134
For Construction Permits	

ORDER

(Adopted June 12, 1974; Released June 18, 1974)

BY THE COMMISSION:

1. The Commission has before it: (a) a request for official notice of a Memorandum Opinion and Order and Further Notice of Proposed Rule Making (FCC 74-409, released April 26, 1974), filed May 15, 1974, by Johnson County Broadcasting Corporation; (b) an opposition filed May 23, 1974, by Braverman Broadcasting Company, Inc.; and (c) comments, filed May 24, 1974, by the Broadcast Bureau.

2. IS IS ORDERED That the request for official notice, filed May 15, 1974, by Johnson County Broadcasting Corporation IS DENIED.

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

FCC 74-506

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of
CAPITAL CITIES COMMUNICATIONS, INC.
For Assignment of Licenses of Stations
WBAP-AM and KSCS-FM, Fort
Worth, Tex.

MAY 13, 1974.

This refers to your application for assignment of the licenses of Stations WBAP-AM and KSCS-FM, Fort Worth, Texas, from Carter Publications, Inc. to Capital Cities Communications, Inc. (BAPL-432; BAPLH-157; BASCA-565).

Section 310(a) of the Communications Act of 1934 as amended provides in pertinent part that a station license:

> . . . shall not be granted to or held by . . . any corporation of which any officer or director is an alien or of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives . . .

You report that all of the officers and directors of Capital Cities Communications, Inc. are U.S. citizens. You also report that you sent a questionnaire to all stockholders on May 14, 1973, inquiring as to the citizenship of the person or entity having the right to vote Capital Cities shares held by each stockholder. You further state: "Of the 2,150 shareholders (other than nominees) holding common stock who received the Capital Cities questionnaire, 1,006 returned the questionnaire, with 994 (46% of the total) responding that they were not aliens and 12 (less than 1% of the total) responding that they were aliens. Of the 53 such shareholders holding preferred stock, 27 (51% of the total) returned the questionnaire, all indicating that they were not aliens. In addition, 342 nominee shareholders holding common stock and 4 nominee shareholders holding preferred stock received the questionnaire. Eighty-eight of the nominee shareholders holding common stock returned their questionnaire, with 82 (24% of the total) indicating they were not aliens and 6 (2% of the total) indicating they were aliens. Of the 4 nominee shareholders holding preferred stock, 2 returned their questionnaires, both indicating they were not aliens."

The Commission is of the view that the above showing is inadequate to demonstrate that 20% or less of Capital Cities stock is owned of record or voted by aliens or their representatives. With such a large number of persons not responding (over 50%), additional efforts must be made to overcome the possible "non-response bias" of the shareholders who did not respond. It is possible that a large number of persons not responding may not have responded because they *were not* U.S. citizens. It is also possible that aliens within the group which

did not respond hold stock in much larger blocks than the non-aliens.

While the Commission concludes that the citizenship showing is deficient, we note that Capital Cities is an existing licensee of the Commission and has been such for many years. In these circumstances we have concluded that the public interest, convenience and necessity would be served by a grant of this application subject to the filing of an appropriate showing that ownership of Capital Cities stock complies with Section 310(a) of the Communications Act within 120 days of the date of this letter. This action is without prejudice to any action the Commission may take as a result of such further citizenship showing.

In your application you report that Bankers Trust Company holds 369,690 shares, or approximately 5.1%, of Capital Cities stock (the voting rights to 100,000 of which are attributable to Jennison Associates Capital Corporation) and that Bankers Trust has declined to advise you as to the number of shares it votes or has the right to vote "except to say that the total is more than 1% and less than 5% of the outstanding shares of Capital Cities." You refer to a letter, dated April 16, 1973 addressed to you by Bankers Trust (a copy of which was filed with the Commission on April 30, 1973) setting forth the Bank's reasons for declining to furnish additional information. We have analyzed the reasons set forth in that letter and we find them without merit. In our *Report and Order* in Docket 18751, 34 FCC 2d 889, 893, we concluded that the continued filing of trust agreements or abstracts thereof would no longer be required. However, we there noted that such filings were unnecessary "because the reporting on FCC 323 (Ownership Report) will indicate the person that has the right to vote." From the information furnished in the application and the ownership report for Capital Cities we are unable to ascertain whether the bank has sole voting rights to the Capital Cities shares it holds or whether others may have voting rights or co-voting rights to such shares. This information must be obtained by Capital Cities from Bankers Trust in order to enable you to report to the Commission the persons or entities which hold or control the right to vote 1% or more of your company's stock as required by Section 1.615 of our Rules. Accordingly our grant of your application is further conditioned upon the filing within 30 days from the date of this letter of a statement regarding the voting rights to the Capital Cities stock held of record by the Bankers Trust Company and a listing of any additional 1% or more holders of your stock which may become apparent from the information furnished by the bank. Our grant of your application is also without prejudice to any action the Commission may wish to take as a result of your filing of this additional ownership information. Commissioners Wiley, Chairman; and Hooks concurring in the result; Commissioner Quello not participating.

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

FCC 74R-216

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of	
CAVALLARO BROADCASTING CORP., SAN JUAN, PUERTO RICO	Docket No. 19897 File No. BP-19073
BORICUA BROADCASTING CORP., SAN JUAN, PUERTO RICO	Docket No. 19898 File No. BP-19201
SUMMIT BROADCASTING OF PUERTO RICO, INC., SAN JUAN, PUERTO RICO	Docket No. 19899 File No. BP-19202
JOSE A. FIGUEROA AND ANTONIO L. OCHOA, D.B.A. FIGUEROA AND ASSOCIATES, RIO GRANDE, PUERTO RICO	Docket No. 19900 File No. BP-19203
VIEQUES RADIO CORP., ISABEL SEGUNDA, VIEQUES, PUERTO RICO	Docket No. 19901 File No. BP-19204
For Construction Permits	

MEMORANDUM OPINION AND ORDER

(Adopted June 10, 1974; Released June 13, 1974)

BY THE REVIEW BOARD: BOARD MEMBER NELSON NOT PARTICIPATING.

1. Each of the above-captioned applicants seeks an authorization to construct a new standard broadcast station in its respective community to operate on 1030 kHz. By Commission Memorandum Opinion and Order, 44 FCC 2d 922, released December 27, 1973, these applications were designated for consolidated hearing on numerous issues, including, *inter alia*, an issue to determine "whether the Cavallaro Broadcasting Corporation [Cavallaro] and the Vieques Radio Corporation [Vieques] are financially qualified to construct and operate their proposed stations." Presently before the Review Board is a petition to modify issues, filed January 22, 1974, by Cavallaro.[1] Cavallaro would have the aforementioned issue (issue 3) modified to read, as follows:

> To determine with respect to the application of Cavallaro Broadcasting Corporation:
>
> (a) The anticipated hearing costs;
>
> (b) Whether sufficient funds are available to defray such costs;
>
> (c) In the light of the evidence adduced pursuant to the foregoing whether Cavallaro Broadcasting Corporation is

[1] The Board also has before it for consideration the following: (a) petition to accept delayed pleadings, filed January 22, 1974; by Cavallaro; (b) opposition to petition to modify issues, filed March 1, 1974, by the Broadcast Bureau; (c) letter, filed March 22, 1974, by Cavallaro; and (d) reply, filed April 11, 1974, by Cavallaro. Cavallaro has shown good cause for a one-day delay in the filing of its petition to modify issues. Therefore, the unopposed petition to accept delayed pleadings, will be granted to the extent that the petition to modify issues, will be accepted.

financially qualified to construct and operate its proposed station.

2. In support of its request, Cavallaro alleges that issue 3 is an unnecessary and unwarranted general financial qualification issue. Specifically, Cavallaro argues that the question raised in the designation Order regarding the availability of a $500,000 loan from the Bank of Nova Scotia in San Juan,[2] reflects a misapprehension on the part of the Commission's processing line. Cavallaro claims that the basis for the Commission's concern was that the bank is a "foreign bank". Such reasoning, Cavallaro insists, is a departure from both precedent and rule, as the Commission has never before made a distinction between domestic and foreign banks. Cavallaro submits an affidavit from a manager of the bank which attests, *inter alia*, to the bank's capacity, power and commitment to lend $500,000 in U.S. currency in Puerto Rico. With the bank credit, Cavallaro argues that it will have more than sufficient funds to meet the total costs set out in the designation Order. Therefore, Cavallaro reasons, since the only remaining question regarding its financial qualifications deals with payment of anticipated hearing costs, the general financial issue should be modified to be coextensive with that question. Finally, petitioner notes that it has been involved in litigation over this frequency since 1964, and that a protracted multiparty proceeding has just been designated for hearing. Citing *Salter Broadcasting Co.* (*WBEL*), 8 FCC 2d 212, 10 RR 2d 14 (1967), Cavallaro argues that an important public interest goal would be served by simplifying and expediting this proceeding.

3. The Broadcast Bureau opposes modification on three grounds. First, the Bureau observes that the issue, as modified by Cavallaro, omits any reference to Vieques, and would therefore result in the deletion of the issue as to Vieques' financial qualifications. Second, the Bureau argues, Cavallaro is not simply asking the Board to modify issue 3, but to delete it and substitute an issue which the Commission chose not to include. The Bureau contends that while the Board may correct issues designated by the Commission due to a mistake of fact, it has repeatedly held that petitions to delete issues on the basis of material contained in pleadings or amendments will be denied.[3] In addition, the Bureau maintains, there are no unusual circumstances present which might require that deletion. Third, the Bureau disputes Cavallaro's assertion that a broad financial issue was mistakenly specified by the Commission. According to the Bureau, the Commission in its designation Order devoted a "fairly lengthy discussion" to Cavallaro's financial proposal, and then specified a broad issue "to permit * * * Cavallaro * * * to clarify its financial proposal."

4. In reply, Cavallaro argues that the Bureau's opposition is purely formal, and, as such, carries forward an error committed by the processing line. Such formalistic opposition, Cavallaro reasons, makes

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[2] In its application, Cavallaro indicates its intent to rely almost exclusively on this loan for financing. Its corporate balance sheet dated November 20, 1973, indicates cash and/or liquid assets in excess of liabilities of only $4,860.

[3] In support, the Bureau cites *Broadcasters 7, Inc.*, 33 FCC 2d 277, 23 RR 2d 566 (1972); *Charles Vanda*, FCC 65R–57, 4 RR 2d 541 (1965); *United Artists Broadcasting, Inc.*, FCC 64R–161, 2 RR 2d 295 (1964).

it necessary for it to observe that the designation Order was faulty factually, as well as legally. Cavallaro then alleges for the first time that the Commission erred in calculating Cavallaro's costs, and that this error is totally unrelated to the question of the mistake of law alleged i ι its petition.[4] Cavallaro also argues that the opposition misreads the designation Order as saying that because a foreign bank was involved, the Commission "was unable to conclude that the loan was available." Cavallaro argues that the Commission was only concerned with "clarifications" with respect to the foreign bank. Such clarification, Cavallaro continues, has taken place at the first opportunity therefor. In addition, Cavallaro notes that its argument based on *Salter*, *supra*, was unanswered.

5. The Review Board will deny petitioner's request for modification of issue 3. Even assuming the availability of the foreign bank loan, petitioner has failed to establish that this obviates the need for a hearing on a general financial issue. In the Board's opinion, the Commission based its decision to specify a general financial issue on more than the question of a foreign bank's capacity to loan $500,000 in U.S. currency and the ability of Cavallaro to meet the cost of professional services. Paragraph 9 of the designation Order clearly indicates that other questions concerning costs were raised which warranted a general financial issue.[5] Adoption of the issue proposed by Cavallaro would result in the deletion of these questions and would be contrary to both the apparent intent of the Commission in this case, and to the well established general principle that where the Commission has specifically considered and passed upon a particular matter, the Review Board should not, in the absence of new matters, substitute its judgment for the Commission's reasoned analysis. *Atlantic Broadcasting Co.* (*WUST*), 5 FCC 2d 717, 721, 8 RR 2d 991, 996 (1966). *Cf. WOIC, Inc.*, 40 FCC 2d 1048, 27 RR 2d 532 (1973). For the above reasons, the petition to modify issues must be denied. *Cf. Charles W. Holt*, 37 FCC 2d 64, 24 RR 2d 1002 (1972).

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[4] The error, Cavallaro argues, arose from the Commission's twice counting the same item, $28,400, for the equipment down payment. However, since this argument is being raised for the first time in a reply pleading, it will not be considered. See *Industrial Business Corporation*, 40 FCC 2d 69, 26 RR 2d 1447 (1973). In any event, the argument does not dispose of the questions raised by the Commission in the designation Order.

[5] Paragraph 9 reads in pertinent part as follows: "On an earlier balance sheet of the Cavallaro Broadcasting Corporation, dated September 1, 1973, a footnote stated that 'any liabilities are for professional services which are being paid directly by the stockholders.' The amount of such direct payments and what effect those payments by the stockholder of liabilities—presumably liabilities of the corporation—has on the financial position of the corporation or any claims against the corporation by the stockholders who pay such liabilities are not indicated. The applicant has represented that 'any further infusion of monies from its stockholders' is not necessary in the light of the corporation's bank credit. It appears to be a reasonable inference, in view of the apparent practice of the stockholders to meet corporate obligations by direct payment, and particularly in view of the fact that the bank credit, if available, will not become available in any event until the corporation becomes the holder of a construction permit, that 'infusion of monies from its stockholders' has occurred in the past and may continue in the future. If that be the case, the applicant has failed to indicate the amount of such payments, past and future, and has failed to establish the ability of the stockholders to meet future direct payments. The Commission will specify a general financial issue to permit the Cavallaro Broadcasting Corporation to clarify its financial proposal." 44 FCC 2d at 924.

6. Accordingly, IT IS ORDERED, That the petition to accept delayed pleadings, filed January 22, 1974, by Cavallaro Broadcasting Corporation, IS GRANTED to the extent that the petition to modify issues, filed January 22, 1974, by Cavallaro Broadcasting Corporation, IS ACCEPTED; and

7. IT IS FURTHER ORDERED, That the petition to modify issues IS DENIED.

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

FCC 74-625

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of CENTRAL MICHIGAN UNIVERSITY (WCMU-FM), MOUNT PLEASANT, MICH. For License to Cover Construction Permit Authorizing a Power Increase and Other Technical Changes	File No. BLED-1085

MEMORANDUM OPINION AND ORDER

(Adopted June 12, 1974; Released June 17, 1974)

BY THE COMMISSION:

1. We have for consideration (a) the above-captioned application, granted March 30, 1973, by staff action, which authorized a change in technical facilities (including change in frequency and power increase from 10 watts transmitter power output (TPO) to 100 kW effective radiated power (ERP)); "Petition to Set Aside Grant," filed April 30, 1973, on behalf of Gross Telecasting, Inc., licensee of television station WJIM-TV, Lansing, Michigan; "Comments in Support of Petition to Set Aside Grant," filed May 11, 1973, by Meredith Corporation, licensee of television station WNEM-TV, Bay City, Michigan; and an opposition pleading, filed June 1, 1973, on behalf of Central Michigan University.

2. Because of the complexity of the issues presented in the pleadings and unavoidable delays in the briefing schedule, we were unable to reach a decision on the merits within the 90-day time frame specified in section 405 of the Communications Act. In order to preserve the status quo pending a decision on the merits, we adopted an Order (FCC 73-747) on July 11, 1973, setting aside the staff grant, returning the above-captioned application to pending status, and reinstating WCMU-FM's earlier program test authorization for 100 kW operation.

3. Radio station WCMU-FM, a noncommercial educational FM broadcast station, currently operates on the frequency 89.5 MHz. Gross Telecasting requests that we take such action as may be necessary to eliminate television interference occurring in the vicinity of Mount Pleasant, Michigan, where WJIM-TV delivers a Grade B television signal. The problem results from the inability of some television receivers, when tuned to WJIM-TV (channel 6, 82-88 MHz), to reject WCMU-FM's adjacent channel transmissions on 89.5 MHz.

4. On April 18, 1974, our Field Operations Bureau conducted an investigation of the interference problem. Approximately 20 complaints previously received by WCMU-FM, together with those received by the Detroit field office, were investigated. It was found that

most were the result of poor TV receiver design, and could be corrected by adding traps or filters to complainants' receivers to increase the ability of such receivers to reject the unwanted FM signal. Technical information and assistance were provided by WCMU–FM in the form of dinner lectures and local newspaper publicity. Since August of 1973, only one interference complaint has come to the attention of the Detroit field office. In these circumstances, the pleadings before us have been effectively mooted.

5. Accordingly, IT IS ORDERED, That the above-referenced pleadings ARE DISMISSED, and the March 30, 1973, staff grant of the above-captioned application IS AFFIRMED.

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

FCC 74-605

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of CHESAPEAKE - PORTSMOUTH BROADCASTING CORP., PORTSMOUTH, VA. For Broadcast License for WPMH(AM)		Docket No. 19787 File No. BL-13137

MEMORANDUM OPINION AND ORDER

(Adopted June 12, 1974; Released June 18, 1974)

BY THE COMMISSION:

1. The Commission has before it (a) a single document entitled Petition for Reconsideration of Designation Order, Petition for Waiver of the Commission's Rules and Request for Expedited Consideration filed on December 26, 1973, by Chesapeake-Portsmouth Broadcasting Corporation; (b) the Broadcast Bureau's opposition filed January 29, 1974; and (c) Chesapeake-Portsmouth's reply filed January 31, 1974.

2. Chesapeake-Portsmouth is the holder of a construction permit for standard station WPMH and the applicant for a license to cover construction permit filed December 8, 1971. The application was designated for hearing on July 11, 1973. By *Report and Order in the Matter of Summary Decision Procedures*, released April 12, 1972, 34 FCC 2d 485, the Commission amended its rules to revoke Section 1.111 and to provide instead for a summary decision procedure under Sec. 1.251 in cases where the materials filed subsequent to designation or matters officially noticed show that there is no genuine issue of fact. As stated in the Notice of Proposed Rulemaking, released February 4, 1971, 27 FCC 2d 426; the purpose of the changes in the rules was to unburden the Commission of the task of scrutinizing and weighing the merits of voluminous materials submitted subsequent to the designation for hearing.*

3. Chesapeake-Portsmouth's pleading of 101 pages plus exhibits in support of its petitions is the kind of voluminous material that the Commission reasoned could better be evaluated by the presiding officer. To entertain the petitions of Chesapeake-Portsmouth in this instance would be to defeat the express purpose of the rules. This the Commission is unwilling to do. The Commission will, however, permit Chesapeake-Portsmouth to file its pleading with the presiding officer for consideration as a petition for summary decision.

4. On its own motion, the Commission has examined the face of the designation order and has noted that the designation for hearing was

*The only instances in which the Commission will reconsider the designation order are not applicable to this case. WPMH is not a party denied intervention (see Sec. 1.106(a)(1)) and this matter is not before us on certification from the presiding officer under Sec. 1.106(a)(2).

made pursuant to Sec. 309(e) of the Communications Act of 1934, as amended. There appears to be a conflict between reliance on Sec. 309(e) in this instance and the provisions of Sec. 319(c) which, *inter alia*, make Sec. 309(a)–(g) inapplicable with respect to any station license "the issuance of which is provided for and governed by the provisions of this subsection."

5. The Commission therefore will direct the parties to submit briefs limited to an analysis of Sec. 319(c) and its relation to Sec. 309 and particularly Sec. 309(e), including any relevant legislative history and Commission and judicial precedent concerning the application of these provisions to a proceeding on an application for license to cover construction permit.

6. Accordingly, IT IS ORDERED that the Petition for Waiver of the Commission's Rules is denied; and the Petition for Reconsideration of Designation and Request for Expedited Consideration are dismissed;

7. IT IS FURTHER ORDERED that Chesapeake-Portsmouth IS AUTHORIZED to file its pleading with the officer presiding at the hearing for consideration as a petition for summary decision; and

8. It is further ordered that (a) each party to this proceeding SHALL SUBMIT within 30 days of the release of this order a brief limited to the matters referred to in paragraph 5 above; and (b) each party IS AUTHORIZED to file a reply brief within 5 days of the expiration of the 30-day period.

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

FCC 74-529

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of CHICAGO FEDERATION OF LABOR AND INDUSTRIAL UNION COUNCIL For Renewal of License of Station WCFL, Chicago, Ill.	Docket No. 20064 File No. BR-549

MEMORANDUM OPINION AND ORDER

(Adopted May 22, 1974; Released May 31, 1974)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE DISSENTING AND ISSUING A STATEMENT; COMMISSIONER QUELLO NOT PARTICIPATING.

1. The Commission has before it the above-captioned license renewal application on remand from the United States Court of Appeals for the District of Columbia Circuit.

2. On September 1, 1970, the Chicago Federation of Labor and Industrial Union Council tendered an application for renewal of its license for standard broadcast Station WCFL, Chicago, Illinois. However, Better Broadcasting Council, Inc., The Task Force for Community Broadcasting, and the Illinois Citizens Committee for Broadcasting timely filed a petition to deny that renewal application on November 2, 1970. Briefly, the petitioners alleged that substantial and material questions of fact existed with regard to the licensee's ascertainment of community problems, its proposed programming, and the station's commercial and program classification practices. The character qualifications of the licensee were also challenged by the petitioners.

3. After consideration of the matters set forth in the various pleadings, the Commission denied the aforenoted petition to deny and granted the WCFL license renewal application. *Chicago Federation of Labor and Industrial Union Council*, 38 FCC 2d 417, 25 RR 2d 1147 (1972). Petitioners appealed our action (Case No. 72-2235), filing their brief with the United States Court of Appeals for the District of Columbia Circuit on July 16, 1973. Upon a review of the brief and a subsequent re-examination of the record, it was determined that the Commission, due to an oversight, had failed to consider facts which have a bearing on some of the matters raised by petitioners. On March 29, 1974, the Commission requested the Court to remand this case for the Commission's further consideration. On April 17, 1974, the Court granted the Commission's unopposed motion.

4. As noted by petitioners in their brief before the Court, the Commission by letter of October 30, 1970 requested the licensee to supply a brief description of three of the programs listed on the 1970 composite week logs (*i.e.*, *Jerry G. Bishop Show*, *Ron Riley Show*, and *Dick*

Williamson Show) so as to enable the Commission to ascertain whether those programs were properly classified as public affairs programs. It was also pointed out in the letter that the licensee's listing of illustrative programs broadcast during the twelve months preceding the filing of the WCFL applications contained programming whose classification as public affairs programs did not appear to be in accord with the Commission's program definitions.[1] The following programs were specifically noted by the Commission: *Ghost Show*, *Red Mottlow Baseball Show*, *Duke Ellington*, *Sports Special*, *Pop Goes the Music*, *Dick Biondi Labels the Blues*, *This is Elvis*, *Dick Biondi and Friend*, *Memphis Sunshines Again*, *In the Beginning*, and *Biondi Vietnam Show*.

5. In its response, dated November 9, 1970, the licensee claimed that the *Jerry G. Bishop Show*, the *Ron Riley Show* and the *Dick Williamson Show* utilized the same basic format, namely, telephone call-ins from listeners to express their opinions on matters of local, national and international interest or to otherwise comment upon a subject under discussion with a particular guest. In the licensee's opinion, these programs were properly classified as public affairs. It was further stated that *Dick Biondi and Friend* was a talk show in which the guest, a prominent music personality, discussed various matters of public concern and that the *Red Mottlow Baseball Show* was an award-winning, special documentary commemorating the 100th anniversary of baseball in the United States and featuring a discussion of the history, current status and future of baseball and interviews with baseball personalities. These programs were also claimed to fall within the Commission's definition of public affairs programming. However, the licensee acknowledged that eight of the remaining programs questioned in our October 30, 1970 letter probably should not have been classified as public affairs, and indicated a similar willingness to accept the Commission's determination that another program, *Ghost Show*, was also misclassified. No further description was furnished with respect to the *Duke Ellington* and *Sports Special* programs.

6. Originally, petitioners alleged that the licensee misrepresented Station WCFL's past programming by improperly classifying two musical programs, the *Dick Williamson Show* and the *Dick Biondi Show*,[2] as public affairs presentations. Based upon a review of the petitioners' pleadings and the licensee's description of the challenged programs which was set forth in its opposition pleading, the Commission held that while the *Dick Williamson Show* was properly classified, the other program (the *Dick Biondi Show*) should not have been classified as entirely public affairs. We further concluded that: "absent other evidence, the mere fact that a licensee misclassified one or two programs does not compel the conclusion that the licensee is guilty of intentional wrongdoing" and that "There is no evidence which would support a conclusion of deliberate misrepresentation; nor is there any

[1] Note 1(d) of Rule 73.112 defines public affairs programs as including "talks, commentaries, discussions, speeches, editorials, political programs, documentaries, forums, panels, roundtables, and similar programs primarily concerning local, national, and international public affairs."

[2] It appears that this program is the *Biondi Vietnam Show* referred to in our letter of October 30, 1970.

evidence which would establish a pattern of such misclassification." 38 FCC 2d at 424, 25 RR 2d at 1155. In reaching this latter conclusion, however, the Commission inadvertently omitted from its consideration the October 30, 1970 letter and the licensee's response thereto. The extent of the program misclassifications as reflected in the previously overlooked material, and the apparent absence of public affairs characteristics for several of those programs, compels the Commission to reverse its earlier determination. On the basis of the information before us, we find that a serious question is raised as to whether the licensee sought to misrepresent the extent of its public affairs programming.[3] The Commission is, therefore, unable to make the statutory finding that a grant of the license renewal application for Station WCFL is consistent with the public interest, convenience, and necessity, and is of the opinion that the foregoing matter should be explored in an evidentiary hearing.[4]

7. Accordingly, IT IS ORDERED, That, pursuant to Section 309 (e) of the Communications Act of 1934, as amended, the above-captioned license renewal applications, ARE DESIGNATED FOR HEARING at a time and place to be specified in a subsequent Order, upon the following issues:

(1) To determine whether, through the use of improper program classifications, the Chicago Federation of Labor and Industrial Union Council deliberately misrepresented Station WCFL's public affairs programming and, if so, whether such conduct adversely reflects upon the qualifications of the Chicago Federation of Labor and Industrial Council to be a Commission licensee.

(2) To determine whether, in light of the evidence adduced pursuant to the foregoing issue, a grant of the application for renewal of license of Station WCFL would serve the public interest, convenience and necessity.

8. IT IS FURTHER ORDERED, That the petition to deny, filed by Better Broadcasting Council, Inc., The Task Force for Community Broadcasting, and the Illinois Citizens Committee for Broadcasting, IS GRANTED to the extent indicated above.

9. IT IS FURTHER ORDERED, That, Better Broadcasting Council, Inc., The Task Force for Community Broadcasting, and the Illinois Citizens Committee for Broadcasting are made parties to the hearing ordered herein.

10. IT IS FURTHER ORDERED, That, in accordance with Section 309(e) of the Communications Act of 1934, as amended, the burden of proceeding with the introduction of evidence with respect to issue (1) shall be on the parties respondent. The burden of proceeding as to issue (2) and the burden of proof with respect to both issues

[3] The Commission has limited its re-evaluation to the record as certified to the Court on January 30, 1973. Except to the extent indicated above, we reaffirm our earlier Memorandum Opinion and Order for the reasons stated therein.

[4] On August 31, 1973, the licensee timely submitted the WCFL renewal application covering the forthcoming triennial license term (December 1, 1973 through December 1, 1976). Proof of the licensee's compliance with the local publication requirements of Rule 1.580 was also tendered at that time. No petition to deny that application has been filed. While we could delay consideration of the 1973 renewal application until resolution of the issues specified herein, the Commission believes that the more appropriate procedure is to designate for hearing both renewal applications.

herein shall be upon the Chicago Federation of Labor and Industrial Union Council.

11. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the Chicago Federation of Labor and Industrial Union Council and the parties respondent, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, shall, within twenty (20) days of the mailing of this Order, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in the Order.

12. IT IS FURTHER ORDERED, That, the Chicago Federation of Labor and Industrial Union Council shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 1.594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such rules, and shall advise the Commission of the publication of such notice as required by Section 1.594(g) of the Rules.

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

DISSENTING STATEMENT OF COMMISSIONER ROBERT E. LEE

I dissent for the reason that I do not think a hearing could prove a deliberate misrepresentation of program classification where an error in licensee judgment is more likely.

A one year license would more befit the aberration.

*See attached Dissenting Statement of Commissioner Robert E. Lee.

FCC 74-612

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re the Application of CINCINNATI BELL, INC. For a Construction Permit To Establish a New One-way Paging Station on the Frequency 152.84 MHz, in the Cincinnati, Ohio, Area	File No. 2986-C2-P-69

MEMORANDUM OPINION AND ORDER

(Adopted June 12, 1974; Released June 18, 1974)

BY THE COMMISSION:

1. The Commission has before it for consideration the above-captioned application of Cincinnati Bell, Inc. (Bell), a Petition to Deny, filed by Radio Relay Corporation (Radio Relay) [1] on January 2, 1969 an opposition by Bell and a reply to the opposition by Radio Relay. We also have a Supplement to the Petition, filed June 12, 1972, a Motion to Strike and Opposition, filed by Bell, and a response from Radio Relay.

2. In general, the pleadings in this case raise the same issues as were raised regarding the application of New York Telephone Company, for a one-way paging station in Buffalo, New York (File No. 5950-C2-P(3)-69). Since the common issues have been discussed at length and decided in our opinion on that case, decided today (FCC 74-611) we will not repeat them here, but only consider the points that concern Cincinnati.

3. In May, 1972, on a request from the Commission, Bell filed an amendment to its application, to demonstrate "need" for the proposed service. Radio Relay filed the "Supplement to Petition to Deny", and other pleadings were filed, as indicated above. We will accept Radio Relay's supplement and treat it on its merits. In the supplement, Radio Relay argued that the amendment was not sufficient to meet the "need" standard set out in *Long Island Paging*, 30 FCC 2d 405 (1971). The decision in that case indicated that, "* * * there were several approaches available * * *" to show "need" (at page 408). Clearly, the approaches are set out in the alternative, and it is not necessary that an applicant satisfy all of the criteria in order to show need. For example, it is not necessary that an applicant present both the results of a market survey and a list of identified prospective cus-

[1] At the time of filing the Petition, Radio Relay had on file an application for Commission consent to an assignment of license for Station KQC877 from New York Technical Institute of Cincinnati, Inc. Radio Relay was not, however, a licensee in Cincinnati, and thus lacked standing to file a Petition to Deny, see our discussion in *Gerard T. Uht et al.*, 35 FCC 2d 140 (1972). New York Technical Institute of Cincinnati, Inc., filed a "Statement in Support of Petition to Deny," but this does not cure the defect. Despite this, we will treat the Petition on the merits.

tomers. Either showing, could establish need if properly made in light of the circumstances of the particular market in question. Here, Bell first indicated the size of the market (1.5 million persons, approximately 38,000 businesses) and then listed the types of persons or businesses it regarded as possible subscribers (1137 Doctors, etc., totalling 14,836). According to its amendment, Bell then selected 600 persons or businesses on a scientific sample basis and mailed them an explanation of the proposed service area and a questionnaire soliciting their opinions as to their need for the proposed service at or near the proposed rates. From the responses, Bell concluded that over 10% had a need for the proposed service, 1.83% would subscribe to the service at the proposed rates and an additional 5.27% would probably subscribe at the proposed rates. From other questions Bell determined that each subscriber would average 2.33 units. Applying these results to the total market, Bell projected a minimum market of 636 units and maximum of 2,465. It further projected growth of 125 units per year for the first five years. Radio Relay attacks the amendment by saying that Bell did not submit a copy of the questionnaire or indicate the type of questions posed to those surveyed, or show "* * * that an adequate picture of the paging situation in the market, including the availability of competitors' services, was represented to the questioned businesses." Radio Relay further says that the amendment did not say exactly who expressed interest in the service and that the results are speculative.

4. In this case we do not have the plethora of data supplied in the Buffalo case, and we have not requested it. *Long Island Paging, supra*, mentions a survey as a permissible method of showing "need", at page 409, and a limited survey was approved in *Telanswerphone, Inc.*, 18 FCC 633 (1954), remanded on other grounds, *Telanswerphone, Inc.*, v. *F.C.C.*, 97 U.S. App. D. C. 398, 231 F. 2d 732 (1956). Item 52 of FCC Form 401 in pertinent part, only requires that, "If surveys or solicitations have been made, the nature and detailed results thereof should be submitted." As indicated below, we think that Bell has submitted the results in sufficient detail. We should say that no reason has been offered to make us doubt that Bell conducted the survey or reported the results accurately. Here as elsewhere we will rely on an applicant's statements of fact unless we have cause to doubt them. If we find that we were misinformed, the Communications Act provides remedies. In addition, we believe that Bell has provided ample information to justify a decision. It has told us that the questionnaire indicated the service area, the nature of the service, and the approximate costs. We do not agree with Radio Relay that we need the additional information they suggest. Also, we can understand that an applicant would be reluctant to make public a list of prospective subscribers, and we do not see any reason why the Commission should require such a list, absent, of course, some grounds for suspecting an applicant's word. Finally, from the survey, Bell projects at least 600 potential subscribers, a total that is more than enough to show there is a need for its service.

5. Other matters raised by Radio Relay, as indicated above, have been treated in our Buffalo decision and are also adopted here. We further find that the applicant is legally, technically and financially

qualified to construct and operate the facility applied for, and from all the above we conclude that it will be in the public interest to grant the captioned application.

6. Accordingly, IT IS ORDERED that the application of Cincinnati Bell, Inc. (File No. 2986–C2–P–69) to establish new facilities in the Domestic Public Land Mobile Radio Service in the Cincinnati, Ohio area, IS GRANTED, and the Petition to Deny filed by Radio Relay Corporation IS DENIED.

7. IT IS FURTHER ORDERED, that the construction permit of Cincinnati Bell, Inc. is conditioned in that "The grantee shall offer to make available to the non-wireline common carriers for one-way signaling purposes the same dial access interconnection facilities as those utilized by the wireline common carriers in the community; further that the charges for such interconnection and all other facilities of the wireline company used by the non-wireline carriers in the one-way signaling service on frequencies 152.24 and 158.70 MHz, shall be identical with those costs used by the wireline company on frequencies 152.84 and 158.10 MHz in computing its own charges over the same distances when it offers a competitive service, or where distances are different, the same per mile basis; and finally, if a wireline carrier offers or purports to offer any free or reduced rate service in connection with its one-way signaling service, it shall provide the identical service so offered or purported to be offered to customers of any competing non-wireline carrier at the same reduced rate or free of charge."

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

FCC 74–590

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of COLDWATER CABLEVISION, INC., BRONSON, MICH. For Certificate of Compliance	CAC–2373 MI180

MEMORANDUM OPINION AND ORDER

(Adopted June 5, 1974; Released June 12, 1974)

BY THE COMMISSION: COMMISSIONER QUELLO NOT PARTICIPATING.

1. On April 5, 1973, Coldwater Cablevision, Inc., filed the above-captioned application for a certificate of compliance to operate a new cable television system at the city of Bronson, Michigan.[1] Bronson is located in the Kalamazoo-Grand Rapids-Muskegon-Battle Creek major television market (#37), and Coldwater proposes to supply subscribers with the signals of the following television broadcast stations:

WKZO–TV (CBS, Channel 3), Kalamazoo, Michigan
WOTV (NBC, Channel 8), Grand Rapids, Michigan
WUHQ–TV (ABC, Channel 41), Battle Creek, Michigan
WILX–TV (NBC, Channel 10), Onondaga, Michigan
WJIM–TV (CBS, Channel 6), Lansing, Michigan
WKAR–TV (Educ., Channel 23), East Lansing, Michigan
WNDU–TV (NBC, Channel 16), South Bend, Indiana
WSBT–TV (CBS, Channel 22), South Bend, Indiana
WSJV (ABC, Channel 28), Elkhart-South Bend, Indiana
WKBD–TV (Ind., Channel 50), Detroit, Michigan
CKLW–TV (CBC, Channel 9), Windsor, Ontario, Canada
WXON (Ind., Channel 20), Detroit, Michigan
WBGU–TV (Educ., Channel 27), Bowling Green, Ohio
WGTE–TV (Educ., Channel 30), Toledo, Ohio

Coldwater has requested a partial waiver of the signal carriage provisions of Section 76.61 of the Commission's Rules to allow carriage of the out-of-market signals of Stations WSJV, WNDU–TV, and WSBT–TV. On July 13, 1973, Channel 41, Inc., licensee of Television Station WUHQ–TV, Battle Creek, Michigan, filed a "Petition for Special Relief" seeking denial of Coldwater's waiver request and Coldwater has replied.[2]

[1] The population of Bronson is approximately 2,390. The system will operate with a 30-channel capacity.

[2] An "Opposition to Application for Certificate of Compliance" filed on May 23, 1973, by Gross Telecasting, Inc., licensee of Station WJIM–TV, Lansing, Michigan, was withdrawn on August 14, 1973, when Coldwater amended its application to provide that "CBS network programs from WSBT–TV will be carried only when such programs are otherwise unavailable on the system * * *."

2. Coldwater asserts that the South Bend, Indiana, UHF–TV transmitting complex substantially pre-dates the establishment in 1971 of WUHQ–TV in the market.[3] Due to this sequence of development, Coldwater asserts that the normal broadcasting receiving patterns of the Bronson audience includes reception of WNDU–TV, WSBT–TV, and WSJV–TV. The UHF–TV complex is approximately 55 miles from Bronson and Coldwater admits that none of the South Bend-Elkhart network signals are significantly viewed in Branch County and clearly indicates that South Bend and Elkhart, Indiana are 42 and 56 miles, respectively, from Bronson, Michigan. As a result of the distance, Bronson has more common cultural interest with northern Indiana than with the closest market cities of Battle Creek (31 miles), Kalamazoo (35 miles), Grand Rapids (77 miles) and Muskegon (107 miles) and a denial of the waiver request would affect the economic viability of the cable system.

3. In its petition, WUHQ–TV points out that Bronson is located within its 35-mile specified zone and not within the specified zone of either WSJV–TV, WSBT–TV, or WNDU–TV. WUHQ–TV states that all three stations operate within the South Bend-Elkhart market (#80) and that Section 76.61(a)(1) of the Rules specifically prohibits Coldwater's proposed carriage of any South Bend television signal into Bronson. Pointing out that Coldwater relies on speculation rather than relevant facts, WUHQ–TV states that Coldwater fails to show that a waiver of Section 76.61 would be in the public interest.

4. We must agree with WUHQ–TV. Even though Coldwater asserts that the Bronson system will not be economically viable unless the distant South Bend network signals are provided, Coldwater has failed to supply specific data or justification to support a petition for waiver of Section 76.61 of the Rules. Mere mileage alone does not reflect enough information to warrant the requested waiver. None of the three opposed television stations are significantly viewed by Bronson viewers nor is the system's community located within the 35-mile zone of South Bend-Elkhart, Indiana. There is no authority under Section 76.61 of the Rules by which these stations can be carried and no special showing has been made to justify the grant of special relief. *See Fetzer Cablevision*, FCC 74–465 —— FCC 2d —— (1974), *Port Arthur Cablevision, Inc.*, FCC 74–358 —— FCC 2d —— (1974).

In view of the foregoing, the Commission finds that a partial grant of the subject application, a grant of the subject opposition, a denial of the waiver request, and a grant of the petition for special relief is consistent with the public interest.

Accordingly, IT IS ORDERED, That the opposition to the subject application filed by Channel 41, Inc., IS GRANTED.

IT IS FURTHER ORDERED, That the Petition for Special Relief denying partial waiver of Section 76.61 of the Commission's Rules filed by Channel 41, Inc., IS GRANTED.

[3] Television Stations WNDU–TV, WSBT–TV and WSJV–TV began operations on July 15, 1955, December 21, 1952 and March 15, 1954, respectively.

IT IS FURTHER ORDERED, That the "Application for Certificate of Compliance" (CAC–2373) filed by Coldwater Cablevision, Inc., IS GRANTED to the extent indicated above and in all other respects including the request for partial waiver of Section 76.61 IS DENIED and the appropriate certificate of compliance will be issued.

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

47 F.C.C. 2d

104–042—74——3

FCC 74-591

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of COMMUNITY ANTENNA CO., RENO AND SPARKS, NEV. Request for Special Relief Filed Pursuant to Former Section 74.1109 of the Commission's Rules TELEPROMPTER CABLE COMMUNICATIONS CORP., RENO and SPARKS, NEV. For Certificates of Compliance	CAC-377, NV006 CAC-378, NV007

MEMORANDUM OPINION AND ORDER

(Adopted June 5, 1974; Released June 13, 1974)

BY THE COMMISSION: COMMISSIONER QUELLO NOT PARTICIPATING.

1. TelePrompTer Cable Communications Corporation (TPT) operates cable television systems at Reno and Sparks, Nevada, communities located in the smaller television market of Reno, Nevada.[1] TPT now provides its subscribers with the following television signals:

KTVN (CBS, Channel 2), Reno, Nevada
KCRL-TV (NBC, Channel 4), Reno, Nevada
KOLO-TV (ABC, Channel 8), Reno, Nevada
KCRA-TV (NBC, Channel 3), Sacramento, California
KVIE (Educ., Channel 6), Sacramento, California
KXTV (CBS, Channel 10), Sacramento, California
KTXL (Ind., Channel 40), Sacramento, California
KOVR (ABC, Channel 13), Stockton, California
KTVU (Ind., Channel 2), Oakland, California

In its applications, TPT requests certification to add the following television signals:

KTLA (Ind., Channel 5), Los Angeles, California
KHJ-TV (Ind., Channel 9), Los Angeles, California
KTTV (Ind., Channel 11), Los Angeles, California
KCOP (Ind., Channel 13), Los Angeles, California

The signals presently provided by TPT are grandfathered on TPT's cable systems pursuant to Section 76.65 of the Commission's Rules. Carriage of the Los Angeles signals is opposed by Washoe Empire, licensee of Television Broadcast Station KTVN, Reno, Nevada; Circle

[1] Reno (population 72,893) and Sparks (population 24,187) are served by a common headend. TPT commenced operations in September, 1953, and on December 31, 1972, served 10,688 subscribers in Reno and 3,097 in Sparks. TPT's systems have a 12-channel capacity, of which eight (four shared) are used for signal carriage, four (shared) are used for automated program originations, and one (shared) is used for non-automated program originations.

L, Inc., licensee of Station KCRL–TV, Reno, Nevada; and Nevada Radio-Television, Inc., licensee of Station KOLO–TV, Reno, Nevada.

2. On October 25, 1966, Community Antenna Company, a division of H & B Communications Corporation, TPT's predecessor, filed with the Commission, pursuant to former Section 74.1105 of the Rules, notices stating that H & B intended to commence carriage of the subject Los Angeles signals as soon as they could be delivered via microwave relay to the Reno area. On November 22, 1966, Washoe Empire filed a petition for special relief pursuant to former Section 74.1109 of the Commission's Rules, which requested the Commission to refuse to authorize the proposed Los Angeles signals for a reasonable time after Television Broadcast Station KTVN commenced operations,[2] or, in the alternative, that the Commission designate the proposed addition of signals for evidentiary hearing to determine whether the addition would be in the public interest. Washoe Empire's petition for special relief triggered the mandatory stay provision of Section 74.1105, which precluded H & B from carrying the Los Angeles signals until the Commission ruled on the petition for special relief. In *Community Antenna Co.*, FCC 67–398, 7 FCC 2d 617 (1967), the Commission denied Washoe Empire's petition for special relief and authorized carriage of the Los Angeles signals on the Reno and Sparks cable systems. In its decision, the Commission stated that Washoe Empire had not sufficiently documented its argument that the proposed additional signal carriage on the cable television systems would pose a threat to the viability of Station KTVN. Since no stay of the Commission's decision was requested, the Los Angeles signals became authorized for carriage on the cable television systems at Reno and Sparks.

3. On May 4 and May 5, 1967, Circle L, Inc., and Washoe Empire, respectively, filed petitions seeking reconsideration of the Commission's action in Community.[3] The petitioners point out that the Commission had failed to consider a document entitled "An Economic Analysis of the Effect of the CATV in Reno on Station KCRL–TV" by Dr. Martin H. Sieden, which had been filed with the Commission on November 9, 1966, in connection with Circle L's opposition to a microwave application which sought authorization to deliver the subject the Los Angeles signals to Reno. In his analysis, Dr. Sieden concluded "that the public interest calls for granting Station KCRL the maximum assistance possible in regaining its local audience from the CATV and in protecting it from the distraction effect of distant independent stations, who themselves will not benefit from access to the Reno market." Petitioners argue that the data in this document should have been considered by the Commission, and, had it done so, the Commission would have denied carriage of the Los Angeles signals on the Reno and Sparks cable television systems.

4. In *Brentwood Co., et al.*, FCC 71–328, —— FCC 2d —— (released April 12, 1971), the Commission, *inter alia*, deferred action on the

[2] Washoe Empire held a construction permit for KTVN in 1966. The station began operation on June 4, 1967.

[3] The petition of Washoe Empire was filed after the period for filing petitions for reconsideration had run and H & B correctly moved to dismiss. However, Washoe Empire's petition is substantially the same as the timely petition of Circle L, and we do not believe the interests of any party would be prejudiced by considering both petitions at this time.

petitions for reconsideration of Community until the pending rulemaking in Docket No. 18397–A was concluded.[4] The Commission stated:

> We initially delayed our resolution of the issues posed in these petitions for reconsideration because of the competing microwave applications, and the competitive conditions in the Reno market have changed substantially since our original determination, invalidating much of the data presented for our consideration. Three television stations now compete in a relatively small market (ranked No. 176 in the 1967 ARB rankings), which produces only marginal profits for two of them; the third station has experienced continual losses. In these circumstances, we consider it advisable to defer further consideration of the matter until we determine in our pending rulemaking in Docket No. 18397–A whether changes are desirable in our smaller television market CATV policy.

H & B Communications then filed a petition for reconsideration of the Commission's decision to defer consideration, arguing that the pending rulemaking in Docket No. 18397–A was irrelevant to the issues presented in the petitions for reconsideration of Community, and that those petitions should be denied forthwith. No action was taken by the Commission on H & B's petition for reconsideration or the petitions for reconsideration filed by Washoe Empire and Circle L.

5. On May 10, 1972, TPT filed the subject applications for certificates of compliance, pursuant to Section 76.13 of the Commission's present rules. TPT asserts that the Los Angeles signals are presently authorized on its cable systems at Reno and Sparks, and that carriage of those signals is therefore consistent with Section 76.65 of the Commission's Rules. Washoe Empire, Circle L, and Nevada Radio-Television argue that carriage of the Los Angeles signals was never finally authorized because of the pending petitions for reconsideration.

6. A review of the pleadings in this proceeding establishes the following: (a) The Reno television market, as a whole, has sustained severe losses since 1967 when Station KTVN commenced operations.[5] (b) Since the subject Los Angeles signals have never been carried on the Reno and Sparks cable television systems, potential disruption of the public's viewing habits is not an issue in this proceeding. (c) The cable television systems at Reno and Sparks presently carry, in addition to the three local television signals, six distant television broadcast signals; three network, two independent, and one educational. (d) Nevada Radio-Television has submitted evidence which indicates that a significant number of cable television viewers in the Reno television market watch distant market programming which is not subject to the Commission's non-duplication rules. It is argued that this audience fragmentation will greatly increase should the Commission approve TPT's proposal to carry four additional distant independent television signals. (e) TPT has not alleged that carriage of the subject

[4] The rulemaking in Docket No. 18397–A culminated in the promulgation of the Commission's present rules on March 31, 1972. The new rules limit the number of distant signals which may be imported into smaller television markets.

[5] Total broadcast losses in the Reno television market:

1967	$307,132	1970	$14,053
1968	195,255	1971	73,332
1969	146,209		

Source: *Television Factbook*, Services Volume, 1973–1974, Edition No. 43, pp. 62–a—70a.

Los Angeles signals is necessary for the successful operation of its cable television systems, and Commission records indicate an increase in the number of subscribers served by TPT in Reno and Sparks.[6] (f) The cable system operator has been on notice since 1966 that carriage of the Los Angeles signals was opposed by local broadcasters, and Commission authorization of such carriage has never been finalized due to the pending petitions for reconsideration of Community and *Brentwood Co., et al., supra.*

7. The evidence submitted persuades us that our decision in *Community Antenna Co., supra*, should be reconsidered. Our action in that proceeding was made without the benefit of the economic impact analysis prepared by Dr. Martin H. Seiden, although it was before the Commission as Exhibit No. 3 to the Petition to Deny Applications and for Other Relief filed by Circle L with regard to the pending applications of Trans American Microwave, Inc., (File Nos. 575–584–CI–P–67). Circle L asserts that since it had already opposed the previously filed microwave applications, it did not file a duplicate set of pleadings in response to the Section 74.1105 notifications of H & B. Circle L assumed that since both the microwave proceeding and the carriage proceeding concerned the question of whether it would be in the public interest to import the four distant Los Angeles signals into the Reno market, the Commission would coordinate the activities of its Common Carrier Bureau with those of its CATV Task Force. Such coordination was referred to by the Commission in *Frank K. Spain*, FCC 68–944, 14 FCC 2d 610, 611 (1968). In that case, the Commission stated that "Since the Commission will not act on a microwave application without considering any relevant pleadings filed under Part 74 of the Rules, two sets of pleadings (under Parts 21 and 74) setting forth like arguments are completely unnecessary." In footnote 3 of its decision, the Commission advised that "To insure that all relevant pleadings filed (or to be filed) under Part 74 are considered in conjunction with the microwave application, it may be wise to file a letter with the Commission in reference to the application, identifying the relevant pleadings that have been (or will be) filed." In the instant proceeding, Circle L certainly would have been wise to have specifically brought the Seiden analysis to the Commission's attention in connection with the petition for special relief considered in *Community Antenna Co., supra.* Nevertheless, the analysis was referred to by H & B in its opposition to Washoe Empire's petition for special relief. Dr. Seiden's analysis deals with the impact which the subject Los Angeles signals would have on Reno Television Broadcast Station KCRL should said signals be carried on the Reno and Sparks cable television systems. This impact is certainly relevant to our determination of whether such cable carriage is in the public interest.

[6] TPT's Forms 325 show the following:

Date	Subscribers	
	Reno	Sparks
Dec. 31, 1971	8,964	2,669
Dec. 31, 1972	10,688	3,097

8. The time which has elapsed since our action in the Community case presents serious problems in reconsidering that determination. The data contained in Dr. Seiden's analysis, prepared in February, 1966, are now stale. However, we have gained much experience in the field of cable television since that case was adopted, particularly respecting the impact of cable television systems on broadcast stations located in smaller television markets, and we have revised our Rules to reflect that experience. Community was decided pursuant to rules which allowed for unrestricted cable carriage of distant television signals in below top 100 markets, absent showings by television broadcasters that such distant signal carriage would not be in the public interest.[7] This policy was changed in the *Cable Television Report and Order*, FCC 72–108, 36 FCC 2d 143, 177 (1972), where we stated that generally, the public interest would best be served by restricting distant signal carriage in below top 100 television markets to three network signals and one independent signal, minus local and significantly viewed signals which are required to be carried.[8] Thus, in the Reno television market, our present rules would restrict cable carriage to the three local network signals and one distant independent signal. Our present carriage rules reflect our determination that smaller television markets are least able to sustain the impact of additional television signal carriage on cable systems. *Cable Television Report and Order, supra*, at 177.

9. TPT asserts that should the Commission decide to reconsider its decision in Community, it is required by law to apply the standards in effect when that decision was rendered, and the Commission's present rules are irrelevant.[9] Furthermore, TPT argues that the Commission cannot consider, *sua sponte*, factors not presented by the pleadings in this proceeding.

10. Clearly, the Commission is not precluded by the due process clause of the Constitution, the Administrative Procedure Act or our Rules from giving weight to the general propositions which we propounded in the *Cable Television Report and Order*, *supra*, and which have been introduced into the record by the parties. *Ideal Farms, Inc. v. Benson*, 181 F. Supp. 62 (1960), *affirmed* 288 F2d 608 (1961), *cert. denied*, 372 U.S. 965 (1963); 5 USC 556; and Section 1.106(c) of the Commission's Rules.[10] Moreover, we would be violating our mandate

[7] In the *Second Report and Order*, FCC 66–220, 2 FCC 2d 725, 783 (1966), we stated "that a fair compromise is to draw the line as to special attention (i.e., evidentiary hearings) at the 100th market, and below that point, simply to take such action as may be necessary in the public interest, upon appropriate petitions bringing substantial questions to our attention."

[8] *See also* Section 76.59(b) of the Commission's Rules.

[9] TPT cites *El Paso Cablevision, et al.*, FCC 71–65, 27 FCC 2d 835 (1971), and *Flint Cable TV Co.*, FCC 69–1394, 20 FCC 2d 921 (1969), where the Commission refused to restrict previously authorized signal carriage on the basis of the Commission's proposed new rules. In the instant proceeding, we are asked to reconsider the decision which authorized the Los Angeles signals on TPT's systems. Unlike the situation in the cited cases, here the question of authorization has not yet been conclusively determined.

[10] Section 1.106 of the Rules states that "A petition for reconsideration which relies on facts which have not previously been presented to the Commission or to the designated authority, as the case may be, will be granted only under the following circumstances: (1) the facts relied on relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters; (2) The facts relied on were unknown to petitioner until after his last opportunity to present such matters, and he could not, through the exercise of ordinary diligence, have learned of the facts in question prior to such opportunity; or (3) The Commission or the designated authority determines that consideration of the facts relied on is required in the public interest."

to act in the public interest should we ignore the considerable experience in the field of cable television which we have gained since Community was decided. We are presented here with a unique situation where the Commission acted without having all the pertinent facts before it. All of the parties to this proceeding have no doubt been adversely affected to some extent by the fact that the Commission has not yet taken final action on the carriage question presented in Community. Nevertheless, there has been no allegation that a party has acted to its detriment on the basis of our decision in Community. Throughout this proceeding, it has been abundantly clear that the question of distant signal carriage in the Reno television market was yet to be decided by the Commission. Under the circumstances, there are no legal or equitable reasons for failing to take notice of what we have found to be in the public interest with respect to cable television signal carriage.

11. Our experience has led us to conclude that generally it would not be in the public interest to permit more than one distant independent television signal to be carried on cable television systems located within smaller television markets. This general conclusion lends added weight to the specific facts relating to the Reno television market which have been introduced by the parties to this proceeding and set out in paragraph 5, *supra*. We are persuaded that the carriage of four additional distant independent television signals on the Reno and Sparks cable television systems would not be in the public interest.[11]

In view of the foregoing, the Commission finds that it would be in the public interest to reverse our action in Community which authorized the subject Los Angeles signals for carriage. The petition for reconsideration of our decision in *Brentwood Co., et al., supra*, insofar as it relates to our action in Community will be dismissed as moot. Our authorization having been withdrawn, carriage of the Los Angeles signals would now be inconsistent with Section 76.59 of the Commission's Rules, and TPT's applications for certificates of compliance must be denied.

Accordingly, IT IS ORDERED, That the subject petitions for reconsideration filed by Washoe Empire and Circle L, Inc., ARE GRANTED to the extent indicated above, and the Commission's Memorandum Opinion and Order in *Community Antenna Co.*, FCC 67–398, 7 FCC 2d 617 (1967) IS REVERSED.

IT IS FURTHER ORDERED, That the subject petition for reconsideration filed by H & B Communications Corporation (now TelePrompTer Cable Communications Corporation), insofar as that petition relates to our action in *Community Antenna Co.*, FCC 67–398, 7 FCC 2d 617 (1967), IS DISMISSED as moot.

[11] We have considered the advisability of requesting updated impact studies from the parties and/or ordering a hearing. In light of the protracted nature of this proceeding and the considerable pleadings which have been filed, we find that we have sufficient information upon which to base our decision and that further delay is not warranted. Furthermore, there are no substantial and material questions of fact which could be resolved by holding a hearing. *See Railway Express Agency, Inc. v. C.A.B.*, 345 F2d 455 (1965), *cert. denied*, 382 U.S. 879 (1965).

IT IS FURTHER ORDERED, That the subject oppositions to certification filed by Washoe Empire, Circle L, Inc., and Nevada Radio-Television, Inc., ARE GRANTED.

IT IS FURTHER ORDERED, That the subject applications for certificates of compliance (CAC–377 and 378) filed by TelePrompTer Cable Communications Corporation ARE DENIED.

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

FCC 74-595

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of COSMOPOLITAN ENTERPRISES, INC., PERMITTEE OF AM STATION KWBY, EDNA, TEX.	Docket No. 20075
For License To Cover Construction Permit	File No. BL-
For Construction Permit To Reduce Power	File No. BP-19137

ORDER AND NOTICE OF APPARENT LIABILITY

(Adopted June 5, 1974; Released June 12, 1974)

BY THE COMMISSION: COMMISSIONER REID CONCURRING IN THE RESULT; COMMISSIONER QUELLO NOT PARTICIPATING.

1. The Commission has for consideration: (a) a permit (BP-16347) issued in 1969, after hearing, which authorized the construction of a new AM station in Edna, Texas (1130 kHz, 10 kW, DA-D), by Cosmopolitan Enterprises, Inc. (Cosmopolitan); (b) a license application filed September 2, 1971, by Cosmopolitan to cover said construction permit; (c) a special temporary authorization (STA) granted September 15, 1971, to operate with a power of five kilowatts in lieu of 10 kilowatts pending submission of an application for modification of the outstanding construction permit to reduce authorized power to five kilowatts; (d) a responsive application for construction permit filed December 2, 1971, with companion request for waiver of section 1.571 of the Commission rules to allow for the acceptance and grant of said application as one for "minor change;" (e) a petition to deny filed December 23, 1971, by International Broadcasting Corporation (KWKH), licensee of co-channel radio station KWKH, Shreveport, Louisiana, directed against Cosmopolitan's construction permit application of December 2, 1971; and (f) an investigation into the affairs of station KWBY conducted in June of 1972.

2. Cosmopolitan completed construction of KWBY in September 1971, but was unable to prove in the three-tower directional antenna system at the authorized power (10 kW). It then tendered the above-captioned application to modify the outstanding construction permit by reducing the authorized power to five kilowatts. In its petition, KWKH claims that even at five kilowatts, the KWBY array cannot be adjusted and maintained to prevent interference to KWKH. Our study indicates that, on a theoretical basis, the proposed operation will involve no overlap (as defined in section 73.37 of the rules) of pertinent contours with any existing station or pending application. In addition, we find that the proposed operation complies with section 73.187 of the rules with respect to radiation permitted toward the

KWKH 0.1 mV/m contour during critical hours. However, to afford the necessary protection, KWBY must suppress radiation to critically low values in the direction of station KWKH. It follows that a minor variation in the operating parameters of this proposal would cause the proposed MEOV's to be exceeded. Since our studies of the present proposal indicate that protection to KWKH is critical, and in view of the degree of signal suppression proposed, we feel that a substantial question exists as to whether KWBY will be able to maintain the pattern within authorized limits, and whether adequate protection will be afforded to KWKH. Consequently, KWKH will be made a party to this proceeding.

3. Pending outcome of a hearing to determine whether the five-kilowatt proposal will, in fact, protect KWKH, KWKH requests that the Commission order KWBY to reduce its interim STA power to 100 watts nondirectional or 500 watts directional. However, the engineering exhibits submitted by KWKH only establish that "* * * a serious question remains as to whether the facility can be operated and maintained with five kilowatts of power while restricting radiation to the required degree." On the basis of our preliminary determination that KWBY's present five-kilowatt STA operation is not causing interference to KWKH, and KWKH's failure to rebut this determination, we would not be justified in ordering a further interim power reduction. Finally, since the five-kilowatt proposal involves no new physical construction, no new channel study, and no increase in radiation over previously authorized values, it will be considered as a "minor change" proposal.

4. Matters coming to our attention over the past several years, including information obtained in our 1972 investigation into the affairs of KWBY, raise serious questions as to whether the applicant possesses the requisite qualifications to remain a permittee or to become a licensee of the Commission. In view of these questions, we are unable to find that a grant of the above-captioned construction permit application would serve the public interest, convenience and necessity, and must, therefore, designate the application for hearing.

5. Accordingly, IT IS ORDERED, That the provisions of section 1.571 of the Commission's rules ARE WAIVED, and the above-captioned application for construction permit IS ACCEPTED FOR FILING as one for minor change.

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

(a) To determine whether the proposed directional antenna system can be adjusted and maintained within the proposed values of radiation.

(b) To determine whether Cosmopolitan Enterprises, Inc., is a legal corporate entity under the laws of the State of Texas, and, if not, whether it is qualified to do business in the State of Texas.

(c) To determine whether Cosmopolitan Enterprises, Inc., engaged in conduct designed to obstruct the flow of information to the Commission, as evidenced by a promissory note drafted by Cosmopolitan's officers in December of 1971.

(d) To determine whether Cosmopolitan Enterprises, Inc., has, at all times, properly maintained a public inspection file in accordance with the requirements of section 1.526 of the Commission's rules.

(e) To determine the facts and circumstances surrounding the execution of a back-dated stock transfer instrument dated June 30, 1970.

(f) To determine whether Cosmopolitan Enterprises, Inc., has failed to file stock transfer agreements within 30 days of their execution, in violation of section 1.613(b)(3) of the Commission's rules.

(g) To determine whether Cosmopolitan Enterprises, Inc., failed to file supplemental ownership reports (FCC Form 323) to reflect changes in corporate directors within 30 days, in violation of section 1.615(c)(2) of the Commission's rules.

(h) To determine whether Phillip J. Tibiletti and/or C. E. Ritchey assumed control of Cosmopolitan Enterprises, Inc., without prior Commission approval in contravention of section 310(b) of the Communications Act of 1934, as amended.

(i) To determine whether Cosmopolitan Enterprises, Inc., engaged in misrepresentation to the Commission or demonstrated a lack of candor in statements filed with the Commission with respect to Matry Hyak's resignation as executive vice president; the pendency of an appeal of a judgment awarded in a local court in favor of G. B. Sandlin for severance pay; the status of a transmitter modification in September of 1971; and the legal existence of Cosmopolitan Enterprises, Inc.

(j) To determine, in light of the evidence adduced under the foregoing issues, whether Cosmopolitan Enterprises, Inc., possesses the requisite qualifications to remain as a permittee or to become a licensee of the Commission.

(k) To determine, in light of the evidence adduced under the foregoing issues, whether a grant of the above-captioned application for construction permit would serve the public interest, convenience, and necessity.

7. IT IS FURTHER ORDERED, That if it is determined that the hearing record does not warrant an Order denying the above-captioned application for construction permit, it shall also be determined whether Cosmopolitan Enterprises, Inc., violated section 310(b) of the Communications Act, section 1.613(b)(3), and/or section 1.615(c)(2) of the Commission's rules within one year preceding the issuance of the Bill of Particulars in this matter.

8. IT IS FURTHER ORDERED, That this document constitutes a Notice of Apparent Liability for forfeiture for violation of section 310(b) of the Communications Act and sections 1.613(b)(3) and 1.615(c)(2) of the rules as set out in the preceding paragraph. The Commission has determined that, in every case designated for hearing involving violations which come within the purview of section 503(b) of the Act, it shall, as a matter of course, include this forfeiture notice so as to maintain the fullest possible flexibility of action. Since the procedure is thus a routine or standard one, we *stress* that inclusion of this notice is not to be taken in any way as indicating what the initial or

final disposition of the case should be; that judgment is, of course, to be made on the facts of each case.

9. IT IS FURTHER ORDERED, That the Chief of the Broadcast Bureau is directed to serve upon Cosmopolitan Enterprises, Inc., within thirty (30) days of the release of this Order, a Bill of Particulars with respect to issues (b) through (i), paragraph 6, *supra*.

10. IT IS FURTHER ORDERED, That the Broadcast Bureau proceed with the initial presentation of the evidence with respect to issues (b) through (i), and Cosmopolitan Enterprises, Inc., then proceed with its evidence and have the burden of establishing that it possesses the requisite qualifications to remain a permittee or become a licensee of the Commission and that a grant of its application would serve the public interest, convenience and necessity.

11. IT IS FURTHER ORDERED, That International Broadcasting Corporation, licensee of station KWKH, Shreveport, Louisiana, IS MADE A PARTY to this proceeding.

12. IT IS FURTHER ORDERED, That the petition to deny filed by International Broadcasting Corporation, is granted to the extent indicated above, and IS DENIED in all other respects.

13. IT IS FURTHER ORDERED, That the STA issued September 15, 1971, for operation of KWBY with power reduced to five kilowatts in accordance with the tentative specifications contained in the Commission letter of September 17, 1971, IS REINSTATED AND EXTENDED pending final outcome of this proceeding.

14. IT IS FURTHER ORDERED, That further action with respect to the above-captioned license application WILL BE HELD IN ABEYANCE pending final outcome of this proceeding.

15. IT IS FURTHER ORDERED, That tower lighting prescribed in the outstanding construction permit (BP-16347) SHALL BE MAINTAINED pending final outcome of this proceeding.

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

17. IT IS FURTHER ORDERED, That the applicant herein, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and section 1.594 of the Commission's rules, shall give notice of the hearing within the time and in the manner prescribed in such rule and shall advise the Commission thereof as required by section 1.594(g) of the rules.

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

FCC 74R-210

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of	
EMPIRE COMMUNICATIONS CO.	Docket No. 19301
For a Construction Permit To Establish Additional Facilities for Station KLF 595 in the Domestic Public Land Mobile Radio Service at Eugene, Oreg.	File No. 531-C2-P-70
LANE PAGING, INC.	Docket No. 19302
For a Construction Permit To Establish New Facilities in the Domestic Public Land Mobile Radio Service at Eugene, Oreg.	File No. 1895-C2-P-70

APPEARANCES

Myron C. Peck and *Daryal A. Myse*, on behalf of Empire Communications Company; *Robert D. Powell*, *Richard S. Becker*, *E. Stratford Smith*, *Morgan O'Brien*, *William H. Roberge, Jr.*, and *Lawrence Bierlein*, on behalf of Lane Paging, Inc.; and *Edmund M. Sciullo* and *Frederick F. Fitzgerald*, on behalf of the Chief, Common Carrier Bureau, Federal Communications Commission.

DECISION

(Adopted June 4, 1974; Released June 12, 1974)

BY THE REVIEW BOARD: BERKEMEYER, NELSON AND PINCOCK.

1. This proceeding involves the mutually-exclusive applications of Empire Communications Company (Empire) and Lane Paging, Inc. (Lane) for authorization to establish a one-way paging system on the sole remaining VHF guard band frequency in Eugene, Oregon. Lane is proposing new facilities, whereas Empire is seeking to establish additional facilities in order to supplement the paging services it provides as the licensee of two existing stations in Eugene. Lane does not own any stations providing DPLMR service in the proposed city of license, whereas Empire owns Stations KLF 595 and KOK 331 in Eugene. KLF 595 operates on a guard band frequency and provides one-way, tone-only paging with direct access, while KOK 331 operates on three two-way frequencies with secondary one-way, tone-plus-voice paging with manual access.[1] By Memorandum Opinion and Order, FCC 71-856, 31 FCC 2d 477 (1971), the Commission designated the applica-

[1] At the oral argument held before the Review Board, Empire indicated that it was licensed to operate on about a dozen frequencies in about eight communities located "up and down the western valley."

tions for comparative hearing [2] and specified the following issue, among others, against Empire: [3]

> (c) To determine the nature and extent of services now rendered by Empire Communications Company, the capacity of its existing facilities, and in the light of Section 21.516(b) of the Commission's Rules, or other pertinent regulations or Commission policy, whether grant of Empire's application for an additional channel is justified in the public interest.[4]

With respect to the above issue (c), the Commission found that although Empire submitted information and data in purported compliance with Section 21.516(b)(4), it was neither responsive nor adequate, and appeared to support the conclusion that Empire's channel capacity was sufficient to meet its traffic needs for the reasonably foreseeable future. On June 15, 1973, Administrative Law Judge Lenore G. Ehrig released an Initial Decision (FCC 73D–31) in which she concluded that both applicants were qualified to construct and operate their proposed systems. The Presiding Judge concluded, in substance, that both applicants had proposed technically feasible paging systems with similar rates and charges, and adequate maintenance personnel; that neither applicant was entitled to a comparative preference under issue (a); that there was a need in the area to be served for additional service; that Lane had shown a greater need for its proposal than had Empire for the additional channel it sought; that there was no reason why Empire could not supply additional paging service with its existing facilities; that Empire had not "carried its burden under issue (c)"; and that the issues framed by the Review Board against Lane were resolved in its favor. Finally, the Presiding Judge concluded that while both applicants were legally, technically and financially qualified, on the basis of effective spectrum utilization and Empire's failure to meet its burden under Section 21.516 of the Rules, the public interest would be better served by a grant of Lane's application.

2. The Review Board has considered the Initial Decision in light of the exceptions and briefs, its examination of the record and the arguments of the parties.[5] We believe that the Presiding Judge's findings of fact are thorough and accurate in all significant respects. Empire's exceptions, in substance, go to the completeness of the Judge's findings and challenge her inferences and conclusions. Consequently, except as modified herein and in the rulings contained in the attached Appendix,

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[2] The Commission designated the following *comparative* issues:

(a) To determine on a comparative basis, the nature and extent of service proposed by each applicant, including the rates, charges, maintenance personnel, practices, classifications, regulations, and facilities pertaining thereto.

(b) To determine on a comparative basis the areas and populations that each applicant will serve within the respective 43 dbu contours, based upon the standards set forth in Section 21.504(a) of the Commission's Rules and Regulations; and to determine the need for the proposed services in said area.

(d) To determine, in consideration of all the evidence on the foregoing issues, whether the public interest, convenience or necessity will be best served by a grant of the application of the Empire Communications Company or the application of Lane Paging, Inc., and the terms and conditions, if any, that should be attached thereto.

[3] Subsequently, by Memorandum Opinion and Order, 33 FCC 2d 721, 23 RR 2d 827 (1972), the Review Board enlarged the issues to include character qualifications, financial qualifications and adjacent channel interference issues against Lane. The interference issue was later mooted by the acceptance of an engineering amendment by Memorandum Opinion and Order, FCC 72M–1310, released October 20, 1972.

[4] Although issue (c) is broader in scope than and incorporates the requirements of Rule 21.516, this issue, in the interests of convenience, will hereinafter be referred to as the Rule 21.516 issue.

[5] Oral argument was held before a panel of the Review Board on February 7, 1974.

the Judges findings of fact are adopted. Although the Board does not agree with the Presiding Judge's conclusion that Empire has shown a need for its proposed service, and with one aspect of her comparative evaluation of the applicants,[6] the Board is in agreement with the Presiding Judge's resolution of the Rule 21.516 issue and with her ultimate conclusion.[7] However, in the Board's view, the Rule 21.516 issue relates to Empire's basic qualifications and is therefore dispositive; accordingly, given an adverse resolution of that issue with respect to Empire, a comparative evaluation of the applicants is not required. See *Airsignal International, Inc.*, 46 FCC 2d 1, 29 RR 2d 1303 (1974). In view of the extensive arguments of Empire and the Board's disagreement with the Presiding Judge's conclusion regarding Empire's showing of need, some discussion of the applicable decisional standards is warranted.

3. Briefly stated, the Rule 21.516 issue is designed to determine whether an existing licensee has an actual need for additional spectrum space. In order to meet its burden under the issue, an applicant is required to make a two-step showing. Thus, as an initial matter, the applicant must show the need of the public for its proposed service and, second, a showing as to the "capacity" of its existing facilities.[8] If, in a comparative proceeding, the need for the proposed service is greater than the capacity of the existing facilities, it may then be concluded that a grant of an application for an additional channel would be in the public interest and the comparative aspect of the proceeding would come into play. It is at this point that the new applicant's showing of need for its proposed services, if affirmative, is compared to the need the existing licensee has demonstrated cannot be met by its existing facilities. As will be discussed in the following paragraphs, it is the Board's view that Empire has failed to show either "need" or "capacity" thereby failing to carry its burden under either the Rule 21.516 issue or the need aspect of the comparative areas and populations issue.

4. In its exceptions and supporting brief, Empire urges that an adequate showing of need for its proposed service has been demonstrated by the record evidence. The applicant places primary reliance in this regard upon depositions of seven business and professional men, which, Empire contends, indicate a need for the proposed automatic direct dial access voice paging in specific extended areas not presently served by its existing Station KLF 595.[9] In further support of its showing, the applicant contends that its existing facilities cannot provide the needed service, either in terms of paging mode or actual coverage. The paging mode it proposes—automatic direct dial access voice service—offers significant advantages over manually operated

[6] Specifically, the Presiding Judge found: "Based upon the record and not upon mere 'presumptive need', * * * it is concluded that there is a need in the area to be served for additional service. It is further concluded that Lane has shown a greater need for the service it proposes than has Empire for the additional channel it seeks."

[7] Hence, the Board is in full agreement with the Presiding Judge's favorable resolution of the character and financial qualifications issues against Lane.

[8] As indicated previously the issue specified is broader than Rule 21.516 itself.

[9] According to Empire's principal, Leslie F. Smith, Jr., he and his sales personnel also talked to customers and prospective customers (which could represent as many as 200 paging units) who expressed interest in the proposed service. Of the 200 units which Smith, as a result of these conversations, believed could be put on the new channel, 60 are now in use on its existing frequencies.

tone and tone-plus-voice systems, according to Empire, since it would cause fewer delays and eliminate inaccuracies allegedly attendant upon voice relayed and manually operated switchboard systems. With respect to coverage, Empire notes that its existing one-way Station KLF 595, which offers the same paging mode as that of its current proposal, has a severely restricted service area. Moreover, the applicant asserts, it would be "impracticable" to expand the coverage of Station KLF 595 by using an additional transmitter on the same frequency and to continue to provide the automatic service, and that a change in transmitter site to a higher elevation would result in an inability to penetrate basements of a few buildings in Eugene. It would also be impracticable to offer automatic direct dial access voice paging on a secondary basis through the two-way Station KOK 331 channels, according to Empire, because these frequencies are currently saturated with traffic loading and the licensee is required by Commission Rules to give priority to two-way traffic.

5. With respect to its showing of capacity, Empire argues that, regardless of the unused capacity of KLF 595, [10] a grant of an additional channel would be in the public interest because of the public need for an automatic dial access voice paging service with extended coverage of areas which cannot be served from Empire's existing facilities. As a means of distinguishing the service proposed from the secondary service of Station KOK 331, Empire stresses that the present service is tone-plus-voice with manual operation, and asserts that automatic dial access voice paging could not be rendered on Station KOK 331 on a secondary basis without disrupting two-way service which must be accorded priority on such channels. In any event, Empire argues, the capacity of the Station KOK 331 channels has been reached, resulting in delays which have been the subject of numerous customer complaints, and the radiation patterns of the channels preclude service to many areas which would receive service from its proposal.

6. In the Board's view, Empire's showing of need for its proposed service is defective in several important respects. As an initial matter, the Board notes that Empire's showing is predicated to a large extent upon the contention that its proposed paging mode constitutes a service which is demonstrably and significantly different from manual modes, such as the one it employs on a secondary basis on one of its Station KOK 331 channels, and the system proposed by Lane. In support of this contention, however, the applicant merely asserts that, in contrast to a manual operation, an automatic system would suffer from fewer delays in service and would eliminate the possibility of inaccuracies allegedly attendant upon manual operation.[11] Accordingly, since an automatic mode cannot be regarded as a separate and distinct form of paging, Empire's failure to show that its proposal would serve a need which is not being met by either of its one-way paging opera-

[10] The Presiding Judge found that Station KLF 595 has a capacity of 300 paging units, but that at the time of hearing (November, 1972) only 119 of the units were in operation.

[11] Empire has presented no evidence, statistical or otherwise, which would indicate to what extent these alleged difficulties are encountered on either mode of operation. In any event, even if it could be assumed that Empire's assertions were correct, these factors, rather than being relevant to the threshold question of need for one-way paging, are relevant to an evaluation of the quality or nature of services proposed within a comparative context. See Issue (a), note 1, *supra*.

tions, regardless of mode, is fatal. Further, the depositions upon which Empire relies refer merely to a need for the proposed automatic paging service in specific extended areas not presently served by Station KLF 595, without any reference to the one-way service provided by Station KOK 331. Aside from this deficiency, Empire has not adduced any evidence which indicates the service contours of the KOK 331 channels. In the absence of a depiction of these contours, there is simply no record basis for determining whether, let alone to what extent, Empire has shown a need for service in areas which cannot be met by its existing facilities. Finally, it is the Board's view that the seven expressions of interest which the applicant submitted in deposition form do not constitute an adequate substantive showing of public need for Empire's proposed service. On the contrary, it is clear that this meager factual showing would not, given the Commission's concern with efficient spectrum utilization, warrant the grant of an initial application for a one-way paging frequency, let alone a grant of an additional channel as in this case.

7. Empire has also failed to meet its burden under the capacity aspect of the Rule 21.516 issue, since, in apparent reliance upon the erroneous assumption that automatic paging constitutes a different class for service than manual paging, the applicant confined its substantive showing in this regard to Station KLF 595, and failed to show the existing capacity of the Station KOK 331 channel used for one-way paging. Although, standing alone, this is a sufficient basis for concluding that Empire has not met the issue, the Board notes that the applicant has not complied with the Rule 21.516 issue requirements with respect to its other two-way channels as well. Thus, in the absence of a showing of capacity,[12] there is no record basis for concluding that the applicant could not provide one-way paging in connection with its two-way base station facilities. See *Airsignal International, Inc., supra.* As a further result of this failure of proof, there is also an insufficient basis for determining whether or not Empire has developed the potential of its existing facilities, and, if not, the effect of such a finding upon any ultimate determination of capacity. In sum, Empire has failed to demonstrate that a grant of its application for an additional channel would be in the public interest.

8. Although the Board is in full agreement with the Presiding Judge's affirmative conclusions with respect to the adequacy of Lane's showing of need and its basic qualifications to be a Commission licensee, we are of the view that one additional consideration merits discussion. In our opinion, the fact that Lane would provide the first guard band competition to Empire in the Eugene, Oregon, market is another basis for grant of its application. Although the Commission has held that, in the common carrier service, the encouragement of competition, in and of itself, should not be the sole basis for a grant of a communications media application, it is clear that where, as here, an applicant has demonstrated that it has been able to locate numerous *new* subscribers for service and that a grant of its application would be in the public interest, this consideration constitutes a "complimen-

[12] Empire did submit some traffic loading studies for Station KOK 331. However, the data contained therein cannot be interpreted in the absence of evidence as to capacity.

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tary or auxiliary" basis for grant.[13] Further, the fact that the guard band frequency presently licensed to Empire and the guard band frequency sought by both of the applicants herein are the only non-wireline carrier guard band frequencies allocated to the Eugene area, also constitutes a "complimentary or auxiliary" basis for grant.[14]

9. Accordingly, IT IS ORDERED, That the application of Lane Paging, Inc. (File No. 1895–C2–P–70) for a construction permit to establish new facilities in the Domestic Public Land Mobile Radio Service at Eugene, Oregon, IS GRANTED; and the application of Empire Communications Company (File No. 531–C2–P–70) for a construction permit to establish additional facilities in the Domestic Public Land Mobile Radio Service at Eugene, Oregon, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
JOSEPH N. NELSON, Member, Review Board.

Attachment.

APPENDIX

RULINGS ON EXCEPTIONS OF EMPIRE COMMUNICATIONS COMPANY

Exception No.	*Ruling*
1	Granted to the extent indicated in Rulings on Exceptions 1(a) and 1(b), *infra;* and *denied* in all other respects since the Presiding Judge's findings adequately and accurately reflect the record.
1(a)	Granted. The 91 letters indicating interest in Lane's proposed service, about which L. Robert Kelley testified, were not offered into evidence by Lane.
1(b)	Granted to the extent that Exhibit 8 was received into evidence* as Lane's showing of need with two stated and recognized observations: (1) the list of prospective customers was received as the showing of need which existed at the time Lane's application was filed; and (2) it was noted that the list would not be *100%* accurate four years later; and *denied* in all other respects since the Presiding Judge's findings adequately and accurately reflect the record.
2	Granted to the extent that a comparative evaluation of the applicant is of no decisional significance. Empire has failed to meet its burden of proof under the disqualifying Rule 21.516 issue; as a result of Empire's failure to establish that a grant of its application for an additional channel would be in the public interest, a comparative evaluation of the applicants is not required; and *denied* in the other regard since the Presiding Judge's findings of need in the area with respect to Lane is supported by the record evidence. Also see Ruling on Exception 2(b), *infra.*

*The exhibit was received during a November 28, 1972, hearing.

[13] *Cf. FCC* v. *RCA Communications,* 346 U.S. 86, 73 S. Ct. 998 (1953); *Whitney Telephone Answering Service,* 1 FCC 2d 283, 6 RR 2d 47 (1965), reconsideration denied 6 RR 2d 496, review denied FCC 66–143.

[14] See *Capital Telephone Company, Inc.* v. *FCC,* D.C. Circuit No. 72–1715, decided May 24, 1974, where the Court of Appeals, citing *Mobile Radio Communications, Inc.,* 29 FCC 2d 62, 21 RR 2d 921 (1971), stated, in substance, that it would do violence to the statutory command to grant both desirable frequencies to one applicant and yet compel another qualified applicant to broadcast on a much less satisfactory channel.

Exception No.	*Ruling*
2(a)	Denied. As discussed more fully in Ruling on Exception 2(b), *infra*, Lane has demonstrated a need for its proposed service. Moreover, inasmuch as Empire has failed to meet its burden under the specified Rule 21.516 issue, *inter alia*, with respect to the capacity of its existing facilities, its allegations concerning area need for Lane's proposal in light of the alleged capacity of Station KLF 595 are unsubstantiated.
2(b)	Denied. As indicated in Ruling on Exception 1(b), *supra*, Lane's list of 79 prospective customers was received into evidence as probative of Lane's showing of need for its proposed service. In the Board's view, there is no basis for questioning the continuing reliability of this showing.
3	Granted to the extent the Presiding Judge's findings are amplified in Rulings on Exceptions 3(a) through 3(e); and *denied* in all other respects since the Presiding Judge's findings are supported by the record evidence.
3(a), 3(b), 4(a), 3(c) 4(d), 7(b).	Granted in substance.
	Granted to the extent that the expressed purposes or the instant proposal are as set forth in the exception; and *denied* in all other respects as unsupported by the record evidence.
3(d)	Denied. The depositions fail to establish the need for Empire's proposed service. Rather than eliciting testimony about the need for a larger service area than that provided by Stations KOK 331 and KLF 595, Empire's counsel, in actual fact, elicited responses from deponents as to whether need exists for a larger service area than that of Station KLF 595, which has a considerably smaller service area than that of Station KOK 331.** Thus, in the absence of a depiction of the service contours of the three KOK 331 frequencies, it cannot be concluded, based upon the record evidence, that Empire has shown a need for service which is not already provided by its existing facilities.
3(e)	Denied as unsupported by the record evidence. Although automatic direct dial access voice paging service and service dispatched through an answering service cannot be regarded as identical services, Empire failed to show that any differences, which allegedly exist, are of decisional or comparative significance.
4	Granted to the extent that the Presiding Judge's findings are amplified in the Rulings on Exceptions 4(a) through 4(d), and *denied* in all other respects since the Presiding Judge's findings are supported by the record evidence.
4(b), 4(c), 5(a), 5(b), 7(a), 7(c), 7(d), 17(b).	Denied as unsupported by corroborative and/or sufficiently specific record evidence. The assertions of the applicant's witness(es) are conclusory in nature, and as such, cannot be regarded as an adequate evidentiary basis for the findings and/or conclusions urged by Empire.
5, 6, 17, 17(a)	Denied. The Presiding Judge's findings adequately and accurately reflect the record.

**Counsel provided deponents with a map depicting only the variance between Empire's proposed service area and that of KLF 595.

Exception No.	*Ruling*
6(a)	Denied. Although Empire could not expand automatic dial access voice paging service on Station KLF 595 with the further addition of a simultaneously-transmitting antenna, the applicant has failed to adequately address itself to other technical means which arguably could permit such an expansion (*e.g.*, sequential operation of transmitters). See note 13, *Capital Telephone Company, Inc.* v. *FCC*, *supra*. Moreover, the coverage limitation of KLF 595 appears to be a direct result of its own selection of facilities (*e.g.*, site, power, antenna height), the choice of which has not been shown to be of comparative significance. See Ruling on Exception 3(e), *supra*.
6(b), 10(b), 10(c), 12(b).	Denied as unsupported by the record evidence.
6(c)	Denied. Empire has submitted insufficient evidence to establish that the Commission's determination in this regard was incorrect.
7	Denied. Although there is testimony on behalf of Empire which asserts that a general failure to penetrate buildings exists in some areas, the allegations in this regard are neither specific nor adequately supported by corroborative evidence.
8, 10, 18, 18(a), 18(c), 18(d).	Denied. The Presiding Judge's conclusions adequately and accurately reflect the record.
14(f), 15, 15(a), 16, 16(a), 16(b), 16(c), 16(d).	Denied. As a result of Empire's failure to establish that a grant of its application for an additional channel would be in the public interest, a comparative evaluation of the applicants is not required.
8(a)	Denied. Empire has failed to adduce evidence which would adequately and accurately support its assertions. Thus, it has failed to show: (1) that the service area of KLF 595 cannot be expanded; (2) that in the absence of a depiction of the service contours of Station KOK 331, the extent of the overlap between the contours of its two-way facilities and its proposed facilities can be determined; (3) that the congestion on its two-way facilities is already intolerable; and (4) that there is any factual basis for concluding that traffic (and the manner of handling the traffic) on its two-way facilties is such that it precludes automatic dial access voice paging without violating the priority given to two-way service pursuant to Rule 21.501(c). See Rulings on Exceptions 4(b), 4(d), 5(a), 5(b), 6(a), 6(b), 7, *supra*.
8(b)	Denied. See Rulings on Exception 6(c), *supra*.
9	Granted.
10(a)	Denied. See Rulings on Exceptions 3(d), 3(e) and 6(a), *supra*.
11	Granted. See Rulings on Exceptions 11(a) and 11(b), *infra*.
11(a)	Granted. Lane's system, as proposed, will consist of 100 units.
11(b), 12(c)	Granted. Lane has not stated on the record that it will increase its proposed system of 1600–1800 units, but rather that this figure represents the capacity of its facility, as proposed, and that it will expand its facilities as need requires.
12	Granted to the extent indicated in Ruling on Exception 11(b), *supra;* and *denied* in all other respects since the Presiding Judge's conclusions adequately reflect the record evidence.

Exception No.	*Ruling*
12(a)	Denied. Inasmuch as Empire has failed to meet its burden under the specified Rule 21.516 issue, *inter alia*, with respect to the capacity of its *existing* facilities, a comparative evaluation of the applicants, including a comparison of the capacity (number of units), of the proposed services is not required. See Ruling on Exception 2, *supra*.
13, 13(a)	Denied. Lane's president made an affirmative response during cross-examination upon being asked if Lane would employ the use of a type DB–201 antenna. This single reference to DB–201 appears to have been a misstatement on the part of a layman, inasmuch as all other references, including those of Lane's engineering expert, refer to the use of a DB–222 antenna.
14, 14(a), 14(b), 14(c), 14(d), 15(c), 15(d).	Denied. Acceptance of Lane's computer study and reliance upon it for purposes of making findings was clearly an appropriate exercise of the Presiding Judge's authority. Thus, a proper foundation was made with regard to the study during the hearing and Empire has provided no basis for impeaching its reliability. Lane's engineering consultant, who was in charge of the study, was made available for cross-examination. He testified that he used Rule 21.504 data for purposes of designing the computer program, and Empire has established neither factual nor theoretical error in the program. Empire's argument that the study cannot be regarded as impartial since Lane's engineering consultant relied upon information unrelated to Rule 21.504 is unpersuasive; thus, although the Rule does not address itself to antenna heights of less than 100 feet, Empire does not allege that Lane's calculations in this regard were not performed in accordance with acceptable engineering practices.
14(e), 15(b)	Granted. The difference in area coverage between the two proposals is not due to Empire's post-designation amendment; as Empire correctly notes, no effective change in the height of its antenna results from that amendment.
16(e)	Denied. The Presiding Judge did not err in holding that the Commission no longer requires a DPLMR applicant to file a mobile tariff. Public Notice, 1 FCC 2d 830 (1965). Also see Ruling on Exception 16(d), *supra*.
18(b)	Granted to the extent that lack of Commission action does not serve to legitimize illegal actions.
19, 20	Denied for the reasons stated in this Decision and elsewhere in the Rulings on Exceptions.

FCC 73D-31

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of EMPIRE COMMUNICATIONS CO. For a Construction Permit To Establish Additional Facilities for Station KLF 595 in the Domestic Public Land Mobile Radio Service at Eugene, Oreg.	Docket No. 19301 File No. 531-C2-P-70
LANE PAGING, INC. For a Construction Permit To Establish New Facilities in the Domestic Public Land Mobile Radio Service at Eugene, Oreg.	Docket No. 19302 File No. 1895-C2-P-70

APPEARANCES

Myron C. Peck and *Daryal A. Myse* on behalf of the Empire Communications Company, *Richard S. Becker*, *E. Statford Smith*, *Morgan O'Brien*, *William H. Roberge, Jr.*, and *Lawrence Bierlein* on behalf of Lane Paging, Inc., *Edmund M. Sciullo* and *Frederick F. Fitzgerald* on behalf of the Chief, Common Carrier Bureau, Federal Communications Commission.

INITIAL DECISION OF ADMINISTRATIVE LAW JUDGE LENORE G. EHRIG

(Issued June 8, 1973; Released June 15, 1973)

PRELIMINARY STATEMENT

1. Empire Communications Company and Lane Paging, Inc. have both applied for construction permits to establish new one-way paging facilities in the Domestic Public Land Mobile Radio Service (DPLMRS) at Eugene, Oregon, on the frequency 158.70 MHz. By Memorandum Opinion and Order released August 26, 1971, these applications were designated for hearing on the following issues:

(a) To determine on a comparative basis, the nature and extent of service proposed by each applicant, including the rates, charges, maintenance personnel, practices, classifications, regulations, and facilities pertaining thereto.

(b) To determine on a comparative basis the areas and populations that each applicant will serve within the respective 43 dbu contours, based upon the standards set forth in Section 21.504(a) of the Commission's Rules and Regulations; and to determine the need for the proposed services in said area.

(c) To determine the nature and extent of services now rendered by Empire Communications Company, the capacity of its existing facilities, and in the light of Section 21.516(b) of the

Commission's rules, or other pertinent regulations or Commission policy, whether the grant of Empire's application for an additional channel is justified in the public interest.

(d) To determine, in consideration of all the evidence on the foregoing issues, whether the public interest, convenience or necessity will be best served by a grant of the application of the Empire Communications Company or the application of Lane Paging, Inc., and the terms or conditions, if any, that should be attached thereto.

The burden of proof with respect to Issues (a) and (b) was placed on the respective applicants, and, with respect to Issue (c), on Empire.

2. By memorandum Opinion and Order released February 7, 1972, the Review Board enlarged the issues as follows: [1]

1. To determine the circumstances regarding the actions of Lane Paging, Inc. and J. Robert Kelley, a principal and officer of Lane, in connection with allowing Stations KKM62, KLC968 and other Business Radio Service stations, licensed to J. Robert Kelley, to be used by Lane to page Lane's customers, and, the effect of these actions on the basic or comparative qualifications of Lane Paging, Inc.

2. To determine whether Lane Paging, Inc., is financially qualified to construct its proposed station and to operate such station for a reasonable time.

3. To determine whether harmful adjacent channel interference will be caused to the reception of mobile radio signals by Empire Station KOK331, on the frequency 158.67 MHz, by a grant of the Lane application to use the transmitter frequency 158.70 MHz, at the location proposed by Lane.

The burden of proceeding with the introduction of evidence under Issue 1 was placed on Empire. The burden of proceeding on the remaining issues and the burden of proof under all the added issues were placed on Lane.

3. Following prehearing conferences, the hearing commenced on November 28 and continued through November 29, 1972, on which date the record was closed. Proposed Findings and Conclusions were filed by all parties on January 23, 1973. Reply Findings were filed by Empire and by Lane on February 6, 1973.

FINDINGS OF FACT

Issue (a)—The Nature and Extent of the Service Proposed

4. Empire proposes a new one-way voice paging base station facility on Capital Hill in Eugene, Oregon. Its proposed site is available to it. The antenna for the proposed facilities will be mounted in an omnidirectional pattern on a 100-foot topped tree at an effective elevation of 105 feet above average terrain. The proposed transmitter is a General Electric ET–26–B–5 with 250 watts output. The effective radi-

[1] By Order released May 26, 1972, the Commission dismissed Applications for Review of the Review Board opinion which had been filed by Lane and by the Bureau. A later Petition for Partial Reconsideration filed by Lane was dismissed by the Commission by Order released August 31, 1972. The Commission had also, by Order released February 28, 1972, denied a Petition for Reconsideration of its original designation order which had been filed by Empire.

ated power is 425 watts. The maximum capacity of the proposed station will be between 300 to 400 units.

5. The proposed service through the new facility will be a dial access automatic voice paging system. Under such system, a caller dials through the telephone system to an Empire number and the call is automatically placed through the base station facilities to the person called, without operators, delay, written message, or other chance for error. Empire personnel will supervise and monitor the transmission by means of an alerting tone to the operator. An automatic alarm system will show any failure of the system. The control point for the proposed station will be at Empire's main office at 162 East Sixth Street in Eugene, connected to the base station by wire line.

6. Empire has an agreement with Smith Radio Communications, Inc. to handle maintenance and repairs on the basis of time and material. Smith Radio owns 100% of the stock of Empire. Smith has seven persons available for such maintenance. Leslie F. Smith is President of both Empire and Smith Radio. He owns approximately 64% of the stock of Smith, and devotes about 80% of his time to general supervision of the Empire operations in Eugene.

7. The rates, charges, practices, classifications, and regulations pertaining to the proposed facilities are contained in Empire Tariff F.C.C. No. 2 on file with the Commission. Such Tariff shows that the basic rate for the tone alert plus voice one-way signalling service totals $22.50 per month per paging unit, with unlimited service. This rate is broken down into $10.00 per month for rental and maintenance of equipment, and $12.50 per month for message service. The Empire Tariff also provides a day rate of 50 cents per day per unit for subscribers who wish service for a limited period less than one month. The basis for these rates is the cost of operation and a reasonable profit.

8. Lane proposes a facility on Capital Hill with an effective radiated power of 435 watts, employing an omnidirectional antenna with a height above average terrain some 40 feet lower than that of Empire. Its antenna site is available. The facility will offer both tone-only and tone-plus-voice paging, dispatched through an answering service, with J. Robert Kelley, President and 50 percent stockholder of Lane, responsible for over-all supervision and available on a 24-hour-a-day basis.

9. Maintenance will be performed by Springfield Radio Communications of which Mr. Kelley is sole owner. Springfield Radio will also make regular checks of frequency deviations and general performance of the Lane Paging operation. It will also take care of installation of equipment and preventive maintenance under Mr. Kelley's supervision. Springfield Radio has available to it the services of Mr. Kelley, who holds a second class radiotelephone operator's license, and employs a shop foreman and nine radio technicians. Nine of the staff members have FCC operator's licenses, five holding first class licenses and four holding second class operator's licenses. The shop foreman of Springfield Radio Communications would be responsible for the performance of maintenance or repair if Mr. Kelley were not available. Technicians of Springfield Radio Communications are on duty 24 hours a day and someone is always available. Dispatching

will be done by Steele's Telephone Answering Service pursuant to an agency agreement. The control point will be at the Answering Service.

10. Charges will be made according to a schedule: $20.50 per month for tone-only paging (or $12.50 per month if the subscriber provides his own equipment and maintenance) and $22.50 per month for tone-plus-voice paging ($14.50 per month if subscriber-owned equipment is provided). Lane owns the equipment it would use, although this equipment is presently leased to a private system. If a license is granted, the private system will rent other equipment. The system proposed is capable of handling 100 paging units, although Lane intends to add equipment to increase capacity to approximately 1600–1800 units, including both tone-only and tone-plus-voice subscribers, and employing subaudible paging in part. The present proposal does not include funds to cover such additional equipment.

Issue (b)—Areas and Populations to be Served and Need for the Proposed Service

11. Empire submitted a study to show the area and population it would serve within its 43 dbu contour, based on Section 21.504(a) of the Commission's Rules. The area totaled 865 square miles and the population, based upon 1970 census figures, totaled 179,762 persons. The 43 dbu contour service area of Empire's existing station KLF 595 is 162 square miles, with a population of 113,054. Empire's "need showing" is interlinked with Issue (c), below, concerning the nature and extent of its present service and whether the grant of its application for an additional channel is justified in the public interest. Mr. Smith testified he believed he could put 200 units on the new channel, based on conversations he or his salesmen have had with prospective subscribers. Mr. Smith himself spoke to 20 or 25 persons, representing approximately 60 paging units. Of the estimated 200 units, approximately 60 are now receiving service from Empire. Seven depositions were offered from present subscribers desiring expanded service. No orders have been taken since the system has not been authorized.

12. According to John E. Dettra, Jr., Lane's consulting communications engineer, Lane Paging will serve 173,792 persons in an area of 762 square miles, while Empire will serve 179,762 persons in an area of 851 (rather than 865) square miles. The contours in Lane Paging Exhibit No. 2 were prepared by an impartial computer based upon information programmed into that computer by Mr. Dettra from Section 21.504 of the Commission's Rules. On the basis of the results drawn by the computer, the difference in area to be served is 89 square miles, and the difference in population to be served by the two applicants is 5,970 persons. The slightly greater area and population to be served by Empire, according to Mr. Dettra, is directly and solely attributable to the most recent amendment to Empire's application, in which Empire changed the elevation as well as the location of its transmitting antenna. Mr. Dettra estimated that the difference in population covered by the two proposals, expressed as a percentage, is about 3.3%.

13. To show need, Lane offered testimony that Mr. Kelley spoke to some 200 persons, of whom 91 sent him letters indicating interest.

Lane also submitted a list showing 74 doctors and 5 commercial companies which requested paging. The list dated from 1968, when Lane originally prepared its application. Mr. Kelley did not know how many of these persons were now receiving paging from another source. Empire offered testimony that approximately 37 of these persons were now receiving service, about 15 from Empire and the rest from a private system licensed to Dr. Hessel.

Issue (c)—The Nature and Extent of Service Now Rendered by Empire, The Capacity of Its Existing Facilities and Whether the Grant of An Additional Channel Is Justified

14. Empire is currently the licensee of two stations in the Eugene, Oregon area: station KOK 331, a three-channel, two-way facility with one-way paging offered on a secondary basis, and station KLF 595, a one-way paging station. As of the date of hearing (November 1972), station KOK 331 had 274 two-way subscribers and 57 one-way. The paging subscribers receive tone-plus-voice service, without direct dial. As of a July 1972 study, there had been 49 paging subscribers on this channel. Station KLF 595 served 119 units at the date of hearing, basically with tone-only, dial access service. This station has a capacity of 300 units. As of the July study, there had been 125 units; prior to designation, there had been 60 units.

15. Each of the existing stations offers service in somewhat different areas. KLF 595, due to its transmitter location in downtown Eugene, can penetrate the basements of the city but is unable to serve outlying areas. Since KOK 331 operates from Blanton Heights, a higher location, it serves a wider area. According to Empire, KOK 331's service area is limited and the station does not penetrate buildings in downtown Eugene satisfactorily. The record reveals, however, that the basements in Eugene are few in number. According to Lane, there are only approximately four in all of downtown Eugene. Nonetheless, Empire regards these, which include the basements of the hotel, the County Courthouse, and the cobalt room of the hospital, as quite important. Lane offered evidence that Dr. Hessel's private system on Blanton Heights penetrated these basements, but Empire's principal, Mr. Smith, thought this was due to the fact that Dr. Hessel's system operated with much more power than did Empire. Mr. Smith admitted, however, that he had not measured this power.

16. Empire believes its station KOK 331 has as much secondary one-way paging as it can carry. It indicated that it has been receiving complaints from its two-way subscribers about delays caused by the paging service. During the two weeks prior to hearing, it received approximately 12 complaints. KOK 331 has two channels which it states are not used for paging because the radiation patterns are directed away from the city. The record reveals, however, that some of the areas which could be served by these channels are included within the service area of the new proposal. There are other areas which KOK 331's two-way channels could not reach.

17. Empire's proposed station will take over the present subscribers of station KOK 331, covering areas Empire cannot now reach, al-

though it will still be unable to penetrate the basements of Eugene. According to Empire, a grant of its proposal will relieve the excess secondary one-way traffic on its two-way channels. Both testimony and depositions were offered to show need in the new areas to be covered.

18. The Commission framed Issue (c) in terms of Section 21.516(b) of its Rules which requires a traffic study as justification for the grant of an additional channel. The study which had been submitted as an amendment to Empire's application showed that 60 pagers were in service on station KLF 595 in January 1971. As indicated above, the capacity of KLF–595 is 300 units. During a six-day period, operating around the clock, the total holding time was 10 minutes. On three of the days, there was no holding time. The total calls held over this six-day period were five. Total calls handled per 24-hour day never exceeded 25. No indication was provided as to the number of orders for service, if any, which were being held. As to this study, the Commission noted that it "appeared to support the conclusion that the present channel capacity is sufficient to meet traffic needs for the reasonably foreseeable future * * *"

19. A later traffic study conducted over a three-day period in July 1972, showed 125 pagers in service on KLF 595. On July 6, out of a total of 58 calls completed, 11 calls were held for a total holding time of 22 minutes. On July 7, out of a total of 53 calls completed, 5 calls were held for a total holding time of 5 minutes. On July 10, out of a total of 42 calls completed, 3 calls were held for a total holding time of 3 minutes. It does not appear from this study or from Mr. Smith's testimony that any orders for service were being held at this time.

20. Empire conceded that it might be possible to expand station KLF 595 by adding a transmitter on Capital Hill, thereby widening its service area. However, Empire does not think this could supply the tone-plus-voice paging it wishes to offer. Empire regards tone-only and its proposed dial access tone and voice paging service as incompatible. In this regard, it is noted that in its Order of Designation, the Commission stated its contrary view that they are compatible.

Issue 1—The Circumstances Regarding the Actions of Lane Paging, Inc. and J. Robert Kelley In Allowing the Business Radio Stations Licensed to Kelley to Be Used by Lane to Page Its Customers

21. J. Robert Kelley testified that in early 1968, two telephone answering service operators approached him about establishing a paging service for their customers. It was intended that there would be no charge for the message service, only for equipment rental. Empire introduced evidence, however, that a newspaper had been charged $19.50 per month for the service, a charge distinct from the telephone answering service charge. Lane intended that the paging service be restricted to subscribers of the answering services, and not open to the public. Lane did not think it would be in violation of any regulations, described its plan to Commission licensees, an attorney, and others it took to be experts, and concluded from the re-

sponses received that its belief was correct. Mr. Kelley held licenses in the Business Radio Service which were used by Lane Paging, of which he was Vice President.

22. In November 1968, violation notices were served on Lane, alleging, *inter alia*, illegal transfer of control of stations, and use of business stations as common carrier stations. Lane consulted with an attorney in Eugene who prepared responses to the notices which expressed Lane's belief that its operations did not constitute a common carrier service. Lane, through the same attorney, acknowledged illegal transfer of control and an application was filed with the Commission for a Business Service license in the name of Lane Paging. Special Temporary Authority to continue service was also requested. Nothing more was heard until June 1969, when two letters were received from the Safety and Special Radio Services Bureau which told Lane its operation was illegal and should be halted. The attorney in Eugene again prepared a reply, requesting clarification as to why the operation was not permitted. The Bureau responded with further clarification. Lane obtained communications counsel and operation ceased on August 20, 1969. Nothing further was heard from the Bureau and Kelley still holds licenses in the Business Radio Service.

Review Board Issue 2—Lane's Financial Qualifications

23. Mr. Kelley estimated Lane's cost of construction as follows: installation $150, antenna and line $200, cost to change crystals $800, and antenna site rental $600, totalling $1,750. Lane already owns the base station equipment, 50 pagers and the initial encoder to serve 100 units. To cover these expenses, Mr. Kelley submitted a bank letter providing a personal line of credit in the amount of $10,000, and a $96,000 line of credit for his various business interests. Of this, $23,000 remains. Mr. Kelley normally pays 8% interest on his loans. Lane Paging's balance sheet as of May 31, 1972 showed $2,768.98 in current assets, $19,506.66 in equipment and fixtures, and $15,657.87 in deferred organizational and developmental expenses of which $13,534.01 represented capitalized legal and engineering fees. At the time of the hearing, the latter totalled approximately $20,000. According to this Balance Sheet, Lane's liabilities totalled $36,490.99 of which $14,256.53 was a loan payable to stockholder (Mr. Kelley). Lane's capital amounted to $1,442.52 of which $1,042.25 represented surplus. Mr. Kelley stated that he would pledge his personal assets to assist Lane. The personal balance sheet submitted for Mr. & Mrs. Kelley showed $842.78 in current assets and $2,577.23 in current liabilities. Other assets, however, include the value of interests in Springfield Radio Communications, Kel-Mac and Siuslaw Radio Communications, loans receivable from Kel-Mac, Lane Paging and Cableview, Inc., as well as 60 shares of stock in Cableview, Inc., valued at $75,000. This value was set by Mr. Kelley's accountant based upon the sale of some shares at $1,250 per share. However, the stock of Cableview, Inc., which consists of 186 shares outstanding, is not traded on any exchange and, therefore, would not appear to be readily marketable. John Robert Kelley d/b/as Springfield Radio Communications shows current assets of $118,091.11 (including

$7,900.22 in cash) against current liabilities of $63,977.08. This company has been incorporated since the date of the balance sheet. Mr. Kelley was 100% owner of the company, and remains so. Mr. Kelley's net worth is over $250,000.

Review Board Issue 3—Adjacent Channel Interference Issue

24. Lane's proposal, as amended, will place its antenna approximately 2.2 miles away from the receiving antenna of Empire station KOK 331 and there is no evidence that adjacent channel interference is to be anticipated.

CONCLUSIONS

Issue (a)

1. Both applicants have proposed technically feasible paging systems with similar rates and charges [2] and adequate maintenance personnel. Neither applicant is entitled to a comparative preference under this issue.

Issues (b) and (c)

2. Both applicants propose to serve substantially the same area and population. Although Empire's service area is slightly larger than Lane's due to a post-designation corrective amendment to its application changing the elevation as well as the location of Empire's transmitting antenna, the discrepancy is not significant. Empire's contention that its service area is much larger than that proposed by Lane is based upon Empire's refusal to accept the area difference stemming from an impartial computer study conducted by Lane's engineer. Such study is, however, found to be a valid means of eliminating "human eyeball differences." Transcript pages 167 through 169 contain an explanation of how the computer study was performed and the fact that many reports have been submitted to and accepted by the Commission based upon data obtained through use of this computer technique.

3. That portion of Issue (b) which seeks a determination of the need for the service proposed by each applicant has been considered along with the facts which were adduced under Issue (c) having to do with Lane's existing service and whether it has shown a need for the additional channel it seeks. Based upon the record and not upon mere "presumptive need," [3] it is concluded that there is a need in the area to be served for additional service. It is further concluded that Lane has shown a greater need for the service it proposes than has Empire for the additional channel it seeks. Notwithstanding Empire's efforts to prove the contrary, the Presiding Judge can perceive no reason why Empire cannot supply additional paging service from its existing facilities. Empire persists in its contention that tone-only and tone-plus-voice paging are incompatible on the same frequency even though, as indicated above, the Commission specifically rejected this contention in paragraph 6 of its Designation Order. Moreover, Empire is propos-

[2] Empire's contention that Lane failed to carry its burden in that it made no showing such as would be contained in a carrier's tariff is rejected. It did submit its proposed rates and charges and other general information. As explained by Lane, the Commission no longer requires mobile tariffs for the type of service proposed by Lane. See *Public Notice*, adopted September 15, 1965, 1 FCC 2d 830 (1965). Additionally, it is not believed that the fact that Empire has set forth a day rate for customers desiring limited service is so significant as to warrant for it a decisional preference.

[3] *Long Island Paging*, 30 FCC 2d 405, 411, review denied 32 FCC 2d 235 (1971).

ing a station with a maximum capacity of 300–400 units. It is not believed that it would be an efficient use of the spectrum to authorize Empire to establish a second system with a capacity of 300–400 units when it is already operating one such system. Lane's proposal, as it stands, is also limited, but Lane has clearly indicated its intention to expand as needed, up to 1600–1800 units. It appears that Lane's capacity can be increased merely by adding encoders and/or terminal equipment without necessity for application to the Commission. In addition, Lane proposes to offer both tone-only and tone-plus-voice paging, whereas Empire's proposal would be limited to tone-plus-voice.

4. At the time of designation, the Commission found that Empire had not justified grant of an additional frequency under Section 21.516 of the Rules. Lane argues that Empire should be limited to that showing since it has had a great deal of time since then to add subscribers. The Bureau contends that Lane's position is reasonable, since otherwise existing carriers would be tempted to prolong litigation until a channel was filled. There is no indication here that Empire has proceeded in any such fashion. Moreover, as indicated in the findings set out above, Empire's later studies have been considered. The latter, however, still do not justify grant of another paging channel. At the time of hearing, there were only 119 subscribers on the paging channel and no significant delays. There were also 57 paging units on one of Empire's two-way channels. There, delays were shown. However, it appears that the delays are the result of Empire's decision to employ only one of its two-way channels for paging, and its belief, rejected by the Commission, that mixing tone-only and tone-plus-voice paging is impractical. Accordingly, with proper use of its existing facilities, it is concluded that Empire will still have unused capacity and so has not carried its burden under Issue (c).

Review Board Issue 1

5. Lane has admitted the violations in issue, but has argued that the violations were neither wilful nor wanton, that it misinterpreted the Commission's regulations, but only after having consulted others who, it believed, understood these regulations. Thereafter it relied on the advice of counsel. The fact that this reliance was misplaced, does, of course, not excuse noncompliance. However, the Commission has indicated that such reliance is relevant, *Asheboro Broadcasting Co.*, 20 FCC 2d 1 (1969), and has also distinguished errors resulting from lack of knowledge of the Communications Act and the Commission's Rules from deliberate violations, *Palm Springs Translator Station, Inc.*, 27 FCC 438 (1959); *Report on Uniform Policy as To Violations by Applicants of Laws of the United States*, 1 RR 91:495 (1951); *Brown Radio & Television Co.*, 5 RR 2d 717 (1965). While these cases are not directly in point, they set out the Commission's basic attitude. No evidence was offered at the hearing which would indicate that Lane had any warning that its operation was illegal and Lane offered credible testimony that its violations and those of J. Robert Kelley were unintentional. From the evidence, the first notice it had that its operations might be illegal came from the November 1968 notices of violation. After responding to them, nothing more was heard for several months. The failure to cease operating during the interim pe-

riod must be considered in light of the fact that the Commission took no further action once it was informed of compliance with the Rules. The Presiding Judge agrees with the Bureau's conclusion that on the evidence here, it is probable that Lane, if licensed, would abide by the Commission's regulations and endeavor to serve the public interest. Accordingly, it is concluded that nothing adverse to Lane's basic or comparative qualifications has been established under this issue.

Review Board Issue 2

6. Lane's cost of construction and maintenance for one year would be approximately $1,750. It does not appear that there would be any financial problem in maintaining the station for a year, since Lane already owns the necessary base station and paging equipment worth $19,506.66. It is necessary, however, to review Lane's financial position. Since its balance sheet does not separate liabilities into long-term and short-term, they will be treated as short term. This leaves the company with $2,768.98 in current assets and $36,490.99 in current liabilities. However, $14,256.53 of the liabilities could be classified as capital in this evaluation, since this sum represents a debt to J. Robert Kelley, who has pledged his own assets to assist the station, and does not seem to need to collect this debt in the near future. Accordingly, the company shows a current working capital deficit of $18,423.23,[4] or $20,173.23, adding to the $1,750 for construction costs and antenna site rental. Opposed to this, Kelley shows lines of credit, of which $33,000 remain ($10,000 to Kelley and $23,000 to his enterprises). However, interest payments on the total lines of credit of $106,000 ($10,000 to Kelley and $96,000 to his enterprises) do not appear to have been provided, and subtracting at 8% would lower the credit available for one year to $24,520. On its face, this should cover the deficit indicated above, except that Kelley testified that legal and engineering costs, by the time of the hearing, had increased by approximately $6,500. In the absence of other information, it is assumed that this was provided from the available bank credit, thus leaving a deficiency in available credit of $2,153.23. Kelley has pledged his personal assets to the company, but there is a shortage of readily liquid assets on his own and his wife's balance sheet. Kelley relies on the shares of Cableview, Inc., which he believes he can sell for $1,250 per share, but this cannot be accepted where there is no independently ascertainable market. However, Springfield Radio Communications Co., wholly owned by Kelley, shows an excess of current assets over current liabilities of $54,114.03, including over $7,000 in cash. Thus it is concluded that Lane, with the help of Kelley and his other holdings, is financially capable of constructing and maintaining the proposed station.

Review Board Issue 3

7. No interference to station KOK 331 is to be anticipated.

8. Both applicants are legally, technically and financially qualified to construct and maintain the proposed facilities. On the basis of effective spectrum utilization and Empire's failure to meet its burden under Section 21.516 of the Commission's Rules, it is concluded that

[4] This includes the capital surplus of $1,042.25.

the public interest, convenience and necessity will be best served by a grant of the application of Lane Paging, Inc.

Accordingly, IT IS ORDERED that, unless an appeal is taken from this Decision to the Commission by a party or the Commission reviews this decision on its own motion in accordance with Section 1.276 of its Rules, the application of Lane Paging, Inc. for a construction permit to establish new facilities in the Domestic Public Land Mobile Radio Service at Eugene, Oregon IS GRANTED, and the application of Empire Communications Company for a construction permit to establish additional facilities in the Domestic Public Land Mobile Radio Services at Eugene, Oregon IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
LENORE G. EHRIG, *Administrative Law Judge.*

FCC 74-574

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of GROSS TELECASTING, INC. For Renewal of Licenses of Stations WJIM, WJIM-FM, WJIM-TV, Lansing, Mich.	Docket No. 20014 Files Nos. BR-830 BRH-1052 BRSCA-207 BRCT-68

ORDER

(Adopted June 5, 1974; Released June 12, 1974)

BY THE COMMISSION: COMMISSIONER QUELLO NOT PARTICIPATING.

1. The Commission has under consideration a motion for leave to file a petition for reconsideration and a petition for reconsideration which were both filed May 22, 1974, by Gross Telecasting, Inc. In its motion Gross seeks permission to file a petition for reconsideration of the designation order in this proceeding, FCC 74-374, released April 22, 1974, asserting that it is raising serious legal and policy questions under the First Amendment, the Communications Act, and Commission precedent; that only the Commission has power to deal effectively with these questions and to grant the relief that is required; and that it should thus be allowed to file the petition for reconsideration. Gross also requests oral argument so that these matters may be fully presented.

2. The motion filed by Gross totally ignores the summary judgment procedure, which was adopted to simplify and expedite hearing proceedings, 34 FCC 2d 485 (1972). The new procedure specifically authorized a pleading, such as Gross wishes to submit, to be filed with the presiding Administrative Law Judge under Section 1.251 of the Rules. At the same time, former Section 1.111 of the Rules, which had previously permitted such pleadings to be filed with the Commission, was deleted. The present motion makes no attempt to show that the new procedures are inadequate in any way or that the questions to be raised cannot be considered and resolved under the established procedures. Indeed, Section 1.106(a)(2) of our Rules empowers the presiding Administrative Law Judge to certify questions to the Commission for immediate consideration where an appropriate showing has been made. See 34 FCC 2d at 491. Under these circumstances, we are convinced that this motion for leave to file a petition for reconsideration should be denied without further consideration and that the petition for reconsideration should be dismissed without prejudice to its resubmission to the presiding Administrative Law Judge.

104-042—74——5

3. Accordingly, IT IS ORDERED, That the motion for leave to file petition for reconsideration filed May 22, 1974, by Gross Telecasting, Inc. IS DENIED and that the petition for reconsideration filed May 22, 1974, by Gross Telecasting, Inc. IS DISMISSED.

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

FCC 74R-211

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of	
HENDERSON BROADCASTING CO., INC., BLOOMINGTON, IND.	Docket No. 19813 File No. BPH-7946
INDIANA COMMUNICATIONS, INC., BLOOMINGTON, IND.	Docket No. 19814 File No. BPH-8030
BLOOMINGTON MEDIA CORP., BLOOMINGTON, IND.	Docket No. 19815 File No. BPH-8032
For Construction Permits	

MEMORANDUM OPINION AND ORDER

(Adopted June 7, 1974; Released June 11, 1974)

BY THE REVIEW BOARD: BOARD MEMBER KESSLER ABSENT.

1. Following issuance of the Commission's Decision of March 15, 1974, in *Voice Of Dixie, Inc.*, 45 FCC 2d 1027 (1974), Bloomington Media Corporation (Bloomington) filed a motion to enlarge issues[1] to inquire into the ascertainment of community needs undertaken by Indiana Communications, Inc. (Indiana), a competing applicant for an FM broadcast station in Bloomington, Indiana.

2. The essentials of the instant request are that Indiana's ascertainment efforts are unacceptable because Mr. Jim Edwards, who is the prospective sales manager, made some of the community leader surveys, and because Mr. Edwards and Mrs. Johnson, whose only connection with Indiana is that she is married to one of its principals, participated in the survey of the general public. Aside from the question of timeliness, the facts require denial of this petition on its merits.

3. The alleged defect in the survey of community leaders relates to the participation of Mr. Jim Edwards, the station's proposed or prospective sales manager. The Board has studied the affidavits attached to Indiana's opposition to the instant petition and is satisfied that an adequate showing has been made in this regard. It is clear that an offer was made to Mr. Edwards, that he accepted it, and that he still plans to serve in the role of sales manager at the station. The facts differ materially from those in *Voice Of Dixie*, *supra*, where, as to one of the participants, there had only been some discussion about his filling a position. Nor do we agree with petitioner's contention that the position of sales manager does not constitute a management-level job so that Mr. Edwards' role should be rejected on this ground, too. The Commission, in its discussion of this in the *Primer*, states that what is being sought is that the survey be conducted by "those whose position

[1] The motion was filed April 5, 1974. The Broadcast Bureau filed comments on April 11, 1974; an opposition was submitted on May 7, 1974, by Indiana; and Bloomington filed a reply on May 17, 1974.

is high enough in the organization to be an effective voice in the decision making process." [2] The position of sales manager fits this test in the absence of a contrary showing which has not been alleged here.

4. Approximately thirty of the general public interviews were conducted by Mrs. Johnson, the wife of an Indiana principal. She is not a principal, employee, prospective employee or member of a research organization hired to perform the survey. Thus, this portion of the general public survey must be rejected. *Voice Of Dixie*, *supra*. However, with a total of 549 interviews having been made, the fact that 5% of them were improperly taken does not render the survey deficient, even under the strict interpretation of the *Primer* applied by the Commission in *Voice Of Dixie*. In that case, there was no way of knowing what Mrs. Stewart Magee's role had been so that the entire general public survey was tainted. That is not the case here. For the reasons stated in the previous paragraph, the Board cannot agree that Mr. Edwards' participation in the general public survey was detrimental.

5. Accordingly, IT IS ORDERED, That the petition to enlarge issues, filed by Bloomington Media Corporation on April 5, 1974, IS DENIED.

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

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[2] *Primer on Ascertainment of Community Problems by Broadcast Applicants*, 27 FCC 2d 650 (1971).

FCC 74-630

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
LIABILITY OF JACK G. HUNT, LICENSEE OF
RADIO STATION KDFN, DONIPHAN, MO.
For Forfeiture

MEMORANDUM OPINION AND ORDER

(Adopted June 12, 1974; Released June 17, 1974)

BY THE COMMISSION:

1. The Commission has under consideration (1) its Notice of Apparent Liability for forfeiture dated June 21, 1973 (mailed June 26, 1973), addressed to Jack G. Hunt, licensee of Radio Station KDFN, Doniphan, Missouri and (2) the licensee's response of July 9, 1973 to the Notice of Apparent Liability.[1]

2. The Notice of Apparent Liability for forfeiture indicated that an inspection of the KDFN operating logs had revealed violations of Sections 73.93(b) and (f) of the Commission's Rules, in that two operators who held third-class radiotelephone licenses without broadcast endorsements were in charge of the transmitter on a regular schedule from January 1, 1972 through August 23, 1972 (the date of inspection).[2] These operators were identified as Earnest Clay Huddleston (P3-17-9100), who operated the transmitter and signed the operating logs from January 1, 1972 to the date of inspection (except during February) for the period 9:00 a.m. until sign-off on weekdays; and Monroe Wiley Hunt (P3-17-6833), who operated the transmitter and printed his name on the operating logs from January 1, 1972 to the date of inspection from 6:00 a.m. to 9:00 a.m. weekdays, 6:00 a.m. to 12 noon Saturdays, and 7:00 a.m. to 12 noon Sundays. The proceeding was confined to those violations which occurred within one year prior to the date of issuance of the Notice of Apparent Liability.

3. In his response to the Notice of Apparent Liability, licensee's operator Huddleston did not deny the violations but stated as follows:

> We were not aware that we had not been given element nine in our examination [a passing score on element nine is required for endorsement for broadcast operation]. Because prior to our examination we had both held a provisional third class license with broadcast endorsement, which we took with us at the time of examination and gave to the examiner. The examiner surely knew that we were broadcasting by the provisional with the endorsement, and that by our

[1] The July 9, 1973 letter was written by Earnest Clay Huddleston, an operator employed by KDFN. In an August 14, 1973 letter, licensee adopted Mr. Huddleston's letter as his response to the Notice of Apparent Liability.

[2] Section 73.93(b) of the Commission's Rules was the rule in effect regarding the above violations until July 14, 1972, at which time it was superseded by Section 73.93(f). Both sections permit the performance of routine transmitter duties by third-class radiotelephone operators whose licenses are endorsed for broadcast station operation.

presence there for the examination, that we intended to continue broadcasting, and that we needed to take whatever examination necessary to do so. Therefore it seems to me that this was an oversight on the part of the examiner. Because we truly thought when we passed our tests that we were in compliance with the rules and regulations of the FCC.

Licensee requested remission of the forfeiture.

4. We find that the licensee violated Sections 73.93 (b) and (f) from June 26 through August 23, 1972, as set forth above, by operating with improperly licensed operators in charge of the transmitting system for an extended period of time. The forfeiture will not be set aside where it appears that such repeated violations resulted from licensee's failure to examine the licenses of the operators in question to insure that they were properly endorsed for broadcast station operation. *Prairie States Broadcasting Co., Inc.*, 15 FCC 2d 838 (1969).[3] Considering all the circumstances in this case, we are not persuaded to remit the forfeiture.

5. In view of the foregoing, IT IS ORDERED, That Jack G. Hunt, licensee of Radio Station KDFN, Doniphan, Missouri, FORFEIT to the United States the sum of five hundred dollars ($500) for repeated violation of Sections 73.93 (b) and (f) of the Commission's Rules. Payment of the forfeiture may be made by mailing to the Commission a check or similar instrument payable to the order of the Federal Communications Commission. Pursuant to Section 504(b) of the Communications Act of 1934, as amended, and Section 1.621 of the Commission's Rules, an application for mitigation or remission of forfeiture may be filed within 30 days of receipt of this Memorandum Opinion and Order.

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

[3] The applications of Huddleston and Hunt for operator license examinations were marked for Radiotelephone Third Class Operator Permits in the applicants' handwriting. The section of the forms where applications for broadcast endorsements should be indicated were unmarked on both. The men were given examinations only for the licenses they applied for.

FCC 74R-217

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of INTERCAST, INC., SACRAMENTO, CALIF.	Docket No. 19516 File No. BPH-7669
EDWARD ROYCE STOLZ II, TRADING AS ROYCE INTERNATIONAL BROADCASTING, SACRAMENTO, CALIF. For Construction Permits	Docket No. 19611 File No. BPH-7924

MEMORANDUM OPINION AND ORDER

(Adopted June 10, 1974; Released June 13, 1974)

BY THE REVIEW BOARD:

1. This proceeding, involving the mutually exclusive applications of Intercast, Inc. (Intercast) and Edward Royce Stolz, II, tr/as Royce International Broadcasting (Stolz) for authorization to construct a new FM broadcast station in Sacramento, California, was designated for hearing by Commission Memorandum Opinion and Order, FCC 72-916, 37 FR 23201, published October 31, 1972.[1] After the Administrative Law Judge closed the record in this proceeding on June 14, 1973, the Review Board reopened the record and remanded the proceeding for further hearings (Memorandum Opinion and Order, 43 FCC 2d 866, 28 RR 2d 1223, released November 14, 1973).[2] Presently before the Review Board is a petition to enlarge issues, filed February 11, 1974, by Stolz, requesting the addition of an issue "to determine if Intercast, Inc. is financially qualified to construct and operate the proposed station."[3]

2. In support of its request for a financial issue, Stolz maintains that Crocker National Bank's agreement, by letters dated July 27, 1972, and August 16, 1972, to loan Intercast $90,000, in addition to a $6,000 loan already outstanding, was a commitment available to the named borrowers only through January 1, 1974, and that no amendment has been submitted indicating that the commitment has been renewed or extended. In any event, petitioner asserts that the bank's commitment is based upon the personal guarantees of Intercast's principals and there is no indication that the bank has examined the ability of the

[1] The application of California Stereo, Inc., originally designated for consolidated hearing with the applications of Intercast and Stolz, was dismissed with prejudice for want of prosecution by Order of the Administrative Law Judge, FCC 73M-444, released April 11, 1973.

[2] On its own motion, the Commission added an issue to include inquiry into possible misrepresentation or lack of candor in the content of affidavits filed by Intercast on July 12, 1973 (Memorandum Opinion and Order, 44 FCC 2d 966, 29 RR 2d 108, released December 21, 1973).

[3] Also before the Board are the following related pleadings: (a) Broadcast Bureau's comments, filed February 26, 1974; (b) reply to Broadcast Bureau's comments, filed February 28, 1974, by Stolz; (c) opposition, filed March 13, 1974, by Intercast; (d) reply to (c), filed March 20, 1974, by Stolz; and (e) letter, filed April 18, 1974, by Intercast.

principals to meet their guarantees other than the statement in the bank's letter of July 27, 1972, that its "commitment is conditioned upon the continuation of facts and circumstances as represented to us by the borrowers."[4] Stolz further argues that examination of the financial statements discloses such marginal ability to meet commitments that up-to-date showings should be required. Conceding that it did not file a timely petition to enlarge issues immediately following the designation of its application for hearing in October, 1972, Stolz nevertheless contends that the expiration of the bank's loan commitment and Intercast's failure to timely submit a renewal or extension of the commitment has had the practical effect of reviving petitioner's right to request enlargement of the issues.

3. The Broadcast Bureau supports addition of a limited financial issue only in the event Intercast fails to furnish an updated bank letter showing that the $90,000 loan commitment has been extended. With respect to that portion of Stolz's request for enlargement of issues alleging a change in the facts and circumstances upon which the bank relied in making the loan commitment, the Bureau submits that Stolz's request should be denied since it does not meet the requirements of Section 1.229 of the Commission's Rules that specific allegations of fact must be supported by affidavits of persons having knowledge of those allegations. Finally, the Bureau notes that neither of the Orders designating Intercast's application for hearing[5] included a financial issue directed against Intercast and, therefore, pursuant to Section 1.229(b), Stolz should have requested the addition of a financial issue predicated on the alleged deficiency of the stockholders' financial statements fifteen days after the most recent designation Order, released October 19, 1972, was published in the Federal Register. Thus, the Bureau concludes that the request predicated on the allegedly deficient financial statements is untimely. In reply to the Bureau's comments, Stolz argues that it has met the specificity requirement of Section 1.229 since the facts it has cited are set forth in Intercast's application, are within the personal knowledge of Intercast's principals and are facts which may be the subject of official notice. Stolz further contends that the question of whether the financial qualifications of each Intercast stockholder must now be placed in issue cannot be determined until Intercast has filed its opposition and presented a new plan of financing. It is Stolz's position, therefore, that its request for a broad financial issue is timely.

4. Intercast's opposition includes, as Exhibit A, an updated loan commitment from the Crocker National Bank in the amount of $100,000, dated March 8, 1974. By letter, filed April 18, 1974, Intercast submits a copy of an amendment to its application which incorporates the new loan commitment letter with supporting documents containing the agreements of Intercast's principals and their wives to provide

[4] In this connection, petitioner asserts that the candor and misrepresentation issues which have been added to this proceeding (see note 2, *supra*) cast doubt upon the accuracy of the financial statements submitted by Intercast's principals as part of Intercast's amendment to its application, filed August 28, 1972.

[5] Intercast's application was first designated for hearing by an Order (Mimeo No. 85281) released June 2, 1972. Subsequently, Intercast's application was designated for hearing in a consolidated proceeding with Stolz's application and that of California Stereo, Inc., by Commission Order, FCC 72-916, released October 19, 1972.

their personal guarantees as security for the loan, as required by the bank.[6] In reply to Intercast's opposition, Stolz contends that a number of changes in the terms and conditions of the March 8, 1974, loan commitment letter necessitate a complete review of Intercast's financial proposal. Specifically, Stolz asserts that the loan has been increased from $96,000 (including a then outstanding loan of $6,000) to $100,000; that the commitment is conditioned upon repayment of the outstanding $6,000 loan on or before March 31, 1974; that the interest rate has been increased from 7¼% to 10¾%; that the loan "would be secured by perfection of a security interest in any purchased equipment of the radio station;" and that the loan "would be secured * * * as well [by] * * * the personal guarantees of the principals of Intercast and their spouses." The earlier letters, argues Stolz, contained only the requirement for the personal guarantees of the principals, contained no requirement for a security interest in any equipment of the radio station,[7] and were not conditioned upon repayment of the $6,000 loan by any specified date.[8] Stolz claims that repayment of the $6,000 loan plus the increase in interest payments of $4,450 will use up the $9,300 cushion between Intercast's available funds and its first year construction and operating costs. On this basis, Stolz avers that Intercast should have submitted an up-to-date balance sheet or other financial statement since its latest balance sheet on record is that of June 30, 1972.

5. The Review Board will deny petitioner's request to add a financial issue. Initially, the Board agrees with the Broadcast Bureau that Stolz's petition is untimely under the provisions of Section 1.229(b) of the Commission's Rules and that good cause for the delay in filing has not been shown. The stockholders' and corporate balance sheets, dated June 30, 1972,[9] were included in an amendment to Intercast's application, filed August 28, 1972, and Stolz made no attempt to request the addition of a financial issue following the publication of the Commission's designation Order on October 31, 1972. In the Board's view, the new bank commitment letter submitted by Intercast as an amendment to its application satisfactorily establishes its financial qualifications and, thus, eliminates the need for addition of a limited financial issue as proposed by the Broadcast Bureau. There is no indication that the bank is unsatisfied with the financial position of the guarantors; and petitioner's allegations to the contrary are sheer speculation. Moreover, Stolz's assertion that a complete review of Intercast's

[6] Intercast's amendment, filed April 17, 1974, was accepted by the Administrative Law Judge in an Order, FCC 74M–555, released May 17, 1974.

[7] Stolz points out that the plan of financing set forth in Intercast's original application contemplates lease of the equipment from CCA Electronics Corporation (Application, Exhibit 3A), and urges that "it is strange, indeed, that the Bank contemplates 'a security interest' in the equipment if it has been advised or understands that all equipment is to be leased."

[8] However, the letter dated August 16, 1972, from Crocker National Bank states that "should this bank's commitment with respect to the $90,000 sum expire by the terms as above described * * * principal reduction of the $6,000 outstanding loan will be made mandatory thereafter on a schedule to be arranged." Since the $90,000 commitment did expire on January 1, 1974, the bank's decision to condition the updated loan commitment upon repayment of the $6,000 loan by March 31, 1974, is not an unusual change in the terms of the loan.

[9] The fact that the balance sheets are almost two years old does not, standing alone, warrant the conclusion that they are outdated. See *Folkways Broadcasting Company, Inc.*, 27 FCC 2d 614, 617, 21 RR 2d 158, 162 (1971).

financial proposal is required because of changes made in the terms and conditions of the loan by the new loan commitment letter of March 8, 1974, is not borne out by a close reading of Intercast's amendment. Thus, the principals of Intercast and their spouses have supplied their personal guarantees as security for the loan, and although the bank letter states that the loan will also be secured by a security interest in any purchased equipment, this provision appears to be contingent and, therefore, it would become operative only if and at such time Intercast purchases equipment.[10] Furthermore, Stolz's contention that Intercast's cushion of $9,300 will be entirely dissipated is not supported by specific allegations of fact.

6. Finally, Stolz's reply pleading, to the extent that it contains a wholly new and previously unmentioned allegation that "the addition of a Section 1.65 issue by the Review Board is appropriate," [11] is not a proper matter for the Board's consideration. See Sections 1.45 and 1.294 of the Rules.[12] A new issue may not be raised nor considered in a reply pleading; rather the material contained therein must be confined in scope to a rebuttal of those allegations raised in the opposition *WIOO, Inc.* 39 FCC 2d 351, 26 RR 2d 704 (1973); *Industrial Business Corp.*, 40 FCC 2d 69, 26 RR 2d 1447 (1973).

7. Accordingly, IT IS ORDERED, That the petition to enlarge issues, filed February 11, 1974, by Edward Royce Stolz, II. IS DENIED.

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

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[10] Moreover, there is no indication that the Crocker National Bank is not aware of Intercast's equipment proposal.
[11] See footnote 2 of Stolz's reply pleading, filed March 20, 1974.
[12] Sections 1.45 and 1.294 state that replies "shall be limited to matters raised in the oppositions."

FCC 74–523

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Request of
JAYCEE ALHAMBRA TELETHON FOR THE MENTALLY RETARDED
For Special Temporary Authorization
for CATV Carriage of Telethon

MAY 22, 1974.

On May 1, 1974, you filed a request for special temporary authorization with the Commission stating that American Microwave & Communications, Inc., a microwave common carrier, which usually supplies Television Broadcast Station WKBD, Detroit, Michigan, to its cable television customers,[1] has agreed to carry Television Broadcast Station WXON, Detroit, Michigan, for the twenty-five hour period during which your telethon will be broadcast (from 5:00 p.m. June 1, 1974, to 6:00 p.m. June 2, 1974).

You indicate that "All the local cable companies receiving the channel 50 signal have been contacted, and they have agreed with the switch for this period."

We believe that the public interest will be served if a special temporary authorization is granted (for the specified twenty-five hour period) to permit the cable television systems served by American Microwave to carry the Jaycee Alhambra Telethon for the Mentally Retarded as broadcast by Television Broadcast Station, WXON, Detroit, Michigan, on June 1 and June 2, 1974.

Accordingly, IT IS ORDERED, That the request for special temporary authorization, filed May 1, 1974, on behalf of the Jaycee Alhambra Telethon for the Mentally Retarded IS GRANTED to the extent indicated above.

Commissioner Quello not participating.

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

[1] American Microwave & Communications, Inc., currently serves cable television systems in the following communities: Alpena, Bay City, Boyne City, Cadillac, Calumet, Charlevoix, Cheboygan, Crystal Falls, East Lansing, Escanaba, Essexville, Gaylord, Grant Rapids, Grayling, Hancock, Houghton, Iron Mountain, Iron River, Ironwood, Ishpeming, Kalkaska, Kincheloe AFB, Kingsford, Kinross, Lachine, L'Anse, Leetsville, Mackinaw City, Manistique, Marquette, Menominee, Mt. Pleasant, Mt. Tom, Munising, Newberry, Norway, Ontonagon, Oscoda, Petoskey, St. Ignace, Sault Ste. Marie, K.I. Sawyer AFB, Talbot, Tawas, Trenary, Williamston, Michigan; Ashland, Wisconsin.

FCC 74-577

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of KAYE BROADCASTERS, INC. For Renewal of License of Station KUPY,[1] Puyallup, Wash.	Docket No. 18929 File No. BR-2682

MEMORANDUM OPINION AND ORDER

(Adopted June 5, 1974; Released June 12, 1974)

BY THE COMMISSION: COMMISSIONERS WILEY, CHAIRMAN; AND HOOKS CONCURRING IN THE RESULT; COMMISSIONER QUELLO NOT PARTICIPATING.

1. This proceeding involves the application of KAYE Broadcasters, Inc. (hereinafter KAYE), for renewal of its license for standard broadcast Station KUPY, Puyallup, Washington. KAYE's application was designated for hearing on issues concerning, *inter alia*, KAYE's policies and procedures for Fairness Doctrine and personal attack matters, its efforts to ascertain the needs and interests of its service area, and the candor and truthfulness of its communications with the Commission, 25 FCC 2d 96 (1970). In a Memorandum Opinion and Order, FCC 72M-1478, December 4, 1972, Administrative Law Judge Nash terminated the hearing and dismissed KAYE's application with prejudice pursuant to Section 1.568(b) of the Rules which provides, *inter alia*, that failure to prosecute an application will be cause for its dismissal. In a Memorandum Opinion and Order, FCC 74-375, released April 19, 1974, we set aside the Judge's order and remanded the proceeding for further hearings.[2]

2. Now before us for consideration are two contingent petitions to enlarge issues filed April 13 and September 6, 1973, by the Broadcast Bureau. On May 16, 1973, KAYE filed a response[3] to the Bureau's first contingent petition which requests issues:

> (1) To determine whether KAYE Broadcasters, Inc. failed to make proper entries in the program logs of KAYE in violation of Section 73.282 of the Commission's Rules.

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[1] Effective November 11, 1973, the station's call letters were changed from KAYE to KUPY.

[2] In that order we also enlarged the issues: To determine whether there has been an unauthorized relinquishment of control of KAYE Broadcasters, Inc. and whether Carl H. Lambert is exercising *de facto* control of the licensee without proper authorization of this Commission.

[3] KAYE, citing the Bureau's pleading in *Royal Broadcasting Company, Inc.* (Docket No. 16676), argues that since the Bureau's petition is contingent, it should be dismissed. *Royal Broadcasting* is not applicable here, however, since the petitioner in that case was willing to dismiss its petition if the Commission denied a similar petition lodged against it, while the present petitions are contingent only in the sense that they would have become moot if the Judge's dismissal order had been sustained.

(2) To determine whether the broadcast by KAYE Broadcasters, Inc. of program length commercials promoting "Shaklee" products violates Commission policy.

(3) To determine whether KAYE Broadcasters, Inc. has used the facilities of its station to serve the private interests of its principals and to raise funds for their support rather than to serve the community generally and to serve impartially all the various groups which make up the community.

(4) To determine whether there have been unauthorized transfers of control of KAYE Broadcasters, Inc. without prior Commission approval in violation of Section 310(b) of the Communications Act.

(5) To determine whether KAYE Broadcasters, Inc. and/or its principals misrepresented facts or were lacking in candor in applications and reports filed with the Commission.

(6) To determine whether KAYE Broadcasters, Inc. failed to comply with the provisions of Section 1.615 of the Commission's Rules.[4]

On October 1, 1973, KAYE filed a motion to dismiss the Bureau's second petition which requested an issue:

To determine whether KAYE Broadcasters, Inc. has made and/or solicited or encouraged others to make *ex parte* presentations in violation of Sections 1.1221 and 1.1225 of the Commission's Rules.[5]

3. Requested issues (1) (logging violations), (2) (broadcast of program length commercials), and (3) (use of KAYE's facilities for the private interest of its principals) evolved out of KAYE's fund raising activities. Attached to the Bureau's first petition is a transcript of a KAYE broadcast on March 5, 1973, which is devoted almost exclusively to the promotion of Shaklee products (soap and other home use items) and distributorships. In a letter, dated March 15, 1973, James Nicholls, who was a distributor of Shaklee products as well as a principal of KAYE, advised the Commission that on March 5, 1973, KAYE had in fact broadcast a 9 hour marathon devoted to promoting the sale of Shaklee products.[6] From an examination of KAYE's logs as they were prepared at that time, it appears that the marathon was improperly logged, since the logs contain only entries for 60 second commercials.

4. In a *Public Notice*, 39 FCC 2d 1062, released February 22, 1973, sent to all broadcast licensees, we held that, where program content

[4] Other pleadings concerning the first petition which are under consideration here include: (1) comments filed April 30, 1973, by the Puget Sound Committee for Good Broadcasting (PSC), (2) a reply filed May 31, 1973, by the Bureau, (3) a further response and a motion to accept that response filed June 18, 1973, by KAYE, (4) an opposition to KAYE's motion filed June 27, 1973, by the Bureau, and (5) KAYE's reply to the opposition, filed July 3, 1973. Since the matters discussed in KAYE's further response could have been raised in its earlier pleading, since they go to the weight rather than to the truthfulness of the Bureau's allegations, and since KAYE has not otherwise shown good cause for its request to file the additional pleading, we shall deny its motion to accept that pleading. See *D. H. Overmeyer Communications Co.*, 4 FCC 2d 496 (1966); *Supplemental Pleadings Before the Review Board*, 40 FCC 2d 1026 (1972); and *KFPW Broadcasting Company*, 33 FCC 2d 310 (1973).

[5] Other pleadings relating to the second contingent petition which are under consideration here include an opposition to the motion to dismiss filed October 11, 1973, by the Bureau and a reply filed October 24, 1973, by KAYE.

[6] The purpose of the promotion was to raise funds for the prosecution of KAYE's application.

is so interweaved with commercial messages that the entire program must be considered commercial, all of such programming—all 9 hours on March 5—must be logged as commercial. We also stated that such broadcasts were considered by the Commission to be "a serious dereliction of duty on the part of the licensee." KAYE asserts that the alleged logging violations were innocent, that it was unaware of our February 22 *Public Notice*, and that it requested rulings on how to log the marathon. We find, however, that KAYE's explanation is of questionable value since it did not request a Commission ruling until after it had violated the policy and after the Bureau had examined its logs. Moreover, a ruling on how to log the programming should have been unnecessary even if KAYE did not receive the *Public Notice*, since the *Public Notice* merely summarized our clear and unambiguous public policy which had been spelled out in prior rulings, including: *Topper Corporation*, 21 FCC 2d 148 (1969); *American Broadcasting Companies, Inc.*, 23 FCC 2d 132 (1970); *American Broadcasting Companies, Inc.*, 23 FCC 2d 134 (1970); *Columbus Broadcasting Company, Inc. (WRBL–TV)*, 25 FCC 2d 56, 18 RR 2d 684 (1970); *Multimedia, Inc. (WBIR–TV)*, 25 FCC 2d 59, 18 RR 2d 687 (1970); *KCOP–TV, Inc.*, 24 FCC 2d 149, 19 RR 2d 607 (1970); *Dena Pictures, Inc.*, 31 FCC 2d 206 (1971); *National Broadcasting Company*, 29 FCC 2d 67, 21 RR 2d 593 (1971); *WUAB, Inc.*, 37 FCC 2d 748, 26 RR 2d 137 (1972); and *WFIL, Inc.*, 38 FCC 2d 411, 25 RR 2d 1027 (1972). KAYE as a Commission licensee is chargeable with knowledge of these rulings and it had an obligation to comply with our policy against program length commercials. *Letter to Weigel Broadcasting Company*, 41 FCC 2d 374, dated May 23, 1973.

5. In the *Public Notice* and the above cited rulings we also stated that the broadcast of program length commercials may raise a question of whether the licensee was subordinating programming in the public interest to his own private interest. The transcript submitted by the Bureau consisted primarily of an attempt by KAYE to sell Shaklee products and distributorships to its listeners. In a letter written on March 15, Mr. Nicholls admitted conducting a marathon to sell Shaklee products, noting that "[t]hroughout the day, on several occasions" he urged KAYE's listeners to purchase Shaklee products. It thus appears that there is sufficient indication that KAYE violated our policy to warrant the requested logging and program length commercial issues.

6. KAYE argues that the policy against program length commercials constitutes censorship and a prior restraint on free speech prohibited by Section 326 of the Communications Act and the First Amendment. We do not agree. In clarifying our policy on program length commercials, we asserted that it is not our function to pass upon the desirability or quality of a questioned program. Our concern lies where the commercial interest in the program is the "dominant purpose" and the licensee has subordinated the public interest in its programming to a point where the programming is designed to promote the sale of products or services rather then entertain or inform the public. 44 FCC 2d 985 at 986–988 (1974). Interpreting the program length commercial within these guidelines does not impinge on the

free exchange of ideas or free speech and it is not censorship in violation of Section 326 of the Act.

7. The Bureau also charges that KAYE's use of programming for its fund raising efforts is inconsistent with the public interest. On the other hand, KAYE asserts that such activities have been undertaken to support and continue the station's operation. References have been made at various points in the record of this proceeding to the fact that KAYE was engaging in such fund raising efforts, but this is the first time that this matter has been mentioned in the context of a petition to enlarge issues. Without attempting to make any final evaluation of KAYE's fund raising efforts here, we have concluded, in view of the tardiness of the Bureau's request and the fact that we have already specified an issue concerning KAYE's program length commercials, that the Bureau's requested issue (3) is neither necessary nor appropriate at this time.

8. Requested issues (4) (unauthorized transfer of control) and (5) (candor), were premised in part on allegations contained in an FCC Form 316 (application for approval of transfer of control) filed by Hayden Blair as transferee and Henry Perozzo as transferor. Although our records indicated that Mr. Nicholls was a 50% owner of KAYE, Messrs. Blair and Perozzo alleged in their application that Mr. Blair owned 100% of the stock in KAYE. In view of the settlement of the civil litigation in the Superior Court of Pierce County, Washington, involving the ownership of KAYE, in which all parties acknowledged the validity of Mr. Nicholls' ownership interest in KAYE, we are convinced that there is no longer any basis for adding these issues. In that civil litigation, however, Mr. Blair filed an affidavit stating that in 1968 he resigned his position as an officer and director of KAYE and that he subsequently abstained from further participation in the affairs of the station. Since KAYE failed to report either this or any subsequent changes in its management as required by Section 1.615 of the Rules, an issue will be added concerning KAYE's failure to comply with Section 1.615.

9. In its second petition the Bureau requests an *ex parte* issue based, *inter alia*, on a letter to former Chairman Dean Burch from Mr. Slade Gorton, Attorney General of the State of Washington, urging a grant of KAYE's renewal application. The letter was not served on either the Bureau or other parties to this proceeding. In a subsequent affidavit, Mr. Gorton asserts: (a) that the letter was solicited by Mr. Nicholls, who stated that he had received similar letters from other public officials, and (b) that Mr. Nicholls sent copies of letters from Leonard Sawyer, a Washington State Representative, and Mr. Hal Nielson of the Tacoma Civil Service Board to him. Mr. Gorton sent those copies to the Bureau's counsel, and they were also attached to the Bureau's pleading.

10. KAYE argues that there is nothing on the face of the Sawyer and Nielson letters to show that they were solicited by Mr. Nicholls, and that, although the letters are addressed to Chairman Burch, the copies do not indicate that they were in fact received by the Commission. Standing alone, the copies of the Sawyer and Nielson letters would not be the basis for an *ex parte* issue. We can, however, take official notice from our public correspondence file that those letters were

received by Chairman Burch's office, and Mr. Gorton's affidavit establishes that Mr. Nicholls had knowledge and copies of the letters. Moreover, as previously noted, the affidavit also states that Mr. Gorton's letter was in fact solicited by Mr. Nicholls in violation of the *ex parte* rules.

11. The Bureau's request is also premised on a petition urging the grant of KAYE's application solicited by Gil Brown, who has been a participant in KAYE broadcasts.[7] The petition was signed by, *inter alia*, Terrell Nicholls, who was manager of KAYE, and Merlyn Nicholls, who is Jim Nicholls' wife and was previously an officer of KAYE. The petition, which was sent to Chairman Burch, was an improper *ex parte* communication supported by KAYE's manager and the wife of its owner who had been an officer. The petition taken together with the Gorton letter and other communications raises serious questions which merit addition of the requested *ex parte* issue.[8]

12. KAYE filed a motion to dismiss the Bureau's second petition arguing that the Bureau was served since it received copies of the letters. KAYE also urges that the fact that Mr. Nicholls' wife and son signed the Brown petition refutes the claim that it was solicited by KAYE, since if Mr. Nicholls had solicited the petition he would not have aroused suspicion by including his wife and son among the petitioners. Both of these arguments, however, ignore the intent of our *ex parte* rules. The rules require service on all parties and are not satisfied because Commission routing of mail happens to call certain *ex parte* letters to the Bureau's attention. Indeed, it is incumbent upon all applicants to see that communications bearing on the merits of a proceeding such as this one are properly served on all parties. As to Terrell Nicholls, as manager of KAYE his signing of the petition addressed to Chairman Burch was also improper unless he took steps to see that all such petitions were properly served on all parties. KAYE next charges the Bureau with "nitpicking" and "dredging up charges." We need only say in response that these types of allegations add nothing of substance to the resolution of the questions raised by the pleadings and are highly improper, particularly since we have found merit to several of the Bureau's requests. The other matters raised in KAYE's motion have been discussed in regard to the merits of the Bureau's request and need not be further considered. Since we find the Bureau's request for an *ex parte* issue to be meritorious, KAYE's motion will be denied.

13. KAYE finally argues that, if we add any of the requested issues, the burden of proof should be on the Bureau. Each of the new issues, however, involves information and evidence which is peculiarly within the knowledge and control of KAYE, and accordingly, the

[7] The transcript attached to the first petition shows Gil Brown appeared on KAYE's Shaklee marathon along with Mr. Nicholls and the regular announcer, and that he gave KAYE's business number as his own telephone number for his business as a Shaklee distributor.

[8] Although we indicated in our recent order, FCC 74-375, released April 19, 1974, that further aspects of this proceeding should be handled in an expedited manner, the presiding Judge has ample authority to schedule the procedures on these newly added issues in any way consistent with both the public interest and KAYE's right to a full and fair hearing.

burden of proof with respect to the additional issues will be on the applicant, as it is in all cases unless specified to the contrary.

14. Accordingly, IT IS ORDERED that the contingent Petitions to Enlarge Issues, filed April 13 and September 6, 1973, ARE GRANTED to the extent indicated herein and ARE DENIED in all other respects.

15. IT IS FURTHER ORDERED, that the issues designated for hearing ARE ENLARGED:

(a) To determine whether KAYE Broadcasters, Inc. failed to make proper entries in the program logs of then Station KAYE in violation of Section 73.282 of the Commission's Rules.

(b) To determine whether the broadcast by KAYE Broadcasters, Inc. of programs promoting "Shaklee" products and distributorships violates Commission policy.

(c) To determine whether KAYE Broadcasters, Inc. has failed to comply with the provisions of Section 1.615 of the Commission's Rules.

(d) To determine whether KAYE Broadcasters, Inc. has made and/or solicited or encouraged others to make *ex parte* presentations in violation of Sections 1.1221 and 1.1225 of the Commission's Rules.

16. IT IS FURTHER ORDERED, that originally specified issue (7) IS MODIFIED to read as follows:

To determine, in light of the evidence adduced under all of the issues, whether the licensee possesses the requisite qualifications to remain a Commission licensee, and whether the public interest would be served by grant of renewal.

17. IT IS FURTHER ORDERED, that the Motion for Acceptance of Response, filed June 18, 1973, by KAYE Broadcasters, Inc., IS DENIED, and that the response, filed June 18, 1973, by KAYE Broadcasters, Inc., IS DISMISSED.

18. IT IS FURTHER ORDERED, that the Motion to Dismiss filed October 1, 1973, by KAYE Broadcasting Inc., IS DENIED.

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

104-042—74——6

FCC 74-601

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of	
LAMAR LIFE BROADCASTING CO., JACKSON, MISS.	Docket No. 18845 Files Nos. BPCT-4320; BRCT-326
CIVIC COMMUNICATIONS CORP., JACKSON, MISS.	Docket No. 18846 File No. BPCT-4305
DIXIE NATIONAL BROADCASTING CORP., JACKSON, MISS.	Docket No. 18847 File No. BPCT-4317
JACKSON TELEVISION, INC., JACKSON, MISS.	Docket No. 18848 File No. BPCT-4318
CHANNEL 3, INC., JACKSON, MISS. For Construction Permits	Docket No. 18849 File No. BPCT-4319

MEMORANDUM OPINION AND ORDER

(Adopted June 12, 1974; Released June 18, 1974)

BY THE COMMISSION: COMMISSIONER HOOKS CONCURRING IN THE RESULT.

1. This proceeding concerns the petition, filed on March 5, 1974, by Channel 3, Inc. (Channel 3) to dismiss with prejudice the application of Lamar Life Broadcasting Company (Lamar) for authorization to operate on Channel 3 in Jackson, Mississippi.[1] Lamar, although the prior operator-licensee of Channel 3, is required to compete on even terms "as nearly as may be" with the other applicants,[2] including Channel 3, for authorization to operate the station. Presently, Lamar leases its broadcast facilities to Communications Improvement, Inc. (CII), to whom we awarded interim operating authority pending final resolution of the comparative hearing.[3] Channel 3 claims that Lamar profits from this lease arrangement to the disadvantage of Channel 3 and the other applicants,[4] contrary to the Commission's requirement of even competition, and that, consequently, Lamar should be disqualified from further participation in these proceedings, or, alternatively, that Lamar's profits should be impounded.

2. We have carefully considered Channel 3's contentions, and we conclude that the petition must be denied. In requiring that Lamar compete on even terms, both the Commission and the Court of Appeals

[1] Lamar and the Broadcast Bureau filed oppositions to the petition on March 15, 1974, and March 20, 1974, respectively; and Channel 3 filed a reply to the oppositions on March 28, 1974.

[2] *Office of Communication of the United Church of Christ* v. *F.C.C.*, 138 U.S. App. D.C. 112, 425 F. 2d 543, *pet. to rehear denied*, 138 U.S. App. D.C. 120, 425 F. 2d 551 (1969); *Lamar Life Broadcasting Co.*, 20 FCC 2d 635 (1969).

[3] *Lamar Life Broadcasting Co.*, 26 FCC 2d 100 (1970).

[4] Channel 3 requests that the Commission first order an accounting by Lamar to determine whether and to what extent Lamar profits from the lease. Under the terms of the lease, CII pays $30,000 monthly rent and further assumes responsibility for taxes, maintenance, and utility charges. Channel 3 maintains that Lamar's profit from this arrangement allows Lamar to defray some of the expense of these proceedings.

were concerned that Lamar should not obtain any preference or advantage based on past operating authority. To that end, the Commission denied Lamar interim operating authority and impounded Lamar's net profits from operation of the station after the date designated for CII to commence its interim operation.[5] However, any profit that Lamar may obtain at this time from its lease with CII results not from any status or preference accorded Lamar by the Commission, but rather arises from Lamar's ownership of broadcast facilities used in the interim operation of the station.

3. Channel 3 also requests that the Commission and the other applicants participate in any renegotiation of the lease when it expires in late June, 1974. We fail to see what purpose would be served at this time by granting this request. CII, having had previous experience bargaining with Lamar, is quite capable of protecting its own interests and preventing the imposition of unreasonable lease demands.

4. We have chosen to deny Channel 3's petition on its merits. However, we agree with both the Broadcast Bureau and Lamar that Channel 3's petition is untimely. Channel 3 knew or should have been aware of the terms of the lease at the time it was filed in 1971. On this basis, alone, therefore, Channel 3's petition is subject to dismissal.

5. Accordingly, IT IS ORDERED, That the petition to dismiss the application of Lamar Life Broadcasting Company, filed March 5, 1974, by Channel 3, Inc., IS DENIED.

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

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[5] *Impoundment of Profits of Station WLBT (TV)*, 39 FCC 2d 462 (1973).

FCC 74-509

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of
MASSACHUSETTS-CONNECTICUT MOBILE TELEPHONE CO. AND SIGMA COMMUNICATIONS CORP.
For Approval of Inter-Carrier Operating Agreement

MAY 15, 1974.

This concerns the inter-carrier operating agreement between Henry R. Zachs, d/b as Massachusetts-Connecticut Mobile Telephone Company, and Sigma Communications Corporation (Sigma) that you submitted to the Commission for approval on October 31, 1973. The agreement was amended by the parties on January 3, 1974, and it is this amended agreement that is under consideration.

Basically, the agreement appears to be in line with the proposal we approved on September 19, 1973, between Zipcall and Colgan Communications, Inc., 42 FCC 2d 1125, with some differences noted below. Sigma has agreed to dismiss an application for the guard-band frequency 152.24 MHz, that is mutually exclusive with an application of Zachs. Also, Sigma will not oppose any application of Zachs for said frequency or for any extension of frequency 158.70 MHz within the state of Connecticut and the greater Springfield, Massachusetts metropolitan area. In return, Zachs agrees to allow Sigma, for a monthly fee, to issue paging units to its subscribers to operate on the frequency 158.70 MHz, assigned to Zachs. Zachs will install a paging terminal available for use by Sigma, both on 158.70 MHz and for subaudible paging on Sigma's two-way channels. Provision is also made for other carriers to reach similar agreement with Zachs, on the same terms agreed to by Sigma. As a result of this agreement the parties will avoid the time and expense of a comparative hearing and subscribers will receive paging promptly and over a wider area than they can at present, without anticompetitive conduct by the licensees.

In our letter of September 19, 1973, approving the agreement between Zipcall and Colgan Communications, we concluded, at page 1126:

> * * * approval of the agreement will serve the public interest, provided that all subscribers are charged the same rates as if they subscribed directly to Zipcall, and provided further that subscribers are informed of the source of that service. Furthermore, the parties should understand that our approval of their agreement does not constitute in any way an approval of any lessening of their competitive activities, and that we will reexamine the matter if such a lessening of normal competitive activities should appear to be the result of their agreement.

These provisions are to be understood as equally applicable to our approval of the present agreement.

A copy of this letter will be associated with the files of Station KQZ 747 for future reference.

Commissioner Quello not participating.

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

FCC 74-587

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of	
MICRO-CABLE COMMUNICATIONS CORP., BLOOMINGDALE, N.J.	CAC-2776 NJ077
MICRO-CABLE COMMUNICATIONS CORP., BUTLER, N.J.	CAC-2777 NJ033
MICRO-CABLE COMMUNICATIONS CORP., OAKLAND, N.J.	CAC-2778 NJ034
MICRO-CABLE COMMUNICATIONS CORP., POMPTON LAKES, N.J.	CAC-2779 NJ035
MICRO-CABLE COMMUNICATIONS CORP., RINGWOOD, N.J.	CAC-2780 NJ076
MICRO-CABLE COMMUNICATIONS CORP., WANAQUE, N.J.	CAC-2781 NJ075
MICRO-CABLE COMMUNICATIONS CORP., WAYNE, N.J.	CAC-2782 NJ036
For Certificates of Compliance	

MEMORANDUM OPINION AND ORDER

(Adopted June 5, 1974; Released June 13, 1974)

BY THE COMMISSION: COMMISSIONER REID CONCURRING IN THE RESULT; COMMISSIONER QUELLO NOT PARTICIPATING.

1. Micro-Cable Communications Corporation operates cable television systems at the above-captioned New Jersey communities, all located within the New York, New York-Linden-Paterson, New Jersey, major television market (#1), and serves its subscribers with the following television broadcast signals:[1]

WCBS-TV (CBS, Channel 2), New York, New York
WNBC-TV (NBC, Channel 4), New York, New York
WNEW-TV (Ind., Channel 5), New York, New York
WABC-TV (ABC, Channel 7), New York, New York

[1] The cable systems commenced operations in 1966-1969 and have 12 channels available for carriage of broadcast and access services. Of these channels, 10 are used for television signal carriage and one is used for origination cablecasting. The populations of the communities and the number of subscribers currently being served, as reported on the systems' FCC Forms 325, are as follows:

Community	Population	Subscribers
Bloomingdale	7,797	387
Butler	7,990	204
Oakland	13,150	1,166
Pompton Lakes	11,397	759
Ringwood	10,393	1,436
Wanaque	8,636	1,131
Wayne	49,141	2,202

WOR–TV (Ind., Channel 9), New York, New York
WPIX (Ind., Channel 11), New York, New York
WNET (Educ., Channel 13), New York, New York
WXTV (Span. Lang., Channel 41), New York, New York
WNJU–TV (Span. Lang., Channel 47), New York, New York
WNYC–TV (Noncommercial, Channel 31), New York, New York

On July 5, 1973, Micro-Cable filed an application for certificate of compliance requesting authorization to add Television Broadcast Station WNJM (Educ., Channel 50), Montclair, New Jersey. Carriage of this signal as well as the signals currently being carried on the above-captioned systems is consistent with Section 76.61 of the Commission's Rules.

2. On August 8, 1973, Blonder-Tongue Broadcasting Corporation, permittee of subscription television Station WBTB–TV, Channel 68, Newark, New Jersey, filed a letter with the Commission stating that while "WBTB–TV has no objection to Micro-Cable's proposed carriage of WNJM," it was raising a carriage controversy pursuant to Section 76.27 of the Rules within 30 days of the public notice which, accordingly, must be acted upon in the certificating process. WBTB–TV states that Micro-Cable has refused to give assurances that it will carry the subscription portions of WBTB–TV's programming when the station commences operation, and that for the Commission not to require such carriage is inconsistent with Sections 1 and 307(b) of the Communications Act as stated in its pleading submitted in *Telco Cablevision*, FCC 74–449, —— FCC 2d —— (1974).

3. In reply to the letter of Blonder-Tongue, Micro-Cable states: (a) that since WBTB–TV is still under construction, consideration of its carriage at this time is premature; (b) that subscription television stations are not "must carry" signals by the Commission's Rules; (c) that the "carriage controversies" contemplated by Section 76.27 involve only controversies concerning existing broadcast stations and not construction permittees; (d) that WBTB–TV has followed a policy of threatening applicants for certificates of compliance in its service area who do not agree to carry subscription television with filing "an opposition, which WBTB–TV knows full well will cause substantial delay in the grant of the certificates," and that such conduct constitutes an abuse of the Commission's process.

4. An informal pleading has been filed by the New Jersey Public Broadcasting Authority, licensee of Television Broadcast Station WNJM, in support of the application. The Authority states that "the real parties harmed by WBTB–TV's action are ETV Station WNJM and the viewing public," and that "the manifest purpose of WBTB–TV's opposition is to force Micro-Cable to capitulate to WBTB–TV's carriage demands through the threat of delayed processing."

5. We have stated that to the extent subscription television stations broadcast at least the minimum number of non-subscription television programs required by Section 73.651 of our Rules, such stations are conventional stations. *Fourth Report and Order in Docket 11279*, FCC 68–1174, 15 FCC 2d 466, 581 (1968); *Telco Cablevision, supra.* Accordingly, since Station WBTB–TV is a television broadcast station within whose specified zone the communities of the systems will be located, it will be entitled to carriage pursuant to Section 76.61

(a) (1) of the Rules for the non-subscription portions of its programming, which Micro-Cable has already agreed to carry. With respect to the subscription portions of WBTB–TV's programming, however, we have stated that carriage of such is not required, but that the issue is still being considered as part of a separate rule making.[2] *Telco Cablevision, supra; B and F Broadcasting*, FCC 73–908, 43 FCC 2d 361 (1973). Our grant of certification to Micro-Cable shall be without prejudice to any further carriage rights of WBTB–TV that result from the rule making presently in progress. In this connection, we note that Micro-Cable has pledged immediate compliance with any such rule change.

6. In response to the various allegations of abuse of the Commission's process, WBTB–TV states that its actions have been merely an exercise of a right it has under section 76.27. We accept this representation of good faith by WBTB–TV. However, we believe we have made our position on this matter sufficiently clear so that a controversy regarding the status of WBTB–TV and its right to have its subscription programs carried on cable systems no longer exists at this time. Accordingly, such requests for carriage of its subscription programming filed by WBTB–TV with respect to individual certificate applications will not be dealt with in the certificating process.[3] *Compare Memorandum Opinion and Order in Docket No. 19417*, FCC 72–646, 36 FCC 2d 136 (1972); *Commission on Cable Television of the State of New York*, FCC 73–1148, 43 FCC 2d 826 (1973), *recons. denied*, FCC 74–99, 45 FCC 2d 283 (1974).

7. Since the instant cable television systems are existing systems and have franchises issued prior to March 31, 1972, compliance with our franchise standards need not be demonstrated until March 31, 1977, or until the franchises terminate. Our certification will therefore extend until March 31, 1977, for all of the systems with the exception of that at Oakland, whose franchise expires on August 31, 1976.

In view of the foregoing, the Commission finds that grant of the above-captioned applications for certificates of compliance would be consistent with the public interest.

Accordingly, IT IS ORDERED, That the comments filed by Blonder-Tongue Broadcasting Corporation, licensee of Station WBTB–TV, on August 8, 1973, ARE DENIED.

IT IS FURTHER ORDERED, That the "Applications for Certification" filed by Micro-Cable Communications Corporation, for the New Jersey communities of Bloomingdale (CAC–2776), Butler (CAC–2777), Oakland (CAC–2778), Pompton Lakes (CAC–2779), Ringwood (CAC–2780), Wanaque (CAC–2781), and Wayne (CAC–2782), ARE GRANTED, and appropriate certificates of compliance will be issued.

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

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[2] *Third Further Notice of Proposed Rule Making in Docket No. 11279*, FCC 68–1175, 15 FCC 2d 601 (1968).

[3] Of course, as stated in paragraph 5, *supra*, any certificate grants will be without prejudice to any further carriage rights of WBTB–TV that result from the proceedings in Docket 11279, *supra*.

FCC 74-594

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of
JOHN WILEY JACKSON, JOHN WILLIS DICKERSON, JR., DOUGLAS LAVOISIER CONNOR, M.D., GEORGE J. SCHWEIZER, JR., AND BOBBIE JEAN ESPY, D.B.A. PRAIRIE BROADCASTING CO., STARKVILLE, MISS.
REQUESTS: 980 KHZ, 1 KW, DAY (FACILITIES OF WKOR, STARKVILLE, MISS.)
For Construction Permit

MEMORANDUM OPINION AND ORDER

(Adopted June 5, 1974; Released June 12, 1974)

BY THE COMMISSION: COMMISSIONERS WILEY, CHAIRMAN; AND ROBERT E. LEE CONCURRING IN THE RESULT; COMMISSIONER HOOKS DISSENTING; COMMISSIONER QUELLO NOT PARTICIPATING.

1. The Commission has for consideration the above-captioned and described application tendered by Prairie Broadcasting Company (Prairie) on November 28, 1973, by which it seeks to compete for the facilities of station WKOR, Starkville, Mississippi, in a comparative hearing with the pending application of the Golden Triangle Radio Corporation (WKOR) for the renewal of the license of WKOR (File No. BR-4707). The date on which Prairie's application was tendered does not fall within the period then prescribed by section 1.516(e)(1) of the Commission's rules for the filing of applications for construction permits in conflict with pending renewal applications. Prairie requests a waiver of section 1.516(e)(1). WKOR opposes the request for waiver and Prairie has replied to WKOR's opposition.

2. Licenses of broadcast stations in the State of Mississippi expired on June 1, 1973, and applications for renewal of those licenses were due on or before March 5, 1973. The application for the renewal of the license of WKOR was not tendered until May 30, 1973. On June 4, 1973, the Commission issued a public notice in which it was indicated that the WKOR renewal application had been accepted. Section 1.516(e)(1) of the Commission's rules requires that an application for a construction permit which is in conflict with a timely renewal application must be tendered by the end of the first day of the last full calendar month of the expiring license term. If WKOR had filed its renewal application on time, a competing application would have had to be filed on or before May 1, 1973. Under the provisions of section 1.516(e)(1), in effect last year, any interested applicant could have filed an application in conflict with WKOR's late application within a 60-day period following the issuance of the public notice of the acceptance of the

WKOR application on June 4, 1973. The 60-day period expired on August 3, 1973. Prairie now requests that its application be accepted notwithstanding the fact that it was filed only a few days short of four months after the cut-off date applicable to the WKOR renewal.

3. In support of its request for a waiver of section 1.516(e)(1) of the rules, Prairie cites WKOR's failure to comply with various requirements of the Commission's rules and the Commission's renewal application form. Prairie points out that WKOR filed its renewal late. The application as filed indicated that notices of the filing of the application had been broadcast over the station, but WKOR failed to file a copy of the text of the notice which was broadcast. WKOR also failed to indicate compliance with the requirements that notice of the filing of the renewal was published in a local newspaper. Prairie notes that the application was not complete in other respects in that the applicant did not file a balance sheet and failed to list the other interests of Charles K. Irby, the applicant's sole stockholder. The application was not complete, declares Prairie, "and should not have been accepted for filing by the Commission's staff."

4. Prairie also alleges that one of its principals inspected the file at WKOR which the station is required by section 1.526 of the Commission's rules to maintain for inspection by members of the public. According to an affidavit of Prairie's principal, George J. Schweizer, Jr., the file did not include a copy of the 1973 WKOR renewal application and did not contain a copy of the 1970 renewal application. Mr. Schweizer also describes some difficulty in gaining access to the file.

5. Finally, Prairie argues that section 1.516(e)(1) should be waived because four of Prairie's five principals are Black and because Prairie proposes to provide a broadcast service directed primarily to Black people, estimated at 35,000, in an area described as the Golden Triangle of Mississippi. This area would appear to bear some relation to the locations of the communities of Starkville, Columbus and West Point, Mississippi, which are the county seats of Oktibbeha, Lowndes and Clay Counties, respectively. Prairie states that the Golden Triangle area is well served by other stations in the area. Prairie lists as examples of such stations WSSO and WSMU–FM in Starkville; WACR, WCBI, WMBC and WJNF–FM (presumably Prairie intends to refer to station WJWF(FM) in Columbus; and WROB in West Point.

6. In connection with Prairie's implied assertion of its superiority over the present licensee of WKOR, Prairie requests the Commission to take official notice of the Annual Employment Reports of the stations listed as indications of the status of Blacks in communications in the area. Incidentally, the licenses of all the stations listed, with the exception of WKOR, were renewed some four months before Prairie tendered its application.

7. WKOR's opposition to Prairie's waiver request urges the denial of the waiver and relies on Commission precedents in which the Commission has declined to waive procedural requirements to permit comparative consideration of untimely applications with previously filed applications.

8. Prairie counters in its reply with the contention that WKOR's opposition fails to deal with the primary basis of Prairie's request for

waiver that WKOR had not satisfied various requirements of the Commission's rules. Prairie seeks to distinguish the precedents cited by WKOR and argues that the rejection of Prairie's application would be hypertechnical and arbitrary because WKOR's renewal application was not complete and not grantable at the time Prairie's application was tendered for filing.

9. The Commission will first dispose of the charge of staff impropriety in accepting WKOR's incomplete application. The Commission has not authorized nor will it direct the staff to reject renewal applications summarily for the omissions apparent in the WKOR renewal application. The carelessness in the preparation and filing of renewal applications as evidenced by WKOR's renewal application as originally filed is not widespread among broadcast licensees, but on the other hand, unfortunately, it cannot be said that such carelessness is unusual. The failure on the part of some licensees to exercise sufficient care to attempt to submit all the material required by the application form and the Commission's rules causes unnecessary difficulties for those licensees and materially increases the already heavy burden on the Commission's staff. Nevertheless, the staff's acceptance of the WKOR application was entirely proper, since despite its deficiencies, it was substantially complete.

10. The Commission cannot accept as grounds for a waiver of section 1.516(e)(1) the fact that the WKOR renewal was filed late. By failing to file the renewal application when due, WKOR extended the time for filing competing applications for an additional 60 days. Prairie did not tender its application until almost three months beyond the 90-day period now provided in the present provisions of section 1.516(e)(1) for the filing of applications for construction permits to compete with applications for renewal of licenses. Prairie makes no attempt to excuse its tardiness. The first evidence supplied to the Commission that Prairie had any interest in the Starkville facility is the statement of Mr. Schweizer that he appeared at the offices of WKOR to inspect the station's public file on October 2, 1973, nearly two months after the deadline for the filing of competing applications. The Commission therefore holds that the belated filing of a renewal application provides no basis, of itself, to waive section 1.516(e)(1).

11. In addition to Prairie's allegation that the WKOR public file did not contain copies of the renewal applications for 1970 and 1973, a dispute over the contents of WKOR's file has arisen in connection with Prairie's petition to deny an application to transfer control of WKOR from Charles K. Irby to Ben P. Yarber, file No. BTC–7272. It appears that the Commission, in the proper context, will have to resolve the dispute and take appropriate action. The Commission does not condone what appears to have been a public file carelessly maintained. But the absence of certain documents in the WKOR public file does not appear to have any bearing on Prairie's tendering its application on November 28, 1973, instead of on or before August 3, 1973, the deadline for filing applications for construction permits for concurrent consideration with WKOR's renewal. Since Prairie has failed to establish or even allege that there was a causal relationship between WKOR's omissions and its own failure to submit a timely application, we cannot

find that those omissions prejudiced Prairie's position and, therefore, constitute good cause for waiver of the cut-off rule.

12. The central point in Prairie's contentions appears to be that a waiver is mandatory because, it is alleged, the WKOR renewal was not complete and not grantable at the time Prairie tendered its application. There is some substance to Prairie's contention that the WKOR renewal was not only incomplete at the time of filing but also was incomplete at the time Prairie's application was tendered. WKOR did supply the missing balance sheet in August of last year. Also in August, WKOR filed a statement which purports to be in response to paragraph 7 of section I, FCC Form 303 (other business interests), in which it is indicated that other business interests of WKOR's sole stockholder are "None." In connection with the pending WKOR transfer application, however, Mr. Irby has filed a statement in which he indicates that he has been engaged for some time in a housing consulting business. Whether the response, "None," in the renewal application is intended to mean that Mr. Irby's activities in the housing field are those of a mere employee or whether this interest is less than the renewal application requires reporting, the Commission cannot determine at this time.

13. There is no denying that WKOR failed to file with its renewal application the material necessary to establish that it had complied with the publication requirements of section 1.580 of the Commission's rules. As Prairie has alleged, the only information regarding the publication of the required notices was the indication that announcements had been broadcast over WKOR on February 12, 13, 14 and 15, 1973. It was not until January 25, 1974, that WKOR filed a publisher's affidavit in response to Prairie's petition to deny the pending application (File No. BTC–7272) for Commission consent to the transfer of control of WKOR. The affidavit indicated that a notice of intent to file a renewal application appeared in the Starkville Daily News on February 8, 9, 13 and 14, 1973. On May 15, 1974, WKOR finally filed the material relating to the notices to be associated with the renewal application including, for the first time, the text of the announcement broadcast over WKOR in February 1973. Aside from the unexplained, apparent negligence in advising the Commission that it had complied with the notice requirements, WKOR appears to have otherwise complied with those requirements. It also appears that the public in the Starkville area was on notice that the WKOR renewal was to be filed. The Commission does not condone such negligence, but, again, there appears to be no causal connection between WKOR's failure to advise the Commission of its compliance with the publication requirements and Prairie's failure to tender its application in time to be considered with the WKOR renewal.

14. Prairie argues that the underlying rationale of the cut-off procedure applicable to renewal applications presupposes that the applicants have complied with our procedural requirements and have submitted applications which may be processed and granted along with other renewals involving licenses expiring at the same time. In apparent support of this assertion, Prairie quotes out of context a phrase from the Commission's Report and Order adopting section 1.516(e), *Broadcast License Renewal Application*, 20 FCC 2d 191, 16 RR 2d

1512 (1969). Prairie cites the phrase: "* * * orderly processing of and action upon the bulk of each area's renewal applications would be impeded * * *." This phrase was included in the discussion of the Commission's determination that the deadline for the filing of petitions to deny timely renewal applications and competing applications in conflict with timely renewals should be the first day of the last full month of the expiring license term rather than the 15 days originally proposed.

15. The reason for adopting a cut-off date for renewal applications was stated in the Commission's Notice of Proposed Rule Making which contemplated the adoption of section 1.516(e)(1). *Broadcast License Renewal Applications*, 16 FCC 2d 858 (1969). Paragraph 3 of that notice reads as follows:

> It is desirable that we also amend the procedural rules governing the filing of applications for new broadcast stations and for modification of construction permits and licenses of existing broadcast stations which are mutually exclusive with applications for license renewal. The orderly and timely processing of such renewal applications requires that there be a date certain, prior to the expiration of the current license term, by which the Commission and the license renewal applicant may be informed concerning the filing of mutually exclusive applications.

Additional time was provided for the filing of construction permit applications to compete with renewal applications not filed on time.

16. The contention that the Commission's cut-off procedure presupposes that renewal applicants have complied with applicable procedural requirements and have submitted applications which can be granted is simply not consistent with reality. There are in the Commission's files at any given time applications for renewal of broadcast licenses (AM, FM and TV) on which action has been deferred beyond the normal license expiration date involving approximately ten percent of the licensed stations on the air. The current percentage is closer to twelve percent. Action on these applications is deferred for a variety of reasons including omissions, in a number of cases, inadequacy of the renewal applications in a variety of respects, and even the failure to comply fully with the Commission's publication requirements.

17. To carry Prairie's contention to its logical extreme, it might be said that action on renewals of over a thousand station licenses has been deferred, and, therefore, the Commission must waive the cut-off rule for all would-be applicants who wish to compete for those facilities.

18. In establishing the renewal cut-off procedure, the Commission had no such results in mind. The cut-off dates prescribed by the rule will be observed in all cases except where there are unusual and compelling circumstances. In the present instance, WKOR has displayed a remarkable complacency, especially considering the fact that WKOR is under vigorous attack. But WKOR's derelictions do not provide any apparent excuse for Prairie's belated attempt to file against WKOR's renewal almost four months after the deadline provided by the rule. The Commission does not, at this time, express any view that disposition will be made, but the Commission does hold that Prairie

has not made out a case for the disposition of the WKOR renewal in a comparative hearing with Prairie's application.

19. Among the precedents cited by WKOR in opposition to Prairie's request for waiver is *Howard University*, 23 FCC 2d 714, 19 RR 2d 234; concurring opinion, 24 FCC 2d 761, 19 RR 2d 236c (1970), in which the Commission declined to waive section 1.227(b)(1) to accept an application for consideration in a hearing proceeding on two other applications which had been designated for hearing almost four months before the applicant requesting the waiver had tendered its application. Section 1.227(b)(1) of the rules provides that an application will not be consolidated for hearing with a previously filed application unless it is tendered the day preceding the day the previously filed application is designated for hearing. Prairie argues that no predesignation cut-off was involved in the Howard University case and that the applications which were in a protected status there had been designated for hearing. The Commission does not view the distinctions as controlling. In the Howard University case, as in the present case, the Commission's rules now provide a date by which competing applications must be on file to receive concurrent consideration. If an applicant is to avoid the application of the rules, it must come forward with persuasive reasons why an exception must be made in its case.

20. Finally, with respect to Prairie's argument that the Commission must conclude that Prairie is comparatively superior, the Commission does not reach the comparative factors unless and until there are two or more applications on file and in a comparative hearing.

21. For the reasons indicated above, IT IS ORDERED, That the request for waiver of section 1.516(e)(1) of the Commission's rules, filed by the Prairie Broadcasting Company, IS DENIED and its application IS HEREBY RETURNED as unacceptable for filing.

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

FCC 74-609

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF SUBPART F, RADIO AMATEUR CIVIL EMERGENCY SERVICE (RACES), IN PART 97	Docket No. 19723. RM-968, RM-1116, RM-1478, RM-2032, RM-2154, RM-2168

NOTICE OF PROPOSED RULEMAKING

(Adopted June 12, 1974; Released June 17, 1974)

BY THE COMMISSION:

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

2. On April 18, 1973, the Commission adopted a Notice of Inquiry in the referenced Docket, FCC 73-40, 38 FR 10467, (April 27, 1973). The purpose of that Notice was to elicit comment on various questions pertaining to the Radio Amateur Civil Emergency Service (RACES). The Notice requested informed parties to comment on the general topics of the effectiveness of the present RACES program; the type of RACES program, if any, that should be continued; the objectives the RACES program should attempt to achieve; and how the services should be structured to achieve those objectives. Responses were received from the Secretary of Defense, civil defense agencies (99), individual amateur operators (20), and amateur organizations (9). Additionally, we have the Final Report of a management study of the emergency role of amateur radio in civil emergencies, performed by the System Development Corporation for the Defense Civil Preparedness Agency (DCPA), under Contract No. DAHC20-72-C-0243, as a source of information regarding RACES.

3. Our Notice was initiated in response to four petitions, RM-968, RM-1116, RM-1478, and RM-2032, proposing additional frequency allocations and privileges for RACES activities. Two new petitions, RM-2154 and RM-2168, also pertaining to RACES, are being added to this Docket. The former was filed by the Fort Worth and Tarrant County (Texas) Civil Defense, and the latter by the Office of Disaster Control and Civil Defense, Baltimore, Maryland. Both request more frequencies be allocated to RACES. Additionally, RM-2168 requests rule amendments to make Technician Class amateur operators also eligible for authorization to operate a RACES station.

4. In reply to our inquiry asking if RACES is an effective means of providing communication services during periods of local, regional, or national emergencies, most of the responses were in the affirmative. Examples were cited of RACES supplied communications during hur-

ricanes, floods, etc. On the other hand, the findings of the DCPA study in this regard, provide a somewhat different perspective:

> Of the 46 states for which we have responses, 31 reported that RACES was useful to them. Of this number, approximately half reported simply that RACES provided them with emergency communications, primarily for backup purposes. Of the remainder, most, while recognizing the value of the emergency communications channels, also reported that the RACES volunteer operators, their technical skills, and their equipment were additional resources of value. The remaining 15 states expressed more or less negative attitudes toward RACES: 11 appeared to feel strongly that RACES, at least as presently structured, is of no value to them; two felt that RACES is of little value in a protracted emergency because of the necessity to rely on volunteers, who have their own jobs and families to provide for; and two reported some need for the RACES frequencies, but only in the hands of paid state personnel. Interestingly, of the 15 states expressing a negative attitude toward RACES, only three reported any recent use of the service. (The two states reporting use of RACES frequencies by paid personnel did not comment on their recent disaster experience). Since only two states registering approval of RACES reported no recent use of RACES, it appears that the negative attitude has caused the disuse of the system. Local government acceptance of RACES is difficult to evaluate. Almost all jurisdictions that responded to our questionnaires and had operational RACES units found it a useful resource, a few emphasized the limitations currently imposed upon RACES. Those jurisdictions that responded and indicated that they did not have RACES units, were often vehement in their criticisms. These negative responses and the extent to which local RACES units are nonexistent throughout many states lead us to believe that, overall, RACES is not well accepted by local governments.

5. Our questions regarding the need for additional or different privileges drew numerous and diverse recommendations. In summary, the most often mentioned were:

A. Permit pre-tuned equipment to be operated by non-RACES personnel in Emergency Operation Centers.

B. Authorize all amateur privileges for RACES.

C. Authorize all amateur repeater frequencies for RACES.

D. Designate a specific frequency in each state for simplex communications.

E. Permit the use of fixed microwave equipment in a control link for a remotely controlled RACES station.

6. In reply to our inquiry as to the projected consequences, to both RACES and the Amateur Radio Service, if RACES were to be expanded, proponents for an expanded RACES argued RACES would function more effectively, and there would be no adverse impact upon the Amateur Radio Service. Others claimed the Amateur Radio Service would suffer from an expansion of RACES because other amateur activities would decline as RACES activities increased.

7. The major new item raised in the comments was that RACES should not be a part of the Amateur Radio Service. The comments argue that the presence of RACES radiocommunications on the amateur frequency bands is a violation of the International Radio Regulations, and that civil defense communications do not fall within the scope of the Amateur Service (A service of self-training, intercommunication and technical investigations carried on by amateurs, that is, by duly authorized persons interested in radio technique solely with a personal aim and without pecuniary interest [1]). They claim the

[1] Article 1, Terms and Definitions 78, Radio Regulations.

definition of RACES (. . . under the direction of authorized, local, regional or federal civil defense officials pursuant to an approved civil defense communications plan [2]) is in itself contradictory to the Basis and purpose of the Amateur Radio Service as stated in § 97.1.

8. We conclude that there does exist, at least in some regions and localities, a real need to organize the resources of amateurs into a service of the kind RACES is intended to provide. In general, we find the following comments from the American Radio Relay League (ARRL) to be appropriate:

> In some areas of the United States, RACES is highly and skillfully organized, with excellent capabilities for service during periods of local and, to a somewhat limited extent, regional emergencies. In other areas, RACES is nonexistent. Because each RACES organization is established and administered by local civil defense officials, RACES does not and probably cannot provide other than local and limited regional service. To provide a national service, RACES must be tied into some other amateur organization such as NTS [3] * * * one answer is clear. RACES should not be abandoned.

Whether this activity rightfully belongs, except for any emergency necessitating invoking of the President's War Emergency Powers, in the amateur frequency bands, depends upon the degree of compatibility that can be achieved with the fundamental purposes of the Amateur Radio Service. For instance, if a station or local governmental organization *needs the capability to conduct other than bona fide civil defense emergency communications*, then *RACES* and *amateur frequencies should not be used* as the resource. If RACES cannot function with only volunteer operators, it should not be a part of the Amateur Radio Service. On the other hand, if amateurs in their role of serving the public with a voluntary non-commercial communications service, particularly with respect to providing emergency communications, can assist with civil defense emergencies, then RACES does come within the scope of the Amateur Radio Service and should be continued.

9. As a general objective, we would like to make available all of the necessary resources of the Amateur Radio Service to civil defense efforts in times of real need. It is also our desire to minimize the additional administrative burdens now required to process applications for RACES authorizations. We believe both of these objectives can be accomplished by *greatly simplifying the rules* for the Radio Amateur Civil Emergency Service as set forth in the attached Appendix. We believe the comments submitted for our consideration by the ARRL to be consistent with our objectives:

> * * * the present licensing system can stand some improvement. Some on the temporary advisory committee and others submitting comments to the Communications Department have suggested (1) that only licensed amateur operators be permitted to operate in RACES, and (2) that station licenses be issued directly to the local or area civil defense director, the communications officer, or the radio officer, even though not a licensed amateur operator, similar to the issuance of station licenses for military recreation stations * * * With respect to operating "privileges" by various classes of amateur operators, many have suggested that Technician Class operators be permitted to hold station authorizations in RACES. In support, the argument has been made that the experience

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[2] Section 97.163(a), *Definitions*, Radio Amateur Civil Emergency Service.
[3] *National Traffic System:* An ARRL organization of amateur traffic networks designed to move messages through a planned series of relays and liaisons.

and discipline obtained by Technicians from the operation of and through repeaters above 146 MHz have provided a highly skilled corps of operators and a vast pool of excellent equipment fully capable of handling emergency communications and traffic * * *

10. We propose to make all licensed amateur radio operators and stations eligible for participation in RACES. The only additional requirement, over and above the possession of an amateur radio operator license, would be enrollment and registration in a civil defense organization, which would be a matter involving only the amateur operator and the organization. We would discontinue the requirements for RACES Communications Plans, FCC Certifications, and Authorizations (FCC Forms 481 and 482). Local, regional or state civil defense organizations desiring to avail themselves of the resources in the Amateur Radio Service for civil defense emergency communication purposes would be able to meet their needs without prior Commission authorization. Additionally, they could obtain one or more RACES station licenses for those locations where they need their own station for amateurs to operate. All amateur frequencies would normally be shared between RACES operations and all other amateur operations on a first come, first served basis. In the event of an emergency, exclusive frequencies can be specified as already provided in § 97.107. The frequency limitations now imposed upon RACES operations would only apply during any emergency situation which necessitates invoking the President's War Emergency Powers under the provisions of § 606 of the Communications Act of 1934, as amended. During such an emergency situation, all other amateur frequencies may be temporarily assigned to higher priority users by the President.

11. Under these proposals, all licensed amateurs would be eligible to participate in RACES including the additional 50,000 Technician Class licensees, to the full extent of their license class privileges. Although, RACES stations would be licensed to civil defense organizations, rather than to amateurs, only licensed amateurs could serve as control operators. These proposed amendments would make many new resources available for civil defense communications, and should greatly increase RACES effectiveness.

12. RACES stations could only be used for civil defense emergency communications, including real emergencies and up to one hour per week for drills and tests. If it is desired to use the same equipment for other types of amateur communication, it could also be licensed as an amateur radio station by a club or individual. With regard to call signs for RACES stations, we believe the comments of the ARRL to be appropriate:

* * * Section 97.213 now provides for the assignment of "tactical or secret call signs by the Commission or by competent civil defense authority" and for their use if properly registered with the civil defense radio officer and, except in time of "actual or threatened conditions which appear to jeopardize the defense or security of the United States," if properly registered with the Commission. With the shift in the role of civil defense over the years, with less emphasis on enemy threats and attacks and more emphasis on natural and man caused disasters, the need for tactical and secret call signs has greatly diminished. Recognition of emergency operations and identifications of stations participating in RACES is most desirable, particularly if the self-policing practices of amateurs are to be effective in minimizing unintentional interference from non-partici-

pating stations. Inasmuch as most RACES communications are in voice, a simple means of identifying a station as engaged in RACES operations is desirable.

Therefore, we are proposing to assign the same distinctive two letter call sign prefix to all RACES stations to facilitate rapid identification as a RACES station, so as to help alert other amateurs of the presence of an emergency situation. Even RACES repeater stations, control stations, and auxiliary link stations would all have this same distinctive prefix, and would also have a distinctive suffix. For instance, all RACES stations could be assigned the same prefix WC. Additionally, a RACES repeater station could have a suffix beginning with the letter *R* (Example: WC 4RAA). All other amateur radio stations would use their regular assigned call when participating in civil defense communication.

13. An application for a RACES station would be submitted on the FCC Form 610–B, in a fashion similar to an application for a military recreation station. The applicant could be any state, regional, or local civil defense organization. The application would be signed by the responsible civil defense official for that organization and countersigned by the responsible official for the governmental entity served by the organization. This should provide a far greater degree of flexibility for civil defense organizations wishing to use the services of RACES, and at the same time reduce our application processing workload.

14. The problem of remotely controlling a RACES station using the frequency band 220–225 MHz will be solved by this approach since other frequencies, such as 420–450 MHz, can be used during all but War Emergency Powers periods. The use of non-amateur facilities for remote control can be considered on a case-by-case basis similar to the use of a public telephone system in a wire line control link.

15. Authority for the proposed rule changes herein is contained in Sections 4(i) and 303 of the Communications Act of 1934, as amended.

16. Pursuant to applicable procedures set forth in § 1.415 of the Commission's Rules, interested persons may file comments on or before September 25, 1974 and reply comments on or before October 10, 1974. All relevant and timely comments and reply comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision on the rules which are proposed herein, the Commission may also take into account other relevant information before it, in addition to the specific comments invited by this Notice.

17. In accordance with the provision of § 1.419 of the Commission's Rules and Regulations, an original and 14 copies of all comments, pleadings, briefs, or other documents shall be furnished the Commission.

18. 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 in Washington, D.C., (1919 M Street, N.W.)

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

Attachment.

104-042—74——8

APPENDIX

Part 97, Subpart F, of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

SUBPART F—RADIO AMATEUR CIVIL EMERGENCY SERVICE (RACES)

GENERAL

§ 97.161 Basis and Purpose.

The Radio Amateur Civil Emergency Service provides for amateur radio operation for civil defense communications purposes only, during periods of local, regional or national civil emergencies, including any emergency which may necessitate invoking of the President's War Emergency Powers under the provisions of § 606 of the Communications Act of 1934, as amended.

§ 97.163 Definitions.

For the purposes of this subpart, the following definitions are applicable:
(a) *Radio Amateur Civil Emergency Service.* A radiocommunication service conducted by volunteer licensed amateur radio operators, for providing emergency radiocommunications to local, regional, or state civil defense organizations.
(b) *RACES station.* An amateur radio station licensed to a civil defense organization, at a specific land location, for the purpose of providing the facilities for amateur radio operators to conduct amateur radiocommunications in the Radio Amateur Civil Emergency Service.

§ 97.165 Applicability of rules.

In all cases not specifically covered by the provisions contained in this subpart, amateur radio stations and RACES stations shall be governed by the provisions of the rules governing amateur radio stations and operators (Subparts A through E of this part).

STATION AUTHORIZATIONS

§ 97.169 Station license required.

No transmitting station shall be operated in the Radio Amateur Civil Emergency Service unless:
(a) The station is licensed as a RACES station by the Federal Communications Commission, or
(b) The station is an amateur radio station licensed by the Federal Communications Commission, and is certified by the responsible civil defense organization as registered with that organization.

§ 97.171 Eligibility for RACES station license.

A RACES station will only be licensed to a local, regional or state civil defense organization.

§ 97.173 Application for RACES station license.

(a) Each application for a RACES station license shall be made on the FCC Form 610–B.
(b) The application shall be signed by the civil defense official responsible for the coordination of all civil defense activities in the area concerned.
(c) The application shall be countersigned by the responsible official for the governmental entity served by the civil defense organization.
(d) If the application is for a RACES station to be in any special manner covered in § 97.41, all of the showings as specified in § 97.41 for non-RACES stations, shall also be submitted.

§ 97.175 Amateur radio station registration in civil defense organization.

No amateur radio station shall be operated in the Radio Amateur Civil Emergency Service unless it is certified as registered in a civil defense organization, by that organization.

OPERATING REQUIREMENTS

§ 97.177 Operator requirements.

No person shall be the control operator of a RACES station, or shall be the control operator of an amateur radio station conducting communications in the Radio Amateur Civil Emergency Service unless (a) that person holds a valid amateur radio operator license, and (b) that person is certified as enrolled in a civil defense organization, by that organization.

§ 97.179 Operator privileges.

Operator privileges in the Radio Amateur Civil Emergency Service are dependent upon, and identical to, those for the class of operator license held in the Amateur Radio Service.

§ 97.181 Availability of RACES station license and operator licenses.

(a) The original license of each RACES station, or a photocopy thereof, shall be attached to each transmitter of such station, and at each control point of such station. Whenever a photocopy of the RACES station license is utilized in compliance with this requirement, the original station license shall be available for inspection by any authorized Government official at all times while the station is being operated and at other times upon request made by an authorized representative of the Commission, except when such license has been filed with application for modification or renewal thereof, or has been mutilated, lost, or destroyed, and request has been made for a duplicate license in accordance with § 97.57.

(b) In addition to the operator license availability requirements of § 97.83, a photocopy of the control operator's amateur radio operator license shall be posted at a conspicuous place at the control point for the RACES station.

TECHNICAL REQUIREMENTS

§ 97.185 Frequencies available.

(a) All of the authorized frequencies and emissions allocated to the Amateur Radio Service are also available to the Radio Amateur Civil Emergency Service on a shared basis.

(b) In the event of any emergency which necessitates the invoking of the President's War Emergency Powers under the provisions of § 606 of the Communications Act of 1934, as amended, unless modified or otherwie directed, RACES stations and amateur radio stations participating in RACES will be limited in operation to the following:

FREQUENCY OR FREQUENCY BANDS

	Limitations (see paragraph (c))
kHz:	
1800–1825	1
1975–2000	1
3515–3550	2, 4
3984–4000	
3997	3
7097–7103	4
7103–7125	2, 4
7245–7255	2, 4
14047–14053	4
14220–14230	2, 4
21047–21053	4
MHz:	
28.55–28.75	
29.45–29.65	
50.35–50.75	
53.30	3
53.35–53.75	
145.17–145.71	
146.79–147.33	
220–225	

(c) Limitations:

(1) Use of frequencies in the band 1800–2000 KHz is subject to the priority of the Loran system of radionavigation in this band and to the geographical, frequency, emission, and power limitations contained in § 97.61 of the rules governing amateur radio stations and operators (Subparts A through E of this part).

(2) The availability of the frequency bands 3516–3550 kHz, 7103–7125 kHz, 7245–7247 kHz, 7253–7255 kHz, 14220–14222 kHz and 14228–14230 kHz for use during periods of actual civil defense emergency is limited to the initial 30 days of such emergency, unless otherwise ordered by the Commission.

(3) For use in emergency areas when required to make initial contact with military units; also, for communication with military stations on matters requiring coordination.

(4) For use by all authorized stations only in the continental United States, except that, the bands 7245–7255 and 14.220–14.230 kHz are also available in Alaska, Hawaii, Puerto Rico, and the Virgin Islands.

USE OF STATIONS

§ 97.189 Points of communications.

(a) RACES stations may only be used to communicate with:

(1) Other RACES stations.

(2) Amateur radio stations certified as being registered with a civil defense organization, by that organization.

(3) Stations in the Disaster Communications Service.

(4) Stations of the United States Government authorized by the responsible agency to exchange communications with RACES stations.

(5) Any other station in any other service regulated by the Federal Communications Commission, whenever such station is authorized by the Commission to exchange communications with stations in the Radio Amateur Civil Emergency Service.

(b) Amateur Radio Stations registered with a civil defense organization may only be used to communicate with:

(1) RACES stations licensed to the civil defense organizations with which the amateur radio station is registered.

(2) Any of the following stations upon authorization of the responsible civil defense official for the organization in which the amateur radio station is registered:

(i) Any RACES station licensed to other civil defense organizations.

(ii) Amateur radio stations registered with the same or another civil defense organization.

(iii) Stations in the Disaster Communications Service.

(iv) Stations of the United States Government authorized by the responsible agency to exchange communications with RACES stations.

(v) Any other station in any other service regulated by the Federal Communications Commission, whenever such station is authorized by the Commission to exchange communications with stations in the Radio Amateur Civil Emergency Service.

§ 97.191 Permissible communications.

All communications in the Radio Amateur Civil Emergency Service must be specifically authorized by the civil defense organization for the area served. Stations in this service may transmit only civil defense communications of the following types:

(a) Communications concerning impending or actual conditions jeopardizing the public safety, or affecting the national defense or security during periods of local, regional civil emergencies:

(1) Communications directly concerning the immediate safety of life or individuals, the immediate protection of property, maintenance of law and order, alleviation of human suffering and need, and the combating of armed attack or sabotage.

(2) Communications directly concerning the accumulation and dissemination of public information or instructions to the civilian population essential to the activities of the civil defense organization or that of other authorized governmental or relief agencies.

(b) Communications for training drills and tests necessary to insure the establishment and maintenance of orderly and efficient operation of the Radio Amateur Civil Emergency Service as ordered by the responsible civil defense organization served. Such tests and drills may not exceed a total time of one hour per week.

(c) Brief one way transmissions for the testing and adjustment of equipment.

§ 97.193 Limitations on the use of RACES stations.

(a) No station in the Radio Amateur Civil Emergency Service shall be used to transmit or to receive messages for hire, nor for communications for material compensation, direct or indirect, paid or promised.

(b) All messages which are transmitted in connection with drills and tests shall be clearly identified as such by use of the words "drill" or "test", as appropriate, in the body of the messages.

FCC 74-580

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF PARTS 2, 15, 81, AND 83 OF THE COMMISSION'S RULES TO ESTABLISH MINIMUM PERFORMANCE REQUIREMENTS FOR RADIO RECEIVERS EMPLOYED AT COAST STATIONS OR USED ABOARD SHIPS AND OPERATING ON FREQUENCIES IN THE BAND 156–162 MHz IN THE MARITIME SERVICE	Docket No. 20074

NOTICE OF PROPOSED RULEMAKING

(Adopted June 5, 1974; Released June 13, 1974)

BY THE COMMISSION: COMMISSIONER QUELLO NOT PARTICIPATING.

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

2. In this Notice of Proposed Rule Making, the Commission is proposing to amend Parts 2, 15, 81 and 83 of the rules to require receivers manufactured after July 1, 1975, which are intended for use in the VHF maritime service, to meet or exceed certain minimum technical characteristics. Further, we are proposing that marine coast and ship stations operating at frequencies of 156 to 162 MHz maintain at least one receiver after July 1, 1980 which meets these requirements.

3. While it is the general procedure in the International Telecommunications Union (ITU) to direct regulation to transmitters rather than to receivers, this procedure was not followed at the World Administrative Radio Conference (WARC) with regard to receivers used in the maritime mobile service in the band 156–174 MHz. The reasons which were advanced during the debates at the WARC in favor of inclusion in Appendix 19 of technical characteristics for receivers were supported with near unanimity by the participating administrations. Briefly, these reasons are: this is a world-wide system providing safety and other communications; vessels fitted with VHF must be able to provide and to obtain two-way communications with other ship stations and with coast stations serving ports throughout the world; in a two-way communication system the technical characteristics of the receiver and transmitter must be such that inter-communication is assured; under these conditions the receiver is an integral and inseparable part of the communication system and, therefore, it is as necessary to specify technical characteristics for the receiver as for the transmitter.

4. While a substantial number of currently available receivers are believed to conform in major part to the technical characteristics set forth in the attached Appendix (referred to hereinafter as superior receivers), there are some receivers which we believe do not meet

these standards (referred to hereinafter as inferior receivers). The proposed receiver characteristics should, we believe, result in the production of a superior type of receiver, give encouragement to manufacturers to continue to effect refinements and improvements in the design of receivers for use in the maritime mobile service; and discourage the production of inferior receivers by setting a minimally acceptable level of performance. Further, such characteristics are intended to discourage competition in one undesirable area, that is, reduction in product quality or performance as a means of reducing unit cost.

5. The statistics on ship station licensing clearly show that use of VHF by the maritime mobile service is expanding at a rapid rate. It is reasonable to expect that the density of users of VHF within a given area will continue to increase, with a consequent increase in the potentiality of interference, particularly with inferior receivers, from one or more of several sources. It is appropriate and timely, therefore, that technical characteristics applicable to receivers set forth levels of performance which will reduce or eliminate the common sources of interference. These technical characteristics, when designed into a receiver, will substantially reduce the susceptibility of a receiver to undesired signals which arise from poor selectivity, poor spurious response attenuation and poor frequency stability. These technical characteristics, which are usually designed into the superior receiver, are in the areas of adjacent channel rejection, spurious response attenuation and frequency stability.

6. The technical characteristics set forth in this Notice of Proposed Rule Making are applicable generally to receivers used in the maritime mobile service. They will be supplemented where there is a requirement peculiar to one or more categories of vessels, or to fulfill a specific operational requirement. The technical characteristics set forth in the attached Appendix will be applicable to receivers used for bridge-to-bridge communications.

7. On February 17, 1972, the Radio Technical Commission for Marine Services (RTCM) established a Special Committee 66 (SC 66) to prepare technical standards for receivers used in the maritime services. Because of the rapidly expanding use of VHF, SC 66 gave first priority to the preparation of technical standards for VHF receivers. Further, for the adopted standards to have specific meaning, it was the view of SC 66 that it was necessary, also, to prescribe the test procedures to be used in making measurements to determine compliance with each of the standards. SC 66 completed that assignment in July 1973, the results of which are contained in a paper entitled "Minimum Standards for VHF Receivers in the Maritime Mobile Service". The technical characteristics and test procedures set forth in the attached Appendix are generally in accord with the minimum standards prepared by RTCM SC 66.

8. The Commission has had a requirement (since 1956) that a receiver (including VHF marine receivers), which operates in the frequency range of 30 to 890 must meet certain minimum technical characteristics to reduce the possibility of the device causing harmful interference. To insure that the receiver meets these standards, it must be certificated, which means certain information is required to be sub-

mitted to the Commission. The material submitted is reviewed and, if acceptable, a grant of certification issued. The technical, certification and labeling requirements for receivers are contained in Subpart C of Part 15 of the Commission's rules (47 CFR 15.61 et seq.).

9. The technical requirements proposed herein are intended to be in addition to the present requirements for certification under Part 15. In this case, the applicant for certification of VHF maritime receivers will submit test data demonstrating that the receiver is capable of meeting or exceeding the certain minimum performance specifications. Again, if the material is found to be acceptable, a grant of certification will be issued. As in the case of other receivers, the marine VHF receiver will also be required to have a label attesting the receiver's compliance with the applicable FCC rule parts.

10. The proposed amendments to the rules, as set forth in the Appendix are issued pursuant to the authority contained in Sections 4(i), 302 and 303(r) of the Communications Act of 1934, as amended, and in Articles 28, 35 and Appendices 18 and 19 of the International Radio Regulations, Geneva 1968.

11. Pursuant to applicable procedures set forth in Section 1.415 of the Commission's Rules, interested persons may file comments on or before July 18, 1974, and reply comments on or before July 29, 1974. All relevant and timely comments and reply comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision in this proceeding, the Commission may also take into account other relevant information before it, in addition to the specific comments invited by this Notice.

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 to the Commission. Responses will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, D.C.

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

Attachment.

APPENDIX

Parts 2, 15, 81 and 83 of Chapter I, Title 47, Code of Federal Regulations, are amended as follows:

1. Section 2.907 of Part 2 is amended by adding a new paragraph (c) to read as follows:

Section 2.907 Certification

* * * * * * *

(c) A device may also be required to meet specific performance requirements for the service in which it is intended to operate.

2. Section 15.69(e) of Part 15 is amended by adding a new paragraph (12) to read as follows:

Section 15.69 Certifications of receivers

* * * * * * *

(e) * * *

(12) In the case of receivers, used in the maritime service, subject to the requirements of Section 15.84, a report of measurements showing the performance characteristics achieved.

* * * * * * *

3. Section 15.71 is amended by adding a new paragraph (d) to read as follows:

Section 15.71 Identification of certificated receivers

* * * * * * *

(d) Each certificated receiver, which meets the requirements of Parts 81 or 83, as well as those in this Subpart, shall have the following statement on the label required by paragraph (a) above: "This receiver meets FCC requirements—Parts 15–C, 81 and 83, as of (*Date of Manufacture*)".

4. Subpart C of Part 15 is amended by deleting Section 15.81 and adding a new Section 15.84 to read as follows:

Section 15.84 Additional requirements for maritime receivers

(a) A receiver, manufactured after 7/1/75, which operates in the band 156–162 MHz and is intended for use in a coast, marine-utility, marine-fixed or ship station shall also meet the performance specifications of Subpart S of Part 81 or Subpart AA of Part 83 of this Chapter.

(b) A receiver intended for operation aboard a ship of the United States, excluding lifeboats and other survival craft, shall also meet the requirements of Section 83.135.

5. Section 81.8 of Part 81 is amended by adding the following definition:

Section 81.8 Technical

* * * * * * *

SINAD Ratio—A measure expressed in decibels of the ratio of (1) the signal plus noise plus distortion to (2) noise plus distortion produced at the output of a receiver that is the result of a modulated-signal input.

6. Part 81 is further amended by adding a new Subpart S to read as follows:

SUBPART S PERFORMANCE REQUIREMENTS FOR RECEIVERS OPERATING IN THE FREQUENCY BAND 156–162 MHz

Section 81.901 Preface

The performance specifications set forth in this Subpart are applicable to receivers operated or intended to be operated in the maritime services in the band 156–162 MHz. This is in addition to the technical and certification requirements of Subpart C of Part 15 of this Chapter.

Section 81.903 Requirements for Receivers operating in the frequency band 156–162 MHz

(a) A receiver manufactured after 7/1/75, which is designed for operation in the band 156–162 MHz for use in a coast, marine-utility or marine fixed station, shall be certificated and labeled in accordance with Subpart J of Part 2 of this chapter to demonstrate that it is capable of meeting the receiver performance requirements of this Subpart and the radiation interference limits of Subpart C of Part 15 of this chapter.

(b) A portable receiver which, when in operation, can be hand carried or worn on the person is exempt from the performance requirements of this subpart, but must be certificated to show compliance with Subpart C of Part 15 of this chapter.

Section 81.905 Station requirement

Each coast, marine-utility or marine-fixed station in the band of 156–162 MHz shall, after 7/1/80, be equipped with at least one receiver which complies with the provisions of this Subpart.

Section 81.907 Filing requirement

Each person filing an application for certification of a receiver subject to the requirements of this Subpart, which is in addition to the requirements of Subpart J of Part 2, and Subpart C of Part 15 of this chapter, shall also present the following information, if not already included with the application:

(a) A report of measurements pursuant to Section 81.909;

(b) A description of the receiver, including a list of all pertinent technical specifications, circuit diagrams, a description of the circuitry and a description of the antenna, if any, provided with the receiver;

(c) Photographs of the receiver: Such photographs shall be 8" x 10", and shall clearly show the construction and circuit layout of the device. At least one exterior view shall be furnished showing the antenna, if any, and controls available to the user. A sufficient number of views of the interior shall be furnished to define component placement and chassis assembly.

Section 81.909 Report of measurements

The report of measurements submitted to the Commission shall be signed by the person who performed, or supervised the tests, who shall attest to the accuracy of the data and shall attach a brief statement of his qualifications. The report shall also include the following information:

(a) Identification of the unit tested. Give the name of manufacturer, model number, serial number, all trade names and model numbers under which the unit will be distributed.

(b) A list of the measuring equipment that was used, identified by manufacturer and model number.

(c) The latest calibration date of the measuring equipment and the standard against which such equipment was calibrated.

(d) Date the measurements were made.

(e) Measurements shall be made and reported in accordance with the following:

(1) For each of the performance characteristics, except audio power output and frequency response, tests shall be made under the standard test condition of Section 81.969 (except where modified by the measurement procedure) with the receiver tuned to the frequencies corresponding to maritime VHF channels 6, 16 and 28. For each test, the report shall state the frequency (or corresponding channel number) tuned, pertinent test conditions, and all results noted.

(2) For each of the environmental tests, measurements shall be made under the standard test conditions of Section 81.969 (except where modified by the measurement procedure) and with the receiver tuned to the frequency corresponding to channel number 16. For each test, the report shall state the frequency (or corresponding channel number) tuned, pertinent test conditions and all results noted.

Section 81.911 Minimum Technical Specifications. The receiver shall meet the following technical specifications:

(a) Channel spacing: 25 kHz

(b) Type of emission to be received: 16F3

(c) Antenna input: coaxial; nominal impedance 50 ohms, non-reactive

(d) Operating ambient temperature: −20°C to +50°C

(e) Channel frequenices and capacity shall be in accordance with Sections 81.304 and 81.104 and Appendix 18 of the International Radio Regulations

(f) An adjustable squelch control shall be provided. When remote control units are installed, the squelch control may be included in each unit, however, provision shall be incorporated to assure that there is no interaction between any two or more such controls.

PERFORMANCE CHARACTERISTICS FOR VHF RECEIVERS

Section 81.923 Usable sensitivity

(a) The usable sensitivity of a receiver is the minimum value of input signal level from a standard signal source which, with standard test modulation, will produce at least 50% of the receiver's rated audio power output with 12 dB signal + noise + distortion to noise + distortion ratio (SINAD).

(b) The receiver shall have a usable sensitivity of 0.5 microvolts or less, when measured in accordance with the procedure specified in Section 81.971.

Section 81.925 Quieting sensitivity

(a) The quieting sensitivity of a receiver is the minimum input signal level from an unmodulated signal generator that will cause the background noise of the receiver to be reduced by 20 dB as measured across the standard output load for the receiver.

(b) The quieting sensitivity of the receiver shall be 0.7 microvolts or less, when measured in accordance with the procedure specified in Section 81.973.

Section 81.927 Squelch threshold sensitivity

(a) The squelch threshold sensitivity of a receiver is the minimum input signal level from an unmodulated or modulated signal generator that will cause the receiver to switch from a quiet state to an open state.

(b) The squelch threshold sensitivity of the receiver shall be equal to or less than the measured usable sensitivity when measured in accordance with the procedure in Section 81.975.

Section 81.929 Squelch limit sensitivity

(a) The squelch limit sensitivity of a receiver is the input signal level from an unmodulated or modulated signal generator that will cause the receiver to switch from a completely quiet state to a completely open state when the squelch control is adjusted to its maximum squelched position.

(b) The squelch limit sensitivity shall be 2.0 microvolts or less when measured in accordance with the procedure in Section 81.977. In addition, there shall be no more than a 3 dB difference between the squelch limit sensitivities with and without modulation.

Section 81.931 Modulation acceptance bandwidth

(a) The modulation acceptance bandwidth of a receiver is a measure of the frequency deviation of a radio frequency signal that the receiver will accept at an RF signal level 6 dB above the measured usable sensitivity.

(b) The modulation acceptance bandwidth of the receiver shall be not less than ± 7.5 kHz when measured in accordance with the procedure in Section 81.979.

Section 81.933 Adjacent channel selectivity

(a) The adjacent channel selectivity of a receiver is a measure of its ability to differentiate between a desired modulated signal and undesired modulated signals which differ in frequency from the desired signal by the width of one radio frequency channel. It is the ratio, expressed in dB, of the power of the undesired signal to the power of the desired signal at which the SINAD ratio is degraded from 12 dB to 6 dB.

(b) The adjacent channel selectivity of the receiver shall be at least 70 dB when measured in accordance with the procedure in Section 81.981.

Section 81.935 Spurious response attenuation

(a) The spurious response attenuation of a receiver is a measure of its ability to reject any undesired signal including images to which it may respond. It is the ratio, expressed in dB, of the signal required to produce 20 dB of noise quieting at any spurious frequency to the signal required to produce 20 dB of noise quieting at the desired received frequency.

(b) The spurious response attenuation of the receiver shall be at least 70 dB when measured in accordance with the procedure in Section 81.983.

Section 81.937 Intermodulation attenuation—Types I & II

(a) The intermodulation attenuation of a receiver indicates its ability to receive a desired signal in the presence of two interfering signals that are separated in frequency from the desired signal, and each other, and are of sufficient strength to cause N^{th} order mixing of the interfering signals in the non-linear elements of the receiver. It is the ratio (expressed in dB) of the interfering signals to the desired signal for a reduction of SINAD by 6 dB. Type I mixing results in a third signal appearing within the passband of the receiver along (or equal in frequency) with the desired signal. Type II results in a third signal appearing within the pass band of the first intermediate frequency (I.F.) amplifier.

(b) The receiver shall be capable of achieving an intermodulation attenuation of at least 60 dB for both Types I and II, when measured in accordance with the procedures set forth in Sections 81.985 and 81.987, respectively.

Section 81.941 Local oscillator frequency stability

(a) The local oscillator frequency stability is the extent to which the frequency of the local oscillator signal (or the equivalent thereof in the case of equipments using frequency synthesizers), measured at the point of injection into the first mixer, is permitted to depart from the reference value.

(b) The receiver shall have a local oscillator frequency stability of not more than ± 10 parts in 10^6 from the reference frequency when measured in accordance with the procedure set forth in Section 81.989.

Section 81.943 Audio output power

(a) The audio output power of a receiver is the average audio power that it can supply into a standard load with not more than 10 percent total distortion when measured with standard test modulation.

(b) The audio output power delivered to the loudspeaker shall be at least 2.5 watts average when measured in accordance with the procedure set forth in Section 81.991.

Section 81.945 Audio frequency response

(a) The audio frequency response of a receiver is a measure of how closely the audio output follows a 6 dB per octave deemphasis characteristic with a constant frequency deviation modulated input.

(b) The audio frequency response of a receiver shall not vary more than +2 to −8 dB from a standard 6 dB per octave deemphasis curve within the frequency range 300 to 3000 Hertz, when measured in accordance with the procedure set forth in Section 81.993.

Section 81.947 Hum and noise

(a) The hum and noise of a receiver is a ratio (expressed in dB) of residual receiver audio output to the rated audio output power.

(b) The hum and noise of a receiver shall be suppressed by at least 50 dB for the squelched condition and at least 35 dB for the unsquelched condition. Measurements shall be made in accordance with the procedure set forth in Section 81.995.

PROCEDURES FOR MEASURING PERFORMANCE CHARACTERISTICS

Section 81.969 *Standard test conditions*—The following standard test conditions shall, unless otherwise noted, be used when measuring a receiver in accordance with procedures in Sections 81.971 to 81.995, inclusive.

(a) The impedance of the specified standard input termination of a radio receiver is based upon the nominal source impedance that the antenna normally presents to the receiver. Unless otherwise noted, this shall be a termination having a nominal impedance of 50 ohms, non-reactive.

(b) The standard output load of a radio receiver is the impedance of the output indicator which is connected to the final audio frequency power amplifier of a receiver. This load shall present a resistive impedance equal to the load into which the receiver normally operates.

(c) The standard environmental test conditions are to be as follows:

(1) Ambient temperature: 25°C, ±5°C

(2) Relative humidity: 0—90%

(d) The standard input signal level of a radio receiver shall be expressed as the number of microvolts across the standard input termination when it is connected to the receiver terminals.

(e) The standard signal source for a radio receiver shall be a signal generator that meets the following criteria:

(1) Presents standard input termination to the receiver.

(2) Can be adjusted to, and will remain at, the center of the received channel frequency.

(3) Has an output attenuator capable of calibrated output levels down to 0.1 microvolt, ±1 dB.

(4) Can be frequency modulated from 300 Hz to 3000 Hz with a peak deviation up to ±5 kHz with 5% maximum distortion and a peak deviation up to ±25 kHz with a 10% maximum distortion.

(f) The standard test modulation for a radio receiver input signal shall be ±3.0 kHz deviation with a modulating tone of 1000 Hz.

(g) The standard power supply voltage for a radio receiver shall be in accordance with the following table and is to be measured at the interface between the equipment and the power cord.

Nominal power supply voltage:	*Power supply test voltage*
12 VDC	13.6 VDC
24 VDC	26.4 VDC
32 VDC	36.0 VDC
115 VAC 60 Hz	117.0 VAC 60 Hz

(h) The standard received frequency (defined as f_o) shall refer to the center frequency of the channel on which the receiver is intended to be operated.

Section 81.971 Procedure for measuring usable sensitivity

A 1,000 microvolt test signal from a standard signal source with standard test modulation shall be connected to the receiver antenna input terminals.

A standard output load and a distortion meter incorporating a 1,000 Hz band elimination filter shall be connected to the receiver audio output terminals. The receiver volume control shall be adjusted to give rated audio output. The standard input signal source attenuator shall be adjusted until the signal + noise + distortion to noise + distortion ratio (SINAD) is 12 dB. At this value of signal input, it shall be possible to obtain at least 50% of the rated audio output without readjustment of the volume control. If it is not possible to obtain this amount of audio output, the RF signal input shall be increased until 50% of full rated audio output is obtained, and this value of RF signal input shall be used in specifying sensitivity.

Section 81.973 Procedure for measuring quieting sensitivity

Connect a standard signal source to the antenna terminals of the receiver. Connect an alternating current vacuum tube volt meter across the standard output load. Adjust the volume control for some convenient 0 dB reference point of background noise. Adjust the standard signal source frequency to f_o. Adjust the signal generator attenuator until the background noise audio output is reduced by 20 dB. That value of input signal level required to produce the 20 dB reduction is the quieting sensitivity for that channel.

Section 81.975 Procedure for measuring squelch threshold sensitivity

Connect a standard signal source to the antenna terminals of the receiver. Adjust the signal generator output to zero. Adjust the squelch control to that point where the receiver just becomes completely quiet. Adjust the signal generator frequency to f_o. With the signal generator unmodulated, adjust the attenuator until the receiver becomes completely open. Apply standard test modulation and readjust the output level if necessary to that point where the receiver is again completely open. That value of RF signal input level (with or without modulation, whichever is greater) required to completely open the receiver is the squelch threshold sensitivity of that channel.

Section 81.977 Procedure for measuring squelch limit sensitivity

Connect a standard signal source to the antenna terminal of the receiver. Adjust the squelch control to its maximum squelched position. Adjust the signal generator frequency to f_o. With the signal generator unmodulated, adjust the attenuator until the receiver becomes completely open. Record this value of RF signal input level. Apply standard test modulation and readjust the attenuator (if necessary) until the receiver becomes completely open. Record this value of RF signal input level. The higher of the two recorded values of RF signal input is the squelch limit sensitivity.

Section 81.979 Procedure for measuring modulation acceptance bandwidth

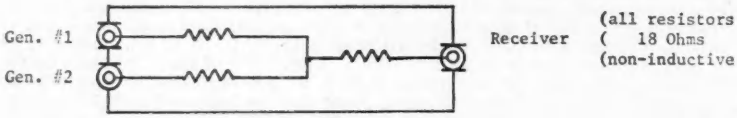
Connect a standard signal source to the receiver. Adjust the signal generator frequency to f_o and the deviation for standard test modulation.

A standard output load and a distortion meter incorporating a 1,000 Hz band elimination filter shall be connected to the receiver output terminals. The receiver volume control shall be adjusted for 10% of rated output with a 1,000 microvolt input signal level. The standard signal source attenuator shall be adjusted until the SINAD ratio is 12 dB. The RF input signal level from the standard signal

source shall be increased 6 dB and the deviation shall be increased until the SINAD ratio is again 12 dB. This deviation is the desired measurement to be recorded.

Section 81.981 Procedure for measuring adjacent channel selectivity

The output of the radio receiver shall be terminated in a standard output load. Two signal generators shall be coupled with a suitable matching network, to provide equal signal input levels, to the receiver antenna input terminals. Such a network is shown below. Signal generator #1 shall be adjusted as set forth in Section 81.971 above. Signal generator #2, modulated with 3 kHz deviation at 400 Hz, shall be tuned first to the high and then to the low adjacent channel. Its attenuator shall be adjusted until the 12 dB SINAD ratio is decreased to 6 dB. The adjacent channel selectivity shall be specified as the ratio, expressed in dB, of the amplitude of signal #2 to signal #1. If the ratio for the high side adjacent channel is different from the ratio for the low side adjacent channel, the smaller ratio, expressed in dB, shall be used in specifying selectivity.

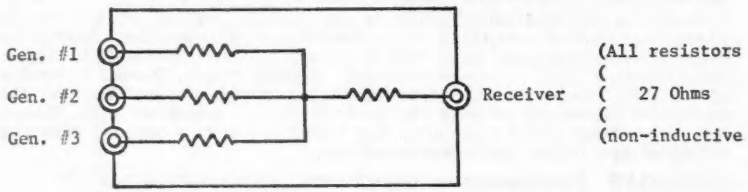


Section 81.983 Procedure for measuring spurious response attenuation

An unmodulated standard input signal source shall be connected to the receiver under test. The receiver under test shall be operated under standard test conditions. A standard output load shall be connected to the receiver audio output terminals and the noise level shall be adjusted to 25% of rated output using the receiver volume control. The attenuator of the signal generator shall be adjusted for the minimum amount of signal required to produce 20 dB of noise quieting. The signal generator used for this test should be of the fundamental oscillator type. Vary the signal generator frequency from the lowest intermediate frequency (IF) used in the receiver to 1,000 MHz. Excluding subharmonics of the frequency on which the receiver is intended to be operated (f_o), and the area $f_o \pm 25$ kHz, record the signal generator output level required to produce 20 dB of noise quieting for any response noted. The spurious response attenuation of a receiver is expressed as a ratio (in dB) of the lowest of the signal generator output levels for any response to the quieting sensitivity.

Section 81.985 Procedure for measuring Type I intermodulation attenuation

Connect three standard signal sources to the antenna terminal of the receiver through a matching network designed so that each port presents standard termination. Such a network is shown below:

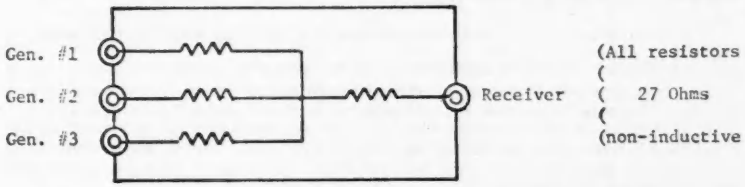


Adjust the receiver to operate on Channel 6. Adjust signal generator #1 for 12 dB SINAD at f_o. Adjust the frequency of signal generator #2 to Channel 66 (156.325 MHz) and the frequency of signal generator #3 to Channel 7 (156.350 MHz). Apply 400 Hz audio at ±3 kHz deviation modulation to signal generator #3 and simultaneously increase the output levels of both signal generators #2 and #3 until the SINAD reduces to 6 dB. Vary the frequency of signal generator #3 back and forth very slightly to obtain maximum interference and then reset the output levels of #2 and #3 for 6 dB SINAD. The intermodulation

attenuation of the receiver is expressed as a ratio (in dB) of the output level of signal generator #2 (or #3) to the output level of signal generator #1.

Section 81.981 Procedure for measuring Type II intermodulation attenuation

Connect three standard signal sources to the antenna terminals of the receiver through a matching network designed so that each port presents standard termination. Such a network is shown below:



Adjust the receiver to operate on Channel 6. Adjust signal generator #1, with 1,000 Hz modulation at ±3.0 kHz deviation applied, for 12 dB SINAD at f_o. Adjust the frequency of signal generator #2 to 162.55 MHz and of signal generator #3 to 162.55 MHz minus the intermediate frequency (IF). Apply 400 Hz audio at ±3.0 kHz deviation modulation to signal generator #3 and simultaneously increase the input levels of both signal generator #2 and #3 until the SINAD reduces to 6 dB. Vary the frequency of signal generator #3 back and forth very slightly to obtain maximum interference and then reset the input levels of #2 and #3 for 6 dB SINAD. The intermodulation attenuation of the receiver is expressed as a ratio (in dB) of the input level of signal generator #2 (or #3) to the input level of signal generator #1.

Section 81.989 Procedure for measuring local oscillator frequency stability

With the receiver adjusted for reception on each of the three standard frequencies, the frequency of the signal injected into the first mixer shall be measured at nominal line voltage and at standard temperature. This is the reference frequency. The measurement shall be repeated at + and −10% of the nominal line voltage and at −20°C and at +50°C. On synthesized receivers and single channel receivers, the measurement at only one frequency is required.

Section 81.991 Procedure for measuring audio power output

Connect a standard signal source to the antenna terminals of the receiver. Connect an audio power meter and a distortion meter across the standard output load. Adjust the signal generator frequency to f_o and output level to 1,000 microvolts. Apply standard test modulation. Increase the volume control level until rated power is achieved. The measured distortion shall not exceed 10%. Record the power measured.

Section 81.993 Procedure for measuring audio frequency response

Connect a standard signal source to the antenna terminals of the receiver. Connect an alternating current vacuum tube volt meter across the standard output load. Adjust the signal generator frequency to f_o and the output level to 1,000 microvolts. Throughout this test, the signal generator modulation deviation is to be held constant at 1.0 kHz. Apply a modulating tone of 300 Hz to the signal generator and adjust the volume control for approximately one-half rated audio power output. Increase the modulating tone frequency to 1.0 kHz. Reduce the volume control setting slightly to some convenient 0 dB reference point. Vary the modulating tone frequency from 300 Hz to 3.0 kHz and record the audio output level in dB referenced to the 1.0 kHz reading.

Section 81.995 Procedure for measuring hum and noise ratio

(a) *Unsquelched.* The residual hum and noise level shall be measured at the audio output terminals of the receiver when the output is terminated in a standard load, and shall be expressed in dB below rated power output. A standard input signal source shall be connected to the antenna terminals of the receiver. With 1,000 microvolts input and with standard test modulation, the receiver volume

control shall be adjusted for rated power output. The modulation shall be turned off and the hum and noise level measured. The hum and noise ratio shall be the difference in dB between the two output meter readings.

(b) *Squelched.* The signal shall be removed from the receiver antenna input terminals. The receiver squelch shall be adjusted as set forth in Section 81.975, and the volume control setting shall remain as in paragraph (a) of this section. The hum and noise ratio for the squelched condition shall be the difference in dB between the output meter readings.

SPECIFICATIONS ON RECEIVER DEGRADATION DUE TO ENVIRONMENTAL CHANGES

Section 81.1011 Receiver degradation due to variations in supply voltage

(a) *Definition.* Power supply voltage range is the range of primary supply voltage over which the receiver will operate with a specified performance.

(b) *Method of measurement.* The primary voltage shall be measured at the interface between the equipment and the power cord. Variations in individual performance characteristics shall be measured in accordance with the procedures set forth in this subpart.

(c) *Standard.* Not more than 3 dB degradation in measured audio power output, usable sensitivity and threshold audio squelch sensitivity shall occur when the power source voltage is varied ±10 percent of the test voltage specified in Section 81.969(g) nor shall the tight squelch adjustment lock out a strong signal. The equipment shall be capable of receiving a 10 microvolt RF signal modulated with standard test modulation when the test voltage is 80 percent of the test voltage specified in Section 81.969(g).

Section 81.1013 Receiver degradation due to variations in temperature range

(a) *Definition.* Temperature range denotes the range of ambient temperature over which a receiver will operate with no more than a specified maximum amount of degradation in overall performance.

(b) *Method of measurement.* Measurements shall be made in the following manner:

(1) After one hour warm-up at standard ambient temperature and humidity the receiver sensitivity, audio squelch sensitivity, modulation acceptance bandwidth, selectivity and audio power output shall be measured in accordance with the appropriate procedures in this Subpart and noted.

(2) The receiver, installed in the case normally supplied shall be placed in a box or room the temperature of which can be accurately measured and controlled. It shall remain inoperative for five hours at an ambient temperature of −20°C after which it shall be turned on. The receiver shall start. After a maximum of fifteen minutes of operation, it shall be tested for all of the technical characteristics set forth in paragraph (b)(1) of this section without readjustment. Tests shall be completed within 1 hour and with the environment maintained at −20°C.

(3) The ambient temperature shall be raised to +50°C and the equipment operated for five hours without forced circulation of air over the equipment. The receiver shall then be tested for all of the technical characteristics set forth in paragraph (b)(1) of this section without readjustment.

(c) *Standard.* The receiver shall meet the following performance specifications:

(1) The usable sensitivity shall not degrade more than 6 dB.

(2) The squelch threshold sensitivity shall not degrade more than 6 dB from the value measured in Section 81.975. The receiver squelch shall not become inoperative over the temperature range and a tight squelch adjustment shall not lock out a 4 microvolt signal.

(3) The modulation acceptance bandwidth shall not degrade more than 20 percent.

(4) The adjacent channel selectivity shall not degrade more than 12 dB.

(5) The audio power output shall not degrade more than 3 dB.

Section 81.1115 Receiver degradation due to a variation in relative humidity

(a) *Definition.* Humidity denotes the relative humidity at which a receiver will operate with no more than a specified maximum amount of degradation in overall performance.

(b) *Method of measurement.* Measurements for the receiver shall be made in the following manner:

(1) After one hour warm-up at standard ambient temperature and humidity, the receiver usable sensitivity, audio squelch sensitivity, modulation acceptance bandwidth, selectivity and audio power output shall be measured in accordance with the appropriate procedure in this subpart and the results recorded.

(2) The receiver shall be placed inoperative in a humidity chamber. The humidity shall be maintained at 90 to 95 percent at 50°C for a period of not less than 8 hours. After removal from the humidity chamber, visible moisture may be blown off with an air hose. The receiver shall be tested for all of the technical characteristics set forth in paragraph (b)(1) of this section within 15 minutes after its removal from the humidity chamber.

(c) *Standard.* The receiver shall meet the following performance specifications:

(1) The usable sensitivity shall not degrade more than 10 dB.

(2) The audio squelch sensitivity shall not degrade more than 10 dB from the value measured in paragraph (b)(1) of this section, and the receiver squelch shall not become inoperative. Tight squelch shall not lock out at a 6 microvolt signal.

(3) The modulation acceptance bandwidth shall not degrade more than 20 percent.

(4) The adjacent channel selectivity shall not degrade more than 20 dB.

(5) The audio power output shall not degrade more than 3 dB.

Section 81.1117 Receiver degradation due to vibration

(a) *Definition.* Vibration stability is the ability of the marine equipment to maintain specified mechanical and electrical performance during and after being vibrated.

(b) *Method of measurement.* The equipment shall be vibrated with simple harmonic motion having an amplitude of 0.015 inches (total excursion 0.003 inches) with the frequency varied uniformly between 10 and 30 cycles per second and an amplitude of 0.015 inches (total excursion 0.015 inches) with the frequency varied uniformly between 30 and 60 cycles per second..

The entire cycle of frequencies for each group (i.e., 10 to 30 and 30 to 60 cycles per second) shall be accomplished in five minutes and repeated three times. The above motion shall be applied for a total of 30 minutes in each direction, namely, the directions parallel to both axis of the base and perpendicular to the plane of the base.

(c) *Standard.* No fixed parts shall become loose or movable part shifted in position or adjustment under either of the two conditions of vibration. After being vibrated, the equipment shall meet all performance requirements at standard temperature and humidity.

Section 81.1119 Receiver degradation due to shock

(a) *Definition.* Shock stability is the ability of the marine equipment to maintain specified mechanical and electrical performance after being shocked.

(b) *Method of measurement.* Acceleration shall be applied to the manufacturers' mounting facilities and may be measured by means of a suitable accelerometer. The equipment shall be operated under standard test conditions.

(c) *Standard.* The equipment shall meet all electrical requirements and suffer no mechanical damage after being subjected to a series of not less than 10 impacts in each plane (total 30). Each impact shall be not less than 20_g acceleration.

Section 81.1121 Receiver degradation due to salt fog

(a) *Definition.* The Salt Fog test indicates the ability of the marine equipment to maintain specified mechanical and electrical performance after being exposed to a salt fog environment.

(b) *Method of measurement.* The method of measurement shall be in accordance with MIL–STD 810B, Method 509. In brief, this test requires the equipment to be exposed to the salt fog for 48 hours, allowed to dry for 48 hours and then placed in operation.

(c) *Standard.* The receiver shall meet the following performance specifications:

(1) The usable sensitivity shall not degrade by more than 6 dB.

(2) The squelch threshold sensitivity shall not degrade more than 6 dB from the value measured in Section 81.975. The tight squelch adjustment shall not lock out a strong signal.

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(3) The modulation acceptance bandwidth shall not degrade more than 20 percent.

(4) The adjacent channel selectivity shall not degrade more than 12 dB.

(5) The audio power output shall not degrade more than 3 dB.

7. Section 83.7 of Part 83 is amended by adding the following definition:

Section 83.7 Technical

* * * * * * *

SINAD Ratio—A measure expressed in decibels of the ratio of (1) the signal plus noise plus distortion to (2) noise plus distortion produced at the output of a receiver that is the result of a modulated-signal input.

8. Subpart X of Part 83 is amended by deleting paragraphs (c) and (d) from Section 83.715 and adding a new paragraph (c) to read as follows:

Section 83.715 Bridge to bridge receiver

* * * * * * *

(c) The receiver referred to in paragraph (a) of this section, except for hand held portables, shall be certificated pursuant to Section 83.903.

9. Part 83 is further amended by adding a new Subpart AA to read as follows:

SUBPART AA—PERFORMANCE REQUIREMENTS FOR RECEIVERS OPERATING IN THE FREQUENCY BAND 156–162 MHz [1]

Section 83.901 (Same as Section 81.901)

Section 83.903 Requirements for Receivers operating in the frequency band 156–162 MHz

(a) A receiver manufactured after 7/1/75, which is designed for operation in the band 156–162 MHz for use in a ship or marine-utility station, shall be certificated and labeled in accordance with Subpart J of Part 2 of this chapter to demonstrate that it is capable of meeting the receiver performance requirements of this Subpart and the radiation interference limits of Subpart C of Part 15 of this chapter.

(b) A portable receiver which, when in operation, can be hand carried or worn on the person is exempt from the performance requirements of this subpart, but must be certificated to show compliance with Subpart C of Part 15 of this chapter.

Section 83.905 Station requirement

Each ship or marine-utility station in the band of 156–162 MHz shall, after 7/1/80 be equipped with at least one receiver which complies with the provisions of this Subpart.

Section 83.907 Filing requirement

Each person filing an application for certification of a receiver subject to the requirements of this subpart, which is in addition to the requirements of Subpart J of Part 2 and Subpart C of Part 15 of this chapter, shall also present the following information, if not already included with the application:

(a) A report of measurement pursuant to Section 83.909.

(b) A description of the receiver, including a list of all pertinent technical specifications, circuit diagrams, a description of the circuitry and a description of the antenna, if any, provided with the receiver.

(c) Photographs of the receiver: Such photographs shall be 8″ x 10″, and shall clearly show the construction and circuit layout of the device. At least one exterior view shall be furnished showing the antenna, if any, and controls available to the user. A sufficient number of views of the interior shall be furnished to define component placement and chassis assembly.

(d) A report of measurements, pursuant to Section 83.135.

Section 83.909 (Same as Section 81.909)

[1] In the first section below, the phrase "83.901 (Same as Section 81.901)", means that the wording of proposed Section 83.901 is the same as has been set forth in proposed Section 81.901. This procedure is employed for other sections of Part 83 where the proposed wording is the same as has been proposed for Part 81. This has been done in order to reduce the physical size of this Notice of Proposed Rule Making and will not affect the normal printing of the rules if and when adopted.

Section 83.911 Minimum technical specifications

The receiver shall be capable of meeting the following technical specifications.

(a) Channel spacing: 25 kHz

(b) Type of emission to be received: 16F3

(c) Antenna input: coaxial; nominal impedance 50 ohms non-reactive

(d) Operating temperatures: −20°C to +50°C

(e) *Frequencies.* Receiver channel frequencies shall be in accordance with Section 83.351 and Appendix 18 of the International Radio Regulations.

(f) *Channel capacity.* The receiver shall have a minimum of 12 channels.

(g) A squelch control shall be provided.

PERFORMANCE CHARACTERISTICS FOR VHF RECEIVERS

Section 83.923 (Same as Section 81.923) through Section 83.947 (Same as Section 81.947)

PROCEDURES FOR MEASURING PERFORMANCE CHARACTERISTICS

Section 83.969 (Same as Section 81.969) through Section 83.995 (Same as Section 81.995)

SPECIFICATIONS ON RECEIVER DEGRADATION DUE TO ENVIRONMENTAL CHANGES

Section 83.1011 (Same as Section 81.1011) through Section 83.1121 (Same as Section 81.1121)

FCC 74R-212

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of RADIO RIDGEFIELD, INC., RIDGEFIELD, CONN. For Construction Permit	Docket No. 19687 File No. BP-18494

MEMORANDUM OPINION AND ORDER

(Adopted June 7, 1974; Released June 11, 1974)

BY THE REVIEW BOARD: BOARD MEMBER NELSON ABSTAINING. BOARD MEMBER KESSLER ABSENT.

1. The application of Radio Ridgefield, Inc. (Ridgefield) for a new standard broadcast station in Ridgefield, Connecticut, was designated for hearing by Commission Memorandum Opinion and Order, 39 FCC 2d 948, released February 23, 1973, together with the then mutually exclusive application of Quinnipiac Valley Service, Inc.[1] on issues to determine, *inter alia*, the current basis of Ridgefield's estimated construction and operating expenses for the first year and whether Bartholomew T. Salerno, Ridgefield's president, has sufficient net assets to loan $100,000 to the applicant. By petition, filed with the Administrative Law Judge on March 18, 1974, Ridgefield sought leave to amend its application to update its financial showing. In a Memorandum Opinion and Order, FCC 74M-394, released April 11, 1974, the Judge rejected in part Ridgefield's proposed amendment.[2] Now before the Review Board is an appeal from the adverse ruling of the Judge pursuant to leave granted under Rule 1.301(b), filed April 23, 1974, by Ridgefield.[3]

2. The portion of Ridgefield's amendment in dispute proposes to substitute new pages 1 and 2 in Section III of Form 301 and a new equipment proposal (identified as Ridgefield Exhibit 11 during the hearing, but not received in evidence). Ridgefield's last previous amendment, filed July 17, 1973,[4] lists total first year costs of $94,187.60 and net total funds available of $119,402.88, with deferred credit from the equipment supplier, CCA Electronics Corporation (CCA), in the

[1] By Order, FCC 74M-556, released May 17, 1974, the Administrative Law Judge dismissed the application of Quinnipiac Valley Service, Inc. with prejudice.

[2] At the hearing conference held on April 16, 1974, the Administrative Law Judge stated that for purposes of the time in which to file an appeal to the Review Board from denial of the amendment, Ridgefield could compute from April 16 (Tr. 1368).

[3] Also before the Review Board are: (a) Broadcast Bureau's opposition, filed May 3, 1974; and (b) opposition, filed May 3, 1974, by Berkshire Broadcasting Company (Berkshire). Berkshire is one of the intervenors in this proceeding; its petition to intervene was granted by Order of the Administrative Law Judge, FCC 73M-469, released April 17, 1973.

[4] The Administrative Law Judge and Berkshire only refer to Ridgefield's May, 1970 amendment in their discussions of the proposed amendment. However, Ridgefield submitted a further revision of Section III in an amendment filed July 17, 1973. The Judge accepted the financial section of the amendment in a Memorandum Opinion and Order, FCC 73M-1027, released September 11, 1973.

amount of $26,487.60.[5] The proposed amendment shows $135,107.00 for total first year costs and $148,653.00 as net total funds available with deferred credit from a new equipment supplier, John H. Ring, of $59,773.00.[6] The amendment was opposed by Berkshire and the Broadcast Bureau. In his Memorandum Opinion and Order, *supra*, the Administrative Law Judge based his rejection of the amended Section III and the new equipment proposal on the grounds that, even in a single applicant proceeding, diligence must be shown. The Judge pointed out that Ridgefield's amendment was extremely belated; moreover, he added that Ridgefield was attempting to introduce an entirely new proposal rather than simply modifying an existing one, and he noted the possibility that additional hearings might be necessary if the amendment were accepted.

3. In its appeal, Ridgefield contends that it sought to amend its application to conform to the evidence already adduced at hearing. Referring to *James B. Francis*, 41 FCC 2d 303, 27 RR 2d 1337 (1973), review denied FCC 73–1155, released November 14, 1973, Ridgefield argues that its amendment updating costs should be allowed. The policy of allowing corrective hearing or even post-hearing showings to cure defects is particularly applicable to cases involving a single applicant, appellant asserts, citing *East St. Louis Broadcasting Co., Inc.*, 29 FCC 2d 170, 21 RR 2d 992 (1971); and *Mace Broadcasting Co.*, 18 FCC 2d 950, 16 RR 2d 982 (1969). It is Ridgefield's position that the Administrative Law Judge directed his attention to the changed identity of the equipment supplier, rather than to the terms of the proposal itself, as the critical difference between this case and other single applicant cases. Appellant claims that no prolongation of the hearing will result from allowance of its amendment nor will there be any prejudice or inconvenience to others. In addition, Ridgefield argues that Mr. Salerno's testimony at the hearing that he is willing to commit his personal credit or funds to the extent of $160,000 serves to refute any assertions that the credit terms of Mr. Ring's proposal raise new issues.

4. Both the Broadcast Bureau and Berkshire oppose Ridgefield's appeal. In its opposition, the Bureau asserts that the Judge carefully evaluated the factors contributing to a showing of good cause and correctly found an absence of diligence on Ridgefield's part, precluding a finding of good cause under Section 1.522 of the Rules. Furthermore, the Bureau notes that the Judge fully considered the liberal policy that has been applied in permitting amendments addressed to disqualifying issues in single applicant proceedings. The crucial factor here, according to the Bureau, is that Ridgefield is attempting to introduce an entirely new equipment proposal which was not even in existence until after the start of the hearing. For these reasons, the Bureau states that the Judge's determination that Ridgefield failed to exercise diligence in prosecuting its application cannot be con-

[5] The CCA equipment proposal is broken down as follows: transmitting equipment, $6,716.60; monitoring equipment, $1,969.50; AM tuner, phasing and transmission line, $868.00; tower equipment, $10,119.50; and studio technical equipment, $6,814.00. CCA first appeared as equipment supplier in an amendment to Ridgefield's application, filed April 7, 1970.

[6] The equipment proposal submitted by Mr. Ring is as follows: transmitting equipment, $7,310.00; monitoring equipment, $3,950.00; antenna system equipment, $42,123.00; program origination equipment, $6,390.00. Mr. Ring was formerly associated with CCA as a salesman.

sidered an abuse of discretion. Berkshire, likewise, asserts that the Administrative Law Judge clearly concluded that Ridgefield had not acted with diligence in amending its application and did not base his denial of the petition to amend solely on the identity of the equipment supplier. As an attachment to its opposition to Ridgefield's appeal, Berkshire submits a copy of its opposition to the petition for leave to amend. The thrust of Berkshire's argument is that the Commission's designation Order of February, 1973, placed Ridgefield on notice of the necessity for updating its three year old cost figures, yet Ridgefield waited until the hearing held in March, 1974, to submit its amendment and alter its equipment proposal.[7] Additionally, Berkshire attacks Mr. Ring's ability to provide $43,653 in net deferred credit and contends that further examination of Mr. Ring would be essential if Ridgefield's amendment is accepted.

5. The Review Board will not reverse the Judge's determination that Ridgefield failed to establish good cause for the belated filing of its instant amendment. In order to satisfy the good cause requirements for post-designation amendments, the movant must show "that it acted with due diligence; that the proposed amendment was not required by the voluntary act of the applicant; that no modification or addition of issues or parties would be necessitated; that the proposed amendment would not disrupt the orderly conduct of the hearing or necessitate additional hearing; that the other parties will not be unfairly prejudiced; and that the applicant will not gain a competitive advantage." *Erwin O'Conner Broadcasting Co.*, 22 FCC 2d 140, 143, 18 RR 2d 820, 824 (1970). While the due diligence requirement has not always been strictly enforced, particularly in single applicant proceedings, it is still an important consideration when, as here, the lack of diligence would impede the orderly administration of the hearing process.[8] Ridgefield has made no attempt, whatsoever, to establish good cause for its lack of diligence in filing the amendment. Mr. Ring testified that he left CCA in May, 1973, and started his own firm in December, 1973 (Tr. 616), yet Ridgefield did not file its petition for leave to amend until March 18, 1974. Coupled with Ridgefield's dilatory behavior is the fact that it is seeking to introduce an entirely new proposal with the substitution of a new supplier, and, as noted by the Judge, additional hearing might be necessary if Ridgefield were allowed to amend. On the whole, therefore, the Board is unable to conclude that the Administrative Law Judge abused his discretion in

[7] Berkshire fails to consider Ridgefield's July 17, 1973 amendment to Section III. See n. 4, *supra*. Ridgefield submitted its March 18, 1974 amendment after it was revealed during cross-examination of Mr. Perry (technical director and 32% stockholder of Ridgefield) on February 26, 1974, that Mr. Perry had checked with CCA and learned that Mr. Ring was no longer in the employ of CCA. (Tr. 258.)

[8] Ridgefield contends that the *James B. Francis* case, *supra*, should govern the instant proceeding. However, *Francis* was a final Board decision, rather than a memorandum opinion and order, and construction costs were not in issue, as in the present case. Instead, the issues in *Francis* concerned the availability of funds to one of the applicants and its estimate for *operating* costs. When the applicant amended its construction and operating costs, no opposition was filed, and the Judge's acceptance of the amendment was not appealed. No subsequent petition to expand the inquiry was filed. The Review Board did accept the applicant's oral modifications of the construction costs at hearing without a new letter from the equipment manufacturer, but the narrow scope of the Board's ruling does not support the arguments now raised by Ridgefield.

rejecting Ridgefield's amendment, and the appeal will be denied. See *Charles W. Holt*, 39 FCC 2d 776, 26 RR 2d 1043 (1973); *Image Radio, Inc.*, 13 FCC 2d 59, 13 RR 2d 205 (1968).

6. Accordingly, IT IS ORDERED, That the appeal from interlocutory Order pursuant to leave granted, filed April 23, 1974, by Radio Ridgefield, Inc. IS DENIED.

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

FCC 74-593

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of REGENTS OF THE UNIVERSITY OF NEW MEXICO AND BOARD OF EDUCATION OF THE CITY OF ALBUQUERQUE, N. MEX. For Renewal of License of Station KNME-TV (ED), Albuquerque, N. Mex.	File No. BRET-28

MEMORANDUM OPINION AND ORDER

(Adopted June 5, 1974; Released June 14, 1974)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE CONCURRING IN THE RESULT. COMMISSIONER HOOKS DISSENTING; COMMISSIONER QUELLO NOT PARTICIPATING.

1. The Commission has before its consideration: (i) the above-captioned application for renewal of license for Educational Television Station KNME-(TV), Albuquerque, New Mexico (hereinafter KNME-TV); (ii) a petition to deny the application for renewal of license for KNME-TV filed by the Alianza Federal de Pueblos Libres and William L. Higgs (hereinafter petitioners) on August 16, 1971; (iii) an opposition to the petition filed by the licensee; and (iv) a reply to the opposition.

2. KNME-TV is licensed jointly to the Regents of the University of New Mexico and the Board of Education of Albuquerque, New Mexico. The Governing Board of the stations is composed of the President, Vice President, Chairman of the Board of Finance and Secretary of the Albuquerque Board of Education and the President, Vice President, Secretary/Treasurer and two members of the Board of Regents of the University of New Mexico.

3. Petitioners predicate their standing as parties in interest on the grounds that the Alianza is a non-profit New Mexico corporation with its headquarters in Albuquerque, that approximately 3,000 families are on its membership rolls, and that William Higgs is a citizen of the United States and a resident of Albuquerque, New Mexico. Petitioners allege that Mexican-Americans comprise approximately 40 percent of the population of Albuquerque and the surrounding areas; that the Alianza is the oldest established group of its kind in the Southwest, and that the Alianza speaks for the interests of a representative and significant portion of Mexican-Americans. Licensee does not challenge petitioners' standing, and we find that petitioners qualify as parties in interest. *Office of Communication of the United Church of Christ* v. *F.C.C.*, 359 F. 2d 994 (D.C. Cir. 1966).

BACKGROUND

4. Petitioners allege that despite the Treaty of Guadalupe-Hidalgo, which ceded the Southwest to the United States, guaranteed civil and property rights to former Mexican citizens and their descendents, over the years the land holdings of Mexican-Americans were taken by violence, fraud and forgery, and that approximately 35,000,000 acres of land were taken from Mexican-Americans. Petitioners further allege that many authorities trace the present day poverty and discrimination suffered by Mexican-Americans directly to this land loss and that the drive by Mexican-Americans to recover their lost land has been a major factor in the history of the Mexican-American in New Mexico since 1848. The Alianza has drafted and introduced legislation in the Congress of the United States to settle this land problem. In addition to its efforts to settle the land question, the Alianza has taken a nationally prominent role in the field of education of Mexican-Americans. Petitioners allege that the Alianza is the strongest critic of the Albuquerque Public School system in the community and is one of the leading critics of public education as it relates to the Mexican-American community and minority groups in general. Petitioners request that the Commission designate the station's renewal application for hearing pursuant to Section 309(d) of the Act. Petitioners raise question in the areas of past programming and alleged fairness doctrine violations.

KNME–TV'S PROGRAMMING DURING THE PAST LICENSE PERIOD

5. With respect to KNME–TV's overall programming during the past license period, petitioners allege that KNME–TV has failed to serve adequately its community of license and has fostered and encouraged the development of racial prejudice and discrimination in all forms. According to petitioners, the station has aired few, if any, programs throughout its past license period dealing with discrimination against Mexican-Americans and none dealing with the question of the land grants, with the possible exception of equal-time appearances of the Peoples Constitutional Party candidates during the last two political campaigns. Petitioners allege that KNME–TV has "deliberately and repeatedly chosen to ignore the interests of the Mexican-American community and of minority groups in general throughout its past license period." This alleged discriminatory programming by KNME–TV has been criticized by petitioners in letters to the licensee during the license term. Petitioners attach to their petition a number of letters to KNME and other broadcasting facilities in Albuquerque requesting time to discuss various issues.

6. Petitioners submit, as Exhibit H of their petition to deny, an article which appeared in the *Albuquerque News* on May 20, 1971, wherein Mr. Tony Tiano, Program Director of KNME–TV, stated that KNME–TV ". . . is definitely geared to white middle and upper class viewers." According to petitioners, this admission makes clear that KNME has been consistently operating in clear violation of Commission policy.

7. In opposition, the KNME–TV states that petitioners' allegations are not well founded and do not provide a basis for setting KNME–TV's renewal application for hearing. The renewal application states that KNME–TV broadcast the following programming percentages during the past license period:

	Percent
Instructional	13
General educational	35
Performing arts	9
Public affairs	33
Light entertainment	8
Other	2

The adult educational and entertainment programs included such programs as *NET Playhouse*, *Biographies* and *On the Trail*, which benefited the public at large. This category also included programs such as *Enchanted Sound*, a program of Spanish folk songs and stories from Northern New Mexico; *Soul*, a program featuring Black musicians, and *Cancion de la Raza*, the story of a Spanish family in Los Angeles. These programs emphasized the contributions and cultures of particular community groups. In addition, this category also included programs which dealt with the arts, and programs which demonstrated and taught specific crafts and skills such as *Concert Hall*, *Performance*, *Creative Process*, *Folk Guitar* and *Extension Beat*. The instructional programs included *Sesame Street*, *Electric Company* and *Hablemos Espanol* as well as programs devoted to music, science and Spanish for the 4th, 5th and 6th grades in 44 school districts in the State of New Mexico. These programs are utilized by schools serving Indian, Mexican-American and Anglo students. The issues covered in the station's public affairs programming varied from matters of local interest to matters of national and international concern. Many of these public affairs programs dealt with problems inherent in the minority condition.

8. According to 1970 U.S. Census data the Albuquerque SMSA has a population of 315,774, of which 39.2% are persons of Spanish language or Spanish surname and less than 2% are Blacks. KNME–TV lists the following programs as programming broadcast by KNME–TV during the past license period [1968–1971] that dealt with problems of unique interest to the Mexican-Americans and other minorities in the Albuquerque community:

a. "Que Pasa"—a weekly half-hour program broadcast every Monday at 6:30 p.m. and again on Wednesdays at 3:00 p.m. Guests are invited from various Mexican-American community groups to discuss topics of interest to Mexican-Americans. Guests on this program included representatives from the EEOC, Chicano Studies Program at the University of New Mexico, League of United Latin American Citizens, Albuquerque Raza Teachers, American G. I. Forum, and the Alianza Federacion de Pueblos Libres. This series began in late August, 1971.

b. "Hablemos Espanol"—presented for the past ten years by the station. This program is presented four times a week and features a Mexican-American instructor who teaches Spanish to

English-speaking listeners and English to Spanish-speaking listeners.

c. "The Indian Speaks"—a weekly half-hour discussion show produced by the All Indian Pueblo Council of Albuquerque and similar to the "Que Pasa?" program. The show is broadcast on Friday afternoons and again on Saturday evenings and features topics of current interest to the Albuquerque Indian community. This show was temporarily discontinued on December 15, 1971, but will be broadcast once a new Indian producer is found.

d. "Black Journal"—a NET program presented each Tuesday evening by the station which discusses current national issues of interest to Black communities.

e. "Americans from Africa"—a 26 series program on Black history broadcast in the late winter and spring of 1969. Each program presented a lecture about a different aspect of the history of Black people in the United States.

f. "America Tropical"—a documentary about the problems of discrimination against Mexican-Americans in the Los Angeles area which was broadcast by KNME–TV on September 28, 1971.

g. "Chicano"—a documentary prepared by PBS concerning the life of the Mexican-American in the Southwest including the problem of discrimination. This program was broadcast on March 1 and 2, 1971.

h. "Ethnic Studies"—a series of half-hour programs broadcast between April 23 and June 3, 1971, produced in cooperation with the Native American Studies, Chicano Studies and Black Studies of the University of New Mexico. Cuurrent events relevant to these groups were discussed including a panel discussion concerning the arrest of Reies Tijerina, founder of the Alianza.

i. "Right On"—a program produced in cooperation with the Albuquerque City Committee Information Office and broadcast on Tuesdays at 7:00 p.m. The program encourages questions from the viewing audience and included a program entitled "Villa de Albuquerque" with William Higgs and Wilfredo Sedillo of the Alianza as participants broadcast on August 26, 1971.

j. "Party Point of View"—a twelve-program series concerning New Mexico politics and party affairs which invited spokesmen from each political party to discuss its objectives and activities. The series included interviews with John Salizar of the New Independent New Mexican Party on three occasions [October 14, November 11, and December 9, 1971]. The People's Constitutional Party, the political arm of the Alianza, discussed problems of discrimination, education and the land grant question on three occasions also [October 28, November 25 and December 23, 1971].

In addition, after the end of the license period, KNME–TV inaugurated a new program series:

"Cancion de la Raza"—presented Monday through Friday at 2:30 p.m. and rebroadcast each day at 6:00 p.m. Program focuses upon the economic, social and racial problems of a Mexican fam-

ily living in Los Angeles area. The series began January 1, 1972.

9. In addition to the above listed programs, which were directed toward the problems and interests of Mexican-Americans and other minority groups in the Albuquerque community, KNME–TV also broadcast a wide range of public affairs and informational programming which dealt with topics and problems of interest to all members of the Albuquerque community. These programs included the "Special of the Week", which covered topics of national and international interest; "Channel Five Reports", a weekly program which explored events and people of current interest to the Albuquerque area; and "The Ageless", which dealt with problems of the elderly. KNME–TV also broadcast numerous other programs which treated matters of state and local government, legislative matters, state prison reform, education and the environment.

10. With respect to the article which appeared in the Albuquerque News, KNME–TV states that its program manager, Mr. Tiano, was merely making clear the fact that the station recognized a need to improve its services in the area of minority group programming. According to KNME–TV:

> Mr. Tiano outlined the station's plans to expand its programming to reach minority groups and low income groups. Noting that most of the station's audience were college educated white persons, Mr. Tiano indicated that such programs would help the station attract a more diverse audience. It is ironical that this interview outlining the station's plans to improve its service has been submitted with the petition to deny (Exhibit H) as evidence of the station's unwillingness to serve Mexican-American and other minority groups.

11. KNME–TV states that its programming clearly demonstrates that the station has dealt regularly and at length with minority problems and that ". . . allegations to the contrary must be read as a charge that the station does not deal with them in the manner and to the extent advocated by Petitioners." KNME–TV states that it received its first communication from petitioners' organization on September 27, 1970, and since then, station personnel have been in continual contact with the organization. Representatives from the Alianza have appeared on "Party Point of View", "Que Pasa?", and "Right On", on numerous occasions to present their views on a variety of subjects. According to KNME–TV, the station has not granted every request by the Alianza because of format or service limitations or because the Alianza is not the only voice in the Mexican-American community that is worthy of attention.[1]

12. Petitioners, in reply, state that KNME–TV relies on programming in its opposition which was aired after it was served with a copy of the petition to deny, such as "Que Pasa?", "Cancion de la Raza", and "American Tropical". According to the petitioners, prior to filing

[1] In addition to the Alianza, KNME–TV lists the following Mexican-American groups whose suggestions for programs have been accepted or whose spokesmen have appeared on the station: Albuquerque Raza Teachers, American GI Forum, Chicano Studies at UNM, Las Garras Negras, League of United Latin American Citizens, and Los Herederos de Mercedes d Nuevo Mexico.

the petition to deny, KNME–TV broadcast only a "How to Speak Spanish Education Program" and required political programs and did not treat topics such as discrimination against Mexican-Americans, administration of Justice, housing, employment, Chicano history and the land grant question. Petitioners charge that counsel for the licensee has attempted to confine the issue of KNME–TV's past programming to the three month period prior to the filing of the station's license renewal application and has ignored the station's programming during the past three years. Petitioners state that not a single member of the Alianza appeared on KNME–TV prior to the filing of the petition to deny.

13. We have carefully considered the matters raised by petitioners in their pleadings, KNME–TV's responses and the subject renewal application and have concluded that a hearing is not warranted on the question of the adequacy of KNME–TV's past programming. Section 73.621(a) of our rules, 47 C.F.R. Section 73.621(a), provides that educational television stations are to "be used primarily to serve the educational needs of the community, for the advancement of educational programs, and to furnish a nonprofit and noncommercial television broadcast service." Historically, we have treated educational broadcasters differently from commercial broadcasters in many respects. For instance, educational applicants are not required at present to submit a formal ascertainment of community problems or to list past and proposed programming to serve community problems. See FCC Form 342; *Educational Broadcast and Renewal Applications*, 42 FCC 2d 690, 693 (1973). However, like commercial broadcasters, educational broadcasters must plan and design programming to serve the problems, needs and interests of the public. In this respect, educational broadcasters are also accorded a wide area of discretion in their choice of programming to meet community problems, needs and interests, including the problems, needs and interests of minority groups, and the Commission will act only where questions are raised about the reasonableness or good faith of the licensee's judgment. The Commission will not, for example, base a grant or denial of a renewal application upon a subjective determination of what is or is not a good program; nor will we act on a general assertion that a licensee's program service has been inadequate. Rather, our determination—as the public's—must be based on an evaluation of the responsiveness of the licensee's overall programming to community problems, needs and interests. Therefore, under the circumstances presented here, petitioners must make specific allegations of fact which, if true, would establish that the licensee's overall programming could not reasonably have met the problems, needs and interests of the people within its service area, including the minority communities.

14. We note, first, that petitioners' programming allegations have little in the way of specificity or substantiation. It is plain that a petitioner has the burden of demonstrating with specificity the facts which warrant grant of the relief requested. 47 U.S.C. 309(d)(1); *Chuck Stone* v. *Federal Communications Commission*, 466 F.2d 316, *rehearing denied*, 466 F.2d 331 (D.C. Cir. 1972). Here, however, petitioners offer virtually nothing but the conclusory allegation that KNME–TV "* * * has deliberately and repeatedly chosen to ignore

the interests of the Mexican-American and of minority groups in general throughout its past license period" in support of its programming inadequacy charge. This type of statement, of course, does nothing to establish the merit of the petitioners' charge, and no effort is made to provide specific and substantial allegations of fact—as opposed to conclusory allegations—required by Section 309(d)(1) of the Communications Act. We conclude, therefore, that no substantial and material question of fact has been presented which would establish that a grant of the KNME–TV application for renewal would be *prima facie* inconsistent with the public interest.

15. Second, we note that during the past license term KNME–TV broadcast a broad range of non-entertainment programming, devoting 48% of its air time to instructional and general educational programming and 33% to public affairs programming. Further, while there is no obligation on a licensee to disprove a general and unsupported allegation, as set forth in paragraphs 7, 8, and 9, above, the licensee has submitted a list of typical and illustrative programming KNME–TV has broadcast serving minority problems, needs and interests. While it is not clear from the pleadings, apparently petitioners maintain that the licensee's service has been inadequate because it failed to provide enough programming specifically designed to serve Mexican-Americans. In this respect, petitioners apparently believe that programming which serves community residents in general, rather than minorities in particular, should not be considered as serving minorities. But, such a distinction has not been sanctioned by the Commission. *Capitol Broadcasting Co.*, 28 FCC 1135 (1965); *The Evening Star Broadcasting Co.*, 27 FCC 2d 316, 332 (1971), *affirmed sub nom., Chuck Stone* v. *Federal Communications Commission*, *supra*. Rather, as the Commission has stated:

> While emphasizing that we believe the problems of a minority group should be covered in a meaningful manner, we do not consider it necessary to require a broadcaster to devise programs specifically for these groups. Minority interests may be adequately covered in programming which has a wider range of appeal.

WKBN Broadcasting Corporation, 30 FCC 2d 958, 970 (1971). See also *Mahoning Valley Broadcasting Corporation*, 39 FCC 2d 52, 59 (1972) and *Time-Life Broadcast, Inc.*, 33 FCC 2d 1081, 1093 (1972).

16. The record discloses that the licensee has broadcast a broad spectrum of programming designed to serve the problems, needs and interests of people within KNME–TV's service area. We will not discount this program showing as not serving minority problems, needs and interests for two reasons. First, there is no requirement that every program broadcast by a licensee treat the subject matter in racial terms: a station's obligation is instead to broadcast programs which meet the problems, needs and interests of all groups within its service area. "[H]e may not flatly ignore a strongly expressed need; on the other hand, there is no requirement that a station devote twenty percent of its broadcast time to meet the need expressed by twenty percent of its viewing public." *Chuck Stone* v. *Federal Communications Commission*, *supra*. The facts before us do not indicate that KNME–TV has ignored community problems of interests to minorities. Indeed, a fair reading of the KNME–TV renewal application and opposition pleading plainly demonstrates that the licensee has been responsive to

the problems, needs and interests of the public it serves, including minority communities. Second, as stated above, petitioners' criticisms of KNME–TV's programming lack the requisite specificity. "They are largely conclusory and in most instances are not tied to specific programming. * * * [Nor do] they * * * indicate whether * * * [non-minorities] are accorded different, more positive treatment." *Chuck Stone* v. *Federal Communications Commission*, *supra*. In short, petitioners have failed to provide any facts to indicate that KNME–TV has either consciously excluded minorities from its programming or consistently ignored a substantial number of significant problems, needs and interests of concern to minorities. Compare, *Radio Station WSNT, Inc.*, 27 FCC 2d 993 (1971). We find no basis, therefore, for concluding that KNME–TV has failed to serve minority problems, needs and interests throughout its license period.

17. In conjunction with the above, one other matter warrants discussion. As indicated, the licensee has provided examples of typical and illustrative programming KNME–TV has broadcast relating to minorities. Another objection raised by petitioners relates to the time period during which some of the cited programs were broadcast. Petitioners allege that there are few examples cited for the first two years of the license term and, accordingly, the licensee is accused of upgrading its programming. We agree with petitioners that "[i]n a renewal proceeding past performance is [the] best criterion * * *. [A] renewal applicant * * * must literally 'run on his record'." *Office of Communication of United Church of Christ* v. *F.C.C.*, 123 U.S. App. D.C. 328, 359 F.2d 994 (1966). Accordingly, should we find a pattern that a licensee has failed to respond to a substantial number of significant community problems, needs and interests, little weight will be given to belated improvement, particularly if such improvement occurs after the station's license expiration date. *American Federation of Musicians* v. *F.C.C.*, 356 F.2d 827 (D.C. Cir. 1966); *Community Broadcasting* v. *F.C.C.*, 363 F.2d 971 (D.C. Cir. 1966); *South Florida Television Corp* v. *F.C.C.*, 349 F.2d 971 (D.C. Cir. 1965), *cert. den.* 382 U.S. 987 (1966). Here, however, we do not have a case of belated upgrading.

18. In answer to petitioners' unsupported allegation, and in an effort to disprove that allegation, the licensee has submitted examples of typical and illustrative programming broadcast by KNME–TV serving minority problems, needs and interests. It is clear from the record that these programs were broadcast during the last year of KNME–TV's license term. We cannot, however, discount this showing, particularly when no facts have been submitted which would indicate that the licensee was unresponsive to the minority community during the first two years of its license term. No such facts have been submitted herein and, in the absence of such facts, no licensee will be required to cull over its three year program record to prove the contrary. *Taft Broadcasting Company*, 38 FCC 2d 770, 794 (1973). This is especially true where, as here, an allegation of belated upgrading is raised for the first time in the reply pleading.

19. It should also be noted that programming is not static in nature. Indeed, educational broadcasters—as commercial broadcasters—are

expected to regularly review their programming operations and to make any changes they determine to be in the public interest. Thus, it is not unreasonable to expect licensees to plan and design new programming throughout the license term, including the year preceding the filing of their renewal applications. Again, such efforts will not be considered belated upgrading even where such programming is planned and designed in response to the strongly expressed needs of members of the community. To hold otherwise would be to rule out any improvement in programming performance during the last year or last few months of the license term. This, obviously, would be contrary to the public interest. Further, while the court in the *United Church of Christ* case stated that past performance is the best criterion for forecasting future performance, and that the Commission could not make an affirmative public interest finding based on a "pios hope" for better performance, we are confronted with an entirely different situation here. Even if we accept petitioners allegation as true—which we do not—the record discloses that the licensee on its own initiative has recognized a need for more minority programming and has undertaken affirmative steps to improve its service. Clearly, this is a fact from which the Commission may draw favorable inferences as to KNME–TV's future operations for as the court noted in the *United Church of Christ* case the Commission has discretion to experiment and take calculated risk based on the applicant's future proposals. Accordingly, we conclude that no issue has been raised herein concerning KNME–TV's past programming operations.

ALLEGED FAIRNESS DOCTRINE VIOLATIONS

20. Petitioners allege that KNME–TV has been programming time for officials of the Albuquerque Public School system to publicize the quality of their own performance. Petitioners allege that since the Alianza is the strongest critic of the Albuquerque school system, it requested time to reply to the statements of the school officials but has never been granted an opportunity to do so.

21. Licensee states that although petitioners allege that the station has repeatedly broadcast programming in support of the Albuquerque Public School System, petitioners have identified only one program specifically, "The Albuquerque Public Schools Annual Report" which was broadcast on May 24, 1971. The licensee states that this program was intended merely as an introduction of the new superintendent of schools and was not intended as a justification of the roles played by school officials or defense of any particular approach to education. However, the licensee states that in any event, KNME–TV has broadcast programs which discussed the adequacy of the public school system. The Alianza presented their views on this issue during appearances on "Party Point of View" on October 28, November 25 and December 23, 1971. The station also treated this issue earlier in a two-program series entitled "Cultural Conflict and Traditional Curricula" broadcast on May 21 and May 18, 1971. These programs dealt with the specific problems of educating Mexican-American children in Anglo schools. In addition, the Alianza planned to discuss the school

issue including the most recent Albuquerque Public School Annual Report on its February 7, 1972 appearance on "Que Pasa?". However, the Alianza decided to discuss other issues including the land grant question.

22. In reply, petitioners allege that the Albuquerque Public School System Monthly Report was broadcast by KNME–TV in prime time on January 4, February 1, March 1, March 29, April 26, and May 24, 1971; that petitioners have continually asked for time on the station; and that the licensee has allowed virtually no criticism of the school system other than isolated instances. Petitioners further allege that the program "Cultural Conflict and Traditional Curricula" was broadcast by the station only after numerous communications to the licensee's coverage of the local school issue.

23. The fairness doctrine requires that once a broadcast station presents one side of a controversial issue of public importance, it is required to afford a reasonable opportunity for the presentation of contrasting viewpoints. Both sides need not be given in the same broadcast or series of broadcasts and no particular person or group is entitled to appear on the station, since the fairness doctrine is designed to protect the public's right to be informed, rather than the right of any particular entity to broadcast its views. In order for the Commission to act in this area, the complainant must submit specific information including the following: (i) the specific issue or issues of a controversial nature of public importance presented by the station, (ii) the date and the time when the issue or issues were broadcast, (iii) the basis for the claim that the issue or issues were controversial issues of public importance, (iv) the basis for the claim that the station broadcast only one side of the issue or issues in its overall programming, and (v) whether the station has afforded or has expressed an intention to afford a reasonable opportunity for the presentation of contrasting views.

24. In the case before us, petitioners have not demonstrated that KNME–TV presented one side of a controversial issue of public importance with respect to the station's coverage of the school issue. It is alleged in the pleadings that KNME–TV broadcasts a monthly show entitled "Albuquerque Public School Reports" but petitioners have not demonstrated how this program gives rise to a fairness doctrine issue. Assuming, *arguendo*, that KNME–TV did present only one side of a controversial issue of public importance on one particular program, on May 24, 1971, we believe that the licensee has demonstrated that the station did present opposing views in its overall programming. Petitioners themselves expressed their views on public education on KNME–TV on three occasions in 1971, and the station explored the problem of educating Mexican-Americans in a two part program broadcast in May of 1971. Thus, it appears that opposing viewpoints including petitioners' own views were presented on the school issue in KNME–TV's programming during the past license period. Having determined that petitioners have failed to demonstrate that KNME–TV violated the fairness doctrine during the past license period the request for a hearing on this issue will be denied.

25. In light of the above, we find that petitioners have failed to raise substantial or material questions of fact which establish that a

grant of KNME–TV's application for renewal of license would be *prima facie* inconsistent with the public interest. KNME–TV is legally, technically, financially, and otherwise qualified, and we find that a grant would serve the public interest, convenience and necessity.

26. Accordingly, IT IS ORDERED, That the "Petition to Deny Renewal of Broadcast Licensee" filed by the Alianza Federal de Pueblo Libres and William L. Higgs IS DENIED, and that the above-captioned application for renewal of license IS HEREBY GRANTED.

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

FCC 74–620

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re RICHWOOD TV CABLE CO., RICHWOOD, W. VA. Request for Special Relief	CSR–492 WV172

MEMORANDUM OPINION AND ORDER

(Adopted June 12, 1974; Released June 17, 1974)

BY THE COMMISSION: CHAIRMAN WILEY CONCURRING IN THE RESULT.

1. Richwood TV Cable Company, operator of a cable television system at Richwood, West Virginia, has filed a petition for waiver of the Commission's program exclusivity rules.[1] The petition was filed in response to a carriage and program exclusivity request submitted to the operator by Withers Broadcasting Company of West Virginia, licensee of Television Broadcast Station WDTV, Weston, West Virginia. Richwood seeks waiver of our program exclusivity rules insofar as they would otherwise require the system to afford WDTV network program exclusivity.

2. The Richwood system is located beyond all television markets and serves approximately 1400 subscribers with the following television signals:

WCHS–TV (CBS, Channel 8), Charleston, West Virginia
WHTN–TV (ABC, Channel 13), Huntington, West Virginia
WSAZ–TV (NBC, Channel 3), Huntington, West Virginia
WOAY–TV (ABC, Channel 4), Oak Hill, West Virginia
WSWP–TV (Educ., Channel 9), Grandview, West Virginia
WDTV (CBS, Channel 5), Weston, West Virginia

3. The Community of Richwood is located within the predicted Grade B contour of CBS affiliated Station WDTV, but beyond the predicted Grade B contour of Station WCHS–TV, Charleston, West Virginia, the other CBS affiliate carried on the system. The system

[1] While Richwood failed to specify which sections of the Rules it had in mind, it appears that a waiver of Sections 76.91 and 76.93 is desired. These sections provide, in pertinent part, as follows:

Section 76.91(a)—"Any cable television system operating in a community, in whole or in part, within the Grade B contour of any television broadcast station, or within the community of a 100-watt or higher power television translator station, and that carries the signal of such station shall, on request of the station licensee or permittee maintain the station's exclusivity as an outlet for network programming against lower priority duplicating signals, but not against signals of equal priority, in the manner and to the extent specified in Sections 76.93 and 76.95."

Section 76.93(a)—"Where the network programming of a television station is entitled to program exclusivity the cable television system shall, on request of the station licensee of permittee, refrain from simultaneously duplicating any network program broadcast by such station, if the cable operator has received notification from the requesting station of the date and time of its broadcast of the program and the date and time of any broadcast to be deleted, as soon as possible and in any event no later than 48 hours prior to the broadcast to be deleted. On request of the cable system, such notice shall be given no later than the Monday preceding the calendar week (Sunday–Saturday) during which exclusivity is sought."

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operator supports its request for waiver by arguing that: (a) there is no demonstrable need for exclusivity for WDTV has broadcast since 1960 without resorting to exclusivity protection, which indicates its continued financial viability; (b) affording program exclusivity protection to WDTV would result in inconvenience and higher costs to subscribers and the disruption of their viewing habits; (c) the system's subscribers share a community of interest with Charleston, but not Weston; and (d) switching equipment at the system's mountaintop headend would be inaccessible for several hours due to heavy snows.

4. Richwood's contentions are unsupported and we cannot give them decisional weight: Richwood has failed to show that exclusivity protection is not necessary for WDTV or that the system will be injured by Withers' "delayed" invocation of the exclusivity rules (See *Massillon Cable TV, Inc.*, 21 FCC 2d 188 (1970) and *Imperial Broadcasting Co., Inc.*, 19 FCC 2d 791 (1969)[2]). Furthermore, Richwood has failed to demonstrate that affording exclusivity protection will in any way be disruptive of its subscribers' established viewing habits. Additionally, the system operator has submitted no documentation for its claim that switching equipment would be inaccessible during the winter. Therefore, consistent with our action in *Five Channel Cable Company*, FCC 74–500, —— FCC 2d ——, and *Tygert Valley Cable Corporation*, FCC 73–1178, 43 FCC 2d 966, we must reject Richwood's arguments and require the system to afford WDTV simultaneous network program exclusivity protection over all lower priority duplicating signals. It should be noted, however, that local programming of Station WCHS–TV, licensed to a city with which Richwood subscribers allegedly have a community of interest, will not be subject to deletion on the system.

5. Finally, the system's pleading discloses that Richwood TV Cable, in operation for several years, only recently added Station WDTV to its carriage (upon the system's expansion to a twelve-channel capacity). According to our records, the signal was added without receipt of a certificate of compliance. However, in view of the system's location outside of all television markets, WDTV's status as a "must-carry" signal (by virtue of Section 76.57 of the Rules[3]) and the liberal provisions of recently amended Section 76.11(a) of the Rules[4], we

[2] In these opinions the Commission stated that its rules do not require that a request for program exclusivity be made at any specific time and found that the respective operators had not been injured by the licensees' delay in making their requests.

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

[4] Section 76.11(a) of the Commission's Rules provides as follows: (a) No cable television system shall commence operations or add a television broadcast signal to existing operations unless it receives a certificate of compliance from the Commission: *Provided, however*, That an existing system may add a television signal, pursuant to Sections 76.57(a)(1)–(3), 76.59(a)(1)–(3) and (5), 76.61(a)(1)–(3), or 76.63(a) (as it relates to Section 76.61(a)(1)–(3)), or the signal of a noncommercial educational television station that is operated by an agency of the state within which the system is located, pursuant to Sections 76.57(b), 76.59(c), 76.61(d), or 76.63(a) (as it relates to Section 76.61(d)), without filing an application or receiving a certificate of compliance, if the system serves the information required by Section 76.13(b)(1) on the Commission and the parties named in Section 76.13(a)(6) at least thirty (30) days before commencing such carriage and no objection is filed with the Commission within thirty (30) days after such service is made. See Section 1.47 of this chapter.

shall waive, *sua sponte*, Section 76.11(a) of the Rules to permit WDTV's continued carriage.

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

Accordingly, IT IS ORDERED, That the petition for waiver (CSR-492) filed by Richwood TV Cable Company, IS DENIED.

IT IS FURTHER ORDERED, That Section 76.11(a) of the Rules is hereby waived to permit continued carriage of Television Broadcast Station WDTV, Weston, West Virginia, on the captioned cable television system.

IT IS FURTHER ORDERED, That Richwood TV Cable Company IS DIRECTED to comply with Sections 76.91 and 76.93 of the Commission's Rules on its cable television system at Richwood, West Virginia, within thirty (30) days of the release date of this Memorandum Opinion and Order.

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

FCC 74–588

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of SENTINEL COMMUNICATIONS OF MUNCIE, INC., MUNCIE, IND. For Certificate of Compliance	CAC–1220 IN094

MEMORANDUM OPINION AND ORDER

(Adopted June 5, 1974; Released June 13, 1974)

BY THE COMMISSION: COMMISSIONER QUELLO NOT PARTICIPATING.

1. Clearview Cable of Richmond, a Joint Venture, requests reconsideration of the Commission's decision in *Sentinel Communications of Muncie, Inc.*, FCC 73–150, 39 FCC 2d 620 (1973), granting a certificate of compliance to Sentinel Communications. Clearview alleges that Section 76.31(a) of our Rules was violated because Sentinel's cable television franchise was not awarded pursuant to a "full public proceeding affording due process of law." Relying on an affidavit obtained from Mr. Earl K. Williams, a member of the City Council of Muncie, Indiana, Clearview submits that the City Council failed to give thorough consideration to Sentinel's qualifications. Further, Clearview urges the Commission to conduct an investigation of Councilman Williams' allegations if an adequate explanation of these proceedings is not forthcoming. Telecable Corporation associates itself with Clearview's petition for reconsideration and similarly requests that the Commission investigate the procedures which attended the award of Sentinel's franchise. Both Telecable and Clearview were unsuccessful applicants for the Muncie, Indiana, cable television franchise.

2. Councilman Williams' affidavit, prepared approximately three weeks after our initial decision, criticizes the franchise awarded Sentinel as follows: (a) it fails to incorporate provisions for "two-way cable" as required by the cable television proposals formulated by the Mayor of Muncie; (b) the Commission's technical standards are not specifically addressed, and Sentinel is required only in vague terms to install the best system available; (c) there is no requirement compelling Sentinel to provide service to all areas of the community within established timetables; (d) Sentinel is not required to maintain a local business office in Muncie. The remainder of the affidavit is devoted to Councilman Williams' opinion of the proceedings attending the award of the franchise to Sentinel, particularly the proceedings of the City's Board of Works, which he describes as "highly suspect." Councilman Williams avers that at all times before the franchise was finally awarded, representations were made to local officials that Time-Life, Inc., was a joint venturer in Sentinel Communications, Inc. However, the ownership interest of Time-Life was not shown in the materials ac-

companying the application for certificate of compliance which Sentinel filed with the Commission, and despite the Councilman's inquiries, the ownership and organization were never clarified. Councilman Williams further asserts that Sentinel was afforded considerations not given other applicants; only Sentinel was permitted to amend certain provisions of its original bid, and only Sentinel failed to submit detailed plans and proposals to local officials, filing only a schedule of proposed subscriber rates. Also, in "subsequent meetings" with city officials—meetings Councilman Williams does not further describe—selected people were invited to meet with Sentinel but no public notice of these meetings was provided. Then, following the award of the franchise, Sentinel is said, by the Councilman, to have dictated its terms.

3. Sentinel opposes the petition for reconsideration and challenges the accuracy of Councilman Williams' statements. It argues that Clearview's petition should be denied on procedural grounds for failure to comply with Section 1.106(c) of the Commission's Rules;[1] the matters alleged by Clearview were known or could easily have been ascertained through the exercise of ordinary diligence when oppositions to Sentinel's application were required to be filed pursuant to Commission Rules. The matters contained in Councilman Williams' affidavit pertain to events which occurred more than a year before the Commission acted on the application. Accordingly, Sentinel maintains there was no excuse for Clearview not to have filed this affidavit much sooner.

4. The franchising process is defended by Sentinel as substantially complying with the Commission's requirements. An affidavit of the Mayor of Muncie, the Honorable Paul J. Cooley, describes the procedures followed by local officials. Applicants for the Muncie franchise were invited to submit their bids to the City's Board of Works, the agency responsible for entering into contracts on behalf of the City. By June 2, 1971, nine bids had been received. Three months later, the Board narrowed the field to four applicants, excluding Clearview from further consideration. These four applicants were invited to make another presentation to the Board, which studied them for several more months. On November 8, 1971, the Board issued a notice that it had decided to award the contract to Sentinel, and a public hearing thereon was held on November 24, 1971. (The date of the hearing and the text of the contract were published in local newspapers.) After that hearing, the action of the Board was subject to approval by the City Council. On February 7, 1972, an ordinance was adopted by the City Council (with Councilman Williams and another councilman dissenting) awarding the franchise to Sentinel. Sentinel alleges that its representatives and those of Time-Life Cable appeared at the meeting of November 24, 1971, a meeting which Councilman Williams did not

[1] Section 1.106(c) of the Rules provides that:
A petition for reconsideration which relies on facts which have not previously been presented to the Commission or to the designated authority, as the case may be, will be granted only under the following circumstances:
(1) The facts relied on relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters;
(2) The facts relied on were unknown to petitioner until his last opportunity to present such matter, and he could not, through the exercise of ordinary diligence, have learned of the facts in question prior to such opportunity; or
(3) The Commission or the designated authority determines that consideration of the facts relied on is required in the public interest.

attend. While informal meetings were conducted between Sentinel and city officials, Sentinel insists such meetings were held with all applicants for the franchise. Sentinel asserts that the franchise itself substantially complies with the Commission's Rules; moreover, most of the shortcomings noted by Councilman Williams have since been corrected by the applicant.[2]

5. Sentinel denies that its relationship with Time-Life was only vaguely described, asserting that the relationship was known from the start. An affidavit from Mr. Otto A. Ohland, an official of Time-Life, alleges that Councilman Williams was advised on November 29, 1971, three months before the City Council adopted the ordinance granting the franchise to Sentinel, that Time-Life was responsible for the design and management of the system but did not have any ownership interest. As a consequence, Time-Life was not listed as an owner in the application for certification. Then, following the award of the franchise, Time-Life completed initial engineering studies and is now engaged in employing persons to operate and manage the system. Finally, Sentinel disputes Councilman Williams' allegation that the only written data supplied local officials concerned Sentinel's proposed rates. On June 2, 1971, "voluminous material" was filed with the Board of Works in response to the Mayor's invitation to interested applicants.

6. We are asked to reconsider our earlier action on the basis of allegations obviously pertinent to our initial action. However, the petitioner is obliged to meet certain standards of proof and pleading. We find that these standards have not been met. The mandate of Section 1.106(c) of the Rules is clear, and Clearview has failed to respond even minimally to its requirements. Therefore, on procedural grounds alone, the petition is defective and could be rejected. Nonetheless, we have examined the merits to determine whether the public interest would be served if reconsideration were granted and our earlier action set aside. We have concluded that reconsideration is not justified in this case.

7. Petitioner invites us to substitute our judgment for the judgment of the majority of local officials. In Paragraph 51 of the *Clarification of the Cable Television Rules and Notice of Proposed Rule Making and Inquiry*, FCC 74–384, 46 FCC 2d 175 (1974), we stated that:

> We do not intend to act as a "court of last resort" for those who disagree with the decisions of their elected officials. * * * We presume the regularity of action by local officials. Except in the extraordinary case, if local officials assure us that they have made appropriate investigations of the franchisee's qualifications and that the public has had an opportunity to participate in the process we will not delve further into the particular methodology or decision factors in any specific franchise grant.

Measured by the above-described criteria, there is nothing on the record set before us that convinces us to set aside our earlier action. We have been assured by the Mayor of Muncie that extensive public hearings were conducted by the City's Board of Works, and the franchise was finally awarded only after approval by the City Council. As to Councilman Williams' contentions, we find them to be speculative and un-

[2] Sentinel states that the system will be constructed with 30 channels and have two-way capability; that the system will serve all areas of the community as rapidly as is feasible; that it will maintain a local business office; and that the system "will be better than required" by the Commission's technical standards.

substantiated. In any event, if Councilman Williams wishes to challenge the actions of the City Council, the proper forum for such a challenge is not before this Commission but rather through local judicial process. Accordingly, our earlier action is reaffirmed; we believe the franchise and proceedings attending its award to Sentinel substantially comply with Section 76.31 of the Rules.

In view of the foregoing, the Commission finds that reconsideration of its action in *Sentinel Communications of Muncie, Inc.*, FCC 73–150, 39 FCC 2d 620 (1973), would not be consistent with the public interest.

Accordingly, IT IS ORDERED, That the "Petition for Reconsideration" filed by Clearview Cable of Richmond, a Joint Venture, IS DENIED.

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

FCC 74-533

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Notification to
SIERRA MADRE BROADCASTING CO.
Concerning Field Investigation of Station KMAX-FM, Arcadia, Calif., Indicating Lack of Control Over Foreign Language Broadcasts

MAY 22, 1974.

Information obtained during the Commission's field investigation into the affairs of Station KMAX-FM, Arcadia, California, indicates that the station has not maintained adequate control over its foreign language broadcasts. KMAX has broadcast seven foreign language programs each week during time sold to "time brokers" for resale. You indicated during the field investigation that the station had made arrangements in 1969 with Mr. Juan Llibse to monitor the foreign language broadcasts in exchange for advertising his school, Poly Language Institute, Passadena, California. However, you stated that you had not broadcast any spots for Mr. Llibse's school in 1973 because the commercial tape had worn out and was not replaced. You further stated that Mr. Llibse and his students spot-check all the foreign language programs but they do not submit any written reports to you because you instructed Mr. Llibse not to report unless there was a "bad report" to be made. You acknowledged that Mr. Llibse has never submitted a "bad report" and has, instead, told you that the foreign program announcers are "all good Americans." You stated that prior to the field investigation you had not talked to Mr. Llibse for about a year, and at that time he told you that he and his students were still monitoring. However, you further stated that you did not know whether Mr. Llibse listens to every foreign language program, that you never asked him to monitor the Arabic language program, and that you did not know whether that program was ever checked.

You stated that some of the time brokers broadcast their foreign language programs live from the station's studio and can therefore give the station operator on duty a translation. However, you acknowledged that none of the station's operators is fluent in any of the foreign languages which are broadcast. Therefore, although you asserted that you instructed the station's operators that there should be no controversial or political broadcasts and that the operators should learn what was being broadcast if the foreign language time brokers read news on their programs, you acknowledged that the operators must accept what the brokers say the substance of the broadcast will be, since the operators do not understand the foreign language employed. You asserted that the station's operators can identify the commercials on the foreign language program tapes because the same spots appear in the

same order for each program, and that the operators can record the exact time for the commercial spots on the program log because of the pauses before and after each spot.

You stated that you had informed all the foreign language time brokers that they could not broadcast about my controversial or political matters and in your original contracts with many of these brokers you required them to furnish you a translation of the commercial material to be broadcast and a program log with a list of the commercials and the approximate times that they would appear during the program. However, you acknowledged that these contract requirements were not always followed. In those instances where the brokers do submit English translations of the broadcast material, you acknowledge that you have never had the translation checked by another person who understood the language.

Mr. Juan B. Llibse told the staff investigators that he started monitoring foreign language broadcasts for KMAX in the beginning of 1970 and that for this service he receives advertisements on KMAX for his school, although he has not replaced his worn-out tape. Mr. Llibse said that he and his wife listen to the Italian and German programs on KMAX but that the last time they listened was from two to six months previously. Mr. Llibse stated that he did not believe in continuous checking because he did not see a need with these kind of programs. According to Mr. Llibse, the foreign language portions of these programs contained mostly commercials and very little news. Mr. Llibse said that his teachers would have the students translate these foreign broadcasts, except for the Yugoslav program. No written reports were submitted to KMAX, Mr. Llibse stated, because there was an understanding that if there was nothing "wrong" heard on any of the foreign language programs there was no reason to call KMAX. Mr. Llibse stated that he had last talked to you about five or six months previously.

According to Mr. Llibse, Ms. Heidi Mair, a former instructor at his school, listens to KMAX's German programs and he told her to check whether "anything improper" was being broadcast and, if there was, to inform him of it. Mr. Llibse said, also, that Mr. Pappadopolis, a former Greek instructor at his school, told him he was listening to KMAX's Greek programs about two years ago, and that he was still listening when Mr. Llibse talked to him three or four months ago. According to Mr. Llibse, Mr. Verduyn Lunel, a translator and teacher, has been monitoring KMAX's Dutch programs for about one and a half years, and had been instructed by Mr. Llibse to check for "anything immoral or against the government" or forbidden by the government. Mr. Llibse had talked to Mr. Lunel a couple of months previously but not about monitoring. Mr. Llibse said that he asked a printer named "Peter" (Mr. Llibse did not know the last name), whom he had met socially several times, to listen to KMAX's Yugoslav programs although Mr. Llibse did not recall exactly what he told "Peter" to listen for. Mr. Llibse said that "Peter" started one and a half years ago to monitor KMAX and that he last saw "Peter" six months ago. Mr. Llibse stated that the monitor of the Arabic program was Ms. Florence Matter, a former Poly language instructor, but he did not know whether she had done any monitoring lately.

The Commission in its Public Notice of March 30, 1967 (FCC 67–368, Mimeo 95960, *Commission Policy on Licensee Control of Foreign Language Broadcasts*) reminded its licensees of their responsibilities to maintain adequate control over all programming including that in foreign languages. The Notice further stated:

> Essential to the exercise of proper license responsibility in this matter is knowledge of the content of such broadcasts. Commission inquiry reveals that a number of licensees have no familiarity with the foreign language and, thus, no knowledge of the content of such broadcasts. They explain their practices as follows: (1) they permit only persons of established reputation for judgment and integrity to use their facilities; (2) copies of commercial announcements used on foreign language programs must be submitted in advance in English translation; (3) recording of all programs are made and retained for further reference. We do not regard such procedures, in and of themselves, as sufficient to insure knowledge of and control over foreign language programming.
>
> Licensee responsibility requires that internal procedures be established and maintained to insure sufficient familiarity with the foreign language to know what is being broadcast and whether it conforms to the station's policies and to requirements of the Commission's Rules.
>
> Failure of licensee to establish and maintain such control over foreign language programming will raise serious questions as to whether the station's operations serves the public interest convenience and necessity.

The Commission in its Memorandum Opinion and Order adopted March 7, 1973 (FCC 73–269, Mimeo 93882) affirmed the intent of its Public Notice of March 30, 1967 (*Commission Policy on Licensee Control of Foreign Language Broadcasts*), and again reminded licensees of their responsibilities for control over foreign language programming. However, it cited various ways in which licensees may fulfill their obligations in this area in addition to those set forth in *Trans America Broadcasting Corp.* (33 FCC 2d 606, 620, 1970).

In its Order of March 7, 1973, the Commission further stated as follows:

> The Commission rejected NAB's suggestion that a background check on a performer would assure licensee control and letting a performer monitor his own program would be as effective as arranging for another person to monitor it. It disavowed any requirement that every foreign language broadcast must be pre-auditioned by a paid outside monitor. In many cases such programs are broadcast by regular station employees who have demonstrated that they are familiar with all the requirements, the Commission said, adding that this does not mean that the licensee can disclaim responsibility for the contents of such broadcasts any more than he can disclaim responsibility for violations by his English-language announcers.

It said that as long as the licensee recognizes his responsibilities he need not engage an outside monitor to listen to every broadcast by a non-employee in a language with which none of his employees is familiar, but he can hire the outside monitor on a spot basis—assuming that the monitor has been made familiar with the station's policies and the Commission's requirements regarding programming (obscenity, personal attacks, Fairness Doctrine, false or misleading advertising, lottery information, fraudulent schemes, political broadcasts, limitation on total commercial content, sponsorship identification).

The Commission said that a third party, independent of the performer and responsible only to the licensee, is likely to be more reliable regarding violations than the performer himself. Pointing out that many foreign language programs are broadcast by independent time-

brokers, the Commission said that there may be a major conflict of interest between the time-broker's tendency to increase his income by accepting dubious commercials and his duty to observe the rules. It said that it had discovered many instances in which time-brokers were devoting more time to commercials than the licensee's policy permitted, and other cases where time was sold to competing political candidates at different rates or higher than regular commercial rates. The Commission said that "mere reliance" on a foreign language broadcaster, who is not a station employee, to report his own violations to the licensee "obviously would not be likely to assure licensee exercise of his responsibilities."

The Commission said that there may be circumstances in which an unpaid monitor would serve as efficiently and responsibly as one who is paid, but it pointed out that it is the licensee's responsibility to assure that all requirements are complied with in his programming, and if unpaid monitors are used, the licensee should take special precautions to assure himself that his purpose in engaging a monitor is being fulfilled.

The Commission said that while it had suggested some guidelines, it would not lay down any rigid formula for achieving control of foreign language programming, but would still leave to the licensee the determination of what particular procedures are necessary for his control of programming.

From the above, it appears that your procedures have been grossly inadequate to "insure sufficient familiarity with foreign languages to know what is being broadcast and whether it conforms to the station's policies and to requirements of the Commission's Rules."

The engaging of "voluntary" monitors who are apparently unpaid (no spots were broadcast for Mr. Llibse in 1973 and his "monitors" were not paid) in itself raises questions as to the regularity of the monitoring that may be expected and the degree of attention that will be given the programs by the monitors. You did not require monitor reports. You did not enforce the requirement in your time-broker contracts for translations of commercial matter. You did not contact Mr. Llibse for nearly a year (1973). You did not know whether the Arabic programs had ever been monitored, since you had not asked Mr. Llibse to do so. You relied on what the foreign language announcer told the station's operators the substance of the broadcast would be. All of these facts indicate that KMAX did not adequately ascertain the content of the foreign language broadcasts.

It also appears that KMAX has not adequately informed Mr. Llibse or his monitors of its programming policies or the Commission's rules and policies relating to programming so that Mr. Llibse or his monitors would be able to report to KMAX possible infractions of rules or deviations from policy. According to Mr. Llibse, his instructions to his monitors were either to check whether anything "improper" was being broadcast or to check for anything immoral, against the government, or forbidden by the government, or he could not recall what instructions were given. Mr. Llibse apparently did not give nor receive any instructions regarding, for example, the fairness doctrine, sponsorship identification, false or misleading advertising, lottery information, or the limitation or total commercial content.

Moreover, it does not appear that your instructions to the foreign language broadcasters, that they could not broadcast about any controversial or political matters, necessarily served the public interest, since it is one of a licensee's prime responsibilities to present discussion of public issues. *Editorializing Report*, 13 FCC 1246 (1949); *Red Lion Broadcasting Co., Inc.* v. *FCC*. 395 U.S. 369 (1969).

In light of the above, it appears that you have been seriously delinquent in the exercise of the responsibility required of a licensee to insure knowledge of and control over its programming. You are requested to submit within 20 days of the date of this letter a detailed statement as to your future policies and procedures to insure such knowledge and control. Your response and the operation of the station during the remainder of the current license term will be considered in connection with your next application for renewal of license of KMAX–FM.

Commissioner Robert E. Lee concurring in the result; Commissioner Quello not participating.

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

FCC 74-606

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 Between Tucson, Ariz., and San Antonio, Tex., 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 120 4kHz Circuits on a Cost-Sharing, Not-for-Profit Basis to Southern Pacific Communications Co.	File No. W-P-C-76

MEMORANDUM OPINION AND ORDER
AND TEMPORARY AUTHORIZATION

(Adopted June 12, 1974; Released June 18, 1974)

BY THE COMMISSION:

1. We have under consideration the April 17, 1974, application of Southern Pacific Transportation Company (SPTC), a licensee in the Railroad Radio Service, for a waiver of requirements under Part 93 of our rules; and the application (File No. W-P-C-76) filed on April 17, 1974, by Southern Pacific Communications Company (SPCC) for temporary authorization, under Section 214 of the Communications Act of 1934, as amended, and Section 63.04 of the Commission's Rules, to provide specialized common carrier service between Tucson, Arizona, and San Antonio, Texas, utilizing frequencies licensed to SPTC, for a period of time not to exceed 6 months. The leased facilities would be made available to SPCC on a not-for-profit, cost-shared basis.

2. SPCC is authorized as a specialized common carrier to provide service between San Francisco, California, and Tucson, Arizona, and between San Antonio, Texas, and St. Louis, Missouri. The portions of the system between San Francisco and Tucson and between San Antonio and Dallas, Texas, are operational. Service between San Antonio and Dallas is being provided on facilities leased from SPTC pursuant to temporary Commission authority which expires August 15, 1974.

3. Certain other segments of SPCC's planned facilities are under construction, including those between Tucson and San Antonio. This portion of its facilities will be completed and operational not later than December of 1974. However, SPCC has prospective customers who desire service over them immediately. In these circumstances, SPCC has applied for special temporary authority to provide service over this route to enable it to initiate service now. In this regard, it asks for a waiver of pertinent provisions of Part 93 of our rules to permit it to lease 120 4kHz circuits of SPTC's microwave system on a not-for-profit, cost-shared basis. This would be for a short period of time, not more than six months.

4. CPI Microwave, Inc. (CPI) filed an opposition to this proposal. It maintains that the proposal should not be granted, because SPCC has failed to show the impossibility of completing its common carrier facilities immediately or of leasing facilities from another carrier. It also argues that because SPCC has advanced its sharing plan in three stages (this is the third request for waiver), it has prevented us from assessing its overall plan for the use of SPTC's microwave system. Finally, CPI asserts that a grant of these requests would permit SPCC an unfair competitive advantage over CPI in the specialized common carrier field.

5. The basic arguments made by CPI have been, in substance, passed upon by us in considering the prior requests for waivers. See *Southern Pacific Communications Company, et al.*, 43 FCC 2d 483 (1973) at pp. 484–485; and *Southern Pacific Transportation Company, et al.*, 46 FCC 2d —— (1974), at paragraphs 2 through 9. The situation, here, is essentially the same. SPCC's microwave facilities are under construction. There is no intention on its part to delay completion of those facilities through the use of SPTC's private microwave system. The request is for a definite period of time, six months, only; and there is no showing that the relief asked will be to the detriment of the public or, for that matter, will impact adversely, in any meaningful way, on CPI's operation. In these circumstances, we are disposed to grant the limited relief requested, for we see in it an advantage to the public in having additional common carrier facilities available at an early date. As in the two prior instances, we will require SPCC and SPTC to file a report showing the contributions to capital and operating costs made by SPCC to SPTC for the use of the specified facilities. This report is to be submitted within thirty days from the expiration of the six-month period designated, herein.

6. Accordingly, IT IS ORDERED, That, the provisions of Section 93.2 and pertinent requirements of Subpart H of Part 93 of the Rules ARE WAIVED to permit Southern Pacific Communications Company to lease, on a not-for-profit, cost-shared basis, from Southern Pacific Transportation Company, 120 4kHz circuits of its microwave facilities, authorized in the Railroad Radio Service, between Tucson, Arizona, and San Antonio, Texas, for a period commencing immediately and terminating not later than December 12, 1974.

7. IT IS FURTHER ORDERED, pursuant to Section 214 of the Communications Act of 1934, as amended, and Section 63.04 of the Rules, That Southern Pacific Communications Company's request for special temporary authorization to lease and operate 120 4kHz circuits

for specialized communications common carrier services between Tucson, Arizona, and San Antonio, Texas, IS GRANTED, for a period commencing immediately and terminating not later than December 12, 1974.

8. IT IS FURTHER ORDERED, That Southern Pacific Transportation Company SHALL FILE A REPORT with the Commission, not later than December 12, 1974, showing the contributions to capital and the operating costs made by Southern Pacific Communications Company for the use of the leased facilities, including the dates of commencement and termination of such use, and the extent to which the leased facilities were employed by SPCC.

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

FCC 74R-225

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of	
THE WESTERN CONNECTICUT BROADCASTING CO. (WSTC), STAMFORD, CONN.	Docket No. 19872 File No. BR-1150
For Renewal of License	
RADIO STAMFORD, INC., STAMFORD, CONN.	Docket No. 19873
For Construction Permit	File No. BP-19162

MEMORANDUM OPINION AND ORDER

(Adopted June 13, 1974; Released June 18, 1974)

BY THE REVIEW BOARD:

1. The above-captioned mutually exclusive applications for a standard broadcast station in Stamford, Connecticut, were designated for hearing by Commission Memorandum Opinion and Order, 44 FCC 2d 673, released November 21, 1973, 38 FR 32971, published November 29, 1973. The Review Board now has before it a petition to enlarge issues, filed January 21, 1974, by Radio Stamford, Inc. (Radio Stamford).[1] Petitioner requests the Board to enlarge the issues as follows:

(a) To determine whether the broadcast interests of Western Connecticut Broadcasting Company and the other media under common control of Kingsley Gillespie and Gillespie Brothers, Inc., constitute an undue concentration of control of the media of mass communication in Stamford, Greenwich, Darien and New Canaan, Connecticut.

(b) To determine the efforts made by Western Connecticut Broadcasting Company to ascertain community needs and interests of the area to be served and the means by which the applicant proposes to meet those needs and interests.

(c) To determine whether Western Connecticut Broadcasting Company has misrepresented its past performance and programming in Docket No. 19043 and its renewal applications.

(d) To determine the facts and circumstances surrounding the civil suit by George Waas, Michael Conetta, Ray Marlin Rothermel and Victor Rubell against The Western Connecticut Broadcasting Company in The Fairfield County (Connecticut) Court of Common Pleas, No. 95596.

(e) To determine the facts and circumstances surrounding the civil suit by Paul Kuczo, Jr. and John J. P. Nocerino against Western Connecticut Broadcasting Company, Kingsley Gillespie

[1] Other related pleadings before the Board for consideration are: (a) opposition, filed March 11, 1974, by Western Connecticut Broadcasting Company; (b) comments, filed March 11, 1974, by Broadcast Bureau; (c) reply, filed April 17, 1974, by Radio Stamford and (d) reply, filed April 22, 1974, by Radio Stamford.

and Julian Schwartz, Civil Action No. B–623, in the United States District Court for the District of Connecticut.

(f) To determine whether Western Connecticut Broadcasting Company has complied with Section 1.65 of the Commission's Rules regarding the reporting of civil suits, and the effect of such compliance or non-compliance upon the basic qualifications of the licensee.

(g) To determine whether Western Connecticut Broadcasting Company has followed a racially discriminatory policy in its overall programming practices.

(h) To determine whether Western Connecticut Broadcasting Company has made reasonable and good faith efforts to assure equal opportunities in its employment policies and practices in accordance with Section 73.125 of the Commission's Rules.

(i) To determine whether, in light of the evidence adduced pursuant to the foregoing issues, a grant of the Western Connecticut Broadcasting Company application would serve the public interest, convenience and necessity, or whether a comparative demerit or demerits should be assessed against Western Connecticut Broadcasting Company.

(j) To determine, pursuant to the standard comparative issue, the benefits and detriments to be derived from the proposed duplication of programming on WSTC and WSTC–FM, and whether a comparative demerit should be assessed against Western Connecticut Broadcasting Company.

The petition was filed late. However, Radio Stamford asserts that it worked diligently to prepare its petition to enlarge and that it was necessary to make several trips to Stamford to interview witnesses and to obtain supporting affidavits. Moreover, petitioner contends that substantial periods of counsel's time were required in the pretrial discovery procedures. Radio Stamford also contends that in any event the overwhelming public interest significance of the subject matter warrants the acceptance of its petition. The Broadcast Bureau, in its comments, takes the position that Radio Stamford has long been aware that its application would be designated for hearing with the mutually exclusive application for renewal of Station WSTC and that the delay in filing the petition is therefore unwarranted. The Board is satisfied that the nature of this case and the subject matter of the petition warrant the modest delay incurred by Radio Stamford in filing this petition.[2] Accordingly, the petition will be considered on its merits.

2. *Undue Concentration of Control of Mass Communications in Greater Stamford Area.* Radio Stamford contends that Western Connecticut Broadcasting Company (Western), the licensee of Station WSTC, is part of a newspaper-radio media monopoly in the greater Stamford area. In support of this contention, petitioner alleges: that Kingsley Gillespie is president, treasurer, director and 51.6% stockholder of Western; that Western is the licensee of Stations WSTC and WSTC–FM, the only broadcast stations in Stamford, Connecticut: that Gillespie Brothers, Inc. owns and publishes the *Stamford Advo-*

[2] See *The Western Connecticut Broadcasting Company (WSTC)*, FCC 74R–167, —— FCC 2d ——, 30 RR 2d 271.

cate, the only daily newspaper in Stamford; and that Kingsley Gillespie is president, treasurer and a director of Gillespie Brothers, Inc. Radio Stamford further alleges that Gillespie Brothers also publishes the *Greenwich Time*, a daily evening newspaper in the town of Greenwich, Connecticut, one of the communities served by WSTC. Moreover, Radio Stamford contends that Kingsley Gillespie has exercised his control over the mass media of communications in the Stamford area in a manner inconsistent with the public interest. More specifically, Stamford alleges that certain candidates for political office have been discriminated against by the Gillespie radio stations and newspapers, both as to news coverage and commercial advertising. To support these allegations, petitioner attaches the affidavits of six Stamford residents who contend that in one way or another the Gillespie controlled media has discriminated against them. Radio Stamford also contends that the Gillespie controlled media has unfairly dealt with the employees of Station WSTC, when they undertook to organize a labor union at WSTC. To support this contention, petitioner attaches affidavits of two former employees of the station. In view of the foregoing allegations, Stamford contends that the issues should be enlarged to determine whether the Gillespie controlled media of mass communications constitutes an undue concentration of control contrary to the public interest.

3. In opposition, Western and the Bureau argue that all of the allegations advanced by Radio Stamford can be considered under the diversification of media of mass communications criterion of the standard comparative issue, and that the Commission has specifically stated that *ad hoc* renewal proceedings are not the appropriate vehicle for restructuring broadcast ownership. Moreover, Western contends that any questions concerning Mr. Gillespie's ownership of radio stations in Stamford, Connecticut, were litigated in 1945 when he purchased Station WSTC. At that time the Commission found, after an evidentiary hearing, that the public interest would be served by a grant of his application to acquire WSTC, then the only broadcast station in Stamford. Western and the Bureau both contend that in renewal situations the mere concentration of control of media is not sufficient to warrant a disqualification issue. Rather, they argue, specific allegations of abuse are necessary to warrant the inclusion of such an issue. In this connection, Western argues that the specific allegations of abuse set forth by Radio Stamford constitute nothing more than a proper exercise of editorial judgment on the part of the management of WSTC and the *Stamford Advocate*.

4. The Review Board has considered the voluminous pleadings and affidavits in this matter and is persuaded that the factual showing made by Radio Stamford warrants the inclusion of a concentration of control issue. It is satisfied that common control of the only two radio stations and the only daily newspaper in Stamford, Connecticut, a city of over 100,000 persons is comparable to the factual situation which existed in Cheyenne, Wyoming, where the Commission designated a renewal application for hearing under a concentration of control issue.[3]

[3] *Frontier Broadcasting Company*, 21 FCC 2d 570, 18 RR 2d 521 (1970).

Moreover, the several affidavits submitted by Radio Stamford raise factual questions concerning the possibility of misuse by Western of its controlling position. While we agree with Western that differences as to editorial judgment should not form a basis for such an issue, the allegations set forth in the various affidavits raise a question as to whether the Gillespie controlled media may have been governed in its choice of news and its management of commercial advertising by something more than editorial judgment. Accordingly, an appropriate issue will be added. *Cf. Midwest Radio-Television, Inc.*, 16 FCC 2d 943 (1969); and *Chronicle Broadcasting Co.*, 16 FCC 2d 882, 15 RR 2d 993 (1969).

5. *Ascertainment of Community Needs Issue.* Radio Stamford contends that Western's survey of community needs and interests contains serious misrepresentations. Specifically, Radio Stamford alleges that Western's reporting of a response to one of its questionnaires made by Mr. Alphonsus J. Donahue, now a principal of Radio Stamford, was "slanted to avoid any reference to local media." In support of this allegation, it has attached the affidavit of Mr. Donahue which states that the response reported after his name in the column under "major problems" did not include a solution which he had suggested, namely that "problems should be thoroughly aired by all our news media. If any of the questions are [in] issue both sides of the problem should be explored with much closer scrutiny to the reports and statements of city officials." Mr. Donahue also avers that he is not a retired industrialist, as stated by Western, but president of Donahue Sales, a division of Textron. Petitioner also alleges that Western's failure to refer to slanted or distorted media and media monopoly as community problems indicates that Western either failed to adequately survey the community or ignored the results of its survey. In support of this allegation, Radio Stamford relies upon affidavits of Stamford principals: Mrs. Sylvia Dowling, Edmond Davis, Alphonsus J. Donahue, Henry Lee and William Brett. Each state that they interviewed community leaders and each includes one or more interview summary sheets which show that the person interviewed felt that some aspect of local news media coverage was a problem. Based on these allegations, Radio Stamford urges the Board to add a *Suburban* issue.

6. In opposition, Western points out that it carefully considered the response of Alphonsus J. Donahue and included the community problems noted by him in its list of major community problems. However, Western notes, Mr. Donahue's suggested solution was not included since WSTC had not undertaken to list solutions to the problems elicited. As to its description of Mr. Donahue as a retired industrialist, Western contends that it made an innocent error.

7. The requested issue will be denied. The fact that Mr. Donahue's suggested solution to a problem was not included in WSTC's exhibit does not warrant the conclusion that Western has slanted its exhibit or that it has not properly ascertained the needs and problems of its community. Nor do the affidavits of Radio Stamford's principals, with their several attachments, warrant the inclusion of the requested issue. The fact that several citizens of Stamford reported to Radio Stamford some problems with existing mass media and that this problem was not

ascertained by WSTC in its exhibit does not *per se*, raise substantive questions concerning Western's ascertainment survey.

8. *Misrepresentation Issues.* Radio Stamford argues that WSTC has failed to program as promised, and that it has seriously misrepresented its programs and operating policies both in its renewal application and before the Presiding Judge in the revocation proceeding. Petitioner sets forth twenty specific areas in which it contends Western misrepresented facts to the Commission. In support of those specific allegations, it relies upon a lengthy affidavit of Mrs. Sylvia Dowling, together with some fifteen exhibits. The Board has carefully considered the voluminous pleadings submitted both in support of and in opposition to this requested issue and is satisfied that the showing made by Radio Stamford does not warrant the inclusion of a misrepresentation issue. We shall not here undertake to treat in detail each of the specific allegations set forth by Radio Stamford. However, we note that in many instances the alleged misrepresentations are subject to varying interpretations. Some of the statements do not allege any facts that are indicative of misrepresentation. In many others, the supporting affidavits consist of conclusory statements of the affiants, which do not provide the specific factual basis for enlargement of the issues required by Section 1.229 of the Commission's Rules. To a large extent Radio Stamford's request for a misrepresentation issue is based upon a critical examination of the minute details of the record of WSTC's revocation hearing and its renewal application. The minor omissions and discrepancies discovered by petitioner clearly do not raise a substantial question of misrepresentation. Moreover, as noted by the Bureau and Western, to the extent that these matters have a bearing on WSTC's past operating record, they may be considered under the existing standard comparative issue. The requested misrepresentation issue will, therefore, be denied.

9. *Rule 1.65 Issue.* Radio Stamford asserts that WSTC failed to amend its renewal application to report four civil actions involving the station and its ownership. Specifically, Radio Stamford alleges that on or about November 4, 1970, a suit was filed against Connecticut Broadcasting Company by George Wass, Michael Cornetta, Ray Marling Rothermel and Victor Rubell alleging denial of accrued WSTC profit-sharing plan benefits; that on April 19, 1971, a suit was filed against Gillespie Brothers, Inc. and other defendants by Polycast Technology Corp. of Stamford, alleging a conspiracy to ruin Polycast's business; that in June, 1971, a suit was filed against Gillespie Brothers, Inc. by Paul R. Doddona, president of Polycast, alleging libel by the *Stamford Advocate;* and finally that on October 19, 1972, a suit was filed against Western Connecticut Broadcasting Company, Kingsley Gillespie and Julian Schwartz by Paul Kuczo, Jr. and John J. P. Nocerino alleging political censorship and discrimination by WSTC in election campaigns. Petitioner points out that none of these lawsuits were reported by WSTC in its renewal application or in subsequent amendments thereto. In its opposition, WSTC notes that the first three listed lawsuits were filed prior to the date of the filing of its last renewal application and that no information concerning these civil suits is elicited by the renewal application. Moreover, it contends that the civil suit filed by Kuczo and Nocerino is not required to be re-

ported because it is a civil action based upon the same facts as were elicited by the Commission in the WSTC revocation proceeding.

10. The requested 1.65 issue will be denied. *Southern Broadcasting Co.*, 38 FCC 2d 461, 25 RR 2d 1138 (1972), relied on by petitioner to support its request, does not stand for the proposition that the civil actions cited by Radio Stamford should have been reported. The renewal application form, at section 1, paragraph 2, requires the reporting of suits in federal courts involving the monopolization of radio communication or the use of unfair competitive methods. None of the civil actions fall within this definition. An issue was added in the *Southern* case because the lawsuits concerned were based on anti-trust allegations. Nor does the Kuczo-Nocerino civil action require reporting. Section 1.65 requires the applicant to advise the Commission of changes whenever the information in the application is no longer substantially accurate and complete in all significant respects.[4] Radio Stamford has made no showing that WSTC's renewal application is deficient in this regard. This is particularly true since the Commission in its designation Order specified that the record in the revocation proceeding could be considered in the present comparative hearing.[5]

11. *Racial Discrimination Issues.* Radio Stamford has requested an issue based on an alleged racially discriminatory policy in the programming practices of Station WSTC, and an issue to determine whether Western has made reasonable and good faith efforts to assure equal employment opportunities in accordance with Section 73.125 of the Commission's Rules. To support these requests, Radio Stamford alleges that WSTC's only regular programming for the black minority was a program known as "Black Viewpoint", that this program was terminated early in 1972; and that it was not restored until after Radio Stamford filed its competing application in the fall of 1972. Moreover, petitioner alleges that "Black Viewpoint" did not in fact represent the point of view of the black people in Stamford, Connecticut. Furthermore, Radio Stamford alleges that the WSTC management continually harrassed the participants on "Black Viewpoint", threatened its cancellation and edited the program. Petitioner also notes that the producer of the program stated that he was not permitted to produce the program live and that frequently the program tapes were lost and the program not aired as scheduled. As further evidence of a racially discriminatory policy, Radio Stamford alleges that the National Association for the Advancement of Colored People worked out an arrangement with the station to carry a special memorial service for the late Martin Luther King, Jr., but that at the last moment the station refused to carry the program. In support of these allegations, Radio

[4] Section 1.65 reads as follows: "Each applicant is responsible for the continuing accuracy and completeness of information furnished in a pending application or in Commission proceedings involving a pending application. Whenever the information furnished in the pending application is no longer substantially accurate and complete in all significant respects the applicant shall as promptly as possible and in any event within 30 days, unless good cause is shown, amend or request the amendment of his application so as to furnish such additional or corrected information as may be appropriate."

[5] Nor has Radio Stamford justified its request that special issues to explore the facts concerning the above described lawsuits be included. To the extent that the facts underlying the above described lawsuits are relevant, they may be elicited under the concentration of control issue or as part of WSTC's past operations record under the comparative issue.

Stamford relies upon the affidavits of Edward White, a director of the West Main Street Community Center, a recreational and cultural center which provided the personnel and material for "Black Viewpoint"; Calvin Johnson, the moderator for "Black Viewpoint"; and Mrs. Eleanor Parks-Davis, President of the Stamford chapter of the National Association for the Advancement of Colored People. Radio Stamford also contends that WSTC does not comply with the Commission's Rules requiring equal employment opportunity for minority persons. To support this contention, it relies on the affidavit of Mrs. Parks-Davis to the effect that WSTC had at the time of the affidavit, no black employees. In addition, Joseph Franchina, formerly Acting Program Director attests that he was never instructed to encourage minority group applications and that, contrary to WSTC's representation in its renewal application that in the past year the station only had two job vacancies, there were in fact six employees hired by WSTC.

12. The allegations of White, Johnson, Parks-Davis and Franchina do not raise specific questions of fact concerning the programming policies and employment practices of WSTC which require addition of issues to this proceeding. See *Stone* v. *FCC*, 466 F. 2d 316 (D.C. Cir. 1972). A careful reading of the White and Johnson affidavits makes it quite clear that the affiants do not feel that they were given as much latitude to present the "black viewpoint" as they would have liked. On the other hand, the affiants have not alleged particular instances of censorship or even editorial supervision which would provide a basis for the requested issue. While the program "Black Viewpoint" was discontinued for a short time, it is now being carried by the Station. Moreover, Mrs. Parks-Davis concedes that, in addition to "Black Viewpoint", the station occasionally carries programming of interest to the black community. With respect to the Martin Luther King Memorial service, WSTC has responded that two services were discussed with Mrs. Parks-Davis and that one was carried live and the other was covered as local news. As to its hiring practices, Western responds that the principles stated in its application do in fact govern its hiring practices and that, as of the time its opposition was filed, it had two full time black employees and one part time black newsman. Western notes that 10% of its full time employees are black and 11.1% of its part time employees are black, while 7.3% of the population of Stamford is black.[6] Neither Mrs. Parks-Davis nor Franchina have cited any specific instances of racial discrimination in employment by Western. Petitioner's general assertions of discrimination do not, in light of Western's response, require a special issue. The questions raised regarding past programming, however, may be fully explored under the existing comparative issue.

13. Radio Stamford also contends that the merits of its independent AM proposal versus the duplicate AM–FM operation proposed by

[6] In response to Franchina's allegation that Western's statement that "it had only two vacancies in the last year" was not true, Western states that the statement resulted from an error. Western alleges that the station in fact placed 13 persons, including both full and part time, on the payroll in 1971; that the tenure of many of these employees was quite short, a few days to a few months; and that one black person was employed in 1971 in a responsible position and even using the total of 13 as a base, 7.7% of the employees placed on the payroll in 1971 were black, Western notes.

WSTC should be included in the existing comparative issue. While the Board is not aware of a situation where an applicant has contended that the public interest would be served by severing an AM station from a commonly owned FM station because the programming of one station is duplicated by the other, it is satisfied that the question can properly be explored under the existing comparative issue since such exploration is regularly permitted when one applicant for an FM station proposes substantial duplication of its AM programming and the other does not.

14. For the foregoing reasons the petition to enlarge issues filed by Radio Stamford on January 21, 1974, will be granted to the extent indicated herein and denied in all other respects.

15. Accordingly, IT IS ORDERED, That the petition to enlarge issues filed by Radio Stamford, Inc., on January 21, 1974 IS GRANTED to the extent indicated herein and DENIED in all other respects;

16. IT IS FURTHER ORDERED, That the issues in the above captioned proceeding are enlarged as follows:

> To determine whether the broadcast interests of the Western Connecticut Broadcasting Company and the other media of communication controlled by Kingsley Gillespie and Gillespie Brothers, Inc. constitute an undue concentration of control of the media of mass communications in Stamford, Connecticut.

17. IT IS FURTHER ORDERED, That the burden of proceeding with the introduction of evidence under the issue added herein SHALL BE on Radio Stamford, Inc., and the burden of proof SHALL BE on The Western Connecticut Broadcasting Company.

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

FCC 74–600

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of THE WESTERN UNION TELEGRAPH CO. Charges, Regulations, Classifications, and Practices for Voice Grade Private Line Service (High Density-Low Density Rate Structure)	Docket No. 20080

MEMORANDUM OPINION AND ORDER

(Adopted June 12, 1974; Released June 12, 1974)

BY THE COMMISSION:

1. The Commission has before it for consideration tariff revisions filed by The Western Union Telegraph Company (Western Union) under Transmittal Nos. 6975 and 6976 providing for a restructuring of its rates for voice grade private line services by decreasing generally the rates for such services over so-called high density routes and increasing generally the rates over low density routes. Western Union states that its tariff filing is made as a necessary competitive response to AT&T's Hi-Lo rate structure, which is currently under investigation in Docket No. 19919 (*See* 44 F.C.C. 2d 697 (1974) and 45 F.C.C. 2d 88 (1974)), and that absent such revisions, it will suffer substantial loss of revenues and earnings to AT&T. Western Union further states that of 80 customers who will be affected by this tariff filing, only 10 will receive increases.

2. No petitions to reject or to suspend have been filed. The Commission believes, however, that this filing raises the same questions of lawfulness that are in issue in the investigation of AT&T's Hi-Lo rate structure in Docket No. 19919. Therefore, we will set the instant Western Union filing for investigation, issue an accounting order, and hold the hearings herein in abeyance pending a final decision in Docket No. 19919.

3. Accordingly, IT IS ORDERED, That, pursuant to the provisions of Section 4(i), 201–205 and 403 of the Communications Act, as amended, an investigation and hearing is hereby instituted into the lawfulness of the aforementioned schedule of charges, regulations, practices and classifications filed by Western Union under Transmittal Nos. 6975 and 6976.

4. IT IS FURTHER ORDERED, That, pursuant to Section 204 of the Communications Act, such tariff revisions ARE HEREBY SUSPENDED for one day and Western Union shall, in the case of all increased charges and until further order of the Commission, keep accurate account of all amounts received by reason of such in-

creases specifying by whom and in whose behalf such amounts are paid.

5. IT IS FURTHER ORDERED, That, the issues to be included in the investigation and the procedures to be followed herein will be set forth in a subsequent order of the Commission and that pending such order, the proceedings herein shall be held in abeyance.

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

FCC 74-596

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of WTWV, INC., TUPELO, MISS. For Construction Permits	Files Nos. BPTI-1849, BPTI-1850, BPTI-1851, BPTI-1852, BPTI-1853, BPTI-1854, BPTI-1855, BPTI-1856, BPTI-1857, and BPTI-1858

MEMORANDUM OPINION AND ORDER

(Adopted June 5, 1974; Released June 12, 1974)

BY THE COMMISSION: COMMISSIONER QUELLO NOT PARTICIPATING.

1. On February 6, 1974, this Commission, by Memorandum Opinion and Order (FCC 74-134, released February 13, 1974), approved the applications of WTWV, Inc. ("WTWV"), licensee of WTWV(TV), channel 9, Tupelo, Mississippi, for an intercity relay system between the transmitter of WTWV and commonly owned station WHTV(TV) in Meridian, Mississippi. In so doing, the Commission dismissed objections by Southern Television Corporation ("Southern"), licensee of WTOK-TV, channel 11, in Meridian. Southern now seeks reconsideration of our decision.[1]

2. WTWV would urge the Commission to dismiss Southern's bid for reconsideration as "patently defective," for failing to allege facts concerning events or circumstances which have changed since Southern's last opportunity to present such matters to the Commission, or facts previously unknown to Southern which it could not have discovered through ordinary diligence. WTWV claims that such a result is required by section 1.106(c) of the rules. However, those are not the only circumstances under which a petition for reconsideration may be granted. Our understanding of Southern's Petition is that Southern believes the Commission's decision was erroneous as a matter of law, and we will therefore proceed to examine the merits of that claim.

3. Southern's first contention is that the Commission has misinterpreted its basic objection to WTWV's applications. A brief synopsis of the developments leading up to this controversy is here in order. On March 7, 1972, the Commission approved an assignment of the license of WHTV(TV), channel 24, Meridian, to Central Television, Inc. ("Central"), a corporation controlled by the controlling stock-

[1] Southern's Petition for Reconsideration was filed March 14, 1974; WTWV, Inc., submitted an Opposition to the Petition on April 12, 1974; and Southern filed a Reply to the Opposition on April 24, 1974. Although the Petition is against our authorization of an intercity relay system, it is clear that Southern's substantive objections are to the manner of programming WTWV(TV) and WHTV(TV).

holder of WTWV, Inc. The station is operated as a 100-percent satellite of WTWV(TV). In the applications granted by our decision which Southern is here contesting, WTWV sought authority to establish intercity relay facilities to deliver the programming of WTWV(TV) directly to the Meridian satellite. Southern objected, requesting that the Commission, if it did not deny the applications, condition any operating authority to prevent WTWV/WHTV from capitalizing on what Southern contended was an unfair competitive advantage in the Meridian market. Southern asked that we require WTWV and Central to contract separately for each station for the purchase of syndicated programs, and that they be forbidden to transmit over the facilities of the intercity relay system any programs on which Southern had not been afforded an opportunity to bid. Southern complained that if it were required to compete for programming with the combined purchasing power of the two stations, the result would be a decline in the quality of syndicated non-network programming offered by WTOK–TV, which, Southern noted, provides the only Grade B service to an area of some 1,102 square miles, containing 17,054 people.[2]

4. In our decision, we said (paragraph 7):

> The crux of Southern's complaint * * * is * * * the alleged anti-competitive impact of the joint buying power of WTWV/WHTV on the market for syndicated programs. Southern claims WTOK–TV will never be able to compete with the WTWV/WHTV consortium in the purchase of syndicated programs because WTWV/WHTV, representing the combined market areas of Meridian and Tupelo, will always be able to offer a greater purchase price.

Southern now says "the concern was *not* that a WTWV/WHTV combination can pay more *for exclusivity in Meridian* than Southern. Rather, the fundamental problem presented was that WTWV/WHTV could, *by virtue of its combined purchasing power*, acquire *Meridian exclusivity* at a lesser price than Southern could." (Emphasis in the original.) Southern then proceeds, by way of illustration, to hypothesize that WTWV would have to pay $50 per half-hour program for exclusive rights in Tupelo, plus $10 to $20 additional for exclusive rights in Meridian. "Southern," it concludes, "would have to outbid WTWV's $60 to $80 offer . . . ," rather than $35, which it assumes would have bought the program if it were not bidding against the combined stations. That seems to us to be another way of stating what we have already said before, that Southern will not be able, or will not choose, to match the price offered by WTWV/WHTV.

5. However Southern's argument is described, it does not affect the basic rationale for our decision (paragraph 11): "As a general rule, we decline to involve ourselves in attempting to equalize competition on a market-by-market basis." As we have stated elsewhere, "While the Commission has desired stations to become competitive in terms of height and power, it has never intended to guarantee a station's economic growth and success equal to that of another station." *West Michigan Telecasters, Inc.*, 22 FCC 2d 943, 945 (1970).

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[2] In our February 6, 1974, decision we stated that the actual impact on WTOK–TV's ability to purchase syndicated programs was "too speculative to be assayed with any definiteness." Nothing in the Petition for Reconsideration warrants a change in that conclusion.

6. Southern also takes issue with our statement with respect to Docket No. 18179, *In the Matter of Amendment of Part 73 of the Commission's Rules with Respect to the Availability of Television Programs Produced by Non-Network Suppliers to Commercial Television Stations and CATV Systems*, "That proceeding does not . . . bear on the situation raised in this case." (Paragraph 11.) In its petition Southern views the statement as "entirely gratuitous." If that is so, we do not see how it can be grounds for reconsideration. But Southern also says the statement is "indefensible," as inconsistent with the policy objectives of Docket No. 18179. In that proceeding, by our *Memorandum Opinion and Order* adopted April 25, 1974, we adopted proposed rule 73.658(m), which prohibits a licensee from obtaining exclusive rights to a program from a non-network program supplier in a community more than thirty-five miles from the community of license (FCC No. 74–382). According to Southern, the existence of a satellite in Meridian has resulted in a "form of unfair competition which the new . . . limitation was expressly intended to avoid," namely geographic exclusivity for WTWV(TV) "far more distant from Tupelo than 25 miles."[3] There is not one word in the *Report and Order* or *Memorandum Opinion and Order* in Docket No. 18179 which would indicate that a satellite station is not just as much entitled to a 35-mile radius of geographic exclusivity as a non-satellite station.

7. Southern also cites alleged procedural defects in our decision which it says require grant of its petition for reconsideration. One is our decision not to consolidate the applications of WTWV with the application (BPCT–4548) of American Public Life Broadcasting Company for a construction permit for a new television broadcast facility to operate on channel 30, in Meridian, as a one hundred-percent satellite of WAPT–TV, Jackson, Mississippi, against which Southern has filed a "Petition to Deny, or, Alternatively, to Condition Grant." Consolidation of applications for hearing is an area where the Commission has left itself a great deal of discretion. Section 1.227(a) of the rules provides that the Commission, "upon motion or upon its own motion, will, *where such action will best conduce to the proper dispatch of business and to the ends of justice* (emphasis supplied), consolidate for hearing" cases involving the same applicant or substantially the same issues, or applications presenting conflicting claims. In this case, Southern claims consolidation should have been granted. "[s]ince the Commission's disposition of the matter might have a direct precedential effect on the WAPT satellite proposal, and since the basic issue of the integrity of the Meridian market could not be decided piecemeal. . . ." In our view, consolidation was not warranted because consideration of the channel 30 application and WTWV's intercity relay application involved a number of different issues, including some issues raised by Southern in its Petition to Deny the channel 30 application, and different alternatives for Commission action. In any event, Southern's concerns on that score should

[3] The First Report and Order in Docket No. 18179, adopted July 26, 1973, 42 FCC 2d 175, adopted a version of section 73.658(m) providing for a maximum "zone" of exclusivity of 25 miles from the community of license.

now be substantially alleviated by the dismissal without prejudice of the channel 30 application at the request of the applicant (as of May 21, 1974).

8. Finally, we turn to Southern's contention that the Commission erred in dismissing, in addition to its Petition to Deny the intercity relay system applications, pleadings directed against other aspects of the WTWV/WHTV operation, including a November 21, 1972, "Petition to Deny Application to Remain Silent, and to Condition Future Operating Authority," and a January 9, 1973, "Petition to Modify Temporary Authority and to Condition Future Operating Authority." In our decision, we stated that these petitions requested "substantially similar relief" and would be "subsumed in our disposition of [the] case." (Footnote 2.) Southern now protests that its January 9, 1973, petition, and subsequent letters by counsel, "raised substantial questions directed to the Commission's statutory authority under section 309(f) of the Communications Act . . . to grant the series of temporary authorizations requested by WTWV(TV)," and should not have been dismissed.

9. On September 8, 1972, the Commission granted WTWV special authority to operate in accordance with an outstanding construction permit (BPCT–4394), pending completion of construction and filing of proof-of-performance data on its Number Two transmitter in connection with a tendered license application, for a period ending December 5, 1972. On November 30, 1972, that authority was extended through February 4, 1973; and on January 31, 1973, it was further extended through May 4, 1973. In the interim, on January 9, 1973, Southern filed the petition described above, requesting the same condition on WTWV's operating authority requested in the petition against the intercity relay system. By letter of counsel dated May 2, 1973, Southern protested the Commission's January 31, 1973, action granting WTWV a 90-day extension of its special authority without reference to Southern's pending petition, and also claiming that the second extension was in violation of section 309(f) of the Communications Act of 1934 as amended, which provides for a single 90-day extension of special temporary authority. Neither of these matters was raised in Southern's January 9, 1973, "Petition to Modify Temporary Authority and to Condition Future Operating Authority," because, simply, the Petition was filed before either of these matters of concern arose; i.e., with the Commission's January 31, 1973, extension of WTWV's temporary authority. Therefore, there was no error when the Commission dismissed the Petition after thoroughly considering the identical substantive arguments in connection with its decision to grant the WTWV intercity relay applications.

10. Furthermore, Southern has not demonstrated how it was prejudiced by the action of January 31, 1973, to grant WTWV's request for an extension, without reference to the pending petition. A "Petition to Modify Temporary Authority and to Condition Future Operating Authority" is not formally recognized under our rules, except as an informal request for Commission action under section 1.41. As such, Southern was, at most, entitled to consideration of the request some time before the issue became moot. Inasmuch as the request looked to

the future operations of WTWV, the issue did not become moot until the Commission laid it to rest with its decision to grant WTWV's intercity relay applications, when it concluded that a request in another context for the same relief was without merit.

11. As for the other matter raised by the May 2, 1973, letter of Southern's counsel, section 309(f) of the Communications Act applies only to applications within the ambit of section 309(b). And section 309(c)(2)(C) of the Act specifically excepts from the operation of section 309(b) any application for "a license under section 319(c) or, pending application for or grant of such license, any special or temporary authorization to permit interim operation to facilitate completion of authorized construction or to provide substantially the same service as would be authorized by such license." Thus, the Commission was not limited by section 309(f) in extending WTWV's special authorization.

Accordingly, IT IS ORDERED, That the Petition for Reconsideration filed on March 14, 1974, by Southern Television Corporation, IS DENIED, and the Commission's decision of February 6, 1974, IS AFFIRMED.

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