FEDERAL COMMUNICATIOI COMMISSION REPORTS

✦

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

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March 1, 1940, to August 1, 1941

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[1] Resigned June 30, 1940.
[2] Appointed Mar. 20, 1941.
[3] Resigned June 30, 1941.
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DECISIONS

FEDERAL COMMUNICATIONS COMMISSION

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of [1] PRESQUE ISLE BROADCASTING CO., ERIE, PA. For Construction Permit.	DOCKET No. 5426

January 26, 1940

George O. Sutton and *Arthur H. Schroeder* for the applicant; *Paul M. Segal* and *George S. Smith* for Station WWSW; *Horace L. Lohnes* and *Maurice M. Jansky* for Stations WLEU and WJBK; *Elmer W. Pratt* and *Joseph F. Pratt* for the Cuyahoga Valley Broadcasting Co.

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF THE COMMISSION

FINDINGS OF FACT

1. This proceeding arose upon an application for construction permit filed by the Presque Isle Broadcasting Co., requesting authority to construct a radiobroadcast station in the city of Erie, Pa., to operate unlimited time on the frequency 1500 kilocycles with daytime power of 250 watts and nighttime power of 100 watts. The Commission was unable to determine from an examination of the application that a grant thereof would serve public interest, convenience and necessity, and designated the matter for hearing before an examiner. The hearing was held on February 24, 25, and 27, 1939. Later, on the Commission's own motion, the matter was remanded to the examiner for further hearing which was held on October 11, 1939. Thereafter, proposed findings of fact and conclusions were filed by the applicant and by the WLEU Broadcasting Corporation (WLEU), and Walker & Downing Radio Corporation (WWSW), respondents.

2. The population of the State of Pennsylvania is 9,631,350; that of the city of Erie is 115,967; that of the metropolitan district is

[1] Petition for rehearing filed by WLEU Broadcasting Co. on April 2, 1940, denied on June 25, 1940. See Decision and Order on Petition for Rehearing, 8 F. C. C. 5.

129,817; and that of Erie County (in which the city of Erie is located) is 175,277 (1930 U. S. Population Census). Station WLEU is the only broadcasting station which is located in Erie or which renders primary service to the entire city. This station operates on the frequency 1420 kilocycles with power of 250 watts, unlimited time. During the day additional service which is satisfactory for portions of the residential sections of the city is received from two other stations, and during the same period some service of a satisfactory character is available in portions of the surrounding rural areas from nine additional stations.

3. Assuming that the site of the proposed station will be located near the center of Erie, the populations within the various contours of the proposed station are estimated as follows: Daytime, within the 10 millivolt-per-meter contour, 110,170; within the 2 millivolt-per-meter contour, 132,120; and within the 0.5 millivolt-per-meter contour, 146,590; and nighttime, within the 10 millivolt-per-meter contour, 89,960; and within the 2.5 millivolt-per-meter contour (to which the station will be limited), 127,110. The proposed station will deliver a signal of 25 millivolts per meter to the entire business section of the city of Erie. During daytime hours of operation it will serve 99.7 percent, and during nighttime hours 97.5 percent of the total population within the metropolitan area of Erie.

4. The operation of the station proposed herein would not be expected to cause objectionable interference within the normally protected contours of any existing broadcasting stations or to the services proposed in applications for broadcast facilities which were pending before the Commission on the date on which the instant application was designated for hearing.

CONCLUSIONS

1. The applicant is legally, technically, financially, and otherwise qualified to construct and operate the proposed radiobroadcast station.

2. The operation of the proposed station would not adversely affect, by virtue of objectionable interference or otherwise, the service of any existing broadcasting stations or the service proposed in pertinent pending applications for broadcasting facilities.

3. The proposed program service is diversified and well-balanced and is expected to render substantial benefits to the listeners in the area to be served.

4. As above shown, only one broadcasting station, namely WLEU, is now located in the city of Erie. This station is, therefore, the only radio facility available in Erie for the broadcasting of local

programs and is the only medium in this city through which merchants and commercial establishments may advertise their businesses or products by means of radio broadcasting. A second broadcasting station located in Erie would compete with Station WLEU for the patronage of advertisers and for listening audiences. The competition between two local broadcasting stations would be expected to result in improvements in the program service of each and corresponding benefits would thus be received by members of the listening public. It is apparent that such competition will promote the public interest.

5. A grant of the application will serve public interest, convenience and necessity.

The proposed findings of fact and conclusions of the Commission were adopted by the Commission as the "Findings of Fact and Conclusions of the Commission" on March 13, 1940.

Decided June 25, 1940

DECISION AND ORDER ON PETITION FOR REHEARING

On March 13, 1940, after a hearing, the Commission issued an order granting the application of Presque Isle Broadcasting Co. for construction permit to erect a new radiobroadcast station at Erie, Pa., to operate on the frequency 1500 kilocycles with a power output of 100 watts night, 250 watts local sunset, unlimited time, and adopted as final its proposed findings of fact and conclusions issued January 25, 1940.

On April 2, 1940, WLEU Broadcasting Co., licensee of Station WLEU, Erie, Pa., a party to the hearing before the Commission on the above-entitled application, filed a petition for rehearing requesting us to reconsider our decision of March 13, 1940, granting the Presque Isle Broadcasting Co. application and to deny the same, or reopen the proceedings and order a rehearing of that application. On April 11, 1940, Presque Isle Broadcasting Co. filed its opposition to this petition for rehearing.

Station WLEU is authorized to use the frequency 1420 kilocycles with 250 watts power, unlimited time. No question of electrical interference is involved in this proceeding since the frequency used by petitioner and that requested by the applicant are sufficiently separated so that both may be used in the same locality without either causing electrical interference to the other.

Petitioner urges as error that we have not made findings of fact upon all of the issues set forth in our notice of hearing on the application of Presque Isle Broadcasting Co.

The Communications Act of 1934 (sec. 309 (a)) provides that if, upon examination of any application for a station license, the Commission shall determine that public interest, convenience, or necessity will be served thereby, it shall authorize the issuance thereof in accordance with said finding. If, however, upon such examination, the Commission cannot so determine, this section of the act requires us to notify the applicant thereof, fix and give notice of a time and place for hearing, and afford such applicant an opportunity to be heard. Had we been able to determine from an examination of the Presque Isle Broadcasting Co. application that the granting thereof would serve public interest, convenience, or necessity, we would have granted the same without a hearing. Not being able so to find, the application was duly heard upon specified issues. The Communications Act of 1934 does not require us to make findings on any particular issues when we grant an application after a hearing any more than it does in a case where we grant an application without a hearing. It is sufficient in our opinion that the Commission determine that public interest, convenience, or necessity would be served by the granting of the license.

Petitioner further contends that the Commission erred in failing to make findings to support the conclusions that applicant is legally, technically, financially, and otherwise qualified to construct and operate the proposed station; that the operation of the station will not adversely affect the service of any existing stations or service proposed in pending applications; that the proposed program service is diversified and well-balanced and is expected to render substantial benefits to the listeners in the area to be served; that the competition between two local broadcasting stations would be expected to result in improvements to the program service of each station and benefits to the listening public; and that a grant of the application will serve public interest, convenience and necessity.

The following facts appear in the record amply supporting the Commission's conclusions:

1. Applicant, Presque Isle Broadcasting Co., is a corporation. All of its officers, directors, and stockholders are citizens of the United States. The corporation is capitalized for $25,000, consisting of 250 shares of stock of the par value of $100 each, of which 20 shares have been issued and 230 shares have been subscribed for as follows: Jacob A. Young, 102 shares; William P. Sengel, 103 shares; Gerald P. O'Connor, 25 shares. Mr. Young has a net worth of $59,059.24, Mr. Sengel's net worth is $60,100, and Mr. O'Connor's net worth is $8,772.

2. The balance sheet of the applicant corporation as of February 6, 1939, shows total assets of $25,000, consisting of $6,381 cash; unpaid balance on capital stock subscriptions, $17,350; organization expenses are listed at $1,268.90. Subsequent to the date of this balance sheet, the corporation borrowed $8,000 on a 6 percent 90-day note, which increased the cash on hand to $14,381.10 and created a current liability of $8,000.

3. The estimated cost of the proposed station is $16,635, estimated yearly expenses of operation are $24,967, and tentative contracts in the amount of $24,761.56 have been signed by advertisers.

4. The population of Erie, Pa., is 115,967 and that of Erie County, in which the city of Erie is located, 175,277, according to the 1930 United States Census. According to the Federal Census statistics in 1933, the annual retail sales in the city of Erie totaled $27,813,000 and those in Erie County totaled $35,517,000; during the same year, annual wholesale sales in the city of Erie totaled $13,824,000 and those in Erie County totaled $14,856,000. For the same period, service, amusements, and hotel receipts in the city of Erie totaled $2,919,000, while those in Erie County totaled $3,470,000. It is estimated that this city handles approximately 2 million tons of coal per year.

(5) Station WLEU is the only broadcast station in Erie, or which renders primary service to the entire city. This station is affiliated with the Blue Network of the National Broadcasting Co. and devotes approximately 40 percent of its time to such network programs. Although Station WLEU does broadcast a number of local programs (including those of some of the organizations to which the Presque Isle Broadcasting Co. will extend its facilities), the applicant's proposed program service includes certain of these programs on a regular or more frequent basis, and other local programs will be broadcast by the applicant which are not now available to the community. The applicant proposes to render a diversified program service, local in character, which includes, among other things, religious, educational, civic, governmental, and other public service programs, news and weather reports, entertainment features, agricultural subjects, and dramatic presentations. All sustaining programs will be broadcast free of charge.

6. There are 75 churches, 25 charitable organizations, 30 educational institutions, and more than 100 civic and similar social organizations located in Erie. Potential sources of talent and other program material include the Erie Conservatory of Music, with 350 pupils; the Erie Symphony Orchestra, a local musicians' union composed of 320 members; a local dramatic society; and members of the teaching staff and student body of the Erie Center of the University of Pittsburgh.

Petitioner urges that the following language in the decision of the Supreme Court in *Federal Communications Commission* v. *Sanders Brothers Radio Station*, 309 U. S. 470 (Mar. 25, 1940), requires us to reconsider our decision and reopen the proceedings to consider the effect of the proposed competition on the public:

> This is not to say that the question of competition between a proposed station and one operating under an existing license is to be entirely disregarded by the Commission, and, indeed, the Commission's practice shows that it does not disregard that question. It may have a vital and important bearing upon the ability of the applicant adequately to serve his public; it may indicate that both stations—the existing and the proposed—will go under, with the result that a portion of the listening public will be left without adequate service; it may indicate that, by a division of the field, both stations will be compelled to render inadequate service. * * *

We believe petitioner has misconstrued the opinion of the Supreme Court and the language quoted above in urging that the Commission should make findings on the effect of the proposed competition between the new station and petitioner's station. The Supreme Court has made it perfectly clear that "Congress intended to leave competition in the field of broadcasting where it found it" and to permit "a licensee to survive or succumb according to his ability to make his programs attractive to the public." A licensee is not entitled to be protected from competition and the Commission is under no duty to make findings on the effect of such competition on the licensee. If, however, the financial qualification of the applicant depends on his ability to compete for business with the existing licensee, the question of the effect of competition on the applicant is an important fact to be considered by the Commission in determining whether the applicant is financially qualified, for the statute requires an applicant to be financially qualified to operate a station. The two illustrations given by the Court are both instances where the financial qualification of an applicant is involved, for if as a result of prospective competition a new station would not be able to render adequate service, or both the existing and the new station could not survive, it is obvious that the applicant would not be financially qualified within the meaning of the statute. There is manifestly a vital distinction between the situation where an applicant is not financially qualified, either because of competition or otherwise, and the case where the applicant is financially and otherwise qualified but where the effect of granting his application will be to drive an existing station out of business due to increased competition.

The statutory requirement that an applicant be financially qualified to operate a station makes relevant in some cases the effect which the competition of the existing licensee will have on the applicant for

where the applicant's financial qualification depends on his ability to compete successfully for business with the other licensees, the Commission cannot grant him a license unless he can show that he can derive sufficient revenue from operation to make him financially qualified. In the case at bar the petitioner does not allege that the applicant is not financially qualified in all respects but, in effect, is complaining of the competitive effect which applicant's successful operation of its new station will have on petitioner. The statute, however, does not require the Commission to consider the effect which the competition of the new station will have on the existing station, for by hypothesis the existing licensee was financially qualified when the license was granted to him and the statute makes his success or failure in the broadcasting business depend solely on "his ability to make his programs attractive to the public." The Supreme Court guarded against the possibility of its opinion being construed as requiring the Commission ever to consider the effect which the competition of a new station would have on the existing licensee, by adding the following language immediately after the portion of the opinion quoted above:

> These matters, however, are distinct from the consideration that, if a license be granted, competition between the licensee and any other existing station may cause economic loss to the latter. If such economic loss were a valid reason for refusing a license this would mean that the Commission's function is to grant a monopoly in the field of broadcasting, a result which the act itself expressly negatives, which Congress would not have contemplated without granting the Commission power of control over the rates, programs, and other activities of the business of broadcasting.

It is inescapable that the intent of Congress would be completely nullified and the Supreme Court's declaration concerning the desirable effects of competition would be rendered entirely meaningless if the Commission were required to deny to a new station permission to enter the field merely because it would adversely affect the ability of an existing station to continue to serve the public. It is a direct contradiction of the proposition that free competition is the basic principle of the American system of broadcasting to contend that the Commission is under a duty to consider the effect which competition may have upon the ability of an existing licensee to continue to serve the public. It is implicit in the idea of free competition that public interest cannot possibly be adversely affected by the failure of an existing station to survive due to increased competition, because this result cannot follow unless the new station's competitive efforts enable it to render a superior public service. In other words, under the statute, competition which an applicant has to face may be important because his financial qualifications may

depend on it; but the effect of competition with which an existing licensee is confronted as a result of the operation of a new station need not be considered by the Commission under the statute because whatever that effect may be, it is only the end-product which a system of free competition is designed to produce.

There is nothing in the record to indicate that the operation of the applicant's station in Erie will deprive petitioner's station WLEU of any advertising revenue which it now receives, nor is there any evidence upon which we could properly base a finding that our grant of the application of Presque Isle Broadcasting Co. will result in depriving the listening public of any service which it now receives. On the contrary, the record supports our finding that a grant of the instant application would serve public interest, convenience, and necessity, because the listening public would have the benefit of improved service, and a wider choice of programs.

As we said in the *Spartanburg Advertising Co. case, supra:* * * * In the radio broadcast field public interest, convenience, and necessity is served, not by the establishment and protection of monopolies, but by the widest possible utilization of broadcast facilities. Competition between stations in the same community inures to the public good because only by attracting and holding listeners can a broadcast station successfully compete for advertisers. Competition for advertisers, which means competition for listeners, necessarily results in rivalry between stations to broadcast programs calculated to attract and hold listeners, which results in the improvement of the quality of their program service. This is the essence of the American system of broadcasting. * * *

Therefore, it is ordered, this 25th day of June 1940, that said petition be, and it is hereby, denied.

8 F. C. C.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of
MACKAY RADIO [1] & TELEGRAPH CO., INC.
(DELAWARE)
For Modification of Fixed Public Service Licenses of Point-to-Point Telegraph Stations WJD, WDU, WMK, and WID at Brentwood, N. Y., to add Rome, Italy, as a primary point of communication.

DOCKET Nos. 4396, 4397, 4398, 4399.

Decided March 13, 1940

Howard L. Kern and *John H. Wharton* on behalf of Mackay Radio & Telegraph Co., Inc., The Commercial Cable Co., and Postal Telegraph-Cable Co.; *Chadbourne, Wallace, Parke & Whiteside* by *Stannard Dunn* on behalf of Alfred E. Smith and George S. Gibbs, trustees of Postal Telegraph-Cable Co., intervenors; *Manton Davis, Frank W. Wozencraft*, and *Chester H. Wiggin* on behalf of R. C. A. Communications, Inc.; *Ralph H. Kimball* on behalf of Western Union Telegraph Co.; *James A. Kennedy* and *Annie Perry Neal* on behalf of the Federal Communications Commission.

FINDINGS OF FACT, CONCLUSIONS OF THE COMMISSION, AND ORDER

BY THE COMMISSION (WALKER AND THOMPSON, COMMISSIONERS, DISSENTING; CASE AND PAYNE, COMMISSIONERS, NOT PARTICIPATING):

FINDINGS OF FACT

These proceedings arose upon applications of Mackay Radio & Telegraph Co., Inc. (Delaware), filed May 4, 1936, for modification of fixed public service licenses of point-to-point telegraph stations WJD, WDU, WMK, and WID at Brentwood, N. Y., to add Rome, Italy, as a primary point of communication. The Commission, being unable to determine from an examination of the applications that the granting thereof would serve public interest, convenience, or necessity, designated them for public hearing in accordance with

[1] Applicant's request for rehearing denied by the Commission on May 7, 1940.

the provisions of section 309 (a) of the Communications Act of 1934.

Notice of the time and place of hearing and of the issues involved was served upon the applicant and upon the International Telephone and Telegraph Corporation, Postal Telegraph-Cable Co., Commercial Cable Co., All America Cables, Inc., Commercial Pacific Cable Co., Cuban All America Cables, Inc., The Western Union Telegraph Co., The French Telegraph Cable Company, R. C. A. Communications, Inc., Press Wireless, Inc., and Globe Wireless, Ltd. The applications were heard before an examiner from June 21 through July 2, 1937, at which time the applicant and parties in interest appeared and submitted evidence.

The examiner submitted his report (II–31) on February 28, 1938, recommending that the applications be denied. Exceptions to the report and a request for oral argument were filed by the applicant, and oral argument was had before the Commission on June 2, 1938.

The issue is whether, under the facts presented, public interest, convenience, or necessity would be served by granting the modification of licenses requested. The applications under consideration involve merely the addition of a new primary point of communication for licenses now outstanding and there is, therefore, no question as to the qualifications of the applicant.

Mackay Radio & Telegraph Co., Inc., (Delaware), the applicant herein, is a common carrier of telegraph communications incorporated under the laws of Delaware and engaged in domestic and foreign radiotelegraph service. At present the applicant does not handle traffic between the United States and Italy and its proposal is to establish a direct high-speed radiotelegraph circuit between the two countries in competition with the carriers now in the field. The station in Italy with which it proposes to communicate is operated by an Italian company known as Italo Radio, which company is also the correspondent of R. C. A. Communications, Inc. (hereinafter referred to as RCAC).

There are now four carriers offering a general public telegraph service between the United States and Italy. The only direct circuit is that of RCAC, which company in conjunction with Italo Radio offers a radiotelegraph service between New York and Rome. That direct radiotelegraph circuit is operated by means of both long and short wave transmitters. During the period April 1, 1936, to March 31, 1937, its maximum speed of transmission eastward was 90 words per minute on high frequency and 35 words per minute on low frequency although the average operating speed was only 28 words per minute on high frequency and 10 words per minute on low frequency. In the westward direction, its maximum transmission speed was 100 words per minute on high frequency and 50

words per minute on low frequency, as contrasted with an average operating speed on high frequency of 25 words per minute, and on low frequency 12 words per minute. RCAC is equipped to transmit and receive messages to and from Italy, respectively, as fast as its correspondent in Italy can receive and transmit them.

There are three cable companies offering service between the United States and Italy. The Western Union Telegraph Co. (hereinafter referred to as Western Union) and the Commercial Cable Co. (hereinafter referred to as Commercial Cable) operate cables between the United States and the Azores where they connect with a cable of the Italian cable company, Italcable, which is operated between the Azores and Italy. The combined operating speed of the Western Union cables is approximately 110 words per minute in each direction. Commercial Cable uses one channel for its Italian traffic with an operating speed of about 40 words per minute in each direction and could use two additional channels with a combined operating speed of approximately 70 words per minute in each direction if traffic demanded additional capacity. Italcable operates a two-channel cable between the Azores and Italy with a speed of 53 words per minute in each direction. Cable messages on these circuits require a manual relay at the Azores, and the through transmission speed between the United States and Italy is limited to the capacity of the cable between Italy and the Azores. The French Telegraph Cable Co. (hereinafter referred to as French Cable) has cables from New York to Paris at which point messages to Italy are transferred to radio circuits between Paris and Italy. Its cable capacity for Italian traffic is 15 to 20 words per minute and the capacities of the radio circuits beyond Paris vary from 75 to 125 words per minute.

In addition to these normal routes used for the handling of Italian traffic, there are alternate routes of the various carriers which might be used, some of which are circuitous and none of which are as direct as the normal routes. It does not appear that many of the alternate routes would be economically satisfactory for use over a long period, although some of the alternate cable routes were in use prior to the installation of the Italian cable and a witness for Western Union testified that they would be economically feasible.

The amount of telegraph traffic between the United States and Italy has decreased consistently from a peak of 14,245,985 words in 1929 to a low of 8,131,770 words in 1936. During the period from April 1, 1936 to March 31, 1937, the total traffic handled between the two countries was 8,297,451 words or a daily average of approximately 27,658 words. Of that traffic about 16½ percent was within the urgent and ordinary classifications and could be handled by any

of the American carriers so far as their facilities extend in a very short period of time.

The average daily traffic eastbound could be transmitted on the RCAC circuit alone at an average speed of 28 words per minute in about 10 hours, and the westbound traffic at an average speed of 25 words per minute in a little more than 7 hours. The available capacity of the RCAC circuit is, of course, substantially greater than the average operating speed used in handling the existing traffic of that carrier. The daily eastbound traffic could be handled by the American cable carriers on the channels assigned to the Italian traffic, so far as their facilities extend, in less than 2 hours a day, and the same traffic on the cables of Italcable from the Azores to Italy would require less than 5½ hours. Westbound, the average daily traffic would require approximately 3½ hours on the cables of Italcable and from the Azores to the United States could be handled in about 1¼ hours. It is apparent, therefore, that the existing facilities are ample to adequately handle the available volume of traffic between the United States and Italy.

The actual speed of service in the case of either radio or cable is dependent upon the handling by the respective Italian correspondents. There is evidence that delays of from 9 to 62 minutes occur on traffic from Italy via Commercial Cable and there is delay of about 2 minutes due to the relay at the Azores on Commercial Cable eastbound messages. The indication is, however, that the delay on westbound messages occurs largely while the messages are in the hands of the Italian company or the Italian landline system and are not attributable to the handling by the American cable companies. No accurate estimate of transmission delays and operating speeds can be made in the absence of evidence as to the speed of handling at the Italian end of the circuits. Studies introduced by RCAC show an average transmission time of 14.9 minutes for full rate ordinary traffic eastward and 36.6 minutes westward. It appears that delivery of a message from any point in Italy to the United States requires from 25 to 35 minutes from the time of filing on the Western Union circuits, as an average on traffic of all classes. There has been no complaint from the telegraph using public as to the service available over the existing systems. The record does not show that the maximum delay of traffic at peak hours is such as to detract from the quality of the service offered.

The applicant, with little expense, could make available sufficient facilities to institute the service intended. It appears that the equipment and the frequencies with which the proposed circuit would be established are adequate to offer a satisfactory service. It further appears that the Italian correspondent is equipped to handle the ap-

plicant's traffic. Both of the American radiotelegraph carriers, however, would operate with the same station of the same correspondent. There is no evidence that the foreign correspondent would provide facilities permitting simultaneous operation with competing American circuits, and it is expected that the service from Italy to the United States would be by means of a forked circuit operated on the same transmitters of Italo Radio. The Italo Radio circuit is already forked to other countries and the applicant proposes to fork its circuit to Rome with its circuits to Vienna and Budapest. A forked circuit is a circuit operated simultaneously to two or more points of communication, usually in different countries. When traffic is being transmitted to one of the points on the forked circuit, no traffic can be handled to the other points on the circuit at the same time. Therefore, a forked circuit is not as efficient from a service standpoint as is a circuit operated to a single point. Each additional point to which the circuit is forked further reduces the service efficiency of the circuit. Moreover, where a circuit is forked for two carriers at the same locality, each must maintain its receiving station in readiness at all times and thereby is forced to receive transmissions not intended for it.

There is little basis upon which to contrast the service of the existing and proposed radiotelegraph circuits in view of the fact that both would operate with the same facilities of the same correspondent, although testimony indicates that the existing direct radio service would be more continuous than that of the applicant, due to the use of both long wave and short wave by RCAC, as opposed to the use of short wave only by the applicant. The applicant believes, however, that its direct circuit would be superior to the indirect circuits of the cable companies. Messages handled via the facilities of the American cable companies require manual relay at the Azores, and in some instances a further relay at Malaga, Spain. They are, therefore, indirect in both operation and communication.

Direct circuits are unquestionably of value in making available continuous and efficient service and in minimizing loss of time and danger of error. Circuits communicating directly with the country of destination have the further advantage of eliminating to a large extent potential administrative or political action by intervening countries through whose territory indirect circuits pass. Were there no further consideration, it could be concluded that the desirable situation would be to have all circuits direct, both from an operating and a communication standpoint. However, the growth of both cable and radio has been such that there are in existence many circuits which are indirect in either service or communication, or both.

Cost factors and the efficient utilization of existing plant require consideration in the regulation of communications systems serving the public, particularly when it is the duty of the Commission to maintain reasonable rates. Furthermore, the Commission believes that, insofar as economic stability permits, both cable and radio are desirable for the maintenance of continuous and reliable service between the United States and foreign countries, both media of communication having certain definite physical advantages and disadvantages.

It is sufficient to say in the present case that, although the cable circuits are indirect, the record does not show that the service of the cable companies is in any respect inadequate for traffic of the nature of that available, or inferior to that of the existing direct radiotelegraph circuit. Nor does it appear that the proposed service of the applicant would, in fact, be superior to that of the existing competing companies.

Reference has been made hereinabove to the fact that the existing direct radiotelegraph carrier is equipped to transmit messages to Italy as rapidly as Italo Radio can receive them, and to receive messages from Italy as rapidly as Italo Radio can transmit them. It is understood that the foreign correspondent does not intend to increase its present equipment for purposes of handling the traffic of the applicant. In the absence of added equipment at the foreign terminal, there is no indication that the national defense would be enhanced by the proposed operation. It was testified on behalf of the respondent RCAC, that, in the event of urgent need for additional facilities as in the case of interruption to the cables, it could have many additional circuits in operation within a day. The existing fixed public press circuits of Press Wireless, Inc., between the United States and Italy, although at present used exclusively for press traffic, could be operated in the general public service if needed for purposes of national defense. In addition to the normal routes of the cable companies there are a number of alternate cable routes which might be used for Italian traffic. The record indicates that the applicant itself could open circuits to Rome within a short period of time. It appears, therefore, that even under the stress of abnormal conditions there would be little difficulty in maintaining an adequate service for the use of the public and the needs of the national defense.

The Italian correspondent of the American cable companies is Italcable, a cable company subsidized by the Italian Government and operating internationally. This company owns and controls Italo Radio which operates radiotelegraph circuits between Italy and foreign points. These associated companies handle all of the interna-

tional cable and radiotelegraph communications of Italy. Italo Radio is the correspondent of RCAC, and is the proposed correspondent of the applicant. The domestic land line system in Italy is a government monopoly under the jurisdiction of the Italian Post Office. Under present practice all unrouted telegraph traffic from Italy to the United States is sent via the facilities of Italcable, which company has leased landlines between Rome and other commercial centers in Italy.

Service between the American cable companies and Italcable is carried on pursuant to the terms of a contract between the three companies frequently referred to as the "Tripartite Agreement." Under this contract the American companies transfer to Italcable at the Azores all cable traffic filed with them or their connecting companies destined to Italy. In return, Italcable transfers to Western Union and Commercial Cable all traffic specifically routed via their respective lines, and in addition the same proportion of each class of westbound traffic, unrouted or routed via Italcable destined to North America, as the total eastbound traffic handed to that company by each of the American cable companies bears to the combined eastbound traffic of both of the American cable carriers.

A contract between RCAC and Italo Radio sets forth the conditions under which radiotelegraph communication between the two companies is maintained. That agreement provides that RCAC shall transmit over the circuit operated by the two companies all traffic within its control destined to Italy or intended for transit through Italy unless otherwise routed by the sender, and reciprocally that Italo Radio shall transmit over that circuit all traffic within its control destined to the United States or intended for transit through the United States unless otherwise routed by the sender.

The proposed service of the applicant is to be controlled by an agreement entered into between the applicant and Italo Radio to become operative 30 days after approval by the Governments of the United States and Italy. Under the provisions of this contract the applicant is to transmit over the proposed circuit all traffic under its control addressed to Italy or for transit through Italy. In addition, the applicant agrees to transmit via the proposed circuit all traffic within its control destined to Albania, Bulgaria, Egypt, Greece, Palestine, Roumania, Syria, Turkey, and Yugoslavia (hereinafter referred to as the nine hinterland countries), so long as the applicant does not operate direct circuits to those countries, and provided that the rates payable for forwarding beyond Italy are not in excess of those obtainable by the applicant on another route. In return, Italo Radio agrees to note the Mackay via, "Via Italo-Mackay Radio", on all traffic received from the applicant addressed to or beyond

Italy, and to transmit via the proposed circuit all traffic specifically routed via that circuit destined to North and Central America, the West Indies, and certain countries in northern South America.

The contract between Italo Radio and the applicant provides for the same division of tolls now in effect between the foreign correspondent and RCAC, namely, that the transmitting station shall retain 60 percent and the receiving station 40 percent of the toll remaining after terminal taxes and other outpayments have been deducted. The balance accruing to the American radiotelegraph carriers, after computations in accordance with the contracts and foreign exchange adjustments, would be approximately 7 cents per full rate ordinary word eastward as opposed to a balance of approximately 3 cents for the American cable carriers. Similarly, in the westward direction, the radiotelegraph carriers would receive approximately 19½ cents per full rate ordinary word and the cable carriers approximately 22 cents. Eastbound traffic diverted to the proposed circuit from the cables would, therefore, obtain approximately 4 cents more per word for the applicant than it now does for the cable companies while westbound traffic would produce about 2½ cents less per word for the applicant than the cable companies now receive for it. Traffic diverted from the existing direct radiotelegraph circuit to the proposed direct radiotelegraph circuit would not alter the total revenue accruing to the American communications system as a whole.

The annual volume of telegraph traffic between the United States and Italy and the revenue derived therefrom rose from a total of 4,233,298 words and $618,867 revenue in 1921 to a high point of 14,245,985 words and $946,802 revenue in 1929. Since that year both the traffic volume and revenue have steadily decreased from year to year, with the exception of the year 1935 during which there was a slight increase over the year 1934. The total volume of traffic during 1936 was 8,131,770 words producing a revenue of $444,811, which is the smallest amount of revenue from Italian traffic of the American carriers between the years 1920 and 1936. The record does not provide any basis upon which a substantial increase in this volume of traffic or revenue may be anticipated.

The applicant estimates that during the first year of operation the proposed circuit can be expected to handle approximately 180,600 words from the United States to Italy and 81,900 words in the reverse direction, which traffic would be expected to produce about $49,000 eastward and $38,000 westward. These estimates were based upon the experience of the applicant and its affiliated company, Commercial Cable, and upon observation of Italian traffic and trade conditions generally.

The source of the anticipated traffic does not clearly appear. In accordance with the terms of the "Tripartite Agreement" the facilities of Commercial Cable will remain the normal route for traffic filed with that company as well as for all unrouted traffic received by it from its affiliated companies. The applicant, therefore, would obtain only such eastward traffic as is filed with it or filed with a connecting carrier specifically routed via the applicant's proposed circuit.

Witnesses for the applicant expressed the view that new traffic could be developed through increased competitive efforts and that the stimulus of added competition in itself might increase communication business between the two countries generally. The possibility that methods of canvassing and other means of developing traffic had not been fully developed was suggested by the applicant, but examination of the witnesses of all parties to the proceeding shows that the existing companies operating between this country and Italy make use of every known device to develop that traffic, including the methods which the applicant suggests might be used to develop new traffic. Judging from the low percentage of the total business handled by the existing direct radio circuits the applicant concluded that RCAC has not adequately developed potential radio traffic. The record shows, however, that the situation between the two countries is highly competitive, and indicates that the failure of RCAC to handle a larger percentage of the existing traffic is due to the contractual relationship between the American cable companies and Italcable, Italcable's control over Italo Radio, and the practice of the Italian Administration of sending all unrouted telegraph traffic by cable, rather than due to any lack of competitive effort on the part of the present direct radiotelegraph carrier.

It is possible that some new traffic might be developed by the proposed circuit. It is undoubtedly true, however, that a large part of the traffic would be secured through diversion from the other carriers. In connection with the 180,600 words estimated eastward, the President of the applicant testified that he assumed that traffic was now probably divided among the different companies. In the absence of any appreciable amount of new traffic, of course, the business of the applicant would necessarily come principally through reallocation. Witnesses for the respondents RCAC and Western Union expressed the view that diversion from the existing carriers in the field would, in fact, be the source of traffic for the new circuit.

There can be no doubt that diversion of traffic from the existing carriers would decrease their revenues. During the years 1934–36 the revenue from Italian traffic of Western Union constituted approximately 3.9 percent of its total international revenue; that of Com-

mercial Cable approximately 4 percent of its total international revenue; and that of RCAC about 1 percent of its total international revenue. Although the record does not show that a partial diversion of the Italian traffic of any of the carriers would seriously impair its ability to serve the public or to continue as a competing factor in the Italian field, it is apparent that the traffic of those companies would be affected. Witnesses for the respondents testified that under existing conditions a decrease in their revenues would impair their ability to serve the public. Similar reallocations of traffic and revenue in respect to a number of countries which the applicant has indicated a desire to serve might well detract from the service of the other carriers individually or as a whole.

The Commission does not believe that a resulting diversion of traffic from existing carriers to a new carrier, in itself, determines whether operation of a new circuit would serve the public interest, convenience, or necessity. It is important to consider, however, the effect of such a reallocation. Traffic and revenue available for the American carriers must determine to a large extent the desirability of competition as to any foreign country. If the traffic and revenue are sufficient to support the entry of a new carrier, and to justify additional competition, sound communication policy would usually indicate that additional competition should be fostered. On the other hand, if there is a small amount of traffic and revenue involved, and if the needs of the public are being satisfactorily met, the entrance of additional competition into that field may adversely affect the ability of all of the companies to serve the public. It must be borne in mind that the preservation of existing facilities which are satisfactorily serving the public is of primary importance, and that to intensify a highly competitive situation, not justified by the traffic and revenue available, may be economically disastrous to the American communications system as a whole. The question is not whether added competition would benefit or harm a particular carrier, but rather what would be its effect upon the service to the public.

The record before the Commission does not justify a finding that the applicant would be able to develop any substantial amount of new business; nor does it show that the reallocation of the existing traffic or the increased competition would confer any benefits upon the public generally unless it be assumed that the creation of additional competitive facilities, in itself, is a public benefit.

The applicant intends to offer the same classes of service as are now available over existing circuits at the same rates. It does not propose to offer new classes of service, nor does it appear that the applicant has considered a reduction of rates. It is suggested that the effect of the added competition would be to secure a lower rate and

the applicant contends that the stimulus to be found therein might achieve that effect. The respondents feel, however, that the diversion of traffic from the carriers now in the field would result in those carriers obtaining less revenue and would consequently tend to delay the time when a reduction in rates might be possible.

It is true, as applicant points out, that there is but one direct radiotelegraph carrier offering a general public service between the United States and Italy. It is also true, however, that there are two American cable carriers operating between the two countries and competing effectively against the radiotelegraph carrier for the same telegraph traffic of the same telegraph-using public. During the year 1936 Western Union handled 57.5 percent of the total word traffic between the United States and Italy, and received 54.4 percent of the total revenue from such traffic. Commercial Cable handled 32 percent of the traffic and received 36.7 percent of the revenue; and RCAC handled 10.2 percent of the traffic and received 8.5 percent of the revenue. During the years from 1920 through 1936 the same highly competitive situation is shown, Western Union having handled 56.6 percent of the traffic and having received 65 percent of the revenue; Commercial Cable having 30.5 percent of the traffic and 22.9 percent of the revenue; and RCAC having 12.3 percent of the traffic and 10.6 percent of the revenue. These figures as well as the testimony of witnesses on behalf of all parties show the existence of intense competition for Italian traffic between the three American telegraph carriers now in the field.

The Commission is of the opinion that, in considering the element of competition as it may apply to an application for new facilities for international communication, it is essential to take into account competition between all media of rapid communication rather than considering separately the several individual methods by which communication is maintained. That view was suggested by the Commission in *Mackay Radio and Telegraph Co., Inc.* (*Delaware*), 2 F. C. C. 592, and was approved by the United States Court of Appeals for the District of Columbia, upon appeal from that decision, in *Mackay Radio & Telegraph Co., Inc.* v. *Federal Communications Commission*, 97 F. (2d) 641. There is no sound basis before this Commission upon which it can be determined that telegraph by cable and by radio are not in fact competing services in the international telegraph field.

The record shows that during the years 1935 and 1936 the cable carriers operating between this country and foreign points handled 68.5 percent of the total international telegraph traffic on a message basis and received 72.8 percent of the revenue from such traffic, while the radiotelegraph carriers handled 31.5 percent of the traffic

and received 27.2 percent of the revenue. It is clear, therefore, that cable carriers and radiotelegraph carriers do compete with each other for the same traffic of the same telegraph-using public, and it is also evident that such competition is continuous and intense in the international picture generally.

In addition to the Italian traffic which the applicant estimates it would receive from the operation of the proposed circuit, it anticipates that it would obtain 72,240 words from the United States through Italy to the nine hinterland countries to which reference has been made, and that it would secure 32,760 words from those countries to the United States. The contract between Italo Radio and the applicant estimates a monthly average of 700 messages from the United States to the hinterland countries and provides that Italo Radio may at any time shut down the circuit on 3 months' advance notice should that average monthly traffic be less than 700 telegrams during any period of 6 months.

During the month of March 1937 the total traffic from the United States to the hinterland countries described, via all routes, was 8,505 messages and during the same period the westbound traffic totaled 7,604 messages. Of the eastbound traffic the applicant handled 352 messages and its affiliated company, Commercial Cable, handled 2,198. In order to maintain the prescribed average monthly traffic, therefore, the applicant must develop approximately twice the amount of traffic to those countries it now obtains. A witness for Commercial Cable testified, however, that it would divert a sufficient amount of traffic from its lines to the applicant's circuit to enable the applicant to meet its obligation in this respect, in the event that the traffic developed is not sufficient.

The situation presented by this contractual provision governing the routing of transit traffic to the nine hinterland countries is unusual in that the necessary outpayments on this routing would result in the applicant handling the eastward traffic to several countries at a substantial loss to itself. On eastward traffic to Albania the applicant would receive 6.64 cents per full rate ordinary word; to Bulgaria, 5.98 cents; to Roumania, 5.98 cents; to Greece, 7.98 cents; to Turkey, 3.43 cents; to Yugoslavia, 7.9 cents. On traffic to Egypt the applicant would lose 10.23 cents; to Palestine it would lose 13.08 cents; and on traffic to Syria, it would lose 13.08 cents. Traffic to the hinterland countries diverted from Commercial Cable to the applicant would result in the system of which these companies are a part receiving revenue of from 8 to 16 cents less per full rate ordinary word than the same traffic would return to the system via Commercial Cable. The applicant contends, however, that such losses would be compensated for by the increased amount of return

traffic from those points which would be obtained by the new circuit. The record does not support this contention.

The applicant expresses the view that any small sacrifice in revenue resulting from a diversion of the hinterland traffic to it from Commercial Cable is justified and would, in fact, be relatively unimportant in comparison to the advantages the applicant's system as a whole could derive from the proposed circuit. It considers the proposed circuit essential to itself and to its affiliated companies, in order that the applicant and the system of which it is a part may continue to serve the public as competing factors in international communications.

The Mackay Radio and Telegraph Companies of Delaware and California, operated together, have radio circuits between the United States and points in Asia, the Pacific Islands, Europe, the West Indies, Central and South America. These radio companies received 2.9 percent of the total revenue from international telegraph traffic of the American carriers during 1936. Commercial Cable, an affiliated cable company, operates cables between the United States and Europe and received 18.3 percent of the 1936 revenue. Another affiliated cable company, The Commercial Pacific Cable Co., operates a cable between the United States, the Pacific Islands, and Asia, and during 1936 received 3.5 percent of the total international revenue. A parent corporation, "The Mackay Companies," owns either directly or indirectly the Mackay radio companies, Commercial Cable, and the Postal Telegraph land-line system. It also has a 25 percent interest in the Commercial Pacific Cable Co. It is, in turn, owned by the Postal Telegraph and Cable Corporation, legal control of which is in the hands of trustees, it being the subject of reorganization proceedings under section 77–B of the Bankruptcy Act. All of the common stock of the Postal Telegraph and Cable Corporation is owned by the International Telephone and Telegraph Corporation, which also owns All America Cable, Inc., a company operating cables between the United States and points in the West Indies, Central, and South America. This company received 19.4 percent of the total revenue from international telegraph traffic of the American carriers during 1936.

The operating companies referred to are operated as a coordinated communications system and are advertised as "The International System." The companies comprising this system handled 38 percent of the total international telegraph traffic to and from the United States during 1936 and received approximately 44 percent of the revenue from such traffic. It must be concluded that the record does not support the position of the applicant that the proposed circuit is necessary to the continued public service of that

system. In respect to the Italian traffic alone it has been noted hereinabove that Commercial Cable during 1936 handled 32 percent of the total traffic between the United States and Italy and received 36.7 percent of the revenue from such traffic.

In respect to the applicant itself, the proposed circuit would undoubtedly be of value in its endeavor to extend its radiotelegraph system between the United States and Europe. Witnesses for the applicant testified that in their opinion a denial of the present applications would endanger the investment of Mackay in its radiotelegraph service. It appears, however, that during the period immediately prior to the hearing in this matter the applicant had been operating its radiotelegraph system at a profit, and the record does not show that the proposed circuit is necessary to the continued existence and public service of the applicant as a competing factor in international communications.

CONCLUSIONS

Upon careful consideration of the facts presented in this proceeding, the Commission concludes that the existing cable and radiotelegraph facilities between the United States and Italy are adequate to handle the existing traffic and any increase in the traffic between the two countries that can reasonably be anticipated. The applicant does not propose to lower the existing rates or to offer new classes of service, but proposes to render a service similar to that now available to the public over existing routes. There has been no complaint from the public as to the service now available to it by means of existing systems. It does not appear that the proposed service of the applicant would be superior to the service of the existing carriers, or that the effect of the proposed operation would be to improve the existing service. Nor does it appear that the needs of the national defense would be better met by the addition of the proposed circuit. The record does not provide any sound basis upon which it may be determined that any substantial increase in the traffic between the United States and Italy will occur through the proposed operation or that the added facilities will create new traffic. The traffic and revenue secured by the applicant would for the most part come through diversion from and at the expense of the carriers now in the field. There is at the present time keen competition for the Italian traffic between American carriers. The traffic and revenue available do not justify intensifying the existing competitive situation or the resulting reallocation in view of the other facts of this case. Under the provisions of the agreement between the applicant and its foreign correspondent, traffic from the United States to Egypt, Palestine, and Syria, handled via the proposed circuit,

would be carried by the applicant at a substantial loss to itself, and traffic to all of the hinterland countries referred to hereinabove would produce less revenue for the applicant's system than the same traffic would produce if handled via the facilities of the Commercial Cable Company. The proposed circuit has not been shown to be necessary to the continued existence and public service of the applicant or its affiliated companies as competing factors in international communications.

In the light of the foregoing facts and of the entire record in this proceeding, the Commission concludes that public interest, convenience, or necessity will not be served by the granting of these applications.

ORDER

It is ordered that the applications of Mackay Radio and Telegraph Company, Inc. (Delaware), for modification of the fixed public service licenses of point-to-point telegraph stations WJD, WDU, WMK, and WID, to add Rome, Italy, as a primary point of communication be, and they are hereby, denied.

8 F. C. C.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of SALT RIVER VALLEY BROADCASTING CO., INC.,[1] PHOENIX, ARIZ. For Modification of License.	DOCKET No. 5054

September 16, 1939

Philip G. Loucks and *Arthur W. Scharfeld* on behalf of the applicant; *Louis G. Caldwell*, *Reed T. Rollo*, and *Donald C. Beelar*, and *Ben S. Fisher* and *John W. Kendall* on behalf of Station KOAC; and *John W. Guider*, *Duke M. Patrick* and *Karl A. Smith* on behalf of Station KFYR.

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF THE COMMISSION

FINDINGS OF FACT

1. This proceeding arose upon the application of the Salt River Valley Broadcasting Co., licensee of Station KOY, Phoenix, Arizona, for modification of license to change the frequency assignment of Station KOY, which is licensed for operation with 1 kilowatt power, from 1390 to 550 kilocycles. Not being satisfied from examination of the application that the granting thereof would serve public interest, convenience and necessity, the Commission designated the matter for hearing. The hearing was held April 20, 1938, pursuant to the notice thereof which was served upon the applicant and upon licensees of stations licensed to operate on the frequency of 550 kilocycles as respondents. Thereafter, the examiner who conducted the hearing submitted a report with a recommendation that the application be granted. Exceptions and a request for oral argument were filed in behalf of Oregon State Agricultural College (KOAC), a respondent. Oral argument was heard November 10, 1938. A petition of the respondent filed November 18, 1938, to reopen the hearing was denied December 12, 1938, but later upon further consideration the order of December 12, 1938, was set aside and the hear-

[1] See Opinion and Final Order of the Commission, 8 F. C. C. 29.

ing reopened. Upon consideration of a motion of the applicant for clarification of issues and the statement of counsel for respondent that it desired to be heard only upon the issues relating to interference, together with the extent of, and effect upon, the service area of Station KOAC, the Commission ordered that the further hearing be limited to the third issue of the original notice, which was to determine whether the interests of Stations KOAC and KTSA may be adversely affected by reason of interference.

2. The Salt River Valley Broadcasting Co., Inc., applicant herein, is duly licensed to operate Station KOY. It has invested in excess of $86,000 in reconstruction of KOY since acquiring the station in November 1936, and is qualified to make such changes and improvements as may be necessary for operation of the station under a license with the modification in terms requested in the instant application.

3. Phoenix, Arizona, the city in which applicant's station is located and the center of the area served by it, has a population of 48,118. It is the capital and largest city of the State. The surrounding area has extensive agricultural resources which contribute to packing, trade, and shipping activities of the city. The latest available statistics of business in Phoenix show 1,033 retail stores having annual sales of approximately $35,000,000 and 201 wholesale establishments with annual sales of approximately $46,900,000.

4. The only radiobroadcast service of primary signal quality available in the community or its surrounding area is that provided by applicant's Station KOY and Station KTAR, both of which operate with 1 kilowatt power. Station KOY is affiliated with the network of the Columbia Broadcasting System and KTAR with the National Broadcasting Co. In this proceeding the licensee of KOY seeks a change from the relatively high frequency of 1390 to 550 kilocycles in order to improve its signal strength in its present service area and extend its service to outlying areas. This change to 550 kilocycles would give Station KOY a frequency comparable in transmission characteristics to that of Station KTAR, which is licensed to operate on the frequency of 620 kilocycles.

5. The programs of KOY, which are on the air 17½ hours each weekday and 16 hours on Sundays, include material from the Columbia Network and World Transcription Library Service, together with entertainment, news and educational materials from local sources. Approximately one-third of the station's time is commercial and the balance sustaining. Gross income from operation for 1 month prior to the hearing was $9,855.99, and cost of operation was $9,258.06, leaving a net profit of $579.93.

6. Examination of the evidence regarding the probable effect of operation of Station KOY upon the frequency of 550 kilocycles shows that this change would improve the signal of the station in the areas which it now serves and that the service of the station would be extended to an area substantially larger than that now served.

7. The nighttime service of the station would be extended from an area of 3,000 square miles, defined by its 1.0 millivolt-per-meter field strength contour, to an area of 8,225 square miles, which would be included within its 1.75 millivolt-per-meter field strength contour. The rural population included within its present service area is 30,100 as against a rural population of 70,900 included within the projected new service area. The urban population served in either case would be 55,500.

8. The daytime service area of KOY would be enlarged by the proposed change approximately 300 percent, and this extension of service would include an area having a population approximately 190 percent greater than that within the present service area of the station.

9. Operation of Station KOY upon the frequency of 550 kilocycles, as proposed herein, will not result in an increase of objectionable interference to the service of Station KOAC. Such interference to the signal of KOAC as might be received from KOY would not extend within the limits of interference caused by the operation of Station KFYR, 1,100 miles distant. The latter station has a 704-foot vertical radiator capable of providing a radiating efficiency equal to 225 millivolts per meter at 1 mile for 1 kilowatt.

10. The proposed change in the frequency assignment of KOY would not cause an increase in interference to KTSA, that station being located nearer to KSD, St. Louis, than to KOY and being subject to interference restricting its service to areas within any limitation it might otherwise receive from KOY.

11. There is a pending application for 5 kilowatts power nighttime upon the frequency of 550 kilocycles, filed by the licensee of Station KFYR. The evidence in this record with respect to interference problems relating to that application and the instant application is adequate to show the probable result of the granting of either or both applications. Examination of this evidence shows no substantial conflict between the 2 applications. Since the KFYR application is the only application now pending which appeared to be in conflict when the instant case was heard, there is no necessity for deferring action in this case in accordance with the announcement of July 5, 1939.

CONCLUSIONS

1. The granting of the instant application would improve the signal strength of Station KOY in areas now served by the station and extend its service to a substantially larger area and greater population than that now served by the station.

2. Operation of Station KOY under the proposed new conditions would not cause an increase in objectionable interference within existing good service areas of any other station or stations.

3. The granting of the application would serve public interest, convenience and necessity.

The proposed findings of fact and conclusions of the Commission were adopted as the "Findings of Fact and Conclusions of the Commission" on March 14, 1940.

March 14, 1940

OPINION AND FINAL ORDER [2]

BY THE COMMISSION (CASE AND PAYNE, COMMISSIONERS, NOT PARTICIPATING):

This proceeding arose upon the application of the Salt River Valley Broadcasting Co., licensee of Station KOY, Phoenix, Arizona, for modification of license to change that station's frequency assignment from 1390 to 550 kilocycles, the authorized power to remain at 1 kilowatt. Not being satisfied from an examination of the application that the granting thereof would serve public interest, convenience or necessity, the Commission designated the matter for hearing. The hearing was held on April 20, 1938, pursuant to the notice thereof which was served upon the applicant and upon licensees of stations licensed to operate on the frequency of 550 kilocycles as respondents. Thereafter, the examiner who conducted the hearing submitted a report with a recommendation that the application be granted. Exceptions and a request for oral argument were filed in behalf of Oregon State Agricultural College (KOAC), a respondent. Oral argument was heard November 10, 1938. A petition of the same respondent filed November 18, 1938 to reopen the hearing was denied December 12, 1938, but later, upon further consideration, the order of December 12, 1938 was set aside and the hearing reopened. Upon consideration of a motion of the applicant for clarification of issues and the statement of counsel for the respondent that it desired to be heard only upon the issues relating to interference, to-

[2] Petition for rehearing and request for special relief filed by Oregon State Agricultural College (KOAC) dismissed by the Commission on June 4, 1940.

gether with the extent of, and effect upon, the service area of Station KOAC, the Commission ordered that the further hearing be limited to the third issue of the original notice, which was to determine whether the interests of Stations KOAC and KTSA might be adversely affected by reason of interference. The further hearing was held beginning May 12, 1939. Thereafter proposed findings were filed by the applicant and by the Oregon State Agricultural College. The Commission on September 16, 1939, issued proposed findings of fact and conclusions looking toward the granting of the application. Exceptions thereto were filed on behalf of Oregon State Agricultural College, and at its request oral argument was held on November 2, 1939.

A careful review of the exceptions filed by the intervener and of the contentions of any merit made in the briefs and upon the oral argument reveals that the only issue remaining for our consideration is that of interference to nighttime service and that this issue resolves itself solely into questions of fact.

Counsel for Station KOAC urge that if the application is granted, the increase in night coverage of KOY will be confined to but a small area because it will be limited by KTSA to its 3.24 millivolt-per-meter contour, and that Station KOAC will be restricted by KOY in its nighttime service to the 3.5 millivolt-per-meter contour and thus deprived of 70 percent of its listeners. It is further argued that Station KOAC now renders interference-free service beyond its 2 millivolt-per-meter contour and that in view of its status as an educational State-owned, noncommercial station it should not have its present service area reduced by a grant of the application. The conclusion is put forward, therefore, that the proposed findings on the interference to KOAC and KOY are not warranted by the evidence and that the application should be denied.

It is admitted that the daytime coverage of the applicant station will be greatly enlarged by granting its request, and it is also conceded that some enlargement of night service will result. In view of these facts, without inquiring further into the extent of the latter enlargement, it is seen that the argument on behalf of the Oregon State Agricultural College must fall unless the facts show that there will be some additional curtailment of its station's service. In our view of the case, the security of the intervener's position depends, therefore, upon the validity of proposed finding number nine, which was worded as follows:

Operation of Station KOY upon the frequency of 550 kilocycles, as proposed herein, will not result in an increase of objectionable interference to the service of Station KOAC. Such interference to the signal of KOAC as might be received from KOY would not extend within the limits of interference caused

by the operation of Station KFYR, 1,100 miles distant. The latter station has a 704-foot vertical radiator capable of providing a radiating efficiency equal to 225 millivolts per meter at 1 mile for 1 kilowatt.

In the course of the two hearings the testimony of six engineers was offered on the two questions covered by this finding. Their estimates of the interference which would be caused by KOY to KOAC varied considerably, ranging from the 3.52 millivolt-per-meter contour to the .69 millivolt-per-meter contour. A similar conflict appears in the evidence of the present interference-free service area of KOAC. At both hearings Commission engineers, relying on the second hour curve in the Commission's allocation survey data, testified that the limitation to KOAC caused by KOY operating as proposed would be in the vicinity of the 1 millivolt-per-meter contour and that this was no greater than KOAC was now restricted. It is urged that such testimony must be disregarded in the face of different results based upon recorded measurements offered in evidence by witnesses for the intervener tending to show that a greater limitation would result.

The Commission's present Standards of Good Engineering Practice (effective August 1, 1939) deal explicitly with the point raised by the intervener. They provide as follows:

> The existence or absence of objectionable interference from stations on the same or adjacent channels shall be determined by one of the following methods:
>
> (*a*) By actual measurements made according to the method hereafter described; or, in the absence of such measurements:
>
> (*b*) By reference to the propagation curves in Figures 1 and 2, or
>
> (*c*) By reference to the distance tables set forth in tables VI, VII, and VIII.
>
> The existence or absence of objectionable interference may be proved by field intensity measurements or recordings made with suitable apparatus, duly calibrated. * * *
>
> These curves are based on extensive measurements of the sky wave produced by broadcasting stations and shall be considered as accurate in all cases unless proof to the contrary is supplied. Such proof must be based on field intensity measurements taken in accordance with requirements set out in Annex III and must show what condition prevails that causes the signal to depart from the average.

Annex III sets out in detail the conditions considered essential to accuracy, including methods and scope of data. While the formal adoption of these Standards and their official effective date is relatively recent, the policy expressed in them is of some years' standing and has been made clear to the broadcasting industry and particularly to its technical experts.

The Commission's curves are based upon averages arrived at by careful actual measurement of a great number of signals in all por-

tions of the country and over a long period of time. Their accuracy as reflecting the average situation has been confirmed many times and now is well established. Even more important, although based on averages, their applicability in specific cases has rarely been opposed, in view of the diverse conditions (*e. g.* seasons, sun spot cycles) taken into account in the figures on which they are based, which conditions are not reflected in a limited set of measurements. Enough has been said to indicate the basis for declining to accept results inconsistent with the curves unless scrupulous attention is given to employing accurate methods of measurement and to obtaining sufficient data upon which to base a conclusion. Under this criterion the engineering evidence offered by the intervener in regard to the question of interference has been found wanting.

One of the intervener's witnesses testified that KOAC would be limited "at least" to its 3.52 millivolt-per-meter contour. The evidence shows, however, and we find, that the methods of measurement employed by this witness were not in accordance with acceptable engineering practice and further that there is grave doubt about the accuracy of the calibration of the instruments used. Two other engineers testified for the intervener by deposition. Their testimony shows, however, that neither had collected enough data to support adequately the conclusions reached. It is not without significance that one of these expressed the opinion that the limitation on KOAC would be at the 2.4 millivolt-per-meter contour, which limitation would not exceed that specified for stations of this class in the Commission's Rules and Regulations. Stations in this category are normally protected to the 2.5 millivolt-per-meter contour. The theoretical separation required by the Standards for this class of operation is 735 miles. The actual distance here involved is 977 miles. Under all the circumstances, as between the intervener's evidence and the average curve, the latter must be accepted. Furthermore, the evidence based on the curve is supported by the testimony of an engineering witness for the applicant who testified that the interference line would be approximately the 0.99 millivolt-per-meter contour. We conclude, therefore, that finding No. 9 must stand.

If, in the actual operation of KOY, objectionable interference should develop as to the present service area of KOAC, the Commission will enter an order requiring appropriate protection.

These conclusions make it unnecessary to consider the other contentions made. The exceptions are overruled and the proposed findings of fact and conclusions must stand.

ORDER

The Commission having considered the entire record in the light of its Proposed Findings of Fact and Conclusions, the exceptions filed on behalf of the Oregon State Agricultural College and the exceptions and oral argument on behalf of the applicant and the Oregon State Agricultural College, and being fully advised in the premises;

It is ordered that the proposed findings of fact and conclusions of the Commission dated September 16, 1939, be, and the same are hereby made final; and

It is further ordered that the application be, and it is hereby, granted.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of [1] REVOCATION OF STATION LICENSE OF STATION WSAL, SALISBURY, MD.	DOCKET NO. 5795

February 15, 1940

William L. Marbury, Jr., on behalf of the respondent; *George B. Porter*, on behalf of the Commission.

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF THE COMMISSION

FINDINGS OF FACT

1. The Commission issued its Order on the 24th day of October, 1939, effective at 3 a. m., E. S. T., November 13, 1939, revoking the license of Frank M. Stearns to operate Broadcast Station WSAL, Salisbury, Md. Thereupon, Frank M. Stearns requested a hearing in accordance with the provisions of section 312 (a) of the Communications Act of 1934 and section 1.401 of the Commission's Rules of Practice and Procedure. The Commission, by Order issued on the 14th day of November, 1939, designated Commissioner Thad H. Brown to conduct a hearing upon the revocation order, and authorized Commissioner Brown to fix the time and place thereof. By order of the designated Commissioner, dated December 5, 1939, hearings were held commencing on the 18th day of December, 1939, at the offices of the Federal Communications Commission in Washington, D. C. These hearings continued through December 21, 1939, and were resumed on the 3rd, 4th, 11th, 12th and 18th of January, 1940, and adjourned on January 22, 1940.

2. The order of revocation contained a statement of the grounds and reasons for such proposed revocation, including the following: That—

Frank M. Stearns in the original application for construction permit and station license, and at the hearing thereon, made false and fraudulent statements and representations, and failed to make full disclosure to the Commission, concerning the financing of station construction, the equipment to be used therein, and the ownership, management, and control thereof, in violation of the provisions of the Communications Act of 1934, as amended, and the Rules and Regulations of the Commission * * *.

[1] See Final Order of the Commission, 8 F. C. C. 37.

3. Frank M. Stearns originally applied January 18, 1937, for a construction permit for a radiobroadcast station to be situated in the city of Salisbury, Md. This application was subscribed and sworn to before a notary of the District of Columbia by the applicant. Relying upon the information submitted in the application and upon his sworn testimony submitted at a hearing upon the application held April 26, 1937, the application was granted (4 F. C. C. 389, July 2, 1937). The call letters WSAL were assigned and a license issued on January 13, 1938. The station is at present operating pending final order of the Commission in the instant proceedings.

4. The original application for a construction permit for a new station in Salisbury, sworn to by Frank M. Stearns, stated that Frank M. Stearns, a resident of Salisbury, Md., was to be the owner of the proposed station, that he had ten thousand dollars in cash with no liabilities and that applicant proposed to use certain equipment, a description of which was on file with the Commission. At the hearing the applicant therein submitted, by way of exhibit, his financial statement, as follows:

Cash (Union Trust)	$300
Cash (in trust under contract for this specific purpose and no other)	10,000
Cash (American Security & Trust)	1,300
Cash (Perpetual Building & Loan)	500
Mortgage, 8 percent	4,500
Stock, B & L	1,400
Stock, B & L	40
	18,040

In addition an exhibit was submitted, being a copy of an agreement dated April 24, 1937, which according to its terms indicated that said Stearns had deposited with one Glenn D. Gillett, a radio engineer, $10,000 in cash to be held in trust for the purpose of constructing the proposed station. This item is referred to in the financial statement (*supra*) where it appears as item 2.

5. The Commission now finds that Frank M. Stearns did not have $10,000 in cash with no liabilities as sworn to in his original application; nor, at the time his financial statement and subsequent testimony was submitted at the hearing did he have $1,300 in the American Security and Trust Co.; nor $500 in the Perpetual Building and Loan; nor $10,000 cash of his deposited in trust; nor any interest in a mortgage for $4,500 at 8 percent; nor stock valued at $1,400. The applicant did have stock valued at $40 and a share in a joint account of $300. Frank M. Stearns further at that hearing testified that his attorney and engineer had already been paid for their services. The Commission finds that neither the engineer nor

the attorney had been paid. The attorney's fees were not paid until around September 1939 and the engineer was not paid.

6. Station WSAL has been operating in Salisbury, Md., since January 1938. It has provided entertainment for the listeners in the area served. It has cooperated with officers of the municipality and the various civic, religious, and fraternal organizations. Time has been furnished free of charge for safety, fire prevention, Boy Scout, high school, local history, and other programs of civic and educational nature.

7. The order of revocation entered by the Commission on October 24 and hereinabove referred to also set forth as a reason for such order "that rights granted to the said Frank M. Stearns in and by the terms of said station license have, without the consent in writing of this Commission, been by him transferred, assigned or otherwise disposed of in violation of the provisions of said license and contrary to the terms of section 310 (b) of the Communications Act of 1934 as amended." Considerable evidence was produced in this record including two contracts and chattel mortgages, each of the latter in the amount of $25,000, entered into between the licensee and one Glenn D. Gillett, and involving the question of control. Incidents were brought out wherein said Gillett did exercise a degree of supervision and control over the station's operation.

However, in our view of this case it becomes unnecessary to pass upon the question of law raised by the evidence relative to the question of control. Where, as here, a license is obtained as a direct result of false statements and representations under oath, involving among other things an applicant's financial responsibility, and made to the Commission in the application itself as well as in the evidence submitted at public hearing in support thereof, the Commission has only one course of action and that is to make final its order of revocation upon that ground alone. The Commission is specifically empowered by section 312 (a) to revoke a license "for false statements either in the application or in the statement of fact which may be required by section 308 hereof or because of conditions revealed by such statements of fact as may be required from time to time which would warrant the Commission in refusing to grant a license on an original application." If the real facts had been known to the Commission with respect to applicant's finances the Commission could not have legally authorized the issuance of a license to an applicant who at best had available to him not to exceed $340. (See secs. 308 (b) and 319 (a), Communications Act of 1934, as amended.)

Any contention that satisfactory service has been rendered and that the community in question would be without service in the future

is not controlling in this case. However important the present service is, the Commission cannot escape the responsibility fixed by statute to ascertain the qualifications of applicants by considering truthful statements and to act accordingly in the granting or refusal of licenses. In requiring that applicants for licenses be found legally, technically, financially and otherwise qualified, Congress recognized that communities will be better served by those who truthfully show themselves to be qualified in all such respects than by persons who are willing to be used as mere figureheads for others who for reasons best known to themselves desire to conceal their interest.

CONCLUSIONS

1. The applicant for a permit to construct and operate Broadcast Station WSAL made false statements under oath both in the original application and at the hearing thereon. Many of such statements involve matters of fact concerning the applicant's financial qualifications which, if the truth had been revealed, would have shown applicant not financially qualified and would have compelled the Commission to refuse to grant the license upon the original application (secs. 312 (a), 308 (b) and 319 (a), Communications Act of 1934, as amended).

2. The revocation order heretofore entered in this matter on the 24th day of October, 1939, should be affirmed.

Decided March 28, 1940

ORDER

The Federal Communications Commission, sitting in general session on the 28th day of March 1940, and having under consideration the proceedings relative to its order entered October 24, 1939, effective at 3 a. m., E. S. T., November 13, 1939, revoking the license of Frank M. Stearns to operate radiobroadcast station WSAL, Salisbury Md.; and

It appearing that the proposed findings of fact and conclusions of the Commission made and entered herein, and finding that the said order of revocation should be affirmed, may not fully and adequately reflect certain pertinent facts and circumstances surrounding the application for construction permit to establish the station in question; and

It appearing from respondent's exceptions to the proposed findings of fact and conclusions of the Commission, and from oral argument thereon presented March 28, 1940, that it would be appropriate

for the Commission in its final order herein to make additional and supplemental findings in the matter;

Now, therefore, it is ordered that the said proposed findings of fact in this matter be, and they are hereby, supplemented in the following particulars:

In the preparation, filing and prosecution of his application for construction permit to establish this station, respondent herein was entirely unfamiliar with the procedure and requirements of the Commission. It was due to the suggestion, and in fact the solicitation, of his counsel that respondent submitted the application to the Commission, (*a*) having first notified counsel that he did not have the funds with which to undertake the construction necessary, and (*b*) having received definite assurance that cash in the amount of $10,000 would be made available to him for the purpose. The application itself was prepared in the office of counsel and executed by respondent without full knowledge of the true import of the information supplied the Commission therein. The testimony given at the hearing by respondent, for the most part, conformed to a statement of questions and answers prepared by counsel.

While respondent did not personally have the $10,000 trust deposit shown in his financial statement, his wife did possess the majority of the remaining items of cash and securities, so that as to such remaining items he may be said to have held a color of interest.

Since the $10,000 item was deposited in the special account of respondent's engineer, under the provisions of the contract of April 24, 1937, such engineer could have looked to the account for payment of any engineering fees.

Accordingly, it is ordered that the proposed findings as herein supplemented and modified, be, and the same are hereby, adopted as the findings and conclusions of the Commission, and that

The order aforementioned, dated October 24, 1939, revoking the license of Radio Station WSAL, be, and the same is hereby, affirmed and made final, effective at 3 a. m., E. S. T., on the 31st day of March, 1940.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of [1] WCOL, INC., COLUMBUS, OHIO. For Construction Permit.	FILE No. B2–P–2508

Decided March 29, 1940

DECISION AND ORDER ON PETITION FOR REHEARING

On October 10, 1939, the Commission granted without hearing the application of WCOL, Inc., Columbus, Ohio, for construction permit to use the frequency 1200 kilocycles and increase power from 100 to 250 watts, unlimited time. WCOL now operates on 1210 kilocycles with 100 watts power, unlimited time.

On October 30, 1939, the Scripps-Howard Radio, Inc., licensee of Station WCPO, filed a petition for hearing or rehearing requesting the Commission to set aside its action of October 10, 1939, and designate the application of Station WCOL for hearing.

Operating on the frequency 1210 kilocycles in the State of Ohio at the present time in addition to Station WCOL are WHIZ, Zanesville, 53 miles from Columbus, using 100 watts power, unlimited time; WLOK, Lima, 79 miles from Columbus, using 100 watts power daytime only; and WJW, Akron, 109 miles from Columbus, with 250 watts power, unlimited time. Concurrently with its grant of the WCOL application the Commission granted WHIZ authority to increase power to 250 watts, contingent upon the change of frequency of WCOL to 1200 kilocycles. Station WLOK has an application pending to increase power to 250 watts and operate unlimited time.

Already assigned to the frequency of 1200 kilocycles in the State of Ohio are Stations WTOL, Toledo, Ohio, 120 miles from Columbus, recently granted an increase in power to 250 watts, unlimited time; WHBC, Canton, Ohio, 102 miles from Columbus, using 250

[1] Petition for rehearing filed by Scripps-Howard Radio, Inc. (WCPO) on June 22, 1940, directed to the granting of the station license, denied on July 19, 1940. See Decision and Order on Petition for Rehearing, 8 F. C. C. 173.

Appeal from the grant of the construction permit filed by Scripps-Howard Radio, Inc., on April 11, 1940, in the United States Court of Appeals for the District of Columbia.

watts power, unlimited time, and WCPO, Cincinnati, 100 miles from Columbus, using 250 watts, unlimited time.

The petition alleges, among other things, that at the present time the closest nighttime station to WCPO on the 1200-kilocycle frequency is 155 miles away and uses 100 watts power: that the action of the Commission with regard to WCOL authorizes the use of 250 watts power by a station 98 miles away; that the required separation to preserve the service area of WCPO is in excess of 244 miles for operation by the interfering station using power of 100 watts and this would be substantially greater with a power of 250 watts; and that the operation of WCOL during evening hours as authorized by the Commission will, therefore, result in real, substantial, and destructive interference throughout a large portion of the present coverage area of Station WCPO and in all directions from its transmitter; that (upon information and belief) "according to standards for the measurement of interference during daytime hours as promulgated by the Commission, the operation of WCOL as proposed will result in destructive interference over a substantial portion of the coverage area of WCPO, particularly in the direction of Columbus and the present coverage area through which such destructive interference will take place will be more than 500 square miles with the complete loss of WCPO's listening audience in that area"; that by reason of the interference above described, petitioner will be deprived of revenues, its competitive position impaired and the area from which it may draw program talent and program material materially reduced; that Station WCPO will be placed in a position where during evening hours it will not adequately cover the metropolitan district of Cincinnati; that the action of the Commission in granting the application of WCOL adversely affects it without notice or hearing and without any advice to it as to the contentions of WCOL, and the comparative claims of WCOL to the enlargement of its coverage at the expense of the listening audience of WCPO.

Station WCPO, operating on 1200 kilocycles, is classified by the Commission as a local or class IV station. The Commission's Standards of Good Engineering Practice concerning Standard Broadcast Stations contemplate that the nighttime service area of a class IV station extends to the 4 millivolt-per-meter ground wave contour (which contour in this case will not extend beyond a few miles from the transmitter of WCPO), and to the 0.5 millivolt-per-meter ground-wave contour during daytime hours (which contour will extend approximately 27 miles from the transmitter). On such local channels the separation between stations operating on the same frequency which will ordinarily be required is the distance necessary in order

to permit satisfactory daytime service to be rendered. This is due to the fact that the phenomena of sky wave transmission are such that the interference at night from a station occurs with maximum intensity at distances of 200 to 400 miles from the transmitter, and a much lesser amount of interference will result at shorter distances. With WCOL operating as at present or as proposed, the sky wave interference would be expected to delineate the extent of the interference-free service of WCPO at night originates with stations at considerably greater distances from Cincinnati than Columbus, and, therefore, the operation of WCOL as proposed will not result in any appreciable increase in the interference to WCPO at night.

Station WCPO renders an intermittent service beyond its 4 millivolt-per-meter contour at night and its 0.5 millivolt-per-meter contour during the day. At night some interference may result to the intermittent service area of WCPO. During the daytime, interference will occur to the intermittent service of Station WCPO, and some interference, as hereinafter set forth, will occur also within its primary service area, as a result of the operation of WCOL as proposed. Under the Commission's Standards, interference in the intermittent service area of a class IV station caused by the operation of a proposed station does not necessarily preclude the establishment of such proposed station. One of the requisites to a determination that the establishment of a proposed station causing such interference is not in the public interest, convenience or necessity is a showing that 90 percent of the population to which the existing station renders such intermittent service does not receive primary service from any other station rendering the same general program service. Such a state of facts is not present in this case. The records of the Commission indicate that the area wherein WCPO renders intermittent service already receives primary service from Stations WLW, WCKY, WKRC, and WSAI. Petitioner's contentions that "the operation of WCOL during evening hours as authorized by the Commission will * * * result in real, substantial and destructive interference throughout a large portion of the present coverage area of Station WCPO and in all directions from its transmitter"; that "Station WCPO will be placed in a position where during evening hours it will not adequately cover the metropolitan district of Cincinnati," and that "the operation of WCOL as proposed will result in destructive interference over a substantial portion of the coverage area of WCPO, particularly in the direction of Columbus, and the present coverage area through which such destructive interference will take place will be more than 500 square miles with the complete loss of WCPO's listening audience in that area" are without merit.

Petitioner's allegations that the grant of increased power to WCOL adversely affects its interests on an economic basis and that because of a reduction in its service area there will be a reduction in the area from which it may draw talent and program material are mere conclusions which are unsupported by any allegation of facts from which such conclusions might reasonably be drawn. It does not follow from the fact petitioner's service area will be somewhat restricted that the increase in power to WCOL would result in such a diminution of petitioner's revenues as to seriously impair or destroy its ability to continue operation of Station WCPO in the public interest. Nor does it follow from this fact that its ability to procure talent and program material will be affected. The restriction of its present service area does not preclude petitioner from drawing its talent and program material from the same sources as heretofore.

As to petitioner's contention that it is adversely affected "without any notice to it or hearing and without any advice to it as to the contentions of WCOL, the comparative claims of WCOL to the enlargement of its coverage at the expense of the listening audience of WCPO, and other material factors affecting the public interest and WCPO," the Communications Act of 1934 requires the Commission to give notice and an opportunity to be heard only to an applicant prior to denial of his application. There is no requirement in the act for notice and an opportunity to be heard to others before the Commission may grant an application for construction permit. If the Commission can determine after an examination of an application and all other relevant data that a grant thereof would serve public interest, convenience, and necessity, it is its duty under the act to grant the application (sec. 309 (a)). In the instant case, the Commission was able to determine from its examination of the WCOL application that the granting thereof would serve public interest, convenience, and necessity, and it, therefore, complied with its statutory duty in granting the same.

Petitioner insists, however, that the grant constitutes a modification or revocation in part of its license because part of the area in which it now renders service will be curtailed, and that the Commission has no power to do this without giving it notice in writing of such proposed action and the grounds or reasons therefor, together with a reasonable opportunity to show cause why such an order of modification or revocation should not issue. Petitioner's contention appears to be based upon a claim that the Act or its license confers upon it a right to serve a particular number of listeners within a specified geographical area. The act is devoid of any suggestion of such a right, and the petitioner's license contains no provision ex-

pressly or impliedly authorizing petitioner to serve any particular portion of the listening public. The petitioner's license merely authorizes it to operate transmitting equipment on a specified frequency, power and hours of operation. Consequently, it can hardly be successfully contended that the grant of an application the effect of which may be a restriction of petitioner's service area constitutes a modification or partial revocation of petitioner's license. Furthermore, petitioner can hardly contend that it has not been given an opportunity to show cause why such action should not be taken. It had notice of the Commission's action and has, by filing a petition for rehearing, attempted to show why the Commission's order should not become effective.[1] The allegations made in such petition fail to show that the grant of the WCOL application will not serve public interest, convenience or necessity and consequently no cause has been shown why the application should not be granted.

On December 22, 1939, WCOL, Inc., Columbus, Ohio, filed its opposition to the petition of Scripps-Howard Radio, Inc. (WCPO), for hearing or rehearing. Attached to the applicant's opposition is a verified report of a study of interference arising out of the operation of WCOL on the frequency of 1200 kilocycles, which has been prepared by the applicant's engineers and filed with the application of WCOL.

Scripps-Howard Radio, Inc., has filed a motion to strike the "study of interference conditions caused by the operation of WCOL on 1200 kilocycles at Columbus, Ohio, December 1939," the basis for which is its contention that the study contained detailed expert opinion and a substantial amount of factual data concerning which WCPO has no information, and the accuracy of which has not been tested by cross-examination. The factual data submitted by WCOL are under oath and are attached to its application as a part thereof. The mere fact that it was submitted after the application was filed is immaterial. The Commission may consider it just as though such data were filed simultaneously with the application, or submitted as a written statement of fact under a request of the Commission made pursuant to section 308 (b) of the act. In either event, the Commission may consider such information in determining whether the application should be granted or denied, and is under no legal duty to submit the same to the petitioner for cross-examination. It should be noted, however, that the opposition with supporting data was served on petitioner, who had an opportunity to submit to the Commission any information it might have to refute any statement,

[1] The Commission on October 24, 1939, upon petitioner's motion, stayed the issuance of construction permit to WCOL pending determination of this petition for hearing or rehearing.

factual or otherwise, made by the applicant. No such information has been filed with the Commission to date, nor are any facts alleged in the petitioner's motion to strike refuting the factual data submitted by WCOL or questioning the accuracy of such facts. Petitioner has made no request of the Commission for additional time within which to make its own study or submit any factual data in opposition to that submitted by the applicant. Our own study of the data submitted by the applicant indicates that it is substantially correct. Therefore, the motion to strike will not be granted.

Insofar as the primary service area of Station WCPO is concerned, appears from the data available to the Commission that WCPO now serves approximately 822,400 persons within its 0.5 millivolt-per-meter contour. Approximately 20,800 of such persons reside in the area within the contour where interference would be caused by WCOL if operating on this frequency, reducing the number of persons to be served by WCPO to 801,600; that the operation of WCOL as proposed will not interfere with the service of WCPO inside the Cincinnati metropolitan area as defined by the United States Bureau of Census; that, operating as proposed on the frequency 1200 kilocycles the nearest station to WCOL on the same frequency will be approximately 100 miles away instead of 50 as at present, and the interference-free service area of Station WCOL will be extended so as to include 398,500 persons instead of 340,700 as at present, representing an increase of 57,800 persons; that Station WLOK, at Lima, now serves 99,300 persons and, if WCOL were removed from 1210 and permitted to operate on 1200 kilocycles, with 250 watts power, WLOK would then be able to serve 129,900 persons, or a gain of 30,600 persons. WLOK is the only broadcast station in Lima. Lima has a population of 42,287. It is located in Allen County, which has a population of 69,419, and the nearest station to Lima is located at Fort Wayne, Ind., 60 miles distant; that the transfer of WCOL from 1210 kilocycles to 1200 would permit the conditional grant of increased power to WHIZ to become effective, thereby improving the service in the Zanesville community as follows: Whereas WHIZ now serves 54,300 persons, it would be able to serve 112,300, a gain of 58,000 persons. WHIZ is the only station in Zanesville, the nearest other stations being located at Columbus; that, in summary, the result of the operation of WCOL as proposed would be an increase of 146,400 persons within the interference-free primary service areas of WCOL, WLOK, and WHIZ, as compared to a loss of 20,800 persons now receiving primary service from Station WCPO.

Thus, upon a comparison of the benefits and detriments sustained in the respective communities, public interest, convenience or necessity will be served by the grant of the application. The Commission has before it all information necessary to a determination of the questions raised by the application of WCOL, Inc. The petition for hearing or rehearing filed by Scripps-Howard Radio, Inc. (WCPO), raises no valid objections which would require us to set aside our grant of the above-entitled application. Accordingly, it is ordered, this 29th day of March, 1940, that the Petition for Hearing or Rehearing be, and it is hereby, denied.

8 F. C. C.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of WILLIAM C. BARNES AND JONAS WEILAND, COPARTNERS, TRADING AS MARTINSVILLE BROADCASTING CO. MARTINSVILLE, VA. For Construction Permit.	DOCKET No. 5425
J. R. WALKER, S. S. WALKER AND C. F. WALKER, COPARTNERS, TRADING AS PATRICK HENRY BROADCASTING CO. MARTINSVILLE, VA. For Construction Permit.	DOCKET No. 5497

January 10, 1940

James H. Hanley, H. N. Joyce on behalf of applicants, William C. Barnes and Jonas Weiland, trading as Martinsville Broadcasting Co.; *Philip G. Loucks, Arthur W. Scharfeld* and *J. F. Zias* on behalf of Stations WBIG and WGNC; *Charles Price* on behalf of applicants, J. R. Walker, S. S. Walker, and C. F. Walker, copartners, trading as Patrick Henry Broadcasting Co.; and *Horace L. Lohnes* and *E. D. Johnston* on behalf of Station WHIS.

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF THE COMMISSION

1. This proceeding arose upon the applications of William C. Barnes and Jonas Weiland, copartners, trading as Martinsville Broadcasting Co. (Docket No. 5425), and J. R. Walker, S. S. Walker and C. F. Walker, copartners, trading as Patrick Henry Broadcasting Co. (Docket No. 5497), for construction permits, each requesting authority to establish a radiobroadcast station at Martinsville, Va., to operate on the frequency 1420 kilocycles, with power of 100 watts night, 250 watts to local sunset, unlimited time.

2. The Commission was unable to determine, from information submitted in connection with said applications, that a grant of either application would serve public interest, convenience and necessity, and designated them for hearing before examiners appointed by the

Commission. The hearing in connection with Docket No. 5425 was held on March 6, 7, and 14, 1939; and the hearing in connection with Docket No. 5497 was held on May 24, 1939.

3. These applications are identical with respect to the location and operating assignment requested; consequently, they are mutually exclusive, from an engineering standpoint, and the grant of one would preclude the grant of the other, and, therefore, although the applications were heard separately on different dates, the matters are now consolidated and disposition of both applications will be made herein.

FACTS APPLICABLE TO EACH APPLICATION

4. Martinsville, Va., is the county seat of Henry County and is located in the south central part of the State, about 20 miles from the North Carolina line. The population of Martinsville (1930 United States census) is 7,705; Henry County, 20,088; and the State of Virginia, 2,421,851. Since 1930 several manufacturing plants and retail establishments have located in Martinsville, largely increasing the population of the city. At night there would be approximately 12,315 people residing with the 10 millivolt-per-meter contour; 14,485 within the 4 millivolt-per-meter contour, and 18,008 within the 2 millivolt-per-meter contour, and during daytime operation there would be approximately 30,559 people residing within the 0.5 millivolt-per-meter contour of the proposed station.

5. There are 17 manufacturing establishments located in Martinsville, and 9 additional manufacturing establishments, employing approximately 4,500 people. In Henry County, outside of the city, there are 2 wholesale grocery houses, 1 wholesale dry goods and notions company, and 1 electrical supply company.

6. There are in Martinsville approximately 125 retail stores, 4 banks, 4 hotels, 9 schools, including a small business college, and a new high school being constructed at a cost of $143,000, and all the principal church denominations are represented in the city. Two railroads and a number of paved highways (including two new highways in the course of construction) serve the community.

7. The territory surrounding Martinsville is an important agricultural area, the principal product being tobacco. Other agricultural products include wheat, corn, oats, and other crops. This area likewise produces livestock, poultry, and dairy products. Martinsville is an important tobacco trade center, and the trade area of the city extends about 30 miles in each direction.

8. No existing radiobroadcast station renders primary service either to the city of Martinsville or to the rural areas immediately adjacent thereto.

9. The operation of either of the proposed stations would not result in objectionable interference to or from any existing station, or to or from any station proposed in applications pending as of the date these applications were designated for hearing, except the applications here under consideration, which are mutually exclusive.

10. The equipment proposed to be installed by each applicant is satisfactory from an engineering standpoint. The antenna and site, in each instance, are to be determined subject to the Commission's approval. Studio space in a local hotel has been offered each applicant and the rent therefor would be paid in the form of advertising over the radio.

11. Talent for broadcast program purposes is available in the service area of the proposed station, including bands, orchestras, quartets, choruses, instrumental ensembles, instrumental and vocal soloists, entertainers, and also various individuals and civic, religious and fraternal organizations who would present educational and other programs of local interest. The applicants have interviewed much of such talent and obtained reasonable assurance of its availability and cooperation.

FACTS IN RE DOCKET NO. 5425

12. The original application of the Martinsville Broadcasting Co. was filed with the Commission in the name of Soloman L. Goodman and Jonas Weiland on September 6, 1938. Subsequently thereto Soloman L. Goodman transferred his interest in the partnership to William C. Barnes. On the 10th day of February 1939, the Commission allowed the application to be amended to show that the Martinsville Broadcasting Co. is a copartnership composed of William C. Barnes and Jonas Weiland, each of whom owns a one-half interest therein. William C. Barnes is a citizen of the United States and resides in the city of Martinsville, Va. He was educated in the common and preparatory schools and attended the University of Illinois for 1 year. Upon leaving school, he engaged in the newspaper business as a reporter and in various other capacities in Beaumont, Tex.; Decatur, Peoria, and Chicago, Ill.; and Washington, D. C.

13. In March 1937, Mr. Barnes purchased and now publishes a newspaper, The Daily Bulletin, at Martinsville, Va., which is now owned by a corporation in which Mr. Barnes holds all of the common stock. This is the only daily newspaper published in the service area of the proposed station. In addition to experience acquired in the newspaper business, Mr. Barnes has had considerable experience in preparing and conducting broadcast programs and in broadcast-

ing on radiobroadcast stations, particularly in connection with the organization and operation of the radio department of the American Legion. He is a member of the Retail Merchants' Association, Kiwanis Club, and other civic organizations, and chairman of the community chest in Martinsville, and is one of the most public-spirited citizens of that community. He has taken an active interest and part in all movements and enterprises tending to promote the general welfare of the community. He cooperates fully with the retail merchants and all civic organizations, and at all times gives to them without charge all newspaper space and publicity requested or necessary in connection with matters of a civic nature. The policy and purpose of the newspaper is designed and directed to the development and general betterment of the local community. The operation and policies of the proposed station would be entirely independent of the newspaper, but the local news, and other news services of the paper of particular local interest, together with certain of its personnel, would be made available to the proposed station for broadcast purposes. In addition thereto, the newspaper has the news service of the Associated Press and the United Press, which will likewise be made available to the station. With respect to all civic matters the applicants expect to pursue the same policy in operation of the proposed station as that pursued by the newspaper. If this application is granted, Mr. Barnes will personally take an active interest and part in the organization and operation of the station. Throughout the organization period and until a competent organization is functioning, he will devote a major portion of his time to the station and, thereafter, in conjunction with the other applicant, Mr. Weiland, will personally devote all time and effort necessary to assure efficient station operation.

14. At the date of hearing William C. Barnes had assets in the total amount of $75,390 consisting of $500 in cash; personal property including marketable securities, notes receivable and various stocks, and real estate located in Martinsville and Texas; liabilities in the amount of $8,750 and a net worth of $66,640. All of the assets of Mr. Barnes, or so much thereof as may be necessary, will be available for the construction and operation of the proposed station.

15. Jonas Weiland is a citizen of the United States and resides at Kinston, N. C. He was educated in the common schools, Boro-Hall School and Cooper Union College. He is the sole owner and licensee of radiobroadcast station WFTC, located at Kinston, N. C., which said station has for the past 2 years been successfully operated by him, and under his personal management and supervision. Prior

to his acquiring Radio Station WFTC, he had been connected in various capacities with broadcast stations in New York and Brooklyn, N. Y. He has supplied musical programs to various stations and for a time was director of an orchestra that broadcast from several New York stations. In addition thereto, he has had experience in building and presenting musical programs in other fields.

16. If this application is granted, Mr. Weiland will establish a residence in Martinsville and will devote as much time to the operation of the station as is necessary to insure the proper and efficient operation thereof.

17. At the date of hearing Mr. Weiland had total assets amounting to $66,279.51; liabilities $26,935.90; net assets $39,340.35. His assets consist of $9,000 in cash, which will be immediately available for construction of the proposed station, personal property consisting chiefly of current accounts receivable in the amount of $2,150 and $15,000 in stock in the Mutual Building and Loan Association of Kinston, N. C., and real estate. All of the assets of Mr. Weiland, or so much thereof as may be necessary, will be available for construction and operation of the proposed station.

18. The estimated total cost of the proposed station is $9,000; the estimated monthly operating expense of the station is $1,225; and the estimated annual income thereof is $15,000.

19. The applicants have secured written commitments from a number of local business concerns for the purchase of station time for advertising purposes in the total amount of $8,150 and have secured reasonable assurance of additional economic support of like character sufficient to insure efficient station operation.

20. The applicant will employ a staff of experienced and qualified personnel adequate to insure efficient station operation, including a competent program director who will develop the local talent and take charge of programs under the supervision of the applicants.

21. The applicants propose to devote 55 percent of the station's time to broadcasting sustaining programs and 45 percent to sponsored programs.

22. The proposed program schedule includes religious services, news, safety talks, law enforcement matters, musical selections, home economics, agricultural features, civic broadcasts, dramatic and entertainment numbers, health discussions, sports events and reviews, weather reports and educational subjects. On each Sunday church services will be broadcast by remote control and devotional services will be broadcast each week day morning. Five news broadcasts will be presented daily; two covering the state, national and international news and three covering local news. This news will be

supplied to the station by The Daily Bulletin, which has and utilizes the service of the United Press and the Associated Press, and tentative arrangements have been made by the applicant to secure also the Press Radio News Service, which is available. The news-gathering staff of the paper will be available to supply the material for the local news broadcast. The facilities of the proposed station will be offered to all civic, religious, educational, patriotic, and other public service organizations and institutions without charge.

FACTS IN RE DOCKET NO. 5497

23. The application of the Patrick Henry Broadcasting Co. was filed with the Commission on January 20, 1939. The Patrick Henry Broadcasting Co. is a copartnership composed of three brothers, namely, C. F. Walker, S. S. Walker, and J. R. Walker, each of whom owns a one-third interest therein. All of the copartners are citizens of the United States. C. F. Walker is engaged in the laundry business in Rocky Mount, N. C., 154 miles distant, but visits Martinsville, Va., 8 or 10 times yearly. He will not be actively affiliated with the proposed station, but will leave the general supervision of its management and operation to the other two members. S. S. Walker and J. R. Walker are residents of Martinsville, where they have resided for thirty years. S. S. Walker is an officer, director and stockholder of 3 corporations, a director of a local bank, and a member of the American Legion, the Masonic Lodge and the Christian Church, and chairman of the city school board. J. R. Walker is secretary-treasurer of the Patrick Henry Ice & Storage Corporation, vice-mayor, president, and a member of the finance committee of the city council, and a member of the Knights of Pythias and the Forest Park Country Club. He also holds a degree of Bachelor of Arts from Wolford College, Spartanburg, S. C., and has completed 1 year in the study of law at Washington and Lee University. Neither of the said applicants residing in Martinsville is a member of, or affiliated with, any civic organization in said city.

24. C. F. Walker, as of April 19, 1939, had total assets amounting to $72,653.79 consisting of $111.79 in cash, personal property and real estate, total liabilities $5,450 and a total net worth of $67,203.79. S. S. Walker, as of May 1, 1939, had a net worth of $77,397.50, consisting of $5,000 in cash, marketable securities and real estate, and no liabilities. J. R. Walker, as of May 1, 1939, had total assets amounting to $80,250, consisting of $2,500 in cash, personal property consisting chiefly of securities, and real estate, liabilities amounting to $13,700, and a net worth of $66,550. If additional cash is needed to cover the cost of construction and operation of the proposed sta-

tion, the applicants plan to borrow such sums as may be necessary for this purpose. The three copartners are each able to negotiate a loan to the extent of $25,000 at a local bank.

25. The cost of the equipment proposed to be installed by the applicants is estimated at $16,982.95. The total estimated cost of operation, including payrolls, replacements of equipment, etc., is $1,338.80 monthly, and the estimated annual income of the proposed station is $25,000 to $30,000.

26. The applicants have secured written commitments totaling $14,080.25 from a number of local merchants and business concerns for the purchase of time for advertising purposes over the proposed station.

27. None of the members of the applicant partnership have had any experience in the construction and operation of a radiobroadcast station. A staff of ten experienced and qualified persons, including a general manager, program director, and a commercial manager will be employed to construct and operate the proposed station.

28. The applicant's proposed program service includes religious services, news, safety talks, law enforcement matters, musical selections, home economics, agricultural features, civic broadcasts, dramatic and entertainment numbers, health discussions, sports reviews, and educational subjects. The applicant plans to utilize the service of Transradio Press to broadcast state, national and international news reports, but no definite arrangement has been made to secure local news items for broadcast purposes. The facilities of the proposed station will be offered to all civic, religious, educational, patriotic, and other public service organizations without charge.

CONCLUSIONS

Upon the foregoing findings of fact the Commission concludes:

1. Each of the applicants is legally, technically, and financially qualified to construct and operate the proposed station.

2. No primary radiobroadcast service, day or night, is now available to the city of Martinsville, Va., and there is a demand for the proposed service in the Martinsville area.

3. The equipment proposed by each applicant complies with the rules and regulations of the Commission and no objectionable interference would be caused by either station operating as proposed.

4. The applications herein are substantially identical with respect to the location and operating assignment requested. They are, therefore, mutually exclusive, and the granting of one necessarily precludes the granting of the other. Each applicant being in all respects qualified to construct and operate the proposed station, it is

necessary for the Commission to consider the two applications on a comparative basis and determine which one, in consideration of the public interest, may be given preference and should be granted. Having considered fully all relevant and material facts and circumstances in the record in each case, the Commission concludes, and so finds, that public interest, convenience, and necessity will be better served by the granting of the application of William C. Barnes and Jonas Weiland, trading as Martinsville Broadcasting Co. (Docket No. 5425), by reason of the fact that both William C. Barnes and Jonas Weiland, the partners in the Martinsville Broadcasting Co., have had considerable experience in the management and conduct of radiobroadcasting stations and would thus bring to the operation of the frequency assigned to Martinsville qualifications not possessed by the partners in the application filed by J. R. Walker, S. S. Walker, and C. F. Walker, trading as Patrick Henry Broadcasting Co. (Docket No. 5497), who have had no experience whatsoever in the operation of a broadcasting station.

Having reached such conclusion, it follows that the application of J. R. Walker, S. S. Walker, and C. F. Walker, trading as Patrick Henry Broadcasting Co. (Docket No. 5497), must of necessity be denied.

The proposed findings of fact and conclusions of the Commission were adopted by the Commission as the "Findings of Fact and Conclusions of the Commission" on April 13, 1940.

WALKER, Commissioner, concurring:

I am of the opinion that it may well be said that the granting of the license herein to the later applicant will mean a monopoly of the news in the hands of the Patrick Henry Broadcasting Co., through such control of advertising as may mean the elimination of the newspaper, through such loss of advertising revenues as to make impossible continued operation of the newspaper by the present owner.

With the general policy regarding monopoly of news through unity of ownership of all means of communications, as stated in the dissenting opinion herein, I fully agree, but I am of the opinion the instant case is not the proper one for beginning the application of this policy.

I therefore concur in the grant to William C. Barnes and Jonas Weiland, copartners, trading as Martinsville Broadcasting Co.

FLY, Chairman, dissenting:

In this case two applicants seek the same facilities in the same community, and under the statutory mandate we are called upon

to determine which of the two is better qualified to serve in the public interest. In the proposed findings and conclusions a grant to the Martinsville Broadcasting Co. and a denial to the Patrick Henry Broadcasting Co. was proposed and the majority now affirm those conclusions. A study of the record has persuaded me that an opposite result should be reached.

Both applicants are copartnerships, Martinsville Broadcasting Co. being composed of William C. Barnes and Jonas Weiland, and Patrick Henry Broadcasting Co. consisting of J. R. Walker, S. S. Walker, and C. F. Walker. The majority consider both applicants to be in all respects qualified to construct and operate the proposed station but base their choice for a grant solely on the previous radio experience of Barnes and Weiland. Countervailing weight is not given to the fact that Barnes is the owner of all of the common stock in the company which publishes The Daily Bulletin, the only daily newspaper published in the service area of the proposed station.

The majority's conclusion is, I believe, inconsistent with that of the Commission in *Port Huron Broadcasting Company*, 5 F. C. C. 177. There, similarly, the Commission had before it two mutually exclusive applications, one of which was filed by an applicant closely associated with the only local daily newspaper and the other by the Port Huron Broadcasting Co. The grant was made to the latter applicant, it being pointed out:

> All circumstances and facts considered, the granting of the application of Port Huron Broadcasting Co. will better serve public interest, convenience, and necessity in that there will be added to the Port Huron area a medium for the dissemination of news and information to the public which will be independent of and afford a degree of competition to other such media in that area.

The views expressed in this case were of course not intended to be applied generally to all newspaper applicants but only when a grant would tend toward creating a local monopoly in the channels for the public expression of opinion and in the dissemination of news and information and when at the same time a competing application was presented. In my opinion this policy is sound and I find no sufficient justification for a failure to apply it here.

There are, moreover, still other distinctions between the applicants which favor the Patrick Henry Broadcasting Co. One of these which, in view of certain recent experiences of the Commission, has influenced my conclusion, concerns the question of the source of the funds necessary to construct the proposed station. While the partners in Martinsville Broadcasting Co. are of more than adequate net worth to undertake this venture, the amount of cash available to

them at the time of the hearing was far too small for this purpose and, except in the most general way, no indication was given of the expected source of the required capital. The other applicant, however, in addition to a showing of greater resources, demonstrated specifically where and how more than the necessary finances would readily be made available, a practice which in the future the Commission may find it necessary to make a uniform requirement as a further check on transfers of control of broadcast stations.

The record shows further that Weiland is resident of Kinston, N. C., which is about 160 miles from Martinsville, and that to date Barnes has lived in Martinsville only 3 years. S. S. Walker and J. R. Walker, on the other hand, have resided in that city for more than 30 years, and are closely associated with local government and local organizations. They would bring to the operation of the proposed station that intimate knowledge of local affairs which is so important to the rendering of a public service. In this connection it should be noted that Weiland is the licensee of Station WFTC, located in Kinston. It may well be urged, in view of the presence of a qualified competing applicant, that the interests of Kinston as well as Martinsville will be best served by Weiland's continuing to give his undivided attention to the supervision of the Kinston station.

Apparently regarded by the majority as outweighing the considerations of public interest indicated, is the prior radio experience of Weiland, and, to a minor degree, of Barnes despite the fact that Weiland is only 27 years of age. It is conceded that none of the partners in the Patrick Henry Broadcasting Co. has been previously in any way connected with radio enterprises. It should be noted, however, that their considerable business ventures have been successful, and that they propose to engage a staff of qualified persons to operate the station.

Under all the circumstances I would set aside the proposed conclusions, deny the application of the Martinsville Broadcasting Co., and grant that of the Patrick Henry Broadcasting Co.

Commissioner Case has examined this opinion and has discussed it with me. He has authorized me to state that he concurs herein.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of
AMERICAN BROADCASTING CORPORATION OF KENTUCKY (WLAP), LEXINGTON, KY.
For Special Experimental Authorization.

DOCKET No. 5638

Decided April 13, 1940

Gilmore N. Nunn on behalf of the applicant.

DECISION AND ORDER

This proceeding arose upon the application of American Broadcasting Corporation of Kentucky (WLAP) for special experimental authorization to rebroadcast over the applicant's present broadcast assignment, with power of 250 watts, facsimile transmissions originating over Station WLW, Cincinnati, Ohio. The Commission designated the application for hearing and it was heard on September 13, 1939, before an examiner duly designated by the Commission. No proposed findings of fact and conclusions have been submitted on behalf of the applicant.

The applicant proposes to rebroadcast over its standard broadcast station (WLAP) in Lexington, Ky., the facsimile transmissions originating over Station WLW, Cincinnati, during the daily period 1:05 to 2:15 a. m., C. S. T. The transmissions from WLW would be received by the use of a Beverage antenna in order to provide as favorable a ratio of the signal to noise level as is possible in the Lexington area. No facsimile broadcasts would be originated over the applicant's station. The applicant intends to install some 15 facsimile receivers in the city of Lexington, which would be provided by the Crosley laboratories. These receivers would be distributed among certain persons who have evidenced an interest in facsimile broadcasting.

The applicant has made no determination of the field intensity and the general suitability of the WLW signals in the Lexington area for rebroadcasting. In fact, the request is not made in order to

carry on a program of research relating to technical developments of the facsimile broadcasting technique, but for the purpose of serving as a booster station to rebroadcast the facsimile material originating over WLW.

From the Commission's experience, the problem of successful rebroadcasting consists almost entirely of receiving a satisfactory signal at the point where the rebroadcast is conducted. In other words, if the originating station's signal at the point where the rebroadcast is made is of sufficient ratio over the noise level, experiments are not necessary to determine whether successful rebroadcasting can be conducted. The problem involved can readily be solved without operating a transmitter by the use of ordinary receiving equipment and measuring devices.

Under the provisions of section 303 (g) of the Communications Act of 1934, the Commission is authorized to provide for experimental use of the frequencies in the public interest. Under section 4.92 of the Commission's rules, a special experimental authorization will be issued only after the applicant has shown, among other things, that the proposed program of research and experimentation indicates reasonable promise of substantial contribution to the facsimile broadcasting technique. In passing upon applications for special experimental authorizations the Commission has consistently followed this standard. Since the program of research and experimentation proposed herein relates wholly to reception, and since the applicant has failed to show that the proposed program of research and experimentation has reasonable promise of substantial contribution to the development of facsimile broadcasting service, the Commission is unable to find that the granting of the instant application would serve public interest, and, accordingly, it must be denied.

ORDER

Upon consideration of the entire record, it is ordered that the application of American Broadcasting Corporation of Kentucky, Docket No. 5638, be, and it is hereby, denied.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of R. C. A. COMMUNICATIONS, INC., To add Quito, Ecuador, as a primary point of communication.	DOCKETS NOS. 5390, 5391, and 5392

March 13, 1940

Manton Davis, *Frank W. Wozencraft*, *C. H. Wiggin*, and *J. F. Gibbons* on behalf of the applicant; *Elihu Root, Jr.*, on behalf of All America Cables & Radio, Inc.; *James A. Kennedy*, *Annie Perry Neal*, and *John A. Hartman* on behalf of the Commission.

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF THE COMMISSION

FINDINGS OF FACT

1. This proceeding arose upon the application of R. C. A. Communications, Inc. (sometimes hereinafter referred to as RCAC or applicant), filed August 12, 1938, for modification of its fixed public service licenses to add Quito, Ecuador, as a primary point of communication for point-to-point telegraph stations WBU, WES, and WKO, at Rocky Point, N. Y., and as a secondary point of communication for its other fixed stations. Applicant proposes to conduct a general public telegraph service of standard international telegraph message classifications between the United States and Ecuador and a service for the transmission of addressed program material for broadcast. The Commission was unable to determine from an examination of the applications that the granting thereof would serve public interest, convenience, or necessity and, therefore, designated the same for public hearing in accordance with the provisions of section 309 (a) of the Communications Act of 1934, as amended.

2. Notice of the time and place of hearing and of the issues involved was given to the RCAC and Mackay Radio & Telegraph Co., Inc., International Telephone & Telegraph Corporation, Postal Telegraph-Cable Company, The Commercial Cable Company, All America Cables & Radio, Inc., Commercial Pacific Cable Company, Cuban All

America Cables, Inc., The Western Union Telegraph Co., The French Telegraph Cable Co., Press Wireless, Inc., Globe Wireless, Ltd., Tropical Radio Telegraph Co., U. S. Liberia Radio Corporation, and the American Telephone & Telegraph Co. Upon motion of RCAC an answer filed by Mackay Radio & Telegraph Co., Inc., was dismissed for failure to comply with the provisions of rule 105.26 of the Commission's Rules of Practice and Procedure. Although leave to file an amended answer was granted, Mackay Radio & Telegraph Co., Inc., did not file such an answer nor appear at the hearing. All America Cables & Radio, Inc. (sometimes hereinafter referred to as AACR), was the only party which appeared as a respondent. The hearing was duly held before an examiner designated by the Commission commencing February 15 and ending February 21, 1939.

3. Proposed findings of fact and conclusions were submitted by the applicant and the respondent AACR, and a brief was filed by the respondent. Subsequently, in order that the record might show changes in the situation which took place after the close of the hearing, certain additional documents were incorporated by stipulation of the parties and order of the Commission, including a contract between the National Government of Ecuador and AACR entered into on July 18, 1939; a Decree-Law of the Republic of Ecuador promulgated on October 16, 1939, imposing a terminal tax on telegraph traffic to or from Ecuador, whether handled by cable or radio; and affidavits of officers of AACR and RCAC as to changes in their rates and proposed rates resulting from the imposition of the said terminal tax.

4. The applicant corporation is a common carrier of telegraph communications, incorporated under the laws of Delaware, and is engaged in domestic and foreign radiotelegraph business. Its capital stock is owned by Radio Corporation of America, also a Delaware corporation. The applicant holds numerous licenses issued by this Commission for fixed public point-to-point radiotelegraph stations and conducts public telegraph service with many principal foreign countries throughout the world. It has heretofore been found by the Commission to possess the necessary legal, technical, and financial qualifications to hold radio licenses for public international telegraph service, and no question was raised in this proceeding as to its qualifications in this respect.

5. The proposed circuit from New York to Quito, Ecuador, will be operated by the use of frequencies 9450 kilocycles, 15970 kilocycles, and 21260 kilocycles, now licensed for applicant's Stations, WES, WBU, and WKO, respectively, at Rocky Point. These stations are currently licensed to communicate with points in Europe, Central

America, and South America, and the Quito circuit will be "forked" with those points. The addition of Quito as a point of communication will not require the assignment to the applicant of additional frequencies, nor will it cause interference to existing stations. Under applicant's plans, the service to be rendered will be an efficient, up-to-date radiotelegraph service.

6. At present there are no radiotelegraph facilities for the conduct of a direct general public telegraph service between the United States and Ecuador. The only public telegraph service of standard message classifications available between these two countries is offered over its cable system by All American Cables & Radio, Inc., a New York corporation.[1] This company has been handling the traffic exclusively since 1882.

7. AACR operates three cable circuits between New York and the west coast of South America via Ecuador. These three cables run from New York to Fisherman's Point (Guantanamo Bay), Cuba, to Colon, C. Z., and via two underground cables (one containing four conductors, the other containing seven conductors) to Balboa, C. Z. At Balboa two cables run direct to Santa Elena, Ecuador, and another cable runs to Santa Elena via Buenaventura, Colombia, with a T-piece connection to Esmeraldas, Ecuador. The two most important Ecuadorian cable routes of AACR do not pass through the territory under the control of any foreign government, since both Fisherman's Point, Cuba, and the Canal Zone are under the jurisdiction of the United States. South of Santa Elena, these cables continue on down the west coast of South America as follows: Two cables direct from Santa Elena to Callao (Lima), Peru; one cable from Santa Elena to Callao via Paita, Peru, with a T-piece to Trujillo, Peru; three cables from Callao to Iquique, Chile; two cables direct from Iquique to Valparaiso; one cable from Iquique to Valparaiso via Antofagasta; land-line circuits across the Andes Mountains to Buenos Aires; land-line circuits to Atalaya, Argentina; three cables (four conductors total) from Atalaya to Montevideo, Uruguay; one cable from Atalaya to Rio de Janeiro, Brazil; one cable from Montevideo to Santos, Brazil. In addition to these cable circuits, land-line circuits are operated by AACR to points in the interior of Colombia, Ecuador, Peru, Bolivia, Chile, Argentina, and Brazil.

8. From these cables, AACR derives three cable circuits in each direction, between New York and South America, called routes 1, 2, and 3. Route 1 at the time of the hearing was the sole route used for handling the traffic between the United States and Ecuador.

[1] Press Wireless, Inc., is authorized to transmit multiple address press messages to Guayaquil and Quito, Ecuador.

This route also handled traffic between the United States and Central America, and other countries in South America.

9. In the southbound direction, route 1, as a speed of 65 words per minute, is operated direct from New York to Balboa with an automatic relay at Fisherman's Point. At Balboa two automatic reperforators, automatically controlled from New York by selector signals, are provided; one for traffic to Central American countries north of Balboa, the other for traffic to Ecuador and other South American countries.

10. The automatic reperforators are located very close to their associated transmitters so that not more than 15 seconds' delay is caused by their use. All traffic on route 1 south of Balboa is transmitted in this manner from Balboa on the cable section to Santa Elena, Ecuador, where an automatic relay is provided for traffic destined to Peru, Chile, and Argentina. Traffic to Santa Elena is picked off the circuit at that point and traffic for Guayaquil, Ecuador, is automatically relayed at Santa Elena to Guayaquil.

11. In the northbound direction, traffic from Guayaquil is received on an automatic reperforator at Santa Elena and this traffic takes its turn with traffic from Santa Elena and from points south for transmission on route 1 to Balboa. At Balboa the traffic is received on an automatic reperforator and takes its turn with traffic from Central American points for transmission direct to New York via automatic relay at Fisherman's Point. This route is operated at a speed of 65 words per minute.

12. Route 2 is normally used as a direct circuit in each direction between New York and Buenos Aires, Rio de Janeiro, and Sao Paulo, Brazil, at a speed of 50 words per minute in each direction. This circuit is operated through automatic relays at the relay stations on the circuit and is not normally used for traffic to and from Ecuador although it is available at a moment's notice for such service.

13. Route 3, at the time of the hearing, was not operated between New York and Fisherman's Point, although it was available for such use at a speed of 30 words per minute in each direction. This circuit is used primarily for handling traffic between points on the west coast of South America.

14. In addition to the three main cable routes discussed above, AACR operates two cable circuits leased from The Commercial Cable Co.; one between New York and Havana, Cuba, the other between Miami, Fla., and Havana. These cables are used for traffic between the United States and Cuba.

15. AACR operates a cable leased from a French company between New York and Cape Haitien, Haiti; cables leased from the French Telegraph Cable Co. from Haiti to Puerto Rico, Puerto

Rico to the Virgin Isles, and from Santo Domingo to the Dutch West Indies; cables from Guantanamo, Cuba, to Haiti and Santo Domingo; cables from the Dutch West Indies to Venezuela and Colon, C. Z., via Colombia. These cable circuits are used for handling traffic between the United States and the West Indies and Venezuela.

16. AACR operates cable circuits on the west coast of Central America, from Balboa to Costa Rica, Nicaragua, El Salvador, Guatemala, and Mexico and via Colon to the east coast of Costa Rica.

17. In addition to its cable circuits, AACR operates a radio circuit between Managua, Nicaragua, and San Juan del Sur, Nicaragua; radio circuit at Bogota, Colombia, to New York, Lima, Peru and Berlin, Germany; radio circuits at Lima to New York, Rome, Italy, and Berlin.

18 Although cable circuits are subject to interruption, AACR has no record of any time when all three cable routes between the United States and Ecuador have been interrupted simultaneously, or when traffic between the United States and Ecuador could not be handled without excessive delay.

19. In the event all three cable routes were interrupted between New York and Fisherman's Point, Cuba, it would be possible to establish a circuit from New York to Fisherman's Point by means of the cables New York-Cape Haitien, Cape Haitien-San Juan, San Juan-Santo Domingo, and Santo Domingo-Fisherman's Point. It would be possible also to establish a circuit from New York to Fisherman's Point by means of the New York-Havana cable and land lines leased from the Cuban Telephone Co. between Havana and Fisherman's Point.

20. Should all three routes between Fisherman's Point and Balboa be interrupted simultaneously, it would be possible to establish a circuit from Fisherman's Point to Balboa by means of the cables Fisherman's Point-Santo Domingo, Santo Domingo-Dutch West Indies, Dutch West Indies-Venezuela, Venezuela-Colombia, and Colombia-Canal Zone.

21. Should all three cable routes be interrupted at Balboa, it would be possible to route traffic via Mackay Radio from New York to Bogota, Colombia, and cable from Bogota to Ecuador; Mackay Radio from New York to Lima, Peru, Santiago, Chile, or Buenos Aires, and thence via cable up to Ecuador.

22. Thus, only in the event all three cable routes into Ecuador from the north and all three cables out of Ecuador to the south were interrupted simultaneously would it become impossible to effect telegraph communication between the United States and Ecuador.

23. The following table shows the traffic handled and revenues received by AACR from telegraph traffic between the United States and Ecuador from 1920 through 1937 and for the first 10 months of 1938. Approximately 80 percent of the Ecuadorian traffic originates or terminates at Guayaquil, between which point and the United States AACR operates direct telegraph circuits. RCAC proposes to serve Guayaquil via its radio circuit to Quito, and the proposed Government radio circuits between Quito and Guayaquil, with manual relaying of traffic at Quito. Traffic between the United States and Guayaquil, therefore, can ordinarily be handled more expeditiously over the cable circuits of AACR than over the proposed circuit of RCAC.

Year	Southbound traffic to Ecuador only		Northbound traffic from Ecuador only	
	Words	Revenue to AACR before exchange	Words	Revenue to AACR before exchange
1920	258,741	$114,932.32	225,597	$99,489.09
1921	242,838	103,772.51	215,447	89,745.04
1922	242,472	102,233.51	236,721	95,935.48
1923	233,532	92,257.25	224,318	84,987.44
1924	311,309	115,380.70	266,309	97,445.83
1925	346,057	126,646.25	288,027	103,978.32
1926	362,929	128,406.01	311,006	107,032.97
1927	351,175	107,754.67	327,051	99,582.41
1928	424,086	106,565.11	371,843	92,601.42
1929	435,210	103,295.37	389,725	89,706.40
1930	389,035	86,032.85	329,375	72,943.56
1931	360,551	74,292.44	245,239	61,705.88
1932	319,633	62,008.76	209,951	48,138.89
1933	302,283	61,637.44	253,095	58,218.64
1934	356,707	66,054.05	284,351	56,147.24
1935	397,522	70,922.53	285,756	53,913.57
1936	425,473	74,980.32	375,781	69,704.32
1937	442,838	79,725.65	412,992	79,048.01
1938 (10 months)	316,893	58,437.26	307,427	57,589.40

24. The record shows that the existing cable facilities between New York and Ecuador furnished by the AACR system are adequate to handle, without delay, all telegraph traffic now existing or reasonably to be anticipated in the future between the United States and Ecuador. In fact, one of the cable routes is not operated normally because the other two routes are sufficient to handle the traffic.

25. The problem presented, therefore, resolves itself into a question of whether the Commission should find that public convenience, interest, or necessity would be served by the establishment of direct radiotelegraph service to a foreign country in a situation where the existing cable service operated by an American carrier is adequate from a traffic standpoint but no radiotelegraph service is now available.

26. AACR opposes the granting of the instant applications, basing its position principally on the following contentions: (1) That its cable service is adequate; (2) that in granting RCAC a contract

exempting that company from taxes in Ecuador the Government will induce a breach of its contract with AACR, which imposes a word tax on incoming messages and provides that similar taxes will be collected from any other entity which may exploit communication service in Ecuador; (3) that the proposed circuit would result in little or no profit to RCAC; (4) that if the proposed circuit is opened AACR will operate its Ecuadorian business at a loss; (5) that tolls will be diverted from the American carrier system; (6) that it is to the advantage of this government to have a single bargaining agent in a foreign field; and (7) that the proposed radio circuit would add nothing of real value to the public.

27. The first point has already been discussed, and we have found that while the cable system is adequate from an operating standpoint to handle the traffic without delay, no facilities are available for a general public radiotelegraph service between the United States and Ecuador.

28. In connection with the other points advanced by respondent, it is necessary to examine the respective contracts of the parties, the proposed operations thereunder, and their rates and service to the public.

29. The Ecuadorian end of the proposed radio circuit between New York and Quito will be operated by the Government of Ecuador under a contract with RCAC which provides for the transmission over the circuit of all messages under RCAC's control which may be destined to or for transit through Ecuador unless routed otherwise by the sender and, reciprocally, for the transmission by the Government of Ecuador, over the circuit, of all messages under its control which may be destined to the exterior unless otherwise routed by the sender; and for an equal division of the through tolls for service over the proposed circuit after the deduction of the outpayments for service beyond New York and Quito and the terminal or transit taxes accruing to each of the parties. This contract further provides that RCAC shall be exempt from payment of imposts or taxes of any sort in Ecuador.

30. At the time of the hearing it appeared that AACR would be subjected to a 10-cent word tax on southbound messages to Ecuador under its contract with the Government of Ecuador dated May 18, 1938, and that RCAC would not be subject to a similar tax, thus making it necessary for AACR to absorb such tax in order to keep its rates in line with those proposed by RCAC. Subsequent to the hearing, however, a new Decree-Law was promulgated by the Government of Ecuador placing a 5-cent word tax on all inbound and outbound ordinary full-rate telegraph traffic and a proportional tax on other classes of telegraph traffic, except Government and press,

whether handled by cable or radio. The decree also provided that such tax should be in lieu of the 10-cent word tax formerly assessed against AACR. Thus, AACR's second point appears to be no longer applicable.

31. In view of this tax, RCAC revised its proposed rate schedule so as to increase its proposed rates by the amount of the tax. AACR, likewise, revised its rates so as to reduce the southbound rates by the difference between the amount of the new 5-cent tax and the amount of the old 10-cent tax, and increased its rates from Ecuador to the United States by the amount of the new tax. The present AACR rates per word and the proposed RCAC rates per word from New York to Ecuador are as follows:

	To Quito		To Esmereldas, Guayaquil, Salinas		To other offices	
	Present via AACR	Proposed via RCAC	Present via AACR	Proposed via RCAC	Present via AACR	Proposed via RCAC
Full rate	[1] $0.44	[1] $0.42	[1] $0.42	[1] $0.42	[1] $0.44	[1] $0.44
Urgent	1.88	1.84	1.84	1.84	1.88	1.88
Code [2]	1.27	1.26	1.26	1.26	1.27	1.27
Code urgent [2]	1.54	1.52	1.52	1.52	1.54	1.54
Deferred [3]	1.22	1.21	1.21	1.21	1.22	1.22
Letters (DLT/NLT)[3]	[1] 3.67	[1] 3.50	[1] 3.50	[1] 3.50	[1] 3.67	[1] 3.67
Ordinary press	.06	.10	.06	.10	.06	.11
Urgent press	.44	.42	.42	.42	.44	.44
U. S. Government, ordinary	.23	.21	.21	.21	.23	.22
U. S. Government, code	.14	.13	.13	.13	.14	.13½
Ecuador Government, ordinary	.21	.21	.21	.21	.21	.21
Ecuador Government, code	.13	.13	.13	.13	.13	.13

[1] Add Ecuadorian tax as follows: Full rate, $0.05; code, $0.03; deferred $0.02½; letters (DLT/NLT), $0.42, minimum charge for 25 words; urgent, $0.10; code, urgent, $0.06.
[2] Minimum 5 words.
[3] Minimum charge for 25 words.

32. AACR presented evidence for the purpose of showing that it is now handling Ecuadorian traffic at a profit, but that in the event the application of RCAC is granted and RCAC takes away 30 percent of the traffic from AACR, the operations of AACR with Ecuador under the contract [1] between AACR and the Ecuadorian Government, in force at the time of the hearing, would be conducted at a loss. The testimony was based on the assumption that the revenues and expenses applicable to the Ecuadorian end of the circuits only were to be included. The revenues for Ecuadorian traffic were calculated on two bases: (1) the allocation of 50 percent of the revenues received from traffic originating in Ecuador, 50 percent of the revenues received from traffic destined to Ecuador and the entire revenues received from traffic wholly within Ecuador; (2) the allocation of 60 percent of the revenues from traffic originating in Ecuador,

[1] As pointed out above, this contract has since been modified by Government decree so as to replace the 10-cent word tax with a 5-cent equated word tax applying to both cable and radio. Therefore, the losses anticipated by AACR due to its absorption of the 10-cent word tax will have to be discounted.

40 percent of the revenues from traffic destined to Ecuador and all of the revenues from traffic handled wholly in Ecuador. AACR relied on the revenues under basis (2) on the theory that the originating office is entitled to a greater percentage of the tolls for securing the business. Other bases of determining the revenues at Ecuador were suggested at the hearing, such as dividing the outgoing and incoming revenues in the proportions 66⅔/33⅓ and 75/25. Since the difference between the outgoing revenues and the incoming revenues is not large the basis selected does not make much change in the revenue. As the difference between 50/50 division and 75/25 is less than $2,000 per year, for the purpose of weighing this testimony we will analyze the 60/40 division as follows:

33. The revenues received by AACR from Ecuadorian traffic for the period November 1, 1937, to October 31, 1938, are as follows:

Outgoing from Ecuador	$111,432
Incoming to Ecuador	104,413
Wholly within Ecuador	3,488
	219,333

34. Under the 60/40 division of revenues, the revenues assigned to operations at Ecuador are as follows:

Outgoing from Ecuador	$66,900
Incoming to Ecuador	41,800
Wholly within Ecuador	3,488
	112,188

35. AACR obtained from records the actual expenses of conducting operations in Ecuador, such as for salaries, wages, materials, office and other expenses; depreciation of plant in Ecuador; rent of lines from the Ecuadorian government; pensions; sales taxes, word taxes and concession taxes. These expenses included those at the Santa Elena office for traffic transiting Ecuador. AACR eliminated the expenses for transit traffic by removing from the total expenses all expenses except those necessary for a theoretical office for handling the traffic originating at or destined to Ecuador. The total expense at the office at Santa Elena amounted to $45,000 for the year period, of which amount $7,750 was allocated to the theoretical office for handling the Ecuadorian business. The amount $7,750 was determined from the salaries of employees necessary to handle the Ecuadorian traffic plus the overhead found to be normal in Ecuador. The only other item of expense arrived at on a theoretical basis was the proportion of general expense for general officers and staff, maintenance and repairs of cables, depreciation and other items which cannot be segregated for individual countries. The item of general

expense for Ecuador was assumed to be in the same proportion to the total general expense as the Ecuadorian revenues were to the total revenues. This method of allocation assumes that the factors making up the total general expense may be allocated to any particular point based proportionally on the revenues derived from this point. Such is not necessarily correct, since these general expenses may be incurred for work done which does not relate to traffic handled at any particular point. While this method of allocation could not be relied upon necessarily in a rate case, the portion of general expense so determined has some value in approximating the profitableness of the Ecuadorian traffic.

36. The annual AACR expenses for conducting operations in Ecuador under the present conditions of no competition are shown below:

Salaries and wages, materials, office and other expenses in connection with maintenance and conducting operations in Ecuador		$64,505.00
Depreciation of local plant and equipment in Ecuador		13,063.00
Rent of lines leased from the Ecuadorian government		107.00
Provisions for pensions		3,193.00
General expense [1]		28,100.00
Miscellaneous and unclassified expense		3,789.00
Sales tax:		
Amount due Government	$3,000.00	
Amount collected from customers	2,500.00	
Net expense for sales tax		500.00
Word tax:		
Amount due Government	$24,900.00	
Amount collected from customers	24,900.00	
Net expense for word tax		
Ecuadorian Government concession tax		20,000.00
Total expenses		133,257.00
Less expenses at Santa Elena for transit traffic [1]		37,300.00
Net expenses		95,957.00
Revenues		$112,188.00
Expenses		95,957.00
Net operating income		16,231.00

37. We find, therefore, that the AACR under conditions of no competition is handling its traffic at Ecuador at a profit, although because of the necessity of making certain allocations the exact amount cannot be determined.

38. During this period the AACR had revenues of approximately $107,000 at other points in its system from handling traffic with

[1] Involves allocations.

Ecuador. No testimony was introduced in regard to the profitableness of operations in handling this traffic with Ecuador at these points. The witnesses of AACR contended that it would be improper to include any profit (or loss) at these points on this traffic in considering the profitableness from the Ecuadorian traffic, because this method "would come out to a total of double the revenues of AACR, and just the one lot of expenses."

39. We are of the opinion that if the AACR operated at Ecuador only, this method of determining the profitableness of the Ecuadorian operations would be correct. Since, however, the AACR operates the other points on the circuit which produced the additional $107,000 revenue from the Ecuadorian traffic, the profits and losses at these other points must be taken into consideration to show completely the results of the operations with Ecuador. Since no such testimony was introduced at the hearing, no conclusions in this respect can be drawn. The testimony shows, however, that the over-all operating ratio (total operating expenses to total operating revenues) of AACR was approximately 80 percent during this period. If this operating ratio be applied to the additional $107,000 Ecuadorian revenues not taken into consideration by the AACR witnesses in determining the profits derived, an additional profit of approximately $21,000 is obtained. This method of determining the profitableness of a given service is not ordinarily satisfactory, since it assumes that it requires the same number of dollars expenditure at each point in the system to produce an equal number of dollars in revenue. Such is not the case, because wages and salaries are different in different countries, the amount and classes of traffic are different, the rates for equal length hauls are different, etc. These expenses can only be determined by allocating on the proper bases the joint expenses at all points for handling Ecuadorian traffic. While no conclusions, therefore, can be drawn as to the actual profit of AACR in handling Ecuadorian traffic, the inferences are that the total profits derived by AACR from handling Ecuadorian traffic at the present time may be double the amount indicated by an analysis of handling the traffic in Ecuador, above.

40. In the event the application of RCAC be granted, it is estimated that RCAC will take away from AACR 30 percent of the traffic it is now handling with Ecuador. If the AACR traffic be thus reduced, it will be able to effect certain economies in operation; also, it will be granted a reduction of $10,000 in its concession tax of $20,000 when the Ecuadorian government establishes a competing service. However, because of the then competitive situation, the sales taxes and word taxes imposed by the Ecuadorian government under the contract of May 18, 1938, in force at the time of the hearing

and at that time passed on almost entirely to the public by AACR would have been paid by AACR itself. The net result is that these reductions and increases in expenses would nearly equal each other, so that the AACR operating expenses would have been approximately the same as before RCAC commenced operations. Since AACR revenues will be reduced by 30 percent, however, AACR contended that its operations in Ecuador would have produced a deficit of approximately $16,000 instead of a profit of approximately this amount.

41. A comparison of estimated revenues and expenses of AACR in Ecuador under the May 1938 contract, before and after the RCAC circuit is established is shown below. This study is based on the same 60/40 division of revenues as the previous study.

			Comparison with previous study
Revenues			
Outgoing from Ecuador		$46,800.00	
Incoming to Ecuador		29,300.00	
Wholly within Ecuador		2,400.00	
		78,500.00	−$33,688.00
Expenses			
Salaries, wages, materials, etc., for conducting operations in Ecuador		$63,205.00	−1,300.00
Depreciation on local plant and equipment		13,063.00	
Rent of lines leased from Ecuadorian government		107.00	
Provisions for pensions		3,093.00	−100.00
General expenses [1]		19,700.00	−8,400.00
Miscellaneous and unclassified expense		3,789.00	
Ecuadorian government sales tax:			
Amount due Government	$2,100.00		
Amount collected from public			
Net sales tax	2,100.00	2,100.00	[1] 1,600.00
Ecuadorian government word tax:			
Amount due government	$17,400.00		
Amount collected from public			
Net word tax	17,400.00	17,400.00	[1] 17,400.00
Concession tax		10,000.00	−10,000.00
Total expenses		132,457.00	−800.00
Less expenses at Santa Elena for transit traffic [1]		37,300.00	
Net expenses		95,157.00	−800.00
Revenues		78,500.00	−33,688.00
Net operating income (loss)		$−16,657.00	$−32,888.00

[1] Involves allocations.

42. A large item of expense to AACR in the above table is the $17,400 representing the amount of the word tax payable to the Government of Ecuador under the contract of May 18, 1938, and which AACR would not have been able to collect from the public since no such tax would have been assessed against the RCAC radio circuit. Since the time of the hearing, however, the above contract has been modified by governmental decree, effective October 6, 1939, which reduced the word tax from 10 cents per word to AACR, only, to 5 cents per equated word applicable equally to all telegraph companies operating with Ecuador. Under these circumstances, the item of $17,400 should be eliminated from the expenses of AACR so that the net operating income should be about $743 profit instead of a loss of $16,657. Therefore, in the event the RCAC is able to take away from AACR 30 percent of the traffic and revenues for handling Ecuadorian traffic, it is probable AACR will conduct its traffic operations in Ecuador with a small margin of profit.

43. As pointed out before, the profit or loss at other points on the AACR system for handling traffic with Ecuador must be determined in order to arrive at the total profitableness of conducting operations with Ecuador. Assuming RCAC is able to take away 30 percent of the traffic from AACR, the present revenues of $107,000 assigned to all other points on the system for handling Ecuadorian traffic will be reduced to $74,900, a loss of $32,100 in revenue to AACR. As previously discussed, the record does not contain any testimony relating to the present expenses for handling traffic with Ecuador at these other points, or to the possibilities of reducing these expenses to meet the reductions in traffic It can be said, however, that the present theoretical profit of $21,000 for this traffic, obtained by applying the operating ratio of 80 percent to the revenue of $107,000, will be reduced by the loss of $32,100 in revenue. However, this reduction in revenue may be offset to some extent by reductions in operating expense.

44. We conclude, therefore, that AACR is handling its traffic with Ecuador at a profit under conditions of no competition for the traffic and that, if the RCAC circuit is established and is successful in taking away 30 percent of the traffic from AACR, it is probable that AACR'S profit on Ecuadorian traffic will be considerably reduced. However, a reduction of 30 percent of the revenue derived from handling traffic with Ecuador, or approximately $66,000 per year, would not seriously affect AACR's ability to serve the public. AACR's revenues from its traffic to Ecuador amount approximately to only 5 percent of its total transmission revenues; and during the period from 1934 to 1937, AACR paid dividends as follows: 1934, $540,000; 1935, $1,622,000; 1936, $676,000; and 1937, $1,081,000.

45. RCAC contends that if its applications be granted, the revenues of the American carriers as a whole will be increased by the increased revenues to be obtained from traffic between Ecuador and Germany and Italy which will be sent over the RCAC circuit. At the present time this traffic is routed via AACR radio from Lima or Bogota and the tolls are divided in agreed proportions between AACR and the foreign administrations operating the European ends of the radio circuits. If the RCAC circuit is established, this traffic to foreign countries will be routed over RCAC circuits, via New York. For traffic with Germany, RCAC will receive between 1 and 2 cents per full-rate word less than AACR now receives for traffic outbound from Ecuador and 14.5 cents per word more than AACR in the inbound direction to Ecuador. For traffic with Italy, RCAC will receive 18 to 19 cents per word less than AACR for outbound traffic and 20.8 cents per word more than AACR for inbound traffic.

46. The Ecuadorian traffic with Germany and Italy, however, amounts to a very few messages per day. A study made of this traffic on February 8 and 9, 1939, showed 30 messages on each day total in both directions between Ecuador and Germany and 5 messages on the 8th and 6 messages on the 9th in both directions between Ecuador and Italy. Since no breakdown for these messages, showing the classes, the number of words, the origin and destination, etc., was included in the study, it is impossible to determine to what extent the revenue accruing to RCAC for this traffic would be greater (or smaller) than the revenue now received by AACR.

47. At the present time AACR is receiving the total amount of the tolls (less the Ecuadorian Government Terminal tax) from traffic between the United States and Ecuador in both directions. Under the contract between ACAC and the Government of Ecuador the tolls (less the terminal tax) will be divided equally between the two parties. If the RCAC application be granted, half of the revenue on the traffic which RCAC may be able to divert from AACR will, therefore, be lost to the American communications system as a whole. AACR will be partially compensated for its loss of traffic, however, by a reduction of its $20,000 Ecuadorian concession tax to $10,000 if the radio circuit is established. It is estimated that RCAC will take 30 percent of the AACR traffic between the United States and Ecuador which will result in a loss to AACR of approximately $66,000 a year. Half of this amount, or $33,000, less the $10,000 reduction in AACR concession tax, would be lost to the American communications system as a whole. The establishment of the direct radio circuit may, therefore, be expected to reduce the revenues now accruing to the American system as a whole; however, it is impossible

to determine with any degree of accuracy the exact extent of such reduction.

48. RCAC estimates that it will "make a little money" if the radio circuit with Ecuador be established. It estimates that its cost of establishing and operating the circuit will be between $1,000 and $2,000 per year. This amount may be increased temporarily by a sum not exceeding $3,000 per year, which represents RCAC's proportion of the salaries to be paid to a commercial supervisor and a technical Advisor in Ecuador to supervise the operations of the radio circuit in the event the government of Ecuador requests their services. These estimates do not include any expenses for RCAC solicitors or other RCAC personnel in Ecuador, additional canvassers in New York or any other points, or any allocation to the Ecuadorian circuit of the general expenses of RCAC. It is, therefore, impossible to determine accurately what profit (or loss) will accrue to RCAC in handling traffic with Ecuador over the proposed radio circuit.

49. In connection with point (6), respondent refers to our decision in *Mackay Radio and Tel. Co., Inc.*, 2 F. C. C. 592, 599, where we discussed possible disadvantages which might result from licensing two competing American radio companies to communicate with a foreign country in which the telegraph services were operated as a monopoly created by the Government. The facts in that case, however, are different from the instant case. The Government of Ecuador does not operate all communication services in Ecuador as a monopoly, but permits AACR to operate an internal telegraph system there.

50. Respondent's seventh point, that the proposed radio circuit would add nothing of real value to the public, presents a fundamental question of international communications policy and deserves special consideration.

51. Cable or radio, each as a medium of communication, has its own peculiar advantages and disadvantages. Cable circuits are comparatively free from forms of electrical interference, and it is difficult to intercept messages passing over them. Cables, however, may be put out of operation completely, by accident, through natural causes, or by the deliberate act of a party desiring to interrupt communication. In instances where cables must pass through the territory of intervening foreign governments, communications over them are sometimes subject to censorship or stoppage. However, this latter factor is not present in this case, since the AACR cables between the United States and Ecuador do not pass through any foreign territory, no foreign administration is thereby in a position to censor or stop the communications. Radio is more subject to electrical interference which may be caused by natural phenomena or by deliberate "jamming," *i. e.*, the creation of electrical disturbances, by a party

seeking to interrupt the communication. While radio communications are susceptible to interception by unauthorized persons, special equipment may be provided at each end of the circuit to protect secrecy; and radio communication may be carried on directly with other foreign countries without the possibility of censorship or stoppage of the communication by intervening administrations. In view of the characteristics of each of the two media, a communication system having both cable and radio facilities is less likely to become partially or completely interrupted at any time than a service conducted by cable or radio alone. Thus, in the international field the maintenance of both media is an important safeguard from the standpoint of national defense as well as public convenience.

52. In addition to providing further assurance that telegraph service will not be interrupted, the supplementing of cable with radio facilities would permit development and utilization of scientific advances in the art of telecommunication.

53. It appears, therefore, that there are sound reasons for, and material advantages to be gained by, the establishment of direct radio service to foreign countries of importance from the standpoint of traffic, national defense, or other national interest even though such countries may have adequate cable service available. In cases where it appears the existing cable service will be imperiled or adversely affected to a substantial degree by the radio competition, however, or where other substantial disadvanages to the American communications system as a whole may result, consideration must be given to the question of whether the possible disadvantages outweigh the advantages.

54. The requirement that in granting licenses the Commission shall "act 'as public convenience, interest, or necessity requires' * * * is to be interpreted by its context, by the nature of radio transmission and reception, by the scope, character, and quality of services * * *." *Fed. Radio Com.* v. *Nelson Bros. Bond and Mortgage Co.*, 289 U. S. 266, 285. Part of the context is Section 1 of the Communications Act of 1934, which states that the Commission was created "For the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States a rapid, efficient, nation-wide and world-wide wire and radio communication service with adequate facilities at reasonable charges, for the purpose of the national defense * * *."

55. As a matter of sound national communications policy in order to fulfill these objectives, the Commission believes, as a general rule and in the absence of substantial reasons to the contrary, that it

should permit the establishment of direct radiotelegraph service between the United States and foreign countries notwithstanding the availability of telegraph service by cable. In our opinion the situation presented in this case warrants the establishment of direct radiotelegraph service between the United States and Ecuador.

CONCLUSIONS

Upon the following grounds the Commission concludes that a grant of these applications will serve the public interest, convenience, and necessity:

1. Applicant will offer an efficient public radiotelegraph service of standard international message classifications between the United States and Ecuador and a service for the transmission of addressed program material for broadcast.

2. The only public telegraph service of standard message classifications now available between the United States and Ecuador is offered over the cable system by AACR.

3. The establishment of the proposed service by applicant will not imperil or seriously affect the ability of AACR to continue its public telegraph service.

4. There are material advantages to be gained by; and, as a matter of international communications policy, there are sound reasons for; the establishment of a direct radiotelegraph service between the United States and Ecuador.

The proposed findings of fact and conclusions of the Commission were adopted by the Commission as the "Findings of Fact and Conclusions of the Commission" on April 29, 1940.

8 F. C. C.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of
AMERICAN BROADCASTING CORPORATION OF KENTUCKY (WLAP), LEXINGTON, KY.
For Construction Permit.

} DOCKET No. 4986

April 4, 1940

George S. Smith and *Harry P. Warner* on behalf of the applicant; *Paul D. P. Spearman* on behalf of Station WJDX and Great Lakes Broadcasting Corporation; *Louis G. Caldwell* and *Reed T. Rollo* on behalf of Station WFBR; *Horace L. Lohnes*, *E. D. Johnston*, and *F. W. Albertson* on behalf of Station WHIO; *Davies*, *Richberg*, *Beebe*, *Busick & Richardson*, *Alfons B. Landa*, and *Robert W. Mapes* on behalf of Stations WOOD and WASH; *A. V. Dalrymple* on behalf of the Federal Communications Commission.

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF THE COMMISSION

FINDINGS OF FACT

1. This proceeding arose upon an application of the American Broadcasting Corporation of Kentucky, licensee of Station WLAP, Lexington, Ky. (operating on the frequency 1420 kilocycles, 100 watts, 250 watts local sunset, unlimited time), for a construction permit to install a new transmitter and a directional antenna for nighttime use, to change frequency to 1270 kilocycles, and to operate with power of 1 kilowatt, unlimited time.

2. The Commission was unable to determine from an examination of said application that the granting thereof would serve public interest, convenience and necessity and designated the same for hearing. On March 9 and 10, 1938, a hearing was held before an examiner, who, in his report (I–670), recommended that the application be denied. To this report exceptions were filed by the applicant. Oral argument was heard on September 29, 1938. Thereafter, on December 23, 1938, the Commission issued its "Statement of Facts, Grounds for Decision, and Order" denying the application, effective December 30, 1938.

3. On January 18, 1939, the American Broadcasting Corporation

of Kentucky filed a petition requesting the Commission either to reconsider and grant the application upon the basis of the existing record, or, in the alternative, to set the application for further hearing. On January 28, 1939, the Baltimore Radio Show, Inc. (WFBR), respondent, filed an opposition to this petition, and on January 31, 1939, the American Broadcasting Corporation of Kentucky filed a motion to dismiss the opposition to its petition. Thereafter, on June 13, 1939, the Commission issued an order setting aside its "Statement of Facts, Grounds for Decision, and Order" of December 23, 1938, and granting the above petition, insofar as it requested a further hearing. In the same order the application was designated for further hearing upon the following issues:

(1) To determine whether or not the applicant's present facilities provide adequate service to the community; and

(2) To determine whether or not the use of the frequency 1270 kilocycles, with 1 kilowatt power, unlimited time, and with a directional antenna for use at night, will provide adequate service for the area proposed to be served and would be consistent with sound principles of allocation.

4. Pursuant to the above order, on September 13, 1939, a further hearing was held on the application before an officer appointed by the Commission. Subsequently, proposed findings of fact and conclusions were submitted by the applicant and by King-Trendle Broadcasting Corporation (WASH-WOOD), the Baltimore Radio Show, Inc. (WFBR), and the Lamar Life Insurance Co. (WJDX) respondents.

5. In the 1930 United States Population Census, the city of Lexington was not classified as a metropolitan district and the population was given as 45,736. The population of Fayette County, of which Lexington is the county seat, was 68,543. WLAP is the only broadcast station located in Lexington, but this area receives additional primary service during nighttime hours from Stations WHAS, Louisville, Ky.; WKRC, Cincinnati, Ohio; and WLW, Cincinnati, Ohio. During daytime hours Station WHAS delivers a signal in Lexington ranging in intensity from 7 to 12.4 millivolts per meter, WKRC, a signal of 3.08 to 8.34 millivolts per meter, and WLW, a signal of 9.8 to 10.8 millivolts per meter. Station WHAS renders satisfactory service in substantially the entire area proposed to be served by Station WLAP under the assignment requested herein, with the exception of the business district of Lexington. Under the Commission's rules, Stations WLW and WHAS now operate on assignments which are classified as clear channel and Station WKRC uses an assignment of the regional classification. Additional satis-

factory service is received in the northern portion of the proposed rural service area from Station WCKY, Covington, Ky.

6. Operating under its present assignment during both daytime and nighttime hours, Station WLAP renders primary service to the entire city of Lexington and a substantial contiguous rural area. At present the station renders interference-free service at night to its 4 millivolt-per-meter contour, which includes approximately one-fifth of Fayette County and an estimated population of 55,332. During the day the station renders interference-free service to its 0.5 millivolt-per-meter contour, which has a radius of 14½ miles and includes, in addition to the city of Lexington, the County of Fayette and a portion of each of the counties adjacent thereto.

7. The assignment requested herein is of the regional classification (designated as class III–B) and, under the Commission's standards of allocation, the proposed nighttime service area would be normally expected to extend to the 4 millivolt-per-meter contour. The present operation of Station WJDX, Jackson, Mississippi, on the frequency 1270 kilocycles with power of 1 kilowatt at night would be expected to limit the proposed service area during nighttime hours to the 5.3 millivolt-per-meter contour. Moreover, the operation of time-sharing Station WASH-WOOD, Grand Rapids, Michigan, on the frequency 1270 kilocycles, with power of 500 watts at night, would be expected to contribute an interfering signal to the proposed nighttime service to its 4.3 millivolt-per-meter contour. Applying the Commission's "Root-Sum-Square" method of computing interference, as set out in the Commission's Standards of Good Engineering Practice, the record shows, and the Commission finds, that the proposed nighttime service area of Station WLAP would be limited to its 6.8 millivolt-per-meter contour. This contour would include an estimated population of 57,816. As Station WLAP now serves an estimated population of 55,332 within its present nighttime interference-free 4 millivolt-per-meter contour, a grant of the application would result in an estimated increase in service during nighttime hours to only 2,484 additional persons.

8. Under the Commission's Standards of Good Engineering Practice, class III stations, which are designated as regional stations operating on regional channels, are normally expected to render primary service to metropolitan districts and the rural areas contained therein and contiguous thereto. Class IV stations operate on local channels and render primary service only to relatively small cities or towns and suburban or rural areas contiguous thereto.

CONCLUSIONS

Upon the foregoing findings of fact, the Commission concludes:

(1) Lexington, Ky., and a substantial contiguous rural area now receive adequate primary service from the operation of Station WLAP on its existing assignment during both daytime and nighttime hours. The station, therefore, now renders an efficient local service consistent with the Commission's plan of allocation. Moreover, additional satisfactory service is provided to the Lexington area from two clear-channel stations and one regional station located in other communities.

(2) The operation of Station WLAP on the regional assignment proposed herein would constitute a distinct departure from the Commission's plan of allocation in that stations of the regional classification are designed to render primary service to metropolitan districts and to rural areas contained therein and contiguous thereto, whereas the city of Lexington is not classified as a metropolitan district and the proposed service at night would be limited well within the contour to which stations of this classification are normally expected to serve. Because of the limitation expected to be caused to this proposed nighttime service area (namely, to the 6.8 millivolt-per-meter contour), the population contained therein would be only slightly in excess of that now receiving adequate service from this station.

(3) As has been reiterated in recent decisions, the Commission by its present plan of allocation has, based upon its experience and study, sought to establish a pattern of radio coverage on a truly national and scientific basis and only in such a manner can the goal, the best and most comprehensive service possible to the greatest number of listeners, be carried into effect. (See *In re Thumb Broadcasting Co.*, Docket No. 4895, 7 F. C. C. 537.) The Commission is, therefore, loath to depart from this plan and will not do so unless sufficient reasons are advanced in a given case to show that such a departure would be warranted under the peculiar conditions and circumstances presented and would be, therefore, in the public interest. No such facts are shown in this record.

(4) Public interest, convenience and necessity will not be served through a grant of the application and it should, therefore, be denied.

The proposed findings of fact and conclusions of the Commission were adopted by the Commission as the "Findings of Fact and Conclusions of the Commission" on May 6, 1940.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of E. D. RIVERS, VALDOSTA, GA. For Construction Permit.	FILE No. B3–P–2586

Decided May 7, 1940

DECISION AND ORDER ON "PROTEST AND REQUEST FOR HEARING"

On February 7, 1940, the Commission granted without hearing the application of E. D. Rivers for construction permit to erect a new radiobroadcast station at Valdosta, Georgia, on the frequency of 1420 kilocycles with a power output of 100 watts night, 250 watts day, unlimited time.

Petitioner, Albany Broadcasting Co., Inc., is the licensee of Station WGPC, located at Albany, Ga., which, at the time the Commission granted the Valdosta application, was authorized to operate on the frequency 1420 kilocycles with power of 100 watts. Petitioner then had pending with the Commission an application to increase power to 250 watts, unlimited time.

On February 26, 1940, petitioner filed a "protest and request for hearing" directed against the Commission's order of February 7, 1940, granting the Valdosta application.

Petitioner alleges that the actual air-line distance between Albany and Valdosta, Ga., is approximately 75 miles; that the recommended separation for stations operating on the frequency 1420 kilocycles with a power output of 100 watts is 143 miles; that the operation of the Valdosta station will cause serious interference with the reception of Station WGPC within its primary service area operating with its then assigned power of 100 watts or operating with the increased power of 250 watts for which it then had pending its application; that if permitted to do so at a hearing, petitioner will present evidence in support of these allegations; that prior to the grant of the Valdosta application, petitioner notified the Commission that a grant hereof would result in serious interference to its station

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WGPC within its primary service area, and that it desired to be heard on the Valdosta application in order to introduce evidence of said interference; that no notice of any decision of the Commission refusing to grant a hearing was made, but the Commission granted the Valdosta application without a hearing, and without giving petitioner an opportunity to present said evidence.

Petitioner's application for increase in power was granted by the Commission on February 27, 1940.

According to the 1930 Census, the population of Valdosta, Ga., is 13,482. There are no other stations located there, and the city does not receive primary service from any stations.

Albany, Ga., according to the 1930 Census, has a population of 14,507. Station WGPC is the only station located there and no primary service from any other station is received in this community.

The frequency 1420 kilocycles is classified by the Commission as a local frequency and stations assigned to this frequency are designated as class IV stations. The Commission's Standards of Good Engineering Practice, concerning standard broadcast stations, contemplate that the nighttime service of class IV stations will extend to the 4 millivolt-per-meter (ground wave) contour, and the daytime service to the 0.5 millivolt-per-meter (ground wave) contour. On local channels the separation necessary for service daytime determines that necessary for adequate nighttime service.

The distance between Albany and Valdosta, Ga., is, as alleged by petitioner, about 75 miles airline. Under average conditions the separation required to avoid objectionable interference within the 0.5 millivolt-per-meter contour is 165 miles. However, the conductivity of the soil in the area between these two stations is considerably less than that on which the average required separation is based, and hence, the separation necessary to avoid objectionable interference is less than that required under average conditions. However, the antennas of both the Valdosta station and Station WGPC have an efficiency somewhat above the minimum, and the operation of the Valdosta station, as proposed, would probably result in some slight interference within the 0.5 millivolt-per-meter contours of both the Albany station, and the proposed Valdosta station.

It appears, therefore, that when the Commission granted the Valdosta application, at which time Station WGPC in Albany was operating with 100 watts power, the establishment of the new station in Valdosta would have resulted in objectionable interference in a small area within the 0.5 millivolt-per-meter contour of Station WGPC. Translated into terms of population, the effect of the establishment of the new station upon the service area of Station WGPC operating with 100 watts power would have been to deprive approxi-

mately 1,359 persons of the service of the latter station during the daytime. The new station at Valdosta would have resulted in no objectionable interference during nighttime hours.

During daytime Station WGPC operating with 100 watts power rendered service to approximately 27,789 persons so that the loss of service to approximately 1,359 persons was a consideration which the Commission was required to balance against the additional service proposed to be rendered by the Valdosta station. However, since the grant of the Valdosta station, this consideration has been eliminated by the grant of the petitioner's application for increased power. The grant of petitioner's application for increased power to 250 watts, unlimited time, will enable that station to serve within its 0.5 millivolt-per-meter contour during the daytime approximately 39,155 persons as contrasted with approximately 27,789 persons when operating with 100 watts power. The effect of the grant of WGPC's application for increased power was also to increase the nighttime service of that station from approximately 17,077 to approximately 19,277 persons within its 4 millivolt-per-meter contour. It is obvious, therefore, that the granting of the petitioner's application for increased power had the effect of removing whatever disadvantage might otherwise have resulted to persons receiving the service of that station from the grant of the Valdosta station.

If the Commission were to deny the Valdosta application, the Albany station, operating with 250 watts, unlimited time, would be able to render service to approximately 1,936 people during daytime within its 0.5 millivolt-per-meter contour who will not be able to receive the service of this station if the grant of the Valdosta application is permitted to stand. None of these 1,936 persons has heretofore received service from Station WGPC. The question which the Commission, therefore, is required to determine is whether the public interest, convenience or necessity requires the denial of the Valdosta application in order that approximately 1,936 persons who have not heretofore received the service of Station WGPC may hereafter receive service from this station. On the other hand, a denial of the Valdosta application would prevent approximately 39,335 people in the area of Valdosta from receiving service of the new station. By granting both the Valdosta application and the petitioner's application for increased power, the Commission can make it possible for the two stations to provide service at night to approximately 23,527 persons who do not now receive service and the extension of interference-free service in the daytime to approximately 50,701 persons who do not now receive service. There would be approximately 4,348 persons residing within the 0.5 millivolt-per-meter daytime contour of both stations who would not receive interference-free

service, none of whom have heretofore received service from either of the two stations. In this instance, therefore, by granting both applications the Commission is not bringing about a situation which deprives any listener of the service of any existing station.

Petitioner makes the argument that it is entitled to notice and an opportunity to be heard before the Commission could grant the Valdosta application. Both the Valdosta application to establish a new station and petitioner's application for increased power were granted by the Commission without a hearing. Both were considered pursuant to section 309(a) of the act, which requires the Commission to grant an application for station license or modification of station license if, upon examination of such application, the Commission determines that public interest, convenience or necessity will be served by a grant thereof. Petitioner has no more basis under the statute for demanding a hearing upon the Valdosta application as a matter of right than the Valdosta applicant would have to demand a hearing upon petitioner's application for increased power. In this instance, the Commission concluded from its study of both applications that the public interest, convenience and necessity would be served by granting both applications. After consideration of the petition filed by Station WGPC and the data furnished the Commission in support thereof, the Commission is still of the opinion that the grant of the Valdosta application as well as the grant of petitioner's application for increased power will serve public interest, convenience and necessity.

Accordingly, it is ordered, this 7th day of May, 1940, that the protest and request for hearing of Albany Broadcasting Company (WGPC) be, and it is hereby, denied.

8 F. C. C.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of MARYSVILLE-YUBA CITY BROADCASTERS, INC., MARYSVILLE, CALIF. Application for Construction Permit.	FILE No. B5–P–2551

Decided May 7, 1940

DECISION AND ORDER ON PETITION FOR REHEARING

On January 17, 1940, the Commission granted without hearing the application of Marysville-Yuba City Broadcasters, Inc., for construction permit to erect a new broadcast station at Marysville, Calif., for the use of the frequency 1420 kilocycles with a power output of 100 watts, unlimited time.

On February 7, 1940, The Golden Gate Broadcasting Corporation, licensee of Radio Station KSAN, San Francisco, Calif., filed a petition for rehearing in which it is alleged that petitioner operates its station, KSAN, at San Francisco on the frequency 1420 kilocycles, with 250 watts power, unlimited time; that Marysville, Calif., is approximately 110 miles air line from San Francisco and that simultaneous operation of Station KSAN and the proposed station at Marysville on the frequency 1420 kilocycles will result in mutual interference within the normally protected 0.5 millivolt-per-meter contour of each station; that according to the conductivity map accompanying the Commission's Standards of Good Engineering Practice, it appears no interference will result within the normally protected 0.5 millivolt-per-meter contour of either KSAN or the proposed Marysville station but that field strength measurements indicate the conductivity is actually better than that shown in said conductivity map and that, as a matter of fact, interference will result.

On February 13, 1940, Marysville-Yuba City Broadcasters, Inc., filed its opposition to the petition of The Golden Gate Broadcasting Corporation, KSAN, in which it is alleged that the petition for rehearing should be denied because said petition states no facts to sustain the conclusion of petitioner that interference will be caused within its normally protected contour; that, if KSAN actually has

engineering measurements taken in conformity with Commission requirements showing that such interference would be caused, these data should have been submitted to the Commission in support of petitioner's request for hearing; that, in the absence of any such evidence to support such conclusion of the petitioner, the petition should be denied.

On February 24, 1940, the Commission made written request of petitioner to submit to the Commission a written statement, under oath, together with affidavits of proof in support thereof, giving the results of the field strength measurements and data upon which petitioner based its conclusion that interference would result to station KSAN from the operation of the proposed Marysville station, as alleged in its petition for rehearing.

On April 5, 1940, the petitioner filed with the Commission an affidavit, accompanied by tabulations of measurements and maps, from which it appears that the 0.5 millivolt-per-meter contour of Station KSAN extends to a distance not in excess of 16 miles in the direction of Marysville and that the 0.025 millivolt-per-meter contour is found at a distance of about 67 miles from San Francisco or about 38 miles from Marysville. The measurements of Station KSAN were inadequate to determine the conductivity of the area between San Francisco and Marysville; therefore, data were submitted showing measurements of the signals of Station KYA, from which it was concluded that the conductivity of the total path between Station KYA (in San Francisco) and Marysville was approximately 2×10^{-13} $e\mu$.

In spite of the fact that the 0.025 millivolt-per-meter contour of Station KSAN occurred at a distance of about 38 miles from Marysville and the 0.5 millivolt-per-meter contour of Station KSAN was found at about 16 miles from San Francisco, it was concluded that the operation of a station in Marysville as proposed would result in objectionable interference to the present service of Station KSAN and that interference would occur to the service of the proposed Marysville station.

Examination of the data indicates, as would be expected, that the conductivity characteristic of the first several miles of a path between Station KYA, at San Francisco, and Marysville (which lies across the salt water of San Francisco Bay) is much better than the conductivity from the north or east side of the Bay to Marysville.

The 0.5 millivolt-per-meter contour of Station KSAN occurs at a distance of 89 miles from Marysville. Based upon an antenna efficiency of 47.5 millivolts per meter for 100 watts power, which is the minimum permitted class IV stations under our rules, a conductivity of 1.35×10^{-13} or better is required in the area between Marys-

ville and the northeast side of the Bay in order that the proposed Marysville station place a signal of 0.025 millivolt per meter at the location of the 0.5 millivolt-per-meter contour of Station KSAN. It is alleged that the conductivity on a line northeast of Station KPO is approximately $1.4\times10^{-13}e\mu$. However, these measurements taken in the direction of Marysville of Station KPO lie over a considerable portion of the salt water of the San Francisco Bay and are not, therefore, truly indicative of the conductivity of the land portion of the path which lies between Marysville and the vicinity of Oakland.

Measurements made during the Commission's allocation survey of 1935 on Station KGO at Oakland indicate the land conductivity over this path to be $2.1\times10^{-14}e\mu$. These measurements are a more accurate indication of the land conductivity since the radial in the direction of Marysville does not lie across the Bay. These data were published by the Commission in the Report of the Allocation Survey of September 1, 1936.

Inasmuch as it is only necessary to consider propagation of the land area from the northeast portion of San Francisco Bay to Marysville in order to determine the signals of the proposed Marysville station at any point where the signal of Station KSAN has been measured, it is clear that the conclusion of the petitioner represented by propagation curves drawn, upon which the interference areas were determined, are not an accurate indication of the actual conditions to be expected. As previously indicated, the conductivity of this path would have to be in the order of $1.35\times10^{-13}e\mu$ before interference would occur. An investigation of the data submitted indicates from the slope of the curves that the conductivity of the land portion of this path is considerably below $1.35\times10^{-13}e\mu$. In fact, the data substantiate the conclusion that the Commission's published information is more nearly representative of the actual conductivity. Assuming the conductivity to be less than 1.35×10^{-13} between the northeast portion of San Francisco Bay and Marysville, the distance between San Francisco and Marysville is ample to prevent objectionable interference within the 0.5 millivolt-per-meter contours of both stations and there is no evidence that objectionable interference will result to either.

In view of the fact that the Commission is satisfied that no objectionable interference will result to the service of the San Francisco station because of the operation of the Marysville station, it is unnecessary for the Commission to consider whether the public interest, convenience, or necessity would be served by the establishment of the new station at Marysville, even though some interference might be caused to the service of the existing station at San Francisco.

Accordingly, it is ordered, this 7th day of May 1940, that the Petition for Rehearing be, and it is hereby, denied.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of PUBLIX BAMFORD THEATRES, INC. ASHEVILLE, N. C., For Construction Permit.	DOCKET No. 5412

April 13, 1940

Howard S. LeRoy, *L. A. Denslow*, and *D. R. Millard*, for the applicant; *Eliot C. Lovett*, for Station WWNC; *Paul M. Segal*, *George S. Smith* and *Harry P. Warner*, for Station WMPS; *H. L. Lohnes*, *F. W. Albertson* and *Maurice M. Jansky*, for Stations WBNS and WHP; *Philip G. Loucks*, *Arthur W. Scharfeld* and *J. F. Zias*, for Station WBIG; *J. W. Gum*, for Station WGNC; and *D. M. Patrick*, *Karl A. Smith* and *Lester Cohen*, for the Asheville Daily News.

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF THE COMMISSION

FINDINGS OF FACT

1. This proceeding arose upon an application of the Publix Bamford Theatres, Inc., for a construction permit to erect a new broadcasting station at Asheville, N. C., to install a directional antenna for nighttime use and to operate on the frequency 1430 kilocycles, with power of 1 kilowatt, unlimited time.

2. The Commission was unable to determine from an examination of the application that the granting thereof would serve public interest, convenience and necessity and designated same for a hearing. On March 10 and 11, 1939, a hearing was held on this matter before an examiner. Later, proposed findings of fact and conclusions were filed by the applicant and by the North Carolina Broadcasting Co., Inc. (WBIG); The Asheville Citizen-Times Co. (WWNC); WBNS, Inc. (WBNS); The Memphis Broadcasting Co. (WMPS); and WHP, Inc. (WHP), respondents. Subsequently, the Commission granted a petition filed by the applicant for leave to amend its application to specify a new transmitter site. On August 8, 1939,

the Commission by its order remanded the application for further hearing upon the following additional issues:

To determine the availability and suitability of the antenna site which the applicant proposes to use;

To determine whether the granting of the assignment requested would be in accordance with the Commission's plan of allocation and Standards of Good Engineering Practice.

3. A further hearing on the above issues was held before an examiner on October 4, 5, and 16, 1939. Later, additional proposed findings of fact and conclusions were filed by the applicant and by WBNS, Inc. (WBNS); WHP, Inc. (WHP); Memphis Broadcasting Co. (WMPS); and Asheville Citizen-Times Co. (WWNC).

4. In the 1930 United States population census, the city of Asheville is not classified as a metropolitan district and the population is given as 50,193. In the same census the population of Buncombe County, in which Asheville is located, is shown as 97,937. There are two broadcasting stations now located in Asheville, namely, WISE (which is classified as a local station operating on the frequency 1370 kilocycles, with power of 250 watts, unlimited time, and WWNC (classified as a regional station) using the frequency 570 kilocycles, with power of 1 kilowatt, unlimited time. During the day Station WWNC serves an estimated population of 163,640 within its 0.5 millivolt-per-meter contour. No other stations render primary service to the Asheville area during either daytime or nighttime hours.

5. The antenna site specified in the application, as amended, would not be satisfactory for the assignment requested herein as the proposed station, operating at this site, would not be able to render a minimum signal intensity of 25 millivolts per meter to the entire business district of Asheville during either daytime or nighttime hours. In fact, operating from the site specified the station's 25 millivolt-per-meter contour would be expected to include, at the maximum, during nighttime hours, only approximately one-half of the business district of Asheville and an even smaller portion of this district during the day.

6. The assignment requested herein is of the regional classification (designated as class III–B), and, under the Commission's Standards of Good Engineering Practice, the proposed nighttime service area would be normally entitled to protection to its 4 millivolt-per-meter contour. Moreover, under the same standards class III stations are normally expected to render primary service to metropolitan districts and the rural areas contained therein and contiguous thereto. The present operation of Station WBNS, Columbus, Ohio, would be ex-

pected to limit the proposed service area during nighttime hours to the approximate 10 millivolt-per-meter contour. This contour would not be expected to embrace even the entire city of Asheville.

7. The service of Station WMPS, Memphis, Tenn., is now limited at night by the operation of KSO, Des Moines, Iowa, to the approximate 3.64 millivolt-per-meter contour. Station WBNS also contributes an interfering signal to the approximate 3 millivolt-per-meter contour of this station. The operation of the proposed station would be expected to contribute an additional interfering signal to this station during nighttime hours to the approximate 2.6 millivolt-per-meter contour. Applying the Commission's "Root-Sum-Square" method of computing interference, as set out in the Commission's Standards of Good Engineering Practice, the operation of the proposed station would be expected to increase the present limitation to the service of Station WMPS at night from the 4.7 millivolt-per-meter contour to the approximate 5.4 millivolt-per-meter contour.

CONCLUSIONS

Upon the foregoing findings of fact, the Commission concludes:

1. The antenna site specified in the application, as amended, is not satisfactory for the operation of a station as proposed herein, in that it would not enable such a station to render a minimum signal of 25 millivolts per meter to the business district of the city of Asheville. Under the Commission's Standards of Good Engineering Practice a station operating at this site on the assignment requested could not render an efficient broadcasting service to this community.

2. The operation of a broadcasting station, as proposed herein, would constitute a distinct departure from the Commission's plan of allocation in that stations of the regional classification are designed to render service primarily to metropolitan districts and to rural areas contained therein and contiguous thereto, whereas the city of Asheville is not classified as a metropolitan district and the proposed service at night would be limited far within the contour to which stations of this classification are normally entitled to protection. Because of the drastic limitation expected to be caused to the proposed nighttime service area (namely, to the 10 millivolt-per-meter contour), the applicant could not render interference-free service at night, even to the entire city of Asheville.

3. The Commission will not, in granting applications for broadcasting facilities, depart from its plan of allocation unless convincing reasons are advanced in a given case to show that such a departure would be in the public interest. No such considerations are shown in this record.

4. The operation of the proposed station during nighttime hours would materially diminish, through objectionable interference, the present useful service area of Station WMPS, Memphis, Tennessee.

5. Public interest, convenience, and necessity will not be served through a grant of the application and, therefore, it should be denied.

The proposed findings of fact and conclusions of the Commission, were adopted by the Commission as the "Findings of Fact and Conclusions of the Commission" on May 13, 1940.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of
C. T. SHERER CO., INC.,
WORCESTER, MASS.
For Construction Permit.

DOCKET No. 5474

March 13, 1940

J. E. Burroughs, Jr., *William Stanley*, and *Wm. P. Arnold* on behalf of the applicant; *Frank D. Scott* and *Louis B. Montfort* on behalf of Station WTHT, respondent; *Karl A. Smith* on behalf of Station WTAG, intervener; *James W. Gum* and *James T. Clark* on behalf of Central Broadcasting Corporation, intervener; *Ben S. Fisher*, *Charles V. Wayland*, and *John W. Kendall* on behalf of Station WORC, intervener.

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF THE COMMISSION

C. T. Sherer Co., Inc., filed an application for a construction permit (file No. B1–P–2266), requesting authority to construct a new radiobroadcast station at Worcester, Mass., to operate on 1200 kilocycles with power of 100 watts night, 250 watts day, unlimited time. The Commission was unable to determine from an examination of the application that the granting thereof would serve public interest, convenience or necessity, and, therefore, designated the application for hearing before an examiner in accordance with the provisions of the Communications Act of 1934, as amended. Due notice of the time and place of hearing, and the issues to be determined, was given to the applicant and other interested parties. The hearing was held on July 14 and 24, and September 19, 1939. Proposed findings of fact and conclusions were filed by the applicant and Alfred Frank Kleindienst, licensee of radiobroadcast Station WORC, located at Worcester, Mass., intervener.

FINDINGS OF FACT

1. The applicant, C. T. Sherer Co., Inc., is a corporation organized under the laws of the State of Massachusetts. The capital stock consists of 1,470 shares of preferred and 5,000 shares of common stock, all of which is owned by the R. C. Taylor Trust. The officers of the applicant corporation are Frank F. Butler, president, William Robert Ballard, vice president, Raymond A. Voltz, treasurer, and

Paris Fletcher, secretary or clerk. The directors are Frank F. Butler, S. Lloyd Jones, and Harry R. Davis. The trustees of the R. C. Taylor Trust are Forrest W. Taylor, Harry R. Davis, and Frank F. Butler. All of the officers, directors, and trustees are citizens of the United States. The applicant is engaged, as its principal business, in the operation of a department store in the city of Worcester.

2. According to the United States Census of 1930, the population of the State of Massachusetts was 4,249,614, of the city of Worcester, 195,311, the metropolitan district of Worcester, 305,293, and Worcester County, 491,242.

3. The 0.5 millivolt-per-meter daytime contour of the proposed station will have a radius of about 8½ miles, which will embrace a population of 234,385. Located between the 2.0 and the 0.5 millivolt-per-meter daytime contours of the proposed station, however, are six cities, each with a population in excess of 2,500 and the group with a total population of 35,360. Under the Commission's Standards of Good Engineering Practice signals received in such cities are not considered to constitute satisfactory primary service unless their value exceeds 2 millivolts per meter. Thus only about 200,000 persons or 65 percent of the population in the metropolitan district of Worcester will receive primary service during the daytime.

4. The Engineering Standards also provide that transmitter sites be so chosen that the station will have a minimum signal of 5 millivolts per meter over the entire residental section of the city in which the main studio is located. The 5 millivolt-per-meter contours of the proposed station will have radii of approximately 2.8 and 2.2 miles, during the day and night, respectively. The dimensions of the city of Worcester with a minimum signal of 5 millivolts per meter either miles east and west. Therefore, regardless of the location selected, it will be impossible to serve the entire residential district of the city of Worcester with a minimum signal of 5 millivolt-per-meter either day or night.

CONCLUSIONS

Upon the foregoing findings of fact, the Commission concludes:

1. The limited service to be rendered by the proposed station will not constitute a satisfactory use of the facilities requested.

2. The granting of the application will not serve public interest, convenience or necessity.

In view of the conclusion reached that this application should be denied for the reasons indicated, it is unnecessary to dispose of other issues in the case.

The proposed findings of fact and conclusions of the Commission were adopted as the "Findings of Fact and Conclusions of the Commission" on May 16, 1940.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of [1] EDDIE ERLBACHER, CAPE GIRARDEAU, Mo. For a permit to construct a coastal harbor station at Cape Girardeau, Mo.; to operate in the public service.	DOCKET No. 5594

March 13, 1940

Harry J. Daly on behalf of the applicant; *Willson Hurt* on behalf of Radiomarine Corporation of America; *James H. Hanley* on behalf of Warner and Tamble Radio Service; *Loyola M. Coyne* on behalf of Inland Waterways Corporation; and *Robert L. Irwin* on behalf of the Commission.

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF THE COMMISSION

FINDINGS OF FACT

1. This proceeding is on an application filed by Eddie Erlbacher for a permit to construct a coastal harbor station at Cape Girardeau, Mo., to be operated in the public service. The assignment requested is: Frequency, 2738 kilocycles; power, 50 watts, A–3 emission; and hours of operation, unlimited. The application was heard before a properly designated employee of the Commission. Proposed findings of fact and conclusions have been filed on behalf of the applicant and Warner and Tamble Radio Service.

2. Eddie Erlbacher, the applicant herein, is a citizen of the United States and a resident of Cape Girardeau, Mo. His principal business is that of towboat operator. The range of his towing operations is generally along the Mississippi and its tributaries.

3. Cape Girardeau is located on a high bluff on the Mississippi River, approximately 95 miles south of Saint Louis and 155 miles north of Memphis. It is situated between the points where the Missouri and Ohio Rivers flow into the Mississippi. The principal

[1] Motion of Warner and Tamble Radio Service to remand for further hearing, denied May 22, 1940.

commodities hauled on the Mississippi are gasoline, cement, coal, molasses, coke, and iron. During the year 1937, the tonnage handled on the Mississippi between the Missouri and Ohio Rivers was 2,056,945, and the values of the cargoes hauled aggregated $151,738,807. The vessels operating in this area during 1937 numbered 1,527 steamers with registered tonnage of 883,384, 2,780 motor vessels with registered tonnage of 288,568, and 6,846 barges with a registered tonnage of 7,301,762. The passengers carried numbered 1,005,708. The applicant has presented a list showing 72 boats which regularly pass Cape Girardeau.

4. The applicant intends to operate the proposed station in the public service, and a constant listening watch will be maintained. Distress calls, emergency calls, weather reports, river data, lock news, and similar information will be handled without charge. In addition, the station will provide two-way telephone communications between boats within the range of the station and land telephone stations. The applicant proposes to charge 75 cents for the initial period of three minutes or fraction thereof, plus 25 cents for each minute after the initial period. The proposed rate will apply to calls between boats and the long distance toll terminal at the proposed station; to telephone relay service; and to telegraph messages which will be accepted for transmission through the established telegraph companies. Arrangements have been made for a physical connection with the toll lines of the Southeast Missouri Telephone Company. However, the Commission makes no finding as to the reasonableness of the proposed rates or with respect to services to be rendered without charge.

5. The record shows that the operation of the proposed station would aid in the safety of life and property of the persons in the area and would permit the business interests in this section to handle their affairs more efficiently. The service proposed would be particularly beneficial to the marine operations in the area in cases of breakdown, the stranding of boats occasioned by the shifting of channels or the fall of the river, and emergencies connected with shipping on the river. A station at Cape Girardeau would aid materially as a medium for transmitting messages between the towboats and their offices.

6. There are two public coastal harbor stations located on the Mississippi River. Station WAK, owned by the Southern Bell Telephone and Telegraph Co., operates on the frequency 2558 kilocycles, with a maximum power of 400 watts, and is located at Port Sulphur, La. Station WJB is owned by Warner and Tamble Radio Service operating on 2738 kilocycles, with a maximum power of 25 watts, and is located at Memphis, Tenn. There is outstanding a con-

struction permit for authority to build equipment which will increase the power assignment of Station WJG to 100 watts. Station WJG is able to contact boats at a distance of 140 miles or approximately 20 miles south of Cape Girardeau. From listening tests conducted on behalf of the applicant, it is shown that the channel 2738 kilocycles is received at Cape Girardeau about one-eighth of 1 percent of the time, and of this time Station WJG uses the channel on an average of 1 minute in 11 hours. Station WJG does not render a consistent service in the Cape Girardeau area.

7. The transmitter and the other equipment to be used in connection with the operation of the proposed station are designed according to good engineering practice and will comply with the regulations of the Commission. The antenna and the transmitter equipment will be located near a building owned by the applicant. The antenna will be approximately 150 feet above the river. The receivers and transmitters to be installed on the boats owned by the applicant will cost approximately $350 each. In addition, it is expected to spend $150 on each boat to quiet the electrical noise and make the antenna more efficient. The coverage of the proposed station is expected to embrace a radius of approximately 20 miles.

8. The estimated cost of the proposed station is $1,900. The operating expenses are expected to be approximately $4,900 a year. The operating expenses will include the services of at least three qualified operators necessary to maintain a constant watch on the frequency. In addition to maintaining a watch, the operators would perform other services connected with the applicant's towboat operations. The operating expenses of the proposed station would thus be reduced by the allocation of the operators' time to other duties. The applicant has a net worth of more than $86,000, of which approximately $16,000 is represented by cash in the bank. The operation of the proposed station is not expected to result in a profit at the start but the applicant is willing to continue the station despite any loss that may be incurred.

9. The frequency 2738 kilocycles is allocated pursuant to rule 229 to ship, coastal harbor and Government stations, under rules 285 (d) and 275 (c) to ship and coastal harbor stations, respectively, and designated by rule 285 (d) for communication primarily with other ship stations. Under the Madrid regulations, this frequency is in a shared band. In accordance with the Canadian Agreement of October 1933, as modified March 31, 1939, this frequency is available for the common use of both Canadian and United States stations. Under the Havana Agreement of December 1937, the frequency band 2735 to 2740 kilocycles is allocated to the coastal service primarily for intership communication. This frequency is also des-

ignated by rule 1 of the Commission's special temporary rules governing the operation of ship telephone and coastal harbor telephone stations in the Great Lakes region, effective March 31, 1939, to ship and coastal harbor stations.

10. The operation of the proposed station would not be expected to cause serious interference to the service of any existing station during daytime. However, if the proposed station and Station WJG operated simultaneously at night, there would be heterodyning and cross-talk sufficient to cause interference in areas outside of a radius approximately 15 miles of the desired station. The applicant expects to operate the proposed station in a manner which would not cause interference to existing services.

CONCLUSIONS

Upon the facts presented, the Commission concludes that:

1. The applicant is legally, technically, financially, and otherwise qualified to install and operate the proposed station.

2. The applicant will offer a public service if the permit to construct the proposed station is granted, and arrangements have been made for landline service.

3. There is a need for the service proposed by the applicant in the area of Cape Girardeau.

4. The frequency 2738 kilocycles is available for use as proposed under the provisions of the Communications Act of 1934, as amended, the General Radio Regulations annexed to the International Telecommunications Convention, Madrid, 1932, and the Rules and Regulations of the Commission.

5. Interference would result at night between the proposed station and Station WJG at Memphis during simultaneous operation. However, since the frequency is allocated principally for use by ship stations, its use by coastal harbor stations contemplates no interference with the ship service and a share-time use between coastal harbor stations.

6. The granting of the application would not adversely affect the interests of any carrier or carriers subject to the Communications Act of 1934, as amended.

7. The granting of the application would serve public interest, convenience, and necessity only on condition that the operation shall not cause interference to the intership service or to the service of any other coastal harbor station operating on the same frequency.

The proposed findings of fact and conclusions of the Commission were adopted by the Commission as the "Findings of Fact and Conclusions of the Commission" on May 22, 1940.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of [1] NEPTUNE BROADCASTING CORPORATION, ATLANTIC CITY, N. J. For Construction Permit.	DOCKET No. 5586

April 4, 1940

Clarence C. Dill, *James W. Gum*, and *Samuel Morris* on behalf of the applicant; *Ben S. Fisher*, *John W. Kendall*, and *C. V. Wayland* on behalf of Station WBAB, intervener; and *George O. Sutton* and *Arthur H. Schroeder* on behalf of Stations WILM and WAZL, respondents.

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF THE COMMISSION

1. Neptune Broadcasting Corporation filed an application for a construction permit (File No. B1–P–2333) requesting authority to construct a new radiobroadcasting station at Atlantic City, N. J., to operate on 1420 kilocycles with power of 100 watts night, 250 watts local sunset, unlimited time. The Commission was unable to determine, from an examination of the application, that the granting thereof would serve public interest, convenience, or necessity and, therefore, designated the application for hearing before an examiner in accordance with the provisions of the Communications Act of 1934, as amended. Due notice of the time and place of hearing, and the issues to be determined, was given to the applicant and other interested parties. The hearing was held on June 9, 10, and 20, 1939. Proposed findings of fact and conclusions were filed by the applicant; Press-Union Publishing Co., intervener; Delaware Broadcasting Co., licensee of broadcast Station WILM, respondent; and the Hazleton Broadcasting Service, Inc., licensee of broadcast Station WAZL, respondent.

2. The licensees of Stations WILM and WAZL participated in this proceeding as respondents because of the possibility of objectionable interference to the operation of said stations if the instant appli-

[1] Petition for rehearing filed by Press-Union Publishing Co. (WBAB), on June 11, 1940, denied on July 16, 1940. See decision and order on petition for rehearing, 8 F. C. C. 98.

cation were granted. The record shows, and the proposed findings of fact and conclusions submitted by the respondents concede, that no objectionable interference will result to Stations WILM and WAZL from the operation of the station proposed by the applicant. As between the remaining parties the only issue to be determined is whether the intervener (WBAB) will be, as alleged by it, adversely affected by the addition of the proposed station in Atlantic City, N. J.

3. According to the 1930 United States Census, the population of Atlantic City was 66,198, the metropolitan district 102,424, and Atlantic County in which Atlantic City is located, 124,823. According to the same census, the population of the State of New Jersey was 4,041,334. The proposed station will render primary service to 111,799 people during the day and 100,472 at night. The proposed station will also render primary service to the whole metropolitan district during the day and at least 99 percent of the whole metropolitan district at night.

There are 12 stations licensed to operate in the State of New Jersey. At the time of the hearing there was only one station licensed to operate in Atlantic City, Station WPG. Since the hearing the Commission has granted the application of Greater New York Broadcasting Corporation for permission to operate a station in New York City with power of 5 kilowatts on 1100 kilocycles, unlimited time, contingent upon the surrender of the license of Station WPG. There was an outstanding construction permit, authorizing the construction and operation of a new station in Atlantic City by Press-Union Publishing Company (WBAB) to operate on 1200 kilocycles with power of 100 watts night, 250 watts day, unlimited time. At the hearing of the application of Press-Union Publishing Company, the applicant therein insisted that there was a need for two broadcast stations in Atlantic City. Some service of an intermittent and secondary nature is received from distant clear-channel stations. These stations, however, carry no programs for the local, charitable, religious, educational, fraternal, or civic organizations of Atlantic City and they do not carry any advertising for local merchants. The local talent has no outlet through such stations.

According to the United States census of business for 1935, Atlantic City had 1,734 retail stores, with 5,525 employees, and a pay roll of $5,092,000, making total annual sales of $37,107,0000. According to the same census, Atlantic City had 108 wholesale establishments with 718 employees and a pay roll of $996,000, doing an annual business of $14,196,000. The census showed also that for 1935, Atlantic City had 84 manufacturing establishments, with 907

employees, and a pay roll of $1,114,284, the manufactured product of which had an annual value of $9,650,306.

4. There is no evidence of the extent, if any, to which the income of Station WBAB will be reduced by the operation of the proposed station or that WBAB will be unable to operate in the public interest. In fact, it was shown that none of the WBAB advertising contracts have been canceled although seven of the contracts for advertising over applicant's proposed station were signed by the same organizations heretofore signing contracts with the intervener.

CONCLUSIONS

Upon the foregoing findings of fact the Commission concludes:

1. Intervener, Press-Union Publishing Co. (WBAB), has failed to show that it has any interests that will be adversely affected by a grant of the instant application or that such grant will result in impairment of its ability, as licensee of Station WBAB, to serve public interest, convenience, or necessity.

2. Upon consideration of all the facts of record as to the application of Neptune Broadcasting Corporation, the Commission concludes that public interest, convenience, or necessity will be served by a grant of said application, subject to the selection of an approved transmitter site and antenna system.

The proposed findings and conclusions of the Commission were adopted by the Commission as the "Findings of Fact and Conclusion of the Commission" on May 22, 1940.

July 16, 1940

DECISION AND ORDER ON PETITION FOR REHEARING

Neptune Broadcasting Corporation, Atlantic City, N. J., filed an application (B1–P–2333) for construction permit to erect a new radiobroadcast station at Atlantic City, N. J., to operate on the frequency 1420 kilocycles, with 100 watts power night, 250 watts local sunset, unlimited time.

The application was heard before an examiner on June 9, 10, and 20, 1939.

Press-Union Publishing Co., licensee of Station WBAB, Atlantic City, N. J., petitioned to intervene in the proceedings, alleging that a grant of the Neptune application would adversely affect its interests because of economic injury. We permitted the intervention, and Press-Union Publishing Co. participated fully in the proceedings. Thereafter petitioner submitted proposed findings of fact and

conclusions of law. Petitioner submitted a proposed conclusion, "The applicant has not proven that there is available in Atlantic City sufficient economic support or talent for program material for two full-time local stations," but did not submit any proposed findings of fact which would support such a conclusion; nor did petitioner propose any conclusion or findings in support thereof, that a grant of the Neptune application would aggrieve or adversely affect its interests.

On April 4, 1940, the proposed findings of fact and conclusions of the Commission were filed. Among other proposed findings of fact was the following:

> There is no evidence of the extent, if any, to which the income of Station WBAB will be reduced by the operation of the proposed station, or that WBAB will be unable to operate in the public interest. In fact it was shown that none of the WBAB advertising contracts have been canceled, although seven of the contracts for advertising over applicant's proposed station were signed by the same organizations heretofore signing contracts with the intervener.

Upon this finding the Commission concluded:

> Intervener, Press-Union Publishing Co. (WBAB), has failed to show that it has any interests that will be adversely affected by a grant of the instant application or that such grant will result in impairment of its ability as licensee of Station WBAB to serve public interest, convenience and necessity.

On May 22, 1940, the Commission issued its order granting the application of Neptune Broadcasting Corporation and adopting as final its findings of fact and conclusions of April 4, 1940.

On June 11, 1940, Press-Union Publishing Co. (WBAB) filed a petition for rehearing. Station WBAB is authorized to use the frequency 1200 kilocycles, with 250 watts power, unlimited time. The frequencies assigned both the applicant and petitioner are sufficiently separated so that both may be used in Atlantic City without either causing electrical interference to the other.

On June 17, 1940, Neptune Broadcasting Corporation filed its answer to the petition for rehearing.

Petitioner does not now assert that it will be aggrieved or adversely affected by the grant of the Neptune application, but seeks a denial of the application on the grounds that there is no need for two local stations in Atlantic City; that the service of the proposed Neptune station will duplicate to a large extent the program service now being rendered by Station WBAB; that the Commission did not make a finding as to the financial qualifications of the applicant; that the record does not support a finding that the applicant is financially qualified because financial statements of the stock subscribers were not put in evidence; that "stock ownership in the applicant corporation is confusing and it is difficult to ascertain the procedure fol-

lowed by the Commission in determining the ultimate parties to which the license was granted."

Although petitioner, in its petition for rehearing, does not assert that it will be aggrieved or adversely affected by the operation of the proposed station, we have carefully considered the grounds urged by petitioner for a reversal of our decision of May 22. Upon considering these grounds, we find that they are without merit.

Accordingly, it is ordered this 16th day of July, 1940, that the petition for rehearing be, and it is hereby, denied.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of Application of the MICHIGAN BELL TELEPHONE Co. for a certificate that the proposed acquisition by it of the telephone plant and property of the HILLANDALE TELEPHONE Co. will be of advantage to the persons to whom service is to be rendered and in the public interest.	DOCKET No. 5831

June 12, 1940

CERTIFICATE

At a session of the Federal Communications Commission held at its offices in Washington, D. C., on the 12th day of June, 1940,

The Commission having under consideration the application of the Michigan Bell Telephone Co. requesting this Commission to certify that the proposed acquisition of the properties of the Hillandale Telephone Co. by the Michigan Bell Telephone Co. will be of advantage to the persons to whom service is to be rendered and in the public interest,

A hearing and investigation of the matters and things involved in said proceeding having been had, it is hereby certified that the proposed acquisition of the properties of the Hillandale Telephone Co. by the Michigan Bell Telephone Co. will be of advantage to the persons to whom service is to be rendered and in the public interest; provided, however, the Commission makes no finding as to the value of the property or as to the reasonableness of the purchase price, and nothing herein shall be deemed an approval of any accounting performed or to be performed in connection with the transaction.

This certificate shall take effect immediately.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of RADIO VOICE OF SPRINGFIELD, INC., SPRINGFIELD, OHIO. For Construction Permit.	DOCKET No. 5704

May 16, 1940

W. Theodore Pierson in behalf of the applicant; *Charles W. Wayland* in behalf of Donald A. Burton (WLBC), respondent.

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF THE COMMISSION

This proceeding arose upon the application of Radio Voice of Springfield, Inc., for a construction permit to erect a new radiobroadcast station at Springfield, Ohio, to operate on the frequency 1310 kilocycles, with power of 100 watts, unlimited time. The Commission being unable to determine that the granting of the application would serve public interest, convenience, and necessity, designated it for hearing, and notice of the time and place thereof and the issues to be determined was given to the applicant and other interested parties. The matter was heard on October 27, 1939, before an examiner duly designated by the Commission. Subsequent thereto, on November 17, 1939, the applicant was granted leave to amend its application on matters not concerning the issues involved herein. Proposed Findings of Fact and Conclusions have been submitted on behalf of the applicant and Donald A. Burton (WLBC), respondent.

The Proposed Findings of Fact and Conclusions submitted by the respondent, Donald A. Burton, concluded that the application should be denied on the ground that the operation of the proposed station would cause objectionable interference to the operation of Station WLBC. As between the parties, this is the only issue and only the relevant facts necessary in deciding this issue are reported herein.

The transmitter site and the antenna are to be selected subject to the Commission's approval. The facts reported herein are based upon the use of a self-supporting vertical radiator with height of

150 feet to be located near the center of the business district of Springfield, upon actual measurements of the signals of Station WLBC, and upon the computed field intensity of the signals of the proposed station.

Station WLBC is located at Muncie, Ind., 87½ miles distant from Springfield, Ohio, and it operates with power of 250 watts, unlimited time, on 1310 kilocycles, the same frequency requested by the applicant herein. The simultaneous operation of the proposed station and WLBC would result in interference within the 0.5 millivolt-per-meter contour of each station. This interference would occur over 2 crescent-shaped areas centering on a direct line between Muncie and Springfield; and the maximum interference to Station WLBC would be to its 0.8 millivolt-per-meter contour and to the predicted 0.88 millivolt-per-meter contour of the proposed station.

The crescent-shaped area within the 0.5 millivolt-per-meter contour of WLBC over which the interference would occur is 7 miles across the widest point and has an area of 157 square miles, which is approximately 4.7 percent of the total area now served by the station. The station now renders primary service to a total population of 187,100 residing within the 0.5 millivolt-per-meter contours and approximately 11,400 persons, or 6.1 percent of the total population within this contour, would be affected by the interference from the proposed station. Based upon measurements taken at a point near the center of this interference area, approximately 29 miles distant from Muncie, the following stations render a signal of 0.5 millivolts per meter, or better, which is considered adequate for primary service to listeners residing in rural areas: WLBC renders a signal of 0.6 millivolts per meter; WKBV, Richmond, Ind., located 18 miles from the point selected, provides a signal of 1.5 millivolts per meter; WHIO, Dayton, Ohio, 42½ miles distant, a signal of 1.57 millivolts per meter; WOWO, Fort Wayne, Ind., 67 miles away, 1.08 millivolts per meter; WJR, Detroit, Mich., 176 miles distant, 1.88 millivolts per meter; WLW and WKRC, Cincinnati, 68 miles distant, 19.8 and 2.12 millivolts per meter, respectively; and WFBM, Indianapolis, provides a signal in excess of 0.5 millivolts per meter. In addition, portions of the area receive signals in excess of 0.5 millivolts per meter from Station WHAS, Louisville, and WMAQ, Chicago. Muncie is situated in Delaware County, and the area over which interference would be received from the proposed station lies entirely outside of this county.

The crescent-shaped area lying within the predicted 0.5 millivolt-per-meter contour of the proposed station, over which interference would be received from Station WLBC, is 6 miles across at the widest point, and a population of approximately 7,500 reside therein.

There are approximately 121,700 potential listeners residing within the predicted 0.5 millivolt-per-meter contour of the proposed Springfield station and 7,500 persons, or approximately 6.2 percent, would be deprived of primary service from the proposed station. This interference area lies outside of Clark County, in which the city of Springfield is located, except for a triangular-shaped area in the northwest corner having a base on the north of 2 miles and an altitude of 7 miles. The persons residing within the interference area of the proposed station receive primary service from Station WHIO, Dayton, WLW, Cincinnati, and WCKY, Covington, Ky.

Springfield has a population of 68,743 and Clark County a population of 90,936 (1930 Census). There are no broadcast stations located in the city or in the county. The entire city receives primary service from but one station, namely, WLW, Cincinnati, and Stations WCKY and WHIO render primary service to the residential districts thereof. The proposed station would serve the entire city of Springfield with satisfactory primary service, and a population of 83,900 reside within the predicted 2 millivolt-per-meter contour and 114,200 within the predicted 0.5 millivolt-per-meter contour.

CONCLUSION

1. Station WLBC and the one proposed herein are classified, under the Commission's rules and standards, as class IV stations and, as such, normally may be expected to render interference-free service during the daytime to the 0.5 millivolt-per-meter contour. It is plain that in the instant case it would not be in the public interest to deny the application for the proposed station in order that the relatively few people now receiving service from Station WLBC who would be affected thereby could continue to receive service from that station, since to do so would mean that the city of Springfield would be deprived of a local radio service, and the relatively large number of people who would be served by the proposed station would not receive the benefit of such service. Particularly is this true where, as here, those who would no longer receive service from Station WLBC already receive service from several other stations.

2. Upon consideration of all the facts of record, the Commission concludes that the granting of the instant application will serve public interest, convenience, and necessity.

The proposed findings and conclusions of the Commission were adopted by the Commission as the "Finding of Fact and Conclusions of the Commission" on June 17, 1940.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of C. L. WEATHERSBEE, W. H. NICHOLS, C. L. PICKLER, and E. M. THOMPSON, doing business as ALBERMARLE BROADCASTING STATION, ALBEMARLE, N. C. For Construction Permit.	DOCKET No. 5664

May 16, 1940

Ben S. Fisher, *Charles V. Wayland*, and *John W. Kendall* on behalf of the applicants; *E. C. Lovett* on behalf of Catawaba Valley Broadcasting Company; *Karl A. Smith* and *Lester Cohen* on behalf of Station WISE.

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF THE COMMISSION

FINDINGS OF FACT

1. This proceeding arose upon an application for a construction permit filed by C. L. Weathersbee, W. H. Nichols, C. L. Pickler, and E. M. Thompson, copartners doing business as Albemarle Broadcasting Station, requesting authority to construct a new radiobroadcast station in Albemarle, N. C., to operate on the frequency of 1370 kilocycles with power of 100 watts, daytime only. The Commission was unable to determine from examination of the application that a grant thereof would serve public interest, convenience, and necessity and designated the matter for hearing.

2. The applicant and all other interested parties were duly notified of the time and place of hearing, and the issues to be determined and, pursuant to said notice, hearing was held on October 29, 1939, before an examiner duly appointed by the Commission.

3. The Albemarle Broadcasting Station, applicant herein, is a copartnership composed of C. L. Weathersbee, W. H. Nichols, C. L. Pickler, and E. M. Thompson, all of whom are citizens of the United States.

4. Mr. Weathersbee resides in Norwood, N. C., a distance of 11 miles from Albemarle. He is now, and for the past 14 years has been, employed by the Duke Power Company as manager of a small

branch out of Salisbury, N. C. If the application is granted, he will each day devote about 2 hours' time from his present employment to station operation, serving as part-time announcer and "helping to arrange station business."

5. Mr. Nichols is a resident of Norwood, N. C., where he is employed as service man in his father's garage. If the application is granted, he will be manager of the proposed station and devote all his time to station operation.

6. Mr. Pickler is now, and for the past 20 years has been, a resident of Albemarle, N. C., where he is employed by the Wiscossit Mills as head mechanic in the yarn and dye department and is also engaged as a part-time minister of the gospel. If the application is granted, he will be sales manager, and have charge of the finances of the proposed station, and also serve as director of religious programs.

7. Mr. Thompson is a resident of Norwood, N. C., where he has for the past 17 years been engaged in business and is now engaged in operating a grocery and meat market and a farm enterprise. He will not take an active part in the operation of the proposed station.

8. None of the applicant partners has ever had any experience in the construction or operation of a radiobroadcast station, other than unlicensed stations, as hereinafter shown, and no definite plan or arrangement has been made by them for the employment of qualified experienced station personnel, station operation in general, or the broadcast service to be rendered. To a large extent such matters are left, and expected, to be "worked out" after the application is granted. However, applicants "hope" and expect to employ two licensed operators, one of whom will act as station engineer, and one announcer.

9. The financial statement of the partnership offered and received in evidence on the hearing shows, as at October 23, 1939, total assets of $8,000, consisting of cash deposited in the First National Bank at Albemarle, N. C., on October 21, 1939, 3 days prior to the hearing, and no liabilities. The evidence adduced at the hearing shows that of this amount three of the partners (Weathersbee, Nichols, and Pickler) each furnished and paid in $1,000, and the fourth partner (Thompson) furnished and paid in $2,000. The balance of $3,000 was provided and deposited in the account by W. E. Smith, a local attorney, and T. R. Wolfe, a state highway commissioner, who are also the local bankers. This money was advanced to the partnership by Smith and Wolfe without any note or agreement in writing being executed by or between the parties with reference thereto, but only an oral understanding that it could be repaid if the application is granted and the station makes money. The partnership is not now

under any obligation to repay the "loan" and will not be unless the application is granted and the station makes money.

10. Smith and Wolfe will have no proprietorship interest in the station if the application is granted, but the partners will give considerable consideration to their wishes in connection with station operation. It is the intention of the present partners to incorporate and, upon incorporation, Smith and Wolfe will be given stock in the corporation in the amount of their advancements.

11. Although the testimony shows that the $8,000 is deposited in the bank to the credit of the Albemarle Broadcasting Station, the partnership has no control whatever of the account and no money can be drawn therefrom without Smith's authorization and signature. Smith and Wolfe still retain full control of the money allegedly loaned by them to the partnership, and Smith alone has power and authority to issue checks against, and to withdraw money from, the account. Such power and authority exists and is derived only from an oral arrangement between the parties and the bank. There is nothing to prevent Smith and Wolfe from withdrawing from the account the $3,000 advanced by them at any time they might desire. All arrangements with reference to the loan and the handling of the bank account are to be made if, and when, this application is granted.

12. In view of these facts, it must be assumed either that the $3,000 allegedly advanced to the partnership by Smith and Wolfe is not a *bona fide* loan or that it is a liability of the partnership and should have been so shown on its balance sheet and, in either event, the net worth of the partnership is reduced to, and should be reported as, only $5,000.

13. Attached to the application was a balance sheet of each of the partners which shows in substance as follows: W. H. Nichols listed as assets, as at April 27, 1939, cash $1,200, automobile, personal and household effects $1,000, making a total of $2,200, with no liabilities. At the hearing evidence was adduced showing that his cash on hand at that date was $200, making total assets of $1,200. Evidence was also adduced showing that $3,000 had been loaned to the partnership composed of Nichols, Weathersbee, Pickler and Thompson. Under the law each partner is liable for the full amount, but at any rate Mr. Nichols should show a liability against his $1,200 total claimed assets of one-fourth of $3,000, or $750, which would reduce his total claimed assets to $450.

14. The balance sheet of C. L. Weathersbee, as at April 27, 1939, attached to the application shows, as assets, cash $1,500, automobile, personal and household effects $2,200, one lot and house $3,100, making claimed total assets of $6,800, and shows no liabilities.

Evidence was adduced in the hearing showing that on that date Mr. Weathersbee had cash $300 and the other assets listed on the balance sheet, making a claimed total of $5,600. In addition thereto, evidence was further adduced at the hearing that there was an outstanding mortgage of $1,500 against the lot and house listed on the balance sheet and which he occupied as his homestead and, therefore, is subject to dower and homestead rights. When this $1,500 is deducted from the claimed total, it leaves a net worth of $4,100 and in this case, as in the case of Mr. Nichols, there must be charged against this net worth at least the pro rata one-fourth of the outstanding $3,000 loan to the partnership, or $750, which would reduce the net worth to $3,350.

15. The balance sheet of C. L. Pickler as at April 27, 1939, attached to the application, shows assets, cash $1,500, automobile, personal and household effects $1,000, two lots and house $3,500, with no liabilities. At the hearing evidence was adduced which shows that Mr. Pickler had at that date cash on hand $500, with the same values accorded to other property as shown in the balance sheet, making a total of $5,000. Evidence was further adduced at the hearing to show that there was an outstanding mortgage for $500 against the real estate listed, which would reduce the claimed net worth to $4,500. Mr. Pickler also occupies as a homestead the house listed as an asset and it, likewise, is subject to dower and homestead rights and, in addition, he likewise is liable for at least one-fourth of the $3,000 indebtedness of the partnership which would further reduce his claimed net worth to $3,750.

16. The balance sheet of E. H. Thompson, filed with the application, shows assets as at April 27, 1939, cash $500, marketable securities ,$1,000, accounts receivable $5,000, notes receivable $500 automobile, personal and household effects $5,000, 110 acres of land, houses, and lots $10,000, making a claimed total of $22,000, with no liabilities. At the hearing Mr. Thompson offered in evidence an amended balance sheet, as at October 20, 1939, which shows the following assets: cash $500, accounts and notes receivable $5,500, securities $1,000, other personal property $7,000, real estate $10,000, making a claimed total of $24,000. This statement also shows the following liabilities: current liabilities $1,000, and mortgage $3,000, reducing the claimed total net worth to $20,000. From this claimed total there must also be deducted at least one-fourth of the liability of the partnership loan of $3,000, which would reduce the claimed net worth of Mr. Thompson to $19,250.

17. The evidence adduced at the hearing discloses that the liabilities, which were admitted by the various parties under cross-examination of the examiner, were in existence at the date of the filing

of the balance sheets attached to the application but were not shown thereon, as heretofore noted.

18. The total claimed net worth of the partners Nichols, Weathersbee, and Pickler is $7,550 and, as heretofore shown, a goodly portion of these assets is subject to the dower and homestead rights of the owners, and all is of such nature that it could not be utilized in securing further funds for station construction and operation. From the evidence adduced at the hearing it does not appear that any one of these three partners is financially able to supply any additional cash to assist in the construction and operation of the proposed station.

19. Of the claimed net worth of the partner Thompson, amounting to $19,250 as heretofore shown, there is but $500 in cash. He testified at the hearing that, in the event the copartnership needs additional funds to construct and continue operation of the proposed station he would be willing to "risk" up to $5,000 in addition to the $2,000 he has already "put in" and that he would either borrow the money or procure it through collection of accounts due him in his business.

20. The estimated cost of constructing the proposed station, exclusive of the land for the transmitter and antenna site, is $6,225.

21. The estimated total monthly cost of station operation is $770, and does not include salary of station manager, cost of talent, rent, maintenance, salary of office employees, telephone service, stationery, postage, etc., and the estimated monthly operating revenue of the proposed station, based on 68 tentative contracts for station time signed by local advertisers and introduced in evidence, is $745. The record is devoid of any satisfactory evidence that additional commercial support is, or will be, immediately available to the proposed station.

22. According to the 1930 United States Census, Albemarle had a population of 3,493 and Stanley County, in which Albemarle is centrally located, had a population of 30,216. Operating as proposed, it is estimated that there is within the primary service area of the proposed station a population of 24,437.

23. The only station rendering primary broadcast service to Albemarle is Station WBT, Charlotte, N. C.

24. The applicants plan to operate the proposed station each day from 6 to 7 o'clock in the morning until approximately 5 o'clock in the afternoon, and propose to devote 50 percent of the broadcast time to live talent programs and the other 50 percent to recordings and transcriptions. The facilities of the proposed station will be offered to all civic, religious, educational, patriotic and other public service organizations without charge.

25. In 1938 Mr. Weathersbee and Mr. Nichols were arrested and prosecuted in a Federal court for operating an unlicensed radio transmitter, in violation of the Communications Act of 1934, at Norwood, N. C., and, on plea of guilty, were each fined $50. The transmitter had been built by them in 1937 and unlawfully operated for approximately a year, until the time of their arrest. It was contended, on the hearing herein, that the operation of this transmitter was carried on in ignorance of the law and in the belief that the signal transmitted did not cross state boundaries and that, therefore, no Federal license was required or necessary. However, the record shows that approximately a month prior to their arrest they received from Commission Inspector Bennett a communication requesting specific information with reference to the operation of such transmitter, and that they ignored and made no reply to such request and continued to unlawfully operate said transmitter until the time of their arrest.

26. The applicant partner, C. L. Pickler, also in 1937 constructed, and for a period of approximately 6 months unlawfully operated an unlicensed transmitter in Albemarle, N. C., for the purpose of broadcasting religious programs on Sunday afternoons. The Commission inspector for that district notified Mr. Pickler that the equipment operated by him was being operated in violation of the Federal law and thereupon he immediately dismantled the transmitter and ceased operation. He was not arrested or formally charged with the offense.

CONCLUSIONS

1. The applicants have failed to sustain the burden of showing that they are financially and otherwise qualified to construct and operate the proposed station, and that a grant of the application would serve public interest, convenience, and necessity.

The evidence in the record relating to the financial qualifications of the individual applicants, and of the partnership, fails to show that they are presently possessed of sufficient means to pay the cost of construction and the expense of initial station operation, or resources from which necessary funds may be secured and made available. They have no definite or certain plan or arrangement for securing necessary additional finances. The record fails to show definitely that there is sufficient commercial support available to defray the estimated operating expense of the proposed station.

None of the applicants has had experience in the operation of a regular radiobroadcast station, and no definite arrangement has been made by them for the employment of sufficient qualified personnel to

insure efficient operation of the proposed station, nor have they any well-defined plan for rendering broadcast service to the listeners in the area proposed to be served.

2. The granting of this application would not serve public interest, convenience, and necessity.

The proposed findings of fact and conclusions of the Commission were adopted by the Commission as the "Findings of Fact and Conclusions of the Commission" on June 17, 1940.

8 F. C. C.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of [1] SANTA MONICA MUNICIPAL AIRPORT, CITY OF SANTA MONICA, SANTA MONICA, CALIF. For Construction Permit.	DOCKET No. 5827
CITY OF LOS ANGELES, LOS ANGELES, CALIF. For Construction Permit.	DOCKET No. 5828
UNITED AIRPORTS COMPANY OF CALIFORNIA, LTD. (KBLA), BURBANK, CALIF. For Renewal of Existing License.	DOCKET No. 5829
CITY OF LONG BEACH (KABQ), LONG BEACH, CALIF. For Renewal of Existing License.	DOCKET No. 5849

June 19, 1940

On behalf of the applicant, Santa Monica Municipal Airport, Santa Monica, Calif.: *Cornelius W. McInerny, Jr.*, City Hall, Santa Monica, Calif. On behalf of the applicant, City of Los Angeles, Los Angeles, Calif: *Robert A. McMillan*, Deputy City Attorney, City of Los Angeles, Calif. On behalf of the applicant, United Airports Co. of California, Ltd., Burbank, Calif.: *Louis G. Caldwell* and *Donald C. Beeler*, by *Donald C. Beeler*, 914 National Press Building, Washington, D. C. On behalf of the applicant, City of Long Beach, Long Beach, Calif.: *Irving M. Smith*, City Attorney, and *Atlee S. Arnold*, Deputy City Attorney, by *Atlee S. Arnold*, 604 City Hall Building, Long Beach, Calif. On behalf of the Federal Communications Commission, *Frank B. Warren.*

REPORT OF THE COMMISSION

WALKER, Commissioner:

Operators of four airports in the vicinity of Los Angeles have filed applications with this Commission for authority to use the

[1] See Order of the Commission, 8 F. C. C. 116.

frequency 278 kilocycles for the purpose of controlling aircraft at the respective airports. The applicants, United Airports Co. of California, Ltd., at Burbank, Calif., and City of Long Beach, Calif., seek renewal of existing licenses authorizing use of the above-mentioned frequency at the two airports named. The city of Santa Monica and the city of Los Angeles seek construction permits authorizing the construction of aircraft control stations to use the frequency 278 kilocycles for the control of aircraft at these last-mentioned airports. All four of the applications mentioned were set for hearing, and a consolidated hearing was held in Los Angeles on April 19 and April 22, 1940.

Under the Commission's rules, at the time these applications were filed, and at the time the hearing was held, 278 kilocycles was the only frequency available for assignment to aircraft control stations. The maximum separation between any of the 4 airports involved is 30 miles. Two of them are within 10 miles of each other. There is certain to be interference between any 2 of these airports using 1 frequency for aircraft control, with authorized power of 15 watts. The theoretical separation should be at least 100 miles between stations using this frequency for aircraft control purposes, in order to avoid objectionable interference.

Two of the applicants named, United Airports Company of California, Ltd., and city of Long Beach, have made joint use of the frequency 278 kilocycles with fairly satisfactory results. All four of the applicants named could not satisfactorily use one common frequency for aircraft control purposes. At the time of the hearing, both the Santa Monica and the city of Los Angeles airports were attempting to utilize the light gun to control air traffic.

The light gun is a device which reflects the light from a 50 candlepower automobile headlight globe through a rotating filter arrangement which provides the appropriate color. The colors used are white, red, and green. The light gun includes sights very similar to those on an ordinary rifle, by which the light beam is directed at the aircraft which it is attempting to control. A green light directed at a pilot in position for takeoff indicates it is clear for his takeoff; a white light directed at a ship on the ground is permission for that ship to taxi with caution; a red light directed at an aircraft on the ground instructs the aircraft to remain stationary. These signals are used similarly to inform aircraft in the air whether or not the field is clear for a landing.

A ship attempting to use an airport not equipped with a radio control for emergency landing is in an extremely hazardous position. By the use of wire telephone between airports in the vicinity of Los Angeles accidents have been avoided in certain instances, but it can-

not be assumed that the results will always be so fortunate. With radiotelephone aircraft control, the pilot is in communication with the tower operator and receives complete instructions and information as to traffic, and is at all times in a position to know exactly what he may or may not do. In an emergency the tower operator can broadcast necessary information to all ships in the vicinity and clear the field if necessary. The record is replete with instances of accidents and near accidents at the Santa Monica and Los Angeles airports which might have been avoided through the use of radio control.

The principal objections or defects in the light gun system were summarized by an official of the Civil Aeronautics Administration as follows: First, the distance at which a signal from the light gun can be observed is very limited; second, it is extremely difficult to single out the particular individual to whom the signal is intended to be directed, especially where there are several aircraft in close proximity; third, there are conditions during certain hours of the day with the prevailing winds in the locality involved which make it difficult for the pilot to observe the signal even though it is directed to him; and, fourth, the pilot has many other things to do in circling an airport preparatory to landing which make it impossible for him to observe at all times the tower in which the light gun is located. The difficulty of singling out the individual to whom a light signal is intended to be directed is applicable equally to ships on the ground preparing for takeoff. The light gun was originally designed to regulate traffic on the ground only, and it is far from dependable for regulating traffic in the air.

Traffic at the 4 airports involved is very heavy and is increasing. Of 62 major airports in the United States, the 4 applicants here mentioned, including the 2 not having radio control, have far heavier than average traffic. Santa Monica and Los Angeles are the only major airports included in the group which are not equipped with facilities for radio control of traffic.

Since the hearing on these applications, the Interdepartment Radio Advisory Committee has agreed to the release of the 272 kilocycle frequency to this Commission for assignment to the cities of Los Angeles and Santa Monica for control of traffic at their municipal airports. The Commission has issued temporary authority to Los Angeles and Santa Monica to proceed with construction of aircraft control stations designed to use this frequency (272 kilocycles). The Commission also has renewed tentatively the license of the United Airports Co., of California, Ltd., and the city of Long Beach, covering the use of 278 kilocycles at these points for the purpose of controlling air traffic.

From a safety standpoint the joint use of one frequency by 2 airports for the control of air traffic when the separation between them is less than 30 miles is not a satisfactory solution of the problem of controlling air traffic. The applicants are agreed, however, that they will cooperate in making use of 2 frequencies for the 4 airports. The Burbank Airport and the Long Beach Airport have had fairly satisfactory results using a common frequency. Los Angeles and Santa Monica have agreed that they will work out a satisfactory cooperative arrangement for use of a single frequency to control traffic at these 2 airports. Joint use of a single frequency by 2 airports is a substantial improvement over existing conditions, where attempt is made to control air traffic at 2 major airports through use of a light gun.

The control of air traffic in the vicinity of all the larger cities of the United States is certain to present a serious problem in the near future, such as has developed in the vicinity of Los Angeles. Apparently, frequencies will not be available in the lower band, that is, from 200 to 400 kilocycles for this purpose. This Commission, under its rules, has assigned, for airport control purposes, ultra-high frequencies 130,860 kilocycles, 131,420 kilocycles, 131,840 kilocycles, and 140,100 kilocycles. Applicants for airport control stations are required to apply for 1 of these high frequencies in addition to 278 kilocycles, the only other frequency available to this Commission for assignment for aircraft control.

Equipment is not now available on a commercial basis to make use of the high frequencies specified for controlling air traffic. It is apparent, however, that use of these frequencies offers the only satisfactory solution of difficulties certain to be encountered in connection with air traffic in the vicinity of every large city in the United States. Especially is this true in view of the almost certain continuation of the present increasing trend of air traffic. The Commission desires to stress at this time the necessity for development, for both airports and aircraft, of equipment designed to make use of these high frequencies. The frequency 272 kilocycles is released for purposes of aircraft control on a temporary basis for a period ending May 1, 1942. It is believed that upon the expiration of this temporary period, high frequency equipment will have been developed and made available upon reasonable terms for use in controlling the movements of aircraft in the vicinity of airports.

CONCLUSIONS

The temporary licenses issued in connection with this proceeding should be reissued on a regular basis for the usual period, and, upon

compliance with the terms of the construction permits for aircraft control stations at the cities of Santa Monica and Los Angeles, the licenses applied for by these cities should be issued on a regular basis. The applicant in Docket 5827, Santa Monica Municipal Airport, proposes to operate between the hours of 9 a. m. and sunset only. The record indicates that operation between these hours will meet satisfactorily the needs at this airport. It should, therefore, be provided that the requirement of our rule 9.111 be waived with respect to this applicant and that operations at this point be from 9 a. m. to sunset only. All the applicants should proceed as expeditiously as possible with arrangements to make use of the ultra-high frequencies assigned by this Commission for aircraft control purposes, since the problem is not solved finally by the authorizations herein provided, and for the further reason that the problem will become increasingly difficult of solution with the tremendously rapid increase in traffic which is expected to develop at these airports.

ORDER

June 19, 1940

At a regular meeting of the Federal Communications Commission held at its offices in Washington, D. C., on the 19th day of June, 1940,

The Commission having under consideration,

Application of United Airports Co. of California, Ltd., for renewal of license to use the frequency 278 kilocycles, 15 watts normal operation, 100 watts when operating as miniature ranger station, for the control of aircraft in the vicinity of United Air Terminal, Burbank, Calif. (Docket No. 5829);

Application of the city of Los Angeles, Los Angeles, Calif., for a construction permit authorizing the construction of a station to use the frequency 278 kilocycles with 15 watts power for the control of aircraft in the vicinity of the Los Angeles Municipal Airport (Docket 5828);

Application of Santa Monica Municipal Airport, city of Santa Monica, Santa Monica, Calif., for construction permit to use the frequency 278 kilocycles with 15 watts power for the control of aircraft in the vicinity of Santa Monica Municipal Airport, operating only between the hours of 9 a. m. and sunset (Docket 5827); and

Application of the city of Long Beach, Long Beach, Calif., for a renewal of license to use the frequency 278 kilocycles, 15 watts power, for the control of aircraft in the vicinity of Long Beach Municipal Airport (Docket 5849); and

Hearing and investigation of the said applications having been had and the Commission being fully advised in the premises,

It is ordered that the aforementioned applications of the United Airports Co. of California, Ltd., and the city of Long Beach, Long Beach, Calif., be granted; and that the applications of the city of Los Angeles and the Santa Monica Municipal Airport be granted for use of the frequency 272 kilocycles instead of 278 kilocycles applied for, with the understanding that the provisions of rule 9.111 are waived as to the city of Santa Monica in order to permit operation of the control tower at the Santa Monica Municipal Airport between the hours of 9 a. m. and sunset only.

It is further ordered that these authorizations shall become effective on the 19th day of June, 1940.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of EVANGELICAL LUTHERAN SYNOD OF MISSOURI, OHIO, AND OTHER STATES (KFUO) ST. LOUIS, Mo. For Modification of License.	FILE No. B4–ML–989

Decided June 25, 1940

DECISION AND ORDER ON PETITION FOR REHEARING

On May 8, 1940, the Commission, upon examination of the application filed April 30, 1940, by Evangelical Lutheran Synod of Missouri, Ohio, and other States (KFUO), St. Louis, Mo., for modification of license to change frequency from 550 kilocycles to 830 kilocycles, 1 kilowatt day and night, local sunrise to local sunset at Denver, Colo. (B4–ML–989), being able to determine and determining that public interest, convenience and necessity would be served thereby, granted the application without a hearing pursuant to section 309 (a) of the Communications Act of 1934.

On May 28, 1940, WCBD, Inc., licensee of Station WCBD, Chicago, Ill., filed its petition for rehearing directed to this grant. Petitioner operates its Station WCBD on the frequency 1080 kilocycles with 5 kilowatts power, sharing time with Station WMBI, Chicago, Ill. On November 25, 1939, it had filed an application with the Commission seeking a change in frequency from 1080 kilocycles to 830 kilocycles, 5 kilowatts power, daytime only (B4–ML–917). The Commission was unable to determine from an examination of this application that the granting thereof would serve public interest, convenience and necessity, and therefore designated it for a public hearing in accordance with the provisions of section 309 (a) of the act.

Petitioner alleges that our action of May 8, 1940, effective June 1, 1940, granting the application of Evangelical Lutheran Synod (KFUO), which was filed after the application of WCBD, Inc., for use of the frequency 830 kilocycles, is erroneous as a matter of law, because both applications raised a statutory question concerning the public interest, convenience and necessity "which can only be determined by simultaneous and comparative consideration"; that the

Commission "cannot grant either application under the power contained in section 309 (a) of the act until it has considered them together on a comparative record," and prays that the Commission reconsider its decision of May 8, 1940, and designate the applications of KFUO and WCBD for joint hearing.

We cannot agree with petitioner's contention. Neither section 309 (a) of the Communications Act of 1934 nor any other section of the law requires us to withhold action on an application which we have found will serve the public interest in order to consider such application on a comparative basis with some other application upon which we are not ready to take final action. Before petitioner's application can be denied, it must be afforded an opportunity to be heard on any grounds which we may have for denying the application, and if the only basis for denying petitioner's application is the superiority of the service rendered or proposed by Evangelical Lutheran Synod (KFUO), petitioner will have ample opportunity to show that its operation as proposed will better serve the public interest than will the operation of KFUO as authorized by the instant grant. The grant herein to KFUO does not preclude the Commission at a later date from taking any action which it may find will serve the public interest.

The petition for rehearing sets forth no facts which were not known to us at the time of the grant of the application of Evangelical Lutheran Synod nor does it set forth any basis which would require us to set aside our order of May 8, 1940, effective June 1, 1940, granting the application of Evangelical Lutheran Synod (KFUO).

Accordingly, it is ordered, this 25th day of June, 1940, that said petition be, and it is hereby, denied.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of
PAWTUCKET BROADCASTING CO.,
PAWTUCKET, R. I.
For Construction Permit.
} DOCKET No. 4990

May 22, 1940

Paul M. Segal, *George S. Smith*, and *Harry P. Warner* on behalf of the applicant; *Horace L. Lohnes*, *Fred W. Albertson*, and *E. D. Johnston* on behalf of WJAR; *Paul D. P. Spearman* and *Allan B. David* on behalf of WAAB; and *Philip G. Loucks*, *A. W. Scharfeld*, and *J. F. Zias* on behalf of WHK.

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF THE COMMISSION

This proceeding arose upon the application of Pawtucket Broadcasting Company for a construction permit (Docket No. 4990), requesting authority to construct a new radiobroadcast station at Pawtucket, R. I., to be operated on the frequency of 1390 kilocycles, with power of 1 kilowatt, unlimited time. Not being satisfied from examination of the application that the granting thereof would serve public interest, convenience, or necessity, the Commission designated the matter for hearing. A hearing was held on the application March 9, 10, and 11, 1938, and, thereafter, the examiner who conducted the hearing made a report to the Commission (I–665) recommending that the application be denied. Subsequently, at the request of the parties appearing at the hearing, oral argument was held before the Commission. On December 12, 1938, the Commission entered an order denying the application, effective December 19, 1938. Thereafter, the applicant filed a petition requesting the Commission to set aside the Statement of Facts, Grounds for Decision, and Order, and either grant the application, permit reargument before the Commission, or remand the case to an examiner for further hearing. On May 16, 1939, the Commission granted the applicant's petition insofar as it requested the Commission to set aside its Statement of Facts, Grounds for Decision, and Order of December 12, 1938, effective December 19, 1938, and directed that the applica-

tion be designated for further hearing upon issues to be specified by the Commission. The issues specified are as follows:

1. To determine whether there is available a frequency which will provide service to the area proposed to be served in keeping with the Commission's plan of allocation.

2. To determine whether or not the use of the frequency 1390 kilocycles with 1 kilowatt power, unlimited time, will provide adequate service for the area proposed to be served and would be consistent with sound principles of allocation.

The further hearing was held July 5, 1939, following which proposed findings were submitted by the applicant and by Radio Air Service Corporation (WHK), Cleveland, Ohio, and The Outlet Co. (WJAR), Providence, R. I.

FINDINGS OF FACT

1. The Pawtucket Broadcasting Co., applicant herein, is a corporation organized under the laws of the State of Rhode Island. Its authorized capital stock consists of 100 shares of no-par value, all of which was issued originally to Howard W. Thornley, Frank F. Crook and Paul Oury, each stockholder receiving 33⅓ percent of the entire issue. The applicant has informed the Commission, however, through submission of a letter signed by Paul Oury, that the stock issued to the latter has been surrendered by him and that he has withdrawn as an interested party in the application and from all connections with the applicant. The Commission is also informed by the applicant that all of its outstanding stock is now held by Howard W. Thornley and Frank F. Crook, both of whom are citizens of the United States. The applicant's financial statement shows $50,000 on deposit in its treasury. On the basis of these and other facts shown by the evidence, the Commission finds that the applicant is qualified for issuance of the construction permit sought.

2. The service of the proposed Pawtucket station, if constructed and operated as proposed herein, would be restricted during nighttime hours by interference to areas within its 4.8 millivolt-per-meter field strength contour. The nighttime service area would include the city of Pawtucket, which has a population of 77,149, and additional area within the Providence-Fall River-New Bedford metropolitan district, which includes Pawtucket and has a total population of 963,686. The population included within the nighttime service area of the station would be 418,864, or 43.5 percent of the population of the metropolitan district. During daytime hours the service of the station, as limited or defined by its 2 millivolt-per-meter contour, would be available to a population of 536,148, or

approximately 55 percent of the population of the metropolitan district.

3. If the power of certain stations now assigned to the frequency of 1390 kilocycles, particularly the power of Station WHK, Cleveland, Ohio, were increased to 5 kilowatts, as contemplated in applications pending before the Commission, the nighttime service area of the Pawtucket station would be subjected to a further restriction, limiting its service to areas within its 7.0 millivolt-per-meter contour. It would still be possible for the station to serve Pawtucket at nighttime; its daytime service area would not be affected by the change.

4. The frequency of 1390 kilocycles was specified by the applicant after investigation to determine the frequency which would provide maximum service with minimum interference to reception of other stations. The fact is that, with due regard to the possibilities of this frequency with respect to service and with respect to possible interference to reception of other stations, it may be used at Pawtucket to better advantage than any other frequency, regional or local, that might have been requested.

5. The applicant's proposal recognizes and accepts the interference limitations which may be expected to result from operation of the proposed Pawtucket station on the same frequency simultaneously with the stations now licensed to employ the frequency. And since the applicant's purpose, which is to serve Pawtucket and incidental to that purpose to serve as much other area as possible, would not be thwarted thereby, it is assumed that the applicant is willing to accept the interference limitations which would obtain in the event the Commission authorized the further development of the use of the frequency 1390 kilocycles by authorizing stations now employing the frequency to increase power to 5 kilowatts as permitted in regulations adopted while this case has been pending. Considered under these conditions, the applicant's proposal is not inconsistent with the purposes of the Commission's plan of allocation.

CONCLUSIONS

Upon the foregoing findings of fact, the Commission concludes:

1. The applicant as now constituted, is qualified to construct and operate the proposed station.

2. The use of the frequency of 1390 kilocycles for operation of a station as proposed by the applicant will provide service to Pawtucket and to some extent, particularly in the daytime, to surrounding areas.

3. The frequency specified by the applicant may be employed in the situation presented here to better advantage than any other

regional frequency or local frequency which might have been requested, and the proposed use of the frequency subject to the conditions which have been indicated is not inconsistent with the purposes of the Commission's plan of allocation.

4. The granting of a construction permit to the applicant will serve the public interest, convenience, and necessity.

The proposed finding and conclusions of the Commission were adopted by the Commission as the "Findings of Fact and Conclusions of the Commission" on June 26, 1940.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of PAUL R. HEITMEYER, CHEYENNE, WYO. For Construction Permit.	DOCKET No. 3161

Decided July 5, 1940

DECISION AND ORDER ON MOTION OF APPLICANT TO GRANT APPLICATION WITHOUT FURTHER HEARING OR TO DISMISS THE SAME

This proceeding arises upon the application of Paul R. Heitmeyer for a permit to construct a radiobroadcast station at Cheyenne, Wyo.

The application was filed March 25, 1935. On October 30, 1935, a hearing was held upon the application, and on May 1, 1936, the Commission entered an order denying it. The applicant appealed to the United States Court of Appeals for the District of Columbia, and on December 27, 1937, the Court reversed the Commission's decision and remanded the case.

On January 15, 1938, Heitmeyer petitioned the Court of Appeals for an order which would stay the Commission from granting a permit or license that would prevent or interfere with the granting of his application. The Court on January 20, 1938, ordered that the Commission stay all further proceedings relating to the granting of a permit for a broadcast station at Cheyenne, Wyo., until such time as final determination could be had of Heitmeyer's application.

The Court of Appeals on March 17, 1938, granted a motion of the Commission to vacate the stay of January 20, 1938, and thereafter on April 20, 1938, the Commission directed that the record in the case be reopened for further hearing *de novo*, consolidated with hearings on the application of Frontier Broadcasting Company and one other application which has since been dismissed.

On May 24, 1939, after further litigation in the United States District Court and the United States Court of Appeals for the District of Columbia, Heitmeyer obtained from the latter court a writ of mandamus directing the Commission to restrict its consideration of his application to the record as originally made. The Commission

filed a petition for a writ of *certiorari* in the United States Supreme Court, which was granted October 16, 1939; and the Supreme Court, on January 29, 1940, after argument, rendered a decision reversing the Court of Appeals and directing it to dissolve the writ of *mandamus* (*J. Lawrence Fly, et al.*, v. *Paul R. Heitmeyer*, 309 U. S. 146).

On April 24, 1940, the Commission requested Heitmeyer and the other applicants for authority to construct stations at Cheyenne, Wyo., whose applications had remained undetermined because of the litigation in relation to the Heitmeyer application, to submit additional information upon a new application Form No. 301, which had recently been adopted, and in particular to submit new balance sheets.

Applicant Heitmeyer made no response to the request of April 24, 1940, for additional information, until June 28, 1940, when a motion was submitted in his behalf petitioning the Commission either to grant his application without further hearing or to dismiss the same. The applicant's motion alleges that the record on file is full and complete in every respect, that this is especially true as to any and all information requested by the Commission in its letter of April 24, 1940, and that to furnish the information requested by the Commission would require the applicant to go to further expense merely to duplicate information now on file. The applicant, through his motion advises the Commission that he does not desire to submit the information requested and prays that his application be acted upon in its present form on the record thus far made or be dismissed.

The Commission's request of April 24, 1940, was not a request for submission of duplicate materials; the applicant was requested to fill in the questions of the recently adopted application form, which provides for submission of more complete data than was provided for in the form used by the applicant in 1935, and to submit a new balance sheet, and the applicant was advised in connection with the request that pertinent documents and exhibits filed in the original application might be referred to in submission of the new form without preparation of additional copies.

The necessity of obtaining current information after a time interval such as that occurring between the original filing and consideration of the instant application and the present date is readily demonstrated by reference to certain contractual arrangements upon which the applicant relied to show financial ability at the time of his hearing in October 1935. The applicant at that time proposed to finance the new station from a loan of $40,000 which he had obtained from A. L. Glasman and which he had agreed to repay within five years with interest at 6 percent, in default of which Glasman was to become owner of certain stock in various corporations which were to be organized. This contract will expire within a few months by

its terms, if it has not already been terminated by the makers. In any event, the Commission does not have information as to the present status of the contract of October 1935, or with respect to the applicant's financial status at this date.

Since the Commission considers that the information which it requested, but which is refused by the applicant, is necessary to further consideration of the application, the only alternative is to dismiss the application as prayed for by the applicant.

Therefore, it is ordered, this 5th day of July 1940, that the applicant's motion of June 28, 1940, be, and it is hereby, granted insofar as it requests that the application be dismissed, and that the application of Paul R. Heitmeyer, for construction permit for a new station at Cheyenne, Wyo., be, and it is hereby, dismissed.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of
FRONTIER BROADCASTING CO.
CHEYENNE, WYO.
For Construction Permit.

DOCKET No. 4318

Decided July 5, 1940

DECISION AND ORDER ON PETITION OF APPLICANT TO RECONSIDER ORDER DESIGNATING APPLICATION FOR HEARING, AND TO GRANT APPLICATION WITHOUT FURTHER HEARING

The application of Frontier Broadcasting Co., as amended, was filed January 25, 1937, and a hearing was held upon it February 26, 1937. However, following litigation which has been discussed in connection with the Heitmeyer application, Docket No. 3161, the Commission on April 20, 1938, designated the case for hearing *de novo*, the hearing to be consolidated with that on the other pending applications for permits to construct stations at Cheyenne, Wyo.

On April 24, 1940, following the decision of the Supreme Court of the United States in the *Heitmeyer case*, Frontier Broadcasting Co., along with the other applicants for permits at Cheyenne, Wyo., was requested to submit additional information on the application form which had then been adopted. Applicant submitted the information requested in application form No. 301, together with other data relating to the qualifications of the applicant and its plan for the construction and operation of the proposed station. Thereafter, on June 21, 1940, a petition was filed in behalf of the applicant calling attention to the materials which had been submitted and requesting the Commission to reconsider its action of April 20, 1938, designating application for hearing *de novo*, and to grant said application without further hearing.

The Commission finds upon further examination of the application of Frontier Broadcasting Co. and the supplemental data which has been submitted, that the applicant has the legal qualifications required of applicants under the Communications Act, and that it is technically and financially qualified to construct and operate the proposed station. It may be noted in this connection, that the cur-

rent information submitted discloses that, since the original hearing was held in this case, material changes have been made in the applicant corporation, particularly with respect to its officers and its stockholders.

The applicant is a Wyoming corporation and is duly authorized to engage in the broadcasting business. Its authorized capital is $25,000, divided into 2,500 shares of common stock at $10 per share, of which 1,300 shares have been issued at par and paid for. The remaining 1,200 shares have been subscribed for by the present shareholders of the corporation. Residents of Cheyenne hold a majority of the shares which have been issued and local residents will still hold a substantial majority of the shares when the stock subscribed for is issued.

The service which the applicant proposes to establish is designed to meet the local needs and interests of Cheyenne and its surrounding area. A permit was recently granted for construction of a station in Cheyenne but as yet this city does not have a radiobroadcast station although it is the capital of Wyoming and one of the state's largest communities.

The equipment applicant proposes to install conforms to standards established by regulation and may be expected to provide efficient service from a technical standpoint. Operation of the proposed station upon the frequency specified by the applicant will not cause objectionable interference to any other station.

The Commission finds, upon further consideration of the application of Frontier Broadcasting Co. in connection with the supplemental information which has been submitted, that the applicant is legally, technically, and financially qualified to construct and operate the proposed station; and that the granting of a construction permit therefor will serve public interest, convenience, and necessity.

Therefore, it is ordered, this 5th day of July, 1940, that the petition of applicant insofar as it requests that its application be reconsidered and granted, be, and it is hereby granted, and that the application of Frontier Broadcasting Co. for construction permit to construct a new radiobroadcast station at Cheyenne, Wyo., to operate on 1420 kilocycles with power of 100 watts, 250 watts, local sunset, unlimited hours of operation, be, and it is hereby granted, subject to the express condition that:

The permittee herein shall file, within a period of 2 months after the effective date of this order, an application for modification of construction permit, specifying the exact transmitter location and the antenna system proposed to be installed.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matters of[1] PITTSBURGH RADIO SUPPLY HOUSE (WHJB), GREENSBURG, PA. For Construction Permit.	DOCKET No. 5176
STUART BROADCASTING CORPORATION (WROL), KNOXVILLE, TENN. For Construction Permit.	DOCKET No. 5715
THE JOURNAL CO. (WTMJ), MILWAUKEE, WIS. For Construction Permit.	FILE No. B4-P-2696

Decided July 16, 1940

DECISION AND ORDER

1. The application of Pittsburgh Radio Supply House is for a construction permit to change the operating assignment of Station WHJB, Greensburg, Pa., on 620 kilocycles from 250 watts, daytime only, to 1 kilowatt, unlimited time, using a directional antenna at night. The application was originally filed on March 11, 1938, and was later amended on May 18, 1938. It was designated for hearing on July 27, 1938, and was heard in a consolidated proceeding before an examiner from October 11 to 26, 1938, together with the applications of Sentinel Broadcasting Corporation, for a construction permit to erect a new broadcast station at Salina (a suburb of Syracuse), N. Y., to operate on 620 kilocycles with power of 1 kilowatt, unlimited time, using a directional antenna at night, and of Civic Broadcasting Corporation, for a construction permit to erect a new station at Syracuse to operate on the frequency of 1,500 kilocycles with power of 100 watts, unlimited time. The examiner, by his report (I–763), recommended denial of all three applications, and the applicant filed exceptions thereto and had oral argument thereon before the Com-

[1] Supplemental petition for rehearing filed by Pittsburgh Radio Supply House on August 26, 1940, denied on October 8, 1940. See Decision and Order on Supplemental Petition for Rehearing, 8 F. C. C. 134.

On motion of Pittsburgh Radio Supply House, the Commission on November 15, 1940, dismissed its application without prejudice.

mission. The Civic Broadcasting Corporation application was granted, effective October 10, 1939, and the application of Sentinel Broadcasting Corporation was on this day granted by the Commission.

2. Station WHJB operates at Greensburg, Pa. (population 16,508), approximately 24 miles southeast of the city of Pittsburgh, and is in the metropolitan district of that city. The applicant is also the licensee of WJAS, Pittsburgh, which is a regional station operating on 1290 kilocycles with power or 5 kilowatts day and 1 kilowatt night, unlimited time.

3. Mr. H. J. Brennan, secretary-treasurer and director of the applicant, owns 58 percent of the capital stock therein, which constitutes a controlling interest. He is also president and director and owns 80 percent of the capital stock of the KQV Broadcasting Co., licensee of Station KQV, Pittsburgh, which is a regional station operating on 1380 kilocycles with power of 1 kilowatt, unlimited time, using a directional antenna at night.

4. Station WHJB is presently operated with power of 250 watts during the daytime and renders service over a portion of the area now being served by Stations KQV and WJAS. Operating as proposed WHJB would, during the daytime, render service over substantially larger portions of the areas being served by Stations KQV and WJAS, and at night it would serve a portion of the area now being served by KQV.

5. The application of Stuart Broadcasting Corporation requests a construction permit to install a new transmitter, a directional antenna for nighttime use at Station WROL, Knoxville, Tenn., and to change the operating assignment from 1310 kilocycles with power of 250 watts, unlimited time, to 620 kilocycles with the power of 1 kilowatt day and 500 watts night, unlimited time. The application was filed on July 3, 1939, and the Commission, on August 8, 1939, designated it for hearing upon certain specific issues. The hearing on the matter was originally scheduled for November 2, 1939, but was later continued to an indefinite date. Thereafter, on April 12, 1940, the applicant filed a petition requesting the Commission to reconsider its action of August 8, 1939, in designating the application for hearing and to grant it without a hearing; and, on April 19, 1940, Pittsburgh Radio Supply House (WHJB) filed an opposition thereto.

6. The Stuart Broadcasting Corporation is a Tennessee corporation and is legally, financially and otherwise qualified to make the necessary construction and to operate Station WROL as proposed. Operating as proposed, the station would, during the daytime, serve 417,999 potential listeners within its predicted 0.5 millivolt-per-

meter contour, or a gain of 220,071 over the number of persons it now serves within the same contour. During nighttime hours the increase of potential listeners would be from 131,831 to 147,027, or a gain of 15,196 persons.

7. The proposed operation would enable WROL to reach a greater number of listeners during both day and nighttime hours, and to render an improved technical service in the Knoxville area.

8. Knoxville has a population of 105,802, and the metropolitan district thereof, 135,714 (1930 census). There is one other station located in the city, namely, WNOX, which is classified as a regional station and operates on the frequency 1010 kilocycles with power of 5 kilowatts day and 1 kilowatt night, unlimited time.

9. Operating as proposed, Station WROL would not cause objectionable interference to the operation of any existing broadcast station, but it would be limited at night to its approximate 5.65 millivolt-per-meter contour by existing stations on the channel. It would, however, limit the proposed operation of Station WHJB to its 6.7 millivolt-per-meter contour at night, which would be of no consequence with WTMJ operating with 5 kilowatts power at night as proposed. The proposed operation of Station WHJB would, in turn, limit the operation of Station WROL to its 7 millivolt-per-meter contour.

10. The application of The Journal Co., licensee of Station WTMJ, Milwaukee, Wis., requests a construction permit to increase its nighttime operating assignment on 620 kilocycles from 1 to 5 kilowatts and to install a directional antenna for nighttime use.

11. The Journal Co. is a Wisconsin corporation and is legally, financially and otherwise qualified to effect the necessary construction and to operate Station WTMJ as proposed. As heretofore shown, the application requests authority to construct a directional antenna system and to increase nighttime power from 1 to 5 kilowatts. Operating with the power sought, the station's potential listening audience at night would be increased from 1,113,762 to 1,498,497, or a gain of 384,735. The granting of the application would enable the station to reach additional listeners residing in extended areas and would effect an improvement in technical service over most of the station's present service area.

12. Milwaukee, Wis., has a population of 578,249, and the metropolitan district thereof, 743,414 (1930 Census). There are two other stations located in Milwaukee, namely, WISN, a regional station which operates on 1120 kilocycles with power of 1 kilowatt day and 250 watts at night, unlimited time, and WEMP, a local station which operates on the frequency 1310 kilocycles with power of 250 watts, unlimited time.

13. Operating as proposed, Station WTMJ would not cause objectionable interference to any existing station, but would limit the station proposed by Sentinel Broadcasting Corporation at Syracuse, N. Y. (which was on this day authorized by the Commission), to the 6.8 millivolt-per-meter contour, and it would limit the proposed operation of WHJB to the 9.5 millivolt-per-meter contour. It would render interference-free service beyond its predicted 2.5 millivolt-per-meter contour.

14. As heretofore shown, Stations WHJB, WJAS, and KQV are operated under common control and render service in the same general area; and the granting of the instant application would have the effect of further extending the areas in which overlapping of service by these stations under common control exists.

15. Due to the limitation which would be suffered by Station WHJB by the operation of Station WTMJ, and the interference which would be received by Station WROL from WHJB, the Commission is unable to reach the conclusion that all of the stations involved herein could operate simultaneously as proposed in the public interest. In other words, the operation of WHJB would preclude the operation of WROL in the public interest; and the operation of WTMJ would preclude the operation of WHJB. But WROL and WTMJ could both operate simultaneously in the public interest without WHJB operating as proposed.

16. Upon considering all of the facts before it, the Commission is of the opinion that the proposed operation of both WROL and WTMJ would better serve public interest, convenience, or necessity than would the proposed operation of WHJB.

17. The foregoing considerations include certain matters not in issue at the hearing on the WHJB application upon which the applicant may desire to be heard. The Commission is, therefore, of the opinion that the WHJB application should be designated for further hearing. In connection with the action taken on the instant applications, it is pertinent to point out the fact that the granting of the WROL and WTMJ applications at this time will not in itself necessitate the ultimate denial of the WHJB application without this applicant being afforded the opportunity to show that the operation proposed by it will serve public interest, convenience, or necessity, or will better meet the statutory criteria than will the proposed operation of WROL and WTMJ. In other words, if Pittsburgh Radio Supply House can show at the further hearing that the proposed operation of WHJB will serve public interest, the Commission would be compelled, as a matter of law, to grant said application. This is true, even though such action might require a future modification of the action taken on the WROL and WTMJ applications.

ORDER

Upon consideration of the application of Pittsburgh Radio Supply House (WHJB) for construction permit (Docket No. 5176), and the evidence adduced at the hearing thereon; the application of Stuart Broadcasting Corporation (WROL) for a construction permit, the petition filed by the applicant requesting the Commission to reconsider its action of August 8, 1939, in designating said application for hearing and to grant the same, and the opposition thereto filed by Pittsburgh Radio Supply House (WHJB); and the application of The Journal Co. (WTMJ) for construction permit (File No. B4–P–2696);

It is ordered, this 16th day of July, 1940, that the application of Pittsburgh Radio Supply House (Docket No. 5176) be, and it is hereby, designated for further hearing upon the following issues:

1. To determine the nature, extent, and effect of the electrical interference which would result should Station WHJB operate as proposed simultaneously with Stations WROL and WTMJ.

2. To determine the extent to which Station WHJB, operating as proposed, would render service in the areas now being served by Stations WJAS and KQV.

3. To determine whether the proposed operation of WHJB in the same general area where the applicant is also the licensee of and operates Station WJAS and is under the same control as the corporation which is the licensee of and operates Station KQV would serve public interest, convenience, or necessity.

It is ordered that the petition filed by Stuart Broadcasting Corporation, requesting reconsideration and a grant of its application (Docket No. 5715), be, and it is hereby, granted; and that said application be, and it is hereby, removed from the hearing docket and granted, upon the condition that the permittee shall submit proof of the performance of the directional antenna system specified, as required by section 3.33 of the Commission's rules; and

It is further ordered that the application of The Journal Co. (WTMJ) for construction permit (File No. B4–P–2696) be, and it is hereby, granted, upon the condition that the permittee shall submit proof of the performance of the directional antenna system specified, as required by section 3.33 of the Commission's rules.

This order shall become effective on the 6th day of August, 1940.

8 F. C. C.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matters of PITTSBURGH RADIO SUPPLY HOUSE (WHJB),[1] GREENSBURG, PA. For Construction Permit.	DOCKET No. 5176
STUART BROADCASTING CORPORATION (WROL), KNOXVILLE, TENN. For Construction Permit.	DOCKET No. 5715
THE JOURNAL CO. (WTMJ), MILWAUKEE, WIS. For Construction Permit.	FILE No. B4–P–2696
SENTINEL BROADCASTING CORPORATION, SALINA, N. Y. For Construction Permit.	DOCKET No. 5094

Decided October 8, 1940

DECISION AND ORDER ON SUPPLEMENTAL PETITION FOR REHEARING

On July 16, 1940, the Commission designated for further hearing the application of Pittsburgh Radio Supply House (WHJB), Greensburg, Pa., for construction permit to move transmitter, install new equipment and directional antenna, increase power from 250 watts to 1 kilowatt and hours of operation from daytime only to unlimited time, on the frequency 620 kilocycles, employing a directional antenna at night (B2–P–2091, Docket 5176), granted the application of Stuart Broadcasting Corporation (WROL), Knoxville, Tenn., for construction permit to move transmitter, install new equipment and directional antenna, change frequency from 1310 kilocycles to 620 kilocycles and power output from 250 watts unlimited time to 1 kilowatt day, 500 watts night, employing a directional antenna at night (B3–P–2435, Docket No. 5715), granted the

[1] On October 29, 1940, the Commission denied the further petition filed by Pittsburgh Radio Supply House requesting that the Commission reconsider its action of July 16, 1940, designating this matter for further hearing.

application of The Journal Co. (WTMJ), Milwaukee, Wis., for construction permit to install new equipment and directional antenna, increase nighttime power from 1 kilowatt to 5 kilowatts on the frequency 620 kilocycles, employing a directional antenna at night (B4–P–2696), and granted the application of Sentinel Broadcasting Corporation, Salina, N. Y., for construction permit to erect a new radio station at that place to use the frequency 620 kilocycles with 1 kilowatt power, unlimited time, using a directional antenna at night. Pursuant to this action of July 16, 1940, the Commission, on August 6, 1940, issued its Decision and Order in the matters of the applications of WHJB, WROL, and WTMJ, and its Statement of Facts, Grounds for Decision and Order in the matter of the application of Sentinel Broadcasting Corporation. The orders were made effective August 6, 1940.

On August 3, 1940, the Pittsburgh Radio Supply House (WHJB), Greensburg, Pa., filed a petition for rehearing directed to the action of the Commission on July 16, 1940. On August 12, Sentinel Broadcasting Corporation filed its opposition to the petition for rehearing and on August 13, 1940, oppositions to the petition for rehearing were filed by The Journal Co. and Stuart Broadcasting Corporation.

On August 26, 1940, Pittsburgh Radio Supply House (WHJB), filed a supplemental petition for rehearing and answer to opposition petitions, directed to the action of the Commission of July 16, 1940, granting the applications of The Journal Co. (WTMJ), Sentinel Broadcasting Corporation and Stuart Broadcasting Corporation (WROL) for construction permits and designating for hearing Pittsburgh Radio Supply House's (WHJB) application for construction permit, and the Decision and Order, and Statement of Facts and Grounds for Decision issued August 6, 1940, effective that day.

The petition filed by Pittsburgh Radio Supply House (WHJB) August 3, 1940, was premature, and has been superseded by the supplemental petition filed August 26, 1940. The petition for rehearing, filed August 3, 1940, is therefore dismissed and the Commission will consider only the petition filed August 26, 1940.

Petitioner Pittsburgh Radio Supply House (WHJB) alleges that, as a result of the Commission's grant to The Journal Co. (WTMJ), petitioner's station, if operated as proposed, would receive interference to its 9.7 millivolt-per-meter contour from Station WTMJ; that said limitation would result in reducing the coverage of Station WHJB, operating as proposed, approximately two-thirds, and therefore the grant to The Journal Co. (WTMJ) presents an obstacle to the grant of petitioner's application. Petitioner presents a comparison of the merits of its application with those of Stuart Broadcasting Corpora-

tion (WROL), The Journal Co. (WTMJ) and Sentinel Broadcasting Corporation, from which petitioner concludes that its application should have been preferred to the other conflicting applications which were granted. Petitioner further contends that the Commission should have applied the same doctrine of comparative need which it applied in the case of *WREN Broadcasting Company, Docket No. 5491* and that section 307 (b) of the Communications Act of 1934 requires that the Commission reconsider the applications herein as well as petitioner's application, and suggests as a possible solution that technical differences of the four conflicting applications might be reconciled so as to permit a grant of all conflicting applications herein, including petitioner's.

Petitioner urges also that the Commission failed to consider the merits of its application since the decision and order of the Commission makes no mention of the area proposed to be served by Station WHJB, the nature and extent of the service, and the need for the service, particularly in contrast with the lack of need for service in the areas proposed to be served by Stations WROL and WTMJ; that the facts stated by the Commission with respect to Station WROL were *ex parte* insofar as the application of Stuart Broadcasting Corporation (WROL) is concerned and that "the purported facts therein asserted were not subject to cross-examination"; that the application of Pittsburgh Radio Supply House (WHJB) "set up a legal question in that it raised a demand for equalization of facilities before the applications of WROL and WTMJ were properly filed before the Commission" and hence "to pick out the WROL and WTMJ applications and take *ex parte* action thereon and then rely on the granting thereof as a means of satisfying the requirements of section 307 (b) is grossly erroneous," and prays that each of the applications be set for hearing together with petitioner's application; that oral argument or reargument be held on the above-entitled applications together with petitioner's application, that the Commission hold an informal hearing pursuant to section 1.192 of the Commission's Rules of Practice and Procedure to determine what plan may be worked out whereby all of the applications involved might be modified so as to permit service to all four communities in the manner intended by each applicant.

The opposition of Sentinel Broadcasting Corporation filed September 5, 1940, to the supplemental petition for rehearing alleges that Pittsburgh Radio Supply House (WHJB) has no interest which has been legally aggrieved or adversely affected because its application has not been denied; that the granting of the petition to intervene, filed by Pittsburgh Radio Supply House (WHJB) in the pro-

ceedings on the Sentinel application, does not give Pittsburgh Radio Supply House (WHJB) an interest as a party aggrieved or adversely affected; that the Sentinel grant is within section 307 (b) of the Communications Act of 1934 and will not preclude petitioner's application; that the Commission was not required to decide contemporaneously the application of Pittsburgh Radio Supply House (WHJB) when it granted the applications of The Journal Co. (WTMJ), Stuart Broadcasting Corporation (WROL) and Sentinel Broadcasting Corporation.

The opposition of The Journal Co. (WTMJ) filed September 5, 1940, to the supplemental petition for rehearing makes reference to its opposition filed August 13, 1940, and alleges that Pittsburgh Radio Supply House (WHJB) has no interest in the grant of The Journal Co. (WTMJ) application as a matter of law, and cannot now be heard to object thereto, because, as is specifically pointed out in the Commission's Decision and Order of August 6, 1940, the application of Pittsburgh Radio Supply House (WHJB) has not been denied, but has been designated for further hearing upon specified issues, and until final action is taken, that applicant has no legal right to object to the grant of other applications which might or might not have any relation to the final decision of the Commission upon its case; that Pittsburgh Radio Supply House (WHJB) has no interest in the grant of The Journal Co. (WTMJ) application as a matter of equity and should not now be heard to object thereto because as the record discloses, the application of The Journal Co. (WTMJ) for 5 kilowatts night power was filed approximately 6 years ago and long before the filing of petitioner's proposal; that petitioner, therefore, was fully aware of the possible interference problems which might confront its application in event the Commission found that the grant of The Journal Co. (WTMJ) application would be in the public interest; that although The Journal Co. (WTMJ) application was amended January 16, 1940, the effect of that amendment was to lessen the degree of interference which Station WTMJ would cause to the proposed night service of Station WHJB, and it cannot be considered or fairly urged by petitioner that said amendment was prejudicial to its interests in the prosecution of its pending application; that petitioner, Pittsburgh Radio Supply House (WHJB), has no interest in the grant of The Journal Co. (WTMJ) application from the standpoint of public interest and should not now be heard to object thereto because the Commission alone is charged with the legal duty of denying applications in the light of the statutory standard and that from the record in this case and the Commission's Decision and Order, it clearly appears that the

operation of Station WTMJ will serve public interest; that there is no merit in, or justification for, the statements contained in the petition for rehearing regarding a possible technical modification of the directional antenna pattern of Station WTMJ so as to further restrict the interference which would be caused to petitioner's proposed night service in the event application were granted, and that the Commission is cognizant of the technical impracticability and impossibility of any further restriction of the WTMJ signal in the direction of petitioner's Station WHJB.

The opposition of Stuart Broadcasting Corporation (WROL) filed August 13, 1940, to the petition for rehearing alleges that if, as alleged by petitioner, the population of Greensburg and certain nearby areas lacks primary nighttime service, it would be more in keeping with the Commission's plan of allocation if application were made for a more localized service than that which is proposed in the present Pittsburgh Radio Supply House (WHJB) application; that furthermore, as stated in the Commission's Decision and Order, Stations WHJB, WJAS, and KQV of Pittsburgh are operated under common control and the granting of WHJB's application would result in extending areas in which services of those stations overlap, that the Commission, under section 307 (b) in considering applications with a view to distribution of licenses, frequencies, hours of operation, and power among the States and communities so as to provide a fair, efficient, and equitable distribution of service, must also consider the qualifications of applicants and the technical sufficiency of the application, and these things considered, together with its finding that a greater number of people will receive improved service from the grants which have been made than from the granting of the application of petitioner, indicate that the Commission has complied with this section of the act; that, without conceding any of the points raised by petitioner or acknowledging a need for service proposed, the Stuart Broadcasting Corporation (WROL) is willing to cooperate in any plan whereby the service in the Greensburg area can be improved without material diminution of the service which Stuart Broadcasting Corporation (WROL) is enabled to render in the Knoxville area through the grant of its application. No opposition has been filed by Stuart Broadcasting Corporation (WROL) to the supplemental petition for rehearing of Pittsburgh Radio Supply House (WHJB).

Insofar as Pittsburgh Radio Supply House (WHJB) contends that it is error for the Commission to rely upon facts taken from the application of Stuart Broadcasting Corporation (WROL) because such facts were *ex parte* and "not subject to cross-examination" by petitioner, we think this contention is without merit since the Com-

mission is under no legal duty to submit to petitioner for cross-examination facts set forth in the Stuart Broadcasting Corporation (WROL) application. (In re: Decision and Order on Petition for Rehearing *WCOL, Inc.*, 8 FCC 39, March 29, 1940). Furthermore, petitioner does not even now in its supplemental petition for rehearing attempt to controvert the facts set forth in the WROL application as distinguished from the Commission's conclusions based on those facts.

Petitioner suggests that "some possibility exists that an effective solution might be found from an engineering standpoint so that all * * * applicants might operate in such manner as to give each other mutual protection and still accomplish the objectives of their respective applications." No facts of any kind are presented in support of this general suggestion. No specific proposal is made as to how petitioner's suggestion may be accomplished, and the Commission, upon the information available to it, is unable to determine that such a plan is feasible.

We have carefully examined all of the allegations of the supplemental petition for rehearing filed by Pittsburgh Radio Supply House in the light of our Decision and Order of August 6, 1940, effective that date, and we find they set forth no new or additional facts or circumstances not already known to and considered by us, nor does the petition show wherein our action of July 16, 1940, effective August 6, 1940, granting the applications of The Journal Co. (WTMJ) for a construction permit, Stuart Broadcasting Company (WROL) for construction permit, of The Sentinel Broadcasting Corporation for construction permit, and designating for hearing the application of Pittsburgh Radio Supply House (WHJB) for construction permit, is illegal or presents any valid objections which would require us to set aside said action.

Accordingly it is ordered, this 8th day of October 1940, that the petition of Pittsburgh Radio Supply House (WHJB) for rehearing be, and it is hereby, denied.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of [1] SENTINEL BROADCASTING CORPORATION, SALINA, N. Y. Application for Construction Permit to erect a new radiobroadcast station and to operate on 620 kilocycles, with power of 1 kilowatt, unlimited time, using a directional antenna at night.	DOCKET No. 5094

Decided July 16, 1940

Paul D. P. Spearman and *Alan B. David* on behalf of the applicant; *George O. Sutton* and *Arthur H. Schroeder* on behalf of Pittsburgh Radio Supply House (WHJB); *Horace L. Lohnes*, *Fred W. Albertson*, and *Everett D. Johnston* on behalf Central New York Broadcasting Corporation (WSYR) and Pennsylvania Broadcasting Company (WIP); *John W. Guider*, *Duke M. Patrick*, *Karl A. Smith*, and *Lester Cohen* on behalf of The Journal Co. (WTMJ); *Paul M. Segal*, *George S. Smith*, and *Harry P. Warner* on behalf of Florida West Coast Broadcasting Co., Inc. (WFLA); *Josephus C. Trimble* on behalf of Colonial Broadcasting Company; *Arthur W. Scharfeld* and *Philip G. Loucks* on behalf of Civic Broadcasting Corporation and St. Petersburg Chamber of Commerce (WSUN); *Frank Stollenwerck* on behalf of Liner's Broadcasting Station, Inc. (KMLB); *Eliot C. Lovett* on behalf of Onondaga Radio Broadcasting Corporation (WFBL); *Theodore L. Bartlett* on behalf of the Commission.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

STATEMENT OF FACTS

BY THE COMMISSION (COMMISSIONERS WALKER AND CASE NOT PARTICIPATING):

1. This proceeding arose upon an application of Sentinel Broadcasting Corporation for a construction permit to erect a new radio-

[1] Petition for reconsideration or rehearing filed on August 5, 1940, by Civic Broadcasting Corporation (WOLF); petition for rehearing filed on August 5, 1940, by Central New York Broadcasting Corporation (WSYR); and petition for rehearing filed on August 5, 1940, by the Onondaga Radio Broadcasting Corporation (WFBL), denied on October 8, 1940. See Decision and Order on Supplemental Petition for Reconsideration or Rehearing and Petitions for Rehearing, 8 F. C. C. 148.

broadcast station at Salina (a suburb of Syracuse), N. Y., to operate on the frequency 620 kilocycles with power of 1 kilowatt, unlimited time, using a directional antenna at night. The application was heard in a consolidated proceeding before an examiner from October 11 to October 26, 1938, together with the applications of Civic Broadcasting Corporation (Docket No. 5175) for a construction permit to establish a new radiobroadcast station in Syracuse, N. Y., to operate on the frequency 1500 kilocycles with 100 watts power, unlimited time; and of Pittsburgh Radio Supply House (Docket No. 5176) for construction permit to install a new transmitter and directional antenna for nighttime use at Station WHJB, Greensburg, Pa., and to change the station's operating assignment on 620 kilocycles from 250 watts, daytime only, to 1 kilowatt, unlimited time. The examiner, by his report No. I–763, recommended the denial of all three applications. Exceptions thereto were filed and briefs were submitted in lieu of oral argument. The application of Civic Broadcasting Corporation was granted by the Commission, effective October 3, 1939; and the application of Pittsburgh Radio Supply House was on this day designated for further hearing by the Commission.

2. The Sentinel Broadcasting Corporation, the applicant herein, was organized and exists under the laws of the State of New York, and is empowered under its charter, among other things, to own and operate radiobroadcast stations. The corporation has an authorized capital of $105,000, divided into 7,000 shares of common stock, each having a par value of $15.00. There are 5,000 shares issued and outstanding.

3. The officers, directors, and stockholders of the applicant corporation are as follows: Frank B. Revoir, president and director, owns 3,000 shares of common stock; Alexis N. Muench, vice president and director, holds 500 shares; Francis E. Doonan, treasurer and director, holds 125 shares; Howard C. Barth, secretary and director, holds 500 shares; William T. Lane, director, owns 250 shares; Francis D. McCurn, director, holds 125 shares, and the estate of William T. McCaffery owns 500 shares. (McCaffery passed away subsequent to the hearing, as shown by the applicant's brief submitted in lieu of oral argument.) The foregoing individuals all reside in Syracuse and are United States citizens.

4. Mr. Revoir has been engaged in the automobile business in Syracuse for the past 20 years and is presently distributor for 17 counties. Mr. Muench has been engaged in the candle manufacturing business for approximately 44 years and for the past 15 years has been president of, and owns a substantial interest in, the Muench-Kreuzer Candle Co. He is also a director and a member of the ex-

ecutive committee of the Lincoln National Bank and Trust Company of Syracuse, and a member of a number of local clubs and fraternal organizations in that city. Mr. Lane is presently engaged in the advertising business, operating his own agency. He has had experience as a newspaper reporter, was executive secretary to the mayor of Syracuse, and he was, for a short time, commercial manager of Station WSYR, Syracuse. He is also president of the city council. Mr. McCurn is at the present time Justice of the Supreme Court of New York. Mr. Doonan is treasurer of Hall & McChesney, Inc., a firm engaged in the manufacturing of record books and indexes. He is also secretary of Revoir Motors, Inc. Mr. Barth, as at the time of the hearing, was not engaged in any occupation or business. For a number of years he was connected with an advertising agency in Syracuse; and he was also general manager of Station WSYR for several years. He owns less than 1 percent interest in Onondaga Broadcasting Corporation, licensee of Station WFBL in Syracuse.

5. The personnel of the proposed station, in addition to Mr. Howard Barth who will be general manager, will consist of the following: A chief engineer, five operators, production manager—musical; production manager—dramatic; a production assistant; four announcers; a continuity writer; stenographer-clerk; secretary-bookkeeper; and a telephone operator. The applicant also expects to maintain a five-piece staff orchestra.

6. As heretofore shown, 5,000 shares of stock in the applicant corporation have been issued and are outstanding; and the applicant has $70,004.08 on deposit in a local bank with which to construct and operate the proposed station. The total cost of the proposed station, including construction, is estimated at $49,893.95, consisting of the following items: Transmitter and technical equipment, $12,290.80; antenna system, $15,480; studio technical equipment, $4,618.75; studio and office furniture, $3,500; studio and construction costs, $10,904.40; transmitter building alterations, $2,600; and $500 as miscellaneous additional expense. The monthly operation expense of the proposed station is estimated at $6,332.09 and includes, in part, $2,856.66 as salaries for a personnel of eighteen persons, and $1,150 for studio orchestra and local talent for sustaining programs. The applicant expects to sell advertising time over the proposed station amounting to at least $100,000 during the first year, approximately 75 percent of which would be derived from local accounts. This expectancy is based upon the sale of three 15-minute periods nightly and 4 such periods daily and 1 announcement hourly, or approximately 9.3 percent of the total time on the air. The applicant has contracted with

some 15 business establishments located in the city for the sale of advertising time and approximately $30,000 in revenue would be derived therefrom during the first year of operation. As already shown, 2,000 shares of stock in the applicant corporation have not been issued and if additional money is needed for the construction and operation of the proposed station, Mr. Revoir will buy said stock. He has a personal net worth of over $400,000 which includes some $42,000 in cash on deposit in local banks.

7. The city of Syracuse has a population of 209,326 and the metropolitan district thereof, 245,015; and Onondaga County, of which Syracuse is the county seat, has a population of 291,606. There are 370 wholesale establishments in Syracuse doing an annual business of $103,770,000, employing 3,530 persons, who receive annual wages amounting to $5,958,000. There are 2,798 retail establishments located in the city doing an annual business of $81,384,000, employing 10,619 persons, who receive $9,875,000 in wages; and 342 manufacturing establishments with annual receipts amounting to $78,372,000, employing 16,322 persons, with an annual payroll of $17,612,000. The total annual payroll for the city amounts to $34,688,000 and $43,513,000 for Onondaga County.

8. The following stations are licensed to operate in the city of Syracuse: WSYR operates on the frequency 570 kilocycles with power of 1 kilowatt, unlimited time; WFBL operates on 1360 kilocycles with power of 5 kilowatts day, 1 kilowatt night, unlimited time; and WOLF (licensed to Civic Broadcasting Corporation) operates on 1500 kilocycles with power of 100 watts, unlimited time, WSYR and WFBL are classified as regional stations and WOLF is a local. Stations WSYR and WFBL provide service to essentially the same areas to be served by the station proposed herein and portions of the rural areas to be served have service available from Stations WGY, WHOM, WMBO, and WOLF.

9. Station WSYR, during the first 8 months of 1938, received $129,448.68 from local, national and network advertising accounts, and the net income for the period was $5,542.84. This revenue from the sale of advertising time was derived from the following sources: Approximately 25.8 percent thereof from network accounts; 38.8 percent from national accounts; and 35.4 percent, local business firms. Seven of the fifteen business firms, contracting with the applicant for advertising time, used WSYR in 1938, spending $3,653.33 with the station. This does not include two contracts with J. P. Byrne Tire Co. which have expired and have not been considered by the Commission. These 7 firms used WSYR in 1937 and spent $7,593.97, or $3,940.64 more than they spent the following year. The contracts these 7 firms have with the applicant amount to $13,798.50.

10. During the first nine months of 1938 Station WFBL received $177,287.16 from the sale of advertising and the station's operating net profit for the period amounted to $23,844.62. The total revenue from the sale of time was derived as follows: Approximately 22.4 percent from local accounts; 21.3 percent from national accounts; and 56.3 percent from network accounts. The record does not show whether or not any of the firms who have contracted with the applicant are using the facilities of WFBL.

11. Stations WSYR and WFBL render a diversified service to the Syracuse area and their facilities are used by various civic, religious, charitable, educational, and other institutions and organizations located in the city. During the week beginning February 13, 1938, Station WSYR operated 124½ hours and devoted 54.3 percent of its time to programs originating locally and 45.7 percent to network broadcasts; and during the week beginning August 14, 1938, the station operated 129½ hours and devoted approximately 44 percent of its time to network programs and the remainder to local broadcasts. The station devoted 53.5 percent of its time to network broadcasts between the hours 6 and 10 p. m. during this period. Between the hours of 6 and 10 p. m., the station devoted 68.7 and 79 percent of its time to network programs during the weeks of December 12, 1937, and June 5, 1938, respectively. WSYR carries programs furnished by the National Broadcasting Co. (both Red and Blue networks) and the Mutual Broadcasting System.

12. During the week beginning February 13, 1938, Station WFBL operated 124 hours and devoted 64.8 percent of its time to network programs (Columbia Broadcasting System), and 72 percent of the nighttime hours were devoted to chain broadcasts; the station operated 122 hours during the week of August 14, 1938, and devoted 64 percent of the time to the network, and 69 percent of the evening hours were devoted thereto; and 81 percent and 86 percent of the station's time between the hours 6 and 10 p. m. during the weeks of March 6 and September 4, 1938, respectively, were devoted to network broadcasts.

13. Station WOLF in Syracuse, licensed to Civic Broadcasting Corporation, provides a local broadcast service to the city and is not affiliated with a network. It operates 17½ hours daily and at least 72 percent of the programs carried are sustaining. The station broadcasts a favorable balance of programs, including the following: Market reports; news and sports; programs designed for the housewife; children's programs; talks on health, civic government; public service broadcasts; special events; and diversified music. The foregoing findings are based upon the proposal of Civic Broadcasting Corporation, as shown in the record.

14. The applicant proposes to operate from 8 a. m. to 12 midnight, or 16 hours during week days, and 14 hours on Sundays. The applicant will carry, in part, the following types of programs: News, weather and market reports; sports; discussions on agriculture; book reviews; children's programs; civic broadcasts; organ recitals; choral groups; diversified music; and religious broadcasts. Time will be devoted to the various classes of programs as follows: Entertainment, 42 percent; educational, 8.4 percent; religious, 3 percent; agricultural, 2.7 percent; fraternal, 2.7 percent; news, 6.4 percent; civic, 4.8 percent; sports, 3.8 percent; literature, 3 percent; charitable, 1.8 percent; and commercial broadcasts, 21.4 percent. The applicant has offered the facilities of the proposed station without charge to a number of civic, fraternal, and educational organizations. It will be the applicant's policy to afford the various organizations and institutions in Syracuse the facilities of the proposed station free of charge. The applicant does not contemplate having a network affiliation and proposes to render a local program service to the city and the surrounding rural districts and communities which are in the Syracuse trade area. It also expects to present many programs presented by local talent.

15. The operation of the proposed station involves no question of objectionable interference with the operation of any existing station during the daytime. There would be, however, slight mutual interference with Station WHJB, operating as proposed by its pending application (B2–P–2091), within the predicated 0.5 millivolt-per-meter ground wave contour of each station.

16. The proposed station during the daytime would render service to the 0.5 millivolt-per-meter contour; the predicted 10 millivolt-per-meter contour has a radius of from 12 to 13 miles, and 260,450 persons reside therein; the area within the 2 millivolt-per-meter contour has an average radius of approximately 34 miles and 480,400 persons reside therein; and the area within the predicted 0.5 millivolt-per-meter contour has an average radius of approximately 62 miles and 942,900 potential listeners reside therein. The station proposed herein would provide a signal of 25 millivolts per meter, or better, throughout the business districts of Syracuse, and a signal of 10 millivolts per meter, or better, would be provided throughout the Syracuse metropolitan district.

17. At night the operation of the proposed station would not cause objectionable interference to the operation of any existing station. It would, however, be limited to its 6.8 millivolt-per-meter contour by Station WTMJ, Milwaukee, Wisconsin, operating with power of 5 kilowatts at night, as authorized on this day by the Commission. This finding is not based upon the record, since the presently pro-

posed operation of WTMJ was not at issue in the hearing, but is based upon technical information available to the Commission. The operation of Station WHJB, proposed by its pending application (B2–P–2091), would limit the proposed station to its 6.6 millivolt-per-meter contour at night, which, together with the limitation caused by Station WTMJ, would have the effect of raising the RSS limitation to the proposed station to the 9.5 millivolt-per-meter contour. The operation of the proposed station would not cause objectionable interference to WTMJ, operating with 5 kilowatts power at night, nor to the proposed operation of Station WHJB.

18. Using the proposed directional antenna at night, the radiation from the projected station would be slightly in a northwesterly and southeasterly direction in a figure "8" pattern, with suppression of the signal to the east and west of the station. A signal of 25 millivolts per meter, or better, would be provided throughout a major portion of the city and a signal of at least 10 millivolts per meter would be furnished throughout the entire city. The exact number of potential listeners residing within the predicted 6.8 millivolt-per-meter contour at night is not shown, but the number would be between 233,950 and 317,200.[1]

19. The transmitting equipment to be used and the site are considered satisfactory for the operation proposed. The antenna specified in the application does not meet the minimum height requirement for the character of the station proposed, and the granting of the application should, therefore, be contingent upon the submission of proof of performance, showing that it will radiate a minimum of 175 millivolts per meter at 1 mile for 1 kilowatt.

GROUNDS FOR DECISION

1. The applicant is legally, technically, financially, and otherwise qualified to construct and operate the proposed station.

2. It is contended on behalf of the licensees of Stations WSYR and WFBL that the applicant has failed to establish by competent evidence that the existing stations in the city of Syracuse are not adequately supplying the local needs of the community as to program service, and that the proposed station would fill said need. As heretofore shown, two of the three existing stations in Syracuse are affiliated with national networks and devote a substantial portion of their time to chain broadcasts, particularly during the hours between 6 and 10 p. m. when the greatest number of listeners may be reached. The operation of the proposed station would thus pro-

[1] Figures represent the number of potential listeners residing within the 10 and 3.5 millivolt-per-meter contours, respectively.

vide an additional broadcast facility in the city of Syracuse over which programs of local interest could be broadcast. Furthermore, there is nothing in the Communications Act, our rules, or our policy which requires the finding of a definite need to support the granting of an application for new broadcast facilities; and, in fact, the words of the statute "public interest, convenience, or necessity" contemplate the most widespread and effective broadcast service possible. *F. W. Meyer*, 7 F. C. C. 544 (decided November 15, 1939).

3. It is argued that the operation of the proposed station would adversely affect the economic interests of Stations WFBL and WSYR to such an extent that their ability to operate in the public interest would be impaired. This contention, if true, would not in itself constitute legal grounds for the denial of an application for a new broadcast station. *Federal Communications Commission* v. *Sanders Brothers' Radio Station*, 309 U. S. 470 (decided March 25, 1940). Even if the contention made were a proper ground for the denial of an application for a new station, the record does not show that Stations WFBL and WSYR would be so affected, nor does it tend to show that the applicant would be unable to successfully compete with said stations for commercial support.

4. The operation of the proposed station would not cause objectionable interference to the operation of any existing broadcast station, or to any station operating as proposed by any pending application. The proposed station would, however, be limited at night to its 6.8 millivolt-per-meter contour by Station WTMJ, operating with power of 5 kilowatts as on this day authorized by the Commission. Under existing standards, stations such as the one proposed herein are normally expected to render interference-free service at night to the 4 millivolt-per-meter contour. While the proposed station would be limited at night to a greater extent than our standards contemplate, it would, nevertheless, provide service throughout the entire city of Syracuse and a major portion of the metropolitan district thereof, and at the same time would cause no objectionable interference to any existing broadcast station. Furthermore, even with the limitation to be suffered, the station would provide interference-free service to a substantial percentage of the total number of potential listeners residing within the 4 millivolt-per-meter contour.

5. It is argued that the instant application cannot be granted within the purview of section 307 (b) of the Communications Act. Section 307 (b) provides for a fair, efficient, and equitable distribution of broadcast facilities among the several States and communities, insofar as there is a demand for the same. The only other pertinent applications, or demands, to operate on the same frequency

requested by the applicant herein are those of Stations WHJB (B2–P–2091) and WTMJ (B4–P–2696), the latter of which was on this day granted and the former was designated for further hearing. The granting of the instant application would not in itself preclude the granting of the WHJB application, and would be in conformity with section 307 (b) of the Communications Act.

6. The transmitting equipment and the site to be used are satisfactory for the operation proposed. The antenna specified in the application does not meet the minimum height requirements of our rules; and the granting of the application should be contingent upon the submission of proof of performance, showing that it will radiate a minimum of 175 millivolts per meter at 1 mile for 1 kilowatt.

7. The granting of the instant application will serve public interest, convenience, or necessity.

Decided October 8, 1940

DECISION AND ORDER ON SUPPLEMENTAL PETITION FOR RECONSIDERATION OR HEARING AND PETITIONS FOR REHEARING

On July 16, 1940, the Commission granted the application of Sentinel Broadcasting Corporation, Salina, N. Y., for construction permit to erect a new radiobroadcast station at that place on the frequency 620 kilocycles with a power output of 1 kilowatt, unlimited time, using a directional antenna at night, and on August 6, 1940, effective that date, issued its Statement of Facts, Grounds for Decision and Order granting the same. This decision and order was made after consolidated hearing upon the application of Sentinel Broadcasting Corporation and other related applications.

On August 5, 1940, Civic Broadcasting Corporation (WOLF), Syracuse, N. Y., filed a petition for reconsideration or rehearing; Central New York Broadcasting Corporation (WSYR), Syracuse, N. Y., filed a petition for rehearing; and the Onondaga Radio Broadcasting Corporation (WFBL), Syracuse, N. Y., filed a petition for rehearing, all of which were directed against the action of the Commission July 16, 1940, granting the application of Sentinel Broadcasting Corporation for construction permit.

On August 26, 1940, Civic Broadcasting Corporation (WOLF) filed a supplemental petition for reconsideration or rehearing, and Central New York Broadcasting Corporation (WSYR) and the Onondaga Radio Broadcasting Corporation (WFBL) filed new petitions for rehearing. The petitions filed by these parties August 5, 1940, were premature and have been superseded by those filed August 26, 1940. The petitions filed August 5, 1940, are therefore dismissed,

and the Commission will consider only the petitions filed August 26, 1940. All petitioners participated in the proceeding before the Commission on the application of Sentinel Broadcasting Corporation.

Civic Broadcasting Corporation (WOLF) is authorized to use the frequency 1500 kilocycles with 250 watts power, unlimited time. No question of electrical interference to the service of Station WOLF from the operation of the proposed Sentinel station is involved in this proceeding since the frequency used by Station WOLF and that authorized to be used by the proposed Sentinel station are widely separated. Civic Broadcasting Corporation does not contend that the grant of the Sentinel application will aggrieve or adversely affect its interest in any way. The petition is based substantially upon the following grounds: (1) That the Commission's conclusion that the granting of the Sentinel application will serve public interest, convenience, and necessity "is neither predicated upon adequate prior findings of basic fact nor supported by the record evidence," and in particular there is no finding by the Commission, nor is there any evidence in the record upon which to base a finding that the existing Syracuse stations are not adequately supplying all the broadcasting needs of the Syracuse area; (2) that the grant of the Sentinel application violates the Commission's Rules and Regulations and Standards of Good Engineering Practice relating to allocation and interference; (3) that the grant of Sentinel application constitutes an uneconomic assignment of a regional frequency in that the Commission simultaneously granted the application of The Journal Co., licensee of Station WTMJ, Milwaukee, Wis., for a construction permit to increase power from 1 to 5 kilowatts, unlimited time, on the frequency 620 kilocycles, the same frequency requested by the Sentinel application; that with Station WTMJ using 5 kilowatts power, the service of the proposed Sentinel station will be limited to its approximate 8.6 millivolt-per-meter contour at night, which is substantially beyond that permitted by the Commission's Standards of Good Engineering Practice; and (4) that the Commission's action in accepting and predicating its decision upon evidence submitted *ex parte* deprives the parties to the proceeding of the fair hearing to which they are entitled under the law.

Central New York Broadcasting Corporation (WSYR) is authorized to use the frequency 570 kilocycles with a power output of 1 kilowatt, unlimited time. No question of electrical interference to the service of Station WSYR from the operation of the proposed Sentinel station is involved in this proceeding since the frequency used by Station WSYR and that authorized to be used by the proposed Sentinel station are adequately separated. Central New York Broadcasting Corporation (WSYR) does not contend in its petition

for rehearing that the grant of the Sentinel application will aggrieve or adversely affect its interests in any way. It alleges (1) that "in finding that the granting of this (the Sentinel) application will serve public interest, convenience, and necessity, the Commission has failed to give the consideration to the ability of the applicant (Sentinel Broadcasting Corporation) to render, in view of competition which it will have from existing broadcast stations in Syracuse, a service in the public interest, as contemplated by the Communications Act of 1934"; that at the time of the hearing on the Sentinel application the applicant's testimony showed that it had to its credit in cash in a bank $70,004.08 to be devoted to the construction of the proposed station, which was to cost $49,393.95, leaving approximately $20,000 from which operating expenses not sustained by broadcasting revenue would be met; according to the applicant's estimate, the station's operating expenses will be approximately $76,000 a year; that the only tangible evidence of commercial support introduced by the applicant was 16 advertising agreements representing business aggregating approximately $35,000; that therefore "this is a case in which the effect of the competition of existing licensees upon the applicant becomes relevant"; (2) that since the hearing upon the Sentinel application "many of the factors and conditions to be considered, as well as the Commission's practice and procedure, have changed materially" and therefore the Sentinel grant should be set aside and the application denied or, in the alternative, a further hearing held thereon.

The Onondaga Radio Broadcasting Corporation (WFBL) is authorized to use the frequency 1360 kilocycles with a power output of 1 kilowatt night, 5 kilowatts day, unlimited time. No question of electrical interference to the service of Station WFBL from the operation of the proposed Sentinel station is involved in this proceeding since the frequency used by Station WFBL and that authorized to be used by the proposed Sentinel station are widely separated. The Onondaga Radio Broadcasting Corporation (WFBL) does not contend in its petition for rehearing that the grant of the Sentinel application will aggrieve or adversely affect its interests in any way. It alleges as error (1) that there is no need for the proposed service and (2) that to authorize the rendering thereof would be contrary to section 307 (b) of the Communications Act.

The opposition filed September 5, 1940, by the Sentinel Broadcasting Corporation to the supplemental petition for reconsideration or rehearing filed August 26, 1940, by Civic Broadcasting Corporation (WOLF) alleges that petitioner's interests are not aggrieved or adversely affected; that, although petitioner participated in the hearing before the Commission on the Sentinel application, it did not claim

or introduce any evidence that would show that if both its application and that of the Sentinel were granted petitioner's station would be unable to operate so that it would serve public interest, convenience and necessity; that, although the Communications Act and the Rules and Regulations of the Commission do not require a finding of definite need to support the grant of an application, nevertheless, adequate findings of need supported by the record have been made in the Commission's Statement of Facts and Grounds for Decision; that the grant of the Sentinel application is not in violation of the Standards of Good Engineering Practice or Rules and Regulations of the Commission, since the proposed Sentinel station will serve all of Syracuse and a major portion of the metropolitan area of Syracuse without causing objectionable interference to any existing broadcast station.

The opposition filed September 5, 1940, by the Sentinel Broadcast-Corporation to the petition for rehearing filed August 26, 1940, by Central New York Broadcasting Corporation alleges that Central New York Broadcasting Corporation (WSYR) is not aggrieved or adversely affected by the Commission's grant of the Sentinel application because Sentinel Broadcasting Corporation is financially qualified, as shown by the record, and therefore the question of competition and its effect on existing stations is immaterial; that there is a need for the service in the area proposed to be served and, although not required to make a definite finding of need upon the grant of an application for a new station, the Commission did make adequate findings on the question of need for the proposed service in its Statement of Facts, Grounds for Decision and Order; that the grant of the Sentinel application is consistent with the proper administration of section 307 (b) of the Communications Act of 1934, although petitioner has no legal interest in this question.

The opposition filed September 5, 1940, by the Sentinel Broadcasting Corporation to the petition for rehearing filed August 26, 1940, by the Onondaga Broadcasting Corporation alleges that the Onondaga Broadcasting Corporation has no interests which were aggrieved or adversely affected by the grant of the Sentinel application; that adequate findings of need for the proposed service of the Sentinel station have been made by the Commission, and that the decision of the Commission likewise shows that the grant of the application was consistent with the administration of section 307 (b) of the Communications Act of 1934.

Civic Broadcasting Corporation (WOLF) contends that the action of the Commission "in accepting and predicating its decision on evidence submitted *ex parte*, deprives the parties to the proceeding to a fair hearing to which they are entitled under the law." The "*ex parte*" evidence to which petitioner refers appears in paragraph 17

of the Commission's Statement of Facts, Grounds for Decision and Order issued August 6, 1940, in the matter of the application of Sentinel Broadcasting Corporation, and is as follows:

> At night the operation of the proposed station would not cause objectionable interference to the operation of any existing station. It would, however, be limited to its 6.8 millivolt-per-meter contour by station WTMJ, Milwaukee, Wis., operating with power of 5 kilowatts at night as authorized on this day by the Commission. This finding is not based upon the record since the presently proposed operation of WTMJ was not an issue in the hearing, but is based upon technical information available to the Commission.

The "technical information available to the Commission" is taken from the application of The Journal Co. (WTMJ), Milwaukee, Wis., as amended subsequent to the hearing on the Sentinel Broadcasting Corporation application. The amendment requested the use of a directional antenna at night, which resulted in a change in the service area of Station WTMJ and also changed the interference which WTMJ would cause to other stations on the frequency, including the proposed Sentinel station.

Examining the Sentinel application in the light of the amended Journal application, the Commission was able to determine that a grant of both the Sentinel application and The Journal Co. application would serve the public interest, convenience and necessity. It would serve no useful purpose, therefore, to consider the Sentinel application upon the basis of the record made at the hearing in so far as it related to The Journal Co. station (WTMJ). Furthermore, as hereinabove pointed out, all of the petitioners herein operate on frequencies widely separated from that assigned to the Sentinel Broadcasting Corporation and The Milwaukee Journal so that interference to or from either such station will not in any way affect them.

Section 309 (a) of the Communications Act of 1934 provides that if upon examination of any application the Commission shall determine that public interest, convenience or necessity would be served by the granting thereof, it shall authorize the issuance thereof in accordance with said determination. In the event the Commission, upon examination of any such application, does not reach such decision with respect thereto, it is directed to notify the applicant and afford such applicant an opportunity to be heard. Since, under the Act no right to notice and hearing is conferred upon any person other than an applicant, it is clear that no duty rests upon the Commission to submit to petitioner for cross-examination facts taken from an application which is not petitioner's. (In re decision and order on petition for rehearing, *WOOL, Inc.*, 8 F. C. C. 39, March 29, 1940.)

We have carefully examined all of the allegations in the supplemental petition for reconsideration and rehearing filed by Civic Broadcasting Station (WOLF), the petition for rehearing filed by Central Broadcasting Corporation (WYSR) and the petition for rehearing filed by the Onondaga Radio Broadcasting Corporation (WFBL) in the light of our Statement of Facts, Grounds for Decision and Order of August 6, 1940, effective that date, and we find they set forth no new facts or additional facts or circumstances not already known to and considered by us, nor do the petitions show wherein our action of July 16, 1940, effective August 6, 1940, and our Statement of Facts, Grounds for Decision and Order issued August 6, 1940, pursuant to said action granting the application of the Sentinel Broadcasting Corporation, Salina, N. Y., for construction permit is illegal or presents any valid objections which would require us to set aside said action.

Accordingly, it is ordered, this 8th day of October 1940, that the supplemental petition for reconsideration or rehearing filed by Civic Broadcasting Corporation (WOLF), the petition for rehearing filed by Central New York Broadcasting Corporation (WSYR) and the petition for rehearing filed by the Onondaga Radio Broadcasting Corporation (WFBL), be, and they are hereby, denied.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of NEW JERSEY BROADCASTING CORPORATION (WHOM), JERSEY CITY, N. J. For Construction Permit.	FILE No. B1–P–2526

Decided July 16, 1940

DECISION AND ORDER ON PETITION FOR REHEARING

1. On April 16, 1940, the Commission granted without hearing the application of the New Jersey Broadcasting Corporation (WHOM) for construction permit to make changes in its transmitter and antenna and to increase its power from 250 to 500 watts (night), 1 kilowatt (local sunset) unlimited time.

2. Station WHOM operates on the frequency 1450 kilocycles, which is shared in the eastern portion of the United States by Stations WSAR at Fall River, Massachusetts, operating with a power of 1 kilowatt, unlimited time and using a directional antenna; WGAR at Cleveland, Ohio, operating with 1 kilowatt, 5 kilowatts (local sunset), unlimited time and employing a directional antenna at night; and WAGA at Atlanta, Georgia, which operates with 500 watts, 1 kilowatt (local sunset) unlimited time.

3. The application of Station WHOM, as filed on September 27, 1939, requested increase in its daytime power from 250 watts to 1 kilowatt without change in the night operating power. This application was accompanied by an affidavit of an engineer which contained measurements of the field intensities of Stations WHOM and WSAR, which measurements indicated there would be no objectionable interference during the daytime within the present 0.5 millivolt-per-meter primary service area of Station WSAR, should Station WHOM operate as proposed. On December 4, 1939, the application was amended to request increase in power to 500 watts night and the amendment was accompanied by an affidavit setting forth the reasons for the requested increase in nighttime operating power and indicating there would be no objectionable interference at night to the stations on 1450 kilocycles should Station WHOM operate as proposed.

4. The affidavits accompanying the application of New Jersey Broadcasting Co. (WHOM) set forth the fact that Station WHOM employs a vertical antenna 390 feet high which has a physical height of approximately 0.57 wave length and which, by reason of its height, has certain directional properties in the vertical plane; that because of these directional properties, the interference which will be caused to Station WSAR will not exceed the approximate 3.0 millivolt-per-meter contour during nighttime hours, whereas Station WSAR is now limited by Station WGAR, as presently operated with a directional antenna, to the approximate 3.42 millivolt-per-meter contour. In arriving at the conclusion that Station WSAR would be limited to the approximate 3.0 millivolt-per-meter contour, applicant assumed that the distribution of current along the vertical antenna in use by Station WHOM was considerably different from that characteristic of a straight vertical wire of equivalent height, and that the antenna will act as though it were a 0.5 wave-length antenna and will radiate 62 millivolt per meter at an angle of 40° above the horizontal; that based upon the second hour curve of the Commission's allocation survey which was assumed to be correct for distances less than 250 miles for a 0.311 wave-length antenna, such a signal would produce a limitation to the service of WSAR in the vicinity of Fall River to the approximate 3.00 millivolt-per-meter contour.[1]

5. The Commission after examination of the application, the documents associated therewith, and a study of the antenna in use by Station WHOM was of the opinion that no objectionable increase in the interference now limiting the service of Station WSAR at night would result from the granting of the application of Station WHOM because the interference predicted by the applicant considerably exceeds the amount which would be calculated on the basis of purely theoretical considerations using a current distribution along the antenna of a single vertical wire without regard to the corrections applicant assumed.

6. The measurements of the ground-wave field intensities along the southern coast of Connecticut and Rhode Island accompanying WHOM's application supported the contention that there would be no objectionable interference during daytime operation within the 0.5 millivolt-per-meter contour.

7. On May 3, 1940, Doughty and Welch Electric Co., Inc., licensee of Radio Station WSAR, Fall River, Mass., filed a petition requesting the Commission to reconsider the grant to WHOM, designate the application for hearing, or specify the use of a directional antenna

[1] See sec. 1, Standards of Good Engineering Practice and Annex II.

to protect Station WSAR in its present service area, or direct such other procedure to protect Station WSAR in its present service area as may be deemed appropriate. The petition alleges that Station WSAR serves a local community at Fall River with a population of 115,000, as well as a surrounding metropolitan district with a population of 963,000, that Station WSAR will receive interference at night from Station WHOM which will reduce its nighttime service area and the population served, and that the RSS limitation to the service of Station WSAR will be increased to well within the 4 millivolt-per-meter contour which is the normal nighttime limitation of a class III–B regional station. The petition further alleges that Station WHOM operates with an antenna having a physical height of 0.57 wave length, and that this antenna has been in use for some time in the past; that the antenna is a self-supporting tower and the distribution of current in such an antenna cannot be sinusoidal; that the vertical plane characteristics of an antenna such as that employed by WHOM are such that the same degree of suppression of sky wave toward Fall River cannot be expected as might be with a uniform cross-section tower having more nearly sinusoidal current distribution, and that WHOM has made no proof based upon actual field measurements or otherwise that there is a substantial reduction of sky-wave radiation resulting from the use of this antenna. It is alleged that the operation of Station WHOM with 1 kilowatt power during the daytime may cause interference within the 0.5 millivolt-per-meter contour of Station WSAR due to the fact that a large portion of the intervening path is across salt water. The petition further alleges that Station WSAR operates with 1 kilowatt power and is, therefore, eligible under the Commission's Rules for class III–A status, which permits increase in power to 5 kilowatts day and night; that on April 29, 1940, petitioner requested III–A status (B–ML–986) but that without protection from WHOM, if it be permitted to use 500 watts, Station WSAR can be only a class III–B regional station; that since Station WSAR operates with a directional antenna to protect WHOM, an equitable arrangement would require that Station WHOM operate with a directional antenna to protect WSAR from any increase in nighttime interference; that the normal nighttime limitation for a class III–A station is to the 2.5 millivolt-per-meter contour.

8. On May 5, 1940, an affidavit of an engineer was filed in support of the allegations made in the petition of Doughty and Welch Electric Co., Inc. The affidavit states that it is the opinion of the engineer that Station WSAR is limited to the approximate 3.42 millivolt-per-meter contour by Station WGAR at Cleveland, Ohio; that the station is now limited by Station WHOM to the approximate 2.96

millivolt-per-meter contour on the basis of assumptions that the electrical height of the antenna of Station WHOM, determined upon a velocity of propagation of 95 percent, is 0.603 wave length, the height of the ionosphere 110 kilometers and the antenna efficiency at Station WHOM 187 millivolts for 500 watts.

9. Actual interference which may be caused is a function of the distribution of the current on the antenna and the resulting distribution of energy radiated in the vertical plane. Both WHOM and WSAR estimated the electrical height to be different from the physical height in calculating the distribution of current. After an examination of the information above set forth we are of the opinion that the difference in the current distribution of the actual antenna and a vertical wire of equivalent height is not as great as that assumed by either applicant or petitioner and consequently the radiation at an angle approximating 40° is not sufficient to cause an objectionable increase in interference to the present service of Station WSAR from the operation of Station WHOM as proposed.

10. The operation of Station WHOM as proposed will result in an improved service to all persons within the present service area of the station and will increase by approximately 250,000 the population within the 25 millivolt-per-meter contour and by approximately 900,000 the population within the 5 millivolt-per-meter contour of Station WHOM. Conditions in the New York metropolitan district are such that signals of 5 to 10 millivolts per meter are required in many areas to provide a satisfactory broadcast service. On the other hand, from the information available to us, we conclude that our grant of the WHOM application will not result in any substantial loss of population now served by WSAR. If, however, the operation of WHOM as proposed actually does result in an objectionable increase of interference to WSAR, that station may at any time submit to us proof of such interference based upon competent and adequate measurements.

11. Petitioner's contention that our grant of the above-entitled application will preclude favorable action upon its application for "III–A classification" is without foundation. In the first place, as we said in our Proposed Findings of Fact and Conclusions in re application of the WREN Broadcasting Co., Inc. (WREN) Lawrence, Kans., Docket No. 5491, June 19, 1940, "The classification of stations under Commission's Rules and Standards of Good Engineering Practice is purely for the administrative convenience of the Commission in allocating frequencies, and is not a source of any right in licensees or applicants." In the second place, any application which petitioner may make for additional facilities can be acted upon when it is made. Our action in granting the above-entitled application would not foreclose favorable action thereon if we were able to find that a grant of

any such application would serve public interest. We would be just as free to act favorably upon such an application with WHOM operating as proposed as we would be if WHOM were to continue operation as at present.

12. Accordingly, it is ordered, this 16th day of July 1940, that the petition of Doughty and Welch Electric Co., Inc., for reconsideration and hearing of the application of New Jersey Broadcasting Corporation (WHOM) be, and it is hereby, denied, but without prejudice, however, to the submission by Station WSAR at any time, of engineering proof based upon competent and adequate measurements which show that the operation of Station WHOM as proposed has resulted in an objectionable increase in the interference suffered by Station WSAR.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of BELLINGHAM BROADCASTING CO. BELLINGHAM, WASH. For Construction Permit.	DOCKET No. 5478
KVOS, INC. (KVOS) BELLINGHAM, WASH. For Renewal of License.	DOCKET No. 5532

May 16, 1940

Frank Stollenwerck, *Tim Healy* and *Robert B. Sherwood* on behalf of Bellingham Broadcasting Co.; *Frank W. Bixby*, *Joseph T. Pemberton*, *Andrew G. Haley* and *Theodore Pierson* on behalf of Station KVOS; *W. Ewart G. Suffel* on behalf of Station KTW.

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF THE COMMISSION

FINDINGS OF FACT

1. These proceedings arose upon (*a*) the application of the Bellingham Broadcasting Co., hereinafter referred to as the corporation, for a construction permit authorizing the establishment of a radiobroadcast station at Bellingham, Wash., using the frequency 1200 kilocycles with power of 250 watts day, and 100 watts night (this application requests the facilities now assigned to Station KVOS, Bellingham, Wash.), and (*b*) the application of KVOS, Inc., for renewal of license of Station KVOS. A hearing was designated by the Commission on these applications and held at Bellingham, Wash., before a presiding officer duly appointed by the Commission, on August 16, 17, 18, 19, 21, 22, 23, and 24, 1939.

IN RE BELLINGHAM BROADCASTING CO.

2. We have pointed out that the Bellingham Broadcasting Co. (the corporation) requests the facilities now allocated to Station KVOS but with power of 250 watts day. This corporation was organized under the laws of the State of Washington and is duly authorized to operate a radiobroadcast station. The corporation has a board

of directors, composed of the following as members: Gil Moe, A. D. Osgood, Andrew Boehringer, C. E. Osgood, Ray Hansey, H. J. Fussner, A. J. Friese, Clarence Osgood, Stannard T. Beard, and Sydney R. Lines. James Robert Waters, Jr., Arthur Osgood, and Sydney R. Lines are the president, secretary-treasurer, and vice president of the corporation, respectively. The officers and members of the board of directors are citizens of the United States.

3. The capital stock of the corporation is divided into 2 classes, A and B. Class A is comprised of 250 shares with a par value of $100 each. The class B stock, which carries the voting power, is comprised of 1,500 shares of stock without par or nominal value. The ownership of 1 share of class A stock entitles the owner to purchase 4 shares of class B stock at a price designated by the Board of Directors.

4. Three banks in Bellingham hold secured promissory notes from the following individuals for the sums shown: Sydney R. Lines, $600; Vaughan Brown, $1,000; J. R. Waters, $500; Ray W. Hansey and Bernice Hansey, $1,000; Arthur and C. E. Osgood, $2,000; Clarence Osgood, $1,000; A. A. Boehringer, $1,000; and Mr. and Mrs. C. E. Osgood, $1,000. These notes are subject to escrow agreements which provide that the banks, upon delivery to them by the corporation of shares of class A common stock equal in value to the notes, will pay to the corporation the amount of the notes. The banks have accepted these agreements and will depend upon either the security held, or upon the individual, for reimbursement. Thus, the corporation would have available to it sums totaling $8,100. Waters has in his possession an unsecured promissory note by his father in favor of the corporation in the sum of $2,000. The bank would not take the note on an escrow agreement. It was not listed as an asset of the corporation because Waters could not make the statement that it would be paid. The corporation has stock subscription agreements from H. J. Fussner and A. J. Friese for three shares of class A common stock each. There is no evidence concerning the ability of these persons to pay for these shares of stock. The cost of constructing the station and the monthly operating cost thereof are estimated at $10,000 and $1,899, respectively. If more money is required the corporation will sell additional stock. In this connection there is no evidence that there are any persons ready, able, and willing to subscribe and pay for such additional stock. The articles of incorporation provide: "That the amount of paid-in capital with which this corporation shall begin business is the sum of $10,000." Hence, by the terms of its "articles" the corporation is not in a position to commence its authorized operations.

Before it conducts business it must either amend its articles of incorporation or sell additional stock.

5. The corporation would employ approximately 15 employees, which would include an engineer, 2 operators, 3 salesmen, bookkeeper, hostess, copy writer, newscasters and announcers. One of the stockholders, namely, Sydney R. Lines, a graduate of Washington State College, has a degree in electrical engineering. He is presently employed in a radio station and would be the engineer for the proposed station. Both Lines and Waters have had experience from a technical standpoint with the operation of radio stations. The transmitter site would be determined subject to the approval of the Commission.

6. No evidence was offered on behalf of the corporation concerning the possibility of electrical interference with existing stations. However, an expert witness for Station KVOS testified and the Commission finds that no objectionable interference would be caused to existing stations on the same or adjacent channels by operation of a station at Bellingham on the frequency of 1200 kilocycles with power of 250 watts.

7. Little evidence was offered by this applicant as to the program service it would offer. The existing station does not procure its weather reports from the local office of the United States Weather Bureau and the applicant corporation would obtain its reports therefrom. It would arrange to have a transcription and news service; attempt would be made to enhance the community spirit of Bellingham and to harmonize the various factions therein if the application of the corporation were granted and the station operated by it; and a number of the streets in Bellingham are named after pioneers and the corporation would arrange to have certain residents of the streets broadcast information with respect to the length of time they had lived there and who their neighbors were. The station would allocate time to sustaining programs as follows: Music, 60.9 percent; dramatics, 4.9 percent; variety, 6.4 percent; talks and dialogs, 11.5 percent; news, 8.3 percent; religious, 5.1 percent; special events, 1.9 percent; and miscellaneous, 1.0 percent. Time would be devoted to commercial programs as follows: Music, 43.4 percent; dramatics, 7.2 percent; variety, 10.4 percent; talks and dialogs, 10.5 percent; news, 11.0 percent; religious, 7.9 percent; special events, 3.5 percent; and miscellaneous, 6.1 percent.

IN RE KVOS, INC. (KVOS)

8. Rogan Jones is the owner of 79 percent of the stock (79 shares) of the licensee corporation, the president thereof, and the manager of

KVOS. The remainder of the stock is distributed as follows: Mrs. Rogan Jones, 1 share; C. E. Wiley and T. Schaefer, 10 shares each.

9. KVOS, Inc., has 13 full-time employees, including the manager, Jones, and sales manager, Wiley, and two part-time employees. As of July 31, 1939, the corporation had total assets of $58,504.37, with total liabilities of $8,194.95.

10. The station provides regular sustaining time for church services of the various denominations, the Ministerial Association of Bellingham, and for church announcements each Saturday. Churches desiring to broadcast specifically on their own behalf are required to pay one-half of the usual advertising rates.

11. The Western Washington College of Education, located in Bellingham, has on its faculty an ex-employee of KVOS, who conducts a course in radio. Jones collaborated with the college in establishing this course. The studios of the college are connected to the station by a remote line and weekly programs are brodcast therefrom. In connection with the "Nation's School of the Year" program (a network broadcast) the licensee purchases schedules thereof from Station WLW, where the program originates, and distributes them throughout the Bellingham schools. Radios were also donated by the licensee to the schools. The station cooperates with the North Western Conference on Radio and sustains expenses of sending a local scholastic representative thereto. The station gives time to broadcasting special announcements concerning the opening and closing of school. Weekly programs are broadcast which consist of drama, talks, etc. Monetary contributions are made to the Federal Radio Education Committee.

12. KVOS cooperates with the State Library, the State Medical Association, the Whatcom County Orthopedic Society, civic and charitable organizations and allots broadcast time thereto. Happenings of public interest are broadcast, as well as programs designed for the agricultural interests of the locality, such as weekly market reports, a farm and home hour, etc. The station maintains a leased wire for news and also employs a reporter for the sole purpose of announcing local news. In the interest of developing local talent the station conducts talent auditions twice a month.

13. KVOS is an affiliate of a national broadcasting chain (Mutual Broadcasting System). For the year 1938, the station devoted approximately 75 percent of its time to sustaining programs. For the year 1939, 76 percent of the station's time was thus occupied. Broadcast hours of the station are from 7:00 a. m. to 11:00 p. m. daily, except Sunday when the broadcast day begins at 9:00 a. m.

14. On February 27, 1939, the Commission authorized the station to make certain equipment changes, install a new antenna and move

transmitter location. Approximately $12,000 has been expended by the station in this connection. A license to cover this construction permit has since been issued. The station has also been given authority to operate with power of 250 watts unlimited time in lieu of 100 watts.

15. On April 19, 1939, one L. H. Darwin filed with the Commission a request that he be permitted "to appear and participate in the hearing" on the renewal application of KVOS, and as reasons for this request stated: "(1) That the operation of KVOS in the past has been the subject of much controversy which has not been for the best interest of the area served by KVOS and as a result public confidence in the policies of KVOS is lacking, and (2) That the granting of the above application will not be in the public interest, convenience, and necessity." A "statement" was filed in connection with the above which, in substance, set forth that Darwin had heretofore filed charges against KVOS alleging violating of the laws of the United States and the rules and regulations of the Federal Communications Commission, and that the purpose of the request was to secure the right to appear before the Commission or its examiner and to give, under oath, the information which he (Darwin) had; to be cross-examined by the attorneys for KVOS and in turn to examine and cross-examine witnesses who may be heard, both for and against KVOS application for the renewal of its license. On April 21, 1939, a group known as "The Roosevelt Supporters" filed papers identical with those of Darwin. The Commission informed the parties aforesaid (hereinafter termed the Protestants) in its letters dated April 20 and 22, 1939, that under the provisions of Order 25 [1] they would be permitted to appear and offer testimony. During the hearing the examiner interpreted Order No. 25, *supra*, to mean that L. H. Darwin and others could "appear and give evidence" but that he would not be made a "party" to the proceedings and could not examine or cross-examine witnesses. The

[1] Order No. 25 (now sec. 1.195 of the Rules of Practice and Procedure adopted July 12, 1939).

"The Secretary is hereby directed to make a record of all communications received by the Commission relating to the merits of any application pending before the Commission requesting the granting, renewal, modification, or revocation of any license or construction permit, certificate of convenience and necessity, or rate schedule. Such record shall show the name and address of the person making the statement and the substance of such statement. When the date of hearing has been set, if the matter is designated for hearing, the Secretary shall notify all persons shown by the records to have communicated with the Commission regarding the merits of such matter in order that such persons will have an opportunity to *appear and give evidence* at such hearing, provided, that in the case of communications bearing more than one signature notice shall be given to the person first signing unless the communication clearly indicates that such notice should be sent to someone other than such person.

"No such person shall be precluded from *giving any relevant material and competent testimony* at such hearing because he lacks a sufficient interest to justify his intervention as a party in the matter. * * *"

examiner ruled accordingly. Darwin, who is not an attorney, during the course of the hearing protested this ruling on behalf of himself and "The Roosevelt Supporters." For the purposes of these proceedings we find that the examiner's ruling was proper. We observe further, in this connection, that the Protestants testified at length and had opportunity to "appear and give evidence" in support of the allegations contained in the aforementioned requests.

16. A considerable portion of the voluminous testimony before us concerns the management of Station KVOS and its relation to the political controversies of Bellingham over a period of years. Counsel for KVOS objected to the introduction of all testimony which concerned the activities of KVOS prior to the decision of the Commission in the matter of *KVOS, Inc., Bellingham, Wash.*, 6 F. C. C. 22, decided July 12, 1938, and the granting of the construction permit to KVOS (B5–MP–744) on February 27, 1939. We are of the opinion that the objection is not well taken. *Greater Kampeska Radio Corporation* v. *Federal Communications Commission*, 108 F. (2d) 5, decided October 16, 1939. Moreover, the aforementioned construction permit was granted subject to the express condition that: "* * * this grant shall not be construed as a finding by the Commission upon the application of Bellingham Broadcasting Company, Inc., for construction permit (B5–P–2241), nor upon the application for renewal of license of Station KVOS, nor upon any of the issues involved therein, nor that the Commission has found that the operation of this station is, or will be, in the public interest beyond the express terms hereof. By the acceptance and operation hereunder the permittee specifically agrees to be bound by all the terms and conditions."

17. The facts hereinafter discussed must be considered in the light of section 315 of the act which reads:

> If any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other such candidates for that office in the use of such broadcasting station, and the Commission shall make rules and regulations to carry this provision into effect: *Provided*, That such licensee shall have no power of censorship over the material broadcast under the provisions of this section. No obligation is hereby imposed upon any licensee to allow the use of its station by any such candidate.

18. We have heretofore indicated that Rogan Jones is the owner of 79 percent of the stock of the licensee corporation, the president thereof, and the manager of Station KVOS. The corporation became the licensee of the station in 1929. At that time the financial condition of the station was poor. Jones sought the advice of L. H. Darwin (heretofore mentioned as one of the Protestants) concerning a remedy

for this condition. Darwin, a man of many years of newspaper experience, counselled him to inaugurate a news program over the station. Jones, who was also the majority stockholder of the corporate licensee of radio Station KPQ in Wenatchee, Wash., thereupon experimented with a news broadcast at that station. Investigation by both Jones and Darwin in Wenatchee proved this program popular. Pursuant to an agreement between Jones and Darwin, the latter, about June, 1933, undertook to broadcast a program over KVOS known as "The Newspaper of the Air." Said agreement provided, in part, that Darwin was to have entire jurisdiction over program content but that the agreement could be terminated at any time by either party.

19. Opposing political factions of the city of Bellingham have bitterly contested each election and public question. Darwin was a leader of one faction which opposed a group among whom the editor of the Bellingham Herald, one Frank L. Sefrit, was a prominent figure. The "Newspaper of the Air" program entered into frank competition with the Herald. Indicative of this competition was a remark with which Darwin would frequently conclude his broadcast, namely, "It will be unnecessary for you to look for your newspapers." The competition was not restricted to the news sphere. Both Sefrit and Darwin strongly criticized each other politically—the former through the newspaper medium, and the latter through the radio. Darwin would occasionally refer to Sefrit, after reciting a news item which was unfavorable to the latter by saying, "That is what makes the wild cat wild." During the broadcasts Darwin gave his unqualified support over the radio to candidates for public office and provided time for such candidates in the course of campaigns. The program in its subsequent stages consumed 3½ hours daily out of a total broadcast time for KVOS of 16 hours. Darwin's opponents had little, if any, valid opportunity to reply to these daily broadcasts. As a rule they did not seek it. The significance of these broadcasts in the political life of Bellingham and the local strife and bitterness caused thereby are well illustrated by the fact that the Ministerial Association of the city and the State Normal School (at that time—now the Western Washington College of Education) refused to continue programs over KVOS because of Darwin's comments.

20. Testimony was introduced on behalf of KVOS intended to show that Jones was entirely disassociated from Darwin and hence the station licensee had no responsibility for the latter's broadcasts. We cannot agree with this proposition. The licensee of a radiobroadcast station must be necessarily held responsible for all program service and may not delegate his ultimate responsibility for such to others.

21. In 1934 Jones was a candidate for Congress and as such often availed himself of the KVOS facilities. During this campaign, Darwin wrote the majority of Jones' speeches. Jones was closely associated with Darwin in his political activities. Differences between Jones and Darwin finally culminated in the termination of the agreement between them, by the former, on July 17, 1937. From June 1933 to July 1937 (the time during which Darwin conducted this program over the station) there is no evidence that a legally qualified candidate for public office was actually refused time over KVOS.

22. It was charged at the hearing that during the time Darwin was connected with the station Jones requested persons in public office to provide jobs for his friends, that he also requested the county board of commissioners (which was authorized to make purchases on behalf of the county) to patronize advertisers of the station and that he otherwise attempted to influence the official conduct of public officers. There is no evidence that Jones directly made such requests. In 1934 Jones' father-in-law was elected a county commissioner and as a part of his duties necessarily was called upon to fill positions and approve purchases. But there is no evidence that Jones took part therein.

23. Similar testimony regarding KVOS and its political embroilments prior to the cessation of Darwin's broadcasts was before the Commission in the matter of *KVOS, Inc., supra.*

24. Subsequent to the separation of Darwin from Station KVOS, Jones adopted a number of regulations designed to govern the conduct of the station from a political standpoint. In substance these regulations were as follows: that during political campaigns, copies of all political speeches were to be submitted to the station a certain number of hours in advance; that all sales of political time must be confirmed by Jones; that news announcers must verify all news broadcasts and that news must be broadcast in an unbiased manner.

25. The purpose of the regulation regarding the submission of political speeches in advance was to afford Jones the opportunity of determining whether the speeches contained libelous statements. If, in his opinion, such statements appeared, then he requested the prospective speaker to modify the statements in question so as to eliminate the material considered libelous. Upon refusal of the speaker to do so, Jones secured the advice of counsel. If counsel were of the opinion that the speech contained libelous material, Jones informed the prospective speaker that he must either change his speech or he could not broadcast.

26. On December 2, 1937, during a political rally, one Judge Hardin (a former judge of the Superior Court of the State of Washington) broadcast a speech over Station KVOS in behalf of a candidate for

public office. In this instance Jones did not enforce the station regulation requiring submission of copies of political speeches in advance. A copy of this speech was submitted in evidence at the hearing, but as the speaker "ad libbed" to a certain extent the copy does not reflect all of the speaker's remarks. One statement made therein is as follows:

> Hanning is quite a different man from the mayor whom he will succeed. Brown, to many of us, is a colossal living joke. In some ways he is not a bad fellow. This is the second time that he has sought to destroy a man who dared to stand in the way of his ambition when he yearned to be drafted again. He has never been accused of knowing the law or having executive ability or being a statesman. He can talk longer, make more noise and say less than any other man in Bellingham. * * * Now he is out in a vindictive spirit supporting a man who was and is believed by many to have been unsympathetic toward the nation's cause in the world war.

Other statements are:

> Brown will soon go out of office. He has never got out and worked to my knowledge. His accumulations have been in salaries which he has clung to, being very close. He can live on the interest on the money people have given him. He can still continue to use a dummy when he forecloses a mortgage on some poor busted devil. I suggest that he fit up one of the small houses at the old bathing resort on Marine Drive. Now that his administration has succeeded in stopping the flow of human excrement from the toilet over the intake at the lake into the intake and it will not be necessary longer to boil the water, he may there collect on the beach and incinerate the cats and dogs brought in by the tide from up-sound and the islands which he has been hollering about.
>
> I may ask, what excuse can Brown find for living anyway. When Thanksgiving Day comes, no pudgy, red-headed, freckle-faced young matron, getting her good looks from her mother, happy and beloved of a worthwhile young man, will come running, take a half Nelson on Brown, call him "Dad" and be glad to see him. There is no such girl and no dad. What justification can any red-blooded American young man in this country with its opportunities have for being an incubus and poaching on society. Brown is well into the sixties. Many of us believe that he is atrophied and will not be harmful to society. * * * It is highly probable that when my ancestors were starving, going barefooted, and fighting in their efforts to achieve independence and establish this great Nation, the ancestors of Brown, who is only two jumps from the bogs of Ireland until his father showed the good sense to come here and become a citizen, were paid soldiers of the mother country fighting alongside hired Hessians trying to put down the American revolution and hang George Washington, Jefferson, the Adamses, the Hancocks, and others who dared to insist upon and fight for the rights of free men to govern themselves.

Jones was not requested to apologize for Judge Hardin's speech but did personally apologize to A. J. Friese, the man referred to in the latter portion of the first quoted paragraph.

27. In 1938 John Vincent Padden (identified with the Roosevelt supporters), a candidate for city councilman, submitted a speech which in one particular read as follows:

New bus system is under the same ownership as the old street-car system. The only difference is that the owners of the street-car system have been released from all their franchise obligations.

This paragraph was deleted upon the request of Jones. In another instance a Mrs. Baughman (also identified with the Roosevelt supporters), a candidate for county auditor in 1938, submitted a speech to the station management which was modified as indicated in a letter from Jones to Mrs. Baughman. This is quoted verbatim:

DEAR MRS. BAUGHMAN: As a legally qualified candidate for office, you have been leased time on this station for a political talk. The speech which you propose to make has been presented to us for perusal in accordance with our rules.

The law does not permit us to "censor" your speech, but all radio stations are required to prevent the utterance of a libel.

On the advice of counsel, your speech contains a libel and must be changed in one respect:

You say: "Thereupon, my husband started investigating—Thereupon Com. Nunn went to my husband, according to testimony he gave in court, and offered him $300 if he would sign the warrants, at the same time telling him there would be "grease" (meaning bribe money) in all machinery purchases if he would sign the warrants."

This speech cannot be run unless a change substantially as follows: "Thereupon my husband was offered a bribe, according to his testimony in court. He testified that he was offered $300 if he would sign the warrant and was told that there would be 'grease' (meaning bribe money) in all the machinery purchases if he would sign the warrants."

The exact quotation of the testimony referred to in your original speech MIGHT be privileged. In the opinion of counsel, your reference would probably not be. Reference to a man (Nunn) who is not a candidate for office and in connection with the charge of a crime is, in the opinion of counsel, libelous per se.

If the foregoing change is made in your speech you may proceed as scheduled. Unless the change is made, or the paragraph quoted is stricken, the speech can not be made.

Yours truly,

ROGAN JONES.

28. On one occasion a candidate for public office broadcast a speech from KVOS which Jones, upon advice of counsel, concluded contained libelous statements. Jones, before permitting the broadcast, had secured statements from the persons who were presumably libeled to the effect that they would not prosecute suits against the station. Speeches were made by other candidates for public office in which L. H. Darwin was attacked.

29. In 1938 during a political campaign in Bellingham, one of the witnesses (identified with the Roosevelt supporters) applied for time over KVOS on behalf of a political candidate (who also testified at the hearing). On this occasion Jones was not at the station. A station employee referred the witness to Mr. T. Schaefer, the sales manager of KVOS, who eventually authorized the sale of time. A

station employee thereupon gave him a receipt which bears upon it the following language:

Operating Full Time
Member NAB

Affiliated with KPQ
Wenatchee, Wash.

RADIO STATION KVOS

OWNED AND OPERATED BY KVOS, INC.

BELLINGHAM, WASH., *October 4, 1938.*

Roosevelt Supporters Central Committee

Tear off and return this stub with your remittance

For Radio Service in accordance with official radio log.

10/5/38[1]

Political Time	(7:30 to 7:35) Paid 10/4/38[1]	$8.40

E. MULHOLLAND[1]

KVOS, INC., BELLINGHAM, WASH.

Bills due by 10th of month following in which service was rendered.

The witness and the candidate appeared at the station upon the evening of the scheduled broadcast. Jones refused to permit the candidate to broadcast. A short time later, the witness received a letter from Jones refunding the money expended and stating in substance that the reasons for the refusal to allow the candidate to broadcast were that the time purchased had not been confirmed by Jones and that the parties concerned had not submitted a copy of the speech in advance. With this letter were enclosed 2 sets of instructions, 1 requesting submission of speeches to the station 12 hours in advance of scheduled time and the other 6 hours. The testimony is conflicting as to whether or not the purchasers of the time were informed that such sale would have to be confirmed by Jones only. In view of the undisputed facts that a contract for time was made which contains no reference to the requirement of confirmation by Jones, and that the payment for the time was acknowledged, we find that the purchasers were not informed of the requirement at the time they made the arrangements. That they were so informed after the scheduled broadcast was not helpful to the candidate.

30. During 1938 all time sold over the station for political purposes was bought and paid for. The same rates were charged each speaker.

31. J. W. Austin is a member of the board of county commissioners for Whatcom County. During July 1939 Austin's security bond was cancelled. J. B. Jackson, a news reporter for Station KVOS ascertained from a deputy sheriff that the cancellation notice had been served on Austin and broadcast a special announcement regarding the

[1] Written in ink.

same on the afternoon of such service and prior to the filing thereof with the clerk of the court (which event occurred 2 days later). Jackson considered this item as outstanding information from a news standpoint. The item was broadcast again on the same day during the next regular news period, i. e., 7:15 p. m. It was again broadcast later in the evening, a musical program originating at a remote point being interrupted for the purpose alone. The difficulty experienced by Mr. Austin was broadcast at other times. Station KVOS broadcast on behalf of Austin's adherents an appeal for members of his political party (he was identified with the Roosevelt Supporters organization) to provide a personal surety bond for him. Approximately 87,000 dollars was received as a result of this and other appeals in general.

32. On occasions Jackson (heretofore mentioned as a news reporter for Station KVOS) refused to broadcast news favorable to Austin, when requested so to do by the latter; and on one occasion Jackson refused to do so saying in effect that he had to live. It was Jackson's recollection that the only time he refused to broadcast news for Austin, the request for such broadcast was made in a jocular manner.

33. During 1937 one Hawley (at that time employed in the copy-writing department at KVOS—now no longer connected with the station) wrote speeches in the course of a campaign for one political group. These speeches were written on Hawley's own time and not while he was engaged in his duties with the station. A similar situation occurred with respect to Jackson during the 1937 political campaign. Jackson is still employed by KVOS.

34. During the 1937 and 1938 political campaigns several changes in the time scheduled for speeches by candidates for public office over Station KVOS were made by the management. The candidates were notified of such changes and no explanation given them. The station was affiliated with a national network in September 1937 and the changes in time resulted from network programs. All allocations of time for political purposes were made subject to network commitments.

35. A controversy arose in Bellingham between employers and two labor unions, subsequent to the cessation of the "Newspaper of the Air" broadcasts. One of the disputants desired Jones to broadcast over the radio a letter presenting its views on the matter in issue. Jones requested the other two groups to avail themselves of KVOS facilities for the purpose of giving to the public their opinions. All of the parties concerned thereupon broadcast over KVOS. After July 17, 1937, the date upon which Darwin's connection with Station KVOS was severed, the relationship between Darwin and Jones became unfriendly. Darwin, in several publications subjected Jones

to severe criticism. At no time did the latter answer these attacks through the medium of Station KVOS.

36. Bellingham has a population of 30,823. Station KVOS is the only station offering primary service to the Bellingham area. Stations KOMO and KJR (both located in Seattle, Wash.), and Station KVI, Tacoma, Wash., render service to the rural portions thereof.

CONCLUSIONS

IN RE BELLINGHAM BROADCASTING CO.

1. It is not shown that the amount of capital to be paid in is sufficient to construct and operate the proposed station. In fact, the estimated cost of construction exceeds the amount of assured capital by a substantial amount. In addition, it does not appear that sufficient financial support would be available for the operation of the station when constructed. We conclude that the applicant is not financially qualified.

2. Bellingham Broadcasting Co. is not shown to be in a position at this time to commence business since by the terms of its articles of incorporation the amount of paid-in capital with which the corporation shall commence business is $10,000 while only $8,100 is shown to be the assured capital. No substantial evidence was adduced on behalf of the applicant corporation which would support a conclusion that the amount of capital to be paid in would be increased above the $8,100.

3. No interference would be caused to the operation of any existing station by the proposed operation.

4. Very little information is furnished as to the type and character of program service to be furnished. It is essential in a proceeding such as this that the Commission not only be informed of the service which the applicant corporation would furnish the Bellingham community but also advised in such a manner that a comparison may be made between such service and that which the applicant seeks to supplant.

5. Public interest, convenience, and necessity will not be served by the granting of the application.

IN RE KVOS, INC.

1. Applicant is legally, technically, and financially qualified to continue the operation of Station KVOS.

2. The questions presented by this voluminous record involve generally the type and character of the program service rendered and the activities of the principal owner of applicant corporation in connection with political campaigns and public issues. There can be no doubt that the licensee prior to July 1937, conducted its station in such manner generally as to encourage strife and discord in the community.

(Also see *In re KVOS, Inc.*, 6 F. C. C. 22, *supra.*) The promulgation of campaigns for and against individuals, and at times alliance with political candidates or parties, appears to have been the rule rather than the exception prior to such date.

3. Subsequent to July 1937, instances were presented in this record of the continuance to some degree of doubtful practices, particularly with respect to the treatment of candidates for public office. Certain candidates experienced difficulties in that time was cancelled or changed once it had been allotted. In one instance time was agreed upon and the station rate paid in advance. When the speaker presented himself he was advised that his time had been cancelled and he was not allowed to present his speech. Thereafter he was advised of the reasons for the cancellation. While we are not accurately advised as to the treatment afforded candidates in opposition, except that various candidates and parties were allotted time for which the station was paid, it is significant that invariably those candidates who complained were identified with one particular party or group. The evidence suggests, but is not conclusive, that "equal opportunity" was not afforded such candidates, and that censorship of the candidates' speeches may have been imposed. However, determination of the question of censorship involves consideration of whether the material was libelous as a matter of law (a subject not within the jurisdiction of this Commission) and whether, if libelous, a licensee possesses the legal right to expunge from a proposed broadcast a libelous statement. In any event, in the light of this record, we do not feel called upon to pass upon these questions.

4. Station KVOS is the only station affording primary service to the Bellingham area.

5. The licensee has promulgated regulations since the cessation of the "Newspaper of the Air" program was designed to prevent a recurrence of that type of broadcasting. It has afforded use of its facilities for religious, civic, and educational purposes. Its program service as a whole indicates that for the past year and more a wide variety of acceptable programs have been furnished. Recent instances indicate the maintenance of an unbiased attitude on the part of the station's management. Former questionable practices have now been discontinued. In the light of these facts, and since this record does not afford a basis upon which KVOS could be deleted and its facilities licensed to Bellingham Broadcasting Co., we conclude that the public, and public interest, convenience, and necessity will be served by granting the application of KVOS, Inc., for renewal of station license.

The proposed findings and conclusions of the Commission were adopted as the "Findings of Fact and Conclusions of the Commission" on July 18, 1940.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of [1]
WCOL, INC.,
COLUMBUS, OHIO.
For License.

FILE No. B2–L–1154

Decided July 19, 1940

DECISION AND ORDER ON PETITION FOR HEARING OR REHEARING

On October 10, 1939, the Commission granted the application of WCOL, Inc., Columbus, Ohio, for construction permit to use the frequency 1200 kilocycles with 250 watts power, unlimited time.

On October 30, 1939, Scripps-Howard Radio, Inc., licensee of Radio Station WCPO, Cincinnati, Ohio, filed a petition for hearing or rehearing requesting the Commission to set aside its order of October 10, 1939, granting the application of WCOL for construction permit and to designate said application for hearing. On March 29, 1940, the Commission made its decision and order denying the petition for hearing or rehearing filed by Scripps-Howard Radio, Inc.

On April 14, 1940, Scripps-Howard Radio, Inc. (WCPO), filed its notice of appeal in the United States Court of Appeals for the District of Columbia from the decision of the Commission granting the application of WCOL and requested an order staying the effectiveness of said decision and order pending the termination of the appeal. No action was taken by the court on the request for a stay order and the construction permit authorized on October 10, 1939, was mailed the applicant, which completed the construction thereunder and made the required program tests. Thereafter, it made application for a license to cover construction permit.

On May 21, 1940, petitioner filed in the United States Court of Appeals for the District of Columbia a petition to enlarge the terms of the stay order theretofore requested so as to prevent issuance of

[1] On July 24, 1940, Scripps-Howard Radio, Inc., appealed from the grant of the station license to the United States Court of Appeals for the District of Columbia, and requested a stay of the Commission's decision. These appeals as of October 1, 1942, are still pending on their merits. On February 3, 1941, the court denied the petition for stay, but on reargument, set aside its opinion on March 13, 1941. Court of Appeals on August 8, 1941, certified question to Supreme Court of the United States. On April 6, 1942, the Supreme Court held that the Court of Appeals had the power to stay the enforcement of the order. (316 U. S. 4; 86 L. Ed, 826.)

the license following construction permit. No action was taken by the court on this petition.

On June 3, 1940, WCOL, Inc., having made satisfactory proof to the Commission that all the terms, conditions, and obligations set forth in the application and permit were fully met, and there being no cause or circumstance arising or first coming to the knowledge of the Commission since the granting of the construction permit which would, in the judgment of the Commission, make the operation of such station against the public interest, the Commission granted its application for license to cover the construction permit pursuant to section 319 (b) of the Communications Act of 1934.

On June 22, 1940, Scripps-Howard Radio, Inc. (WCPO), filed a petition for hearing or rehearing directed against the issuance of the license to WCOL to cover construction permit in which it is alleged the operation of Station WCOL as authorized by said license "produced interference with the established service of petitioner in accordance with the predictions and computations heretofore set out" (in its petition for hearing or rehearing filed with the Commission, directed against the grant of October 10, 1939, of the WCOL application for construction permit); and that "such operation during daytime hours produces regular interference in that part of the established and lawful service area of the petitioner in the direction of Columbus, Ohio, beginning at about three miles beyond Montgomery, Ohio, at the 1140 microvolt-per-meter contour of the petitioner, which interference becomes increasingly severe with the further approach toward the 500 microvolt-per-meter contour of the petitioner in the direction of Columbus."

In the Commission's decision of March 29, 1940, on the Scripps-Howard Radio, Inc., petition for hearing or rehearing which was directed against the order granting the application of WCOL for construction permit to use the frequency 1200 kilocycles with 250 watts power, unlimited time, the Commission pointed out that the petition failed to show any facts indicating that the grant of the WCOL application would not serve public interest, convenience, and necessity; that, on the contrary, the information before the Commission indicated that WCPO, operating on the frequency 1200 kilocycles with 250 watts power, unlimited time, serves approximately 822,400 persons within its 0.5 millivolt-per-meter contour; that approximately 20,800 of such persons reside in the area within the contour where interference wouold be caused to the operation of WCPO or WCOL operating on this frequency; that the result of the operation of WCOL as proposed would be an increase of 146,400 persons within the interference-free primary service area of Stations WCOL, WLOK, and WHIZ as compared with a loss of 20,800 persons now

receiving primary service from WCPO; and that, therefore, the proposed interference with WCPO did not constitute a ground upon which the Commission could conclude that public interest, convenience or necessity would not be served by a grant of the WCOL application.

The instant petition for hearing or rehearing which is directed against the issuance of the license to WCOL to cover construction permit merely suggests that operation by WCOL under the grant results in interference in petitioner's present service area, but sets forth no facts in any way indicating that the Commission erred in concluding that "upon a comparison of the benefits and detriments sustained in the respective communities, public interest, convenience and necessity will be served by the grant of the application." Furthermore, no facts are set forth in the petition upon which the Commission could find that the terms, conditions and obligations set forth in the application and permit of WCOL have not been met, nor has the petitioner brought to the Commission's attention any cause or circumstance, arising since the granting of the WCOL construction permit, which would make the operation of such station against the public interest, convenience or necessity.

Accordingly, it is ordered, this 19th day of July 1940, that the petition for hearing or rehearing filed by Scripps-Howard Radio, Inc., (WCPO), be, and it is hereby, denied.

8 F. C. C.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matters of HERALD PUBLISHING CO., INC. (NEW), ALBANY, GA. For Construction Permit.	FILE No. B3–P–2774
SPRINGFIELD PUBLISHING CO. (KGBX), SPRINGFIELD, MO. For Construction Permit.	FILE No. B4–P–2510
WFBM, INC. (WFBM). INDIANAPOLIS, IND. For Construction Permit.	FILE No. B4–ML–354

Decided August 14, 1940

DECISION AND ORDER ON PETITIONS FOR STAY AND FOR REHEARING OR RECONSIDERATION

On June 25, 1940, the Commission granted in part the application of the Herald Publishing Co., of Albany, Ga., for a construction permit to erect a new radio station in that city to operate on the frequency 1230 kilocycles, unlimited time, with 1 kilowatt power. The grant was limited to daytime operation only.

On the same date the Commission also granted the applications of Stations KGBX and WFBM for construction permits to increase their power to 5 kilowatts day and night, employing directional antennas at night. Station KGBX is located at Springfield, Mo., and is operated by the Springfield Broadcasting Co. on the frequency 1230 kilocycles with power of 500 watts, unlimited time. Station WFBM is located at Indianapolis, Ind., and is operated by WFBM, Inc., on the frequency 1230 kilocycles, with power of 1 kilowatt night, 5 kilowatts day.

On July 8, 1940, the Herald Publishing Co. filed two petitions requesting the Commission to stay the issuance of the above construction permits to KGBX and WFBM pending the filing and consideration of certain petitions for reconsideration to be submitted by the Herald Publishing Co. at an early date. These petitions alleged that the Commission would not have granted the applications of Stations

KGBX and WFBM with the proposed directional antennas at the proposed transmitter sites if certain engineering data, which the petitioner was having prepared, had been in its hands.

On July 15, 1940, the Herald Publishing Co. filed petitions for rehearing or reconsideration in each of the above three proceedings. In the proceeding involving its own application for construction permit (No. B3–P–2774), petitioner requested the Commission to reconsider its action granting petitioner a construction permit to erect a new radio station for daytime operation only and to grant its application for full-time operation. In the other two cases, petitioner requested the Commission to reconsider its action granting the applications of Stations KGBX and WFBM and require as a condition of their operation with 5 kilowatts power that they so construct and locate their antennas that petitioner would be able to operate nighttime in Albany, Ga.

With each petition for rehearing or reconsideration, petitioner filed an affidavit by W. J. Holey, a consulting radio engineer. These affidavits stated, in substance, that the selection of new transmitter sites and the use of different directional antenna designs from those proposed by Stations KGBX and WFBM would make possible the grant of the petitioner's application for full-time operation without any increase in interference to existing stations on 1230 kilocycles and without any loss in the total number of listeners in the nighttime service areas of KGBX and WFBM. In addition, it was alleged that any loss in population which might be suffered by WFBM and KGBX would be more than offset by the gain in service to the people of Albany and vicinity.

With respect to WFBM, moreover, it was alleged that more effective coverage of Indianapolis would result from a change in the directional antenna and from locating the transmitter in the vicinity of Southport, Ind.; that fewer people in the existing nighttime service area would be deprived of WFBM's service under the petitioner's proposal than under WFBM's proposed operation; and that the total population within the 2.5 millivolt-per-meter night contour of this station would remain practically the same and might be increased somewhat by careful selection of a new site.

The change in the sites of the transmitter and in the patterns of the directional antennas of Stations KGBX and WFBM would admittedly result in a limitation to petitioner's proposed station in the neighborhood of 9 millivolts per meter at night, which is greater than the normally protected contour of regional stations. Petitioner asserts, however, that the 9 millivolt-per-meter contour would still be adequate to serve Albany and vicinity.

Petitioner urges as the ground for its petitions for rehearing or reconsideration that certain changes in the transmitter sites and directional antenna patterns of Stations KGBX and WFBM will enable its proposed station to render satisfactory nighttime service in Albany, Ga., without increasing interference to other stations operating on 1230 kilocycles and without reducing the total number of listeners in the nighttime service area of Stations KGBX and WFBM. However, these contentions are merely unsupported statements of general conclusions. Petitioner suggests that certain changes in KBGX's and WFBM's directional antennas and transmitter sites would enable it to render adequate nighttime service, but it does not indicate what changes in the directional patterns will produce such results or what specific sites should be selected or whether such sites are available to the stations. Similarly, its conclusions with respect to the effect of the proposed changes upon the populations served by Stations KGBX, WFBM, and other stations operating on the frequency of 1230 kilocycles are unsubstantiated by any engineering data showing the manner in which these conclusions were reached. In the absence of any specific proposal concerning the suggested location of the transmitter sites and the nature of the antenna changes proposed, the Commission has no basis for determining either the feasibility of petitioner's proposal or the accuracy of its conclusions.

Operation of Stations WFBM and KGBX under the Commission's grant of the applications of these stations for increased power will increase the coverage of these stations and improve the signal to the listeners already served. To require changes in the transmitter sites and antenna designs of Stations KGBX and WFBM as a condition precedent to their proposed operation would undoubtedly delay for several months their proposed additional service to the listening public of these two stations. Since petitioner's general conclusions and unsupported allegations furnish no reasonable assurance that any new transmitter sites can be found or directional antenna patterns devised which will make possible unlimited operations by petitioner, the Commission does not deem it in the public interest to postpone the proposed additional service to the listeners of Stations KGBX and WFBM.

Under section 1.381 of the Commission's Rules and Regulations petitioner has elected to accept the partial grant of its application without a hearing. This section provides that when an application is granted in part without a hearing, such action "shall be considered as granting such application unless the applicant shall, within 20 days from the date on which public announcement of such grant is made, or from its effective date if a later date is specified, file with the Commission a written request for a hearing with respect to the

part * * * not granted." The partial grant of petitioner's application for construction permit was made on June 25, 1940, and no request for a hearing with respect to the part not granted has been made. The order of June 25, 1940, must, therefore, be deemed a grant of petitioner's application for construction permit.

Neither section 1.381 nor any other rule of the Commission, however, precludes petitioner from filing with the Commission an application for modification of its construction permit or of its license, as the case may be, requesting full-time operation. Nor does the grant at this time of either of the applications of Stations KGBX or WFBM prevent the Commission from later granting any application by petitioner if the Commission finds that such grant would be in the public interest, even though such grant might involve further action by the Commission to require Stations KGBX and WFBM to move their transmitters or change their directional antenna patterns.

It is, therefore, ordered, this 14th day of August 1940, that the Petitions for Stay of Issuance of Construction Permits to Station KGBX and Station WFBM be, and they are hereby, denied.

It is further ordered, that the petitions for rehearing or reconsideration of the partial grant of the application of Herald Publishing Company, Inc., and of the grant of the applications of Stations KGBX and WFBM be, and they are hereby, denied.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the matter of MONOCACY BROADCASTING CO. (WFMD), FREDERICK, MD. For Construction Permit.	DOCKET NO. 5423

George B. Martin on behalf of the applicant; *Gov Hutchinson* on behalf of the city of Jacksonville (WJAX); *Paul D. P. Spearman* and *Frank Roberson* on behalf of WBEN, Inc. (WBEN); and *Paul M. Segal*, *George S. Smith* and *Harry P. Warner* on behalf of WKY Radiophone Co. (WKY).

Decided August 14, 1940

DECISION AND ORDER

1. Monocacy Broadcasting Co. (WFMD), Frederick, Md., made application October 25, 1938, for construction permit to erect a directional antenna for nighttime use, and to increase hours of operation of Station WFMD on the frequency 900 kilocycles from daytime only to unlimited time, with a power output of 500 watts (No. B1–P–2243). The application was designated for hearing and a hearing was held on February 7 and 8, 1939, before a presiding officer designated by the Commission. Proposed findings of fact and conclusions were filed on behalf of the applicant and the other parties to the proceeding. At the time of the hearing on this application, WBEN, Inc. (WBEN), Buffalo, N. Y., had pending an application which requested the use of the frequency 900 kilocycles with a power output of 5 kilowatts, unlimited time, and WKY Radiophone Co. (WKY), Oklahoma City, Okla., had pending an application requesting the use of the same facilities, employing a directional antenna at night. The Commission's rules, however, did not then permit the use of 5 kilowatts power at night on regional frequencies, and these applications were not considered at the hearing. On June 23, 1939, the Commission revised its rules so as to permit the use of 5 kilowatts power at night on regional frequencies, and on July 5, 1939 announced that final action would be deferred on all pending applications requesting nighttime operation on regional frequencies which would involve problems of interference

if other pending applications requesting power of 5 kilowatts were granted. The application of Monocacy Broadcasting Co. (WFMD) was one of those named in the Commission's announcement. Subsequent to the Commission's action of July 5, 1939, Station WBEN withdrew its said application requesting the use of 900 kilocycles with a power output of 5 kilowatts at night, unlimited time, and submitted a new application (B1–P–2757) requesting the use of the same facilities, but specifying the use of a directional antenna at night, and Station WKY withdrew its said application requesting the use of 900 kilocycles with a power output of 5 kilowatts at night, unlimited time, specifying the use of a directional antenna at night, and filed a new application (B3–ML–1002) which requested the use of the same facilities, but specified the use of a conventional antenna in place of the directional antenna for nighttime use which it had theretofore requested.

2. The only questions with which any of the parties to this proceeding, other than the Monocacy Broadcasting Co. (WFMD) are now concerned, are: (1) whether the operation of the Monocacy Broadcasting Co. (WFMD) as proposed will cause objectionable interference to Station WJAX, Jacksonville, Fla., (2) whether the operation of the Monocacy Broadcasting Co. (WFMD) as proposed will cause objectionable interference to the operation of Station WBEN, Buffalo, N. Y., operating pursuant to the Commission's order of today granting its application (B1–P–2757), and (3) whether the operation of the Monocacy Broadcasting Co. (WFMD) as proposed will cause objectionable interference to the operation of Station WKY, Oklahoma City, Okla., either as proposed by its application (B3–ML–1002), or as specified by the order of the Commission today granting the application of WKY for increase in nighttime power to 5 kilowatts on the frequency 900 kilocycles, on condition that a directional antenna is employed at night.

3. The record at the hearing in this proceeding demonstrates that the proposed operation of Station WFMD would not cause objectionable interference to the present operation of Station WJAX, Jacksonville, Fla.

4. As pointed out above, the applications of Stations WBEN and WKY which were pending at the time of the hearing on the instant application were not considered in that hearing and they have since been withdrawn and new applications filed by these stations. It appears from these new applications and the data attached thereto, that the proposed operation of Station WFMD would not result in objectionable interference to the operation of Station WBEN as proposed and pursuant to the Commission's order today granting

said application, or to the operation of Station WKY operating either as proposed by its application or pursuant to the Commission's order today granting said application on condition that a directional antenna is employed at night.

5. Frederick, Md., according to the 1930 United States Census, had a population of 14,434. Since the hearing the 1940 United States Census (preliminary) figures are available. These show that Frederick, Md., now has a population of 15,933. The record shows that the only primary service available at Frederick is furnished by the applicant Station WFMD which operates daytime only. Operating as proposed, WFMD would render primary nighttime service throughout the city of Frederick and rural areas contiguous thereto.

6. In view of the changes which have occurred since the hearing, of which the Commission has full information, and the fact that no objectionable interference would result to Station WJAX or to Stations WBEN or WKY operating either as proposed or pursuant to the orders of the Commission today granting their applications as aforesaid, we are of the opinion no purpose could be served by further hearing in this matter or by the issuance of proposed findings. From the application, data attached thereto, other pertinent information before the Commission, and the record of the hearing, we are of the opinion that the granting of the instant application of the Monocacy Broadcasting Co. (WFMD) for construction permit will serve public interest, convenience and necessity.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of ILLINOIS BROADCASTING CORPORATION, QUINCY, ILL. For authority to operate radio broadcast station WTAD unlimited time on the frequency 900 kilocycles with 1 kilowatt power using a directional antenna at night.	DOCKET No. 4599

Decided August 14, 1940

W. Emery Lancaster on behalf of the applicant; *L. E. Vaudreuil* on behalf of Station WLBL; *Paul M. Segal* and *George S. Smith* on behalf of Station WKY; *Paul D. P. Spearman* and *Alan B. David* on behalf of Station WBEN; and *A. V. Dalrymple* on behalf of the Commission.

DECISION AND ORDER ON PETITIONS FOR REHEARING AND FOR RECONSIDERATION AND GRANT

On March 20, 1939, the Commission issued its statement of facts, grounds for decision and order, effective March 27, 1939, denying the application of Illinois Broadcasting Corporation (WTAD), Quincy, Ill., for authority to operate Station WTAD unlimited time on the frequency 900 kilocycles with 1 kilowatt power, using a directional antenna at night. In its decision the Commission found that the applicant was technically and financially qualified. The Commission also found that a grant of the instant application would not result in increased interference to any existing station and that the service to be rendered by Station WTAD is meritorious and of interest to the listening public. No objections to these findings have been taken by anyone and the record supports them without contradiction. The sole ground for denial of this application is that, although the evidence tends to show a need for nighttime service in the area proposed to be served, a grant of the application would not be in accordance with the proper allocation of radio facilities because

the service of WTAD will be limited by certain existing stations beyond the limitation to which, under our Standards of Good Engineering Practice, regional stations are generally protected; that in the absence of a "compelling need which is not here shown to exist," the Commission will not grant an application for a regional frequency under these circumstances.

On April 12, 1939, the applicant filed a petition for rehearing, reargument and reconsideration of the Commission's decision and order of March 20, 1939, effective March 27, 1939, contending that the above conclusion of the Commission is not warranted by the evidence in the record and that it is in violation of section 307 (b) of the Communications Act of 1934, to require a "compelling need" to be shown in order that a community can share in the fair, efficient and equitable distribution of the radio facilities.

At the time of the hearing on the instant application, there were pending several applications, including those of WBEN and WKY, for increase in power to 5 kilowatts night on the 900-kilocycle channel. These applications involved additional interference to Station WTAD, but, since they were in violation of a rule of the Commission, they were not considered in conjunction with the Quincy application.

On April 17, 1939, WKY Radiophone Co. filed a motion to dismiss applicant's petition for rehearing, etc., and on April 18, 1939, WBEN, Inc., filed its opposition to the applicant's said petition. The intervenor, WBEN, Inc. contends in its opposition to the applicant's petition for rehearing, that petitioner has not set forth any questions of fact or of law which were not considered or passed upon by the Commission in its decision. The intervenor, WKY Radiophone Co., in its motion to dismiss the petition, contends that the petition has failed to state a cause for rehearing, reargument or reconsideration of the Commission's order, but does not controvert the contentions advanced by petitioner.

On June 23, 1939, the Commission revised its rules so as to permit the use of 5 kilowatts at night on regional frequencies. Consequently, no action was taken on the petition for rehearing, reargument or reconsideration filed by Illinois Broadcasting Corporation or the motion to dismiss or opposition filed by WBEN, Inc. and WKY, respectively, and on July 5, 1939, public announcement was made that final action would be deferred on all pending applications requesting nighttime operation on regional frequencies which would involve interference problems, if other pending applications requesting the use of 5 kilowatts power on such frequencies were granted.

Illinois Broadcasting Corporation (WTAD), Docket No. 4599, was one of the pending applications named.

On October 24, 1939, applicant, Illinois Broadcasting Corporation (WTAD) filed a petition requesting reconsideration and grant of its application without further evidence. It is alleged that no further evidence is needed because (1) the existing record sustains the fact that the granting of its application would not cause objectionable interference to the service of any existing station or the proposed service of any pending applicant, and (2) that even if pending 5-kilowatt applications were granted and even considering the limitation which they would place upon petitioner's proposed operation, nevertheless, applicant could serve all of the city of Quincy, including approximately 50,000 listeners who receive no primary nighttime service.

Stations WKY and WBEN filed oppositions to this petition alleging that the granting of the application of WTAD would create an obstacle to or be inconsistent with the granting of their 5-kilowatt applications by reason of interference.

Upon further and careful review of the application of Illinois Broadcasting Corporation (WTAD), Quincy, Ill., the record made in connection therewith, the petitions filed by Illinois Broadcasting Corporation (WTAD), and the oppositions filed by WBEN and WKY, it appears that a grant of the application will permit WTAD to render nighttime service to the entire population of Quincy, Ill., and surrounding territory which is now being served during the daytime by Station WTAD on the frequency 900 kilocycles with 1-kilowatt power and which area does not receive primary service from any other station at night. We think, therefore, that our action in denying the application herein upon the failure by the applicant to show that a "compelling need" exists for the proposed service was erroneous and should be set aside.

We are further of the opinion that none of the pending applications involving the frequency 900 kilocycles presents any valid legal objection to action by us at this time upon the Illinois Broadcasting Corporation application. Before any such pending application can be denied, notice and opportunity to be heard must be afforded the applicant. If there be any conflict between the operation of Station WTAD as proposed and any such pending application, such applicant will be permitted at the hearing, to show on a comparative basis that its operation will better serve the public interest than will that of WTAD as proposed.

In view of the foregoing, it is ordered, this 14th day of August, 1940: (1) that the petition of Illinois Broadcasting Corporation

(WTAD) for rehearing be, and it is hereby, dismissed; (2) that the petition of Illinois Broadcasting Corporation (WTAD) for reconsideration and grant of its application without further evidence be, and it is hereby, granted; (3) that our Statement of Facts, Grounds for Decision and Order of March 20, 1939, effective March 27, 1939, denying the application of Illinois Broadcasting Corporation (WTAD) for authority to operate Station WTAD unlimited time on the frequency 900 kilocycles with 1-kilowatt power be, and it is hereby set aside; and (4) that said application be, and it is hereby granted.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of HUNTSVILLE TIMES CO., INC., HUNTSVILLE, ALA. For Construction Permit.	DOCKET No. 5886

Decided August 23, 1940

DECISION ON PETITION TO VACATE ORDER OF INTERVENTION

THOMPSON, COMMISSIONER (PRESIDING AT MOTION DOCKET):

This is a petition by the Huntsville Times Co., Inc., to vacate an order allowing Wilton Harvey Pollard (Station WBHP) to intervene in the hearing on the application of the petitioner for a construction permit for a new radiobroadcast station in Huntsville, Ala., to operate on the frequency 1200 kilocycles with power of 250 watts day and night. One of the grounds upon which this application was designated for hearing was "to determine whether public interest, convenience, or necessity will be served by the granting of this application and the deletion of Station WBHP, Wilton Harvey Pollard."

Station WBHP is located at Huntsville, Ala., and operates on the frequency requested by the petitioner in the above application. The intervention of Station WBHP in the hearing on the above application of petitioner was predicated upon its interest in the proceeding arising from the proposed deletion of its station if petitioner's application were granted.

On August 12, 1940, the petitioner filed a petition asking the Commission to accept an amendment to its application requesting the frequency 1420 kilocycles with power of 250 watts, unlimited hours, instead of the frequency previously requested. This petition has been granted as of this date.

It is alleged in support of the petition to vacate order of intervention that the ground upon which the intervention of Station WBHP was permitted no longer exists because of the amendment of petitioner's application to request a different frequency from that on which Station WBHP operates. The petition presents the ques-

tion whether, under the Commission's rules, Station WBHP retains its status as intervener, notwithstanding the fact that the application with respect to which intervention was granted is amended to request a different frequency from that originally requested.

The Commission's rule relating to intervention reads as follows:

SEC. 1.102. *Intervention.*—Petitions for intervention must set forth the grounds of the proposed intervention, the position and interest of the petitioner in the proceeding, the facts on which the petitioner bases his claim that his intervention will be in the public interest, and must be subscribed or verified in accordance with section 1.122. The granting of a petition to intervene shall have the effect of permitting intervention before the Commission but shall not be considered as any recognition of any legal or equitable right or interest in the proceeding. The granting of such petition shall not have the effect of changing or enlarging the issues which shall be those specified in the Commission's notice of hearing unless on motion the Commission shall amend the same.

Amendment of an application to request a different frequency amounts, for all intents and purposes, to the filing of a new application and institution of a new proceeding. Under section 1.73 of the Commission's rules, upon such amendment the application is removed from the hearing docket and the amended application is reconsidered by the Commission. If any hearing is necessary at all upon such amended application, new issues will generally be involved therein.

In the light of the foregoing, it is clear that a "proceeding" in which a person has been permitted to intervene is terminated upon the filing of an amendment requesting a different frequency from that stated in the application. Intervention ends upon the termination of the "proceeding" in which intervention was allowed.

It is the purpose of the Commission's rule to allow intervention where the proposed intervener can show that it has some interest in the proceeding and that it can assist the Commission in the determination of the issues involved therein (Decision on Petition to Intervene and Enlarge Issues in *In re Hazlewood, Inc.*, Docket No. 5698, decided September 9, 1939, 7 F. C. C. 443). It is obvious that this purpose would not be served by permitting a person to continue to retain the status of intervener where the interest upon which such intervention was originally predicated no longer exists and where the issues that may be involved in the proceeding remain as yet undetermined.

It follows, therefore, that the order granting leave to Station WBHP to intervene upon the application of the Huntsville Times Company, Inc., for a construction permit was limited solely to the hearing upon the original application and that such authorization does not extend to any proceeding upon the application as amended to request a different frequency. This is not to say, however, that

Station WBHP may not be permitted to intervene upon a new petition which shows its position and interest in the proceeding upon the amended application and the manner in which its participation in such proceeding will assist the Commission in the determination of the issues involved therein.

Since Station WBHP is not a party to the new proceeding on the amended application, it becomes unnecessary to enter any formal order vacating the order of intervention previously issued and accordingly, the petition of the Huntsville Times Co., Inc., is dismissed.

Station WBHP has filed a motion to strike the petition filed by the Huntsville Times Co., Inc. In view of the dismissal of this petition, this motion is also dismissed.

8 F. C. C.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of [1] WATERTOWN BROADCASTING CORPORATION, WATERTOWN, N. Y. For Construction Permit.	File No. B1–P–809.

Decided Sept. 4, 1940

DECISION AND ORDER ON PETITION FOR RECONSIDERATION

This is a petition filed by Brown Radio Service and Laboratory (WSAY), Rochester, New York, addressed to the Commission *en banc* pursuant to Administrative Order No. 3, for reconsideration of action taken July 29, 1940, by a Board of Commissioners consisting of James Lawrence Fly, Chairman, Paul A. Walker, and Frederick I. Thompson, granting the application of Watertown Broadcasting Corporation, Watertown, New York, for a construction permit (B1–P–809) to erect a new radiobroadcast station at that place, to operate on the frequency of 1210 kilocycles, with a power output of 250 watts, unlimited time. The Commission *en banc*, on August 14, 1940, ratified the action taken July 29, 1940, by the Board of Commissioners, granting the application of Watertown Broadcasting Corporation for a construction permit. The petition for reconsideration will be treated as directed to the Commission's action of August 14, 1940.

The application of Watertown Broadcasting Corporation, as amended, November 13, 1939, requesting the use of the frequency 1210 kilocycles with a power output of 250 watts, unlimited time, is accompanied by the affidavit of a qualified radio engineer certifying to field intensity measurements made by him of daytime operation of Station WSAY, Rochester, New York. These measurements indicate that the 0.5 millivolt-per-meter contour of WSAY during daytime extends over land a distance of 20 miles in the direction of Watertown. Predictions made by applicant's engineer upon the basis of the Commission's map of ground conductivities and in accordance with the Standards of Good

[1] Petition for Stay Order filed by Brown Radio Service and Laboratory in the United States Court of Appeals for the District of Columbia denied on February 3, 1941 (not reported). Appeal dismissed on stipulation of appellant and the F. C. C. on March 3, 1941.

Engineering Practice indicate that the 0.025 millivolt-per-meter contour of the proposed Watertown station will extend to a distance of 79 miles from Watertown in the direction of Rochester. The sum of the distances of the WSAY 0.5 millivolt-per-meter contour and the 0.025 millivolt-per-meter contour of the Watertown station indicate the minimum distance from Rochester at which the Watertown station can operate as proposed without objectionable interference to Station WSAY. This distance is 99 miles, whereas the actual distance between the transmitter sites of the proposed Watertown station at Watertown, New York, and Station WSAY at Rochester, is 103 miles. It is noted further that the land service area of WSAY in the direction of Watertown does not extend to the 0.5 millivolt-per-meter contour in a direct line, and therefore the minimum separation required would be reduced.

It also appears from the measurements, maps, and data accompanying the Watertown application that the 0.025 millivolt-per-meter contour of Station WSAY in the direction of Watertown extends to points slightly within the predicted 0.5 millivolt-per-meter contour of the proposed Watertown station, indicating that there will be slight interference within the 0.5 millivolt-per-meter contour of the proposed daytime service of the Watertown station covering 17.5 square miles, including a population of 400 people; that operating as proposed, the Watertown station will serve during the daytime (according to the United States 1930 Census) a population of 81,900. This figure excludes all cities over 2,500 population which lie outside of the 2 millivolt-per-meter contour.

The frequency 1210 kilocycles is classified by the Commission as a local channel for use by class IV stations and on such channels the minimum separation required for the daytime protection of the service also determines the required nighttime separation; consequently, the Watertown application raises no question of nighttime interference to Station WSAY.

After an examination of the application, the documents associated therewith, a study of the measurements made and the method used by applicant's engineer in making said measurements, the Commission was of the opinion that they are substantially accurate and reflect the actual situation with respect to the interference conditions between the proposed Watertown, N. Y., station and that of Station WSAY, Rochester, N. Y., and that a grant of the Watertown application would serve public interest, convenience and necessity. Accordingly, the application was granted by the Commission.

Petitioner, Brown Radio Service and Laboratory (WSAY), Rochester, N. Y., is authorized to use the frequency 1210 kilocycles with

a power output of 250 watts at Rochester, N. Y. Its petition for reconsideration, filed August 19, 1940, is based upon the ground that "it is believed the geographical separation between Watertown, N. Y., and Rochester, N. Y., is inadequate to permit simultaneous operation of the two stations without objectionable interference to the normally protected 0.5-millivolt contour of WSAY."

Engineering and more specific reasons for the above conclusions are embodied in exhibit A hereto attached and made a part hereof.

Exhibit A is entitled "Engineering Statement for WSAY in re Application of Watertown Broadcasting Corporation." The Engineering "statement" is accompanied by the sworn affidavit of a consulting radio engineer, certifying to the truth of the statements made in said exhibit A. The statement is as follows:

The Standards of Good Engineering Practice Concerning Standard Broadcast Stations published by the Federal Communications Commission and effective August 1, 1939, indicates in table 6 thereof that the required day separation in miles between two 250-watt class IV broadcast stations on the same channel is 173 miles. This required separation is for average values of efficiency, frequency, and conductivity.

In the case of the application of the Watertown Broadcasting Corporation the actual mileage separation between the proposed Watertown Broadcasting Corporation station and Radio Station WSAY at Rochester, N. Y., is approximately 103 miles.

On August 21, 1940, Watertown Broadcasting Corporation filed an opposition to the petition of Brown Radio Service and Laboratory (WSAY) for reconsideration. The opposition does not dispute the statements contained in the exhibit accompanying the petition but denies the allegation that Station WSAY and the proposed Watertown station cannot operate simultaneously without objectionable interference within the 0.5 millivolt-per-meter contour of WSAY. The opposition alleges that field strength measurements were made in October 1939 under the direction of a consulting radio engineer (whose qualifications are accepted by the Commission) to determine, among other things, whether or not the frequency 1210 kilocycles could be used at Watertown, N. Y., without causing objectionable interference to Station WSAY; that these measurements were reported in the engineering statement which was filed with its application; that these actual measurements show definitely that the geographical separation between Rochester and Watertown is sufficient to permit the use of the frequency 1210 kilocycles in Watertown with 250 watts power without resulting in objectionable interference to Station WSAY. The opposition also alleges that the engineering statement accompanying its application shows that the city of Watertown does not receive a signal of a field intensity greater than 404 microvolts per

meter from any existing station and that the station delivering that signal is located in Canada; that, inasmuch as a field intensity of not less than 2 millivolts per meter and preferably 5 millivolts per meter is required to render good service in the residential sections of Watertown, the city does not have satisfactory service from any existing stations; that when the Commission granted the Watertown Broadcasting Corporation application it also granted an application of The Brockway Co. for a station in Watertown to be operated daytime only; that the city of Rochester has unlimited time service from three stations, including Station WSAY; that it would be inequitable to deprive the city of Watertown of nighttime service even if some interference were to result to the normally protected contours of WSAY; that it is clear, however, no such interference will occur.

The sole basis for petitioner's conclusion that the distance between its Station WSAY and the proposed Watertown station is inadequate to avoid objectionable interference is that table VI of the Commission's Standards of Good Engineering Practice indicates the required daytime separation in miles between two class IV broadcast stations on the same channel to be 173 miles. These distance tables are, however, based upon a hypothetical set of average conditions; namely, a frequency of 1000 kilocycles, a specified soil conductivity and dielectric constant. Since these values vary in every case, the tables for daytime separation cannot be used except as a general guide. (See pt. II, Standards of Good Engineering Practice Concerning Standard Broadcast Stations.)

On August 26, 1940, Brown Radio Service and Laboratory (WSAY) filed a "supplemental petition" which petitioner says "is filed by way of answer to the opposition of Watertown Broadcasting Co. to WSAY's Petition for Reconsideration." Petitioner alleges in this "supplemental petition" that since the filing of its original petition, it has checked up the service area of Station WSAY in its present operating status and has ascertained that it covers certain named counties. But it does not appear either from the original or the supplemental petition that any of the existing service area of Station WSAY will be interfered with as a result of the operation of the proposed Watertown station. The supplemental petition also alleges that petitioner "desires an opportunity to take measurements." The application of Watertown Broadcasting Co. for the use of the frequency 1210 kilocycles at Watertown and data accompanying it has been pending since November 13, 1939. Public notice of the pendency of this application was given as in other cases. No reason appears from the petition for reconsideration or supplement thereto why, during the intervening 8 months this application was pending, or

during the 20 days permitted for the filing of its petition, petitioner could not have taken measurements.

On August 29, 1940, Watertown Broadcasting Corporation, Watertown, N. Y., filed an opposition to the "supplemental petition" of Brown Radio Service and Laboratory for reconsideration.

Neither the petition for reconsideration nor the supplement thereto filed by Brown Radio Service and Laboratory (WSAY), Rochester, N. Y., dispute or challenge the measurements taken or the predictions made by the Watertown Broadcasting Corporation which indicate that no objectionable interference will result to the operation of Section WSAY from the operation of the proposed Watertown station. Petitioner does not even assert that if it took measurements it could prove the contrary.

Upon examination of the application of Watertown Broadcasting Corporation, the documents and data accompanying the same, the petition for reconsideration filed by Brown Radio Service and Laboratory (WSAY), the opposition thereto filed by the Watertown Broadcasting Corporation, the supplemental petition for reconsideration filed by Brown Radio Service and Laboratory (WSAY) and the opposition filed by Watertown Broadcasting Corporation to the supplemental petition for reconsideration, we are convinced that no objectionable interference will result to the operation of Station WSAY, Rochester, N. Y., from the operation of the Watertown, N. Y., station as proposed. Although Station WSAY will cause daytime interference to the operation of the proposed Watertown station slightly within its 0.5 millivolt-per-meter contour, such interference will include only about 400 people who do not now receive such service, and the proposed Watertown station will be able to render service to about 81,900 persons during the daytime and about 39,700 persons at night. Watertown now has no local service. The Commission has recently authorized the construction and operation of a station in Watertown daytime only. Even with the operation of that station, it will have no local service at night except from Watertown Broadcasting Corporation.

We are of the opinion, therefore, that the petition and supplemental petition of Brown Radio Service and Laboratory (WSAY) for reconsideration should be denied.

Accordingly, it is ordered, this 4th day of September 1940, that the petition for reconsideration and supplement thereto, filed by Brown Radio Service and Laboratory (WSAY), be, and they are hereby, denied.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of WESTINGHOUSE ELECTRIC AND MANUFACTURING Co. For Renewal of Licenses (Stations WBZ, WBZA, KYW, and KDKA).	DOCKET NOS. 5823, 5824, 5825, AND 5826

Decided September 4, 1940

OPINION AND ORDER ON PETITION TO RECONSIDER AND GRANT WITHOUT HEARING

The applicant herein petitions the Commission to reconsider its action of January 29, 1940, designating the above-described applications for hearing and to grant the same.

Upon its examination of these applications the Commission was unable to find that the granting thereof would serve public interest, convenience and necessity and designated them for hearing for the purpose of determining whether the licensee was discharging the rights, duties and obligations under its licenses or whether, on the other hand, such rights had been turned over to and were being exercised by outside operating companies under a so-called management contract. On November 21, 1932, the Westinghouse Electric and Manufacturing Co. (hereinafter referred to as Westinghouse) entered into an agreement with the National Broadcasting Co. (hereinafter referred to as National) for the stated purpose of permitting Westinghouse, "while retaining the ownership, operation, and control of said stations and studios," to employ National to supply programs for broadcasting from the stations. Under the terms of the contract National was appointed the sole agent of Westinghouse with authority to furnish all programs broadcast from the stations, to enter into agreements with others in National's own name and discretion and on National's own account and risk for the sale of such broadcast programs, and to charge fees and collect and retain all revenues resulting from the broadcasting of such programs.

In its petition for reconsideration and grant of the renewal applications without hearing, Westinghouse alleges that it had been con-

tinuously licensed to operate the four stations involved for more than 18 years past, and as "the pioneer" in the development of broadcasting, has always maintained its interest in, continued its research in connection with, and kept pace with the development of the technique and art of broadcasting; that prior to the action of the Commission in designating the renewal applications for hearing, petitioner had considered the desirability of terminating its agreement with National, and thereafter did in fact, by agreement of April 24. 1940, terminate said agreement, effective July 1, 1940; that a new arrangement has been effected whereby Westinghouse now supplies its own programs for local broadcasting and has entered into a contract with National on the usual station affiliation basis for network programs; that the entire personnel of the stations and studios are employees of Westinghouse and Westinghouse fixes all rates for the sale of time; that Westinghouse has appointed National as its representative for the purpose of promoting the sale of "national spot time" on the stations, and that under the last mentioned agreement with Westinghouse, will pay National the usual agency commission on contracts for the sale of "national spot time" obtained by National and accepted by petitioner together with an additional commission, operative only if the net profits exceed certain stated amounts.

We are of the opinion that in entering into the agreement of November 21, 1932, and in permitting National to operate the stations, Westinghouse disposed of rights and privileges granted to it by the terms of its licenses and to all intents and purposes transferred control of the stations here involved to National, without obtaining the written consent of the Commission as required by section 310 (b) of the Communications Act. But the agreement has been abrogated and Westinghouse represents that it will henceforth exercise control over the stations. To deny the renewal applications because of this earlier violation of law would result in depriving the public of the broadcast service now available from the stations.

The contracts now in existence between Westinghouse and National appear to be of the usual character extensively employed by the several networks in relation to licensed broadcast stations. The Commission, by a special committee, has held lengthy hearings and has obtained much information upon the subject of such contracts in its investigation of chain broadcasting, and now has this general subject under consideration. Pending final action by the Commission on this subject, we do not deem it desirable either to approve or disapprove the new contracts between Westinghouse and National, and therefore expressly reserve any decision or opinion with respect to these contracts until our consideration of the entire subject of chain broadcasting agreements is completed and action taken thereon.

Upon all of the facts we are of the opinion that public interest will be served by granting the renewal applications here involved. This action, however, must not be interpreted as a precedent which in the future will permit licensees of broadcast stations to dispose by contract or agreement, oral or written, of the rights and privileges conferred upon them under licenses issued by this Commission or to transfer control of stations to nonlicensees without first obtaining the written consent of the Commission and thereafter abrogate such agreements, contracts or understandings and urge the Commission to overlook such actions and grant renewals of licenses by the Commission.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In re Revocation of License of
NAVARRO BROADCASTING ASSOCIATION,
CORSICANA, TEX.
To Operate Station KAND.

DOCKET NO. 5839

Decided September 5, 1940

Beauford Jester and *Julius C. Jacobs*, Corsicana, Tex., on behalf of respondents; *George B. Porter* and *Hugh B. Hutchison* on behalf of the Commission.

DECISION AND ORDER

This proceeding arose upon an order issued by the Commission on February 7, 1940, revoking the license of the respondents, J. C. West and Frederick Slauson, a partnership doing business as the Navarro Broadcasting Association, to operate broadcast station KAND. The respondents duly requested a hearing which was held on April 23, 24, 25, and 26 before Commissioner George Henry Payne in Dallas, Tex., on the following issues:

(1) That the original construction permit and station license were issued by the Commission upon false and fraudulent statements and representations and because of the failure of the applicants to make disclosures to the Commission concerning the financing of station construction; and the operation, ownership, management and control thereof by James G. Ulmer and Roy G. Terry, either or both, in violation of the provisions of the Communications Act of 1934, as amended, and the Rules and Regulations of the Commission; and

(2) That the rights granted to the Navarro Broadcasting Association (J. C. West, president) in and by the terms of the station license have been by it transferred, assigned or otherwise disposed of, without the consent in writing of this Commission, in violation of the provisions of the license and of the provisions of section 310 (b) of the Communications Act of 1934, as amended.

The Commission finds that these respondents misrepresented to the Commission their intentions as to the financing, construction, control, and operation of the station in securing their original con-

struction permit and station license. In addition the Commission finds that they transferred the rights granted them to James G. Ulmer and Roy G. Terry without the consent of this Commission, in violation of section 310 (b) of the Communications Act.

These facts taken alone would support an affirmation of the Commission's Order of Revocation. There are other facts appearing in this record, however, which give the Commission pause and which lead to a different conclusion.

These violations were committed by the respondents either prior to the commencement of the operation of this station or within less than six months thereafter. Though ignorance of the law is no excuse, yet their conduct must be viewed in its true light as that of men at the outset of their career in radiobroadcasting without any previous experience with the Commission.

On November 6, 1937, Ulmer and Terry, in consideration of the payment of $6,000 by the respondents "released, relinquished and quit-claimed" to the respondents all their interest in this station. Thus, within 6 months of the time Station KAND began to operate the respondents had obtained full control of the station and ended all affiliation of James G. Ulmer and Roy G. Terry therewith. Since that time, in so far as may be ascertained from the record of these proceedings, Station KAND has been operated by the respondents in the interest of the public in that area. Accordingly, this station, which began its program tests on May 17, 1937, and was issued its station license and began operation on June 1, 1937, has been operated since November 6, 1937, in full compliance with the representations made by respondents to this Commission. There is nothing in this record to indicate that the respondents, if permitted by this Commission, will not continue to operate in the public interest as they have done since November 1937.

In determining whether to revoke the license of a radiobroadcast station for false representations to the Commission and other violations of the Communications Act, the Commission is faced with competing considerations. The Commission's primary duty is to the listening public and, in dealing with a licensee, the Commission must be guided by this primary duty. On the other hand, if the Commission is to carry out its function of granting and denying applications for licenses, it must obtain true and accurate information from those who seek to operate radio stations and must take disciplinary action against those who make false representations to the Commission. But discipline should not be inexorably applied when station licensees demonstrate to the Commission, as these respondents have now done, that they are ready to act in good faith.

To revoke their license at this time would deprive the community of the service of this station when there is no reason to believe that the respondents will not continue to operate it in the public interest. From their conduct since 1937 and from their good reputation in their community, the Commission feels that the respondents may be trusted with the public responsibilities contained in an authorization to continue to operate Station KAND.

In view of these facts, the Commission feels that public interest will be served by revoking its previous order of revocation, reserving all rights, however, to incorporate the facts developed in these proceedings in any future proceeding involving this station.

Accordingly, it is ordered this 5th day of September 1940, that the Commission's Order of February 7, 1940, revoking the license of Station KAND, be, and hereby is, revoked.

DISSENTING OPINION OF COMMISSIONER GEORGE HENRY PAYNE

I disagree with the action taken by the Commission in dismissing the revocation order in the Navarro Broadcasting Association case issued on February 7, 1940. In my opinion the charges made by the Commission in this order are fully established by the record of the hearing at which I presided. Nothing has happened since the hearing to change my mind.

This case is not so dissimilar from the *Eagle Broadcasting Co., Inc., case*, Station KGFI, Brownsville, Tex., in which the Commission affirmed the revocation order, as to justify contrary action.

If J. C. West and Frederick Slauson were animated by good faith they would have filed voluntarily the contract of September 14, 1937, between themselves and Ulmer, covering the operation of Station KAND. This they failed to do. With the dismissal of the revocation order these people who, in my opinion, have been guilty of many infringements of the Act and regulations, go scot free.

The decision of the Commission in the *Westinghouse case* this week, from which I also dissented and which has been followed in the present case, is in my opinion a very bad precedent and may give the Commission a great deal of perturbation in the future.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of LOUIS RAYMOND CHOINIERE, HOLYOKE, MASS. Suspension of amateur radio operator license.	DOCKET No. 5777

Decided, September 5, 1940

Joseph W. Heady on behalf of respondent and *Robert M. Fenton* on behalf of the Commission.

FINDINGS OF FACT AND CONCLUSIONS OF THE COMMISSION

FINDINGS OF FACT

1. This proceeding arose upon application of Louis Raymond Choiniere, Holyoke, Mass. (hereinafter designated Choiniere), for a hearing upon the Commission's order of August 8, 1939, proposing suspension of Choiniere's operator license for a period of 3 months. The grounds for the proposed suspension were:

(1) that Choiniere on April 8, 1938, while engaged in the operation of Station W1CON transmitted profane language in violation of section 326 of the Communications Act of 1934, as amended;

(2) that Choiniere, on June 27, 1938, while engaged in the operation of Station W1CON transmitted music in violation of Rule 371 of the Rules and Regulations of the Commission Governing Amateur Radio Operators and Stations in effect on that date;

(3) that Choiniere, on June 17, 1939, failed to keep the log of Station W1CON in proper manner in violation of rule 152.45 (now sec. 12.136) of the Rules and Regulations of the Commission Governing Amateur Radio Operators and Stations in effect on that date.

2. The matter was designated for hearing and was heard in Washington, D. C., on January 9, 1940, before an examiner designated by the Commission. Depositions were taken before a Notary Public in Boston, Mass., on December 8, 1939, at which time Choiniere was represented by counsel, cross-examined the Commission's witnesses, and submitted testimony in his own behalf. Although due notice was given Choiniere of the hearing in Washington, he failed to appear and was not represented at the hearing. Choiniere elected not

to file proposed findings of fact and conclusions as provided by section 1.231 of the Commission's rules. The Commission's order of suspension has been held in abeyance until the conclusion of this proceeding.

3. The record does not disclose that Choiniere transmitted profane language on April 8, 1938.

4. On June 27, 1938, Choiniere transmitted music and singing over amateur radio station W1CON, licensed to him, between 8:17 and 8:55 p. m. Rule 371 prohibited the use of an amateur radio station for the broadcasting of any form of entertainment; rule 372 permitted the transmission of music for test purposes of short duration in connection with the development of experimental radiotelephone equipment. Choiniere announced twice during these transmissions that he was "testing" and Choiniere testified that he had at the time a "bad parasitic modulation." That the music was actually broadcast as a form of entertainment, and that the announcements were made for the purpose of apparently bringing the broadcast within the provisions of rule 372 is apparent from the following transcript of a portion of the broadcast together with the admissions made by Choiniere recited below: A song, then "That was Leonard"; "He is going to sing another one"; "Here is Leonard again"; "Sing another one, Leonard"; "Leonard does not know he is being broadcast"; "Ray, send Johnny down"; "This is Ray at the mike"; laughter in the background. Subsequent to the deposition hearings, Choiniere acknowledged to an inspector for the Commission (and the inspector so testified at the Washington hearings) that the station was on the air between 8:17 and 8:55 p. m., June 27, 1938; that Choiniere was having a party at his station during that period; that a friend named Leonard was present at the party; and that Choiniere is known as Ray. We find that the music was broadcast as a form of entertainment and was not transmitted for test purposes in connection with the development of experimental radiotelephone equipment.

5. Station W1CON was not operating and Choiniere was not transmitting on June 17, 1939, the date on which he is charged with having failed to maintain a proper station log.

CONCLUSIONS

Upon the foregoing findings of fact, the Commission concludes that:

(1) The charge that Choiniere on April 8, 1938, transmitted profane language in violation of section 326 of the Act has not been sustained.

(2) The broadcasting of music by Choiniere June 27, 1938, over amateur radio station W1CON was in violation of rule 371 of the Commission's Rules and Regulations in effect at that date.

(3) The charge that Choiniere on June 17, 1939, failed to maintain the log of Station W1CON in violation of section 152.45 of the Commission's Rules and Regulations then in effect has not been sustained.

Notwithstanding our conclusions 1 and 3, the deceptive tactics used by Choiniere in announcing that the broadcasting of music and singing was for test purposes, showing a deliberate violation of the Commission's Rules, sustain the Commission's order of suspension for the period of 3 months and said order of suspension should be affirmed.

ORDER

At a session of the Federal Communications Commission, held at its office, in Washington, D. C., on the 5th day of September, 1940.

Whereas the Commission has heretofore, on August 8, 1939, issued an order of suspension, suspending the amateur radio operator license granted to Louis Raymond Choiniere, for a period of three months; and

Whereas said Louis Raymond Choiniere made written application, within 15 days of receipt of notice of such order, for a hearing upon such order; and, the order of suspension has been held in abeyance until the conclusion of the hearing requested; and

Whereas the hearing has been concluded by the Commission's having this day issued its Findings of Fact and Conclusions, which by reference are made a part hereof;

It is, therefore, ordered that said order dated August 8, 1939, suspending the amateur operator license of Louis Raymond Choiniere for a period of three months, be and it is hereby affirmed.

This order shall become effective immediately, and the period of suspension shall begin as of this date.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of [1] THE USE OF STAMPS IN PAYMENT FOR WESTERN UNION TELEGRAPH SERVICE	DOCKET No. 5858

September 11, 1940

REPORT OF THE COMMISSION

Ralph H. Kimball on behalf of the Western Union Telegraph Co. and *L. W. Spillane* on behalf of the Federal Communications Commission.

BY THE COMMISSION:

1. This proceeding arose upon the filing by the Western Union Telegraph Co. of first revised page 35 of its Tariff F. C. C. No. 176, containing a schedule stating new charges, classifications, regulations, and practices with respect to the manner of payment for telegraph service, to become effective on April 25, 1940. Paragraph IV (d) of rule 9 of the revision provides as follows:

> Telegrams may be paid for either in cash or by stamps issued by the telegraph company in denominations expressed in United States currency. These stamps may be purchased from the telegraph company at their face value in books of the aggregate value of $2.50 or $5 each, and are accepted in payment of telegrams at their face value. Such stamps are not issued or accepted by any concurring or connecting carrier.

2. On April 13, 1940, the Commission ordered that this tariff be suspended until July 25, 1940, and that a hearing be held for the purpose of inquiring into the lawfulness of the charges and of the classifications, regulations, and practices involved. The Western Union Telegraph Co. was made party respondent in the proceeding and was required to appear and show cause why the Commission should not find said charges, classifications, regulations, or practices affecting same to be unreasonable, unreasonably discriminatory, preferential, prejudicial, or otherwise unlawful.

3. The hearing in this matter was held on May 21, 1940, before a presiding officer duly designated by the Commission, at which time

[1] Proceeding dismissed by the Commission on September 23, 1941.

the respondent appeared and offered evidence upon the issues raised by the Commission's order.

4. It appears from the evidence that the respondent proposes to issue the stamps in denominations of 25 cents, 5 cents, and 1 cent and that they will be sold at their par value, for cash only, through Western Union offices and other established channels of distribution. Although the tariff regulation mentions only that the stamps may be used to pay for telegrams, the testimony discloses that they will be accepted in payment for any Western Union service, including messenger service, cable service, and money order service. Thus, it appears that the scope of the plan is somewhat broader than is indicated in the regulation.

5. The plan contemplates that the stamps shall bear no expiration date and shall be freely transferable. They will not be registered in any particular person's name or otherwise identifiable in relation to the purchaser. They will be redeemable only in service, except insofar as the giving of change may be necessary when a customer does not have stamps in proper denominations to pay the precise charge for service. In this connection, it is observed that the tariff regulation in issue does not state with certitude the manner in which the stamps may be redeemed and, as noted above, does not provide that they shall be sold for cash only, or that they shall be transferable. The respondent indicated a willingness to clarify the regulation in these particulars in the event the Commission does not disapprove the purposes thereof.

6. It appears that the regulation in question is intended only as a traffic stimulation scheme, calculated to reach potential customers for whom existing methods of paying for service do not suffice. As an illustration, reference was made to the case of parents, who might desire to provide their children with books of the stamps for use in telegraphing home at specified intervals, while away at school. It was pointed out that this would more effectively serve the needs of such customers because of the likelihood of the diversion to unintended uses of money which might be provided for such purposes. Another illustration given was the convenience of providing such stamps for use by friends of the purchaser when the advancing of money for the purpose would be embarrassing. Moreover, it was suggested that the use of stamps would be of considerable benefit to firms having traveling representatives, thereby rendering charge accounts unnecessary, with resulting economies to the respondent.

7. The respondent contends that its proposal does not constitute any substantial departure from existing methods of handling charges, but that it is merely a variation in the mechanics of collecting the same. Since the stamps are available to the public generally and are to be sold and redeemed always at par, it appears that the result will actually be but the converse of a credit transaction, the sale of the stamps being

regarded as collection in advance for telegraph service, to be provided in accordance with the customer's convenience and needs, the stamps merely serving as receipts for the prepayment. The legitimate use of this plan does not appear to be objectionable. Of course, there is the possibility that use of the stamps may in practice produce complications which will unduly increase the regulatory burden, or be so readily adaptable to abuse as to be objectionable for that reason. However, such considerations are purely speculative at this stage and present a separate problem which can be dealt with as experience may indicate. If complete and accurate accounting records are maintained of all transactions involving the use of stamps, regulatory difficulties should not be appreciably increased.

8. Upon the record here made we are of the opinion, and so find, that the proposed practice under the tariff regulation in issue is not unreasonable, unreasonably discriminatory, preferential, prejudicial, or otherwise unlawful. However, in view of the fact that the regulation, as stated, is not fully descriptive of the practice proposed thereunder, it is essential that it be supplemented as hereinabove indicated. Accordingly, upon the filing by the respondent of a supplemental tariff, properly describing the proposed practices under the plan as set forth in the record, an order will be entered dismissing the proceeding.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of
CANNON SYSTEM, LTD. (KIEV), GLENDALE, CALIF.
For Renewal of License.

DOCKET No. 5786

Decided September 25, 1940

David H. Cannon and *Reed E. Callister*, Los Angeles, Calif., on behalf of the applicant; *P. W. Seward*, Washington, D. C., on behalf of the Commission.

DECISION AND ORDER

This proceeding arose upon the designation for hearing on October 31, 1939, of the renewal application of KIEV, filed on May 22, 1939, by the licensee of that station, Cannon System, Ltd. The issues set forth involved principally the program service of this station.

In its original application to the Federal Radio Commission for a construction permit, Cannon System, Ltd., proposed a diversified program service, including under the heading "Commercial programs"—entertainment, 45 percent; educational, 10 percent; religious, 10 percent; fraternal, 5 percent; and under the heading "Sustaining programs"—entertainment, 10 percent; agriculture, 20 percent. The applicant further undertook "to avail itself in large part of the various excellent talent proposed by residents of Glendale and its environs, and proposes to furnish through the station the highest type of program, both from an entertainment and educational viewpoint." It was also represented to the Radio Commission that the lack of a broadcast station in Glendale at that time discriminated against "the use of Glendale's excellent talent."

At the hearing on this original application the applicant promised "programs with an educational background, programs that would be uplifting." The types of program proffered included: "Sketches, music, duets, quartets, excerpts from operas, cuttings from great plays, literary characterizations, and interpretation of great poems, readings for children and adults, the creation of continuous stories for children that have as their aim the stimulating of interest and culminating with a message that is constructive to childhood; and the

general interpretation of literary works that are not ordinarily acceptable to the average layman." The applicant also represented at the hearing that "one-third of the broadcasting time would be devoted to educational and semieducational matters. Agricultural features would be presented and programs would include local, state, and national news items * * *." It was represented that "there is abundant musical and other talent of good quality available in Glendale to insure the broadcasting of interesting and diversified programs." On the basis of all these representations, the grant was made. The station began operation February 21, 1933, and has been on the air from that date to the present.

Complaints about the station's program service resulted in an investigation out of which this proceeding arose. At the hearing detailed facts as to the service of KIEV were developed. The record shows that Commission inspectors made recordings of the programs broadcast by the applicant on December 15, 21, and 27, 1938. An analysis of these recordings reveals that on the first of these days the programs consisted of 143 popular records and 9 semiclassical records. There were 264 commercial announcements and 3 minutes of announcements concerning lost and found pets. On December 21, 1938, the programs were made up of 156 popular and 10 semiclassical records and were accompanied by 258 commercial announcements. Ten minutes were devoted to the lost and found pet column. On December 27, 1938, 165 popular, 12 semiclassical records, 10 minutes of the lost and found pet column and 199 commercial announcements made up the day's schedule. During these 3 days, which represented a total of 36 hours of broadcast time, only 23 minutes were devoted to programs other than records and commercial announcements. The alleged policy of the station had been to limit commercial announcements to 160 announcements for each 10-hour day but it appears that the manager, employed on a commission basis, permitted a greater number to be broadcast. Even if the station's definition of a "commercial," which excludes time signals and introductions in the name of the sponsor, is accepted, the number of commercial programs on the dates recorded would be far in excess of those originally proposed.

Further examples of the divergence between promise and performance are found in the following record facts. For a period of over a year no regular news was broadcast over the station. Little effort was made to promote any programs other than those characterized by purely commercial continuity. The musical portions were composed almost entirely of popular records. Each 5-minute program contains at least one commercial announcement and some recorded

music. While the licensee made its station available free of charge to civic, charitable, fraternal, and educational organizations, it expended no substantial effort actively to assist and aid such organizations in the preparation and production of programs. As a result, programs of this character became in most instances mere announcements for such organizations.

The record further shows that the applicant in successive applications for renewal of license which it filed subsequent to 1936 carried $500 per month as the expenditure made for talent. Although the renewal applications of August 1, 1938, and May 22, 1939, repeated the figure of $500 per month for talent expense, a financial statement for the calendar year 1938 listed $2,000 as the total expense for talent that year. As a matter of fact, the use of live talent by Station KIEV was short-lived. At the outset an orchestra was employed at a cost of $125 per week, but such talent expenditures were almost completely discontinued after the first 9 months of broadcasting. At the time of this hearing the licensee was paying about $2,000 per year for program material, two or three hundred dollars of which was for sustaining talent, instead of the sum of $6,000 per year as set forth in the renewal applications.

In order to explain the obvious difference between the programs as actually broadcast and those originally proposed, the applicant offered evidence that advertisers who support the station prefer recorded music to poor live talent; educational programs sponsored by the school system were interrupted by the demolition of school buildings in an earthquake; concerts were available only at night when the station was not operating; though the station facilities have been available to local organizations, they have lacked the civic enterprise necessary to prepare programs; their efforts to develop local talent of satisfactory quality for use on the air failed.

In the Commission's view the licensee of Station KIEV did not make a reasonable effort to make its programs conform to its representations. The disparity between the proposed service and the programs actually broadcast indicates such a disregard of the representations made as to cast doubt on their sincerity in the first instance and, therefore, on the qualifications of the licensee. Furthermore, false statements of talent expenditures were made in successive renewal applications. The Commission, in the allocation of frequencies to the various communities, must rely upon the testimony of applicants and upon the representations made in original and renewal applications, to determine whether the public interest will be served by a grant of such applications. Faced here by such a disregard for representations so made, particularly upon the question of service to the public, the Commission is satisfied that a denial of the renewal application might

well be justified. It should be noted that the emphasis is here placed upon the question of the truth of representations made to the Commission as a basis for the grant and renewal of a broadcast license. No adverse criticism is directed at the use of a proper proportion of high quality records or electrical transcriptions.

Upon all the facts, however, it has been concluded not to deny the pending application. The record shows that attempts to improve programs have been made. An additional member has been placed on the staff with the duty of arranging programs of a civic, educational, and charitable nature. The percentage of time devoted to recorded music and to commercialization has been much reduced, and the remainder of the program schedule dedicated to diversified nonrecorded program material. News programs have been added and a 5-year contract entered into with the United Press. Religious programs are being prepared by the Ministerial Association. Local civic and fraternal organizations are being more actively assisted in the preparation of programs. To a substantial extent the public has come to utilize the transmitting facilities and the broadcast service.

There is, therefore, ground for urging that we may expect the present trend of improvement in program service to be carried forward. With some reluctance the Commission concludes that this application may be granted. The facts developed in this proceeding will, however, be given cumulative weight in dealing with any future questions involving the conduct of this station.

ORDER

At a session of the Federal Communications Commission held at its offices in Washington, D. C., on the 25th day of September 1940;

Upon consideration of the above-described application, the documents submitted therewith, and the evidence adduced at the hearing thereon, the Commission, being full advised in the matter, determines that public interest, convenience, and necessity will be served by the granting of said application.

It is ordered that said application be, and the same is hereby, granted.

This order shall become effective immediately.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of BEN S. McGLASHAN, LOS ANGELES, CALIF. For Renewal of License of High Frequency Broadcast Station W6XKG and For Renewal of License of High Frequency Broadcast Station W6XRE.	DOCKET No. 5550 DOCKET No. 5551

April 4, 1940

Ben S. Fisher for applicant and *Russell Rowell* on behalf of the Federal Communications Commission.

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF THE COMMISSION

FINDINGS OF FACT

1. These proceedings arose upon the applications of Ben S. McGlashan for renewal of licenses of High Frequency Broadcast Stations W6XKG and W6XRE, Los Angeles, Calif. Station W6XKG is assigned to the frequency 25950 kilocycles with power of 1000 watts. Station W6XRE is assigned to the frequencies 42300, 116950, and 350000 kilocycles with power of 500 watts. Both stations are licensed upon an experimental basis. The applications involved identical issues and were consolidated and heard together on September 15, 1939, before an examiner duly appointed by the Commission.

2. The issues upon which these applications were designated for hearing relate in part to the following: Whether the applicant's program of research and experimentation indicated a reasonable promise of substantial contribution to the development of high frequency broadcasting within the purview of section 44.02 (1) then in force and effect;[1] whether substantial data would be taken on the propagation

[1] Sec. 44.02 (1) (now sec. 4.112 (a) of the Commissions regulations effective April 17, 1939) provides:

"(Sec. 44.02) *Licensing requirements; necessary showing.*—A license for a high-frequency broadcast station will be issued only after a satisfactory showing has been made in regard to the following, among others:

"That the applicant has a program of research and experimentation which indicates reasonable promise of substantial contribution to the development of high-frequency broadcasting."

characteristics of the frequencies involved herein, on noise levels, on the antenna design and characteristics with respect to propagation within the purview of section 44.02 (2) then in force and effect; [2] and to determine whether the supplemental reports filed by the applicant with reference to its program of research and experimentation are adequate within the purview of section 44.07 then in force and effect.[3]

3. Field strength measurements of Station W6XKG were taken by the applicant during August 1938. The measurements were made on a superheterodyne receiver using resistance coupled intermediates and a diode detector. Signal strength was measured with a high resistance direct current voltmeter with a scale of 0 to 15 volts, directly across the diode rectifier. From these measurements it was determined that a signal strength of one unit would override all interference, including ignition noise on main boulevards in heavy traffic. A 7/10-unit signal was found to be satisfactory in all but the noisiest locations. A 5/10-unit signal was found to be satisfactory in quiet locations at least one block from boulevards. A signal strength of 1/10 unit gave clearly understandable signals above receiver noise. This signal was not satisfactory when interference was present. The applicant made a listening test at each location, the signal being given a rating as to loud-speaker reception. In cononection with these measurements no data were offered by the applicant which would show the relation of actual field strength as compared with the readings of the meter (given in arbitrary units). Thus, no method of interpreting these readings is available for the purpose of correlating this experimentation with results obtained from research conducted by other experimenters.

4. A number of different antennas were tested at W6XKG and W6XRE and the qualitative results of the experimentation were

[2] Sec. 44.02 (2) (now sec. 4.112 (b) of the Commission's regulations effective April 17, 1939) provides:

"(Sec. 44.02) *Licensing requirements; necessary showing.*—A license for a high-frequency broadcast station will be issued only after a satisfactory showing has been made in regard to the following, among others:

"That substantial data will be taken on the propagation characteristics of these frequencies; on the noise level in different parts of the city; on the field intensity necessary to render good broadcast service; on antenna design and characteristics with respect to propagation; and on other allied phases of broadcast coverage."

[3] Sec. 44.07 (now sec. 4.117 of the Commission's regulations effective April 17, 1939) provides:

"*Supplemental report with renewal application.*—A supplemental report shall be filed with each and made a part of the application for renewal of license and shall include statements of the following, among others:

"1. The number of hours operated.

"2. Data taken in compliance with sec. 44.02 (2).

"3. Outline of reports of reception and interference and conclusions with regard to propagation characteristics of the frequeney assigned.

"4. Research and experiments being carried on to improve transmission and to develop broadcasting on the very high frequencies.

"5. All developments or major changes in equipment.

"6. Any other pertinent developments.

"7. Comprehensive summary of all reports received. See sec. 44.04 (e)."

reported. However, the reports in this connection were devoid of supporting data which would enable the Commission to arrive at a conclusion regarding the performance of antennas on frequencies allocated for high frequency broadcast stations.

5. Tests on various types of tubes were conducted at both stations. No facts of any kind were given as to the operating conditions of said tests.

6. Reports were received by the applicant which indicated serious interference was being received from Station W9XUP (St. Paul, Minn.) formerly operating on the same frequency. This interference had definite peaks of such strength that on occasions speech from applicant's Station W6XKG and the aforementioned station could not be understood. These peaks occurred locally at 10:30 to approximately 11:30 a. m. and 2:30 to approximately 3:30 p. m. daily throughout the entire summer and fall months. Reports from Middle Western and Eastern States showed that consistent interference was being encountered and similar reports were received from Europe, Australia, and Canada. No information was given which would show the extent to which the interference limited the signal or the coverage of Station W6XKG.

7. The applicant received reports of reception of Station W6XKG from remote points and foreign countries. No supporting evidence was given which would assist in an analysis of transmission at great distances. In this respect the pertinent factors to which no reference was made by the applicant are the time of day, the time of year, and a correlation of such factors with the ionosphere conditions at the time of the reception.

8. As ultimate objectives for both these stations, the applicant stated he would ascertain the usefulness of ultra-high frequency broadcasting for both local and distance, night and day range; determine by tests under actual working conditions the most satisfactory apparatus for ultra-high frequency use; and determine by tests under actual working conditions the most satisfactory types of antennas for local and distance coverage, for both daylight and night transmissions. No supporting details are shown in this respect which would afford a basis for a determination by the Commission that these objectives would be attained.

9. The licensee would conduct field work with respect to noise levels in the city of Los Angeles. He would also attempt to determine the effect of shadow from the hills which predominate in the Los Angeles metropolitan area. No data were submitted which would show the method and scope of these experiments.

CONCLUSIONS

Upon the foregoing findings of fact the Commission concludes:

1. The applicant has not shown a program of research and experimentation which indicates reasonable promise of substantial contribution to the development of high-frequency broadcasting within the purview of section 44.02 (1).

2. The applicant has not shown that substantial data will be taken on the propagation characteristics of the frequency involved on noise levels; on the field intensity necessary to render good broadcast service; and on antenna design and characteristics with respect to propagation within the purview of section 44.02 (2).

3. The supplemental reports filed by the applicant are not adequate within the purview of section 44.07.

4. The granting of these applications will not serve public interest, convenience, and necessity.

The proposed findings of fact and conclusions of the Commission were adopted as the "Findings of Fact and Conclusions of the Commission" on September 24, 1940.

8 F. C. C.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of [1]	
LEE E. MUDGETT (KRKO),	
EVERETT, WASH.	DOCKET No. 5097
For Construction Permit.	DOCKET No. 5226
For Consent to Voluntary Assignment of License.	DOCKET No. 5443
For Renewal of License.	

June 12, 1940

Horace L. Lohnes, *John C. Kendall*, *Frederick A. Clanton*, *E. D. Johnston*, and *F. W. Albertson*, for Lee E. Mudgett; *Clarence C. Dill* and *James W. Gum* on behalf of KVL, Inc., Station KEEN; *Paul D. P. Spearman* and *Alan B. David* on behalf of Tacoma Broadcasters, Inc.; *Robert T. Scott*, *William J. Neale*, and *Parker Williams* on behalf of Cascade Broadcasting Co., Inc.; *James E. Waddell* on behalf of Michael J. Mingo; *James D. Cunningham* and *James G. McCain* on behalf of the Commission.

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF THE COMMISSION

FINDINGS OF FACT

1. These proceedings arose upon the applications of Lee E. Mudgett and Cascade Broadcasting Co., Inc. On December 27, 1937, Mr. Mudgett, licensee of Radiobroadcast Station KRKO, Everett, Wash., applied for construction permit to move antenna site locally, install new equipment and vertical radiators, and change the operating assignment of his station from power of 50 watts, sharing time equally with Station KEEN, Seattle, Wash., to power of 100 watts at night and 250 watts until local sunset, with unlimited hours of operation. That part of his application which requested an increase in operating time was made contingent upon a grant of the pending application of KVL, Inc., to change the assignment of Station KEEN from the frequency 1370 to 1420 kilocycles. On January 14, 1938, by application

[1] See Final Order of the Commission, 8 F. C. C. 227.

submitted under section 310 (b) of the Communications Act of 1934, as amended, Mr. Mudgett requested the consent of the Commission to the voluntary assignment of the KRKO license to the Everett Broadcasting Co., Inc. The Cascade Broadcasting Co., Inc., on January 25, 1938, made application for authority to construct a new radio broadcast station in the city of Everett, to operate on the frequency of 1420 kilocycles, with power of 100 watts at night and 250 watts until local sunset, unlimited time (Docket No. 5114). These applications were heard in a consolidated proceeding before an examiner on October 28, 29, 31, November 1, and December 1, 1938. Thereafter, on December 19, 1938, the Commission designated for hearing the application of Lee E. Mudgett for renewal of the license of Station KRKO, and at the same time ordered further hearing with respect to the above-mentioned application in consolidation with the renewal application. A deposition session involving these applications (ordered by the Commission on April 3, 1939) was held at Seattle, Wash., during the period May 1 to May 11, 1939, inclusive; and on June 16, 1939, the hearing upon all applications was concluded.

2. On October 17, 1939, the Commission granted permission to the Cascade Broadcasting Co., Inc., to amend its application for construction permit to request the frequency 1430 kilocycles in lieu of 1420 kilocycles, and the application was removed from the hearing docket. Consequently, it will not receive consideration at this time in connection with the instant applications of Lee E. Mudgett.

3. Prior to May 15, 1934, Station KRKO (then identified as Station KFBL) was licensed to Otto Leese and Robert Leese, d/b as Leese Bros. In the early part of the year 1934, negotiations for the disposition of KRKO (KFBL) were undertaken. It was contemplated that the station would be acquired by Lee E. Mudgett, Lloyd Wallgren, Monrad Wallgren, and I. W. Parsons, each of whom would own an individual one-fourth interest. Messrs. Lloyd and Monrad Wallgren did not actively prosecute the matter, and Frederick Clanton and Mrs. Gold E. Mudgett, mother of Lee Mudgett, were substituted for them. These parties purchased the station, in behalf of Lee E. Mudgett, for $3,500, which sum was returned to them under the conditions hereinafter disclosed. An application was then filed requesting consent of the Commission to the assignment of the station license to Lee E. Mudgett. This consent was given on May 15, 1934. The funds for the purchase of the station were contributed as follows: Dr. Parsons, $2,500; Frederick Clanton, $425; and Mrs. Mudgett, $900. In addition, Dr. Parsons advanced about $200 for operating and other expenses. It was contemplated that a corporation would be formed at an early date by these three persons, together with Mr. Mudgett,

and that an assignment of license thereto would be sought. The agreement under which the station was purchased provided, as part of the consideration moving to the Leese brothers, that they would receive preferred stock having a par value of $5,000 in such proposed corporation. Under the arrangements, $1,000 of such preferred stock was to have been delivered by the Leese brothers to Mr. Mudgett in satisfaction of a chattel mortgage for $1,000 held by him as security for back wages. This mortgage, together with any right, title, or interest which he may hold in Station KRKO, constitute the only assets of Mr. Mudgett. The mortgage appears to have been discharged. No funds for the purchase or operation of the station were provided by Mr. Mudgett.

4. During the period from December 1935 to January 1937, substantial portions of the operating time of the station were sold in bulk under a brokerage arrangement with David F. Wells. The latter, in turn, sold this time on his own account to advertisers and bore all expenses incidental thereto, including the production of programs. During this period Mr. Mudgett was principally engaged in the actual operation of the transmitter, which was installed on premises removed from the studios and offices. In October 1936, Mr. Wells was notified by Mr. Clanton (hereinafter more fully discussed) that the brokerage contract was terminated; but operations thereunder were continued until January 23, 1937.

5. In October 1936, Mr. Clanton suggested to Mr. Wells that the latter become station manager. Negotiations between Mr. Clanton and Mr. Wells regarding this matter extended over a period of several weeks and were concluded on January 23, 1937, by the execution of a contract between Mr. Wells and Mr. Mudgett. Under the terms thereof, Mr. Wells was given control and management of sales and programs and was vested with authority to engage and discharge all personnel other than technical employees, subject to the approval of Mr. Clanton. It was further provided that Mr. Wells would not be authorized to incur any station obligation in excess of $100 without the approval of Mr. Clanton. This contract was for a period of 6 months. On January 29, 1937, an agreement was made between Mr. Clanton and Mr. Wells, specifying the personnel to be engaged and their rates of compensation. During the period from October 1936 to January 1938, Mr. Wells consulted several times weekly with Mr. Clanton regarding matters associated with the operation of the station and only infrequently with Mr. Mudgett. Consultations with the latter related to subjects of only minor importance. Mr. Wells served in this capacity until July 15, 1938.

6. On October 25, 1934, a contract was entered into between Lee E. Mudgett and R. E. Bronson, under the terms of which the latter

(or his nominee) was given an option to acquire the station and the license thereof for a purchase price of $3,800. A down payment of $150 was made by Mr. Bronson. No termination date for the option period was fixed, and the contract was not subject to cancellation at the option of Mr. Mudgett. It was provided therein that Mr. Bronson would compromise the then outstanding liability to the Leese brothers.

7. On November 6, 1934, the option held by Mr. Bronson was assigned by him to Pioneer Broadcasters, Inc., a newly formed corporation. All of the issued and outstanding stock of such corporation was purchased about September 1, 1935, by H. J. Quilliam. The latter drew a proposed new contract incorporating provisions supplementary to the outstanding option held by Pioneer Broadcasters, Inc., and on September 17 and 23, 1935, conferred with Messrs. Mudgett and Clanton with respect thereto. However, all power and authority to make any decision with respect to the disposition of Station KRKO to Pioneer Broadcasters, Inc., was held by Mr. Clanton to the complete exclusion of Mr. Mudgett. Mr. Clanton refused to discuss with Mr. Quilliam the option held by Pioneer Broadcasters, Inc., or the terms of the proposed new contract and Mr. Mudgett was required to follow instructions and orders given to him by Mr. Clanton with respect thereto. On October 1, 1935, Archie Taft, Sr., desired the facilities of Station KRKO to supplement the network coverage of Station KOL and would not permit the terms of the option held by Pioneer Broadcasters, Inc., to be carried into effect. (Station KOL is owned and operated by the Seattle Broadcasting Co., a corporation having 1,000 shares of stock issued and outstanding, of which 488 shares are owned by Mr. Taft, Sr., and 440 by Louis Wasmer, both of whom are officers therein.) About September 30, 1935, Mr. Taft, Sr., offered to purchase 51% of the capital stock of Pioneer Broadcasters, Inc., and permit Mr. Quilliam to hold 49% of the stock thereof and manage Station KRKO. This offer was not accepted.

8. On September 14, 1935, a memorandum agreement was entered into between Seattle Broadcasting Co. and Lee E. Mudgett, under the terms of which an option for a period of 4 months was given to the corporation to purchase the station for a consideration of $3,700. On September 16, 1935, a formal contract was drawn. Under the terms thereof, Seattle Broadcasting Co. agreed to assume all liability to the Leese brothers and to save Mr. Mudgett harmless from all claims arising out of the option held by Pioneer Broadcasters, Inc. (The liability to the Leese brothers was discharged later by the payment to them of $1,900 out of funds provided by Mr. Archie Taft, Sr.) KRKO, Inc., was incorporated November 15, 1935, by Messrs. Taft, Sr., Wasmer, and

an employee of the Seattle Broadcasting Co., for the purpose of exercising the option held by Seattle Broadcasting Co. The corporate name was subsequently changed to S. B. I., Inc., an abbreviation of Seattle Broadcasting Investment Co., Inc. All of the stock thereof is owned by the Seattle Broadcasting Co., licensee of Station KOL.

9. An option for a period of 3 months to purchase the station for $3,700 was given to KRKO, Inc., on January 28, 1936. The corporation assumed all liability to the Leese brothers and agreed to save Mr. Mudgett harmless from all claims arising out of the option held by Pioneer Broadcasters, Inc. For a consideration of $700 paid by Mr. Taft, Sr., a formal release of any option rights of Pioneer Broadcasters, Inc., was executed on June 9, 1936. The option to KRKO, Inc., was extended to July 8, 1936. The consideration under this contract, in the form of a check for $3,700, was placed in escrow. This check was released to Mr. Mudgett on June 19, 1936. In return therefor, Mr. Mudgett gave his note to the Seattle Broadcasting Co. for $3,700, payable June 19, 1941, bearing interest at 6 percent. The check in question for $3,700 was deposited by Mr. Clanton, and $2,500 of the proceeds therefrom were paid to Dr. Parsons and the remainder to Mrs. Mudgett and Mr. Clanton. Distribution of the funds was made by checks signed jointly by Dr. Parsons and Mr. Mudgett. The payment to Mrs. Mudgett was deposited to her credit by Dr. Parsons. No agreement was made at this time affecting the prior arrangements between Mr. Clanton, Dr. Parsons, Mrs. Mudgett, and Mr. Mudgett. A second escrow agreement for the remainder of the option period was executed and the note attached thereto. The note is held by S. B. I., Inc.

10. During the period from March 1936 to May 1939, the sum of $19,715.06 was expended for the acquisition, maintenance, or operation of Station KRKO by Mr. Taft, Sr., either directly or through corporations in which he was an officer. The first expenditures, aggregating $138.90, were made directly to a news distribution agency for services to Station KRKO. In June 1936 the aforementioned payment of $700 to Pioneer Broadcasters, Inc., and the $3,700 loan to Mr. Mudgett were made. All other funds advanced to KRKO have been charged to the account of Mr. Clanton.

11. On September 23, 1936, a new transmitter for Station KRKO was purchased at a cost of $4,318, and installation was made in October 1936. All payments therefor were made monthly by checks drawn by Mr. Taft, Sr., or corporation in which he was an officer. These checks were forwarded directly to the agency from which the transmitter had been purchased and the amounts charged to the account of Mr. Clanton.

12. Under the terms of an agreement made about December 9, 1936, between Mr. Clanton and Mr. Taft, Sr., the former became individually liable to the latter, to the exclusion of Mr. Mudgett, for any advances made subsequent to such date. As an inducement to secure additional funds, Mr. Clanton disclosed the terms of an agreement between Dr. Parsons and himself, providing that Dr. Parsons would guarantee the repayment of all funds, not exceeding $5,000, advanced to him by Mr. Taft, Sr. This agreement has not been abrogated. Mr. Taft, Sr., agreed to furnish the additional funds in return for a one-third interest, to be held by Mr. Taft, Jr., in any corporation which subsequently acquired the facilities of Station KRKO, for which interest only $5,000 in cash would be paid. Pursuant thereto, additional funds were advanced through Mr. Clanton for the construction of new studios and to effect other station improvements.

13. About the same time, December 9, 1936, Mr. Taft, Sr., wrote off $3,215.69 of the amount previously expended by him, or corporations in which he was an officer, in connection with the acquisition, maintenance, or operation of the station. This did not reduce the liability of Mr. Mudgett for the $3,700 loan.

14. Some technical equipment has been installed at Station KRKO by employees of Station KOL, under the supervision of the chief operator of the latter station. In the year 1937, the sum of $7,061.58 was expended for capital improvements at Station KRKO, including payments on the new transmitter. This entire amount was advanced by Mr. Taft, Sr., or corporations in which he was an officer, and charged to Mr. Clanton. The adjusted amount owed to Mr. Taft, Sr., or his interests by Messrs. Clanton and Mudgett, on May 1, 1939, including the liability of Mr. Taft, Jr. of $403.63 for hearing expenses, amounted to $16,499.37.

15. A constructed balance sheet of Station KRKO, as of March 31, 1939, shows assets of $18,547.41, consisting of cash, $12.30; accounts receivable, $1,071.66; advances to employees, $872.40, including $495.95 advanced to one employee whose services were terminated in February 1937, and an unstated amount advanced to another employee who left the station in April 1937; fixed assets, original cost $14,189.76; less reserve for depreciation of $1,598.71, depreciated value, $12,591.05; and goodwill of $4,000. The last account represents the capitalization at full station rates of all broadcast time devoted to public service activities during the years 1936 and 1937. The valuation represents a purely arbitrary amount and is not computed upon any recognized method of accounting. As of such date, the excess of liabilities over assets was $1,578.46. The liability to trade creditors for accounts payable was $2,924.22; and to Mr. Taft, Sr., or to corporations in which he is an officer, the liability was $17,201.65, con-

sisting of the time loan of $3,700 procured in June 1936 and due in June 1945, and accrued interest thereon amounting to $620; time loans aggregating $14,056.55 procured at various times subsequent to May 1936, without interest, which amount, by virtue of the cancelation of liability for $2,376.89, was reduced to $11,679.76; and liability for hearing expenses of $1,201.89 to be paid equally by Messrs. Mudgett, Clanton, and Taft, Jr.

16. Constructed profit and loss statements show that during the calendar year 1937 the station had operating income of $12,432.61, operating expenses of $13,262.24, and a net loss of $829.63; during the calendar year 1938, operating income was $10,437.35, operating expenses were $11,250.21, and net loss was $812.86. During the period January 1, 1939, to March 31, 1939, operating income was $1,430.18, operating expenses were $2,358.39, and net loss was $928.21.

17. Lee Mudgett, Inc., was incorporated November 6, 1936, by Messrs. Mudgett, Clanton, and Andrew Guttormsen for the purpose of acquiring Station KRKO. The articles of incorporation were executed on September 23, 1936. The corporation has a capitalization of $10,000, consisting of 100 shares of common stock, each having a par value of $100. The corporate name was changed to the Everett Broadcasting Co., Inc., the assignee herein, on May 18, 1937. On December 14, 1936, the stock of Lee Mudgett, Inc., was distributed to Mr. Mudgett, 50 shares; Mr. Guttormsen, 1 share; and Mr. Clanton, 47 shares, in addition to 1 share previously held. As consideration in full for the issuance of these 47 additional shares to Mr. Clanton, the sum of $4,700 was expended by him for construction of new studios and other station improvements. The entire $4,700 was furnished by Mr. Taft, Sr., or corporations in which he was an officer, and was charged to the account of Mr. Clanton.

18. On January 23, 1937, an agreement was made between Messrs. Clanton and Wells to effect the assignment of all station assets to a corporation having a capitalization of $25,000 which they would own and control. It was agreed that 49 percent of the stock thereof would be issued to Mr. Clanton and 51 percent to Mr. Wells; that the latter would make immediate payment of about $3,000 and additional amounts later, and that no cash payment would be required from Mr. Clanton. No interest of any nature in the corporation was to be held by Mr. Mudgett. However, it was represented by Mr. Clanton that employment at Station KGY, Olympia, Wash., may be offered to Mr. Mudgett. This station is licensed to KGY, Inc., a corporation in which Mr. Taft, Sr., and Mr. Wasmer have interests. William Taft, a son of Mr. Taft, Sr., is employed in a managerial position at Station KGY. A new transmitter for such

station was purchased by Mr. Taft, Sr., in September 1936. Under the terms of another agreement to which Mr. Wells was a party, it was contemplated that Mr. Mudgett would have a one-third interest in the proposed corporation. Mr. Clanton represented that the greater part of his indebtedness to Mr. Taft, Sr., probably would be canceled, in which event he would not be required to make any contribution of funds for the 49 percent stock interest in the proposed corporation to be held by him. In pursuance of this plan, Mr. Wells failed to withdraw the entire amount of the various commissions accruing to him. In this manner, he established a credit balance of about $1,500 which amount was to be available for the purchase by him of shares of stock in the proposed corporate assignee. The proposal was not actively prosecuted, and the credit balance was gradually withdrawn.

19. Mr. Mudgett is president, Mr. Clanton is secretary, and Mr. Taft, Jr. is vice president of the Everett Broadcasting Co., Inc., the proposed assignee in the instant application for assignment of license. All are directors. Under the terms of an agreement dated December 10, 1937, the subscription rights to all of the shares of stock of such corporation were redistributed to Messrs. Mudgett, Clanton, and Taft, Jr. Mr. Mudgett is to receive 35 shares in return for the transfer to the corporation of all right, title, and interest held by him in Station KRKO. Mr. Archie Taft, Jr., is to receive 30 shares for the consideration agreed upon about December 9, 1936, between Mr. Clanton and Mr. Taft, Sr. About May 1, 1939, Mr. Taft, Sr., deposited the agreed amount of $5,000 to the credit of the Everett Broadcasting Co., Inc., as payment in full for the stock to be held by Mr. Taft, Jr. The latter is 23 years of age and has no independent assets. Mr. Clanton is to receive 35 shares, 2 of which are in return for services. In payment therefor, any obligation of Mr. Mudgett to Mr. Clanton for expenditures aggregating $8,240 by the latter on behalf of the station is to be canceled. All dividends declared on the 70 shares of stock to be issued to Messrs. Mudgett and Clanton are to be paid to S. B.-I., Inc., until the amount of the outstanding liabilities has been paid. Neither Mr. Mudgett nor Mr. Clanton will be privileged to exercise any rights with respect to the disposition of such 70 shares of stock until liabilities to Mr. Taft, Sr., or corporations in which he is an officer, aggregating $11,641.77, have been paid.

20. All expenditures made by Station KRKO have been by check. Only during the month of August 1936 were any checks signed by Mr. Mudgett individually. During the period from June 1934 to about January 1, 1935, Mr. Clanton was general commercial man-

ager of the station and his business offices used for all purposes were located on the station premises. During this period, all station checks were signed by him. About January 1, 1935, Mr. Clanton was appointed to a position in the local government, and removed his office from the station premises. At the same time he delegated to Dr. Parsons the authority to sign checks in behalf of the station.

21. With the exception of a few instances in June 1935, all station checks issued during the period from about January 1, 1935, to July 1, 1935, were signed by Dr. Parsons at his office. From July 1, 1935, to October 15, 1937, all checks were signed by Mr. Clanton, with the exception of those signed in August 1936 by Mr. Mudgett. A station employee signed some checks in April 1937, and all checks issued from October 15, 1937, to January 15, 1938. The signatures of Mr. Mudgett and a station employee were affixed jointly to all checks issued from January 15, 1938, to August 15, 1938. From the latter date to May 1, 1939, all checks were signed by a station employee alone. Checks issued subsequent to January 1, 1935, which required the signature of Mr. Clanton were taken to his office. This usually consumed not less than an hour of time. Monthly reports of station operations have been submitted to Mr. Clanton and Dr. Parsons.

22. Mr. Clanton has actively participated in the engagement and discharge of station personnel, fixing rates of compensation for their services and in the arbitration of personnel difficulties.

23. On January 5, 1937, Station KRKO became an outlet of the Mutual Don Lee System, which is the Pacific regional net of the Mutual System. All operations of such station in the States of Washington and Oregon are conducted by the Pacific Broadcasting Co. Mr. Taft, Sr. and Mr. Wasmer each own one-third of the stock of this corporation and, together with one other person, determine which stations in their territory shall be accorded an opportunity to become associated. Mr. Taft, Sr., is vice president and director of the corporation. The installation of network lines from Station KOL to KRKO and technical network facilities at the latter station was executed by employees of the Seattle Broadcasting Co. Thirty percent of the broadcast time of Station KRKO is devoted to Mutual programs. The program director was instructed to broadcast all network commercial programs and to adjust local programs accordingly. This practice was followed. Station KRKO has received no income from its network programs. The Seattle Broadcasting Co. (KOL) receives about $900 monthly for broadcasting Mutual network programs.

24. No service for cleaning the station premises was provided subsequent to January 15, 1938. After that date phonograph records,

papers, news copy, and other debris accumulated in a disorderly and unclean fashion in and about the studios and offices. Occasionally, some employee voluntarily would attempt to alleviate the situation. Similar conditions prevailed at the station in October 1936.

25. During the period from February 1, 1938, to about January 1, 1939, two youths attending the local junior high school were employed in the capacity of announcers and control operators. One was about 14 years of age and the other from 14 to 16 years. Their duties embraced the reading of announcements, playing and identification of records and transcribed programs, and the handling and control in general of programs originating in the studios. At various times during this period the program director protested to Mr. Mudgett regarding the employment of these persons and directed his attention to instances of incompetency, which included boisterous conduct, the aural effects of which were broadcast, improper pronunciation of words, and failure to broadcast scheduled programs. However, no immediate action was taken.

26. During the summer of 1938, the transmitting apparatus was at times operated by an unlicensed person in violation of the Communications Act of 1934; and the operator's license was not posted at the transmitter to cover these periods of operation, in contravention of rules and regulations of the Commission.

27. Station KEEN is under the management of Arthur C. Dailey, who owns one-third of the stock of KVL, Inc., the licensee corporation. The remaining two-thirds of the issued and outstanding stock are held equally by a brother and the mother of Mr. Dailey. Coincidental to negotiations between Mr. Taft, Sr., and Mr. Dailey, an application was filed December 5, 1934, by KVL, Inc., requesting, among other things, a change in frequency for Station KEEN from 1370 kilocycles to 1070 kilocycles. After the withdrawal of this application in early 1936, an agreement was made between Mr. Taft, Sr., and Mr. Dailey under the terms of which the former agreed to pay all attorney fees which may be incurred in prosecuting an application to enable Station KEEN to remove from 1370 to 1070 kilocycles, in order that such frequency may become available to Station KRKO for unlimited time. Accordingly, a second application requesting a change in frequency from 1370 to 1070 kilocycles was filed by KVL, Inc., in early 1936. (This was not prosecuted to a final decision.) On many occasions during the year 1937, Mr. Taft, Sr., offered to donate a new transmitter to KVL, Inc., in return for a one-half interest in Station KEEN.

28. In October and December 1937 agreements were made between Mr. Dailey and Mr. Taft, Sr., under the terms of which KVL, Inc., agreed to withdraw its pending application requesting 1070 kilo-

cycles for Station KEEN. Mr. Taft, Sr., agreed to withdraw a pending application requesting the frequency 1420 kilocycles for Station KRKO. It was further agreed that an application would be filed by KVL, Inc., requesting a change in frequency for Station KEEN from 1370 to 1420 kilocycles and that Mr. Taft, Sr., would make application for unlimited time on 1370 kilocycles for Station KRKO. The pending applications of KEEN and KRKO for 1070 and 1420 kilocycles, respectively, were withdrawn; and in December 1937 applications were filed requesting, among other things, a change of frequency for Station KEEN from 1370 to 1420 kilocycles (Docket No. 5017), and unlimited time for Station KRKO on 1370 kilocycles (Docket No. 5097).

29. It is estimated that the construction proposed to enable Station KRKO to operate with the increased facilities as requested herein would cost $2,275. For this purpose Mr. Taft, Sr., on behalf of the Seattle Broadcasting Co., has agreed to advance an additional $3,500 through Mr. Clanton.

30. The application filed by KVL, Inc., which sought a change in frequency from 1370 to 1420 kilocycles was heard April 1, 1938. However, the facilities requested therein conflict with allocations provided for in the North American Regional Broadcast Agreement. Accordingly, action on such application is being held in abeyance.

31. In view of the conclusion expressed below with respect to the application for renewal of license of Station KRKO, it is considered unnecessary to make findings of fact upon the applications of Lee E. Mudgett for construction permit and for consent to assignment of license.

CONCLUSIONS

Upon the foregoing findings of fact the Commission concludes, with respect to the applications of Lee E. Mudgett:

1. The applicant has not shown himself to be financially qualified to continue the operation of the station.

2. The licensee, in the conduct of business and the exercise of rights associated with the operation of Station KRKO, has been dominated and directed by various persons who have provided funds in substantial amounts for the original acquisition of the station in 1934 and for its subsequent maintenance and operation.

3. Action of the Commission with reference to the granting of applications for renewal of licenses of stations in the radiobroadcast service is by the express provisions of the Communications Act limited to and governed by the same considerations and practice which affected the granting of original applications. The disclosure of facts which would warrant the Commission in refusing to grant a license

on an original application, or the failure to operate substantially as contemplated by the provisions of a station license, form a basis for the denial of an application for renewal of a station license. The Commission is of the opinion that if the facts disclosed above were presented to it in a proceeding upon an original application for new radio facilities, it would be constrained to find that the granting thereof would not serve the public interest, convenience or necessity. Neither the letter nor the spirit of the licenses heretofore granted to Lee E. Mudgett for the operation of Station KRKO has been observed, inasmuch as he has not been free to exercise the rights conferred therein, or to accept the responsibility thereby delegated to him, without the intervention of outside influences.

4. The granting of the application of Lee E. Mudgett for renewal of license of Station KRKO will not serve public interest, convenience or necessity.

5. In the event that the application for construction permit were granted, the funds required to effect the proposed changes would be obtained from the same ultimate source which in the past has dominated the activities of the station, and to which the existing liability exceeds the value of the tangible assets of the station.

6. The corporation which is the proposed assignee herein, at least from a financial standpoint, is subject to the domination of the same persons who for several years past have directed and controlled the present licensee, and the majority of the shares of stock thereof are to be issued primarily in satisfaction of claims of varying nature against the station held by these persons.

7. In view of the foregoing conclusions, it is not necessary to consider the applications of Lee E. Mudgett for consent to assignment of license or for construction permit. Consequently, these two applications will be dismissed.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of	
LEE E. MUDGETT (KRKO)	
EVERETT, WASH.	DOCKET No. 5097
For Construction Permit.	DOCKET No. 5226
For Consent to Voluntary Assignment of License.	DOCKET No. 5443
For Renewal of License.	

October 9, 1940

ORDER

At a session of the Federal Communications Commission, held at its offices in Washington, D. C., on the 9th day of October, 1940; and

The Commission having under consideration (1) the applications of Lee E. Mudgett (a) for renewal of the license of Radio Broadcast Station KRKO, Everett, Wash., to use the frequency of 1370 kilocycles, with power output of 50 watts, sharing time equally with Station KEVR (formerly KEEN), Seattle, Wash., (b) for consent of the Commission to the voluntary assignment of the license of this station to The Everett Broadcasting Co., Inc., and (c) for construction permit to move the KRKO antenna site locally, install new equipment and vertical radiator, and increase power output to 100 watts at night and 250 watts until local sunset, with unlimited hours of operation; (2) the Proposed Findings of Fact and Conclusions which were adopted by the Commission on June 12, 1940, wherein the proposed conclusion was expressed that the granting of the instant application for renewal of license would not serve public interest; and (3) the exceptions to such proposed findings of fact and conclusions filed in behalf of Lee E. Mudgett and The Everett Broadcasting Co., Inc., and memorandum brief submitted in support thereof; and (4) the entire proceedings held with reference to these applications; and

It appearing, upon further consideration of the evidence of record, the exceptions in memorandum brief aforementioned, that the affairs of Station KRKO have been conducted in an inefficient and irregular manner; that the present licensee (applicant herein) has not been

financially qualified to hold the license for these facilities, and in an effort to meet operating deficits and obligations incurred for improvements of the technical equipment, he has sought and regularly obtained an advancement of capital from persons whom he permitted to intervene, but not to exercise complete domination, in the management and operation of the station and to curtail his freedom of action in determining and directing the policies thereof, which conduct bordered upon illegality, although not constituting a transfer of rights in the station's license contrary to section 310 (b) of the Communications Act of 1934, as amended; and

It appearing further, that while applicant's mismanagement and inefficiency, as aforementioned, cannot be denied, his financial instability and dependency upon outside sources for financial assistance may be attributed to the difficulties incident to the sale of broadcast time on KRKO, which heretofore has been authorized to operate with the limited power output of 50 watts and thereby supply service within a comparatively meager area; and

It appearing further, that the Everett Broadcasting Co., Inc., the assignee herein, is technically, legally, and financially qualified to engage in the operation of this station and to hold the license therefor; that it will undertake such operation with a working capital of $5,000, after completion of construction, and the city of Everett and the surrounding communities are possessed of sufficient economic resources to insure adequate support for the station when operated, as proposed, upon an efficient and businesslike basis and providing the type of program service promised in the instant applications; and

The Commission, being fully advised in the premises, and mindful that its function as an administrative agency is not the imposition of penalties upon radio station licensees for their derelictions, except insofar as such action may result in some public benefit, but the correction of irregularities in station management and operation, as well as the encouragement and promotion of methods whereby such licensees may supply the most satisfactory public service in accordance with the Communications Act of 1934, as amended, and the rules of the Commission promulgated thereunder; and considering that the consummation of the proposals set forth in the instant applications for construction permit and assignment of license will result in an improved and entirely satisfactory public service, and the removal from the station of all the irregularities and inefficiencies heretofore found therein; the Commission concludes that public interest, convenience, and necessity will be served by granting the instant applications for renewal and assignment of the KRKO license, and a grant of the application for construction permit, except as hereinafter provided; now therefore,

It is ordered, this 9th day of October 1940, that the Proposed Findings of Fact and Conclusions aforementioned, dated June 12, 1940, insofar as they may appear inconsistent herewith, be, and they are hereby, set aside; and that the applications of Lee E. Mudgett for renewal of license of Station KRKO, for construction permit, and for consent to the voluntary assignment of the station's license to the Everett Broadcasing Co., Inc., be, and they are hereby, granted, except that final action with reference to the application for construction permit, insofar as it seeks the unlimited time use of the frequency 1370 kilocycles, be, and it is hereby, held in abeyance, pending decision upon the application of Evergreen Broadcasting Corporation for construction permit (File No. B5–P–2023) to authorize a change in the assignment of Station KEVR (Seattle, Wash.) from the frequency 1370 kilocycles to 1420 kilocycles.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matters of VOICE OF BROOKLYN, INC. (WLTH), BROOKLYN, N. Y., For Renewal of License.	DOCKET No. 1967
UNITED STATES BROADCASTING CORPORATION (WARD), BROOKLYN, N. Y., For Renewal of License.	DOCKET No. 2039
BROOKLYN BROADCASTING CORPORATION (WBBC), BROOKLYN, N. Y., For Modification of License, insofar only, as said application requests the facilities of WARD and WLTH.	DOCKET No. 1882

Decided October 22, 1940

J. Bruce Kremer, *Herbert M. Bingham*, and *Gustave A. Gerber* on behalf of the Brooklyn Broadcasting Corporation; *Paul M. Segal*, *George S. Smith* and *Harry P. Warner* on behalf of the Voice of Brooklyn, Inc., and United States Broadcasting Corporation; *George B. Porter* and *James D. Cunningham* on behalf of the Commission.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION:

The licensees involved in this proceeding are the Voice of Brooklyn, Inc. (Station WLTH), United States Broadcasting Corporation (Station WARD), and the Brooklyn Broadcasting Corporation (Station WBBC). These three licensees and the Paramount Broadcasting Corporation (Station WVFW) divide time equally on the frequency 1400 kilocycles. Each station serves the Brooklyn, N. Y., area and each was licensed prior to 1932.

In 1932 each of the four licensees filed an application for increase of operating time which, if granted, would have required the deletion of one or more of the other stations. These applications were heard together before an examiner in August and September of 1933.

During this hearing and subsequent thereto a number of applications were filed by other parties seeking full-time use of the 1400-kilocycle frequency. Also, the licensees amended their applications as to operating time requested. Therefore, the Commission ordered a further hearing to include these subsequent applications. This hearing was held in December 1934 before an examiner and the Commission rendered its decision on December 17, 1935 (2 F. C. C. 239).

Upon consideration of petitions for rehearing the Commission on February 5, 1936, ordered a hearing *de novo* to be held before it upon all the applications then pending and involving the use of the frequency of 1400 kilocycles in Brooklyn, N. Y., including the renewal applications of the licensees. This hearing was opened March 19, 1937, and concluded with oral argument on April 13, 1937. On June 29, 1937 (Commissioners Payne and Walker not participating and Commissioner Stewart dissenting), the Commission entered its order, effective September 15, 1937, (1) granting the applications of the Brooklyn Broadcasting Corporation (WBBC) for renewal of license and for renewal of auxiliary transmitter license, and granting, in part, its application for modification of license, subject to compliance with rule 131, insofar as that application requested the facilities of Stations WARD and WLTH, and denying said application insofar as it requested the facilities of Station WVFW; (2) granting the applications of the Paramount Broadcasting Corporation (WVFW) for construction permit to make equipment changes and for renewal of license, and (3) denying all other applications involved in the proceeding (4 F. C. C. 521, 526).

On September 29, 1937, the Voice of Brooklyn, Inc., and the United States Broadcasting Corporation each filed notice of appeal in the United States Court of Appeals for the District of Columbia from the Commission's decision and order of June 29, 1937, denying their applications for renewal of license. Appeals were also taken by the Brooklyn Daily Eagle Broadcasting Company, Inc., and the Debs Memorial Radio Fund, Inc., from the same decision and order of the Commission which denied their applications for the operating time of WBBC, WLTH, WARD, and WVFW. Later the appeals of the Debs Radio Fund, Inc., and Brooklyn Daily Eagle Broadcasting Co., Inc., were withdrawn.

On September 30, 1937, the Court of Appeals, upon petitions filed by the Voice of Brooklyn, Inc., and the United States Broadcasting Corporation, stayed the effectiveness of the Commission's order of June 29, 1937, insofar as it terminated the radiobroadcast service of Stations WLTH and WARD and assigned the operating time of said stations to Station WBBC.

Pursuant to a motion filed by the Commission, the Court of Appeals on October 13, 1938, remanded back to the Commission for further proceedings the cases which were the subject of the above appeals taken by the Voice of Brooklyn, Inc., and the United States Broadcasting Corporation, with the stipulation that "The Commission and the other parties in interest agree that the *status quo* will remain until the Commission has acted on the remand."

Based upon the foregoing, the Commission on October 27, 1938, ordered that temporary licenses be issued to WLTH and WARD for their continued operation and on the same date set aside its order of June 29, 1937, insofar only as the same denied the applications of WLTH and WARD for renewal of license and granted in part the application of WBBC for modification of license to utilize the time of WLTH and WARD. Also, on the same date the Commission granted the requests of WARD and WLTH and WBBC for oral argument and directed that each of the parties file briefs. Oral argument was held on November 10, 1938, and on March 31, 1939, the parties completed the filing of briefs. Reargument by the same parties was held before the Commission on October 19, 1939.

The applications now before the Commission are those of WLTH and WARD for renewal of licenses, Docket Nos. 1967 and 2039, respectively, and the application of WBBC, Docket No. 1882, requesting the operating time of WLTH and WARD. The Commission's order of October 27, 1938, above noted, also set aside the Statement of Facts and Grounds for Decision of June 29, 1937, insofar as the same denied the renewal applications of WLTH and WARD and granted the application of WBBC for the operating time of WLTH and WARD. The Commission's reconsideration of this record has been limited to the evidence which relates to these three applications.

During the course of the 1937 hearing the testimony and depositions of certain witnesses who participated in the 1933 and 1934 hearings were offered in evidence in the form of exhibits on behalf of WBBC and WARD, for the purpose of rebutting the testimony of certain witnesses who participated in the 1937 proceeding. The only parties who objected to the introduction of this evidence were those who had participated in the prior proceedings and who had had full opportunity to cross examine the witnesses in question. Rulings on the admission of all these exhibits were reserved. It is the opinion of the Commission that the testimony contained in these exhibits may be considered by the Commission insofar as it is pertinent to the issues involved herein.

IN RE THE VOICE OF BROOKLYN, INC.—STATION WLTH (DOCKET NO. 1882)

The Voice of Brooklyn, Inc., is a corporation organized under the laws of the State of New York and has issued 390 shares of common stock, each at the par value of $100 per share. Samuel J. Gellard, president of the corporation, owns 290 shares and his wife and mother each own 50 shares. The officers, directors, and stockholders of this corporation are citizens of the United States.

A separate corporation known as the Jewish Radio Program Service, Inc., was organized by the Voice of Brooklyn, Inc., under the laws of the State of New York. Mr. Gellard considers this separate corporation the financial department of WLTH. All of the stock in the Jewish Radio Program Service, Inc., is owned by the licensee corporation and Mr. Gellard is president of both corporations. Under an agreement entered into between the licensee and the Jewish Radio Program Service, Inc. (a memorandum of which is in evidence), the Jewish Radio Program Service, Inc., undertakes to procure advertising contracts for the sale of broadcasting time on the station; to prepare and arrange all programs, and to procure and prepare the talent and music used in connection therewith. This agreement also provides that such advertising contracts are to be made in the name of the Jewish Radio Program Service, Inc., but shall not be binding unless approved by the licensee; that the Jewish Radio Program Service, Inc., is to collect all moneys payable for broadcasting and to remit to the licensee 50 percent of the net proceeds of each advertising contract; and the Jewish Radio Program Service, Inc., also agrees to advance any sums and loans to the parent corporation which may be required for the operation of WLTH. Pursuant to this agreement, the Jewish Radio Program Service, Inc., has acted as the financial department of the station, and pays all salaries and receives most of the money which comes into the station. All contracts are made in the name of the Jewish Radio Program Service, Inc., subject to the approval of Mr. Gellard who signs checks for both corporations. Although both corporations keep separate books, any moneys needed for the operation of the station are taken from the accounts of the Jewish Radio Program Service, Inc., and no "loans" made to the licensee corporation are repaid to the former. Moreover, all of the revenue of the station is originally entered on books of the Jewish Radio Program Service, Inc., and none of this revenue is assigned to the books of the licensee. Substantially all revenue of the licensee comes through this subsidiary, and adjustments of the intercorporation accounts are made through journal entries. In fact, most of the financial transactions of the station are handled through the Jewish Radio Program Service, Inc.

Separate balance sheets of the Jewish Radio Program Service, Inc., and of the Voice of Brooklyn, Inc., were received in evidence. When combined, these balance sheets show current assets of $11,167.09, including $2,082.10 in cash and $2,032.85 in Government bonds. The fixed assets include plant, equipment, furniture, and fixtures, less depreciation totaling an estimated valuation of $24,627.40. A bookkeeper, who testified in this connection, opened the books of the corporation on January 1, 1936. The assets and liabilities were set up from figures taken from the 1935 income tax returns. The plant and equipment as well as furniture and fixtures were all depreciated at a flat rate of 10 percent per annum. The total current liabilities consist of accounts payable in the sum of $1,363.53. Fixed liabilities consist of an unpaid mortgage on the land of $5,750. The combined net worth of the two corporations as of March 30, 1937, is shown as $37,451.18. The separate balance sheet of the Voice of Brooklyn, Inc., shows that as of March 30, 1937, the licensee corporation had current assets of $2,056.95, including $24.10 in cash and $2,032.85 in United States Government bonds. Among the assets is also listed an intercompany account due from the Jewish Radio Program Service, Inc., of $8,616.88 and the stock of this corporation valued at $400. As above shown, under the arrangement between the parent and subsidiary corporations, the current assets of the latter are available to the former at any time. Apart from the capital stock of the licensee, valued at $39,000, the only liabilities shown are the mortgage on land, notes and loans payable totaling $7,037.14, leaving a surplus (or net worth) of $37,257.51. The separate balance sheet of the Jewish Radio Program Service, Inc. (as of March 30, 1937) showed current assets of $9,110.14, or sufficient current resources at that time from which to pay the intercompany account. At the time of the hearing there was an unpaid judgment outstanding against the Voice of Brooklyn, Inc., in the sum of $940 resulting from a suit which had been filed by the American Society of Composers, Authors and Publishers.

For approximately 3 years prior to the hearing, Station WLTH had been involved in a controversy with the American Society of Composers, Authors and Publishers (ASCAP) with respect to certain claims of the latter for the payment of royalties on Yiddish music used by the station for broadcasting purposes. The original claim was for approximately $3,000. These parties became involved in a law suit which resulted in a judgment in favor of the ASCAP for $940. It was contended on behalf of Station WLTH that a substantial portion of its revenue comes from commercial broadcasting in the Yiddish language, supported by Yiddish music; that the copyrights of Yiddish music are not controlled by the ASCAP but by the

Jewish Society of Authors and Composers, to which the station has been regularly paying its royalties; and that the ASCAP had been seeking to levy an additional royalty or tax not only upon the programs using music controlled by it, but also upon programs using music controlled by the Jewish Society of Authors and Composers.

Mr. Sam Gellard, the president of the Voice of Brooklyn, Inc., testified that in order to protect himself from what he considered an unjust claim on the part of ASCAP, he placed a mortgage of record on the station's equipment in favor of his brother-in-law. He claimed that this was done without legal advice and some months before the suit of the ASCAP resulted in a judgment in its favor; that when he came to Washington shortly in advance of the 1937 hearing he discussed this matter with his attorney who advised him to have it cancelled; that he immediately telephoned his brother-in-law in New York and had the mortgage vacated. The discharge of the mortgage was received in evidence at the hearing. Mr. Gellard testified at several points in the record that neither he nor the licensee corporation received any money for the issuance of the mortgage. This testimony is not contradicted and nowhere in the record is there any evidence that a monetary consideration passed between the licensee corporation, or its representatives, and the mortgagee with respect to the issuance or release of the chattel mortgage. At the time of the hearing Mr. Gellard and his New York attorney were preparing to file an appeal from the judgment in favor of the American Society of Composers, Authors and Publishers.

The Jewish Radio Program Service, Inc., was organized during the course of the above litigation. Mr. Gellard explained that the licensee found it convenient to sell programs through this corporation "to the extent that the American Society, the ASCAP Corporation, cannot go prying into that company and seeing the Jewish programs it sells * * *" and that the purpose of the corporation was to act as a "buffer" for protection of the financial transactions of WLTH.

Although it is not the function of this Commission to determine the merits of strictly private controversies and suits between licensees and other parties, yet the Commission is concerned with the ethics and character of persons who are charged with the responsibility of operating broadcasting stations. While there is no proof that the Jewish Radio Program Service, Inc., was organized for the specific purpose of defrauding the claims of creditors, yet Mr. Gellard's own explanations as to the reasons for turning over the financial affairs of the licensee corporation to this separate corporation cast grave doubt upon the propriety of his motives.

While it is true that the mortgage of record was placed upon the equipment of the station by Mr. Gellard in favor of his brother-in-

law prior to the date on which the judgment was actually rendered in favor of the ASCAP, nevertheless, the evidence shows that the litigation was pending at the time the mortgage was given and that said mortgage was given without consideration. It would appear from these facts alone that Mr. Gellard's actions in this connection were of a very questionable nature and certainly not in accordance with good business ethics.

The record contains no criticism of the transmitting apparatus or antenna system of Station WLTH. From a technical standpoint, these facilities appear to have been operated by qualified persons. The station spent approximately $1,200 in making improvements to its equipment in 1936 and 1937 and the antenna in use at the time of the 1937 hearing was satisfactory.

During the week from March 8 to 14, 1937, 31 percent of all programs broadcast were in English and the rest in foreign languages. 53.3 percent of all programs were Jewish, of which 43 percent were commercial and commercial announcements. The station does broadcast, however, a number of sustaining programs consisting of news, education, religious, civic, and governmental programs in Yiddish, German, Italian, and Polish. The station has in the past also broadcast a number of public service programs in English, including courses in American citizenship. The facilities of the station are extended to educational, religious, civic, governmental, charitable, and similar institutions and organizations without charge. Approximately 26.5 percent of all programs broadcast are commercial in character.

The programs broadcast by Station WLTH have included advertisements of a number of proprietary medicines and preparations, such as Gudes Pepto-Mangan, a liniment called Pain Expeller, a tonic known as Kalwariske and Carter's Little Liver Pills.

During the month of January 1937, Station WLTH paid $560.29 for sustaining talent. The Jewish Radio Program Service is not only the financial department of Station WLTH, but procures talent and musicians in connection with most of the commercial programs broadcast.

As above stated, Mr. Gellard is president of both corporations. In this connection he testified that either he or some employee under his direct supervision examines and approves all program continuities in advance of their broadcast.

At the time of the 1937 hearing and for a period of about 7 years prior thereto, one Witkowski, the station's musical director, conducted broadcasts of a certain orchestra which were sponsored by advertisers and which were announced in Polish. Witkowski is regularly employed by the station on a commission basis, prepares these programs

himself, furnishes the announcer, supplies the talent, secures the sponsor, and collects the money. A certain portion of the revenue is deducted as commissions and the remainder is turned over to the station.

The station manager, Mr. Sam Gellard, testified, however, that although he does not understand Polish, Witkowski always submits English translations of all announcements and advertising continuity in advance of the broadcasts, which he (Gellard) personally examines and approves, and that at all times he is "thoroughly familiar" with everything that is broadcast on the program in the Polish language. Mr. Gellard also stated that he does not allocate to Witkowski a blanket account of time on the air for the purposes of these Polish broadcasts. The same witness also testified that the station has conducted for about 8 years a similar musical Jewish program under one Cantor Altman, which is supervised in the same manner.

As Gellard's testimony on this subject was not contradicted, the Commission must accept his version of the arrangements made between the Station management and Messrs. Witkowski and Altman and it, therefore, appears that Gellard does exercise some degree of supervision over these Polish and Jewish programs. For reasons discussed elsewhere in this opinion, however, the Commission is of the opinion that arrangements of this character are inherently undesirable as they do not permit responsible supervision of the programs broadcast.

IN RE UNITED STATES BROADCASTING CORPORATION—STATION WARD (DOCKET NO. 2039)

The United States Broadcasting Corporation was organized under the laws of the State of New York and has issued 100 shares of capital stock. The stockholders are Mrs. Rae Kronenberg, 74 shares; Estelle Wagner, 20 shares; Morris Meyers, 5 shares; and Aaron Kronenberg, 1 share. All of the officers, directors, and stockholders of this corporation are citizens of the United States.

Station WARD is managed by Aaron Kronenberg. A staff of employees, consisting of radio engineers and operators, announcers, clerks, and salesmen, is retained upon a regular basis for the operation of these facilities.

According to a balance sheet which was submitted in evidence, as of February 28, 1937, the United States Broadcasting Corporation had a net worth of $31,342.32. The current assets consisted of $1,496.65 in cash and $4,190.76 in accounts receivable. Among the assets listed was the sum of $25,877.72, the replacement value of the transmitter (the book value less depreciation was shown as $16,243.97). The auditor (certified public accountant) admitted he had no idea as to the items which went to make the original charges on the books

or the cost of the transmitting equipment and had no knowledge of the age of the transmitter or rate of depreciation. The book value was taken from the old books of the corporation. The auditor testified that he had only been in charge thereof for 2 years prior to the hearing. The replacement value of this equipment was supplied by the station's chief engineer. The auditor had no idea as to what elements went into this value. Other evidence indicates depreciation of equipment was taken in accordance with the last income tax report and was in the sum of $15,908.01. No lawyers' fees or expenses incurred in the instant proceeding were included among the station's assets. The only liability of the United States Broadcasting Corporation was the sum of $673.81 representing accounts and notes payable.

A profit and loss statement of the United States Broadcasting Corporation shows that for the 6-month period ending February 28, 1937, the station operated at a net profit of $2,941.78. There were no judgments pending against the licensee at the time of the hearing and the station's equipment was not mortgaged.

Certain improvements have been made from time to time in the equipment of Station WARD over a period of 4 years prior to the hearing and the technical operation of the station during the same period has been supervised by one Abe Hass, chief operator, who employs an assistant operator. During the period of the present ownership of the station, the studios have been twice rebuilt and, at the time of the hearing, the station maintained modern and well equipped studios.

For the period March 1, 1936 to February 28, 1937, 75 percent of the broadcast time of Station WARD was devoted to sustaining programs. The 75 percent was divided as follows: 57 percent English, 10 percent Yiddish, 6 percent Spanish, 1 percent German, and 1 percent Polish.

Of all programs broadcast, 65¼ percent were in English, 25¼ percent Yiddish, 8 percent Spanish, 0.5 percent German, and 1 percent Polish.

A further analysis of the programs broadcast during the same period (March 1, 1936 to February 28, 1937) shows that 2 percent were drama, 9 percent charitable, 4.5 percent religious, 0.75 percent cultural, 6 percent educational, 3 percent civic, 1.5 percent fraternal, 0.25 percent political, and 73 percent popular entertainment. WARD has in the past broadcast a number of religious, civic, charitable, educational, governmental, and other public service programs free of charge.

During a period of approximately 7 or 8 months in the year 1934 certain programs were conducted twice a week in Italian over Sta-

tion WARD under the direction of one Louis Capola, who was a regular employee of the station on a commission basis and who sold the programs to advertisers, secured the talent therefor, and made the Italian announcements. Under this arrangement Capola collected the money due and retained 40 percent, the remaining 60 percent being turned over to the licensee. The programs consisted, in general, of instrumental music and songs, and commercial announcements. Capola's participation in the broadcasts appears to have been limited to making these announcements in Italian at the beginning of the programs. Although it is true that neither the commercial manager, Rabbi Kronenberg, nor the program director, knew the Italian language, both claimed that translations of the Italian announcements were furnished to said program director, which were examined and approved by him in advance of the broadcasts.

While it appears from the foregoing testimony, which is uncontradicted, that some attempt was made on the part of the station management to supervise these Italian programs, the evidence does not show that either Rabbi Kronenberg or his program director had personal knowledge concerning the exact contents of what was being broadcast as they admittedly did not know the Italian language and were forced to rely upon the translations of Mr. Capola, whose qualifications to make these translations were not established.

During the year 1934 Station WARD broadcast a program known as the "Little Artists Radio School." One Wagner, who was not employed by the station, took space in the back part of the station's studio and instructed children how to write, play instruments and sing. Wagner charged the children's parents $1 a lesson and they were assured that if their children had ability, they would be helped to develop through the school. There was a total of about 100 pupils and about 10 or 12 children demonstrated their ability to the extent that they were allowed to broadcast. Wagner was the owner of the "Little Artists Radio School" and the school, as such, was never owned or conducted by Station WARD. The school had an arrangement with the station whereby the latter was paid a percentage of Wagner's income for the rental space and broadcasting. The exact amount of the revenue paid the station was not shown. It is not shown by the evidence whether or not representations were made over the station that children would be allowed to broadcast or that there were any discussions in these broadcasts respecting the charges made by the school. Rabbi Kronenberg stated that he voluntarily discontinued this program in August 1934, because he did not consider that it was in good taste. Moreover, there is no evidence to show that the licensee of Station WARD ever exercised any real supervision or control over this program.

At one time, Station WARD broadcast a program known as the Reuben's Matrimonial Bureau. The evidence does not disclose the exact contents of this program, but it was apparently broadcast for the purpose of establishing a medium for the introduction of young men to young women and to arrange social engagements with a view to furthering their matrimonial plans. In this connection, Rabbi Kronenberg, the station manager, testified that he did not personally approve of such a broadcast; that it was a contract "left over from the old regime" (that of the former stockholders of the United States Broadcasting Corporation) and that under this old contract the program had 4 weeks to run, but that he only allowed one broadcast under his management, for which he was not paid. Kronenberg stated, however, that at no time did he advertise his availability for performing marriage ceremonies in connection with this particular program.

Kronenberg further testified that he maintains a marriage ceremonial chamber at his residence in which he performs weddings for members of the Jewish faith and that for a few months some years previous to the hearing he made individual announcements concerning his availability to perform marriages at this place; but that another rabbi had called his attention to the fact that a broadcast of this character was not entirely ethical and he voluntarily stopped it entirely. It cannot be determined from the record whether these announcements, admittedly unethical, were objectionable in character or whether the station received any remuneration therefor.

On the evening of September 26, 1934, between 7:30 and 8 p. m., Station WARD was off the air due to some technical difficulties. At this time the station was broadcasting by remote control a program sponsored by one Mogelewski, who conducted a wholesale and retail clothing business known as the World Clothing Exchange. Mogelewski testified in substance that he was billed by the management of WARD for this program a few days subsequent to the incident; that he paid for it in full and that at a later date he discovered through certain customers that the program had not been broadcast. He also stated that he called the matter to the attention of Rabbi Kronenberg on the telephone and that the latter refused to discuss the matter. The testimony of Mogelewski was somewhat confusing and in some respects self-contradictory, and is not considered convincing in view of the following facts which were reasonably established by the evidence:

On September 26, 1934, Stations WARD, WLTH, and WVFW were temporarily using jointly the studios of WARD and were associated together under a corporation known as "The Broadcasters of Brooklyn, Inc.," to which these stations had applications pending for

authority to assign their licenses. Pending action upon these applications (which were denied by the Commission after the 1934 hearing and were subsequently withdrawn) for a period of 5 or 6 months (July to December 1934) the three stations used the one common studio. They maintained separate operating staffs, operated from separate transmitters, announced their programs under separate call letters, and otherwise preserved their separate identities. Under a time-sharing arrangement, which was in effect on September 26, 1934, WVFW was authorized to broadcast from 6 to 7:30 p. m. and WARD from 7:30 to 9 p. m. Some weeks prior to September 26, Stations WARD and WLTH entered into an arrangement whereby WARD agreed to broadcast over its transmitter programs for the benefit of WVFW for the period 7:30 to 8 p. m. and in turn WVFW agreed to broadcast the program of WARD over its transmitter for the period 7 to 7:30 p. m. This arrangement continued until about the middle of November 1934.

During the period from 7:30 to 8 p. m., although the World Clothing Exchange program was broadcast over the transmitter of Station WARD, said program appears to have been an account of Station WVFW. One Callahan, who was employed at that time as chief announcer for WVFW and who actually announced the program in question at the studios of the World Clothing Exchange, testified he knew at the time of the 22-minute suspension that it was taking place and that Mogelewski and other persons associated with the program were aware that it was not being broadcast.

A similar charge was made by Mogelewski with respect to certain other programs during the same half-hour period which he alleged were not broadcast in November 1934, and for which he claimed that payments were made.

Mogelewski stated in this connection that he continued to put on his program at the usual time between 7:30 and 8 p. m. and had no knowledge until some weeks later (after payments had been made therefor) that on several occasions his program had not been broadcast and that a "fish" program had been heard instead.

These statements were to some extent refuted by one Sanford Major, who testified that he was then in the employ of Station WVFW and was instructed by that station to go to the studios of the World Clothing Exchange on November 14, 1934, for the purpose of taking charge of the technical operation of the remote control broadcast. He stated that he arrived at the studios at 6:30 p. m. and informed Reuben Goldberg, an announcer in the employ of Mogelewski, that the program of the World Clothing Exchange must be broadcast between 7 and 7:30 p. m. Goldberg then telephoned Oscar Kronen-

berg (son of the Rabbi) on this matter. The witness further stated that despite these instructions, the management of the World Clothing Exchange refused to put on the program until 7:30, although both Goldberg and Mogelewski were aware of the fact that the performance which they gave beginning at 7:30 was not being broadcast and that said performance was continued "as a sort of farce" for the benefit of persons sitting outside the studio.

Moreover, on November 8, 1934, the management of Station WARD had already notified WVFW by letter that it would not continue to broadcast the programs of the World Clothing Exchange between 7:30 and 8 p. m. and was preparing to resume, beginning November 14, 1934, the use of this period for the broadcasting of its own programs. (Prior to this date Station WARD had contracted with a local fish dealers' association to broadcast its program during said period). On November 14, 1934, the date on which the first of the fish dealers' programs was broadcast, WVFW acknowledged the notice, but requested an opportunity to arrange with Mogelewski for some other time for his program.

Mogelewski was requested by Commission counsel to produce cancelled checks to corroborate his statement that he had paid Station WARD for the programs of the World Clothing Exchange which he thought were broadcast on September 26, 1934, and during the month of November 1934. This he was unable to do. He was billed for these programs on the stationery of Broadcasters of Brooklyn, Inc., and at the bottom of each of these bills appears the statement "Kindly make check payable to WVFW."

Due to this conflict in the testimony, the exact circumstances surrounding the broadcasting of the above programs of the World Clothing Exchange cannot be definitely determined but the evidence does not establish that Mogelewski was billed by Station WARD (as distinguished from Station WVFW) for those broadcasts or that in fact he paid that station therefor. In view of the fact that these programs were scheduled to be broadcast over WARD, there is some doubt as to whether the manager of that station acted in an entirely ethical manner in connection with these broadcasts, as it was clearly his responsibility to see that the sponsor was directly and promptly advised of the fact that the programs were not being broadcast on those occasions and of the reasons why they could not be. This apparently was not done.

On or about May 3, 1934, one Walter J. Howell, an inspector for the Federal Radio Commission, visited Station WARD for the purpose of inspecting the transmitting equipment. Upon that occasion Rabbi Kronenberg showed the inspector certain new equipment which

had been purchased; discussed various plans for the improvement of the studios and asked and received certain advice from the inspector with respect to the proposed changes and improvements. Rabbi Kronenberg escorted the inspector to his private office in order to show him certain spare parts which had been purchased. When the inspector was about to leave for his luncheon he shook hands with the Rabbi. According to Kronenberg's version of the incident, he stated that it was too early for his own luncheon and that there was no "kosher" place in the vicinity; that he took a dollar or two and said to the inspector, "Go down and have lunch at my expense;" that the inspector shoved the Rabbi's hand away, and the latter then said in Jewish, "Don't be silly."

According to the testimony of Walter J. Howell (1934 hearing), no conversation led up to this incident and when he clasped the Rabbi's hand he felt what he assumed to be a bill, a transfer, or a cigar coupon. Only the sense of touch led the inspector to believe that the article was a bill or something of value. The inspector never saw what the article was. He stated that he told the Rabbi that he could not accept anything of that nature, and when he pushed the Rabbi's hand away, the latter then became angry and spoke some words, partly in English and partly in Jewish.

The inspector stated that he had not found anything wrong with the station equipment, but had previously informed the Rabbi that the station would be cited for a minor violation of the rules. Apart from this matter, the inspector stated that he could give no reason as to why the Rabbi should offer him anything of value. According to the testimony of Rabbi Kronenberg, the station was later cited for failure to make a proper entry in the transmitter log.

The Commission does not consider that there is sufficient evidence to support a finding that Kronenberg attempted to bribe the Commission's inspector at this meeting.

IN RE BROOKLYN BROADCASTING CORPORATION, STATION WBBC (DOCKET NO. 1882)

The Brooklyn Broadcasting Corporation was organized under the laws of the State of New York and is authorized to issue 750 shares of capital stock of the par value of $100 a share. Two hundred and ninety shares of this stock have been issued, all of which are owned by Peter J. Testen, president of the corporation. The officers, directors and stockholders are citizens of the United States.

According to a balance sheet submitted in evidence, as of December 31, 1936, the Brooklyn Broadcasting Corporation had a net worth of $28,766.08. Current assets consisted of $1,804.19 in cash and

$3,133.67 in accounts receivable. Testimony adduced at the hearing discloses, however, that on March 16, 1937, WBBC had cash in bank in the sum of $4,955.90. The evidence is not clear as to whether the additional cash as of that date was derived from a corresponding reduction in accounts receivable. Among the assets listed was the sum of $8,000 which represented the amount spent or to be paid for legal fees in connection with the instant proceeding. As of the date of the hearing, approximately $6,000 of this had been paid out and the $2,000 additional was included in accounts payable. The accountant who prepared the statement testified that it is good accounting practice to list such an item as an asset and that his theory was corroborated by the United States Treasury Department on former income tax reports of this station. This item was challenged by other parties to the proceedings. Among the fixed assets is listed the sum of $36,531.33 which represented a valuation of radio and studio equipment. Of this item, according to the testimony, $19,000 represented the cost of equipment less depreciation since March 1, 1932. The equipment has been depreciated at the rate of 10 percent per annum. The accountant did not know whether the $19,000 was based upon the original cost or simply an arbitrary figure. This sum was set up on the books by the bookkeeper who was predecessor to this witness. At no time was an attempt made to take an inventory of the equipment. The difference between the sum of $19,000 and $36,531.33 represents the cost of equipment actually purchased since 1932. Among the liabilities listed are notes and accounts payable, sums due Peter J. Testen and unemployment insurance payable, totaling $9,745.93.

A profit and loss statement of the Brooklyn Broadcasting Corporation for the year ending December 31, 1936, shows a net loss in broadcasting operation during that period of $2,459.97.

The antenna used by WBBC at the time of the hearing was of the inverted "L" type. An engineering witness who testified on behalf of that station admitted that he did not consider this antenna efficient, based upon current standards. (Peter J. Testen, Jr., admitted in his testimony that the WLTH antenna was vertical and higher than that of WBBC.) The transmitting equipment in use by WBBC at the time of the hearing was of a composite structure. The above engineering witness also stated that such equipment in his opinion was sufficient "for the purposes at hand" but would have to be improved to meet the standards of modern transmitters. It was shown, however, this licensee has spent substantial sums since 1934 in improvements which were made to the studio and transmitting equipment. At the time of the hearing the studios were shown to be modern and well equipped.

During the period from January 1, 1936, to February 28, 1937, approximately 33 percent of all programs broadcast by Station WBBC were in foreign languages interspersed with English announcements. In this connection the commercial manager of the station estimated that at least 70 percent of the station's gross income was derived from foreign language programs and that one-half of this 70 percent was received from Jewish commercial programs. The program director testified that about 60 percent of all foreign language programs broadcast were commercial in character. At the time of the hearing no Italian or Spanish programs were being broadcast and those in the Polish and Hungarian languages were not of a commercial character.

A program schedule for a typical spring week reveals that 27¼ percent of all programs broadcast were commercial and the remaining were sustaining. The program director of Station WBBC testified that the great majority of the station's sustaining and public service programs are broadcast in the English language. Although Station WBBC broadcasts a program in English entitled "The Elementary School of the Air" under the auspices of the Federal Works Progress Administration and the local board of education for the purpose of teaching English to the foreign-born listeners and to acquaint them with American ideals and institutions, at the time of the 1937 hearing no Americanization programs were broadcast by this station in foreign languages.

Station WBBC retains five or six different persons to prepare and broadcast programs in German, Syrian, Jewish, and other foreign languages. The same individuals procure the sponsors for these programs. The program director stated that these persons are not employed on a salary basis which strongly implies that they receive commissions on the accounts obtained. The program director also admitted that he had no personal knowledge of any foreign language except German. At one point he stated unequivocally that the continuities of the foreign language programs are not subject to supervision of any kind. Later, however, he changed his testimony on this subject and stated that the translations of the foreign language programs, which are commercial in character, are submitted to him in advance of their broadcast and that he examined the English version of these continuities. In this connection he also stated that the persons who procure and broadcast the programs also make the translations. The qualifications of these individuals to make accurate translations were not shown.

Although it is not clear from the evidence what degree of supervision or control is exercised over foreign language programs by responsible representatives of the licensee corporation, the admissions

of the program director strongly indicate that such supervision is extremely lax in character. In any event the program director is obliged to rely upon the translations which are furnished him by persons who have a definite financial interest in obtaining these programs but who in no way share the responsibilities of the licensee to the public. As heretofore shown, Stations WLTH and WARD also employ the same methods in broadcasting foreign language programs.

Station WBBC has, in the past, broadcast a number of educational, civic, fraternal, religious, governmental, and other public service programs without charge. A number of additional organizations of this character have accepted invitations to use the facilities of this station in the future.

The program director stated that he was not familiar with the programs broadcast by the other time-sharing stations and admitted that as far as he knew the program service of Station WBBC is neither superior to nor different from that of these stations.

Station WBBC has in the past conducted a program relative to an organization known as "The Brooklyn School of the Air." This school was established in the same building as the studios of Station WBBC and was conducted for the purpose of teaching children singing and dancing. The school paid rental to Station WBBC for its use of the premises. The parents paid for the lessons taught the children and for the privilege of hearing them broadcast over Station WBBC. This was listed as a commercial program. The amount of money actually paid to the licensee for these broadcasts was not shown. One of the officers of "The Brooklyn School of the Air" was a Miss Smith who had formerly been the program directoress of Station WBBC. This school program was discontinued about a month prior to the 1937 hearing. A witness for Station WBBC also admitted that in the year 1934 this station operated a similar school which was also conducted by Miss Smith, and that the first school was considered a property of the licensee. It appears that "The Brooklyn School of the Air," a separate organization, was a successor to the former school.

Although there is no definite evidence in the record that the contents of these particular programs were objectionable, the Commission believes that the broadcasting of such programs in conjunction with a school, from which the station receives financial benefits, is a practice which lends itself to abuse.

Station WBBC has broadcast a number of programs advertising proprietary medicines and tonics, such as Carter's Little Liver Pills, a mineral water known as "Katylesine," St. Joseph's Aspirin and Penetro.

COMPARISON OF THE SERVICES OF STATIONS WARD, WLTH, AND WBBC

(A) FINANCES

As shown above WBBC claimed as an asset the sum of $8,000 for prepaid legal expenses. It is questionable whether or not it was proper to claim this item as an asset. The other two stations did not attempt to capitalize their legal expenses. A comparison of the financial statements submitted by the three stations revealed that at the time of the hearing the net worth of WBBC was $28,766.08, or approximately $8,500 less than that of Station WLTH. If the sum of $8,000 be eliminated as an asset, the net worth of WLTH is far greater than that of WBBC. The net worth of WARD ($31,342.32) is somewhat higher than that of Station WBBC. During the period of a year prior to the hearing WBBC operated at a substantial loss whereas during a 6-month period preceding the hearing, Station WARD operated at a substantial profit.

When all of the above facts are taken into consideration, it is apparent that WBBC did not show any superior financial qualifications to those of WARD and WLTH and that, in fact, it is in a weaker financial position than the other two stations.

Each of the three licensees presented some evidence in support of its financial qualifications which was not of a satisfactory character; i. e., the valuations placed on the equipment of the stations were speculative and unscientific in view of the fact that the original purchase prices were not shown; no inventory had been taken of the equipment; and the rates of depreciation were low in two cases (WLTH and WBBC) and were not definitely shown in the third (WARD).

(B) PROGRAMS

A comparison of the program services of the three stations reveals that they were all of substantially the same character; all devoted approximately the same proportions of their broadcasting hours to sustaining programs, and all have apparently cooperated with civic, religious, governmental, charitable, and similar institutions. Stations WBBC and WARD each devote approximately the same proportions of their time to foreign language programs, most of which are highly commercialized. While it is true that Station WLTH devotes a greater portion of its time to foreign language broadcasts, this is counterbalanced by the fact that WLTH apparently broadcasts sustaining and public service programs in these languages to a somewhat greater extent than WARD and to a degree which is at least comparable to that of WBBC. WBBC made no showing that it has

or will be able to render a program service which is materially superior to that of WARD and WLTH.

As above shown all of the three time-sharing stations devote substantial portions of their allotted hours to the broadcasting of programs in foreign languages, many of which are commercialized. Because of the large groups of persons of foreign extraction residing in Brooklyn, each of the applicants herein contended that a definite need exists for programs of this character. In support of these contentions the 1930 United States Census population statistics were presented to show that out of a total population in Brooklyn of 2,500,000 persons, 878,770 were foreign-born whites and 1,126,952 native-born whites in Brooklyn were of foreign or mixed parentage.

The Commission is of the opinion that because of the fact that the population of Brooklyn contains such a large number of persons of foreign extraction, many of whom apparently do not understand the English language, that a definite need does exist for programs in foreign languages. Moreover, as above indicated, the program service of each of the above stations includes a number of such programs which appear to be meritorious in character. However, it is extremely doubtful whether the methods employed by these stations in broadcasting these programs are in the public interest. Most of these foreign programs are prepared and conducted by persons usually employed by the stations on a commission basis, who also secure the advertising for such programs and deduct their remuneration from the revenues produced thereby. The same individuals make the translations which are turned over to the station management. The qualifications of these persons to make accurate translations were not established. As the station managers and program directors are not personally familiar with most of the foreign languages broadcast, they necessarily must rely upon these translations and cannot, therefore, have absolute assurance as to the exact nature of the contents of the programs. Under these circumstances it does not appear that responsible representatives of the licensee corporations exercise complete supervision or control of the foreign language programs which are broadcast. Moreover, as the individuals who procure, broadcast, and translate these programs have a definite financial interest therein, and conduct them largely on their own responsibility, it is conceivable that such persons might be tempted to broadcast advertising matter which, although lucrative, may not be of high quality and which might possibly be detrimental to the welfare of the listening public. There is no evidence of record, however, that such results have followed or that complaints have been received by the stations with respect to these programs from members of the public.

(C) TECHNICAL QUALIFICATIONS

From a comparison of the equipment, studios, and personnel employed by the three stations there is no evidence to show that Station WBBC was better qualified technically than either of the other two stations. In fact, the antenna which was employed by WBBC at the time of the 1937 hearing was of an obsolete design and admittedly was not as efficient as the one which was then used by Station WLTH. All three of the licensees have made certain improvements in their studios and equipment from time to time and all were shown to be technically qualified to continue the operation of their respective stations.

CONCLUSIONS

For the reasons herein set forth, none of the stations involved in this proceeding has rendered a service which could be deemed highly meritorious. The service rendered by each of the stations has been of the same general character and quality, and there is nothing in the record to show that WBBC is qualified to render a superior service to that of either WLTH or WARD. Because of the fact that WBBC has failed to show that it is qualified to render a more efficient service than has heretofore been rendered by WLTH and WARD, the Commission, upon further consideration of this record, is impelled to reverse its former action (order of June 29, 1937), granting to WBBC the facilities of WARD and WLTH and, accordingly, the application of WBBC for such facilities must be denied.

The history of these proceedings reveals that beginning in 1932 none of the four time-sharing stations operating on 1400 kilocycles was satisfied with its allotted operating time. This is evidenced by the applications filed by the licensees seeking the time of one or more of the other stations or the assignment of facilities to a single assignee. As a result of these applications the various licensees became involved in a series of controversies and conflicting contentions before the Commission, extending over a number of years.

The Brooklyn area is served by a large number of competing stations. The four stations sharing time on the frequency 1400 kilocycles are not only in competition with other stations operating in the Brooklyn area but, due to the fact that they are separately owned, managed and controlled, they must also compete with each other. Competition, under such circumstances, is necessarily severe and operates as a definite handicap to each station in rendering an efficient service to the public. Moreover, as evidenced by these proceedings, due to this competitive situation and the divergence of

ownership and interest in the different licensee corporations, conflicts and antagonisms arose between the licensees, and it is apparent that these conflicts and resulting litigation before this Commission have also been somewhat detrimental to the licensees of these stations in rendering an efficient service. Under such circumstances it is impossible to build a program service sufficiently balanced and continuous to meet the highest standards of efficiency in service to the listening public.

It is the opinion of the Commission that a single station operating full time and under one management, would be in a much stronger position to meet the competition of other stations operating in the Brooklyn area, and would be better qualified to render a far more efficient service than has heretofore been available from the four time-sharing stations. A decided improvement is needed in the character of the broadcast service rendered the Brooklyn, N. Y., area through the use of the frequency 1400 kilocycles. The Commission, of course, will entertain any feasible proposal for the consolidation of the four present licensee corporations into a new organization to operate one station under a single management and control for the purpose of supplanting the four existing stations. In this connection, however, such new corporation or other organization must be prepared to demonstrate to the satisfaction of the Commission that the management selected will consist of persons who are highly responsible and fully qualified to operate the new station.

The Commission will grant the pending applications of the Voice of Brooklyn, Inc. (WLTH), and the United States Broadcasting Corporation (WARD) for renewal of licenses, and thus place them in the same status as the Brooklyn Broadcasting Corporation (WBBC) and the Paramount Broadcasting Corporation (WVFW) insofar as concerns the 1937 hearing and related proceedings.

In order to facilitate the carrying out of the North American Broadcasting Agreement the Commission has from time to time, through its orders, extended the licenses of standard broadcast stations expiring in the year 1940. Normally, the licenses of Stations WVFW and WBBC would have expired August 1, 1940. Under the Commission's order of June 11, 1940, all licenses expiring August 1, 1940, were extended to October 1, 1940, and on September 11, 1940, were further extended to March 29, 1941.

It is to be understood that the action herein taken is without prejudice to the Commission's right to review the entire situation at a future date and institute further proceedings for the purpose of determining whether or not the continued operation of these stations on the present time-sharing basis will serve public interest, convenience and necessity.

GROUNDS FOR DECISION

1. The broadcasting service rendered the public by Stations WLTH and WARD has been of the same general character and quality as the service rendered by Station WBBC and there is, in fact, no substantial distinction in the merits of the services of these three stations.

2. The licensees of Stations WLTH and WARD are qualified legally, technically, financially, and otherwise to operate their respective stations on the limited basis of a time-sharing station.

3. The granting of the application of the Brooklyn Broadcasting Corporation (Docket No. 1882) for modification of license insofar as said application requests authority to operate during the hours used by the Voice of Brooklyn, Inc., and the hours used by the United States Broadcasting Corporation would not serve public interest, convenience and necessity.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of AMARILLO BROADCASTING CORPORATION (KFDA), AMARILLO, TEX. For Modification of License.	File No. B3–ML–1013

Decided October 22, 1940

DECISION AND ORDER ON PETITION FOR REHEARING

This is a petition for rehearing filed by Southland Industries, Inc., owner and licensee of radio station WOAI, San Antonio, Tex. Station WOAI is assigned the use of the frequency 1190 kilocycles with a power output of 50 kilowatts, unlimited time. The petition for rehearing is directed against the action of the Commission, September 4, 1940, granting without hearing the application of Amarillo Broadcasting Corporation (KFDA), Amarillo, Tex., for modification of license to change frequency from 1500 kilocycles to 1200 kilocycles with a power output of 250 watts, unlimited time.

The petition alleges that Station WOAI is a class I station "which the Commission, by its Standards of Good Engineering Practice, recognizes as being assigned on the basis of rendering secondary and intermittent service over large areas outside of the primary service areas;" that WOAI renders secondary service in the vicinity of Amarillo, Tex., and that many persons residing there regularly receive radio service from WOAI; that the operation of Station KFDA on the frequency 1200 kilocycles will destroy petitioner's service in the Amarillo area; that such interference to WOAI's service will extend over an area of about 1,965 square miles or over a radius of 25 miles from Station KFDA; that WOAI's service has not heretofore been subject to interference in Tex. from the operation of stations on 1200 kilocycles. Petitioner requests the Commission to reconsider its action granting the application of Amarillo Broadcasting Corporation (KFDA) and upon such reconsideration, vacate its order and designate the application for hearing. Petitioner "offers to produce testimony showing the extent and character of the interference to the

service rendered by Station WOAI in the Amarillo area occasioned by the grant of the (KFDA) application."

The opposition filed October 7, 1940, by Amarillo Broadcasting Corporation (KFDA) to the petition for rehearing makes reference to the Commission's Standards of Good Engineering Practice and separation tables insofar as they refer to the primary service area of stations such as WOAI. Since petitioner does not allege interference to its primary service area, the opposition is not responsive to the petition.

On October 8, 1940, Southland Industries, Inc., filed an answer to the opposition filed by Amarillo Broadcasting Corporation to the petition for rehearing.

Under the rules of the Commission governing allocation of facilities for broadcasting stations, Station WOAI, San Antonio, Tex., (1190 kilocycles—50 kilowatts power—unlimited time) is a class I station. KFDA, Amarillo, Tex. (1200 kilocycles—250 watts power—unlimited time) is a class IV station. Section 3.22 (a) of our rules provides that a class I station is a dominant station operating on a clear channel and designated to render a primary and secondary service over an extended area at relatively long distances. "Its primary service area is free from objectionable interference from other stations on the same and adjacent channels, and its secondary service area free from interference, except from stations on the adjacent channel, and from stations on the same channel in accordance with the channel designation in section 3.25 or in accordance with the 'Engineering Standards of Allocation'." Section 3.22 (d) provides that a class IV station is a station operating on a local channel designated to render service primarily to a city or town and the suburban and rural areas contiguous thereto. The power of a station of this class shall be not less than 100 watts nor more than 250 watts and its service area is subject to interference in accordance with the "Engineering Standards of Allocation."

The Standards of Good Engineering Practice of the Commission indicate that class I stations are designed to render primary and secondary service over an extended area and at relatively long distances. Hence their primary service areas are free from objectionable interference from other stations on the same and adjacent channels, and their secondary service areas are free from objectionable interference from stations on the same channels. On adjacent channels, however, the secondary service area of a class I station is not protected. Our standards provide further, in case of placing a station on an adjacent channel (10 kilocycles removed) to a class I station which, as here, would substitute a primary service for the secondary service, the matter of the program service as well as the

signal service of the two stations should be given consideration. "That is, at the 0.5 millivolt-per-meter 50-percent sky-wave contour of a class I station purely for the determination of comparative service, the area bound by 1 millivolt-per-meter contour of a class IV station 10 kilocycles removed may be taken as the area within which the secondary service of the class I station is precluded. For higher values of 50-percent sky signal from a class I station the ratio of the ground-wave to sky-wave shall be 2 to 1 and considered only within the 0.5 millivolt-per-meter 50-percent sky-wave contour of the class I station."

Station KFDA at Amarillo, Tex., is approximately 450 miles from Station WOAI, San Antonio, Tex. The required separation in miles between two broadcast stations such as WOAI and KFDA operating on adjacent channels (10 kilocycles removed) to avoid objectionable interference to the primary service of each is 205 miles. Upon the effective date of the North American Regional Broadcasting Agreement, March 29, 1941, it is proposed that KFDA will operate on the frequency 1230 kilocycles and WOAI will operate on the frequency 1210 kilocycles which will give these stations a 20-kilocycle separation.

No question of interference to the primary service of Station WOAI is involved in this proceeding. The sole question raised by the petition for rehearing relates to the secondary service area of Station WOAI while it is operating on the frequency 1190 kilocycles and KFDA is operating on the frequency 1200 kilocycles. It is alleged that this secondary service area of WOAI will be interfered with over an area of 1,965 square miles, or over a radius of 25 miles from Station KFDA. No engineering data supported either by actual measurements, or predictions or calculations based upon generally accepted standards of good engineering practice as to either the extent of the secondary service area of Station WOAI or the interference which Station WOAI alleges it will receive from the proposed operation of the Amarillo station, is set forth in the petition.

Even in the absence of any supporting data to show the basis for petitioner's conclusions, and of any actual measurements of the field intensities of the signals of both WOAI and KFDA, these may be calculated with substantial accuracy under the Engineering Standards of Allocation and Standards of Good Engineering Practice. Using these data, the signal of WOAI at the location of Station KFDA is calculated to be 0.94 millivolt per meter. Since KFDA is within the 0.5 millivolt-per-meter 50-percent sky-wave contour of Station WOAI, the value of the ground wave signal of Station KFDA which will interfere with the sky-wave service of Station WOAI (based on the 2 to 1 ratio, provided for by our Standards of Good Engineering Prac-

tice) is 1.88 millivolts per meter. This contour is calculated to lie at a distance of 18½ miles from the transmitter of Station KFDA encompassing an area of about 1,075 square miles, including a population of 51,356 persons. Of this number, the people residing within the city of Amarillo and those residing within the town of Canyon, Tex., did not receive service from Station WOAI, San Antonio, Tex., because the signal laid down in those areas by Station WOAI was not serviceable. According to the 1930 (U. S.) Census, Amarillo had a population of 43,132 and Canyon had a population of 2,821. Hence, only about 5,403 persons who received secondary service from Station WOAI prior to the operation of Station KFDA on the frequency 1200 kilocycles will be deprived of that service by KFDA's change in frequency.

Operating on the frequency 1500 kilocycles with 250 watts power, Station KFDA serves, within its 4 millivolt-per-meter (night) contour of about 320 square miles, a population of about 45,237, and within its 0.5 millivolt-per-meter (day) contour of about 2,827 square miles, a population of 55,624. Operating as proposed on the frequency 1200 kilocycles KFDA would serve, within its 4 millivolt-per-meter (night) contour of about 408 square miles, a population of about 45,682 and within its 0.5 millivolt-per-meter (day) contour of about 4,300 square miles, a population of about 62,927.

Besides KFDA there is one other station located in Amarillo, Tex., namely, KGNC, which operates on the frequency 1410 kilocycles with a power output of 1 kilowatt night and 2½ kilowatts local sunset, unlimited time. Station KPDN, Pampa, Tex., 54 miles from Amarillo, serves a small part of the rural area during the daytime and Station KWFT, Wichita Falls, Tex., 210 miles from Amarillo, serves part of the rural area towards Wichita Falls, daytime only. This is all the primary service received in this area. Station KFDA operates 536 hours per month, 252 hours of which are devoted to programs of the Mutual Broadcasting System and the Texas State Network. Station KGNC operates 537½ hours, 251 hours of which are devoted to programs of the National Broadcasting Co., and the Texas State Network. Station KPDN, Pampa, Tex., is not affiliated with any chain. Station KWFT, Wichita Falls, Tex., uses the programs of the Columbia Broadcasting System, Inc.

Station WOAI, San Antonio, Tex., is an affiliate of the National Broadcasting Co. (Red Network) and the Texas Quality Network and devotes about 375 hours out of 527 hours per month to the transmission of network programs. The programs of the National Broadcasting Co. (Red Network) are also received in the area with a signal of about the same intensity as that of Station WOAI from Station KOA, Den-

ver, Colo., which devotes about 354 hours out of a total of 551 hours per month to network programs, and with slightly less intensity from Station WHO, Des Moines, Iowa, which transmits network programs about 255 hours out of a total of 537 hours per month.

To sum up therefore, it appears that the proposed operation of Station KFDA will result in the extension of the primary service of Station KFDA at night to a population of about 455 persons and in the daytime about 7303 persons and the loss to a population of about 5403 persons in the secondary service area of Station WOAI. Most of the population receiving the secondary service of Station WOAI, however, is able to receive the network programs broadcast by Station WOAI from one or two other stations. Furthermore, this situation will exist only until March 29, 1941, when the North American Regional Broadcasting Agreement becomes effective, at which time it is proposed that Stations WOAI and KFDA will operate on frequencies 20 kilocycles apart, thus eliminating even the foregoing interference to the secondary service of WOAI.

Thus, upon a comparison of the benefits and detriments resulting from the grant to KFDA, we think public interest, convenience, and necessity will be served by a grant of the Amarillo application. The petition for rehearing filed by Southland Industries, Inc. (WOAI) raises no valid objections to the granting of the Amarillo application nor does it set forth any allegations of fact which, if established, would require us to set aside our grant of the Amarillo application.

Accordingly, it is ordered this 22d day of October 1940, that the petition for rehearing be, and it is hereby, denied.

8 F. C. C.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of
PORTLAND BROADCASTING SYSTEM, INC.
(WGAN), } FILE No. B1–P–2912
PORTLAND, MAINE.
For Construction Permit.

Decided October 22, 1940

DECISION AND ORDER ON PETITIONS FOR REHEARING

Portland Broadcasting System, Inc., owns and operates Station WGAN located at Portland, Maine, which is licensed to operate on 640 kilocycles, with 500 watts of power, time of operation being limited to local sunset at KFI, Los Angeles, Calif. On July 16, 1940, the Commission granted without hearing the application of WGAN for a construction permit to change its frequency to 560 kilocycles, increase its power to 5 kilowatts and to operate unlimited time, using a directional antenna at night.

Two petitions for rehearing of the grant of the construction permit to WGAN have been filed. One was filed by Community Broadcasting Service, Inc., licensee of Station WABI, Bangor, Maine, which has on file an application to change its frequency from 1200 to 560 kilocycles and to increase its power from 250 watts to 1 kilowatt. The other petition was filed by William H. Rines, who has pending an application for a construction permit to erect a new station in Portland, Maine, to operate on 560 kilocycles, unlimited time, with power of 5 kilowatts daytime and 1 kilowatt nighttime, using a directional antenna at night. The applications of William H. Rines and WGAN are mutually exclusive since both request the same frequency for use in the same city. The applications of WGAN and WABI are likewise mutually exclusive for the interference between the two stations would be prohibitive if both applications were granted.

The petition of WABI was filed on August 5, 1940, and is entitled "Petition for Reconsideration and Hearing." It alleges: On March 21, 1939, WABI filed with the Commission an application for a construction permit to change its frequency from 1200 to 560 kilocycles

and to increase its power from 250 watts to 1 kilowatt, using a directional antenna at night. This application was designated for hearing on June 27, 1939, and a hearing was held before an examiner on October 25, 1939. On November 27, 1939, WABI filed a petition requesting the Commission to issue a final order granting the application in lieu of issuing proposed findings of fact and conclusions. Both the application of WABI and its petition to grant same are still pending before the Commission. The application of WGAN for 560 kilocycles was not filed until June 27, 1940, and was granted without a hearing on July 16, 1940.

The petitioner asserts that there is no apparent reason why its application could not have been granted, and that all the reasons making possible the grant of the WGAN application are equally applicable to the application of WABI. It contends that the grant of the WGAN application was invalid in that it nullified the hearing already held on the WABI application, because in effect it denied such application without a hearing, and for the further reason that the Commission's order was not supported by any basic findings of fact. The petitioner requests the Commission to reconsider its action granting the application of WGAN, grant the WABI application, and then hear and determine the WGAN application.

A short statement of the history of the WABI and WGAN applications will be helpful in considering the problems raised by the petition of WABI. The application of WABI was filed on March 21, 1939. On June 27, 1939, it was designated for hearing because, *inter alia*, the proposed operation of WABI involved questions of possible interference to existing and proposed stations, and also because, as developed at the hearing, it involved a question of the proper allocation of the frequency 560 kilocycles under the terms of the North American Regional Broadcasting Agreement. The hearing was held on October 25 and 26, 1939. No further action has been taken by the Commission on the application.

WGAN's application was filed on June 27, 1940. Prior to that time, however, WGAN had filed on August 29, 1939, an application for modification of its existing license so as to permit unlimited time of operation on 640 kilocycles. On September 28, 1939, the Commission received a communication from the Department of Posts and Telegraphs of Newfoundland with respect to this application. The communication pointed out that WGAN's frequency, 640 kilocycles, is assigned by the North American Regional Broadcasting Agreement to Newfoundland for a class II station; that Station VONF operates on this frequency with 10 kilowatts power; and that since other means of communication in Newfoundland are slow and infrequent, a good

part of the population depends on secondary service from VONF to receive local news, information about government decrees, and weather and other reports of vital interest to the population. It was further pointed out that WGAN, as then operated, caused severe interference to VONF, particularly to its secondary service area and that the grant of the WGAN application for unlimited time would increase such interference. It was suggested that if the Commission would not assign 640 kilocycles to WGAN, or to any other station on the eastern seaboard of the United States which would be likely to cause interference to VONF's secondary service area, Newfoundland would be willing to relinquish to the United States the frequency, 560 kilocycles, also assigned to Newfoundland by the North American Regional Broadcasting Agreement for a class II station.

This proposal appeared satisfactory in substance to the Commission and it was referred to the State Department for the purpose of negotiating an agreement with Newfoundland. Pending further advice with respect to the matter the Commission took no action on the applications of WABI or WGAN. On June 20, 1940, the Commission was advised that Newfoundland was prepared to relinquish all claims to the frequency, 560 kilocycles, in favor of the United States, if the United States would not assign 640 kilocycles to WGAN or to any other station in the United States, the operation of which would cause objectionable interference to the secondary service area of Station VONF.

On June 27, 1940, WGAN filed the application involved in this proceeding and on June 29, 1940, requested the Commission to return its earlier application without further action. Thus, upon removal of the reason for deferring action on the WGAN and WABI applications, the Commission had before it for consideration not one but two applications for the use of 560 kilocycles. Only one of these applications could be granted since they involved mutually prohibitive interference.

The Commission was able to determine from an examination of the applications and the information available to it that both applicants were legally, technically, and financially qualified to operate the stations as proposed in their applications. It also appeared that with the relinquishment by Newfoundland of all claims to 560 kilocycles, the grant of either application, if it alone were on file, would serve public interest, convenience, or necessity. The question, therefore, presented was whether public interest, convenience, or necessity would be better served by a grant of the WGAN application or that of WABI, and whether a fairer, more efficient, and more equitable distribution of radio facilities within the meaning of section 307 (b)

would be achieved by the allocation of the facilities requested to Portland (WGAN) or to Bangor (WABI).

From data furnished by the applicants or in possession of the Commission, it appeared that with WABI operating on its present assignment (1200 kilocycles, unlimited time with 250 watts of power), it is able to serve about 67,583 persons within its 0.5 millivolt-per-meter daytime contour and about 41,226 persons in its 4.0 millivolt-per-meter nighttime contour. These are the primary service areas for this station prescribed by the Commission's Standards of Good Engineering Practice. If its application for a construction permit should be granted, WABI could serve about 152,000 persons within its 0.5 millivolt-per-meter daytime contour and about 61,000 persons within its nighttime interference-free service area.[1] The grant would thus result in an increase of approximately 84,417 listeners in the daytime service area of WABI, and about 19,774 persons in its nighttime interference-free area.

With respect to WGAN, the data showed that the granting of its application would result in an increase from about 225,308 persons now receiving service within its 0.5 millivolt-per-meter contour to about 422,726, a net gain of approximately 197,418. The number of persons who would be within the interference-free nighttime service area of WGAN[2] is about 115,796, all of which represents a net gain since WGAN's present time of operation is limited to local sunset at Los Angeles. Although the grant of the WABI application would result in an increase of daytime service to about 84,417 listeners and of nighttime service to approximately 19,774 persons, the grant of the WGAN application means a gain of about 197,418 daytime listeners and about 115,796 nighttime listeners. A much larger number of persons is thus assured service by a grant of the WGAN application than that of WABI.

Furthermore, it appears that Portland has a greater need for the radio service requested than does Bangor. The population of Bangor, according to the 1930 Census, is 28,749, while that of Portland is 70,810, and that of South Portland is 13,840. Bangor already receives both day and night service from two stations located in Bangor, WABI and WLBZ. WABI operates on 1200 kilocycles with 250 watts power, and WLBZ operates on 620 kilocycles with power of 1 kilowatt until local sunset and 500 watts at night. On the other hand, Portland, Maine's largest city, receives both day and night service from only one station located in Portland, WCSH, which operates on 940 kilocycles and holds a construction permit to

[1] Because of interference which WABI would receive from other stations, this service area would be its 6.0 millivolt-per-meter contour.

[2] This service area would likewise be the 6.0 millivolt-per-meter contour.

use 5 kilowatts power . WGAN does not render a full nighttime service as it operates only until local sunset at Los Angeles.[3]

Because the grant of the WGAN application will result in an extension of service to many more listeners than is possible under a grant of the WABI application, and because there is a greater need for the facilities requested in Portland than in Bangor, the Commission was impelled to grant the WGAN application. The Commission held that public interest, convenience or necessity would be better served by a grant of the WGAN application than that of WABI, and that a fairer, more efficient and more equitable distribution of radio facilities would be achieved by assignment of 560 kilocycles to Portland than to Bangor.

WABI's petition for reconsideration and hearing does not show wherein the Commission's determination is in error. The only statement going to the merits of the Commission's determination is an allegation in the petition that "all the reasons making possible the grant of the Portland application were and are equally applicable to petitioner's application." This allegation, however, is merely a statement of a conclusion with no data set forth to support it. On the contrary, as has already been pointed out above, the data submitted by both WABI and WGAN and those otherwise available to the Commission show that there is no basis in fact for the petitioner's contention.

Petitioner contends, however, that the action of the Commission is illegal because it nullifies the hearing already held on its application, because it, in effect, is a denial of the application of WABI without a hearing, and because the order was not supported by any basic findings of fact.

WABI's first contention is erroneous because it assumes contrary to the holding in *Federal Communications Commission* v. *The Pottsville Broadcasting Co.*, 309 U. S. 134, that the Commission was bound to consider the WABI application on the basis of the evidence produced at the hearing. The Commission set down the application of WABI for hearing on certain issues. After the hearing was held, but before final action was taken on the application, it was found advisable to suspend further proceedings on WABI's application (and that of WGAN) until the negotiations with Newfoundland referred to above, were completed. When they were completed, the Commission had before it not one application for 560 kilocycles but two, only one of which could be granted since they were mutually exclusive. The considerations determining whether the application of WABI should

[3] Both Bangor and Portland receive secondary service at night from numerous distant clear channel stations, and the residential and rural areas of Portland, in addition, receive primary service from WBZ in Boston.

be granted or not were now entirely different from those existing when the hearing on the WABI application was first held, and no useful purpose would be served by considering the WABI application on the basis of the record made at that hearing. The Commission proceeded to do the only logical thing under the circumstances, to consider both applications on a comparative basis. This is precisely the type of procedure which the Supreme Court in the *Pottsville case* held that the Commission had authority to adopt.

It is not true, moreover, as petitioner further contends, that the grant of the WGAN application without a hearing is in effect a denial of the WABI application without a hearing. The application of WABI has not been denied by the Commission and it cannot be denied until WABI has had an opportunity at a hearing to show why the grant of its application rather than that of WGAN would better serve public interest, convenience, or necessity, or would produce a fairer, more efficient, and more equitable distribution of radio facilities within the meaning of section 307 (b). The Commission is in no way precluded by the grant of the WGAN application from later granting that of WABI, if WABI can show at its further hearing that the grant of its application rather than that of WGAN would better serve public interest, convenience, or necessity, or would insure a fairer, more efficient, and more equitable distribution of radio facilities.

There is likewise no merit in petitioner's third contention because it assumes that the Commission must hold a hearing and make basic Findings of Fact before granting an application. There is no provision in the Communications Act which expressly, or by necessary implication, requires the Commission to hold a hearing before granting an application or to issue Findings of Fact to support such grant. On the contrary, section 309 (a) requires the Commission to examine applications and to grant same without a hearing if it can determine from an examination thereof that public interest, convenience, or necessity would be served by a grant thereof.

For the foregoing reasons, the Commission finds that WABI has not set forth any reason in its petition why the grant of WGAN's application should be set aside.

The petition of William H. Rines for hearing or rehearing was filed on July 23, 1940. It alleges that on July 5, 1940 (8 days after the WGAN application was filed), William H. Rines filed an application for a construction permit to erect a new station in Portland to operate on 560 kilocycles, unlimited time, with 5 kilowatts power daytime and 1 kilowatt nighttime, using a directional antenna at night. Rines maintains that the action of the Commission in granting the

WGAN application without a hearing is improper because such action in effect deprives him of a hearing. He contends that any hearing which might be held on his application is a hearing in form only and not in substance. The relief requested is that the Commission should reconsider its action and designate both applications for a joint hearing.

As has already been pointed out above, the grant without hearing of one of two mutually exclusive applications is not a denial of the other application without a hearing. Such application cannot be denied without a hearing and at that hearing the applicant has the same opportunity as he would have at a joint hearing to show to the Commission why public interest, convenience, or necessity would be better served by a grant of his application than by a grant of the one granted. This hearing is not a mere formality as petitioner contends, for if he does make a showing to the Commission that the granting of his application would better serve public interest, convenience, or necessity than the grant of the other, the Commission will grant his application.

In the instant case the Commission was able to determine from an examination of the data submitted in both applications that public interest, convenience, or necessity would be better served by a grant of the WGAN application than that of William H. Rines. In the first place, the data disclose that the coverage of WGAN will be more adequate than that of the station proposed by Rines. The daytime service of WGAN will extend to about 422,726 listeners and its nighttime service to about 115,796. The proposed coverage of Rines' station, however, will be about 346,141 persons daytime and about 107,000 nighttime. Thus, WGAN will be able to serve about 76,585 more listeners in the daytime and about 8,796 more in the nighttime than could Rines' proposed station.

Secondly, while the grant of the WGAN application will not result in any objectionable interference to any existing station, the grant of the Rines application would result in limiting CJKL, Dane, Ontario, also operating on 560 kilocycles, to its 6.1 millivolt-per-meter contour. CJKL is a class III–B station and under the terms of the North American Regional Broadcasting Agreement class III–B stations are protected in their nighttime service to their 4.0 millivolt-per-meter contour. The Rines application cannot be granted without violating this provision.

Thirdly, the equipment proposed by WGAN is satisfactory and meets the technical requirements for such equipment prescribed by the Commission. The frequency monitor which Rines proposes to install, however, is not approved for new station installation.

Fourthly, it appears that the licensee of WGAN is better qualified and has more experience than Rines in the operation of a station in

the public interest. Portland Broadcasting System, Inc., has been the licensee of Station WGAN since its opening on September 26, 1938. The Gannett Publishing Co., which owns a majority interest in the licensee, has held such control since May 23, 1939. William H. Rines, on the other hand, has but recently graduated from college. His only experience in broadcasting has been derived from working during summer vacations in a radio station owned by his family (WCSH) for which he was paid $90 in 1938 and $250 in 1939. This is the only income he has earned by his own efforts in the past four years. He proposes to finance his station by a grant of $100,000 advanced to him by his mother against his ultimate distributive share in the estate of his father.

Finally, competition between the radio stations in Portland will be more active if the WGAN application rather than that of Rines is granted. Rines is one of two equal beneficiaries of the estate of his father (if he survives his mother). This estate owns all but the qualifying share of Station WCSH, Portland; WFEA, Manchester, N. H.; and WRDO, Augusta, Maine. Though Rines proposes to operate his station as an independent venture, it is obvious that competition will be more active and real if the two stations in Portland are owned by independent parties than by persons whose interests are so nearly alike as are those of Rines and the licensee of WCSH.

It is, therefore, ordered this 22d day of October 1940, that the Petition for Reconsideration and Hearing of Community Broadcasting Service, Inc., and the petition for hearing or rehearing of William H. Rines be, and they are hereby, denied.

It is further ordered that the applications of William H. Rines and Community Broadcasting Service, Inc., be, and they are hereby, designated for hearing and further hearing, respectively, on issues to be specified in the Notices of Hearing.

8 F. C. C.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of WCLS, INCORPORATED (WCLS),[1] JOLIET, ILL. For Modification of Construction Permit.	FILE No. B4–MP–824

Decided October 22, 1940

DECISION AND ORDER

The above-entitled application was filed on August 16, 1939, and it requests a modification of construction permit to make certain changes in technical equipment and to increase the operation assignment of Station WCLS, Joliet, Ill., on the frequency 1310 kilocycles from power of 100 watts, specified hours, to 250 watts, unlimited time. The applicant, on September 27, 1940, filed a petition requesting a waiver of section 1.368 of the Commission's rules, and consideration of its application for modification of license (B4–ML–1033), filed on the same date, which requests unlimited time operation with the station's presently authorized power of 100 watts.

Section 1.368 provides, in substance, that while there is one application pending for new or additional facilities the Commission will not consider another application for new or additional facilities involving the same station. Consideration of the application for modification of license (B4–ML–1033) while the application for modification of construction permit (B4–MP–824) is pending would require a waiver of this rule. However, since the applications for modification of license and for modification of construction permit are identical, except for certain changes in technical equipment and operating power sought by the latter, the result desired by the applicant can be accomplished without waiving the provisions of section 1.368 by considering at this time the application for modification of construction permit. We are, therefore, of the opinion that the petition for waiver of rule and the application for modification of

[1] On February 4, 1941, the Commission granted the application of WCLS, Inc., for construction permit to make changes in equipment, change frequency to 1340 kilocycles, and increase power to 250 watts, unlimited time, effective March 29, 1941.

license (B4–ML–1033), filed on the same date by the above applicant, should be dismissed.

The operation of WCLS with 250 watts power, as proposed by its pending application (B4–MP–824), involves problems of electrical interference with the simultaneous operation of existing and proposed stations on the channel, upon which we are not ready to act. However, after considering the application and the documents submitted therewith, we are of the opinion that the granting of the application in part, insofar as it requests unlimited time operation, will serve public interest, convenience, or necessity, and should be granted.

ORDER

It is therefore ordered, this 22d day of October 1940, that the petition requesting a waiver of the provisions of section 1.368 of the Commission's rules and the application for modification of license (B4–ML–1033) filed by WCLS, Inc., be, and the same are hereby, dismissed; and

It is further ordered that the application of WCLS, Inc., for modification of construction permit (B4–MP–824) be, and it is hereby, granted insofar as it requests unlimited time operation, without prejudice to the later consideration of the remainder of the request contained therein; and that the license of Station WCLS be modified accordingly to authorize Station WCLS to operate on its presently assigned frequency with power of 100 watts, unlimited time.

This order shall become effective immediately.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of
WSMK, INC. (WING),
DAYTON, OHIO,
For Construction Permit.

FILE No. B2–P–2761

Decided October 29, 1940

DECISION AND ORDER ON PETITION FOR REHEARING

This is a petition for rehearing filed September 24, 1940, by Plains Broadcasting Co. (KFYO), Lubbock, Tex., requesting the Commission to reconsider its action of September 4, 1940, granting the application filed February 17, 1940, by WSMK, Inc. (WING), Dayton, Ohio, which operates on the frequency 1380 kilocycles, for construction permit to install new equipment, make changes in its directional antenna system, and increase power output from 250 watts night, 500 watts day, to 5 kilowatts, unlimited time, and, upon such reconsideration, to rescind this action and set this application for hearing.

Plains Radio Broadcasting Co. (KFYO), Lubbock, Tex., is licensed to operate on the frequency 1310 kilocycles with 100 watts power night, 250 watts day, unlimited time. Its application (B3–P–2455), which was originally filed July 21, 1939, sought a construction permit to install new transmitter with vertical antenna, change frequency from 1310 kilocycles to 1380 kilocycles and increase power from 100 watts night, 250 watts day, to 500 watts night, 1 kilowatt day. On November 6, 1939, this applicant amended its application so as to request 1 kilowatt unlimited time. On August 29, 1940, the application was again amended to request 5 kilowatts unlimited time using a directional antenna.

Petitioner alleges in its petition for rehearing that the frequency 1380 kilocycles is a regional frequency available for operation with 5 kilowatts both day and night by a class III–A station; that petitioner, in its application as amended August 29, 1940, requested a III–A classification and the maximum operating power; that class III–A stations are normally protected to their 2.5 millivolt-per-meter night contour; that the directional antenna which petitioner proposes

will protect all other stations on the channel to the 2.5 millivolt-per-meter contour; that with Station WING operating as proposed, Station KFYO will be limited to approximately its 2.29 millivolt-per-meter contour; that the RSS limitation will thereby be increased to approximately 3.44 millivolts per meter; that the grant to WING is therefore an obstacle to the grant of petitioner's pending application. Petitioner alleges further that Station WKBH, La Crosse, Wis., has an application pending to install directional antenna, and increase power output to 5 kilowatts on 1380 kilocycles; that Station WKBH proposes in this pending application to radiate approximately 580 millivolts per meter toward Lubbock, which would result in a limitation to KFYO to approximately its 5.86 millivolt-per-meter contour; that Station WALA, Mobile, Ala., has an application pending to install directional antenna and increase power output to 5 kilowatts, unlimited time, on 1380 kilocycles; that WALA proposes to radiate 440 millivolts per meter in the direction of Lubbock and a limitation to KFYO's 4.5 millivolt-per-meter contour would result; that if both of these applications should be granted along with the instant grant to WING, the RSS in the vicinity of Lubbock, Tex., would be to the 7.38 millivolt-per-meter contour; that only the amending of the WKBH and WALA applications to reduce the radiation of those stations in the direction of KFYO to a value of not more than 70 percent of that radiated by Station WING could make the WING grant unobjectionable under those circumstances.

Operating with 250 watts night, 500 watts day, on the frequency 1380 kilocycles, Station WING serves at night within its 6.2 millivolt-per-meter contour,[1] an area of about 163 square miles, including a population of 238,000. During the day it serves to its 0.5 millivolt-per-meter contour, which covers an area of about 3,220 square miles, including a population of about 436,000. Operating as proposed at night, Station WING will serve to its 2.5 millivolt-per-meter contour, encompassing an area of about 1,625 square miles, including a population of 385,000. During the day, within its 0.5 millivolt-per-meter contour, operating as proposed, it will serve an area of approximately 9,500 square miles, including a population of 873,000. In addition to this increase in the number of persons which Station WING will be able to serve operating as proposed, this station will improve the signal to the population which it now serves.

The Dayton metropolitan district (according to the 1930 United States Census, no figures available for 1940) has a population of 251,928 and the city of Dayton, according to the 1940 (preliminary)

[1] This is the contour to which Station WING is limited by reason of interference from other stations on this frequency.

Census, has a population of 211,456.[2] Besides WSMK, Inc., one other Station renders service to the Dayton metropolitan district. This is Station WHIO, Dayton, Ohio, operating on the frequency 1260 kilocycles, with a power output of 1 kilowatt night, 5 kilowatts local sunset, using a directional antenna at night.

A grant of the WSMK, Inc. (WING), application will not result in objectional interference to any existing station.

In view of the foregoing, we were able to find that the grant of the WSMK, Inc. (WING), application would serve public interest, convenience, and necessity and granted the same pursuant to section 309 (a) of the Communications Act of 1934.

Petitioner contends that a grant of the WSMK, Inc. (WING), application, while its application is pending, is an obstacle to the grant of said application because of the limitation (3.44 millivolts per meter) to the operation of Station KFYO from Station WING as authorized by us September 4, 1940. We cannot agree with this contention. In the first place, this RSS limitation (which is not entirely due to the single limitation from Station WING, Stations WKBH and WALA being contributing factors) does not render the applications of WSMK, Inc. (WING), and Plains Broadcasting Co. (KFYO) mutually exclusive. An application for use of a regional frequency (such frequencies are normally assigned for use in metropolitan districts) may be granted where the proposed interference-free service of such station does not extend to its 2.5 millivolt-per-meter contour if, despite the excessive limitation, such station will serve the metropolitan area in which it is located. Although Lubbock, Tex., is not a metropolitan center,[3] the application of Plains Broadcasting Co. (KFYO), Lubbock, Tex., for the use of 1380 kilocycles, a regional frequency, may be granted if we are able to find that the assignment of a regional frequency in an area not a metropolitan center is justified in the circumstances of the particular case. In that event, the fact that the interference-free service of such a station would not extend to its 2.5 millivolt-per-meter contour would not, of itself preclude a grant, if it should appear that a substantial population within the interference-free contour of the station would be served, or that there were other factors which make such a grant in the public interest. In the second place, even if the two applications were mutually exclusive, a denial of petitioner's application would not be implicit in the WSMK, Inc. (WING), grant, since petitioner's application can not be denied until petitioner has been afforded an

[2] 1930 United States census for Dayton, Ohio, was 200,982.

[3] The population of Lubbock, Tex., according to the 1930 United States census, was 20,520. The 1940 United States (preliminary) census shows the population to be 31,588.

opportunity to show that the operation proposed by it would serve public interest, convenience, and necessity, or will better meet the statutory criteria than will the proposed operation of Station WSMK, Inc. (See Decision and Order of August 6, 1940, in re Application of Pittsburgh Radio Supply House, Greensburg, Pa., for construction permit.)

Petitioner alleges no facts which, if established, would require us to set aside the grant of the WSMK, Inc. (WING), application.

Accordingly, it is ordered, this 29th day of October 1940, that the petition for rehearing be, and it is hereby, denied.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of SPOKANE BROADCASTING CORPORATION (KFIO), SPOKANE, WASH. For Construction Permit.	DOCKET No. 5537

September 25, 1940

John B. Brady, Washington, D. C., on behalf of the applicant; *Frank D. Scott*, Washington, D. C., on behalf of Station KMBC; *Ben S. Fisher*, *John W. Kendall*, and *Charles V. Wayland*, Washington, D. C., on behalf of Stations KFWB, KHQ, and KGA; *Paul D. P. Spearman* and *Frank U. Fletcher*, Washington, D. C., on behalf of Station KFPY.

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF THE COMMISSION

FINDINGS OF FACT

1. This proceeding arose upon the application of the Spokane Broadcasting Corporation, licensee of radiobroadcast Station KFIO, Spokane, Wash., for a construction permit. Station KFIO presently operates on the frequency 1120 kilocycles with 100 watts power, daytime only. This application requests authority to operate said station on the frequency 950 kilocycles with power of 1000 watts, unlimited time.

2. This application was filed with the Commission on February 24, 1939, designated for hearing March 27, 1939, and was heard before an examiner duly appointed by the Commission on July 14 and July 15, 1939. Thereafter the case was, by the Commission, remanded for further hearing and was heard on January 8, February 8, and February 10, 1940.

3. Stations KFWB, Hollywood, Calif., and KMBC, Kansas City, Mo., are now authorized to operate with power of 5 kilowatts, unlimited time. Station KFWB, operating with 5 kilowatts power at night, will limit Station CJRM, situated at Regina, Saskatchewan, Canada, to the approximate 1.47 millivolt-per-meter contour; Station KMBC, operating with 5 kilowatts power at night and a direc-

tional antenna, will limit Station CJRM to the approximate 4.9 millivolt-per-meter contour. This interference, computed by the "root-sum-square" method, will limit Station CJRM to the approximate 5.1 millivolt-per-meter contour; and Station KFIO, operating as herein proposed would, during nighttime hours of operation, limit Station CJRM to the approximate 3.3 millivolt-per-meter contour. The root-sum-square of these three interfering signals would place a nighttime limitation on Station CJRM to its approximate 6.0 millivolt-per-meter contour. Interference during daytime hours of operation is not involved in this case.

4. In accordance with the provisions of the North American Regional Broadcasting Agreement entered into December 13, 1937, to which agreement the United States and Canada are parties, stations classified as III–A broadcasting stations are normally entitled to protection to the 2.5 millivolt-per-meter nighttime contour. It appears that Station CJRM is a class III–A station. Consequently, the interference shown above is classified as objectionable.

5. In view of the facts heretofore summarized, it appears unnecessary to set forth any of the facts bearing upon other issues set out in the notice of hearing on the original as well as further hearing on this application.

CONCLUSION

The operation of Station KFIO as herein proposed would cause interference to Station CJRM, Regina, Saskatchewan, within its 2.5 millivolt-per-meter nighttime contour, and, therefore, would be in violation of the provisions of the North American Regional Broadcasting Agreement. The objectionable interference now received by Station CJRM would be further increased by the addition of the interfering signal from Station KFIO, and would necessarily further complicate the problem of the Commission in carrying out the provisions of the agreement. For these reasons the Commission is unable to find that the granting of this application will serve public interest, convenience, and necessity. Consequently, the application should be denied, without prejudice.

The proposed findings of fact and conclusions of the Commission were adopted by the Commission as the "Findings of Fact and Conclusions of the Commission" on November 1, 1940.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matters of MASON CITY GLOBE GAZETTE CO. (KGLO), MASON CITY, IOWA. For Construction Permit.	DOCKET No. 5510
CHARLES WALTER GREENLEY (KGCA), DECORAH, IOWA. For Renewal of License.	DOCKET No. 5534
and	
LUTHER COLLEGE (KWLC), DECORAH, IOWA. For Renewal of License.	DOCKET No. 5533

September 25, 1940

John A. Senneff, Jr., on behalf of Mason City Globe Gazette Co. (KGLO), applicant; *Maurice M. Jansky* on behalf of WASHWOOD; *John W. Kendall* on behalf of WIBA; *Frank Roberson* and *Frank U. Fletcher* on behalf of WJDX; *Louis G. Caldwell* and *Reed T. Rollo* on behalf of WFBR; and *P. M. Segal* and *H. P. Warner* on behalf of Luther College (KWLC), applicant for renewal of license, and also on behalf of KVOR.

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF THE COMMISSION

FINDINGS OF FACT

1. Mason City Globe Gazette Co., licensee of radiobroadcast Station KGLO, located at Mason City, Iowa, filed an application for a construction permit requesting authority to change frequency from 1210 kilocycles to 1270 kilocycles; increase power from 100 watts night, 250 watts local sunset, to 1 kilowatt, unlimited time; install new equipment, including a directional antenna for nighttime operation. The applicant requested the facilities of Stations KWLC and KGCA, located at Decorah, Iowa. Charles Walter Greenley, Decorah, Iowa,

licensee of Station KGCA, and Luther College, Decorah, Iowa, licensee of Station KWLC, filed applications for renewal of their respective licenses. The applications were designated for hearing before an examiner in accordance with the Commission's rules. The hearing was held on September 5, 6, and 7, 1939. The applicants, Mason City Globe Gazette Co. (KGLO) and Luther College (KWLC), appeared at the hearing and offered evidence in support of their applications. Applicant Charles Walter Greenley (KGCA) did not appear in person, or by attorney, at the hearing, and there was no evidence offered in support of his application for the renewal of the license of KGCA. All parties appearing at the hearing agreeing thereto, the hearings on the applications were consolidated.

2. The Mason City Globe Gazette Co. is licensed to operate radiobroadcast Station KGLO on the frequency of 1210 kilocycles with 250 watts power, and is legally and technically qualified to reconstruct the station to operate on the frequency of 1270 kilocycles with 1 kilowatt power as proposed in the instant application. It is also qualified from a financial standpoint, having adequate capital available to finance installation of new transmitting equipment together with a directional antenna, which will cost a total of approximately $15,700.

3. This applicant's station is the only radiobroacast station located in Mason City, Iowa, and provides the only broadcast service of primary quality, as defined by signal strength, available throughout its community, which census reports show has a population in excess of 23,000. There are other stations, particularly WHO, Des Moines; WOI, Ames; and WMT, Cedar Rapids, which provide service to at least part of the Mason City residential area as well as to surrounding rural areas. But, at the present time, there is no full-time regional station assigned to the north central area of Iowa in which Mason City is located.

4. Station KGLO renders a diversified program service, including programs from a national network system, market reports of special interest to farmers and livestock growers, news services, and civic, educational, and religious matters. A mobile unit is maintained by applicant for use in extending the transmission facilities of its station to smaller communities of its area for broadcasting of special events and other matters of public importance and interest.

5. The operation of Station KGLO with 1 kilowatt power on the frequency of 1270 kilocycles as proposed by the applicant would result in a substantial extension of the service of the station. It would make the service of the station available during daytime hours to a population of 308,600 as against a population of 188,000 within

the present primary service area of the station, and would make the service of the station available during nighttime hours to a population of 53,400 as against a population of 26,300 within the present primary service area of the station.

6. In order for Station KGLO to employ the frequency of 1270 kilocycles it would be necessary to remove Stations KWLC and KGCA, Decorah, Iowa, from the frequency by deletion of the stations or transfer to other operating assignments. Operation of Station KGLO on the frequency of 1270 kilocycles in lieu of KGCA and KWLC would not cause any increase in objectionable interference to the service of any other station during daytime hours. During nighttime hours, however, operation of Station KGLO under the conditions proposed would cause a slight increase in interference to Station WJDX, Jackson, Miss.; Station KVOR, Colorado Springs, Colo., and to Stations WOOD and WASH, which share time on the frequency of 1270 kilocycles at Grand Rapids, Mich. The interference to these stations as computed by the root-sum-square method, would extend to the approximate 4.2 millivolt-per-meter field strength contour of Stations WOOD and WASH, to the 2.6 millivolt-per-meter contour of Station KVOR, and to the 2.5 contour of Station WJDX. Applicant's station would be subject to interference at nighttime, limiting its service to the approximate 5.2 millivolt-per-meter contour.

7. However, the use of the frequency of 1270 kilocycles by KGLO would not cause objectionable interference within the service areas of other stations, defining service areas as the areas included within the limits of protection contemplated in the Commission's plan of allocation and Standards of Good Engineering Practice, if the antenna of KGLO were constructed so that the radiation in each critical angle would not be in excess of that radiated at the same critical angle by a 0.311 wave-length antenna having unattenuated ground-wave field values in the pertinent directions as follows:

Bearing	Direction	Effective field
Degrees		*Millivolts per meter*
90	WOOD-WASH	69
248	KVOR	79
168	WJDX	200
292	KOL	300
102	WFBR	230
65	Rimouski, Quebec	405

Under these conditions the RSS interference limitation to the service of Stations WOOD and WASH would extend to the approximate 4.0 millivolt-per-meter contour of the stations, and to the approximate 2.5 millivolt-per-meter contour in the case of Station KVOR.

8. Luther College, applicant for a renewal license to continue operation of Station KWLC on the frequency of 1270 kilocycles, is legally qualified as an applicant and is technically and financially qualified to operate Station KWLC in the manner in which it has heretofore been operated.

9. Station KWLC is located in Decorah, Winneshiek County, Iowa. The population of the community is 4,581 and that of the county 21,630.

10. The applicant, as its name indicates, is an educational institution operated by an organization of the Lutheran religion. Its broadcast service, which is noncommercial, is arranged and presented by a faculty committee with the assistance of a limited technical staff and student assistants. Broadcasts are limited to about 4 hours a day during the school year and to 1 hour a day during the summer vacation period. No income other than of donations is received from operation of the station. The purpose given by the college in maintaining the station is to serve the college in its educational program, aid students in becoming capable speakers and writers, to publicize Luther College, and to serve the general public.

11. A local station assignment would be adequate to provide service to the community in which KWLC is located, and would be in keeping with the general plan of allocation which contemplates the use of local stations to provide service in smaller communities. As a matter of fact, if Station KWLC were transferred from the frequency of 1270 kilocycles to the frequency of 1210 kilocycles, as has been suggested in behalf of KGLO, it would be possible for the station, operating with efficient transmitting and radiating equipment, to serve an even larger area and greater population than it now serves.

12. As a part of its application, the Mason City Globe Gazette Co. proposed to replace the present equipment of Stations KWLC and KGCA with complete new transmitting and radiating equipment of such design as to comply with requirements of Commission rules, for operation of these stations with 100 watts power on the frequency of 1210 kilocycles in lieu of the frequency of 1270 kilocycles. To substantiate its application in respect to this proposal, the Mason City Globe Gazette Co. offered evidence showing that it had made a written offer to Luther College, licensee of KWLC, to provide new equipment for operation of the latter station, the offer being contingent upon the Commission approving the proposed assignment of Station KGLO to operate on the frequency 1270 kilocycles and the assignment of KWLC to operate on the frequency 1210 kilocycles. The offer specified that the new equipment was to be installed with all expenses paid, for the use, benefit, and ownership of Luther College and was supplemented by a further offer of weekly program periods on Station KGLO for 2 years. The offer has so far been refused by the implications of

the opposition raised by Luther College to the application of the Mason City Globe Gazette Co. But according to the representations of the latter applicant as submitted in its application, in its offer of evidence in support of the same, and in its proposed findings, the offer is still open. It would be possible for Luther College to obtain new, approved equipment for operation of Station KWLC on the frequency 1210 kilocycles without incurring any expense. In order to obtain authority for installation of such new equipment it would of course be necessary for Luther College to make application for a construction permit and to submit the same in such form as to meet the approval of the Commission.

13. The licensee of Station KGCA, applicant for renewal of license, did not appear for hearing and no evidence was submitted in support of his application. This applicant's station, which formerly shared time with KWLC on the frequency 1270 kilocycles, has been silent as a matter of record for the past year, having applied for authority and various extensions thereof to remain silent while attempting to make arrangements to employ the same equipment as Station KWLC.

CONCLUSIONS

Upon the foregoing findings of fact, the Commission concludes:

1. The Mason City Globe Gazette Co., applicant for a construction permit, is financially qualified to install the proposed new equipment for which a permit is requested.

2. The granting of a permit for the proposed changes in equipment and operating assignment of Station KGLO will tend toward a fair, efficient, and equitable distribution of radio service.

3. Operations of Station KGLO, subject to limitations proposed herein upon signal strength radiated in certain specified directions, will not cause objectionable interference to reception of any other station or stations within service areas contemplated by the Commission's allocation plan.

4. The granting of a permit therefor in accordance with the proposals of Mason City Globe Gazette Co. in its application and reconstruction of Station KGLO to be operated on the frequency of 1270 kilocycles will result in improvement of service to the public and serve public interest better than it would be served by granting renewal licenses for operation of Stations KWLC and KGCA or either of these stations on the frequency of 1270 kilocycles.

5. The service of Station KWLC could be improved and extended by the use of a local frequency such as that now assigned to KGLO in lieu of the present frequency assignment of the station.

6. Public interest, convenience, and necessity will be served by the granting of the application of Mason City Globe Gazette Co., subject to approval of an antenna which must be so designed and so situated as to meet the specifications indicated herein with respect to field strength radiated in certain directions, and at the same time provide a minimum field intensity of 25 millivolts per meter throughout the business district of Mason City and a minimum field intensity of 5 millivolts per meter throughout the residential section of the city.

7. No evidence was offered in support of the application of Charles Walter Greenley for a renewal of license for operation of Station KGCA and accordingly the application should be denied as in default.

8. Public interest would not be served by the granting of the application of Luther College for a renewal of license to operate Station KWLC on the frequency of 1270 kilocycles. This finding, however, will not prejudice consideration of an application of this applicant for authority to operate Station KWLC upon another frequency. Upon the filing of such an application appropriate provision will be made for the purpose of maintaining the continuity of the applicant's service.

The proposed findings and conclusions of the Commission were adopted as the "Findings of Fact and Conclusions of the Commission" on November 4, 1940.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matters of J. D. FALVEY, OTTUMWA, IOWA. For Construction Permit, and	DOCKET No. 5789
LOUIS R. SPIWAK & MAURICE R. SPIWAK, COPARTNERS DOING BUSINESS AS L. & M. BROADCASTING CO., OTTUMWA, IOWA. For Construction Permit.	DOCKET No. 5809

September 11, 1940

Ben S. Fisher, *C. V. Wayland*, and *J. W. Kendall*, Washington, D. C., on behalf of the applicant J. D. Falvey; *James H. Hanley*, Washington, D. C., and *Frank McElverry*, Ottumwa, Iowa, on behalf of the applicants, Louis R. Spiwak and Maurice R. Spiwak; and *Frank D. Scott and Louis B. Montford*, Washington, D. C., on behalf of Station KFJB, Marshalltown, Iowa, interveners.

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF THE COMMISSION

1. This proceeding arose upon (1) the application of J. D. Falvey (Docket No. 5789), for a construction permit requesting authority to establish a new standard radiobroadcast station in Ottumwa, Iowa, to operate on the frequency 1210 kilocycles, with power of 100 watts, unlimited time, and (2) the application of Louis R. Spiwak and Maurice R. Spiwak, copartners, doing business as the L. & M. Broadcasting Company (Docket No. 5809), for a construction permit requesting authority to establish a new standard radiobroadcast station in Ottumwa, Iowa, to operate on the same frequency, 1210 kilocycles, with power of 250 watts day, and 100 watts night, unlimited time. Both of these applications were filed with the Commission on August 25, 1939.

2. The Commission was unable to determine from information submitted in connection with said applications that a grant of either

application would serve public interest, convenience, and necessity, and designated said matters for hearing to determine the issues set out in the notice of hearing in each case. Due notice of the time and place of hearing, and the issues to be determined, was given to the applicants and other interested parties and, pursuant thereto, hearing in said matters, in a consolidated proceeding, was held on April 4, 5, 6, and 8, 1940, before an examiner duly designated and appointed by the Commission.

3. Each of said applicants appeared and participated as an intervener in the proceeding on the application of the other, and the Marshall Electric Company, licensee of Station KFJB, Marshalltown, Iowa, was on petition permitted to intervene and participate in the hearing on both applications. Such intervention was expressly limited to the issues assigned in each case relative to interference to Station KFJB which might result from operation of the proposed stations.

4. Being identical with respect to the location and operating assignment requested, except for the daytime power proposed to be used, these applications are mutually exclusive from an engineering standpoint, and the grant of one necessarily precludes the grant of the other. Consequently, one of the issues assigned, and to be determined on the basis of the entire record herein, is whether public interest, convenience, and necessity would be best served by the granting of the application of J. D. Falvey (Docket No. 5789), or that of Louis R. Spiwak and Maurice R. Spiwak (Docket No. 5809).

FACTS APPLICABLE ALIKE TO EACH APPLICATION

5. Ottumwa, Iowa, is the county seat of Wapello County, and is located in the south central part of the State. It is the center of a rich agricultural area, the principal products of which are corn, small grain, and livestock. According to the 1930 United States census, Ottumwa had a population of 28,075, and Wapello County 40,480. The trade area of Ottumwa comprises 8 counties and extends approximately 35 miles in all directions from the city. According to the United States Department of Commerce, business census (1935), there are located within this trade area 262 wholesale establishments, with annual sales of $15,500,000, and 2,387 retail establishments with annual sales of $31,404,000; Wapello County has 610 retail establishments, 485 of which are located in the city of Ottumwa. In 1935 the county had retail sales of $10,509,000, and the city had retail sales of $9,547,000; Wapello County has 46 wholesale establishments with net sales of $5,955,000, 41 of which are located in Ottumwa, and had net sales of $5,900,000. In addition, there are in the city of Ottumwa 164 serv-

ice establishments with annual receipts of $503,000, and also a number of large industrial plants, including packing and machinery manufacturing plants and railroad shops. Practically all the principal civic and fraternal organizations and religious denominations are represented in the city of Ottumwa, and several colleges and other institutions of higher learning are located within the service area of the proposed station.

6. No radiobroadcast station is located in the city of Ottumwa, and no existing station renders primary service to said city and adjacent rural areas or carries programs of particular local interest to that community.

7. The transmitting equipment proposed to be installed by each applicant is satisfactory from an engineering standpoint. The antenna and transmitter site, in each instance, are to be determined subject to approval of the Commission.

8. Talent available in the service area of the proposed stations for broadcast program purposes includes bands, orchestras, quartettes, choruses, instrumental ensembles, instrumental and vocal soloists, entertainers, and also various individual and civic, religious, and fraternal organizations who would present educational and other programs of local interest. The applicants have interviewed much of such talent and obtained reasonable assurance of its availability and cooperation.

FACTS IN RE DOCKET NO. 5789

9. J. D. Falvey, the applicant herein, was born in Easton, Pa., on April 9, 1894. He is a citizen of the United States and a resident of the city of Ottumwa, Iowa, where he has resided since October 1938. Prior to that time he resided in Elgin, Ill., but had visited Ottumwa a great number of times. During the past twenty years, since 1918, the applicant has been engaged in newspaper and radio advertising. He first entered the radio field in 1921 with Station WTAS, Chicago, Ill., and since that date has been connected with a number of stations in the capacity of salesman, commercial manager, and promotional manager. In addition he has also written the script for many radio shows which were broadcast under his direct supervision by various radiobroadcast stations. He has never owned or had any ownership interest in a radiobroadcast station or filed any other application for radio facilities.

10. Since moving to Ottumwa, the applicant has devoted his entire time to the preparation of data, exhibits, and other material in connection with the instant application. He is a member of the Kiwanis, Elks, Veterans of Foreign Wars, and the American Legion of Ot-

tumwa, and is active in local community affairs in the city. He served as captain of the Community Chest, and has made a wide acquaintance and enjoys an excellent reputation in the community.

11. A financial statement introduced in evidence shows that the applicant as at April 1, 1940, had total assets in the amount of $44,850, consisting of cash in bank $15,350, real estate $27,000, and personal property $2,500; with liabilities in the amount of $8,500, and a net worth of $36,350. All of the assets of the applicant, or so much thereof as may be necessary, will be available for the construction and operation of the proposed station. The real estate listed on the financial statement of the applicant, which is valued at $27,000, on which there is now a mortgage of $8,000, is held jointly by the applicant and his wife, and a recent offer to purchase at that figure has been refused, but this land will be sold if a reasonable price is offered therefor. In the event this land is not sold and additional funds are needed for the construction and operation of the station, arrangements have been made to secure an additional loan thereon.

12. The estimated cost of the proposed station is $12,255; the estimated monthly operating expense is $2,461.50; and the estimated monthly income is $3,210. The last estimate is predicated upon 117 tentative advertising contracts, which the applicant has secured from the business establishments of the city of Ottumwa.

13. The applicant has no other business interest in Ottumwa and, if this application is granted, will himself be the general manager of the proposed station and devote his entire time to the management, supervision, and control of the operation thereof. In addition he expects to have nine full-time experienced and qualified employees, including a chief engineer, two assistant engineers, a program director, a chief announcer, two assistant announcers, two salesmen, and also a bookkeeper and stenographer, to assist him and insure proper and efficient operation of the proposed station.

14. A tentative program schedule which the applicant proposes to broadcast, if and when the proposed station is established, was received in evidence, and shows, among other things, that news will be broadcast seven times each broadcast day; that definite gratuitous time has been allocated to the various religious, educational, civic, and agricultural organizations; that arrangements have been made for a complete transcription and news service; and local news will be gathered by members of the station's staff and broadcast daily. Remote lines will be installed and maintained in police headquarters, office of the county farm agent, and various places, and programs of local interest will be broadcast at regular intervals. Other lines will be installed to the high school athletic field, Y. M. C. A., and the

various churches and used as needed. The proposed program appears to be diversified, well-balanced, and definitely designed to meet the needs of the area proposed to be served. On a percentage of breakdown, the applicant proposed to broadcast programs as follows: Commercial 25 percent, sustaining 75 percent. It is proposed to present 55 percent of the programs with talent and 45 percent by transcription. No chain affiliation is at this time contemplated.

15. The nearest station to Ottumwa, operating on the frequency 1210 kilocycles, is KGLO, Mason City, Iowa, which operates with 250 watts power, unlimited time, and is 153 miles distant. Operation of the proposed station at Ottumwa, Iowa, with 100 watts power, will cause slight interference to Station KGLO within its normally protected 0.5 millivolt-per-meter ground-wave contour (0.515 millivolt per meter), on a line through the stations, and will in return be limited by KGLO to the 0.75 millivolt maximum. A population of approximately 1,575 residing within the present service area of Station KGLO would be affected by such interference.

16. The proposed station, operating with 100 watts power, would also cause a slight limitation to the service of Station KFJB, Marshalltown, Iowa, operating on the adjacent channel of 1200 kilocycles, which is normally protected to its 0.5 millivolt-per-meter ground-wave contour and operation of the proposed station would limit it to the 0.56 millivolt-per-meter maximum and in return it would be limited by KFJB to the approximate 0.61 millivolt-per-meter maximum. A population of approximately 1,700 residing within the present service area, between 0.5 and 0.56 millivolt-per-meter contours, of Station KFJB would receive some interference from the proposed station.

17. The proposed station, operating with 100 watts power, would serve to its 4 millivolt-per-meter contour at night, including the entire city and considerable area adjacent thereto, and supply primary service to a population of 33,045. During the daytime hours of operation the proposed station would serve an estimated population of 87,480.

FACTS IN RE DOCKET 5809

18. Louis and Maurice Spiwak, the applicants herein, are brothers and copartners and filed this application under the trade name of L. & M. Broadcasting Company. They are both citizens of the United States by birth, and residents of the city of Ottumwa, Iowa, where they have lived for approximately the past 36 years. They have, for many years, been jointly associated in various business enterprises in Ottumwa, including the retail automobile, real estate, finance, furniture and general household furnishings, and general clothing and furnishing businesses. They now own two large retail stores in Ottumwa, i. e., the Spiwak Furniture Co., which deals in furniture and household furnishings, including "everything used in the home," and the Peoples

Store, which deals in clothing and furnishings for both men and women. These two establishments are operated by managers employed on a salary plus percentage of profits basis. Neither applicant now devotes any time to the actual operation of such enterprises. They also jointly own several buildings in which space is rented to various tenants, but the conduct of such real estate enterprises requires little, if any, of the applicants' time.

19. Louis R. Spiwak acquired a high school education in Ottumwa and is a member of the Chamber of Commerce and American Legion in said city. Maurice R. Spiwak has a public school education, attended the Conservatory of Music in Ottumwa, and had General Motors training in the retail automobile business in which he has been engaged. He was a member and vice president of the junior chamber of commerce, and is a member of the chamber of commerce; he took an active part in the Community Chest and Red Cross drives, and participated in Christmas toy programs, tocking club, soap box derbies, and other civic enterprises. Since February 9, 1940, when he disposed of his interest in the automobile business, his time has been devoted to preparation and prosecution of the instant application.

20. Neither of the applicant partners has ever owned an interest in or had any experience in the operation of a radiobroadcast station, or heretofore made application for radiobroadcast facilities. The partner, Maurice, has had some experience in preparing advertising continuity, in connection with their own business enterprises which advertised extensively over Station WIAS, during the time it was located and operating in Ottumwa. Also, during the pendency of this proceeding, he said short visits to several radiobroadcast stations to acquire such information as might be made available to him pertaining to station operation.

21. As at the date of hearing the applicant copartners had on deposit in two banks in Ottumwa, in the name of the L. & M. Broadcasting Co., cash in the sum of $24,000 and a current note receivable in the amount of $4,700, due May 9, 1940, for the express purpose of paying cost of construction and initial operation of the proposed station in the event this application is granted.

Individual balance sheets of the applicants, introduced in evidence at the hearing, show that as at April 1, 1940, Louis R. Spiwak had a total net worth of $136,646 and Maurice R. Spiwak had a total net worth of $89,803. All of the partners' individual assets will, if it becomes necessary, be available for use in the operation of the proposed station.

22. The estimated cost of constructing the proposed station is $14,354.85; the estimated monthly operating expense is $3,247.49; and the estimated average monthly station revenue is $2,756.48. The last esti-

mate is predicated upon fifty-one tentative advertising contracts which the applicants have secured from business establishments in the city of Ottumwa.

23. If this application is granted the applicants propose to provide a staff of thirteen experienced and qualified employees, consisting of a general manager, one program director, two announcers, three engineers and announcers, one continuity writer, one commercial manager, one salesman, one auditor, and two stenographers, to insure proper and efficient operation of the proposed station. This proposed station is, by the applicants, considered no less a business enterprise than others in which they are engaged and is to be operated as nearly as possible in the same way. The applicants "expect it to stand on its own feet, and it will be utilized in any way it can to make them money." They intend to use it as an adjunct to their other business enterprises which will be advertised extensively.

24. The applicants propose to devote their entire time to the operation of the proposed station, but the general manager will be given and have complete charge, direction, and supervision of station operation, including the programs broadcast. He will serve in an advisory capacity to the applicants and they will accept and be guided by his advice, "as to program service and everything else." In his absence the selection and supervision of programs to be broadcast will be left entirely to the program director.

The applicant witness was asked if he and his partner would submit programs offered for broadcast to the manager and be guided by his advice as to whether or not it was a proper program and should be broadcast, and the applicant stated: "That is exactly what I would do. I would take the program to him and say 'You pass on this,' and if he passed on it I would give way to his judgment that is better than mine." He further testified that he had talked that matter over with his brother and he agreed to such procedure. However, the other partner-applicant, Maurice Spiwak, later testified that although they would advise with the station manager, the final decision would be theirs and they would exercise supervision over all programs broadcast. The applicants propose also to employ someone else who, in the absence of the manager, can properly supervise the operation of the proposed station and on whose advise and instruction they can depend and act.

25. Prior to filing their application, the applicants had entered into a contract to employ one Howard Shuman, of Hot Springs, Ark., as general manager of the proposed station. However, during the hearing herein it developed that because of an existing similar contractual arrangement he then had with a station in Hot Springs, Ark., in which

he is half owner, Shuman would be unable adequately to serve the applicants, and their contract with him was, by mutual consent, verbally canceled at the hearing. It is understood between them, however, that if this application is granted Shuman will continue to advise and assist them in any way possible, without pay. It was stated that the applicants would employ someone else as general manager of the proposed station, and that they had one or two experienced and qualified persons in view for the position but no definite arrangement therefor had been made.

26. The applicants' proposed program service, as shown by the tentative weekly program schedule received in evidence, includes religious services, news, dramatic and educational numbers, weather reports, health discussions, sports events and reviews, home economics, civic, agricultural, musical, and other matters. News broadcasts will be presented several times daily and the applicants plan to pick up and broadcast programs from several remote control points. They expect to use the Standard Library Service and the International News Service. Broadcast time of the proposed station has been, or will be, offered to all civic, religious, educational, patriotic, and other public service organizations without charge. The tentative program schedule was prepared, to a large extent, by Mr. Howard Shuman, the then proposed station manager, with the assistance of the applicants, and some of the programs therein were made up from a study of newspaper clippings collected by one of the partners applicant. Neither of the partners could supply information as to the amount of percentage of time that would be devoted to use of talent or transcriptions should the application be granted and proposed station placed in operation.

27. The application, herein, when originally filed with the Commission, requested the use of the frequency 1210 kilocycles with power of 250 watts, unlimited time, but was amended on October 26, 1939, to request the use of 250 watts day and 100 watts night. On the hearing herein, the applicants stated that in the event operation of the proposed station with 250 watts day would cause objectionable interference to existing stations, they would be willing to accept in lieu thereof an assignment of 100 watts power for daytime operation also, the same assignment requested in the Falvey application (Docket No. 5789).

28. Operation of the proposed station at Ottumwa, Iowa, with daytime power of 250 watts, would limit Station KGLO, Mason City, Iowa, using the frequency 1210 kilocycles to approximately its 0.7 millivolt-per-meter maximum which is within its normally protected 0.5 millivolt-per-meter contour, and in return would be limited by Station KGLO to approximately the 0.78 millivolt-per-meter maxi-

mum. A population of approximately 9,530 resides within the resulting interference area of Station KGLO. An undetermined portion of such population now receives interference from Station KFJB, Marshalltown, Iowa, operating on the 1200-kilocycle channel. The proposed station, operating with daytime power of 250 watts, would also limit Station KFJB, Marshalltown, Iowa, to its 0.7 millivolt-per-meter maximum and in return would be limited by Station KFJB to approximately the 0.72 millivolt-per-meter maximum. Station KFJB is normally protected to its 0.5 millivolt-per-meter daytime contour. Operation of the proposed station with 250 watts power would, by reason of such interference, result in a loss of service to a population of 7,110 persons residing within the present service area of Station KFJB who now receive service from that station.

29. The population residing within the various contours of the proposed station, operating with 250 watts power, cannot be determined from the evidence in the record.

30. Interference from and to the proposed station and its coverage, operating with power of 100 watts, would be as set forth in paragraphs 15, 16, and 17 hereof in connection with the proposal of J. D. Falvey.

CONCLUSIONS

Upon the foregoing findings of fact the Commission concludes:

1. Each of the applicants is legally, technically, financially, and otherwise qualified to construct and operate a broadcast station.

2. The station proposed in the application of J. D. Falvey (Docket No. 5789) operating with power of 100 watts, unlimited time, would not cause objectionable interference to Station KGLO, Mason City, Iowa, and would cause only a slight limitation to Station KFJB, Marshalltown, Iowa. Approximately 1,700 persons residing within the present service area of Station KFJB would be deprived of service by reason of this interference while on the other hand, the proposed station would serve within its 4 millivolts-per-meter nighttime contour a population of 33,045, and within its daytime contour 87,480.

3. The station proposed in the application of Louis R. Spiwak and Maurice Spiwak, copartners, doing business as L. & M. Broadcasting Co. (Docket No. 5809) operating with 250 watts power, daytime, would cause objectionable interference to Stations KFJB, Marshalltown, Iowa, and KGLO, Mason City, Iowa. This would result in a loss of service to a population of 7,100 now receiving service from Station KFJB, and to an undetermined part of the population of 9,530 residing within the interference area who are now receiving service from Station KGLO.

4. The applications herein are substantially identical with respect to the location and operating assignment requested, the only difference therein being in respect to daytime power requested. The applicants,

in Docket No. 5809 stated at the hearing that in lieu of the 250 watts power requested they would be willing to accept an assignment of 100 watts power for daytime operation, the same as that requested in the Falvey application. The applications are, from an engineering standpoint, mutually exclusive and the granting of one necessarily precludes the granting of the other. Each applicant being in all respects qualified to construct and operate the proposed station, it is necessary for the Commission to consider the two applications on a comparative basis and determine which one, in consideration of the public interest, may be given preference and should be granted.

Having considered fully all relevant and material facts and circumstances in the record in each case the Commission concludes, and so finds, that public interest, convenience, and necessity will be better served by the granting of the application of J. D. Falvey (Docket No. 5789) for the following reasons: The applicant, J. D. Falvey, is shown to have had a great deal more qualifying experience than the applicants in Docket No. 5809 and, from the standpoint of public interest, is better able to operate the proposed station. He has no other business interests in Ottumwa and would personally manage, direct, and supervise generally the operation of the proposed station, including the broadcast program service thereof. Unlike the applicants in Docket No. 5809, Mr. Falvey is prepared personally to assume the full responsibilities incident to the conduct of a station and would not delegate major functions to third persons.

The applicants in Docket No. 5809 own two large retail business establishments in Ottumwa which are proposed to be advertised extensively over the station. If their application is granted, the proposed station would be operated by a third party who would be employed as general manager thereof on a profit-sharing basis. He would have and exercise general supervisory authority over station operation and the broadcast program service thereof, including the approval and selection of program continuities. The applicants would seek and be guided by his advice in all matters pertaining to station operation. The program service proposed to be rendered by the applicant Falvey (Docket No. 5789) appears to be more definitely designed and adapted to serve the needs of the community than is that of the applicants in Docket No. 5809.

Having reached such conclusion, it follows that the application of J. D. Falvey should be granted and the application of Louis R. Spiwak and Maurice R. Spiwak, copartners, doing business as L. & M. Broadcasting Company (Docket No. 5809) must, of necessity, be denied.

The proposed findings of fact and conclusions of the Commission were adopted as the "Findings of Fact and Conclusions of the Commission" on November 20, 1940.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In re Application of [1] WORLD PEACE FOUNDATION, ABRAHAM BINNEWEG, Jr., OAKLAND, CALIF. For Construction Permit.	DOCKET No. 5851

Decided November 20, 1940

Abraham Binneweg, Jr., appeared in person on behalf of the applicant.

DECISION AND ORDER

1. This proceeding arose upon the amended application of World Peace Foundation, Abraham Binneweg, Jr., for a construction permit to erect a new developmental broadcast station at Oakland, Calif., to operate portable-mobile with power of 10 watts, A0, A1, A2, and A3 emission, on the frequencies 1614, 2398, 6425, 8655, 9135, 12862.5, and 17310 kilocycles. The Commission set the application for hearing, which was held on June 3, 1940, before a presiding officer duly designated by the Commission. The applicant failed to file proposed findings of fact and conclusions in accordance with the requirements of section 1.231 (d) of the Commission's Rules.

2. The Commission's Rules of Practice and Procedure, with certain exceptions not pertinent herein, provide for the issuance of proposed findings of fact and conclusions in cases upon which hearings have been held. But, since the applicant herein has failed to file proposed findings, and, under the provisions of section 1.231 (d) of our rules, is thereby deemed to have waived any right to participate further in this proceeding, we are of the opinion that the issuance of proposed findings in the instant case would serve no useful purpose, and that a decision and order should be issued in lieu thereof.

3. The World Peace Foundation is not in fact an existing organization, but is merely a name which Abraham Binneweg, Jr., expects to establish to be used in connection with his future plans in radio. For

[1] Applicant's petition for rehearing denied by the Commission on December 17, 1940.

all practical purposes, Mr. Binneweg is considered as the applicant herein.

4. The applicant proposes a program of research looking toward the development of the characteristics of various types of directive antennas and transmitting equipment, expecting to simplify the design and improve the efficiency thereof. The applicant hopes that the results of the research contemplated will prove of benefit to the international broadcast service, as well as other services, such as police radio and airplane guidance.

5. In connection with his proposed research of directive antennas, the applicant would use rotatable beam types, a combination of two or more parabolic reflector antennas, and would employ means to control not only the horizontal but the vertical angle of radiation. In order to produce any desired directivity, the applicant proposes to utilize antenna arrays consisting of fixed conductors with electrical arrangements for varying the angle of radiation from within the station, and the use of mechanical means by the rotation of the antenna system itself. The applicant believes that the use of such systems would enable one low-powered station to transmit separate programs on separate frequencies and serve several areas simultaneously. The results of the contemplated experimentation would be obtained from missionaries located in several parts of the world and observers who, by the use of radio receivers, would report upon the length of time the station's signals are heard and the quality thereof; and the results of performance in the vicinity of the station would be secured by use of measuring instruments.

6. During the progress of the hearing, the applicant was several times asked as to what degree of performance he expects of the antenna systems to be employed, or towards what standards of performance thereof would be his ultimate objective. The applicant did not furnish, either at the hearing or in his application, any quantitative estimate of the expected performance, nor did he give any theoretical basis for his conclusion that the narrow beam transmission proposed would be possible or practicable. From the Commission's experience, the engineering involved in connection with directive antenna systems has become an established practice, and it is only reasonable to expect from a prospective licensee of an experimental station some quantitative basis for the program of research proposed. Worthwhile antenna research, being a very complicated undertaking, should be predicated upon some reasonably sound basis and the person who is to conduct the experimentation thereon should demonstrate that he has a thorough understanding of the principles involved. This the applicant failed to do.

7. Directive antennas, in general, have received extensive study by the radio industry and are now used by many stations in different services, including broadcast and fixed point-to-point. The design of such antennas has become more or less of an established practice. As heretofore shown, the applicant proposes to use one antenna system for alternate or simultaneous transmission in different directions. The established practice to accomplish this result of transmission in various horizontal directions is to use several antennas. The applicant proposes to employ means of controlling the horizontal angle of radiation from the antenna from within the station. Some experimentation and progress has already been accomplished in this phase of the radio technique. He would also use means of controlling the vertical angle of radiation from the antenna. This is now being done by stations in the point-to-point radiotelephone service.

8. As heretofore shown, one of the stated purposes of the applicant is to conduct research on transmitters with the ultimate objective of simplifying the design and improving the efficiency thereof. No data or testimony was offered to substantiate these proposals.

9. Under the provisions of section 303 (g) of the Communications Act of 1934, as amended, the Commission is authorized to provide for the experimental use of frequencies in the public interest. Under section 4.153 of the Commission's rules, licenses for developmental broadcast stations will be issued only after a satisfactory showing has been made, *inter alia*, that the proposed program of research has reasonable promise of substantial contribution to the development of broadcasting, or is along lines not already thoroughly investigated. While the applicant herein proposes some research along lines not already thoroughly investigated, *i. e.*, simultaneous transmission on separate frequencies in different directions with a single antenna, sufficient data as a basis therefor have not been presented from which the Commission can find that it shows reasonable promise of substantial contribution to the development of radiobroadcasting, or that the proposed use of the frequencies requested herein would be in the public interest. The Commission is, therefore, of the opinion that the application must be denied.

10. In view of the conclusion reached that this application must be denied for the reasons stated, it is unnecessary for the Commission to pass upon the other issues involved.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of Rates of the LORAIN COUNTY RADIO CORPORATION for radiotelephone service, Radiotelephone Service between ships on the Great Lakes and land radiotelephone stations provided by the Lorain County Radio Corporation, and Thorne Donnelley, doing business as Donnelley Radio Telephone Co., and Rates of THORNE DONNELLEY, doing business as DONNELLEY RADIO TELEPHONE Co., for Radiotelephone Service.	DOCKET No. 5658 DOCKET No. 5659 DOCKET No. 5671

October 9, 1940

Frank C. Dunbar and *Frank C. Dunbar, Jr.*, on behalf of the Lorain County Radio Corporation; *Joseph E. Keller* on behalf of Thorne Donnelley; *S. Whitney Landon* on behalf of American Telephone and Telegraph Co., Illinois Bell Telephone Co., Northwestern Bell Telephone Co., Ohio Bell Telephone Co., and Wisconsin Telephone Co.; *Manton Davis*, *Frank W. Wozencraft* and *Willson Hurt* on behalf of Radiomarine Corporation of America; and *Eugene L. Burke* on behalf of the Commission.

PROPOSED REPORT OF THE COMMISSION

FINDINGS OF FACT

1. These proceedings arose upon orders adopted by the Commission on its own motion as follows:

(*a*) In Docket No. 5658 the Commission suspended until September 30, 1939, tariffs filed by Lorain County Radio Corporation, hereinafter referred to as Lorain, proposing an optional rate of $1.50 per message which could be chosen by users of the company's service in lieu of the

ready-to-serve charge of $25 a month plus a message rate of 75 cents [1] or 85 cents [2] for station-to-station calls, and 90 cents [1] or $1 [2] for person-to-person calls.

(*b*) In Docket No. 5671 the Commission suspended until September 30, 1939, tariffs filed by Thorne Donnelley, doing business as Donnelley Radio Telephone Co., hereinafter referred to as Donnelley, proposing to increase his message charge from 75 cents to $1 for station-to-station calls and 90 cents to $1.25 for person-to-person calls, and to eliminate his readiness-to-serve charge of $5 per month.

(*c*) In Docket No. 5659 an investigation was ordered into the lawfulness of the maximum, minimum, and precise basis of all charges and of the classifications, regulations, and practices relating thereto, applicable to radiotelephone communication service furnished by Lorain and Donnelley between ships on the Great Lakes and their respective coastal harbor stations.

2. Radiomarine Corporation of America, hereinafter referred to as Radiomarine, was authorized to intervene. These proceedings were heard before a properly designated employee of the Commission on July 24 to July 27, inclusive, and August 16 and 17, 1939. Proposed findings of fact and conclusions have been filed on behalf of Lorain, Donnelley, and Radiomarine. The periods of suspension have expired and the suspended rates have been put into effect by both Lorain and Donnelley. Rates refer to radiotelephone charges for calls of 3 minutes or less, unless otherwise stated; land-line telephone and telegraph charges, if any, and taxes are extra. Reference to Lorain stations means Lorain's coastal harbor stations as distinguished from ship stations licensed to it. Reference to the Lorain, Ohio, station means Lorain's station (WMI) at Lorain, Ohio. A "subscribing ship" means a ship for which the Lorain ready-to-serve charge of $25 a month is paid.

3. Lorain undertakes to furnish two-way radiotelephone communication service 24 hours a day during the navigation season, which begins in April and ends in December, between its coastal harbor stations and ships on the Great Lakes, Lake St. Clair, Georgian Bay,

[1] For calls (1) between ships on the Great Lakes and the company's coastal radiotelephone station located at Lorain, Ohio, (2) between ships on the Great Lakes and telephones within the local service area of the Lorain Exchange of The Lorain Telephone Co. (when transmitted via the Company's coastal radiotelephone station at Lorain), (3) between ships on the Great Lakes and the company's coastal radiotelephone station located at Duluth, Minn., and (4) between ships on the Great Lakes and the company's coastal radiotelephone station at Port Washington, Wis. (Lorain Tariff F. C. C. No. 2, III–A, 4th revised, p. 7).

[2] Between ships on the Great Lakes and telephones within the local service area of the Duluth, Minn., exchange of the Northwestern Bell Telephone Co., when calls transmitted via company's coastal radiotelephone station at Duluth, and between ships on the Great Lakes and telephones within the local service area of the Port Washington, Wis., exchange of the Wisconsin Telephone Co., when calls transmitted via company's coastal radiotelephone stations at Port Washington (Lorain Tariff F. C. C. No. 2, III–C, 4th revised, p. 8).

and the connecting rivers and channels. Since 1934, Lorain has operated a coastal harbor station at Lorain, Ohio (WMI), and since late in 1938 a coastal harbor station at Duluth, Minn. (WAS), and one at Port Washington, Wis. (WAD).

4. Donnelley undertakes to furnish two-way coastal and harbor radiotelephone service between his station and ships on Lake Michigan 24 hours a day throughout the year. Donnelley also furnishes frequency measurements for ship and other radio stations. Since May 1938, Donnelley has operated a coastal harbor station (WAY) at Lake Bluff, Ill.

DOCKET NO. 5658—LORAIN

5. The suspended optional rate schedule proposed by Lorain was designed principally for yacht owners, Canadian shipowners, and their seamen who use Lorain service intermittently. This schedule provides for a separate charge of an unspecified amount for inspecting ship station equipment, if inspection is requested.

6. Lorain's theory is that $0.75 of the optional rate of $1.50 represents a message charge and the remaining $0.75 a ready-to-serve charge. On this basis the charge of $0.50 for an extra minute is equal to one-third of the message charge plus one-third of the ready-to-serve charge. Under the present schedule, the rate for each extra minute is about one-third of the message charge only.

7. The charges for a month's service under the optional rate schedule compare with the charges based upon the ready-to-serve charge plus the related message rates as follows:

Class of service	Number of calls	Message rate	Message charge	Ready-to-serve charge	Total of charges	Total charges at optional rate of $1.50
Station-to-station	34	$0.75	$25.50	$25	$50.50	$51
Do	40	.85	34.00	25	59.00	60
Person-to-person	42	.90	37.80	25	62.80	63
Do	50	1.00	50.00	25	75.00	75

8. For a call by a seaman on a nonsubscribing ship, or for a call to a nonsubscribing ship the optional rate would be charged; while for a call by a seaman on a subscribing ship or for a call to a subscribing ship the charge may be only 75 cents. The charge for extra minutes would be 50 cents and 25 cents or 30 cents, respectively.

9. The same rate applies under the optional rate schedule to a person-to-person call as to a station-to-station call, although a person-to-person call involves approximately 15 cents greater expense to the carrier. A $0.15 differential is made in other rates to cover the additional expense. The ratio of station-to-station calls (including tele-

grams and position reports) to person-to-person calls was more than 3 to 1 in 1938 and more than 2 to 1 in 1939 to June 30.

DOCKET NO. 5671—DONNELLEY

10. By the suspended tariff schedules, Donnelley proposed to drop his readiness-to-serve charge and increase his message rates to make the service available to a greater number of vessels on a more reasonable basis. Heretofore a ship calling Donnelley was required to pay a $5 readiness-to-serve charge plus the message rate; the ship owner was then entitled to service the rest of the month on payment of only the message rate. This $5 charge against the first message from a ship each month injured Donnelley's business because occasional users would refrain from placing a call on such a basis, and other ship owners having paid the Lorain ready-to-serve charge, found it more economical to send their messages through Lorain stations than to pay two such charges. The average charge for calls was $2, including the readiness-to-serve charge. Donnelley furnished those who paid the readiness-to-serve charge with three frequency measurements per month free; the regular charge for such measurements is $2 each. The cost of communication will be greater after a user makes 14 person-to-person or 20 station-to-station calls, at the proposed rates. Most of the calls are person-to-person.

11. In the 7-month period June–December 1938, Donnelley handled 2,052 calls of which 657 were paid calls. Of the paid calls, 474 were from ships and 183 to ships. Those from ships involved a readiness-to-serve charge, while those to ships did not. The station handled 1⅔ paid calls per day.

12. For the 13-month period June 1, 1938 to June 30, 1939, the station's revenue from message charges was $759, from readiness-to-serve charge, $228.87, and from frequency measurements, $1,893.51. Had the full $5 readiness-to-serve charge been collected in each instance in 1938, the revenue would have been $26.13 greater. The cost of operations for the period was $28,079 for radiotelephone service, and $7,156 for frequency measuring. The station experienced a loss of $27,091 on radiotelephone operations, amounting to about $41 a message, and a loss of $5,263 on frequency measuring. The book cost of the plant at July 1, 1939, was $79,131. Depreciation is not recorded on the books but a figure of $11,933 was given as the amount of depreciation.

13. Lorain's ready-to-serve charge hinders Donnelley in securing traffic normally destined through his station because the collection of the charge has enabled Lorain to offer a lower message rate than it otherwise could and a rate lower than Donnelley can offer, and because

its rate structure is such that the user's cost per call decreases as the number of his calls through Lorain stations increases.

14. It is significant, in this respect, that in the 2 months' period preceding the hearing during which Donnelley was licensed to operate on 2550 kilocycles in common with Lorain, Donnelley did not receive a single call on that frequency, nor did he receive any paid calls from or for a Lorain-equipped ship.

15. Donnelley estimates that the station should normally handle 24,000 calls annually at the proposed rates with a revenue of $30,000, at an expense of $27,000, leaving a 5 percent return on his investment. The traffic estimate is based on estimates of the number of ships on Lake Michigan, and on river boats coming into Chicago, and the number of calls these vessels would make through the station. The estimate also considers traffic from car ferries that use radiotelegraph and communicate through affiliated stations and ignores the effect of a competing station on the Lake. Revenue from and expense of frequency measuring are not included in the estimate.

DOCKET NO. 5659—LORAIN AND DONNELLEY

LORAIN SERVICES

16. Besides the radiotelephone service, Lorain furnishes without separate charge:

(*a*) Weather reports twice daily at Lorain; once daily at Duluth; and once daily at Port Washington;

(*b*) Listing in a ship telephone directory; and

(*c*) Hydrographic reports.

The weather and hydrographic reports, or portions of them, are repeated upon request without charge.

17. At the end of the navigation season in 1938 there were 82 ships equipped with Lorain ship station equipment and at July 24, 1939, 128 ships were so equipped. The owners of these ships all subscribed to Lorain service during the entire navigation season except for periods during which the ships were not in service 14 or more consecutive days. At August 17 there were about 136 cargo ships for which the $25 a month ready-to-serve charge was being paid. Lorain also handles calls from a large number of ships that are not subscribers; those ships are mostly yachts and Canadian vessels. There are 350 United States ships on the Lakes which are potential users.

18. During 1938 Lorain handled 18,699 calls. Of these calls, 10,799 were paid calls [3] which averaged 43.3 calls per day handled by the

[3] Those for which no charge was made were classified as demonstration, weather, and service calls.

station and approximately 33.3 calls per month per ship. The number of calls at Duluth and Port Washington was negligible in 1938. During the period April–June 1939, Lorain handled at the three stations 6,636 calls, of which 2,978 were paid calls. During the period April–June messages at Lorain in 1939 totaled 5,765, of which 2,687 were paid messages, and in 1938, 4,538, of which 1,975 were paid messages. The average number of paid messages per day at Lorain during the period April–June 1939, increased about 50 percent over the same period in 1938, while the average number per ship per month decreased about one-third.

19. In 1938, 95.3 percent of shore-to-ship calls and 99.1 percent of ship-to-shore calls handled by Lorain were completed; in 1939, 94.1 percent and 98.9 percent, respectively, were completed.

20. Condensed balance sheet at May 31, 1939:

Assets		*Liabilities and capital*	
Plant	$181,185	Current liabilities	$62,871
Cash	1,015	Accrued taxes	516
Materials and supplies	24,575	Depreciation reserve	24,212
Other current assets	14,783	Capital stock	74,000
Prepaid rents and insurance	1,043	Donations	97,888
		Deficit	(36,886)
	222,601		222,601

These accounts include amounts for both shore and ship station equipment.

21. Income statements:

	1938	*To May 31, 1939*
Message toll revenue	$8,508	$936
Ready-to-serve charge revenue	8,237	982
Total revenue	16,745	1,918
Operating expenses	31,779	12,688
Loss from radiotelephone service	15,034	10,770
Profit from furnishing ship station equipment	16,021	1,135
Profit	987	[1](9,635)

[1] Loss.

22. When Lorain entered the radiotelephone service in 1934, it undertook to furnish ship station equipment to those who subscribed for service and who agreed to contribute specified amounts "to aid and induce the development of a coordinated telephone system on the Great Lakes."

23. There were 16 steamship companies that contributed $97,888.50, for which they were furnished station equipment on 43 ships. One

company contributed $1,250 for substantially the same equipment as that for which another company contributed $2,845.50. The contribution of others varied from $2,200 to $2,500 per ship.

24. In 1937 this method was abandoned and Lorain is now furnishing ship station equipment under a combination sales and service contract. The charge for equipment is uniform and is the same for one or a number of sets. Lorain also offers to lease ship station equipment but has not leased any.

25. Lorain's tariffs have provided, since November 5, 1936, for the ready-to-serve charge. Prior to that date the charge was made but no tariff was on file showing the charge. The tariff states that the charge is made to cover:

(*a*) Maintenance in readiness-to-serve of shore receiving and transmitting equipment;

(*b*) Ship-to-ship telephone service between subscribing ships on the Great Lakes; and

(*c*) Periodic inspections of the ships' radiotelephone apparatus when the ships reach Lake Erie ports.

26. The charge and the amount thereof was decided upon, after conferences with prospective subscribers, to enable Lorain to offer a lower message rate to reach the seamen on the Lakes. The owners of subscribing vessels pay the ready-to-serve charge and permit their seamen to talk at message rates. Seamen on nonsubscribing vessels have been charged a ready-to-serve charge of 83⅓ cents a day with a minimum of $6.25 per month per ship. No ready-to-serve charge is made on shore-to-ship calls. In 1937, 1938, and 1939, about one-half of Lorain's gross revenue was derived from the ready-to-serve charge.

27. In 1938, Lorain's total expenses were $31,779.25, including $4,219.70 for inspection service, leaving $27, 559.55 for all other operating expenses. It collected $8,237.37 as ready-to-serve charges which covered inspection service. Eliminating the cost of inspection service, the amount collected in 1938 to cover maintenance of the shore station equipment in readiness-to-serve was $4,017.67, or an average of $12.19 of each $25 charge.

28. The average expense of handling messages exclusive of ship station inspection expense was $2.55. The average message charge was 79 cents and that portion of the ready-to-serve charge allocable to shore station maintenance averaged 37 cents a message. Thus, the average amount collected for the transmission of messages costing Lorain $2.55 was $1.16.

29. A rate schedule that provides a flat charge plus a message charge inevitably produces a lesser charge per call to those who use the service more than others. The greater the flat charge the greater will be the difference in the charge per call. Thus, if we use the amount of $12.19

as the true ready-to-serve charge and a 75-cent message rate the difference between the charge per call to the subscriber who uses 30 calls per month and the subscriber who uses 5 calls will be $2.04 in favor of the larger user; using the full $25 charge and a 75-cent message rate, the difference will be $4.17.

30. Elimination of the ready-to-serve charge would not impair the quality and dependability of its service because Lorain could continue to render its inspection service, making a proper charge therefor to finance it.

31. Elimination of the ready-to-serve charge and a compensatory increase in the message rate should not disturb Lorain traffic except that it will probably lose some traffic to Donnelley that is destined to or originates in the Chicago area.

32. Lorain's theory is that the excess of (*a*) maintenance and depreciation expenses of shore stations, traffic expenses, rentals and insurance, and taxes, over (*b*) message toll revenues, represents (*c*) the cost of maintaining the stations in readiness-to-serve. It is evident that the charge is an arbitrary amount not based on the amount of plant or expense that can be allocated to a ship station through which little or no use is made of Lorain service.

33. Lorain is billing the ready-to-serve charge for the actual number of days the ships are in service at the rate of 83⅓ cents a day with a minimum of $6.25 per month per ship. This practice was started in 1938 and is admittedly a departure from the tariffs.

34. Lorain tariffs provide for inspection of subscribing ships' radiotelephone apparatus when the ships reach Lake Erie ports, as part of the service covered by the ready-to-serve charge. A separate charge is made for a spring inspection and cleanup, the amount depending upon the location of the ship and other factors. At the present time Lorain makes inspections not only at Lake Erie ports, but on Lake Michigan and at the Sault Ste. Marie locks. Ships for which the ready-to-serve charge is paid on a "daily basis" have been given no inspection service.

35. Some of the subscribing ships carry other than Lorain ship station equipment. The service contracts with owners of these ships contain a clause that Lorain "shall not be responsible for the care, custody, maintenance or performance of any equipment not furnished or owned by [Lorain]." Lorain has not inspected the station equipment on subscribing ships equipped with other than Lorain equipment but would have done so if the ship owners had requested it. Since the beginning of the hearing, Lorain instituted the practice of calling all subscribing ship owners to inquire whether Lorain inspection service is desired. However, Lorain's service men are not com-

petent to inspect the station equipment on some of the subscribing ships. As a result of the spring inspection, there is practically no trouble during the navigation season.

36. Direct ship-to-ship communication is effected by an operator on board ship dialing the signal of the called ship. The operator has no relationship to Lorain and his salary is paid and the power used to operate the ship station equipment is supplied by the ship owner.

37. Messages received from ships are forwarded, at the request of the sender by telegraph. This telegraph service is not provided for in filed tariffs. The charges made for the telegraph service are those of the telegraph company.

38. Lorain in 1938 transmitted free as "demonstration calls" 898 ship-to-shore messages and 133 shore-to-ship messages at the Lorain, Ohio, station. April 1 to July 17, 1939, it transmitted free 296 ship-to-shore messages and 37 shore-to-ship messages at Lorain; from April 20 to July 17, 1939, 15 ship-to-shore messages and one shore-to-ship message at the Port Washington station; and from May 1 to July 17, 1939, 16 ship-to-shore messages and one shore-to-ship message at the Duluth station. These free calls represented approximately 2 percent of the total calls in 1938 and 2 percent in 1939. These messages were designated "demonstration calls" and include a substantial number of calls made by captains on subscribing ships to their homes and other places in return for the captains agreeing to accept demonstration calls made from shore to their ships. The land-line charges on "demonstration calls" made by the ship captains were paid by them.

39. Nonsubscribing ships are permitted to make test calls without separate charge on days for which they pay a ready-to-serve charge; at other times test calls are made, the charge would be 83⅓ cents a day as a ready-to-serve charge with a $6.25 minimum. There is admittedly no provision in the tariff for such a charge.

40. Lorain's tariffs specify report charges on uncompleted station-to-station and person-to-person calls. In 1938, the Lorain, Ohio, station was unable to complete 268 calls; between April 1 and June 30, 1939, the three Lorain stations were unable to complete 134 calls. Report charges have been collected only on incomplete person-to-person calls.

41. Notwithstanding that the Lorain tariffs provide for station-to-station service at lower rates than for person-to-person service, it is the practice of Lorain to charge the person-to-person radio-link rate for all calls which, under American Telephone and Telegraph tariffs (F. C. C. No. 132), carry the person-to-person land line rate.

DONNELLEY SERVICES

42. Notwithstanding that the tariffs provide for station-to-station service at lower rates than for person-to-person service, Donnelley charges person-to-person rates on all calls which under other carriers' tariffs carry the person-to-person land line rate.

43. Donnelley has failed to complete calls, but has never collected a report charge although his tariffs provide for report charges on uncompleted calls.

44. The tariff provides that no report charge will be made when the caller is not notified within a specified period that Donnelley is unable to complete the call. Callers have always been notified within the period.

CONCLUSIONS

Upon the foregoing findings of fact, the Commission concludes that:

DOCKET NO. 5658—LORAIN

1. The relationship between Lorain and a ship station originating or terminating a call furnishes no justification for discrimination in rates and charges and the charging a higher rate for a call to or from a station on a nonsubscribing ship than for a like call to or from a station on a subscribing ship is an unjust and unreasonable discrimination against persons calling to or from ship stations on nonsubscribing ships. For these reasons the tariff schedule under suspension in this proceeding is unlawful, and an order will issue accordingly.

DOCKET NO. 5671—DONNELLEY

2. The tariff schedules suspended in this proceeding proposing to eliminate Donnelley's readiness-to-serve charge and increase the message rates provide a more equitable basis for charges for the service than previously. The proceeding herein will be dismissed.

DOCKET NO. 5659—LORAIN AND DONNELLEY

LORAIN

3. The ready-to-serve charge unjustly discriminates against the small user, against the user who has no need for Lorain inspection service, and against the user equipped with ship station equipment which Lorain is not competent to inspect, and is unjust and unreasonable and therefore unlawful.

4. The charging for the ready-to-serve charge at 83⅓ cents a day, with a $6.25 minimum per month, was in violation of Lorain tariffs then in effect, and in violation of section 203 (c) of the act.

5. The elimination of the ready-to-serve charge will require a revision of the rate structure so as to fix the charges upon a per-call basis.

6. The furnishing of communication service to certain ship captains in return for such captains agreeing to accept demonstration calls to their ships amounts to charging and collecting from such captains a different compensation for such communication than the charges specified in the tariff schedule in effect, in violation of Lorain tariffs and in violation of section 203 (c) of the act.

7. The charging of person-to-person rates for station-to-station calls is in violation of Lorain tariffs and in violation of section 203 (c) of the act.

8. The collection of charges for test calls, not shown in the tariff schedules in effect, is in violation of section 203 (c) of the act.

9. The failing to collect report charges on uncompleted calls is in violation of Lorain tariffs and in violation of section 203 (c) of the act.

DONNELLEY

10. The charging for the readiness-to-serve charge of amounts of less than $5.00 a month was in violation of Donnelley tariffs then in effect and in violation of section 203 (c) of the act.

11. The charging of person-to-person rates for station-to-station calls is in violation of Donnelley tariffs and in violation of section 203 (c) of the act.

12. The failing to collect report charges on uncompleted person-to-person calls and collect station-to-station calls is in violation of Donnelley tariffs and in violation of section 203 (c) of the act.

The proposed report of the Commission was adopted as the "Report of the Commission" on November 20, 1940.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of
WSAZ, INC. (WSAZ),
HUNTINGTON, W. VA.
For Construction Permit. } FILE No. B2-P-2856

Decided November 26, 1940

DECISION AND ORDER ON PETITIONS FOR REHEARING AND RECONSIDERATION BY THE COMMISSION (COMMISSIONER CASE DISSENTING IN PART)

These are petitions for rehearing and reconsideration filed by Joe L. Smith, Jr. (WJLS), Beckley, W. Va., and Illinois Broadcasting Corporation (WTAD), Quincy, Ill., respectively, requesting the Commission to reconsider the following action taken by it September 4, 1940, in regard to the above-entitled application: "Granted construction permit to change frequency to 900 kilocycles, increase hours of operation to unlimited time, move transmitter to 6 miles west of center of Huntington, W. Va., near Burlington, Ohio, install new transmitter and directional antenna for day and night use. Tower to be marked in accordance with section 3.45 (d). Conference to be held promptly in regard to corporate accounting and engineering questions." Prior to this grant, Station WSAZ was licensed to operate on the frequency 1190 kilocycles with 1 kilowatt power, limited time (until sunset[1] at San Antonio, Tex.).

Joe L. Smith, Jr., is the licensee of Station WJLS, Beckley, W. Va. The present assignment of Station WJLS is 1210 kilocycles with a power output of 250 watts, unlimited time. Joe L. Smith, Jr. (WJLS), has pending an application filed February 13, 1940, requesting a change of frequency to 900 kilocycles, increase in power to 1 kilowatt, unlimited time, employing a directional antenna at night (B2-P-2752). Station WJLS is located about 81 miles from Station WSAZ. The simultaneous operation of these stations on the same frequency each using a power output of 1 kilowatt would result in prohibitive interference to both.

[1] This limitation required Station WSAZ to cease operating in the evening at the following times: January, 7 o'clock; February, 7:30; March, 7:45; April, 8; May, 8:15; June, 8:30; July, 8:30; August, 8:15; September, 7:45; October, 7; November, 6:45; December, 6:30.

Illinois Broadcasting Corporation is the licensee of Station WTAD, Quincy, Ill. On April 22, 1940, when WSAZ, Inc., filed its application for a construction permit (B2–P–2856), Station WTAD was licensed for the use of the frequency 900 kilocycles with 1 kilowatt power, daytime only. On August 19, 1940, Station WTAD was authorized to use the frequency 900 kilocycles with 1 kilowatt power, unlimited hours, using a directional antenna at night. So operating, Station WTAD serves at night to its 4 millivolt-per-meter contour. Within this contour reside about 100,800 people. Operation of Station WSAZ, Huntington, W. Va., pursuant to the Commission's grant of September 4, 1940, will limit the nighttime service of WTAD, Quincy, Ill., to its 7.3 millivolt-per-meter contour with a consequent loss in the population it serves between its 4 millivolt-per-meter and 7.3 millivolt-per-meter contours of about 22,100 persons. Operation of Station WJLS, Beckley, W. Va., as proposed by its pending application, would limit the nighttime service of Station WTAD, Quincy, Ill., to its 6.1 millivolt-per-meter contour with a consequent loss in population served between its 4 millivolt-per-meter and 6.1 millivolt-per-meter contours of about 11,600 persons. The people residing in the area within the 4 and 7.3 and 4 and 6.1 millivolt-per-meter contours do not receive primary service at night from any other station.

On September 24, 1940, Joe L. Smith, Jr. (WJLS), filed his petition for rehearing praying that the Commission reconsider its action granting the application of WSAZ, Inc., and designate that application for hearing with petitioner's application. In support of this prayer, petitioner alleges (1) that "petitioner is informed and believes that different procedures were followed in the consideration of the application of WSAZ than have been and are being followed in the consideration of the application of WJLS," in this: That certain information was requested of petitioner in connection with his application, pending receipt of which no consideration was given to petitioner's application, whereas, the application of WSAZ, Inc., which was filed nearly two and one-half months after the filing of petitioner's application was granted on September 4, 1940, without a hearing "pending conference"; that the "conference" was for the purpose of settling a number of questions raised by the application of WSAZ which were similar to the questions which the Commission required petitioner to answer before it would consider petitioner's application. Petitioner alleges that this difference in the procedure applied to the two conflicting applications is prejudicial to his interests and to the listeners which Station WJLS proposed to serve by his application; (2) that the operation of Station WSAZ as proposed by the application which

was granted by the Commission September 4, 1940, will not provide the signal to the business and factory areas of Huntington which is required by Section 4 of the Commission's Standards of Good Engineering Practice; (3) that "a detailed analysis and a searching investigation of the factors of public interest that bear on the application of WJLS, and the application of WSAZ would show that the public interest, convenience, and necessity would be served by the granting of the application of WJLS"; that "the public record does not show that the Commission had before it the detailed and comprehensive facts that vitally affect and concern the public interest in the disposition of these conflicting applications"; (4) that "the practical effect of the Commission's action * * * is to deny the petitioner's application without a fair hearing and to impede the conscientious exercise of the broad discretionary powers vested in the Commission."

On September 30, 1940, WSAZ, Inc., filed its opposition to the petition for rehearing. In support of the opposition WSAZ, Inc., alleges that the action of the Commission in not considering petitioner's application with that of WSAZ, Inc., as a consolidated matter or on a comparative basis was consistent with the provisions of the Communications Act of 1934, as amended, and with the decision of the Supreme Court of the United States in the *Federal Communications Commission* v. *The Pottsville Co.*, 309 U. S. 134; that a comparison of the areas affected by the grant supports the correctness of the Commission's decision in that Huntington, W. Va., a city with a metropolitan population of 163,367 persons (United States 1930 Census) had no local primary nighttime service, whereas Beckley, W. Va., a town of 9,357 persons (United States 1930 Census) receives service both day and night from Station WJLS; that under the Commission's Standards of Good Engineering Practice, class III stations are intended to render a primary service to a metropolitan area; that the assignment of the facilities requested by WSAZ at Huntington comes within the Standards of Good Engineering Practice, while the granting of the application of Station WJLS obviously would not be in compliance with the Standards; that although the operation of WSAZ as proposed will not render a 25 millivolt-per-meter signal over the entire business district of the city of Huntington, it will render a signal with intensity of 15 to 20 millivolts per meter over the business section of Huntington; that the reason for the inability of WSAZ to render a 25 millivolt-per-meter signal over the entire business district of the city of Huntington is that the only transmitter location satisfactory to the Civil Aeronautics Authority is the site approved by the Commission when it granted the application on September 4, 1940; that in view of the fact that the business section

of Huntington, prior to the grant of which petitioner complains, had no local nighttime service even approaching this intensity, the grant of the application of WSAZ, Inc., was in the public interest.

On October 5, 1940, Joe L. Smith, Jr. (WJLS), filed his reply to the opposition of WSAZ, Inc. (WSAZ), to the petition for rehearing. It is alleged in the reply that the population of Huntington, W. Va. (according to the 1930 United States Census) is 75,752 and that the population of the Huntington-Ashland metropolitan district is 163,367; that "Station WCMI (Ashland, Ky., 1310 kilocycles, 250 watts power), operating unlimited time, is located in this metropolitan district and furnishes interference-free primary service, during the nighttime, to about 75 percent of its residents. This interference-free service is rendered to the city of Ashland and to all but a small portion of the city of Huntington." The reply alleges further that Beckley is the center of a large coal mining district; that "obviously this industry cannot be carried on within the city limits of Beckley but must operate on a decentralized basis in temporary mining camps located with profusion throughout the Beckley area"; that such temporary camps have populations as high as three thousand or more, and because of electrical noise caused by industrial equipment, are just as much in need of a strong radio signal to overcome local electrical noise as are any of the residents of the Huntington-Ashland metropolitan district; that this industrial community cannot possibly be served by a station having a maximum power of 250 watts and therefore, many of these people do not receive interference-free nighttime service from Station WJLS, the only station located in their community.

In view of the contention of petitioner Joe L. Smith, Jr. (WJLS), that the Commission proceeded differently with respect to his application than it did with respect to the conflicting application of WSAZ, Inc., and that this difference in the procedure followed by the Commission with respect to the two conflicting applications is prejudicial to his interests, it seems appropriate at this point to set forth briefly the history of the application of Joe L. Smith, Jr. (WJLS), and that of WSAZ, Inc.

The application of Joe L. Smith, Jr. (WJLS), was originally filed February 13, 1940, on Form No. 301 (1939). This application was amended February 16, 1940, so as to substitute answers to sections 19 (f) and 25 for the ones set forth in the original application. On March 1, 1940, the applicant Smith submitted a balance sheet showing his financial condition as of December 31, 1939. On April 3, 1940, the Commission wrote the applicant Smith, enclosing application Form 301 (1940) which superseded application Form 301 (1939),

requesting him to supply additional information by completing sections 28 and 29 in application Form 301 (1940). The first part of sections 28 and 29 of application Form 301 (1940) refers to coverage in population and area of the proposed station or, if an existing station, operating as at present and as proposed; the second part has to do with interference from proposed operation to existing stations. On May 21, 1940, the Commission again wrote applicant Smith referring to its letter of April 3, 1940, calling for additional information, inviting attention to the fact that this information had not yet been received. On July 16, 1940, applicant Smith filed the additional information requested by our letter of April 3, 1940; on August 24, 1940, the applicant Smith amended his application with regard to the specifications covering his No. 1 antenna. On September 9, 1940, the Commission requested the applicant Smith to explain certain discrepancies in the balance sheet of his financial condition as of December 31, 1939. On October 1, 1940, the applicant Smith submitted his explanation of the discrepancy in his said balance sheet.

The application of WSAZ, Inc., was filed April 22, 1940, on Form No. 301 (1940) and upon examination was found to be complete. The maps and information requested in sections 27 (a), 28 (a) (1), (2), (3) and (4) and 29 (a), (b), (c) and (d), properly subscribed, were attached to the application and made a part of it.

At the time this application was filed, Illinois Broadcasting Corporation (WTAD), Quincy, Ill., was licensed to operate on the frequency 900 kilocycles with 1 kilowatt power daytime only. There was, therefore, no question of electrical interference at night to Station WTAD from Station WSAZ operating as proposed, and there was no other station to which the operation of Station WSAZ, as proposed, might cause objectionable interference. Hence, the applicant, WSAZ, Inc., was not required to answer section 28 (a) (5) and (6), or section 29 (e), (f) and (g).

On September 4, 1940, when we considered the application of WSAZ, Inc., Huntington, W. Va., upon its merits, we found that public interest, convenience, and necessity would be served by a grant of this application. The applicant was and is an existing licensee and there was no question concerning its legal or technical qualifications. The estimated cost of the construction, including land and buildings for Station WSAZ to be operated as proposed was $20,500; the estimated annual expense of operation under the proposed plan was $45,600 and the estimated annual revenue was $90,000. The First Huntington National Bank had agreed to lend the applicant (WSAZ, Inc.) $20,000. Upon this showing we were satisfied that

the applicant was financially qualified to continue the operation of Station WSAZ as proposed.

WSAZ, Inc., is part of a complicated corporate structure controlled by Mr. and Mrs. John A. Kennedy. There are several other licensees which are likewise part of this Kennedy system. The complex corporate relationships have led to informal intercompany transactions sometimes involving the extension of cash or credit by one licensee for the benefit of another and have also tended to interfere with or unduly burden the efficient administration of the Commission's duties and functions under the Communications Act. These matters came to the Commission's attention in July 1940, in connection with an application by Ohio Valley Broadcasting Co. (WPAR), another licensee in the Kennedy system. On August 2, 1940, the Commission requested a conference with Mr. Kennedy, his associates or legal representatives to discuss the feasibility of simplifying the corporate structure of the Kennedy system and of reducing to written, definite contracts some of the intercompany transactions which had theretofore occurred. No response to this request for conference had been received on the date when the WSAZ application was presented to the Commission. Although there was no question as to the legal, technical or financial qualifications of WSAZ, Inc., to perform the construction and to continue operation as proposed, its application, nevertheless, contained further indications of the matters already under inquiry in connection with the application of Ohio Valley Broadcasting Co. (WPAR). In these circumstances, the Commission added to its grant of the WSAZ application September 4, 1940, a direction that the conference theretofore requested be held promptly. The Minutes of the Commission meeting of September 4, 1940, recording this action read as follows: "Conference to be held promptly in respect to corporate accounting and engineering questions." The "engineering questions" referred to in these minutes were not those alleged by petitioner. They were not questions which had been left unanswered in the application form filed by WSAZ, Inc. Unlike the petitioner's application, the WSAZ application had been filed in completed form. Nor did the engineering matters referred to in our minutes of September 4, 1940, embrace any matters which might interfere with the granting of the application. Inasmuch as we were fully satisfied that, from an engineering standpoint, as well as from a legal and financial standpoint, the grant was in the public interest. The granting of the WSAZ application was in no way dependent upon a solution of the engineering questions on which we directed a conference. These engineering questions related solely to an effort by us to provide the fullest public service possible in the existing state of the radiobroadcasting art rather than the minimum

deemed sufficient for the purposes of a grant. The facts in relation to these engineering questions are as follows: Our study of the engineering factors involved in the WSAZ application and related matters suggested the possibility that WSAZ might be able to install an antenna which would not only permit that station to render satisfactory service to the Huntington area but would also provide protection to the service of Station WTAD in the Quincy area. It was with this in mind that the post-decision conference was called. Our decision of September 4, 1940, however, was not conditioned upon the outcome of this conference, nor was the conference called as petitioner suggests for the purpose of permitting the applicant WSAZ, Inc., to complete answers to the questions in its application, since these were complete, as already indicated, prior to our consideration of this application upon its merits.

When the facts of record are checked against the allegations of fact set forth in the petition for rehearing filed by Joe L. Smith, Jr. (WJLS), it is clear that there is no merit to petitioner's contention that "different procedures were followed in the consideration of the application of WSAZ and have been and are being followed in the consideration of the application of WJLS."

The application of WSAZ, Inc., Huntington, W. Va., being complete on September 4, 1940, was ready for consideration on its merits by the Commission ahead of the application of Joe L. Smith, Jr., which, though filed earlier, was not complete in the respects heretofore shown. Neither the Communications Act of 1934 nor any rules promulgated by the Commission pursuant thereto requires the Commission to withhold action upon an application which is ready to receive final consideration in order that it may give comparative consideration with the conflicting application upon which the Commission is not yet ready to act (*In re application of Evangelical Lutheran Synod of Missouri, Ohio, and Other States (KFYO) modification of license*, June 25, 1940).

We do not agree with petitioner's contention that the effect of the grant of the WSAZ application without hearing is to deny his application without a fair hearing. The application of Joe L. Smith, Jr. (WJLS), has not been denied by the Commission and it cannot be denied until this applicant has had an opportunity at a hearing to show why the grant of his application, rather than that of WSAZ, would better serve public interest, convenience, or necessity or would produce a fairer, more efficient and more equitable distribution of radio facilities within the meaning of section 307 (b) of the Communications Act of 1934. The Commission is in no way precluded by the grant of the WSAZ application from later granting that of

Joe L. Smith, Jr., if he can show at the hearing that a grant of his application, rather than that of WSAZ, Inc., would better serve public interest, convenience, or necessity or would insure a fairer, more efficient, and more equitable distribution of radio facilities.

Petitioner further contends that "a searching investigation of the factors of public interest that bear on the application of WJLS and WSAZ would show that public interest, convenience and necessity would be served by the granting of the application of WJLS."

From data furnished by the applicant, WSAZ, Inc., or in possession of the Commission, it appeared that operating on the frequency 1190 kilocycles with 1-kilowatt power until sunset at San Antonio, Tex., Station WSAZ served day and until approximately 1¼ hours after sunset at Huntington, to its 0.5 millivolt-per-meter contour, an area covering 2,690 square miles and a population of 258,000. Operating on the frequency 900 kilocycles with 1-kilowatt power, unlimited time, as proposed, WSAZ could serve to its 6 millivolt-per-meter contour at night an area of 340 square miles and a population of 167,000, and during the daytime to its 0.5 millivolt-per-meter contour an area of 3,600 square miles and a population of 329,000.

According to our calculations, by the proposed operation of Station WSAZ a signal of approximately 22 millivolts per meter will be obtained at the center of the business section and 97.5 percent of the metropolitan area will receive a 6 millivolt-per-meter signal. According to our Standards of Good Engineering Practice, the site selected for a station should provide a minimum field intensity of 25 to 50 millivolts per meter over the business or factory areas and a minimum field intensity of 5 to 10 millivolts per meter over the most distant residential section of the city in which the main studio is located. However, in view of the fact that the site selected by Station WSAZ was the best available under all the circumstances, and that, operating as proposed, Station WSAZ could render a satisfactory service[2] to a substantial majority of the population, we approved the proposed site notwithstanding the slight deviation from our standards.

Huntington, W. Va., has a population of 15,572,[3] and the Huntington-Ashland metropolitan district has a population of 163,367. The only nighttime primary broadcast service available to this area comes from Station WSAZ (Huntington, W. Va.) and Station WSMI (Ashland, Ky.—1310 kilocycles—250 watt power—unlimited time). Station WCMI renders service at night to its 4 millivolt-per-meter

[2] According to our Standards of Good Engineering Practice, the following signals are considered satisfactory for primary service: City business or factory areas: 10 to 50 millivolt per meter; city residential areas: 2 to 10 millivolt per meter.

[3] All population figures are taken from the 1930 United States census. The preliminary 1940 United States census is not available.

contour in and around Ashland, Ky., and areas contiguous thereto. Within this contour reside about 83,000 inhabitants of the metropolitan district of whom about 10,000 reside within the city limits of Huntington. The rest of the people residing within the city limits of Huntington (about 65,500) have no satisfactory nighttime service other than that received from Station WSAZ. (See note 1, p. 303.)

Now that the petitioner's application is complete, we shall examine it carefully in the light of petitioner's contention. It appears from the application of Joe L. Smith, Jr. (WJLS), that at the present time Station WJLS operating on a local frequency (1210 kilocycles) with 250 watts power, unlimited time, serves at night to its 4.0 millivolt-per-meter contour which includes a population of 19,272, and in the daytime this station serves to its 0.5 millivolt-per-meter contour. Within this contour about 57,475 persons reside. The application of Joe L. Smith, Jr. (WJLS), indicates that, operating as proposed, Station WJLS, with a regional frequency (900 kilocycles) and with 1 kilowatt power, unlimited time, employing a directional antenna at night, will serve at night to its 6.8 millivolt-per-meter contour, and that within this contour reside approximately 23,800 persons. In the daytime Station WJLS, operating as proposed, will serve to its 0.5 millivolt-per-meter contour which includes a population of approximately 136,656. According to the 1930 United States Census, Beckley, W. Va., has a population of 9,357. This city receives no primary broadcast service day or night except from Station WJLS. About one-half of the rural area which would be served by Station WJLS, operating as proposed by its pending application, now receives primary daytime service from Station WCHS, Charleston, W. Va. The other half of this area receives no primary daytime service and none of the proposed nighttime service area of Station WJLS receives primary nighttime service.

Upon a comparison of the application of WSAZ, Inc. (WSAZ), Huntington, W. Va., and Joe L. Smith, Jr. (WJLS), Beckley, W. Va., we find that at the present time Station WSAZ serves about 258,000 persons as compared with 57,475 served by WJLS. Operating as proposed, Station WSAZ will serve in the daytime about 329,000 persons as compared with the proposed service of WJLS daytime of about 136,656. At the present time, Station WSAZ serves at night until sunset at San Antonio, Tex. At the most, this permits Station WSAZ to operate for an average of about one and one-quarter hours after sunset at Huntington. During this time Station WSAZ serves about 258,000 people. Operating as proposed, Station WSAZ will have unlimited nighttime hours, and can serve about 167,000 people. As compared with this, Station WJLS now serves

at night about 19,272 people. Operating as proposed, it can render primary service to approximately 23,800 people.

Comparing now other service available to the respective areas, we find that in the Huntington area Station WCMI, Ashland, Ky., renders primary service during the day to all of the metropolitan district except the business and industrial section of Huntington and approximately 24,000 persons in the residential district of Huntington. At night WCMI will serve part of the metropolitan area including about 83,000 persons, of which 10,000 reside in the city of Huntington. This leaves about 65,500 persons residing within the city of Huntington with no primary nighttime service from any other station after about 1¼ hours after sunset. In the Beckley area, during the daytime, Station WCHS, Charleston, W. Va., will serve approximately one-half of the rural area which Station WJLS, operating as proposed, would serve. At night this area would receive no other primary broadcast service.

Station WJLS is applying for a regional frequency although it is located in Beckley, W. Va., which is not a metropolitan district. While the rule that regional frequencies are normally assigned for use in metropolitan districts would not of itself exclude an assignment of such a frequency outside a metropolitan district if a grant were found to be justified by other circumstances, in this case a more beneficial use of the regional frequency can be made in Huntington, W. Va., which is a metropolitan district.

Thus, with full information before us, comparing the applications of WSAZ, Incorporated (WSAZ) and Joe L. Smith, Jr. (WJLS), upon their merits, and considering the populations involved in each area and service available to each, we are of the opinion that public interest, convenience, and necessity is served by the grant of the application of WSAZ, because of the greater number of people to be benefited by such grant.

The petition for rehearing of Joe L. Smith, Jr. (WJLS), sets forth no valid objections which would require us to set aside the grant of the WSAZ, Inc., application. It should, therefore, be denied, and the application of Joe L. Smith, Jr. (WJLS), Beckley, W. Va., for construction permit (B2–P–2752) be designated for hearing pursuant to section 309 (a) of the Communications Act of 1934. As we have heretofore indicated, at the hearing this applicant will have a further opportunity to show that a grant of his application will better serve the public interest than would a grant of the application of WSAZ, Inc. If petitioner can make such a showing, the Commission is not precluded by its prior grant of WSAZ, Inc., application from granting the application of Joe L. Smith, Jr. (WJLS).

On September 24, 1940, Illinois Broadcasting Corporation (WTAD), Quincy, Ill., filed its petition for reconsideration which alleges that the operation of Station WSAZ as proposed by the Commission's grant of September 4, 1940, will restrict the service area of petitioner's station WTAD to its 7.3 millivolt-per-meter contour and that this limitation would prevent a substantial number of persons who receive no other nighttime primary broadcast service from hearing Station WTAD; that such proposed operation of Station WSAZ is not in the public interest, convenience, and necessity unless Station WSAZ is required to operate on the frequency 900 kilocycles in such a manner as to enable Station WTAD adequately to serve the Quincy, Ill., area. Petitioner further alleges that following the action of the Commission on September 4, 1940, granting the application of WSAZ, Inc., petitioner's engineering representative and the engineering representative of WSAZ, Inc., have been working on an antenna design which will enable Station WSAZ to give adequate service to the Huntington, W. Va., area and at the same time protect Station WTAD during nighttime hours; that such an antenna is entirely feasible from a technical standpoint and "as both engineers are proceeding with diligence, it is expected that within a few weeks the problem of interference from Station WSAZ will be completely and satisfactorily worked out." Petitioner prays that the Commission reconsider its action of September 4, 1940, and either modify said action granting the application of WSAZ, Inc. "to the extent necessary to require Station WSAZ to so operate on 900 kilocycles at night as not to preclude Station WTAD from adequately serving the Quincy, Ill., area at nighttime, or (2) stay the effective date of its action of September 4, 1940, granting the above-mentioned application until such time as there has been submitted to and approved by the Commission a directive pattern for Station WSAZ which will enable Station WTAD to serve adequately the Quincy, Ill., area."

On September 30, 1940, WSAZ, Inc., filed its opposition to the petition of Illinois Broadcasting Corporation for reconsideration in which it alleges "that conferences between the engineers of both stations WTAD and WSAZ have taken place and that it is entirely possible that the question of interference will be satisfactorily adjusted between the two parties. In any event, such existing interference will not materially curtail the service area of WTAD for only a few thousand people will be excluded from receiving this nighttime service of Station WTAD. These people even now, however, receive no service from Station WTAD."

On October 28, 1940, Illinois Broadcasting Corporation (WTAD) filed its reply to the opposition to petition for reconsideration filed

by WSAZ, Inc. (WSAZ), in which it is alleged that since the date on which the petition for reconsideration was filed the engineers for both Station WSAZ and Station WTAD have been working on an antenna design for Station WSAZ which would enable Station WSAZ to serve the Huntington, W. Va., area and, at the same time, permit Station WTAD to render adequate nighttime service to the Quincy, Ill. area; that such an antenna design has now been prepared by a competent radio engineer and is attached to the "reply" as an exhibit; that without some protection from Station WSAZ this station operating as proposed will limit Station WTAD to its 7.3 millivolt-per-meter contour and by reason of such limitation approximately 27,566 persons will be deprived of primary radio service who would otherwise receive such service from Station WTAD; that these persons do not now receive primary radio service at night from any other station.

Public interest, convenience and necessity is served by the widest, most efficient use of available facilities. Our study of the engineering affidavit and suggested directional array for Station WSAZ attached to the "reply" filed by Illinois Broadcasting Corporation (WTAD) convinces us that it will be possible for Station WSAZ to install a directional array which will permit Station WSAZ to render adequate daytime and nighttime primary service to the Huntington, W. Va., area, and at the same time, protect the service of Station WTAD so that it can render adequate primary nighttime service to the Quincy, Ill. area. The benefits and detriments to the respective areas (Quincy, Ill., and Huntington, W. Va., which would result from a grant of the WSAZ application, as we have already indicated, are such that we have concluded that public interest, convenience, and necessity would be served by a grant of the WSAZ application, notwithstanding the interference to Station WTAD. However, it now appears that the benefits to the Huntington area can be retained while, at the same time, Station WTAD can be protected from interference. This, we think, will even better serve the public interest, convenience, and necessity. Accordingly, the petition for reconsideration filed by Illinois Broadcasting Corporation should be granted and our decision of September 4, 1940 granting the application of WSAZ, Inc., Huntington, W. Va., modified so as to make said grant conditional upon the applicant, WSAZ, Inc., obtaining from the Commission specific approval of an antenna which will enable Station WSAZ to serve the Huntington, W. Va., area and, at the same time, protect Station WTAD.

In view of the foregoing, it is ordered this 26th day of November 1940, (1) that the petition for rehearing filed by Joe L. Smith, Jr.,

(WJLS), Beckley, W. Va., be, and it is hereby denied[4]; (2) that the application of Joe L. Smith, Jr., Beckley, W. Va. (B2–P–2752) for construction permit be, and it is hereby, designated for hearing; (3) that the petition for reconsideration filed by Illinois Broadcasting Corporation (WTAD), Quincy, Ill., be, and it is hereby, granted; and (4) that our decision of September 4, 1940, granting the application of WSAZ, Inc., (WSAZ) Huntington, W. Va., for construction permit (File No. B2–P–2856) be, and it is hereby, modified so as to make said grant conditional upon the applicant obtaining from the Commission specific approval of a directive antenna which will enable Station WSAZ to serve the Huntington, W. Va., area and, at the same time, will not cause a limitation from Station WSAZ to Station WTAD greater than 2.8 millivolts per meter.

[4] Commissioner Case dissenting.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of WORCESTER BROADCASTING CORPORATION, SAN DIEGO, CALIF. For Construction Permit.	DOCKET No. 5834

September 5, 1940

Ben S. Fisher, *Charles V. Wayland*, and *John W. Kendall* on behalf of the applicant, Worcester Broadcasting Corporation; *Karl A. Smith* and *Lester Cohen* on behalf of Airfan Radio Corporation; *Richard D. Daniels* on behalf of Riverside Broadcasting Co.; *Horace Lohnes*, *E. D. Johnston*, *F. W. Albertson*, and *Swagar Sherley* on behalf of Santa Barbara Broadcasters, Ltd., Interveners.

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF THE COMMISSION

FINDINGS OF FACT

1. This proceeding arose upon the application of the Worcester Broadcasting Corporation for a construction permit, requesting authority to establish a radiobroadcast station at San Diego, Calif., to operate on the frequency 1420 kilocycles with power 250 watts, unlimited time. The Commission designated the application for hearing, and the hearing was held on May 20, 1940, before an examiner duly appointed by the Commission.

2. The applicant is a California corporation with an authorized capital stock of 10,000 shares at par value of $10 each. The president of the corporation is Warren B. Worcester, who has agreed with the applicant to purchase 7,500 shares of stock at par value, i. e., $75,000, conditioned upon permission being granted by the commissioner of corporations of the State of California for the sale and issuance of the stock (hereinafter discussed), and upon a grant of the instant application by this Commission. Mr. Worcester has deposited with the First National Trust and Savings Bank of San Diego, Calif., securities which, as of June 11, 1939, had a market value of $75,040, and has authorized said bank to hold the securities as a guarantee of his ability to purchase the 7,500 shares of capital stock

of the applicant. Mr. Worcester, as of April 30, 1940, had total assets of $147,913.66, which included cash, $368.24; stocks, bonds, and mortgages, $128,245.42; and real estate valued at $19,300. He has no liabilities. The maximum cost of constructing the proposed station is estimated to be $12,942, and the monthly operating expense thereof will approximate $1,965. Tentative written commitments have been secured from advertisers which will assure to the proposed station a monthly income of $2,036. Mr. Worcester will supply any additional funds which may be required to insure continued operation of the proposed station.

3. Mrs. Warren B. Worcester is vice president and director of the corporation, and Mr. Glenn H. Munkelt is a director and secretary-treasurer of the corporation. Each of these persons will own one share of stock in the corporation. All of the prospective stockholders, officers, and directors of the corporation are citizens of the United States.

4. While Warren B. Worcester, the president of the applicant corporation, has had no experience in radiobroadcasting, said applicant proposes to employ for the operation of the station, a station manager, a chief engineer, two technicians, a program director, and others. The services of a manager, who is now employed in an identical capacity with an existing station, have been secured for the station proposed herein. Several other qualified individuals have been contacted for the positions heretofore enumerated.

5. The transmitting equipment proposed to be installed by the applicant is satisfactory from an engineering standpoint. The antenna and transmitter site are to be determined subject to approval of the Commission.

6. The Worcester application was designated for hearing to determine, among other things, the nature, extent and effect of any interference which would result if the station proposed therein operates simultaneously with a station proposed in the then pending application of Jack Hazard (B5–P–2400) and with Station KDB as proposed in its then pending application (B5–P–2453). Both of these applications have been withdrawn and are no longer pending before the Commission.

7. Riverside Broadcasting Co., intervener herein, has an application pending for the use of the frequency 1420 kilocycles with power of 250 watts, unlimited time, at Riverside, Calif. No objectionable interference would result from the simultaneous operation of the proposed Riverside station and the station proposed in the instant application.

8. John P. Scripps has an application pending which seeks authority to establish a radiobroadcast station at Ventura, Calif., to operate

on the frequency 1430 kilocycles with power of 1 kilowatt, unlimited time. In the event that both that and the instant application are granted neither station will cause objectionable interference to the other.

9. Mutual interference would result from simultaneous operation of the proposed station and station XEAU, Tiajuana, Mexico, which operates on the frequency 1420 kilocycles with power of 250 watts. The interference to both stations would be to their approximate 1.3 millivolt-per-meter maximum during day and night hours. However, the interference to Station XEAU would be to service which said station now renders within the United States, and the interference to the proposed station, insofar as the United States is affected, will take place along the Mexican border in an area about 1 mile wide which contains practically no population.

10. San Diego has a population of 147,995, and its metropolitan district has a population of 181,020 (1930 United States Census). As pointed out above, simultaneous operation of the proposed station and Station XEAU will not, for all practical purposes, decrease the population which will normally be served by the former. During daytime hours, the proposed station will serve 102,700 persons within its 25 millivolt-per-meter contour; 158,500 persons within its 5.0 millivolt-per-meter contour; 178,000 persons within its 2.0 millivolt-per-meter contour and 187,958 persons within its 0.5 millivolt-per-meter contour. At night, the station proposed herein will render service to 164,200 persons residing within its 4.0 millivolt-per-meter contour. A portion of the northern section of San Diego will not be included within the 5 millivolt-per-meter contour of the proposed station during daytime hours. This part of San Diego, however, is sparsely populated. In addition, more than 90 percent of the population residing in the metropolitan district is included within the 4 millivolt-per-meter contour.

11. Stations KFSD and KGB, located in San Diego and operating on the frequency 600 and 1330 kilocycles, respectively, with 1 kilowatt power, now render service to the said city and surrounding territory. Each is classed as a regional station and is affiliated with a national network.

12. At the time of the hearing the applicant had not obtained a permit or authorization from the proper authority of the State of California, as required by that State, for the issuance of its capital stock. It is, therefore, necessary that the applicant furnish to the Commission satisfactory proof of authority to issue its capital stock before the application may be unconditionally granted.

CONCLUSIONS

Upon the foregoing Findings of Fact the Commission concludes:

1. The applicant is legally, technically, financially and otherwise qualified to construct and operate the proposed station.

2. No objectionable interference would result from the simultaneous operation of the proposed station and any existing station in the United States, or with radiobroadcast facilities requested in any pending application.

3. While the applicant herein seeks the use of a local channel to serve a metropolitan district, we have found that more than 90 percent of the population residing in said area will receive interference-free service from the proposed station. In other words, practically the entire population of San Diego, Calif., will receive such service, if this application is granted.

4. We conclude that public interest, convenience, and necessity will be served by the granting of the instant application, such grant, however, to be made subject to the following condition: The applicant corporation shall furnish to the Commission within 30 days from the effective date of the Commission's final order herein satisfactory proof of its authority to issue its capital stock.

The proposed findings of fact and conclusions of the Commission were adopted as the "Findings of Fact and Conclusions of the Commission" on November 27, 1940.

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BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of	
COLUMBIA BROADCASTING SYSTEM, INC., NEW YORK, NEW YORK.	DOCKET No. 5901 FILE No. B1–PIB–26

Decided October 15, 1940

ORDER

At a session of the Federal Communications Commission held at its offices in Washington, D. C., on the 15th day of October 1940.

Upon consideration of the petition of The Crosley Corporation, licensee of International Broadcast Station WLWO, located at Mason, Ohio, for reconsideration of the Commission's action of August 21, 1940, granting the above-entitled application insofar as said action authorizes the assignment of the frequency 9590 kilocycles to the applicant:

It appearing that public interest, convenience, and necessity would be better served by a grant of said application in part and by assignment of the frequency of 9590 kilocycles to Station WLWO for use on an unshared basis and by the further reallocation and assignment of other frequencies pursuant to the Commission's action of this date granting the application of The Crosley Corporation for modification of license for Station WLWO (File No. B2–MLIB–39) and the applications of World Wide Broadcasting Corporation for modification of the licenses for Stations WRUL (file No. B1–MLIB–41) and WRUW (file No. B1–MLIB–42) located at Scituate, Mass.; and

It further appearing that Columbia Broadcasting System, Inc., has consented to the foregoing petition for reconsideration and to the partial grant of its application in the manner requested in said petition;

It is ordered that the said petition for reconsideration be, and it is hereby, granted.

It is further ordered

1. That the Commission's order of August 21, 1940, granting the above-entitled application of Columbia Broadcasting System, Inc., be, and it is hereby, set aside:

2. That said application be, and it is hereby, removed from the hearing docket;

3. That said application be, and it is hereby, granted, except insofar as authority is requested therein for the use by Columbia Broadcasting System, Inc., of the frequency 9590 kilocycles;

4. That the construction permit for the proposed new station at Brentwood, N. Y., shall authorize the use of the frequency 15270 kilocycles, shared only with Stations WCBX, Wayne, N. J., and WCAB, Newtown Square, Pa., instead of with said stations and Station WLWO, as requested in the application; and

5. That the granting of the above-entitled application of Columbia Broadcasting System, Inc., be, and it is hereby, made subject to the express conditions that:

(*a*) The permittee shall file with the Commission an application for modification of construction permit within 2 months after date of this grant, specifying the dimensions and expected directional characteristics of the proposed antenna systems; said antenna systems shall comply with section 4.43 (c) of the Rules Governing Broadcast Services Other Than Standard Broadcast; and

(*b*) That the permittee shall install frequency control equipment capable of maintaining the operating frequency within 0.005 percent of the assigned frequency in accordance with sections 4.41 and 4.47. The frequency monitor installed shall have an accuracy of 0.0025 percent in accordance with section 4.2.

This order shall become effective immediately.

8 F. C. C.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of [1] TELEGRAPH HERALD (KDTH), DUBUQUE, IOWA. For Modification of Construction Permit	FILE No. B4–MP–1028

Decided December 5, 1940

DECISION AND ORDER ON PETITION FOR REHEARING

On September 4, 1940, the Commission granted the application of Telegraph Herald (KDTH), Dubuque, Iowa, for modification of construction permit to increase power from 500 watts to 1 kilowatt, hours of operation from daytime only to unlimited time on the frequency 1340 kilocycles, using a directional antenna at night.

Sanders Bros. Radio Station is the licensee of Radio Station WKBB at Dubuque, Iowa. It is assigned the use of the frequency 1500 kilocycles with 250 watts power, unlimited time. On September 24, 1940, Sanders Bros. Radio Station filed a petition for rehearing directed against the action of the Commission, September 4, 1940, granting the Telegraph Herald (KDTH) application for modification of construction permit. The petition for rehearing is based primarily upon the following allegations: (1) That the granting of the Telegraph Herald application will adversely affect the public interest in that, because of the competitive situation, either (*a*) petitioner's station and the proposed Telegraph Herald station will both go under, thus leaving the listening public without adequate service, or (*b*) petitioner's station and the proposed Telegraph Herald station will both be compelled to render inadequate service, or (*c*) one of the two stations will go under, with the public receiving inadequate service from each during the period that both continue in operation.

On October 4, 1940, Telegraph Herald (KDTH) filed its opposition to the petition for rehearing of Sanders Bros. Radio Station (WKBB).

[1] Petition for Stay Order filed by Sanders Brothers Radio Station, Inc., in the United States Court of Appeals for the District of Columbia denied on February 18, 1941. Appeal dismissed pursuant to stipulation by appellant and F. C. C. on April 24, 1941. Petition for rehearing filed by KGIR, Inc., dismissed on November 26, 1940.

No question of interference is involved in this proceeding as the two stations are licensed to operate on widely separated frequencies.

With respect to petitioner's primary contention, that the granting of the Telegraph Herald application will adversely affect the public interest because of the competitive situation, we think the petitioner misapprehends the Commission's duty to consider competition under the Communications Act of 1934. Under that Act a *licensee* is not entitled to be protected from free competition. "Congress intended to leave competition in the field of broadcasting where it found it" and to permit "a licensee to survive or succumb according to his ability to make his programs attractive to the public" (*Federal Communications Commission* v. *Sanders Bros. Radio Station (WKBB)*. 309 U. S. 470). Where, however, the financial qualification of an applicant depends on his ability to compete for business with an existing licensee, the question of the effect of competition on the applicant is an important fact to be considered by the Commission in determining whether the applicant is financially qualified. As the Supreme Court said in the *Sanders Bros. case*, "an important element of public interest and convenience affecting the issuance of a license is the ability of the licensee to render the best practicable service to the community reached by its broadcasts. That such ability may be assured the Act contemplates inquiry by the Commission *inter alia* into an applicant's financial qualifications to operate the proposed station."

We found upon consideration of the original application of Telegraph Herald for a construction permit, and again upon consideration of the instant application (for modification of construction permit), that Telegraph Herald is financially qualified to construct and operate Station KDTH as proposed, and that a grant of these applications would serve the public interest. With respect to the original application, these findings were fully supported by the testimony and evidence introduced at the hearing on that application, and our decision has been sustained by the Supreme Court of the United States in *Federal Communications Commission* v. *Sanders Brothers Radio Station*, *supra*. With respect to the instant application, it is clear from the information and data therein that Telegraph Herald is financially qualified to operate Station KDTH as proposed. Petitioner sets forth no facts which indicate any change in the financial qualifications of Telegraph Herald since the hearing upon the original application of Telegraph Herald or in contradiction to the facts and data supplied to the Commission by the instant application of Telegraph Herald with respect to its financial qualifications. Since Telegraph Herald is financially qualified to operate the proposed station, the Commission believes that public interest, convenience, or necessity

will be best served by allowing free competition between the applicant and the existing station. We think that "competition between stations in the same community inures to the public good because only by attracting and holding listeners can a broadcast station successfully compete for advertisers. Competition for advertisers which means competition for listeners results in rivalry between stations to broadcast programs calculated to attract and hold listeners, which necessarily results in the improvement of the quality of their program service. This is the essence of the American system of broadcasting. * * *" (*In re Spartanburg Advertising Co.*, Spartanburg, S. C., for construction permit, 7 F. C. C. 498.)

We have examined petitioner's remaining allegations and find them without merit. They are either related to its primary allegation or have been considered by this Commission before or are entirely without substance. We are, therefore, of the opinion that the petition for rehearing should be denied.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of
DONALD J. FLAMM,
NEW YORK, N. Y.
For Consent to Transfer of Control of
KNICKERBOCKER BROADCASTING CO., INC.
(WMCA).

FILE No. B1–TC–252

Decided January 7, 1941

DECISION AND ORDER ON PETITION TO RECONSIDER

BY THE COMMISSION (COMMISSIONER CRAVEN NOT PARTICIPATING):

This is a petition filed December 23, 1940, by Donald J. Flamm, New York City. It requests the Commission to reconsider its action of December 17, 1940, giving consent to a transfer of control of Knickerbocker Broadcasting Company, Inc., licensee of Radio Station WMCA, New York City, from Donald J. Flamm to Edward J. Noble, upon application filed December 2, 1940, by Donald J. Flamm, transferor, and Edward J. Noble, transferee (B1–TC–252), and upon such reconsideration, to dismiss the application.

In support of the petition it is alleged that the application for consent to transfer control of the Knickerbocker Broadcasting Company, Inc. (WMCA), through the transfer of all the stock from Donald J. Flamm to Edward J. Noble was filed December 2, 1940; that on December 14, 1940, petitioner's counsel received a letter from the Commission requesting further information, and stating that before action would be taken on the application it would be necessary to supply the Commission with such information; that on December 17, 1940, petitioner had prepared a petition to dismiss the application under rule 1.73, "which was ready to be filed" when notice of the Commission's action of December 17, 1940, was received.

On December 30, 1940, Edward J. Noble, transferee, filed his answer to the petition filed by Donald J. Flamm, transferor.

Upon examination of the application filed December 2, 1940, by Donald J. Flamm, transferor, and Edward J. Noble, transferee, for consent to transfer control of the Knickerbocker Broadcasting Co.,

Inc. (WMCA), it was found that full information was lacking, particularly as to the financial arrangements between the parties, the financial showing of the transferee, and the nature of an asset item in the licensee's balance sheet entitled "franchise." On December 13, 1940, a request for additional information in regard to these matters was made jointly of transferor and transferee. On December 14, 1940, the Commission received a response from the transferee to its inquiry of December 13, 1940.

Thereupon the application became available for action by the Commission, and, upon consideration of the application and data submitted therewith by the transferor and transferee, the Commission, on December 17, 1940, found that the transferee was legally, technically, financially, and otherwise qualified, and that the transfer requested was in the public interest. It, therefore, gave its consent to the transfer.

Insofar as the instant petition requests a reconsideration of the action of the Commission granting consent, as applied for, to transfer of control of a licensee corporation, neither the Communications Act of 1934, as amended, nor any rule or regulation promulgated by the Commission pursuant to the act either expressly or by implication makes provision for the filing by an applicant of a petition for reconsideration or rehearing following a grant of his own application as filed. Section 405 of the Communications Act of 1934 and paragraph 1.271 of the Commission's Rules of Practice and Procedure provide for the filing of a petition for rehearing which may request reconsideration, hearing, or rehearing by any "person aggrieved or whose interests are adversely affected" by any decision, order, or requirement of the Commission. Petitioner has failed to make any showing that he is aggrieved or adversely affected by the action of the Commission taken pursuant to his request.

Insofar as the petition requests a dismissal of the above-entitled application, petitioner's sole complaint appears to be that the Commission acted upon the merits of his application without awaiting a response from him as well as from the transferee to its communication of December 13, 1940, and while he was preparing to file a request for dismissal of the instant application. Petitioner does not claim that the information furnished by the transferee was in any way inadequate, improper, or incorrect, nor does he allege that he had intended to furnish any additional information. On the contrary, it appears from his petition that his intentions were to ignore the Commission's request for information, and to petition the Commission to dismiss the application without giving any consideration whatever to its merits.

Petitioner's application was pending from December 2 to December 17, 1940, during which time he had ample opportunity to request a dismissal thereof pursuant to paragraph 1.73 of the Commission's rules. If petitioner found himself unable to have the necessary papers prepared formally requesting a dismissal of his application, he might have informally communicated his intentions to the Commission, and requested additional time within which formally to do so. In the absence of any contrary expression of intention by an applicant, the Commission necessarily presumes that the request contained in his application is a continuing one until final action is taken thereon. Since the applicant in this case did not make his intentions known to the Commission prior to final action thereon, rule 1.73 is no longer applicable.

In view of the foregoing, we are of the opinion that the "Petition to reconsider action approving transfer of control and to dismiss application in accordance with rule 1.73 of the Commission's Rules and Regulations" should be dismissed.

However, in accordance with our usual practice, we have examined the instant petition with particularity in order to determine whether it presents any matters upon which we should, on our own motion, take action. As hereinbefore indicated, after securing full information we found on December 17, 1940, that the transferee was legally, technically, financially, and otherwise qualified; that the transfer requested would serve the public interest, and gave our consent to the transfer. The petition for reconsideration does not allege the contrary. No facts are stated in the petition which contradict in whole or in part the Commission's conclusion that the transferee is qualified to serve the public interest. In the absence of any showing that our action giving consent to the transfer of control of the Knickerbocker Broadcasting Co., Inc. (WMCA), is contrary to the public interest or that the action is in any respect unjust, unwarranted, or erroneous, no basis exists for reconsidering on our own motion our action of December 17, 1940, giving consent to said transfer of control.

In this connection, it should be noted that our action taken at the request of the parties is not a mandatory order, but is a permissive consent to the proposal contained in the application. The petitioner, as transferor, was himself an applicant seeking our consent to that proposal. Our consent has been given, and the matter is now one of private contractual arrangements between the parties.

Accordingly, it is ordered, this 7th day of January 1941, that the petition filed by Donald J. Flamm, transferor, "to reconsider action approving transfer of control and to dismiss application in accordance with rule 1.73 of the Commission's Rules and Regulations" be. and it is hereby, dismissed.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of [1]
REFORWARDING TELEGRAMS WITHOUT ADDITIONAL CHARGE. DOCKET No. 5628

Decided January 9, 1941

Ralph H. Kimball and *William Wendt* on behalf of The Western Union Telegraph Co.; *Manton Davis* and *Frank W. Wozencraft* on behalf of R. C. A. Communications, Inc.; *John H. Wharton* on behalf of Postal Telegraph-Cable Co. and Mackay Radio & Telegraph Co.; *B. O. Heinrich* on behalf of the Continental Telegraph Co.; and *Annie Perry Neal* on behalf of the Commission.

REPORT OF THE COMMISSION

BY THE COMMISSION:

1. By order dated May 16, 1939, the Commission instituted on its own motion an investigation into and concerning the lawfulness of the charges for reforwarding telegraph messages in interstate commerce, and of the regulations, practices and classifications applicable thereto, with the view of determining whether such charges, practices, classifications, and regulations were in any respect in violation of law and of making such findings and entering such order, or orders, in the premises and of taking such other and further action as the facts and circumstances might appear to warrant.

2. Hearing was had on June 19, 1939, after due and appropriate notice to the respondent carriers and to the public. Evidence as to their tariff provisions and the practices thereunder was supplied by the Western Union Telegraph Co., Postal Telegraph-Cable Co., R. C. A. Communications, Inc., and Mackay Radio & Telegraph Co. The respondents did not avail themselves of the privilege of filing proposed reports, as permitted under the Commission's Rules of Practice and Procedure.

3. Rule 5 of the Western Union Tariff, F. C. C. No. 176, original page 27, reads as follows:

(*a*) Subject to the restrictions contained in paragraphs (*b*) and (*c*) messages prepaid at regular commercial rates, reaching their original destination over Western Union lines, will be forwarded without additional charge to the ad-

[1] The Commission, on January 9, 1941, discontinued this proceeding.

dressee at any other point within the United States where there is a Western Union office. Such forwarding will be done either on instructions left by the addressee or automatically by the company when the whereabouts of the addressee is ascertained locally.

(*b*) Forwarding without additional charge applies only when the addressee has left the point where the sender expected him to be. It does not apply, however, to messages reported undelivered and forwarded or resent to some other destination at the request of the sender, nor does it give to persons who are habitually on the road the privilege of having all their messages addressed to their headquarters and forwarded free to them wherever they may be. Neither does it permit messages addressed to a company or firm to be forwarded free from one office, division, or department of that company or firm to another office, division, or department of the same company or firm in the same city or in a different city. Nor is it intended that, under standing instructions, messages for persons having their places of business in a city or town and residing in a neighboring or suburban town, will be forwarded free to them at their place of residence.

(*c*) Under the circumstances outlined in paragraph (*a*) of this rule, collect messages will be forwarded and the addressee charged, on the basis of the original word count, the tolls from the originating point direct to the final destination.

4. Under this rule a 10-word prepaid telegram could be sent from New York City to a person temporarily in Baltimore, Md., at a charge of $0.36. If the party had gone to San Francisco and left a forwarding address, the message would be reforwarded without additional charge to that point; whereas, the charge for a 10-word telegram sent directly from New York to San Francisco would be $1.20. Conversely, however, a 10-word prepaid telegram sent from New York to San Francisco and reforwarded to Baltimore would be charged for at the New York-San Francisco rate of $1.20, rather than at the lower rate between New York and Baltimore.

5. The rule as to collect messages differs in that the rate charged for a reforwarded collect message is the rate between the point of origin and the point at which delivery is actually made. For example, if a message were sent collect from New York to San Francisco and reforwarded to Boston, the charge collected would be the rate from New York to Boston, only. Conversely, a collect message sent from New York to Boston and reforwarded to San Francisco would be charged for on the basis of the toll from New York to San Francisco.

6. In order to forestall abuses by persons attempting in bad faith to make use of the reforwarding privilege for the purpose of securing telegraph service at a lower charge, the company has made certain restrictions and exceptions to the general rule. For instance, the Company does not reforward messages delivered after office hours at the business address of an officer of a company to the officer's residence if it is in the suburbs or some distance removed from his

headquarters, or messages addressed originally to the permanent or regular address of the addressee, or messages sent to the general headquarters of a traveling man.

7. The Postal Telegraph-Cable Co., the Mackay Radio & Telegraph Co., and R. C. A. Communications, Inc., have reforwarding rules in their tariffs similar to those of The Western Union Telegraph Co. and similar practices obtain thereunder.

8. The principal questions presented are whether reforwarding prepaid messages without additional charge is unjust or unreasonable or results in any unjust or unreasonable discrimination and whether the different method employed as to collect messages is unreasonable or results in any such discrimination.

9. The vice president of the Western Union Telegraph Co. testified that their rules and regulations have taken care of possible abuses of the reforwarding privilege, that cases of abuses have been quite rare, and that they had no difficulty in dealing with them.

10. As pointed out above, there are instances in which the sender of a telegram may have his message reforwarded to a new destination at a lower cost to him than for a direct message to the same point. This privilege may work to the advantage of the former. However, as pointed out by one of the witnesses at the hearing, the reason for using telegraph facilities is usually based upon the need for fast service, and it is unlikely that persons desiring fast service would knowingly send telegrams to the wrong address and subject them to the necessary delay of reforwarding merely to save the small difference in the charge. On the other hand, the reforwarding privilege works to the advantage and convenience of the entire telegraph-using public for it gives them greater assurance of the efficient handling and prompt delivery of their messages. The privilege is equally available to all persons and all classes of persons coming within the provisions of the rule in all localities where the companies render domestic telegraph service.

11. The exceptions which the companies have made to the application of the reforwarding privilege appear to be reasonable and aimed solely at preventing abuses of the privilege.

12. In explaining the reasons which prompted a different rule for reforwarding collect messages the vice president of the Western Union Telegraph Co. submitted the following testimony:

> In the case of a prepaid message, the sender having paid the charges through to original destination, and our undertaking being to complete the service regardless of circumstances, if it was in our power to do so, we make no additional charge.
>
> In the case of a collect message, the facts and circumstances are somewhat different. Nobody has made any payment with respect to such a message prior to its delivery, and when a collect message is forwarded, we necessarily provided

that the office of ultimate delivery should collect the through charges from the point of origin to such point of ultimate delivery. The explanation of that being that the office of ultimate delivery has no means of knowing what the correct tolls were between the originating point and the office of the original destination.

It may seem, perhaps, that this is, in effect, a discrimination against the sender or addressee of a collect message but, of course, that is not actually the case. The sender may just as well be traveling toward the place of original origin as away from it, and if he has moved out of the zone of the first delivery office and gone into an office which has a cheaper rate in the direction from which the message was sent, he would pay less than the case of a prepaid message addressed originally to a point further away from the point of origin.

In other words, in the ordinary processes the thing would average up so that the parity would be established, in fact, between prepaid and collect messages insofar as forwarding charges are concerned.

13. The contract involved in the handling of a telegraph message is between the sender and the carrier, and the sender has the privilege of sending his message prepaid or collect. Tariffs of the carriers on file with the Commission provide that if the addressee of a collect message refuses to pay the charges the sender is liable and must make payment; and it is the practice of the carriers to permit the opening and inspection of a message by the addressee before requiring him to pay or refuse to pay the charges. In this situation it is difficult to say that the difference in handling reforwarded collect messages as compared to prepaids amounts to unjust discrimination.

14. We are mindful of the general principle that a transportation carrier can have but one lawful rate between two points, whether the shipment is made prepaid or collect. *Boise Commercial Club* v. *Adams Express Co.*, 17 I. C. C. 115, 121, and other cases. These cases arose where the carriers charged higher basic rates for collect shipment than for prepaid shipments between the same two points. That is not the case here, however. Here the rates from the point of sending to the point designated in the message are always the same for prepaid messages and collect messages. It is only in the case of a reforwarded message where a different ultimate charge may result, higher or lower depending upon whether the addressee is going toward or away from the point from which the message was sent. This practice appears justifiable in the interest of expediency of handling and simplification of operation.

15. It may be argued that the rules applicable to reforwarding messages may be susceptible of abuse in practice, resulting in unreasonable or unjust discrimination. However, no instances of such abuse have come to our attention; and no complaints by the public concerning the rules, their operation, or application, have been made to the Commission. If such abuse is later found or complaints are made in this respect, the Commission will take appropriate action.

16. Upon the record here we find that the discrimination, if any, which may result from a proper application of the reforwarding privilege is not unjust or unreasonable. An order will be entered, therefore, discontinuing this proceeding.

WALKER and THOMPSON, Commissioners, dissenting in part:

We think it is fundamental that the rates on prepaid and collect messages be the same, and that charging for reforwarding collect messages when no such charge is made for reforwarding prepaid messages constitutes unjust and unreasonable discrimination.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of [1] THE MAYFLOWER BROADCASTING CORPORATION, BOSTON, MASS. For Construction Permit.	DOCKET No. 5618
THE YANKEE NETWORK, INC. (WAAB), BOSTON, MASS. For Renewal of Licenses (Main and Auxiliary).	DOCKET No. 5640

May 29, 1940

J. W. Gum on behalf of The Mayflower Broadcasting Corporation; *Paul D. P. Spearman*, *Frank Roberson*, *Frank U. Fletcher*, *J. Arnold Farrer*, and *Richard M. Russell* on behalf of The Yankee Network, Inc.

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF THE COMMISSION

FINDINGS OF FACT

1. These proceedings arose upon (*a*) the application of The Mayflower Broadcasting Corporation for a construction permit authorizing the establishment of a radiobroadcast station at Boston, Mass., using the frequency 1410 kilocycles with power of 500 watts night and 1 kilowatt day, unlimited time (this application requests the facilities now assigned to Station WAAB, Boston, Mass.), and (*b*) the application of The Yankee Network, Inc., for renewal of licenses of Station WAAB for main and auxiliary transmitters. The Commission designated these applications for hearing and the hearings were held during the month of November 1939, in Boston, Mass., before an examiner duly appointed by the Commission.

IN RE THE MAYFLOWER BROADCASTING CORPORATION

2. This corporation has three stockholders who hold offices as indicated: George R. Dunham, president; John J. McCann, treasurer; and Lawrence J. Flynn, secretary. The corporation was originally authorized to issue 1,000 shares of common voting stock with a par value of $100 each. Messrs. Dunham and McCann each held 350 shares of stock and Mr. Flynn 300 shares thereof.

[1] The proposed findings and conclusions of the Commission as to the application of The Mayflower Broadcasting Corporation were adopted by the Commission on January 16, 1941. See Decision and Order of the Commission, 8 F. C. C. 338.

3. The application of The Mayflower Broadcasting Corporation was filed with the Commission on March 23, 1939. A balance sheet filed therewith purported to show the financial condition of the applicant "*as at the date of hearing*" [emphasis supplied]. Total assets were shown therein to be $100,000 in cash. Other items on the report, including notes receivable, were left blank. No liabilities were shown. On January 14, 1939 (prior to the date of submission of the application and balance sheet above), John J. McCann and George R. Dunham signed demand notes payable to The Mayflower Broadcasting Corporation. Each of these persons endorsed the other's note. The notes are identical in tenor and read as follows:

$50,000.00 JANUARY 14, 1939.

On demand I promise to pay to the order of Mayflower Broadcasting Corporation fifty thousand dollars at Boston, Mass. (without interest).

Value received.

No. _____ Due

(Signed)

Seventy thousand dollars of the total sum represented by the two notes, i. e., $100,000, constituted the consideration for the 700 shares of stock (par value, $100) issued to the promisors. The remaining $30,000 of the sums payable comprised the consideration for the 300 shares of stock issued to Mr. Flynn, who received these shares in consideration for his services in connection with the application, and for his contemplated future employment as manager of the proposed station.

4. George R. Dunham has a net worth of $48,643.88. He has securities totaling $40,879.23 composed of stock in various companies. Other assets include a house and land valued at $5,000 and various life-insurance policies with a total cash value of $7,964.65. Liabilities consist of two notes totaling $5,200 which have been owing for a number of years. A considerable number of the shares of stock mentioned heretofore as assets are pledged to secure one of the notes ($4,900). Mr. Dunham has retired from business. He and his wife subsist on the income derived from his investments. The record does not reveal how he would satisfy his $50,000 demand note or whether the corporation would accept a partial payment thereon.

5. John J. McCann intends to satisfy his note with expected proceeds from an invention. At the date of the hearing final action had not yet been taken by the United States Patent Office upon the application for a patent. Testimony was presented as to the possible value of the device. In any event, the Commission considers that the value of the invention is of necessity highly specula-

tive and conjectural since the device has yet to be patented. It cannot be concluded that under such circumstances satisfactory proof of Mr. McCann's financial ability to meet the obligation of his $50,000 demand note has been presented.

6. The estimated costs of constructing and operating the proposed station are $16,406 and $6,926 (monthly), respectively.

7. Adverting to the statement on the balance sheet attached to the application, i. e. (in substance), that the corporation would have $1000,000 in cash at the date of the hearing, counsel for The Mayflower Broadcasting Corporation at the outset of the proceeding objected to examination of Messrs. Dunham and McCann on the subject of finances, and instructed these persons not to answer questions upon that subject, although the examiner, in the light of the aforementioned statement in the application, considered the information pertinent. The examiner thereupon issued a subpena requiring Mr. McCann (treasurer) to appear and testify regarding the finances of The Mayflower Broadcasting Corporation. Therefore, counsel for said corporation stated in substance that he would examine the witnesses on finances, and thereupon produced the evidence upon which the foregoing findings are based. It was contended by counsel for the applicant that the demand notes and cash were synonymous. We certainly cannot agree with such contention and find that at the time of the instant hearing and contrary to the representations made in the balance sheet attached to the application The Mayflower Broadcasting Corporation did not have any cash. Nor does it appear with any degree of conclusiveness that the necessary funds would be supplied to the applicant if the demand notes were called, and the possibility of such action being taken by the corporation would appear to rest largely within the discretion of Messrs. Dunham and McCann, two of the three stockholders holding 700 of the 1,000 shares of stock between them and each of whom is liable as endorser on the note of the other.

8. Information in the nature of *quo warranto* was filed by the attorney general of Massachusetts in the Superior Court of the Commonwealth of Massachusetts, praying for a judgment of ouster against The Mayflower Broadcasting Corporation and that its charter and certificate of incorporation be declared forfeited. The charges made by the attorney general (in the information as amended) were as follows:

> That the fraud practiced upon the Commissioner of Corporations and Taxation and the Secretary of State as alleged in this information more particularly consisted in preparing, signing, and presenting to the said commissioner by the said Dunham, Flynn, and McCann, and through him to the Secretary of State on or about January 5, 1939, Articles of Organization, for the purpose of obtaining

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a special charter and a certificate of incorporation for the then proposed corporation, The Mayflower Broadcasting Corporation, which articles contained the false statement:

"That the amount of capital stock now to be issued is 1,000 shares of common stock to be paid for as follows: In cash in full, $100,000; shares, common, 1,000" the said Dunham, Flynn, and McCann as such organizers not then having any intention that such stock was to be issued for cash in full to the amount of $100,000, but having then the present intention to issue it for promissory notes or like things other than cash, and intending by said statement to deceive the officers of the Commonwealth so that they would approve such articles of organization and issue a certificate of incorporation, and by such representations to deceive the general public as to the financial standing of the said The Mayflower Broadcasting Corporation. Such officers were in fact deceived by the said false statement so fraudulently made as aforesaid and by reason thereof granted such approval and certificate of incorporation.

That the misrepresentation made in the Articles of Organization, by the false statement aforesaid, to the effect that the stock was to be issued for cash, caused said Commissioner and the said Secretary of State to grant a special charter and Articles of Incorporation which would not have been so granted by them if instead of such false statement it had been set forth in said articles of organization that the stock was to be issued for promissory notes of the stockholders.

That the stock was after said January 5, 1939, issued illegally in that it was issued not for cash but for notes of the stockholders.

The factual content of the foregoing pleading is in accord with the circumstances surrounding the issuance of stock and payment therefor which we have heretofore outlined.

9. A demurrer was filed on behalf of the defendants. Said demurrer was overruled. On January 23, 1940, articles of amendment to the original articles of incorporation of The Mayflower Broadcasting Corporation were entered into by the incorporators and approved by Henry F. Long, the commissioner of corporations and taxation for Massachusetts. The amendment provides:

Whereas in the articles of organization the statement that 1,000 shares of common stock were to be issued for cash in full was made by the incorporators with the knowledge that $100,000 in payment for the said 1,000 shares of common stock was available; and, whereas subsequent to the approval of the Articles of Organization it became evident that $100,000 was not immediately needed by the corporation nor required by it nor likely to be required for a substantial period of time; and, whereas it is the intention of the incorporators to issue 3 shares of the capital stock for cash, the statement as to the manner of issue of stock on the fourth page of the Articles of Organization is hereby amended to read as follows:

Three shares to be issued for cash in full.

10. On January 26, 1940, an "agreement for judgment" was entered into between the attorney general and the corporation. This agreement provided for dismissal of the information.

11. Articles of amendment to the charter of The Mayflower Broadcasting Corporation were filed with the Commission on February 2,

1940. Under the amended charter 3 shares of stock were issued, 1 share each to George R. Dunham, John J. McCann, and Lawrence J. Flynn. Thereafter, the parties were advised by letter of the Commission dated February 28, 1940, that certain copies of correspondence, pleadings, and other papers concerning the *quo warranto* proceedings hereinbefore mentioned, which had been filed subsequent to the conclusion of the hearing, would be made a part of the record in the absence of written objection from counsel for the parties submitted to the Commission on or before March 4, 1940. No such objection was received. The parties were further informed that the time for filing proposed findings was extended to April 6, 1940. However, on March 27, 1940, The Mayflower Broadcasting Corporation, by its attorney, filed a letter transmitting subscription agreements wherein Mr. George R. Dunham subscribes for 499 shares of the corporate stock; Mr. John J. McCann, 498 shares. Also transmitted with the letter was an agreement with Mr. Flynn, the remaining stockholder, whereby Messrs. Dunham and McCann agreed to endorse to Mr. Flynn 299 shares, so that in the final analysis the stockholders of the corporation would be the same and the same number of shares would be held by each as originally planned. The Commission did not open the record for the purpose of admitting the communication of March 27, 1940, and the agreements transmitted therewith; therefore, these may not be considered as evidence in the instant proceedings. But even if they be so considered, the subscription agreements plainly impose upon Messrs. Dunham and McCann substantially the same obligations as the 2 original $50,000 demand notes. Moreover, no additional financial statements were submitted for either McCann or Dunham.

12. We have found that the application of The Mayflower Broadcasting Corporation was filed with the Commission on March 23, 1939. Question 19 (f) of the application reads as follows: "Show the number of shares of each class of stock issued and outstanding." In response, the following statement (under oath) was made: "All issued and outstanding." The stock was not issued until more than 4 months after the application was filed, or on August 1, 1939.

IN RE THE YANKEE NETWORK, INC.

13. The primary reason for designating the renewal application of Station WAAB for hearing was the pendency of the application of The Mayflower Broadcasting Corporation requesting the facilities allocated to said station. In view of the conclusions which we have reached with respect to The Mayflower Broadcasting Corporation's application, we do not consider it necessary to discuss other

evidence introduced at this hearing. Much of this evidence concerns information brought before the Commission and which was the subject of its review upon the complaint of Lawrence J. Flynn, one of the stockholders of The Mayflower Broadcasting Corporation.

CONCLUSIONS OF THE COMMISSION

IN RE APPLICATION OF THE MAYFLOWER BROADCASTING CORPORATION

(1) Application, The Mayflower Broadcasting Corporation, is not shown to be financially qualified to construct and operate the station proposed by it.

(2) Representations made to the Commission in the application, under oath, were not in fact true. Whenever an applicant, such as here, makes material representations in its application which are at variance with the true facts, a serious question is presented and problems arise which affect and, in fact, substantially impede, the progress of the Commission in carrying out its mandate under the statute. Under no circumstances can the Commission excuse or condone action of this sort. A proposed licensee who acts in this manner cannot be entrusted with the burdens imposed by a broadcast license.

(3) The granting of the application of The Mayflower Broadcasting Corporation will not serve public interest, convenience, or necessity.

IN RE APPLICATION OF THE YANKEE NETWORK, INC. (STATION WAAB)

(1) By reason of the failure of The Mayflower Broadcasting Corporation to present satisfactory evidence of its qualifications, it is unnecessary to consider in detail the evidence presented either upon the hearing of The Mayflower Broadcasting Corporation or upon the hearing of the renewal application of Station WAAB, as the same may have reference to the latter. Such questions as are presented thereby have had, as pointed out herein, the consideration of the Commission.

(2) The granting of the applications of The Yankee Network, Inc. (WAAB), for renewal of licenses for main and auxiliary transmitters will serve public interest, convenience, or necessity.

Decided January 16, 1941

DECISION AND ORDER

These proceedings were instituted upon the filing by The Mayflower Broadcasting Corporation of an application for a construction permit to authorize a new radiobroadcast station at Boston, Mass., to operate

on the frequency 1410 kilocycles with power of 500 watts night and 1 kilowatt day, unlimited time. These are the facilities now assigned to Station WAAB, Boston, Mass. The Commission designated this application for hearing along with the applications of The Yankee Network, Inc. (licensee of Station WAAB) for renewal of licenses for this station's main and auxiliary transmitters. The hearing was held in Boston, Mass., during November 1939. On May 31, 1940, the Commission issued proposed findings of fact and conclusions proposing to deny the application of The Mayflower Broadcasting Corporation and to grant the applications of The Yankee Network, Inc., for renewal of licenses. Exceptions to the proposed findings and conclusions were filed by Mayflower Broadcasting Corporation and at its request oral argument was held on July 25, 1940, with The Yankee Network, Inc., participating. Due to the absence of a quorum of the Commission at that time, the case was reargued before the full Commission by counsel for both parties on September 26, 1940.

In its proposed findings the Commission concluded that The Mayflower Broadcasting Corporation was not shown to be financially qualified to construct and operate the proposed station and, moreover, that misrepresentations of fact were made to the Commission in the application. After careful consideration of the applicant's exceptions and of the oral arguments presented, the Commission is unable to change these conclusions. The proposed findings and conclusions as to the application of The Mayflower Broadcasting Corporation will therefore, be adopted and made final.

More difficult and less easily resolvable questions are, however, presented by the applications for renewal of The Yankee Network, Inc. The record shows without contradiction that beginning early in 1937 and continuing through September 1938, it was the policy of Station WAAB to broadcast so-called editorials from time to time urging the election of various candidates for political office or supporting one side or another of various questions in public controversy. In these editorials, which were delivered by the editor-in-chief of the station's news service, no pretense was made at objective, impartial reporting. It is clear—indeed the station seems to have taken pride in the fact—that the purpose of these editorials was to win public support for some person or view favored by those in control of the station.

No attempt will be made here to analyze in detail the large number of broadcasts devoted to editorials. The material in the record has been carefully considered and compels the conclusion that this licensee during the period in question, has revealed a serious misconception of its duties and functions under the law. Under the American system of broadcasting it is clear that responsibility for the conduct

of a broadcast station must rest initially with the broadcaster. It is equally clear that with the limitations in frequencies inherent in the nature of radio, the public interest can never be served by a dedication of any broadcast facility to the support of his own partisan ends. Radio can serve as an instrument of democracy only when devoted to the communication of information and the exchange of ideas fairly and objectively presented. A truly free radio cannot be used to advocate the causes of the licensee. It cannot be used to support the candidacies of his friends. It cannot be devoted to the support of principles he happens to regard most favorably. In brief, the broadcaster cannot be an advocate.

Freedom of speech on the radio must be broad enough to provide full and equal opportunity for the presentation to the public of all sides of public issues. Indeed, as one licensed to operate in a public domain the licensee has assumed the obligation of presenting all sides of important public questions, fairly, objectively and without bias. The public interest—not the private—is paramount. These requirements are inherent in the conception of public interest set up by the Communications Act as the criterion of regulation. And while the day to day decisions applying these requirements are the licensee's responsibility, the ultimate duty to review generally the course of conduct of the station over a period of time and to take appropriate action thereon is vested in the Commission.

Upon such a review here, there can be no question that The Yankee Network, Inc., in 1937 and 1938 continued to operate in contravention of these principles. The record does show, however, that, in response to a request of the Commission for details as to the conduct of the station since September 1938, two affidavits were filed with the Commission by John Shepard 3d, president of The Yankee Network, Inc. Apparently conceding the departures from the requirements of public interest by the earlier conduct of the station, these affidavits state, and they are uncontradicted, that no editorials have been broadcast over Station WAAB since September 1938 and that it is not intended to depart from this uninterrupted policy. The station has no editorial policies. In the affidavits there is further a description of the station's procedure for handling news items and the statement is made that since September 1938 "no attempt has ever been or will ever be made to color or editorialize the news received" through usual sources. In response to a question from the bench inquiring whether the Commission should rely on these affidavits in determining whether to renew the licenses, counsel for The Yankee Network, Inc., stated at the second argument, "There are absolutely no reservations whatsoever, or mental reservations of any sort, character, or kind with reference to those affidavits. They mean exactly what they say in

the fullest possible amplification that the Commission wants to give to them."

Relying upon these comprehensive and unequivocal representations as to the future conduct of the station and in view of the loss of service to the public involved in the deletion of this station, it has been concluded to grant the applications for renewal. Should any future occasion arise to examine into the conduct of this licensee, however, the Commission will consider the facts developed in this record in its review of the activities as a whole.

One further point must be dealt with in view of certain contentions made in the course of this proceeding. It has been pointed out that The Yankee Network, Inc., is also the licensee of a second regional station in Boston, Station WNAC, and the contention has been made that the applications for renewal for WAAB should, therefore, be denied. This argument raises a serious and troublesome question of policy to which the Commission has given considerable attention and which is presently under consideration in connection with the Commission's investigation into chain broadcasting. The question is peculiarly one which cannot be effectively and fairly dealt with by singling out individual instances for treatment. It should be understood, therefore, that the grant of these applications of The Yankee Network, Inc., for renewal is without consideration of the question of dual ownership. The Commission will reserve its decision on that point until such time as it is prepared to consider a more general policy for application on a country-wide basis.

January 16, 1941

ORDER

At a session of the Federal Communications Commission held at its offices in Washington, D. C., on the 16th day of January 1941;

Upon consideration of the above-described applications, the documents submitted therewith, and the evidence adduced at the hearing thereon, the Commission, being fully advised in the matter, determines that public interest, convenience, and necessity will not be served by a grant of the application of The Mayflower Broadcasting Corporation, and will be served by a grant of the application of The Yankee Network, Inc.

It is ordered that the application of The Mayflower Broadcasting Corporation be, and the same is hereby, denied.

It is further ordered that the application of The Yankee Network, Inc., be, and the same is hereby, granted.

This order shall become effective immediately.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

DEPARTMENT OF PUBLIC SERVICE OF WASHINGTON, COMPLAINANT, *v.* THE PACIFIC TELEPHONE & TELEGRAPH CO. ET AL., RESPONDENTS The Investigation upon the Commission's Own Motion into the Rates, Charges, Classifications, Services and Practices of the Pacific Telephone & Telegraph Co. and Its Wholly-Owned Subsidiaries Applicable to Interstate Communication Service.	DOCKET No. 5681

Decided February 3, 1941

For the Respondents: *Alfred Sutro, A. T. George, Fletcher Rockwood, Otto B. Rupp;* for the complainant, Department of Public Service of the State of Washington: *Carl I. Wheat, Albert B. Stephan;* for the California Railroad Commission: *E. F. McNaughton*, Director of Public Utilities Department, *Arthur B. Frye*, chief of the telephone division, *Loren East*, research engineer, *John E. Benton;* for the Public Utilities Commission of Idaho, Public Utilities Commissioner of Oregon, Public Service Commission of Nevada, National Association of Railroad and Utilities Commissioners: *John E. Benton;* for the City of Seattle: *A. C. Van Sollen*, corporation counsel, and *Glen E. Wilson*, assistant corporation counsel; for the city of Spokane, *George M. Ferris*, corporation counsel; for King County, Wash.: *B. Gray Warner*, prosecuting attorney, and *Harry A. Bowen*, deputy prosecuting attorney; for Seattle Telephone Users League: *Raymond D. Ogden;* for Telephone Users League of Washington: *Skeel, McKelvy, Henke, Evenson & Uhlmann;* for the Federal Communications Commission: *Frank B. Warren.*

REPORT AND DECISION OF THE COMMISSION

On June 28, 1939, the Department of Public Service of the State of Washington filed with this Commission its complaint alleging,

among other things, that the interstate rates of The Pacific Telephone & Telegraph Co., hereinafter referred to as the respondent, were unjust, unreasonable, excessive, and unreasonably discriminatory in respect to respondent's patrons in the State of Washington. The Washington Department prayed that respondent be required to prepare and submit a statement of the revenues from, expenses incurred in connection with, and property used by it in furnishing interstate communication service in each of the States served. Thereafter, on July 12, 1939, this Commission issued its order directing the respondent to prepare and file the data, hereinafter referred to as the separation study, requested by the complainant, including an explanation of the bases for the allocation of any amounts not directly assignable to a particular class of service or to a particular state. On August 8, 1939, this Commission, on its own motion, issued its order under section 205 of the Communications Act, instituting an investigation into the interstate rates, charges, etc., of the respondent above named and its two wholly-owned subsidiaries, Bell Telephone Co. of Nevada and Southern California Telephone Co. These two wholly-owned subsidiaries were later made parties respondent to these proceedings.

We invited the cooperation of the State regulatory authorities in the States affected and their representatives sat with our presiding Commissioner Paul A. Walker at the hearings.[1] We have availed ourselves of their advice in considering the proper disposition of the proceeding and they concur in the views herein expressed, and in the result.

All three respondents are referred to collectively hereinafter as the "Pacific System."

The expression "Pacific territory" means that territory served by the respondents directly through their owned or leased facilities and includes the States of Washington, Oregon, California, Nevada, and that portion of Idaho generally north of the Salmon River.

"Interstate Pacific" business or traffic means interstate communication business or traffic of respondents both originating and terminating in Pacific territory. "Other interstate" business or traffic is interstate communication business or traffic of respondents which either originates or terminates (but not both) in Pacific territory. Other interstate business may also include a negligible amount of traffic which transits a portion of Pacific territory.

[1] California Railroad Commission, Ray C. Wakefield, commissioner; Department of Public Service, State of Washington, A. M. Garrison, supervisor of public utilities; Public Utilities Commissioner, State of Oregon, Ormond R. Bean, commissioner; Public Utilities Commission of Idaho, J. W. Cornell, president, Reese Hattabaugh, commissioner; Public Service Commission of Nevada, C. B. Sexton, chairman.

The Pacific Telephone & Telegraph Co. publishes, for itself and the other two respondents, rates applicable to both "interstate Pacific" and "other interstate" traffic.

Pursuant to the Commission's order of July 12, 1939, the respondents submitted a separation study for the calendar year ended December 31, 1938, and for the twelve months ended June 30, 1939, which purports to show the revenues from, the expenses incurred in connection with, and the cost of property used in furnishing intrastate, "interstate Pacific," and "other interstate" services.

Hearings were held at Seattle and San Francisco and the record was closed April 6, 1940. Respondents submitted proposed findings and brief in support thereof. On August 15, 1940, the Commission issued its proposed report. Respondents filed exceptions thereto and briefs in support thereof. The proposed report and the exceptions thereto were argued orally before the Commission on November 14, 1940. Various counsel representing respondents, the complainant and other interested State Commissions, as well as counsel for this Commission, were heard at that time.

The respondent, Pacific Telephone & Telegraph Co., is a California corporation and is an operating unit in the Bell System. Southern California Telephone Co. is a California corporation, and Bell Telephone Co. of Nevada is incorporated under the laws of Nevada.

The Bell System includes a group of telephone companies severally operating in various geographical areas throughout the United States. These are commonly referred to as the Associated Companies. They are controlled by the American Telephone & Telegraph Co. which also owns and operates interstate telephone toll lines interconnecting a large number of exchanges in the United States. The American Telephone & Telegraph Co. owns about 83 percent of the voting stock of Pacific Telephone & Telegraph Co., which in turn owns all of the voting stock of the other two respondents named. The minority stock interest of respondent, Pacific Telephone & Telegraph Co., is so scattered that it is not available for any exercise of corporate control. The minority interest consists of 179,043 shares of preferred stock held by 2,716 stockholders and 256,291 shares of common stock held by 4,812 stockholders. The holdings of American Telephone & Telegraph Co. are 640,957 shares of preferred stock and 1,548,709 shares of common stock. All the above figures are as of December 31, 1939.

INTERSTATE RATE SCHEDULES OF RESPONDENTS

Prior to the Postmaster General's Order No. 2495 of December 13, 1918, there was a notable lack of uniformity in interstate message toll

telephone rate schedules, both as to charges per unit of service and as to the types of service. This order of the Postmaster General attempted to establish a uniform Nation-wide basis for the statement of interstate message toll telephone rates. The rates and the classifications provided therein were applicable to "other interstate" business of the Pacific System on January 21, 1919, and to "interstate Pacific" business on February 21, 1919. This equality prevailed until October 1926. The two scales of rates applicable to "interstate Pacific" traffic and to "other interstate" traffic, for convenience, are referred to respectively as the "interstate Pacific" scale and the "other interstate" scale.

Long Lines Department is an operating department of the American Telephone & Telegraph Co., the latter being sometimes referred to hereinafter as the American Co. By virtue of an adoption by Pacific Co. of Long Lines Department tariffs, and concurrence in Pacific Co. tariffs by the other two respondents, changes made by the Long Lines Department in its schedule of rates have become applicable to "other interstate" business of the Pacific System. The "interstate Pacific" schedule has not been adjusted in all instances to conform to the changes in the tariff covering "other interstate" traffic. The situation reviewed here is one where the respondents maintain two levels of rates for interstate telephone service furnished by them, both services making common indiscriminate use of the same facilities and personnel and being so intermingled in Pacific territory as to present no material difference from the standpoint of operations of respondents.

The discussion in this report will be limited to message toll telephone rates. The respondents supply other classes of interstate communication service, such as message telegraph, private line telephone and telegraph, program transmission, and others. Message toll telephone service supplies about 90 percent of the revenue from all classes of toll communications service. Investigation of the applicable tariffs indicates that for most of the toll services, other than message toll telephone service, rates within Pacific territory do not vary materially from those published by the Long Lines Department where both the Pacific System and the Long Lines Department supply the same class of service.

The "interstate Pacific" schedule of message toll telephone rates is the same as the "other interstate" schedule for distances up to 42 miles but is generally higher than the "other interstate" schedule for greater distances. Various exhibits introduced in evidence set forth the differences in charges for different mileages and between specific points. The following table is illustrative of the difference between the two rate scales or schedules.

Rate air-line miles	Initial period rates							
	Station-to-station				Person-to-person			
	Day		Night and Sunday		Day		Night and Sunday	
	Other interstate	Interstate Pacific	Other interstate	Interstate Pacific	Other interstate	Interstate Pacific	Other interstate	Interstate Pacific
25	$0.25	$0.25	$0.25	$0.25	$0.35	$0.35	$0.35	$0.35
50	.40	.45	.35	.35	.55	.65	.50	.55
100	.55	.60	.35	.35	.75	.90	.55	.65
200	.80	1.05	.50	.60	1.10	1.40	.80	.95
300	1.05	1.25	.65	.75	1.40	1.65	1.00	1.15
400	1.30	1.55	.80	.95	1.75	2.00	1.25	1.40
500	1.50	1.90	.95	1.10	2.00	2.40	1.45	1.60
600	1.65	2.10	1.10	1.25	2.20	2.75	1.65	1.90
700	1.80	2.40	1.20	1.45	2.40	3.15	1.80	2.20
800	2.00	2.75	1.35	1.60	2.65	3.50	2.00	2.35
900	2.20	3.00	1.45	1.70	2.95	3.75	2.20	2.45
1,000	2.30	3.25	1.55	1.85	3.05	4.00	2.30	2.60
1,100	2.50	3.50	1.65	1.95	3.35	4.50	2.50	2.95
1,200	2.70	3.75	1.80	2.10	3.60	4.75	2.70	3.10

The tariff presently applicable to "interstate Pacific" and "other interstate" business is Tariff F. C. C. No. 89 published by Pacific Telephone & Telegraph Co. and concurred in by the other two respondents. Tariff F. C. C. No. 132 published by the Long Lines Department of the American Co. is incorporated in Tariff F. C. C. No. 89 of the Pacific Co. by reference. The respondents, Bell Telephone Co. of Nevada and Southern California Telephone Co., interchange business directly with Long Lines but do not concur directly in Long Lines Tariff F. C. C. No. 132. The so-called "other interstate" scale is a publication of Pacific Telephone & Telegraph Co. applicable to "other interstate" business and binding upon Southern California Telephone Co. and Bell Telephone Co. of Nevada by virtue of their concurrences in Pacific Telephone & Telegraph Co. Tariff F. C. C. No. 89. Message toll telephone rates are stated on an air-line basis between rate centers.[1]

Between February 1919, when the Postmaster General's scale of toll rates become effective, and October 1926, and again between December 1, 1936, and January 15, 1937, the "interstate Pacific" schedule and the "other interstate" schedule were the same. The record shows that the respondents have not made any comprehensive analysis of the relative traffic and operating conditions applicable to "interstate Pacific" business and "other interstate" business as a basis for the various adjustments of the "interstate Pacific" rates maintained from time to time. No separation study such as was presented in this case was prepared as a foundation for the adoption of these changes. The

[1] Rate centers are points between which rate air-line mileages are computed to arrive at the charges for toll messages between individual pairs of telephone stations.

departure from the uniformity prevailing from December 1, 1936, to January 15, 1937, was not based upon any analysis of the relative cost or of profit from the two classes of business concerned.

In this proceeding, the respondents contend that higher average costs, alleged to be established by the evidence in this proceeding, justify the maintenance of "interstate Pacific" rates on a higher level than those for "other interstate" traffic, although relative costs have never been used by respondents as a basis for rate adjustments in the past. It is apparent that the cost theory has been advanced by respondents only in resisting rate adjustments and has had no practical application to their voluntary establishment of rates.

In participating in supplying service under the "other interstate" schedule, the respondents are compensated for their portion of the service supplied by receiving 66 percent of the revenue derived from calls sent paid from and received collect at stations on their system. This is their total compensation for all business interchanged with the Long Lines Department of the American Co. If the revenue from calls sent collect from and received paid at Pacific System stations is included, the percentage retained by the Pacific System would be reduced about one-half, and the Pacific System would receive, therefore, about 33 percent of the tolls collected from the public for all business interchanged with the Long Lines Department. The profit to the Pacific System from traffic interchanged with Long Lines Department is measured by this division of revenue and not by the "other interstate" scale of rates. The Pacific System does not receive a straight mileage pro rate, via either air line or physical route. Out of this 33 percent division of the tolls collected from the public, the respondents are required in some instances to compensate their connecting companies in Pacific territory when the calls originate or terminate on the lines of one of these connecting carriers. In some instances the amount paid out by respondents to their connections in Pacific territory may be greater than their portion of the revenue from business interchanged with the Long Lines Department. In the case of "interstate Pacific" traffic, the respondents retain all the revenue except that turned over to their connections when the call originates or terminates on a connecting carrier's system.

No attempt has been made by the respondents to show whether or not, for a comparable unit of service such as a message-minute-mile, the "interstate Pacific" scale produces a greater or less compensation to them than the "other interstate" scale. It is thus entirely possible that respondents are supplying service under the "interstate Pacific" scale, measured by commonly accepted service units, on a basis relatively much higher than would appear from a

mere comparison of "interstate Pacific" and "other interstate" rate scales.

PACIFIC SYSTEM OPERATIONS AS A WHOLE

The results of over-all operations of the respondents may not be accepted as conclusive with respect to rates on any particular class of traffic. Other factors must be considered and weighed. However, if respondents' over-all operations were found to be producing an inadequate return or were resulting in an actual loss, it would be clear that rates for one or more classes of traffic were less than adequate and the Commission might hesitate to order a reduction in a particular rate on the ground of unreasonableness.

The over-all operations of the Pacific System have been very profitable for a long period of years. During the last fifteen years, the net earnings of the System ranged from a low of 5.44 percent to a high of 7.63 percent of the average net book cost of telephone plant and equipment. Viewed from another angle, the System has, during the last fifteen years, paid the dividends regularly on its outstanding 6 percent preferred stock and dividends of 6 percent or more on its outstanding common stock, in addition to absorbing direct surplus charges of more than $11,000,000. In spite of these charges to surplus, the System accumulated over this period a surplus of about $4,500,000 of undistributed earnings after providing for depreciation of some $98,000,000 in excess of actual net retirement losses during this period. The record indicates that future earnings will produce a higher rate of return than the average for the fifteen years shown. The net operating income of the Pacific System for the year ended December 31, 1938, was $20,237,104. For the eleven months ended November 30, 1939, the net operating income was $20,529,835. On an annual basis the ratio of net operating income to average net book cost of telephone plant and equipment was 5.97 percent for the year 1938 and 6.50 percent for the eleven months ended November 30, 1939. The estimates for 1940 indicate a substantial increase in gross and net earnings. All of the above figures are taken from statements prepared by the respondents, without adjustment. Undisputed testimony in the record indicates that these reported figures might be revised considerably to reflect elimination of excessive amounts included in operating expenses and in the investment accounts, and if this were done, the respondents' earning position would be even stronger.

A rate of return which would be fair for the Pacific System, as of the date of inquiry, is below the ratio of net operating income to net book cost of plant for recent periods. These ratios are, respectively, 5.97 percent for 1938 and 6.50 percent for the first 11 months of 1939.

When it is considered, as shown by the record, that Bell System Companies probably have no risks not common to the country as a whole, and when comparison is made with the interest yield on United States Government bonds, a fair rate of return for the Pacific System is certainly substantially less than the rates shown above. Mr. Justice Stone in his dissent in *West* v. *Chesapeake and Potomac Telephone Co.* (1935), 295 U. S. 662, 683, said:

> There is at least grave doubt whether a return of 4½ percent is so out of line with the current yield of invested capital as to be deemed confiscatory. * * * Twenty-five years ago, in times far more prosperous than these, this Court unanimously declined to take judicial notice that an estimated return of 4 percent would be confiscatory.

It is common knowledge and it is established by the record that the yield on invested capital in 1935 was higher than it is today.

A reduction of the "interstate Pacific" scale to the level of the "other interstate" scale would reduce gross revenues on present volume of business. Any estimate of the net effect of such a reduction must necessarily be speculative. We do not have available data as to composition of traffic by classes for any representative period, neither do we have complete data as to volume of traffic for various mileages. Even if these deficiencies were eliminated, any estimate would require the exercise of judgment with respect to important factors such as stimulation which is certain to result from the reduction in rates. However, consideration of the available data in the light of experience with other estimates of a similar nature would seem to justify a prediction that the decrease in net operating income would not exceed $300,000 and it might be much less. Respondents have not excepted to this estimate. We are justified in assuming that the net effect of such an adjustment would not exceed $300,000 which is less than one-tenth of one percent of the net book cost of the respondents' plant, or a reduction in the respondents' return on this basis from 5.97 percent for 1938 to 5.87 percent and from 6.5 percent for the first 11 months of 1939 to 6.4 percent. The $300,000 is also approximately 1½ percent of the respondents' current annual net operating income.

THE SEPARATION STUDY

The Pacific System furnishes both exchange and toll service. Toll service is further classified as intrastate, "interstate Pacific" and "other interstate." In addition, the Pacific System supplies other types of communication services, such as private-line telephone, telegraph, and teletypewriter, teletypewriter exchange, radio program transmission, and others. There is very little telephone plant used exclusively for one particular class of service, such as "interstate Pacific" toll. In

order to estimate the relative profitableness of the various classes of service furnished by the company it is necessary to allocate expenses incurred and plant used jointly for more than one class of service. The basis for the allocation is relative use, generally either message minutes or message-minute miles, depending upon the class of property or expense involved. The samples used to establish the percentage factors for allocation purposes are necessarily very small in relation to the total annual business of the company, and there is nothing in the record which establishes that the samples used are in any way representative of an annual period. The separation study purports to show that "interstate Pacific" traffic produced a net revenue equal to 3.86 percent of the net book cost of telephone plant devoted to that service for the year ended June 30, 1939. It also purports to show that "other interstate" traffic earned at the rate of 3 percent.

Separation studies similar to that prepared by respondents for this proceeding have been submitted in connection with many telephone rate proceedings. The failure of state regulatory commissions specifically to attack such studies may be due to the tremendous task of making a complete analysis and check of one of these studies and to the accuracy simulated through the use of complicated methods. Other factors have usually been considered of more importance in rate cases. The respondents state that the separation study submitted in this proceeding was prepared at a cost of more than $300,000. We are not bound, as the respondents contend, to accept the results of this study in the absence of something better in the way of a different separation study. *Railway Express Agency* v. *U. S.*, 6 Fed. Supp. 249. The Commission may derive a reasonable result on the basis of the record before it without attempting to develop another separation study. *Los Angeles Gas & Elec. Corp.* v. *R. R. Comm.*, 289 U. S. 287, and *R. R. Comm.* v. *Pacific Gas & E. Co.*, 302 U. S. 771.

In the proposed report in this proceeding attention was directed to certain errors in the circuit mileage computations stated in exhibits prepared by respondents. One of the errors was with reference to mileage fom Los Angeles to Las Vegas. Two different pages of the same exhibit indicated mileages of 236 and 280.4 miles, respectively. This is a substantial mileage error which is admitted by the respondent. Another error referred to was with respect to the statement of circuit mileage between Portland and San Francisco. The mileage stated on one of the exhibits is 898.3, whereas it appears that such a mileage could not be derived from a simple average of the two available routes between San Francisco and Portland. In their brief, respondents infer that this latter apparent error can be reconciled by a consideration of

the number of circuits available over each route. They carefully avoid a statement that the exhibit is not in error. Working papers underlying the Commission's exhibits in this proceeding indicate that between San Francisco and Portland, the circuits available over the short route number nine and over the long route they number only three. Thus, the error or overstatement of the San Francisco-Portland circuit mileage will be exaggerated rather than decreased if consideration is given to the circuits available via the short and long routes. Both the mileage errors referred to are substantial and are in connection with routes over which there is substantial movement of traffic, and both are located wholly within Pacific territory. These circuit mileages are an important element in the determination of average conditions in the Pacific territory and in the determination of certain elements included in the separation study. If glaring and obvious errors such as these are apparent on the face of exhibits prepared by the respondents for use in this proceeding, this Commission is not justified in assuming that the separation study results or the comparisons between Long Lines and Pacific System operations are even approximately accurate.

There are 2 methods of stating telephone rates, described as "board-to-board" and "station-to-station." The "board-to-board" method of stating rates assumes that a toll call originates at a toll switchboard and terminates at another toll switchboard, and that the toll rate is intended to be sufficient to compensate the company only for the use of facilities furnished and services performed in transmitting toll messages from one toll board to another. The "station-to-station" method assumes that a toll call originates at a subscriber's station (ordinary telephone) and terminates at another such station, and that the toll rate is intended to compensate the company for the use of all facilities furnished and services performed in transmitting toll messages from one subscriber's telephone to another. The latter method necessarily involves an allocation of exchange property and expenses to toll service, whereas the first, or "board-to-board" method, does not involve an allocation of the exchange plant or expenses in connection therewith to toll service.

The separation study submitted in this proceeding was made on what is known as the "board-to-board" basis. This necessarily implies that the rates have been fixed on that basis. Such a conclusion is supported by the testimony of a Pacific Co. official that the exchange rate applies to "the property from a subscriber's station to the terminal of the toll plant." However, there is unchallenged testimony in the record of a representative of the California Railroad Commission that at least part of the local exchange rates in the State of Cali-

fornia have been prescribed under the "station-to-station" theory of rate making. We have never approved the "board-to-board" basis of stating toll rates.

The respondents point out in their brief that a transition from a "board-to-board" to a "station-to-station" basis of stating rates for the purpose of the separation study would operate to increase the net earnings on exchange traffic and decrease the net earning on toll traffic. Assuming that all rates of the respondents are on a station-to-station basis, a rough estimate of the effect of such a transition indicates that the change would be sufficient to wipe out the net profit on interstate toll operations.

If respondents' rates are on a "station-to-station" basis and the separation study is on a "board-to-board" basis, the costs therein assigned to toll service have been understated and those assigned to local service have been overstated. Inasmuch as the figures relating to local service and to intrastate toll service have been combined in the separation study, and also because no underlying data are included in the summary of the separation study, it is not possible to determine the exact amount of this understatement.

Page 37 of exhibit 24 shows:

	Year 1938	
	Interstate Pacific	Interstate other
Revenues	$2,696,562.40	$4,383,023.22
Expenses	2,423,304.20	3,862,343.93
Alleged return	273,258.20	520,679.29

If the separation study is recast on the "station-to-station" basis, the expenses above stated must be increased to reflect the local service expense properly allocable to various toll services on the basis of relative use of facilities and personnel. The unavailability of the supporting data underlying exhibit 24 and the lack of necessity of separating exchange service costs under the "board-to-board" basis underlying the separation study make it impossible to determine exactly the magnitude of the costs necessary to be added to the "interstate Pacific" and "other interstate" expenses in changing from a "board-to-board" to a "station-to-station" basis.

A transfer of only $273,258.20 is needed to wipe out the alleged net revenue from the "interstate Pacific" business. Total exchange service revenues, intrastate, amount to $81,369,738.23. The net amounts available for return from both "interstate Pacific" and "other interstate" toll business amount only to $793,937.49, or 0.98

percent of the local service revenues of $81,369,738.23, which is, of course, the total cost, including return, of furnishing local service and originating and terminating toll service, a portion of which is, on a "station-to-station" basis, assignable as toll service cost. If the portion of this local service cost, allocable to interstate toll service on the basis underlying the separation study, exceeds the income from "interstate Pacific" and "other interstate" traffic, then these classes of traffic are handled at a loss on a "station-to-station" basis of cost determination.

In view of the relative magnitude of local service, intrastate toll service, "interstate Pacific" toll service, and "other interstate" toll service revenues (72.3, 21.9, 2.3 and 3.5 percent, respectively), it is an unavoidable conclusion that, on a "station-to-station" basis, the company's system of allocation would show the two classes of interstate toll service in question to be furnished at a loss.

This is further proof that the separation study basis is either unsound or so inaccurate as to destroy any probative value thereof. The acceptance of such a result requires the assumption that the management of the Pacific System has been satisfied to operate its interstate toll service at cost or at a loss when it has been, for many years, practically free from restriction by any regulatory body. No such assumption is justified. Neither are we entitled to believe that the state regulatory authorities have permitted the intrastate operations to carry the entire load of producing the over-all profits of the Pacific System.

Our order did not prescribe the separation study method to be used and respondents did not request any elaboration on the terms of the order for their guidance in this connection. They should have used the method which would give results most informative to the Commission in the solution of the questions presented by this proceeding. This they did not do. It may be that we could have made intelligent use of the study before us if it had been supplemented and supported by definite showing of the extent to and manner in which the station-to-station theory of rate making is being employed in respondents' territory. In the absence of such aid to an evaluation of the results shown by the separation study, we can attach no probative value to the showing concerning profit levels for interstate communication service as compared with intrastate service.

Respondents ignored at least one important principle in particular in their separation study. Considerable amounts of plant investment and operating expenses were allocated to the various services purely on the basis of time in use, with no consideration whatever for the relative magnitude of the contributions of each service to busy-hour loads. There is every reason to believe that the various services

represent proportions of the peak loads which vary widely from the proportion each is of the total traffic. The volume of busy-hour traffic as compared with average traffic is the factor which determines the requirements for plant necessarily idle most of the time, and also affects the attainable level of efficiency of personnel. It will be readily appreciated that the service responsible for the peak loads should, in a separation, have allocated to it the plant required only on account of those peaks, and the same theory also has some application to allocation of operating expenses.

The several criticisms of respondents' separation study outlined above indicate that it is subject to so many infirmities that we can give but little weight to the results shown. It fails completely to establish any reasonable or proper basis for charging 20 to 40 percent higher rates for "interstate Pacific" calls using substantially the same facilities as used for "other interstate" calls.

UNREASONABLENESS OF "INTERSTATE PACIFIC" SCHEDULE

It is urged that this Commission has no basis upon which to make a finding that the "interstate Pacific" scale of rates is unreasonable *per se*, or by comparison with another scale of rates applicable to service furnished under similar conditions. It is true that this record does not contain evidence with respect to all of the elements usually considered in determining "fair value." There is, however, ample evidence with respect to the appropriate rate of return for a utility such as the Pacific System. There is also ample evidence of the comparability of the "other interstate" Pacific scale of rates for the purpose of testing the reasonableness of the "interstate Pacific" scale. The Communications Act recognizes no distinction between relative unreasonableness and intrinsic or absolute unreasonableness. Intrinsic unreasonableness is to be determined usually with respect to the entire revenues of a public utility or enterprise in relation to the value of its entire property. "It is seldom, if ever, that a rate can be found unreasonable without comparison of the rates to other points" (*Sioux City Chamber of Commerce* v. *Baltimore & Ohio Railroad Co.*, 120 I. C. C. 7). This statement has equal force with respect to a scale of rates on a particular class of service where a utility supplies several classes of service through the joint or common use of the same property.

For comparative purposes the scale of rates which naturally suggests itself is the "other interstate" scale. The two schedules of rates are both published by the Pacific Company; one for application to interstate message toll service between states within Pacific territory; the other for application between states within Pacific territory on the one hand and the remainder of the United States on the other.

So far as the respondents are concerned, the service furnished and the facilities used in supplying service under both schedules of rates are practically identical. The record shows that it costs the Pacific Company no more to supply service under the "interstate Pacific" scale than it does under the "other interstate" scale. The only information in the record with respect to apparent relative profits under these two scales of rates within Pacific territory is the separation study which indicates "interstate Pacific" traffic is more profitable to respondents than traffic under the "other interstate" scale. There is nothing to indicate that (for equal distances) it is of more value to a telephone user to carry on a conversation between points within Pacific territory than it is to carry on a conversation between points one of which is within and the other without Pacific territory.

We need not decide in this case that average conditions of cost or traffic density are not important factors in determining the reasonableness of telephone toll rates for the Bell System as a whole for application throughout the United States. Here we deal with a limited area. However, if these are assumed to be important factors in this proceeding, the statistics submitted by respondents covering cost and traffic averages of Long Lines operations throughout the United States can have little if any probative value in testing the comparative reasonableness of the "interstate Pacific" scale since these averages are influenced substantially by the inclusion of traffic between large metropolitan centers in the East and further influenced by the choice of routes to be operated and facilities to be used by the American Company through the Long Lines Department in providing this service. The Long Lines Department may either own or lease the circuits used or it may permit the Associated Company to own the circuit and prorate the revenue. These arrangements with the various Associated Companies are subject to change from time to time. It thus is wholly within the control of the American Company to determine, from time to time, what the results of Long Lines operations shall be by selecting not only the circuits to be operated but the manner in which they shall be provided, either through lease, ownership, or by arrangements whereby revenue is prorated with the Associated Companies.

Assuming that such factors as density of traffic, cost of plant per circuit mile, and similar factors, should determine the level of rates for a particular class of traffic, the comparison which would be informative would involve a determination of the factors mentioned with respect to traffic handled jointly by the Pacific Company and the Long Lines Department as compared with that handled exclusively by the Pacific Company under the "interstate Pacific" scale. No such comparison is available in the record. The available informa-

tion does indicate that the "interstate Pacific" traffic is more profitable. The costs of handling both classes of traffic are identical in Pacific territory because identical facilities and personnel are used in handling both classes of traffic. Any apparent difference in profit is, therefore, due to a difference in rate levels or a difference in the composition of the traffic. It is shown from the comparisons in the record, that other operating telephone companies of the Bell System have adopted the "other interstate" scale for traffic within their operating territories when the over-all statistics available indicate a much less favorable situation than in Pacific territory.

The respondents introduced a number of exhibits dealing with density of population per square mile by political subdivisions such as states or counties. These exhibits were designed in general to indicate that the relatively lesser density of population in Pacific territory, measured by averages per square mile of large political subdivisions, as compared with eastern and midwestern territories, was by some means to be related to the necessity for the maintenance of a higher interstate scale in Pacific territory. Density of population is disregarded by the Bell System in fixing rates for the Long Lines Department of the American Company. In a study of a nation-wide rate structure, nation-wide conditions may be pertinent. In a study of particular rates for any given territory information submitted should bear some reasonable and definite relation to the territory under consideration.

Even if density of population is considered an important element, density per square mile, measured by large political subdivisions, has little or no bearing on the cost of furnishing telephone service in any of the territories referred to. Density of population if relevant at all, should more properly be related to the area reasonably to be served by the telephone plant, and should not include, as is done here, substantial portions of the general area where no service is rendered. In the Pacific area notwithstanding the intensive development of the telephone plant of the respondents, the total area actually served is relatively small, due in part to large sections of mountainous and arid territory.

Only 23 percent of the total area in Pacific territory is classified by the Census as being in use as farms. A comparable figure for Southwestern Bell territory is 74.8 percent and for a combination unit including the States of Indiana, Ohio, and Michigan, the comparative figure is approximately 70 percent. This indicates a greater dispersion of the population, excluding cities, in Southwestern territory and in Indiana, Ohio, and Michigan than in Pacific territory. The table below, which sets forth comparative statistics for Pacific System, Southwestern Bell Telephone Co., and the combination

operating unit including the Associated Companies in Ohio, Indiana, and Michigan, indicates clearly the relatively more favorable conditions in Pacific territory:

Comparative statistics

	Pacific System	Southwestern Bell Telephone Co.	Ohio, Indiana, Michigan Bell Telephone Cos.
Telephones per 100 population	26.11	14.14	15.51
Toll messages per telephone	52.48	27.21	28.89
Toll messages per capita	13.70	3.85	4.48
Book cost of toll plant:			
Per toll message	$0.61	$1.82	$1.81
Per telephone	$32.20	$49.38	$52.18
Percent of total area in farms	23.4	74.8	68.2

The above statistics may not be accepted as conclusive evidence that "interstate Pacific" business, including "other interstate" business, is relatively more favorable than total interstate business in the other two territories with which it is compared, for the reason that intrastate messages are included in the second and third items of the above table, and for the further reason that certain message traffic transits Southwestern Bell territory as well as the States of Ohio, Indiana, and Michigan and these messages are not included since they were not available. It is, however, inconceivable that any adjustment which might be made to eliminate the intrastate business and include the transit messages would change the respective position of the three territories, although the adjustment as to degree might be substantial. In any event, the table above is conclusive that relative population density per square mile, measured by large political subdivisions, has no particular bearing on the cost of supplying toll service to the customers within these large areas. The table further shows, since there are more telephones per hundred population in Pacific System territory, more toll messages per telephone, more toll messages per capita, and smaller book cost per toll message and per telephone, that toll message service can be rendered at less cost in Pacific System territory than in the other territories concerning which data are set forth. The "other interstate" scale is applicable to interstate traffic in the two territories which are compared with Pacific territory.

Operations of the Long Lines Department of the American Company for the year 1939 showed a profit to the American Co. on the net investment in telephone plant used for that purpose of more than 8.00 percent. This rate of return may be contrasted with a figure of 3 percent indicated by the separation study as being the rate at which the respondents earned on traffic interchanged with the Long Lines

Department. Assuming the exercise of independent managerial discretion by the Pacific Company, the words of the late Justice Cardozo in *Dayton Power & Light Co.* v. *Public Utilities Commission*, 292 U. S. 290, 312, are particularly applicable:

> It is a strain on credulity to argue that the appellant, when putting into effect a new schedule of charges, was satisfied with one productive of so meager a return.

Respondents have voluntarily published the "other interstate" schedule and have voluntarily accepted a division of revenue thereunder. It is a fair assumption, in the light of all the circumstances, that the "other interstate" scale is not less than a maximum reasonable scale. Compared with the "other interstate" scale, the "interstate Pacific" scale must be held to be unreasonable for application to interstate traffic within Pacific territory. The record shows that the "other interstate" scale was not the result of an effort on the part of the Pacific Company to attract traffic, nor was it forced by competition. It is recognized that a carrier may voluntarily publish and maintain rates which are less than reasonable maximum rates and which could not be required by the regulatory authorities.

The percentages by which the "interstate Pacific" rates exceed the "other interstate" rates for representative distances are shown below:

Rate (air-line miles)	Station-to-station		Person-to-person	
	Day	Night and Sunday	Day	Night and Sunday
	Percent	*Percent*	*Percent*	*Percent*
25	12.50		18.18	10.00
50	9.09		20.00	18.18
100	31.25	20.00	27.27	18.75
200	19.05	15.38	17.86	15.00
300	19.23	18.75	14.29	12.00
400	26.69	15.79	20.00	10.35
500	27.27	13.64	25.00	15.15
600	33.33	20.83	31.25	22.22
700	37.50	18.52	32.08	17.50
800	36.36	17.24	27.12	11.36
900	41.30	19.35	31.15	13.04
1,000	40.00	18.18	34.33	18.00
1,100	38.89	16.67	31.94	14.81
1,200				

The disparity between the "other interstate" scale and the "interstate Pacific" scale is so great (40 percent or more in some mileage blocks) that, if the "other interstate" scale is a reasonable maximum scale, it must be conceded that the "interstate Pacific" scale is unreasonably high. There is no reason apparent from the record why a subscriber making a call from Seattle to San Francisco, for purposes of illustration, should pay at a greater rate per unit of service (such as a message-minute-mile) furnished than a subscriber in the same build-

ing in Seattle is required to pay when making a call from Seattle to Salt Lake City.

Maintenance by the Pacific Company of the two scales of rates herein referred to results in greater charges for shorter distances than for longer distances over the same physical route and in the same direction. Telephone toll rates are stated on an air-line basis. The air-line basis of stating rates disregards physical routing, density of traffic, etc., between any two points which may be covered by the air-line schedule. Such a basis of stating rates is bound to result in higher charges at intermediate points than at more distant points in instances where the more distant point via the physical route is actually closer to the point of origin via the air-line route. These situations have been recognized as a necessary incident to the statement of rates on an air-line basis and there is no intention on the part of this Commission at this time to require a revision of existing rate structures which would eliminate all these conditions.

It is quite another matter, however, when the lower rate at the more distant point is not the result of circuity of the physical route, but comes about solely because of the difference in level of the two rate schedules. Seattle, Wash.; Payette, Idaho; and Baker, Oreg., are on practically the same air line. The rate from Seattle to Payette is, under the "other interstate" scale, $1.20 and the air-line mileage is 360. The rate from Seattle to Baker is, under the "interstate Pacific" schedule, $1.25, and the air-line mileage is 295. There is no excuse for this situation. It is illustrative of many which exist by reason of the maintenance of the two scales of rates. A greater charge for a shorter than for the longer distance over the same route is *prima facie* unreasonable. *Karnofsky Brothers* v. *Pennsylvania Railroad Co.*, 155 I. C. C. 12.

The record establishes no mitigating circumstances which might justify such charges. There is, as to Pacific System, no discernible difference in supplying service to the more distant and to the closer point. There is no competition between carriers or markets which justify these charges such as the rail carriers sometimes rely upon before the Interstate Commerce Commission. This situation, in and of itself, condemns the "interstate Pacific" schedule in so far as it results in a greater charge for a shorter than for a longer air-line distance.

DISCRIMINATION AND PREFERENCE

Under the Communications Act, "any unjust or unreasonable discrimination in charges" is made unlawful. The language is broad and all-inclusive with respect to discrimination. Section 202 (a) reads:

> It shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or

services for or in connection with like communication service, directly or indirectly, by any means or device, or to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality or to subject any particular person, class of persons or locality to any undue or unreasonable prejudice or disadvantage.

The language in section 202 (a) bears a general similarity to language in sections 2 and 3 of the Interstate Commerce Act. The respondents contend that this language in the Interstate Commerce Act, having been interpreted by the Interstate Commerce Commission and the courts, has an established judicial meaning which is binding upon this Commission in its administration of the Communications Act. It is contended that decisions have established a judicial meaning for the language of section 2 in the Interstate Commerce Act to the effect that unjust discrimination exists only in those instances where a carrier makes different charges to different persons for identical services between the same points; and that undue preference or prejudice under section 3 exists only where it is alleged and proven that competitive injury results from the collection of higher charges from one shipper than are collected from another shipper.

If the respondents have correctly interpreted the decisions under the the Interstate Commerce Act, and if such decisions are binding upon this Commission in its administration of the Communications Act, it is very doubtful whether this Commission could ever establish the existence of unlawful discrimination or preference in telephone toll rates.

Important words omitted from section 202 which are included in section 2 of the Interstate Commerce Act are "for a like and contemporaneous service under substantially similar circumstances and conditions." The language with respect to preference or prejudice is also broad and all-inclusive. As compared with section 3 of the Interstate Commerce Act, it is important that undue or unreasonable preference as to any "class of persons" is made unlawful. The prohibition against undue preference in section 3 of the Interstate Commerce Act makes no reference as to "class of persons."

The Interstate Commerce Act was originally enacted largely as a result of almost universal abuses by the carriers in the granting of rebates to favored shippers in favored communities. The language of section 2 of the Interstate Commerce Act still reflects this initial purpose.

The Interstate Commerce Commission was faced with a situation in the regulation of railroad rates which developed over a long period of years as a result of the most objectionable type of competition not only among the rail carriers themselves, but between rail carriers and water carriers and among communities competing for manufacturing, pro-

ducing and distributing enterprises. It could not fairly be stated that the railroad charges constituted a rate structure in the sense that it may be compared with the telephone toll rate structure. Railroad rates were the result of a great variety of considerations, with competition being the predominant influence.

The Interstate Commerce Commission was also faced with the necessity of making necessary adjustments in railroad rates with as little disturbance to the whole railroad rate structure as possible. Any attempt on the part of the Interstate Commerce Commission to prescribe a rational rate structure for the railroads, having some reasonable relation to equal charges for equal services throughout the country as a whole or within groups, would have caused a tremendous upheaval of commercial interests and property rights throughout the United States. Tremendous investments were dependent upon the maintenance of delicate adjustments in railroad rates. See Sharfman, *The Interstate Commerce Commission*, volume III B, page 527.

In marked contrast to the railroad rate situation, the existing interstate telephone toll rate structure is the outgrowth of a uniform Nation-wide rate structure promulgated by the Postmaster General during the period of Federal control. The carriers, particularly the Bell System itself, were influential in the adoption of this method of stating rates. Nearly all of the interstate telephone toll service in the United States is supplied by the Bell System, in contrast to the hundreds of railroad carriers competing with each other and with other forms of transportation for the available business. Telephone conversations are not bought and sold in a competitive market as are the commodities upon which freight charges are paid.

It is clear that practices and policies, including rules of law, developed in the regulation of a highly competitive industry have little, if any, application to the regulation of the telephone monopoly.

Telephone toll service is not used exclusively for business purposes. Its use for social purposes in everyday life may be as great as for business purposes. The charges for telephone toll service cannot be compared with freight rates paid in connection with commodities which are bought and sold in the market. Insofar as social use of the telephone is concerned, it would be absolutely impossible to ever establish either prejudice or discrimination under the meaning of these words contended for by respondents.

The Interstate Commerce Commission has clearly distinguished the application of sections 2 and 3 of the Interstate Commerce Act to passenger fare schedules, as contrasted with freight rate schedules related to commodities bought and sold in the competitive markets. Passenger fares bear a much closer analogy to telephone toll rates

than do freight rates. The Interstate Commerce Commission has held:

> That the transportation of persons in such private passenger cars, including berth and other accommodations, at the rate charged passengers provided only with ordinary coach accommodations is unjustly discriminatory and unduly preferential and prejudicial (Use of Private Passenger Train Cars, 155 I. C. C. 775).

This decision of the Interstate Commerce Commission was reviewed and affirmed by the United States Supreme Court in *L. & N. Ry.* v. *U. S.*, 282 U. S. 740. In the Interstate Commerce Commission's brief filed with the Court, its understanding of the scope of section 3 with respect to passenger fares is clearly stated at page 45, as follows:

> Appellants also contend that, before the Commission can find undue preference and prejudice in passenger travel, the passengers involved must be of the same class in the narrow sense of being engaged in competitive commercial travel. Any such construction of sections 2 and 3 of the act would make their provisions unworkable in respect of passenger travel. Many passenger trains run daily between New York and Washington, and between other cities, carrying passengers traveling for recreation purposes of many kinds, for educational purposes of many kinds, for business purposes of many kinds and for many other purposes. All such passengers are clearly entitled under the Act to equality of service for the same charges and to equality of charges for the same service without inquiry by the Commission into the particular purpose of the travel of each.

There is no doubt that users of telephone service are entitled to equality of charges for the same or equivalent service without a showing of competitive injury and without an inquiry as to the particular purpose of the telephone use by each subscriber.

There is discrimination and prejudice against the telephone user in Seattle who is required to pay at a higher rate per unit of service furnished (message-minute-mile) for a call between Seattle and San Francisco than is required of another subscriber for a call between Seattle and Salt Lake City merely because of a difference in direction from Seattle. Unless the Commission is justified in a finding of unjust discrimination and undue preference with respect to the respondents as a result of the simultaneous maintenance of the "interstate Pacific" and the "other interstate" schedules, the Commission is apparently powerless to eliminate preferences and prejudices in telephone toll rates.

It would be the merest coincidence if all telephone subscribers in Pacific territory made an equal use of the two scales of rates here in question. The record clearly establishes that such is not the case, and it is, therefore, apparent that actual discrimination results from the simultaneous maintenance of the "other interstate" scale and the "interstate Pacific" scale of rates by the respondents.

There is evidence in the record that certain users of telephone service are actually prejudiced and discriminated against through the collection of higher charges for equivalent services than are collected from other users. There is substantial movement of traffic under both the "interstate Pacific" scale and the "other interstate" scale. Further, an actual user of the "interstate Pacific" service who testified at the hearing is charged 20 percent more than his competitors using the "other interstate" scale. This user is typical of a class. It is not necessary to show that the user of the "interstate Pacific" scale is unable to do business or is deprived of business because of the level of telephone rates. His profit is less by the amount of the excess of telephone charges over what they would have been under the "other interstate" scale of rates and there is no reasonable excuse for such a difference. He is prejudiced and discriminated against unjustly under any reasonable interpretation of section 202 of the Communications Act.

We are mindful of the problems which over the years have faced the Interstate Commerce Commission in the regulation of railroad freight rates and the precedents and rules which have been established in that field. We feel, however, that this Commission should conform its decisions to the broad purposes expressed in the Communications Act as applied to the subject matter dealt with therein. We must, therefore, give due consideration not only to the differences between the laws applicable to the regulation of freight rates and to telephone toll rates but also to the essential differences between the two industries. In recent years the telephone has become an instrument of communication in a very broad sense. The purposes of its use are myriad. Its actual usage is ever recurring and in vast detail. Telephone service and the rates charged therefor have an important and direct impact upon the daily economic and social lives of the many millions of individual telephone users, as contrasted with the relatively few persons who pay freight charges directly. The regulation of such a comparatively modern, complex, and significant industry cannot be effectively accomplished by the application of rules evolved in the regulation of a relatively old and highly competitive industry, attuned in large degree to the competitive production and sale of commodities.

As compared with hundreds of class I railroads in the United States supplying the bulk of the railroad freight service, there is one telephone monopoly supplying more than 90 percent of the service. There are approximately 22,000,000 subscriber stations in the entire country.

On argument, counsel for respondents admitted that in any given community there must be a parity of rates for the same service. This

is axiomatic. We are here confronted, however, with the contention that when there is any differential in cost with respect to different classes of traffic handled by the same company the obligation to avoid discrimination disappears. The logical extreme of such a contention is presented here, in that for service over a part of the same route and facilities at necessarily lower costs the user may be charged a higher rate than the user of greater facilities over a greater airline distance at greater costs. To this argument, in a case of this kind, we cannot subscribe. Absolute equality, the ideal standard, may vary or surrender on occasion to other compelling considerations. But in the absence of other controlling considerations the basic rule to be observed in the determination of reasonable charges is that there shall be collected from each user "equal charges for equal services." Such a scheme as the one here involved departs from any acceptable construction of the basic principle of equality.

CONCLUSION

The Commission has not considered it necessary to comment upon all the evidence in the record. On final review of the evidence, it is apparent that respondents have failed to demonstrate why the telephone subscribers of the Pacific System should be compelled to pay from 9 to over 40 percent more for "interstate Pacific" calls than for "other interstate" calls. These "interstate Pacific" rates are unreasonably high and, furthermore, produce undue and unreasonable discrimination and prejudice throughout the Pacific System's territory. The only proper method of correcting the situation is to reduce the "interstate Pacific" scale to the level of the "other interstate" scale of rates.

An appropriate order will be entered.

ORDER

At a general session of the Federal Communications Commission held at its offices in Washington, D. C., on the 3d day of February, 1941.

The Commission having considered all the evidence, the exceptions, briefs, and oral arguments in the above-entitled matters and having issued the foregoing Report of the Commission, which is hereby referred to and made a part hereof:

It is ordered that The Pacific Telephone & Telegraph Co., the Southern California Telephone Co., and the Bell Telephone Co. of Nevada be, and they are hereby, directed to establish and maintain for interstate message toll telephone service between points within the territory described in the attached report of the Commission as Pacific ter-

ritory, rates adopted in The Pacific Telephone & Telegraph Co.'s Tariff F. C. C. 89 presently applicable to interstate message toll telephone service originating or terminating within Pacific territory, including the regulations, classifications, and practices applicable thereto; such rates to be filed with this Commission to become effective not later than March 15, 1941;

It is further ordered that the rates filed pursuant to the requirements of the above paragraph of this order may become effective upon less than 30 days' notice to this Commission and to the public.

It is further ordered that the respondents above named shall, after March 15, 1941, cease and desist from charging, collecting, or receiving any other or different charges than those herein ordered to be established.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of BURLINGTON BROADCASTING COMPANY (New), BURLINGTON, IOWA, For Construction Permit.	DOCKET No. 4640

Decided February 4, 1941

APPEARANCES

Louis G. Caldwell, *Reed T. Rollo*, and *Percy H. Russell* on behalf of the applicant and WCLS, Inc. (WCLS); *Paul D. P. Spearman*, *Alan B. David*, and *Frank U. Fletcher* on behalf of Clinton Broadcasting Corporation; *Frank Stollenwerck* on behalf of Commodore Broadcasting, Inc. (WSOY); *Eliot C. Lovett* on behalf of Courier-Post Publishing Co.; *Ben S. Fisher*, *Charles V. Wayland*, and *John W. Kendall* on behalf of Tribune Printing Co. (KWOS), Superior Broadcasting Service, Inc. (WCAZ), and Milwaukee Broadcasting Co. (WEMP); and *Hugh B. Hutchison* on behalf of the Commission.

DECISION AND ORDER

BY THE COMMISSION:

Burlington Broadcasting Co. on May 24, 1937, filed an application for a construction permit to erect a new radiobroadcast station at Burlington, Iowa, to operate on the frequency 1310 kilocycles with power of 100 watts, unlimited time. The application was heard by an examiner on February 21, 1938, in a consolidated proceeding with the application of Clinton Broadcasting Corporation (Docket No. 4939); and the examiner on June 30, 1938, issued his report (No. I–651) recommending that both applications be granted. Exceptions thereto, insofar as it recommended a grant of the Burlington application, were filed on behalf of Superior Broadcasting Service, Inc., licensee of Station WCAZ, Carthage, Ill., and this party later filed a brief in lieu of oral argument. Thereafter, the Commission on May 31, 1939, designated both applications for further hearing to determine questions of electrical interference. A further hearing was held on January 3, 1940, and Clinton Broadcasting Corporation, Courier-Post Publishing Co., Superior Broadcasting Service, Inc.,

and the applicant herein filed proposed findings of fact and conclusions.

The instant application was heard in a consolidated proceeding with the application of Clinton Broadcasting Corporation (Docket No. 4939). Courier-Post Publishing Co., applicant in Docket No. 4062, participated therein as a party. Clinton Broadcasting Corporation and Courier-Post Publishing Co. are applicants for new stations in Clinton, Iowa, and Hannibal, Mo., respectively, and each requests authority to operate on 1310 kilocycles, the same frequency specified by the instant application. The only question with which these parties are concerned on the instant application is the possibility that a grant of it would preclude favorable consideration and action on their applications. This interest, however, no longer exists, since the Commission on this day adopted orders granting the Clinton and Courier-Post applications. See orders in Dockets Nos. 4939 and 4062.

As shown above, exceptions to the examiner's report, a brief in lieu of oral argument, and proposed findings and conclusions were filed on behalf of the intervener, Superior Broadcasting Service, Inc., licensee of Station WCAZ. In the instant proceeding, the only question with which this party is concerned is the probability of economic injury to it by the operation of the proposed station. Such a result, however, does not in itself constitute a proper ground for the denial of an application. *Federal Communications Commission* v. *Sanders' Brothers Radio Station*, 309 U. S. 470 (decided March 25, 1940). Nor does the record show that the effect of the competition would be such that the intervener could not continue to operate WCAZ in the public interest or that the applicant herein would be rendered financially disqualified, by reason of the expected competition, to operate the station proposed by it in the public interest.

In view of the fact that Superior Broadcasting Service, Inc., has already been afforded and has availed itself of all procedural rights to which it is entitled under the Communications Act of 1934 and our rules of practice and procedure (i. e., it filed exceptions and was permitted to submit a brief in lieu of oral argument, dealing with the considerations with which it is concerned), we are of the opinion that the issuance of proposed findings of fact and conclusions in this case would serve no useful purpose and that a final order should now be issued.

As heretofore shown, the Commission on this day granted the applications of Clinton Broadcasting Corporation (Docket No. 4939) and Courier-Post Publishing Co. (Docket No. 4062). The simultaneous operation of the projected Clinton and Hannibal stations on

the same frequency with the station proposed herein would result in severe electrical interference, especially to the latter. However, under the provisions of section 1.381 of the Commission's Rules of Practice and Procedure, an application for radiobroadcast facilities may be granted with privileges, terms, or conditions other than those requested. Upon exploring the possibility of assigning to the applicant facilities other than those specified in its application, we find that after the reallocation of frequencies under the terms of the North American Regional Broadcasting Agreement, which is expected to take effect March 29, 1941, a local station could be operated in Burlington, Iowa, on 1490 kilocycles with power of 250 watts, unlimited time.

Upon consideration of the above-entitled application, the evidence adduced at the proceedings held thereon, the exceptions, the briefs submitted in lieu of oral argument, the proposed findings of fact and conclusions filed by the parties, and information available to the Commission, we are of the opinion, and so find, that the granting of the instant application, with authority to operate on the frequency 1490 kilocycles after March 29, 1941, with power of 250 watts, unlimited time, will serve public interest, convenience, and necessity.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of LICHT & KAPLAN, INC., a New York Corporation, complainant, *v.* POSTAL TELEGRAPH-CABLE CO., a New York Corporation, defendant.	DOCKET No. 5056

Decided February 5, 1941

Herman Katz on behalf of the complainant, *John H. Wharton* on behalf of the defendant, *J. Fred Johnson, Jr.*, on behalf of the Commission.

REPORT OF THE COMMISSION

Licht & Kaplan, Inc., instituted the proceedings by filing with the Commission a complaint against Postal Telegraph-Cable Co., a New York corporation, alleging an "unauthorized, improper, and obstructionist policy, practice, and course taken by the defendant" in interposing the so-called "other company" defense in the trial of a suit in the municipal court of the city of New York, brought by the complainant against the defendant for damages allegedly sustained by reason of the negligence of the defendant in failing to deliver a telegram.

It is alleged in the complaint that the interposition of the other company defense in the course of the trial of the case in the New York court resulted in delay, expense, annoyance, and unreasonable disadvantage to complainant, and was within the condemnation of sections 201, 202, and 203 of the Communications Act of 1934.

No award of damages is sought here, but complainant reserves the right to pursue his claim for damages in separate proceedings in a proper tribunal if this Commission finds that the defendant has violated the Communications Act.

Defendant, answering, admits that in the course of the trial in the New York court it contended that its telegraph lines were wholly within the State of New York; that the negligence complained of, if any, was that of the "other company," to wit, the Postal Telegraph-Cable Co. of Illinois; that the Postal companies of New York and Illinois are separate entities; that the suit should have been brought against the Illinois company; and that on these grounds defendant

urged the court to dismiss the action. It is also admitted that the defendant introduced testimony on the issue to show separation of the companies; that the message in question was duly transmitted by defendant over its own lines in New York and thence over "connecting lines" to Chicago; and that there are several direct lines to Chicago, which, insofar as they lie in New York State, are owned by defendant. It is also admitted that the tenor of defendant's argument in the trial of the case in the New York court was that it was absolved from responsibility by rule No. 2 of the rules of the Postal Telegraph-Cable Co. (land-line system), which reads as follows:

2. The company is hereby made the agent of the sender, without liability, to forward this message over the lines of any other company or by any other means of communication when necessary to reach its destination.

Defendant denies that the interposition of the other-company defense was violative of any provisions of the Communications Act, and asserts, on the contrary, that "any delay or inconvenience to which complainant may have been put was of the character of that normally and frequently met with by parties in all litigation and constitutes no injury to complainant or to the public, either at law or in equity, and the assertion thereof as a cause of action" before this Commission "is completely frivolous and without merit." It is further contended that the rule complained of, which is set forth in defendant's tariffs, duly filed with this Commission as rule No. 2 of Postal Telegraph-Cable Co. (land-line system), Tariff F. C. C. No. 31, is a "just and reasonable regulation and practice" and in no way violative of the Communications Act of 1934. The answer concludes with a prayer for dismissal of the complaint.

Section 201 (b) of the Communications Act of 1934 provides that all charges, practices, classifications "and regulations for and in connection with such communication service shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is hereby declared to be unlawful."

Section 202 of the Communications Act provides that—

it shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service, directly or indirectly, by any means or device, or to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality, to any undue or unreasonable prejudice or disadvantage.

Section 203 of the act requires every common carrier, except connecting carriers, to—

file with the Commission and keep open for public inspection schedules showing all charges for itself and its connecting carriers for interstate and foreign wire

or radio communication between the points on its own system, and between the points on its own system and points on the system of its connecting carriers or points on the system of any other carrier subject to this act when a through route has been established, whether such charges are joint or separate, and showing the classifications, practices, and regulations affecting such charges.

By subsection (c) of said section 203, carriers are not permitted to participate in such communication unless schedules have been filed and published as required, and no carrier is permitted to employ or enforce any "regulations or practices affecting such charges, except as specified in such schedule."

Section 208 of the act authorizes any person complaining of anything done or omitted to be done by a common carrier subject to the act, in contravention of the provisions thereof, to file a complaint with the Commission stating the facts. It is further provided that no complaint so filed shall be dismissed because of the absence of direct damage to the complainant.

Section 404 of the act provides that whenever an investigation shall be made by the Commission, it shall be its duty to make a "report in writing in respect thereto, which shall state the conclusions of the Commission, together with its decision, order, or requirement in the premises."

Complainant and defendant are both corporations organized under the laws of the State of New York. Defendant is one of the 35 companies constituting the Postal Telegraph-Cable Co. (land-line system). This entire communications system is operated as a unit, under the managerial control of the defendant. The separate companies embraced in the system do not file separate reports with this Commission in accordance with the requirements of section 219 of the Communications Act, and the orders of the Commission promulgated pursuant thereto. The annual reports filed for the entire system are styled "Annual Report of Postal Telegraph-Cable Company (land-line system), 67 Broad Street, New York, New York."

In response to the Commission's instructions to the carriers to "give in full the exact name of the respondent," the name given in the returns is "Postal Telegraph-Cable Company (land-line system), 67 Broad Street, New York, New York." There is an explanatory statement, as follows:

Respondent is making a report of telegraph properties which constitute what is commonly known as the Postal Telegraph System. No separate books of accounts are kept for the individual land-line companies, as combined books of accounts are maintained for the entire group of 35 operating companies by Postal Telegraph-Cable Co. (New York), in accordance with contractual agreements.

The explanatory remarks refer to page 105 of the return "for list of active telegraph companies covered by this report."

In response to the requirements of section 203 of the Communications Act and the rules of the Commission promulgated pursuant thereto, which require "each common carrier" to file with the Commission its schedules of charges, etc., one set of schedules is filed for the entire postal land-line system, and the other companies in the system now file concurrences. In the schedules filed with the Commission for the system, there is repeated reference in the rules to "the Company" and "Postal Telegraph." Domestic service rule 5.01, with respect to service rates, refers to the "rate system" of "Postal Telegraph" between points in the United States. Rule 5.06 refers to a rate sheet for use in combination with the "Company's Directory" of stations indicating the rates in effect over "its" lines, which will be on file in "every office" of "this Company." The rule further states that a complete schedule of "this Company's" rates and tariffs will be on file with the Federal Communications Commission in Washington, D. C., and that, "where required," a complete schedule of all rates between offices "in any one State" will be on file with the governing body in that State.

The tariffs now on file with the Commission list all 35 of the land-line companies as concurring in the schedules filed for the system.

On April 30, 1937, complainant instituted in the municipal court of the city of New York a suit against the defendant for $480 damages for failure to deliver a certain telegram, dated February 24, 1937, addressed to Goldblatt Bros., Chicago, Ill. Defendant filed an answer in the nature of a general denial. The case came up for trial February 24, 1938, before the judge of the court and jury of six. Mr. James L. Nesbitt appeared as trial attorney for the defendant, having been retained for that purpose. In his opening to the jury, he advanced the so-called other-company defense, to wit, that the plaintiff was suing the wrong party. In the previous correspondence with reference to the subject matter of the suit, no indication had been given that such a defense would be urged. It had not been set up by any special pleading.

After considerable argument with respect to the motion to dismiss, based upon the other-company defense, the court submitted the case to the jury on the merits and reserved decision on the motion. The jury brought in a verdict in favor of the plaintiff for $275. The court requested that briefs on the issue raised by the motion be exchanged and submitted to the court. On or about March 7, defendant's attorney, Mr. Nesbitt, procured an extension of time in which to prepare and exchange briefs. A further extension was granted to March 14. On this date, plaintiff's attorney had his brief of about 36 pages ready. Defendant's attorney, Mr. Nesbitt, appeared with his brief in the office of plaintiff's attorney, but would not exchange briefs as had been

directed by the court, but indicated to plaintiff's attorney that if he would read the brief he might not proceed with submission. Plaintiff's attorney thereupon advised Mr. Nesbitt that he would appear in court the next day and take the default. Mr. Nesbitt then advised plaintiff's attorney that he would appear before the court and withdraw the other-company defense. This he did on March 15. Judgment was thereupon entered on the verdict of the jury and the judgment was subsequently paid.

In the proceedings here, Mr. Nesbitt, appearing as a witness for the defendant, testified that before the exchange of briefs as required by the court in the New York case, he was advised that the company did not wish the defense to be used; that he was instructed by Mr. Kern, the general counsel of the defendant, to withdraw the motion based thereon; and that since then, though he has represented the defendant in a number of cases, he has never interposed the so-called other-company defense in any other case.

Mr. Wharton, attorney of record for the defendant here, stipulated in the record that the 35 companies of the Postal Telegraph land-line system are, from the point of view of managerial control, operated as a single system; that a uniform series of telegraph blanks is used in all offices in the system; that the same blanks are used irrespective of which State the messages originate in or which of the land-line companies handled them; that there is nothing on any of the telegraph blanks to indicate that the customer is dealing with any particular one of the companies in the system, other than the clause hereinabove referred to, which appears in small print on the back of the telegram blank. He stipulated that the telegraph blank indicates the customer is dealing with the Postal Telegraph Co.

CONCLUSIONS

After careful consideration of the entire record, we find that the 35 companies embraced in the Postal Telegraph-Cable Co. (land-line system) are, as to their communications services, operated as a single entity under the managerial control of the defendant company, and that though the tariffs on file with the Commission for the system now list the 35 separate corporate entities as concurring carriers, nevertheless the system is treated, and the public is lead to treat it, for all practical communication purposes, as a single entity. Indeed, there appears to be no other conceivable excuse for the failure of the individual corporate entities embraced in the system to comply with the specific requirements of the statute and the regulations of the Commission with respect to the filing of annual and other reports,

The stipulation of nonliability in question here is a regulation limiting the liability of the carrier, to wit, Postal Telegraph-Cable Co. (land-line system). Regulations limiting the liability of a carrier are regulations affecting the charges for service. When such regulations are duly published and filed as required by law, they become a part of the legal charge. They must be universally respected by the carrier and patron alike. Any departure or deviation therefrom by any means, scheme, or device is prohibited. *Western Union* v. *Esteve Brothers*, 256 U. S. 566. This case involved a regulation limiting the liability of the carrier on an unrepeated message to "that part of the tolls which shall accrue to it." The only difference between the regulation in the *Esteve case* and that involved here is in the amount or extent of the limitation. The regulation involved in the *Esteve case* contained a partial limitation of liability, and the regulation here involved provides a complete limitation of liability under specified circumstances. In either case if the facts and circumstances are not such as are specified in the effective regulation, as properly interpreted, then the application of the regulation is offensive to that part of section 203 of the Act which expressly provides a plain, unqualified prohibition against the application of any "regulation * * * affecting such charges, except as specified in such schedule."

Referring particularly to the words "over the lines of another company" appearing in the terms and conditions on the Postal Telegraph blanks provided by the system for use in all states and at all points served by the Postal Telegraph-Cable Co. (land-line system), and appearing in the tariffs filed for the entire system, the question is presented as to whether the "other company" refers to some company other than a Postal company (which was apparently the defendant's interpretation of its rule when it withdrew the special defense) or whether this charge includes the companies in the Postal system (which apparently was the defendant's interpretation when it interposed the special defense and while it was introducing testimony and making its arguments and preparing its brief thereon). The regulation means one or the other. It cannot mean both. In view of the manner in which the Postal Telegraph-Cable Co. (land-line system) frames its public offerings and presents itself in its dealings with the public, it is the opinion of the Commission and we so conclude, that the defendant correctly interpreted the tariff regulation in question when, through its general counsel, it gave instructions for the withdrawal of the "other company" defense. It follows, and we so find that the defendant incorrectly interpreted the regulation in question when, through its trial attorney in the case, it interposed

said defense in the first instance, and the application and attempt to enforce the regulation as misinterpreted by the carrier was a departure or deviation from the tariff duly published and filed with this Commission and, therefore, in violation of section 203 (c) (3).

While this Commission cannot say what may and what may not be used as a defense in the trial of a law suit, it was manifestly the intention of Congress to require uniformity in the application of the regulations contained in a carrier's published schedules. Obviously there can be no uniformity if in any particular instance the carrier is permitted to deviate from the regulations so published, whether such deviation results in the granting of a privilege otherwise than as specified in the schedules or the imposition of a burden otherwise than as specified in such schedules. There is no less a deviation in one case than in the other. The circumstances under which the carrier is not liable by virtue of the regulation in question are exclusive. To expand or enlarge these circumstances, by a strained interpretation of the regulation or otherwise, in order to defeat a particular claim, is to apply and attempt to enforce the regulation except as specified therein, and, therefore, results in a deviation therefrom.

The implications from the record in this case are to the effect that it is not now the policy of the defendant to invoke the regulation in question in such circumstances as are hereinabove described. It may, therefore, be assumed that in the future the carrier will uniformly and impartially apply the regulation in question as herein interpreted. Hence, no orders as to the future seem necessary in this proceeding.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of
MIAMI BROADCASTING CO. (WQAM),
MIAMI, FLA.
To Classify Station WQAM as a
Class III–A Station.

Decided February 11, 1941

DECISION AND ORDER ON PETITION TO CLASSIFY STATION WQAM AS A CLASS III–A BROADCAST STATION

Miami Broadcasting Co., licensee of Station WQAM, Miami, Fla., filed this petition praying that the Commission: (1) Classify Station WQAM as a class III–A station upon its present assignment of 560 kilocycles, 1 kilowatt power, unlimited hours of operation, and modify the license of the station accordingly; (2) that action upon petitioner's application for authority to install a new transmitter and increase power to 5 kilowatts be deferred until after final action by the Commission upon this petition; and (3) that in the event the first prayer of its petition is granted, the application for authority to increase the power of Station WQAM to 5 kilowatts be returned to petitioner.

The application for a construction permit to increase the power of Station WQAM to 5 kilowatts, File No. B3–P–2597, will be considered separately. This decision relates exclusively to the basic request for classification of Station WQAM as a class III–A station. In this connection no change whatsoever in the status of petitioner's station is requested other than designation as a "class III–A station." With respect to this request the petitioner alleges, in substance, that Station WQAM has the requisite channel assignment, power assignment, and interference-free service area to qualify as a class III–A station as defined by the Standards of Good Engineering Practice, adopted June 23, 1939, effective August 1, 1939.

However, the classification of stations under the provisions of the Commission's rules as "class I," "class II," "class III–A," "class III–B," and "class IV" stations is a matter merely of administrative

convenience. As has heretofore been stated in proposed findings issued in the matter of Wren Broadcasting Co., Inc., Docket No. 5491, and in the matter of New Jersey Broadcasting Corporation, File No. B1–P–2526, these classifications are not a source of any right in licensees or applicants. No provision is made either in the Commission's rules or in the authorizations which it issues for specifying in a permit or license or other authorization any classification such as that here requested.

The Commission finds that the petition is out of order, and therefore, it is ordered, this 11th day of February, 1941, that the petition be, and it is hereby, dismissed.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C.

In the Matter of BEAUMONT BROADCASTING CORPORATION (KFDM), BEAUMONT, TEX. Request to classify Station KFDM as a class III–A station.	FILE No. B3–ML–927

Decided February 11, 1941

DECISION AND ORDER

The Beaumont Broadcasting Corporation requested the Commission to add "class III–A" to the license of Station KFDM, submitting this request in the form of an application for modification of license.

No provision is made either in the Commission's rules or in the authorizations which it issues for specifying in a license a classification such as is here requested. The classification of standard broadcast stations, as stated in the decision and order entered this day in the matter of a petition of Miami Broadcasting Co. to classify Station WQAM as a class III–A station, is a matter merely of administrative convenience. Such classifications are not a part of any license and are not a source of any right in the licensees. Addition of "class III–A" to the license of Station KFDM would have no effect whatsoever on the rights and privileges of the licensee. No modification of license terms is therefore in fact requested. The Commission finds that the "application" is out of order, and therefore, it is ordered, this 11th day of February 1941, that the same be, and it is hereby, dismissed.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of [1] HAWAIIAN BROADCASTING SYSTEM, LTD., HONOLULU, T. H. For Construction Permit.	FILE No. B–P–2978.

February 25, 1941

MEMORANDUM DECISION

This is an application filed by Hawaiian Broadcasting System, Ltd., for a construction permit to erect a new standard broadcast station at Honolulu, to operate on 1310 kilocycles, 250 watts, unlimited time. No network affiliation is contemplated.

At the present time there are four radiobroadcast stations located in the Hawaiian Islands: Station KTOH at Lihue on the Island of Kauai, 100 miles north of Honolulu; Station KHBC, licensed to this applicant, at Hilo on the Island of Hawaii, approximately 200 miles south of Honolulu; and Station KGU and Station KGMB both in Honolulu, the latter of which is owned by the applicant. Both of the Honolulu stations are network affiliates.

Unofficial 1940 figures for the island of Oahu on which Honolulu is located show a population of 247,703, more than half of the population of the Territory of Hawaii (423,330) being concentrated on this island. The figures for 1930 (1940 figures not available) reveal that the Territory's population in terms of racial origin was made up at that time as follows:

37.9 percent Japanese.
13.7 percent Hawaiian, Caucasian-Hawaiian, and Asiatic-Hawaiian.
21.8 percent Caucasian (of which 9.6 percent are Portuguese, Puerto Rican, and Spanish).
26.6 percent other races.

Large numbers of these do not speak the English language and the applicant proposes to serve them through programs in the languages

[1] Petition for rehearing and petition for recall of construction permit and stay order filed by Marion A. Mulrony and Advertiser Publishing Co., Ltd. (KGU), granted on April 29, 1941. Memorandum Decision of February 25, 1941, set aside and application of Hawaiian Broadcasting System designated for hearing.
Application dismissed without prejudice on September 23, 1942.

which they understand. It plans to emphasize Americanism and democratic principles and will give special attention to programs produced in cooperation with civic societies, and particularly with the University of Hawaii, stressing the history and traditions of the American people and American culture. All of the officers and directors of the applicant are native-born American citizens.

The United States maintains on the island of Oahu one of its largest military and naval establishments.

The Commission has been greatly concerned with the problem of the concentration of control of radio facilities and it has been loath to grant applications which might tend to result in an excessive concentration in any locality in the hands of one group. In view, however, of the unique situation in the Territory of Hawaii and taking into account this country's large military establishment there and the present condition of world affairs when so many influences are competing for the allegiance of our foreign-born residents, it has been decided to grant the instant application. It is true that such foreign-language programs as those proposed have been regularly presented by existing stations, but in view of the sizeable population to be served, the relatively limited service now available, and the absence of a non-network station in Honolulu, it is concluded that this new facility should be authorized in order to provide an increased opportunity for a better over-all service to all the diverse groups in this area. There are no other applications pending from Hawaii.

The application is granted subject to the condition that in any authorization to operate after March 29, 1941, the Commission may specify the frequency 1340 kilocycles in lieu of the frequency 1310 kilocycles.

8 F. C. C.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of [1]
C. T. SHERER CO., INC.,
WORCESTER, MASS.,
For Construction Permit. } FILE No. B1–P–2963

Decided February 26, 1941

DECISION AND ORDER ON PETITION FOR REHEARING

This is a petition for rehearing filed January 6, 1941, by Worcester Broadcasting, Inc., Worcester, Mass., and is directed against the action of the Commission December 17, 1940, granting without hearing the application of C. T. Sherer Co., Inc., Worcester, Mass., for construction permit (B1–P–2963) to erect a new radiobroadcast station at that place, to operate on the frequency 1200 kilocycles with a power output of 250 watts, unlimited time, with three 100-watt amplifier stations to be located near Auburn, Whitinsville, and Marlborough, Mass., and designating for hearing the application of Worcester Broadcasting, Inc., Worcester, Mass., for construction permit (B1–P–2929) to erect a new radiobroadcast station at that place for the use of the same facilities as those requested by the Sherer application, with two amplifier stations to be located near Whitinsville and Marlborough, Mass.

On October 20, 1938, C. T. Sherer Co., Inc., made application for construction permit (B1–P–2266) to erect a new radiobroadcast station at Worcester, Mass., to operate unlimited time on the frequency 1200 kilocycles with daytime power of 250 watts, nighttime power of 100 watts. This application was heard before an examiner of the Commission on July 14 and 24, and September 19, 1939. Proposed Findings of Fact and Conclusions of the Commission were filed March 15, 1940, wherein the Commission concluded that the limited service to be rendered by the proposed station would not constitute a satisfactory use of the facilities requested. On May 16, 1940, the Commission issued its final order adopting its proposed findings and conclusions issued March 15, 1940, and denied the application "without

[1] Petition for rehearing filed by North Shore Broadcasting Co., Inc. (WENX), on January 6, 1941, dismissed on February 4, 1941.

prejudice." Thereafter, and on August 23, 1940, the instant application (B1–P–2929) was filed by the C. T. Sherer Co., Inc.

On July 5, 1940, Worcester Broadcasting, Inc., Worcester, Mass., made application for construction permit (B1–P–2963) to erect a new broadcast station at that place to use the frequency 1200 kilocycles with 250 watts power, unlimited time. On August 8, 1940, this application was amended so as to specify antenna systems and transmitter locations and to request booster stations in Marlborough and Whitinsville, Mass. On August 23, 1940, this application was again amended to change site and ground system to be used on the booster station to be located at Whitinsville, Mass.

The simultaneous use of the frequency 1200 kilocycles at Worcester, Mass. by two applicants would result in intolerable interference to both and, therefore, these applications are mutually exclusive. The Commission, on December 17, 1940, upon comparative examination of the two applications, found that a grant of the Sherer application (B1–P–2963) would serve public interest, convenience and necessity, and therefore, granted the same pursuant to section 309 (a) of the Communications Act of 1934. Since a grant of the Sherer application (B1–P–2963) precluded a grant without hearing of the Worcester Broadcasting, Inc., application (B1–P–2929), the Commission designated the latter application for hearing in accordance with section 309 (a) of the act.

The petition for rehearing filed January 6, 1941, by Worcester Broadcasting, Inc., alleges (par. 4) that "petitioner is familiar with the theory advanced by the Commission in cases of this character to the effect that the granting of the Sherer application does not necessarily preclude the granting of petitioner's application on the premises that should petitioner show that the granting of its application will better serve the public interest than that of the Sherer Co., the grant to the Sherer Co. will be rescinded and petitioner's application will be granted"; that "although under the statute this reasoning may be legally correct, it certainly does not serve the ends of justice"; that (par. 5) "in view of the facts that its application was on file nearly 2 months before the Sherer application and all facts necessary to support a grant of its application were before the Commission even before the Sherer application was filed, it has been diligent in the presentation of its application and is entitled to at least make a comparative showing with the Sherer applicant at a public hearing to determine which application should be granted"; that (par. 6) "petitioner will attempt to show, among other things, if a comparative hearing is granted, that there is a strong sentiment among small Worcester merchants to the effect that because the

Sherer Co. operates a department store in Worcester, the merchants are very fearful of having this medium of advertising placed in its hands, due to the fact that they believe such a medium would not be used in their best interests, and that such a medium would give the Sherer Co. an unfair business advantage"; that no evidence of this type was before the Commission at the time the Sherer application was granted, and that such evidence is important to show whether the granting of the Sherer application will serve the public interest; that (par. 7) "it is obvious from a perusal of the Sherer application that the station at Worcester is requested not for the purpose of serving the public interest or for any philanthropic act on the part of the Sherer Co., but * * * to provide an opportunity to invest the funds of the R. C. Taylor Trust in a profitable enterprise, and * * * to advance the interests of the Sherer Company's department store." Petitioner alleges further (par. 8) that "because of the radio experience of the stockholders of the Worcester Broadcasting, Inc., which is fully set out in petitioner's application, the proposed station will broadcast the best available programs, and the station's continued operation in the public interest will be assured. Further, because of the fact that petitioner or its stockholders are not engaged in commercial pursuits in Worcester, the objections of the smaller merchants to the Sherer station will be overcome." Petitioner prays that the Commission reconsider its action of December 17, 1940, in granting the application of C. T. Sherer Co. and designate that application for hearing along with petitioner's application.

The opposition of C. T. Sherer Co., Inc., was filed on January 16, 1941.

A comparison of the essential facts taken from the two applications is as follows:

1. *Concerning legal qualifications of the applicants.*—C. T. Sherer Co., Inc., is a Massachusetts corporation and has authority under its charter to engage in the business of radiobroadcasting. All of its officers and directors are citizens of the United States and five of the six officers and directors of that company are residents of Worcester, Mass.

Worcester Broadcasting, Inc., is a Maryland corporation. Its charter provides for the construction and maintenance of a radiobroadcast station. All of the officers and directors of Worcester Broadcasting, Inc., are citizens of the United States, but none of them have ever lived in Worcester, Mass.

2. *Concerning the financial qualifications of the applicants.*—Sherer Co., Inc., is the owner and operator of a department store bearing

the same name located in Worcester, Mass. The corporation is authorized to issue 1,500 shares of preferred stock (no voting power) with par value of $100 per share, and 5,000 shares of stock (sole voting power) with no par value. 1,470 shares of the preferred stock and all of the common stock have been issued. All of the stock is held by three trustees for the benefit of the R. C. Taylor Trust. The balance sheet of the C. T. Sherer Co. as of April 30, 1940, shows a total net worth of $364,394.91, including cash in the amount of $31,610.44. In addition to this, it is stated in the application that the R. C. Taylor Trust has set aside 4,857 shares of the common stock of the Worcester County Trust Co., which has a current market value of $78,926.00 for the purpose of financing the radiobroadcast station. The total cost of construction of the proposed station is estimated at $53,505.00 and the total monthly cost of operation is estimated at $4,426.95.

Worcester Broadcasting, Inc., submitted with its application a balance sheet as of July 2, 1940, which shows assets consisting of cash in the amount of $24,900 from the sale of 249 shares of capital stock, all of which have been issued, and no liabilities, and the Maryland Trust Co. of Baltimore, Md., has agreed to grant this applicant loans up to $10,000. The cost of the equipment, exclusive of land and buildings, is estimated by the applicant as $24,319.00. The estimated monthly cost of operation is $2,592.00.

3. *Concerning technical qualifications of the applicants.*—All of the officers and directors of the C. T. Sherer Co., Inc., have had years of general business experience. This applicant proposes to employ a competent staff, qualified through training and experience.

All of the officers and directors of Worcester Broadcasting, Inc., are experienced in the business of radiobroadcasting. Its president, Mr. Easton C. Woodley, has been engaged in the business of radiobroadcasting for about 9 years; its vice president, Mr. Joseph Katz, has been president of an advertising agency for 25 years; its secretary-treasurer, Mr. G. Bennet Larson, has been connected with radiobroadcast stations in various capacities since 1926.

4. *Concerning the coverage of the respective applicants.*—Neither applicant can serve the entire city of Worcester. Each station operating as proposed, however, would render interference-free service in the daytime in excess of 85 percent and at night in excess of 75 percent of the population of the Worcester metropolitan district. The Sherer applicant would serve approximately 292,000 persons in the daytime and approximately 233,000 persons at night in the Worcester area. The Worcester applicant would serve approximately 286,226 persons in the daytime and approximately 234,505 persons at night.

It does not appear from the petition for rehearing or the opposition that any of the facts set forth in the applications of C. T. Sherer Co., Inc., for construction permit (B1–P–2963) or Worcester Broadcasting, Inc., for a construction permit (B1–P–2929) have changed since the grant of the Sherer application December 17, 1940, and no new or additional facts are given in the petition for rehearing.

From the foregoing comparison we think it clear that the Sherer application is the superior of the two, first: because most of the officers and directors of the Sherer Company are lifelong residents of Worcester, familiar with local conditions there, whereas none of the officers and directors of Worcester Broadcasting, Inc., have ever lived in Worcester, and it does not appear that any of them is familiar with its local conditions; second, because the Sherer application proposes to spend a much larger sum in the construction and operation of the station than does the Worcester applicant, and thus to provide a better service in the public interest.

Petitioner does not deny that the Commission has legal authority, upon simultaneous consideration of two conflicting applications, to grant one and to designate the other for hearing. It contends, however, that such action does not serve the ends of justice. We are compelled to disagree with petitioner for the reason that such action permits the Commission to provide service without delay to a community which otherwise would not have such service, while at the same time petitioner's rights are protected. Before its application can be denied, petitioner must be afforded an opportunity to be heard on any grounds which the Commission may have for denying the application. If the only basis for denying petitioner's application is the superiority of the service rendered or proposed by the C. T. Sherer Co., petitioner will have ample opportunity to show that its operation as proposed will better serve the public interest than will the grant of the Sherer application as authorized by the grant of December 17, 1940. Such grant does not preclude the Commission, at a later date, from taking any action which it may find will serve the public interest (*In re Application of Evangelical Lutheran Synod of Missouri, Ohio, and other States, KFUO, St. Louis, Mo.*, for modification of license decided June 25, 1940, 8 F. C. C. 118).

With respect to petitioner's contentions that its application should be preferred to that of the Sherer application (1) because the Sherer Company is the owner of a department store in Worcester and the smaller merchants of Worcester are fearful that the Sherer Company would have an unfair business advantage and would not use the station in their best interests and (2) that "it is obvious from a perusal

of the Sherer application that the station in Worcester is requested not for the purpose of serving the public interest" but "to provide an opportunity to invest the funds of the R. C. Taylor Trust in a profitable enterprise," petitioner sets forth no supporting facts. Such unsupported allegations are insufficient to overcome the sworn statements in the Sherer application that the direct objects of the Sherer proposal are to provide the people of Worcester and environs a public service consisting of programs primarily of local origin and interest.

In view of the foregoing, we are of the opinion that the petition for rehearing must be denied.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of THE SOUTH BEND TRIBUNE, SOUTH BEND, IND. Application for Construction Permit.	FILE No. B4–P–900

February 26, 1941

MEMORANDUM OPINION

BY THE COMMISSION (COMMISSIONER THOMPSON NOT PRESENT):

The South Bend Tribune, applicant herein, is a corporation organized under the laws of the State of Indiana. Its principal place of business is South Bend, Ind., where it is engaged in the publication of a daily newspaper, the Tribune, and in the operation of two broadcast stations, WSBT and WFAM.

The applicant is licensed to operate Station WSBT on the frequency 1360 kilocycles with 500 watts power, sharing time with Station WGES, Chicago, Ill., and to operate Station WFAM on the frequency 1200 kilocycles with 100 watts power, sharing time with Station WWAE, Hammond, Ind. The operating schedules arranged under the licenses of applicant's two stations do not permit operation of both stations at the same time, but do permit the maintenance of a continuous service through operation of the stations in such manner that their services supplement each other.

In this application, as amended, the applicant applied for a construction permit to make changes in the equipment of Station WSBT to change transmitter site, and to install a directional antenna, for operation of the station unlimited time on the frequency 930 kilocycles with 500 watts power.

The granting of the application, as submitted, would give the applicant authority to operate both a full-time regional station of 500 watts power and a part-time local station in the same community.

Prior to the amendment of this application to request authority for the operation of Station WSBT full time on the frequency 930 kilocycles, it was considered on the basis of a request for full-time operation on the frequency 1010 kilocycles. In an opinion issued February 6, 1939, denying the application as then presented, the Commission expressed reluctance to grant "new or additional facilities to one now operating a radiobroadcast station in the area proposed to be

served." Reference was made in this connection to the decision entered in the matter of the application of the Louisville Times Co. (5 F. C. C. 554) in which the Commission in denying a request for authority to construct a second station in the same community where applicant operated a station, stated that an element of particular importance in the consideration of the case was the furtherance of competition in program services to the end that the best service be made available. The opinion of February 6, 1939, also contains a reference to the application of Cornbelt Broadcasting Corporation (6 F. C. C. 282) in which the Commission held that the granting of the application would not have the effect of establishing or augmenting competitive conditions, and that under such circumstances a grant should not be made. See also *WSMB, Inc.*, 5 F. C. C. 55; *Port Huron Broadcasting Co.*, 5 F. C. C. 177; *Genessee Radio Corporation*, 5 F. C. C. 183; *The Journal Co.*, 5 F. C. C. 201; *The Kansas City Star Co.*, 5 F. C. C. 500; *The Colonial Network, Inc.*, 5 F. C. C. 654; *El Paso Broadcasting Co.*, 6 F. C. C. 86; and *King-Trendle Broadcasting Corporation*, 6 F. C. C. 790.

This application presented an even less desirable proposal than did the original application denied February 6, 1939, insofar as the element of competition is concerned. When the original application was considered, applicant published one of two newspapers in the community. When this application was considered, the applicant was without a local newspaper competitor. The granting of the authority requested in the amended application would not add to or augment competition between media for dissemination of intelligence, or add to competition between radio program services.

However, the Commission was satisfied that the public interest, convenience, and necessity would be served by granting the applicant the authority necessary to establish one full-time station (WSBT) so that residents of applicant's community might receive a full-time broadcast service from a single station without interruption. We concluded that it would be desirable to make this improvement possible. However, we concluded that it would not be in the public interest in this case to grant authority which would permit operation of two stations in the same community at the same time by the sole newspaper interests in the community. Operations under such circumstances would not be conducive to competition. Accordingly this application was, on October 1, 1940, granted upon condition that the permittee, prior to the issuance of a license for the operation of Station WSBT in accordance with the terms of the permit, should satisfy the Commission that it has divested itself of any and all interest, direct or indirect, in Station WFAM, South Bend, Ind.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of TELEGRAPH HERALD (KDTH), DUBUQUE, IOWA. For Modification of Construction Permit.	File No. B4–MP–1096.

Decided March 25, 1941

DECISION AND ORDER ON PETITION FOR REHEARING

The Commission has before it a new petition for rehearing filed January 27, 1941, by Sanders Bros. Radio Station (WKBB), Dubuque, Iowa, directed against the Commission's action January 7, 1941, granting without hearing the application of Telegraph Herald (KDTH), Dubuque, Iowa, for modification of construction permit (B4–MP–1096), seeking approval of transmitter site and directional antenna, and to extend the date for commencement of construction from August 22, 1940, to 60 days after the grant of the application (i. e., 60 days after January 7, 1941), and to extend the completion date from February 21, 1941, to 60 days after completion of construction (i. e., 60 days after March 8, 1941). The above-entitled application (B4–MP–1096) was filed by Telegraph Herald in fulfillment of the condition of the authorization of September 4, 1940, granting its application for modification of construction permit (B4–MP–1028) filed July 17, 1940, requesting increase in hours of operation from daytime only, to unlimited time, on 1340 kilocycles, with 1 kilowatt of power. The grant of September 4, 1940, was conditioned upon the selection of a transmitter site and antenna which would meet Commission approval, the issuance of said authorization to be withheld pending the filing, by the applicant, and approval of the Commission, of an application for modification of construction permit specifying the exact transmitter location and antenna system.

Petitioner requests the Commission (1) to reconsider and set aside its action of January 7, 1941, granting without hearing the above-entitled application; (2) to enter an order staying said action pending determination of the petition for rehearing or until final disposition of said matter on appeal to the United States Court of Appeals for the District of Columbia; and (3) to designate the application for hearing and permit petitioner to participate in said hearing.

This is the third petition for rehearing filed by petitioner since the Supreme Court affirmed the Commission's action in authorizing Telegraph Herald to construct broadcast facilities in Dubuque, Iowa. *Federal Communications Commission* v. *Sanders Bros. Radio Station*, 309 U. S. 470.

Before discussing the allegations of the petition for rehearing and request for stay, it will be helpful to state briefly a history of the proceedings upon the Telegraph Herald applications.

These proceedings started on January 20, 1936 when Telegraph Herald applied for a construction permit (B4–P–960) requesting the use of the frequency 1340 kilocycles with a power output of 500 watts daytime only. The Commission was unable to determine from an examination of this application that a grant would serve public interest, convenience, and necessity, and therefore designated the same for public hearing. At the time this Telegraph Herald application was designated for hearing, Sanders Bros. Radio Station (WKBB) had an application pending before the Commission for construction permit to move the transmitter and principal studios of Station WKBB (then operating in East Dubuque, Ill.), to Dubuque, Iowa, to operate on the frequency 1500 kilocycles, with a power output of 100 watts night, 250 watts day, unlimited time. No question of electrical interference between Station WKBB and the proposed Telegraph Herald station was involved, as the frequencies assigned to Station WKBB and that requested by Telegraph Herald were adequately separated to permit simultaneous operation.[1] Sanders Bros. Radio Station (WKBB) petitioned the Commission to intervene in the hearing on the original Telegraph Herald application, alleging that Station WKBB derived its revenue principally from the city of Dubuque, Iowa; that there was insufficient advertising revenue available in Dubuque, Iowa, to support an additional broadcast station; and that a grant of the Telegraph Herald application would seriously impair the type of service rendered by its Station WKBB. The petition to intervene was granted, and on September 14–16, 1936, a consolidated hearing was held on the application of Telegraph Herald for construction permit to erect a new radiobroadcast station at Dubuque, Iowa, and on the application of Sanders Bros. Radio Station (WKBB) for construction permit to move Station WKBB from East Dubuque, Ill., to Dubuque, Iowa.

On July 2, 1937, effective July 27, 1937, the Commission granted both applications.[2] Among other findings with regard to the Telegraph

[1] Station WKBB is now assigned the use of the frequency 1500 kilocycles with 250 watts power, unlimited time. There is still no question of electrical interference involved in this proceeding.

[2] 4 F. C. C. 392.

Herald application, the Commission found that Telegraph Herald was financially qualified, and this finding was based upon a showing of net worth of Telegraph Herald in excess of $840,000,[3] approximate cost of equipment $25,000, and estimated monthly operating expense estimated of $2,000.[4] A resolution adopted by the Board of Directors of Telegraph Herald authorized its treasurer and president "to spend such sums as may be found necessary and advisable for the proper construction and operation of the proposed station."[5]

On August 10, 1937, Sanders Bros. filed a petition for rehearing pursuant to section 405 of the Communications Act of 1934, directed against the grant of the Telegraph Herald application. Among other allegations, not material here, the petition alleged that the Commission had not made a finding of need for an additional broadcast station in Dubuque, and that there was no substantial evidence in the record upon which such a finding could be based; and that there was no evidence of any substantial character upon which a finding could be based that there was sufficient commercial support for a second radio station in Dubuque, Iowa. This petition was denied by the Commission December 8, 1937.

Thereupon, on December 14, 1937, Sanders Bros. appealed to the United States Court of Appeals for the District of Columbia. On January 23, 1939, the United States Court of Appeals for the District of Columbia held that appellant's reasons for appeal presented an issue of "economic injury to an existing station through the establishment of an additional station" and that the Commission erred in not making a finding on that issue.[6] The Supreme Court, on March 25, 1940 (rehearing denied, April 22, 1940) reversed the judgment of the Court of Appeals, and affirmed the action of the Commission in making the grant to Telegraph Herald.[7] The Supreme Court held that "resulting economic injury to a rival station is not in and of itself, and apart from considerations of public convenience, interest, or necessity, an element that the petitioner (Commission) must weigh, and as to which it must make findings in passing on an application for a broadcasting license." The Supreme Court pointed out that the ability of the licensee to render the best practicable service to the community reached by his broadcasts was an important element of public interest and convenience; consequently, the Act contemplates inquiry by the Commission *inter alia* into an applicant's financial qualifications to

[3] On May 25, 1940, Telegraph Herald filed an application for modification of construction permit to which was attached a balance sheet of Telegraph Herald as of April 30, 1940. According to this balance sheet, the net worth of Telegraph Herald as of that date was $604,111.25.

[4] 4 F. C. C. 394, 395.

[5] Telegraph Herald exhibit No. 2.

[6] 103 F. (2d) 321.

[7] 309 U. S. 470.

operate the proposed station in order that such ability may be assured. The Supreme Court said: "Plainly, it is not the purpose of the Act to protect a licensee against competition, but to protect the public" and that "Congress intended to leave competition in the business of broadcasting where it found it, to permit a licensee who was not interfering electrically with other broadcasters to survive or succumb according to his ability to make his programs attractive to the public." The Supreme Court held, further, that:

> Examination of the findings and the grounds of decision set forth by the Commission discloses that the findings were sufficient to comply with the requirements of the Act in respect of the public interest, convenience or necessity involved in the issue of the permit.

On May 9, 1940, the mandate of the Supreme Court of the United States was filed in the United States Court of Appeals for the District of Columbia, and on May 10, 1940, that Court vacated its judgment of January 23, 1939, reversing the Commission, and entered its order in conformity with the opinion and judgment of the Supreme Court affirming the decision of the Commission of July 2, 1937, effective July 27, 1937.

On May 13, 1940, Sanders Bros. filed with the Commission a "Petition for Reconsideration and Further Hearing," directed against the action of the Commission July 2, 1937, effective July 27, 1937, granting the application of Telegraph Herald for a construction permit to erect a new radio-broadcast station at Dubuque, Iowa, to operate with the frequency 1340 kilocycles, with power output of 500 watts, daytime only. The request for further hearing was based upon the ground that the record contained false statements and misrepresentations by Telegraph Herald as to its advertising commitments and that the Commission should reconsider the Telegraph Herald application in the light of changed conditions.

On June 5, 1940, Telegraph Herald filed an opposition to the petition for reconsideration and further hearing, and moved to dismiss or deny the same. The opposition denied that any false statements or misrepresentations were made by any Telegraph Herald witness and pointed out that the Commission had full knowledge of present conditions, that there were no changes in conditions which justified a further hearing and that the Commission was without jurisdiction to entertain the petition since the decision against which it was directed had been made more than 3 years ago; that in any event Sanders Bros. had exhausted its remedies before the Commission and the Courts under sections 405 and 402 (b) of the Communications Act of 1934 by its petition for rehearing filed August 10, 1937, and by its appeal to the United States Court of Appeals for the District of Columbia.

Upon consideration of the Sanders Bros.' petition for reconsideration and further hearing and the Telegraph Herald opposition thereto, the Commission, on June 18, 1940, dismissed the petition.

On July 17, 1940, Telegraph Herald (KDTH) filed an application for modification of construction permit to increase power output from 500 watts to 1 kilowatt, hours of operation from daytime only, to unlimited time, on the frequency 1340 kilocycles using a directional antenna at night (B4–MP–1028), which was granted on September 4, 1940. This grant, as we have already pointed out, was conditioned upon the filing by Telegraph Herald, and approval by the Commission, of an application for modification of construction permit specifying exact transmitter site and antenna.

On September 24, 1940, Sanders Bros. Radio Station (WKBB) filed a petition for rehearing directed against the action of the Commission September 4, 1940, granting the Telegraph Herald (KDTH) application for modification of construction permit (B4–MP–1028). That petition was based primarily upon the following allegation:

> The granting of the Telegraph Herald application will adversely affect the public interest in that because of the competitive situation either (*a*) petitioner's station and the proposed Telegraph Herald station will both go under, thus leaving the listening public without adequate service, or (*b*) petitioner's station and the proposed Telegraph Herald station will both be compelled to render inadequate service, or (*c*) one of the two stations will go under with the public receiving inadequate service from each during the period they both continued in operation.

On December 5, 1940, the Commission denied Sanders Bros.' petition for rehearing, and on December 9, 1940, issued its written decision and order in which it pointed out that Sanders Bros.' primary contention was "that the granting of the Telegraph Herald application will adversely affect the public interest because of the competitive situation." The Commission held that this contention was without merit since it was based upon a misapprehension of the Commission's duty under the Communications Act to consider the effect of competition upon an existing licensee, and pointed out that under the Communications Act and under the Supreme Court's decision in the *Sanders case*, a licensee is not entitled to be protected against competition. The question of competition may be important where the financial qualification of an applicant depends upon his ability to compete for business with an existing licensee, for then the question of the effect of competition on the applicant is an important fact to be considered by the Commission in determining whether the applicant is financially qualified to operate the station. The decision pointed out, however, that the Commission had found both upon consideration of the original application and the instant one that Telegraph Herald is

financially qualified to construct and operate Station KDTH, and that the petitioner at no time set forth any facts to indicate the contrary.

With respect to the remaining allegations in this petition for rehearing, the Commission said:

> We have examined petitioner's remaining allegations and find them without merit. They are either related to its primary allegation, or have been considered by this Commission before, or are entirely without substance. We are, therefore, of the opinion that the petition for rehearing should be denied.

On December 27, 1940, Sanders Bros. appealed to the United States Court of Appeals for the District of Columbia from the decision of the Commission of September 4, 1940, granting the modified construction permit to Telegraph Herald and requested an order staying such decision "pending determination of this appeal or until further order of the Court." On February 19, 1941, the Court, without opinion, denied the petition for stay.

On January 7, 1941, the Commission granted the instant application of Telegraph Herald (KDTH) for modification of construction permit (B4–MP–1096), seeking approval of transmitter site and directional antenna and to extend commencement and completion dates for construction of the station, pursuant to the Commission's action of September 4, 1940.

The instant petition for rehearing, directed against the action of the Commission January 7, 1941, granting the above-entitled application for modification of construction permit (B4–MP–1096) is based upon the same allegations as was the petition for rehearing of September 24, 1940. We have already passed upon and rejected those allegations in our written decision and order of December 5, 1940, denying the Sanders Bros.' petition for rehearing of September 24, 1940.

We think, therefore, this petition for rehearing must be denied insofar as it requests us to reconsider and set aside our action of January 7, 1941, to designate the application for hearing, and permit petitioner to participate therein.

Insofar as petitioner requests us to enter an order staying our action "pending determination of this petition for rehearing or until final decision of said matter on appeal to the United States Court of Appeals for the District of Columbia," in view of the fact that for nearly 4 years the people of Dubuque, Iowa, have been deprived of the additional radio facilities to which they are entitled under our decision of July 2, 1937, and the opinion of the Supreme Court sustaining this decision, we are convinced that public interest will not be served by a further delay in the construction and operation of the Telegraph Herald station.

It is obvious that petitioner is really objecting to the grant of the original construction permit to erect a new radiobroadcast station in Dubuque, Iowa, rather than the grant of the instant application for construction permit. In other words, petitioner wants us to set aside any order looking towards the operation of any station in Dubuque, Iowa, whatever the character of the authorization may be. This issue was disposed of by the Supreme Court's affirmance of our decision in the first *Sanders case.*

Singularly enough, Sanders Bros. Radio Station (WKBB) did not ask for a stay of our action of September 4, 1940, granting the Telegraph Herald (KDTH) application for modification of construction permit (B4–MP–1028) which is the action it really wishes stayed, but waited nearly 5 months thereafter before asking us for such a stay.

Moreover, we are given no sufficient reason for a grant of the relief requested. The basis for petitioner's request for a stay of the action of which it complains is that unless the decision of January 7, 1941, granting the application of Telegraph Herald (B4–MP–1096) is stayed, petitioner and the listening public will suffer serious and irreparable injury. According to the petitioner, Telegraph Herald will commence operation of its proposed station and, because of competitive conditions in Dubuque, Iowa, this might eventually cause inadequate radiobroadcast service by both stations to the listening public. Appellant's investment in Station WKBB and its ability to render service in the public interest would, therefore, be seriously impaired. But petitioner does not allege any facts to indicate any reasonable likelihood that such will be the effect of the Commission's action. The Commission cannot assume this consequence, especially since it has been the Commission's experience that the addition of a competitive station in a community does not bring about the disastrous results predicted by petitioner. On the contrary, as a general matter, competition usually stimulates advertising. This is so because, as the Commission has frequently stated, competition in radio broadcasting means, insofar as listeners in a particular community are concerned, a wider choice of programs. A heightened listener interest may very well result in a greater amount of advertising expenditures because of increased listener hours resulting in increased revenues for both stations. Petitioner would have us assume that contrary results are inevitable in Dubuque without presenting any facts whatever to support its prognostications. In the light of the long period of delay which this matter has already entailed, we do not deem that it would be consonant with justice to the parties involved or the interests of the

listening public in Dubuque to use our processes to accomplish a further delay in the institution of the proposed radiobroadcast service.

Accordingly, it is ordered that the petition for rehearing filed by Sanders Bros. Radio Station January 27, 1941, be, and it is hereby, denied, and the request that we enter an order staying our action of January 7, 1941, granting without hearing the above-entitled application "until final decision of said matter on appeal to the United States Court of Appeals for the District of Columbia," be, and it is hereby denied.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter[1] of MATHESON RADIO CO., INC. (WHDH), BOSTON, MASS. For Construction Permit.	DOCKET NO. 5433

December 5, 1940

W. Theodore Pierson and *Andrew G. Haley*, Washington, D. C., on behalf of the applicant; *George O. Sutton* and *Arthur H. Schroeder* on behalf of Berks Broadcasting Co., Intervener.

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF THE COMMISSION

FINDINGS OF FACT

1. These proceedings arose upon the application of Matheson Radio Co., Inc., licensee of radiobroadcast Station WHDH, Boston, Mass., for a permit to increase the power of Station WHDH from 1 to 5 kilowatts and hours of operation from daytime and until sunset at Denver, Colo., to unlimited time, with directional antenna at night. The application was designated for hearing by the Commission on January 3, 1939, and afterwards upon further consideration was scheduled for hearing pursuant to a hearing notice dated September 2, 1939. On September 15, 1939, the petition of Berks Broadcasting Co. (WEEU) to intervene in the hearing was granted. On September 29, 1939, a petition to intervene, filed by National Broadcasting Co.

[1] Petition for rehearing filed by National Broadcasting Co., Inc. (KOA) on April 25, 1941, denied on May 20, 1941. See decision and order on petition for rehearing, 8 F. C. C. 411.

Petition for reconsideration and request for modification of order filed on April 26, 1941, by Berks Broadcasting Co. (WEEU), denied on May 20, 1941. See decision and order on petition for reconsideration and request for modification of order, 8 F. C. C. 427.

Petition for rehearing filed on April 28, 1941, by Earle C. Anthony, Inc. (KFI); National Life and Accident Insurance Co. (WSM); WGN, Inc. (WGN); Atlantic Journal Co. (WSB); WJR, The Goodwill Station (WJR); Carter Publications, Inc. (WBAP); Louisville Times Co. (WHAS); Loyola University (WWL); Agricultural Broadcasting Co. (WLS); Central Broadcasting Co. (WHO); and Stromberg-Carlson Telephone Manufacturing Co. (WHAM); dismissed on May 20, 1941. See Order on Petition for Rehearing, 8 F. C. C. 429.

Petition for stay during appeal filed by National Broadcasting Co., Inc., denied on June 12, 1941. See Decision and Order on Petition for Stay During Appeal, 8 F. C. C. 430.

Appeal filed by National Broadcasting Co., Inc. (KOA), in the United States Court of Appeals for the District of Columbia on June 7, 1941. Petition for stay order filed by KOA on June 17, 1941.

On September 12, 1942, the United States Court of Appeals for the District of Columbia reversed and remanded for further proceedings before the Commission.

On January 18, 1943, the Supreme Court of the United States granted certiorari and on May 17, 1943, the case was decided. The lower court, which reversed the Commission, was sustained.

as licensee of Station KOA, and a similar petition, filed by Columbia Broadcasting System, Inc., as licensee of Station WABC, were denied. On October 6, a petition of the Northern Corporation (WMEX) to intervene was denied. On October 10, 1939, the Commission denied a petition of National Broadcasting Co., Inc. (KOA), requesting review of the action of September 29, 1939, denying its petition to intervene. The hearing of the matter was continued indefinitely by the Commission by order dated October 12, 1939, but thereafter, on October 29, 1939, the case was again scheduled for hearing. An amended notice of hearing was issued December 2, 1939. On December 6, 1939, a petition and supplemental petition to intervene, filed by the licensees of 13 broadcast stations, referred to therein as the "clear channel group," a motion to dismiss the application or eliminate certain issues of the hearing notice, filed by the same group of licensees, and a motion to dismiss the application filed by the National Broadcasting Co., Inc., as licensee of KOA, were dismissed. A hearing was held on the application January 29 and 30, 1940, before an officer designated by the Commission to conduct the proceedings. Proposed findings and motions to strike the intervention and the testimony of Berks Broadcasting Co. (WEEU) were filed by applicant March 15, 1940. The intervener filed proposed findings March 15, 1940, and on March 28, 1940, filed an answer to applicant's motion to strike the intervention of Berks Broadcasting Co. and the testimony adduced by the latter.

2. The amended notice of hearing upon the application, issued by the Commission December 2, 1939, contains the following statement of matters to be determined:

(1) To determine whether or not the Commission's rules governing standard broadcast stations, particularly sections 3.22 and 3.25 (part 3) properly interpreted and applied preclude the granting of the application;

(2) To determine the nature, extent, and effect of any interference which would result should the applicant's proposed station operate simultaneously with stations KOA, WRUF, WEEU, and WABC;

(3) To determine the nature, extent, and effect of any interference which would result should the applicant's proposed station operate simultaneously with Station WRUF operating as proposed in its pending application (File No. B3-P-2408).

3. Station WHDH, which is located at Boston, Mass., is licensed to operate on the frequency 830 kilocycles with 1 kilowatt power with time of operation restricted to daytime and evening time preceding sunset at Denver, Colorado.

4. Station KOA, which is located at Denver, Colo., is licensed to operate on the frequency 830 kilocycles with 50 kilowatts power and unlimited hours of operation.

5. The operating assignments of Stations WHDH and KOA, as provided in the licenses of these stations, comply with the following provisions of sections 3.22 and 3.25 of the Commission's rules:

SEC. 3.22. *Classes and power of standard broadcast stations.*—(*a*) *Class I station.*—A "class I station" is a dominant station operating on a clear channel and designed to render primary and secondary service over an extended area and at relatively long distances. Its primary service area is free from objectionable interference from other stations on the same and adjacent channels, and its secondary service area free from interference, except from stations on the adjacent channel, and from stations on the same channel in accordance with the channel designation in section 3.25 or in accordance with the "Engineering Standards of Allocation." The operating power shall be not less than 10 kilowatts nor more than 50 kilowatts.

SEC. 3.25. *Clear channels; classes I and II.*—The frequencies in the following tabulation are designated as clear channels and assigned for use by the classes of stations as given: (*a*) To each of the channels below there will be assigned one class I station and there may be assigned one or more-class II stations operating limited time or daytime only: 640, 650, 660, 670, 700, 720, 740, 750, 760, 770, 800, 810, 820, 830, 850, 860, 870, 980, 990 1000, 1070, 1090, 1130, 1150, 1170, and 1190 kilocycles. The power of the class I stations on these channels shall not be less than 50 kilowatts.

6. The applicant requests that Station WHDH be authorized to operate unlimited hours on the frequency 830 kilocycles asserting that such operation would tend to accomplish maximum service to the public, and for that reason would not be inconsistent with the purposes for which rules 3.22 and 3.25 were promulgated. But the Commission finds upon examination of the matter that the issuance of an authorization as applied for by applicant would not be in accordance with section 3.25 of its rules. Section 3.25 (a) of the rules limits the use of the frequency 830 kilocycles to one full-time station of 50 kilowatt power; the applicant proposes to operate its station nighttime simultaneously with the station already assigned to the frequency.

7. In designating the instant application for hearing, however, the Commission specified certain issues, designed to provide for examination of evidence with respect to the nature, extent, and effect of any interference which might be expected to result from operation of Station WHDH in the manner proposed by applicant. Upon consideration of the evidence material to these issues, it is concluded that operation of Station WHDH nighttime, with directional antenna, as proposed by applicant, would not cause any interference to the primary service of Station KOA, Denver, Colo., and that such interference as the proposed operation of WHDH might reasonably be expected to cause to reception of KOA would be limited to receivers in the eastern half of the United States. Any use which might be made of the signal of KOA in the area where same might be affected

by proposed operation of WHDH would be dependent upon the characteristics of the individual receiver, the signal intensity available, and signal to interference ratio involved in each individual case.

8. The operation of WHDH as proposed by applicant would not cause objectionable interference to Stations WRUF, WEEU or WABC.

9. The application of Station WRUF, File No. B3–P–2408, which was pending when this application was designated for hearing has been withdrawn.

10. The granting of a permit therefor and operation of Station WHDH as proposed by applicant will enable it to deliver service of primary signal quality to an area having a population of 3,093,000 or to 621,000 more people than are now included within the primary service area of the station. The hours of operation of applicant station will be extended two and one-half hours during summer months, and a maximum of five and one-half hours during winter months. This will provide a new primary service to 94.9 percent of the Boston metropolitan area, including a population of 2,185,000. In addition to the aforementioned improvements and extension of service to residents in the Boston area, there will be an improvement and extension of service which applicant station now endeavors to render over the fishing banks situated off the New England coast.

11. Upon examination and consideration of the evidence adduced with respect to the proposed use of the frequency 830 nighttime at Boston simultaneously with the present use of the frequency at Denver, the Commission finds that such operation would permit more efficient use of the frequency and has concluded to amend its rules by striking the reference to the frequency 830 kilocycles from subsection (a) of section 3.25, and by adding the figure 830 immediately following the figure 790 in subsection (b) of section 3.25.

CONCLUSIONS

1. The operation of Station WHDH as proposed herein will not cause interference to the primary service of any station, and any interference which such operation may reasonably be expected to cause to Station KOA, Denver, will be limited to interference with intermittent reception upon receivers located in the eastern part of the United States, remote from the station.

2. The proposed change in the provisions of rule 3.25 and the granting of the application of Matheson Radio Co., Inc., will permit of more efficient use of the frequency 830 kilocycles, and serve public interest, convenience, and necessity.

3. Applicant's motion to strike the intervention of Berks Broadcasting Co. should be denied, the Commission being of the opinion that applicant has not presented any reason why the intervention should not have been allowed in the first instance or any reason why the intervener after becoming a party to the proceeding should not be permitted to continue as such until a final determination is made of the matter.

December 5, 1940

COMMISSIONERS NORMAN S. CASE AND T. A. M. CRAVEN DISSENT FROM THE PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF THE COMMISSION, AND BELIEVE THAT THE PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF THE COMMISSION SHOULD HAVE READ AS FOLLOWS:

FINDINGS OF FACT

1. These proceedings arose upon the application of Matheson Radio Co., Inc., licensee of radiobroadcast Station WHDH, Boston, Mass., for a permit to increase the power of Station WHDH from 1 to 5 kilowatts and hours of operation from daytime and until sunset at Denver, Colo., to unlimited time, with directional antenna at night, on the frequency 830 kilocycles. The application was designated for hearing by the Commission on January 3, 1939, and afterwards upon further consideration was scheduled for hearing pursuant to a hearing notice dated September 2, 1939. On September 15, 1939, the petition of Berks Broadcasting Co. (WEEU) to intervene in the hearing was granted. On September 20, 1939, a petition of National Broadcasting Co. to intervene as licensee of Station KOA, and a petition of Columbia Broadcasting System, Inc., to intervene as licensee of WABC, were denied. On October 6, a petition of the Northern Corporation (WMEX) to intervene was denied. On October 10, 1939, the Commission denied a petition of National Broadcasting Co., Inc. (KOA), requesting review of the action of September 29, 1939, denying its petition to intervene. The hearing of the matter was continued indefinitely by the Commission by order dated October 12, 1939, but thereafter, on October 29, 1939, the case was again scheduled for hearing. An amended notice of hearing was issued December 2, 1939. On December 6, 1939, a petition and supplemental petition to intervene, filed by the licensees of 13 broadcast stations, referred to therein as the "clear channel group," a motion to dismiss the application or eliminate certain issues of the hearing notice, filed by the same group of licensees, and a motion to dismiss the application filed by the National Broadcasting Co., Inc., as licensee of KOA, were dismissed. A hearing was held on the application January 29 and

30, 1940, before an officer designated by the Commission to conduct the proceedings. Proposed findings and motions to strike the intervention and the testimony of Berks Broadcasting Co. (WEEU) were filed by applicant March 15, 1940. The intervener filed proposed findings March 15, 1940, and on March 28, 1940, filed an answer to applicant's motion to strike the intervention of Berks Broadcasting Co. and the testimony adduced by the latter.

2. The amended notice of hearing upon the application issued by the Commission December 2, 1939, contains the following statement of matters to be determined:

(1) To determine whether or not the Commission's Rules Governing Standard Broadcast Stations, particularly sections 3.22 and 3.25 (part 3) properly interpreted and applied preclude the granting of the application;

(2) To determine the nature, extent, and effect of any interference which would result should the applicant's proposed station operate simultaneously with stations KOA, WRUF, WEEU, and WABC;

(3) To determine the nature, extent, and effect of any interference which would result should the applicant's proposed station operate simultaneously with Station WRUF operating as proposed in its pending application (File No. B3-P-2408).

3. Station WHDH, which is located at Boston, Mass., is licensed for operation on the frequency 830 kilocycles with 1 kilowatt power daytime hours and until sunset at Denver, Colo.

4. Station KOA is licensed to operate on the frequency 830 kilocycles at Denver, Colo., with 50 kilowatt power and unlimited hours of operation, and is classified as a class I station under the following provision of section 3.22 of the Commission's rules:

SEC. 3.22. *Classes and power of standard broadcast stations.*—(*a*) *Class I station*—A "class I station" is a dominant station operating on a clear channel and designed to render primary and secondary service over an extended area and at relatively long distances. Its primary service area is free from objectionable interference from other stations on the same and adjacent channels, and its secondary service area free from interference, except from stations on the adjacent channel, and from stations on the same channel in accordance with the "Engineering Standards of Allocation." The operating power shall be not less than 10 kilowatts nor more than 50 kilowatts.

5. The frequency 830 kilocycles, along with certain other frequencies, is allocated for use during nighttime hours by one 50 kilowatt station (class I) by a regulation of the Commission, as follows:

SEC. 3.25.—*Clear channels; classes I and II.*—The frequencies in the following tabulation are designated as clear channels and assigned for use by the classes of stations as given:

(*a*) To each of the channels below there will be assigned one class I station and there may be assigned one or more class II stations operating limited time or daytime only: 640, 650, 660, 670, 700, 720, 740, 750, 760, 770, 800, 810, 820,

830, 850, 860, 870, 980, 990, 1000, 1070, 1090, 1130, 1150, 1170, and 1190 kilocycles. The power of the class I stations on these channels shall not be less than 50 kilowatts.

6. The applicant requests the Commission to authorize the operation of WHDH unlimited time on the frequency 830 kilocycles simultaneously with the clear channel station now assigned to the frequency, notwithstanding the provisions of sections 3.22 and 3.25 of the Commission's regulations. At the same time the applicant takes the position (in its appearance, in a statement during the course of the hearing and in its proposed findings) that it is not attacking the regulations or suggesting an amendment, change, or modification thereof; and asserts that it offers no argument that the regulations in their general application do not serve public interest, convenience, or necessity.

7. The application clearly is not consistent with the provisions of sections 3.22 and 3.25 of the Commission's regulations. No construction, interpretation or application of these regulations has been shown or suggested in the matters submitted by applicant, which would permit the granting of the authority requested without allowing an exception to the application of the regulations.

8. The Commission denied petitions from the licensee of Station KOA and others on the 830 kilocycle channel to participate in the hearing of the instant application. Likewise, the Commission denied the petition of a group of licensees operating stations in accord with rule 3.25 (a), to participate in this hearing which involves a change of the aforesaid rule. Changing a basic rule of the Commission in a specific case while at the same time denying parties, who may be affected adversely by such change, the right to participate in the hearing of the case is questionable legal procedure. Furthermore, such a procedure cannot safeguard the interest of the public when, as in this case, all evidence which may have a bearing on the important phases of this national problem of broadcasting cannot be available in the record of the hearing.

9. The applicant contends that operation of WHDH nighttime, simultaneously with KOA would not cause interference to the latter, but the testimony on this question is not in agreement. An expert in radio engineering, appearing as a consultant of applicant and as a witness in support of the application, testified that a usable service would not be provided beyond the calculated 500 microvolt signal intensity 50 percent of the time field strength contour of Station KOA, and that no interference would be caused within the 500-microvolt 50 percent field intensity contour for the reason that it would not be reached by the 25 microvolt 10 percent of the time contour

of WHDH, operating as proposed. The twenty-to-one or greater advantage in field strength ratio which KOA would have at its 500 microvolt 50 percent contour under the conditions proposed, is recognized as adequate to prevent objectionable interference. The applicant's projection of the WHDH 25 microvolt 10 percent contour extends from northern Minnesota to western New York and thence to Louisiana.

10. An expert from the Commission's staff testified that in the absence of unfavorable noise levels and interference to reception caused by signals of other stations, field intensities considerably below the value of 500 microvolts 50 percent of the time provide usable service. The testimony of this witness also shows the fact that sky-wave field intensities such as those under consideration, are subject to wide variations in strength, from hour to hour, day to day, and week to week. It was calculated that KOA would have a field strength of approximately 166 microvolts or greater 90 percent of the time at the same range where it would have a field of 500 microvolts 50 percent of the time. It was shown in this connection, that no sharp line of demarcation could be drawn between the areas where KOA would and would not deliver a usable signal.

11. There is also disagreement in the testimony with respect to the effect of operation of stations on adjacent channels upon the usability of the signal of KOA. It was shown that the effect of the signals from stations on adjacent channels would be determined in a large measure by the characteristics of the receiving equipment employed by the listeners.

12. The applicant showed that the signal of KOA is now subject to interference in certain areas from certain foreign stations, particularly CMHI, Santa Clara, Cuba, which operates on 830 kilocycles with 5 kilowatts power. This interference, however, will be eliminated when the changes in allocation contemplated by the North American Regional Broadcasting Agreement are completed. Under the provisions of the agreement KOA, if listed as a class I station, will be entitled to protection against signals from foreign stations exceeding 25 microvolts (night) or 5 microvolts (day) at the boundary of the United States.

13. Upon consideration of all the evidence material to the issue, it is concluded that operation of WHDH as proposed herein would cause interference to the reception of service rendered by Station KOA in its extended secondary service area. The usefulness of this service is dependent upon the characteristics of the individual receiver, the signal intensity available, and the signal to interference ratio involved in each individual case.

14. The operation of WHDH as proposed by applicant would not cause objectionable interference to Stations WRUF, WEEU, or WABC.

15. The application of Station WRUF, File No. B3–P–2408, was withdrawn by applicant prior to the hearing of this matter.

DISCUSSION

1. A conclusion to grant in full the instant application of WHDH can be reached only by applying the engineering standards specified for the clear channels of rule 3.25 (b) to the clear channels of rule 3.25 (a).

2. Therefore, it is important to review here the engineering standards which the Commission has recognized hitherto as being the best engineering practice. These make it possible for a clear channel station, operating under rule 3.25 (a), to render primary service to a distance of from 50 to 100 miles, depending upon propagation conditions. While this primary service is constant under any specific condition, its technical quality varies in proportion to the amount of natural noise present in the background of the program as heard in the receiver of the listener. Usually, with any specified power the farther a listener is from a transmitter, the poorer the quality of received primary service. In addition to primary service, which is available both day and night, it is possible for a station operating in accord with rule 3.25 (a) to render a secondary service at night. However, because of weaker signals and because of variation in the signal intensity from minute to minute, hour to hour, day to day, and year to year, all secondary service is inferior to primary service. The secondary service of a 50 kilowatt clear channel station operating in accord with rule 3.22 and 3.25 (a) may be grouped arbitrarily for purposes of this discussion into four grades of intermittent service, namely: (1) Good, beginning at about 100 miles and extending to approximately 400 miles from the transmitter; (2) Satisfactory, beginning at about 400 miles and extending to about 700 miles from the station; (3) Poor, beginning at about 700 miles and extending to about 1,000 miles from the station; and (4) Occasional, beginning at more than 1,000 miles from the transmitter. The grade of service is dependent upon the amount of fading, and upon the strength of the received signal as compared to the loudness of natural noises also heard in the receiver. While it is possible to change the character of these grades of service at any specific point by raising or lowering the power at the transmitter, the maximum power now permitted by the Commission is 50 kilowatts.

3. The service from clear channel stations operating under rule 3.25 (b) is limited by the permissive introduction of radio inter-

ference. For this reason these stations are capable only of rendering secondary service to a much smaller area than are stations operating under rule 3.25 (a). In an attempt to provide means to control the amount of this interference to secondary service, the Commission accepted the advice of the radio engineers of the country. For stations operating under rule 3.25 (b) the Commission decided arbitrarily that interference to the secondary service rendered by such stations would be objectionable if it exceeds 25 microvolts more than 10 percent of the time when measured where the secondary service signal from the desired station has a value of 500 microvolts 50 percent of the time. This arbitrary method of evaluating and measuring the interference is necessary to secure some semblance of tangibility under conditions of unpredictable variation at any specific point. The standard applied here is not intended to indicate that clear channel stations operating under rule 3.25 (b) render an interference-free secondary service to the 500 microvolt contour and that thereafter the service is degraded. Much of the secondary service of a clear channel station operating under rule 3.25 (b) may be inferior in technical quality as compared to that of a clear channel station operating under rule 3.25 (a).

4. Many radio listeners in the nation must not only rely upon secondary service from clear channel stations for the only broadcast service available to them but also millions of listeners now rely upon a low grade of secondary service in order to enjoy any broadcasting whatsoever. The most important problem confronting the Commission is to provide an improved radio service to these rural listeners. It appears that in any successful solution of this problem of rural broadcast coverage the Commission must rely primarily upon clear-channel stations operating in accord with both rule 3.25 (a) and rule 3.25 (b).

5. Before adopting the engineering standards provided for in the existing rules, the Commission in a public hearing considered the engineering opinion of the nation. The preponderant engineering opinion of the nation was that at least 25 clear channels of the type specified in rule 3.25 (a) were necessary to insure good nighttime broadcast service with a choice of only two programs to millions of persons residing in remote rural regions.

6. All the channels now provided in rules 3.25 (a) and 3.25 (b) are barely sufficient to provide service for the rural areas of the country at night. Much of the rural areas receive no service in the daytime. Therefore, any reduction in the number of either of these classes of clear channels would handicap the Commission in providing the much-needed improvement in rural coverage. This becomes

obvious when it is assumed (1) that the listeners in rural areas are entitled to a choice of a minimum of four different programs, such as now provided to radio listeners in most of the metropolitan centers of the nation; (2) that the engineers of the country are correct in their assertion that each rural listener having available only secondary service must have signals available from at least two stations transmitting the same program in order to obtain a reasonable degree of continuity of service; and (3) that to secure the most ideal geographical distribution of clear-channel stations from the standpoint of rural coverage, it would be necessary to disregard natural economic laws and establish such stations in places remote from markets and the centers of talent.

7. The technical quality of radio service in our cities is superior to that now rendered rural areas throughout the nation. Therefore, any course of action which handicaps the future ability of the Commission to equalize quality of service between cities and rural areas would be classed as discrimination against the rural population. A reduction of the number of clear channels may easily result in real discrimination against rural listeners in favor of the population living in metropolitan centers.

8. In the consideration of the important rural phase of the national radiobroadcasting problem, the Commission must balance the effect of paragraph B, 8 (d) of part II of the North American Regional Broadcasting Agreement, which reads as follows:

(d) If within the period of this agreement the country to which a clear channel has been assigned shall have made use of the channel but not in the manner above prescribed or not to the extent required by the provisions of this agreement, such country shall be considered as having relinquished that portion of the rights which it has not used and at the expiration of this agreement the other countries party thereto shall have the right, if they see fit, to withdraw the unused privileges from such country and to reassign them to any or all of the other interested countries.

9. This treaty provision should be interpreted in the light of international practice and international law. It means that if the United States should degrade the service on a particular class of radio channel on which it now has prior rights, the United States would lose its right to protection against the use of such channel in like manner by other nations. For example, if the United States now designates a station to operate in accordance with the Commission's rule 3.25 (a), other nations must not permit stations within their borders to operate in such a manner as to cause interference to the service of the United States' station within the borders of the United States. On the other hand, if the United States should, by its own action, degrade the service rendered on one of its clear channels by licensing stations in ac-

cord with rule 3.25 (b) instead of rule 3.25 (a), other nations may, at a future date, take advantage of this situation and designate their stations to operate on the same channel in a manner which will cause interference within the borders of the United States. Therefore, if the United States should designate all of the channels now reserved under rule 3.25 (a) for the use of stations operating in accord with rule 3.25 (b), the United States would be severely handicapped in its future solution of its most important national radio technical problem.

10. The Commission has likewise recognized in its rules the necessity for coping with the practical situation inherent in the problem of distributing fairly to the vast number of communities of the nation the use of the relatively few radio-broadcasting channels. This is accomplished by providing a large number of channels for regional and local stations.

11. Regional and local stations render no secondary service because several stations operate simultaneously on the same channel. This service is cut off by interference which the Commission must permit in order to solve the practical problem of distributing facilities to the various communities of the nation. Furthermore, at night the primary service of regional and local stations is considerably limited in area as compared to the area served by any class of clear channel station, thereby increasing the need in rural areas for clear channel service at night. Generally speaking, regional and local stations are ineffective as a means of solving the national problem of rural radio service at night.

12. In effect, the instant application of WHDH proposes to render an unlimited time regional station service primarily to the metropolitan district of Boston, which is already saturated with radio service from several other stations. In order to accomplish this, it is necessary to change rule 3.25 (a) so that WHDH may operate as a class II station in the manner provided for this class in rule 3.25 (b).

13. A grant of full-time operation to the licensee of WHDH might enable that licensee to survive with less effort under the strenuous competitive conditions which now confront him in Boston. Unfortunately, however, in considering this desire of the licensee of WHDH to improve his economic situation the Commission should not fail to consider likewise the paramount issues affecting the public of the nation as a whole.

14. A substantial improvement in the technical quality of service rendered by WHDH to the listeners of Boston can be obtained by granting the application in part, even though the Commission denies that part of the proposal which hinders the proper solution of the national problem. The issue thus may be narrowed to the question

of whether rural listeners of the nation shall be handicapped in obtaining an improved broadcast service, or whether the people of the metropolitan district of Boston, already enjoying radio service from many stations, shall have an opportunity to listen on an average throughout the year for four hours a day longer to the service of WHDH. (The limits of the extension of time are 5½ hours per day in December and 2½ hours per day in July.)

15. In this issue it has not been demonstrated convincingly that the people of Boston will receive better radio service generally. However, if it be assumed that nothing need be done to improve broadcast service to the rural population of the nation, one may argue that the isolated case presented here by WHDH has merit. It can be stated in this argument that under present conditions at KOA, if WHDH is permitted to operate simultaneously at night with KOA on the channel, the only rural listeners who would be deprived of service from KOA reside in the occasional and poor secondary service areas, and those portions of the satisfactory secondary service area from KOA within the States of North Dakota, Minnesota, Missouri, Arkansas, Oklahoma, and Texas. Also it can be argued that listeners in these areas already receive secondary service from other stations and that the technical grade of service now received by them from KOA is not good secondary service and that therefore the operation of WHDH as proposed creates insufficient harm to override the advantages of improved service in Boston.

16. On the other hand, listeners in these western areas of the country do not receive either the quality or the variety of service now available to the citizens of Boston. Therefore, to degrade further the service of rural listeners dependent in whole or in part upon KOA and other clear channel stations is an injustice. Moreover, favorable Commission action in an isolated instance of this nature creates a precedent, the mere existence of which may handicap future ability to secure improved broadcast service to rural areas. Therefore, such favorable action in this case would constitute an action resulting ultimately in the establishment of an unsound policy for the nation as a whole. An unsound public policy of this nature obviously would not benefit the listening public. Furthermore, this deterioration of radio service is bound to result in repercussions against the entire radio industry.

17. In this instance, granting in full the application of WHDH would limit the future freedom of action of the Commission in two ways, to wit: (1) It would reduce the needed number of clear channels under rule 3.25 (a), and (2) it would ultimately accord rights to other nations which rights are not now conceded in the North American Regional Broadcast Agreement.

18. If proper weight is given to all of the factors discussed herein it must be concluded that the applicant WHDH has not proved that any advantage which may accrue to him or to the people of the metropolitan district of Boston outweighs the disadvantages of:

A. The application of unsound engineering in the solution of the rural broadcast problem of the nation.

B. The establishment of a precedent which may ultimately result in a discrimination against rural listeners in favor of those listeners living in metropolitan centers.

C. The establishment of a precedent which may result ultimately in handicapping the United States in providing for its people any desirable change in the organization of radio broadcast facilities designed to improve rural coverage.

19. If the Commission desires to degrade any or all of the few clear channels provided in rule 3.25 (a), it would be far better to do so in a manner which benefits some of the underserved rural population of the nation rather than to favor any metropolitan center already surfeited with radio service.

CONCLUSIONS

1. The provisions of the Commission's Rules Governing Standard Broadcast Stations, particularly sections 3.22 and 3.25 (pt. 3), properly interpreted and applied, preclude the granting in full the application.

2. Operation of Station WHDH as proposed herein would cause interference to reception of KOA in its extended secondary service area, but would not cause interference to Stations WRUF, WEEU, or WABC.

3. The application of WRUF which was pending when the instant case was scheduled for hearing has been withdrawn.

4. That part of the application of WHDH which requests unlimited time of operation should be denied for the reason that it is not consistent with the provisions of sections 3.22 and 3.25 of the Commission's Rules Governing Standard Broadcast Stations.

5. That part of the application which requests an increase in power should be granted.

6. Applicant's motion to strike the intervention of Berks Broadcasting Co. should be denied, the Commission being of the opinion that applicant has not presented any reason why the intervention should not have been allowed in the first instance or any reason why the intervener after becoming a party to the proceeding should not be permitted to continue as such until a final determination is made of the matter.

The proposed findings of fact and conclusions of the Commission (8 F. C. C. 397), were adopted as the "Findings of Fact and Conclusions of the Commission" on April 7, 1941.

CASE and CRAVEN, Commissioners, dissenting.

This application was filed and prosecuted in violation of a rule of this Commission promulgated after a general hearing in which the whole industry, including this applicant, was represented. Other licensees of this Commission who applied were denied the right to intervene in the hearing of this particular case. No petition was filed by this applicant to waive or modify the rule for this particular application. In the final order the Commission, on its own motion and without notice to the industry and disregarding its determination of the general policy as promulgated in the rules adopted, has taken the unprecedented action so far as this Commission is concerned of changing a rule in this particular case to allow the granting of this application which was theretofore in violation of the rule.

This invites other applicants to file applications in violation of and without regard to the rules of this Commission. It discriminates against those who have relied upon the rules of the Commission and not filed applications for frequencies which they might desire, and which the rules of the Commission did not permit them to have. This discrimination is inequitable and not in accordance with the best administrative or judicial practices.

We adopt our proposed findings of fact and conclusions dated December 10, 1940 (see 8 F. C. C. 401) wherein we dissented from the proposed findings of fact and conclusions of the majority, as our findings of fact and conclusions in this case, and hereby incorporate them as part of this dissenting opinion by reference.

Decided May 20, 1941

DECISION AND ORDER ON PETITION FOR REHEARING

BY THE COMMISSION (COMMISSIONERS CASE AND CRAVEN VOTING "NO"; COMMISSIONER WAKEFIELD NOT PARTICIPATING; CHAIRMAN FLY NOT PRESENT):

This is a petition for rehearing filed April 25, 1941, by the National Broadcasting Co., Inc. (KOA), Denver, Colo. It is directed against the Commission's action of April 7, 1941: (1) Adopting as final the proposed findings of fact and conclusions made and entered by the Commission December 5, 1940, in the matter of the application of Matheson Radio Co., Inc. (WHDH), Boston, Mass., for construction permit (B1–P–2201, Docket No. 5453); (2) granting the application of Matheson Radio Co., Inc. (WHDH), for construction permit for in-

creased power and nighttime operation; and (3) amending the rules and regulations of the Commission governing standard broadcast stations so as to strike the figure 850 from subsection (*a*) of section 3.25, and adding the figure 850 immediately following the figure 810 in subsection (*b*) of section 3.25.

I—HISTORY OF PROCEEDINGS

On October 25, 1938, Matheson Radio Co., Inc. (WHDH), Boston, Mass., was operating on the frequency 830 kilocycles daytime and until sunset at Denver, Colo., with the power of 1 kilowatt. On that date, Matheson filed an application for construction permit requesting an increase in power to 5 kilowatts, and in hours of operation to unlimited time, using a directional antenna at night. Petitioner, National Broadcasting Co., Inc. (KOA), Denver, Colo., was then using the frequency 830 kilocycles [1] unlimited time with power of 50 kilowatts. Each of these assignments was made in accordance with the Commission's then effective rules.[2]

The Matheson application was in proper form and available for Commission consideration. Upon examination thereof, the Commission was unable to determine that a grant would serve public interest, convenience, and necessity. Accordingly, on January 3, 1939, the Commission designated the application for hearing.

Several petitions to intervene in the hearing were filed,[3] of which only one, filed by the petitioner, is material to this proceeding.

[1] Under the provisions of the North American Regional Broadcasting Agreement stations which were on March 29, 1941, assigned to the frequency 830 kilocycles were shifted to 850 kilocycles. Station KOA is now authorized to use 850 kilocycles with 50-kilowatt power, unlimited time.

[2] Insofar as these rules are here material, they were as follows:

"70. For the purposes of allocation of frequencies * * * broadcast stations are classified as follows: * * * (*a*) Clear channel. * * *

"72. The term 'clear channel station' means a station licensed to operate on a frequency designated as a clear channel. (See par. 116.)

"77. The term 'limited time station' means a station licensed to operate on a frequency designated as a clear channel, during daytime, and until local sunset, or until sunset at the dominant clear-channel station, and in addition, during night hours, if any, not used by the dominant clear-channel station.

"116. The following frequencies are designated as clear channels and are allocated for use by clear-channel stations * * * : * * * 830 * * * kilocycles.

"117. The authorized power of a dominant clear-channel station shall be not less than 5 kilowatts nor more than 50 kilowatts."

The foregoing rules were on August 1, 1939, superseded by sec. 3.21 (a), 3.22 (a), 3.23 (a) and (b), 3.24, and 3.25 of the Commission's present rules.

[3] Rule 1.102 on intervention is as follows:

"Petitions for intervention must set forth the grounds of the proposed intervention, the position and interest of the petitioner in the proceeding, *the facts on which the petitioner bases his claim that his intervention will be in the public interest,* and must be subscribed or verified in accordance with sec. 1.122. The granting of a petition to intervene shall have the effect of permitting intervention before the Commission but shall not be considered as any recognition of any legal or equitable right or interest in the proceeding. The granting of such petition shall not have the effect of changing or enlarging the issues which shall be those specified in the Commission's notice of hearing unless on motion the Commission shall amend the same." [Italics supplied.]

That petition was denied by the presiding Commissioner on September 29, 1939, on the basis of a written opinion entered the same day in Docket No. 5698. *In re Application of Hazelwood, Inc., Orlando, Fla.*[4]

On October 10, 1939, the Commission *en banc* affirmed the action of the presiding Commissioner denying National's petition to intervene.

On December 2, 1939,[5] a notice was issued by the Commission announcing that the Matheson application would be heard upon certain issues therein stated. Insofar as these issues are here material they were:

[4] The Hazelwood decision stated in part:

"The underlying purpose of the Commission in adopting its present rule on intervention (1.102) was to correct a practice which had become prevalent under the prior rule of the Commission relating to intervention. Under its former rule, the Commission permitted any person to intervene in a hearing if his petition disclosed 'a substantial interest in the subject matter.' This standard was so broad and the Commission's practice under it was so loose that intervention in Commission hearings came to be almost a matter lying in the exclusive discretion of persons seeking to become parties to Commission proceedings. The experience of the Commission during the past few years clearly demonstrated that the participation of parties other than the applicant in broadcast proceedings in a great many cases resulted in unnecessarily long delays and expense to both the Commission and applicants without any compensating public benefit. In many cases the major function served by intervenors was to impede the progress of the hearing, increase the size of the record, confuse the issues, and pile up costs to the applicant and to the Commission through the introduction of cumulative evidence, unnecessary cross-examination, dilatory motions, requests for oral argument, and other devices designed to prevent expeditious disposal of Commission business.

"The underlying purpose of the present rule is to limit participation in proceedings, particularly on broadcast applications, to those persons whose participation will be of assistance to the Commission in carrying out its statutory functions. The present rule requires a petitioner to set forth not only his interest in the proceeding but also 'the facts on which the petitioner bases his claim that his intervention will be in the public interest.' The fact that a proposed intervenor may have the right to contest in a court the validity of an order granting or denying a particular application does not in and of itself mean that such person is entitled as a matter of right to be made a party to the proceedings before the Commission on such application. Intervention in proceedings before administrative agencies like the Federal Communications Commission is ordinarily covered by statutory provision. The Communications Act contains no provisions giving the right of intervention in proceedings before the Commission to any person or class of persons, but expressly provides that the Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice. By the adoption of rule 1.102 the Commission in effect has declared that it will conduce to the proper dispatch of business and to the ends of justice if it permits intervention in a proceeding before it only if the making of a record in which the facts are fully and completely developed is facilitated by permitting the requested intervention. It is this theory, that where the public will benefit through aid or assistance given to the Commission or the applicant by a party-intervenor in a broadcast hearing, such participation should be permitted, which underlies rule 1.102.

"The petition of the Orlando Broadcasting Co., Inc., utterly fails to meet the requirement of the present rule on intervention. Insofar as it requests permission to participate in the hearing already designated on the application of Hazelwood, Inc., it simply prays that the petitioner be made a party and be allowed to present 'evidence.' Not the slightest intimation is given as to the type of evidence which the petitioner desires to adduce or what petitioner intends to prove by the introduction of such evidence. * * *"

[5] The numerous motions and petitions filed in this proceeding delayed the issuance of this notice of hearing. Many of these motions and petitions are not here material and hence references to them have been omitted.

1. To determine whether or not the Commission's Rules Governing Standard Broadcast Stations, particularly sections 3.22 and 3.25 (pt. III), properly interpreted and applied, preclude the granting of the application;[6]

2. To determine the nature, extent, and effect of any interference which would result should the applicant's proposed station operate simultaneously with Stations KOA * * *.

On January 29 and 30, 1940, the hearing was held on the Matheson application before an examiner designated by the Commission. Proposed findings were filed by the applicant March 15, 1940. On December 5, 1940, proposed findings of fact and conclusions of the Commission (Case and Craven, Commissioners, dissenting) were made and entered proposing to grant the Matheson application and to amend subsections (a) and (b) of section 3.25 of the Commission's rules by striking the reference to the frequency 830 (850) kilocycles from subsection (a) of section 3.25, and by adding the figure 830 (850) immediately following the figure 810 in subsection (b) of section 3.25.[7]

The Commission found, *inter alia:*

6. * * * the issuance of an authorization as applied for by applicant would not be in accordance with section 3.25 of its rules. Section 3.25 (*a*) of the rules limits the use of the frequency 830 (850) kilocycles to one full-time station of 50-kilowatt power; the applicant proposes to operate its station nighttime simultaneously with the station already assigned to the frequency.

7. * * * operation of Station WHDH nighttime, with directional antenna, as proposed by applicant, would not cause any interference to the primary service of Station KOA, Denver, Colo., and * * * such interference as the proposed operation of WHDH might reasonably be expected to cause to reception of KOA would be limited to receivers in the eastern half of the United States. Any use which might be made of the signal of KOA in the area where same might be affected by proposed operation of WHDH would be dependent upon the characteristics of the individual receiver, the signal intensity available, and signal to interference ratio involved in each individual case.

* * * * * * *

10. The granting of a permit therefor and operation of Station WHDH as proposed by applicant will enable it to deliver service of primary signal quality

[6] Secs. 3.22 and 3.25 of the Commission's rules (pt. III) are as follows:

"3.22. *Classes and power of standard broadcast stations*—(*a*) *Class I station.*—A 'class I station' is a dominant station operating on a clear channel and designed to render primary and secondary service over an extended area and at relatively long distances. Its primary service area is free from objectionable interference from other stations on the same and adjacent channels, and its secondary service area free from interference except from stations on the adjacent channel, and from stations on the same channel, in accordance with the channel designation in section 3.25 or in accordance with the Engineering Standards of Allocation. The operating power shall be not less than 10 kilowatts nor more than 50 kilowatts. (Also see sec. 3.25 (*a*) for further power limitation.)

"3.25. *Clear channels; Classes I and II.*—The frequencies in the following tabulation are designed as clear channels and assigned for use by the classes of stations as given:

"(*a*) To each of the channels below there will be assigned one class I station and there may be assigned one or more class II stations operating limited time or daytime only: * * * 850 * * *. The power of the class I stations on these channels shall not be less than 50 kilowatts.

"(*b*) To each of the channels below there may be assigned class I and class II stations: * * *."

[7] See *infra*, p. 397.

to an area having a population of 3,093,000 or to 621,000 more people than are now included within the primary service area of the station. The hours of operation of applicant station will be extended 2½ hours during summer months, and a maximum of 5½ hours during winter months. This will provide a new primary service to 94.9 percent of the Boston metropolitan area, including a population of 2,185,000. In addition to the aforementioned improvements and extension of service to residents in the Boston area, there will be an improvement and extension of service which applicant station now endeavors to render over the fishing banks situated off the New England coast.

11. * * * with respect to the proposed use of the frequency 830 (850) nighttime at Boston simultaneously with the present use of the frequency at Denver, * * * such operation would permit more efficient use of the frequency * * *.

On December 16, 1940, petitioner filed a second petition to intervene—

* * * in order that, as a party, it may (1) renew its motion to dismiss the WHDH application;[8] (2) file a motion to reopen the proceedings in order to afford petitioner an opportunity to introduce evidence, to cross-examine all witnesses, and otherwise to participate fully in the proceedings; (3) * * * file proposed findings of fact and conclusions of law; (4) have the right to file exceptions to any proposed Commission decision thereafter issued; (5) request oral argument upon such proposed decision and upon its exceptions thereto; and (6) in all respects fully participate in the issues involved in the application of Matheson Radio Co., Inc.

This petition, like National's previous petition to intervene did not comply with section 1.102 of the Commission's Rules on intervention in that it did not state "the facts on which petitioner bases his claim that his intervention will be in the public interest." Nor was the petition in effect anything more than a premature petition for rehearing. Accordingly, the petition was denied on January 7, 1941, but National was granted permission to submit a brief as *amicus curiae*. The Berks Broadcasting Co., WEEU (an intervenor whose participation in this proceeding is not here material), requested oral argument which was granted by the Commission, and National was permitted to participate in the oral argument as *amicus curiae*. The oral argument was had before the Commission February 20, 1941. On April 7, 1941, the Commission (Case and Craven, Commissioners, dissenting), adopted as final the proposed findings of fact and conclusions of the Commission made and entered December 5, 1940, amended the Rules and Regulations Governing Standard Broadcast Stations, as aforesaid, and granted the application of Matheson Radio Co., Inc. (WHDH) for construction permit.

On April 11, 1941, National filed a petition for stay of the foregoing action of the Commission April 7, 1941 (*a*) "until after the

[8] A previous motion filed by National to dismiss the Matheson application had been dismissed on December 6, 1939.

Commission shall have had an opportunity to take action upon a petition for rehearing which this petitioner intends to file on or before April 27, 1941," or (*b*) "until after the conclusion of any rehearing which may be held subsequently should the Commission grant its petition for rehearing," or (*c*) "until after a final determination of proceedings which petitioner intends to institute in the United States Court of Appeals for the District of Columbia for judicial review of the Commission's action."

On April 22, 1941, the Commission denied the petition for stay on the ground that "the sole basis for the relief requested in the petition for stay is an allegation of 'great and irremediable damage' to the private rights of petitioner without any facts to support it and that, therefore, petitioner has failed to state a ground for stay." On its own motion, however, the Commission suspended its action of April 7, 1941, "pending the filing by National Broadcasting Co., Inc. (KOA), * * * of a petition for rehearing and the determination thereon by the Commission, or until further order of the Commission," because it appeared "upon an independent examination of the facts and circumstances that public interest, convenience, and necessity will be served" thereby.

On April 25, 1941, National filed a petition for rehearing directed against the action of the Commission April 7, 1941. On May 7, 1941, Matheson Radio Co., Inc. (WHDH), filed an opposition to the petition for rehearing.

II. ALLEGATIONS OF THE PETITION FOR REHEARING

The petition alleges 13 grounds of error. Stripped of all repetition, these 13 grounds boil down to the following allegations:

1. That the Commission erred in failing to return the Matheson application to the applicant without action as a "defective" application under section 1.72 of its rules, and was without power to take any action upon this application except to return it.

2. That the Commission erred in refusing petitioner the right to intervene in the hearing on the Matheson application. Petitioner asserts that the Commission had no power under the act to grant the Matheson application "except after a hearing upon issues clearly defined and after affording National an opportunity to participate fully in such hearing."

3. That section 303 (f) of the act requires the Commission to afford petitioner an opportunity to be heard prior to the amendment of section 3.25 of the rules.

4. That the grant of the Matheson application "results in a degradation of service on 830 kilocycles (850 kilocycles) which will be preju-

dicial to the priority rights of the United States on this channel under paragraph B–8 (d) of part II of the North American Regional Broadcasting Agreement without affording National an opportunity to be heard on its own behalf and on behalf of the listeners it serves."

5. That the grant of the Matheson application "results in a substantial modification of the license held by National authorizing it to operate Radio Station KOA," and section 312 (b) of the Communications Act of 1934 requires the Commission to afford KOA an opportunity to be heard prior to such a grant.

6. That the decision of the Commission effects a change in the policy of the Commission with respect to the use of the frequency 850 kilocycles and authorizes and directs a new kind of use of said frequency. It is alleged that the Commission was without power, under section 409 of the Communications Act of 1934, to effect such a change after a hearing before an examiner.

7. That the findings and conclusions of the Commission are insufficient to support the decision rendered and do not fairly report and represent the evidence in the record; that the evidence is insufficient to support the Commission's decision "in that it affords no basis for a comparison of the services rendered by Radio Stations WHDH and KOA" and "it fails to afford any basis for a determination of the relative scope, character, and quality of the radio services available to the residents of Boston and the area adversely affected by the granting of the WHDH application."

8. That the decision is in violation of the requirements of section 307 (b) of the Communications Act of 1934 in that it results in a discrimination against service to rural listeners in order to furnish additional service to the residents of the city of Boston.

III. DISCUSSION OF THE ALLEGATIONS OF THE PETITION

1. We do not agree that the Commission was required to return the Matheson application without action as "defective" under our rules, or that our rules deprived us of the power to take any action upon this application except return it. Under the rules in effect when the Matheson application was filed, it was not "defective." The application was "in writing, under oath of the applicant, and on forms furnished by * * * the Commission";[9] two copies of the application were filed with the Commission at its offices in Washington, D. C.;[10] the application was specific with regard to the frequency, power,

[9] 103.1. Each application for an instrument of authorization shall be made in writing, under oath of the applicant, and on forms furnished by or in the manner prescribed by the Commission. * * *

[10] 103.7. Each application for construction permit * * * with respect to the number of copies and place of filing, shall be submitted as follows: * * * two copies direct to Washington, D. C.

hours of operation, and all other terms of the instrument of authorization requested; [11] and the applicant's answers to the questions set forth in the application forms were complete.[12] It was, therefore, available for consideration by the Commission under section 308 of the Communications Act of 1934.

The fact that the Matheson application was still pending and without final action by the Commission when section 1.72 [13] was promulgated and made effective did not require the return of the application unconsidered. We think the determination as to whether we should have returned the application, which was proper when filed, required further data or information, acted upon the application as filed, or taken any other action with respect to it, was a matter committed solely to our discretion by section 4 (j) of the Communications Act which empowers us to conduct our proceedings in such a manner as "will best conduce to the proper dispatch of business and to the ends of justice." See also *Federal Communications Commission* v. *The Pottsville Broadcasting Co.*, 309 U. S. 134. The petition does not show wherein our discretion was exercised either arbitrarily or capriciously.

2. Petitioner's contention that the Commission had no power to grant the Matheson application, or to amend section 3.25 without first affording petitioner notice and an opportunity to be heard, and that petitioner was entitled to intervene in the proceedings on the Matheson application is plainly without merit, we think, when examined in the light of our action thereon, and the applicable provisions of the Communications Act of 1934.

Insofar as the Commission's grant of the Matheson application is concerned, section 309 (a) of the act requires that the Commission

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[11] 103.9. Each application shall be specific with regard to frequency or frequencies, power, hours of operation, and all other terms of the instrument of authorization requested. An application for broadcast facilities in the band 550 kilocycles to 1600 kilocycles shall be limited to one specific frequency. * * *

[12] 104.1. * * * Any application which is not filed in accordance with the Commission's regulations with respect to the form used, manner of execution, and completeness of answer to questions therein required will not be considered by the Commission. Each such application shall be returned to the applicant by the Secretary of the Commission, together with a brief statement of the respect in which it is defective.

Rules 103.1, 103.7, 103.9, and 104.1 were superseded by sec. 4.01 and 4.02 of the rules effective January 1, 1939 (see pp. 2830 and 2831, Federal Register), which in turn were superseded by secs. 1.71 and 1.72 of the present rules of the Commission adopted August 1, 1939, as amended December 20, 1940.

[13] Sec. 1.72 is as follows: Applications which are defective with respect to completeness of answers to required questions, execution, or other matters of a purely formal character will not be received for filing by the Commission unless the Commission shall otherwise direct; (b) applications which have been received for filing but which are not in accordance with the Commission's rules, regulations, or other requirements will be considered defective. If an applicant by specific request of the Commission is required to file any documents or information not included in the prescribed application form, a failure to comply therewith will constitute a defect in the application. Such defective applications will not be considered by the Commission."

grant applications without hearing if upon examination thereof it "shall determine that public interest, convenience, or necessity would be served by the granting thereof." In the event the Commission upon examination of any such application does not reach such decision with respect thereto, this section requires that the Commission "shall notify the *applicant* thereof, fix and give notice of a time and place of hearing thereon, and shall afford *such applicant* an opportunity to be heard under such rules and regulations as it may prescribe." [Italics supplied.] No such right to notice and hearing is conferred upon any person *other than the applicant*, and no duty rests upon the Commission to afford any person *other than the applicant* an opportunity to be heard.

As we pointed out in our decision in the *Hazelwood* matter,[14] the act contains no provision giving the right of intervention in proceedings to any person or class of persons, but expressly provides that the Commission may "conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice." We promulgated rule 1.102 relating to intervention pursuant to this authority. National's petition, like the petition in the *Hazelwood case*, previously referred to, failed to meet the requirements of this rule, since it did not set forth "the facts on which the petitioner bases his claim that his intervention will be in the public interest." Petitioner did not even allege that it had any evidence to introduce, much less state the type of evidence which the petitioner desired to adduce, or what petitioner intended to prove by participating in the hearing.

Petitioner asserts that its license entitled it to operate Station KOA free of co-channel interference, and that the grant of the Matheson application results in reducing the area in which Station KOA is now entitled to render service free of co-channel interference. It is further alleged that the grant of the Matheson application results in changing the character of the frequency 850 kilocycles.[15] Therefore, argues petitioner, the grant of the Matheson application constitutes a modification of its license. But, assuming that interference will result to petitioner's station,[16] nothing in the Communications Act of 1934, the rules of the Commission promulgated pursuant thereto, or petitioner's license, entitles petitioner to operate Station KOA free of co-channel interference, nor to operate in any manner other than

[14] See note 4, p. 413.

[15] I. e., before the grant and change in rule 3.25 accompanying it, the frequency 850 kilocycles was a class I–A frequency, whereas, as a result of the Commission's order, the frequency 850 kilocycles has become a class I–B frequency.

[16] See p. 414, infra.

appears specifically on the face of petitioner's license.[17] This license merely authorizes petitioner to operate specified transmitting equipment for a period of 1 year, on the frequency 850 kilocycles with a power of 50 kilowatts, and for unlimited time. It does not expressly or by implication give petitioner a right to serve any particular number of listeners or geographical area or contain any provision designating petitioner's station as a "class I–A" station.

Although the Commission under section 303 (h) of the act has been given express authority to "establish areas or zones to be served by any station," it has not done so for standard broadcast stations.[18] Such a provision would not be practicable in the present state of the broadcasting art because all stations using the same frequency, with the same power and operating during the same hours, will not cover like areas or population. The extent of the service derived from the use of frequencies in the band assigned for standard broadcast stations is subject to wide variation dependent upon sky-wave propagation conditions, conductivity of the terrain, frequency, efficiency of the particular radiating system employed, static, man-made noises and other factors. A station in one part of the United States may serve more or less population and area than a station in another part of the United States, using the same frequency and power, and operating during the same hours of operation. Moreover, the present allocation of standard broadcast stations is such that as a practical matter each time an application for construction permit, license, or modification of license is granted, there is likely to be some change in the population and area of other stations. The Commission, therefore, has not established areas or zones to be served by standard broadcast stations, but instead has provided standards for normally protected sky-wave and ground-wave contours of station classified by its rules. Neither the standards nor the rules, however, impart any "rights" to the licensee, but are for administrative convenience of the Commission in the allocation of facilities under the act.[19] Thus, the grant of an application

[17] Sec. 301 of the Communications Act of 1934 provides in part: "* * * and no license shall be construed to create any right beyond the terms, conditions, and periods of the license. * * *"

[18] Licenses for high frequency broadcast stations provide for specified service areas in square miles. This is possible in the allocation of high frequency broadcast stations, although it is not possible in the allocation of standard broadcast stations, primarily for the following reasons: (a) The propagation of high-frequency signals is subject to fewer variables than is the propagation of standard broadcast signals; (b) unlike standard broadcast stations, high frequency broadcast stations render no useful sky-wave service; (c) unlike standard broadcast stations, the sky-wave transmissions from a high frequency broadcast station do not restrict or limit the service area of another high frequency broadcast station.

[19] See Proposed Finding of Facts and Conclusions, *in re Application of WREN Broadcasting Co., Inc.* (*WREN*), Lawrence, Kans., Docket No. 5491—June 19, 1940; and Decision and Order, *In re Beaumont Broadcasting Corporation* (*KFDM*), Beaumont, Tex., Feb. 11, 1941 (B3–ML–927). See also footnote 1, page 48—6th Annual Report of F. C. C.

which, because of electrical interference, may result in curtailment of the population or area served by an existing station, does not "modify" the existing station's license. Any other interpretation would render nugatory section 309 (a) of the act insofar as that section provides for the grant of applications without hearing, if public interest, convenience, and necessity will be served thereby, because, as a practical matter, virtually no application could be granted without a hearing. The interpretation contended for by petitioner would thus make expeditious and orderly administration of the Communications Act impossible.

Since petitioner has no legal right to be heard in any event, and did not comply with the Commission's rule providing for intervention, we think the contention that the Commission erred in not permitting petitioner to intervene is without merit.

We note, too, that our refusal to permit petitioner to intervene did not preclude petitioner if it had so desired from appearing at the hearing on the Matheson application and giving any relevant, material, and competent testimony it may have had. The rules of the Commission expressly so provide.[20] Petitioner did appear at the hearing, but limited its participation solely to noting an exception to the ruling of the Commission denying its petition to intervene. If petitioner had any relevant, material, and competent testimony relating to the merits of the Matheson application, it had ample opportunity to present the same. Petitioner can hardly complain now that the record on the Matheson application is deficient because of its own failure to give the Commission the benefit of such information and data as it may have had.

(3) Petitioner contends that it was error for the Commission to amend section 3.25 without first affording petitioner notice and an opportunity to be heard thereon and relies on section 303 (f) of the act which empowers the Commission to:

> *. * * Make such regulations not inconsistent with law as it may deem necessary to prevent interference between stations and to carry out the provi-

[20] Sec. 1.195 of the rules of the Commission provides in part:

"There will be maintained in the office of the secretary of the Commission a record of all communications received by the Commission relating to the merits of any application pending before the Commission requesting the granting, renewal, modification, or revocation of any license or construction permit * * *. Such record shall show the name and address of the person making the statement and the substance of such statement. When the date of hearing has been set, if the matter is designated for hearing, the secretary shall notify all persons shown by the records to have communicated with the Commission regarding the merits of such matter in order that such persons will have an opportunity to appear and give evidence at such hearing; * * *.

"No such person shall be precluded from giving any relevant, material, and competent testimony at such hearing because he lacks a sufficient interest to justify his intervention as a party in the matter * * *."

sions of the act: *Provided, however,* That changes in the *frequency, authorized power, or in the times of operation* of any station, shall not be made without the consent of the station licensee unless, after a public hearing, the Commission shall determine that such changes will promote public convenience or interest or will serve public necessity, or the provisions of this act will be more fully complied with; * * * [Italics supplied.]

Neither the amendment to section 3.25 nor the grant of the Matheson application, however, effected a change in the frequency, authorized power, or in the time of operation of petitioner's station KOA. The hours of operation of station WHDH were changed (increased), but that station expressly requested this change in its application and hence consented thereto. It is clear, therefore, that our action of April 7, 1941, amending section 3.25 did not violate section 303 (f) of the Act.

(4) Petitioner contends that the Commission's action "will be prejudicial to the priority rights of the United States" under paragraph B–8 (d) of part II of the North American Regional Broadcasting Agreement [21] and could not be taken without affording National an opportunity to be heard. This contention is based upon petitioner's misconception that it is in some manner subrogated to the rights of the United States under the treaty. But the treaty recognizes rights only in the signatory governments and does not create in any licensee any vested rights in frequencies or service areas. Moreover, the treaty does not prohibit the Commission from considering applications for broadcast facilities in accordance with the statutory standard of public interest, convenience, and necessity.

Nothing in the North American Regional Broadcasting Agreement gives petitioner any right to be heard prior to the promulgation of the amendment of section 3.25, and, as we have already pointed out, nothing in the Communications Act of 1934 or in the terms of its license issued pursuant to the act, gives petitioner any such right.

(5) Insofar as petitioner contends that the Commission's Order of April 7, 1941, results in a "substantial modification" of petitioner's license without an opportunity to be heard as required by section 312

[21] Par. B–8 (d) of pt. II of this treaty is as follows:

"If within the period of this agreement the country to which a clear channel has been assigned shall have made use of the channel but not in the manner above prescribed or not to the extent required by the provisions of this agreement, such country shall be considered as having relinquished that portion of the rights which it has not used and at the expiration of this agreement the other countries party thereto shall have the right, if they see fit, to withdraw the unused privileges from such country and to reassign them to any or all of the other interested countries."

(b)[22] of the Communications Act of 1934, we think petitioner misconstrues the Commission's order. As we have already pointed out in our discussion of point 2, petitioner's license authorizes Station KOA to operate for a period of one year on the frequency 850 kilocycles with a power output of 50 kilowatts and unlimited hours. The instant order does not change any of the terms of petitioner's existing license. We think, therefore, this contention is without merit.

(6) Petitioner's contention that the Commission's Order of April 7, 1941, "effects a change in the policy of the Commission with respect to the use of the frequency 850 kilocycles, and authorizes a new kind of use of said frequency," and that this change was made after hearing before an examiner and is therefore contrary to section 409 (a)[23] of the Communications Act of 1934 further misconstrues the Commission's order.

In considering whether the Commission's Order amending section 3.25 actually effects a change in the policy of the Commission, it will be helpful to review briefly the history of the allocation of radio-broadcast frequencies in the United States.

The Radio Act of 1927 became law February 23, 1927. Its passage was precipitated by the so-called "break-down of the law" which followed an opinion of the Attorney General, July 6, 1926, holding that the Secretary of Commerce under existing law had no power to restrict the operation of stations with respect to frequency, power, or hours of operation. Broadcast stations in the United States took advantage of this situation to broadcast on whatever frequencies they pleased with whatever power they desired and whenever they chose. The result was utter chaos for the listening public. In its attempt to bring about order, the Federal Radio Commission undertook at once to put into effect a general reallocation. This reallocation was not based upon any scientific plan and in the late months of 1927 it became apparent that the reallocation was not voting satisfactory

[22] Sec. 312 (b) of the Communications Act of 1934 is as follows:

"Any station license after June 19, 1934, granted under the provisions of this chapter or the construction permit required hereby and after such date issued, may be modified by the Commission either for a limited time or for the duration of the term thereof, if in the judgment of the Commission such action will promote the public interest, convenience, and necessity, or the provisions of this chapter or of any treaty ratified by the United States will be more fully complied with: *Provided, however,* That no such order of modification shall become final until the holder of such outstanding license or permit shall have been notified in writing of the proposed action and the grounds or reasons therefor and shall have been given reasonable opportunity to show cause why such an order of modification should not issue (June 19, 1934, c. 652, sec. 312, 48 Stat. 1086)."

[23] That part of sec. 409 (a) of the Communications Act of 1934 which is here material provides: "any member or examiner of the Commission * * * when duly designated by the Commission for such purpose, may hold hearings * * *; except that in the administration of title III of this act, an examiner may not be authorized to exercise such powers with respect to a matter involving (1) a change of policy by the Commission * * * or (4) a new kind of use of frequencies * * *."

results. As a partial step in ameliorating the situation, the Commission, on December 1, 1927, ordered 25 channels cleared, either entirely or partially.[24]

In the meantime, the Commission continued its endeavor to work out an allocation policy for broadcast stations. It invited and received the best engineering advice in the country. As a result of this advice, the Commission, on August 30, 1928, promulgated General Order 40[25] as the first step toward putting into effect a new allocation system. This Order established three types of channels for service by radiobroadcast stations in the United States as follows: Clear channels—for use by stations to provide good service to rural and remote listeners; regional channels—for use by stations to provide service primarily to metropolitan districts and rural areas contiguous thereto; and local channels—for use by stations to provide service primarily to cities or towns and suburban or rural areas contiguous thereto.[26]

During the period from 1928 to 1933, the Federal Radio Commission made no change "in the basic plan of allocation of frequencies set up by General Order 40" but minor changes in frequency assignments were made from time to time in order to improve local conditions.[27] During the period from 1934 to 1939, inclusive, no change in the basic plan of allocation set up by General Order 40 was made by the Federal Communications Commission, but individual assignments and changes were made as a result of the granting of applications.[28] Thus, it is apparent from the administrative practice heretofore followed that mere changes in frequencies have never been regarded as "changes in policy" of the Commission.

On June 23, 1939, the Commission, after an extensive hearing, adopted new Rules and Regulations Governing Standard Broadcast Stations and Standards of Good Engineering Practice Concerning Standard Broadcast Stations effective August 1, 1939. These rules did

[24] See p. 9, Second Annual Report of Federal Radio Commission.

[25] See Second Annual Report of Federal Radio Commission, p. 48.

[26] The following statement was issued by the Federal Radio Commission together with General Order 40: "The Commission is furthermore convinced that within the band of frequencies devoted to broadcasting, public interest, convenience, or necessity will best be served by a fair distribution of different types of service. *Without attempting to determine how many channels should be devoted to the various types of service,* the Commission feels that a certain number should be devoted to stations so equipped and financed as to permit the giving of a high order of service over as large a territory as possible * * * a certain number of other channels should be given over to stations * * * as to which there will be large intermediate areas in which there will be objectionable interference. Finally, there should be a provision for stations which are distinctly local in character and which aim to serve only the smaller towns in the United States * * *" (Second Annual Report of Federal Radio Commission, page 168). [Italics supplied.]

[27] See 3d, 4th, 5th, 6th, and 7th Annual Reports of the Federal Radio Commission, pp. 16, 56, 19, 25 and 18 respectively.

[28] See 1st, 2d, 3d, and 4th Annual Reports of the Federal Communications Commission, pp. 23, 57, 28, and 51 respectively.

not affect the basic plan of allocation of broadcast facilities, but sought to unify the plan of allocation of broadcast stations within the United States with that set up by the North American Regional Broadcasting Agreement. As under former rules, the three classes of channels provided were clear, regional and local. The principal changes were these: The new definitions establishing these classes of channels clarified the purpose of each class of channel and in general established the normal protection for stations operating on these channels.[29] With respect to clear channels, these rules provided in part:

3.25. *Clear channels; classes I and II.*—The frequencies in the following tabulation are designated as clear channels and assigned for use by the classes of stations as given:

(*a*) To each of the channels below there will be assigned one class I station and there may be assigned one or more class II stations operating limited time or daytime only: * * * 850 * * * kilocycles.

(*b*) To each of the channels below there may be assigned class I and class II stations: * * *.

The order of the Commission, April 7, 1941, amended rule 3.25, in part, as follows:

3.25. *Clear channels; classes I and II.*—The frequencies in the following tabulation are designated as clear channels and assigned for use by the classes of stations as given:

(*a*) To each of the channels below there will be assigned one class I station and there may be assigned one or more class II stations operating limited time or daytime only: * * *

(*b*) To each of the channels below there may be assigned class I and class II stations * * * 850 * * * kilocycles.

It is clear from the foregoing that the amendment with respect to the single frequency 850 does not change, but on the contrary continues the policy maintained by the Commission prior to April 7, 1941, of providing two classes of clear channel service. Both classes of clear channel stations are "designed to render primary and secondary service over an extended area and at relatively long distances."[30] The amendment merely effects a minor shift in one frequency within the established policy.

Petitioner's contention that the Commission's action results in a "new use" of the frequency 850 kilocycles within the meaning of section 409 (a) of the Communications Act is similarly without merit. The frequency continues to be assigned for the same kind of service, i. e., standard broadcast. Furthermore, as we have already shown, no change will result in the real nature or purpose of the use of this frequency within the standard broadcast band.

[29] See p. 38, 5th Annual Report, Federal Communications Commission.

[30] See sec. 3.22 of the Rules of the Commission.

(7) Petititoner alleges that the findings and conclusions of the Commission are "insufficient to support the decision rendered and do not fairly report or represent the evidence." The petition does not, however, allege in what particulars these findings and conclusions are insufficient or fail to report and represent the evidence. In this respect, the petition does not comply with section 1.271 of our Rules of Practice and Procedure which provides that a petition for rehearing "shall state with particularity in what respect the decision, order, or requirement, or any matter determined therein is claimed to be unjust, unwarranted or erroneous, and with respect to any finding of fact must specify the pages of the record relied on."

However, in view of the importance of the matters involved in this proceeding, we shall reexamine our findings and conclusions and the record upon which they are based. Since these findings and conclusions are stated at length elsewhere in this decision, we shall state simply their substance here. Summarized, we found that a grant of that application would not result in interference to the primary service of Station KOA, Denver, Colo., and that such interference to the reception of Station KOA as might reasonably be expected to result from a grant of the Matheson application would occur in its secondary service area and would be limited to receivers in the eastern half of the United States, remote from the KOA transmitter; that such secondary service as KOA could render in this area would be of uncertain character because of its dependence upon the characteristics of the individual receiver, the signal intensity and the signal to interference ratio involved in each individual case. These findings are supported by the expert opinion of both the applicant's and the Commission's engineer. We found further, that a grant of the Matheson application would enable Station WHDH to render an improved and extended primary service in the Boston metropolitan area and to the fishing banks situated off the New England coast; that the operation of Station WHDH as proposed would permit a more efficient use of the frequency 850 kilocycles than at present. Our review of the record indicates that the evidence supports these findings.

Petitioner further alleges that the evidence is insufficient to support the Commission's decision and order in that "it affords no basis for a comparison of the service rendered by Stations WHDH and KOA" and that "it fails to afford any basis for the determination of the relative scope, character and quality of the radio services available to the residents of the Boston metropolitan area adversely affected by the granting of the WHDH application." Since the record supports a finding that the primary service area of Station KOA will not be interfered with in any way and that the secondary service area

of Station KOA would be limited to receivers in the eastern half of the United States and remote from the KOA transmitter where the KOA signal is of uncertain character, it is clear that the WHDH service does not displace the KOA secondary service in any real or substantial sense. It is significant that although petitioner contends it is entitled to serve the rural areas in which it is claimed interference will occur, it fails to allege either that it has been providing a useful service in such areas or point out, in terms of population, the nature and extent of the claimed interference. Accordingly, there is no occasion for making a comparison of the services rendered by Stations WHDH and KOA.

(8) Petitioner alleges that the Decision and Order herein "results in a discrimination against service to rural residents in order to furnish additional service to the residents of the city of Boston and, as such, is violative of the requirements of section 307 (b) of the Communications Act of 1934." As we have already indicated, our decision and order results in no real or substantial displacement of the service of KOA. We have found that the improvement and extension of service in the Boston area will serve public interest. We think, therefore, that this allegation is without merit.

Accordingly, it is ordered, this 20th day of May 1941, that the petition for rehearing filed by National Broadcasting Company, Inc. (KOA) be, and it is hereby, denied.

It is further ordered that our Order of April 7, 1941, which was suspended on our own motion April 22, 1941, be, and it is hereby, reinstated.

May 20, 1941

DECISION AND ORDER ON PETITION FOR RECONSIDERATION AND REQUEST FOR MODIFICATION OF ORDER

BY THE COMMISSION (COMMISSIONER WAKEFIELD NOT PARTICIPATING; CHAIRMAN FLY NOT PRESENT):

This is a petition filed April 26, 1941, by Berks Broadcasting Co. (WEEU), Reading, Pa., for reconsideration and modification of the Order of the Commission, April 7, 1941, granting the application filed October 25, 1938, by Matheson Radio Co., Inc. (WHDH), Boston, Mass., for construction permit to increase power output from 1 to 5 kilowatts and hours of operation from daytime until sunset at Denver, Colo., to unlimited time on the frequency 850 kilocycles using a directional antenna at night.

Berks Broadcasting Co. (WEEU), Reading, Pa., is now authorized to use the frequency 850 kilocycles with 1 kilowatt power, daytime only. On December 6, 1940, this licensee filed an application for con-

struction permit (B2–P–3048) to increase hours of operation from daytime only to unlimited time on the frequency 830 kilocycles (850 kilocycles under the N. A. R. B. A.), using a directional antenna at night. On February 18, 1941, the Commission designated this application for hearing.

The basis for the instant petition is that Station WHDH, operating as proposed by the Commission's grant of April 7, 1941, will limit Station WEEU, operating as proposed by its pending application for construction, to its 8 millivolt-per-meter contour at night; that if WHDH were required to protect the proposed nighttime operation of WEEU to its 4 millivolt-per-meter contour (the protection generally afforded stations operating on 1 kilowatt under the Commission's Standards of Good Engineering Practice), WEEU would be able to serve a greater area and population at night; that WHDH could give this protection to WEEU by the selection of a more appropriate site and by modifying its directional antenna.

On May 7, 1941, Matheson Radio Co., Inc. (WHDH), filed its opposition to the petition of Berks Broadcasting Company. The opposition alleges that if a site were available that would enable the applicant to render better service to Boston and at the same time permit a more efficient use of the 850 channel, the applicant would be the first to propose that such a site be approved; that the applicant has no knowledge that any such site exists; that it has not been shown that a site which would not constitute a hazard to safe air navigation and would permit WHDH to serve the area of Boston satisfactorily, is available to the applicant; that it has been shown that the general character of those areas makes for extremely high attenuation of radio signals passing over them; that the present service of WEEU receives adequate protection from WHDH operating as proposed; that in view of the fact that petitioner's application was filed so long after the hearing on the Matheson application, the Matheson Radio Company, Inc. (WHDH), should not now be delayed further in going forward with the improvement of its station.

Although petitioner urges, as a ground for the relief it requests, that certain changes in the transmitter site and directional antenna pattern of Station WHDH will enable Station WEEU, operating as proposed by its pending application, to render an improved service, no facts are stated in support of this general conclusion. Petitioner does not indicate what change in the directional pattern will produce the results for which it contends, or what specific site should be selected, or whether such site is available to Station WHDH. In the absence of any concrete proposal concerning the suggested change in the location of transmitter site and the nature of the antenna

design proposed, the Commission has no basis for determining either the feasibility of petitioner's proposal or the verity of its conclusions. The petition must, therefore, be denied.

Before petitioner's application can be denied, however, it must be afforded a hearing at which time petitioner will have an opportunity to show that a grant of its application so as to operate with an RSS limitation of 4 millivolts per meter will better serve the public interest, convenience, and necessity than would the operation of Matheson Radio Co., Inc. (WHDH), as authorized by our grant of the above-entitled application. If petitioner can make such a showing, the Commission would not be precluded by its grant of the Matheson application, from granting petitioner's proposal, even though to do so would require the Matheson Radio Co., Inc. (WHDH), to make changes in its antenna system, find a new site for its transmitter, or both.

Accordingly, it is ordered, this 20th day of May 1941, that the petition for reconsideration and request for modification of order filed by Berks Broadcasting Co. (WEEU), Reading, Pa., be, and it is hereby denied.

Decided May 20, 1941

ORDER ON PETITION FOR REHEARING

(CASE and CRAVEN, Commissioners, voting "No"; WAKEFIELD, Commissioner, not participating; FLY, Chairman, not present.)

Upon consideration of the petition for rehearing filed April 28, 1941, by Earle C. Anthony, Inc. (KFI), Los Angeles, Calif.; National Life and Accident Insurance Co. (WSM), Nashville, Tenn.; WGN, Inc. (WGN), Chicago, Ill.; Atlanta Journal Co. (WSB), Atlanta, Ga.; WJR, The Goodwill Station (WJR), Detroit, Mich.; Carter Publications, Inc. (WBAP), Fort Worth, Tex.; Louisville Times Co. (WHAS), Louisville, Ky.; Loyola University (WWL), New Orleans, La.; Agricultural Broadcasting Co. (WLS), Chicago, Ill.; Central Broadcasting Co. (WHO), Des Moines, Iowa; and Stromberg-Carlson Telephone Manufacturing Co. (WHAM), Rochester, N. Y., directed against the action of the Commission April 7, 1941, adopting as final the Proposed Findings of Fact and Conclusions made and entered by the Commission December 5, 1940, in the matter of the application of Matheson Radio Company, Inc. (WHDH), Boston, Mass., for a construction permit to increase power from 1 kilowatt to 5 kilowatts, and hours of operation from daytime and until sunset at Denver, Colo., to unlimited time on the frequency 830 kilocycles (850 kilocycles under the N. A. R. B. A.) using a directional antenna at night (B1–P–2201, Docket No. 5453); amending the Rules and Regu-

lations of the Commission Governing Standard Broadcast Stations, as amended pursuant to the Commission's Order of September 11, 1940, so as to strike the figure 850 from subsection (a) of section 3.25 and adding the figure 850 immediately following the figure 810 in subsection (b) of section 3.25; and granting the application of Matheson Radio Co., Inc. (WHDH), for construction permit (B1–P–2201); the Opposition filed the 7th day of May 1941, by Matheson Radio Co., Inc. (WHDH), to said petition for rehearing.

It appearing that Station KFI, Los Angeles, Calif., is assigned the frequency 640 kilocycles; Station WSM, Nashville, Tenn., 650 kilocycles; Station WGN, Chicago, Ill., 720 kilocycles; WSB, Atlanta, Ga., 750 kilocycles; WJR, Detroit, Mich., 760 kilocycles; WBAP, Fort Worth, Tex., 820 kilocycles; WHAS, Louisville, Ky., 840 kilocycles; WWL, New Orleans, La., 870 kilocycles; WLS, Chicago, Ill., 890 kilocycles; WHO, Des Moines, Iowa, 1040 kilocycles; WHAM, Rochester, N. Y., 1180 kilocycles; that the separations in geographical location of and frequency used by each of these petitioning licensees from the location and frequency of the applicant Matheson station, operating as proposed, are such that no interference will result to any of the petitioners from said action of the Commission April 7, 1941, and

It appearing that the sole ground for the petition is the apprehension of the petitioning licensees that said Commission action will establish a precedent for future Commission action with respect to clear channel stations; and

It appearing that mere apprehension on the part of the petitioning licensees that said action of the Commission may at some future time operate as a precedent with respect to clear channel frequencies assigned to each of them is not such an interest as to entitle any of the petitioning licensees to standing as a party or person "aggrieved or whose interests are adversely affected thereby" within the meaning of section 405 of the Communications Act of 1934; and,

Now, therefore, it is ordered, this 20th day of May, 1941, that said petition for rehearing be, and it is hereby, dismissed.

Decided June 12, 1941

DECISION AND ORDER ON PETITION FOR STAY DURING APPEAL

BY THE COMMISSION (CASE AND WAKEFIELD, COMMISSIONERS, DISSENTING; PAYNE AND CRAVEN, COMMISSIONERS, ABSENT):

This is a petition for stay during appeal filed by National Broadcasting Co., Inc., licensee of Station KOA, Denver, Colo. Petitioner alleges that it intends to appeal to the Court of Appeals for the District of Columbia from the Commission's order of April 7, 1941.

That order adopted as final the proposed findings of fact and conclusions of the Commission proposing to grant the application of WHDH for unlimited hours of operation on 850 kilocycles, with power of 5 kilowatts, and also amended section 3.25 of the rules by removing the frequency 850 kilocycles from the group of frequencies specified in section 3.25 (a) and placing it in section 3.25 (b).

On April 11, 1941, petitioner filed with the Commission a petition for stay pending action by the Commission on the petition for rehearing which petitioner alleged it was about to file or until after disposition of the appeal which petitioner alleged it would file if its petition for rehearing were denied. The only reason given in support of the petition was that the issuance of a stay would preserve the *status quo*, whereas if a stay were not issued "KOA's status under the rules and regulations of the Commission and under the North American regional broadcast agreement as well as its capacity to serve its listeners will be changed materially to its great and irremediable damage without its having been afforded an opportunity to be heard as a party to such action." No facts were alleged showing irremediable injury to petitioner or any injury to the public. Accordingly, the Commission on April 22, 1941, denied the petition for stay but on its own motion suspended its action of April 7, 1941, until after the filing of and action upon the petition for rehearing.

The petition for rehearing was filed on April 25, 1941, and was denied in a written opinion and order dated May 20, 1941. The present petition for stay was filed on May 21, 1941, and an opposition thereto was filed by Matheson Radio Co., Inc., on May 28, 1941.

In the instant petition for stay, petitioner likewise requests that pending the determination of the appeal, the Commission stay the amendment of subsections (*a*) and (*b*) of section 3.25 of its rules and regulations and the issuance of a construction permit to WHDH under its order of April 7, 1941. In support of its request, petitioner incorporates by reference the representations and averments contained in its petition for rehearing. These were discussed by the Commission and found to be without merit in its opinion of May 20, 1941.

Petitioner apparently assumes that petitions for stay issue automatically, for in neither of the petitions for stay nor in the petition for rehearing are there any facts which show irremediable injury to itself or the public if the action of April 7, 1941, is not stayed. Such an assumption flies in the teeth of section 405 of the Communications Act which provides that no request for rehearing shall "operate in any manner to stay or postpone the enforcement thereof (i. e., an order of the Commission) without the special order of the Commis-

sion." When this section is considered in the light of the general policy of the act to provide for the fullest utilization of radio frequencies in the public interest, it is clear that there must be a compelling reason for delaying the effective date of new or additional service.

Petitioner's repeated failures to show how the public will be injured unless the Commission's action is stayed is significant in view of the fact that the Commission found that the grant of the WHDH application would without measurably affecting petitioner's service enable WHDH to serve 621,000 more people within its primary service area, would improve and extend the service rendered by WHDH to the fishing banks off the New England coast, and would permit WHDH to operate approximately 2½ hours more in the summer and about 5½ hours more in the winter than at present. These findings have never been challenged by petitioner nor has it shown wherein public interest would be served by a further delay in the effectuation of this increased service. We find that public interest would be served by going forward without further delay with the extension and improvement of radiobroadcast service to the listening public as proposed in the Matheson application.

In further support of its request for a stay, petitioner urges the Commission to grant it "for the same reasons which impelled it upon its own motion to find, on April 22, 1941, that public interest, convenience and necessity would be served by suspending its order of April 7, 1941, pending the filing of petitioner's petition for rehearing and the Commission decision thereon." The issuance of a stay on the Commission's own motion was motivated by a desire on the part of the Commission to withhold final action on such an important matter until after petitioner had fully exercised its administrative opportunities to show wherein public interest, convenience or necessity would not be served by a grant of the Matheson application. Although, as we have heretofore indicated, petitioner's previous petition for stay suggested no reason why the public would be benefitted by a stay, the importance of the questions involved combined with the possibility that petitioner might make such a showing in its petition for rehearing appeared to justify a stay pending the filing of, and decision on, such petition. Petitioner failed to make such a showing as the Commission pointed out in its decision of May 20, 1941, on the petition for rehearing.

The considerations, therefore, which impelled the Commission to act on its own motion are no longer applicable. The Commission has determined to reaffirm its decision granting the WHDH application and amending section 3.25 of its rules and regulations. Peti-

tioner has not shown either wherein that determination is in error or why public interest would be served by a further stay of the Commission's action. On the contrary, the Commission has found that it would be against the public interest to order a further stay of its action which makes possible an extensive increase in WHDH's coverage without any measurable effect on that of petitioner's station.

Accordingly, it is ordered, this 12th day of June 1941, that the petition for stay during appeal filed by National Broadcasting Co., Inc. (KOA), be and it is hereby, denied.

FLY, Chairman, specially concurring:

For the reasons stated above and particularly since there is no real injury to Station KOA, and since Station WHDH moves forward with knowledge of any legal risks involved, I concur in the foregoing decision denying the stay. The Commission heretofore has arrived at a final decision upon the merits of this case, in which I did not participate, and I do not want by expressing any opinion on a procedural matter to be understood as expressing an opinion on the merits of the decision. At the same time I entertain no doubt as to its legality.

Great waste results from the fact that clear channel stations whose *raison d'etre* is to serve over great distances and in vast rural areas of the country, have to a great extent been concentrated along the coasts and the borders of the country. The power is impacted into the lucrative markets of large metropolitan areas which are already fully served, if, in fact, not over served, while a great portion of the signal strength of the clear channel station is wasted upon the sea. Thus, while listeners in New York, Chicago, and Los Angeles may tune in on a dozen stations, there are vast rural regions in upper New England, in some areas of the South, and in the great trans-Mississippi area where the listening public has difficulty in receiving programs of even one station. The need for a studious, careful appraisal of this vital problem is apparent. If the clear channel wave lengths are to be further exploited, the plans for that exploitation ought to be made in the light of these dominant factors and as a result of a full study.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of
JOHN H. STENGER, JR. (WBAX), WILKES-BARRE, PA.
For Renewal of License.

DOCKET No. 5430

September 18, 1940

R. Lawrence Coughlin and *Carl J. Burke* for applicant; *Phillip J. Hennessey* for *Glenn D. Gillett*, intervener; *James D. Cunningham* and *Russell Rowell* for the Commission.

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF THE COMMISSION

FINDINGS OF FACT

1. This proceeding arose upon the application of John H. Stenger, Jr., for renewal of license of Radio Station WBAX (Wilkes-Barre Pa.) to use the frequency of 1210 kilocycles, with power of 100 watts, unlimited time. This application was designated for hearing on November 28, 1938, upon issues relating primarily to the financial qualifications of the applicant; whether he has at all times controlled the station; whether rights granted him under the license were transferred or assigned without authority of the Commission, in violation of section 310 (b) of the Communications Act of 1934, as amended; and whether Stenger Broadcasting Corporation or Glenn D. Gillett have operated the station in violation of section 301 of said act. Gillett was granted leave to intervene in the hearing, which was held on January 30, 31, and February 1, 2, 5, 6, 7, and 8, 1940, before an examiner designated by the Commission.

2. The licensee (applicant herein) entered into an agreement on July 20, 1936, with Charles B. Waller, a resident of Wilkes-Barre, under the terms of which the latter (during a specified period of time) was granted an option to purchase the station and its license for a total consideration of $25,000. This option, as later extended, remained in effect until December 20, 1936. Mr. Waller at that time was a director of Wilkes-Barre Record Co., which recently has been merged with the Leader Publishing Co. Prior to the merger these two companies published two newspapers in Wilkes-Barre.

The option aforementioned, on December 19, 1936, was assigned to Anthracite Broadcasting, Inc., an organization incorporated under the laws of the State of Pennsylvania for the purpose of acquiring and operating Station WBAX. The incorporators, directors, officers, and sole subscribers to capital stock thereof are Ernest G. Smith, president; Charles B. Waller, secretary; and Joseph T. Murphy. All of the common stock of the Leader Publishing Co. is owned by Smith, who also is president thereof, and its entire issue of preferred stock is owned by his wife and children. Murphy, a director of Leader Publishing Co., is an employee of Smith.

3. On the same date (December 19, 1936) the licensee entered into an agreement to sell and assign to Anthracite all assets associated with the station and the license for the operation thereof for a total consideration of $25,000, of which amount $500 was paid forthwith. The proposed assignee reserved to itself the right to terminate the agreement within 6 months if it so desired; but no provision was made for any termination by the licensee. It was provided therein that funds should be furnished by Anthracite for the operation of the station and for the acquisition of equipment. In addition, there was granted to Anthracite the right to be represented in the management and operation of the station to any extent determined by such company. This privilege became effective December 19, 1936, and was to continue until such time as the license ultimately was transferred to Anthracite. The expenditures by Anthracite in connection with this agreement aggregated $8,788.70, of which amount $4,430 was expended for a transmitter and associated equipment which have been installed and are now in use at the station. Title thereto has been retained by Anthracite.

4. Stenger Broadcasting Corporation was incorporated May 4, 1938, by John H. Stenger, Jr.; Anna C. Stenger, his wife; and John H. Stenger, Sr., his father. Its authorized capital stock consists of 500 shares of common stock of the par value of $100 per share. Of these shares, 490 were issued in the name of John H. Stenger, Jr., president; 5 in the name of Anna C. Stenger, secretary; and the remaining 5 in the name of John H. Stenger, Sr., treasurer. Simultaneously therewith, John H. Stenger, Jr., transferred and assigned to the corporation, effective as of May 6, 1938, all of his right, title, and interest in the station and the license for the operation thereof which had been issued by the Commission. Thereafter, also effective as of May 6, 1938, a series of contracts was made with respect to the acquisition and operation of the station. Stenger Broadcasting Corporation and the licensee, with the consent of Anthracite, assigned and transferred the control and management of Station WBAX,

for a term of ten years ending May 6, 1948, to Glenn D. Gillett (a consulting radio engineer with offices in Washington, D. C.) and an associate whose name was not disclosed at that time, and sold to the latter parties all of the broadcast hours. Under the terms of the agreement, the net earnings arising from the sale of broadcast time were to be divided equally between the Stengers, on the one hand, and Gillett and his associate, on the other, subject to the condition that neither party was to draw in excess of 10 percent of the net earnings until $25,000 of the existing liabilities were liquidated in full. Certain other liabilities in excess thereof, amounting to about $14,000, were assumed by Stenger. An allowance of $50 weekly, chargeable against future net earnings of the station, has been drawn by the Stengers at all times subsequent to May 6, 1938.

5. Under the terms of a contract aforementioned (dated May 6, 1938), the Stengers immediately endorsed in blank and delivered to Gillett the stock certificates issued in their names on May 6, 1938. Such stock was to be held by Gillett during the 10-year period of the operating contract as collateral for monies to be advanced by him in the operation of the station. Upon the termination of such period, 300 shares thereof were to become the absolute property of Gillett, 50 shares were to be issued to Waller or his nominee, and 150 shares were to become the absolute property of Anna C. Stenger. The agreement to issue stock to Waller or his nominee was made in consideration of the assignment to Stenger Broadcasting Corporation of the option to purchase the station held by Anthracite; and it was provided that Anthracite was to be reimbursed within 4 years from May 6, 1938 for its expenditures as aforementioned, aggregating $8,788.70; and title to the transmitter in use at the station was retained by Anthracite until such reimbursement had been made. It was further provided that the issuance to Waller or his nominee of 10 percent of the stock held by Gillett was to be made upon such date as the station license was transferred to Stenger Broadcasting Corporation. Also, after certain existing debts, in the amount of $20,000, were liquidated, 10 percent of all net earnings arising from the operation of the station until May 6, 1948, were to be distributed to Waller or his nominee, and the remaining 90 percent was to be divided equally between Anna C. Stenger and Gillett. As further consideration for the assignment of the option held by Anthracite, the above-discussed publishing companies were given prior right in the purchase and use of broadcasting time over any other newspapers, and were granted the first opportunity to furnish the station with any service obtainable from any newspaper.

6. Simultaneously with these negotiations, an application dated May 6, 1938, and executed by the licensee on the same day, requesting the

consent in writing of the Commission to the assignment of the license to operate Station WBAX from John H. Stenger, Jr., to Stenger Broadcasting Corporation, was prepared and subsequently filed with the Commission. This application, as hereinafter discussed, was not prosecuted to a decision but was withdrawn at the request of the parties on March 17, 1939.

7. Coincidental with the execution of the above agreements, Gillett entered into separate contracts with Marcy Eager, a consulting radio engineer residing at Wellesley, Mass., and Dale Robertson, then residing in Utica, N. Y., under which Gillett assigned to Eager, in consideration for the advancement of funds by the latter, a one-third interest in all benefits accruing to him (Gillett) from the operation of the station and the dividends from one-third of the stock of Stenger Broadcasting Corporation which ultimately was to become the property of Gillett. Under the other contract, Robertson was employed as the personal agent of Gillett and Eager to manage and operate the station in the name of Stenger Broadcasting Corporation. At all times subsequent to May 1938, Robertson has received as compensation, chargeable as an operating expense of the corporation, a salary of $100 weekly, in addition to one-third of the net earnings for the first year and one-fifth of the net earnings thereafter.

8. Immediately subsequent to May 6, 1938, seven station employees were discharged and new personnel engaged. Of the persons whose services were terminated, only one was discharged by the licensee; the remainder were discharged by the agents of Gillett and Eager. Thereafter, various new employees were engaged by such agents without prior consultation with Stenger.

9. As of May 6, 1938, the bank account theretofore used as a depository, and for the clearance and payment of the funds arising from the operation of the station, became inactive and the books of account and records previously used at the station to record financial transactions were no longer maintained. Thereafter, all funds received from the operation of the station and the greater portion of the funds advanced by Gillett and Eager were deposited in a bank account carried in the name of Stenger Broadcasting Corporation and all expenditures on behalf of the station were made by means of bank checks drawn thereon, with the exception of some payments which were made through personal checking accounts of Gillett and Eager. All checks drawn on the corporation account were required to bear the signature of Robertson, and no member of the Stenger family had authority to withdraw any funds from such account on his or her signature alone. At the same time, a new bookkeeping system was installed and maintained by agents of Gillett and Eager.

10. At all times subsequent to May 10, 1938, Robertson has been general manager of Stenger Broadcasting Corporation and has had and exercised sole authority to make and execute contracts in its behalf. Payment of obligations under several of such contracts was guaranteed by Gillett. At no time thereafter has any member of the Stenger family been invested with authority to execute any contract for the corporation. With the exception of periods of short duration in April and May 1939, as hereinafter discussed, and two or three isolated instances with respect to matters of only minor importance, John H. Stenger, Jr., has not exercised any degree of control since May 6, 1938, over the physical operation of or the programs broadcast by Station WBAX. However, Stenger did exercise some functions with respect to the maintenance and physical operation of equipment used upon occasion in connection with programs originating at points outside the main studio. The express wishes and orders of Stenger with respect to the operation of the station in some instances were disregarded and ignored by the operating personnel. During the period May 6, 1938, to March 4, 1939, Gillett and Eager maintained close supervision over their agents engaged in the operation and management of the station by means of conferences and through reports regularly submitted to them by such agents.

11. On one occasion, Robertson submitted to the Commission a written statement reporting that there would be no objection on behalf of WBAX to a grant of temporary authority to Station WKOK to change its operating assignment so that it may operate unlimited hours during parts of September, October, and November 1938. Such document was prepared by Gillett and forwarded to Robertson for his signature. Station WKOK is located at Sunbury, Pa., 68 miles distant from Station WBAX, and operates on the same frequency as the latter station. On August 25, 1938, Robertson informed the Commission that there would be no objection on behalf of WBAX to a grant of permanent authority to WKOK to operate simultaneously with WBAX, unlimited time. These steps were taken without the knowledge or consent of the licensee, Stenger.

12. After preliminary negotiations commenced by Robertson in August 1938, to obtain space for new studios at a local hotel, he entered into a contract in February 1939, on behalf of Stenger Broadcasting Corporation, to effect structural changes at the premises selected. About the same time, Robertson, without authority from the licensee, removed his office to quarters located at the hotel in anticipation of a formal lease which subsequently was executed on March 6, 1939. The licensee originally was a party thereto, but after such lease had been withdrawn and an alteration made in the terms thereof he refused to

sign the amended instrument and disclaimed any responsibility thereunder. Yet the construction work then in progress upon the new studios continued, and funds to defray the expense thereof and for rent during the period involved were made available by Gillett. The control of physical operation of the station and programs broadcast thereby was exercised by Gillett and Eager, directly and through persons in their employ, during the entire period May 6, 1938, to March 4, 1939.

13. On March 4, 1939, an agreement was entered into between the Stengers, Stenger Broadcasting Corporation, Anthracite, and Gillett, under the terms of which the various provisions pertaining to the ultimate distribution of stock of the Stenger Broadcasting Corporation and profits arising from the operation of the station were accelerated. Gillett relinquished to Stenger Broadcasting Corporation the right held by him to operate the station until May 6, 1948, and to retain profits therefrom. In consideration therefor, the 500 shares of stock held by Gillett were immediately reissued as follows: 300 shares to Gillett, 150 shares to Anna C. Stenger, and the remaining 50 shares to Waller. Simultaneously with this redistribution of stock, an election of officers and directors was held. Francis J. Murray was elected president and director. Dale Robertson was elected vice president and director, Eager was elected treasurer and director, Anna C. Stenger was elected secretary and director, and Allen E. Bacon and Gillett were elected directors. At the same time, Howard E. Kennedy, a personal attorney of Gillett, was appointed assistant secretary. Murray and Kennedy were both engaged in the practice of law in Wilkes-Barre. Murray has been attorney for Stenger Broadcasting Corporation since April 20, 1938. During the period April 20, 1938 to March 25, 1939, he also was attorney for Stenger, and for a short time subsequent to May 25, 1938, he acted as attorney-in-fact for Eager.

14. It was further agreed on March 4, 1939 that 200 shares of preferred stock would be issued to and held by Murray as trustee for certain creditors, and that 80 percent of net earnings of the station would be allocated to the retirement of such stock. However, issuance thereof has been held in abeyance. Coincidental with these negotiations, the then pending application for voluntary assignment of license to Stenger Broadcasting Corporation was withdrawn and arrangements were made to file an amended application. Upon the refusal of the licensee to execute such document, an application was filed on April 10, 1939 by Stenger Broadcasting Corporation requesting consent of the Commission to an involuntary assignment of license thereto, and legal proceedings were instituted in court against John H. Stenger, Jr., on April 15, 1939, by Stenger Broadcasting Corpora-

tion and Gillett, to compel Stenger to sign the amended application and cooperate in the prosecution thereof before the Commission. Immediately thereafter, on April 25, 1939, Stenger, accompanied by local police officers, forcibly entered the premises which housed the radio station and seized therefrom various books of account of Stenger Broadcasting Corporation and other records pertaining to the operation of the station. Stenger immediately assumed control of physical operation and programs broadcast and remained in possession of the station until May 1, 1939, at which time an injunction, which still is in effect, was issued against him by the county court. In effect, it was decreed that the control of physical operation and programs broadcast should continue to be exercised by Stenger Broadcasting Corporation, as theretofore, to the exclusion of the licensee. Such court order was stayed for a period of 24 hours by a temporary injunction obtained by the licensee from a Federal court on May 10, 1939, after which the Federal mandate was dismissed. During the effective period thereof Stenger had possession and control of the station.

15. The aforementioned application filed with the Commission for involuntary assignment of license was subsequently dismissed. The proceedings instituted in the county court on April 15, 1939, to require the execution of the application for assignment of license to Stenger Broadcasting Corporation, were concluded December 28, 1939, by the issuance of a final order requiring Stenger to sign such application and to participate in the prosecution thereof before the Commission. This order, which is still in effect, also requires that the *status quo* of the parties as of April 15, 1939, be continued. At all times subsequent to March 4, 1939, with the exception of the two limited periods discussed above, the control of physical operation of Station WBAX and the programs which it broadcasts have been exercised by Stenger Broadcasting Corporation through its officers and directors, and the licensee has had no degree of authority with respect thereto.

16. On January 27, 1940, Stenger entered into an agreement with various persons residing in the vicinity of Wilkes-Barre to form a corporation under the name of WBAX, Inc., and to transfer thereto the license for the operation of Station WBAX. Further proceedings under the terms of this agreement have been stayed under the injunction aforementioned issued by the local county court.

17. The consent of the Commission in writing was not obtained for the carrying out of the agreements or arrangements discussed herein pertaining to the ownership or operation of the station or assignment of the station license. The agreement of May 6, 1938, under which Gillett and Eager, directly and through agents, immediately assumed control and operation of the station was reported to

the Commission on June 21, 1938. Not until May 16, 1939, did the Commission become informed with respect to the remaining agreements setting forth the respective right, title, and interest of Gillett, Eager, Robertson, Murray, Bacon, Anna C. Stenger, Waller, Anthracite, and the local newspapers in and to the physical assets associated with and earnings arising from the operation of the station; and the capital stock of Stenger Broadcasting Corporation. A copy of each of these agreements, with the exception of the contract dated March 4, 1939, was required to be submitted to the Commission not later than June 17, 1938, the date on which the application for voluntary assignment of license was filed. In addition, Stenger failed to comply with rule 340.01 of the Commission's rules and regulations, adopted May 11, 1938, which required, in effect, that a copy of each of these agreements be filed with the Commission not later than July 15, 1938. Under the provisions of such rule a copy of the contract dated March 4, 1939, was required to be filed not later than April 4, 1939. Numerous false statements of fact have been submitted to the Commission by Stenger, as hereinafter discussed, with respect to the ownership of the station, the identities of the parties having control of the physical operation and programs broadcast, and the identities of the parties having possession of and beneficial interest in the capital stock of Stenger Broadcasting Corporation.

18. In applications for renewal of license of Station WBAX, executed by Stenger in March and September, 1937 and March, 1938, it was reported that he was the owner of the station and had absolute control thereof both as to physical operation and programs broadcast. No disclosure was made therein of the several agreements then in effect under the terms of which rights in the station had been assigned to Anthracite.

19. The application for voluntary assignment of license, dated May 6, 1938, together with the associated documents, was prepared by Gillett, Murray, and James W. Gum. The last-mentioned is an attorney engaged in the practice of law in Washington, D. C. He was retained by Gillett as his personal attorney and filed the aforementioned application with the Commission on June 17, 1938. The application stated that 490 shares of the capital stock of Stenger Broadcasting Corporation would be issued to and held by John H. Stenger, Jr., and that the remaining 10 shares would be issued to and held equally by Anna C. Stenger and John H. Stenger, Sr. Further, it was stated therein that the proposed assignee corporation would not be controlled, directly or indirectly, by any other corporation, when as a matter of fact Stenger Broadcasting Corporation was required by contract with Anthracite to include Waller or his nominee on its board of directors. It was also stated in such application, without reserva-

tion, that the assignee corporation would have absolute control of the station both as to physical operation and service conducted. However, such control had been assigned to Gillett and Eager for the 10-year period ending May 6, 1948. Such application, after being returned by the Commission, was executed again by Stenger on June 24, 1938, while it was in the possession of Murray, and it was resubmitted to the Commission by Gum on June 27, 1938. There was also filed, simultaneously with the application for voluntary assignment of license, an affidavit executed May 9, 1938, by John H. Stenger, Jr., wherein he stated that there were no contracts, agreements, or understandings of any nature which in any wise affected or concerned the assignment of license contemplated, the financial arrangements between the parties, the equipment of the station, or its operation or supervision.

20. In a written statement of fact, which was executed by the licensee on June 29, 1938, and filed with the Commission, it was reported that the contract under which the right was assigned to Gillett and Eager to operate the station for a period of 10 years was the only contract or instrument which affected or concerned the ownership or control of the station or rights or interests therein. In an application for renewal of license of Station WBAX, executed by Stenger, September 23, 1938, it was reported, without reservation, that he was the owner of the station and had absolute control thereof both as to physical operation and programs broadcast.

21. On November 3, 1938, the Commission addressed a letter to Gum advising him that it would be necessary for all parties involved in the application for voluntary assignment of license to reduce to writing their complete understanding, including all the terms and conditions and the exact consideration paid or promised, and to show the exact number of shares of stock then held or which would be held by the stockholders of the proposed assignee corporation. In response thereto, Gum submitted to the Commission, on November 17, 1938, two affidavits, both executed by John H. Stenger, Jr., on November 14, 1938, in which it was stated that the shares of stock of Stenger Broadcasting Corporation then held and to be held if the application for assignment of license were granted was as follows: John H. Stenger, Jr., 490 shares; John H. Stenger, Sr., 5 shares; and Anna C. Stenger, 5 shares. It was also stated therein that there was no written contract between the licensee and Stenger Broadcasting Corporation regarding the assignment of the station to the corporation but that there was an understanding whereby the station would be assigned to the corporation in return for the 500 shares of its capital stock.

22. A letter dated March 16, 1939, submitted to the Commission by John H. Stenger, Jr., stated that the funds advanced by Gillett

in the operation of the station were to be repaid from net earnings. It was also stated therein that 490 shares of stock of Stenger Broadcasting Corporation were pledged to Gillett as security for the funds advanced by him. On March 24, 1939, Stenger executed under oath and submitted to the Commission financial reports for the calendar year 1938 and for the period August 1, 1938, to January 31, 1939, respectively. In each of such reports it was stated that he had not disposed of his financial interest; that he was the owner of the station at the end of the year and during the year; and that station operations, time management, and sales of broadcast time were conducted by him.

23. In various applications for renewal of license, John H. Stenger, Jr., has made false statements with respect to the amount of his liabilities. In the application for renewal of station license dated and executed March 20, 1937, it was reported falsely that liabilities were less than $2,000; that he had expended the amount of $5,100 as payment in full for a new transmitter, and that he was not liable for any further commitments of a financial nature in connection therewith. As of March 20, 1937, the liabilities of the licensee amounted to not less than $5,730. Such liabilities included an obligation in the amount of $4,430 for the full purchase price of the new transmitter and a liability of not less than $1,300 on a purchase-money mortgage dated November 27, 1935, on land used as the transmitter site of the station. In the financial statement submitted with the application for renewal of license dated September 14, 1937, it was reported that the total liabilities of the licensee at that time amounted to $3,720.20. In fact, his liabilities at that time aggregated not less than $7,382.08, and included the aforementioned obligations on a transmitter and mortgage in the total amount of $5,730, liability for the payment of a promissory note in the amount of $1,500 dated July 8, 1937, and an obligation of $152.08 for material used in the installation of a new ground system at the station. As at December 31, 1939, he had total assets of $1,905.13, consisting of cash, $670.13; cash surrender value of insurance, $400; equity in automobile, $600; meter deposit, $15; and tube inventory, $220. As of May 6, 1938, his liabilities aggregated about $39,000. Although no funds have been applied to the reduction thereof by the licensee, Gillett has reduced the total amount of such liability by effecting compromise agreements with some creditors and payments of money to others. The outstanding obligations of the licensee aggregated $19,545 as of March 4, 1939, without regard to any funds advanced or expended by others in the operation of the station subsequent to May 6, 1938. Expenditures made by Gillett and Eager in behalf of the station after May 6, 1938 aggregated $16,196, of which amount $10,750 was ad-

vanced by Eager. The operations of the station in every year subsequent to 1922 have resulted in a loss.

24. The control actually exercised by Gillett and his associates went beyond the terms of the contract, and beyond the activities reasonably to be contemplated therefrom.

CONCLUSIONS

Upon the foregoing findings of fact the Commission concludes:

1. The applicant is not financially qualified to continue the operation of the station.

2. In view of the facts recited above with respect to false representations made to the Commission by the applicant in applications and other documents, it is apparent that his character is not such as to qualify him to hold the license of a radiobroadcast station.

3. In practical effect the station licenses heretofore granted to the applicant for the operation of Station WBAX, and the rights therein granted, have been transferred to Glenn D. Gillett, Marcy Eager, and Stenger Broadcasting Corporation without obtaining the consent of the Commission thereto in writing, in violation of the provisions of section 310 (b) of the Communications Act of 1934, as amended.

4. The radio transmitting apparatus described in licenses heretofore issued to the applicant for the operation of Station WBAX has been used and operated by Glenn D. Gillett and Marcy Eager, directly and through agents, and by Stenger Broadcasting Corporation, through its officers and directors, particularly with respect to the control of physical operation and programs broadcast, in violation of the provisions of section 301 of the Communications Act of 1934, as amended.

5. The applicant has relinquished control of this station and his right to exercise same; and has failed to discharge properly the obligations made incumbent upon him in licenses which he has received from the Commission.

6. The granting of the application for renewal of license of Station WBAX will not serve public interest, convenience, or necessity.

The proposed findings of fact and conclusions of the Commission were adopted as the "Findings of Fact and Conclusions of the Commission" on March 31, 1941.

CRAVEN, Commissioner, concurring specially:

I concur with the ultimate result, but believe that denial should be without prejudice to the filing of an application for transfer of license to a person satisfactory to the Commission, as to qualifications under the law.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matters of Revocation of Licenses of:	
STATE CAPITOL BROADCASTING ASSOCIATION, INC., (KTBC), AUSTIN, TEX.	DOCKET No. 5835
JOHN CALVIN WELCH, WILLIAM M. KELLER and BONNER FRIZZELL, doing business as PALESTINE BROADCASTING ASSOCIATION, (KNET), PALESTINE, TEX.	DOCKET No. 5836
RED LANDS BROADCASTING ASSOCIATION, BEN T. WILSON, President, (KRBA), LUFKIN, TEX.	DOCKET No. 5837
EAST TEXAS BROADCASTING CO., (KGKB), TYLER, TEX.	DOCKET No. 5840

April 10, 1940

OPINION OF GEORGE HENRY PAYNE, COMMISSIONER, IN THE ABOVE CASES

I submit herewith a preliminary report on four of the Texas hearings at which the Commission recently designated me to preside.

On March 5 and 6, I heard KTBC in Austin, Tex.; March 7, KNET in Dallas; March 11, 12, 13 and 14, KRBA in Dallas; March 14 and 15, KNET was concluded in Dallas; March 18 and 19, I heard KGKB in Tyler; March 20 KSAM in Dallas; and on March 21, KTBC, KRBA, and KSAM were concluded in Dallas. However, the KSAM matter will be heard further.

STATE CAPITOL BROADCASTING ASSOCIATION, INC., STATION KTBC, AUSTIN, TEX.—DOCKET NO. 5835

On February 7, 1940, the Commission revoked the license of this station, effective February 24, 1940, on the following charges:

That the original construction permit and station license were issued by the Commission upon false and fraudulent statements and representations and because of the failure of the applicants to make full disclosure to the Commission concerning the financing of station construction and operation, the ownership, management, and control thereof, in violation of the provisions of the

Communications Act of 1934, as amended, and the rules and regulations of the Commission; and that, had the actual facts in connection therewith been presented and made known to the Commission it would have been warranted in refusing to grant such application and station license; and that rights granted to the State Capitol Broadcasting Association, R. B. Anderson, president, and State Capitol Broadcasting Association, Inc., in and by the terms of said station license have been by it transferred, assigned, or otherwise disposed of without the consent in writing of this Commission in violation of the provisions of the license and of the provisions of section 310 (b) of the Communications Act of 1934, as amended.

On February 27, 1940, I was designated by the Commission to preside at a hearing to be held in Texas on the order revoking the license.

This company originally obtained a broadcast license as a copartnership consisting of A. W. Walker, Jr., R. B. Anderson, and R. A. Stuart. The company was later incorporated and the license transferred to the corporation. The stock in the corporation was divided equally among the three partners.

All of these men are lawyers and enjoy good reputations in their communities. Walker has occupied the position of Professor of Law in the University of Texas since September 1925.

The partners knew little or nothing of radio but were guided at practically every step by Dr. James G. Ulmer, a resident of Tyler, where he operates a radio school. The application was prepared by Ulmer or under his supervision. He was present at the deposition hearings and at the hearings in Washington.

Except for some incidental expenses, the partners expended no money whatever on the station. The cost of the land and the equipment required for the construction of the station and the cost of operation were borne by Ulmer.

On April 4, 1939, not long after the construction permit had been issued to the partners, two contracts were made by the partners with Ulmer. One of these contracts provided for the erection of the station by Ulmer. The other contract gave an option of 6 months to Ulmer to purchase the station on payment of $6,000 to the partners. There is another provision in one of the contracts giving the partners an option to buy the interest of Ulmer by the payment to him of not more than $20,000, provided he had not exercised his option of buying the station for $6,000. Still another clause provides that Ulmer should have management of this station under the control of the State Capitol Broadcasting Association as to general policies.

The $6,000 option was never exercised by Ulmer. The $20,000 option was never exercised by the partners.

The record shows that Ulmer had charge of construction and paid all costs and that the partners showed only a casual interest while it was being constructed. When the station was finally in operation, Walker, who was the most active of the partners, made a few perfunctory inquiries as to how things were going on at the station. His partners displayed even less interest. In fact neither of them lives in Austin. Both reside in distant communities and make only occasional visits there at irregular intervals. Ulmer operated the station practically without supervision except of the vaguest sort. The station was in fact in the possession of Ulmer. The license, however, was issued in the name of the partners who at no time had other than technical ownership of the station.

The licensees have deliberately misinformed or deceived the Commission on at least two occasions.

On September 26, 1939, the licensees filed an application to assign the license to a corporation representing the same interests as existed in the partnership. The balance sheet accompanying this application showed the net worth of the partnership to be $27,031.45. It also showed fixed assets amounting to $24,433.10 and intangible assets amounting to $1,984.84. The fact was that the licensees, as a copartnership, at that time had no assets and their net worth was nil. The record also shows that the licensees could at no time regain possession of the station unless they first paid Ulmer $20,000. This liability was not shown in the balance sheet.

Form 728 was filed with the Commission on December 15, 1939, by the licensees as part of an agreement for the sale of the capital stock of the licensee corporation to J. M. West and two others. One of the instructions in this Form 728 required information relative to all contracts (written or oral) affecting the "use, management, or operation of the stations by any person or entity, other station, chain of stations or chain broadcasting company." The contracts of April 4, 1939, with Ulmer were not listed in this form, although that was clearly required by the instructions.

It may be mentioned that in this agreement for the sale of the stock of the licensee corporation to West and others, Ulmer was not mentioned. However, of the $50,000 consideration specified in the agreement, Ulmer was to receive $44,000 and the three stockholders only $6,000.

All the negotiations for the sale of the station were carried on by Ulmer. West testified it was his understanding that Ulmer had constructed and was operating the station and that $6,000 was to be paid to the licensees of the station for obtaining the license.

It may be noted that the deed of the land from Ulmer to the partner-

ship was executed August 16, 1939, and that the deed from the partnership to the corporation was executed September 14, 1939. Both were filed for record November 9, 1939. However, the application for assignment of license from the partnership to the corporation was executed September 25, 1939, a considerable time before the deeds were recorded. Apparently Ulmer had received no consideration for the transfer of the property.

The licensees received no returns whatever from the station.

It is evident that the partners secured the station license through fraud, having represented to the Commission in their applications and associated papers and at hearings that they would construct, control, and operate the station—something they had no intention of doing.

No convincing or even reasonable explanations have been made of the irregularities shown. No evidence was produced to show that the owners of record actually owned and controlled the station. The station has in fact been owned, controlled and operated by Ulmer.

PALESTINE BROADCASTING ASSOCIATION, RADIO STATION KNET, PALESTINE, TEX.—DOCKET NO. 5836

On February 7, 1940, the Commission revoked the license of this station, effective February 24, 1940.

The charges in the revocation order in this case are similar to the charges in the State Capitol Broadcasting Association case.

On February 27, 1940, I was designated by the Commission to preside at a hearing to be held in Texas on the order of revocation.

The Palestine Broadcasting Association obtained a broadcast license as a copartnership consisting of John Calvin Welch, William M. Keller, and Bonner Frizzell. The license is still in the names of these persons.

As in the previous case, all the partners are men of excellent reputation in their community. Reverend John Calvin Welch is an active minister; Bonner Frizzell is the superintendent of public schools in Palestine, Tex., and William M. Keller is a local insurance broker. Welch has not resided in Palestine in several years.

In this case also Dr. James G. Ulmer inspired the filing of the application which was prepared by him or under his supervision. In this case, as in the previous one, Ulmer has used local men of excellent standing to obtain a station license.

Keller testified that he had no equity whatever in the enterprise. He was prevailed upon to lend his name to the project by the solicitation of Frizzell, who in turn was inspired by Ulmer. Keller was also approached directly by Ulmer.

Articles of copartnership were executed by the three partners and duly filed with the Commission, but no written agreement between the partners was made.

Keller stated definitely that in spite of the fact that he had joined in the application, lent his name to the project, and filed a financial statement as required by the Commission, he was assured by Ulmer and Frizzell that he would be free of all responsibility.

Keller made no investment whatever in the enterprise and received no compensation, in accordance with his understanding with Ulmer and Frizzell. It was Ulmer and Roy Terry who constructed the station and attended to all the details.

Keller said that he had joined in the undertaking through a misapprehension. When he became aware of the legal responsibilities that he had unwittingly assumed, he tried to prevail upon Ulmer to incorporate the company in order that he (Keller) could assign his stock to someone else. Ulmer promised to do so. However, nothing came of this promise for a long time. Keller became worried and impatient and feared that he might be charged with fraud. He threatened to write to the Commission, disclosing the true facts and asking that his name be removed from the records as owner. As a result of this state of mind, Keller and Welch jointly executed an assignment transferring their partnership interests to Frizzell. This assignment was never filed with the Commission, but it has never been cancelled by either Keller or Welch.

Since the station license was issued, neither Keller nor Welch has participated in its operation.

Welch's connection with the company was similar to that of Keller's. He had no control of the station nor any financial interest therein. Like Keller, he had acted as "dummy."

Keller, who is an insurance broker, wrote a number of policies for the station which were negotiated and paid for by Dr. Ulmer or Terry. Renewals of these policies were made in the name of Frizzell.

No one has ever reported to Keller or to Welch about station operations. Ulmer was in charge of these operations and Terry at the beginning was his principal assistant. No meeting of the partners was ever held subsequent to the signing of the articles of association. No financial accounting has ever been made to Keller or to Welch.

Frizzell testified that it was Ulmer who had prepared the application for a station license, had taken care of the hearings in Washington, had financed, equipped, and constructed the station. Frizzell had spent no money in connection with the station except $250 in incidentals and $350 for legal fees in the present case. None of the partners had paid any part of the capital costs.

Frizzell testified further that it was he who had brought Welch and Keller into the enterprise, upon the suggestion of Ulmer that local people would be required to apply for the license. He also testified that Terry had direct charge of construction and took care of operations when the station was first opened.

Frizzell had occasional talks with Terry, but gave no directions to Terry about the construction or the operation of the station. Terry remained at the station for a month or two after it had begun operation. It was either Terry or Ulmer who engaged the employees. Terry also supervised operations from the beginning of 1936 until the fall of 1937, making periodic trips to the station. He employed all the local managers during that period, who reported solely to him.

Frizzell corroborated the testimony of Keller as to the promise made to Keller and Welch that they would be free of all liability in connection with the station. Frizzell received similar assurances as to his own liability from Ulmer. He said he knew that the partnership as it stood was subject to certain legal liabilities and it was therefore understood by the partners and Ulmer at the very beginning that a corporation would be organized to supersede the partnership.

An agreement was executed by Welch May 16, 1939, assigning his interest to Frizzell. This was in addition to the one he had executed jointly with Keller. This agreement was not filed with the Commission but has never been cancelled. Frizzell stated it was his belief that the assignments to him by Welch and Keller were valid and that he actually held their interests. Frizzell stated Welch and Keller had drawn no money whatever from the enterprise.

On April 1, 1939, Frizzell entered into an agreement with Ulmer under which he has been drawing $50 a month for services rendered. However, practically all of Frizzell's time has been consumed by his duties as superintendent of schools and his services at the station have been nominal. He had drawn no money from the station previously.

The lease to the studio stood originally in the names of Ulmer and Terry.

Terry claimed a half interest in the enterprise, but Ulmer refused to make an accounting.

When matters at the station were becoming critical, Ulmer gave Frizzell a 25 percent interest in a corporation which was organized to supersede the partnership.

Frizzell had made misrepresentations under oath to the Commission.

The renewal application filed October 1939 contains the names of Welch and Keller as partners in spite of the fact that they had assigned their partnership interests to Frizzell.

B. V. Hammond, former station manager of KNET, was an important witness. He verified the following facts:

(*a*) That the control of the station was in the hands of Ulmer and Terry.

(*b*) That the partners were simply "dummies" having technical ownership only.

Hammond stated that he had been cautioned by Ulmer and Terry not to disclose their interests in the station.

Roy G. Terry stated that it was never intended that the partners of record should have any ownership of the station or control of its operations, and that the bank account was transferred to Frizzell in order to disguise the true interests if an investigation were made by the F. C. C. This testimony is corroborated by letters in the record, exchanged between Terry and Hammond. Terry also stated that Ulmer had not put much money in the station, but he was one of the owners. Terry invested about $2,500 in the enterprise, for which he was never reimbursed except such money as he may have collected from operations.

It is evident that the partners secured the station license through fraud, having represented to the Commission in their applications and associated papers and at hearings that they would construct, control, and operate the station—something they had no intention of doing.

No convincing or even reasonable explanations have been made of the irregularities shown. No evidence was produced to show that owners of record actually owned and controlled the station. The station has in fact been owned, controlled, and operated by Ulmer and, for a substantial period, by Terry.

Frizzell was an evasive witness.

RED LANDS BROADCASTING ASSOCIATION, STATION KRBA, LUFKIN, TEX.—DOCKET NO. 5837

On February 7, 1940, the Commission revoked the license of this station effective February 24, 1940.

The charges in the revocation order in the present case are similar to the charges made in the *State Capitol Broadcasting Association case.*

On February 27, 1940, I was designated by the Commission to preside at a hearing to be held in Texas on the order of revocation.

The Red Lands Broadcasting Association secured a station license from the Commission as a copartnership consisting of Ben T. Wilson, Thomas W. Baker, and R. A. Corbitt.

All of the partners are reputable men of fair means. It was shown that James G. Ulmer had arranged for these men to apply for a broadcast license because they were able to show a good front before the Commission.

Here, too, Ulmer came into the picture early. The application for a construction permit was prepared by him or under his supervision. He prepared the data for the depositions, was present at the deposition hearings, and employed his lawyer Hanley to handle the legal phases of the case.

The partners knew practically nothing of radio as a science or as a business and were used by Ulmer as dummies to serve his purpose. None of the partners made any capital investments in the station. Roy G. Terry, a former partner of Ulmer's, testified that Ulmer had assured the partners that they were to invest no money in the enterprise. One of the partners, Ben T. Wilson, corrobated this testimony.

On February 20, 1938, the partners entered into a contract with Darrell E. Yates, in Ulmer's presence, under the terms of which Yates agreed to finance, construct, and operate the station. The partners were to receive 10 percent of the net profit of the station until the capital investment was withdrawn by Yates and 20 percent thereafter. During the first 6 months Yates was to receive 100 percent of the net profit.

It must be noted here that Yates at this time was employed by Ulmer at Station KLUF (Galveston, Tex.) and it was Ulmer who had sent him to Lufkin. This fact is clearly established by the testimony of Ben T. Wilson, although denied by Yates.

In course of time the station was constructed under the direction of Yates, who has been operating it since it went on the air under licenses granted by the F. C. C. to the partners.

The testimony shows clearly that the partners have not participated in the financing, construction, or operation of the station; nor have they directed its policies, although a feeble claim was made that they had.

Ulmer does not appear in the records as partner or owner. He never does in these partnership cases. His interests, however, have been protected. Since June 1938, he has been employed by Yates as an adviser on a "retainer fee" of $50 a month. He also holds Yates' promissory note for $5,000, the consideration for which has not been explained and remains obscure. Payments on this note, which bears no interest, are shown by Yates' records, but have not been endorsed on the note itself. Yates has stated that the $250 was the only investment Ulmer made in the station.

Practically all the profits made by the station so far has gone into the pockets of Yates and Ulmer. The partners have received no in-

come from it whatever, although Yates stated that small credits, representing their share, have been set up on his books in their favor. No books of the station accounts were set up until after the revocation order had been issued.

Yates admitted that two bank accounts are maintained for the deposit of station funds. One of these accounts is in the name of the Red Lands Broadcasting Association and the other in the name of "Darrell E. Yates." Both are subject to Yates' order only. The word "Proprietor" is used in the books of the station in connection with Yates' name. This use of the word "Proprietor" is in itself a sufficient commentary on the nature of the set-up in this case.

Important testimony was given by Roy G. Terry, the former partner of Ulmer. The Red Lands Broadcasting application for a construction permit at Lufkin, Tex., was filed before these two partners had split up. Terry testified that it was Ulmer who had arranged for the Red Lands partners to file the application. He sought local color, good reputation and financial stability in the men he used as a front before the Commission. Wilson, Baker, and Corbitt answered his requirements.

Terry also testified that the Lufkin enterprise had belonged wholly to Ulmer and himself before the split occurred. It was Terry who arranged, upon the suggestion of Ulmer, for one of their employees, Verne Hatchett, to help with the depositions which were submitted with the application. Verne Hatchett was paid $50 for this service—$12.50 by each of the four stations controlled by Ulmer. Ulmer took care of Verne Hatchett's transportation and hotel bill personally. In fact, Ulmer drove her to Lufkin in his own car.

Terry stated that Ulmer and he defrayed the expenses incurred by Ben T. Wilson on his trip to Washington to attend the hearings. These disbursements were noted in the personal partnership records of Ulmer and Terry. In fact, practically all promotional expenses were paid by Ulmer and Terry.

Terry testified that on one occasion he demanded of Ulmer a written statement covering their partnership agreement and that in response Ulmer said: "No; I can't do that . . . The applications are in those other people's names."

Here, as in the other partnership cases, the partners filed an application, depositions, and financial statements with the Commission—all tending to show that they would finance, construct, operate, and control the radio station although they had no intention of so doing. The partners went further in deceiving the Commission. On November 30, 1938, they filed a financial report showing that the Red Lands Broadcasting Association had assets of the value of $15,000, whereas the partnership had no assets whatever.

The partners have not participated in financing construction or operation of Station KRBA. They have not exercised the more important rights granted to them by the Commission's license. These rights have, on the contrary, been exercised by Yates and Ulmer.

It was interesting to note that one of the partners, R. A. Corbitt, could not remember the office he held in the association.

A little episode at the hearing may shed light in dark corners. While on the witness stand, Yates drew from his pocket U. S. Government bonds of the face value of $11,400 (cost $8,500) and stated that he had converted all his cash or most of it into bonds. Apparently he was uncertain of his legal status in the business he was operating.

Both Yates and Baker made unusually evasive and hostile witnesses.

EAST TEXAS BROADCASTING CO. STATION KGKB, TYLER, TEX.—DOCKET NO. 5840

On February 13, 1940, the Commission revoked the license of this station effective March 1, 1940.

The charges in the revocation order issued in this case are in effect as follows:

(*a*) That control of the licensee corporation was transferred to James G. Ulmer and his wife by means of stock sales in violation of the act.

(*b*) That the corporation assigned the rights granted to it by license issued by the F. C. C. to James G. Ulmer and that he had exercised such rights without having secured the consent of the Commission in writing.

On February 27, 1940, I was designated by the Commission to preside at a hearing to be held in Texas on the revocation order.

The East Texas Broadcasting Co., a corporation, acquired this station by assignment on January 27, 1932. James G. Ulmer was not an original officer of the corporation, but he was an original stockholder, having acquired 80 shares in 1931.

The East Texas Broadcasting Co. (Station KGKB) was authorized to issue 1,000 shares of common stock having a par value of $25 a share, all of which are outstanding.

Soon after he had taken charge of the station in 1932, as shown below, Ulmer began to acquire additional stock. Some of these shares he acquired openly, but others surreptitiously for there was objection to Ulmer's gaining stock control, particularly on the part of B. J. Peasley, one of the stockholders and directors of the corporation.

Early in 1937 Ulmer was reported to have said that he then had control of the stock of the corporation. On another occasion, at a

directors' meeting, Ulmer admitted under pressure that he held stock having a par value of $13,500, or 540 shares, which represented more than 50 percent of the outstanding stock of the corporation. Walter B. Jones testified that he had sold his stock, 40 shares in all, to Ulmer sometime at the end of 1936. This stock was transferred to the name of Mrs. Ulmer. It was on this occasion Ulmer said (according to the testimony of Jones): "Well, this gives me control of Station KGKB." W. M. Roberts, president of the corporation, also stated that Ulmer had control early in 1937. Later he amended this statement to say that control was vested in Ulmer and his wife.

The stock books of the corporation show that Ulmer holds 480 shares and Mrs. Ulmer, his wife, 256 shares, or 736 shares in all. As 501 shares constitute a majority of the shares, Ulmer and his wife actually control the stock of the corporation according to the stock books.

There is an illuminating bit of evidence in the record which tends to show that the stock held in the name of Mrs. Ulmer is owned by Ulmer himself. Arthur Squyres & Co., accountants, submitted a report covering an audit of the corporation on March 12, 1938. In this report the accountants state that the stock which Ulmer bought was bought solely with his personal funds. All the Ulmer stock, including the shares held in the name of Mrs. Ulmer, was bought by Ulmer.

In February 1939, Ulmer submitted a report to the directors of the corporation showing that he held stock having a par value of $15,300, or 612 shares, and that Mrs. Ulmer held stock of the par value of $3,000, or 120 shares. If this report is correct, Ulmer held in his own name a majority of the shares.

In another report rendered by Ulmer to the directors, he admitted holding stock of the par value of $17,300.

Both of the reports mentioned were apparently accepted by the board of directors.

It may be noted that Mrs. Ulmer has never attended any of the meetings of the stockholders, and that Ulmer has invariably voted her stock by proxy at such meetings. Ulmer has never reported this practice to the Commission, as required. In fact he falsely reported to the Commission under oath that she always voted her stock independently.

In 1932, the licensee corporation entered into a contract or lease with Ulmer transferring to him substantial control of the station. In return Ulmer was required to pay to the stockholders a rental of 10 percent of the gross income of the station when such gross income did not exceed $25,000 and 20 percent of any gross income in excess of $25,000.

Under this lease Ulmer took full charge of the station. He controlled the station's policy, its operations, programs, commercial accounts, and employees. He employed Roy Terry to manage the station under a personal agreement giving Terry an interest in the profits. Terry reported only to Ulmer. Ulmer submitted no reports to the corporation regarding the activities of Terry.

A bank account was maintained by the East Texas Broadcasting Co. in its own name. Ulmer alone signed checks on this account, except at the beginning when such checks were signed by both Ulmer and W. M. Roberts, the president. No formal authority was ever granted to Ulmer by the corporation to sign checks in this manner.

Ulmer was not actually subject to the will or direction of the board of directors or of the stockholders. He drived his power from the lease or contract he held. Although Ulmer was the secretary-treasurer of the corporation, he operated the station as an individual under this contract and not as an officer of the East Texas Broadcasting Co. It is he who has exercised the rights granted to the corporation in its station license and not the corporation itself. The corporation, indeed, continued to function as a legal entity, but it had divested itself entirely of its rights under the Commission's license.

These conditions existed during the life of the contract or lease, which expired in 1939, but have been continued by tacit consent.

Ulmer has apparently not furnished the corporation with reports of any comprehensive character, or with any degree of regularity regarding station operation under its license. One of the few reports rendered by him was an annual report showing the amount of rent or dividend due to each stockholder under the lease or contract.

SUMMARY

Three of the four licensees dealt with secured their station licenses in the names of copartnerships. These were:

KTBC	Austin, Tex.
KNET	Palestine, Tex.
KRBA	Lufkin, Tex.

All of these cases present telltale points of similarity. The technique used in securing the licenses and of transferring the rights under them was practically the same in each case.

First, James G. Ulmer prevailed upon three local men of excellent reputation and financial stability to organize a copartnership for the sole purpose of securing a station license.

Next, he directed all the important details: Prepared the application, or supervised its preparation; compiled data for the depositions

which the partners executed; was usually present at the deposition hearings to see that no hitches were encountered; and finally he had his own lawyer, James H. Hanley, file the papers with the Commission and attend to the legal phases. Ulmer hovered over the application and applicants like a guardian angel until the application was granted and the applicants had received a construction permit from the Commission.

Soon after the construction permit had been secured, the partners entered into a contract authorizing Ulmer (or one of his coworkers) to finance, construct, and operate the station. Thus, in the early history of the station, did the partners assign their license rights without the knowledge or consent of the Commission.

The partners made no capital investments and received no income from the station. Stipulations for small percentages of the profits were sometimes made in the contract. But actually the partners received no income and expected none, except in one case where one of the partners got $50 a month. Ulmer assured them that they would be free of liability in connection with the station. All, or almost all, of the profits found their way into Ulmer's pockets or the pockets of one of his close associates.

The partners had no control of the station's bank accounts, receipts, or expenditures. They had no control of personnel, programs, or station policy. They continued, indeed, to sign reports intended for the Commission. But all such reports were prepared by others and the partners had but a vague idea of their contents and purpose. They continued to sign papers because they were the licensees of record in order to deceive the Commission.

It is clear that the partners were simply puppets manipulated by Ulmer who was the puppeteer.

It was Ulmer, or one of his associates, who financed, constructed, and operated the station. It was he who controlled the programs and the station policy. It was he who hired or fired employees and enjoyed the profits.

The partners signified under oath by their application and associated papers that they would finance and control the station. This they never intended to do, thus perpetrating fraud upon the Commission.

In several instances the partners submitted sworn statements showing that the partnerships involved possessed substantial assets, whereas, in fact, such partnerships possessed no assets whatever. Station assets belonged to Ulmer or one of his associates.

The *Tyler case* (Station KGKB) involves a corporation and differs somewhat from the partnership cases. Here Ulmer gained voting con-

trol of the East Texas Broadcasting Co. by means of stock purchases, without the knowledge or consent of the Commission. In other respects the case is similar to the rest. Here, too, the license rights were illegally assigned and illegally exercised by the assignee, who again was Ulmer.

Ulmer's conduct is reprehensible in more ways than one. He has induced honest and self-respecting men to violate the law and participate in an intricate scheme of deception. Most of these men made themselves parties to Ulmer's machinations through honorable intentions—a desire to serve their communities. Some of them even tried to break through the net in which Ulmer had caught them. But Ulmer's own conduct was prompted wholly by greed. Ulmer has cast a shadow upon the business of broadcasting.

I do not consider that this is the appropriate time to call the Commission's attention the fact that James H. Hanley, an attorney practicing before this Commission, represented James G. Ulmer throughout the formulation and prosecution of all of the applications involved. He also represented in each instance the local applicants. It will be remembered that Hanley was a member of the Federal Radio Commission, which preceded this Commission in the regulation of broadcasting. The attention of the Commission will be called to his activities upon the completion of the remaining hearings in Texas and after I have had further opportunity to study the exhibits in this connection.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matters of

SAM HOUSTON BROADCASTING ASSOCIATION (KSAM), HUNTSVILLE, TEX.	DOCKET No. 5838
NAVARRO BROADCASTING ASSOCIATION (KAND), CORSICANA, TEX.	DOCKET No. 5839

June 4, 1940

OPINION OF GEORGE HENRY PAYNE, COMMISSIONER, IN THE ABOVE CASES:

I submit herewith a preliminary report on two additional Texas hearings at which the Commission designated me to preside.

SAM HOUSTON BROADCASTING ASSOCIATION, STATION KSAM, HUNTSVILLE, TEX.—DOCKET NO. 5838

On February 7, 1940, the Commission revoked the license of this station, effective February 24, 1940.

The charges in the revocation order in this case are as follows:

* * * It further appearing that said original construction permit and station license were issued by the Commission upon false and fraudulent statements and representations and because of the failure of the applicants to make full disclosure to the Commission concerning the financing of station construction and the operation, ownership, management and control thereof by James G. Ulmer and Roy G. Terry, either or both, in violation of the provisions of the Communications Act of 1934, as amended, and the rules and regulations of the Commission; and that, had the actual facts in connection therewith been presented and made known to the Commission it would have been warranted in refusing to grant such application and station license; and

It further appearing that rights granted to the said Sam Houston Broadcasting Association, H. G. Webster, President, in and by the terms of said station license have been by it transferred, assigned or otherwise disposed of without the consent in writing of this Commission in violation of the provisions of said license and of the provisions of Section 310 (b) of the Communications Act of 1934, as amended; * * *

On February 27, 1940, I was designated by the Commission to preside at a hearing to be held in Texas on the order of revocation.

I heard this case in Dallas, Tex., on March 20 and 21, 1940. The case was reopened for further hearing in Dallas on April 24 and closed the same day.

The Sam Houston Broadcasting Association obtained a license as a copartnership consisting of H. G. Webster, president, Dr. C. N. Shaver, vice president, and W. Bryan Shaver, secretary-treasurer.

As in the *Lufkin, Palestine* and *Austin cases*, I have already reported on, all the partners are men of excellent reputation. Webster is a banker; Dr. Shaver is president of the Sam Houston Teachers College and director and honorary vice president of a bank; W. Bryan Shaver is Dr. Shaver's son.

Again Dr. Ulmer comes into the picture at the very beginning. Webster testified that the partners had an agreement with Ulmer, before the application was filed, that he would finance and construct the station; but that this agreement was cancelled before the application was actually filed because of Ulmer's split-up with his partner, Roy G. Terry.

Roy G. Terry testified that in the summer of 1934, he and Ulmer entered into an oral agreement to procure, construct and operate radio broadcast stations; that they were to be equal partners; that this agreement was in effect until March 12, 1938, and that he and Ulmer each had half ownership in the enterprise that later developed into Station KSAM. He also testified that there was no dispute as to ownership of the stations between him and Ulmer prior to the middle of August of the year 1937 and that discussion of the dissolution of the partnership first occurred sometime between October 1, 1937, and November 6, 1937.

The application for Station KSAM, according to Commission records, was filed on June 21, 1937. It appears, therefore, that the application had been filed before the split-up between Ulmer and Terry, and while the agreement between Ulmer and the partners constituting the Sam Houston Broadcasting Association was still in effect.

It was Ulmer who made the suggestion that local people be used to obtain the station license. Ulmer and his engineer, John Sheppard, helped in the preparation of the application, in spite of the alleged abrogation of the agreement between him and the partners. Ulmer advised them to draw up and file with the Commission articles of association. Ulmer made a final check of the original application before it was filed; he recommended Hanley as attorney to the partners; he was present at the original deposition hearings; and advised the applicants as to procedure.

All the partners except W. Bryan Shaver made depositions and all three filed financial statements.

On June 16, 1938, soon after the construction permit was issued (May 21, 1938), the partners entered into two contracts with Ulmer. Under the terms of the first contract, Ulmer undertook to construct the station at a cost of $6,500 on condition that the partners were to furnish $1,625

in cash and establish a credit fund of an additional $1,625. These conditions were fulfilled. Owing to cash discounts received only $1,500 was spent under the credit.

Under the terms of the second or supplemental contract, Ulmer was given the privilege of filing with the Commission an application for the transfer to him of a half interest in the station. It was also agreed that the partners would incorporate and transfer to him one-half of the stock of the corporation and that they would give him a promissory note in the amount of $3,250 to be used as evidence before the Commission to show that he held a half interest. This note was actually delivered to Ulmer. The note was dated September 26, 1938, and was due on or before the expiration of twelve months. It was agreed that the note was not to be paid by the partners unless the Commission denied the application for the transfer of half interest to Ulmer, in which event they were to pay the note in installments. The partners further agreed to assist Ulmer before the Commission to obtain his half interest. No payments of principal or interest had been made on account of this note at the time of the hearing and Ulmer still held the paper. It may be mentioned that the actual amount of this note is $3,200.

It is apparent now why neither the principal nor the interest had been paid. The paper was intended simply as an instrument to deceive the Commission when Ulmer applied for his half interest.

It is clear that the note covered a half interest that Ulmer actually held in the station—a half interest that he acquired soon after the construction permit was issued, but which was not disclosed to the Commission as required by the rules. The contracts referred to were filed with the Commission about a week before the revocation hearing.

An attempt was made on March 12, 1940, sometime after the revocation order was issued, to nullify the contractual relations existing between the partners and Ulmer by the execution of a cancelation of the supplemental contract. However, the fact that Ulmer actually had a half interest in the station could not be nullified. Webster testified that the contract was canceled because it provided no expiration date. This reason is not convincing as no superseding instrument was executed.

The station was built by Ulmer or under his direction.

The first manager of the station was Harold C. Scott and the present manager is Darrell Yates—both friends or associates of Ulmer. Paul Wolfe, the first engineer employed by the station, was recommended by Ulmer.

On June 29, 1939, an agreement was made between the partners and Darrell Yates under the terms of which Yates purchased for $2,500 stock of this corporation having a par value of $5,000 of a total capitalization of $15,000. Webster testified that the $2,500 was re-

ceived by the partners and divided equally by them. The Commission was not informed of this transaction although, with it and the transfer to Ulmer, majority ownership had passed from the licensees.

On or about September 27, 1938, the licensees transferred to Harold Scott, as station manager, control and operation of the station. This transfer was not reported to the Commission.

A charter covering the incorporation of the association was obtained September 10, 1938. An application to assign the license and station to this corporation is pending before the Commission. In these papers no mention was made of the interest of Yates or Ulmer in the corporation or in the broadcast station.

Order No. 2 of the Broadcast Division required, among other things, that licensees report to the Commission all contracts (oral or written) affecting the "use, management, or operation of the station by any person or entity, etc." The contracts in question were not reported, notwithstanding the above clear provision.

The record shows that it was Ulmer's manager, Yates, who was in actual control of the station and that the total investment of the licensees in the station was only $625.00.

The partners signified by their application, financial statements, depositions, and testimony at the hearing that they would finance, construct, and operate the station, which they failed to do. They have perpetrated fraud upon the Commission.

NAVARRO BROADCASTING ASSOCIATION, STATION KAND, CORSICANA, TEX.—DOCKET NO. 5839

On February 7, 1940, the Commission revoked the license of this station, effective February 24, 1940, on the following charges:

* * * It further appearing that said original construction permit and station license were issued by the Commission upon false and fraudulent statements and representations and because of the failure of the applicants to make full disclosure to the Commission concerning the financing of station construction and the operation, ownership, management, and control thereof by James G. Ulmer and Roy G. Terry, either or both, in violation of the provisions of the Communications Act of 1934, as amended, and the rules and regulations of the Commission; and that, had the actual facts in connection therewith been presented and made known to the Commission it would have been warranted in refusing to grant such application and station license; and

It further appearing that rights granted to the said Navarro Broadcasting Association, J. C. West, President, in and by the terms of said station license, have been by it transferred, assigned, or otherwise disposed of without the consent in writing of this Commission in violation of the provisions of said license and of the provisions of section 310 (b) of the Communications Act of 1934, as amended. * * *

On February 27, 1940, I was designated by the Commission to preside at the hearing to be held in Texas on the order revoking the license.

I heard this case at Dallas, Tex., on April 23, 24, 25, and 26, 1940.

This company secured a broadcast license as a copartnership, consisting of J. C. West and Frederick Slauson, and the station began to operate May 16, 1937.

Both of these men were in business in Corsicana, Tex., and enjoyed good reputations.

West, the president of the association, became acquainted with James G. Ulmer in 1933, or possibly 1932, but it was not until 1934 or 1935 that they and Slauson discussed the possibility of a radio station in Corsicana. It was then that West and Slauson expressed a willingness and a desire to file an application with the Commission for such a station.

Roy G. Terry testified that Ulmer and he had discussed the possibility of obtaining a station in Corsicana and that subsequently Ulmer went to Corsicana and obtained the consent of West and Slauson, who were partners in the Wolf Brand Products Company, manufacturers of chili products in Corsicana, to help secure such a station.

Ulmer supervised the preparation of the application and engaged his lawyer, James H. Hanley, to prosecute the application before the Commission which, in due course, was filed.

Both West and Slauson had furnished depositions and financial statements in connection with the application, but in the beginning had used none of their own funds to finance it.

On January 17, 1936, Hanley wrote Ulmer regarding the proposed station, speaking of it as "your" station and in other respects indicating that Ulmer was the owner. Hanley had represented Ulmer in cases involving radio stations since 1934.

Ulmer wrote a letter to Hanley on March 25, 1936, in which he referred to the application as his, using the word "my" to qualify the word "application."

Ulmer looked after the local deposition hearings, although it was West and not he who testified at the hearing in Washington. However, Ulmer was in Washington at the time of the hearing and consulted with West. At all times, Ulmer displayed a direct and personal interest in the vicissitudes of the application.

On May 9, 1936, Ulmer wrote to his partner, Terry, regarding the Corsicana application, as follows:

"I think we have an air-tight case there." This letter was written from Washington on Hanley's stationery.

Hanley looked to Ulmer for information about the application and in a letter dated April 3, 1937, he again referred to it as Ulmer's application.

In response to a question of government counsel, Ulmer explained that by "we" in his testimony, he meant himself, West, Slauson, and possibly Terry. Terry testified that it was he and Ulmer who had filed the application and owned the station.

The station was constructed and financed by Ulmer and Terry—principally by Terry, who was associated in this project as well as in others with Ulmer. Important sums of money that went into the station were borrowed by Terry upon promissory notes.

On February 11, 1936, Ulmer wrote to Hanley expressing concern about the cost of promotion of his stations. Ulmer wrote:

> The promotion of these stations is a costly thing and we must cut corners wherever we can.

Terry testified that he took charge of construction, raised most of the money for the station, and when it went on the air on May 16, 1937, he operated it. He admitted that during construction Slauson offered good suggestions which were accepted.

Terry employed practically all of the personnel, although he admitted that he accepted suggestions from West in the matter of a few appointments to the staff. Furthermore, Terry had full charge of the policies, programming, and the commercial phases of Station KAND.

Both West and Slauson displayed an interest in the station and made helpful suggestions, but ultimate decision rested with Terry.

From May 16, 1937, when the station began operating, up to November 6, 1937, when Ulmer and Terry severed all connection with it, no accounting was ever made to West or Slauson, the licensees of record. Although the station was yielding an income, no revenue whatever was derived therefrom by West or Slauson during this period.

A short time before the station began operations, Terry opened an account in the State National Bank of Corsicana, designated as the "Radio Station KAND" account, upon which only he could draw checks. However, some time later, Charles L. Whittier was empowered to sign checks. The change to Whittier was prompted by a letter which Hanley had written to Ulmer on September 20, 1937, advising that unless a management contract existed, to see that the owners of record handle bank accounts and other business. Neither West nor Slauson ever drew on this account.

Some time in August 1937, Terry relinquished operation of the station, but not his ownership interest therein.

The following episode sheds light upon the true ownership of Station KAND before November 6, 1937. West and Slauson had

made a number of outlays for the station, amounting in all to $2,199.93. Terry had paid $600.00 to West and Slauson on account of these expenditures on June 6, 1937. Later, West made a demand for the balance, amounting to $1,599.93, presenting an itemized bill for that sum. On July 2, 1937, Terry paid his balance to West. Both of these items were paid by checks drawn on Terry's KAND bank account. These two checks represented payment in full at the time to the ostensible owners of the station. Terry testified that at a later date West loaned the station $250 which was duly repaid.

Terry testified that West presented the bill with these words:

> Dr. Ulmer told me that we wouldn't have to outlay any cash on this thing, and we don't want any cash tied up in it. I want my money, and I want it now.

No convincing explanation has been made by West and Slauson of these transactions. If the licensees had actually owned the station, there would, of course, be no reason whatever for them to demand and accept reimbursement from Ulmer and Terry of expenditures on the station.

Ulmer testified that for their services, Terry and he were allowed to operate the station. West and Slauson, it was agreed, were to get advertising for their chili products on Station KAND and on all the other stations controlled by Ulmer and Terry. Such advertising was actually given to West and Slauson.

Terry testified that Ulmer had agreed to give West and Slauson advertising of their chili products over all the stations Ulmer and Terry owned or would acquire in the future—three announcements daily over each station—and in return Ulmer and Terry were allowed to operate KAND as their own. This arrangement had continued up to the final settlement on November 6, 1937.

On November 6, 1937, Ulmer and Terry transferred their interests in Station KAND to West and Slauson in consideration of $6,000. This contract became effective and West and Slauson assumed control of the station.

The record shows that West and Slauson had become aware of the partnership differences that had developed between Terry and Ulmer and the settlement of November 6, 1937, was hastened thereby.

In a letter to Ulmer, dated September 14, 1937, Hanley referred to a contract made between the licensees of record and Ulmer concerning the operation of KAND. Hanley expressed the fear that the Commission might designate the license for hearing if this contract were filed. The records of the Commission show that this contract has never been filed.

Slauson made a voluntary statement admitting that errors had been made by the licensees. Beauford H. Jester, their attorney, made

a clear statement of the entire matter which, in effect, is a plea of confession and avoidance.

Mr. Jester went on to say, "Whatever this decision will be, it will be taken by the respondents and their counsel in good grace and in the knowledge that you gentlemen, all of you, have done a conscientious job, and that you are doing it for the public weal, and in effectuating a record of your Commission that is going to make that Commission an admired Commission."

The record plainly shows that the licensees at no time prior to November 6, 1937, the date of the settlement contract, had control of Station KAND; that such control was vested in Ulmer and Terry during that period; and that, when the licensees became aware of their anomalous position and sensed the difficulties and confusion that the quarrel between Ulmer and Terry might give rise to, they purchased control of the station by the payment to Ulmer and Terry of $6,000 on November 6, 1937.

RECOMMENDATION

In my opinion the charges made by the Commission in the two cases mentioned herein have been fully sustained. I, therefore, recommend that the revocation orders be affirmed.

8 F. C. C.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of

EAGLE BROADCASTING CO., INC., (KGFI), BROWNSVILLE, TEX. DOCKET NO. 5854.

June 17, 1940

OPINION OF GEORGE HENRY PAYNE, COMMISSIONER, IN THE ABOVE CASE:

In reporting on the last one of the so-called Texas cases, I may say that the conditions prevailing in these cases do not arise from anything peculiar to Texas, nor from the lawlessness or cunning of any one person. These conditions, I believe, have resulted from the opinion held by a few that the Communications Act can be ignored, if only the right kind of pressure can be exerted upon the Commission or its personnel.

There are some indications that equally distressing conditions may exist in other parts of the country, too.

It seems to me that the Commission has taken a long stride in the right direction by these revocation orders and that racketeering in radio can be eliminated entirely by persistence and courage on the part of the Commission and its staff.

* * * * * * *

On March 22, 1940, the Commission revoked the license of Station KGFI, effective April 15, 1940.

The charges in the revocation order are as follows:

* * * It further appearing, that on or about October 7, 1938, the said Eagle Broadcasting Co., Inc., by and through Ewol E. Wilson and Ernest E. Wilson of Corpus Christi, Tex., then sole stockholders and in control of the licensee corporation, by contract transferred and delivered to James G. Ulmer of Tyler, Tex., and M. D. Gallagher of Brownsville, Tex., complete and exclusive possession and control of said Station KGFI, and did thereby then and there assign and transfer to the said Ulmer and Gallagher all of the rights theretofore granted to the licensee corporation by the terms of the license issued by this Commission for the operation of said station, without first having applied for and secured the consent of this Commission in writing for such assignment and transfer, in violation of the provisions of section 310 (b) of the Communications Act of 1934 as amended; and

It further appearing, that by virtue of said assignment and transfer as aforesaid, the said James G. Ulmer, and/or M. D. Gallagher, from about October 7, 1938, to about April 22, 1939, had and exercised complete control of the manage-

ment and operation of said station, and had and exercised all of the authority and rights granted to the said Eagle Broadcasting Co., Inc., by the terms of the license heretofore issued to it for the operation of said station KGFI, in violation of the provisions of the Communications Act of 1934 as amended; and

It further appearing, that Lawrence D. Yates, by contractual arrangement with the said James G. Ulmer, M. D. Gallagher, and others, and without any authority whatsoever from this Commission, since April 22, 1939, has been, and is now, in complete and exclusive possession and control of said station, and unlawfully has and exercises complete and exclusive supervision of the operation thereof; and

It further appearing, that rights granted to the said Eagle Broadcasting Co., Inc., in and by the terms of said station license have been by it transferred, assigned, or otherwise disposed of without the consent in writing of this Commission, in violation of the provisions of said license and of the provisions of section 310 (b) of the Communications Act of 1934 as amended; * * *

Ewol E. (Jack) Wilson has been president of the Eagle Broadcasting Co., Inc., for about twelve years. For many years the majority stock was held by Ewol, his father and brothers, and, in later years, by Ewol and only one of his brothers, Ernest E. Wilson. Ernest E. Wilson has been serving as secretary and treasurer of the corporation.

The station was formerly located in Corpus Christi, Tex., and has been operating in Brownsville, Tex., since about October 5, 1937. On October 7, 1938, Ewol and his brother Ernest, who together owned 85 percent of the stock of the corporation, entered into a contract to sell their holdings to James G. Ulmer and M. D. Gallagher. An initial payment of $5,000 was required by the contract, and the balance of the purchase price to be paid at the rate of $375 a month by Gallagher and Ulmer. Meanwhile the stock was held in escrow by the Peoples National Bank of Tyler, Tex. Soon after the execution of this contract Ulmer and Gallagher were elected directors of the corporation and the board of directors appointed them managers.

About October 15, 1938, Gallagher assumed control and operation of the station, and continued in charge until some time in February 1939, when Lawrence D. Yates, one of Ulmer's employees, took charge. The Wilsons consented tacitly to this arrangement.

On April 22, 1939, Gallagher conveyed to Yates his interest in the station but the Wilsons were not party to this contract. It may be noted here that none of these contracts and changes of control were reported to the Commission at the time when they occurred.

It seems that Ulmer had defaulted in his rental payments to the Wilsons at the very beginning. He had, however, bought a mortgage and note on the station in the amount of $2,900 that was held by one H. C. Ragsdale. Gallagher paid his rental instalments while he was associated with the station and Yates continued to make them for some time after he had taken charge. The Wilsons accepted the payments from Yates without question over a consider-

able period of time and by so doing recognized his authority to operate the station.

Finally, Yates defaulted in the payments due to the Wilsons. The Wilsons brought suit in the local courts to regain possession of the station. An injunction in their favor was issued on April 3, 1940, and the Wilsons resumed control of the station.

On March 26, 1940, Yates sent a telegram to the Commission practically acknowledging that he was operating the station illegally and asking what disposition he should make of the license. This occurred a few days after the Commission issued its order revoking the license of KGFI.

William Simpson, an employee of KGFI, testified that Gallagher had full control of the station up to the time he, Gallagher, transferred his interest to Yates.

Wilson admitted that he and his brother were not in possession of the station for some time preceding April 3, 1940, when it was held by Yates against their will. April 3, 1940, was the date of the injunction. Wilson also admitted that Yates had operated the station in violation of the law.

Wilson failed to report changes in operation or control, as required by the Commission's rules, up to some time in April, 1940, when he received a telegram from the Commission in reference to closing the station. This telegram was sent in reply to the inquiry of Yates, mentioned herein.

A number of contracts involving the interests of the station were made by Gallagher, Ulmer and Yates without the knowledge or consent of the Wilsons.

* * * * * * *

The Eagle Broadcasting Co., Inc., maintained KGFI in Corpus Christi, Tex., for a number of years (from early in 1929 to some time in May 1937). The circumstances under which the company closed KGFI in Corpus Christi and reestablished it in Brownsville, Tex., are important.

On August 19, 1936, the licensee company entered into an agreement with T. Frank Smith under which Smith purchased for a period of five years all the time of KGFI. Smith took the station over and began to operate it on September 1, 1936. Under this contract Smith was given in express terms the complete control of KGFI.

Tilford Jones, who was a partner of Smith's in several enterprises, appears to have had an interest in this contract.

On September 30, 1936, a new contract was executed adding Houston Harte, Bernard Hanks, and W. G. Kinsolving as partners in interest.

Under the contracts of August 19, 1936, and September 30, 1936, the Eagle Broadcasting Co., Inc., relinquished all control and operation of KGFI.

George Morrison was appointed by Smith to take charge of the station. The only Wilson that remained at the station was Ewol, who had been given a job as public relations director, and worked under the direction of Smith.

Under these contracts the Eagle Broadcasting Co., Inc., was paid 10 percent of the gross operating revenue of the station. This arrangement, which was in fact a lease, continued up to the time KGFI was closed in Corpus Christi.

On August 20, 1936, another contract was executed giving T. Frank Smith an option to buy all the stock the Wilsons held in the licensee company, which amounted to 85 percent of the outstanding stock. The Wilson stock was deposited in escrow.

Some time in 1935, an application for a regional broadcast station at Corpus Christi was filed by the Harte and Hanks interests in the name of Caller-Times Publishing Co. Later an application in the name of Gulf Coast Broadcasting Co. replaced the Caller-Times application.

Tilford Jones told Wilson that he was trying to stop the issuance of a license to Harte and Hanks. A favorable report, however, was handed down by our examiner on August 10, 1936, in the case of the Gulf application. Tilford Jones then seems to have convinced Harte and Hanks, in spite of the favorable report, that they could not secure a license in Corpus Christi, for they withdrew their application.

Some time in 1936, Harte, Hanks, Smith, and Jones seem to have come together. This fact is indicated by the contract of September 30, 1936. The Gulf application was reinstated by the Commission. Smith and Jones now turned up with a 50 percent interest in this enterprise and Harte and Hanks with a 50 percent interest in the the operating contract covering KGFI.

On December 12, 1937, after the Gulf application had been reinstated, the Wilsons entered into a contract reducing the purchase price of KGFI by $5,000 and agreeing to sell all the physical property, contracts, business, and goodwill of KGFI to the Gulf interests. They further agreed that they would move KGFI a distance of at least one hundred miles from Corpus Christi and that they would withdraw their opposition to the Gulf application.

It seems that Tilford Jones, at about this time, was in Washington helping along the fortunes of the Gulf application, which later developed into Station KRIS. Jones was also looking after the removal of KGFI. Ewol Wilson was informed by Jones that Judge

Sykes, who at that time was Chairman of the Commission and a member of the broadcast division, would not agree to the granting of the KRIS application until he saw Wilson, as he feared there wasn't enough business for two stations in Corpus Christi.

Wilson came to Washington upon the request of Jones and explained all the circumstances to Judge Sykes including his consent to the removal of KGFI. A license was duly issued to the Gulf Coast Broadcasting Co. and call letters KRIS were assigned to the station.

On or about May 28, 1937, KGFI discontinued operation and KRIS went on the air using the equipment of KGFI with unimportant additions. For all practical purposes, KRIS was the same station as KGFI operating on a different frequency, and, of course, under different ownership. The Gulf applicants had constructed practically nothing. In effect, they had had an existing station transferred to them upon applications for a construction permit and a license. The Eagle Broadcasting Co., Inc., at this time had nothing left of KGFI except a piece of paper representing the Commission license.

Wilson testified that during his interview with Judge Sykes he told the Judge all about the contracts existing at the time and explained the terms of these contracts to the Judge down to the smallest detail. Wilson also testified that Judge Sykes informed him that as long as there had been no transfer of stock control there would be no need for Wilson to report these contracts to the Commission. He testified further that the Judge had our engineers determine the best place to relocate KGFI, and it was finally decided that Brownsville, Tex., would be suitable for the purpose.

With the money the Wilsons received for Station KGFI at Corpus Christi and some additional funds that they raised, they built a new station at Brownsville, Tex., retaining the old call letters. This new station began operations on or about October 10, 1937.

Wilson admitted that he had violated the law saying, "In my opinion, there is very little doubt but that I have violated the Commission's laws * * *. I didn't think at the time that I was violating any laws of any kind. * * *." By way of extenuation of some of his acts, Wilson testified that he had informed Inspector L. L. McCabe about the contract of October 7, 1938, some time in November of that year. This, it will be remembered, is the contract wherein the Wilsons agreed to sell all the stock in the Eagle Broadcasting Co., Inc., to Ulmer and Gallagher.

It is noted that the Gulf Coast Broadcasting Co. (KRIS), originally applied for authority to construct a new station in Corpus Christi, Tex. It is pursuant to this application that a construction

permit was issued by the Commission. However, the applicants constructed nothing of importance in the station, as KRIS took over the equipment and business of KGFI in Corpus Christi. In effect, Station KGFI was transferred to the Gulf Coast Broadcasting Co. without the knowledge of the Commission, and the provisions of section 310 (b) of the Communications Act have been subverted by suppression of the facts relating to the transfer.

It is questionable, therefore, whether the licenses of KRIS have been obtained and held in good faith.

I recommend that the law department be instructed to examine the legal status of KRIS and report to the Commission.

In my opinion, the charges made by the Commission in the Eagle Broadcasting Co., Inc. (KGFI) case have been fully sustained. I therefore recommend that the order of revocation be affirmed.

8 F. C. C.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matters of

RED LANDS BROADCASTING ASSOCIATION (KRBA), BEN T. WILSON, President, LUFKIN, TEX.	DOCKET No. 5837
SAM HOUSTON BROADCASTING ASSOCIATION (KSAM), H. G. WEBSTER, President, HUNTSVILLE, TEX.	DOCKET No. 5838
STATE CAPITOL BROADCASTING ASSOCIATION, INC. (KTBC), AUSTIN, TEX.	DOCKET No. 5835
JOHN CALVIN WELCH, WILLIAM M. KELLER and BONNER FRIZZELL, doing business as PALESTINE BROADCASTING ASSOCIATION (KNET),[1] PALESTINE, TEX.	DOCKET No. 5836
EAGLE BROADCASTING COMPANY, INC. (KGFI)* BROWNSVILLE, TEX.	DOCKET No. 5854

Revocation of licenses.

Decided April 2, 1941

DECISION AND ORDER

BY THE COMMISSION (COMMISSIONER PAYNE DISSENTING):

Proposed findings of fact and conclusions of the Commission having been released on the above-entitled proceedings, exceptions thereto filed, and oral argument had, these matters are now before us for final decision. Upon consideration of said oral arguments, the proposed findings of fact and conclusions, the exceptions thereto, and the testimony individual to each docket, we are of the opinion that

[1] The Commission, on May 6, 1941, granted an application for the assignment of license of KNET to Bonner Frizzell, and directed that upon consummation of the assignment a license for the period ending December 1, 1941, be issued to him upon a regular basis. (CASE and PAYNE, Commissioners, voted "No.")

*The Commission, on August 5, 1942, authorized change of call letters to KEEW.

ample foundation has been provided for sustaining the revocation orders entered herein. Other considerations, however, impel us to a disposition of the matters differing from that indicated in our proposed findings of fact and conclusions heretofore promulgated.[2]

The primary and moving figure in all of these cases was Dr. James G. Ulmer.[3] His actions coupled with the lack of understanding displayed by the other principal participants in the proceedings with respect to the duties of radiobroadcast licensees, particularly concerning the requirements of the Communications Act of 1934 and the rules and regulations of the Commission, combine to present a clouded and dubious history for each of the stations involved. But we think in this regard that the various licensees in the light of the several hearings will accord, in the future, more respect and, consequently, a stricter adherence to such duties and requirements.

We said *In re Revocation of License of Navarro Broadcasting Association*, Docket No. 5839, 8 F. C. C. 198, decided September 5, 1940:

> In determining whether to revoke the license of a radiobroadcast station for false representations to the Commission and other violations of the Communications Act, the Commission is faced with competing considerations. The Commission's primary duty is to the listening public and, in dealing with a licensee, the Commission must be guided by this primary duty. On the other hand, if the Commission is to carry out its function of granting and denying applications for licenses, it must obtain true and accurate information from those who seek to operate radio stations and must take disciplinary action against those who make false representations to the Commission. But discipline should not be inexorably applied when station licensees demonstrate to the Commission, as these respondents have now done, that they are ready to act in good faith.[4]

Applying these observations to the instant proceedings, it is noteworthy that in none of these cases has any charge been made that the program service of these stations in and of itself is not in the public interest. It is also to be observed that, except in these special instances, the evidence establishes that the various local parties involved are responsible citizens in good public standing and repute. Moreover, we are faced with the circumstance that in none of the areas wherein these stations are located, excluding Austin, Tex., is there any other station to serve as a medium for community expression excepting said

[2] By its orders entered February 7 and March 22, 1940, the Commission revoked the licenses of Stations KRBA, KSAM, KTBC, KNET, and KGFI. In the proposed findings of fact and conclusions of the Commission thereafter released in connection with the proceedings resulting from these revocation orders, it was concluded that all of such orders should be affirmed.

[3] See proposed findings of fact and conclusions of the Commission in Dockets Nos. 5837, 5838, 5835, 5836, and 5854.

[4] The respondents referred to are J. C. West and Frederick Slauson, Corsicana, Tex., doing business as the Navarro Broadcasting Association, licensee of Station KAND.

stations. It may be noted, however, that Austin has a population approximately 4 times greater than Brownsville, the largest of the remaining cities here involved, and has but 1 station in addition to KTBC, namely KNOW, which operates with power of 250 watts.[5]

The Commission now feels that the licensees may be entrusted with authorizations to continue the operation of these stations. Said authorizations will, however, be issued on a temporary 90-day basis and prior to the expiration date thereof the licensees shall submit evidence satisfactory to this Commission that James G. Ulmer has completely and absolutely relinquished any right, title, or interest in or to Stations KRBA, KSAM, KTBC, KNET, and KGFI, their conduct and operation, and will not be associated or connected with them in the future.

The Commission leaves the records in these cases with the admonition that in any future proceeding involving these licensees the facts developed in the instant proceedings will be considered in connection therewith.

Accordingly, it is ordered, this 2nd day of April 1941, that the Commission's orders revoking the licenses of Stations KRBA, KSAM, KTBC, KNET, and KGFI be, and they are hereby, vacated.

It is further ordered, that said stations be issued a temporary license for a period of 90 days from the date hereof, during which time the licensees thereof shall submit evidence satisfactory to this Commission that James G. Ulmer has completely and absolutely relinquished any right, title, or interest in or to said stations, their conduct and operation, and will not be associated or connected with them in the future.

June 30, 1941

ORDER

(PAYNE, Commissioner, voted "No.")

At a session of the Federal Communications Commission held at its offices in Washington, D. C., on the 30th day of June 1941,

The Commission having under consideration its order entered on April 2, 1941, in the above-entitled and numbered matter, and affidavits filed pursuant to and in connection therewith by Ben T. Wilson and R. A. Corbett, two of the copartners, doing business as the Red Lands Broadcasting Association, together with supporting verified statements attached thereto; and

It appearing that the licensees of said station, in compliance with the provisions of said order, have furnished to the Commission

[5] According to the 1940 United States Census, the population figures for these communities are: Austin, 87,930; Lufkin, 9,567; Palestine, 12,144; Huntsville, 5,108; and Brownsville, 22,088.

satisfactory evidence of the fact that James G. Ulmer has completely and absolutely relinquished any and all right, title, or interest which he may have had or claimed in or to said station, its conduct, and operation, and will not be associated or connected therewith in the future, as long as the present licensees are the owners thereof; and

It further appearing that the licensees of Station KRBA have complied substantially with the provisions of said order, and that the public interest, convenience, and necessity will be served by a grant and issuance, on a regular basis, of a license for the operation of said station in lieu of the temporary license therefor issued on April 2, 1941:

It is ordered, this 30th day of June 1941, that a license for the operation of Station KRBA, Lufkin, Tex., be granted and issued to Ben T. Wilson, R. A. Corbett, and Thomas W. Baker, copartners, doing business as the Red Lands Broadcasting Association, upon a regular basis for the period ending October 1, 1941, in lieu of the temporary license under which said station is now being operated.

June 24, 1941

ORDER

(PAYNE, Commissioner, voted "No.")

At a session of the Federal Communications Commission held at its offices in Washington, D. C., on the 24th day of June 1941,

The Commission having under consideration its order entered on April 2, 1941, in the above-entitled and numbered matter, and affidavits filed pursuant to and in connection therewith by H. G. Webster, C. N. Shaver, and W. Bryan Shaver, copartners, doing business as the Sam Houston Broadcasting Association; and

It appearing that the licensees of said station, in compliance with the provisions of said order, have furnished to the Commission satisfactory evidence of the fact that James G. Ulmer has completely and absolutely relinquished any and all right, title, or interest which he may have had or claimed in or to said station, its conduct and operation, and will not be associated or connected therewith in the future, as long as the present licensees are the owners thereof; and

It further appearing that the licensees of Station KSAM have complied substantially with the provisions of said order, and that the public interest, convenience and necessity will be served by a grant and issuance, on a regular basis, of a license for the operation of said station in lieu of the temporary license therefor issued on April 2, 1941;

It is ordered, this 24th day of June 1941, that a license for the operation of Station KSAM, Huntsville, Tex., be granted and issued

to H. G. Webster, C. N. Shaver, and W. Bryan Shaver, copartners, doing business as the Sam Houston Broadcasting Association upon a regular basis for the period ending December 1, 1941, in lieu of the temporary license under which said station is now being operated.

June 26, 1941

ORDER

At a session of the Federal Communications Commission held at its offices in Washington, D. C., on the 26th day of June 1941,

The Commission having under consideration its order entered on April 2, 1941, in the above-entitled and numbered matter, and affidavit filed pursuant to and in connection therewith by the State Capitol Broadcasting Association, Inc. (KTBC), R. B. Anderson, R. A. Stuart, and A. W. Walker, Jr.; and

It appearing that the licensees of said station, in compliance with the provisions of said order, have furnished to the Commission satisfactory evidence of the fact that James G. Ulmer has completely and absolutely relinquished any and all right, title, or interest which he may have had or claimed in or to said station, its conduct and operation, and will not be associated or connected therewith in the future; and

It further appearing that the licensees of Station KTBC have complied substantially with the provisions of said order, and that the public interest, convenience and necessity will be served by a grant and issuance, on a regular basis, of a license for the operation of said station in lieu of the temporary license therefor issued on April 2, 1941;

It is ordered this 26th day of June 1941, that a license for the operation of Station KTBC, Austin, Tex., be granted and issued to State Capitol Broadcasting Association, Inc., upon a regular basis for the period ending June 1, 1942, in lieu of the temporary license under which said station is now being operated.

July 29, 1941

ORDER

At a session of the Federal Communications Commission, held at its offices in Washington, D. C., on the 29th day of July 1941,

The Commission, having under consideration its order entered on April 2, 1941, in the above-entitled and numbered matter, a "petition for modification of order and for grant of renewal application" and supporting affidavits filed pursuant to and in connection therewith by the Eagle Broadcasting Co., Inc. (KGFI); and

It appearing that the licensee of said station, in compliance with the provisions of said order, has furnished to the Commission satisfactory evidence of the fact that James G. Ulmer has been completely eliminated from any connection whatsoever with the station and in the future will not be associated or connected therewith; and

It further appearing that the licensee of Station KGFI has complied substantially with the provisions of said order, and that the public interest, convenience, and necessity will be served by a grant and issuance, on a regular basis, of a license for the operation of said station in lieu of the temporary license therefor issued on April 2, 1941, and extended June 30, 1941;

It is ordered, this 29th day of July 1941, that a license for the operation of Station KGFI, Brownsville, Tex., be granted and issued to the Eagle Broadcasting Co., Inc., upon a regular basis for the period ending December 1, 1941, in lieu of the temporary license under which said station is now being operated.

This order shall become effective immediately.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of EAST TEXAS BROADCASTING COMPANY (KGKB), TYLER, TEX. Revocation of License.	DOCKET No. 5840

Decided April 2, 1941

DECISION AND ORDER

BY THE COMMISSION (COMMISSIONERS CASE AND PAYNE DISSENTING):

Proposed findings of fact and conclusions having been released, exceptions thereto filed, and oral argument had in the above-entitled proceeding, the matter is now before us for final decision. As in the other so-called "Texas cases,"[1] we are convinced on the record herein presented that solid foundation exists for affirming the revocation order entered in the instant proceeding, but, again, considerations of public interest lead us, reluctantly, to a different ultimate conclusion than that reached in our proposed findings of fact and conclusions. To recapitulate, in our proposed conclusions in the instant matter, we said:

1. On some date unknown to this Commission during the year 1936 or 1937, there was sold to one James G. Ulmer a majority of the 1,000 shares of outstanding capital or voting stock in the East Texas Broadcasting Co., and there was finally sold a total of 736 shares to the same individual. Of these shares, 480 were later reissued at various dates, on the books of the corporation, in the name of James G. Ulmer and 256 shares were reissued in the name of his wife, Minnie B. Ulmer. The 256 shares recorded in the name of Minnie B. Ulmer were falsely reported to the Commission from time to time as being voted personally by her, whereas they were in fact at all times voted by James G. Ulmer by means of his wife's proxy. In fact, a majority of the 1,000 shares of stock in the East Texas Broadcasting Co. was voted and controlled by Ulmer during the years 1938 and 1939. The sale of this stock to Ulmer and the subsequent exercise by him of the voting rights therein constituted in truth and in fact a transfer of the legal or voting control of the East Texas Broadcasting Co., and gave him the actual control thereof. As such transfer of control was made without the consent in writing of this Commission, as required by section 310 (b)

[1] See decision and order of the Commission in Docket Nos. 5837, 5838, 5835, 5836, and 5854, released simultaneously herewith.

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of the Communications Act of 1934, as amended, the said transfer was illegal and in violation of the provisions of the statute.

2. Under a contract entered into on May 20, 1932, between the East Texas Broadcasting Co., licensee of Station KGKB, Tyler, Tex., and one James G. Ulmer, the former delegated to the said Ulmer the operation and management of Station KGKB. Under certain provisions of this contract, on February 7, 1935, the said East Texas Broadcasting Co., through formal action of its board of directors, leased the facilities of Station KGKB to the said James G. Ulmer for a period of three years, ending February 5, 1938, and has from time to time since the latter date, by subsequent actions of its board of directors, extended this lease. Each of such extensions constituted, in effect, a new lease. By virtue of the above contract and leases, the said East Texas Broadcasting Co. voluntarily transferred the rights theretofore granted to it by the terms of the license issued by this Commission for the operation of Station KGKB and did also transfer the management, control and operation of Station KGKB to the said Ulmer, without having first applied for and secured the consent of this Commission in writing for such transfer or assignment in violation of the provisions of section 310 (b) of the Communications Act of 1934, as amended.

3. By virtue of the above contract and leases, the said James G. Ulmer has, since February 7, 1935, or some date prior thereto, acquired the management, control, and operation of Station KGKB and has exercised the authority and rights granted to the East Texas Broadcasting Co. by the terms of the license theretofore issued to said company for the operation of Station KGKB, in violation of the provisions of the Communications Act of 1934, as amended.

On October 2, 1940, subsequent to the oral argument hereon, the East Texas Broadcasting Co. filed with the Commission minutes of the board of directors which read in part as follows:

James G. Ulmer, secretary and general manager of the company, moved that his contract with the East Texas Broadcasting Co., which was filed with the Commission May 20, 1932, and which is now being disputed by the Commission, be forfeited and canceled and that it be of no further force and effect. The motion was seconded by Mr. Sledge and voted unanimously so that the contract became immediately of no further force and effect whatsoever.

A motion was made by James G. Ulmer that every detail of the management and operation of the East Texas Broadcasting Co. be placed back into the hands of the company. This motion was unanimously carried and immediately all management, operation, and control of every kind and nature of Radio Station KGKB was placed back into the hands of the East Texas Broadcasting Co. on this date.

A motion was made, duly seconded, and unanimously carried that the bank account of the East Texas Broadcasting Co. be carried in the name of the East Texas Broadcasting Co. and that all checks be signed by the secretary and countersigned by the president until further notice.

At this meeting James G. Ulmer advised the board of directors that Mrs. Ulmer had sold $6,000 worth, or 240 shares, of her stock so that his stock and Mrs. Ulmer's stock combined would no longer constitute a majority of the stock of the organization and that all dispute relative to stock ownership would therefore be at an end.

A motion was made and carried by a unanimous vote that James G. Ulmer would continue to manage Radio Station KGKB on a salary of $400 per month from month to month under the direction of the board of directors.

The licensee has also filed returns, under oath, showing the distribution of its stock to be such that the combined holdings of James G. Ulmer and his wife are less than fifty percent. Thus, the licensee, belatedly it is true, has endeavored to purge itself of the unlawful aspects of past operation of Station KGKB.

In our Decision and Order *In re Red Lands Broadcasting Association (KRBA et al.)*, *supra*,[1] we quoted from and applied certain observations set forth *In re Navarro Broadcasting Association, Docket No. 5839*, 8 F. C. C. 198, decided September 5, 1940. Bearing these remarks in mind, it will be noted that here also no question is raised that the program service of Station KGKB, in and of itself, is not in the public interest. Furthermore, Station KGKB serves as the sole radio broadcast medium for community expression in Tyler, Tex.[2]

In re Red Lands Broadcasting Association et al., *supra*, we ordered that Stations KRBA, KSAM, KTBC, KNET, and KGFI be issued temporary licenses for a period of 90 days during which time the licensees of said stations shall submit evidence satisfactory to this Commission that James G. Ulmer has completely and absolutely relinquished any right, title, or interest to said stations and in their conduct and operation, and will not be associated or connected with them in the future. In this case, in view of the action of the licensee's board of directors heretofore referred to in eliminating the unauthorized transfer of control, we will permit the licensee to continue operation of the station. By this, it is not to be construed that Dr. Ulmer's past activities in connection with the station are in any way approved by this Commission. To the contrary, we unequivocally condemn these activities and the complete disregard of the duties of radio broadcast licensees shown by the other principal participants in this proceeding. The Commission does believe, however, in view of the action taken regarding the licenses of the stations mentioned above, and by reason of other considerations mentioned herein, that the licensee East Texas Broadcasting Co. may now be entrusted with an authorization to continue the operation of Station KGKB.

In tolerating the action of the respondent herein, it must be understood that should future improper conduct on the part of the licensee of Station KGKB be proven, the facts developed and the improper conduct proven in these proceedings cannot be disregarded.

Accordingly, it is ordered, this 2d day of April 1941, that the Commission Order revoking the license of Station KGKB, be, and it is hereby, vacated.

[1] 8 F. C. C. 479.

[2] According to the 1940 United States census, Tyler, Tex., has a population of 28,279.

DISSENTING OPINION OF COMMISSIONER GEORGE HENRY PAYNE

I cannot agree with the action recently taken by the Commission vacating the revocation orders in the six so-called Texas cases.

It is regrettable that the Federal Communications Commission has, after whitewashing the Westinghouse Electric and Manufacturing Company, exonerated these six radio station owners, whose licenses were revoked over a year ago. This action of the Commission is particularly regrettable as only a few days ago, under similar circumstances, the Commission unanimously refused to renew the license of John H. Stenger, Jr., for Station WBAX, although Stenger, in my opinion, was far less culpable than these six Texas licensees.

I fear that the precedent set by the Commission in its decision of September 4, 1940, in the Westinghouse Electric and Manufacturing Co. cases (from which I also dissented), has risen like a ghost to plague the Commission, as I predicted it would. For, once the law is relaxed or softened in favor of the mighty, it is hard to enforce it rigidly against the less mighty.

Consider the steps taken by the Commission in these Texas cases.

On February 7, 1940, the Commission revoked the licenses of Stations KTBC, KNET, KRBA, and KSAM; on February 13, 1940, that of KGKB; and on March 22, 1940, that of KGFI. The revocation orders had the unanimous vote of the Commission.

On May 17, 1940, the Commission issued Proposed Findings of Fact and Conclusions, affirming its revocation orders in the cases of Stations KTBC, KNET, and KRBA. On June 20, 1940, the Commission took similar action in the case of Station KSAM, on July 9, 1940, in the case of Station KGKB, and on September 9, 1940, in the case of Station KGFI.

After exhaustive hearings had been held on these cases in Texas and the record was complete, the Commission affirmed the revocation orders—unanimously and after due deliberation.

Let us examine briefly the charges of the Commission against these broadcast license holders.

The two important charges in all the cases, except in that of KGKB (East Texas Broadcasting Co., Tyler, Tex.) and KGFI (Eagle Broadcasting Co., Inc., Brownsville, Tex.), are similar and are in effect as follows:

(1) That the original construction permits and station licenses were issued by the Commission upon false and fraudulent statements and representations, and because of the failure of the applicants to make full disclosure concerning the financing of station construction and operation, the ownership, management, and control thereof, in violation of the provisions of the Communications Act of 1934, as

amended, and the rules and regulations of the Commission; and that, had the actual facts in connection therewith been presented and made known, the Commission would have been justified in refusing to grant the applications;

(2) That the licenses granted to the station license holders, in and by the terms of their licenses, have been transferred, assigned, or otherwise disposed of by the licensees of record without the consent in writing of this Commission, in violation of the provisions of the licenses and of the provisions of section 319 (b) of the Communications Act of 1934, as amended.

In the KGFI case, the charges listed in paragraph (2) were the ones principally urged.

In my opinion, there was only one question for the Commission to decide, namely: Had the charges of paragraph (1) or of paragraph (2), or of both, been sustained at the hearings?

Evidently the Commission was of the opinion that such charges had been sustained; otherwise, it could not have issued Proposed Findings affirming the revocation orders.

What, then, has happened since the issuance of the Proposed Findings to change the mind of the Commission?

Oral arguments were held at various times subsequent to the issuance of these proposed findings. That was the only important event of record in the history of these cases occurring between the issuance of the Proposed Findings and the present decisions of the Commission.

I have scrutinized the transcripts of these oral arguments as well as the exceptions and petitions filed by the respondents and I fail to find any new evidence of such a character as to impair the validity of the action taken by the Commission in revoking the licenses.

The Commission in its final decisions does not show which of the charges the Government has failed to prove or which the respondents have disproved. Either, in my opinion, would be a hard task, for every one of the charges is supported by an abundance of evidence in the record.

In fact, in these decisions it is admitted that solid foundation exists for affirming the revocation orders.

In the *KGKB case* (East Texas Broadcasting Co., Tyler, Tex.), the charges in effect were as follows:

(1) That control of the licensee corporation was transferred to James G. Ulmer and his wife by means of stock sales in violation of the Act;

(2) That the corporation assigned the rights granted to it by its license to James G. Ulmer and that he had exercised such rights without having secured the consent of the Commission in writing.

These charges, too, have been established by an abundance of evidence.

In this case, too, the Commission had voted unanimously to sustain its own revocation order. Nothing said or done subsequently has changed an iota of the merits of the case.

The reasoning in the Commission's decision in the *Tyler case* (KGKB) is strange and bewildering. The Commission holds, figuratively speaking, that having let five horses escape, it might as well let this one go, too.

I wish to call the attention of the Commission to its own decision of March 31, 1941, denying the application of John H. Stenger, Jr., for renewal of the license of Station WBAX at Wilkes-Barre, Pa.

In my opinion, the evidence in the Stenger case is far less convincing or damaging than the evidence in these six Texas cases.

The Commission seems to be much worried about leaving certain areas in Texas without broadcast service, if these revocation orders were affirmed.

This, in my opinion, is an unnecessary worry. It has been my experience that new stations spring up quickly without coaxing and without the need of sending out engraved invitations.

I wish I could join the Commission in the backflip it has done in these cases, for I should like to see the decisions unanimous. But I do not see how I possibly can. I presided at the hearings, I heard all the testimony of the respondents and of the Government witnesses, and my convictions cannot be altered except by the introduction of convincing evidence contradicting the record. But I fear such evidence does not exist.

In my opinion, the Commission has given a favorable signal to all and sundry who are plotting to obtain radio licenses by indirection and fraud.

I, therefore, dissent from the Commission's action in vacating the revocation orders in these cases.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matters of KXL BROADCASTERS (KXL), PORTLAND, OREG. Application for Construction Permit and Change of Operating Assignment.	DOCKET No. 5799
THOMAS R. McTAMMANY and WILLIAM H. BATES, JR. (KTRB), MODESTO CALIF. Application for Construction Permit and Increase in Power and Operating Assignment.	DOCKET No. 5800

September 11, 1940

Paul D. P. Spearman and *Frank U. Fletcher*, Washington, D. C., on behalf of applicant KXL Broadcasters; *E. C. Lovett*, Washington, D. C., on behalf of the applicants Thomas R. McTammany and William H. Bates, Jr.

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF THE COMMISSION

1. This proceeding arose upon the applications of KXL Broadcasters, Portland, Oreg., and Thomas R. McTammany and William H. Bates, Jr., Modesto, Calif., each requesting construction permits and changes in operating assignments. The Commission was unable to determine from an examination of the said applications that a grant of either of them would be in the public interest, and they were designated for hearing before an examiner duly appointed by the Commission.

2. All proper parties were notified of the time and place of said hearing and the issues to be determined thereat. The matters came on for hearing and were heard, in a consolidated proceeding, on March 6 and 8, 1940.

FINDINGS OF FACTS

DOCKET NO. 5799

3. KXL Broadcasters is the licensee of Radiobroadcast Station KXL, Portland, Oreg. This application requests authority to install new transmitter and directional antenna, to change frequency from

1420 to 740 kilocycles, to increase power from 250 watts to 10 kilowatts, to change hours of operation from sharing time with Station KBPS, Portland, to limited (WSB, Atlanta, Ga.), and to move transmitter and studio.

4. The population of Portland was 301,815 and of the State of Oregon 953,786 (1930 Census). The estimated population within the 4 millivolt-per-meter contour of Station KXL, as presently operated, is 301,815; and within the 0.5 millivolt-per-meter contour it is 357,301. The estimated population within the 25 millivolt-per-meter contour of Station KXL, operated as herein proposed, is 391,996; within the 5 millivolt-per-meter contour 521,715; and within the 0.5 millivolt-per-meter contour, excluding towns of 2,500 between 2 and 0.5 millivolt-per-meter contours, is 706,721.

5. Station KXL, operating as herein proposed with a directional antenna, will serve an area principally north and south from Portland which will extend into the States of Washington and California. There are fifteen broadcast stations rendering service to this area or to portions thereof. The city of Portland receives service from the applicant's Station KXL, which shares time with KBPS, five other Portland stations, and one station located in Vancouver, Wash. Those stations render primary service to all or the major portion of the city of Portland and its metropolitan district.

6. The operation of Station KXL, as herein proposed, would not be expected to cause objectionable interference during daytime or nighttime hours of operation to any existing radiobroadcast station operating on its present assignment, nor would objectionable interference be expected to be caused by such operation to Station KTRB, operating as proposed in its application, during daytime hours of operation.

7. During nighttime hours of operation Station KTRB, operating as proposed, would limit Station KXL to its 4 millivolt-per-meter contour, and the operation of KXL, as proposed, would limit Station KTRB, operating as proposed, to its 14 millivolt-per-meter contour. Consequently, these applications must be considered as mutually exclusive.

8. There are 19 regular broadcast stations in the State of Oregon operating on 18 frequency assignments. A grant of this application will increase the number of frequency assignments to the State.

DOCKET NO. 5800

9. Thomas R. McTammany and William H. Bates, Jr., applicants herein, are the licensees of Radiobroadcast Station KTRB, Modesto, Calif. This application requests a construction permit to change

hours of operation from daytime to limited (WSB, Atlanta, Ga.), which would permit operation after 10 p. m., P. S. T, install new equipment, increase power from 250 watts to 1 kilowatt, on its present frequency of 740 kilocycles, and change transmitter site.

10. The population of Modesto was 13,842 and of the State of California 5,677,251 (1930 Census). The estimated population within the 25 millivolt-per-meter contour of KTRB as presently operated is 14,750; 5 millivolt-per-meter contour 37,600; and within the 0.5 millivolt-per-meter contour 149,000. The estimated population within the 25 millivolt-per-meter contour of Station KTRB, operating as herein proposed, is 20,230; 5 millivolt-per-meter contour, 73,400; the 2.5 millivolt-per-meter contour, 142,300; and 0.5 millivolt-per-meter contour, 305,200.

11. Station KTRB is the only station located in Modesto, Calif., and the only station which will render primary nighttime service to the business district of the city if operated as herein proposed. Station KPO, San Francisco, Calif., 193 miles from Modesto, is the only additional station which now renders or will render both day and night service to the entire proposed service area of Station KTRB, outside of the business district of Modesto. The signal strength of this station at Modesto is approximately 2.73 millivolts. There are, in addition to KPO, 16 other stations that render service to various portions of the proposed service area of KTRB during the daytime, 5 of which render some service to various portions thereof at night.

12. The operation of Station KTRB, as herein proposed, would not be expected to cause objectionable interference to any existing broadcast station operating on its present assignment. Should this application, and the application of KXL Broadcasters, be granted and the stations operated as proposed, mutual interference would result. KTRB would be limited, at nighttime, by KXL to the 14 millivolt-per-meter contour, and KXL would be limited, at nighttime, by KTRB to the 4 millivolt-per-meter contour. Consequently, these two applications must be considered as being mutually exclusive.

13. There are 54 regular broadcast stations located in the State of California, operating on 52 frequencies. A grant of this application will not increase the number of frequency assignments to that State.

CONCLUSIONS

1. The operation of Stations KXL and KTRB, as proposed herein, would result in mutual objectionable interference and consequently these applications are mutually exclusive. The grant of one necessarily precludes the grant of the other.

2. The city of Portland now receives, in whole or in part, primary daytime and nighttime service from 8 broadcast stations, 4 of which have unlimited hours of operation. This distribution of service to the Portland area appears adequate when compared with the advantages to be gained by the residents of the city of Modesto by the grant of the application in Docket No. 5800 (Station KTRB). Such grant will enable Station KTRB to make better use of the frequency assigned to it and to render the only local primary nighttime service to all of the city of Modesto, during such additional hours as it may operate.

3. The grant of the application of McTammany and Bates and the denial of the application of KXL Broadcasters will result in a fair, efficient, and equitable distribution of radio service between the areas here under consideration, and will serve public interest, convenience, and necessity.

4. Consequently, the application of KXL Broadcasters, Docket No. 5799, should be denied and the application of Thomas R. McTammany and William H. Bates, Jr., Docket No. 5800, should be granted subject to the following condition:

That the applicants herein shall file an application for modification of construction permit specifying the exact transmitter location and antenna system within 2 months after the effective date of this order. If for any reason such application cannot be submitted within the time allowed, an informal request for extension of time must be submitted stating the necessity therefor.

The Commission, by Minute action of April 16, 1941 granted the application KXL Broadcasters (B5–P–2396) as requested, for operation on 750 kilocycles, and granted the application of KTRB Broadcasting Co. (B5–P–2631), for operation on the frequency 860 kilocycles with 1 kilowatt power, upon terms and with provisions in the alternative as follows:

(*a*) Daytime only; or

(*b*) Unlimited time provided a directional antenna is installed, subject to approval of the Commission, for the protection of other stations, and subject to the condition that, within 30 days hereof, the permittee shall submit an application for modification of construction permit specifying a transmitter site and a directional antenna satisfactory to the Commission. If, for any reason, such application cannot be submitted in the time allowed, an informal request for extension of time must be submitted stating the necessity therefor.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matters of UNITED THEATRES, INC., SAN JUAN, P. R. For Construction Permit.	DOCKET No. 4610
ENRIQUE ABARCA SANFELIZ, SAN JUAN, P. R. For Construction Permit.	DOCKET No. 5298

March 5, 1941

Fontaine C. Bradley, *Ben S. Fisher*, *John W. Kendall*, and *Charles V. Wayland* on behalf of the applicant, United Theatres, Inc.; *Edmund M. Toland* and *Alan B. David* on behalf of the applicant, Enrique Abarca Sanfeliz; *Karl A. Smith* and *Lester Cohen* on behalf of Worcester Telegram Publishing Co., Inc. (WTAG), respondent; *Elmer W. Pratt* and *Joseph F. Pratt* on behalf of Juan Piza (WNEL), respondent; *J. Harold Merrick* on behalf of Radio Corporation of Puerto Rico (WKAQ), respondent; and *Ralph L. Walker* and *Russell Rowell* on behalf of the Commission.

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF THE COMMISSION

FINDINGS OF FACT

1. This proceeding arose upon the amended application of United Theatres, Inc., for a permit to construct a new standard broadcast station at San Juan, P. R., to use the frequency 580 kilocycles with power of 1 kilowatt, unlimited time, with a directional antenna; and upon the amended application of Enrique Abarca Sanfeliz for a permit to construct a new broadcast station at San Juan to use 580 kilocycles with power of 5 kilowatts day and 1 kilowatt night, unlimited time. Hearings were held on both applications in a consolidated proceeding from April 27 through May 11, and a further hearing was held on November 20, 1939, the proceedings being conducted by a presiding officer designated by the Commission. Proposed findings of fact and conclusions were submitted by the applicants and by all the respondents, except Worcester Telegram Publishing Co., Inc. (WTAG).

2. United Theatres, Inc., the applicant herein, is a corporation organized under the laws of Puerto Rico, and is authorized under

its charter to engage in the theatre business, and to own and operate radiobroadcasting stations. The applicant presently operates 17 theatres on the island of Puerto Rico.

3. The proposed station would cost something over $32,975 to construct, which includes a transmitter, antenna system, other technical equipment, a transmitter building, labor, and engineering services. The studio space and transmitter site would be leased from others.

4. The applicant has assets amounting to $224,179.67, consisting of the following: Current assets, $4,601.25 ($4,019.21 of which is in cash); fixed assets are listed at $148,578.42, which includes $52,808.17 as value of unimproved real estate and two theatres, and the remainder represents the value of furniture and fixtures (depreciated value), a print shop, delivery wagon, and utility deposits; and other assets amount to $71,000 (of which $70,000 is carried on the books as goodwill). Its liabilities amount to $86,791.64, which includes the following: Current liabilities, $41,434.25; and fixed liabilities total $45,357.39, which includes $13,700 as notes payable, $14,500 as mortgages payable, and $17,157.39 as directors' accounts payable. Included in the fixed liabilities is mortgage indebtedness on real estate in the amount of $28,200. Foreclosure proceedings were instituted on one of the mortgages but an extension for 1 year was obtained and the proceedings dropped, with the applicant paying all expenses incident thereto. The applicant's books, as of December 31, 1938, show a net worth of $137,388.03, which includes $100,000 in capital stock and the remainder as surplus.

5. The amount, $52,808.17, shown under "fixed assets" includes the following: Unimproved real estate, located in Borinquen Park in San Juan, valued at $22,000, upon which there are outstanding a first mortgage in the amount of $8,500 and a second mortgage in the amount of $13,700, the latter being held by the Banco Popular de Puerto Rico; Monte Carlo Theatre is valued at $12,000, and has a first mortgage of $6,000 outstanding; and the Imperial Theatre is valued at $18,808.17 and is unencumbered. The amount, $70,000, carried on the applicant's books as goodwill represents the value of leases on theatre buildings and film rental contracts, but does not represent actual outlay of capital.

6. It is the plan of the applicant to pay cash for the equipment and the construction of the proposed station. There was offered in evidence a purported contract between the applicant and Rafael Arcelay de la Rosa and his wife, Consuelo Cavinero de Arcelay, wherein the latter agree to lend the applicant the sum of $30,000, if the instant application is granted. Upon objection to the admissibility of this purported contract, the presiding officer excluded it from evidence. Without passing upon the question of admissibility, it should be suffi-

cient to state that the Commission is of the opinion that it has no probative value, since competent evidence has not been offered to show that the prospective lenders are possessed of sufficient funds to carry out the provisions of the agreement. Furthermore, at the hearing it was contended on behalf of the applicant that the parties to the purported contract have agreed that the applicant shall put up as collateral for the loan, among other things, a second mortgage on the Borinquen Park property. As heretofore shown, there is already a second mortgage on this property held by the Banco Popular de Puerto Rico.

7. As heretofore shown, the applicant proposes to operate on the frequency 580 kilocycles with power of 1 kilowatt, unlimited time, with a directional antenna. At the hearing the expert testimony offered on behalf of the applicants concerning soil conductivities over the island of Puerto Rico was not in agreement. Without determining which of the conductivity values assumed is accurate or more nearly accurate, it should be sufficient to state that the proposed station would during the daytime provide service to at least 956,000 potential listeners, residing inside the predicted 0.5 millivolt-per-meter contour, and to almost 15,000 listeners at night. The proposed station would be limited at night to the 2.15 millivolt-per-meter contour by Station WDBO, Orlando, Fla., operating with power of 5 kilowatts, as authorized by the Commission on July 16, 1940.

IN RE DOCKET NO. 5298

8. Enrique Abarca Sanfeliz, the applicant herein, was born in San Juan, P. R., in 1882 and has lived there all his life except for some years spent in the United States as a student. He is a citizen of the United States. He has been engaged in business in San Juan since 1909.

9. The applicant will be the sole owner of the proposed station and will control the operating policies thereof. While the applicant has had no experience in radiobroadcasting, he expects to engage a competent staff of personnel to assist in the operation of the proposed station.

10. The applicant has total assets of $187,544.40 consisting of the following: Cash on deposit, $19,892.31; accounts receivable (collectible on demand), $12,642.77; securities (par value), $20,790.50; interest in partnership, $29,333.33; house and lot, $12,500; and undivided interest in other real estate, $92,385.49. He has no liabilities. The total cost of the proposed station is estimated at $58,470. The monthly operating expenses are estimated at $5,106. The applicant has entered into tentative contracts with 34 business firms in San Juan for the sale of advertising time over the proposed station and

$5,578.81 per month will be received therefrom during the first 6 months of operation. The applicant is willing to sell his securities (valued at $20,790.50) in order to raise the necessary funds to effect the proposed construction, but he expects to borrow up to $40,000 from a local bank.

11. San Juan is the largest city in Puerto Rico and has a population of 137,215, and the island has a population of 1,723,534. At the present time there are two broadcast stations licensed to operate in San Juan, namely, WKAQ which operates on 1240 kilocycles with 1 kilowatt, unlimited time (has a construction permit to change to 620 kilocycles with operating power of 5 kilowatts, unlimited time), and WNEL, which operates on 1290 kilocycles with power of 1 kilowatt night and 2½ kilowatts day, unlimited time (but has a construction permit to increase power to 5 kilowatts, unlimited time).

12. The applicant proposes to provide a program service designed not only for the listeners residing within the San Juan area, but also for those living in more remote communities. The program plans of the applicant indicate a favorable balance of time will be devoted to entertainment, broadcasts of a religious and educational nature, newscasts, and programs devoted to civic and governmental affairs. It will be the applicant's policy to develop local talent, and to afford the various organizations the use of the facilities of the proposed station without charge. The applicant expects to operate the proposed station 112¼ hours per week, and to devote 71½ percent of the total time to sustaining broadcasts. Some investigation has been conducted on behalf of the applicant which indicates that there is experienced professional talent in San Juan upon whom he can draw for program material. The applicant also expects to subscribe for the use of two well-known transcription libraries.

13. The island of Puerto Rico is of general rectangular shape and is approximately 84 to 105 miles in length from the eastern to western coast, and is approximately 40 miles in width. San Juan is situated on the north coast of the island approximately 30 miles west of the northeast coast thereof. As heretofore shown, the engineering witnesses who testified on behalf of the applicants were not in agreement as to soil conductivity values over the island. Based upon the lower values of conductivity assumed without passing upon the accuracy thereof, the proposed station would, during the daytime, provide primary service to at least 1,097,000 potential listeners residing inside the predicted 0.5 millivolt-per-meter contour, which includes the entire island except the southwestern portion thereof. There are 924,000 potential listeners residing inside the predicted 2 millivolt-per-meter daytime contour which includes the entire northeastern and north central portion of the island; and the pre-

dicted 10 millivolt-per-meter contour extends approximately 33 miles to the east, 18 miles to the south, and 21 miles to the west of San Juan, and 448,000 persons reside therein. Based upon the lower conlarger than the area inside the predicted 0.5 millivolt-per-meter contour of the proposed station includes an area which is substantially larger than the area inside the predicted 0.5 millivolt-per-meter contour of the station proposed by United Theatres, Inc.

14. Based upon the same conductivity values, the proposed station operating with power of 1 kilowatt during nighttime hours would be limited to the 2.15 millivolt-per-meter contour by the 5 kilowatt operation of Station WDBO, Orlando, Fla., as authorized by the Commission on July 16, 1940, and it would render service to almost 708,000 potential listeners residing inside this contour.

15. The operation of the proposed station would not cause objectionable electrical interference to the operation of any existing broadcast station.

16. The transmitting equipment the applicant expects to use is satisfactory for the operation proposed; and the transmitter site and radiating system are to be later determined, subject to the Commission's approval.

CONCLUSIONS

1. As heretofore shown, the current liabilities of United Theatres, Inc., exceed its current assets by $36,833, which indicates a weak current financial condition. Its fixed assets amount to $148,578.42 and the fixed liabilities total $45,357.39. As heretofore shown, $28,200 of the fixed liabilities represents mortagage indebtedness and foreclosure proceedings were commenced on one of the mortgages but were dropped when the applicant obtained an extension for 1 year. The amount, $70,000, carried on the applicant's books as goodwill does not represent the actual outlay of capital. The proposed station would cost over $32,975 to construct, and the applicant's plan is to pay cash therefor by borrowing $30,000. There has been no showing, by competent evidence, that the parties from whom it expects to borrow this amount are possessed of sufficient finances to effect such a loan. The question is thus presented as to whether, in the absence of such a showing, the applicant's finances are in such a condition that it could reasonably be expected to secure the funds necessary to construct and operate the proposed station. From the facts heretofore stated, and even assuming that the proposed station would not cost over $32,975 to construct, the Commission is unable to reach such a conclusion.

2. From the facts heretofore stated, we are unable to determine that the granting of the application of United Theatres, Inc. (Docket No.

4610), will serve public interest, convenience, or necessity, and are of the opinion that it should be denied.

3. The applicant, Enrique Abarca Sanfeliz, is legally, technically, financially, and otherwise qualified to construct and operate the proposed station; a diversified program service would be provided over the proposed station and the listeners residing in Puerto Rico would receive substantial benefits therefrom; the operation of the proposed station would not cause objectionable electrical interference to the operation of any existing radio broadcast station; the transmitting equipment the applicant expects to use is satisfactory; and the transmitter site and radiating system are to be determined, subject to the Commission's approval.

4. It is contended on behalf of Radio Corporation of Puerto Rico (licensee of Station WKAQ) and Juan Piza (licensee of Station WNEL), respondents, that their economic interests would be adversely affected by the operation of either of the stations proposed herein. Even if the economic interests of these respondents would be affected to such an extent that neither could continue to operate their station in the public interest, such result would not in itself constitute a proper legal ground for the denial of either of the instant applications. *Federal Communications Commission* v. *Sanders Bros. Radio Station*, 309 U. S. 470. Assuming such result were a proper ground for the denial of an application for a new station, the record does not show that respondents would be so affected, nor does it tend to show that the applicants would be unable to successfully compete with the existing stations in San Juan for commercial support.

5. Upon consideration of the entire record, we conclude that the granting of the application of Enrique Abarca Sanfeliz (Docket No. 5298) will serve public interest, convenience, or necessity, and should be granted.

6. As hereinabove stated we have reached the conclusion that the application of United Theatres, Inc., should be denied for the reason indicated. However, even if the finances of this applicant could be considered as being adequate for the construction and operation of the station proposed by it, nevertheless, from the facts of record we would still be compelled to deny the application and to grant the Abarca application, since we find that: (*a*) Abarca is better qualified financially than United Theatres, Inc.; and (*b*) the station proposed by Abarca would provide superior technical service than would the one proposed by United Theatres, Inc.

The proposed findings of fact and conclusions of the Commission were adopted as the "Findings of Fact and Conclusions of the Commission" on April 25, 1941.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of TRI-CITY BROADCASTING CO. (WOC), DAVENPORT, IOWA. For Construction Permit.	DOCKET NO. 5487

Decided May 21, 1941

Frank D. Scott on behalf of the applicant; *E. D. Johnston* on behalf of Rockford Broadcasters, Inc. (WROK); *Louis G. Caldwell*, *Reed T. Rollo*, and *Percy H. Russell, Jr.*, on behalf of Aberdeen Broadcasting Co. (KABR); *George O. Sutton* and *Arthur H. Schroeder* on behalf of Arkansas Broadcasting Co. (KLRA); and *Philip G. Loucks* on behalf of Radio Air Service Corporation (WHK).

DECISION AND ORDER

BY THE COMMISSION:

Tri-City Broadcasting Co., on November 25, 1938, filed an application for a construction permit to install a new transmitter, erect a directional antenna system for nighttime use, move to another site, and to change the operating assignment of Station WOC, Davenport, Iowa, from 1370 kilocycles, a local frequency, to the regional frequency, 1390 kilocycles (now 1420 kilocycles under the NARBA), with power of 1 kilowatt, unlimited time. The application was heard on April 28 and 29, 1939, before a presiding officer, designated by the Commission; and proposed findings of fact and conclusions were duly filed on behalf of the applicant and three of the respondents. Thereafter, on July 5, 1939, the Commission announced that, because of changes in its rules and standards permitting regional stations to operate with power of 5 kilowatts at night, further hearings would be held upon certain pending applications, including the one under consideration.

The respondents referred to above are the Arkansas Broadcasting Co., licensee of KLRA, Little Rock, Ark.; Aberdeen Broadcasting Co., licensee of KABR, Aberdeen, S. Dak.; and Radio Air Service Corporation, licensee of WHK, Cleveland, Ohio. At the time of the hearing, these stations were operating on 1390 kilocycles (the same

frequency requested by the applicant) with operating power as follows: KLRA, 1 kilowatt at night, 5 kilowatts until local sunset, unlimited time; KABR, 500 watts at night, using directional antenna, and 1 kilowatt until local sunset; and WHK, 1 kilowatt at night, 2½ kilowatts until local sunset, unlimited time. In the instant proceeding, the only question with which these respondents are concerned is the one involving the possibility of objectionable electrical interference being caused to the services of their stations by the proposed operation of WOC. The evidence adduced at the hearing clearly demonstrates that the proposed operation of WOC would not cause objectionable electrical interference to the services of said respondents' stations, as then operated, or to the service of any other existing broadcast station.

Stations KLRA, KABR, and WHK have, since the hearing, been authorized to operate on 1390 kilocycles (now 1420 kilocycles under the NARBA) with nighttime power of 5 kilowatts. From technical information available to the Commission, it appears, and we so find, that the services of these stations so operating would not be subjected to objectionable electrical interference by the proposed operation of WOC. Accordingly, we are of the opinion that no useful purpose would be served by the holding of a further hearing on the instant application or by the issuance of proposed findings of fact and conclusions.

Upon consideration of the instant application, the evidence adduced at the hearing held thereon, and other available data, we are of the opinion, and so find, that the granting of the application of Tri-City Broadcasting Co. for construction permit will serve public interest, convenience, and necessity.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matters of [1] HOBART STEPHENSON, MILTON EDGE, and EDGAR J. KORSMEYER, doing business as STEPHENSON, EDGE & KORSMEYER, JACKSONVILLE, ILL. For Construction Permit.	DOCKET No. 5779
HELEN L. WALTON and WALTER BELLATTI, JACKSONVILLE, ILL. For Construction Permit.	DOCKET No. 5870

March 26, 1941

Harry J. Daly on behalf of Stephenson, Edge & Korsmeyer; *Ben S. Fisher, Charles V. Wayland* and *John W. Kendall* on behalf of Helen L. Walton and Walter Bellatti.

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF THE COMMISSION

FINDINGS OF FACT

1. Hobart Stephenson, Milton Edge, and Edgar J. Korsmeyer, a partnership doing business as Stephenson, Edge & Korsmeyer, request a permit to construct a new broadcast station at Jacksonville, Ill., to operate on the frequency 1150 kilocycles (1180 kilocycles under the reallocation made necessary by the North American Regional Broadcasting Agreement), with power of 250 watts, daytime only (Docket No. 5779).

Helen L. Walton and Walter Bellatti, a partnership, request identical facilities (Docket No. 5870). The applications were set for hearing and were heard in Washington, D. C., on September 4, 1940, before an officer duly appointed by the Commission.

2. There is at present no broadcast station located in Jacksonville, Ill., and no station delivers a signal in this city in excess of 2 millivolts per meter, the signal strength deemed by this Commission desirable for primary broadcast reception in the business districts of a city the size of Jacksonville. A number of stations deliver a signal in this area of sufficient strength to furnish satisfactory reception in the rural areas surrounding Jacksonville.

[1] Petition for rehearing filed by WCBS, Inc., denied on July 16, 1941.

3. According to the 1940 Census, Jacksonville and Morgan County, Ill. (in which Jacksonville is located), have a population of 19,796 and 36,311, respectively. These figures show a substantial increase in the population over the 1930 Census.

4. The transmitting equipment, the antenna, and ground system proposed by each of the applicants conform to the engineering requirements of this Commission.

5. Operating on the frequency 1180 kilocycles, with power of 250 watts, daytime only, neither of the proposed stations would cause interference within the normally protected contours of any existing or proposed station, nor would it receive interference within its normally protected contours from any existing or proposed station.

6. Operating as proposed, either station would deliver a signal to the entire city of Jacksonville in excess of 25 millivolts per meter. The service area and the population expected to be served are in both cases as follows:

Contour	Radius	Area	Population served
Millivolts per meter	*Miles*	*Square miles*	
25	3.0	28	19,242
5	11.3	402	28,439
2	20.3	1,204	58,250
.5	41.5	5,420	[1] 208,200

[1] Net.

7. Jacksonville is the center of a trade area extending 35 miles to the north, 15 miles to the east, 25 miles to the south, and 35 miles to the west. According to the 1935 census of business, 259 retail establishments in the city had total sales in excess of $7,000,000, and 40 wholesale establishments had total sales slightly less than $4,000,000. The retail and wholesale sales for Morgan County were in excess of the stated figures.

8. Each applicant proposes a diversified program containing news, music, and broadcasts of educational, religious and entertainment features. Each applicant proposes to use as much live talent as possible, but estimates that approximately 40 percent of the time will be devoted to electrical transcription. Each applicant would give time free of charge to the various civic, religious, social, educational, and municipal agencies in Jacksonville and vicinity.

IN RE APPLICATION OF STEPHENSON, EDGE, AND KORSMEYER—DOCKET 5779

9. All members of this partnership applicant are citizens of the United States by birth and residents of Jacksonville, Illinois. They are affiliated with various civic, religious, social, and educational organizations in this community.

10. Hobart Stephenson is an instructor at the Illinois State School for the Blind, where he has been in charge of amateur radio work for the blind. He is the author of two books on technical matters in general use in schools for the blind and has been in charge of the construction of a device which facilitates the operation of PBX switchboards by blind persons.

11. Milton Edge for the last several years has been manager of one of the large chain grocery stores in Jacksonville.

12. Edgar J. Korsmeyer for several years has been credit manager of the Illinois-Iowa Power Company, distributor of gas and electricity in Jacksonville.

13. The net worth of each of these applicants is as follows:

Hobart Stephenson	$9,892
Milton Edge	10,128
Edgar J. Korsmeyer	42,898

14. The three partners have total cash assets of $1,504. Other assets, stocks, mortgage notes, etc. which can be converted into cash are in the amount of $5,749. The loan value of the real property owned by these partners is $25,000, over and above existing encumbrances.

15. The partners expect that the cost of their proposed station will be $8,500. They estimate that the annual operating expenses will be $16,120, and anticipate broadcasting revenue in excess of $20,000 per year.

16. The applicant firm proposes to employ competent personnel for the management and operation of the station. The firm members are presently employed, but they will devote sufficient time to the station to supervise its operations.

17. If this application is granted, it is the intention of these parties to form a corporation and assign thereto, if the Commission approves, either the construction permit or the station license.

18. Stephenson and Edge are two of the three members of a partnership which applied to the Commission in 1937 for a permit to construct a radiobroadcast station in Jacksonville. After a hearing on that application, one of the partners died and the Commission on June 6, 1939, dismissed the application without prejudice. Thereafter, on August 29, 1939, the surviving partners, together with Korsmeyer, filed the instant application requesting authority to operate the class IV station on the frequency 1370 kilocycles, with power of 250 watts, unlimited time. On December 9, 1939, they moved to amend the application so as to substitute the request for the present assignment. This motion was granted December 15, 1939.

19. Both members of this partnership applicant are citizens of the United States by birth and residents of Jacksonville, Illinois. Both are affiliated with various civic, religious, social, and educational organizations in Jacksonville and vicinity.

20. Mrs. Walton is a widow aged about 65, who, since the death of her husband, has devoted her time to her various business interests. These include a 48½% stock interest in the Jacksonville Journal Courier Co., a company publishing the Courier, an evening paper, and the Journal, a morning paper, the only newspapers of general circulation published in Jacksonville. She has a net worth in excess of $200,000, of which amount $4,500 is in cash and more than $23,000 is in marketable securities. "Mrs. Walton testified that her station would not compete with the newspaper."

21. Walter Bellatti is a practicing attorney in the city of Jacksonville. He has a net worth in excess of $100,000 of which $2,500 is in cash and more than $11,000 in marketable securities.

22. The station proposed by this applicant firm would cost $14,600. The firm members estimate that annual operating expenses would be $24,000, with operating revenue in excess of $25,000.

23. The partnership agreement between Mrs. Walton and Mr. Bellatti provides that they will remain as partners in the operation of the station for a period of 5 years from the date of said agreement, November 11, 1939.

24. If the application of these parties were to be granted, they would employ competent personnel for the operation of the station. Mrs. Walton would take an active interest in the supervision of the musical programs presented by the station. Mr. Bellatti would exercise general supervision over the station.

25. Mrs. Walton suggested to Mr. Bellatti, her attorney, the filing of this application, her stated reason being that there probably would be a radio station in Jacksonville some time "and I thought we might have it." This application was filed on November 13, 1939, several months after the application of Stephenson, Edge, and Korsmeyer.

26. This application, as originally filed, requested authority for a permit to construct a class IV station to operate on the frequency 1370 kilocycles, with power of 250 watts, unlimited time. On December 26, 1939, a short time after the application in Docket No. 5779 was amended, this application was similarly amended to request the assignment of 1150 kilocycles (1180 kilocycles under the reallocation made necessary by the North American Regional Broadcasting Agreement), 250 watts, daytime only.

CONCLUSIONS

Upon the foregoing findings of fact the Commission concludes:

1. Each applicant is legally, technically, and financially qualified to become the licensee of the proposed radio station in Jacksonville, Illinois.

2. Neither of the proposed stations would cause interference within the normally protected daytime contours of any existing or proposed station, nor would it receive any interference within its normally protected daytime contour from any existing or proposed station.

3. Where, as in this case, there are two qualified applicants seeking the same facilities, and the granting of the one precludes the granting of the other, it is necessary to select one of the two. Stephenson and Edge for some years have endeavored to obtain broadcast facilities to serve the vicinity of Jacksonville. Stephenson, Edge, and Korsmeyer filed the instant application 2 months prior to the application of Walton and Bellatti seeking the same facilities. With the granting of the application of Stephenson, Edge, and Korsmeyer, there will be added to the Jacksonville area a medium for the dissemination of news and information to the public which will be independent of and afford a degree of competition to other such media in that area. All these circumstances and acts considered, the Commission concludes that the granting of the application of Stephenson, Edge, and Korsmeyer will better serve the public interest.

The proposed findings of fact and conclusions of the Commission were adopted as the "Findings of Fact and Conclusions of the Commission" on May 22, 1941.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of TELEGRAPH DIVISION ORDER No. 12,[1] The justness and reasonableness of the ratio between the charges for ordinary and urgent messages (except press urgent messages) as prescribed in the tariffs of respondent carriers; and the existence of discriminations, prejudices, or disadvantages resulting from such ratio.	DOCKET No. 2639

Decided April 9, 1941

REPORT AND DECISION OF THE COMMISSION

Ralph H. Kimball for The Western Union Telegraph Company; *Manton Davis*, *Frank W. Wozencraft*, and *Chester H. Wiggin* for R. C. A. Communications, Inc.; *Louis G. Caldwell* and *Edward K. Wheeler* for International Communications Committee; *John H. Wharton* for Commercial Cable Company; *Beverly R. Myles* for Commercial Cable Staffs Association; and *Frank B. Warren* for the Commission.

BY THE COMMISSION

(COMMISSIONERS CASE AND THOMPSON DISSENTING; COMMISSIONER WAKEFIELD NOT PARTICIPATING):

On October 31, 1934, the Telegraph Division of this Commission issued its order (No. 12), which instituted a general investigation into (1) the justness and reasonableness of the ratio between the charges for each class of telegraph communications and the basic charge for full-rate telegraph communications, and (2) the existence of (*a*) discriminations in charges, practices, classifications, regula-

[1] See Final Order of the Commission, 8 F. C. C. 515. Bill of complaint and motion for interlocutory injunction filed by RCA Communications, Inc., on June 16, 1941, in the District Court of the United States for the Southern District of New York. On February 4, 1942, the court issued an opinion in which it concluded that the complaint should be dismissed, the preliminary injunction dissolved, and the reserve distributed by appropriate order.

On February 24, 1942, the court issued a decree dismissing the bill of complaint, dissolving the injunction and ordering a distribution of the reserve.

tions, facilities, or services for or in connection with like telegraph communication service, or (*b*) preferences or advantages to any particular person, class of persons or locality, or (*c*) prejudices against or disadvantages to any particular person, class of persons, or locality with respect to telegraph communications, whether such discriminations, preferences, advantages, prejudices, or disadvantages are direct or indirect.

Extensive hearings were held beginning on March 4, 1935, and terminating on May 10, 1935. Among the numerous subjects affecting the telegraph industry on which evidence was adduced at these hearings was the matter of the justness and reasonableness of the ratio between the charges for urgent and ordinary messages in the international service. An urgent plain language or urgent code (CDE) message is given priority over all other classes of messages, except Government messages, in transmission and delivery, the sender of the urgent message writing the paid service indicator "urgent" immediately before the address and paying double the charge for the ordinary (either plain language or code) message of the same length. Ninety percent of the urgent traffic handled by the American carriers moves between New York and European points and 80 percent of this traffic moves between New York and London.

The Western Union Telegraph Co. (hereinafter referred to as Western Union), Commercial Cable Co. (hereinafter referred to as Commercial Cables), and R. C. A. Communications, Inc. (hereinafter referred to as R. C. A. C.), appeared at these hearings in support of the justness and reasonableness of the ratio between the charges for urgent and ordinary messages. The Cable and Radio Users' Protective Committee, an association of users of telegraph service, urged a reduction in the ratio between the charges for urgent and ordinary messages. The International Communications Committee (hereinafter sometimes referred to as the "Committee") is the successor to the Cable and Radio Users' Protective Committee. This committee is an informal organization of 121 concerns consisting of 30 banks, 43 stock and commodity exchange houses, and 48 importers and manufacturing exporters. A majority are located in New York, but the membership includes concerns in most of the large cities of the United States. These concerns provide more than 90 percent of the urgent traffic handled by the American carriers.

On June 14, 1937, the Commission issued its report and order, holding that the existing ratio (2 to 1) between charges for urgent and ordinary messages was unjust and unreasonable, and that the maintenance of such ratio resulted in an unjust and unreasonable

discrimination in charges for and in connection with like communication services, and subjected the users of the urgent service to an undue and unreasonable prejudice and disadvantage. The order was directed to the Western Union only, and required that company to cease and desist "from charging, collecting, or receiving rates for urgent plain language and code messages which bear the ratio to the rates for ordinary plain language and code messages found in said report to be unjust and unreasonable." 4 F. C. C. 258.

On November 10, 1937, Western Union issued, and on November 12, 1937, it filed, its supplement No. 17 to F. C. C. tariff No. 60, effective December 12, 1937. This supplement reduced the Western Union's participation in the charges for urgent telgrams from the United States to England, France, Belgium, and Holland from double to one and one-half times the ordinary rate and, with respect to all other countries, abandoned the urgent classification. By reason of the proceedings hereinafter described, supplement No. 17 never became effective.

Part I of the order of June 14, 1937, relating to the "artificial delays" imposed upon the handling, transmission, or delivery of ordinary messages in the international service was not opposed and has become effective. Part II of the order relating to the ratio between the charges for urgent and ordinary messages is the subject matter of this proceeding.

On November 11, 1937, prior to the effective date of part II of the aforementioned order, the Western Union filed with the Commission its motion praying that the hearing be reopened and that part II of the order of June 14, 1937, be suspended pending further hearing. The motion of Western Union was joined in by Commercial Cables and R. C. A. C. The Cable and Radio Users' Protective Committee opposed the motion. The effective date of part II of the order of June 14, 1937, was postponed from time to time and on October 7, 1938, the Commission issued an order reopening the investigation instituted by Order No. 12 of the Telegraph Division, dated October 31, 1934, insofar as it related to the reasonableness of the ratio between charges for ordinaries and urgents (except press urgents), and the existence of discriminations, prejudices, or disadvantages resulting from such ratio for the purpose of taking further testimony with leave to all parties in the proceedings in Docket No. 2639 to appear and offer evidence in the premises. The hearing provided for in the order dated October 7, 1938, commenced on May 8, 1939, and was concluded on May 24, 1939. Evidence on behalf of the carriers, the Committee, and certain employee groups was submitted. A proposed report of the Commission was issued on June 5, 1940. Exceptions to

the proposed report were filed by the Committee. Briefs have been filed on behalf of the Committee and the respondents. Counsel for the Committee, the respondents, and the Commission were heard in oral argument on December 5, 1940.

It should be noted that part II of the Commission's order of June 14, 1937, did not prescribe the ratio which should be made effective by the carrier named in that order. It merely held that the existing ratio (2 to 1) between the charges for urgent and ordinary messages results in unjust and unreasonable discrimination, and undue and unreasonable prejudice and disadvantage. It should also be noted that the Committee representing the users admits that the urgent service as furnished by the carriers, parties hereto, should bear a higher rate than that charged for ordinary service. The issue is thus narrowed to the question as to whether the differential based on the 2 to 1 ratio is justified, and if not, what the proper ratio should be.

The general nature of urgent service was described in our previous report, 4 F. C. C. 258 at page 263. The Committee contends that the only additional service rendered by the carriers in furnishing urgent service, as distinguished from ordinary service, is the placing of the urgent message on top of the file for transmission ahead of other traffic. Urgent service is not used for all stock and commodity quotations and transactions between Europe and the United States for the reason that the ordinary service is sufficiently speedy for most purposes. The average speed of handling an ordinary message from the time of its receipt in the New York office of one of the carriers until it is transmitted is 1 minute and 4 seconds. Many ordinary messages are transmitted by all companies in from 1 to 3 minutes after the time of filing. In the case of a large user of urgent service, the elapsed time between filing of an ordinary message in New York and delivery in London is not much over a minute more than the elapsed time for the handling of an urgent message between the same points. The users of urgent service receive a service which amounts to more than mere priority over ordinary service. This is clearly established from the record of special employees, equipment, and methods evolved to insure extremely expeditious handling of urgent messages. The user of urgent service also is required to make substantial expenditures by way of wages of special employees, etc., in order to insure that the urgent service shall be as expeditious as required in the type of business which avails itself of the urgent service. All the expenditures of the carriers and all the attention given to urgent service would not provide the type of service which the users require if the user does not cooperate fully in providing his own personnel to insure the speed desired in connection with this service.

THE INTERNATIONAL TELEGRAPH REGULATIONS

Much evidence was presented with respect to action taken by various delegations and representatives at the International Telecommunications Conference at Madrid in 1932, and at Cairo in 1938. The ratio of 2 to 1, urgent to ordinary, was adopted at Madrid in 1932, made effective by the American carriers in 1934, and affirmed at Cairo in 1938, although representations were made at the later Conference by the countries between which the service is principally used (Great Britain and the United States) for a reduction in this ratio. The United States Government is not a party to the international telegraph regulations, and neither are any of the carriers respondents in this proceeding. Since the international telegraph regulations are not binding on either the carriers or the United States Government, they do not offer any obstacle to the prescription by this Commission of a different ratio, urgent to ordinary, than that set forth in those regulations. The bulk of the urgent traffic, which moves between New York and London, was for years handled under a classification called "preferred service" and at a rate which was one and one-fourth times the ordinary rate. The international telegraph regulations at that time did not prescribe the classification above referred to as "preferred," but provided for a somewhat similar expedited service called "urgent" service at triple the ordinary rates. Notwithstanding this situation, the United States cable carriers in the trans-Atlantic field handled traffic as "preferred" as far as London and beyond there the European carriers handled it to destination as "urgent," which conclusively establishes that the United States carriers, as a practical matter, are not required to adhere to the classifications and rates prescribed in the international telegraph regulations.

COST OF FURNISHING URGENT SERVICE

The hearing in this matter was reopened by the Commission upon the petition of Western Union, supported by the other carriers, in order to give the carriers an opportunity to submit evidence particularly upon the cost of furnishing urgent service. While they offered some evidence upon cost it has little if any probative value and fails to convince that the existing ratio of charges is supported by the ratio of costs.

At the reopened hearing each of the carriers submitted studies purporting to show the cost of handling urgent traffic. The Western Union study is based on its operations on November 15, 1938, which was assumed to be a typical day. On this day it found that 15 of its available 22 North Atlantic channels were assigned to and did actually handle some urgent traffic, 9 channels being used

for eastward traffic and 6 for westward traffic. Between the hours of 10 and 11 a. m., the peak hour for urgent traffic, 23.9 percent of the total words handled on the 15 channels referred to was urgent traffic. The carrying charges related to the 22 channels were estimated to be $3,456,468 for the year 1938. The items included in "carrying charges" are generally expense items which are fixed and do not fluctuate with the volume of business. Twenty-three and nine-tenths percent of 15/22 of the above annual carrying charges on all the North Atlantic cables was assumed to be assignable to urgent traffic. The amount thus determined is $563,247 per year.

We cannot perceive what value this study has to the present proceeding. The problem is not one of establishing an appropriate charge for urgent service, considered alone, to be derived by some scheme or percentage basis of allocating facilities used jointly by urgent and other types of service. For purposes of this proceeding, the propriety of the charges for ordinary messages has been by everyone assumed. The sole problem is, given this premise, are the increased costs sustained by the company in furnishing the urgent service and the resulting effects upon this and other services sufficient to justify the present ratio of charges. No attempt was made in this study to determine what facilities or what elements of cost in relation to those facilities could have been eliminated were urgent service abolished.

There is nothing in this study which tended to establish that adoption of the urgent classification involved maintenance of more channels than would otherwise be necessary. Indeed one of its studies tends to establish the converse. This study determined that on May 17, 1939, between the hours of 10 and 11 a. m., 171 urgent messages were handled in comparison with approximately 400 urgent messages between the same hours on November 15, 1938. The May 17, 1939, study indicated that of the nine channels assigned for eastward urgents, a maximum of five were in use during any 1-minute period for handling urgent traffic; a maximum of six were in use during any 5-minute period; and a maximum of eight were in use during any 10-minute period. At no time during the hour were all nine eastward channels in use for handling urgent traffic. If at no single moment were all channels utilized for urgent messages, then obviously it could not be claimed that certain of the channels were necessary solely in order to maintain the established speed in transmitting messages of this classification. There is nothing anywhere in the record to indicate satisfactorily that some portion of the carrying charges on the cable plant should be assigned to urgent service as a "stand by" or "readiness-to-serve" charge.

Another study submitted by the Western Union dealt with the issue. It purported to show that in the absence of urgent traffic, 4 of the 22 North Atlantic channels could be eliminated. On this basis the plant expense for handling urgent traffic was assumed to be four twenty-seconds of $3,456,468. or $628,448 per annum. But there is nothing in the study to justify the conclusion that 4 channels could be eliminated without degrading the ordinary service. And there is every reason to believe that this could not be done. Certainly the Western Union has no intention of abandoning any part of its plant if urgent service is discontinued, in the absence of some other change which would justify such abandonment. Nor is it shown that any particular plant was constructed solely on account of urgent service. The public generally is entitled to expeditious service and undoubtedly will demand continuance of the transmission of ordinary messages at the same speed as has heretofore prevailed. Furthermore, competition among the carriers will alone compel a degree of service which would make it impossible to discard existing channels.

Apart from the problem of the carrying charges on plant assumed to be allocable to urgent traffic, it was estimated that if urgent traffic were abandoned the Western Union could dispense with the services of a total of 111 cable operators, supervisors, routing aides, service clerks, customer tie-line operators, etc., at a saving in labor costs of $213,240 per annum. In addition, witnesses for Western Union stated that special equipment provided solely for handling urgent traffic involved carrying charges of $58,000 per annum and, further, that certain land lines in Great Britain could be released if urgent traffic were eliminated, which would result in a saving of approximately $24,000 per year. It was also stated that urgent traffic is one of the major reasons why the Western Union has been unable to transfer its cable operating room from 40 Broad Street, New York, to the main office at 60 Hudson Street, and that such a transfer of operations would result in an annual saving to the company of $200,000. Other expenses partly attributable to the handling of urgent traffic were said to be the salaries of engineers who devote part of their time to the urgent service and the expense of maintaining branch offices at Shorter's Court, London, and the cotton exchanges at New York and Liverpool.

But it is nowhere made clear to what extent expenses of this type could be eliminated on abolition of urgent service. And it certainly appeared that elimination of the 111 employees could be effected only at a sacrifice of the existing quality of ordinary service. Herein lies the vice of all the studies of this character made by the company. All the cost elements which tend to expedite service were too

readily assumed to be attributed to urgent service. Nowhere did they clearly make the assumption that users of ordinary service are entitled to substantially their present quality of service and on that basis proceed to determine what extra expenses were involved in furnishing the premium service. While there are unquestioned incremental expenses involved in the latter, the over-all record fails decidedly to establish them sufficient in degree to justify the existing 2:1 ratio.

The cost studies submitted by the other two carriers can be dismissed briefly. It should, however, be noted that they did not attempt, as did Western Union, to justify the prosent ratio on a plant-allocation basis, but correctly endeavored to establish incremental costs resulting from offering the premium service. The study by Commercial Cable Co. assumed that if no urgent traffic were handled, it would be able to discontinue its branch offices at Shorter's Court, and at the cotton exchanges in New York and Liverpool, with a total saving in office rentals, leased wire expenses, and wages of approximately $50,000 per year. It was further assumed that if the urgent classification were abandoned it could dispense with the services of cable operators, supervisors, messengers, tie-line operators, clerks, etc., at its terminal offices in New York, London, and Paris, with a total saving to the company of approximately $72,000 per year. In addition, it was assumed that the company would be relieved of the necessity of paying approximately $6,000 in transit taxes to the Portuguese authorities at the Azores for the passage of urgent traffic through this point.

It is apparent that if the three branch offices of Commercial Cables above referred to were to be abandoned, some other provision would have to be made for handling the traffic now handled at these offices. The estimated saving of $50,000 would therefore be reduced by the undetermined expense of some other method of handling the traffic now handled through these offices. As in the case of Western Union, it is apparent that additional operating expenses are incurred for handling urgent traffic, but it is impossible to determine with any reasonable degree of accuracy the amount of such additional operating costs.

R. C. A. C. based its cost study on the expenses which it estimated could be eliminated in its main operating room at 66 Broad Street, New York, if the urgent service were not offered. It was estimated that a total of 19 employees, assigned primarily to the handling of urgent traffic with total annual salaries of $37,352, could be eliminated. It was also estimated that 50 tie-lines now furnished to the urgent users could be eliminated with an annual saving of $3,784. The evidence

submitted by R. C. A. C. affords no basis for an exact determination of the expense which would be eliminated if urgent traffic were not handled. It is apparent, however, that patrons of R. C. A. C. would object strenuously to the withdrawal of many of the 50 tie-lines which it assumed might be eliminated, since these tie-lines are used for services other than urgent traffic.

The record establishes that nothing more than the costs associated with certain employees and tie-line facilities at the terminals of the carriers are solely attributable to urgent traffic. It is clear that if all the employees and facilities involved were to be eliminated, there would be a substantial degrading of the ordinary service, at least during the busy hours. The carriers do not contend that ordinary service is above the standards to which the public is reasonably entitled, and it is a fair assumption that a degraded ordinary service due to the elimination of tie-line facilities and operating personnel, would not adequately meet the public requirements with regard to ordinary service. If consideration is given to the employees and facilities in the New York offices which would have to be retained in any event to avoid an unreasonable degradation of the ordinary service, it is apparent that the premium from urgent service is far in excess of any costs solely attributable thereto. It is also apparent that a reduction in the ratio from 2 to 1 to 1½ to 1 would not result in a situation where the revenue from the premium on urgent service would be less than the cost solely attributable to the quality of urgency.

BENEFITS AND VALUE OF SERVICE

The Western Union position in the first hearing, as stated by its counsel, was, in effect, that the cost element in furnishing urgent service was given entirely too much weight and consideration, and that the ratio between the charges for urgent and ordinary messages (2 to 1) represents an effort on the part of the carriers to fix a rate which will confine the use of urgent service to the people who have a real need for such service, and to prevent its use becoming so general as to destroy the benefit of that service for the persons who really have need for it.

Urgent service may well be of very substantial value to the parties who have occasion to use it. Indeed, there is some testimony by the members of the committee indicating that in particular instances resort would be had to the urgent classification rather than the ordinary classification irrespective of the ratio of the charges within reasonable limits. This the carriers seek to stress in justification of the existing ratio. But the point is of very limited significance.

The ratio must be justified largely on the basis of the increased costs to the carriers in providing the higher grade of service; not on the basis of its value to any particular user, or in effect, the charge which the user can be made to bear.

Value of service has significance in the adjustment of rates in a matter of this kind only in considering the over-all effect of the rate upon the service in question and upon other services offered by the carrier, i. e., whether a proposed rate for a classification of service would increase or decrease the benefit of that particular service or of other services to the telegraph-using public. It may well be anticipated that a reduction in the urgent rates will increase the volume of traffic moving under that classification, but there is nothing to indicate that such an increase in volume will degrade the quality of urgent service nor the quality of service rendered under the ordinary classification. There is nothing in the record to indicate that the double rate now in effect is justified upon any value-of-service standpoint, but on the contrary, it is apparent that a reduction of the 2-to-1 ratio will increase the benefit of the urgent service to all users who have a need for that service without degrading the benefit of the other services.

UNREASONABLENESS OF RATIO

Despite the opportunity afforded by the reopened hearing the carriers have failed to justify the continuance of the 2-to-1 ratio with respect to urgent traffic on a basis of additional cost incurred in supplying this type of service. By comparison with the ordinary service, the additional cost involved in supplying urgent service does not appear to justify the 2-to-1 ratio for the future. Nor is the maintenance of the 2-to-1 ratio justified by the application of the value-of-service theory largely relied upon by counsel for Western Union. There is nothing in the record to indicate that a reasonable reduction in the basis for urgent charges would result in so increasing the traffic and thereby degrading the several services as to degrade the value of those services for the persons who really have need for them. On the contrary, the record does show that the maintenance of the existing 2-to-1 ratio has prevented the use of urgent service by certain persons who do have a real need for the service.

The committee takes the position that the issue here is whether the carriers can justify what they term an increase in the ratio, urgent to ordinary, made effective in 1934. We do not agree with this contention. At the time this investigation was instituted, on this Commission's own motion, the legal ratio, included in tariffs filed with this Commission, was 2 to 1; and the proceeding is not one in which the carriers are called upon to justify an increase in existing rates.

It is rather one where the Commission upon its own motion seeks to determine whether the existing charges are just and reasonable for the future or in any way violative of the provisions of the Communications Act. Our conclusion is that for the future the basis for urgent charges should be reduced.

CONCLUSION

The cost studies in this proceeding do not afford a basis for a mathematical determination of an appropriate ratio of charges for urgent messages as compared to ordinary messages. However, giving due consideration to the cost studies and to the other evidence in the record, the Commission concludes that the ratio should be reduced from 2 to 1 to 1½ to 1. Certain of the carriers in this proceeding maintained, prior to 1934, a classification of service known as "preferred." It is indicated that the "preferred" service was somewhat comparable to that now classified as "urgent." The "preferred" service was charged for on a basis, voluntarily fixed by the carriers, of one and one-fourth times the rate for ordinary service. There is no indication that the 1¼-to-1 ratio was inadequate or that it resulted in so degrading the "preferred" service as to destroy its value to users requiring extreme expedition. The tariff of the respondent Western Union Telegraph Co. (Supplement No. 17 to F. C. C. Tariff No. 60) filed with the Commission on November 12, 1937, pursuant to the Commission's report and order heretofore referred to, fixed the ratio for urgent messages at 1½ to 1 over its own lines, which is indicative of the fact that that carrier was of the opinion that this ratio was proper. Counsel for the users stated in oral argument that a ratio of 1½ to 1 would be proper from the standpoint of the users.

The Commission has given consideration to the motion of the Radio Corporation of America Communications, Inc., for further argument in this matter and considers that motion to be without merit. This has been a long proceeding and the parties have had every opportunity to bring in facts in their possession bearing upon the issues.

An appropriate order will be entered.

ORDER

At a general session of the Federal Communications Commission, held at its offices in Washington, D. C., on the 9th day of April 1941,

The Commission having considered all the evidence, the exceptions, briefs, and oral arguments in the above-entitled matter and

having issued the foregoing report and decision, which is hereby referred to and made a part hereof:

It is ordered that on and after May 5, 1941, the lawful charge for handling urgent plain messages and code messages (except press urgent messages) shall be 1½ times the charge for handling ordinary messages.

It is further ordered that on and after May 15, 1941, the Western Union Telegraph Co., R. C. A. Communications, Inc., and the Commercial Cable Co. shall cease and desist charging, collecting, receiving, or participating in charges for urgent plain-language and code messages (except press urgent messages) which bear any different or other ratio than 1½ to 1 to the charges for ordinary plain-language and code messages.

It is further ordered, that the rates to be filed pursuant to this order may become effective upon less than 30 days' notice to this Commission and to the public.

COMMISSIONER CASE dissenting:

I am unable to join in the adoption of the order of the Commission requiring a reduction in the ratio between the charges for ordinary and urgent telegraph traffic.

The majority decision properly reaches the conclusion that "it is impossible to determine with any reasonable degree of accuracy the amount of such additional costs." The additional operating costs referred to are costs solely attributable to the quality of urgency present with regard to traffic moving under the urgent rate. It necessarily follows that there is no foundation for the further conclusion of the majority "that a reduction in the ratio from 2 to 1 to 1½ to 1 would not result in a situation where the revenue from the premium on urgent service would be less than the cost solely attributable to the quality of urgency." The two conclusions are absolutely irreconcilable. There is likewise no foundation in the record and no support from any other source for the conclusion of the majority to the effect that a reduction of the 2-to-1 ratio would increase the value of the urgent service to all users. The value of the service to a user depends upon the nature of his business and his necessities in this regard. Changing the basis of charges for communication service cannot possibly affect the value of the service to the user, although it may make the service available to additional users and increase the use of existing users. The three conclusions referred to above seem to be the basis upon which the majority considers the reduction justified. None of them are supported by the record. Furthermore, there is a fundamental principle of rate making here involved which is conclusive against a reduction in the urgent rate

on the basis of the record before us. Persons who demand premium services should pay premium prices in order that the vast majority of users may receive their services at the lowest possible rates. The urgent service is of inestimable value to the limited number of users who demand it. Urgent service is an absolute essential to the operations of the arbitrageurs. In the absence of this class of user it is doubtful whether urgent service would ever have been established. Seven users of one carrier take more than 79 percent of the urgent service. One hundred twenty-one represent 90 percent of all the users of urgent service. The record is devoid of positive evidence that the existing 2-to-1 ratio has operated to restrict the use of urgent service. It is likewise devoid of positive evidence that a reduction in the ratio will result in an increase in the use of urgent service. The use of urgent service depends primarily upon the activity in security markets. If the markets are active, urgent service is used. If the markets are inactive, there is no need for urgent service and no matter what the rate the use would be extremely limited.

There is for all practical purposes no urgent traffic moving today. The majority reaches the conclusion that reparation as to traffic handled in the past is not justified upon this record. There are certain practical difficulties in connection with the application of the ratio ordered by the majority particularly in the case of radio carrier where one terminal of the circuit is in a foreign country and owned by a foreign administration. Bearing in mind that the international telegraph regulations provide for uniform application of the 2-to-1 ratio condemned by the majority, the practical aspects of the problem indicate the difficulties of securing international agreement for reduction by the United States companies concerned and the undesirability of ordering any adjustment at this time.

As the majority points out, the Users' Committee takes the position that the issue is whether the carriers can justify what the users term an increase in the rate made effective in 1934. The majority denies that this is the issue. Further, statistics relating to the average cost of urgent messages show clearly that the average cost per urgent message was less in 1938 than in 1926. It is thus clear that there is no foundation for an adjustment in the ratio based upon the contention of the users.

I agree with the conclusion in the proposed report that the record before us does not provide a satisfactory basis for disapproval of the existing ratio of 2 to 1 urgent to ordinary at this time.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of TELEGRAPH DIVISION ORDER No. 12 The justness and reasonableness of the ratio between the charges for ordinary and urgent messages (except press urgent messages) as prescribed in the tariffs of respondent carriers; and the existence of discriminations, prejudices, or disadvantages resulting from such ratio.	DOCKET No. 2639

May 27, 1941

ORDER

(Commissioner CASE dissenting.)

At a session of the Federal Communications Commission held at its offices in Washington, D. C., on the 27th day of May 1941,

The Commission having under consideration the petition of R. C. A. Communications, Inc., for rehearing and the opposition of the International Communications Committee to the petition for rehearing of the above-entitled matter and having under consideration its decision and its order of April 30, 1941, herein,

It is ordered, that the petition of R. C. A. Communications, Inc., for rehearing be, and it hereby is, denied.

It is further ordered that the Commission's order of April 30, 1941, be, and it hereby is, set aside and revoked.

It is further ordered that on and after the 1st day of July 1941, the lawful charge for handling urgent full rate and urgent CDE messages (except press urgent messages) shall not exceed one and one-half times the charge for handling ordinary full rate and ordinary CDE messages, respectively, for messages between the United States, its territories and possessions, and any point with which the transmitting or receiving carrier within the United States, its territories or possessions, maintains direct communication, including messages which may originate at or be destined to a point beyond that with which direct communication is maintained for such portion of the handling as occurs between the United States, its territories and

possessions and the point with which direct communication is maintained.

It is further ordered that on and after the 1st day of July 1941, The Western Union Telegraph Company, R. C. A. Communications, Inc., and the Commercial Cable Co. shall cease and desist charging, collecting and receiving, or participating in charges for urgent full rate and urgent CDE messages (except press urgent messages) as set forth hereinabove which bear any greater ratio than one and one-half to one to the charges for ordinary full rate and ordinary CDE messages, respectively.

It is further ordered that the rates to be filed pursuant to this order may become effective upon less than 30 days' notice to this Commission and to the public and that appropriate tariffs shall be filed.

8 F. C. C.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of [1] RADIOMARINE CORPORATION OF AMERICA, For coastal harbor stations at: WEST DOVER, OHIO, Construction Permit. WEST DOVER, OHIO, Construction Permit. BUFFALO, N. Y., Construction Permit. WEST DOVER, OHIO, Temporary Authority.	DOCKET NOS. 5447, 5547, 5675, 5674

March 5, 1941

Manton Davis, *Frank W. Wozencraft*, and *Wilson Hurt* on behalf of the applicant; *Gilbert R. Johnson* on behalf of Lake Carriers' Association; *Lee C. Hinslea* and *John T. Haswell* on behalf of Central Radio Telegraph Co.; *Horace L. Lohnes* and *Joseph E. Keller* on behalf of Donnelley Radiotelephone Co.; *Frank C. Dunbar* and *Frank C. Dunbar, Jr.*, on behalf of Lorain County Radio Corporation; *Marshall S. Orr* on behalf of the Commission.

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF THE COMMISSION

FINDINGS OF FACT

1. These matters were heard in a single proceeding before an employee of the Commission. Dockets 5547 and 5447 relate to one application for a coastal harbor radiotelephone station at West Dover, Ohio. Docket 5675 relates to an application for coastal harbor radiotelephone station at Buffalo, N. Y. Docket 5674 was concerned with certain temporary authority which was granted applicant to operate a coastal harbor station at West Dover, Ohio, under special temporary rules of the Commission. Since both the temporary authority and the temporary rules under which it was granted expired prior to the hearing, the applicant moved that it be allowed to take a default.

[1] Petition for rehearing filed by applicant denied on July 9, 1941.

2. The West Dover application requested, in addition to frequencies provided by the rules, certain frfequencies above 3000 kilocycles then available only for a different type of coastal service in connection with ocean-going vessels. On March 27, 1939, the Commission ordered that the issues presented by all such applications be separated. Accordingly, the West Dover application was docketed for two proceedings, namely, Docket 5447 relating to frequencies then allocated under the rules, and Docket 5547 relating to the request for frequencies above 3000 kilocycles. Upon the completion of public hearings preceding the Commission's report to Congress with respect to radio requirements necessary or desirable for safety purposes for vessels operating on the Great Lakes, and because of representations made at such hearings, the Commission, upon its own motion, ordered a general public hearing for the purpose of determining whether the rules should be amended to make high frequencies (between 3000 and 30000 kilocycles) available for supplementary use by coastal harbor telephone stations in the Great Lakes area. This hearing (Docket 5816) was held in Cleveland, Ohio, March 4 to 8, 1940, and the Commission's decision was issued April 13, 1940. In accordance with the decision, the rules were amended to make certain frequencies between 3000 and 9000 kilocycles available for use by Great Lakes coastal harbor stations on a restricted and conditional basis. The applicant was allowed to amend its applications so that they now conform to the rules of the Commission with respect to available frequencies.

3. The applicant was incorporated under the laws of the State of Delaware in December of 1927. It was organized for the purpose of taking over the marine operations of Radio Corporation of America and is a wholly-owned subsidiary of that company. Of the States bordering the Great Lakes, it is authorized to do business in Ohio, New York, Illinois, and Minnesota. All officers and directors of the applicant and of Radio Corporation of America are citizens of the United States. As of March 1, 1940, less than 6 percent of the common stock of Radio Corporation of America and less than 5 percent of its first preferred stock was held by foreigners. Not more than one-fifth of the capital stock of either of such companies is owned or voted by aliens or their representatives, or by a foreign government or representatives thereof, or by any corporation organized under the laws of a foreign country.

4. As of March 31, 1940, the total assets of the applicant were $1,759,324.86 and the total current liabilities were $363,873.44. The balance of assets is represented by $500,000 of capital stock, capital surplus in the amount of $500,000, and $395,451.42 designated as earned surplus. None of the assets are pledged for collateral loans or otherwise hypothecated. The position as to cash and current inventories

is such that applicant could construct, maintain, and operate the stations for which application is made without seeking cash or disposing of, or pledging, any of its assets.

5. Radio Corporation of America first entered the marine communications business on the Great Lakes about 1922 through two subsidiaries which have since been dissolved. Their activities at first were confined to the sale and servicing of ship radio apparatus. In 1925 the present radiotelegraph station at Chicago was opened and a similar station in Cleveland followed in 1926. The radiotelegraph stations at Buffalo and Duluth were opened in 1927. The applicant operates a total of 16 coastal telegraph stations, 4 of which are in the Great Lakes region. It operates about 1,000 ship telegraph stations. For a very brief period in 1939, the applicant operated coastal harbor radiotelephone stations on the Great Lakes under special temporary rules adopted by the Commission for the purpose of obtaining information to serve as a basis for revision of the permanent rules. The applicant company also develops, designs, and manufactures radiotelephone and radiotelegraph transmitting and receiving equipment for marine service. It has manufactured in the past 5 years about 525 sets of radiotelephone apparatus of some 8 different types. In the same period it has developed a total of 40 new types of marine radio apparatus which have been manufactured in approximately 6,000 units.

6. The proposed West Dover station (Dockets 5447 and 5547) would be located about 12 miles west of Cleveland at the site of applicant's present coastal telegraph station near the town of West Dover, Ohio. This site is only 12 to 15 miles from an existing coastal harbor telephone station operated by The Lorain County Radio Corporation near Lorain, Ohio. Interference would result from simultaneous use of the same frequency. However, the Commission's existing rules recognize that all ship and shore radiotelephone stations in the Great Lakes region are in the same interference area and must coordinate their operations to give satisfactory service. The limited number of available frequencies does not permit the assignment of any frequency for the exclusive use of one station.

7. The applicant would construct the proposed Buffalo station (Docket 5675) at the site of its present coastal telegraph station at that point. Although there is no other United States coastal harbor telephone station within 100 miles, it would still be necessary to coordinate the operation with that of other stations on the Great Lakes, especially in connection with the use of frequencies within the band 4000 to 9000 kilocycles. The Commission's rule 7.36 requires that the coastal station, before beginning a transmission, shall monitor the

frequencies to be used to determine whether a communication is already in progress. The applicant would conduct its operations in accordance with the rule and also suggests the possible use of an automatic busy signal. It is agreeable to entering a specific time-sharing arrangement, although the applicant's traffic manager is of the opinion that such an arrangement would result in inefficient use of circuit time.

8. In support of the element of need for the proposed stations, the applicant dwelt at some length upon the matter of its inability to continue radiotelegraph service unless it also was permitted to operate a radiotelephone service. Over the years that it has operated coastal telegraph stations on the Great Lakes, the applicant has sustained a loss of around $73,000. The company's original investment in the four Great Lakes telegraph stations was approximately $42,819. A reserve of $30,450 has been set aside, leaving an undepreciated investment of about $12,369. In the opinion of applicant's traffic manager, the loss can never be recovered if Radiomarine is not permitted to operate radiotelephone stations. This is for the reason that the trend in the Great Lakes maritime service for the past year or two has been away from telegraph toward the use of telephone, so that there are now less than sixty United States vessels using the radiotelegraph. The Company would expect to recoup some of its loss from the profits on radiotelephone service and would thus be enabled to continue the radiotelegraph service, which service it believes to be in the public interest.

9. Much of the testimony offered by the applicant dealt with the development of ship radio sets and the necessity of providing a satisfactory shore station to work with the vessels equipped with such sets. However, there is testimony to indicate that the actual intention is to provide direct communication between all ships on the Great Lakes and all telephone subscribers ashore, irrespective of the type of vessel equipment. An arrangement would be made to connect with the Ohio Bell Telephone Co. at West Dover and with the New York Telephone Co. at Buffalo. A unit charge is proposed of $1.25 for 3-minute calls to or from the local service areas of both Cleveland and Buffalo. For calls to or from points outside these areas the toll charges of the Bell Companies would be added in accordance with tariffs on file.

10. Considerable testimony was given concerning the advantages of the selective tone calling system as now incorporated in the ship sets manufactured by the applicant. It appears that by the use of this device some time might be saved in establishing communication. However this may be, it is not relevant to the quality of service rendered by any particular shore station, since the Commission's rules, in effect, require all shore stations to be so equipped that, when calling a

ship station on certain frequencies that include the Great Lakes calling frequency, it must transmit the type of signal which will actuate the particular receiving equipment known to be installed on the ship. The details of equipment and antenna construction for the proposed coastal harbor stations have not been fully decided upon, but it is stated that adequate provision will be made to provide a high quality and "fully competitive" service.

11. The applicant encountered "sales resistance" in selling or renting Great Lakes ship radiotelephone apparatus, which resistance is attributed to a belief on the part of the prospective purchaser that the company selling ship apparatus should furnish complementary shore stations to guarantee a system of communication. The applicant, nevertheless, has obtained a number of orders for ship telephone apparatus for reasons stated by its traffic manager, as follows, "by furnishing superior equipment, by demonstrating its use through experimental shore stations and by agreeing or assuring the customers that Radiomarine would establish shore station facilities as soon as governmental authority to do so had been obtained." Ship stations using Radiomarine equipment have, at times, failed to establish communication through the shore stations of Lorain County Radio Corporation. However, the evidence is conflicting as to whether this failure is due to improper operation of the shore station, or to possible unreliable functioning of the selective ringing devices under all conditions. Some evidence was admitted concerning Lorain Corporation tariff inequities that were said to have operated to the disadvantage of shipowners using Radiomarine ship equipment. These matters were considered in other proceedings, which were still pending before the Commission at the time of this hearing, but have since been decided (Docket Nos. 5658 and 5659).

12. The Cleveland area, and to a lesser extent the Buffalo area, is now served by the Lorain County Radio Corporation station, WMI, located near the city of Lorain, Ohio, some 28 miles west of Cleveland. Such service as is afforded the Buffalo area involves the use of land lines over a distance of more than 150 miles. The person-to-person land-line telephone rate between Lorain and Buffalo is approximately $1.10. Station WMI is presently licensed to operate on all of the frequencies below 3000 kilocycles provided in the rules for this service, and is also authorized, on a temporary basis, to use those frequencies within the band 4000 to 9000 kilocycles recently made available by the Commission for use under certain conditions and restrictions. An application for authority to use the higher frequencies on a regular basis was recently the subject of a hearing and is now pending before the Commission.

13. The Lorain station, WMI, has been in operation since 1934 and has been out of service only three times for a period of a few minutes. It is equipped with three transmitters which may be operated simultaneously, and frequently are so operated. An auxiliary transmitter may be immediately placed into service in the event of shut-down or failure of any one of the main transmitters. Duplicate receivers are available for each of the heavy traffic channels. Power is supplied by a commercial company and has not failed in the 6 years of operation, except in an aggregate of only a few minutes. However, the Lorain Corporation has planned for an auxiliary power supply to be provided in its new building now under construction. The new building is of fireproof construction and is large enough to house twice the present amount of equipment. Station WMI is equipped with numerous antennae of various kinds. Voice terminal equipment of special design is provided for four channels so that four calls may be handled simultaneously. The station uses all systems of calling that are in commercial use at the present time on the Great Lakes, namely, voice calling, tone-signal calling, and the "two-tone" selective ringing. Eight operators are employed with two or more on duty at all times during the season of navigation, except during the low-traffic period from 10:30 p. m. to 5 a. m.

14. With respect to available traffic, the applicant company contends that a second station in the Cleveland area would not necessarily decrease the present business of Lorain Corporation. The Radiomarine Co. believes it could create new business not now enjoyed by the Lorain Corporation and at the same time serve the "customers" who already have ships equipped with telephone apparatus manufactured and installed by the applicant. In support of this belief it was shown that the number of Great Lakes vessels of 1,000 gross registered tons and over is approximately 723, of which 485 are United States vessels and 238 are Canadian. As of June 8, 1938, some 123 of the United States vessels were equipped with wireless telegraph. Since that date, the Lorain County Radio Corporation has equipped about 49 of these vessels with radiotelephone apparatus, while the applicant has similarly equipped 17 of the vessels. There are now approximately 200 American lake vessels equipped with radiotelephone apparatus and it is estimated that of all Great Lakes vessels over 1,000 gross tons, both Canadian and United States, a total of about 600 will eventually be equipped with such apparatus. However, it was not shown that any of the prospective new business in the Cleveland area would result from a proposed coastal harbor service that cannot be rendered by the existing Lorain County station at Lorain, Ohio.

15. Some 5,000 yachts on the Great Lakes are of a size and ownership to make them potential users of radiotelephone service. The

applicant estimates that 10 percent might be considered "live" prospects for the purchase of ship equipment. It was not shown what proportion of the yachts are located in the Cleveland or Buffalo areas, although a survey conducted by the applicant indicated that considerable new business might be developed from this source.

16. Seventy-six percent of the total gross tonnage of United States commercial lake vessels of 1,000 gross tons and over is operated from offices in Cleveland, where the coal and ore exchange is located. Other shipowners maintain offices in Cleveland, although their boats are operated from different ports. Since the great majority of coastal harbor telephone traffic on the Great Lakes relates to vessel operation, it is evident that a large proportion of commercial messages will originate or terminate in Cleveland. However, another coastal harbor station in the Cleveland area would not increase the total traffic handling capacity, for the reason that the few available frequencies are not assigned on an exclusive basis but must be shared in common with all coastal harbor stations in the Great Lakes region. It is probable that there would be even some loss of "Channel time" in coordinating the service of two stations to avoid interference, as contrasted with the integrated operation of a single station. Thus, the public would be called upon to pay charges sufficient to support two stations rendering the same type of service over the same channels, and a service which could be provided just as well by one station.

17. Buffalo, N. Y., is a city of approximately 600,000 population. From the standpoint of shipment and receipt of goods and commodities the port of Buffalo ranks third on the Great Lakes with a total of 19,000,000 net tons. Of the 485 United States Great Lakes vessels of 1,000 gross tons and upward, 50 are operated out of Buffalo. Still other companies maintain offices there, although the vessel operation may be directed from other ports. Several large passenger vessels operate between Buffalo and Cleveland, Detroit, Chicago, and Duluth. In addition to lake cargoes, sea-borne commerce comes into Buffalo via the New York State Barge Canal and the Welland Canal. There are several local operations such as tugs and self-propelled gravel barges. Representatives of the various services have expressed an interest in obtaining direct marine radiotelephone communication to and from Buffalo.

CONCLUSIONS

1. The matters involved in Docket 5674 having become moot, the proceeding should be dismissed as requested by the applicant.

2. The applicant is legally, technically, and financially qualified to construct and operate the stations applied for.

3. The frequencies specified in the amended applications are available for assignment as requested.

4. Since all coastal harbor stations in the Great Lakes area must use the same frequencies, there is an unavoidable interference problem, and from this point of view the total number of stations should be kept to a minimum.

5. The Cleveland area is now served by coastal harbor station WMI of the Lorain County Radio Corporation. A second station in the Cleveland area using the same frequencies would not increase the total traffic capacity and might even reduce the channel time available for message traffic.

6. The showing that the proposed stations could be used to promote the sale of vessel equipment manufactured by the applicant is not a valid proof of need for the service. The rules of the Commission do not contemplate a coastal harbor telephone service that is dependent, for satisfactory results, upon a reciprocal operation between the coastal harbor station and vessels equipped with particular apparatus of a certain manufacturer.

7. Such improvement in service as might be expected from competition in the Cleveland area would relate principally to the development of ship apparatus, so that the benefits obtained would derive from competition between manufacturers of marine radio equipment rather than from competition between licensees of shore stations.

8. A second coastal harbor station in the Cleveland area duplicating the service of the existing station would not produce benefits to compensate for the probable disadvantages, and hence would not serve public interest, convenience, and necessity (Dockets 5447 and 5547).

9. There is a public need for the service of the proposed coastal harbor telephone station at Buffalo, N. Y. (Docket 5675).

10. Public interest, convenience, and necessity would be served by granting the Buffalo application (Docket 5676).

The proposed findings and conclusions of the Commission were adopted as the "Findings of Fact and Conclusions of the Commission" on May 28, 1941 (Fly, Chairman, not participating; Commissioner Craven dissenting in Dockets Nos. 5447 and 5547).

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of The LORAIN COUNTY RADIO CORPORATION, for coastal harbor facilities at LORAIN, OHIO (WMI), Construction Permit. LORAIN, OHIO (WMI), Renewal of License. LORAIN, OHIO (WMI), Construction Permit. PORT WASHINGTON, WIS. (WAD), Modification of Construction Permit. DULUTH, MINN. (WAS), Modification of Construction Permit.	DOCKET NOS. 5590, 5589, 5544, 5545, and 5546

March 5, 1941

Frank C. Dunbar and *Frank C. Dunbar, Jr.*, on behalf of the applicant; *Horace L. Lohnes* and *Joseph E. Keller* on behalf of Donnelley Radio Telephone Co.; *Manton Davis*, *Frank W. Wozencraft* and *Wilson Hurt* on behalf of Radiomarine Corporation of America; *Lee C. Hinslea* and *John T. Haswell* on behalf of Central Radio Telegraph Co.; *Gilbert R. Johnson* on behalf of Lake Carriers' Association; *Marshall S. Orr* on behalf of the Commission.

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF THE COMMISSION

FINDINGS OF FACT

1. These dockets were heard in a single proceeding before an employee of the Commission. Docket 5589 involves that part of the application for renewal of license of coastal harbor Station WMI, located at Lorain, Ohio, which requests authority to operate on the frequencies 6470 and 11370 kilocycles. In Docket 5590, the applicant requests authority to make changes in equipment at Station WMI and add the frequency 8585 kilocycles. In Dockets 5544, 5545, and 5546, authority is requested to make changes in equipment and add the frequency 4282.5 kilocycles at the following licensed stations,

respectively: Station WMI (Lorain, Ohio), Station WAD (Port Washington, Wis.), and Station WAS (Duluth, Minn.).

2. The frequencies 4282.5, 6470, 8585, and 11370 kilocycles were not available under the Commission's Rules and Regulations for assignment to coastal harbor stations at the time the applications were originally designated for hearing. Subsequent to the docketing of these matters, but before any hearing was had thereon, the Commission, on its own motion, ordered a public hearing (Docket 5816) for the purpose of determining the general question as to whether some frequencies above 3000 kilocycles should be made available for marine radiotelephone service on the Great Lakes to provide communication over greater distances. In a report dated April 13, 1940, the Commission concluded that its coastal harbor rules should be amended to make available for assignment to Great Lakes stations only, certain frequencies above 3000 kilocycles. The general purpose of such modification of the rules, it was stated in the report, would be to compensate for reduced range on the lower frequencies due to transmission over fresh water and the exceptional static conditions experienced during some months. In accordance with this decision, the Commission, on April 16, 1940, amended sections 7.58 (c) and 7.101 of the rules to make available for assignment to coastal harbor stations in the Great Lakes area the frequencies 4282.5, 6470, and 8585 kilocycles, in addition to the regular coastal harbor frequencies in the 2- to 3-megacycle band.

3. Of a total of 485 United States vessels of 1,000 gross registered tons, or over, operating on the Great Lakes, 320, or approximately 66 percent, have their operating offices in Cleveland. The Lorain station, WMI, is approximately 25 miles from the downtown area of Cleveland. In the month of October 1939, Station WMI handled a total of 4,342 messages between vessels and shore points, of which 3,523 originated or terminated in Cleveland. In addition to those messages handled through Station WMI, some 67 messages originating or terminating in Cleveland were handled by the other Lorain stations at Port Washington and Duluth. Of the total of 3,590 Cleveland messages, 561 originated or terminated on ships in Lake Michigan, 1,052 originated or terminated on ships in Lake Superior, and 1,085 originated or terminated on ships in Lake Huron. It is obvious, therefore, that a large percent of the messages were transmitted over distances in excess of 100 miles.

4. Station WMI, Lorain, Ohio, is regularly licensed to operate on frequencies in the 2- to 3-megacycle band. It also has temporary authority to use the frequencies 4282.5, 6470, 8585, and 11370 kilocycles. The characteristics of frequencies in the band between 2 and

3 megacycles are such that fairly reliable service at mid-day is restricted to 100 miles or less. At other times of the day the range might be greater and at nighttime the range is much greater. During the month of October 1939, over one-half of the traffic through station WMI at Lorain was handled on the frequency 6470 kilocycles. In the same period, a total of 64.8 percent of all messages at this station were handled on the two frequencies 6470 and 8585 kilocycles.

5. The frequency 4282.5 kilocycles had not been authorized for use by the Lorain stations at the time of the hearing. However, it is anticipated that the range of this frequency will average 200 miles and will to a considerable extent relieve the congestion on 6470 kilocycles. It is probable that about half the present bulk freighters on the Lakes will be equipped, eventually, to receive on the frequency 4282.5 kilocycles.

6. The Lorain station, WAS, at Duluth, Minn., furnishes a radiotelephone service on frequencies in the 2- to 3-megacycle band between Duluth and vessels on Lake Superior. Duluth is the largest port on the Great Lakes from the standpoint of tonnage handled. A large percentage of the radiotelephone traffic is in the nature of messages from vessels to dock officials and others interested in information concerning precise arrival times. It is highly desirable that this information reach Duluth several hours in advance of the arrival of the ships, and during office hours.

7. Duluth is over 350 miles from the farthest points on Lake Superior. The present reliable service range of Station WAS, when using frequencies in the 2-megacycle band, is not over 100 miles. By the use of the frequency 4282.5 kilocycles, a fairly reliable range of 200 miles might be expected, thereby increasing the service area of the station by approximately 100 miles under average daytime conditions.

8. The Lorain Port Washington station, WAD, is located about 105 miles north of Chicago on the west shore of Lake Michigan and about 25 miles north of Milwaukee, Wis. It is licensed to operate on frequencies in the 2- to 3-megacycle band. With the frequency 4282.5, the range of the station would be increased to about 200 miles, which would enable the station to give a much improved service in northern Lake Michigan. This is an area of substantial lake traffic and one that now receives only intermittent service.

CONCLUSIONS

1. There exists a need for the frequencies 4282.5, 6470, and 8585 kilocycles at Station WMI, Lorain, Ohio.

2. The frequency 11370 kilocycles is not available, under the rules, for assignment to coastal harbor stations, and the applicant has not

shown such need for the frequency at Station WMI as to warrant a waiver of the rules.

3. There is a need for the frequency 4282.5 at Station WAS, Duluth, Minn.

4. There is a need for the frequency 4282.5 at Station WAD, Port Washington, Wis.

5. Public interest, convenience, and necessity will be served by granting the applications, except for the request for 11370 kilocycles in Docket 5589.

The proposed findings and conclusions of the Commission were adopted as the "Findings of Fact and Conclusions of the Commission" on May 28, 1941.

(FLY, Chairman, not participating.)

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of THORNE DONNELLEY, doing business as DONNELLEY RADIO TELEPHONE Co., for coastal harbor facilities at LAKE BLUFF, ILL. (WAY), Construction Permit. MACKINAC ISLAND-ROGERS CITY, MICH. (WHC) (Central Radio Telegraph Co.), Construction Permit. HOUGHTON, MICH., Construction Permit. MARINE CITY, MICH., Construction Permit. MANISTEE, MICH., Construction Permit.	DOCKETS Nos. 5548, 5549, 5846, 5847, and 5848

March 5, 1941

Horace L. Lohnes and *Joseph E. Keller* on behalf of the applicant; *Frank C. Dunbar* and *Frank C. Dunbar, Jr.*, on behalf of Lorain County Radio Corporation; *Manton Davis*, *Frank W. Wozencraft*, and *Wilson Hurt* on behalf of Radiomarine Corporation of America; *Gilbert R. Johnson* on behalf of Lake Carriers' Association; *Lee C. Hinslea* and *John T. Haswell* on behalf of Central Radio Telegraph Co.; *Marshall S. Orr* on behalf of the Commission.

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF THE COMMISSION

FINDINGS OF FACT

1. All of the applications involve existing or proposed coastal harbor radiotelephone stations in the Great Lakes region and were heard by an employee of the Commission in a single proceeding. In Dockets 5548 and 5549 the applicant requests authority to use certain high frequencies above 3000 kilocycles at his existing coastal harbor stations located at Lake Bluff, Ill. (WAY), and Mackinac Island, Mich. (WHC), respectively. Dockets 5846, 5847, and 5848 involve applications for new stations at Houghton, Mich., Marine City, Mich., and

Manistee, Mich., respectively, and request authority to use all frequencies now available under the rules.

2. The high frequencies (above 3000 kilocycles) requested in Dockets 5548 and 5549 were not allocated for this service under the rules of the Commission at the time the applications were designated for hearing. However, the Commission has since made certain frequencies above 3000 kilocycles available for assignment to Great Lakes coastal harbor stations on a conditional and restricted basis. This action was taken prior to the hearing of these matters, but following a general hearing on the subject of frequencies in Cleveland, Ohio, during March 1940 (Docket 5816). The applications were amended prior to hearing to specify the frequencies provided for in the rules. In addition, Dockets 5846, 5847, and 5848 specify the frequency 2572 kilocycles and in Dockets 5548 and 5549 the applications request 6480 kilocycles and 8585 kilocycles. No testimony was offered to indicate a need for the use of these frequencies, which are not available under the rules.

3. Subsequent to the hearing on the above applications, the Commission, on December 17, 1940, granted an application for construction permit to move Station WHC (Mackinac Island) to Rogers City, Mich. It approved, on the same date, an assignment of license to Central Radio Telegraph Co., and granted the motion of Central Company (*a*) to be substituted as the applicant in Docket 5549 (above), (*b*) to dismiss Central Company's applications for a coastal harbor station at Rogers City, Mich. (Dockets 5542 and 5543), and (*c*) to incorporate in Docket 5549 (above) the record compiled in Dockets 5542 and 5543, relating to the use of high frequencies in the Mackinac-Rogers City area.

4. The applicant, Thorne Donnelley, is vice president and general manager of Reuben H. Donnelley Corporation, publishers, and a large stockholder in R. R. Donnelley and Sons, printers. In the year 1939 he paid a total income tax of $157,267.90. The firms with which applicant is connected have no interest of any kind in the Donnelley Radio Telephone Co. The large number of telephone directories printed by R. R. Donnelley and Sons for the American Telephone and Telegraph Co. represent less than 3 percent of the printing business done by that company. There are no contractual arrangements or understandings between the applicant and any other communications carriers other than connecting agreements with Illinois Bell Telephone Co. and the Michigan Bell Telephone Co. to provide land-line service to and from applicant's radio stations.

5. The applicant is the sole proprietor of licensed radiotelephone Station WAY at Lake Bluff, Ill., and, until January 16, 1941, was the licensee and sole proprietor of WHC at Mackinac Island, Mich.

He has been interested in radiotelephone since the World War and has had a telephone set on his yacht since 1928. The applicant is willing to operate the stations at a loss for an indeterminate period under the hope and belief that they will eventually make a return on the investment. In addition to a general manager, who is familiar with the construction and operation of radio equipment, the applicant employs the services of qualified radio consulting engineers from time to time for the purpose of making special studies and recommendations.

6. The applicant's general manager stated, in behalf of the applicant, that the application for a station at Marine City, Mich. (Docket 5847) would not be pressed. Accordingly, no testimony was offered concerning the need for service at this point, nor was there any testimony on other important subjects specified in the notice of hearing.

7. In support of the application for a station at Manistee, Mich. (Docket 5848), some testimony was offered concerning the need of the railroad-car ferries for radiotelephone service. It appears that these vessels are presently equipped with radiotelegraph, but that the railroads are giving serious consideration to the possibility of shifting to radiotelephone. However, a witness representing the Pere Marquette and Ann Arbor Railroads stated that their study of the problem was not complete. As to the general need for the service at this point, the applicant offered no evidence other than the volume of shipping at nearby ports as set forth in the report of the Board of Army Engineers. While the applicant did not actually abandon the Manistee application, his general manager, nevertheless, stated that he did not believe the Commission would grant the license for the reason that "we have not yet produced complete evidence that there is a need for such a station."

8. In Docket 5846 authority is sought to construct a coastal harbor station on the Keewenaw Waterway at Houghton, Mich. The waterway traverses the Keewenaw Peninsula, which extends into Lake Superior from the southern shore about midway between the east and west ends of the lake. The nearest existing United States coastal harbor station is located at Duluth, Minn., a distance of some 150 miles. There is no United States station at the eastern end of the lake, although a Canadian station is located not far from Sault Ste. Marie. The nearest United States station to the eastward would be that of Central Radio Telegraph Co. at Rogers City, Mich., on Lake Huron, an air-line distance of approximately 250 miles.

9. The largest local industry in the Houghton area is copper mining and copper refining. Shipments of refined copper will vary from

year to year but have been as high as 100,000 tons. During the last war refined copper was shipped as rapidly as possible, even to the extent of loading a 3,000-ton ship with 5,400 tons of copper. Single cargoes of copper may be valued as high as $2,500,000. The east-bound traffic out of Houghton is principally refined copper, maple flooring and dairy freight, while the in-bound, or west-bound, traffic includes package freight, coal, and automobiles.

10. Other vessels frequently go through the waterway for the purpose of avoiding bad weather outside. In the year 1938, the total number of vessels up-bound, or west-bound, was 267, and east-bound 161. Local traffic amounted to 400,998 tons valued at $5,-185,633, and through traffic of 117,326 tons of the value of $7,965,518. Total number of passengers carried was 4,028, of which 1,984 were through passengers. All vessels operating between Duluth and Sault Ste. Marie, if they do not use the waterway, will pass near Keewenaw Point some 35 miles north of Houghton. The Government is constantly improving the waterway so that it is becoming increasingly available for larger vessels. It is necessary for vessels to know the weather conditions in the vicinity of Keewenaw Point to determine when they should use the waterway, or to determine which entrance to use if the vessel is bound for a waterway port. The Houghton station would be useful in this connection although general weather conditions can now be obtained through the radiotelephone-equipped Coast Guard stations at Marquette, approximately 50 miles southeast of Houghton, and Eagle Harbor, approximately 30 miles north of Houghton near the end of the Keewenaw Peninsula.

11. The Great Lakes Transit Co. averages two ships a week into Houghton, and others of its vessels may use the waterway on account of weather. This company employs an agent at Houghton and would use the service of a coastal harbor station at that point. Radiotelephone will be installed on the vessels as soon as it is known that the company may not afterwards be required to install radiotelegraph. Vessels of other companies operate in and out of Houghton. Nevertheless, the applicant was of the opinion that the local business would not meet operating expenses of the proposed station, and that it would be necessary, therefore, to depend to some extent on traffic from vessels passing in the vicinity. The extent of such business is uncertain and would depend in large measure upon the ability of the vessels to establish communication, under the Commission's rules, with coastal harbor stations closer to the points of destination of the messages. The applicant's testimony in this connection is confusing. It was stated that if long-range communication were permitted on the Lakes, there was then the possibility

that local traffic at Houghton would not justify the Commission in granting a license. Furthermore, the applicant would not be inclined to build a station at Houghton except for the existence of section 8.50 of the Commission's Rules and Regulations, and the understanding that the radiotelephone service on the Lakes would be a coastal harbor operation. We must assume that the applicant understood the rules as they existed at the time of the hearing. There has since been no material change either in the allocation of frequencies or in the rules governing their use.

12. Transmitter sites in the vicinity of Houghton are limited by available power supply, transportation during winter months, telephone connections, interferences from copper smelters in the vicinity of Houghton and considerations of terrain. However, there are three possible sites, the most desirable being on Government property at the western end of the waterway. It was thought that a lease could be obtained, since there is already a private enterprise located on a part of the property. An alternate site was found in the vicinity of Freda about 12 miles from Houghton.

13. It is proposed to install a 10-frequency, 1000-watt output transmitter with half-wave antenna. The station will be kept open and on the air during the period of navigation and will render a coastal harbor telephone service with connection to the land-line telephone system. It is proposed to make a radio link charge of $1.25 for person-to-person calls, although it may develop that the charge will be determined on a zone basis with varying rates. The series of frequencies requested will serve to overcome "skip effect" and provide reliable communication up to approximately 200 miles.

14. The issues involved in the Lake Bluff, Ill., and Mackinac Island, Mich., applications (Dockets 5548 and 5549) have been largely determined by the Commission's report in Docket 5816, as a result of which certain frequencies above 3000 kilocycles were made available for assignment to coastal harbor stations in the Great Lakes area. These frequencies are intended to supplement the regular coastal harbor frequencies in the 2-megacycle band, which were found to afford a very limited range over fresh water. The stations offer a general coastal harbor telephone service to commercial vessels, both interlake and intralake, as well as service to yachts and small boats in the immediate vicinity of the stations. They are located near the routes of heavy through traffic movements, and the ports in the vicinity themselves account for a large volume of lake tonnage. A number of steamship companies maintain offices in Chicago, which is one of the Great Lakes traffic centers. Station WHC will continue to serve the same general area after the transmitter site is changed from Mackinac Island to

Rogers City, Mich. The station will be nearer the principal ports of call of commercial vessels. It will also be closer to ship-repair yards in the area, which have a definite need for communication over considerable distances in order that their operations may be coordinated with vessel movements.

CONCLUSIONS

1. The applicant is legally, technically, and financially qualified to own and operate the stations applied for.

2. The applicant is the sole proprietor of licensed station WAY at Lake Bluff, Ill., and, until January 16, 1941, was the sole proprietor of licensed station WHC at Mackinac Island, Mich., when the license was assigned to Central Radio Telegraph Co. The other business concerns with which the applicant is connected, namely, R. R. Donnelley & Sons, printers, and Reuben H. Donnelley Corporation, publishers, have no interest in or relation to the radiotelephone business of Thorne Donnelley, the applicant herein. Nor does the applicant have any contractual arrangements, relationships, or understandings with any other communications carriers or licensees of this Commission other than agreements for connecting his coastal harbor stations with the land-line telephone system.

3. The application for a coastal harbor station at Marine City, Mich., Docket 5847, was in effect abandoned in that the statement was made that the applicant did not desire to press the application. No evidence was offered to indicate the need for a station at this point.

4. Only very meager evidence was introduced in support of the need for a coastal harbor station at Manistee, Mich., Docket 5848, and such evidence was admitted by the applicant to be inconclusive.

5. There was shown to be a need for the service proposed at Houghton, Mich., Docket 5846.

6. The frequencies 4282.5, 6470, and 8585 kilocycles are needed at stations WAY and WHC (Dockets 5548 and 5549) in order that these stations may render satisfactory coastal harbor communication in the areas which they serve.

7. The Great Lakes region is recognized by Commission rules to constitute a common interference area with respect to the operation of coastal harbor stations. It is necessary, therefore, that the stations which the Commission licenses on the basis that they will serve public interest, convenience, and necessity, shall coordinate their operations to reduce interference to a minimum.

8. It has not been shown that public interest, convenience, or necessity will be served by granting the applications for stations at Marine City and Manistee, Mich., Dockets 5847 and 5848, respectively.

9. Public interest, convenience, and necessity will be served by granting authority to construct a station at Houghton, Mich., Docket 5846, as proposed by the applicant except for the use of the frequency 2572 kilocycles..

10. Public interest, convenience, and necessity will be served by granting the applications for authority to use the frequencies 4282.5, 6470, and 8585 kilocycles at Stations WAY, Lake Bluff, Ill., and WHC, Mackinac Island or Rogers City, Mich., Dockets 5548 and 5549, respectively. The request for the use of the frequencies 6480 and 8585 kilocycles will be denied.

The proposed findings and conclusions of the Commission were adopted as the "Findings of Fact and Conclusions of the Commission" on May 28, 1941.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of MICHIGAN BELL TELEPHONE CO., for coastal harbor stations at PORT HURON, MICH., Construction Permits. DETROIT, MICH., Construction Permits.	DOCKET Nos. 5841, 5843, 5844, and 5845

March 5, 1941

Karl F. Oehler on behalf of applicant; *Lee C. Hinslea* and *John T. Haswell* on behalf of Central Radio Telegraph Co.; *Frank C. Dunbar* and *Frank C. Dunbar, Jr.*, on behalf of The Lorain County Radio Corporation; *Horace L. Lohnes* and *Joseph E. Keller* on behalf of Donnelley Radio Telephone Co.; *Gilbert R. Johnson* on behalf of Lake Carriers' Association; *Marshall S. Orr* on behalf of the Commission.

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF THE COMMISSION

FINDINGS OF FACT

1. These dockets were heard before an employee of the Commission in a single proceeding. Two of the applications (Dockets 5841, 5843) request authority to construct a coastal harbor station in the vicinity of Port Huron, Mich., with two transmitters at separate locations. In Dockets 5844 and 5845 authority is sought to construct a similar station in Detroit with transmitters located at two locations.

2. The applicant is a corporation organized under the laws of the State of Michigan to engage in the rendition of a general telephone service. None of the officers or directors is an alien. On December 31, 1939, the applicant had assets in excess of $211,000,000 of which $488,000 was in cash, and an unappropriated surplus of more than $4,100,000.

3. The applicant's experience with the construction and operation of radio stations is confined to two portable emergency radiotelephone stations of which it is now the licensee. However, in addition to the

applicant's "transmission engineer," who by reason of education and experience is well versed in basic technical knowledge, the applicant sought and obtained and will continue to receive the advice and assistance of American Telephone and Telegraph Co. engineers familiar with the operation of radiotelephone stations.

4. It is intended that all four transmitters shall be Western Electric Co. type No. 24, which type is rated at 50 watts unmodulated carrier power. The associated receivers are to be Western Electric Co. type No. 23. These receivers will be fixed tuned, employing beating oscillators controlled with low temperature coefficient quartz crystals, and will include "codan" circuits and noise discrimination features. The transmitters will be equipped with facilities for automatic voice switching and for automatically adjusting the input speech level to the optimum value.

5. The applications have been amended, with respect to the frequencies applied for, to conform with the frequency allocations as set forth in the present rules of the Commission. Since there is no request for use of the high frequencies (4000 to 9000 kilocycles), which were recently made available for assignment on a restricted basis, the question of interference with existing stations is confined to the 2-megacycle band. Under the rules of the Commission, the Great Lakes constitute a common-interference area and the operation of the various stations must be coordinated so as to avoid interference and make the most effective use of the frequencies assigned. The applicant gave detailed testimony concerning plans for avoiding interference, which will include facilities for providing the same kind of busy signal that has been used at several of the Bell system coastal harbor stations on the seacoast, and expressed its willingness to provide other safeguards if experience shows that it is necessary or desirable.

6. The air-line distance between Detroit and the nearest existing coastal harbor station, Station WMI at Lorain, Ohio, is 74 miles. The nearest station in the opposite (northwesterly) direction is about twice that distance. Some service is presently afforded the Detroit area through the medium of Station WMI and the land-line connections to Detroit. However, satisfactory communication by this means with vessels having only low frequency (2000–3000 kilocycles) equipment would be restricted to vessels on Lake Erie.

7. The proposed system is designed to render a dependable quality of service to a relatively limited area ranging from a point just north of Forrestville on Lake Huron to a point just south of Monroe on Lake Erie, including the St. Clair River, Lake St. Clair, and the Detroit River. This is a stretch of lake and river of about 140–150

miles. Connection will be made to land lines at Detroit so that service can be given between any ship in the service area and any telephone connected to the land-line system. Regular ship-to-shore, two-way communication is proposed at a basic rate of $1.50 for 3 minutes with an overtime rate of 50 cents per minute. This charge would be applied to a communication between any ship within approximately 200 miles of Detroit and any telephone in Detroit or its surrounding suburban exchanges. If the ship were beyond the 200-mile limit the initial rate would be $3 and the overtime rate $1. The regular land-line person-to-person rate will be added to the radio-link charge when the land telephone is located outside the Detroit area. One-third of radio-link charge will be returned to the vessel operator. It is proposed to render a dispatch service by means of a special-toll terminal on the subscriber's premises connected with the marine operator's switchboard position. A special rate is to be quoted for such messages where they are large in number and of relatively short duration. However, the Commission makes no finding at this time upon the lawfulness of the rates proposed, such matters being always subject to adjustment.

8. The population of the city of Detroit, proper, is about 1,725,000. The port of Detroit comprises some 30 miles of waterfront with approximately 125 waterfront facilities including two drydocks. In 1938 the receipts at and shipments from the port represented about 10 percent of the tonnage on the Great Lakes. However, about 80 percent of the freight traffic on the Lakes utilizes the Detroit waterway. Some of the largest passenger lines have their home ports at Detroit. There are 83 commercial vessels (including 19 large barges) of United States registry and 13 of Canadian registry having home ports within the proposed service area. It is expected that 40 of these vessels will be equipped with radiotelephone within 5 years if the proposed service is inaugurated. There are some 5,369 pleasure craft in the proposed service area of which about 3,800 are located in the local Detroit area. An investigation of the possibilities in this field indicated that about 200 of such craft would install radiotelephone over the next five years. In addition, there are 69 commercial fishing craft within the service area.

CONCLUSIONS

1. The applicant is legally, technically, financially, and otherwise qualified to establish and operate coastal harbor telephone stations as proposed in the application.

2. The service proposed to be furnished is a public coastal harbor telephone service interconnected with the land-line telephone system.

It is intended, primarily, to afford a reliable service within a limited area of 50 to 75 miles from Detroit and Port Huron for pleasure craft, commercial vessels having home ports in the area, and commercial and pleasure vessels using the Detroit waterway in transiting the Great Lakes.

3. There is a need for the proposed service.

4. The frequencies requested may be authorized pursuant to law and regulation.

5. Satisfactory arrangements will be made for cooperative use of the frequencies to reduce interference to a minimum.

6. The applicant will offer two classes of service, a vessel-dispatch service and the regular ship-to-shore service.

7. Public interest, convenience, and necessity will be served by granting the applications herein.

The proposed findings and conclusions of the Commission were adopted as the "Findings of Fact and Conclusions of the Commission" on May 28, 1941.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of PIERCE MARINE CORPORATION, For permit to construct coastal harbor telephone station.	DOCKET No. 5875

April 23, 1941

L. Livingston Pierce on behalf of the applicant; *Horace Lohnes* and *Joseph E. Keller* on behalf of Thorne Donnelley, doing business as Donnelley Radio Telephone Co.; *Marshall S. Orr* on behalf of the Commission.

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF THE COMMISSION

FINDINGS OF FACT

1. This matter was heard before an employee of the Commission on November 4, 1940. Proposed findings of fact and conclusions were filed by Thorne Donnelley, intervener, but none were filed on behalf of the applicant.

2. Authority is requested to construct a coastal harbor telephone station at Youngstown, N. Y., on Lake Ontario to use the frequencies 2182, 2514, 2550, and 2582 kilocycles. The frequencies are available for this service under the rules of the Commission.

3. The applicant, Pierce Marine Corporation, was incorporated in 1933 under the laws of New York State. All of the officers are United States citizens by birth. The stock of the corporation is owned by its president, L. L. Pierce, and by the estate of his father. The corporation is primarily engaged in operating a boathouse and boatyard for the sale of boats and the servicing and storage of yachts and other small craft, but it operates, also, two 25-foot motor cruisers in a ferry service across the Niagara River, and a towboat service for emergency work. The articles of incorporation were not offered in evidence nor was there other proof that the corporation is authorized to engage in the communications business.

4. A financial statement as of October 31, 1939, shows assets amounting to $42,175.06 and liabilities of $39,894.22. The net worth of $2,280.84 appears to be represented by outstanding capital stock in the amount of $15,000. Cash on hand was $4.32. There was testimony to the effect that the 1940 statement would show a better financial position due to an increase in new boat sales.

5. The applicant is not now engaged in the communications business and has had no experience with the operation of radio stations, except for the radiotelephone installations on its ferries and towboats. Nor was it shown that the president or other officer or employee of the applicant was possessed of any technical or practical knowledge of the technique of construction and operation of a commercial radio station. However, the applicant has retained a qualified radio engineer in a consulting capacity.

6. It is proposed to install a standard RCA transmitter, type ACT-150. Receivers would be provided for all channels, together with terminal equipment consisting of a hybrid coil for duplex operation, and a full complement of auxiliary equipment such as volume indicators, level indicators, volume limiter, etc. The cost of the proposed equipment is estimated to be about $3,000. Another $2,000 has been allocated for construction of quarters on top of the existing boathouse. Annual maintenance was estimated at $3,500, which would appear to be low for the type of service proposed, since it includes the salary of three first-class radio operators.

7. As a result of tests conducted with 50-watt boat equipment, the applicant's consulting engineer is of the opinion that under normal conditions the proposed 150-watt transmitter would afford communication with vessels in any part of Lake Ontario. However, he recognizes that conditions may exist "that make it impossible to do the things that you want to do at all times." The station would employ three first-class operators and render service 24 hours a day during the season of navigation. It is the present intention to establish connection with the land-line telephone system. Rates have not been definitely determined although a charge of $1.50 for the radio link is contemplated for person-to-person calls.

8. It is evident that the applicant does not desire to enter the communications business, as such, but is interested in the radio station only to the extent that the service to boat owners may attract business to its boat yard and dock. The applicant's president stated that he had not made any estimate of revenue and had not the slightest idea of the number of calls that might be anticipated. He further testified that he did not believe the station itself would maintain a profit, but he desired to render the service to his customers and it was his belief that

it would indirectly bring him business. He believes the station should break even, but states that, "After all, our business in the first place is the boat business. If we can render a service to our yachtsmen, it will indirectly bring us a return. * * *"

9. The United States Engineers' records of 1939 show that there were 92 yachts based in the Youngstown area. Some of the yachtsmen have requested the applicant to obtain a public coastal station so that they can have contact with shore at all times. The applicant evidenced but little interest in serving commercial vessels and offered no direct testimony on the subject.

10. There are not now any United States coastal harbor stations on Lake Ontario. Some service may be obtained through Canadian stations, but it is said to be unsatisfactory; first, because the stations are busy with commercial telegraphy and only answer radiophone calls about half of the time; and, secondly, the service is not direct communication by phone with the offices and homes of the yachtsmen. A temporary station in Buffalo, using 100 watts power, has not afforded satisfactory communication. However, the Commission has recently released a proposed report (Radiomarine Corporation of America, Docket 5675) approving an application for a permanent station at Buffalo, N. Y., to use 400 watts power. This station would be located about 30 miles from the site of applicant's proposed station and should render a satisfactory service in the area. The telephone rate between Youngstown and Buffalo is 25 cents. However, most of the boat owners reside in Buffalo, Lockport, Niagara Falls, and other places at a distance from Youngstown, so that there appears to be little choice in the matter of land-line charges as between a station located at Youngstown and one located at Buffalo.

11. Under the rules of the Commission all coastal harbor stations on the Great Lakes must use the same frequencies. It is recognized that the region constitutes a common interference area, and for this reason, the total number of stations should be kept to a minimum.

CONCLUSIONS

1. It has not been shown that the applicant is legally and financially qualified to construct and operate a radio station for the purpose of engaging in a common carrier coastal harbor telephone service. Nor does it appear that any of the applicant's officers or employees are qualified by training or experience to assume the technical responsibilities involved in the construction and operation of such a station. However, the technical deficiency would be largely overcome by retaining a qualified engineer in a consulting capacity.

2. The applicant is not particularly interested in operating a communication service except insofar as it may serve to promote goodwill and attract business to its boatyard and dock.

3. The evidence concerning the commercial need for the proposed service is very sketchy and unconvincing and it is impossible to make any satisfactory deductions therefrom with respect to the volume or character of traffic to be expected. Although the service now afforded the area is unsatisfactory, it is probable that the situation will be greatly improved through the construction of a 400-watt coastal harbor telephone station at Buffalo, N. Y., for which an application was tentatively approved by the Commission in a proposed report issued March 6, 1941 (Docket 5675).

4. It would not serve public interest, convenience, or necessity to grant this application.

The proposed findings and conclusions of the Commission were adopted as the "Findings of Fact and Conclusions of the Commission" on May 27, 1941.

8 F. C. C.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of
Investigation of the enlargement by the SOUTHWESTERN BELL TELEPHONE CO., of the Kansas City Exchange area.

DOCKET No. 5672

May 28, 1941

E. W. Clausen on behalf of the respondent, Southwestern Bell Telephone Co., 1010 Pine Street, St. Louis, Mo.; *James H. Linton* on behalf of the Missouri Public Service Commission; *Harold Medill* on behalf of the State Corporation Commission of Kansas; *John E. Benton* on behalf of National Association of Railroad and Utilities Commissioners; *James A. Kennedy* and *Frank B. Warren* on behalf of the Federal Communications Commission.

REPORT OF THE COMMISSION

This proceeding arises upon motion of the Commission for an investigation concerning the failure of the Southwestern Bell Telephone Co. to file with this Commission certain telephone message rates applicable to interstate traffic in the Kansas City area. Prior to July 1, 1938, the Southwestern Bell Telephone Co., hereinafter referred to as the company, filed with this Commission certain tariffs canceling interstate message toll telephone rates applicable to calls between suburban communities contiguous to Kansas City, Mo., and Kansas City, Kans. The cancelation was effective July 1, 1938. On June 29, 1938, the Commission directed that an investigation be made with respect to the cancelation of the rates mentioned. Subsequently, the company was advised that, in the opinion of the Commission, the rates covering the interstate toll messages should be included in tariffs filed with this Commission. The com-

[1] Petition for rehearing filed on June 26, 1941, by Southwestern Bell Telephone Co., denied on July 9, 1941. Complaint filed by Southwestern Bell Telephone Co. on August 19, 1941, in the District Court of the United States for the Western District of Missouri. On February 3, 1942, the Government filed a motion for summary judgment. On May 28, 1942, the Court decided that the Commission had no jurisdiction to regulate interstate interzone message rates in the Kansas City District Exchange Area of the Southwestern Bell Telephone Co. (45 Fed. Supp. 403.)

pany requested a hearing before this Commission. The request was granted, and the hearing was held October 9, 1939.

The State Corporation Commission of Kansas and the Public Service Commission of Missouri were requested to cooperate with this Commission in disposing of the question presented. They cooperated in preparing a stipulation, which was incorporated in the record. The only other evidence received at the hearing was the testimony of an operating official of the company covering certain practical operating characteristics of the traffic moving under the cancel rates.

The Southwestern Bell Telephone Co. is a carrier, as defined in the Communications Act, doing business in the States of Kansas and Missouri, engaging in interstate communication service between Kansas and Missouri and particularly within the area described in respondent's tariffs on file with the Kansas and Missouri Commissions as the "Kansas City District Exchange Area."

A proposed report in this proceeding was issued on July 26, 1940. Exceptions to this report and brief in support of the exceptions were filed by the Southwestern Bell Telephone Co. Exceptions were also filed by the Kansas Corporation Commission. Counsel for the company and the general solicitor of the National Association of Railroad and Utilities Commissioners were heard on oral argument. All of the evidence in the record, the briefs, and oral arguments have been carefully considered in reaching the conclusions herein expressed.

Kansas City, Mo., and Kansas City, Kans., are contiguous municipalities and have long been included in the same telephone-exchange area. The exchange rates for these cities have never been on file with any Federal regulatory authority, and the matter of filing rates for exchange service is not an issue in this proceeding. As the cities expanded and developed, certain suburban communities contiguous to them were first supplied with telephone-exchange service on a limited basis whereby a subscriber in any one of those suburban communities had access to other subscribers in the same community under his exchange flat rate, and all calls to other suburban communities or to the cities named were handled as toll messages and charged for on a per-message basis. The rates for such interstate toll messages were formerly on file with this Commission and are the rates which were canceled effective July 1, 1938. Some of those communities have been absorbed into one or the other of the two cities named and are now included within the exchange areas of Kansas City proper. The suburban communities which are involved in this proceeding have been, until July 1, 1938, receiving limited service on the basis above described.

Effective July 1, 1938, the company, with the approval of the Kansas and Missouri Commissions, created an enlarged Kansas City district

exchange area, which embraces Kansas City, Mo., Kansas City, Kans., and a number of surrounding contiguous communities located either in Missouri or Kansas. Tariffs filed with the Kansas and Missouri Commissions provide for alternative service throughout this district exchange area whereby a subscriber in any one of these suburban communities may obtain either:

(1) Zone service which permits calling at flat rates to customers in the originating zone only, with interzone message rates applying on all calls to other zones; or

(2) District (extended area) service permitting residence customers to call at flat rates to all customers in the originating zone and the Kansas City zone and those business and residence customers taking district service in all other zones. For business customers, the district service includes unlimited service to all customers in the originating zone and an allowance of 20 messages per month (additional calls at 4 cents each) to all customers in the Kansas City zone or to those customers taking district service in all other zones. For both business and residence customers, interzone message rates apply on all calls to customers taking zone service in other suburban zones.

In the Kansas City zone, only one type of customer service is offered, providing, at flat or message rates, service to all customers in the Kansas City zone and to those customers taking district (extended area) service in all other zones. Interzone message rates apply on all calls to exchange customers taking zone service in the suburban zones.

The matter of filing the rates described in item (2) above is not an issue in this proceeding. The issues cover only the filing of the interstate interzone message rates referred to in item (1) formerly filed with this Commission as message toll rates. These are the rates which the Commission requested the company to file and which the company contends that it is not required to file with this Commission.

It is apparent that the only real change effected on July 1, 1938, was to add the service described under item (2), since that described under item (1) had been available for many years. The availability of the item (2) service reduces the number of toll messages transmitted in connection with the item (1) service, but does not change the nature of that service. In transmitting interstate messages between zones in the district exchange area, the operating procedure was the same after July 1, 1938, as it was before. The method of billing and collecting for these item (1) messages is the same as before July 1, 1938. Prior to July 1, 1938, these interzone calls were classified as "message toll telephone service" in toll tariffs on file with this Commission. Subsequent to July 1, 1938, these same calls were

included under the classification "interzone message service," and charges therefor are included only in tariffs on file with the Kansas and Missouri Commissions. It appears that this change of name and a decrease in the volume of the traffic are the only changes which occurred with relation to this service.

The broad grant of authority to this Commission is contained in sections 1 and of the Communications Act, section 1 of which reads in part:

> For the purpose of regulating interstate and foreign commerce in communication by wire and radio * * * there is hereby created a Commission to be known as the Federal Communications Commission, which shall be constituted as hereinafter provided and which shall execute and enforce the provisions of this act.

Section 2 states:

> The provisions of this act shall apply to all interstate and foreign communication by wire or radio * * *.

Section 221 (b) of the Communications Act reads as follows:

> Nothing in this act shall be construed to apply, or to give the Commission jurisdiction, with respect to charges, classifications, practices, services, facilities, or regulations for or in connection with wire telephone exchange service, even though a portion of such exchange service constitutes interstate or foreign communication, in any case where such matters are subject to regulation by a State commission or by local government authority.

Telephone exchange service is defined in section 3 of the Communications Act as follows:

> "Telephone exchange service" means service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge.

The Communications Act contains a broad all-inclusive grant of authority to this Commission over all interstate communication by wire or radio. Section 221 (b) is an exception to, or limitation upon, this broad grant. Giving it its broadest possible meaning, consideration of the definition of "telephone exchange service" in section 3 of the act necessitates the conclusion that the service furnished under the interstate interzone message rates in the Kansas City extended exchange area is not within the exception contained in section 221 (b). It is not intercommunicating service of the character ordinarily furnished by a single exchange and which is covered by the exchange service charge.

The contract entered into by a subscriber for telephone exchange service in the Kansas City area includes and involves all the provisions of the applicable tariffs of the carrier. This is a reasonable

interpretation of the whole agreement, express and implied, between the subscriber and the company. The subscriber, however, contracts for a particular type of exchange service. He also agrees to pay the lawful rates for toll service not covered in his contract for exchange service. It would be just as logical to say that all toll rates in the United States are included in the subscriber's contract for exchange service as to say that a subscriber for limited or zone service in one of the Kansas City zones has included in his contract for exchange service the toll rates covering the interzone messages.

The distinction between extended area measured exchange service messages and the interzone messages referred to in this proceeding is very clear. Measured service is a common and recognized method of charging for exchange service and contemplates a flat minimum charge with a specified number of messages included therein. Messages in excess of the minimum number are charged for at a specified rate per message, but all the messages must be within the same area as that covered by the minimum charge for exchange service. The interzone messages referred to in this proceeding terminate outside the local zone exchange area covered by the flat zone exchange rate.

From the standpoint of the subscribers in the suburban communities who take local or zone service described under item (1) above, the zone exchange rate only covers service to other subscribers in the local zone in which they live, and the message rates are designed to cover service between the local or zone exchanges within the district exchange area. The mere fact that the zone exchange area is within the geographical limits of a larger district exchange does not affect the nature of the service furnished under the interzone interstate message rates. It is not "service * * * which is covered by the exchange service charge."

Service rendered in interstate commerce between the suburban communities contiguous to Kansas City under the interzone message rates which became effective July 1, 1938, is in all respects identical with that furnished prior to July 1, 1938, under the message toll rates then on file with this Commission. It should not be assumed that carriers subject to the Communications Act could, by merely changing the label on a particular class of service, bring such service within the exception in section 221 (b), thus eliminating the necessity of filing rates under the provisions of section 203.

CONCLUSIONS

It is our conclusion that the present rates covering interstate telephone toll messages between zones in the Kansas City district exchange area, designated as "message toll rates" in tariffs formerly on file with this Commission, and now designated as "interzone message

service" by the Company in tariffs on file with the Kansas and Missouri Commissions, should be included in tariffs on file with this Commission, in accordance with the requirements of section 203. An appropriate order will be entered.

ORDER

(Commissioner PAYNE not participating.)

At a general session of the Federal Communications Commission held at its offices in Washington, D. C., on the 28th day of May 1941.

Pursuant to the conclusions stated in the foregoing report, which is hereby referred to and made a part hereof.

It is ordered that Southwestern Bell Telephone Co. file with this Commission interstate "interzone message rates" presently charged and collected by the company for interstate service furnished between zones in the Kansas City district exchange area, which service was formerly covered by rates on file with this Commission in tariffs designated as follows:

Southwestern Bell Telephone Co., F. C. C. No. 3.
First revised pages 20 and 21.
Southwestern Bell Telephone Co., F. C. C. No. 7.
Third revised page 174.
Fourth revised page 182.
Second revised page 221.

It is further ordered that the rates herein referred to shall be filed before June 30, 1941, pursuant to the requirements of section 203 and in accordance with this Commission's Rules and Regulations (pt. 61).

CASE AND CRAVEN, COMMISSIONERS, dissenting:

We believe that under any reasonable interpretation of section 221 (b) of the Communications Act, rates for telephone service within the Kansas City exchange area, as enlarged on July 1, 1938, are not properly within the jurisdiction of this Commission.

Section 221 (b) of the act specifically excludes this Commission from exercising any authority whatsoever with respect to "charges, classifications, practices, services, facilities, or regulations for or in connection with wire telephone exchange service." The language of the Act is specific and plain. The phrase "in any case where such matters are subject to regulation by a State commission or by local governmental authority —" in section 221 (b) is seized upon to urge a strained construction of the paragraph as a whole, which would nullify its meaning. It is further assumed that, under the Constitution, no purely State authority could be given jurisdiction over interstate commerce in the nature of telephone exchange service. But the hearings on the

Communications Act show clearly that the reference in Section 221 (b) is to the State regulatory commissions as then constituted. The paragraph was suggested by the general solicitor for the National Asscciation of Railroad and Utilities Commissioners. A witness for the Iowa Independent Telephone Association suggested that the quoted phrase be omitted since, in his opinion, the Federal Commission should not have jurisdiction even where there was no local regulatory authority. Iowa has no local or State authority for the regulation of telephone rates. No one questioned his understanding of the meaning of the quoted phrase.

It is not for this Commission to question the action of Congress as being unwise or even unconstitutional. The intent of Congress is plain.

No distinction should be drawn between the flat rate charges for exchange service and the message rates between zones in the enlarged exchange area. The interzone message rates are within the meaning of "exchange service" under any commonly accepted construction of this phrase at the time of the passage of the Communications Act. Exchange service is furnished within an area including interconnected central offices where the community of interest indicates the desirability of flat rate service throughout such an area. It is shown in this record that the enlargement of the Kansas City area was sponsored by the State Commissions of Kansas and Missouri. The retention of message rates and limited or zone service within the enlarged area is merely an incident and a very minor one in the general provision of expanded flat rate service within the entire exchange area.

We are not here confronted with a situation where the Company seeks to deprive this Commission of its jurisdiction over what is essentially toll service between communities or cities through an unwarranted and wholly fictitious expansion of the exchange area beyond the limits consonant with any recognized measure of community interest. The Census Bureau provides a test for measuring community of interest as a basis of ultimate expansion of exchange areas. If and when the operating telephone companies seek to go beyond the accepted limitation of community interest adaptable for flat rate exchange service, we are in position to take whatever action may be appropriate at that time. This is not such a case, nor are we warranted in assuming that we will ever be faced with such a case. The history of exchange area development to date does not give color to such a possibility but rather negatives it. Expansion of an exchange area has heretofore coincided with or lagged behind (never preceded) public demand and has always been well within

the commonly accepted limits of metropolitan areas as defined by the Census Bureau.

There is a discernible and practical difference in the operations of any telephone company within an exchange area and those between communities which have not developed the community of interest which justifies their inclusion within the same exchange area. Community of interest between communities served by different central offices develops slowly and eventually reaches the point where it justifies the elimination of the toll board originally employed to handle messages between the communities, even though these messages continue to be charged for as toll traffic during the transitional period. Ultimately the combined effect of public demand and economy of operation results in the establishment of an enlarged exchange area and the elimination of toll traffic as to most subscribers, who will take the flat rate enlarged area exchange service. A few may prefer, at least for a time, to remain as limited subscribers; confined, under their exchange rate, to an area roughly corresponding to the original area served by the local central office. The relatively insignificant number of calls by this limited class of subscriber between zones in the enlarged area is purely incidental in a very minor way to the operation of the whole area as an exchange. The development of an exchange area is not an instantaneous proposition and it is fruitless to make much of the fact that there is no change in actual operations with respect to the limited number of interzone messages immediately before and after July 1, 1938. On July 1, 1938, the community of interest and volume of traffic had reached the point where it was treated in all respects, except billing, as exchange traffic is usually treated.

Telephone service within a single metropolitan area, regardless of State lines, has been recognized by the Congress as a local problem. It is in fact a local problem, both technically and socially. Congress has further recognized the desirability of leaving the matter of local exchange rates in the hands of State or local authorities. There is nothing in this record which indicates the desirability of an attempt on the part of this Commission to inject itself into these purely local problems. The State Commissions concerned are satisfied of their authority to fix the charges for subscribers in their respective States. The company does not contest their jurisdiction. Hence the jurisdiction of the States is unchallenged. This Commission has no grounds whatsoever upon which to seek the extend its authority beyond the plain intent of the Congress.

The investigation should be discontinued.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of THE EVENING NEWS ASSOCIATION (WWJ), DETROIT, MICH. For Modification of Construction Permit.	FILE No. B2–MP–1132

Decided June 3, 1941

DECISION AND ORDER ON PETITION FOR REHEARING

BY THE COMMISSION:

On May 17, 1940, The Evening News Association (WWJ), Detroit, Mich., made application for a construction permit (B2–P–2880), requesting authority to make changes in transmitting equipment, increase power from 1 kilowatt to 5 kilowatts at night on the frequency 920 kilocycles, and install directional antenna for nighttime use. This application was granted by the Commission without hearing on October 15, 1940, on condition that no construction permit would be issued until after The Evening News Association (WWJ) had filed, and the Commission had approved, an application for modification of construction permit specifying the exact directional antenna system to be used.

On December 13, 1940, pursuant to the Commission's grant of October 15, 1940, The Evening News Association (WWJ) filed an application for modification of construction permit seeking approval of directional antenna for nighttime use (B2–MP–1132).

On January 21, 1941, Drovers Journal Publishing Company (WAAF), Chicago, Ill., made application for construction permit to increase hours of operation from daytime only to unlimited time, with power output of 1 kilowatt, on the frequency 920 kilocycles using directional antenna at night. This licensee now operates on the frequency 920 kilocycles with 1 kilowatt power daytime only.

On January 28, 1941, the Commission granted without hearing the application (B2–MP–1132) of The Evening News Association (WWJ) for modification of construction permit approving the proposed directional antenna.

On February 17, 1941, Drovers Journal Publishing Co. (WAAF) filed the instant petition for rehearing directed against the action

of the Commission January 28, 1941, granting the application of The Evening News Association (WWJ) for modification of construction permit.

Petitioner claims to be aggrieved and its interests adversely affected in that (1) "the proposal of WWJ may render the [proposed] nighttime operation of WAAF impractical from an allocation and economic standpoint, and thus substantially lower the value and future earnings of petitioner's station" and (2) "Assuming the nighttime operation of WAAF, in spite of the interference from WWJ as proposed, the restrictions to nighttime coverage of WAAF imposed by WWJ would substantially lower the value and future earnings of petitioner's station." Petitioner alleges that the impairment to Chicago service resulting from the WWJ proposal is unnecessary and therefore contrary to public interest and necessity because (a) WWJ does not now render satisfactory service to the City of Detroit as defined in the Commission's Standards of Good Engineering Practice; (b) the inadequacy of WWJ service to Detroit can be remedied by the installation of a different antenna system at another transmitter site, or the installation of a different antenna system on WWJ's present site; and (c) while improving its service to Detroit, WWJ could at the same time decrease the objectionable interference it will cause to the proposed nighttime operation of WAAF and the present nighttime operation of Stations WPEN and WSPA.

Petitioner attaches an affidavit of its consulting engineer who states that the objectionable interference from Station WWJ to be expected within the night service area proposed to be established by Station WAAF in its application for construction permit (B4–P–3077) is within the 10 millivolt-per-meter contour of Station WAAF; that this limitation to Station WAAF from Station WWJ could be avoided by the use by WWJ of a better transmitter site with appropriate directive antenna array; that if it is not convenient to move WWJ's transmitter site, it is still possible to reduce interference to WAAF by the use of a directive array differing from that which has been authorized and having certain specifications.

Petitioner prays that the Commission modify its order to the extent of requiring WWJ to install a directional antenna system that would permit WAAF, if its pending application for construction permit were granted, to render interference-free nighttime service to at least 90 percent of the population residing within the normally protected night contour (4 millivolt-per-meter) of WAAF.

On February 27, 1941, The Evening News Association (WWJ) filed its opposition to the petition for rehearing. The opposition points out that petitioner's application was not filed in proper form to be accepted by the Commission until more than 30 days after the WWJ

application for modification of construction permit had been filed, and therefore the Commission should not permit this untimely request to delay further the improvement of the WWJ service.

Attached to The Evening News Association (WWJ) opposition is an affidavit of its consulting radio engineer concerning the modification of antenna system suggested by the petition for rehearing. In the opinion of this affiant, the proposal attached to the petition for rehearing filed by WAAF may be expected to increase the limitation from WWJ to Station KPRC, Houston, Tex., to 2.5 millivolts per meter, which would increase the RSS limitation to KPRC to 3.37 millivolts per meter instead of its present 2.5 millivolt-per-meter contour; that the plan suggested by petitioner will result in a 15 percent loss to Station WWJ of land area, including such towns as Flint, Lapeer, and Howell; that this loss would not be offset by the gain of Ann Arbor and hence the loss in population external to the city of Detroit would be proportionately greater than the loss in area; that the suggested antenna system cannot be accommodated upon property now owned by WWJ, nor can it be accommodated on the additional plot of land approximately three acres in extent, which petitioner alleges is available immediately to the west of the present property of WWJ; that the suggested antenna system cannot be accommodated upon the present property or the present property plus such other property as can be shown to be available.

On March 5, 1941, petitioner filed a reply to the opposition to the petition for rehearing alleging that with the antenna proposed by petitioner, even though there will be a loss in land area of 15 percent, there will be a gain in population served of about 6 percent; that land adjacent to the WWJ property is available sufficient to accommodate the antenna suggested by petitioner for price of $8,000.

On March 3, 1941, the Houston Printing Corporation, KPRC, Houston, Tex., filed an opposition to the petitioner's petition for rehearing. Station KPRC operates on the frequency 920 kilocycles, with a power output of 1 kilowatt night, 5 kilowatts day, and has a construction permit to increase nighttime power to 5 kilowatts. The KPRC opposition alleges that at the time of the filing of the KPRC application to increase night power to 5 kilowatts the maximum interference anticipated from existing stations was 1.7 millivolts per meter, a single limitation from Station KFEL, Denver, Colorado; that by virtue of the Commission's grant of October 15, 1940, of the application of Station WSPA, Spartanburg, N. C., to operate at night with a directional antenna on the frequency 920 kilocycles, the characteristics of the antenna approved by the Commission were such that when in operation, Station WSPA will be expected to increase the nighttime limitation to Station KPRC to its 2.22 millivolt-per-meter

contour; that the suggested directive antenna pattern contained in the petitioner's petition for rehearing proposes that Station WWJ increase its radiation toward Station KPRC so as to cause a single signal limitation to Station KPRC of 2.5 millivolts per meter, and that this would reduce the good service area of Station KPRC by 880 square miles and 30,000 persons.

Insofar as petitioner bases its petition for rehearing upon claims that the proposal of WWJ "may render nighttime operation of WAAF impractical from an allocation and economic standpoint and thus substantially lower the value and future earnings of petitioner's station" and that "assuming nighttime operation of WAAF, in spite of the interference from WWJ as proposed, the restrictions to the nighttime coverage imposed by WWJ would substantially lower the value and future earnings of petitioner's station," we think the petition for rehearing untenable since financial injury, which petitioner may suffer as a result of the Commission's grant of the above-entitled application, is not in and of itself an element which we must weigh apart from a consideration of public interest, convenience, and necessity, *Federal Communications Commission* v. *Sanders Bros. Radio Station*, 309 U. S. 470.

Upon consideration of the above-entitled application on January 28, 1941, we found that public interest, convenience, and necessity would be served by a grant thereof. Petitioner does not contend that this finding is erroneous. Its claim is that public interest, convenience, and necessity would be served better by a grant of its application for construction permit (B4–P–3077) filed January 21, 1941, so as to permit nighttime operation of Station WAAF at Chicago with the protection petitioner requests from Station WWJ, Detroit, than by the operation of Station WWJ as authorized by the Commission January 28, 1941. The engineering opinion submitted by petitioner in support of this contention is opposed by the opinion of engineering counsel on behalf of The Evening News Association (WWJ). Apart from this conflict of engineering opinion, petitioner's claim assumes that petitioner's application is in all respects satisfactory and that but for the question of limitation to petitioner's Station WAAF from Station WWJ, a grant of petitioner's application would be in the public interest, convenience, and necessity. Petitioner's application has not yet been acted upon by the Commission. No such assumption can therefore be entertained since petitioner's application may involve issues other than the question here raised. In this situation, neither the Communications Act of 1934 nor the rules of the Commission require that we set aside or suspend our action of January 28, 1941, granting the above-entitled application in order to give it simultaneous comparative consideration with petitioner's later application; and

we think to do so would not conduce to the proper dispatch of business or to the ends of justice.

No rights of petitioner are infringed thereby, since petitioner's application could not be denied without affording petitioner an opportunity to show that a grant of its application, with protection from WWJ as proposed by petitioner, will better serve the public interest, convenience, and necessity than would the operation of The Evening News Association (WWJ), as authorized by our grant of the above-entitled application. If petitioner can make such a showing, the Commission is not precluded by said grant from granting petitioner's proposal, even though to do so would require The Evening News Association (WWJ) to make changes in its antenna system, the location thereof, or both.

Accordingly it is ordered, this 3d day of June 1941, that the petition for rehearing filed by Drovers Journal Publishing Co. (WAAF), Chicago, Ill., directed against the action of the Commission January 28, 1941, granting the application for modification of construction permit of The Evening News Association (WWJ), Detroit, Mich. (B2–MP–1132), be, and it is hereby, denied.

8 F. C. C.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matters of [1] METROPOLITAN BROADCASTING CORPORATION (WMBQ), BROOKLYN, N. Y. For Renewal of License.	DOCKET No. 4050
METROPOLITAN BROADCASTING CORPORATION (WMBQ), BROOKLYN, N. Y. For Construction Permit.	DOCKET No. 4029
LILLIAN E. KIEFER (NEW), BROOKLYN, N. Y. For Construction Permit.	DOCKET No. 3941
PAUL J. GOLLHOFER (NEW), BROOKLYN, N. Y. For Construction Permit.	DOCKET No. 4331
ARTHUR FASKE (WCNW), BROOKLYN, N. Y. For Renewal of License.	DOCKET No. 5323
ARTHUR FASKE (WCNW), BROOKLYN, N. Y. For Modification of License.	DOCKET No. 4622
ARTHUR FASKE (WCNW), BROOKLYN, N. Y. For Construction Permit.	DOCKET No. 5444
ARTHUR FASKE (WCNW), BROOKLYN, N. Y. For Modification of Construction Permit.	DOCKET No. 5324

[1] Petition filed by Long Island Broadcasting Corporation requesting the Commission to amend its findings, conclusion, and order or in the alternative, requesting reconsideration and oral argument, denied on August 12, 1941.

LONG ISLAND BROADCASTING CORPORATION (WWRL), WOODSIDE, LONG ISLAND, N. Y. For Renewal of License.	DOCKET No. 5676
LONG ISLAND BROADCASTING CORPORATION (WWRL), WOODSIDE, LONG ISLAND, N. Y. For Modification of License.	DOCKET No. 5459
LONG ISLAND BROADCASTING CORPORATION (WWRL), WOODSIDE, LONG ISLAND, N. Y. For Modification of License.	DOCKET No. 4302

June 18, 1941

On behalf of the receiver of the Metropolitan Broadcasting Corporation (WMBQ), *Edward H. Wilson;* on behalf of Lillian E. Kiefer, *Frank Stollenwerck*, and *Thomas B. Cullen;* on behalf of Paul J. Gollhofer, *Horace L. Lohnes*, *Sigmund Sarnowski*, *E. D. Johnston*, and *Jacob Brenner;* on behalf of Arthur Faske, *Elmer W. Pratt*, *Joseph F. Pratt*, and *Samuel L. Cohen;* on behalf of the Long Island Broadcasting Corporation (WWRL), *Gustave A. Gerber;* on behalf of the Commission, *Andrew G. Haley*, *James D. Cunningham*, and *Russell Rowell.*

FINDINGS OF FACT AND CONCLUSIONS OF THE COMMISSION

STATEMENT OF FACTS

1. This proceeding was originally instituted on the following applications:

(1) An application of the Metropolitan Broadcasting Corporation (WMBQ) for a construction permit to change equipment and to move the transmitter site (Docket No. 4029).

(2) An application of the Metropolitan Broadcasting Corporation (WMBQ) for renewal of license (Docket No. 4050).

(3) An application of Lillian E. Kiefer for construction permit requesting the operating assignment of Station WMBQ (Docket No. 3941).

(4) An application of the Long Island Broadcasting Corporation (WWRL) for modification of license requesting permission to operate during the hours then assigned to Station WMBQ (Docket No. 4302).

(5) An application of Paul J. Gollhofer for construction permit requesting the operating assignment of Station WMBQ (Docket No. 4331).

2. The above applications were designated for hearing and a consolidated hearing thereon was held before an examiner on February 16, 17, and 18, 1937. On April 20, 1937, the examiner released his report (I–403) in which he recommended that the application of the Long Island Broadcasting Corporation (WWRL) for modification of license be granted and the other applications be denied. Exceptions were taken to this report, and oral argument was heard before the Commission on February 4, 1938. Thereafter, on May 25, 1938, the Commission rendered its decision in these matters and denied all of the applications with the exception of that of the Long Island Broadcasting Corporation for modification of license, which was granted. The Commission issued a further order, effective January 5, 1939, directing (1) that petitions for rehearing filed by Paul J. Gollhofer and Lillian E. Kiefer be granted; (2) that the Commission's Statement of Facts, Grounds for Decision and Order dated May 25, 1938, be vacated and set aside; (3) that the modification of license granted to the Long Island Broadcasting Corporation be canceled; and (4) that the applications heretofore enumerated be designated for further hearing to be heard together with the application of Arthur Faske (WCNW) for modification of license (Docket No. 4622, requesting the facilities theretofore assigned to WMBQ and WWRL). At the time of the original hearing on the applications set forth above, the Metropolitan Broadcasting Corporation (WMBQ) was in receivership and not in a position to operate the station. The effective date of provision 3 of the Commission's order dated January 5, 1939, canceling the grant of the modification of license to the Long Island Broadcasting Corporation (WWRL) was from time to time extended and the Long Island Broadcasting Corporation was granted temporary authority to utilize the broadcast time formerly used by Station WMBQ. This temporary authorization has been extended from time to time and is still effective.

3. In addition to the applications mentioned above, there are six other applications involved in this proceeding, as follows:

(1) Application of Arthur Faske for renewal of license of Station WCNW (Docket No. 5323).

(2) Application of Arthur Faske (WCNW), Brooklyn, N. Y., for modification of license (Docket No. 4622), requesting the hours formerly allocated to Station WMBQ and the hours presently allocated to Station WWRL.

(3) Application of Arthur Faske for modification of construction permit requesting extension of the commencement and completion dates (Docket No. 5324).

(4) An application of Arthur Faske for construction permit requesting permission to make certain equipment changes, removals, and installations in connection with Station WCNW (Docket No. 5444).

(5) Application of the Long Island Broadcasting Corporation (WWRL) for renewal of license (Docket No. 5676).

(6) Application of Long Island Broadcasting Corporation (WWRL) requesting unlimited time including the facilities now assigned to Station WCNW (Docket No. 5459).

4. At the date of the original hearing of this case Stations WMBQ, WWRL, and WCNW operated specified hours on the frequency 1500 kilocycles. Stations WWRL and WCNW were authorized to use 100 watts night and 250 watts day, and WMBQ was authorized to use 100 watts day and night.

5. A consolidated hearing was held before an examiner duly appointed by the Commission on all of the applications heretofore listed on October 16, 17, 18, 19, 20, 23, 24, 25, 26, 27, 28, and November 2 and 3, 1939.

IN RE DOCKET NO. 4050, APPLICATION OF METROPOLITAN BROADCASTING CORPORATION FOR RENEWAL OF LICENSE OF STATION WMBQ

6. The original license for Station WMBQ was issued on January 28, 1927, to Paul J. Gollhofer. Lillian E. Kiefer became associated with Mr. Gollhofer in the operation of the station and acted as commercial manager, program director, announcer, and staff musician. For several years Mr. Gollhofer devoted his time to the actual operation of the transmitter and general supervision of the station. Later a corporation was organized under the laws of New York, known as the Metropolitan Broadcasting Corporation, in which Kiefer and Gollhofer each owned 100 shares of the 200 shares of stock, issued by said corporation. An application was made to the Commission for assignment of the license of Station WMBQ from Mr. Gollhofer to this corporation. Consent to the assignment was given on May 7, 1935. Mr. Gollhofer was designated as president and Miss Kiefer as secretary-treasurer of the corporation.

7. The succeeding months revealed differences between these parties, and, as a result, Mr. Gollhofer remained away from the station after March 1936. On March 26, 1936, Miss Kiefer filed with the Commission an application for a construction permit (Docket No. 3941) requesting the operating assignment of Station WMBQ. (A similar application was also filed by Gollhofer, Docket No. 4331.) On April 28, 1936, Mr. Gollhofer filed a petition in the Supreme Court of the State of New York (Kings County) for dissolution of the Metropolitan Broadcasting Corporation, licensee of Station WMBQ. On August 13, 1936, the Court, after receiving the report of the referee, entered an order dissolving said corporation and appointed a receiver to collect and distribute the assets thereof. At the date of the instant hear-

ing this order of dissolution had become final and the said corporation had ceased to exist as a legal entity.

8. No evidence was offered on the merits in support of this application at the original or the instant hearing. This fact and the other facts heretofore shown lead to the unavoidable conclusion that the application for renewal of license of Station WMBQ filed by the Metropolitan Broadcasting Corporation on April 29, 1936, should be dismissed with prejudice.

IN RE DOCKET NO. 4029, APPLICATION OF METROPOLITAN BROADCASTING CORPORATION FOR CONSTRUCTION PERMIT

9. No evidence was offered at the original or the instant hearing in support of this application. It appears, as heretofore shown, that the application for renewal of license (Docket No. 4050) should be dismissed with prejudice, and it necessarily follows that this application also should be dismissed with prejudice.

IN RE DOCKET NO. 3941, APPLICATION OF LILLIAN E. KIEFER FOR CONSTRUCTION PERMIT

10. Lillian E. Kiefer and Paul J. Gollhofer (as heretofore shown) were originally among the applicants for the facilities of Station WMBQ. At the instant hearing the applicant Gollhofer placed in evidence a copy of a contract which he had entered into with this applicant providing, among other things, for an adjustment of the property rights between the parties and that Miss Kiefer would cooperate fully with Mr. Gollhofer in the prosecution of his application in Docket No. 4331.

11. In view of the fact that this applicant offered no evidence at the instant hearing in support of her application, it appears that said application should be dismissed with prejudice.

IN RE DOCKET NO. 4331, APPLICATION OF PAUL J. GOLLHOFER FOR CONSTRUCTION PERMIT

12. Mr. Gollhofer is a citizen of the United States. He was born in Brooklyn, N. Y., where he now resides. After completing 2 years of high-school study, he attended and graduated from the Radio Institute of America, and holds a commercial broadcast operator license. Prior to securing a license for Station WMBQ he was employed by several receiving-set and other manufacturing concerns.

13. As heretofore pointed out, the Supreme Court of the State of New York has entered an order dissolving the Metropolitan Broadcasting Corporation. A statement of receipts and disbursements of the receiver as of February 10, 1937 [illegible]

received and $2,533.27 expended, leaving a balance of $9,766.77 cash on hand. Approximately $700 was outstanding in accounts due the corporation, which the receiver was attempting to collect. The only other asset appears to be the technical equipment of the station, which has been appraised at $1,442.30, and the furniture and fixtures, which have not been appraised. The Court entered an Order dated June 3, 1938, which provides that the receiver "Be and he hereby is ordered and directed to transfer to Paul J. Gollhofer all of the physical assets of the Metropolitan Broadcasting Corporation, when, as, and if an order granting permanent license to Station WMBQ is made by the Federal Communications Commission and such Order becomes final." Prior to the entering of this Order the Court had approved a claim of Mr. Gollhofer for $1,500 against the Metropolitan Broadcasting Corporation. In addition he has $3,000 cash which was given to him by his father, who will provide funds to the limit of his ability for the construction and operation of the proposed station. His father has cash assets of $14,500 and owns, clear of encumbrances, real estate which provides an income of about $80 per month.

14. Mr. Gollhofer proposes to install at a site to be hereafter selected, subject to the approval of the Commission, a standard 100-watt transmitter and a quarter-wave vertical radiator. The present studio of Station WMBQ, located on property owned by the applicant's father, will be used for the new station, at least temporarily. The estimated cost of construction of a transmitter house, and purchase and installation of all equipment, ready for operation, is $8,000.

15. This applicant contemplates a staff composed of himself, a director of music and announcer, an operator, office girl, and porter at salaries aggregating $275 per month, to which will be added about $200 per month for foreign-language announcers, about $21 monthly for wire lines to three remote-control points, and $128 for copyright fees, power, telephone, frequency monitoring service, association dues, postage, stationery, and maintenance of equipment. Based upon his experience in connection with the operation of Station WMBQ he expects the station to have an operating income of $1,000 per month.

16. The musical director, program manager, and announcer, tentatively selected by the applicant was 21 years of age at the date of the original hearing and was then a student in Brooklyn College. He had studied music for 15 years, has served as organist in several churches, has appeared in theaters as pianist of an orchestra and as an accompanist, and has appeared as accompanist and soloist in the programs of various stations in the New York Metropolitan area, including WAAT, WARD, WLTH, WVFW, and WMBQ.

17. A tentative program schedule received in evidence indicates that approximately 40 percent of the time of the proposed station will be

devoted to broadcasts in foreign languages, namely, Lithuanian, Italian, German, Polish, and Jewish. The schedule includes time for church services, civic matters, news, sports, police-safety talks, health talks, as well as matters of general entertainment. Time will not be sold to individuals for resale.

18. Evidence relating to the manner in which Station WMBQ was operated while under the management of Mr. Gollhofer, as president of the Metropolitan Broadcasting Corporation, licensee of said station, is pertinent as disclosing his qualifications to operate the proposed station.

19. The staff of Station WMBQ, at the time of the original hearing, consisted of the director (Miss Kiefer), an operator, an announcer, and a porter, at salaries aggregating $424 per month. The additional expense for rent, electricity, etc., was $171.75 per month, making total operating cost of $595.75. No talent was paid by the station, nor did it have a transcription service. The monthly income from the sale of time averaged about $1,350.

20. Station WMBQ operated 32 hours each week, 15 hours and 45 minutes of which was sold to "time brokers." There is in evidence a program schedule of the station for the period of 1 week. It indicates that time has been devoted to safety and health talks, news, civic, social, and fraternal affairs, church services, and music. During the week 8 hours were devoted to Lithuanian, 3 hours to German, 4¾ hours to Italian, and 3 hours to Polish programs, a total of 18¾ hours, broadcast primarily in foreign languages.

21. It had, for a number of years, been the practice of the management of Station WMBQ to sell time to "time brokers." These brokers used the time so obtained for presentation of programs prepared by them, supporting their activities by selling, receiving payment for, and broadcasting commercial announcements for others. In each instance the purchaser of the time was required to submit to the station manager for approval before the broadcast an English translation of the program.

22. Savierio Cappiallo purchased 4¾ hours per week from the station, conducted programs in Italian and English, made announcements advertising his own retail electrical appliance business, and sold commercial announcements to other advertisers. The programs broadcast by him included religious and civic matters, and were translated into English by his daughter, who was in high school.

23. Jonas Valatas purchased 2½ hours per week from the station, conducted programs in Lithuanian and English, and sold commercial announcements. His programs included health talks, news, naturalization programs, and an employment service. He furnished his own English translation to the station management.

24. Bernard Westendorf purchased 2¾ hours per week, and broadcast programs in German with commercial announcements which he sold. One period of one-half hour was devoted to a German-English school program. He furnished his own English translation to the station management.

25. Anthony Witkowski purchased 4 hours per week and presented programs of music and songs, interspersed with commercial announcements sold by him. All announcements were made in both Polish and English. He furnished his own English translation to the station management.

26. Joseph P. Ginkas purchased 1¾ hours per week and presented in Lithuanian programs which included religious, safety-campaign, and citizenship matters. He advertised his own restaurant and confectionary business and sold commercial announcements to others. English translations of such programs were made by his brother-in-law.

27. Pasquale Colacino, who had conducted a program, including commercial announcements, over Station WMBQ for several years, did not submit copies of his announcements to anyone.

28. In December 1935 a certain association of merchants gave tickets to persons making purchases from their several stores. At the end of the designated period the ticket stubs were collected and at a general drawing persons holding the "lucky number" received prizes, and Station WMBQ "* * * advertised the names of people who were present and who could claim their gifts, and the number of their ticket * * * ." The broadcasting of this program was a violation of section 316 of the Communications Act of 1934, which provides in part that "No person shall broadcast by means of any radio station * * * and no person operating any such station shall knowingly permit the broadcasting of any advertisement of, or information concerning any lottery * * * or any list of the prizes drawn or awarded by means of any such lottery, gift enterprise, or scheme * * *."

IN RE DOCKET NOS. 5323, 4622, 5324, 5444, APPLICATIONS OF ARTHUR FASKE

29. The application for renewal of license of Station WCNW (Docket No. 5323) was designated for hearing in order to determine certain issues relating to the technical operation of the station, among which are included issues "to determine whether, particularly during the month of April 1938, proper entries were made in the operating or transmitter log of Station WCNW in accordance with the requirements of rule 172B * * * and to determine whether * * * the operating power of Station WCNW was maintained in exact ac-

cord with its licensed power in accordance with the requirements of rule 142."

30. Since February 5, 1935, WCNW has been authorized to use the frequency 1500 (1600 since March 29, 1941) kilocycles with power of 250 watts day and 100 watts night. The station operates specified hours as follows: Sundays 9 a. m. to 11 a. m. and 11 p. m. to 12 midnight; Mondays and Fridays, 2 p. m. to 6 p. m. and 8 p. m. to 10 p. m.; Tuesdays, 2 p. m. to 6 p. m.; Wednesdays, 2 p. m. to 6 p. m. and 10 p. m. to 12 midnight; Thursdays, 2 p. m. to 8 p. m.; and Saturdays, 3 p. m. to 9 p. m. Local sunset at Brooklyn, N. Y., as fixed by the rules of the Commission, was, for the months of March and April 1938, 6 p. m. and 6:30 p. m., respectively.

31. Commission inspectors, on various dates, checked the power used by WCNW. On May 13, 1935, at 2:30 p. m. the station operated with 96 watts power and on August 9, 1935, at 3:05 p. m. with a power of 270 watts. Discrepancy reports were issued by the inspectors to the licensee who, in turn, filed with the Commission a statement which purported to explain the discrepancy in May by pointing out that on that particular date the frequency monitor was out of order. Licensee denied that excess power was used on August 9th.

32. Pursuant to instructions received from the Engineering Department of the Commission at Washington, D. C., the inspector in charge in New York City and his associates made investigations on April 2, 4, 7, and 9, 1938, in order to determine whether the licensee was operating with excess power. On April 2, 1938, between the hours of 3 and 9 p. m. (excepting 27 minutes between 5 and 5:27 p. m.), the station was monitored at the New York office of the Commission by Commission inspectors using a satisfactory receiver. No change in the meter reading was noted during these observations, thus indicating that the power of the station was not reduced after local sunset as required by its license. On April 4, 1938, at 2:20 p. m. a Commission inspector visited the licensee and found from the meter readings of various instruments that the calculated power output as of that time was 258.6 watts. On April 7, 1938, still further investigation was made by inspectors at which time it was again observed by them that the licensee did not reduce the power or carrier strength at local sunset, in compliance with his license.

33. Part of the investigation of the inspectors on April 9, 1938, was conducted in their New York offices and showed that no reduction in power was made by the licensee during the hours of 3 to 9 p. m. On the same day inspectors of the Commission using an Emerson auto receiving set made observations at a point approximately 2,500 feet north of Station WCNW and likewise observed

no reduction in power during that period. At 7:41 p. m. of the same day a Commission inspector visited the station and observed the meter readings from which he calculated the power output of the station to be 258.7 watts, which constituted a violation of the terms of the license. Operator Meyrowitz, an employee of the licensee, Faske, was on duty at the station at that time and stated to the inspector that the low-power relay and resistor were not functioning properly. However the inspector made a test of the relay and resistor immediately after the station discontinued its operations for the day and found that they were functioning properly.

34. The Long Island Broadcasting Corporation, licensee of Station WWRL, employed a qualified radio engineer to record, in graphic form, measurements of the field intensity of WCNW's signal. Such measurements and recordings were made on March 19, 24, 25, 26, 28, 31, April 1 and 9, 1938. The graphs and supporting testimony of the engineer, which were received in evidence, indicate that upon all of these dates the licensee operated said station with a nighttime power equal to its daytime power, in violation of the license.

35. On March 19, 24, and 26 the graphs indicate that a reduction of power was made at local sunset, but shortly thereafter, it was raised to the daytime authorization. On March 25, 28, and April 1, the graphs indicate the use of power at a daytime level between the hours of 8 to 10 p. m. On March 31, 1938, the graphs indicate that the daytime level of field intensity continued past local sunset until 7:18 p. m. at which time it was reduced.

36. On April 9, 1938, both the inspectors for the Commission and the expert witness on behalf of the licensee of WWRL monitored WCNW. Their testimony and the graphs prepared by the WWRL expert witness show that the power of Station WCNW, contrary to terms of its license, was not reduced at 6:30 p. m., local sunset time.

37. We are aware that the testimony of the radio engineer on behalf of WWRL, rival of Station WCNW, might be considered as not entirely disinterested; but when coupled with, and supported by, the testimony of Commission inspectors whose impartiality is unquestioned, it gains a credence that it might otherwise lack.

38. Jack Krinsky, operator in charge for Station WCNW on March 25 and April 1, 1938, signed the logs for those dates and testified that he had reduced the power of the station in compliance with its license. Milton Meyrowitz, operator in charge on March 24 and 26, 1938, signed the logs for those dates and testified that he had reduced the power as required by the station license. Leo Lawsine signed the logs for March 19, 26, and 31, 1938, but his whereabouts was not known at the time

of the hearing and he did not testify. The licensee, Arthur Faske, vouched for the accuracy of the statements made in the logs but had no personal knowledge of the factual basis for such entries.

39. On April 4, 1938, the evidence indicates, and we so find, that no station license was posted at the transmitter; the connecting leads between portions of the transmitter were improperly cabled; the bleeder resistors were not connected across high voltage condenser banks supplying power to the second and third buffer stages; the concentric line ammeter at the transmitter was not connected directly in series with the concentric line above the coupling unit; the readings on the excitation feed line ammeter were not properly entered on the log. We further find that the temperature of the crystal control oven, which should be maintained at 50 degrees centigrade, had varied on April 14, 1938, from 47.4 degrees to 53 degrees centigrade.

40. It appears from the record, and we find, that on October 11, 1938, the transmitter of WCNW was located at 180 Morgan Avenue, Brooklyn, N. Y., although the license for the operation of the station specified 1525 Pitkin Avenue, Brooklyn, N. Y., as the location of the transmitter. A Commission inspector testified, and we find, that: one meter was found connected into an undetermined circuit by means of a flexible drop cord with two small battery clips; the modulation transformer was on the floor with wires running to it in a haphazard manner without protection; another transformer, described by the licensee as a filament transformer, was also on the floor in the same condition; the radio frequency lead from the last buffer stage to the final amplifier was not completely shielded; and the necessary spare tubes for the transmitter were not found at the station. According to the licensee type RCA–838 modulators were operated at zero bias; two tubes of this type operated under the conditions prevailing at Station WCNW on that date would have a total harmonic content of better than 4 percent at 400 cycles. The inspector estimated the harmonic content would increase to 7 percent at 5000 cycles. He also estimated, and we find, that the total harmonic content of the station, including that which would be added at other points, would amount to more than the total of 10 percent, the allowable tolerance under rule No. 139A.

41. Certain of the employees of WCNW who were directly responsible for some of the violations referred to above are no longer associated with the licensee.

42. The evidence indicates, and we find, that the program service of WCNW has been well rounded and is of the type that serves public interest.

43. The licensee has assured the Commission that if his license is renewed he will take every precaution to prevent the recurrence of

whatever statutory and regulatory violations may have occurred in the past. He has also assured the Commission that he will improve the equipment used by the station.

44. The licensee's application (B1–MP–662, Docket No. 5324) for modification of construction permit B1–P–1918 requests that the commencement date of construction be extended from November 7, 1937, to May 7, 1938, and that the completion date be extended from May 7, 1938, to July 2, 1938. This application has become moot.

45. The licensee's application (B1–P–2233, Docket No. 5444), requests a construction permit to make changes in transmitting equipment, install automatic frequency control apparatus, install vertical antenna, and move transmitter site locally. On March 25, 1941, the licensee filed an application for authorization to install automatic frequency control, which was granted on April 17, 1941. On May 1, 1941, the licensee was granted temporary authority to install two R. C. A. type 805 tubes in the last radio stage in place of four R. C. A. type 203–A tubes, pending Commission action on the licensee's application (B1–P–2233, Docket No. 5444) wherein a similar request was made.

IN RE DOCKETS NOS. 4302, 5459, AND 5676, APPLICATIONS OF THE LONG ISLAND BROADCASTING CORPORATION (WWRL) FOR MODIFICATION OF LICENSE PERMITTING UNLIMITED OPERATION USING THE HOURS NOW ASSIGNED TO STATIONS WMBQ AND WCNW

46. Station WWRL was first licensed on August 16, 1926, to William H. Reuman. The Long Island Broadcasting Corporation was organized with Mr. Reuman as its president and general manager and the license for Sation WWRL was voluntarily assigned to it. The stockholders of the corporation are William H. Reuman, 98 shares; Mrs. Adele Reuman, his mother, 1 share; and Jacob Reuman, his father, 1 share, who are all citizens of the United States.

47. The corporation, as of October 14, 1939, has total assets of $35,645.88, consisting, among other things, of cash in bank, $4,240.23 and cash on hand, $198.95, with liabilities of $7,748.96, of which $6,500 was payable to its officers, leaving the net worth of $27,897.92. For the period January 1, 1939, to October 14, 1939, total operating expenses of the station were $46,696.37, leaving a net profit of $305.31. Station WWRL had on hand signed contracts for sale of time totaling $21,168.54.

48. Station WWRL has a staff of 29 employees, consisting of a manager, public-relations man, program director and chief announcer, staff organist and production manager, staff announcer, staff announcer and control man, director of juvenile activities, director of German programs, seven language announcers (Czechoslovakian, German,

Hungarian, Italian, and Polish), five translators, chief operator, remote operator, studio-control man, five salesmen, a stenographer, and a bookkeeper.

49. From June 4, 1938, to October 14, 1939, the licensee of Station WWRL expended the sum of $13,967 on improvements for the station and $6,955 for additional pay roll. The station at present maintains five remote-control lines. If increased time is granted, the station will install five additional lines.

50. During the daytime hours the station serves within its 10 and 5 millivolt-per-meter contours 397,055 and 1,194,372 persons, respectively. During nighttime hours the station serves within its 10, 5, and 3 millivolt-per-meter contours 269,782, 769,147 and 1,919,790 persons, respectively.

51. At the present time Station WWRL operates a total of 74 hours per week representing 43 hours of time regularly allocated to it and 31 hours heretofore allocated to Station WMBQ. It is not affiliated with a national broadcasting system.

52. For the period December 1, 1937, to May 31, 1938 (prior to the time that WWRL began utilizing hours formerly assigned to WMBQ), the station devoted 649 hours and 20 minutes to foreign-language broadcasts out of total of 1,118 hours. For the period December 1, 1938, to May 31, 1939, 800 hours and 32 minutes were devoted to such broadcasting out of a total of 1,950 hours. Prior to May 31, 1938, foreign-language broadcasting comprised 58 percent of the total program time. Since this date the percentage has decreased to 41 percent.

53. All foreign-language broadcasts are translated and reviewed. Certain foreign-language broadcasts are rebroadcast in English. During foreign-language broadcasting the translator is present and in each instance an English translation is filed at the station. During the period May 17, 1938, to September 30, 1939, there were broadcast a total of 321 Americanization and naturalization programs.

54. Insofar as operating time permits, the station affords gratuitous cooperation to the religious, charitable, civic, and governmental organizations of Queens County, wherein it is located. Because of the limited hours of operation of Station WWRL, it was necessary to deny time to a number of public service organizations. Arrangements have been made for broadcasting on behalf of such organizations if the applications are granted.

CONCLUSIONS

1. The Metropolitan Broadcasting Corporation failed to offer any evidence at the original or instant hearings in support of its appli-

cation for renewal of license of Station WMBQ (Docket No. 4050). Therefore, said application and its application for construction permit (Docket No. 4029) should be dismissed with prejudice.

2. Lillian E. Kiefer failed to offer any evidence at the instant hearing in support of her application for construction permit requesting the facilities of Station WMBQ (Docket No. 3941). Therefore, said application should be dismissed with prejudice.

3. Paul J. Gollhofer, in support of his application for a construction permit requesting the facilities of WMBQ (Docket No. 4331), has failed to sustain the burden of proof that he is qualified to construct and operate a broadcast station, and in view of the manner in which he, as president of the Metropolitan Broadcasting Corporation, operated Station WMBQ, the Commission is unable to find that a grant of this application will serve the public interest. Consequently, this application should be denied.

4. Although Station WCNW has in the past been operated in violation of the terms of its license and the Rules and Regulations of the Commission the Commission has received the licensee's assurances that such violations will not occur in the future. Furthermore, some of the employees who were directly responsible for the violations are no longer associated with him. We have carefully scrutinized the programs of the licensee over a long period of time and conclude that their broadcast has been in the public interest. We further conclude that the continued operation of WCNW by Arthur Faske will serve public interest, and, consequently, a renewal license should be issued. Since the continued operation of WCNW by Arthur Faske will serve public interest, and since the Long Island Broadcasting Corporation, licensee of WWRL, has failed to show that the allocation of those facilities to it would better serve public interest, its application for Faske's facilities (B1–ML–599; Docket No. 5459) should be denied.

5. The request made by Arthur Faske for modification of construction permit (B1–MP–662; Docket No. 5324) has become moot and should be dismissed.

6. The requests made in the Faske application for construction permit (B1–P–2233; Docket No. 5444) have, for the most part, already been granted on a temporary basis, subject to the final disposition of Faske's renewal application. In connection with our decision to grant the renewal application we conclude that a grant of the construction permit will serve public interest.

7. The Long Island Broadcasting Corporation is legally, financially, technically, and otherwise qualified to continue as licensee of WWRL and, consequently, its renewal application (B1–R–271; Docket No. 5676) should be granted. A grant of this renewal application will

serve public interest. Arthur Faske has failed to show that his proposed acquisition of the facilities now allocated to the Long Island Broadcasting Corporation would better serve public interest and, consequently, his application for these facilities (B1–ML–378; Docket No. 4622) should be denied.

8. The temporary use which the licensee of WWRL has made of the facilities allocated to WMBQ has been in the public interest and the licensee of WCNW has failed to show that the allocation of such facilities to him would better serve public interest and, consequently, the application of the Long Island Broadcasting Corporation for these facilities (B1–ML–352; Docket No. 4302) should be granted.

Decided June 18, 1941

BY THE COMMISSION:

This proceeding, commonly known as the little Brooklyn cases, involves the use of the 1600-kilocycle frequency in Brooklyn (1500 kilocycles prior to the effective date of the North American Regional Broadcasting Agreement). The proceeding was originally instituted in 1936 on the following applications:

(1) An application of the Metropolitan Broadcasting Corporation (Station WMBQ) for a construction permit to change equipment and to move the transmitter site (Docket No. 4029).

(2) An application of the Metropolitan Broadcasting Corporation (Station WMBQ) for renewal of license (Docket No. 4050).

(3) An application of Lillian E. Kiefer for construction permit requesting the operating assignment of Station WMBQ (Docket No. 3941).

(4) An application of the Long Island Broadcasting Corporation (Station WWRL) for modification of license requesting permission to operate during the hours then assigned to Station WMBQ (Docket No. 4302).

(5) An application of Paul J. Gollhofer for construction permit requesting the operating assignment of Station WMBQ (Docket No. 4331).

The above applications were designated for hearing and a consolidated hearing thereon was held before an examiner on February 16, 17, and 18, 1937. On April 20, 1937, the examiner released his report (I–403) in which he recommended that the application of the Long Island Broadcasting Corporation (WWRL) for modification of license be granted and that all other applications be denied. Exceptions were taken to this Report and oral argument was heard before the Commission on February 4, 1938. Thereafter, on May 25, 1938, the Commission rendered its decision in these matters and, in line with the recommendation of the examiner, denied all of the applications with the exception of that of the Long Island Broadcasting Corporation for modification of license, which was granted. The Commission issued a further order, effective January 5, 1939, directing (1) that petitions for rehearing filed by Paul J. Gollhofer and Lillian E. Kiefer be granted; (2) that the Commission's statement of facts, grounds for decision, and order dated May 25, 1938, be vacated and set aside; (3) that the modification of license granted to the Long Island Broadcasting Corporation be canceled; and (4) that the

applications heretofore enumerated be designated for further hearing to be heard together with the application of Arthur Faske (WCNW) for modification of license (Docket No. 4622, requesting the facilities theretofore assigned to WMBQ and WWRL). At the time of the original hearing on the applications set forth above, the Metropolitan Broadcasting Corporation (WMBQ) was in receivership and not in a position to operate the station. The effective date of provision 3 of Commission's order dated January 5, 1939, canceling the grant of the modification of license to the Long Island Broadcasting Corporation (WWRL) was from time to time extended and the Long Island Broadcasting Corporation was granted temporary authority to utilize the broadcast time formerly used by Station WMBQ. This temporary authorization has been extended from time to time and is still effective.

On the date of further hearing there were six additional applications involved in the proceeding, as follows:

(1) Application of Arthur Faske for renewal of license of Station WCNW (Docket No. 5323).

(2) Application of Arthur Faske (WCNW), Brooklyn, N. Y., for modification of license (Docket No. 4622), requesting the hours formerly allocated to Station WMBQ and the hours regularly allocated to Station WWRL.

(3) Application of Arthur Faske for modification of construction permit requesting extension of the commencement and completion dates (Docket No. 5324).

(4) An application of Arthur Faske for construction permit requesting permission to make certain equipment changes, removals, and installations in connection with Station WCNW (Docket No. 5444).

(5) Application of the Long Island Broadcasting Corporation (WWRL) for renewal of license (Docket No. 5676).

(6) Application of Long Island Broadcasting Corporation (WWRL) requesting unlimited time including the facilities now assigned to Station WCNW (Docket No. 5459).

Consolidated hearings on all the applications were held before an examiner duly appointed by the Commission on October 16 through 28 (omitting October 21 and 22) and on November 2 and 3, 1939. Thereafter and following the submission of proposed findings of fact and conclusions on behalf of the Long Island Broadcasting Corporation (WWRL) and Arthur Faske (WCNW), the Commission issued its proposed findings on February 5, 1941. The proposed findings of the Commission would have dismissed with prejudice the applications of Metropolitan Broadcasting Corporation (WMBQ) for renewal of license and a construction permit, the application of Lillian E. Kiefer for construction permit, and the applications of Arthur

Faske (WCNW) for modification of license, construction permit, and modification of construction permit; would have denied the application of Paul J. Gollhofer for construction permit, and the application of Faske for renewal of license; and would have granted the application of Long Island Broadcasting Corporation (WWRL) for renewal of license and for modification of same to include the hours formerly allocated to WMBQ and WCNW. Exceptions to the proposed findings were filed on behalf of WCNW to which WWRL filed its opposition. Thereafter, oral argument was requested on behalf of both of the parties.

It will be observed that the three parties other than Arthur Faske and Long Island Broadcasting Corporation have all dropped from the proceedings somewhere during their course. The two applications of Metropolitan Broadcasting Corporation (WMBQ) were never prosecuted, no evidence on its behalf having been offered either at the original hearing in 1937 or the further hearing in 1939. The only shareholders in the Metropolitan Broadcasting Corporation were Miss Kiefer and Mr. Gollhofer and their disagreement, as hereafter discussed, and subsequent pursuit of their own several interests meant in effect abandonment of the applications originally filed on its behalf.

The original license for Station WMBQ was issued on January 28, 1927, to Mr. Gollhofer. Miss Kiefer subsequently became associated with him in the operation of the station, acting as commercial manager, program director, announcer, and staff musician, while Mr. Gollhofer devoted his time to general supervision and technical operations. Subsequently, a corporation known as the Metropolitan Broadcasting Corporation was formed in which Miss Kiefer and Mr. Gollhofer each owned 100 shares of the 200 shares issued by the corporation. The Commission consented to the assignment of the license of Station WMBQ from Mr. Gollhofer to the corporation on May 7, 1935. Internal disputes between Mr. Gollhofer and Miss Kiefer culminated in March 1936 with Miss Kiefer's application for a construction permit requesting the operating assignment of Station WMBQ. Subsequently, on Mr. Gollhofer's petition the Metropolitan Broadcasting Corporation was dissolved by action of the New York courts and its assets were distributed.

The disputes between Miss Kiefer and Mr. Gollhofer, which resulted in the dissolution of the Metropolitan Broadcasting Corporation, were settled prior to the further hearing which commenced in October, 1939, and, at that time, applicant Gollhofer placed in evidence a copy of a contract between Miss Kiefer and himself providing for an adjustment of their property rights and for Miss Kiefer's full cooperation

with Mr. Gollhofer in the prosecution of his application. Miss Kiefer offered no evidence at the hearing in support of her application, and in view of the circumstances it should be deemed abandoned and dismissed with prejudice.

While Mr. Gollhofer participated fully in the 1939 hearings, he did not file with the Commission thereafter any proposed findings of fact and conclusions, nor did he except to the proposed findings actually entered by the Commission or request oral argument thereon. A careful reexamination of the record made by Mr. Gollhofer in the 1939 hearing indicates no reason to depart from the Commission's proposed findings insofar as he is concerned. Quite apart from isolated instances of dereliction from the Commission's standards and, in at least one instance, violation of an express provision of the Communications Act, the evidence discloses that Station WMBQ over a period of years engaged in the practice of selling a substantial portion of its time to "time brokers." The quality of its program service may be accurately conjectured from the fact that no talent was paid by the station, nor did it have a transcription service. There is nothing to indicate that the public has suffered through loss of service from Station WMBQ since expiration of its authority to operate. There is, furthermore, no basis for supposing that the public would now gain by revival of its service.

At the time oral argument was held before the Commission on April 3, 1941, the proceeding had in effect narrowed into a controversy between Long Island Broadcasting Corporation (WWRL) and Arthur Faske (WCNW). At that time Station WWRL was operating 75 hours per week and Station WCNW the remaining 37 hours per week pursuant to the proceeding described in detail above. The Commission has concluded on the basis of the record, and in view of the oral argument, to depart from its proposed findings of fact and conclusions, and to leave the parties as it found them at the date of oral argument. Consequently, the renewal licenses will permit the two applicants to continue to operate on the same time-sharing basis as they do now.

With regard to the operation of Station WCNW, the record made at the two hearings amply disclosed that this station has been guilty of repeated failures to maintain proper engineering standards. While minor when considered as individual instances, their cumulative effect tended to show a pattern of hit-or-miss operation which cannot be tolerated. To illustrate, Commission inspectors found that on one occasion in May 1938 the station operated with 96 watts power instead of the authorized 250 watts; whereas, in one instance in the following August, it was operating with a power of 270 watts. Similar instances of improper operation were repeatedly found during 1938.

However, irregularities of operation are not of recent date, and since their last known date several Commission inspections have failed to disclose improper operation. The Commission has determined to accept the representations of the licensee that in the future every proper and reasonable precaution will be taken to assure that past errors will not be repeated and that operation will rigorously comply with the Commission's standards and with the terms of the station's license. A close examination will, however, be maintained on the operating practices of Station WCNW, and, should future deviations be disclosed, the Commission will necessarily take into consideration the entire operating history of the licensee in determining the proper course of action.

While the operating conditions of the Long Island Broadcasting Corporation (WWRL) have been satisfactory, grave charges against its operation in the public interest have been made by WCNW. The gravamen of the charges is that the present licensee constitutes a channel through which agents of and sympathizers with a belligerent government are permitted to speak freely, and that the station consequently "cannot express the unbiased American point of view." The charges are of a most serious character and have resulted in a thorough and painstaking investigation by the Commission of the past program service offered by Station WWRL.

The fact that continued operation has been authorized by the Commission may of itself be taken to establish that no basis for the charges has been found to exist. It is worth noting that the charges against Station WWRL were first made by Station WCNW very late in the proceedings in a document filed February 22, 1941, purporting to be a petition for reconsideration directed against the Commission's proposed findings of fact and conclusions. It is further worth noting that they depend entirely on innuendo, conclusory statements, and *non sequitur* reasoning, arising from the fact that Station WWRL's service area includes a substantial German population and thereby must be deemed to be expressing a point of view said to prevail among that population. No facts to support the innuendos, conclusions, and reasoning were offered either in the petition or in subsequent oral argument, although at that time counsel for Station WCNW has repeatedly pressed for such facts as formed the basis for his charges. But, whatever the intrinsic probabilities of the charges, and however inadequately their author may have sustained them either in his petition or in subsequent oral argument their seriousness merited full investigation. Commission investigators conducted extensive interviews with the personnel of Station WWRL and the sponsors of its German-language programs, with Stations WCNW and WNYC, and with the American Jewish Congress. The station's

files of German-language continuities since January 1, 1940, have been examined. No pro-Nazi slanting of program service has been discerned. The results of an independent survey of the station's German-language programs conducted by the Office of Radio Research of Columbia University confirm this conclusion. It is significant that the Commission received no complaints on Station WWRL, of the nature set forth in the petition, until it proposed to deny the renewal application of Station WCNW and grant its time to WWRL.

The standards of objectivity to which a station must adhere have been fully stated in the Commission's recent decision in the Mayflower case (*In the Matter of the Mayflower Broadcasting Corporation, Boston, Mass.*, Docket No. 5618, and *In the Matter of The Yankee Network, Inc. (WAAB)*, for Renewal of License, Docket No. 5640, decided January 17, 1941) and we do not deem it necessary to elaborate the subject here. The station has a recognized duty to present well-rounded programs on subjects which may be fairly said to constitute public controversies of the day within the framework of our democratic system of government. At the same time the Commission will not tolerate hostile propagandizing in the interest of any foreign government which has repeatedly and flagrantly expressed its enmity to this country and to the continued existence of its basic system of government.

While we have found the program service offered by Station WWRL free from taint of the character alleged, nevertheless an over-all consideration of the record, including a comparison of the program service offered by the respective applicants, leads us to the conclusion that there is no adequate basis for denying the renewal application of Station WCNW in order to grant its hours of operation of Station WWRL. Apart from the engineering matters previously covered, the operation of Station WCNW has uniformly been in the public interest and shows a considered understanding of the responsibilities placed upon licensees by this Commission. Genuine efforts have apparently been made on its part to render a rounded, constructive, and enlightened program to the listeners which it serves. In view of its efforts and in view of its representations with respect to future operations, the Commission has determined to modify its proposed findings and to permit the two stations to continue operating with their present division of operating hours.

In so doing the Commission is not to be construed as departing from its position that time-sharing stations do not represent a healthy situation and are not to be encouraged. The Commission does feel, however, that there is nothing in the record to warrant the economic death penalty on either station at the instance of the other. The

situation as it now exists will be permitted to continue but the Commission will be continually interested in the public-service records which these two applicants may compile.

An appropriate order will be entered.

CASE, COMMISSIONER, dissenting:

I am unable to concur in the majority decision. The record clearly establishes, and the majority decision concedes, that the licensee of Station WCNW has been guilty of numerous and repeated violations of the terms of its license and of the engineering requirements of the statute and regulations. The licensees of Stations WCNW and WWRL have each applied for authority to operate full time on the frequency 1600 kilocycles which they now share. The charges made by the licensee of Station WCNW with respect to foreign-propaganda broadcasts by Station WWRL are not supported either by the facts as submitted by the licensee of WCNW or as found by the Commission's independent investigation. No disinterested person has filed any such complaints or charges with the Commission.

Furthermore, I believe that as a general principle the Commission should adhere to its policy against time-sharing operations by radio-broadcast licensees.

In view of these circumstances, the proposed findings of fact and conclusions (issued by the full Commission on February 6, 1941), which proposed to deny a renewal of the WCNW license and to grant authority to the license of WWRL to operate full time on the 1600-kilocycle channel, should be adopted as final.

June 18, 1941

ORDER

At a session of the Federal Communications Commission held at its offices in Washington, D. C., on the 18th day of June, 1941;

The Commission having under consideration the evidence in the above-entitled dockets, the proposed findings of fact and conclusions submitted by the Long Island Broadcasting Corporation and Arthur Faske, the proposed findings of fact and conclusions of the Commission, and the oral arguments and briefs filed by the Long Island Broadcasting Corporation and Arthur Faske in support of and in opposition to the Commission's proposed findings and conclusions;

It is ordered that the findings and conclusions attached hereto be, and they are hereby, adopted as the final findings and conclusions of the Commission;

It is further ordered that the application for renewal of license by the Metropolitan Broadcasting Corporation (B1–R–218; Docket No. 4050) be, and it is hereby dismissed;

It is further ordered that the application for a construction permit by the Metropolitan Broadcasting Corporation, (B1–P–1063; Docket No. 4029) be, and it is hereby, dismissed;

It is further ordered that the application for a construction permit by Lillian E. Kiefer (B1–P–1064; Docket No. 3941) be, and it is hereby, dismissed;

It is further ordered that the application for a construction permit by Paul J. Gollhofer (B1–P–1443; Docket No. 4331) be, and it is hereby, denied;

It is further ordered that the application of Arthur Faske for the renewal of his license to operate Station WCNW (B1–R–216, Docket No. 5323) be, and it is hereby granted; the application of Arthur Faske to modify the license of Station WCNW (B1–ML–378; Docket No. 4622) be, and it is hereby, denied; the application of Arthur Faske for construction permit (B1–P–2233; Docket No. 5444) be, and it is hereby granted; the application of Arthur Faske for modification of construction permit (B1–MP–662; Docket No. 5324) be, and it is hereby, dismissed.

It is further ordered that the application of Long Island Broadcasting Corporation (WWRL) to utilize the hours of operation allocated to WCNW (B1–ML–599; Docket No. 5459) be, and it is

hereby, denied; the application of Long Island Broadcasting Corporation (WWRL) to utilize the hours of operation allocated to WMBQ (B1–ML–352; Docket No. 4302) be, and it is hereby, granted; the application of the Long Island Broadcasting Corporation (WWRL) for the renewal of its license (B1–R–271; Docket No. 5676) be, and it is hereby, granted.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of MUZAK CORPORATION, NEW YORK, N. Y. Application for construction permit for the developmental broadcast station.	FILE No. B1–PEX–36

July 1, 1941

MEMORANDUM OPINION

BY THE COMMISSION:

This matter arises upon the application of Muzak Corporation for authority to construct in New York City a new developmental broadcast station to operate unlimited time with power of 1 kilowatt, special emission for frequency modulation.

The proposal advanced in this application is unique in the annals of radiobroadcasting in this country. The applicant proposes to experiment with what may be termed a subscriber service, for the purpose of determining whether the public, or a sufficiently large proportion of the public to make the service feasible, would finance the broadcasting of programs by direct payment therefor. This is to be accomplished through the presentation of a diversified high quality program service which will be available to the public generally upon subscription and payment therefor. The applicant will broadcast no commercially sponsored programs, and no advertising continuity whatever will be used. Special receiving equipment will be leased by the applicant to those who subscribe for its service. Reception by persons other than subscribers will be prevented by means of the transmission of a discordant sound (referred to sometimes as a "pig squeal" signal) which can be eliminated only by the use of such special receiving equipment.

Inasmuch as the applicant's proposal is a marked departure from the usually accepted method of providing broadcast service in this country, a brief reference may be made to the definition and history of broadcast service. A broadcast station is defined, both by treaty and statute, as one licensed for the transmission by radiotelephone emis-

sions primarily intended to be received by the general public. The first such stations licensed in this country were sought and obtained by individuals or organizations engaged in manufacturing or similar enterprises who desired either to advertise their own product or to promote public good will in their own behalf. Licenses, in order to meet the increasing cost of providing broadcast programs, gradually entered into the practice of transmitting, for a fee, advertising matter for other persons. As the effectiveness of radio as an advertising medium developed, broadcasting became a business in its own right. Thus arose the practice in this country of public support of broadcast service, not through any direct charge, but through the purchase of articles and services advertised by radio. This is not true in all countries of the world.

The service which this applicant proposes will be available to the general public; any member of the public, without discrimination, may lease the equipment to receive the service. The distinguishing feature will be that those receiving the programs will pay directly rather than indirectly therefor. Operation of a station in this manner is within the definition of broadcasting.

The rules of the Commission [1] contemplate that an authorization for a developmental broadcast station will be issued only where the proposed program of research has reasonable promise of substantial contribution to the development of broadcasting, or is along lines not already thoroughly investigated and provide that a developmental broadcast station shall not make any charge, directly or indirectly, for the transmission of programs. The type of experiment which the applicant proposes has not been conducted in this country. We believe it to be worthy of investigation. A charge to the subscriber for the program service is an integral and inseparable part of the experiment. The rule prohibiting a direct or indirect charge by the licensee of a developmental broadcast station for the transmission of programs was promulgated in the light of the existing practices of broadcast stations. Under the circumstances here presented, we are of the opinion that the rule should be construed in such a manner as to permit the proposed operation.

The facts before us clearly establish the qualifications of the applicant to construct and operate the proposed station and the experiments will be carried on by competent persons.

The frequency to be assigned to the proposed station, 117,650 kilocycles, is in a crowded part of the spectrum devoted to other services,

[1] Secs. 4.152 (a) (2) and 4.153 (b). A developmental broadcast station is defined (sec. 4.151) as one licensed to carry on development and research for the advancement of broadcast services along lines other than those prescribed by other broadcast rules or a combination of closely related developments that can be better carried on under one license. Such a station is to be distinguished from an experimental station which is one engaged in research and experimentation for the technical advancement of the radio art (sec. 5.1).

and if it should develop that a service of this nature is practicable, frequencies therefor would probably have to be allocated from other portions of the radio spectrum. Accordingly, the authorization to Muzak Corporation is issued upon the express understanding that this grant is not to be construed as a finding by the Commission that the operation of the proposed station upon the frequency authorized is or will be in the public interest beyond the express terms of the grant. Furthermore, this authorization is on an experimental basis only, and upon the express condition that it is subject to change or cancellation by the Commission at any time, without advance notice or hearing, if, in the Commission's discretion, the need for such action arises. This station is to use frequency modulation.

Subject to the aforementioned conditions, we find the public interest, convenience, and necessity will be served through the granting of this application.

8 F. C. C.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of WSAZ, INC., HUNTINGTON, W. VA. For Modification of Construction Permit.	FILE No. B2–MP–1290

Decided July 22, 1941

DECISION AND ORDER ON PETITION FOR REHEARING

BY THE COMMISSION (COMMISSIONER WALKER DISSENTING):

The Commission has before it a petition for rehearing filed June 21, 1941, by Monocacy Broadcasting Co. (WFMD), Frederick, Md. On June 30, 1941, WSAZ, Inc., Huntington, W. Va., filed its opposition to the petition for rehearing.

The petition for rehearing purports to be directed against the order of the Commission of June 4, 1941, granting the application of WSAZ, Inc., Huntington, W. Va., for modification of construction permit (B2–MP–1290). The Commission's order of June 4, 1941, did no more, however, than formally approve the transmitter location and the antenna system devised by the applicant in accordance with the Commission's earlier order of September 4, 1940, which granted the application of WSAZ, Inc., for construction permit (B2–P–2856) to operate on the frequency 900 (930) kilocycles, unlimited time, conditioned upon use of a directional antenna [1] as particularly described in the grant. And examination of the petition for rehearing reveals that it is in reality directed at the Commission's order of September 4, 1940, and at its order of August 14, 1940, granting the application of WBEN, Inc., Buffalo, N. Y., for construction permit (B1–P–2757) to increase power from 1 kilowatt to 5 kilowatts power on the frequency 900 (930) kilocycles, and to change its antenna system from nondirectional to directional.

On August 14, 1940, the Commission granted the application of petitioner, Monocacy Broadcasting Co., Frederick, Md., for construction permit (B1–P–2243) to increase hours of operation of Station

[1] As of March 29, 1941, under the terms of the North American Regional Broadcasting Agreement, stations assigned to the frequency 900 kilocycles were shiffted to 930 kilocycles.

WFMD from daytime only, to unlimited time, on the frequency 900 (930) kilocycles with 500 watts power.[2] According to engineering data attached to petitioner's application for construction permit (B1–P–2243) petitioner's station, operating as proposed by the Commission's grant of August 14, 1940, would serve at night to its 7.3 millivolt-per-meter contour, which would include a population of 25,073, with Station WBEN, Buffalo, operating as authorized prior to the Commission's grant of August 14, 1940. On the other hand, according to the data, the Commission's grant of August 14, 1940, to Station WBEN would limit petitioner's station, operating as proposed by the Commission's grant of August 14, 1940, to its 11 millivolt-per-meter contour which would include 21,126 people.

The Commission's Order of September 4, 1940, granted the application of WSAZ, Inc., Huntington, W. Va., for a construction permit (B2–P–2856) to operate on the frequency 900 (930 kilocycles with 1 kilowatt power, unlimited time, using a directional antenna. Petitioner contends that this grant will result in a nighttime limitation to petitioner's station of 6.85 millivolts per meter. Although this limitation is not 70 percent of the dominant interfering signal (11 millivolts per meter from Station WBEN, Buffalo, N. Y.), and hence would not increase the existing interference to petitioner's station as computed under the Commission's rules,[3] petitioner alleges that if Station WBEN were required to protect petitioner's station to its 4 millivolt-per-meter contour (the contour generally recommended under the Commission's Standards of Good Engineering Practice for stations in the class of petitioner's station), then Station WSAZ would become the dominant interfering signal to petitioner's station. Therefore, petitioner requests the Commission to require Station WBEN, Buffalo, N. Y., and Station WSAZ, Huntington, W. Va., to reduce the limitation each imposes upon petitioner's station so as to permit petitioner's station to operate to its 4 millivolt-per-meter contour.[4]

No engineering data is given by petitioner to show what changes, if any, are necessary in the pattern or location of the directional antenna systems or other transmitting equipment of Stations WBEN and WSAZ to produce the results petitioner requests. Nor is any

[2] See decision and order August 14, 1940, in re Monocacy Broadcasting Co. (WFMD). Frederick, Md., for construction permit, 8 F. C. C. 180.

[3] The Commission's Standards of Good Engineering Practice provide: "It is not considered that increased objectionable interference is caused when (in the case where interference is predominantly from a single station) a signal from another station is added which does not have an intensity greater than 70 percent of the value of the highest signal already causing interference."

[4] It may be noted that at the time petitioner filed its application for construction permit to increase hours of operation from daytime only to unlimited time, as well as at the time petitioner's application was granted, the limitation to petitioner's station from Station WBEN operating as then authorized was 7.3 millivolts per meter.

information given in the petition as to what effect such changes might have on the service areas of Stations WBEN and WSAZ if these stations were required to protect petitioner's station as requested. In this situation, the Commission has no basis upon which it could possibly determine either the feasibility of the petitioner's request, or that a grant of the request would serve public interest, convenience, and necessity.

Moreover, the petition for rehearing, insofar as it complains of the Commission's orders of August 14 and September 4, 1940, was not timely filed. Section 405 of the Communications Act of 1934 provides for the filing of a petition for rehearing by any party or any person aggrieved or whose interests are adversely affected by a decision, order, or requirement of the Commission, "*Provided, however*, That in the case of a decision, order, or requirement made under title III [of the act], the time within which application for rehearing shall be made shall be limited to 20 days after the effective date thereof. * * *"[5] Since the Commission's orders of August 14, 1940, granting the application of WBEN, Inc., for construction permit (B1–P–2757) and of September 4, 1940, granting the application of WSAZ, Inc., for construction permit (B2–P–2856), of which petitioner complains, were made effective months prior to the filing of petitioner's petition for rehearing, the petition for rehearing must be dismissed insofar as it requests a rehearing of the Commission's orders granting the applications of WBEN, Inc., and WSAZ, Inc., for construction permits.

Insofar as petitioner requests a rehearing of the Commission's act of June 4, 1941, granting the application of Station WSAZ for modification of construction permit (B2–MP–1290), the petition must be denied; first, because that application does no more than seek approval of the antenna system and transmitter location as expressly set forth in the Commission's order of September 4, 1940, and second, because it appears that petitioner is not aggrieved or adversely affected by either the Commission's order of June 4, 1941, granting the application of Station WSAZ, Inc., for modification of construction permit (B2–MP–1290) or the Commission's order of September 4, 1940, granting the application of Station WSAZ for construction permit (B2–P–2856), since the operation of Station WSAZ as proposed by those orders does not increase the limitation to petitioner's station as determined by the Rules and Regulations of the Commission and its Standards of Good Engineering Practice.

[5] Par. 1.271 of the Commission's rules of practice and procedure provides: "Any party whose interests are aggrieved or adversely affected by any decision, order, or requirement, may file a petition for rehearing of the same or any matter determined therein as provided in section 405 of the act."

It is, therefore, ordered, this 22nd day of July 1941, that the petition for rehearing of Monocacy Broadcasting Company (WFMD), Frederick, Md., be, and it is hereby, dismissed without prejudice insofar as it requests a rehearing of the order of the Commission, August 14, 1940, granting the application of WBEN, Inc., Buffalo, N. Y., for construction permit (B1–P–2757) and the order of the Commission September 4, 1940, granting the application of WSAZ, Inc., for construction permit (B2–P–2856).

It is further ordered that the petition of Monocacy Broadcasting Co. (WFMD), Frederick, Md., be, and it is hereby denied, insofar as it requests a rehearing of the order of the Commission, June 4, 1941, granting the application of WSAZ, Inc., for modification of construction permit (B2–MP–1290).

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of

Joint application of the COLLIERVILLE TELEPHONE Co. and the SOUTHERN BELL TELEPHONE & TELEGRAPH Co. for a certificate that the acquisition by the SOUTHERN BELL TELEPHONE & TELEGRAPH Co. of the telephone plant and property of COLLIERVILLE TELEPHONE Co. will be of advantage to the persons to whom service is to be rendered and in the public interest.

DOCKET No. 6008

July 22, 1941

CERTIFICATE

At a session of the Federal Communications Commission held at its office in Washington, D. C., on the 22d day of July 1941, the Commission having under consideration the joint application of the Southern Bell Telephone & Telegraph Co. and the Collierville Telephone Co., requesting this Commission to certify that the proposed acquisition of the telephone properties of the Collierville Telephone Co. by the Southern Bell Telephone & Telegraph Co. will be of advantage to the persons to whom services are to be rendered and in the public interest.

A hearing and investigation of the matters and things involved in said proceeding having been had, it is hereby certified that the proposed acquisition of the properties of the Collierville Telephone Co. by the Southern Bell Telephone & Telegraph Co. will be of advantage to the persons to whom service is to be rendered and in the public interest.

This certificate will take effect immediately.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of [1]
ORDERS No. 79 AND 79–A } DOCKET No. 6051

Decided July 23, 1941

DECISION AND ORDER ON MOTION TO VACATE ORDER

This is a petition by American Newspaper Publishers Association to vacate Commission Order No. 79 and Order No. 79–A and to terminate the proceedings instituted thereunder.

Order No. 79, issued on March 20, 1941, directed that an investigation be undertaken to determine what statement of policy or rules, if any, should be made concerning applications for high-frequency broadcast stations (FM) by persons also associated with the publication of one or more newspapers, and concerning the future acquisition of standard broadcast stations by such persons. This order was supplemented by Order No. 79–A, issued July 1, 1941, setting forth the issues on which testimony would be taken. The hearing was originally scheduled for June 25, 1941, but was continued to July 23, 1941, on the petition of a committee representing certain newspaper publishers.

The instant petition, filed July 15, 1941—8 days before the date set for the hearing—requests the Commission to vacate its Orders No. 79 and 79–A on the ground that the Commission lacks authority to conduct proceedings of the type contemplated by the order.

Our jurisdiction to issue Order No. 79 and Order No. 79–A was carefully considered prior to the promulgation of those orders. It seems inconceivable to us that an argument could be seriously advanced against the inherent power of any administrative agency, endowed by statute with power to hold hearings, issue subpoenas, etc., to conduct general hearings of the type involved here. One of the principal reasons for the establishment of administrative agencies is the expertness which such agencies are expected to develop in the administration of difficult and complicated matters. If problems

[1] See *Stahlman* v. *Federal Communications Commission*, 75 App. D. C. 176; 126 F. (2d) 124, January 26, 1942.

involved in the regulation of an agency are complex enough to induce Congress to establish an administrative agency to administer them, it would seem unlikely that Congress would limit its usefulness by denying to it the power to hold general hearings for the purpose of acquainting itself with the problems of the industry and the best solution therefor. Such an intention is not to be imputed to Congress unless the statute creating the agency explicitly so provides.

But our jurisdiction does not rest alone on this inherent power of administrative agencies. The Communications Act explicitly confers on us the power to conduct such proceedings as that involved in Orders 79 and 79–A.

Section 403 of the act provides:

> The Commission shall have *full* authority and power at any time to institute an inquiry, on its own motion, *in any case and as to any matter* or thing concerning which complaint is authorized to be made, to or before the Commission by any provision of this act, or *concerning which any question may arise under any of the provisions of this act*, or relating to the enforcement of any of the provisions of this act. [Italics supplied.]

In the administration of section 309 of the act, authorizing the Commission to grant or deny applications for station licenses, the question whether the public interest, convenience, and necessity is served by the granting of a license to newspaper interests has arisen from time to time (e. g. *Port Huron Broadcasting Co.*, 5 F. C. C. 177; *Dorrance D. Roderick*, 3 F. C. C. 616, 5 F. C. C. 563; *The South Bend Tribune*, 6 F. C. C. 783; *Barnes & Weiland et al.*, 8 F. C. C. 46) (Decided April 15, 1940).

With the recent advent of frequency modulation (FM) broadcasting, this question has taken on an increased importance. Out of 116 applications for FM licenses, 45, filed by newspaper interests, confront the Commission with the necessity of determining whether or not the granting of FM licenses to such interests will serve the public interest, convenience or necessity. The Commission's duty to act upon these applications for licenses carries with it the duty to determine the qualifications of the applicants. Under section 309 each of these applications would have to be set for hearing if the Commission could not determine from the examination thereof that public interest, convenience or necessity would be served by a grant. To deny the Commission the power to institute a general inquiry into the same matter under section 403, as urged by petitioner, would deprive section 403 of all meaning, and would lead to the unreasonable result that we are empowered to hold scores of particular hearings in order to arrive at a determination of policy but are not empowered to hold one general inquiry for the same purpose. The power conferred by section 403, and the further power

conferred by section 4 (j), to conduct proceedings "in such manner as will best conduce to the proper dispatch of business and to the ends of justice" were hardly intended to impose such a procedural strait jacket on the Commission.

The Commission's authority under section 403 to institute the proceedings covered by Orders 79 and 79–A is not, moreover, limited to matters arising under section 309. An inquiry may be authorized as to "any matter" concerning which "any question" may arise under "any of the provisions of this act." Thus the issues to be examined pursuant to Order No. 79 may be broad enough to include subjects concerning which the Commission may wish to consider recommending additional legislation in its annual report to Congress, as directed by section 4 (k) of the act. Even if the questions arising under Order No. 79 and 79–A were not clearly matters arising under section 309, the Commission could conduct such a general inquiry preliminary to determining whether to make recommendations to Congress for additional legislation.

The instant petition appears to be less concerned with Order No. 79 and Order No. 79–A than with some possible regulations, the precise nature of which petitioner does not state, which it fears the Commission may promulgate at some future date. It would certainly not be conducive to the proper dispatch of business to permit petitioner at this time to argue the validity of purely suppositious regulations which may or may not be promulgated after the hearings are closed. If at the close of the hearings we do determine that the public interest makes regulations necessary or advisable, our procedure allows ample opportunity to argue the validity or invalidity of such regulations at that time.

It is ordered, this 23d day of July 1941, that the petition filed by American Newspaper Publishers Association to vacate Commission Order No. 79 and 79–A be, and it is, hereby denied.

ADDITIONAL DECISIONS IN DOCKETED PROCEEDINGS; SUMMARY OF ORDERS ENTERED WITHOUT FORMAL OPINIONS

Southern Bell Telephone & Telegraph Co., Atlanta, Ga., Docket No. 5634.—Application for construction permit for coastal harbor station near Charleston, S. C., granted on March 13, 1940, upon consideration of the application, the documents submitted therewith, the evidence adduced at the hearing, and the Commission having determined that public interest, convenience, and necessity will be served by granting the application.

Southern Bell Telephone & Telegraph Co., Atlanta, Ga., Docket No. 5772.—Application for construction permit for coastal harbor station at Maderia Beach, Fla., granted on March 22, 1940, upon consideration of the application, the documents submitted therewith, the evidence adduced at the hearing, and the Commission having determined that public interest, convenience, and necessity will be served by granting the application.

Pacific Telephone & Telegraph Co., San Francisco, Calif., Docket Nos. 5773, 5774.—Application for construction permit to erect a coastal harbor station near Fort Stevens, Oreg., to operate on 2598 kilocycles, 400 watts, unlimited time, A2 and A3 emission; and to erect a coastal harbor station near Portland, Oreg., to operate on 2598 kilocycles, 50 watts, unlimited time, A2 and A3 emission, granted on April 13, 1940, upon consideration of the applications, the documents submitted therewith, the evidence adduced at the hearing, and the Commission having determined that public interest, convenience, and necessity will be served by granting the application.

Diamond State Telephone Co., Wilmington, Del., Docket No. 5712.—Application for construction permit for coastal harbor station near Delaware City, Del., granted on May 16, 1940, upon consideration of the application, the documents submitted therewith, the evidence adduced at the hearing, and the Commission having determined that public interest, convenience, and necessity will be served by granting the application.

L. J. Duncan, Leila A. Duncan, Josephine A. Keith, Effie H. Allen, and *Aubrey Gay,* doing business as *Valley Broadcasting Co., West Point, Ga., Docket No. 5784.*—Application for construction permit for new broadcast station to operate on 1310 kilocycles, 250 watts, unlimited time, granted on May 16, 1940, upon consideration of the application, the documents submitted therewith, the evidence adduced at the hearing, and the Commission having determined that public interest, convenience, and necessity will be served by granting the application.

George Penn Foster, Maxwell Kelch, and *Calvert Charles Applegate,* doing business as *Nevada Broadcasting Co., Las Vegas, Nev., Docket No. 5702.*—Application for construction permit for new broadcast station to operate on 1370 kilocycles, 100 watts night, 250 watts day, unlimited time, granted on June 5, 1940, upon consideration of the application, the document submitted therewith, the evidence adduced at the hearing, and the Commission having determined that public interest, convenience, and necessity will be served by granting the application.

Las Vegas Broadcasting Co., Las Vegas, Nev., Docket No. 5703.—Application for construction permit for new broadcast station to operate on 1420 kilocycles, 100 watts night, 250 watts day, unlimited time, granted on June 5, 1940, upon consideration of the application, the documents submitted therewith, the evidence adduced at the hearing, and the Commission having determined that public interest, convenience, and necessity will be served by granting the application.

Joe W. Engel, Chattanooga, Tenn., Docket No. 5783.—Application for construction permit for new broadcast station to operate on 1370 kilocycles, 250 watts, unlimited time, granted on July 5, 1940, upon consideration of the application the documents submitted therewith, the evidence adduced at the hearing, and the Commission having determined that public interest, convenience, and necessity will be served by granting the application. "Petition for rehearing and for reconsideration of the grant," filed by Chattanooga Broadcasting Corporation, Chattanooga, Tenn., denied by the Commission on September 10, 1940.

Wilton Harvey Pollard (WBHP), *Huntsville, Ala., Docket No. 5798.*—Application for renewal of license of Station WBHP granted on July 16, 1940, upon consideration of the application, the documents submitted therewith, the evidence adduced at the hearing, and the Commission having determined that public interest, convenience, and necessity will be served by granting the application.

Harold Thomas, Bridgeport, Conn., Docket No. 5699.—Application for construction permit for a new radiobroadcast station to operate on 1420 kilocycles, 250 watts, unlimited time, granted on July 19, 1940, upon consideration of the application, the documents submitted therewith, the evidence adduced at the hearing, and the Commission having determined that public interest, convenience, and necessity will be served by granting the application.

Sharon Herald Broadcasting Co. (WPIC), *Sharon, Pa., Docket No. 5803.*—Application for construction permit for a new broadcast station granted on August 21, 1940, upon consideration of the application, the documents submitted therewith, the evidence adduced at the hearing, and the Commission having determined that public interest, convenience, and necessity will be served by granting the application.

Guy S. Cornish, Cincinnati, Ohio, Docket No. 5814.—Application for construction permit for new class II experimental station to operate on 310000 kilocycles, 1 watt, A-3, emission granted on October 30, 1940, the Commission, having determined that public interest, convenience, and necessity will be served by the granting of the application.

Courier-Post Publishing Co., Hannibal, Mo., Docket No. 4062.—Application for construction permit to erect a new broadcast station to operate on 1310 kilocycles, 100 watts night, 250 watts day, unlimited time, granted on February 4, 1941, upon consideration of the application, the documents submitted therewith, the evidence adduced at the hearing, and the Commission having determined that public interest, convenience, and necessity will be served by granting the application.

Clinton Broadcasting Corporation, Clinton, Iowa, Docket No. 4939.—Application for construction permit to erect a new broadcast station to operate on 1310 kilocycles, 100 watts night, 250 watts day, unlimited time or in the alternative to

operate 100 watts unlimited time, granted on February 4, 1941, the Commission having determined that the granting of the application will serve public interest, convenience, and necessity.

Michael J. Mingo, Tacoma, Wash., Docket No. 4937.—Application for construction permit to erect new broadcast station on 1430 kilocycles, 500 watts or 1 kilowatt, unlimited time, granted on May 6, 1941, the Commission having determined that the granting of the application will serve public interest, convenience and necessity.

Tacoma Broadcasters, Inc., Tacoma, Wash., Docket No. 5229.—Application for construction permit to erect a new broadcast station to operate on 1490 kilocycles, 250 watts, unlimited time, granted on May 6, 1941, the Commission having determined that the granting of the application will serve public interest, convenience and necessity.

CASES DISMISSED WITH PREJUDICE OR DENIED AS IN DEFAULT

SPRINGFIELD RADIO SERVICE, INC., SPRINGFIELD, OHIO, DOCKET NO. 5714; application dismissed with prejudice on April 5, 1940.

ARLINGTON BROADCASTING CORPORATION, ARLINGTON, VA., DOCKET NO. 5862; applicant failed to file written appearance in accordance with section 1.382; application denied as in default on June 10, 1940.

PIERCE MARINE CORPORATION, YOUNGSTOWN, N. Y., DOCKET NO. 5878; applicant failed to file an appearance and statement of facts to be proved; application denied as in default on July 5, 1940.

GLOVER WEISS, trading as GLOVER WEISS CO., JACKSONVILLE, FLA., DOCKET NO. 5878; applicant failed to file an appearance and statement of facts to be proved; application denied as in default on July 11, 1940.

BEN J. SALLOWS, ALLIANCE, NEBR., DOCKET NO. 5882; applicant failed to file written appearance in accordance with section 1.382; application denied as in default on July 23, 1940.

GREENVILLE BROADCASTING CO., GREENVILLE, S. C., DOCKET NO. 5884; applicant failed to file written appearance in accordance with section 1.382; application denied as in default on August 6, 1940.

KEYS BROADCASTING CO., KEY WEST, FLA., DOCKET NO. 5932; applicant failed to file written appearance in accordance with section 1.382; application denied as in default on December 5, 1940.

CENTRAL BROADCASTING CORPORATION, SANFORD, FLA., DOCKET NO. 5934; applicant failed to file written appearance in accordance with section 1.382; application denied as in default on December 5, 1940.

ATLANTIC BROADCASTING CORPORATION, WEST PALM BEACH, FLA., DOCKET NO. 5936; applicant failed to file written appearance in accordance with section 1.382; application denied as in default on December 5, 1940.

CARL SHOLTZ, FORT PIERCE, FLA., DOCKET NO. 5937; applicant failed to file written appearance in accordance with section 1.382; application denied as in default on December 5, 1940.

T. B. GILLESPIE, PALATKA, FLA., DOCKET NO. 5943; applicant failed to file written appearance in accordance with section 1.382; application denied as in default on December 28, 1940.

PADUCAH BROADCASTING CO., INC., CLARKSVILLE, TENN., DOCKET NO. 5940; application dismissed with prejudice on January 21, 1941.

MOLLIN INVESTMENT CO., RIVERSIDE, CALIF., DOCKET NO. 5888; applicant failed to appear at the hearing scheduled for November 7, 1940, on said application and to offer evidence in support thereof; application denied as in default on March 28, 1941.

C. J. MALMSTEN, JOHN K. MORRISON, AND ARTHUR BALDWIN (TRANSFERORS) AND ROSS C. GLASMAN, WILLIAM W. GLASMAN, AND BLAINE V. GLASMAN (TRANSFEREES), DOCKET NO. 6113; applicants failed to file written appearance in accordance with section 1.382 of the Rules; application dismissed on June 13, 1941.

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Certificate issued by Commission under authority of section 221 (a) certifying that proposed acquisition by Michigan Bell Telephone Co. of telephone plant and property of Hillandale Telephone Co. would be of advantage to persons to whom service would be rendered and in the public interest. *Michigan Bell Telephone Co.*, 101.

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AMATEUR OPERATOR AND STATION LICENSE.

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ASSIGNMENT OF LICENSE.

Application for assignment of license granted after hearing where it appeared that the proposed transferee was financially, technically, legally, and otherwise qualified, and was prepared to operate the station in an efficient and businesslike manner and in the public interest. *Lee E. Mudgett* (*KRKO*), 227.

CERTIFICATE FOR ACQUISITION.

Certificate issued by Commission under authority of section 221 (a) certifying that proposed acquisition by Michigan Bell Telephone Co. of telephone plant and property of Hillandale Telephone Co. would be of advantage to persons to whom service would be rendered and in the public interest. *Michigan Bell Telephone Co.*, 101.

Certificate issued by the Commission under authority of section 221(a) certifying that proposed acquisition by Southern Bell Telephone & Telegraph Co. of the telephone properties of the Collierville Telephone Co. would be of advantage to the persons to whom service would be rendered and in the public interest. *Collierville Telephone Co.; Southern Bell Telephone & Telegraph Co., Acquisition*, 588.

CHARGES, CLASSIFICATIONS, REGULATIONS, AND PRACTICES.

Neither United States Government nor carriers in United States are required to adhere to classifications, regulations, and rates prescribed in International Telegraph Regulations. *Telegraph Division Order No. 12* (*Urgent Rate Classification*), 502, 506.

CLASSIFICATION OF STATIONS.

Classification of stations under the rule as "class I," "class II," "class III–A," "class III–B," and "class IV" is matter merely of administrative convenience and is not a source of any right in licensees or applicants. *Miami Broadcasting Co.* (*WQAM*), 376; *Beaumont Broadcasting Corporation* (*KFDM*), 378.

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CLASSIFICATION OF STATIONS—Continued.

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COASTAL HARBOR STATIONS.

An application to construct a coastal harbor radiotelephone station near Charleston, S. C., granted where it appeared that public interest, convenience and necessity would be served. *Southern Bell Telephone & Telegraph Co.*, 592.

Application for authority to construct a coastal harbor radiotelephone station at Houghton, Mich., granted when there was shown to be a need for the service proposed. *Thorne Donnelley*, 529, 534.

Application for authority to construct coastal harbor radiotelephone station at Cape Girardeau, Mo., granted when it was shown need for proposed service existed and public interest, convenience and necessity would be served by granting thereof. *Eddie Erlbacher*, 92, 95.

Application for coastal harbor radiotelephone station at Marine City, Mich., denied where no evidence was offered to indicate the need for a station at that point. *Thorne Donnelley*, 529, 534.

Application for coastal harbor station denied where the applicant failed to satisfactorily establish legal and financial qualifications or a public need for the service proposed. *Pierce Marine Corporation*, 540, 542.

Application for second coastal harbor radiotelephone station at West Dover, Ohio, to serve Great Lakes, which would duplicate service of existing station denied since it would not produce benefits to compensate for probable disadvantages, and hence would not serve public interest, convenience and necessity. *Radiomarine Corporation of America*, 517, 524.

Application to construct a coastal harbor radiotelephone station at Madeira Beach, Fla., to operate in the public service granted conditionally where Commission found public interest, convenience, and necessity would be served. *Southern Bell Telephone & Telegraph Co.*, 592.

Applications for authority to construct a coastal harbor radiotelephone station at Houghton, Mich., and to use certain additional frequencies at coastal harbor radiotelephone stations at Lake Bluff, Ill., and Mackinac Island or Rogers City, Mich., granted when it was shown that public interest, convenience, and necessity would be served by the granting thereof. *Thorne Donnelley*, 529, 535.

Applications for authority to construct coastal harbor radiotelephone stations at Port Huron and Detroit, Mich., granted when it was shown that public interest, convenience and necessity would be served by the granting thereof. *Michigan Bell Telephone Co.*, 536.

Applications for coastal harbor radiotelephone stations at Marine City and Manistee, Mich., denied when it was not shown that public interest, convenience, and necessity would be served by the granting thereof. *Thorne Donnelley*, 529, 534.

Applications to construct coastal harbor radiotelephone stations near Fort Stevens, Ore., and near Portland, Ore., granted where it appeared that public interest, convenience, and necessity will be served. *Pacific Telephone & Telegraph Co.*, 592.

Competition.—Application for second coastal harbor radiotelephone station denied where such improvement in service as might be expected from competition between the two stations would relate principally to the development of ship

COASTAL HARBOR STATIONS—Continued.

apparatus, so that the benefits obtained would derive from competition between manufacturers of radiomarine equipment rather from competition between licensees of shore stations. *Radiomarine Corporation of America*, 517, 524.

Frequency congestion.—Application by coastal harbor radiotelephone station for additional frequencies granted where such would relieve congestion on another frequency. *The Lorain County Radio Corporation*, 525, 527.

Interference.—Applications for authority to construct coastal harbor radiotelephone stations at Port Huron and Detroit, Mich., granted when it was shown that satisfactory arrangements would be made for cooperative use of frequencies assigned to reduce interference to a minimum. *Michigan Bell Telephone Co.*, 536, 539.

Need for radiotelephone facilities.—Application for authority to construct coastal harbor radiotelephone station at Cape Girardeau, Mo., granted when there was shown to be need for the service proposed. *Eddie Erlbacher*, 92, 95.

Public interest, convenience and necessity would be served by granting application to establish coastal harbor radiotelephone station at Buffalo, N. Y., to serve the Great Lakes. *Radiomarine Corporation of America*, 517, 524.

Public interest, convenience and necessity would be served by granting applications (1) of coastal harbor station at Lorain, Ohio, to add frequencies 4282.5, 6470 and 8585 kilocycles, (2) of coastal harbor station at Port Washington, Wis., to add frequency 4282.5 kilocycles, and (3) of coastal harbor station at Duluth, Minn., to add frequency 4282.5 kilocycles. *The Lorain County Radio Corporation*, 525, 527.

Upon finding that public interest, convenience, and necessity would be served, the Commission, after hearing, issued an order granting construction permit for coastal harbor station at Delaware City, Del. *Diamond State Telephone Co.*, 592.

COASTAL HARBOR TELEPHONE SERVICE.

The rules of the Commission do not contemplate coastal harbor telephone service that is dependent, for satisfactory results, upon reciprocal operation between coastal harbor stations and vessels equipped with particular apparatus of a certain manufacturer. *Radiomarine Corporation of America*, 517, 524.

COMMUNICATIONS ACT OF 1934.

There is no requirement in the Communications Act of 1934 that findings be made on any particular issues when an application is granted after hearing. *Presque Isle Broadcasting Co.*, 3, 5, 6.

In determining whether to revoke a broadcast license for false representations to the Commission and other violations of the Communications Act, the Commission's primary duty is to the listening public; and if it appears that the violations have ceased, that the licensee is now operating the station in good faith and in the public interest, and that to revoke the license would deprive the community of broadcast service, the license should not be revoked. *Navarro Broadcasting Association (KAND)*, 198, 199.

In renewal proceedings, the function of the Commission as an administrative agency is not the imposition of penalties upon station licensees for their derelictions, except insofar as such action may result in some public benefit, but the correction of irregularities in station management and operation, as well as the encouragement and promotion of methods whereby such licensees may supply the most satisfactory public service in accordance with the Communications Act of 1934 and the rules of the Commission. *Dee E. Mudgett (KRKO)*, 227, 228.

Section 203.—Departure or deviation from regulations contained in tariff schedules, by any means or device, directly or indirectly, prohibited. Misin-

COMMUNICATIONS ACT OF 1934—Continued.

terpretation of published regulation and application thereof as incorrectly interpreted was deviation therefrom in violation of section 203 of the act. *Licht and Kaplan* v. *Postal Telegraph-Cable Co.*, 369, 374, 375.

Section 203 (c).—Charging for test calls, not shown in the carrier's tariffs, violates section 203 (c) of the act. *The Lorain County Radio Corporation*, 292, 302.

Section 221 (b).—Rates covering interstate telephone messages between zones in exchange area are not within exception contained in section 221 (b), are under jurisdiction of this Commission, and hence should be included in tariffs filed with this Commission. *Southwestern Bell Telephone Co.*, 544, 547, 548.

Section 301.—Application for renewal of broadcast license denied when it appeared that control of the physical operation and programs broadcast by the station had been exercised by unlicensed persons in violation of section 301 and 310 (b) of the act. *John H. Stenger, Jr.* (*WBAX*), 434, 444.

Section 303 (b).—Amendment of Commission's rule 3.25 which took the frequency 850 kilocycles from the group formerly assigned to class I–A stations and put it in the group assigned to class I–B stations does not constitute a modification of license of class I–A stations assigned to the frequency within the meaning of section 303 (b) of the Communications Act of 1934. *Matheson Radio Co., Inc.* (*WHDH*), 397, 425.

Section 303 (f).—Grant which curtails part of area to which existing station now renders primary service does not constitute a modification of license of existing station within the meaning of section 303 (f) of the Communications Act of 1934 since neither the act nor station's particular license confers upon station any right to serve a particular number of listeners within a specified geographical area. *WOOL, Inc.*, 39, 42.

Petition for rehearing based upon contention that it was error for the Commission to amend section 3.25 of its rules without first affording petitioner notice and an opoprtunity to be heard thereon, pursuant to section 303 (f) of the Communications Act of 1934 denied on the ground that section 303 (f) of the act requires a notice and hearing only when changes are made in the frequency, authorized power, or in times of operation of any radio station's license and the amendment to section 3.25 of the rules of which petitioner complains did not modify petitioner's license within the meaning of section 303 (f) of the act. *Matheson Radio Co., Inc.* (*WHDH*), 397, 421, 422.

Section 307 (b).—Application for construction permit to erect a new radio broadcast station which does not preclude a grant of another application for the use of the same frequency would be in conformity with section 307 (b) of the Communications Act of 1934. *Sentinel Broadcasting Corporation*, 140, 147, 148.

Applicant for increased facilities does not have to make a showing of "compelling need" in order that the community can share in the fair, efficient, and equitable distribution of radio facilities under section 307 (b) of the Communications Act of 1934. *Illinois Broadcasting Corporation*, 183, 185.

Contention in petition for rehearing that a decision of the Commission "results in a discrimination against service of rural residents in order to furnish additional service to the residents of the city of Boston and as such is violative of the requirements of section 307 (b) of the Communications Act without merit where the Commission found that the order complained of results in no real or substantial displacement of the service of petitioner's station and that the improvement and extension of service in the area of applicant station will serve the public interest. *Matheson Radio Co., Inc.* (*WHDH*), 397, 427.

COMMUNICATIONS ACT OF 1934—Continued.

Section 309 (a).—Section 309 (a) of the Communications Act of 1934 does not require notice and an opportunity to be heard to others before the Commission may grant an application for construction permit. "If the Commission can determine after an examination of an application and all other relevant data that a grant thereof would serve public interest, convenience, and necessity, it is its duty under the act to grant the application * * *." *WCOL, Inc.*, 39, 42; *E. D. Rivers*, 79, 82; *Matheson Radio Co., Inc. (WHDH)*, 397, 418, 419.

Neither section 309 (a) of the Communications Act nor any other section of the law requires the Commission to withhold action on an application which it has found will serve the public interest in order to consider such application on a comparative basis with some other application upon which the Commission is not ready to take final action. *Evangelical Lutheran Synod of Missouri, Ohio, and Other States (KFUO)*, 118, 119.

Section 310 (b).—Application for renewal of four broadcast licenses granted upon petition to reconsider and grant without hearing when it appeared that although for the past 7½ years the stations had been operated under management contracts violative of section 310 (b) of the Communications Act, the contracts had since been abrogated and the licensee was again exercising proper control over the stations. *Westinghouse Electric & Manufacturing Co. (WBZ, WBZA, KYW, KDKA)*, 195, 196.

Applications for assignment of license granted after hearing where it appeared the proposed transferee was financially, technically, legally, and otherwise qualified, and was prepared to operate the station in an efficient, businesslike manner for the public interest. *Lee E. Mudgett (KRKO)*, 227, 228.

Application for renewal of broadcast license denied, when it appeared that control of the physical operation and programs broadcast by the station had been exercised by unlicensed persons in violation of sections 301 and 310 (b) of the act. *John H. Stenger, Jr. (WBAX)*, 434, 444.

Section 403.—Commission has the power under section 403 to institute a general inquiry into applicants' and licensees' newspaper interests, and is not limited to matters arising under section 309. *Orders 79 and 79A, Docket 6051 (Newspaper Inquiry)*, 589.

Section 405.—Mere apprehension of petitioning licensees that the Commission action of which they complain will establish a precedent for future action of the Commission with respect to clear channels is not a sufficient interest under section 405 of the Communications Act of 1934 to entitle them to standing to petition for rehearing as "persons or parties aggrieved or whose interests are adversely affected." *Matheson Radio Co., Inc. (WHDH)*, 397, 430.

When section 405 of the act is construed in the light of the general policy of the act to provide the fullest utilization of radio frequencies in the public interest, it is clear that there must be a compelling reason for delaying the effective date of new or additional service. *Matheson Radio Co., Inc. (WHDH)*, 397, 431, 432.

Section 409 (a).—Change in assignment of frequency 850 kilocycles from I–A stations to I–B stations does not constitute a new use of the frequency 850 kilocycles since that frequency continues to be assigned to the same kind of service, i. e. standard broadcast, and no change will result in the real nature or purpose of the use of this frequency within the standard broadcast band. *Matheson Radio Co., Inc. (WHDH)*, 397, 425.

Change in assignment of frequency from class I–A to class I–B stations is not a change in policy of Commission but merely effects a minor shift in one frequency within the established policy. *Matheson Radio Co., Inc. (WHDH)*, 397, 425.

COMPARATIVE CONSIDERATION OF CONFLICTING APPLICATIONS.

See *Conflicting Applications for Broadcast Facilities.*

COMPETITION.

Broadcast stations.—See *Economic Injury.*

Common carriers.—Applications for modifications of licenses to permit the applicant to establish a direct radiotelegraph circuit between the United States and a foreign country in competition with the carriers now in the field, denied, when it appeared, *inter alia*, that intense competition for the telegraph traffic between the countries already existed and that the increased competition proposed would not confer any benefits upon the public generally. *Mackay Radio & Telegraph Co., Inc.*, 11, 24.

In considering the element of competition as it may apply to an application for new facilities for international communication, it is essential to take into account competition between all media of rapid communication rather than considering separately the several individual methods by which communication is maintained. Cable carriers and radiotelegraph carriers do compete with each other for the same traffic of the same telegraph using public. *Mackay Radio & Telegraph Co., Inc.*, 11, 21.

The fact of diversion of traffic and revenue from existing carriers, in itself, does not determine whether the creation of additional competitive facilities would serve the public interest, although it is important to consider the effect of such a reallocation. The preservation of existing facilities which are satisfactorily serving the public is of primary importance, and to intensify a highly competitive situation, not justified by the traffic and revenue available, may be economically disastrous to the American communications system as a whole. The question is not whether added competition would benefit or harm a particular carrier, but rather what would be its effect upon the service to the public. *Mackay Radio & Telegraph Co., Inc.*, 11, 20.

COMMON CARRIERS.

See *Fixed Public Service.*

CONDITIONAL GRANTS.

An application for construction permit to erect a new developmental broadcast station was granted on conditional basis when the Commission found that the frequency 117650 kilocycles, to be assigned to the proposed station, is in a crowded part of the spectrum devoted to other services and if it should develop that the proposed service is practicable frequency therefor would probably have to be allocated from other portions of spectrum. *Muzak Corporation*, 581, 582.

CONFLICTING APPLICATIONS FOR BROADCAST FACILITIES.

Grant of one of two conflicting applications with no action taken upon the other cannot presume a denial of the second application since petitioner's application cannot be denied without affording petitioner an opportunity to show that a grant of its application with protection from another station as proposed by petitioner will better serve the public interest, convenience and necessity than would operation of that station as authorized by the grant to which petitioner objects. *Evening News Association (WWJ)*, 552, 555.

The grant without hearing of one of two conflicting applications does not constitute a denial of the other application. *Portland Broadcasting System, Inc., (WGAN)*, 257, 262.

Where a hearing is held on an application, and a new application for the same facilities is received during the period when consideration of the first applica-

CONFLICTING APPLICATIONS FOR BROADCAST FACILITIES—Con.

tion is suspended because of negotiation with a foreign country concerning the frequency involved, the Commission need not consider the first application exclusively on the basis of the hearing already held but may consider both applications on a comparative basis. *Portland Broadcasting System, Inc.* (*WGAN*), 257, 261, 262.

Two mutually exclusive applications for operation on the same frequency in the same locality where each applicant is in all respects qualified to construct and operate the proposed station will be considered on a comparative basis. *William C. Barnes and Jonas Weiland, trading as Martinsville Broadcasting Co.*, 46, 47, 52, 53.

Upon comparison of two conflicting applications on their merits, considering populations involved, and service available, public interest, convenience and necessity is served by the grant of the application which benefits the greater number of people. *WSAZ, Inc.* (*WSAZ*), 303, 312.

Neither the Communications Act of 1934 nor any rule promulgated by the Commission pursuant thereto requires the Commission to withhold action upon an application which is ready to receive final consideration in order that it may be given comparative consideration with a conflicting application upon which the Commission is not yet ready to act. *WSAZ, Inc.* (*WSAZ*), 303, 309; *Evangelical Lutheran Synod of Missouri, Ohio, and Other States* (*KFUO*) 118, 119.

In deciding between two mutually exclusive applications for a construction permit for a new standard broadcast station in the same city, since other factors were approximately equal, the permit should be granted to the applicant who showed the most qualifying experience in radio, who had no other business interests in the city than the operation of the station, who was prepared personally to assume the full responsibilities incident to the conduct of the station and would not delegate major functions to third persons, and who proposed the program service most definitely adapted to serve the needs of the community. *J. D. Falvey; Louis R. Spiwak and Maurice R. Spiwak, doing business as L & M Broadcasting Co.*, 279, 288.

One application for new broadcast facilities preferred over another, when it was found that the former was better qualified financially, and that the former would provide superior technical service to the latter. *Enrique Abarca Sanfeliz*, 488, 494.

When, after a hearing involving conflicting applications, the Commission grants one application partly upon considerations not in issue at the hearing, the other application will be designated for further hearing. *Pittsburgh Radio Supply House* (*WHJB*), 129, 132.

The Commission having found that two applications were mutually exclusive, one application was proposed to be granted and the other proposed to be denied, when it appeared that this action would result in a fair, efficient and equitable distribution of radio service between the areas under consideration, and would serve public interest, convenience and necessity. However, both applications were granted when a new frequency was assigned to the licensee whose application was proposed to be granted. *KFH Broadcasters* (*KXL*); *Thomas R. McTammany and William H. Bates, Jr.*, 485, 487, 488.

Where there were two qualified applicants seeking the same facilities, the Commission granted the application of the one who showed that it would add to the area a medium for the dissemination of news and information to the public which will be independent of and afford a degree of competition to other such media in that area. *Stephenson, Edge and Kortmeyer; Helen L. Watton and Walter Bellatti*, 497, 501.

CONSTRUCTION PERMIT.

Application for a construction permit to change a standard broadcast station from a local to a regional frequency and to increase power, which in turn required the shifting of a noncommercial educational broadcast station on the regional frequency to the applicant's local frequency granted without the consent of the latter station where it appeared that the change would result in an improvement of service for both of the stations and the applicant had agreed to pay the cost of the change in the frequency of the noncommercial station. *Mason City Globe Gazette Co. (KGLO)*; *Charles Walter Greenley (KGCA)*; *Luther College (KWLC)*, 273, 277, 278.

Application for construction permit for authority to erect a new broadcast station granted. *Neptune Broadcasting Corporation*, 96; *Radio Voice of Springfield, Inc.*, 102; *Pawtucket Broadcasting Co.*, 120; *Sentinel Broadcasting Corporation*, 140; *Burlington Broadcasting Co.*, 366; *Worcester Broadcasting Corporation*, 316; *Stephenson, Edge and Korsmeyer*, 497.

Application for construction permit for new international broadcast station granted for different frequency than requested, subject to condition that permittee file application for modification of permit specifying demands and expected directional characteristics of proposed antenna system, and that permittee install frequency control equipment. *Columbia Broadcasting System, Inc.*, 320, 321.

Application for construction permit granted subject to contention that permittee apply for modification of permit to specify exact transmitter location and antenna system. *Courier-Post Publishing Co.*, 593.

Application for construction permit to change frequency and increase power of standard broadcast station denied when it appeared there would be additional objectionable interference under the North American Regional Broadcasting Agreement to a class III–A Canadian broadcast station on the desired frequency. *Spokane Broadcasting Corporation (KFIO)*, 271, 272.

Application for construction permit to erect a new broadcast station denied. *Publix Bamford Theatres, Inc.*, 83; *C. T. Sherer Co., Inc.*, 381; *Albermarle Broadcasting Station*, 105; *Bellingham Broadcasting Co.*, 159; *Mayflower Broadcasting Corporation*, 333; *United Theatres, Inc.*, 489; *Helen L. Walton and Walter Bellatti*, 497.

In deciding between two mutually exclusive applications for a construction permit for a new standard broadcast station in the same city, since other factors were approximately equal, the permit should be granted to the applicant who showed the most qualifying experience in radio, who had no other business interests in the city than the operation of the station, who was prepared personally to assume the full responsibilities incident to the conduct of the station and would not delegate major functions to third persons and who proposed the program service most definitely adapted to serve the needs of the community. *J. D. Falvey; Louis R. Spivak and Maurice R. Spivak, doing business as L & M Broadcasting Co.*, 279, 288.

Application by broadcast station for increased facilities granted. *Monocacy Broadcasting Co.*, 180; *The South Bend Tribune*, 387; *Matheson Radio Co., Inc. (WHDH)*, 397; *KXL Broadcasters (KXL)*, 485; *Thomas R. McTammany and William H. Bates, Jr.*, 485; *Enrique Abarca Senfeliz*, 489; *Tri-City Broadcasting Co.*, 425.

Where an applicant for permit to construct a new developmental broadcast station proposed to experiment with a subscriber service for the purpose of determining whether the public would finance the broadcasting of programs

CONSTRUCTION PERMIT—Continued.

by direct payment therefor and no commercially sponsored programs nor advertising continuity would be used, held granting thereof, on experimental basis, would serve public interest, convenience, or necessity. *Muzak Corporation*, 581.

CONTROL OF STATION.

Order of revocation of station license rescinded when it appeared that although an assignment of the station license violative of section 310 (b) of the act had been made immediately after the application was granted, the licensee had reacquired control of the station 6 months later and thereafter had operated it in good faith and in the public interest. *Navarro Broadcasting Association (KAND)*, 198, 199.

DENIAL BY DEFAULT.

Application for renewal of license of standard broadcast station denied by default when licensee failed to appear at renewal hearing and it was a matter of record that station had been silent for past year. *Charles Walter Greenley (KGCA)*; *Luther College (KWLC)*, 273, 277.

DEVELOPMENTAL BROADCAST STATION.

Application for developmental broadcast station to test simultaneous transmission on separate frequencies in different directions with a single antenna denied because of failure of applicant to demonstrate some quantitative basis from which the Commission could find that the proposed experimentation shows reasonable promise of substantial contribution to the development of radio broadcasting, or that the use of the frequencies requested would be in the public interest. *World Peace Foundation (Abraham Binnewig, Jr.)*, 289, 291.

An application for construction permit to erect a new developmental broadcast station granted on conditional basis when Commission found that the frequency 117650 kilocycles, to be assigned to the proposed station is in a crowded part of the spectrum devoted to other services and if it should develop that the proposed service is practicable, frequency therefor would probably have to be allocated from other portions of spectrum. *Muzak Corporation*, 581.

DISCRIMINATION.

Carriers found to have made unjust and unreasonable discriminations in maintaining timed wire service classification and practices and regulations in connection therewith. *Telegraph Division Order No. 12 (Urgent Rate Classification)*, 502.

Charging for reforwarding collect telegrams when no charge is made for reforwarding prepaid telegrams held not to constitute an unjust or unreasonable discrimination. *Reforwarding Telegrams Without Additional Charge*, 328, 332.

Proposed practice under telegraph tariff regulation of issuing stamps to be used in payment for telegraph service found not to be unreasonably discriminatory. *The Use of Stamps in Payment for Western Union Telegraph Service*, 204, 206.

Discrimination results from the simultaneous maintenance of two scales of rates for equivalent services. *Department of Public Service of Washington v. Pacific Telephone & Telegraph Co.*, 342, 362, 363.

DISMISSAL OF APPLICATION.

See also *Rules and Regulations*.

Dismissal of application under section 1.73 of the Commission's Rules of Practice and Procedure denied where petitioner's application was pending from December 2 to December 17, 1940, during which time there was ample oppor-

DISMISSAL OF APPLICATION—Continued.

tunity to request a dismissal thereof. If petitioner found himself unable to have necessary papers prepared formally requesting a dismissal of his application, he might have informally communicated his intentions to the Commission and requested additional time within which formally to do so. In the absence of any contrary expression of intention by the applicant, the Commission necessarily presumes that the request contained in his application is a continuing one until final action is taken thereon. Since the applicant in this case did not make his intentions known to the Commission prior to final action thereon, section 1.73 is no longer applicable. *Donald J. Flamm*, 325, 326, 327.

DUPLICATION OF FACILITIES.

Second coastal harbor station in Cleveland area duplicating service of existing station would not produce benefits to compensate for probable disadvantages and hence would not serve public interest, convenience and necessity. *Radiomarine Corporation of America*, 517, 524.

ECONOMIC INJURY.

Allegations that the grant of which petitioner complains will adversely affect petitioner's interest on an economic basis and that because of a reduction in its service area there will be a reduction in the area from which it may draw talent and program material without merit. "It does not follow from the fact that petitioner's service will be somewhat restricted that the increase in power to WCOL would result in such a diminution of petitioner's revenues as to seriously impair or destroy its ability to continue operation of Station WCPO in the public interest. Nor does it follow from this fact that its ability to procure program material will be affected The restriction of its present service area does not preclude petitioner from drawing its talent and program material from the same sources as heretofore." *WCOL, Inc.*, 39, 42.

Injury to economic interest of existing stations by operation of proposed station, to such an extent that their ability to operate in the public interest would be impaired, does not in itself constitute legal grounds for denial of application for new facilities. *Sentinel Broadcasting Corporation*, 140; *Burlington Broadcasting Corporation*, 366; *United Theatres, Inc.*, 489; *Enrique Abarca Sanfeliz*, 489.

Licensee's objection to the grant of an application for a new station in the same town on the ground that operation of such station would result in economic injury to petitioner without merit where there was no evidence in the record to indicate that the operation of the new station would deprive the existing licensee of any advertising revenue which it then received, and, in any event, the licensee is not entitled to be protected from competition. *Presque Isle Broadcasting Co.*, 3, 10.

While the effect which competition of the existing licensee may have on the applicant may be relevant where the applicant's financial qualification depends on his ability to compete successfully with other licensees, the Commission need not consider the effect of the proposed competition on the existing licensee. *Presque Isle Broadcasting Co.*, 3, 8, 9.

Under the Communications Act of 1934, a licensee is not entitled to be protected from free competition. *Telegraph Herald (KDTH)* (1940), 322, 323.

Application for new station granted when, among other things, existing station failed to show that it has interests that will be adversely affected by the grant or that grant will result in impairment of its ability to serve public interest, convenience and necessity. *Neptune Broadcasting Corporation*, 96, 98.

EFFECT ON INTEREST OF OTHER CARRIERS.

Application for authority to construct coastal harbor radiotelephone station granted where it was shown granting thereof would not adversely affect interests of other carriers. *Eddie Erlbacher*, 92, 95.

EQUITABLE DISTRIBUTION OF RADIOBROADCAST FACILITIES.

Granting of application for new facilities does not necessarily preclude the grant of other applications for the same facilities, and hence would be in conformity with section 307 (b) of the Communications Act. *Sentinel Broadcasting Corporation*, 140, 148.

When the Commission found that two applications were mutually exclusive, one application was proposed to be granted and the other proposed to be denied, when it appeared that this action would result in a fair, efficient, and equitable distribution of radio service between the areas under consideration, and would serve public interest, convenience and necessity. Both applications granted when a new frequency was assigned to the licensee whose application was proposed to be granted. *KXL Broadcasters (KXL)*, 485, 488; *Thomas R. McTammany and William H. Bates, Jr.*, 485, 488.

Applicant for increased facilities does not have to make a showing of "compelling need" in order that the community can share in the fair, efficient, and equitable distribution of radio facilities under section 307 (b) of the Communications Act of 1934. *Illinois Broadcasting Corporation*, 183, 185.

Contention in petition for rehearing that a decision of the Commission "results in a discrimination against service of rural residents in order to furnish additional service to the residents of the city of Boston and as such is violative of the requirements of section 303 (b) of the Communications Act," without merit, where the Commission found that the order complained of results in no real or substantial displacement of the service of petitioner's station and that the improvement and extension of service in the area of applicant station will serve the public interest. *Matheson Radio Co., Inc. (WHDH)*, 397, 427.

EXISTING FACILITIES.

Application for second coastal harbor radiotelephone station in Cleveland area denied where second second station using same frequencies would not increase total traffic capacity and might even reduce channel time available for message traffic. *Radiomarine Corporation of America*, 517, 524.

FACSIMILE TRANSMISSIONS.

Application for special experimental authorization to rebroadcast facsimile transmissions denied. *American Broadcasting Corporation of Kentucky (WLAP)*, 56, 57.

FALSE STATEMENTS.

Application for renewal of broadcast license denied when the Commission found that the applicant had made false representations in applications and other documents. *John H. Stenger, Jr. (WBAX)*, 434, 444.

The Commission cannot excuse or condone the making of material representations in an application which are at variance with the true facts. *Mayflower Broadcasting Corporation*, 333, 338.

Broadcast license revoked because of false statements as to applicant's financial responsibility made in the application for the license. *Station WSAL, Revocation of Station License of*, 34, 37, 38.

FINANCIAL QUALIFICATIONS OF APPLICANT.

The effect which competition of the existing licensee may have on the applicant will be considered where the applicant's financial qualification depends on his ability to compete successfully with other licensees. *Presque Isle Broadcasting Co.*, 3, 8, 9.

Where the financial qualifications of an applicant depend on his ability to compete for business with an existing licensee, the question of the effect of competition on the applicant is an important fact to be considered by the Commission in determining whether the applicant is financially qualified. *Telegraph Herald (KDTH)* (1940), 322, 323.

FINDINGS.

There is no requirement in the Communications Act of 1934 that findings be made on any particular issues when an application is granted after hearing. *Presque Isle Broadcasting Co.*, 3, 5, 6.

FIXED PUBLIC SERVICE.

Applications for modification of Fixed Public Service radiotelegraph licenses to add a new foreign point as an authorized point of communication, denied when it appeared that the existing cable and radiotelegraph facilities are adequate to handle the existing traffic and any increase in the traffic that reasonably can be anticipated; when the applicant does not propose to lower the existing rates or to offer new classes of service; when the service to be offered would be similar to, but not superior to, the services of the existing carriers; when it did not appear that the effect of the proposed operation would be to improve the existing service or better meet the needs of the national defense; when it did not appear that the proposed circuit would create new traffic, but rather that the traffic secured by the applicant would come principally through diversion from and at the expense of the carriers in the field; when it appeared that there exists keen competition for the present traffic and that the traffic and revenue available do not justify intensifying the existing competitive situation; when transit traffic to certain countries beyond the foreign point would be handled at a loss; and, when the proposed circuit has not been shown to be necessary to the continued existence and public service of the applicant or its affiliated companies as competing factors in international communications. *Mackay Radio & Telegraph Co., Inc.*, 11, 24.

FOREIGN LANGUAGE PROGRAMS.

Broadcasts of foreign language programs in communities which contain a large number of persons of foreign extraction, many of whom do not understand the English language, are in the public interest provided the preparation and presentation of the programs is carefully supervised by the station licensee. *Voice of Brooklyn, Inc., (WLTH)*; *United States Broadcasting Corporation (WARD)*; *Brooklyn Broadcasting Corporation (WBBC)*, 230, 247, 248.

HIGH FREQUENCY (FM) BROADCASTING.

Renewal of license of two experimental high frequency broadcast stations denied after hearing where it appeared that the licensee had not shown a program of research and experimentation which indicated a reasonable promise of substantial contribution to the development of high frequency broadcasting within the purview of section 4.112 (a) of the Commission's Rules. *Ben S. McGlashan (W6XKG, W6XRE)*, 211, 214.

INTERFERENCE.

Application for construction permit to change frequency and increase power of standard broadcast station denied because there would be additional objectionable interference under the North American Regional Broadcasting Agreement to a class III–A Canadian broadcast station on the desired frequency. *Spokane Broadcasting Corporation (KFIO)*, 271, 272.

Application for construction permit to increase service of existing station granted notwithstanding protest by existing station charging objectionable interference to its service where the Commission found that such operation would not result in any substantial loss of population to protesting station and that if, however, the operation of the station as proposed actually does result in an objectionable increase of interference to the protesting station, that station may at any time submit to the Commission proof of such interference based upon competent and adequate measurements. *New Jersey Broadcasting Co. (WHOM)*, 154, 157.

Application for new facilities granted, even though proposed station would be limited at night to a greater extent than Standards of Good Enginering Practice contemplate, since station would provide service throughout entire city and major portion of metropolitan district and would not cause objectionable interference to existing stations. *Sentinel Broadcasting Corporation*, 140, 147.

Interference which would limit proposed operation to part of metropolitan district not inconsistent with Commission's plan of allocation so as to prevent grant of construction permit, if main purpose of applicant to serve city proper would be accomplished, and if particular frequency would be used to better advantage than any other frequency. *Pawtucket Broadcasting Co.*, 120, 122, 123.

Application for new facilities granted where it is shown that no objectionable interference would result from the simultaneous operation of the proposed station and any existing station in the United States or with radiobroadcast facilities requested in any pending application. *Worcester Broadcasting Corporation*, 316, 319.

Interference which may be expected within the 0.5 millivolt-per-meter daytime contour of an existing class IV station from the operation of a proposed class IV station on the same frequency will not preclude the grant of an application for construction permit to erect such proposed station where the grant would result in the loss of population to the existing station in an interference area of about 20,000 as compared with an increase to a service of more than 140,000 population, resulting from the grant. *WCOL, Inc.*, 39, 178.

No objectionable interference will result within the 0.5 millivolt-per-meter contours of either of two stations, one located at San Francisco, Calif., the other at Marysville, Calif., 110 miles distant, both operating on the frequency 1420 kilocycles with 250 watts power at night where the conductivity of the terrain between the two places was found to be less than 1.35×10^{-13} *ev.* *Marysville-Yuba City Broadcasters, Inc.*, 83, 85.

Calculations made in accordance with the Standards of Good Engineering Practice which indicate that operation as proposed by an application for modification of license would not cause an increase in objectionable interference within existing good service areas of any other station accepted as against inaccurate measurements improperly taken which indicated a contrary result. *Salt River Valley Broadcasting Co., Inc.*, 26, 32.

Public interest, convenience, and necessity would be served in granting application to construct coastal harbor radiotelephone station at Cape Girardeau, Mo.,

INTERFERENCE—Continued.

only on condition that operation thereof not cause interference to intership service or to service of any other coastal harbor station operating on the same frequency. *Eddie Erlbacher*, 92, 95.

Since Great Lakes region is recognized by Commission rules to constitute common interference area with respect to operation of coastal harbor stations, it is necessary that stations which Commission licenses shall coordinate their operations to reduce interference to a minimum. *Thorne Donnelley*, 529, 534; *Radiomarine Corporation of America*, 517, 524.

Suggestion in petition for rehearing that "some possibility exists that an effective solution might be found from an engineering standpoint so that all * * * applicants might operate in such manner as to give each other mutual protection and still accomplish the objectives of their respective applications" unaccompanied by any kind of facts and without specific proposal as to how the suggestion might be accomplished, without merit since the Commission is unable thereby to determine that such plan is feasible. *Pittsburgh Radio Supply House (WHJB)*, 129, 130.

Application for construction permit to erect directional antenna for nighttime use and to increase hours of operation from daytime only to unlimited time, granted when Commission found that the proposed operation would not result in objectionable interference to the services of any existing station. *Monocacy Broadcasting Co.*, 180, 182.

Application for construction permit to increase power and hours of operation granted, when it was found that operating as proposed, no interference would be caused to the primary service of any station and any interference which such operation may reasonably be expected to cause to a clear channel station in Denver, Colo., will be limited to interference with intermittent reception upon receivers located in the eastern part of the United States, remote from the clear channel station. *Matheson Radio Co., Inc. (WHDH)*, 397, 400.

Application for new broadcast facilities granted when the Commission found that the proposed operation would not result in objectionable interference to the services of any existing or proposed station. *Stephenson, Edge and Korsmeyer*, 497, 501; *Enrique Abarca Sanfeliz*, 489, 494; *Tri-City Broadcasting Co.*, 495, 496.

Application for new station granted even though the operation thereof would cause objectionable interference to an existing station when it was found that the listeners residing within the service area of the existing station, who would be affected by interference already have service available from several other stations, while those residing in the city where the new station is to operate were without local service. *Radio Voice of Springfield, Inc.*, 102, 104.

Under rules of the Commission, Great Lakes constitute common interference area and hence operation of coastal harbor stations there must be coordinated to avoid interference. *Michigan Bell Telephone Co.*, 536, 537.

Under the Commission's Standards, interference in the intermittent service area of a class IV station caused by the operation of a proposed station will not preclude the operation of such proposed station where it appears that 90 percent of the population to which petitioner's station renders such intermittent service already receives primary service from other stations rendering the same general program service. *WCOL, Inc.*, 39, 41, 44.

Unsupported allegations of interference in a petition for rehearing with refernce to the application granted by the Commission to which petitioner objects held insufficient to overcome the sworn statements to the contrary in the application. *C. T. Sherer Co., Inc.*, 381, 386.

NTERFERENCE—Continued.

Where four applicants for radiotelephone aircraft control stations in a certain area could not satisfactorily use the one common frequency sought because f probable objectionable interference, their applications were granted and two requencies assigned when it was shown cooperative arrangements would be nade for use of the two frequencies. *Santa Monica Municipal Airport; City of Los Angeles; United Airports Co. of California, Ltd.; City of Long Beach*, 112.

Where it appeared from the measurements, maps, and data accompanying an application for a new radio station that the 0.5 millivolt-per-meter contour of :he proposed Watertown station in the direction of Rochester, New York, extended over a distance of 20 miles, and predictions made by applicant's engineer upon the basis of the Commission's map of ground conductivities and in accordance with the Standards of Good Engineering Practice indicated that the 0.025 millivolt-per-meter contour of the proposed Watertown station would extend a distance of 79 miles in the direction of Rochester and the sum of these distances equalled 99 miles, and the actual distance between the transmitter sites of the two stations was 103 miles, objectionable interference would not be expected to result to the Rochester station from the operation of the Watertown station as proposed. *Watertown Broadcasting Corporation*, 190.

Application by a class IV local station for a construction permit to operate on a class III–B regional frequency denied, where the proposed nighttime service area would be limited to the 6.8 millivolt-per-meter contour and an increase in service to only 2,484 additional persons would result. *American Broadcasting Corporation of Kentucky (WLAP)*, 75, 77.

The granting of an application for operation on a class IV frequency will not be denied where such operation results in interference in the intermittent service area of an existing station in the absence of a showing that 90 percent of the population receiving such intermittent service does not receive primary service from any other station rendering the same general program service. *WCOL, Inc.*, 39, 173.

INTERNATIONAL BROADCAST STATION.

Application for construction permit for new international broadcast station granted for different frequency than requested. *Columbia Broadcasting System, Inc.*, 320, 321.

INTERNATIONAL TELEGRAPH REGULATIONS.

Neither United States Government nor carriers in United States are required to adhere to classifications and rates prescribed in International Telegraph Regulations. *Telegraph Division Order No. 12 (Urgent Rate Classification)*, 502, 506.

INTERVENTION.

A "proceeding" in which a person has been permitted to intervene is terminated upon the filing of an amendment requesting a different frequency from that stated in the application. Intervention ends upon the termination of the "proceeding" in which intervention was allowed. *Huntsville Times Co., Inc.*, 187, 188.

Intervener in a proceeding terminated by amendment of application is not party to proceeding on amended application and a formal order vacating the order of intervention in original proceeding is not required. *Huntsville Times Co., Inc.*, 187, 188.

INTERVENTION—Continued.

Petition for intervention denied where petition did not comply with section 1.102 of the Commission's Rules and Regulations requiring a petitioner to state the facts upon which the petitioner bases his claim that his intervention will be in the public interest. *Matheson Radio Co., Inc.* (*WHDH*), 397, 413.

JURISDICTION.

Rates covering interstate telephone messages between zones in exchange area are not within exception contained in section 221(b), are under jurisdiction of this Commission, and hence should be included in tariffs filed with this Commission. *Southwestern Bell Telephone Co.*, 544, 547, 548.

Since International Telegraph Regulations are not binding on United States carriers or United States Government, they offer no obstacle to prescription by Commission of different ratio of telegraph rates, urgent to ordinary, than that set forth in those regulations. *Telegraph Division Order No. 12* (*Urgent Rate Classification*), 502, 506.

MANAGEMENT CONTRACTS.

See also *Communications Act of 1934, section 310 (b)*.

Application for renewal of four broadcast licenses granted upon petition to reconsider and grant without hearing when it appeared that although for the past 7½ years the stations had been operated under management contracts violative of section 310 (b) of the Communications Act, the contracts had since been abrogated and the licensee was again exercising proper control over the stations. *Westinghouse Electric & Manufacturing Co.* (*WBZ, WBZA, KYW, KDKA*), 195, 196.

Applications for renewal of license, assignment of license, and increased power granted after hearing where it appeared that licensee had mismanaged station and had entered into management contract bordering on violation of section 310 (b) of the act to obtain additional capital to offset financial losses, but where it also appeared that the proposed transferee was financially qualified and the grant of increased power would provide greater advertising revenue. *Lee E. Mudgett* (*KRKO*), 215, 227.

MARINE OPERATIONS.

Application for authority to construct coastal harbor radiotelephone station granted where it was shown proposed service would be particularly beneficial to marine operations in area in cases of breakdown, stranding of boats occasioned by shifting of channels or fall of river, and emergencies connected with shipping on river. *Eddie Erlbacher*, 92, 93.

MODIFICATION OF BROADCAST STATION LICENSE.

Application for modification of license providing for operation on the frequency 1390 kilocycles to permit operation on the frequency 550 kilocycles granted, where increase in listener coverage, without objectionable interference with other stations on the frequency resulted. *Salt River Valley Broadcasting Co.*, 26, 29.

The grant of an application, the effect of which may be a restriction of the service area of an existing licensee, does not constitute a modification or partial revocation of the license. *WOOL, Inc.*, 39, 42, 43, 173.

Amendment of Commission's Rule 3.25 which took the frequency 850 kilocycles from the group formerly assigned to class I–A stations and put it in the group assigned to class I–B stations does not constitute a modification of license

MODIFICATION OF BROADCAST STATION LICENSE—Continued.

of class I–A stations assigned to the frequency within the meaning of section 303 (f) of the Communications Act of 1934. *Matheson Radio Co., Inc.* (*WHDH*), 397, 422.

Application for modification of license granted where it appeared that operation as proposed would result in the extension of primary service to the applicant station at night to a population of about 455 persons and in the daytime, about 7,303 persons and a loss of population to about 5,403 persons in the secondary area of an existing station but most of the secondary population which would be lost to petitioner's station is able to receive the same network programs from two other stations. *Amarillo Broadcasting Corporation* (*KFDA*), 252, 255.

Grant which curtails part of area to which existing station now renders primary service does not constitute a modification of license of existing station within the meaning of section 303 (f) of the Communications Act of 1934 since neither the act nor station's license confers upon station any right to serve a particular number of listeners within a specified geographical area. *WCOL, Inc.*, 39, 42.

MODIFICATION OF RADIOTELEGRAPH LICENSES.

See *Fixed Public Service.*

MULTIPLE OWNERSHIP.

The Commission in granting an application for renewal of license considered the contention that the applicant was the licensee of two regional stations, but in view of the Commission's investigation into chain broadcasting did not single out the instant case for discussion. The grant of the application was stated to be without consideration of the question of dual ownership. *The Yankee Network, Inc.*, 333, 341.

When it appeared that applicant was publisher of only newspaper in community and licensee of part-time local and regional stations, application for construction permit to change regional station to full-time operation was granted, on condition that applicant divest itself of all interest in the local station. *The South Bend Tribune*, 387, 388.

Where change in operating assignment would extend overlapping of service areas of three stations under common control, Commission will consider this fact in determining public interest. *Pittsburgh Radio Supply House* (*WHJB*), 129, 132.

NEED FOR BROADCAST SERVICE.

Application for new facilities granted when a need for same was shown to exist. *Neptune Broadcasting Corporation*, 96, 98.

Application for new facilities granted when it was shown that two of three existing stations in city broadcast network programs, particularly during evening hours, indicating that additional broadcast facilities for programs of local interest would fill a need. *Sentinel Broadcasting Corporation*, 140, 146.

Finding of a definite need not required to support grant of application for new facilities. *Sentinel Broadcasting Corporation*, 140, 147.

Application for increased facilities granted as serving public interest, convenience and necessity, when it was shown that operating as proposed, applicant would render primary nighttime service throughout the city and rural areas contiguous thereto, whereas previously, the only primary service available was during daytime. *Monocacy Broadcasting Co.*, 180, 182.

NEED FOR RADIOTELEPHONE SERVICE.

Application for coastal harbor radiotelephone station at Manistee, Mich., denied where only very meager evidence was introduced in support of the need for such a station and such evidence was admitted by the applicant to be inconclusive. *Thorne Donnelley*, 529, 534.

Applications for authority to construct coastal harbor radiotelephone stations at Port Huron and Detroit, Mich., granted when there was shown to be a need for the service proposed. *Michigan Bell Telephone Co.*, 536, 539.

Applications for authority to use certain additional frequencies at coastal harbor radiotelephone stations at Lake Bluff, Ill., and Mackinac Island or Rogers City, Mich., granted when it was shown such frequencies were needed in order that the stations might render satisfactory coastal harbor communication in areas which they served. *Thorne Donnelley*, 529, 535.

Applications for radiotelephone aircraft control stations granted where it was shown existing light gun control system was inadequate, traffic was increasing and accidents might have been avoided through use of radio control. *Santa Monica Municipal Airport; City of Los Angeles; United Airports Co. of California, Ltd.; City of Long Beach*, 112.

No showing of public need for second coastal harbor radiotelephone station at West Dover, Ohio. Public need found for coastal harbor radiotelephone service at Buffalo, New York. *Radiomarine Corporation of America*, 517, 524.

Public need found for (1) adding radiotelephone frequencies 4282.5, 6470, and 8585 kilocycles at coastal harbor station at Lorain, Ohio, (2) adding radiotelephone frequency 4282.5 kilocycles at coastal harbor station at Port Washington, Wis., and (3) adding radiotelephone frequency 4282.5 kilocycles at coastal harbor station at Duluth, Minn.; such additional facilities needed (1) to relieve congestion on other frequencies, and (2) to increase service areas. *The Lorain County Radio Corporation*, 525, 528.

Maintenance of 2 to 1 ratio of charges in telegraph field for urgent messages and ordinary messages found to have prevented use of urgent service by certain persons who had need for service. *Telegraph Division Order No. 12 (Urgent Rate Classification)*, 502, 512.

Showing that proposed coastal harbor radiotelephone stations would be used to promote sale of vessel equipment manufactured by applicant is not valid proof of need for service. *Radiomarine Corporation of America*, 517, 524.

NEED FOR TELEGRAPH FACILITIES.

Applications for modification of licenses to permit the applicant to establish a direct radiotelegraph circuit between the United States and a foreign country denied, when it appeared, *inter alia*, that the amount of telegraph traffic between the two countries has been decreasing consistently; that the existing facilities are ample to handle adequately the traffic available and any increase in that traffic that reasonably can be anticipated, even under the stress of abnormal conditions; that the effect of the proposed operation would not be to improve service, reduce rates, create traffic, or enhance the national defense; and, when it did not appear that any substantial increase in traffic may be anticipated. *Mackay Radio & Telegraph Co., Inc.*, 11, 24.

NEW USE OF FREQUENCY.

Change in assignment of frequency 850 kilocycles from I–A stations to I–B stations does not constitute a new use of the frequency 850 kilocycles since that frequency continues to be assigned to the same kind of service, i. e. stand-

NEW USE OF FREQUENCY—Continued.

ard broadcast, and no change will result in the real nature or purpose of the use of this frequency within the standard broadcast band. *Matheson Radio Co., Inc.* (*WHDH*), 397, 423.

NEWSPAPER INTERESTS.

Commission found that it would not be in the public interest to grant authority which would permit operation of two stations in the same community at the same time by the sole newspaper interests in the community. Application for increased facilities to regional station granted, on condition that applicant divest itself of all interest in the local station. *The South Bend Tribune*, 387, 388.

Where two conflicting applications for operation on the same frequency in the same locality were presented, license was granted to one group of applicants, of whom one member was the owner of the local newspaper having the Associated Press and United Press news services which would be made available to the station. *William C. Barnes and Jonas Weiland, trading as Martinsville Broadcasting Co.*, 46, 49.

NORTH AMERICAN REGIONAL BROADCASTING AGREEMENT.

Application for construction permit to change frequency and increase power of standard broadcast station denied because there would be additional objectionable interference under the North American Regional Broadcasting Agreement to a class III–A Canadian broadcast station on the desired frequency. *Spokane Broadcasting Corporation* (*KFIO*), 271, 272.

NARBA recognizes rights only in signatory governments and does not create in any licensee any vested rights in frequencies or service areas; nor does the treaty prohibit the Commission from considering applications for broadcast facilities in accordance with the statutory standard of public interest, convenience, and necessity. *Matheson Radio Co., Inc.* (*WHDH*), 397, 422.

Nothing in NARBA gives a licensee any right to be heard prior to the promulgation of the amendment to section 3.25 of the Commission's Rules and Regulations. *Matheson Radio Co., Inc.* (*WHDH*), 397, 422.

NOTICE AND HEARING.

Under section 309 (a) of the Communications Act of 1934, the Commission is required to grant an application if upon an examination thereof it can find that public interest will be served. Where the Commission granted two applications under section 309 (a) without hearing, neither was entitled to notice and hearing with regard to the other. *E. D. Rivers*, 79, 82.

Granting one application without hearing does not constitute denial of conflicting application which is not acted upon. Such application cannot be denied until the applicant has had an opportunity at a hearing to show why the grant of its application rather than the other conflicting application would better serve public interest, convenience or necessity, or would produce a fairer, more efficient and more equitable distribution of radio facilities within the meaning of section 307 (b) of the Communications Act of 1934. *WSAZ, Inc.* (*WSAZ*), 303, 309.

Section 309 (a) of the Communications Act of 1934 does not require notice and an opportunity to be heard to others before the Commission may grant an application for construction permit. "If the Commission can determine after an examination of an application and all other relevant data that a grant thereof would serve public interest, convenience, and necessity, it is its duty under the act to grant the application. * * *." *WCOL, Inc.*, 39, 42.

OPERATING EXPENSES.

While it is apparent that additional operating expenses are incurred by telegraph carriers for handling urgent traffic, it is difficult to determine with any reasonable degree of accuracy the amount of such operating costs. *Telegraph Division Order No. 12 (Urgent Rate Classification)*, 502.

"OTHER COMPANY DEFENSE."

When the "other company defense" is based upon an effective tariff regulation, it must be uniformly applied. *Licht & Kaplan* v. *Postal Telegraph-Cable Co.*, 369, 374.

PAYMENT FOR TELEGRAPH SERVICE.

Proposed practice under telegraph tariff regulation of issuing stamps to be used in payment for telegraph service found not to be unreasonable, unreasonably discriminatory, preferential, prejudicial, or otherwise unlawful. *The Use of Stamps in Payment for Western Union Telegraph Service*, 204, 206.

PETITION FOR RECONSIDERATION.

Petition for reconsideration denied where petitioner alleges it "desires an opportunity to take measurements" but submitted no reason why in the 8 months during which the application against which its petition is directed was pending and for 20 days after the grant thereof, petitioner could not have taken measurements, and where it appeared from the maps, data, and other information accompanying the application for construction permit that no interference would result from the operation of the new station as proposed to the operation of petitioner's station, and that the new station would be able to render service to a substantial population and area which had not theretofore received primary service from any station. *Watertown Broadcasting Corporation*, 190, 193.

PETITION FOR REHEARING OR RECONSIDERATION.

Petition filed by existing licensee on the frequency 1200 kilocycles, for rehearing of grant without hearing of application for operation on the same frequency denied, where the operation as proposed would enable an increase of 146,400 persons in the interference-free primary service areas of applicant and two other stations, while causing a loss of 20,800 persons receiving primary service of petitioner, without a loss of listeners in the metropolitan area which petitioner serves. *WCOL, Inc.*, 39, 44.

Petition for rehearing based solely upon the ground of the apprehension of the petitioning licensees that the Commission action of which they complain will establish a precedent for future action of the Commission with respect to clear channels dismissed on the ground that such an interest does not "entitle any of the petitioning licensees to standing as a party aggrieved or whose interests are adversely affected thereby within the meaning of section 405 of the Communications Act of 1934." *Matheson Radio Co., Inc. (WHDH)*, 397, 430.

Petition for rehearing based upon contention that it was error for the Commission to amend section 3.25 of its rules without first affording petitioner notice and an opportunity to be heard thereon, pursuant to section 303 (f) of the Communications Act of 1934 denied on the ground that section 303 (f) of the act requires a notice and hearing only when changes are made in the frequency, authorized power, or in times of operation of any radio station's license and the amendment to section 3.25 of the rules of which petitioner complains did not modify petitioner's license within the meaning of section 303 (f) of the act. *Matheson Radio Co., Inc. (WHDH)*, 397, 421.

PETITION FOR REHEARING OR RECONSIDERATION—Continued.

Petition for rehearing based upon contention that the Commission had no power to grant application without first affording petitioner notice and an opportunity to be heard denied upon ground that section 309 (a) of the Communications Act of 1934 requires that the Commission grant applications without hearing if upon examination thereof, it "shall determine that public interest, convenience, and necessity would be served by the granting thereof" but in the event the Commission, upon examination of any such application does not reach such decision with respect thereto, this section of the Act requires that the Commission shall notify the applicant thereof, fix and give notice of a time and place of hearing thereon, and shall afford such applicant an opportunity to be heard; no such right to notice and hearing having been conferred upon any person other than the applicant and no duty resting upon the Commission to afford any person other than the applicant an opportunity to be heard. *Matheson Radio, Inc.* (*WHDH*), 397, 418–421.

Petition for rehearing based upon claims that the proposal of the applicant for modification of construction permit may render the nighttime operation of petitioner's station impractical from an allocation and economic standpoint and thus substantially lower the value and future earnings of petitioner's station denied "since financial injury which petitioner may suffer as a result of the Commission's grant of the application in question is not in and of itself an element which we must weigh apart from a consideration of public interest and necessity. *Federal Communications Commission* v. *Sanders Bros. Radio Station*, 309 U. S. 470." *Evening News Association* (*WWJ*), 552, 555.

Petition for rehearing by an existing station directed against grant of an application for construction permit on the ground that operation of proposed station will restrict service area of petitioner's station so that a substantial number of persons who receive no other nighttime primary broadcast service will be prevented from receiving petitioner's service, granted where it appeared that the limitation to the existing station from operation of proposed station is unnecessary for the reason that the applicant could install a directional antenna which would give petitioner adequate protection and where petitioner attached to its petition an affidavit from a qualified radio engineer giving facts and data specifying the type of directional antenna design which, if employed, would produce the results for which it contended. *WSAZ, Inc.* (*WSAZ*), 303, 314.

Petition for rehearing denied where Commission examined all of the allegations of the petition and found they set forth no new or additional facts or circumstances not already known to and considered by the Commission and that the petition does not show wherein the action of which it complains is illegal or presents any valid objections which would require the Commission to set aside such action. *Pittsburgh Radio Supply House* (*WHJB*), 134, 139. See also *Conflicting Applications for Broadcast Facilities; Multiple Ownership.*

Petition for rehearing denied where contention that petitioner who is a broadcast station licensee is entitled to be protected from free competition was found to be without merit and other allegations were already considered by the Commission in a previous petition and found without substance. *Telegraph Herald* (*KDTH*), 322, 324.

Petition for rehearing denied where the Commission is satisfied that no objectionable interference will result to the service of petitioner's station from the operation of another station as proposed under a grant without hearing to which the petition for rehearing is directed. *Marysville-Yuba City Broadcasters, Inc.*, 83, 85.

PETITION FOR REHEARING OR RECONSIDERATION—Continued.

Petition for rehearing denied where the record indicates that the evidence supported the Commission's findings that a grant of the application would not result in interference to the primary reception of petitioner's station and that such inerference as might reasonably be expected to result from a grant of the application of which petitioner complains would occur in its secondary area and would be limited to receivers in the eastern half of the United States, remote from petitioner's station transmitter; that such secondary service as petitioner's station could render in this area would be of uncertain character because of its dependence upon characteristics of the individual receiver, the signal intensity and the signal to interference ratio involved in each individual case; that a grant of the application against which the petition is directed would enable the station to render an improved and extended primary service to a metropolitan area and would permit a more efficient use of the frequency 850 kilocycles than was theretofore possible. *Matheson Radio Co., Inc.* (*WHDH*), 397, 414.

Petition for rehearing denied where it appeared that the operation of the station as proposed by the grant against which the petition is directed would result in an improved service to all persons within the present service area of the station and would substantially increase the area and population that station could serve and where it appeared that the grant would not result in any substantial loss of population then served by petitioner's station. *New Jersey Broadcasting Corporation* (*WHOM*), 154, 157.

Petition for rehearing denied where it set forth no valid objections which would require the Commission to set aside a grant of the application to which the petition was directed. *WSAZ, Inc.* (*WSAZ*), 303, 312.

Petition for rehearing denied where there was no allegation that petitioner would be aggrieved or adversely affected by the grant of the application of which it complains, but sought a denial of that application on the ground that there was no need for two local stations in the same town; that the service of the proposed station would duplicate to a large extent the program service then being rendered by petitioner's station; that the Commission did not make a finding as to the financial qualifications of the applicant; and that the record did not support a finding that the applicant was financially qualified; and the Commission found petitioner's contentions without merit. *Neptune Broadcasting Corporation*, 96, 99.

Petition for rehearing directed against action of the Commission granting an application for modification of construction permit based upon the same allegations as were made in previous petitions directed against Commission's original grant for construction permit and license following construction permit which have already been passed upon and rejected, denied. *Telegraph Herald* (*KDTH*) (1941), 389, 394.

Petition for rehearing directed against grant of application for construction permit to use the same frequency as that used by petitioner's station on the ground that the proposed station would cause objectionable interference to petitioner's station thereby depriving a large population and area of its programs, denied where, upon a comparison of the benefits and detriments sustained in the respective communities of both stations, it appeared that public interest, convenience, and necessity would be served by the grant of which petitioner complains, and where petitioner raises no valid objections which would require the Commission to set aside its grant. *WCOL, Inc.*, 39, 45.

PETITION FOR REHEARING OR RECONSIDERATION—Continued.

Petition for rehearing directed against the action of the Commission granting petitioner's application in part so as to operate daytime only instead of full time as proposed denied where petitioner elected under section 1.381 to accept the partial grant without a hearing and did not, within 20 days from the date of the grant, file with the Commission a written request for a hearing with regard to the part not granted. *Herald Publishing Co., Inc.*, 176, 178.

Petition for rehearing directed against the grant of a license following construction permit upon the same basis as its former petition which was directed against the grant of the original construction permit denied where petitioner has not brought to the Commission's attention any cause or circumstances arising since the original grant which would make the operation of such station against the public interest, convenience, and necessity. *WCOL, Inc.*, 173, 175.

Petition for rehearing directed against the grant without hearing of an application for modification of license requesting the use of the frequency 830 kilocycles on the ground that such grant is erroneous as a matter of law because petitioner had pending an application for the use of that frequency filed prior to the application granted and that both applications raised a statutory question concerning public interest, convenience, and necessity "which can only be determined by simultaneous and comparative consideration" denied on the ground that neither section 309 (a) of the Communications Act nor any other section of the law requires the Commission to withhold action on an application which it has found will serve the public interest in order to consider such application on a comparative basis with some other application upon which the Commission is not ready to take final action. Before petitioner's application can be denied, it must be afforded an opportunity to be heard on any grounds which the Commission may have for denying the application and if the only basis for denying petitioner's application is the superiority of the service rendered or proposed by the other applicant, petitioner will have ample opportunity to show that its operation, as proposed, will better serve the public interest than will the operation of the other applicant as authorized by the grant. Such grant does not preclude the Commission at a later date from taking any action which it may find will serve the public interest. *Evangelical Lutheran Synod of Missouri, Ohio, and Other States (KFUO)*, 118, 119.

Petition for rehearing filed by one of two mutually exclusive applicants whose application was designated for hearing directed against the action of the Commission granting the other application denied where allegations of petition are unsupported by any facts from which the Commission could find that it was wrong upon a comparison of the two applications in finding one preferable to the other. *C. T. Sherer Co., Inc.*, 381, 385.

Petition for rehearing filed by one whose application is pending on the ground that the application granted by the Commission against which the petition is directed will result in objectionable interference to the operation of petitioner's station as proposed by its pending application, and requesting that the Commission revise its grant so as to require the applicant to change its directional antenna pattern and site, without indicating what changes should be made or whether a specific site is available denied on the grounds: (1) that before petitioner's application can be denied, it must be afforded a hearing, at which time petitioner will have an opportunity to show that a grant of its application so as to operate with an RSS of 4 mv/m will better serve the public interest, convenience and necessity than would the operation of the station whose grant it protests; that if petitioner can make such a showing the Commission will

PETITION FOR REHEARING OR RECONSIDERATION—Continued.

not be precluded from granting petitioner's proposal even though to do so would require another station to make changes in its antenna system, find a new site for its transmitter, or both; and (2) that the Commission has no basis for determining either the feasibility of petitioner's proposal or the verity of its conclusions. *Matheson Radio Co., Inc.* (*WHDH*), 397, 428.

Petition for rehearing filed by the existing station protesting grant of application for new broadcast station in the same town where petitioner's station is located based solely upon allegation of economic injury to petitioner denied on the ground that a licensee is not entitled to be protected from competition and the Commission is under no duty to make findings on the effect of such competition upon a licensee where it appeared that the new station was financially qualified to erect and operate the proposed station in the public interest. *Presque Isle Broadcasting Co.*, 3, 9.

Petition for rehearing filed by WABI of a grant without hearing to WGAN denied, where the operation by WGAN as proposed would result in an increase of about 197,418 daytime listeners and about 115,796 nighttime listeners, while the grant of the WABI application would result in an increase of daytime service to about 84,417 listeners and of nighttime service to approximately 19,774 persons. *Portland Broadcasting System, Inc.* (*WGAN*), 257, 260.

Petition for rehearing filed by William H. Rines, for rehearing of grant without hearing to WGAN denied where the data discloses that the coverage of WGAN would be more adequate than that of the station proposed by Rines, that the grant of the Rines application would result in objectionable interference to another station, that the equipment proposed by Rines does not meet the technical requirements prescribed by the Commission, and that WGAN is better qualified and has more experience. *Portland Broadcasting System, Inc.* (*WGAN*), 257, 263.

Petition for rehearing of existing licensee based on the claim that the Commission failed to consider the effect of the proposed competition from the grant of facilities in the same community to the applicant denied where the applicant showed it was financially qualified and nothing appeared in the record to support a finding that a grant of the application will result in depriving the listening public of any service which it now receives. *Presque Isle Broadcasting Co.*, 3, 10.

Petition for rehearing or reconsideration urging as ground for relief that certain changes in the transmitter sites and directional antenna patterns of two stations operating as proposed by the grants against which the petition is directed will enable petitioner's proposed station to render satisfactory nighttime service without increasing interference to other stations operating on the same frequency and without reducing the total number of listeners in the nighttime service areas of the two stations denied where these contentions are simply unsupported statements of general conclusions and do not indicate what changes in the directional patterns will produce such results or what specific sites should be selected or whether such sites are available to the stations since in the absence of any specific proposals the Commission has no basis for determining either the feasibility of petitioner's proposal or the accuracy of its conclusions. *Herald Publishing Co., Inc.*, 176, 178.

"Protest and request for hearing" which is, in effect a petition for reconsideration filed by an existing station directed against the grant of an application for a new station for the use of the same frequency as that assigned to the existing station on the ground that operation as proposed by the grant will result in objectionable interference to petitioner denied where it appeared that

PETITION FOR REHEARING OR RECONSIDERATION—Continued.

grant without hearing of application of petitioner for increased power more than offset interference it would have received from operation of new station as proposed by grant to which the protest was directed and clearly granting of both applications would result in increased service to areas and populations served by them without depriving any listener of the service of any existing station. *E. D. Rivers*, 79, 81.

Petition for rehearing filed by licensee directed against grant of application for modification of license for change in frequency on the ground of interference to petitioner denied where, upon comparison of benefits and detriments resulting from grant, Commission found public interest, convenience and necessity would be served by the grant. *Amarillo Broadcasting Corporation* (*KFDA*), 252, 256.

Petition requesting reconsideration and rehearing of the action of the Commission denying an application on the ground that no "compelling need" for the service was shown to exist granted on the ground that section 307 (b) of the Communications Act of 1934 does not require a showing of "compelling need" in order that a community can share in the fair, efficient, and equitable distribution of radio facilities. *Illinois Broadcasting Corporation*, 183, 184.

Petition filed by transferor, licensee of broadcast station, to reconsider action of Commission giving consent to a transfer of control of station license dismissed where neither the Communications Act of 1934, as amended, nor any rule or regulation promulgated by the Commission pursuant to the act, either expressly or by implication makes provision for the filing by the applicant of a petition for reconsideration or rehearing following a grant as filed of his own application. *Donald J. Flamm*, 325, 326.

POINTS OF COMMUNICATION.

See *Fixed Public Service.*

POLICY OF COMMISSION.

Change in assignment of frequency from class I–A to class I–B stations no change in policy of Commission but merely effects a minor shift in one frequency within the established policy. *Matheson Radio Co., Inc.* (*WHDH*), 397, 425.

Classification of stations under the rules as "class I," "class II," "class III–A," "class III–B," and "class IV" is matter merely of administrative convenience and is not a source of any right in licensees or applicants. *Miami Broadcasting Co.* (*WQAM*), 376; *Beaumont Broadcasting Corporation* (*KFDM*), 378.

POSTAL TELEGRAPH–CABLE COMPANY (LAND LINE SYSTEM).

Regulations contained in tariff schedules filed with the Commission for the Postal Telegraph-Cable Co. (land line system) apply to and govern all the companies embraced in the Postal system. Deviation therefrom by the Postal system or any of the companies embraced therein is unlawful. *Licht & Kaplan* v. *Postal Telegraph-Cable Co.*, 369, 373.

PRACTICE AND PROCEDURE.

For reference to particular rules, see *Rules and Regulations, Table of Cases, Statutes*, and other authorities cited, p. XI.

PREFERENCES.

Proposed practice under telegraph tariff regulation of issuing stamps to be used in payment for telegraph service found not to be preferential. *The Use of Stamps in Payment for Western Union Telegraph Service*, 204, 206.

PROGRAM PLANS.

Application for new broadcast station (requesting facilities of existing station) denied when applicant failed to advise the Commission of its proposed program service in such a manner that a comparison might be made between such service and that which the applicant sought to supplant. *Bellingham Broadcasting Co.*, 159, 171.

While applicant previously conducted its station in such a manner as to encourage strife and discord in the community, the discontinuance of these questionable practices was considered by the Commission in granting the application for renewal of license. *KVOS, Inc.*, 159, 172.

Application for renewal of broadcast station license granted after hearing where it appeared that the licensee contrary to the intentions expressed in its original application and the hearing thereon to present a diversified program service including a number of educational and live talent programs, had since the station's inception limited its program service to recorded music and commercial announcements, but where it also appeared that the licensee was presently making a genuine effort to improve and diversify its program service by reducing the time devoted to recordings and increasing the time devoted to broadcasts of news, religion, civic organizations, and live talent. *Cannon System, Ltd. (KIEV)*, 207.

PROPOSED FINDINGS OF FACT AND CONCLUSIONS.

Where an applicant for a developmental broadcast station has failed to file proposed findings after hearing, and, under section 1.231 (d) of the rules is thereby deemed to have waived any right to participate further in the proceeding, the issuance of proposed findings in the case by the Commission would serve no useful purpose and a decision and order should be issued in lieu thereof. *World Peace Foundation (Abraham Binnewig, Jr.)*, 289.

PUBLIC INTEREST, CONVENIENCE, AND NECESSITY.

Common carriers.—Applications for authority to construct a coastal harbor radiotelephone station at Houghton, Mich., and to use certain additional frequencies at coastal harbor radiotelephone stations at Lake Bluff, Ill., and Mackinac Island or Rogers City, Mich., granted when it was shown that public interest, convenience, and necessity would be served by the granting thereof. Applications for coastal harbor radiotelephone stations at Marine City and Manistee, Mich., denied when it was not shown that public interest, convenience, and necessity would be served by the granting thereof. *Thorne Donnelley*, 529, 534.

Applications for authority to construct coastal harbor radiotelephone stations at Port Huron and Detroit, Mich., granted where it was shown that public interest, convenience, and necessity would be served by the granting thereof. *Michigan Bell Telephone Co.*, 536, 539.

In considering the possible advantages of a new direct radiotelegraph circuit as opposed to existing indirect cable circuits, it must be borne in mind that the growth of both cable and radio has been such that there are in existence many circuits which are indirect in either service or communication, or both. Cost factors and the efficient utilization of existing plant require consideration in the regulation of communications systems serving the public, particularly in view of the duty of the Commission to maintain reasonable rates. Furthermore, insofar as economic stability permits, both cable and radio are desirable for the maintenance of continuous and reliable service between the United States and foreign countries, both media of communication having certain definite physical advantages and disadvantages. *Mackay Radio & Telegraph Co., Inc.*, 11, 15.

PUBLIC INTEREST, CONVENIENCE, AND NECESSITY—Continued.

Public interest, convenience, and necessity would be served by granting application to establish coastal harbor radiotelephone station at Buffalo, N. Y. *Radiomarine Corporation of America*, 517, 524.

Public interest, convenience, and necessity would be served by granting applications (1) of coastal harbor station at Lorain, Ohio, to add frequencies 4282.5, 6470, and 8585 kilocycles, (2) of coastal harbor station at Port Washington, Wis., to add frequency 4282.5 kilocycles, and (3) of coastal harbor station at Duluth, Minn., to add frequency 4282.5 kilocycles. *The Lorain County Radio Corporation*, 525, 527.

Public interest, convenience, and necessity would be served in granting application to construct coastal harbor radiotelephone station at Cape Girardeau, Mo., only on condition that operation thereof not cause interference to intership service or to service of any other coastal harbor station operating on same frequency. *Eddie Erlbacher*, 92, 95.

Public interest, convenience, and necessity would not be served by granting application to establish second coastal harbor radiotelephone station at West Dover, Ohio. *Radiomarine Corporation of America*, 517, 524.

Standard Broadcast Stations.—A grant of one application while another application requesting the same facilities is pending will not preclude the Commission from granting the later proposal even though to do so would require the applicant whose application was first granted to make changes in its antenna system, find a new site for its transmitter, or both, if the Commission can find that public interest, convenience, and necessity will be served thereby. *Matheson Radio Co., Inc.* (*WHDH*), 397, 429.

Action of the Commission in granting any application does not foreclose favorable action upon later inconsistent applications if Commission can find that a grant of any such application will serve the public interest. *New Jersey Broadcasting Corporation* (*WHOM*), 154, 157.

Application for new broadcast station granted where Commission determined that public interest, convenience, and necessity would be served thereby. *Joe W. Engel*, 593; *Harold Thomas*, 593; *George Penn Foster, et al., doing business as Nevada Broadcasting Co.*, 592; *L. C. Duncan, et al., doing business as Valley Broadcasting Co.*, 592; *Las Vegas Broadcasting Co.*, 593.

Application for renewal of broadcast license denied, when the Commission found that (1) the applicant was no longer financially qualified to continue operation of the station; (2) false representations have been made in applications and other documents; (3) the license had been transferred without the consent of the Commission, in violation of the Communications Act. *John H. Stenger, Jr.* (*WBAX*), 434, 444.

Application for renewal of broadcast license granted when it appeared that public interest, convenience or necessity would be served by the continued operation of the station. *Wilton Harvey Pollard* (*WBHP*), 593.

Application for renewal of broadcast license granted when the Commission found that certain activity, contrary to the principles of the Communications Act, had been discontinued and that "no attempt * * * will ever be made to color or editorialize the news received" through usual sources. *The Yankee Network, Inc.*, 333, 340.

Application granted as serving public interest, convenience, and necessity where evidence shows such action will result in establishment of nighttime service to a population and area which does not receive primary nighttime service from any other station, even though applicant station will be limited by certain existing

PUBLIC INTEREST, CONVENIENCE, AND NECESSITY—Continued.

stations beyond the contours to which, under the Commission's Standards of Good Engineering Practice, regional stations are generally protected. *Illinois Broadcasting Corporation*, 183, 185.

Petition for rehearing denied where Commission found that grant to which petition is directed will serve public interest, convenience, and necessity and petitioner does not contend this finding is erroneous. *Evening News Association (WWJ)*, 552, 555.

Public interest, convenience, and necessity is served by the grant of an application for new facilities in a community where there is no showing that the grant of the application will result in depriving the listening public of any programs which it now receives and where the listening public would have the benefit of improved service and a wider choice of programs. *Presque Island Broadcasting Co.*, 3, 4.

Public interest, convenience, and necessity is served by the widest and most efficient use of available facilities. *WSAZ, Inc. (WSAZ)*, 303, 314.

Public interest, convenience, and necessity will be served where, upon a comparison, the benefits outweigh the detriments resulting from a grant. *Amarillo Broadcasting Corporation (KFDA)*, 252, 256; *E. D. Rivers*, 79, 81.

The grant of one of two inconsistent applications does not preclude the Commission at a later date from taking any action which it may find will serve the public interest. *Evangelical Lutheran Synod of Missouri, Ohio and Other States (KFUO)*, 118, 119.

There is nothing in the Communications Act of 1934, the rules, or in the policy of the Commission which requires the finding of a definite need to support grant of application for new facilities; the words "public interest, convenience, or necessity" contemplates the most widespread and effective service possible. *Sentinel Broadcasting Corporation*, 140, 147.

Upon a comparison of two conflicting applications upon their merits, considering populations involved in each area and service available to each, public interest, convenience and necessity is served by the grant of the application which benefits the greater number of people. *WSAZ, Inc. (WSAZ)*, 303, 312.

When it appeared that applicant was publisher of sole newspaper in the community and also licensee of part-time local and regional stations in the same community, application for construction permit to change regional station to full-time operation was granted as being in the public interest, convenience, and necessity, on condition that applicant divest itself of all interest in the local station. *The South Bend Tribune*, 387, 388.

When the Commission found that two applications were mutually exclusive, one application was proposed to be granted and the other denied, when it appeared that this action would result in a fair, efficient, and equitable distribution of radio service between the areas under consideration and would serve public interest, convenience, and necessity. Both applications granted when a new frequency was assigned to the licensee whose application was proposed to be granted. *KXL Broadcasters (KXL)*; *Thomas R. McTammany and William H. Bates, Jr.*, 485, 487, 488.

Where there were two qualified applicants for the same facilities, the Commission granted the application of the one who showed that it would add to the area a medium for the dissemination of news and information to the public which will be independent of and afford a degree of competition to other such media in that area. *Stephenson, Edge and Korsmeyer; Helen L. Walton and Walter Bellatti*, 497, 501.

QUALIFICATIONS OF APPLICANT.

Applicant for coastal harbor radiotelephone service found to be legally, technically, financially, and otherwise qualified to install and operate proposed station. *Eddie Erlbacher*, 92, 95; *Michigan Bell Telephone Co.*, 536, 538; *Radiomarine Corporation of America*, 517, 523; *Thorne Donnelley*, 529, 534.

Application for a new broadcast station denied when applicants failed to make a proper showing of financial ability to construct and operate the proposed station. *Albemarle Broadcasting Station*, 105, 110; *Mayflower Broadcasting Corporation*, 333, 338; *United Theatres, Inc.*, 489, 493, 494.

Application for renewal of license denied when Commission found that applicant was not financially qualified to continue operation of the station. *John H. Stenger Jr.* (*WBAX*), 434, 444.

In deciding between two mutually exclusive applications for a construction permit for a new standard broadcast station in the same city, since other factors were approximately equal, the permit should be granted to the applicant who showed the most qualifying experience in radio, who had no other business interests in the city than the operation of the station, who was prepared personally to assume the full responsibilities incident to the conduct of the station and would not delegate major functions to third persons, and who proposed the program service most definitely adapted to serve the needs of the community. *J. D. Falvey; Louis R. Spiwak, and Maurice R. Spiwak, doing business as L & M Broadcasting Co.*, 279, 288.

Application for construction permit denied where shown that none of the applicants had any experience in the operation of a broadcast station and they had no definite plan or arrangement for the employment of sufficient qualified personnel to insure efficient station operation. *Albemarle Broadcasting Station*, 105, 110, 111.

Application for construction permit requesting facilities of existing station denied when applicant failed to sustain the burden of proof that he was qualified to construct and operate a broadcast station. *Paul J. Gollhofer*, 557, 570.

Application for new broadcast station granted when the Commission found that the applicant was legally, technically, financially, and otherwise qualified to construct and operate the proposed station. *Enrique Abarca Sanfeliz*, 489, 494; *Stephenson, Edge and Korsmeyer*, 497, 501.

QUALIFICATIONS OF LICENSEES.

Although it is not the function of the Commission to determine the merits of strictly private controversies and suits between licensees and other parties, yet the Commission is concerned with the ethics and character of persons who are charged with the responsibility of operating broadcast stations; and in passing upon an application for renewal of license, the Commission may properly receive and weigh evidence that a licensee corporation organized a second corporation for the purpose of defrauding the claims of its creditors. *Voice of Brooklyn, Inc.* (*WLTH*); *United States Broadcasting Corporation* (*WARD*); *Brooklyn Broadcasting Corporation* (*WBBC*), 230, 235.

RADIOTELEGRAPH SERVICE

Granting of applications for modification of license to add Quito, Ecuador, as a primary point of communication would serve public interest, convenience, and necessity. *R. C. A. Communications, Inc.*, 58, 74.

RADIOTELEPHONE SERVICE.

Application for authority to construct coastal harbor radiotelephone station at Cape Girardeau, Mo., granted when it was shown need for proposed service existed and public interest, convenience and necessity would be served by granting thereof. *Eddie Erlbacher*, 92, 95.

RADIOTELEPHONE SERVICE—Continued.

Applications for authority to construct a coastal harbor radiotelephone station at Houghton, Mich., and to use certain additional frequencies at coastal harbor radiotelephone stations at Lake Bluff, Ill., and Mackinac Island or Rogers City, Mich., granted when it was shown that public interest, convenience and necessity would be served by the granting thereof. Applications for coastal harbor radiotelephone stations at Marine City and Manistee, Mich., denied when it was not shown that public interest, convenience and necessity would be served by the granting thereof. *Thorne Donnelley*, 529, 534, 535.

Applications for authority to construct coastal harbor radiotelephone stations at Port Huron and Detroit, Mich., granted when it was shown that public interest, convenience and necessity would be served by the granting thereof. *Michigan Bell Telephone Co.*, 536, 538, 539.

Applications for radiotelephone aircraft control stations granted where it was shown existing light gun control system was inadequate, traffic was increasing and accidents might have been avoided through use of radio control. *Santa Monica Municipal Airport; City of Los Angeles; United Airports Co. of California, Ltd.; City of Long Beach*, 112.

Public need found for (1) adding radiotelephone frequencies 4282.5, 6470 and 8585 kilocycles at coastal harbor station at Lorain, Ohio, (2) adding radiotelephone frequency 4282.5 kilocycles at coastal harbor station at Port Washington, Wis., and (3) adding radiotelephone frequency 4282.5 kilocycles at coastal harbor station at Duluth, Minn. *The Lorain County Radio Corporation*, 525, 527, 528.

Public need found for coastal harbor radiotelephone service at Buffalo, N. Y. *Radiomarine Corporation of America*, 517, 524.

Public interest, convenience, and necessity would not be served by granting application to establish second coastal harbor radiotelephone station at West Dover, Ohio. *Radiomarine Corporation of America*, 517, 524.

The rules of the Commission do not contemplate coastal harbor telephone service that is dependent for satisfactory results upon reciprocal operation between coastal harbor stations and vessels equipped with particular apparatus of a certain manufacturer. *Radiomarine Corporation of America*, 517, 524.

RATES.

The results of over-all operations of respondents may not be accepted as conclusive with respect to rates of any particular class of traffic. Other factors must be considered and weighed. *Department of Public Service of Washington* v. *Pacific Telephone & Telegraph Co.*, 342, 348.

The Commission is not bound to accept respondents separation study in the absence of something better in the way of a different separation study. *Department of Public Service of Washington* v. *Pacific Telephone & Telegraph Co.*, 342, 350.

The Commission may derive a reasonable result on the basis of the record before it without attempting to develop another separation study. *Department of Public Service of Washington* v. *Pacific Telephone & Telegraph Co.*, 342, 350.

A greater charge for a shorter than for a longer distance over the same route is *prima facie* unreasonable. *Department of Public Service of Washington* v. *Pacific Telephone & Telegraph Co.*, 342.

Charging for reforwarding collect telegrams when no charge is made for reforwarding prepaid telegrams held to be justifiable in the interest of expediency of handling and simplification of operation. *Reforwarding Telegrams without Additional Charge*, 328, 331, 332.

RATES—Continued.

Charging for reforwarding collect telegrams when no charge is made for reforwarding prepaid telegrams held not to constitute an unjust or unreasonable discrimination. *Reforwarding Telegrams without Additional Charge*, 328, 332.

Application for authority to construct coastal harbor radiotelephone station granted where distress calls, weather reports, river data, lock news, and similar information would be handled without charge. *Eddie Erlbacher*, 92, 93.

A ready-to-serve charge of $25 a month which covers inspection service of the ship's radiotelephone equipment, unjustly discriminates against the small user, against the user who has no need for the carrier's inspection service or who carries equipment the carrier is not qualified to inspect. *The Lorain County Radio Corporation*, 292, 301.

Charging for test calls, not shown in the carrier's tariffs violates section 203 (c) of the act; charging less than the full amount of the ready-to-serve charge as the proper pro-rate thereof, as provided in the carrier's tariff, with a minimum of $6.25 a month not provided in the tariffs, is in violation of section 203 (c) of the act; charging person-to-person rates for station-to-station calls, when land-line charges for such calls are at person-to-person rates violates section 203 (c) of the act; collecting less than the full amount of a readiness-to-serve charge when the tariff reads "$5 per month or fraction thereof" violates section 203 (c) of the act; failing to collect report charges provided in the carrier's tariffs violates section 203 (c) of the act; free service to ship captains is forbidden, in the circumstances, by section 203 (c) of the Act. *The Lorain County Radio Corporation*, 292, 301, 302.

Carriers subject to Communications Act cannot, by merely changing label on particular class of service, bring such service within exception of section 221 (b), thus eliminating necessity of filing rates under provisions of section 203. *Southwestern Bell Telephone Co.*, 544, 548.

Mere fact that telephone zone area is within geographical limits of district exchange does not affect nature of service furnished under interzone interstate message rates; it is not "service * * * which is covered by the exchange service charge." *Southwestern Bell Telephone Co.*, 544, 548.

Neither United States Government nor carriers in United States are required to adhere to rates prescribed in International Telegraph Regulations. *Telegraph Division Order No. 12 (Urgent Rate Classification)*, 502, 506.

Maintenance of 2 to 1 ratio of charges in telegraph field for urgent messages and ordinary messages found to have prevented use of urgent service by certain persons who had real need for service. *Telegraph Division Order No. 12 (Urgent Rate Classification)*, 502, 511.

Ordered that ratio of charges in telegraph field for urgent messages (except press urgent messages) and ordinary messages be reduced from 2 to 1 to 1½ to 1 where carriers failed to justify continuance of 2 to 1 ratio on basis of either additional cost incurred in supplying urgent message service or "value of service" theory, and where it appeared that a reduction in the ratio to 1½ to 1 would not mean revenue from urgent service would be less than cost solely attributable to quality of urgency and would not result in so increasing traffic and thereby degrading services as to degrade value of those services. *Telegraph Division Order No. 12 (Urgent Rate Classification)*, 502, 513.

Ratio of charges for urgent and ordinary telegraph messages must be justified largely on basis of increased costs to carriers in providing higher grade of service and not on basis of its value to any particular user, or in effect, charge which user can be made to bear. *Telegraph Division Order No. 12 (Urgent Rate Classification)*, 502, 511.

RATES—Continued.

"Value of service" has significance in adjustment of telegraph rates only in considering effect of rate upon service in question and other services offered by carriers, i. e., whether proposed rate would increase or decrease benefit of particular service or of any other service to telegraph-using public. *Telegraph Division Order No. 12 (Urgent Rate Classification)*, 502, 511.

Rates covering interstate telephone toll messages between zones in exchange area are not within exception contained in section 221 (b) and hence should be included in tariffs filed with this Commission, in accordance with requirements of section 203. *Southwestern Bell Telephone Co.*, 544, 548.

Relationship between radiotelephone carrier and a ship station originating or terminating a call furnishes no justification for discrimination in rates. *The Lorain County Radio Corporation*, 292, 301.

See *Public Interest, Convenience or Necessity (Common Carriers)*.

Tariff schedules for radiotelephone service proposing an optional rate in lieu of a ready-to-serve charge plus message rates as low as one-half the optional rates are, under the circumstances, unlawful. *The Lorain County Radio Corporation*, 292, 301.

Tariff schedules for radiotelephone service proposing to eliminate readiness to serve charge with an increase in the message rates provide a more equitable basis for charges than previously. *The Lorain County Radio Corporation*, 292, 301.

The charging of a higher rate for a call from a station on a ship for which the radiotelephone carrier's ready-to-serve charge of $25 a month is not paid than for a like call to or from a station on a ship for which the charge is paid is unjust discrimination. *The Lorain County Radio Corporation*, 292, 301.

REFORWARDING OF TELEGRAMS.

Reforwarding prepaid but not collect telegrams without additional charge found not unjust or unreasonable or to result in any unjust or unreasonable discrimination and to be justifiable in the interest of expediency of handling and simplification of operations. *Reforwarding Telegrams Without Additional Charge*, 328, 331.

REGULATIONS AFFECTING CHARGES.

Effective tariff regulations affecting charges must be uniformly applied. Stipulation in schedules against liability for errors on lines of "any other company," in Postal's tariffs refers to any company other than those of Postal landline system, this system being operated as a single entity and held out to the public as "the company," etc., and one of the companies filing tariffs, reports, etc., for the entire system. *Licht & Kaplan* v. *Postal Telegraph-Cable Co.*, 369, 370.

RENEWAL OF BROADCAST LICENSE.

Application for renewal of broadcast license denied when the Commission found that applicant was no longer financially qualified to continue operation of the station; that in view of false statements made to the Commission, his character is not such as to qualify him to hold the license; and that the license had been transferred without consent of the Commission in violation of the Communications Act. *John H. Stenger, Jr. (WBAX)*, 434, 444.

Application for renewal of broadcast license granted as serving public interest, convenience and necessity, when it appeared that former questionable practices engaged in by the station had been discontinued. *KVOS, Inc.*, 159, 172.

Application for renewal of broadcast license granted when the Commission found that certain activity, contrary to the principles of the Communications

RENEWAL OF BROADCAST LICENSE—Continued.

Act had been discontinued and that "no attempt * * * will ever be made to color or editoralize the news received" through usual sources. *The Yankee Network, Inc.*, 333, 340.

Application for renewal of four broadcast licenses granted upon petition to reconsider and grant without hearing when it appeared that although for the past 7½ years the stations had been operated under management contracts violative of section 310 (b) of the Communications Act, the contracts had since been abrogated and the licensee was again exercising proper control over the stations. *Westinghouse Electric & Manufacturing Co.* (*WBZ, WBZA, KYW, KDKA*), 195, 196.

Application for renewal of license granted when the Commission determined to accept representation of the licensee that in the future, every proper and reasonable precaution would be taken to assure that past failures to maintain proper engineering standards would not be repeated, and that operation would strictly comply with the Standards and the terms of the license. *Arthur Faske,* (*WCNW*), 557, 570.

Application of noncommercial educational broadcast station for renewal of its license to operate on a regional frequency denied where it appeared that improved service all around would be had and public interest would best be served by shifting the educational station to a local frequency and granting the application of a commercial station on that local frequency for a construction permit to operate with increased power on the regional frequency of the educational station. *Mason City Globe Gazette Co.* (*KGLO*); *Charles Walter Greenley* (*KGCA*); *Luther College* (*KWLC*), 273.

Application for renewal of broadcast station license granted after hearing where it appeared that the licensee contrary to the intentions expressed in its original application and the hearing thereon to present a diversified program service including a number of educational and live talent programs, had since the station's inception limited its program service to recorded music and commercial announcements, but where it also appeared that the licensee was presently making a genuine effort to improve and diversify its program service by reducing the time devoted to recordings and increasing the time devoted to broadcasts of news, religion, civic organizations, and live talent. *Cannon System, Ltd.* (*KIEV*), 207.

Application for renewal of license of standard broadcast station denied by default when licensee failed to appear at renewal hearing and it was a matter of record that station had been silent for past year. *Mason City Globe Gazette Co.* (*KGLO*); *Charles Walter Greenley,* (*KGCA*); *Luther College* (*KWLC*), 273.

Applications for renewal of license, assignment of license, and increased power granted after hearing where it appeared that licensee had mismanaged station and had entered into management contract bordering on violation of section 310 (b) of the act to obtain additional capital to offset financial losses, but where it also appeared that the proposed transferee was financially qualified and the grant of increased power would provide greater advertising revenue. *Lee E. Mudgett* (*KRKO*), 215, 227.

RENEWAL OF LICENSE.

In renewal proceedings the function of the Commission as an administrative agency is not the imposition of penalties upon station licensees for their derelictions, except insofar as such action may result in some public benefit, but the correction of irregularities in station management and operation, as

RENEWAL OF LICENSE—Continued.

well as the encouragement and promotion of methods whereby such licensees may supply the most satisfactory public service in accordance with the Communications Act of 1934 and the rules of the Commission. *Lee E. Mudgett (KRKO)*, 227, 228.

Renewal of license of two experimental high-frequency broadcast stations denied after hearing where it appeared that the licensee had not shown a program of research and experimentation which indicated a reasonable promise of substantial contribution to the development of high-frequency broadcasting within the purview of section 4.112 (a) of the Commission's Rules. *Ben S. McGlashan (W6XKG, W6XRE)*, 211, 214.

Where three stations sharing time on the same frequency in the same city each applied for unlimited time operation on the joint frequency and the Commission granted one of the three unlimited time operation while necessarily denying the renewal applications of the other two, on reconsideration, the Commission reversed its action because the service rendered by the three stations is of the same general character and quality, and there is no showing in the record that any one of the stations is qualified to render a superior service than the other two. *Voice of Brooklyn, Inc. (WLTH)*; *United States Broadcasting Corporation (WARD)*; *Brooklyn Broadcasting Corporation (WBBC)*, 230.

RESEARCH AND EXPERIMENTATION.

Application for developmental broadcast station to test simultaneous transmission on separate frequencies in different directions with a single antenna denied because of failure of applicant to demonstrate some quantitative basis from which the Commission could find that the proposed experimentation shows reasonable promise of substantial contribution to the development of radio broadcasting, or that the use of the frequencies requested would be in the public interest. *World Peace Foundation (Abraham Binnewig, Jr.)*, 289, 291.

Renewal of license of two experimental high-frequency broadcast stations denied after hearing where it appeared that the licensee had not shown a program of research and experimentation which indicated a reasonable promise of substantial contribution to the development of high-frequency broadcasting within the purview of section 4.112 (a) of the Commission's rules. *Ben S. McGlashan (W6XKG, W6XRE)*, 211, 214.

REVOCATION OF BROADCAST LICENSE.

Broadcast license revoked after issuance of revocation order and hearing thereon, on the ground that the license was obtained as a direct result of false statements as to applicant's financial responsibility, among other things, made in the application and at public hearing thereon. *Station WSAL, Revocation of Station License of*, 34, 36.

In determining whether to revoke a broadcast license for false representations to the Commission and other violations of the Communications Act, the Commission's primary duty is to the listening public; and if it appears that the violations have ceased, that the licensee is now operating the station in good faith and in the public interest, and that to revoke the license would deprive the community of broadcast service, the license should not be revoked. *Navarro Broadcasting Association (KAND)*, 198, 199.

Order revoking the licenses of certain licensees vacated, when the Commission concluded that they will accord, in the future, more respect and a strict adherence to the duties and requirements of the act and the Rules and Regulations. *Red*

REVOCATION OF BROADCAST LICENSE—Continued.

Lands Broadcasting Association (KRBA); Sam Houston Broadcasting Association (KSAM); State Capital Broadcasting Association (KTBC); Palestine Broadcasting Association (KNET); Eagle Broadcasting Co., Inc. (KGFI); East Texas Broadcasting Co. (KGKB), 479.

RULES AND REGULATIONS.

Application requesting use of frequency 11370 kilocycles denied where the frequency was not available under the rules for assignment to coastal harbor stations, and the applicant had not shown such need for the frequency as to warrant a waiver of the rules. *The Lorain County Radio Corporation*, 525, 527.

Contention in petition for rehearing that it is error for the Commission to rely upon facts taken from the application granted by the Commission without hearing because such facts were *ex parte* and "not subject to close examination" by petitioner without merit since the Commission is under no legal duty to submit to petitioner for close examination facts set forth in such application. *Pittsburgh Radio Supply House (WHJB)*, 134, 136.

Proposed findings of fact and conclusions not issued when Commission found that intervener had been granted all procedural rights under the Communications Act and the rules, i. e., it filed exceptions and was permitted to submit brief in lieu of oral argument. *Burlington Broadcasting Co.*, 366, 367.

When applicant offered no evidence at the hearing in support of application it was deemed abandoned and was dismissed with prejudice. *Lillian E. Kiefer*, 557, 561.

Section 1.72.—Section 1.72 of the Commission's Rules and Regulations which provides that applications which are not in accordance with the Commission's Rules shall be considered defective and will not be acted upon by the Commission does not necessarily apply to an application filed prior to promulgation of this section and would not require the return of the application unconsidered, the determination as to whether the Commission should have returned the application which was proper when filed, required further data or information, acted upon the application as filed or taken any other action with respect to it, being a matter committed solely to the Commission's discretion under section 4 (j) of the Communications Act of 1934. *Matheson Radio Co., Inc. (WHDH)*, 397, 418.

Section 1.73.—Section 1.73 of the Commission's Rules of Practice and Procedure, which provides that any application may be amended or dismissed without prejudice as a matter of right prior to the designation of such application for hearing is no longer applicable where applicant does not make his intentions known to the Commission prior to final action on the application. *Donald J. Flamm*, 325, 327.

Section 1.102.—Petition for intervention denied where petition did not comply with section 1.102 of the Commission's Rules and Regulations requiring a petitioner to state the facts upon which the petitioner bases his claim that his intervention will be in the public interest. *Matheson Radio., Inc. (WHDH)*, 397, 415.

Section 1.231 (d).—Where an applicant for a developmental broadcast station has failed to file proposed findings after hearing, and, under section 1.231 (d) of the Rules is thereby deemed to have waived any right to participate further in the proceeding, the issuance of proposed findings in the case by the Commission would serve no useful purpose, and a decision and order should be issued in lieu thereof. *World Peace Foundation (Abraham Binnewig, Jr.)*, 289.

Section 1.368.—Request to waive section 1.368 which provides in substance that while there is one application pending for new or additional facilities

RULES AND REGULATIONS—Continued.

the Commission will not consider another application for new or additional facilities involving the same station, dismissed when the result desired by the applicant can be accomplished without waiving the provisions of section 1.368 by a grant of the conflicting applicant's application for modification of constructure permit. *WCLS, Inc.* (*WCLS*), 265.

Section 1.381.—Proposed findings of fact and conclusions not issued when Commission found that intervener had been granted all procedural rights under the Communications Act and the Rules, i. e., it filed exceptions and was permitted to submit brief in lieu of oral argument. *Burlington Broadcasting Co.*, 366, 367.

Section 4.92.—Application for special experimental authorization to rebroadcast facsimile transmissions denied where applicant failed to make the showing required by Section 4.02 of the Commission's Rules that the proposed program of research and experimentation indicates reasonable promise of substantial contribution to the facsimile broadcasting technique. *American Broadcasting Corporation of Kentucky* (*WLAP*) (*Special Experimental Authorization*), 56, 57.

Section 4.112 (*a*).—Renewal of license of two experimental high frequency broadcast stations denied after hearing where it appeared that the licensee had not shown a program of research and experimentation which indicated a reasonable promise of substantial contribution to the development of high-frequency broadcasting within the purview of section 4.112 (a) of the Commission's Rules. *Ben S. McGlashan* (*W6XKG, W6XRE*), 211, 214.

Section 9.111.—Requirement of Rule 9.111 waived to permit operation by radiotelephone aircraft control station from 9 a.m. to sunset only when it was shown operation between these hours would meet satisfactorily needs of the station. *Santa Monica Municipal Airport; City of Los Angeles; United States Airports Co. of California, Ltd.; City of Long Beach*, 112.

SAFETY OF LIFE AND PROPERTY.

Application for authority to construct coastal harbor radiotelephone station granted where it was shown the proposed service would aid in the safety of life and property of persons in the area. *Eddie Erlbacher*, 92, 93.

SERVICE AREA.

Application denied where applicant could not render an interference-free service at night consistent with that required of stations of regional classification. *Publix Bamford Theatres, Inc.*, 86, 88.

Application denied where limited service to be rendered by proposed stations will not constitute a satisfactory use of the facilities requested. *C. T. Sherer Co., Inc.*, 881.

Where change in operating assignment would extend overlapping of service areas of three stations under common control, Commission will consider this fact in determining public interest. *Pittsburgh Radio Supply House* (*WHJB*), 129, 132.

Applications for authority to use certain additional frequencies at coastal harbor radiotelephone stations granted where operation on such additional frequencies would serve to overcome "skip effect" and increase the service area or range of such stations. *Thorne Donnelley*, 529, 533.

SERVICE AREA—Continued.

Applications by coastal harbor radiotelephone stations for additional frequencies granted where operation on such additional frequencies would increase the service area or range of such stations. *The Lorain County Radio Corporation*, 525, 527.

SERVICE IMPROVEMENTS.

Application by coastal harbor radiotelephone station at Port Washington, Wis., for additional frequency 4282.5 kilocycles granted where range of station would thus be increased, which would enable station to give a much improved service in northern Lake Michigan. *The Lorain County Radio Corporation*, 525, 527.

SPECIAL EXPERIMENTAL AUTHORIZATION.

Application for special experimental authorization to rebroadcast fascimile transmissions denied. *American Broadcasting Corporation of Kentucky (WLAP)*, 56.

STANDARDS OF GOOD ENGINEERING PRACTICE.

Actual measurements inconsistent with the measurements embodied in the Commission's Standards of Good Engineering Practice will not be accepted where the accuracy of the calibration of the instruments used is in doubt and where there is no showing that sufficient data was collected to support adequately the conclusion reached. *Salt River Valley Broadcasting Co.*, 26, 32.

Application denied, where applicant requested assignment which could not, under the Commission's Standards, render an efficient broadcasting service to the community. *Publix Bamford Theatres*, 86; *C. T. Sherer Co., Inc.*, 381.

Application for new station granted even though applicant seeks the use of a local channel to serve a metropolitan district, where it is shown that more than 90 percent of the population residing in said area will receive interference-free service from the proposed station. *Worcester Broadcasting Corporation*, 316, 319.

Application for new station granted even though it would be limited to greater extent than contemplated by standards since station would provide service throughout the entire city and larger portion of metropolitan district and would cause no objectionable interference to existing station. *Sentinel Broadcasting Corporation*, 140, 147.

Application for renewal of license granted when the Commission determined to accept representation of the licensee that in the future, every proper and reasonable precaution would be taken to assure that past failures to maintain proper engineering standards would not be repeated, and that operation would strictly comply with the Standards and the terms of the license. *Arthur Faske (WCNW)*, 557, 570.

Distance tables referred to in the Commission's Standards of Good Engineering Practice are based upon hypothetical set of average conditions which vary in each case, therefore these tables cannot be used except as a general guide. *Watertown Broadcasting Corporation*, 190, 193.

In the absence of actual measurements of field intensities of the signals of a station, these may be calculated with substantial accuracy under the Engineering Standards of Allocation and the Standards of Good Engineering Practice. *Amarillo Broadcasting Corporation (KFDA)*, 252, 254.

The fact that applicant station operating as proposed will be limited by certain existing stations beyond the contours to which under the Commission's Standards of Good Engineering Practice regional stations are generally protected will not preclude the grant of an application where it will result in the establishment

STANDARDS OF GOOD ENGINEERING PRACTICE—Continued.

of primary nighttime service to a population and area which does not receive primary service from any other station. *Illinois Broadcasting Corporation*, 183, 185.

STAY ORDER.

Commission will not automatically issue a stay order. Facts must first be presented showing that irremedial injury will result to the public or to the petitioner. *Matheson Radio Co., Inc.* (*WHDH*), 397, 431.

Commission granted a stay order pending decision on petition for rehearing because of the importance of the questions involved and the possibility that petitioner might make a showing in its petition for rehearing that the public would be benefited by a stay. *Matheson Radio Co., Inc.* (*WHDH*), 397, 432.

Petition for stay order denied where it appeared that action of the Commission which petitioner requests stayed will not prevent the Commission from later granting any application by petitioner if the Commission finds that such grant would be in the public interest, even though such grant might involve further action by the Commission to require certain stations to move their transmitters or change their directional antenna patterns. *Herald Publishing Co., Inc.*, 176, 179.

Stay order denied where petitioner failed to show irremedial injury to itself or to the public if the action of which it complains were not stayed. *Matheson Radio Co., Inc.* (*WHDH*), 397, 431.

SUBSCRIBER SERVICE BY DEVELOPMENTAL BROADCAST STATION.

Where an applicant for permit to construct a new developmental broadcast station proposed to experiment with a subscriber service for the purpose of determining whether the public would finance the broadcasting of programs by direct payment therefor and no commercially sponsored programs nor advertising continuity would be used, held granting thereof, on experimental basis would serve public interest, convenience, or necessity. *Muzak Corporation*, 581.

TARIFFS.

Proposed practice under telegraph tariff regulation of issuing stamps to be used in payment for telegraph service found not to be unreasonable, unreasonably discriminatory, preferential, or otherwise unlawful. *The Use of Stamps in Payment for Western Union Telegraph Service*, 204, 206.

TARIFF SCHEDULES.

Departure from regulations therein. *Licht & Kaplan* v. *Postal Telegraph-Cable Co.*, 369.

TELEGRAPH SERVICE.

Proposed practice under telegraph tariff regulation of issuing stamps to be used in payment for telegraph service found not to be unreasonable, unreasonably discriminatory, preferential, prejudicial, or otherwise unlawful. *The Use of Stamps in Payment for Western Union Telegraph Service*, 204, 206.

TELEPHONE SERVICE CLASSIFICATION.

Distinction between (1) extended area measured exchange service and (2) interzone messages. *Southwestern Bell Telephone Co.*, 544, 548.

TELEPHONE TOLL RATES.

Narrow meaning of unlawful discrimination in regulation of freight rates under Interstate Commerce Act not applicable to telephone toll rates under Communications Act. *Department of Public Service of Washington* v. *Pacific Telephone & Telegraph Co.*, 342, 363.

TELEPHONE TOLL RATES—Continued.

Unlawful preference or prejudice in telephone toll rates may be established under Communications Act without showing competitive relationship between users and competitive injury. *Department of Public Service of Washington* v. *Pacific Telephone & Telegraph Co.*, 342, 360–362.

Departure from basic rate-making principle of "equal charges for equal services" must be clearly justified by other controlling considerations and be in the public interest. *Department of Public Service of Washington* v. *Pacific Telephone & Telegraph Co.*, 342, 364.

Disparities of from 9 to 40 percent between two schedules of rates maintained by same company not within "zone of reasonableness" where identical facilities and personnel employed in furnishing service under both schedules. *Department of Public Service of Washington* v. *Pacific Telephone & Telegraph Co.*, 342, 358, 364.

Schedule of telephone toll rates found to be unreasonable by comparison with another schedule of same company where both make use of identical facilities and personnel and no circumstances appear justifying difference. *Department of Public Service of Washington* v. *Pacific Telephone & Telegraph Co.*, 342, 355–356.

Schedule of toll rates voluntarily joined in by company assumed to be reasonable where not shown to be forced by competition or necessary to attract business for purpose of comparison with another schedule of same company. *Department of Public Service of Washington* v. *Pacific Telephone & Telegraph Co.*, 342, 358.

Schedule of toll rates which results in greater charges for shorter than for longer airline distance over same route and in the same direction is unreasonable in absence of circumstances justifying same such as competition. *Department of Public Service of Washington* v. *Pacific Telephone & Telegraph Co.*, 342, 359.

TOLL MESSAGES.

Rates covering interstate telephone messages between zones in exchange area are not within exception contained in section 221 (b) and hence should be included in tariffs filed with this Commission in accordance with requirements of section 203. *Southwestern Bell Telephone Co.*, 544, 547, 548.

TRAFFIC.

Applications for modification of licenses to permit the applicant to establish a direct radiotelegraph circuit between the United States and a foreign country denied when it appeared, *inter alia*, that the amount of telegraph traffic between the two countries has been decreasing consistently; that the existing facilities are ample to handle adequately the traffic available and any increase in that traffic that reasonably can be anticipated, even under the stress of abnormal conditions; that the proposed circuit would not create new traffic but would secure its traffic through diversion from and at the expense of the carriers now in the field; and that there is no basis for anticipating any substantial increase in traffic. *Mackay Radio & Telegraph Co., Inc.*, 11, 13, 14, 16, 18–20, 24.

URGENT MESSAGES.

Maintenance of 2 to 1 ratio of charges in telegraph field for urgent messages and ordinary messages found to have prevented use of urgent service by certain persons who had real need of service. *Telegraph Division Order No. 12 (Urgent Rate Classification)*, 502, 511.

Ordered that the ratio between the charges for urgent telegraph messages (except urgent press telegraph messages) and ordinary telegraph messages be

URGENT MESSAGES—Continued.

reduced from 2 to 1 to 1½ to 1, after consideration of cost studies of record; the voluntary fixed ratio of 1¼ to 1 which existed between the charges for "preferred" telegraph message service (a service comparable to urgent service) and ordinary telegraph message service, about which no evidence was presented that such ratio was inadequate, or that the service at such ratio tended to degrade the "preferred" service so as to destroy its value to users of telegraph service requiring expeditious handling; the ratio of 1½ to 1 between charges for urgent telegraph messages and ordinary telegraph messages stated in tariffs which had been filed by one respondent; statements by users that a ratio of 1½ to 1 between the charges for urgent telegraph messages and ordinary telegraph messages would be proper; and other evidence of record; even though the cost studies of record did not afford a basis for a mathematical determination of such ratio. *Telegraph Division Order No. 12* (*Urgent Rate Classification*), 502, 512.

Ratio of charges for urgent and ordinary telegraph messages must be justified largely on basis of increased costs to carriers in providing higher grade of service and not on basis of its value to any particular user, or, in effect, charge which user can be made to bear. *Telegraph Division Order No. 12* (*Urgent Rate Classification*), 502, 511.

Since International Telegraph Regulations are not binding on United States carriers or United States Government, they offer no obstacle to prescription by Commission of different ratio of telegraph rates, urgent to ordinary, than that set forth in those regulations. *Telegraph Division Order No. 12* (*Urgent Rate Classification*), 502, 506.

While it is apparent that additional operating expenses are incurred by telegraph carriers for handling urgent traffic, it is difficult to determine with any reasonable degree of accuracy the amount of such operating costs. *Telegraph Division Order No. 12* (*Urgent Rate Classification*), 502, 506–510.

VALUE OF SERVICE.

"Value of service" has significance in adjustment of telegraph rates only in considering effect of rate upon service in question and other services offered by carrier, i. e., whether proposed rate would increase or decrease benefit of particular service or of other services to telegraph-using public. *Telegraph Division Order No. 12* (*Urgent Rate Classification*), 502, 511.

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