

## ABSTRACT

This study, divided into three major sections, documents the operation and licensing problems of KRLA, an American standard broadcasting station in Pasadena, California, from the station's founding in 1941 through 1979. The first section describes the conventional era, when programming and management conformed to the Federal Communications Commission (FCC) ideals. The second section investigates the controversial programming and management that resulted in license non-renewal and four years of hearings and court appeals. The third section examines the fifteen-year process that ensued to select a replacement licensee from the applicants desiring the vacated facility. Additional sidelights are included delineating the unique interim operation permitted by the FCC during the lengthy selection process.

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CHAPTER I  
INTRODUCTION

Unlike other forms of mass media, broadcast stations in the United States are subject to a complex variety of rules and regulations imposed by the federal government. The authority for this regulation was granted by Congress with the passing of the Communications Act of 1934, and its implementation rests with the Federal Communications Commission (FCC).<sup>1</sup>

The FCC utilizes a variety of methods to enforce these rules and regulations, including: (a) the power to grant licenses for either the maximum three-year term, or, if a broadcaster has erred, for a shorter period; (b) the power to financially fine errant stations; (c) the power to grant licenses to multiple applicants; and, (d) the power to revoke licenses.

In addition to these tactics, the FCC has, throughout the years, utilized another technique sometimes referred to as "jawboning." This is a method whereby a member of the Commission may address Congress, deliver a

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<sup>1</sup>47 U.S.C., Secs. 1, 301, and 303.

speech to a group or organization, or hold a press conference, and during the process suggest possible changes in the way broadcasters function. This suggestion is often enough warning to broadcasters that they voluntarily comply with the proposal to avoid further legislation and regulation.

The broadcasters have legal rights to protect their interests, including hearings and appeals to the FCC, and legal appeals to the United States Court of Appeals for the District of Columbia. Ultimately, the licensee can petition the United States Supreme Court for review.<sup>2</sup>

The majority of rules and regulations are technical in nature. For the most part, they are designed to protect the electromagnetic spectrum, to ensure that stations do not interfere with one another, and, ultimately, to ensure that the listening public receives clear signals in a uniform, standardized way. The Commission is specifically forbidden to control program content or exercise censorship over what broadcasters air,<sup>3</sup> and several test cases have firmly established the broadcaster's right to control program content, as long as that content is not obscene, indecent, or illegal.<sup>4</sup>

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<sup>2</sup>28 U.S.C., Sec. 2350.

<sup>3</sup>Communications Act, Sec. 326.

<sup>4</sup>Writer's Guild of America, West, Inc. v. FCC, 423 F. Supp. 1064 (Appeal Pending), (1976).

The vast majority of broadcast stations rarely encounter FCC enforcement provisions other than mild warnings and notices of procedural violations. These might consist of such minor infractions as inaccurate record-keeping, inaccurate equipment maintenance procedures, failure to notify the proper authorities when a transmitter tower light burns out, improper drifting of a frequency, and things of that nature. Only a few stations ever encounter the full wrath of the federal regulatory agency, and even fewer suffer the ultimate penalty, loss of license.

For seven years prior to the Communications Act of 1934, broadcasting was regulated by the Federal Radio Commission (FRC), under the authority of the Radio Act of 1927. This was during the early, developmental years of broadcasting and many licensees took excessive liberties with how they operated. According to radio critic Ben Gross:

In a steady procession, there came before the microphones newscasters who merely read word-for-word items from the daily papers, owners of diploma mills, crystal-gazing fortunetellers, installment furniture men, conductors of matrimonial bureaus, fakers, nuts, and dreamers making merry carnival.<sup>5</sup>

In the majority of cases, the FRC was able to correct the abuses without resorting to license revocation. There are, however, two exceptions that ultimately firmly

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<sup>5</sup>Ben Gross, I Looked and I Listened, (New York: Random House, 1954, revised 1970), p. 68.

established the legal right of the Commission to consider a station's programs relative to its overall performance.

On March 20, 1930, radio station KFKB, located in Milford, Kansas, and operating on a frequency of 1,050 kilocycles with 500 watts of power, filed its application for license renewal. The FRC, having received several complaints about appellant's programming practices, failed to find that the renewal would serve the public interest, convenience, or necessity,<sup>6</sup> a phrase that appears frequently through the Communications Act of 1934. Hearings were held May 21-23, 1930, and the Commission, after receiving evidence on the question and appeals by appellant counsel, reaffirmed that KFKB's license be denied.

KFKB eventually took the appeal to district court, where evidence showed that KFKB operated as a vehicle whereby the owner, Dr. J. R. Brinkley, was dispensing medical prescriptions through hospitals and pharmacies controlled by Brinkley. In its decision, the court noted:

When Congress provided that the question of whether a license should be issued or renewed should be dependent upon a finding of public interest, convenience, or necessity, it very evidently had in mind that broadcasting should not be a mere adjunct of a particular business but should be of a public character.<sup>7</sup>

The second case in question occurred one year later

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<sup>6</sup>KFKB Broadcasting Association, Inc. v. Federal Radio Commission, 47 F.2d 670 (D.C. Cir, February 2, 1931).

<sup>7</sup>Ibid.

when the Court of Appeals held that the FRC's refusal to renew KGEF, a station in Los Angeles licensed to Trinity Methodist Church, South, and owned by the Reverend Dr. Shuler, violated neither the First nor Fifth Amendments to the Constitution. The renewal was refused because of defamatory and objectionable statements delivered by the Reverend on the air.<sup>8</sup> In citing examples of abuses committed by Shuler, the court noted:

On one occasion he announced over the radio that he had certain damaging information against a prominent unnamed man which, unless a contribution (presumably to the church) of a hundred dollars was forthcoming, he would disclose. As a result, he received contributions from several persons. He freely spoke of pimps and prostitutes. He alluded slightly to the Jews as a race, and made frequent and bitter attacks on the Roman Catholic religion and its relations to government.<sup>9</sup>

Thus, prior to the enactment of the stringent broadcast regulation inherent in the Communications Act of 1934, the courts had established that broadcast licenses could be denied, and that this denial was not in violation of either the First or Fifth Amendments. At the same time, these cases affirmed the power of the FRC, and later, the FCC, to revoke a station's license.

In the first twenty-six years after the enactment of the Communications Act, the FCC stripped only forty-two

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<sup>8</sup>Trinity Methodist Church, South v. Federal Radio Commission, 62 F.2d 850 (D.C. Cir, November 28, 1932).

<sup>9</sup>Ibid.

broadcasting licenses. Thirty-nine of those were revoked for technical reasons or unauthorized transfer of control.<sup>10</sup>

KRLA was the first station ever to lose its license due to alleged misrepresentations, false statements, fraudulent contests, falsification of logs, and attempts to deceive the Commission. KRLA was also the first station ever to be allowed to remain on the air while comparative hearings for license contenders continued for more than a decade.

This study documents the KRLA license renewal struggle, the procedural and judicial steps taken to defend and maintain the license, and the Commission's slow, court-challenged method of selecting a replacement licensee.

The first part of the study reviews the early, historical founding of the station and the period of operation herein identified as the "Conventional Era." The second part documents the changes in format and programming which were to irk the FCC, raise controversy and, eventually, lead to the decision for license non-renewal. This period is identified as the "Controversial Era." The third part, noted as the "Comparative Era," outlines the struggle by multiple interests to acquire the KRLA license.

In addition, the study includes a chapter detailing

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<sup>10</sup>John D. Abel, Charles Clift III, and Fredric A. Weiss, "Station License Revocations and Denials of Renewals, 1934-69," Journal of Broadcasting, XIV:4, pp. 411-421.



sidelights to the KRLA operation, which describes the station's problems and successes during its operation under interim authority.

The final chapter is devoted to summary and conclusions in which this author, who has been an employee of the station in a technical managerial position since 1958, attempts to place events into perspective, noting both potential values and warning signals in the KRLA case that could prove beneficial to other broadcasters.

## CHAPTER II

### THE CONVENTIONAL ERA

The story of KRLA began in 1940, when J. R. Frank Burke formed Pacific Coast Broadcasting with other minor stockholders, including Pasadena citizens and members of the Irvine family, the largest landholders in Orange County, California. In August of that year, the corporation applied for a license to construct a ten-kilowatt standard broadcast station on the frequency of 1110 kilohertz in Pasadena. The transmitter was to be located in El Monte, and the requested call letters were KPAS.

Burke, formerly from Ohio, was an active supporter, behind-the-scenes manipulator, and fund-raiser for the Democratic party. He moved to Orange County during the thirties, where he began publishing the Santa Ana Register newspaper. While the paper was well-received by the Irvine family and other Democrats, it did not generate a lot of support from the local population. The people of Orange County and the local growers did not respond to Burke's views, and the Register did not grow to become as influential as Burke had intended.

Burke was the financial and motivating force in the

KPAS operation, and Loyal King, his former accountant in Ohio and for the Register, became the first station manager. Although the records give no indication that the application was anything but conventional, it was viewed by some to have been influenced by Burke's political contacts. Jack Reeder, who helped build the station, felt that Burke received favorable consideration in his application for the license.<sup>1</sup> With President Roosevelt at his peak, the 1940s had become a very strong Democratic era, and Reeder implied that those conditions were to the advantage of Burke, adding positive influence to his application in the eyes of the federal regulatory agency, the FCC.<sup>2</sup>

In order to place a new station on the band in that location, a directional antenna was proposed to protect existing stations, including KFAB, Omaha, Nebraska, which was on the same frequency, and two adjacent stations. It was approved, and the FCC issued construction permit number B5-MP-1639 to Pacific Coast Broadcasting on September 9, 1941.

#### Construction Begins

Construction for the new station was started immediately, although the plans were altered by the United

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<sup>1</sup>Jack Reeder, interview held in El Monte, California, March 1980.

<sup>2</sup>However, perhaps this "influence" was not even considered, because during the forties the broadcast spectrum was not saturated. Although the availability of choice broadcast stations was becoming limited in major markets,

States' entrance into World War II just three months after the issue of the permit. The permit had approved the requested power of 10,000 watts, and the transmitter was constructed to provide that power. However, Western Electric, the manufacturer of the equipment, was unable to supply the appropriate high voltage transformer because of equipment shortages which had already developed due to increased war preparations. Thus, the initial operation began at a reduced power of 5,000 watts.

On February 8, 1942, just two months after the attack on Pearl Harbor, KPAS went on the air for the first time to conduct programming tests. By mid-February the tests were completed and the proof-of-performance report submitted to the Commission. The Commission routinely granted the operating license. Nine months later, on November 24, 1942, Western Electric was able to supply the missing component which permitted the 10,000-watt transmitter to begin operation.

#### Ownership Changes

In 1945, Burke sold his interest in KPAS to William Dumm, a preacher from Oakland, California, and an early religious broadcaster. Other original stockholders retained their stock, and the corporate name, Pacific Coast Broadcasting, remained intact. The only outward appearance

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including Los Angeles, the study of FCC records does not indicate any competition or comparative hearings for the grant of the Pasadena station.

of change was the addition of new call letters, as KPAS became KXLA.

Part-ownership in KXLA helped to solve a duopoly<sup>3</sup> problem for Dumm, who also owned KSFO, San Francisco; KROW, Oakland; and KXA, Portland, Oregon.<sup>4</sup> To comply with the duopoly rule, Dumm sold his Oakland station, then purchased KPAS (KXLA) with the intention of beginning his own radio network. He also applied for a license in Santa Monica, California, but that transaction was never completed.

KXLA never did become a part of Dumm's network, because King and Dumm found that they did not agree on many aspects of station management and operation. Two years later, in late 1947, Dumm sold his interests to King, giving King fifty-one per cent interest in the station.

From 1942 to 1948, the station's format was typical

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<sup>3</sup>The duopoly rule is one result of several rules drawn up by the FCC in 1941. It was upheld by the Supreme Court in National Broadcasting Company (NBC) v. U.S., 319 U.S. 190, which broke up NBC's red and blue networks and prevented other broadcasters from owning competing stations in the same coverage area. After it was upheld by the Supreme Court, the duopoly rule was put into effect in 1945, although exceptions later made AM-FM combination ownerships acceptable.

An interesting sidenote is that the American Broadcasting Company (ABC) radio network was formed in 1945 as a result of the duopoly rule breaking up NBC's red and blue networks. KPAS was among those considered to become the flagship station for the ABC radio network on the West Coast, but Burke sold his interests to Dumm before an agreement with ABC was reached.

<sup>4</sup>In re Application of Queen City Broadcasting Co., 26 FCC 611, at 635.

of other non-network stations at the time. It had an active live studio, complete with a grand piano and bandstand, and generated at least three live programs each day. Most of the programming was block programming, where, typically, a sponsor would purchase a fifteen-, thirty-, or sixty-minute time segment that became identified with that sponsor and ran consistently on a daily or weekly basis. Segments would be known as the local Chevrolet dealer's hour or the local insurance agency's show, and a certain type of program would consistently be aired. Programming included all types of music, from light opera to country and western, and other shows featuring news, commentators, bridge lessons, cooking lessons, and dramatic sketches by Pasadena Playhouse performers. Following each block would be a station identification and a spot announcement, and then the next block would begin.

The station was not a major moneymaker, as were some of the other broadcast properties at the time. Most industries which operated during the war years accrued fantastic profits, due to the volume of business engaged in war production and the fact that there was little equipment available to encourage reinvestment. These profits were spent, in large part, on advertising. Many companies could not supply their products, as there were shortages of materials, but they were trying to keep their

product names before the consumer, so that they would be remembered when the war was over and manufacturing resumed at full pace. As product awareness advertising soared during the war, most radio stations made fantastic profits, which were later used to finance television.

But there is no record that KPAS or KXLA were extraordinarily profitable operations. The station was operated conservatively, which reflected King's way of doing business. With a background as an accountant, as opposed to an aggressive, competitive broadcaster, King was content to let the station operate at a comfortable profit, and did not push for any more. Program logs contained a large number of religious programs, local shows, and shows that would now be considered public service programs. There were few commercials, running only three to five minutes per hour, many of which were set up at "per inquiry" advertising rates. This allowed the sponsor to pay a minimum rate for the commercial time segment, with extra fees paid for each inquiry that the commercial generated.

KPAS, and later KXLA, were both operated by local people with low commercial emphasis. The station was tremendously responsive to local needs, generating local programming, local advertising, and a great deal of public service programming.

There is no mention of the station in FCC reports

or records during this time period, or in Broadcasting magazine or other journals. This lack of mention indicates that the communications between the station and the Commission were quite conventional; records were routinely filed and never reported to the public because of their everyday nature.

#### Troubles With Nixon

Only one unusual incident has ever been recalled by early staff members, although it was never recorded in FCC reports. In September 1950, Richard Nixon was a Republican candidate for the U.S. Senate, running opposite one of KXLA's minor stockholders and a member of the Irvine family, Democratic candidate Helen Gahagan-Douglas.

During this extremely bitter campaign, Nixon accused both Gahagan-Douglas and Jimmy Roosevelt, another Democratic candidate, of being "communists, fellow travelers, and pinkos." No one recalls that Gahagan-Douglas ever used the station for political messages, but Nixon demanded equal access to the station. He physically came upon the premises, demanding air time.

It was reported by the employees that were present that Nixon was physically escorted from the premises by King. At that point, Nixon threatened to contact the FCC and demand that Section 315 of the Communications Act be enforced.<sup>5</sup> There is no indication that a formal complaint

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<sup>5</sup>Section 315 of the Communications Act states: "If



was ever filed, but the story continues to be told around the station. Possibly, Nixon never pursued it because he won the election.

#### Country and Western Format Begins

During the late forties KXLA picked up the syndicated show "Country Crystals," a country and western program originating in Texas, broadcast every evening at 8 P.M. The success of that show caused KXLA to evolve into a country and western station by the early fifties. At that point, there were so many stations in Los Angeles that competition led to fragmentation of the stations into specific formats. Los Angeles stations began broadcasting to defined audiences rather than trying to reach everyone on a mass scale. As other stations found successful formats, KXLA turned to country and western. "Hometown Jamboree" was broadcast live daily at noon, with live performances from large country and western bands. Yet the new format continued to stress both local participation and religious programming.

KXLA tried to meet all of the FCC's criteria for

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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: 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. . . ." [Emphasis in original.]

the desired characteristics of a broadcaster. It was serving the public interest, it was serving a specific audience, it was responsive to community needs, and it was carrying a large amount of non-commercial local church programs. Services from the Lake Avenue Congregational Church, the Pasadena Presbyterian Church, a Catholic Mass, and numerous others were all carried weekly, at no cost to the churches.

The station also contributed to the entertainment field. There was concern during this period of broadcasting that the increased use of records was discouraging the development of new live entertainment. A station that played only records and commercials had a great deal less overhead; the records were low-cost items, used as a format in which to present commercials. It was obviously much easier to play a record than to have a large orchestra, engineer, and staff announcer present. But KXLA did have a staff organist, J. Newton Yates, a pianist and announcer, and its music library not only catalogued records, but also carried a large repertoire of written musical scores and arrangements for its orchestra.

Cliffey Stone, who was later to become famous in the country and western field, was the resident musician. Stone and his band were the primary orchestra for "Hometown Jamboree," although visiting country and western groups were often invited to perform. Another later-to-be-famous staff member was Tennessee Ernie Ford, one of KXLA's first

staff announcers. KXLA also developed regular broadcasts from local nightclubs such as the Green Lantern and the Manger, and from El Monte Legion Stadium.

#### Power Increase Initiated

In September 1956, a study was conducted concerning the feasibility of increasing KXLA's daytime power to 50,000 watts. A directional antenna pattern was conceived which would protect KFAB, Omaha, which was on the same frequency, and both KSDO, San Diego, and XERB, Rosarita Beach, Mexico, which were on adjacent channels.

The study for the directional antenna pattern proved feasible, and an application was filed with the FCC for increase of daytime power to 50,000 watts in June 1958. The nighttime operation would remain at 10,000 watts.

With the application for increased power, KXLA demonstrated that it was satisfied with the smaller segmentation of its audience generated by the country and western programming. It did, however, seek increased revenues by providing coverage to larger geographic areas.

## CHAPTER III

### THE CONTROVERSIAL ERA

As noted in the previous chapter, KXLA operated in a conventional manner under the control and direction of its principal stockholder, Loyal King. The station appealed to an agricultural audience that was faithful, although not necessarily large. Its programming consisted of recorded country and western music, live broadcasts from local country and western nightclubs, commercial religious programs sponsored by various churches, and farm reports.

Broadcast stations are routinely traded, although the FCC tries to prevent speculation by requiring that an owner operate a station for three years before trading it. To negotiate a sale or transfer, purchaser and seller are brought together by a broker, or they seek out each other through conventional market methods. When the purchase price is determined and an agreement is reached, an application for transfer of license is filed with the FCC. The FCC reviews this application in much the same manner as if the prospective buyer were applying for a new station. Questions regarding the character, financial qualifications

and citizenship of the applicant are all reviewed.

The purchase of an existing station differs from the application for a new station in that the purchase application is not considered comparatively with other applicants. It is regarded by the FCC as a one-to-one transaction between seller and purchaser.

The sale of KXLA and the transfer of its license thus began in a conventional manner. But it also provided a turning point from conventional to controversial operation. The following details the step-by-step behavior of each of the principals involved in this controversial period.

Jack Kent Cooke, a Canadian citizen, was the sole owner of radio station CKEY, Toronto, publisher of several Canadian magazines, a manufacturer of plastics, owner of Strand records, seventy-six per cent stockholder in the Toronto Maple Leafs baseball team, and half owner of Donald Cooke, Inc., a New York broadcast representative organization.<sup>1</sup>

Cooke was interested in acquiring an American broadcast property, and in 1950, he discussed the matter with Theodore Pierson of Pierson, Ball & Dowd, a Washington D.C. law firm specializing in Communications Law. Pierson told Cooke that it was impossible for him to obtain a

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<sup>1</sup>"Pasadena Sale," Broadcasting, December 1, 1958, p. 5.

broadcast license as long as he was a Canadian citizen, under provisions of Section 310 of the Communications Act.<sup>2</sup>

Seven years later, Cooke again raised the subject with Thomas Dowd of the same firm. This time he was told it might be possible. The plan would be to acquire the physical facilities of a broadcast station, and lease them to a company owned by a U.S. citizen. It was proposed that his brother, Donald Cooke, a U.S. citizen since 1947, might acquire a station's license.<sup>3</sup> Jack was also informed that if the plan was fully disclosed to the FCC, it would be workable.

Jack and Donald Cooke then began looking for suitable broadcast properties. During the next few months, a deal with Ben Gimbel to buy WIP, Philadelphia, fell through. Other possibilities in Saint Louis, Louisville, and Miami were also explored before the brothers heard of a property in Pasadena.<sup>4</sup>

#### Jack Kent Cooke Locates KXLA

On September 6, 1958, Jack went to Los Angeles to visit Mr. L. E. Cord, owner of radio station KFAC, and a

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<sup>2</sup>Section 310 of the Communications Act of 1934, as amended, prohibits the holding of a radio station by "any alien or the representative of any alien" or "any corporation of which any officer or director is an alien."

<sup>3</sup>"KRLA Offers Its Defense," Broadcasting, November 11, 1960, p. 76.

<sup>4</sup>In re Applications of Eleven Ten Broadcasting Corp., 32 FCC 720, at 723.

fellow Canadian who had become a naturalized American citizen. During the visit, Cal Smith, KFAC's chief engineer, informed Jack that KXLA, Pasadena, might be available for sale. Smith added that it would be a good buy because its ten kilowatt power could easily be raised to fifty kilowatts.<sup>5</sup>

Jack then called on Loyal King. He informed King at the outset that he was a Canadian citizen, and told King of the plan conceived by his attorney; the plan for Jack to acquire the station's physical assets and his brother, Don, to acquire the license. This session was followed by several more, during which they negotiated the sale of KXLA. Don was in New York while Jack worked out the details with King, and learned about the plans through telephone calls from Jack.

Jack never examined the books of the station's licensee. Yet, by September 20, Jack and King agreed upon the price. All that remained was to draft the contract for the sale.<sup>6</sup>

Even though Jack was an alien and his actions were in violation of FCC law, he actually determined the details of the sale of KXLA. Don was committed to the purchase price by Jack not only while Don was not present, but also without Don having knowledge of the station's financial

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<sup>5</sup>Ibid.

<sup>6</sup>Ibid., p. 724.

condition.<sup>7</sup> The most important thing, Jack informed Don, was the pending application for fifty kilowatts. The two brothers met in New York on September 21 to discuss the matter further. Thereafter, they met frequently with attorney Thomas Dowd to discuss the purchase contract.

#### Don Signs Purchase Agreement

Don signed a purchase agreement with Pacific Coast Broadcasting on October 10 in New York City. The agreement was part of the associated material for the assignment application. In section five, paragraph C, the document stated that Don had examined and knew the condition of the premises covered by the agreement.<sup>8</sup> Don, however, signed the papers without ever having seen the premises. In fact, Don's first visit to the station was made more than six months later, at the consummation of the agreement on May 1, 1959. The total consideration to be paid to Pacific was \$900,000.<sup>9</sup>

#### Application For Transfer Filed

An application for transfer of license from Pacific Coast Broadcasting to Don's newly-formed corporation, Eleven Ten Broadcasting, was filed with the FCC on October 22, 1958. Don was the sole stockholder of Eleven Ten, pur-

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<sup>7</sup>Ibid.

<sup>8</sup>Ibid.

<sup>9</sup>"Approved," Broadcasting, March 30, 1959, p. 55.



chasing the stock for \$10,000.

Eleven Ten was to deposit \$100,000 in escrow against the station's purchase price. The corporation, with the individual guarantee of Don, obtained a loan for that amount from the Chase Manhattan Bank. Subsequently, the Royal Bank of Canada offered to purchase the note of Eleven Ten at any time Chase wished to sell it.<sup>10</sup> Jack orally agreed to hold the Royal Bank harmless, to preclude any possibility of defaulting judgment being entered against Eleven Ten. Thus, Jack, through the Royal Bank and Chase Manhattan, guaranteed the \$100,000 loan to Eleven Ten.

The balance to be paid by Eleven Ten amounted to \$246,320. This sum was paid with funds derived from the sale of securities previously owned by Pacific.<sup>11</sup>

Under the original terms of the application, Eleven Ten acquired only the license of KXLA, while Broadcast Equipment Corporation, owned by Jack, acquired all of the station's physical assets for the sum of \$553,680. By agreement, Broadcast Equipment would lease the facilities to Eleven Ten for a period of ten years, at a rental rate of \$50,000 per year.<sup>12</sup>

Broadcast Equipment also held an option, good until

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<sup>10</sup>32 FCC 722.

<sup>11</sup>Ibid.

<sup>12</sup>Ibid., p. 721.

November 21, 1965, to purchase all of the stock of Eleven Ten for \$250,000. The option was to be exercised only when Broadcast Equipment, or its assignee, possessed the qualifications necessary to obtain a broadcast license.<sup>13</sup> It expressly provided that until the stock was purchased or the license transferred, "Broadcast Equipment, its assignee, employees or agents shall not, directly or indirectly, control, supervise, direct, or attempt to control, or supervise, or direct the operation of radio station KXLA."<sup>14</sup>

#### Construction Permit Issued

The FCC issued a construction permit to Pacific Coast Broadcasting on November 12, which authorized KXLA to increase power from ten to fifty kilowatts daytime. This action was independent of the negotiations for sale and transfer of the license.<sup>15</sup>

#### FCC Questions Sale

On January 28, 1959, three months after the transfer application was filed, the Commission addressed Section 309(b)<sup>16</sup> letters to Don and to Pacific. The letters ques-

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<sup>13</sup>"Pasadena Sale," p. 5.

<sup>14</sup>32 FCC 722.

<sup>15</sup>Broadcasting, November 17, 1958, p. 73.

<sup>16</sup>Section 309 of the Communications Act states that the Commission, upon receipt of an application, will award a license if it meets the public interest, convenience and necessity. If, however, the Commission finds that the ap-

tioned the extent of Jack's interest in the assignment, since nearly all of the capital to finance the purchase was furnished directly or indirectly by Jack. The Commission also questioned "whether the public interest is served by a grant of a license to one who has committed himself, prior to such a grant, to the transfer of control of the license."<sup>17</sup>

To justify the grant of the assignment application as originally filed, Don submitted a letter written by his lawyers to the FCC. Dated February 14, 1959, the letter stated:

. . . Donald R. Cooke, an American citizen, became interested in acquiring radio station KXLA in Pasadena. This station was available for purchase at a cash price of approximately \$900,000. Since the cash purchase price of this amount was beyond Don's own personal financial resources, he discussed the matter with his brother, Jack Kent Cooke, a Canadian citizen, and a person of considerable financial means. The two brothers recognized from the outset that Jack, as a Canadian citizen, could not own, control or participate to any significant extent in the equity of an American broadcasting station because the restrictions upon alien ownership and control were set forth in Section 310 of the Communications Act. However, Jack was willing to render financial assistance to his brother if a way could be found to do so which, on one hand, would be prudent from a business viewpoint, and, on the other hand, would satisfy all of the requirements of the Federal Communications Act. . . . It was recognized that Jack would not participate in the ownership or control of KXLA, either directly or indirectly, as long as he was a Canadian citizen.<sup>18</sup>

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plication does not meet these criteria, the applicant will be notified by a "309(b) letter" of the reasons for the Commission's objection.

<sup>17</sup>Broadcasting, February 9, 1959, p. 140.

<sup>18</sup>32 FCC 722.

Although Jack had initiated the purchase of KXLA, the letter implied that Don had done so. Further, while it recognized that "Jack would not participate," he had already done so, by arranging the sale, by guaranteeing the loan to Don, and by setting up the option to buy the stock of Eleven Ten.

Assignment Application Amended

The assignment application was subsequently amended to eliminate the option held by Broadcast Equipment, and submitted to the FCC on March 16. For this concession, Eleven Ten agreed to increase the rent to be paid Broadcast Equipment from \$50,000 to \$90,000 per year. In addition, Jack was released from his indirect agreement regarding Don's \$100,000 loan from Chase Manhattan Bank.<sup>19</sup>

Eleven Ten then arranged to borrow \$100,000 from Empire Trust, in order to pay off the loan from Chase Manhattan. The loan from Empire Trust was personally guaranteed by Don, and Eleven Ten executed a promissory note for \$100,000. Don pledged as collateral everything he owned, including all of his shares of Donald Cooke, Inc., his station representation business; all of the issues and outstanding common stock of Eleven Ten; and his home and car.<sup>20</sup>

The explanation for the amended application was that

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<sup>19</sup>Ibid., p. 723.

<sup>20</sup>"KRLA's Renewal Hearing," Broadcasting, November 14, 1960, p. 78.

the option to purchase the station would have expired on August 31, 1959, and it was feared that approval might be delayed beyond that date if the original application for transfer required a hearing. After that, it might not have been possible to get the option extended.

FCC Approves Sale;

Eleven Ten Assumes Operation of KXLA

The Federal Communications Commission approved the sale and transfer of KXLA on March 25, 1959, without comment.<sup>21</sup>

On May 1, 1959, Eleven Ten assumed the operation of KXLA. It was also on this day that Don met Loyal King for the first time. Don asked King to remain as general manager of KXLA, and King continued in that position until July 3. During that period, Don gave King instructions regarding the station's operations and authorized King to sign checks on behalf of Eleven Ten.

Jack also attended the closing of the sale on May 1, and met with King at least three times during the following two weeks. These visits, Jack later testified, were primarily social, although the two men did discuss the progress of the fifty kilowatt construction permit.<sup>22</sup> Jack also visited the transmitter site during his stay in Los

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<sup>21</sup>"Approved," p. 55.

<sup>22</sup>32 FCC 725.

Angeles.

However, neither Jack nor Don remained in Los Angeles to supervise the operation of the new station. Don returned to New York on May 5, and Jack followed on May 13.

#### New Personnel Hired

At Don's suggestion, William J. Wheatley, program director of radio station WKY, Oklahoma City, came to New York on May 15, to be interviewed for the position of program director for KXLA. Wheatley first met Don briefly in Don's office, then both of them went to meet Jack. For nearly three hours, Wheatley, Don and Jack discussed general radio programming.

Wheatley met with Jack alone on several more occasions. Jack described to Wheatley the types of radio service available in the Los Angeles area, and they discussed how KXLA should be programmed. However, not one of the many programming discussions ever broached the subject of educational, religious, or any other type of public service programming.<sup>23</sup> Wheatley was subsequently hired as program director for KXLA.

Again at Don's suggestion, Edwin V. Schulz, also of WKY, came to New York on May 16 to be interviewed for the job of general manager of KXLA. Don spoke to Schulz, then introduced Schulz to Jack, because Don wanted Jack to ap-

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<sup>23</sup>"KRLA Offers Its Defense," p. 72.

praise Schulz's abilities based upon his greater experience in broadcasting. Schulz was offered the job of station manager during his visit, and Schulz accepted.

Wheatley reported to KXLA on July 1, 1959, and, pursuant to instructions from Don, assumed general supervision of the station for two weeks pending the arrival of Schulz. As program director, Wheatley had complete charge of all programming, and was authorized to hire new personnel to carry out the station's programming.

#### Jack and Schulz Set Up Budgets

Jack arrived in Los Angeles on July 6 and remained until July 23, where he worked with Schulz and Wheatley on the KXLA budget. They met daily for four days to establish the station's operating costs and to set revenue goals for the sales department.<sup>24</sup>

Jack also worked with Schulz to organize KXLA's sales department, and with Vernon Dobson, who remained from King's operation as accountant, on setting up sales reports. Jack and Dobson met to discuss the preparation of KXLA budgets for the remainder of 1959 and part of 1960, based upon accounting methods used at Jack's station in Toronto.<sup>25</sup>

At this point, with the preparation of the budgets, reports, and operating procedures, Jack was actually in-

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<sup>24</sup><sub>32</sub> FCC 726.

<sup>25</sup> Ibid.

volved in the day-to-day operation of the station, even though such control could be considered prohibited by the Communications Act.

#### Programming Practices of Eleven Ten

From May 1, when the Cookes took over the operation of KXLA, the station's programming continued as it had under the previous ownership, with country and western music being the primary fare. Don, however, planned to make it a "new" station, by changing the call letters, and by changing to a popular music format. The brothers hoped that permission to operate at 50,000 watts would be received by August 1. Then, simultaneously with the operation at increased power, the country and western format of KXLA would be changed to Top Forty music and news on KRLA.

The former policy for non-commercial spot announcements was also followed. This policy, according to Wheatley, was "very casual," and consisted of scheduling "a certain number of non-commercial spots throughout the day based upon current needs."<sup>26</sup>

Shortly after Wheatley arrived on July 1, he cancelled KXLA's commercially-sponsored religious programs and live nightclub broadcasts because they were considered unacceptable for the coming Top Forty format. Wheatley advised the churches concerned that "in the near future, KXLA

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<sup>26</sup>Ibid.



will institute a round robin broadcast from the various churches, the cost of which will be borne by KXLA."<sup>27</sup>

As mentioned above, Jack arrived in Los Angeles on July 6, 1959, to work with Schulz and Wheatley for Eleven Ten, and remained until July 23. During this period, he also set up the operation of Broadcast Equipment Corporation, to lease the station's facilities to Eleven Ten. Jack established Broadcast Equipment with the same address as the KXLA studios in Pasadena, and asked Dobson to handle the bookkeeping for his corporation.

Don arrived back in Los Angeles on August 12 and remained through August 21, 1959. Much of his time was spent in the Hollywood sales office, organizing the sales department. He saw Wheatley only twice: on August 12, in an advertising agency, and again on August 17, when some jingles were recorded for KXLA. He also helped prepare KXLA's application for license renewal.

#### Renewal Application Executed

The FCC establishes dates for broadcast license renewal based upon geographic considerations, and all Southern California radio stations were required to submit applications for renewal during August 1959. KXLA's renewal application was prepared and executed on August 14.<sup>28</sup>

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<sup>27</sup>Ibid.

<sup>28</sup>Ibid., p. 737.

In the original transfer application filed with the Commission on October 22, 1958, Don had submitted the following policy statement concerning his proposed programming:

The applicant proposes to schedule on KXLA, Pasadena, California, a program of popular music, news on the hour, news headlines on the half hour, with sports-casts at peak periods of male listening. The program emphasizing music, news and sports will be produced to appeal to the largest possible cross-section of the audience in the station area. Surveys will be conducted regularly to attempt to determine the changing likes and dislikes of the listeners in the area. KXLA will keep abreast of the results of these surveys of programming accordingly. In the field of public service, KXLA proposes to broadcast polished and attractive performances by teachers, educators and proponents of culture. In order to do so, KXLA proposes to train and coach speakers wherever necessary to prepare talks with the aura of professionalism and showmanship.<sup>29</sup>

The original proposal had also addressed itself to specific music, news, religious, agricultural, and educational programming. With regard to agricultural programming, it had stated:

KXLA serves a farm area, second in importance only to the industrial strength of the region. With this in mind, the station will schedule a one-hour program each week calculated to satisfy the needs and entertainment of the farm audience. Bulletins highlighting farm market prices and weather conditions of interest to the farmers, such as storm and frost warnings, will be broadcast on every newscast twenty-four hours a day.<sup>30</sup>

The educational programming plans had included a nightly program at 10:45 called "Town Hall," in which "exponents of culture, science and technology will speak."<sup>31</sup>

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<sup>29</sup>Ibid., p. 735.

<sup>30</sup>Ibid., p. 736.

<sup>31</sup>Ibid.

Following the programming descriptions, the original transfer application cited the proposed total percentage of time for each program category as follows:

Entertainment.....	82.7%
Religion.....	2.1
Agriculture.....	1.0
Education.....	1.9
News.....	10.0
Discussion.....	.3
Talks.....	2.0 <sup>32</sup>

The renewal application submitted on August 14, 1959, directly duplicated the programming promises that had been made in the original transfer application. With the renewal application, Don submitted composite program logs of the week ending July 11, 1959, which reflected KXLA's programming as it had been scheduled under the previous ownership.

By August 14, when the renewal application was executed, Wheatley had not set up any programming to meet KXLA's religious or educational promises, and he never received specific instructions to prepare such programming.

#### Preparations For The New Format

On August 18, Wheatley sent a memorandum to the staff telling them to plan for a presentation, or "dry run," for Don and Jack on August 20.

Jack arrived in Los Angeles on August 19. He came to Los Angeles, he later testified, "to help him [Don] with

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<sup>32</sup>Ibid.

any of the problems that are almost inevitably attendant with the opening of a station, and to lend Don assistance, guidance, sympathy and comfort, and to enjoy the opening emotion of the KRLA campaign." Jack also later testified that upon his arrival, Don informed him that KXLA was "a mess."<sup>33</sup>

The dry run was held on August 20, as scheduled, at the KXLA studios. Its purpose was to present the new on-the-air personnel hired by Wheatley. Each disc jockey did a thirty-minute simulated program while Jack, at Don's request, noted comments and suggestions regarding the announcers, the pace of the programming, and the general operation of a Top Forty station.

During the dry run, Jack made many remarks to Wheatley such as, "This man has no business being a disc jockey," "What were you thinking about when you hired this man?" and "This man has to go." He also told Don that he considered one of the disc jockeys, Frank Pollack, to be unsatisfactory.

Later that evening, Jack, Don, Wheatley, and Schulz met in the Hollywood sales office. Jack repeated many of the remarks he had made to Wheatley earlier in the day. Then the group analyzed the audition tapes made by applicants who had not been hired. According to Wheatley, Jack

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<sup>33</sup>"KRLA Offers Its Defense," p. 76.

determined which applicants should be contacted immediately and offered disc jockey positions for the new format of KRLA.<sup>34</sup> Again, Jack was making management decisions, contrary to Don's assertion that "Jack would not participate in the ownership or control of KXLA."<sup>35</sup>

On August 21, Don left Los Angeles to go to New York for "personal and business reasons." He asked Jack to take over the duties of program director. After Don left, Jack announced at a staff meeting that Wheatley was still the program director, and that the personnel were to take their orders from Wheatley. However, from then on, Wheatley reported to Jack instead of Schulz, the general manager.

During the meeting, some disc jockeys questioned whether they were still employed, because they knew Jack had made negative comments about them. Jack assured them that their contracts would be honored. When one disc jockey pressed for a written contract, Jack replied that he did not need one, but if he wanted a written contract, he could have it.<sup>36</sup>

From that point on, Jack actively participated in the organization of the staff, and gave instructions to

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<sup>34</sup>Ibid., p. 74.

<sup>35</sup>32 FCC 722.

<sup>36</sup>Ibid., p. 729.

on-the-air personnel. He also continued working with the sales and accounting departments to establish reporting procedures for sales and projected revenues.<sup>37</sup>

Jack visited several advertising agencies on KXLA business, and the manager of Western Airlines, a potential account. Jack and Schulz also met with the Eiseman-Johns advertising agency, Los Angeles, to plan a promotional contest for KRLA.

While Don was in New York from August 21 to September 15, he received no written communication from Jack. By telephone, however, the brothers discussed the progress of the programming, the disc jockeys' confusion regarding their jobs, and ideas for promotions and contests to launch the new format.

Fifty Kilowatt Program Test Authorized;

Golden Key Contest Conceived

The Commission first denied the station's request for fifty kilowatt program test authorization on August 28, because the consultant had not yet been able to adjust the new antenna to meet the construction permit parameters. Upon receiving that information, Jack told Wheatley that the problems would be quickly corrected, and the Top Forty format would commence on September 2.

On August 31, the station received the high power

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<sup>37</sup>"KRLA Offers Its Defense," p. 76.

test authorization. Just prior to that, Jack had announced his idea for a contest to serve as a sustaining action pending receipt of the authorization. The contest, he felt, would relieve KXLA's embarrassment at failing to increase power at an earlier date.

Jack's idea revolved around a "Golden Key," which would theoretically unlock the transmitter of KRLA's fifty kilowatt operation. The key would be hidden, and KRLA would broadcast clues to its location. A cash prize would be awarded to the person who located the key. At the beginning of the contest, the prize would be \$50,000, and as the clues became more explicit the prize would be reduced; thus, each clue was assigned a prize value. The minimum prize would be \$2,000.<sup>38</sup>

#### Top Forty Format Begins on KRLA

The call letters for the 1110 frequency were officially changed from KXLA to KRLA on September 1, 1959. Beginning at midnight, and on a 24-hour basis until 6:00 A.M. September 3, KRLA broadcast a continual stream of various contest announcements and Golden Key clues. The station's logs listed the 54-hour program as "talk."<sup>39</sup>

Twice during each quarter hour, the Golden Key clues were interrupted for one minute with telephone con-

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<sup>38</sup>"KRLA's Renewal Hearing," p. 82.

<sup>39</sup>32 FCC 730.

tests. For one contest, the names of Los Angeles residents were picked at random from telephone directories, and these people were asked to call the station within a stipulated time in order to win cash prizes. Another contest, called "Don't Say Hello, Say KRLA," awarded cash prizes to listeners who, when called by the station, answered their phones by saying "KRLA" instead of the customary "Hello."

Both the Los Angeles audience and the media took notice. Broadcasting magazine reported that KRLA's kickoff, heralded by three days of continual announcements, boosted the station's ratings by better than forty per cent. Amid all this "sound and fury," the magazine reported, "Police intervention was required to prevent damage to [the] station transmitter, plus other sites in [the] city, by seekers of [the] prize."<sup>40</sup>

It wasn't until 6 A.M. on September 3 that KRLA began broadcasting popular music programs. These programs consisted of disc jockey shows which included the contest promotions already mentioned.

The clues to the Golden Key contest were written by Wheatley at Jack's direction. Jack initially buried the key on August 29, but did not tell Wheatley where the key was hidden. Thus, KRLA broadcast at least twenty contest clues which Wheatley had written without having

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<sup>40</sup>"Three days of 'warning,' no music," Broadcasting, September 7, 1959, p. 29.



knowledge of the hiding place. Jack later testified that "it's the closest thing to impossible" that the keys could have been found from listening to the clues broadcast before September 3.<sup>41</sup>

In fact, the key was never found where Jack had initially buried it. Jack later gave the key to a friend, Frank Loy, who hid the key at Marineland resort in Palos Verdes, California. It was not until September 4 or 5 that Loy, at Jack's direction, told Wheatley where the key was buried. Meanwhile, Wheatley's original clues, written without knowledge of the key's location, were broadcast over KRLA until the morning of September 7.

When Jack told Wheatley that the key was hidden at Marineland, he also said that it must be found on September 7. That day would be Labor Day, and thousands of people would be at Marineland, a popular recreation spot. Jack directed Wheatley to write clues so leading that it would be obvious that the key was hidden at Marineland.

After receiving those instructions, Wheatley devised the "obvious" clues, and they were broadcast over KRLA for the first time on the morning of September 7. The same afternoon, Jack told Wheatley that although he originally decided the prize should decrease to \$2,000, he now felt that the prize should remain at \$5,000.

As Jack had wished, Mrs. Patricia Beer, a KRLA

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<sup>41</sup>32 FCC 730.

listener, found the key on Labor Day. She received the \$5,000 check at the KRLA studios, while photographers took promotional pictures.

Although Jack had no authority to sign checks on behalf of Eleven Ten, as the law prohibited his involvement in station management, he did co-sign two such checks. One was the \$5,000 check, dated September 7, that was awarded to Mrs. Beer for finding the Golden Key. The other was a \$200 check, dated September 12, made payable to cash.<sup>42</sup>

Later testimony never determined the purpose of the \$200 check. Don said that he never authorized Jack to sign checks for Eleven Ten. Adding to the confusion, the voucher copies of both checks later had Jack's signature erased from them. Both Don and Jack said that neither of them ordered the erasures, and the matter still remains a mystery on the FCC records.<sup>43</sup>

#### The Perry Allen Contest

The Perry Allen contest was planned and conducted during the same weeks as the Golden Key contest. On August 20, 1959, Don listened to an audition tape made by Perry Allen, a disc jockey for station WKBW, Buffalo, New York. Jack heard the tape a few days later. During the last week of August, Jack called Allen in Buffalo and of-

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<sup>42</sup>"KRLA's Renewal Hearing," p. 80.

<sup>43</sup>Ibid.

ferred him the job of disc jockey during the 6 A.M. to 9 A.M. drive period, an important time slot because it reaches peak audiences and brings increased advertising revenues. Jack told Allen that he would be needed for the kickoff of KRLA's Top Forty format on September 1.

Allen accepted the job with the understanding that he would try to get to Los Angeles in time for the kickoff, but that he also was required to give notice of termination to WKBW under the terms of his present contract. Allen was not sure how long that notice would have to be.

Following that conversation, Allen spoke to WKBW's management, which contended that it could not release Allen from his contract until a replacement was found. When Allen told Jack of WKBW's position, Jack told him to try to find a replacement himself. Jack also offered to reimburse him for any liability he might incur if he were to leave Buffalo without WKBW's consent.<sup>44</sup>

On August 30, Allen's wife called Jack to say that Allen could not leave WKBW until September 12. Later that day, Jack called Allen himself to confirm Allen's arrival on September 12. Jack added that due to the delay of his arrival, it would be a good idea to center a contest around him.

The next day, Jack again called Allen to describe

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<sup>44</sup>32 FCC 731.

the "Find Perry Allen" contest. Listeners would be encouraged to walk up to men resembling Allen and ask, "Are you Perry Allen, the latest member of the KRLA Eleven Ten team?" Twelve clues would be broadcast each day for ten days, and the first person to locate Perry Allen would receive a cash prize. The prize would start at \$10,000, and each day be reduced by \$1,000 until Allen reached Los Angeles. When the prize decreased to \$1,000, the clues would be easy enough to insure that he was "found."<sup>45</sup>

Jack asked Allen if he had any characteristics that would be noticeable in a crowd, and Allen replied that he was short, and that he frequently wore a bow tie and gray suit. Jack directed him to tape announcements such as: "Look for the guy in the bow tie. . . in a Los Angeles restaurant, and, if you walk up to the right person and ask the correct question, you'll win the money." The clues should be designed, Jack said, to ". . . get everyone . . . accosting every little man in Los Angeles with the statement 'KRLA, Eleven Ten.'"<sup>46</sup>

On September 2, before the first broadcast of the Allen tapes, Jack called a staff meeting to tell the disc jockeys which hours they would be broadcasting, the number of records to be used during programs, and the details of the Perry Allen contest.

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<sup>45</sup>"KRLA Offers Its Defense," p. 70.

<sup>46</sup>32 FCC 732.

Don Cole, a disc jockey, told Jack he objected to the contest because Allen would not be in Los Angeles while it was going on. Further, he told Jack, if anyone discovered that fact, "we would be in trouble." According to Cole, Jack replied, "Don't you worry about it. I'll take care of it."<sup>47</sup>

Another disc jockey, Frank Pollack, told Jack that Chuck Blore of station KFVB, Los Angeles, knew where Perry Allen was. Jack replied that no one knew where Allen was, except for himself and a few others.

Jack directed the disc jockeys to broadcast extemporaneous live announcements in conjunction with the Allen tapes. Later, during an FCC hearing, when Jack was asked whether he advised the announcers to ad lib along with the tapes, and to generally give the impression that Allen was to be found in Los Angeles, Jack answered, "I suppose I did."<sup>48</sup>

On the morning of September 4, the contest began when Don Cole broadcast some of the tapes. On the same day, Allen was found in Buffalo by two KFVB employees. Robert M. Purcell, president of KFVB, had heard the tapes. Knowing that Allen was in Buffalo, he instructed Charles Arlington and Joseph Zingelli to go and identify Allen. When KFVB claimed the prize money, Schulz refused to pre-

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<sup>47</sup>"KRLA's Renewal Hearing," p. 82.

<sup>48</sup>"KRLA Offers Its Defense," p. 71.

sent the prize and issued a statement which included the following:

Since it is now clear that Mr. Arlington did not himself hear or listen to KRLA while the Perry Allen contest was being broadcast, and that he went to Buffalo under the direction and control of his employers, . . . we have referred the entire matter to our attorneys for their legal opinion.<sup>49</sup>

Following four weeks of legal negotiations, Purcell won the battle, and was paid \$10,000 by KRLA for finding Allen. At that point, for the news releases, Schulz stated:

We are delighted to pay Mr. Purcell \$10,000 for listening to KRLA and finding Perry Allen. This is another example of why it always pays to listen to KRLA-Radio Eleven-Ten.<sup>50</sup>

In connection with the Perry Allen contest, KRLA ran two other contest promotions from September 3 to September 12. For one, a prize was given to the listener who guessed the precise time Allen spoke his first words on KRLA. The second promotion, designed to attract attention and publicity to Allen's arrival at Los Angeles International Airport on September 12, consisted of Allen and other KRLA personnel selling dollar bills for fifty cents each.

#### Heiman Joins KRLA Staff

Jack left KRLA on September 14, but returned for a brief visit on September 21, when he introduced Herb Heiman

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<sup>49</sup>"L.A. Backfire; Rival employees claim KRLA debut prizes," Broadcasting, September 14, 1959, p. 54.

<sup>50</sup>"Settle contest," Broadcasting, November 2, 1959.

to the KRLA staff. Heiman became the new program director, replacing Wheatley, who resigned because of Jack's interventions in his programming decisions.

Jack again left the station, and did not return to Los Angeles until a few days before the license renewal hearing on November 2, 1960.

Don Turns His Attention To  
Public Service Programming

On October 2, 1959, Don sent the following memorandum, regarding public service programming, to both Heiman and Schulz:

When I made up the program schedule which was submitted to the FCC and approved by them, I included a farm report on each newscast. I regret now that I did so. However, Pierson, Ball & Dowd urged that KRLA increase its amount of agricultural programming. Thus, the reason for the inclusion of the farm report.

Naturally, we don't want the usual "hayseed" type of report inserted in our newscasts. However, surely there are means of getting around the strictly rural or "hayseed" type of information.

For instance, could we broadcast the prices of:  
Avocados, oranges, lemons, . . .

Wheat prices, corn prices, barley prices, . . .  
. . . the prices on cattle, . . .

Ed Schulz has an idea that the farm market reports can be incorporated in our schedule in the form of "tips to housewives." I don't see how this would help KRLA conform to its proposed broadcast schedule. I think that a 30-second farm market report on certain specific newscasts (certainly not on the 24 newscasts a day) would fill the bill. [Emphasis in original.]

Herb, please give your serious attention to this. I am not anxious to run afoul of the FCC. . . .

Ed Schulz tells me that a public announcement in this period [from 10:30 to 10:45 P.M., nightly] without any commercial announcements being included in the period designates the entire 15 minutes as "public service." If this is so, are both of you fellows satis-

fied that we should not have to put a 15-minute talk in? . . . UCLA is prepared to give us material for one-minute spot announcements which could be used in such a period and which would result in the 15-minute period being classified as "public service."

As to the series of religious programs, nothing would please me more than to remove the necessity of broadcasting a roundtable of churches in the 11 A.M. to 12 noon period Sundays. If both of you fellows feel that we should have a religious program on the air and, whether we want a religious program on the air or not, we must broadcast one in order to conform with our promise to the FCC, why not put it on between 6 and 7 A.M. Sunday mornings? Would this pass muster? You will also note that KRLA has undertaken to broadcast a 30-second or 60-second message of religious good cheer each morning at 5:50 A.M. . . .

I am anxious to get your reaction to this memo.

Yours very truly,

[Sgd.] Don<sup>51</sup>

Heiman replied to Don's memorandum two days later. He said that, among other things, KRLA would devote thirty seconds of the morning newscast to "Farm Fair," which would be "of interest mainly to the consumer rather than the farmer."<sup>52</sup>

Schulz's reply followed. Schulz told Don that he planned to insert a forty-second agricultural "Market Roundup" during the 5:55 and 11:55 newscasts, and to broadcast two two-minute featurettes each day, directed to housewives. In addition, he would insert single-minute public service spot announcements in sustaining quarter hours. The remaining fourteen minutes would consist of Top Forty tunes, and KRLA would log the entire fifteen

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<sup>51</sup>32 FCC 738.

<sup>52</sup>Ibid., p. 739.



minutes as public service programming. Schulz stated, "We do not have to fill the entire fifteen minutes with gab."<sup>53</sup>

Schulz's Memorandum  
to Sales Representatives

On October 15, Schulz addressed a memorandum to the employees of Donald Cooke, Inc., the sales representation firm which sold advertising time for KRLA. The portion of the memorandum devoted to scheduling stated:

Here's an important fact: KRLA is the only Los Angeles station to block-program its personalities in the same time slot seven days a week. Yep, that's right, only on KRLA can you hear each and every personality at his regular time on Sunday too. This unique programming schedule has been arranged at great expense to the management. Remind your clients too, that when they call for a Monday through Saturday schedule, to add more spots to cover that important Sunday radio audience in L.A. Only KRLA has complete personality programming all day Sunday, uninterrupted by commercial religion.<sup>54</sup>

Don later said that the duplication of the Monday through Saturday programming on Sundays took place with his approval. He said:

At this time, because the sales had been so bad, I was willing to do anything to get sales on the radio station. And if [the duplication of the Monday through Saturday programming on Sunday] would help, I would go along until we had gotten to the point where we didn't have to borrow or suffer the terrible losses.<sup>55</sup>

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<sup>53</sup>Ibid.

<sup>54</sup>Ibid.

<sup>55</sup>Ibid., p. 740.

FCC Questions Eleven Ten's Programming

In a letter to Eleven Ten dated October 28, 1959, the FCC requested a revised program analysis for the period of October 18 through October 24, inclusive, and the logs for each date. The Commission felt that its decision to renew should be based upon the program analyses and policies of the Top Forty KRLA format, and not upon the logs from July, which reflected KXLA and the prior owners' programming policies.<sup>56</sup>

Don came to Los Angeles on November 9 to "improve KRLA's advertising revenue, since the station was losing money," and to initiate public service programming.<sup>57</sup> He also assisted in preparing a response to the FCC's request for recent program logs.

Don submitted the KRLA program logs and amended renewal application on November 12. During the week of October 18 through 24, the percentage of time devoted to each of the following categories was:

Entertainment.....	87.23%
Religion.....	.16
Agriculture.....	.69
Education.....	0.00
News.....	8.20
Discussion.....	0.00
Talks.....	3.70 <sup>58</sup>

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<sup>56</sup> Ibid., p. 737.

<sup>57</sup> "KRLA's Renewal Hearing," p. 78.

<sup>58</sup> 32 FCC 737.

Thus, KRLA's actual programming in each of the Religious, Agricultural, Educational, News, and Discussion categories fell far short of the program promises made in the station's assignment application. The amended renewal application also stated:

It is the opinion of the licensee that under the present-day circumstances, radio is most effective when its messages are reduced to timely and repetitive announcements. The experience of KRLA during the short time that it has operated under the present ownership has proven the effectiveness of this technique.<sup>59</sup>

Don remained in Los Angeles until November 20.

#### FCC Delivers Section 309(b) Letter

The FCC responded to the amended renewal application by returning a Section 309(b) letter on December 16, 1959, stating that KRLA was apparently not operating in conformity with its previous program proposals. The Commission also voiced specific objections to Eleven Ten's possible falsification of logs, to misrepresentations made during the Perry Allen contest, and to the extent of Jack's involvement in station management. The letter stated, in part:

It appears . . . that you are not operating your station in accordance with the programming proposals made by you and considered by the Commission in connection with its approval of the assignment of license (BAPL-171) earlier this year. Additionally, a question exists as to whether you intended to carry out the representations made in your statement of pro-

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<sup>59</sup>Ibid.

gram service submitted with that application.

A review of the logs submitted by you for the week of October 18 to October 24, 1959 (as requested by the Commission's letter of October 28, 1959), indicates that you may have falsified the program logs for each of the 7 days mentioned above by the addition of certain religious programming to the entries of other programs actually broadcast on those dates.

You were advised . . . that information had been brought to the attention of the Commission which indicates that on September 4, 1959, station KRLA broadcast announcements by Perry Allen--or someone purporting to be Perry Allen--which stated that the listeners should look for Allen in a Los Angeles restaurant and "identify" him so as to win \$9,000. You admit that on the date in question Allen was actually still working for a station in Buffalo, N.Y. A question is raised as to whether your conduct of this contest constitutes an improper use of your facilities inimical to the public interest. . . .

An inquiry conducted by the Commission indicates that Jack K. Cooke, a Canadian citizen, inaugurated the present programming format utilized by station KRLA; that Jack K. Cooke has changed his residence to the Los Angeles area and is active in the day-to-day management of the station; that at the conclusion of the "Find Perry Allen" contest mentioned above, the "finder" telephoned KRLA and was referred to Jack K. Cooke who advised him to fly to Los Angeles with Allen "for a big publicity splash"; and that disagreements, arising out of Jack K. Cooke's participation in station operations, existed between him and certain staff members in matters of station policy and management. It appears that these activities constitute actual control of the station, by Jack K. Cooke, contrary both to the provisions of section 310 of the Communications Act, and to the representations by Donald R. Cooke with respect to the ownership and control of the station made in your assignment application (BAPL-171).<sup>60</sup>

With this 309(b) letter, the FCC was questioning KRLA's conduct with regard to some extremely serious issues. The Commission required that the station respond to these charges and questions within thirty days.

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<sup>60</sup>Ibid., pp. 740-41.

Program Steps Taken By Eleven Ten

Upon receiving the 309(b) letter, Don turned his attention to KRLA's programming practices. In a letter to Heiman dated January 4, 1960, he wrote, "I want very much to put our public service house in order, exacting order, well before January 15th."<sup>61</sup> The letter directed Heiman to get the programs that were originally promised into production and on the air as quickly as possible, so that Don could mention those programs in his response to the FCC. The letter also outlined specific instructions for Heiman to schedule:

1. a church service from 11 to 11:55 A.M. each Sunday, "beginning at once";
2. "within 24 hours," a 1-hour weekly "farm audience program," as promised in the assignment application;
3. "beginning at once," 30 seconds of farm information on every newscast, 24 hours a day;
4. as soon as possible, preferably well before January 15, "Town Hall" at 10:45 P.M., nightly, as promised in the assignment application.<sup>62</sup>

Don also instructed Heiman to begin producing the educational shows that were promised. Regarding Eleven Ten's "failure to broadcast these particular [Education] shows," Don said he would "beg the indulgence of the Commission," and promise to have them on the air just as quickly as they could be produced.<sup>63</sup>

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<sup>61</sup>Ibid., p. 741.

<sup>62</sup>Ibid.

<sup>63</sup>Ibid.

Four days later, Heiman reported to Don that he was ". . . proceeding posthaste on all [Don's] requests."<sup>64</sup>

On January 11, Don directed Heiman to obtain letters from as many sources as possible that would be of benefit to KRLA in the areas of public service, religious, and educational programming. In a similar letter to Schulz, he wrote, "The importance of these local church services cannot be minimized since we expect the ministers priests and rabbis to send us warm letters of thanks and acknowledgement of the services rendered by KRLA."<sup>65</sup>

As the deadline for the submission of Don's reply neared, he wrote to the FCC requesting a one-month extension for the submission of his response to the 309(b) letter, explaining that he needed extra time to ". . . personally verify the information which will be submitted in response to the Commission's inquiry. . . ."<sup>66</sup> The FCC routinely granted the extension.

Don arrived in Los Angeles with counsel on January 22, and remained until February 10. One of the staff members later described this visit as Don's "crash program," initiated because he "wanted the 'full complement' of programs specified in the assignment application to be on the

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<sup>64</sup>Ibid.

<sup>65</sup>Ibid., p. 744.

<sup>66</sup>Ibid., p. 741.

air by January 30, 1960, 'at all costs.'"<sup>67</sup>

Eleven Ten's Response to the 309(b) Letter

On February 15, 1960, the FCC received Don's sworn response to the 309(b) letter in the form of an amendment to his renewal application. Don's letter responded in some degree to each of the charges or questions raised in the 309(b) letter, and contained program information which Don said reflected the manner in which Eleven Ten was "carrying out its original representations made to the Commission."<sup>68</sup>

It also contained affidavits from Wheatley and Schulz. While Wheatley's affidavit appeared to be in order, Schulz's affidavit instead created more questions than it answered for the Commission. For one thing, it was titled "Draft No. 1--Revised No. 1," and Don could not explain why it had such a title or whether Schulz had been told it was to be only a draft and not an actual affidavit.<sup>69</sup>

In addition, the notarization of Schulz's affidavit was dated February 8, and on the next day, February 9, 1960, Schulz left the employ of Eleven Ten. The FCC also learned that Donald Fry, the accountant who notarized the affidavit, did not see Schulz sign it, and notarized it without Schulz being present. Fry later explained that when Don asked him

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<sup>67</sup>Ibid.

<sup>68</sup>Ibid., p. 742.

<sup>69</sup>Ibid.

to notarize the signature he did so because he recognized the signature as Schulz's, after having put his own signature beneath Schulz's numerous times on company checks.<sup>70</sup>

Included in the station's response to the 309(b) letter was an analysis of the logs from January 31 to February 6, 1960, prepared by Heiman. It specified the following breakdown:

Entertainment.....	81.1%
Religion.....	2.5
Agriculture.....	2.7
Education.....	2.0
News.....	8.9
Discussion.....	0.3
Talks.....	2.5 <sup>71</sup>

These figures not only met, but in some categories actually exceeded the originally proposed percentages for public service programming that KRLA had submitted to the FCC with the transfer application on October 22, 1958.

Also included in the station's response were statements regarding program descriptions. Two newscasts per day, it said, had the majority of their content devoted to farm news. Each was four minutes, thirty seconds in length, and broadcast in early morning and early afternoon time slots since October 1959. The response further stated that although the policy of including thirty seconds of agricultural news in every newscast was not strictly adhered to

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<sup>70</sup>"KRLA's Renewal Hearing," p. 80.

<sup>71</sup>32 FCC 742.



prior to January 8, 1960, it had been fulfilled from that date on.<sup>72</sup>

These two points were a departure from Don's October 2 memorandum to Schulz and Heiman, when he said that thirty-second reports on certain specific newscasts would be sufficient. They also conflicted with Heiman's memorandum of October 26, 1959, which stated that agricultural news would be broadcast only twice per day.

Additional irregularities found within the station's response included instances where agricultural spots were improperly classified as public service, and other programs that were improperly classified as agricultural, such as "Best Buy of the Day," a sixty-second spot aired Monday through Friday. Begun on October 15, 1959, it was designed to help Southland shoppers find out which farm products were arriving in Los Angeles in the greatest quantity and quality.

Another program described improperly was "KRLA Farm Roundup." A fifteen-minute program that aired each Monday morning beginning January 11, 1960, it was described as being composed of live agricultural information such as weather forecasts and local farm news, and transcribed comments on pertinent issues by prestigious officials from various farm associations and universities. It was unclear to the Commission, however, whether the transcribed por-

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<sup>72</sup>Ibid.

tions were ever broadcast. Perry Allen, the disc jockey on duty during the Monday morning time period when the program was carried, did not recall ever having broadcast transcriptions made by any of the individuals cited. And Heiman, when questioned, stated that he had never heard the program broadcast.

Although Eleven Ten classified "Farm Roundup" as agricultural, it actually contained less than three minutes of farm information during each fifteen-minute segment. According to the station, the program contained "bits" of agricultural information which would not be broadcast during a normal disc jockey program.

#### KRLA Awaits FCC's Decision

During the spring of 1960 operations at KRLA continued as usual, with the Top Forty programming producing steadily good ratings, as the station awaited the Commission's response.

Heiman kept a watchful eye on the competition, and worked to keep the station's ratings high. On April 6, he sent a progress report to Don regarding the Sunday morning block of religious programming. Heiman proposed that they move the religious block to an earlier time period for the summer months, so that the Top Forty programming could begin by 10 A.M., in order to capture the weekend beach crowds. This audience, he felt, might otherwise be lost for the entire day if tuned in to other stations during

the morning.<sup>73</sup>

Don's response went back to Heiman on April 12, about two months after he had submitted the renewal application. He had expected to have the renewal approved by that time, but as that had not been the case, he told Heiman that no modifications should be made until after the license had been renewed. Specifically, he said:

. . . before doing anything, the following points should be answered in the affirmative:

1. Tommy Dowd should be consulted and should approve the move.
2. No move should be made until about a month after the FCC has approved KRLA's request for its license renewal.

At that time, undoubtedly, we will be able to drop some of the present programming, but we will only do so with the full approval of Pierson, Ball & Dowd, of course.<sup>74</sup>

#### License Renewal Designated for Hearing

After consideration of KRLA's response to the 309(b) letter, the FCC notified Eleven Ten that a hearing would be necessary to determine whether the renewal should be granted. The official notification, released July 5, 1960, stated that the following five specific issues would be investigated.

1. To determine whether, in the light of operations since it acquired the station KRLA, the licensee's programming proposals contained in application for the Commission's consent to assignment in the license of station KRLA were made in good faith.

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<sup>73</sup>Ibid., p. 745.

<sup>74</sup>Ibid.

2. To determine whether, in light of the manner in which the "Find Perry Allen" contest was conducted by station KRLA, in and about September 1959, the licensee operated said station for improper purposes, contrary to the public interest.

3. To determine whether that station's program logs for the week of October 18-24 were altered with the intent and purpose of deceiving the Commission.

4. To determine whether, since the date of the assignment of license of station KRLA to the licensee, Jack Kent Cooke, a Canadian citizen, had exercised control with respect to the operations of said station contrary to the provisions of Section 310 of the Communications Act of 1934, as amended, and the Commission's rules and policies promulgated thereunder.

5. To determine, in the light of the evidence adduced pursuant to the foregoing issues, whether the grant of the above entitled application would serve the public interest, convenience and necessity.<sup>75</sup>

From mid-July until the hearing was conducted in the latter part of October, KRLA became the subject of an informal investigation made by FCC attorneys and investigators. In Pasadena, the station's files were examined and personnel questioned by the investigators during many random, unannounced visits to the station.

Although the FCC investigators did not carry search warrants, and the Constitution guaranteed the station the right to privacy by prohibiting unreasonable search, Eleven Ten allowed the investigators to search the facilities and question the employees. The managers felt that any resistance from the station might cause suspicion, or hasten the Commission's action against Eleven Ten. Further, it was known that the Commission could obtain a court order

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<sup>75</sup>Ibid., p. 720.

for a search warrant if it deemed necessary, so it would ultimately have access to KRLA's files.

### Prehearing Conferences

Prehearing conferences were held October 3 and October 28, 1960, in Los Angeles and Washington D.C., respectively. A standard procedure, the conferences were held to establish guidelines for the scope of the investigation, and to establish the list of prosecution witnesses. The conferences also provide a time for disclosure, and the FCC told KRLA about the information it had gathered to support its charges, and the witnesses that would testify on its behalf.

At that time, too, the FCC appointed James D. Cunningham to act as the presiding hearing examiner. As KRLA and its counsel agreed to have a second Commissioner present, Herbert Scharfman was also accepted and appointed as co-hearing examiner. Before these examiners, the Broadcast Bureau, an arm of the FCC appointed to defend the public interest, would argue the prosecution's case while KRLA argued its defense.

### The Hearings

The hearings for KRLA's license renewal began on Monday, October 31, 1960, and continued for ten days, concluding on November 9. Thirty-one witnesses testified, including Don and Jack Cooke, Wheatley, Schulz, Heiman, Allen, and various other KRLA personnel.

An additional, final hearing was held in Washington D.C., on December 22, 1960,<sup>76</sup> during which Eleven Ten presented additional documents as evidence in order to answer questions raised during the Los Angeles hearings. The documents had not been available or accessible during the earlier proceedings, but were submitted to the examiners in Washington.

At that point, the record was closed. Both the Broadcast Bureau and the station rested their cases, and agreed that nothing more would be added to the testimony. The examiners' judgment would be based upon the testimony presented during the hearings alone, regardless of any events that might occur later.

While the hearings were going on, and throughout 1960, KRLA continued to increase in popularity. In the fall Audience Research Bureau (ARB) ratings, KRLA overtook the well-established KFVB, which had been the first rock-and-roll station in the Los Angeles area. And not once during the investigations or the hearings did the station mention to its listeners that there were serious questions regarding its license renewal.

#### Proposed Findings of Fact and Conclusions

On March 13, 1961, both the Broadcast Bureau and KRLA's counsel filed proposed findings of fact and conclu-

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<sup>76</sup>Ibid., p. 721.

sions.<sup>77</sup> A typical legal procedure, the attorneys for both parties had reviewed the testimony and evidence, studied the legal implications, and searched for legal precedents to put the testimony into context as they viewed it. Each side submitted conclusions based upon the testimony given and references to similar legal cases.

#### The Examiners' Decision

On April 21, 1961, hearing examiners Cunningham and Scharfman handed down their decision. The examiners determined that Don had not surrendered control of his company to Jack, although they did criticize Don for trying to operate the station from afar while he remained in New York. There was evidence, they said, in both the original application and subsequent acts, that showed that Jack intended to take over the station, when and if he could legally do so. Nonetheless, if judged on the basis of overt facts, there was insufficient evidence to indicate unlawful control by Jack in any manner considered contrary to the provisions of Section 310.<sup>78</sup>

Cunningham and Scharfman found it "obvious" that Eleven Ten did not adhere to its program proposals. While this fact, in itself, did not necessarily prove the charges

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<sup>77</sup>"Bureau Asks KRLA Denial," Broadcasting, March 20, 1961, p. 82.

<sup>78</sup>32 FCC 749-50.

of fraud and deception, the decision did state, "the material departures, both attempted and realized, from the promises made . . . merit severe condemnation, as do Don Cooke's programming instructions to his staff, particularly those of April 12, 1960."<sup>79</sup>

A suspicion still lingered regarding Don's April 12 memorandum; a suspicion that his instructions were prompted by desire to make only temporary, token compliances with his original promises. If the programming issues were to be judged in terms of promise versus performance, the examiners continued, a conclusion adverse to the applicant would surely be compelled.

Cunningham and Scharfman also found both the Perry Allen and Golden Key contests to be "representative of the type of station operation which, if the broadcast industry is to continue maturing, should be relegated to oblivion." They continued with the following:

. . . it is obvious from the findings of fact that it [the Perry Allen contest] was conceived in a cynical fashion to play upon the gullibility and cupidity of the audience, in the hope of gaining widespread quick publicity for the new KRLA. With arrogant disregard of the true facts, announcements were broadcast to induce listeners to believe that Allen was in Los Angeles and that the large initial prize was at least possible of attainment, when, in reality, he was across the continent at the time. . . .

The Golden Key contest may be considered akin to the Perry Allen contest. . . . It is also of particular significance that many continuous hours of broadcasting time were devoted to a series of irresponsible announcements of this and other contests, in disregard

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<sup>79</sup>Ibid., p. 752.



of the program obligations which had been assumed by the applicant.

As a general matter, these contests are to be condemned. . . . It appears, however, that KRLA has discontinued this type of operation, and for this reason its derelections will be less stringently viewed than would otherwise have been the case.<sup>80</sup>

Addressing the charge of altered program logs, they established that the KRLA logs were indeed altered improperly to reflect the broadcasting of religious programs which were not broadcast, and "the only possible purpose of this," they continued, "was to deceive the Commission."<sup>81</sup> Even though Don was not aware of the mislogging until the Commission notified him, they felt he should have made a far more detailed investigation of the matter. He had been "neglectful in his duties properly to inform himself before reporting to the Commission . . . ," but he, and Eleven Ten Broadcasting, were not held responsible for the altered logs.

The examiners concluded by saying:

. . . while the ultimate conclusion herein favors the applicant as heretofore indicated, this general ruling cannot be considered an approval of all of its behavior since it acquired station KRLA, and it is here determined that section 307(d) of the Communications Act Amendments, 1960, and section 3.34 of the Commission's rules, authorizing short-term grants, find appropriate use in this proceeding. A renewal of license to KRLA for the full 3-year period is not indicated, but a 1-year renewal is appropriate and will serve the ends of justice and the public interest. . . .

Accordingly, It is ordered, This 20th day of April,

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<sup>80</sup>Ibid., p. 753.

<sup>81</sup>Ibid.

1961, that unless an appeal from this initial decision is taken to the Commission by either of the parties to the proceeding, or the Commission reviews the initial decision on its own motion in accordance with the provisions of section 1.153 of the rules, the above-captioned application for license to cover construction permit is granted; and that the above-captioned applications for renewal of the licenses, insofar as they contemplate the regular 3-year term, Are denied, but are granted only to the extent that said licenses are renewed for the term of 1 year.<sup>82</sup> [Emphasis in original.]

#### The Commission Hears Oral Arguments

Both Eleven Ten and the Commission's Broadcast Bureau immediately filed exceptions to the decision for a one-year renewal. Eleven Ten disagreed with parts of the examiners' findings, but accepted the short-term renewal. The Broadcast Bureau urged denial of both applications.

On January 18, 1962, the Commission heard oral arguments. Robert Rawson, chief of the FCC's hearing division, spoke for the Bureau. He maintained that Jack had supplied the major portion of money for the station's purchase, and that Jack actually controlled the station, in violation of FCC rules. He also charged that the KRLA contests were completely fraudulent and designed with "contempt for the public."<sup>83</sup>

Thomas Dowd, counsel for KRLA, stated that Don and his temporary program manager, Jack, had made mistakes

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<sup>82</sup>Ibid., p. 754.

<sup>83</sup>"KRLA record draws Broadcast Bureau fire," Broadcasting, January 22, 1962, p. 52.

during the "emergency" and "time of panic" shortly before the September contests. However, he said, there was never any intent to mislead the Commission. He pointed out that the financing for KRLA's purchase was fully explained to the FCC, that Jack briefly served as program director only after the former director had been discharged, and that there was nothing in the record to justify the charge that KRLA had performed in bad faith. After the initial period of panic, he said, KRLA had established a record of competence and outstanding performance in the Los Angeles area.

#### Eleven Ten Petitions to

#### Re-Open the Record

Following the oral arguments, Eleven Ten filed a petition to re-open the record. Although the examiners had declared a one-year renewal necessary to determine Eleven Ten's reliability, Eleven Ten pointed out that more than a year had elapsed since the hearing record was closed. Dowd requested that the record be re-opened to allow KRLA to show that the previous year's programming had indeed been responsible and reliable.

#### Commission Reverses Examiners' Decision

The Commission reviewed the examiners' findings, studied the exceptions filed by both attorneys, and considered the oral arguments offered January 18. It found that the two contests conducted by KRLA were indeed fraud-

ulent: that the clues broadcast were "deceptive, and knowingly so." It further found that the KRLA logs were altered improperly and agreed that the only possible purpose of that action was to deceive the Commission. The decision stated:

. . . retention of effective control by licensee of the station's management and operation is a fundamental obligation of the licensee, and the licensee's lack of familiarity with the operation of the station and management may reflect an indifference tantamount to lack of control.<sup>84</sup>

It is clear, it continued, that Don suggested ways in which program changes might be made only to appear as conforming with the program proposals made at the time of the transfer. Don, Heiman, and Schulz had agreed that agricultural programs were at best a necessary evil, and that ways and means should be devised to cut such programs to a bare minimum. The only restraint upon Don, it felt, was the inhibiting fear that he might "run afoul" of the Commission.

The FCC's decision addressed the ultimate question posed by the hearings: whether a renewal of the Eleven Ten license would be in the public interest. "In view of the evidence adduced pursuant to the hearing issues," it continued, "the conclusion is inescapable that responsible management is not a characteristic of Eleven Ten's operation of station KRLA."<sup>85</sup>

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<sup>84</sup>In re Applications of Eleven Ten Broadcasting Corp., 32 FCC 706, at 707-708.

<sup>85</sup>Ibid., p. 711.

Expanding on its opinion, the Commission said that Don failed to maintain effective control, and delegated actual control to his brother, Jack. After the station's logs were altered, Don assumed greater interest in the station's operation. The decision described Don's behavior at that point as follows:

. . . he demonstrated a willingness to connive with station employees in various schemes to hoodwink the Commission into believing KRLA's programming conformed with its program proposals. A similar effort to mislead the Commission as to KRLA's past programming was made in Eleven Ten's response to the Commission's 309(b) letter--a response which was submitted following the granting of Eleven Ten's request for additional time for filing a response so that Donald Cooke could "personally verify" its contents. Nearly two months after the response was filed, Donald Cooke indicated a willingness to drop certain programs proposed in the amended renewal application--but in no event until after the renewal application was granted. This record of neglect, on the one hand, and of efforts to mislead the Commission, on the other hand, disqualifies Eleven Ten from being a licensee of the Commission, and its applications will, therefore, be denied. A willingness to deceive a regulatory body, even as to matters unimportant in themselves, warrants denial of a renewal application.<sup>86</sup>

As to the request to re-open the record, the decision stated:

There may be cases in which it would be appropriate to re-open the record for the reasons advanced by Eleven Ten. This is not one of those cases. The efforts to distort the true character of KRLA's programming were not limited to the period prior to the time that the Commission called KRLA's attention to the fact that its programming was not in accord with its program proposals.<sup>87</sup>

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<sup>86</sup>Ibid., p. 711-12.

<sup>87</sup>Ibid., p. 712.

The Commission found no mitigating circumstances which would warrant the grant of the request to re-open.

It concluded that:

In view of this continued pattern of deception, a meritorious programming fare, which may have been presented while the disposition of this renewal application was still in doubt, does not provide any assurance that such deception would not subsequently be resumed. Under the circumstances, no useful purpose would be served by re-opening the record to adduce evidence as to Eleven Ten's programming since the record was closed.

Accordingly, it is ordered, This 15th day of March, 1962, that the petition to re-open the record, filed February 27, 1962, by Eleven Ten Broadcasting Corp. Is denied;

It is further ordered, That the above-captioned applications of Eleven Ten Broadcasting Corp. Are denied; and

It is further ordered, That in order to enable Eleven Ten Broadcasting Corp. to wind up its affairs, It is authorized to operate station KRLA until April 16, 1962. [Emphasis in original.]<sup>88</sup>

Commissioner John S. Cross concurred with the Commission's statement, but also issued an independent statement, in which he said:

In my opinion, the evidence clearly establishes that Jack Kent Cooke, while still a Canadian citizen, did exercise control of station KRLA from August 21 to September 14, 1959. Accordingly, I disagree with the majority to the extent that they have failed to so find. . . .

The unanswered question in my mind is: was this unlawful control by Jack Cooke a willful violation, or was it (as claimed by the applicant) the result of unforeseen and deteriorating economic circumstances that motivated the protective instinct of one brother for the other--a characteristic as old as man. All through the record of this case there are illustrations of the older and richer brother, Jack, helping his poorer kid brother, Donald. . . .

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<sup>88</sup>Ibid.

While I cannot condone or excuse the unlawful or reprehensible operations of KRLA under Jack Cooke's stewardship during the period noted above, I would be inclined to accept the applicant's explanation and temper justice with mercy under the circumstances if these were the only violations involved. However, there also were other violations; i.e., the falsified logs and the failure of the applicant to carry out his program proposals. . . .

In my view, all of these things added together indicate a pattern of operation by KRLA that is based primarily upon expediency and little or no regard for the law or the Commission's rules. . . the aggregate pattern makes it impossible for me to make the public interest finding necessary to grant the license renewal. I therefore concur with the majority, i.e., I would reverse the Examiner, and not renew the license.<sup>89</sup>

#### KRLA Petitions for Reconsideration

Within a week after the FCC overturned the short-term renewal and decided not to renew, KRLA was granted a stay pending the submission of a petition for rehearing. Under provisions of the law, the FCC had no choice but to grant KRLA the stay, as requested.

On April 18, 1962, Eleven Ten filed a petition for reconsideration. The station requested that the Commission reconsider its denial, or remand the proceeding for further hearing. It also requested that oral arguments again be heard. Meanwhile, the Broadcast Bureau opposed all of Eleven Ten's requests.

KRLA charged that the FCC's refusal to renew the station's license reflected an "arbitrary and capricious

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<sup>89</sup>Ibid., p. 718-19.

application of a double standard of license responsibility," and cited five alleged errors in the Commission's decision, as follows:

1. The basic findings of fact by the FCC are not supported by the record.
2. Certain established findings that are essential to proper decisions were not made.
3. Conclusions reached were contrary to the evidence.
4. The decision was reached substantially upon issues raised by the FCC for the first time in the final order, and KRLA was not given an opportunity to reply.
5. Denial of its renewal shows a double standard when contrasted with the FCC's license renewal for Westinghouse Broadcasting Company's WNOE, New Orleans.<sup>90</sup>

Eleven Ten charged that the Commission's treatment of KRLA was inconsistent with judgment in similar cases; specifically, that it was impossible to reconcile the decision for KRLA with the decision for Westinghouse Broadcasting. In Westinghouse, the FCC granted a renewal without hearing, despite the station's recent criminal conviction and its history of anti-trust violations.<sup>91</sup>

Commission Denies Application  
for Rehearing

In a memorandum, opinion and order, adopted July 18, 1962, the FCC denied in all respects the station's petition for reconsideration and oral arguments. It explained the

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<sup>90</sup>"KRLA Charges FCC 'Double Standard,'" Broadcasting, April 23, 1962, p. 50.

<sup>91</sup>Westinghouse Broadcasting Company, Inc. v. FCC, 22 RR 1023 (1962).



decision as follows:

. . . Eleven Ten has not persuaded us [the FCC] that our views concerning Donald Cooke's efforts to mislead the Commission should be altered. The facts upon which the Commission rests its conclusions in this area were set forth in great detail in paragraphs 8-12 of our decision, and notwithstanding Eleven Ten's elaborate attempt to explain them, such facts nevertheless remain unchanged.

A major objection raised by Eleven Ten is based upon an erroneous view that the decision was based on issues of which the applicant had no notice and that it was therefore deprived of procedural due process. The ultimate question posed by the hearing issues was whether a renewal of Eleven Ten's license would be in the public interest. Viewed collectively, the facts adduced pursuant to the good faith, Perry Allen, mislogging, and alien control issues can only lead not only reasonably and logically but inevitably to the conclusion that it is not in the public interest to renew petitioner's license in view of the absence of responsible management in the past and in view of the efforts made on behalf of the petitioner to mislead the Commission.<sup>92</sup>

In Westinghouse, the Commission said, it was required to judge alleged misconduct outside the broadcast field. Although the anti-trust charges weighed heavily against the applicant, the FCC concluded that the station's outstanding record of service as a licensee provided strong countervailing circumstances which warranted the renewal of the license.

Eleven Ten's request for oral arguments was denied because the Commission felt that they would serve no useful purpose. The related hearings, it said, were sufficiently exhaustive. So, based upon the original stay order, which

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<sup>92</sup>In re Applications of Eleven Ten Broadcasting Corp., 33 FCC 92, at 95-96.

granted a stay from the cease broadcasting order until thirty days after a final decision was reached, the FCC ordered KRLA to be off the air as of August 18, 1962.<sup>93</sup>

#### Case Goes to Court of Appeals

Following the FCC's denial for rehearing, KRLA notified the Commission of intent to seek judicial review. On August 6, 1962, the order to cease broadcasting was once again stayed by the FCC until thirty days after the final judicial order was rendered.

From November, 1962, through July 5, 1963, Eleven Ten took its case to the United States Court of Appeals, Washington D.C. In the normal custom of appeals proceedings, Eleven Ten submitted written arguments to the Court, to which the FCC responded. The station then submitted additional comments, contending that the FCC should have considered KRLA's public service programming and citing the procedural errors previously mentioned in its request for reconsideration.

On July 5, in an unsigned opinion, the Court held that the Commission's decision was warranted. The decision said that the FCC need not consider the public service rendered by a station where the licensee attempted to deceive the Commission. With the FCC's decision not to renew upheld, the case was remanded back to the Commission

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<sup>93</sup>Ibid., p. 97.

for action.<sup>94</sup>

Upon receiving the Court's order, Eleven Ten notified the Commission of its intent to appeal to the United States Supreme Court, and requested another stay order until thirty days after the Supreme Court decision was announced. When the request was granted, the Eleven Ten attorneys began preparing their arguments for their appeal to the high court.

#### Los Angeles Churches Petition FCC

While Eleven Ten continued its battle for license renewal, two local churches, the Immaculate Conception Church of Los Angeles and the Lake Congregational Church of Pasadena, petitioned the FCC for rehearing of the KRLA case. Both churches, which regularly aired religious broadcasts over KRLA, praised the station for its generous public service practices. When the Commission ruled that the churches had no standing in the KRLA matter,<sup>95</sup> the churches then filed notice of appeal to the United States Court of Appeals, Washington D.C.

As a matter of standard practice, the Court of Appeals combines appeals made for the same case, and considers them simultaneously. However, in the ruling handed

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<sup>94</sup>Immaculate Conception Church of Los Angeles v. FCC, 320 F.2d 795 (1963)

<sup>95</sup>In order to limit the magnitude of testimony, the FCC ruled that the churches had no standing, or no legitimate license interest in the KRLA matter. (22 RR 699).

down July 15, the Court did not combine appeals, and made no finding as to the churches' standings to intervene. The churches then filed notice of intent to appeal to the Supreme Court, and as the 1963 session of the high court began in September 1963, two cases involving KRLA were requesting certiorari.

The Supreme Court combined both cases, and on November 12, 1963, certiorari was denied.<sup>96</sup> The cases were remanded back to the Court of Appeals, which in turn remanded them back to the FCC. With the Supreme Court's refusal to hear the case, all appeals had been exhausted, and KRLA was ordered off the air at midnight December 27, 1963.<sup>97</sup>

#### License Transfer Proposed

With no further legal actions to take, Eleven Ten offered to transfer its license and facilities to Broadcast Foundation of California, Incorporated, a non-profit organization. Under the proposed plan, Broadcast Foundation would continue to operate KRLA, and would use the profits accrued to aid in the development of an educational television station, Channel 28, in Los Angeles.

When the proposal was submitted to the FCC on December 16, 1963, the Commission requested that Eleven Ten supply

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<sup>96</sup>Immaculate Conception Church of Los Angeles, et al. v. FCC, 375 US 904.

<sup>97</sup>"New Proposal From KRLA," Broadcasting, December 23, 1963.

additional details and legal memorandum. It then granted a forty-five day extension to the station's termination date while it studied the proposal.<sup>98</sup>

The arrangement stipulated that the new corporation would assume a \$360,000 debt owed Jack Cooke by Eleven Ten. In addition, it would take over the lease agreement with Jack's Broadcast Equipment Corporation, which still had more than five years to run. Income received by the Foundation would be devoted exclusively to educational, scientific, literary, and charitable purposes, and administered under the direction of the following trustees: Dr. Frank Baxter, professor emeritus of the University of Southern California (USC); Dr. Kenneth Harwood, chairman of the Department of Telecommunications, USC; John Pollock, attorney; Stephen Royce, attorney; John Bowles, president of Rexall Drug Company; and Robert Sprague, president of Pioneer Savings and Loan.<sup>99</sup>

FCC Opposes KRLA as Gift;

Accepts Bids for Interim Operation

On February 24, 1964, the FCC voted four to two opposing the gift of Eleven Ten stock to Broadcast Foundation. The decision was based on the grounds that Don Cooke no longer had the authority to make that proposal

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<sup>98</sup>Ibid.

<sup>99</sup>Ibid.

because he no longer possessed the license. The majority felt the FCC's power would be weakened if the agency allowed a nonrenewed license to be transferred, even if the transaction would achieve a worthwhile goal.

The two dissenting votes were cast by Commissioners Kenneth A. Cox and Robert E. Lee. Cox felt that the transfer would have been in the public interest, and that it would leave "unimpaired the main thrust of this proceeding, which was to terminate Donald Cooke's broadcasting authorization . . ." He added that the transfer would have permitted "something to be salvaged out of this whole unfortunate situation."<sup>100</sup>

Cox doubted that the transfer of the \$360,000 debt owed to Don's brother, Jack, would allow the licensee to profit in any way. Instead, he saw the agreement as repayment of a loan that was used to improve KRLA's competitive status, a status from which Broadcast Foundation would surely benefit.

In conclusion, Cox did agree that the transfer could weaken the FCC's policy which guards against questionable licensees selling their facilities as a maneuver to dodge qualifications hearings. But, he added, that was not the issue in the KRLA case. He doubted that many licensees would run the risk of losing their licenses by

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<sup>100</sup>"Cox, Lee oppose rejection of KRLA as gift," Broadcasting, March 2, 1964, p. 66.

transferring them to charities, as they would recoup only the funds that were still invested in working capital and physical facilities.<sup>101</sup>

Anticipating the vacating of the 1110 frequency, a number of interested parties requested that the FCC lift the "AM Freeze"<sup>102</sup> and accept applications for the frequency. In a special session, the FCC did lift the freeze, and twenty applications were filed for the soon-to-be-silent KRLA facilities. These events set the stage for what would become the largest, longest, and most costly comparative hearings in the history of the FCC. The Commission itself even predicted a complex battle, due to the large number of viable applicants for the license.

The FCC was faced with what to do with the station, and it wanted Eleven Ten off the air while the comparative hearings continued. But, if the United States vacated the 1110 frequency, an international treaty stipulated that a Mexican station, XERB, could increase power to provide the coverage vacated. The FCC wanted to avoid that as well, so a proposal for interim operation of KRLA seemed a likely solution.

From the total of twenty applicants, fifteen were

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<sup>101</sup>Ibid.

<sup>102</sup>During the early sixties, the FCC issued a "freeze," refusing to accept any applications for new AM facilities until a nationwide plan for the equitable distribution of broadcast services could be drawn up.

applying solely for permanent authorization. Of the remaining five, three--Goodson-Todman Broadcasting, California Regional Broadcasting, and Crown City Broadcasting--were applying for both interim and permanent authority, one--Radio Eleven Ten--was a combined interim application composed of six applicants for permanent authorization, and one--Oak Knoll Broadcasting--was applying solely for interim operation. Oak Knoll further stipulated that it would donate eighty per cent of its profits to KCET educational television, Los Angeles, and the remaining twenty per cent to various charities.<sup>103</sup>

From the nineteen applicants for permanent authorization, twelve proposed to use the frequency at Pasadena and seven sought to use it at other California locations. Based upon the quantity and quality of the applicants, the FCC estimated that it would take nearly three years to decide which applicant would best use the frequency to best meet the public need; therefore, interim operation had to be considered.

All five of the interim applicants were found to be legally, technically, financially, and otherwise qualified to conduct an interim operation, and the FCC designated the interim proposals for oral arguments before the Commission on June 19, 1964.

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<sup>103</sup>"Nonprofit group gets interim bid support," Broadcasting, June 22, 1964.



### Oral Arguments for Interim Operation

Opposition to the FCC's actions began with five applicants for permanent operation arguing against interim use of the frequency. These applicants, all from out-of-town locations, felt that an interim operation in the Los Angeles area would prejudice their applications for authorization in different locales. Other protesting parties contended that the FCC did not have the authority to grant an interim operation, because the Commission's conditional grant rule did not contemplate temporary authorizations to parties that did not seek permanent assignment to the frequency.

While five applicants opposed interim operation, five others urged the FCC to approve the application of Oak Knoll Broadcasting, the one applicant seeking solely interim authority. Those in support of Oak Knoll expressed the view that the interim grant would not prejudice the ultimate decision because Oak Knoll did not seek the permanent assignment.<sup>104</sup>

### FCC Approves Oak Knoll Broadcasting

On July 17, 1964, in a four to three vote, the FCC approved Oak Knoll Broadcasting Corporation for interim operation of the KRLA facilities. In selecting Oak Knoll, the Commission placed great weight on the fact that the

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<sup>104</sup>Ibid.

applicant was not among those seeking a permanent license. The Oak Knoll grant, it said, would most completely avoid disadvantage or detriment to the applicants for the permanent license because Oak Knoll had not applied for regular use; not one of its principals would participate in the subsequent proceedings. It would also protect the country's interests, and supply much-needed funds for non-commercial educational television in the Los Angeles area.<sup>105</sup>

On the issue of prejudice to other locales, the Commission stated:

Contrary to opponents' assertions, they have no burden to overcome with respect to dislocation of service in Pasadena. Each of the applicants for the different communities, as well as each of the applicants for Pasadena, has the identical burden in the subsequent proceeding of establishing a greater need for the use of the frequency in his respective community, as compared with the showings with respect to other competing communities. With an interim authorization, this burden remains unchanged--it is no greater or less than it would be if the frequency were silenced.<sup>106</sup>

The Commission also addressed those who questioned its authority on the matter. Although the Oak Knoll case was beyond the specific comprehension of the rule, the FCC said, the grant was consistent with the policies underlying the rule. Specifically, the Commission stated:

To hold that the Commission is without the power of positive action in situations not anticipated by its rules would be inconsistent with the dynamic nature of the broadcasting industry and its requests, and

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<sup>105</sup>In re Applications of Oak Knoll Broadcasting Corp., et al., 45 FCC 1571, at 1572.

<sup>106</sup>Ibid.

with the basic discretion and duties conferred and prescribed by the Communications Act.<sup>107</sup>

The FCC approved of the commitments made by Oak Knoll to continue the same type of programming, to utilize substantially the same staff, and to remain within essentially the same budget as the previous licensee. Further, Oak Knoll proposed to increase news coverage and to add an educational program for children, bringing the portion of non-entertainment programs up to twenty-four per cent of its 163-hour broadcast week.

Dissenting to the majority were Commissioners Robert T. Bartley, Lee Loevinger, and Frederick W. Ford. They opposed the decision not because they disapproved of Oak Knoll, but because they felt that given the circumstances, no interim authority should be granted.

Eleven Ten Steps Out;

Oak Knoll Takes Over

At midnight on July 31, 1964, Eleven Ten Broadcasting Corporation went off the air, after five years of service to the Los Angeles area. The transmitters were actually shut off for twenty seconds, then turned back on again as KRLA became owned and operated by Oak Knoll Broadcasting Corporation. The equipment, studio, transmitters, and antennas were still owned by Broadcast Equipment, and

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<sup>107</sup>Ibid., pp. 1583-84.

leased to Oak Knoll under the same arrangements that were previously set up by Eleven Ten.

Ten days after the new operation began, Broadcasting ran a story on the changeover. Under the headline, "This time the fanfare was muted, the drums muffled," the magazine reported it doubtful that many in KRLA's audience were aware of the station's new ownership. The change was made without promotion or publicity, unlike the well-publicized changes made when Don Cooke took charge of the station in 1959. Recalling the blaring three-day celebration that kicked off KRLA's rock-and-roll format, the article's author observed:

Five years ago, Mr. Cooke wanted everyone within earshot to know that a change had been made. Today, things are different . . . The KRLA sound, by and large, will remain the same. But the station's profits will go, not to a private owner, but to help Los Angeles' new educational TV station, KCET(TV), get established.

So the fanfare which seemed so desirable to Mr. Cooke five years ago would serve no purpose for the station's new operators, who see no point in informing KRLA's young listeners that the station is now an educational institution.<sup>108</sup>

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<sup>108</sup>"This time the fanfare was muted, the drums muffled," Broadcasting, August 10, 1964, p. 69.

CHAPTER IV  
THE COMPARATIVE ERA

With Oak Knoll's operation underway, the Commission turned its attention to the selection of a permanent licensee. Media interest, previously sparse during Cooke's license renewal hearings and then relatively high during the arguments for interim operation, remained consistent, as periodic reports appeared in Broadcasting, Variety, and the Pasadena Star-News. Occasionally stories appeared in other media as well.

Broadcasting reported that KRLA's 1110 frequency and its prominent spot in the nation's number two market made it the "most desirable radio facility up for grabs in years." It further noted that the case "could go on for years," explaining:

A rough rule of thumb used by some Washington lawyers is that it takes at least a week of FCC hearing for each applicant in contested cases. At that rate the hearing itself could last for six months.

Add to that time the months of prehearing conferences, more months after hearing for the preparation of the examiner's report, still more months for the scheduling of oral arguments to the FCC, more months for FCC consideration and the unpredictable time it will take for the inevitable appeals to the courts, and the date on

which a winner will emerge is beyond definite prediction.<sup>1</sup>

Prominent in all reports were remarks on the vast number of celebrities from radio, television, and business which held interests in the competing applications for permanent license. Well-known names included Bob Hope, Art Linkletter, Nat King Cole, Mark Goodson, William Todman, John Daly, Richard Adler, Horace Heidt, Carl Haverlin, Edwin Pauley, actor MacDonald Carey, pollster Louis Harris, American Pay-TV president Richard Moore, former Columbia and Warner Bros. records president James Conkling, former CBS executive Micheal Grillkhes, and California Assemblyman Mervyn Dymally.<sup>2</sup>

Most of the program proposals were based upon music-and-news formats, with two distinct exceptions. An application from the Bible Institute of Los Angeles proposed a commercial operation aimed primarily to promote the knowledge and worship of God, study of the Bible, and "the saving of the lost in Los Angeles, Calif., and the whole world . . ." Another applicant, California Regional Broadcasting, under chairman Howard F. Ahmanson, sought the frequency for a civic and cultural program format.<sup>3</sup>

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<sup>1</sup>"A Stampede over KRLA's grave," Broadcasting, April 6, 1964, p. 88.

<sup>2</sup>"More Showfolk--Hope, Cole, Heidt--Race Others for Pasadena Radio License," Variety, April 2, 1964, p. 1.

<sup>3</sup>"A Stampede over KRLA's grave," p. 89.

Early in 1968, after three and one-half years of hearings, the Broadcast Bureau recommended that the choice be narrowed to two applicants. With the hearing record closed, an initial decision appeared to be close at hand.

At that point, however, four applicants filed a petition that again enlarged the issues. The petition added another surprising link to the unusual chain of KRLA events, because it was filed to request that the FCC explore an alleged relationship between three Orange Radio stockholders and Howard Hughes. The petitioners contended that three principals in the Orange application, Robert A. Maheu, Frank W. Gay, and James F. Simons, were "apparently involved so closely in Mr. Hughes's interests that the effect of that relationship on their application should be more carefully scrutinized."<sup>4</sup>

Although eighteen applications for permanent authorization were originally filed, eight of the applicants withdrew as the hearings extended from 1964 through 1969. The ten remaining corporate applicants, their principals, their proposed locations, and their proposed power were as follows:

Western Broadcasting Corp.--Principals: Bob Hope (25%), Richard A. Moore (20%), Edwin W. Pauley and Frederick Levy, Jr. (each 15%), James L. Saphier (7.5%), Art Linkletter (5%), G. Sydney Barton (5%), and the Los Angeles law firm of Gang, Tyre, Rudin

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<sup>4</sup>"Latest name in KRLA game: Howard Hughes," Broadcasting, August 19, 1968, p. 46.

and Brown (7.5%). Station would be located three miles northeast of the Pasadena site. 50 kw daytime, 10 kw nighttime.

Crown City Broadcasting Co.--Principals: Donald C. McBain (10%), Marshall S. Neal (10%), Robert W. Breckner (10%), MacDonald Carey (10%), Arthur Hanisch (10%), Ben P. Smith (10%), Robert Morton (10%), Robert Villaneourt (10%), James A. Boyle (5%), Edward Earl (5%), Louis R. Vincenti (5%), and Robert C. Mardian (5%). Station would be located in Pasadena. 50 kw daytime, 10 kw nighttime.

Voice of Pasadena, Inc.--Principals: Robert E. Lovett (8.33%), and 55 other stockholders each having small percentages. Station would be located in Pasadena. 50 kw daytime, 10 kw nighttime.

Charles W. Jobbins--Principal: Charles W. Jobbins. Station would be located in Costa Mesa-Newport Beach. 1 kw daytime only.

Orange Radio, Inc.--Principals: Frank W. Gay and Robert A. Maheu (each 15%), Stephen H. Clark, James F. Simmons, Michael M. Grillkhes, Joseph M. Dean, Don Belding, Gordon D. Hawkins, Emmett McNair Pettis, Harry H. Suker, Jr., William J. West, Louis McNeil Ballard, James B. Conkling, Max V. Eliason, Marshal Sawyer, and Edward J. Spillane (each 5%). Station would be located in Fullerton. 50 kw daytime, 10 kw nighttime.

California Regional Broadcasting Corp.--Principals: Howard F. Ahmanson (33.34%), Wesley I. Dumm (23.33%), William H. Ahmanson (28.33%), Maurice D. Jameson, Stanley L. Hahn, and David M. Crandell (each 5%). Station would be located in Pasadena. 50 kw unlimited.

Goodson-Todman Broadcasting, Inc.--Principals: Mark Goodson and William Todman (each 27%), Howard F. Todman (3%), Harris L. Katleman and Robert H. Forward (each 10%), John C. Daly, Louis Harris, and Richard Adler (each 5%), Harold M. Austin and Robert Stewart (each 4%). Station would be located in Pasadena. 50 kw daytime, 10 kw nighttime.

Pasadena Broadcasting Co.--Principals: Tribune Publishing Co. (20%), Dr. James C. Caillouette, Edward J. Flynn, Gardner K. Grout, and Dean Sweeney (each 10%), Frank J. Burke, Ann Liberton Davis, William R. Ewing, Jr., James F. Hoffman, and Paul Titus (each 5%). Station would be located in Pasadena. 50 kw daytime, 10 kw nighttime.

Pacific Fine Music, Inc.--Principals: A. Arthur Crawford and Jean E. Crawford (each 50%). Station would be located in Whittier. 50 kw daytime, 10 kw nighttime.



Topanga-Malibu Broadcasting Co.--Principals: C. Funk and George A. Baron (each 50%). Station would be located in Topanga. 500 w unlimited.<sup>5</sup>

Initial Decision Announced

After nearly five years of comparative hearings, FCC Examiner Forest L. McClenning released an initial decision on April 2, 1969, in which he proposed the grant of the license to Voice of Pasadena. Under the criterion of "efficient and equitable distribution of radio service," McClenning felt that Pasadena was the preferred community among those represented by the applications, as neither of the two existing Pasadena stations offered primary service to the entire city at night.<sup>6</sup>

He specifically selected Voice for its probability of bringing the "best practicable service" to the public, the best diversification of mass media ownership, and the best integration of management and ownership. Unlike the other nine applicants which held substantial media interests, Voice's only media connection was through a 2.6% stockholder, Oran W. Asa, who owned eight community newspapers in the Los Angeles area. Thus, McClenning's choice reflected the growing concern within the Commission regarding concentrated ownerships in the broadcast and print

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<sup>5</sup>"The applicants for 1110 Los Angeles," Broadcasting, April 16, 1964, pp. 88-90.

<sup>6</sup>"At last, a decision on KRLA," Broadcasting, April 7, 1969, p. 42.

industries.<sup>7</sup>

Voice was owned by fifty-six Californians, with the largest share, 8.33%, held by corporate president Robert A. Lovett, assistant dean of the USC School of Commerce and vice president and one-third owner of the Boylhart, Lovett & Dean advertising agency, Los Angeles. Another stockholder, Cal Smith, former chief engineer and manager for KFAC, Los Angeles, would serve as general manager for the new operation. The group planned a program similar to NBC's "Monitor," consisting of "talks, discussions and interviews interspersed with music and news."<sup>8</sup>

McClenning's selection of Voice considered many factors. The low power proposals, he said, would be a "gross waste" of facilities, and would not provide the public interest benefits of the high power proposals. Some applicants failed to meet the "suburban issue," as they had "not overcome the presumption that their applications were intended to serve Los Angeles rather than the communities they had specified." Still others were deleted when McClenning determined that Pasadena was the preferred community under the criterion of efficient and equitable distribution of service.<sup>9</sup>

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<sup>7</sup>"New Group in Line for KRLA Tag," Pasadena Star-News, April 3, 1969.

<sup>8</sup>Ibid.

<sup>9</sup>"At last, a decision on KRLA," p. 42.

One application was rejected because it failed to prove that its directional antenna array could be maintained, and the remaining applicants were discarded after consideration of both the "integration of ownership and management" and the "diversification of media ownership" factors.<sup>10</sup>

Although McClenning selected Voice, the situation was still a long way from being resolved. In practice, an examiner's initial decision serves only as a guideline for the Commission; before it even reaches the Commission it is first considered by the FCC Review Board. Beyond that, if any appeals are made, subsequent court hearings would be required.

#### Review Board Decision

On May 26, 1971, after two years of additional hearings, the Review Board released its decision. Its action reversed the examiner's decision favoring Voice, and denied all other applications on engineering grounds, except that of Orange Radio. The Review Board agreed that the low power proposals could not match the high power proposals in terms of efficiency. However, it also denied seven of the high power applicants on "basic technical disqualifying grounds" which included problems with their respective sites, their ability to maintain and adjust their

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<sup>10</sup>Ibid.

directional antenna patterns, and interference to station KFAB, Omaha, Nebraska.

Orange was the only applicant which showed no insurmountable problems in the adjustment and maintenance of its array. However, the Review Board did not grant Orange's application, but retained it for hearing in order to explore a charge of misrepresentation brought against Orange in a petition filed by Western Broadcasting, a competing applicant.

The controversy over Howard Hughes was again raised as Western cited alleged inconsistencies between oral and written statements Orange made to the FCC regarding the relationship between Hughes and fifteen per cent stockholder Robert Maheu. In response, the Review Board enlarged the hearing issues against Orange to include discussion of the following five questions:

1. Whether the Orange proposal stating the duties and time Mr. Maheu would devote to the proposed station was made in bad faith;

2. Whether Orange and Mr. Maheu made false or misleading representations about Mr. Maheu's business interests and the relation of those interests to Howard Hughes, Hughes Tool Co., and Mr. Hughes' Nevada operation;

3. Whether Mr. Maheu, at any time between March 1967 and December 1970, controlled the operation of station KLAS-TV, Las Vegas, Nevada, licensed to Hughes Tool Co., in violation of Section 310(b) of the Communications Act;

4. Whether Hughes Tool Co., of which Orange stockholder Frank W. Gay is a director and senior vice-president, at any time within this period relinquished control of KLAS-TV in violation of Section 310(b) of the Communications Act or made false and misleading representations to the Commission about the opera-

tional responsibility for the station; and

5. Whether Orange failed to report significant and material changes in information previously furnished the Commission, by periodically amending its application and hearing representations, as required by Section 1.65 of the rules.<sup>11</sup>

Hughes Tool Company and the nine denied applicants were all made party to the proceeding, but were specifically told that the re-opened hearing would be limited to evidence that would resolve the enlarged issues. At that point, the comparative hearings had continued for seven years, and the end was still not in sight.

California Regional Broadcasting Withdraws;

Remaining Applicants Appeal

Following the Review Board's decision of May 1971, California Regional Broadcasting petitioned the FCC for dismissal of its application. By an FCC order, released October 3, 1972, the petition was granted.

The nine remaining applicants, including Orange, filed petitions for reconsideration of the Review Board's decision. The Commission responded with a memorandum, opinion, and order, adopted February 13, 1973, which denied the applications filed by the two low power applicants but authorized oral arguments for the remaining seven applicants. The order also requested that each party's oral presentation include a discussion of the following matters:

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<sup>11</sup>FCC News Release, "Actions in Docket Cases, Report no. 8353, February 14, 1973.

A. Whether the Review Board's "theory of the case is valid for a disposition of the case, or whether findings and conclusions must be made on additional or all of the issues specified in the designation order.

B. Whether the Review Board committed prejudicial error in taking official notice, in the manner it did, of material regarding the technical operation of Oak Knoll Broadcasting and its predecessor, Eleven Ten Broadcasting, and whether the record is sufficient without the use of such material to make findings and conclusions on the dispositive issues.<sup>12</sup>

The order stated that oral arguments would be held before the FCC on March 19 and 20, 1973, in Washington D.C. During the proceedings, each party would be allowed a maximum of forty-five minutes to present its arguments, and no party would be permitted to reserve time for rebuttal.

#### FCC Renders Decision

The FCC considered the oral arguments in March, but did not issue a decision until December 10, 1973. Adding still another twist to the KRLA story, the Commission concluded, in a five to two vote, that a grant of the Western Broadcasting application would best serve the public interest.

Western, whose principals included Bob Hope and Art Linkletter, was selected on the grounds that its proposal held the greatest promise of "an improved operation, which [would] make the most efficient use of the frequency in Southern California." The FCC determined that Western had the most stable directional antenna array of any applicant,

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<sup>12</sup> In re Applications of Charles W. Jobbins, et al., 39 FCC 2d, 595, at 596.

and the strongest ability to control its signal.

After finding fault with each of the applicants, including Western, on engineering grounds, the Commission based its decision solely on comparative technical considerations. It said:

Our choice is not among applicants who meet all of our technical requirements, but among applicants with a variety of shortcomings where there appears to be no likelihood that a proposal which does meet all of the requirements would be forthcoming if we opened the frequency to new applicants.<sup>13</sup>

Each of the applicants proposing to use the existing KRLA transmitter site were rejected because the proposed stations would cause interference to KFAB, Omaha, and would receive interference from other stations also, due to potential reradiators in high ambient fields near the existing site. The proposed Whittier site was likewise found to be technically undesirable.

Only Orange and Western met the FCC's technical considerations. In comparing them, the Commission found that Western edged out Orange with the most stable directional antenna array of any applicant. But the determining factor, it said, was that Orange would receive interference affecting 23.2% of its audience in its nighttime primary service area, which was greater than that of any applicant. The Commission rules set a ten per cent limit, with which

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<sup>13</sup>"Hope-Linkletter group gets brass ring in Pasadena," Broadcasting, December 10, 1973, p. 32.

Western was in compliance, having only a 9.26% population loss. In total, Orange's 23.2% loss would involve 923,827 more persons than Western's 9.26% loss.<sup>14</sup>

Therefore, the FCC ordered that the application for Western be granted, and all others denied. It further decreed that Oak Knoll's interim authority be terminated at 3:00 A.M., local time, on the day following the release date of the FCC order granting program test authorization to Western.<sup>15</sup>

#### Court of Appeals Questions FCC Decision

As to be expected, this decision, too, caused appeals from the other applicants. When the FCC stood firm, the denied applicants, as a group, took their case to the United States Court of Appeals, Washington D.C.

Meanwhile, the FCC received criticism from the press, most notably in a column authored by Jack Anderson of the Washington Post. Anderson described the award to Western as a "\$15 million plum plucked by a group of President Nixon's friends." He based his comment on the fact that "famed comedian and presidential pal Bob Hope," the corporate chairman and majority stockholder, had contributed \$50,000 to the Nixon re-election campaign. Anderson further noted that fifteen per cent stockholder Ed Pauley

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<sup>14</sup>Ibid.

<sup>15</sup>In re Applications of Goodson-Todman Broadcasting, Inc., et al., 45 FCC 2d 573, at 596.



had given \$35,000 to Nixon's campaign, and that the only Pasadena citizen named as a stockholder was G. Sydney Barton. Finally, he pointed out the ironic fact that the FCC Review Board awarded the license to Western on technical grounds, but had turned down Western's application in 1971, also on technical grounds.<sup>16</sup>

Eighteen months later, the Court of Appeals took action by remanding the eleven-year-old battle back to the FCC for "clarification" of its decision. It noted that the Commission resolved the matter without specific consideration of the comparative factors outlined in the policy statement on comparative hearings, which represented "a fundamental departure from precedent."<sup>17</sup>

Further, the Court noted that while the FCC decision was based on efficiency, the Communications Act called for not only efficient, but also equitable distribution of service. Clarification was imperative, said the Court, since a decision based on the grounds offered by the FCC counsel would "obviate the need for consideration of many comparative issues in many cases."<sup>18</sup>

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<sup>16</sup>"Newsman Raps Award of KRLA License," Pasadena Star-News, January 8, 1974.

<sup>17</sup>"In Brief," Broadcasting, September 29, 1975, p. 23.

<sup>18</sup>Ibid.

### FCC Explains Decision

In January 1976, the FCC again explained its reasoning in deciding the KRLA case on engineering-efficiency grounds alone. The Commission stated that the efficiency factors in the Communications Act which required a "fair, efficient, and equitable distribution of radio service throughout the country" were of "dispositive weight" in considering the case. Accordingly, it explained, since Western's application was the only one that did not pose "severe technical problems," it was not necessary to reach the standard comparative issues.<sup>19</sup>

"To hold otherwise," the Commission said, "would be to suggest that even in the case of flagrantly inefficient proposals and marked violations of our technical standards," a full hearing would be required before a case could be decided.

### Court of Appeals Decision

When the Court of Appeals issued its decision on May 12, 1977, it included reflections on the entire history of comparative battles, stating:

The ensuing proceeding generated no fewer than eight opinions during its twelve-year administrative lifespan. The Hearing Examiner, the Review Board, and the Commission each favored a different applicant, and for different reasons. Although each struggled valiantly with the bevy of complex

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<sup>19</sup>"FCC stands ground on KRLA decision," Broadcasting, January 5, 1976, p. 34.

issues presented, the net effect was error, and so we reverse.<sup>20</sup>

The Court held that the FCC erred in assigning the frequency on the sole basis of size of population to be served. Despite precedent which indicated that applicants for "first local service are to be favored in hearings with applicants proposing an additional service to a community," the FCC did not indicate that it had compared Los Angeles' need for "still another AM station" with Newport's need for its first. At the time, Los Angeles was served by more than twenty AM stations, twelve of which specified Los Angeles as the city of license. On the other hand, Newport Beach, twenty miles southeast of Los Angeles, had no AM service specifically dedicated to its community.

The Court agreed that Congress was concerned that radio service be extended to as large an audience as possible. However, it added:

. . . that is not to say that the license is to be awarded to the applicant who would encompass the most listeners within the range of his signal. If that were so, all frequencies likely would be assigned sooner or later to powerful stations in major population centers--precisely the result Congress meant to forestall by means of Section 307(b).<sup>21,22</sup>

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<sup>20</sup>Pasadena Broadcasting Co. v. FCC, 555 F.2d 1047.

<sup>21</sup>"Court says FCC placed 'efficient' over 'equitable' in KRLA grant," Broadcasting, May 23, 1977, p. 36.

<sup>22</sup>Section 307(b) of the Communications Act provides:  
(b) In considering applications for licenses, and modifications and renewal thereof, when and insofar as there is demand for the same, the Commission shall make

In addition, the Court held that the FCC erred in assigning "dispositive weight" to the efficiency factor. Referring to the Commission's disregard for the standard comparative issues, one judge stated:

. . . we do not think that an aspirant within the scope of the rules established by the FCC may, ad hoc, be refused a comparative hearing merely because a rival appears who is somewhat more "efficient." After all, his other attributes might show that the satisfaction accorded to those who will listen counterbalances, as far as the public interest is concerned, the fact that fewer could hear.<sup>23</sup>

Thus, with the Court of Appeals ruling overturning the decision for Western, the FCC was again faced with the problem of re-examining the evidence in light of both the comparative issues and the efficient and equitable mandate, and to assign the frequency to the applicant who would best serve the public interest.

#### Solution Reached by Merger

In view of the Court decision, the FCC requested suggestions from all parties involved as to how to proceed. Subsequently, each of the remaining applicants responded with recommendations. They were divided on the issue of whether the case could be resolved on the basis of existing record, or whether additional input was necessary.

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such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same.

<sup>23</sup>Ibid.

Voice of Pasadena suggested that the FCC arrange a regular operation in which each of the three previously selected applicants, Voice, Orange, and Western, held a thirty per cent share. The remaining ten per cent would be divided among the other applicants, with ownership percentages reflecting each applicant's perceived probability of license success.<sup>24</sup>

During the next year, several other mergers were suggested, but none of the groups could agree on the proposals. In September 1978, an agreement was reached and the final documents were ready to be signed. The merger stipulated that Western would become a forty per cent stockholder, with Voice holding twenty-five per cent, Goodson-Todman and Pasadena Broadcasting each fifteen per cent, and Charles Jobbins five per cent. The agreement also provided for ultimate ownership for Western in three years, for the total sum of fifteen million dollars.<sup>25</sup>

But the FCC rejected this agreement too, in March 1979, on the grounds that the provision for Western's "automatic buy-out" was not the kind of bona fide merger contemplated by the Communications Act.<sup>26</sup> The parties involved were required to restructure the agreement, or it

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<sup>24</sup>Broadcasting, August 29, 1977, p. 19. [No title]

<sup>25</sup>"Second Time Around," Broadcasting, September 25, 1978, p. 7.

<sup>26</sup>Broadcasting, April 2, 1979, p. 31. [No title]

would be necessary to resume hearings.

After several months of negotiations, the groups rewrote the arrangement for joint ownership, to be held under the name of KRLA, Incorporated. The percentages of ownership remained the same, but the terms for Western's option were altered. Under the new agreement, Western held an option to buy out the other stockholders, at the determined market price, after three years. If Western did not exercise the option, the others could retain their holdings or sell to other buyers.

On September 27, 1979, Hearing Examiner Reuben Lozner granted the application of KRLA, Incorporated after finding that the new corporation did meet the requirements for merger outlined in the Communications Act.<sup>27</sup> In the same action, Lozner granted the withdrawal bids of Orange Radio and Pacific Fine Music.

KRLA General Manager Donald Fry stated that the change of ownership would not affect the daily station operation in any way. The current programming mixture of old rock-and-roll, contemporary hits, and a nighttime block of disco music would be retained. The new organization would, however, originate some of its programming from Orange County, California. It planned for a mobile studio with a full-time newsman in the area to produce three hours

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<sup>27</sup>"New 5-group company given KRLA ownership," Pasadena Star-News, October 11, 1979, p. 1.

of programming each day. A portion of it would include feature items and public affairs slanted toward the Orange County area.

#### KRLA, Incorporated Takes Control

Oak Knoll Broadcasting received notice on October 15, 1979, that KRLA, Incorporated was to assume control of the station in forty-two days, on November 26. But by mid-November, KRLA, Incorporated had not yet received the document granting its construction permit. Unable to operate without it, the corporation notified the Broadcast Bureau immediately. On November 22, just four days before the changeover, it received "special temporary authorization," which came in the form of a letter hurriedly typed by the chief of the Broadcast Bureau. The letter stated that all other terms would be discussed at "a future date."<sup>28</sup>

Although the changeover took place as scheduled, it was covered only superficially by the media. The local press was unaware of the story until a station employee called them with an anonymous tip. And Broadcasting did not report the change of ownership until three months after the fact. Ironically, the number of stories detailing the complex battles over KRLA dwindled to almost nothing when the case was actually finally

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<sup>28</sup> Letter to KRLA, Incorporated, from Larry Olson, Branch Chief, Broadcast Bureau, November 21, 1979.

resolved.

On December 2, 1979, the Los Angeles Times reported:

On Monday the FCC formally awarded a broadcast license to KRLA Inc. as new owners and operators of the 50,000-watt Pasadena facility. And with that stroke, the commission officially put an end to an unprecedented 17-year limbo . . .

. . . after the long labyrinthine process during which the various applicants poured millions of dollars into the fight for ownership for KRLA, in the words of program director Art Laboe, "The orphan is legitimized."<sup>29</sup>

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<sup>29</sup>James Brown, "KRLA: An Orphan Finds A Home," Los Angeles Times, Calendar section, December 2, 1979, p. 50.



## CHAPTER V

### SIDELIGHTS TO OAK KNOLL'S OPERATION

As the hearings and court battles continued for sixteen years during the Comparative Era, Oak Knoll's operation of KRLA continued with ups and downs in the competitive market, innovations and changes in operation and format, and the development of a controversy all its own.

#### And the Beat Goes On...

Between 1964 and 1970, KRLA's many self-promoting publicity campaigns proved to be hugely successful. The station consistently ranked among the top stations in the Los Angeles ratings, competing with more than sixty stations serving the area. And while its youthful audience remained staunchly loyal, KRLA also gained wider acceptance and respect among mature audiences as it added topical documentaries and in-depth reports to its music-and-news format.

Although Newsweek described pop radio as "mostly a wail sold by an idiot," with "little else but shrill commercials, brief bleep-bleeping news bulletins and the inane blather of the resident disc jockey," it reported

that KRLA was different, with more depth than the rest, evidenced by its involvement with the problems and despairs which faced the youth of that generation.<sup>1</sup>

When scores of young people were declared a nuisance and chased off the Sunset Strip during the winter of 1967, KRLA gave them air time to explain their side. When 10,000 Vietnam dissenters clashed with police when President Johnson spoke in Los Angeles, KRLA condemned the protestors for their civil disobedience, but presented one thousand dollars to the American Civil Liberties Union to investigate the matter. The station later aired a satirical program composed of a choir singing "America the Beautiful" against a background of screams taped during the riot.<sup>2</sup>

The number of documentaries presented increased during this period, and KRLA received two news awards for its reports on marijuana and suggestive lyrics in pop music. It also received acclaim for its presentations on birth control, the draft, and a series of interviews conducted during the second anniversary of the Watts riots. Explaining the station's philosophy, News Director Cecil Tuck commented, "We're trying to cause our listeners to stop and think, even if it's briefly and painlessly, just

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<sup>1</sup>"Beating the System," Newsweek, August 21, 1967, p. 60.

<sup>2</sup>Ibid.

for a minute."<sup>3</sup>

On the lighter side, KRLA created the Credibility Gap, a news satire team composed of Harry Shearer and David L. Lander. The duo presented their news in a highly entertaining manner by approaching stories with unlikely angles and adding wacky traits to the personalities in the news. Additional humorous comments evolved when the station began poking fun at the then-competitive gasoline industry, with ads for "Thor Thunderbolt Gasoline," guaranteed to put a thunderbolt in your tank, and boasting the cleanest restrooms in the world, complete with sauna baths.

The largest "publicity splash" of all occurred with KRLA's ads for blueprints to construct a special television antenna which would allow listeners to bring in the San Diego Superbowl telecast which was blacked out in Los Angeles. Their gimmick, constructed from a broomstick and five wire coathangers, was really no joke. Although the National Football League raised sharp protest, five thousand requests for the blueprints were received the first day, and local newspapers picked it up and ran copies of the plans. People were able to pick up the game from as far away as the San Fernando Valley, and station manager John Barrett remarked, "It worked beautifully. . . . It was a way to beat the system."<sup>4</sup>

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<sup>3</sup>Ibid.

<sup>4</sup>Ibid.

Barrett was convinced that the youth of the sixties were "more interested" in the world, and he worked hard to respond to their demands for straight talk about the problems of the day. With the addition of singer-poet Len Chandler, KRLA was the first radio station in twenty years to hire a resident singer. Chandler's songs, based upon the day's news events, were often humorous, often satirical, and often very serious.

Only two days after he arrived at the station in 1963, Chandler was faced with the biggest challenge he had ever encountered. He was at home when he heard the news that President John F. Kennedy was assassinated, and he quickly returned to the station. His efforts, which follow, were praised by both fans and critics alike.

#### "Circle Game"

"Let us grieve for all men  
 who are felled by the violence  
 That sweeps through this land  
 like a death motorcade;  
 Some vote with the ballot,  
 some vote with the bullet,  
 And a hate vote from either  
 is as deadly as plague. . . .  
 The wrongs that we've doubled  
 will soon be quadrupled,  
 This foul type of turnabout  
 knows no fair play;  
 The hate circle's order is  
 terror and slaughter  
 And mourning each morning  
 for the deaths of each day. . . ." <sup>5</sup>

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<sup>5</sup>Bill Yaryan, "Len Chandler Sings the News," Pasadena Star-News.

### Changes in Procedure and Personnel

With changes in station management over the years, the Oak Knoll operation was altered significantly by the mid-seventies. The former emphasis on publicity aimed at public awareness, characterized by numerous contests and audience involvement, gradually gave way to more sales-oriented promotion. Much effort and expenditure was directed toward attracting and maintaining advertisers in order to keep station revenues high.

Many methods were used to enhance KRLA's image and entertain business prospects. These included management's purchase of a membership in the prestigious Bel Air Country Club, the lease of expensive automobiles for directors' and management's use, lavish promotional parties, and trips for advertising agency personnel, sponsors, and station employees to such resorts as Las Vegas, Nassau, Banff, and Mexico City.

As the sales-oriented promotion increased during the early seventies, the station's profits remained consistent for a couple of years, although its ratings began to slip. Then, during the age of the Watergate scandal and the heightened consumerism movement, the extravagant sales promotion techniques of many businesses were seriously called into question. These events produced negative attitudes within some of KRLA's advertisers toward the station's sales methods. As advertising agencies and

sponsors became concerned about those practices, they stopped renewing their contracts with Oak Knoll, and the station's revenues dropped sharply.

By the mid-seventies, KRLA faced serious problems. Not only had the ratings decreased due to inconsistent programming direction, but the loss of advertising revenues coupled with continued high operating expenses left Oak Knoll operating at a deficit.

At that point, KRLA was forced to withdraw some of the funds that were previously set aside into escrow. Through the lean years, the FCC routinely granted Oak Knoll permission to release money from the account.<sup>6</sup> The station also filed for retrieval of excess income tax paid during more profitable years. But when these funds, too, were exhausted, Oak Knoll still faced tax liens. The future of the interim operation looked very bleak.

#### More Changes

In July 1975 another personnel change took place. Lawrence Webb resigned from the posts of executive vice-president and general manager of KRLA to join the staff of FCC Commissioner Robert E. Lee in the position of engineering assistant and broadcast specialist. Webb's background in broadcasting included management positions

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<sup>6</sup>"Sentry Asleep?" Broadcasting, August 29, 1977, p. 7.

with KRLA and other stations, and experience as the head of the Station Representatives Association.

In 1976, station manager Hal Matthews experimented with MOR, or middle-of-the-road recorded programming, in order to reduce expenses. By this time, the operation was already partially automated, since tapes of the day's shows from 6:00 A.M. to 6:00 P.M. were played back at night from 6:00 P.M. to 6:00 A.M. Matthews continued to consider different prospects in late February 1976.

Financial problems made the change to automation inevitable. Sources said that the station had lost several hundred thousand dollars when the advertising revenues decreased.<sup>7</sup> But the major expenses were in the salaries for KRLA's popular personalities such as Paul Compton, Johnny Magnus, Lee Baby Simms, and others.

According to Billboard, KRLA's move to automation was not only a hard blow for the station, but spelled "bad news for the record industry" as well. The article explained:

Although the station hasn't had exactly sensational audience ratings of late, it at least was another alternative medium for new record exposure. Automation is a very weak potential for breaking new product since the tendency among programming service creators is to stick with the hits, whatever the format.<sup>8</sup>

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<sup>7</sup>Claude Hall, "Automation for KRLA: MOR coming?" Billboard, February 28, 1976, p. 3.

<sup>8</sup>Ibid.

At the end of February, KRLA announced that in order to survive economically, it would have to abandon its personality-rock format and let go of most of its staff, surrendering to automation. Matthews called it a "sad but inevitable step." He commented:

We did not have a good year, and it became increasingly evident that as we continued to lose money, we couldn't afford to keep paying eight or nine full-time announcers to keep the format going. . . .

Our problem has been and continues to be an inability to hold on to money. As a nonprofit organization, money we take in above and beyond operating costs is channeled over to KCET . . .

Therefore, we have nothing to show permanence in the marketplace because, in fact, we were never meant to be permanent in the first place. Economy is why we've continually changed formats, why people come and go. It is not the ideal way to do business, but that's what we're up against.<sup>9</sup>

As an interim authority only, Oak Knoll owned no license and no assets, virtually no collateral to make any form of credit feasible. The switch to automation seemed the only means possible to reduce the station's operating costs and keep the operation alive.

#### Art Laboe Brings New Programming

After considering several automated programming services ranging from oldies to country music, the station settled upon a package presented by Art Laboe. Laboe, known as the "rock radio powerhouse" of the fifties

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<sup>9</sup>James Brown, "Another Fork in the Road for KRLA," Los Angeles Times, Calendar section, February 29, 1976, p. 73.



who literally copyrighted the phrase "oldies but goodies," was selected, Matthews said, partly because "his Saturday night program was our highest rated show on the air."<sup>10</sup>

An arrangement was drawn up whereby Laboe contributed nearly half a million dollars to meet KRLA's existing debts and provide enough cash for day-to-day operation. In return, when the station again achieved a profitable status, Laboe would receive sixty per cent of the net revenues. This situation added an element of motivation to the operation; it would be profitable to Laboe only if he turned things around and made money for KRLA.

The new format was similar to the "oldies" format of KRTH-FM, Los Angeles. However, Laboe split the past into three eras, from 1950 to 1961, from 1961 to 1970, and from 1970 to the present, or the "recent oldies," and most of the emphasis was placed upon songs from the recent past. Some believed it to be an "odd and potentially dangerous programming mix," feeling that it would either appeal directly to, or completely alienate, a broad spectrum of the radio audience.<sup>11</sup> But Laboe was confident that he could successfully blend the music.

While planning the old-new format, KRLA also sought counsel from the consulting team of Tom Greenleigh

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<sup>10</sup>Ibid.

<sup>11</sup>James Brown, "Art Laboe Mixing His Formulas Well," Los Angeles Times, Calendar section, July 25, 1976, p. 78.

and Billy Pearl. Their efforts were aimed at making KRLA become closer to its listeners. To achieve that, Greenleigh and Pearl devised a "people as DJ" concept by going out into the community armed with tape recorders to allow people on the street to introduce their favorite tunes. Other innovations included the start of "mini-concerts," derived by playing two or three songs by a popular concert artist back to back.

Although many expected the station to become fully automated, the new manager had other plans. Laboe himself was on the air live each morning from 5:30 to 9:00, and Johnny Hayes took the air from 3:00 to 7:00 each afternoon. In terms of the music, the Los Angeles Times reported:

. . . on this new KRLA there was no such thing as "oldies," only hits. KRLA was the place for all of the hits--from Elvis to Elton, or so the slogan went.<sup>12</sup>

To reach his target audience of listeners between eighteen and forty years of age, Laboe produced an "assemblyline of music" with very little talk. He felt that the station should not be a duplication of KRTH or KHJ, but should carve its own niche, and "take a bit of the audience away from everyone."<sup>13</sup> Aside from the live shows done by Laboe and Hayes, the remaining programs were run from a playlist of two thousand selections.

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<sup>12</sup>James Brown, "The Art of Laboe at KRLA," Los Angeles Times, Calendar section, May 2, 1976, p. 72.

<sup>13</sup>Ibid.

Laboe also capitalized upon the popularity of the stage shows he had promoted during the fifties and sixties at El Monte Legion Stadium, by setting up KRLA concert events. The first, featuring Freddy Fender at the Hollywood Palladium in April 1976, was quickly sold out, and many other popular artists were subsequently scheduled.

As the Los Angeles Times commented, "The wheels kept turning."<sup>14</sup> Laboe spent money extravagantly during his first few months at KRLA, but always with a specific purpose in mind. He bought billboard space throughout the station's service area and had hundreds of thousands of bumper stickers printed and distributed to saturate Southern California with the name KRLA.

Another of his projects was the successful KRLA Hit Man contest, where a roving reporter walked up to anyone, anywhere, and asked simple questions about rock music. KRLA's Beach Patrol contest was also revived, beginning again in the summer of 1976. Prizes for the contests included motorcycles, ten-speed bicycles, and one hundred dollar bills, all of which appealed enormously to Laboe's target audience.

With the new format underway, the Los Angeles Times reported that although Laboe did not sound like any of the disc jockeys people were accustomed to, "it seems to be working." The story continued with the fol-

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<sup>14</sup>Ibid.

lowing:

He stumbles over words. His voice doesn't rise and fall in a crescendo of mock excitement. Laboe simply gives you the time, temperature, and the next song. Pumping out the music.<sup>15</sup>

It was working. The station more than doubled its ratings during the five-month period after Laboe took over. And conversely, as KRLA's ratings climbed, those for KBTH "slipped noticeably."<sup>16</sup> Other factors also aided in the station's success. KRLA's spot on the AM dial made the station much more accessible to listeners than those located on the FM dial, especially during the important drive-time hours. And, as James Brown noted, "KRLA seems to deliver the music at twice the rate of any other station."<sup>17</sup> The steady flow of music held the listeners, and the heavy promotion by the KRLA Hit Man and other contests kept attracting more.

Laboe, quite pleased with the station's success, remarked:

This whole thing is like a project to me. I got a good deal here at KRLA, but I can honestly say that I'm not here for the money. My record company is being run. The club is doing well. This radio station is the thing that's taking up my time and I'm happy with it. I don't see this format as an interim thing at all. I see KRLA as a frontline competitor.<sup>18</sup>

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<sup>15</sup>Brown, "Art Laboe Mixing His Formulas Well," p. 78.

<sup>16</sup>Ibid.

<sup>17</sup>Ibid.

<sup>18</sup>Brown, "The Art of Laboe at KRLA," p. 72.

### Back on Top Again

KRLA's steady climb in the ratings landed it back up at the top of the charts by the beginning of 1977. In the January-February Arbitron ratings, it passed KHJ's 4.0 share with a new figure of 4.1 for the 6:00 A.M. to midnight Monday through Sunday metropolitan area.<sup>19</sup> Consultant Greenleigh felt that the station's directness and simplicity played a large role in building up an enormous loyalty factor. Soon after, variations of the KRLA format began to be heard on other stations throughout the country.

### Problems Continue for Oak Knoll

As KRLA made its return to the top of the charts, other problems arose for Oak Knoll Broadcasting. In June 1977 with a six to zero vote, the FCC ordered a revocation hearing for the interim operators, charging that Oak Knoll "failed to live up to its commitment to use 100% of its profits for educational purposes."<sup>20</sup>

The Commission raised questions regarding Oak Knoll's handling and reporting of its finances. Specifically, it asked:

Did officers, directors, or others connected with Oak Knoll use its assets for personal use?  
Did Oak Knoll provide the Commission with inaccur-

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<sup>19</sup>"Making waves in Los Angeles radio: KRLA and KTNQ," Broadcasting, April 11, 1977, p. 51.

<sup>20</sup>"Oak Knoll has a lot of explaining to do," Broadcasting, August 8, 1977, p. 25.

rate financial information?<sup>21</sup>

The FCC's decision to investigate the matter was said to have been set off by a tip, and was believed to involve Commissioner Lee's staff member, Lawrence Webb, also former station manager for KRLA under Oak Knoll. As these events unfolded in June, Webb took an administrative leave, then tendered his resignation from Lee's staff on June 27, 1977.<sup>22</sup> Lee, too, remained uninvolved for the time being, as he did not participate in the Commission's vote.

The media were quick to report and comment on the FCC charges. In an editorial dated August 15, 1977, Broadcasting declared that it would be wrong to prejudge Oak Knoll. The column stated:

One judgment, however, may be made now. The FCC bears a share of the responsibility for anything that may have gone wrong at the station. It was the FCC that approved the creation and purpose of Oak Knoll as a caretaker licensee . . . And it is the FCC that has conducted proceedings<sup>23</sup> for 13 years to choose a regular licensee. . . .

The editorial noted that one of the principal reasons for the FCC's selection of Oak Knoll, that Oak Knoll promised to devote all of its profits to charitable causes, "was an invitation to sloppy management at best." It ex-

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<sup>21</sup>"In Brief," Broadcasting, June 27, 1977, p. 23.

<sup>22</sup>Ibid.

<sup>23</sup>"Party of Interest," Broadcasting, August 15, 1977, p. 66.

plained, "There was no incentive to maximize revenues and keep costs under control if 100% of station earnings were to go elsewhere." Further, it questioned why the charges, said to have occurred throughout much of Oak Knoll's thirteen-year authority, were being brought up at such a relatively late date. Why had these issues not been challenged when financial statements were received each year? "The question," it said, "is whether an FCC that set up Oak Knoll as a source of revenue for noncommercial institutions should have exercised more oversight."<sup>24</sup>

#### Oak Knoll's Response

In July, Oak Knoll waived its hearing rights and opted, uniquely, to file a written "statement of mitigation," which it would submit to the FCC on August 29. Management felt that the nature of the charges was more conducive to a written response than a formal court hearing. In a memorandum to the KRLA salesmen, general manager Donald Fry explained the station's position on the pending proceeding.

Fry stated that they did not intend to minimize the seriousness of the allegations raised. They did, however, feel that "there unquestionably are two sides to this story." Fry pointed out that the station had already furnished "hundreds of thousands of dollars" to KCET and other

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<sup>24</sup>Ibid.

non-commercial causes. The station was preparing to explain the circumstances leading up to the charges, and felt that "once the real nature of the arrangement is explained to the FCC, the contract will be found to be entirely proper."<sup>25</sup>

### Specific Charges

Later in the month, the FCC released a long list of the specific allegations brought forth against Oak Knoll. The charges, outlined in Broadcasting, were:

1. That Oak Knoll Chairman Frank Baxter received \$200 weekly since 1971 from KRLA funds for programming that "Dr. Baxter and the other members of the Oak Knoll Board were aware . . . had been discontinued in 1972 or 1973."
2. That Oak Knoll allowed that station's former general manager, Lawrence Webb, to retain the proceeds of his sale in 1975 of a membership in the Bel Air country club, which had been purchased originally with \$10,000 in KRLA funds.
3. That Oak Knoll failed to maintain control over the use of trade sales "so as to insure that property obtained through the use of KRLA trade time would remain a KRLA asset and not be directed to the private use of station officials or employees." Mr. Webb was said to have obtained a piano, TV set, and "at least one payment in cash" and several station officials were said to have leased "expensive automobiles" through station trade time.
4. That Oak Knoll exhibited a "complete lack of control" over expense account items.
5. That Oak Knoll "misused \$15,000 of KRLA funds" by awarding that amount to Mr. Webb as compensation.
6. That KRLA funds were used to pay \$150 weekly to a servant in Mr. Webb's home.
7. That Mr. Webb was paid for moving expenses and club memberships after he resigned from the Oak Knoll board in 1975 and relocated in Washington, where he

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<sup>25</sup>Memorandum to KRLA salesmen from Donald O. Fry, General Manager, Re: "Statement to be filed with FCC." [Not dated.]



became an assistant to FCC Commissioner Robert E. Lee. Mr. Webb resigned when the FCC ordered the Oak Knoll hearing.

8. That "substantial sums" were spent on promotional trips to such sites as Las Vegas, Nassau, and Mexico City. "The reasonableness of those trips is called into question by the amounts expended and the number of persons in attendance, including most of the station personnel," it was said.

9. That Oak Knoll paid salaries to station officers other than those who were full-time employees, contrary to earlier representations to the commission. Mr. Baxter was said to have been paid as president and Mr. Webb as a "consultant."

10. That KRLA "improperly allowed Mr. Arthur Egnoian [Art Laboe] . . . a share in KRLA profits through a sales contract that . . . allowed Mr. Egnoian 60% of Oak Knoll's adjusted net revenues."<sup>26</sup>

Throughout August, after the charges were released, several media again raised questions as to whether the FCC shared part of the blame. All wondered how closely the FCC had monitored Oak Knoll throughout its authority.

### Oak Knoll Delivers

#### Statement of Mitigation

Oak Knoll released its 121-page statement to the FCC on August 29, 1977, backed up with exhibits and affidavits. It flatly denied the basic charge, that it failed to contribute one hundred per cent of KRLA's profits to charitable organizations, offering proof that it had already provided \$1,141,775 to KCET and other causes. And while it did not dispute some of the FCC's specific allegations, it did take issue with what it termed the Commission's "conclusory assignments of malfeasance." The

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<sup>26</sup>"Oak Knoll has a lot of explaining to do," p. 25.

charges could be explained, it said, as all of the station's actions were legitimate and necessary to keep the operation stable.<sup>27</sup>

Oak Knoll pointed out that although its profit flow ceased in 1972, it had made a strong recovery four years later under new management, and it fully expected its charitable contributions to resume.

The station also argued that the FCC's allegations were based upon "erroneous assumptions." For example, it cited that the FCC's understanding that "the officers, directors, and trustees of Oak Knoll and Broadcast Foundation would serve without compensation" was entirely mistaken. On the contrary, Oak Knoll contended, its by-laws "explicitly authorized compensation to directors and committee members."<sup>28</sup> It was set up to be operated in the same manner as any commercial station.

For these reasons, Oak Knoll's statement defended the benefits provided to Webb, who "deserved compensation" for serving the station "faithfully and well for ten years." All of the expenses, including Laboe's percentage, were defined as legitimate business expenses. Some were necessary for promotion and entertaining to boost advertising sales, others were defended as essential for

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<sup>27</sup>"Oak Knoll admits to the acts, but denies wrongdoing," Broadcasting, September 19, 1977, p. 120.

<sup>28</sup>Ibid.

enhancing and maintaining KRLA's image. Further, it added, they were all approved by the Internal Revenue Service.<sup>29</sup>

Oak Knoll also stated that it believed the FCC investigation was prompted by two "disgruntled former directors of Oak Knoll." These were Hal Matthews, former station manager and general manager, and Mel Ross of Continental Advertising. Both had opposed Laboe's position and influence in the station's operation, and the resulting conflicts caused them both to be terminated as directors. Their removal, Oak Knoll stated, was followed by "ascerbic threats of retribution," including Ross's statement that if he was not returned to the board he would "make charges to the Commission to have KRLA taken off the air."<sup>30</sup>

#### Proceeding Terminates as

#### KRLA, Incorporated Takes Control

After the statement was filed, the Commission acknowledged receipt of the response, but did not make further comment. After that, Oak Knoll heard nothing further from the FCC regarding the charges.

Two years later, the comparative hearings ended with the Commission's approval of KRLA, Incorporated as the permanent licensee. This action made the revocation pointless; therefore, the FCC terminated the proceeding.

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<sup>29</sup>Ibid.

<sup>30</sup>Ibid.

In much the same manner as the comparative hearings ended, the revocation issue ended, not with headlines and emotion, but with a murmur that was heard by only a few.

KRLA, Incorporated began operation at the station's facilities on November 26, 1979. Just as Oak Knoll had begun its operation in 1964, it ceased operation and the new owners took control without any publicity directed to the changeover. The continuity of the operation was never broken. The public remained unaware that the management had changed, or that a permanent license had finally been awarded to the new owners of the "orphan" station.

KRLA, Incorporated continued with the same programming concept and format, hiring Laboe as executive vice-president and program director. The station's success continued, and even grew, as KRLA became and remained the highest-rated AM music station in the Los Angeles area during 1979 and the beginning of 1980.<sup>31</sup>

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<sup>31</sup>ARB ratings, as reported by Mediatrend, KRLA Audience Profile, November 1979.

## CHAPTER VI

### SUMMARY AND CONCLUSIONS

KRLA's unique history is important for several reasons. Throughout most of its existence it has remained a top-rated station in the nation's number-two market, often serving as a model for other stations in many parts of the country. The record of the specific troubles KRLA endured and the outcome of each successive battle for ultimate ownership can be helpful to both existing and potential broadcasters, and to others in related fields.

The KRLA case outlines some of the options that are available to any broadcaster whose license renewal is challenged. It also supplies an indication of the enormous amounts of money and time that can be spent in defense of a license or in competition for an available license. Even though the FCC assigns no monetary value to broadcast licenses, each of the competitors for the KRLA license invested considerable sums of money for legal and technical counsel in the long seventeen-year struggle.

The timing of events influenced outcomes at many points throughout the case. For example, the decision for non-renewal of Eleven Ten's license was caused by its

timing as much as by the seriousness of the infractions themselves. While the station's misdeeds cannot be denied or condoned, there were many other factors interacting in the FCC's decision for non-renewal.

Both prior to and since the KRLA case, other broadcasters committed comparably unlawful acts, yet few others received as drastic a sentence as Eleven Ten. While KRLA's misdeeds were not so different from those of other stations, the climate surrounding the FCC at that time played a large role in the FCC decision. Contributing factors included the forms of regulation available to the FCC, the FCC's limited response options, the saturation of the AM spectrum, the pressures brought upon the FCC by Congress, and the unique standards and interpretations of the specific group of men that served on the Commission at that time.

Congress placed unprecedented pressure upon the Commission to regulate broadcasters more harshly with the establishment of the Harris Oversight Committee just before Donald Cooke took control of KXLA. During that period Cooke's misdeeds were probably the first serious issues to come to the FCC's attention. Other stations of the same era made comparable mistakes, and one of them, station KWK, Saint Louis, actually lost its license. But there were several others of the same period that did not.

The fundamental reason for the Commission's actions against Cooke can be attributed to his failure to keep his programming promises. He promised to continue the agricultural and public service programming initiated by KXLA, but then instantly discarded it. If he had even partially fulfilled his promises, the punishment may have been less severe. There was really no reason for him to continue providing agricultural reports to a rock-and-roll audience; the Commission would not really expect him to. Yet, he promised it and did not follow through. Then later, when he was challenged on it, he attempted to deceive the Commission.

Again, Cooke was no better or worse than some of his contemporaries. The timing of the events contributed significantly to Cooke's license non-renewal, as other broadcasters had committed similar misdeeds previously and faced lighter consequences or none at all.

That is not to condone Cooke's actions. The rules were well-established, and he knowingly violated them. The Commission's harsh penalties were long overdue because the violations of fraudulent contests, falsification of logs, deception, and an alien controlling station operations were all extremely critical. However, those issues were not nearly as important as the fact that Cooke did not live up to his programming promises. That, by itself, was the main thrust of the case.

Since the enactment of the Communications Act of 1934, the number of broadcast stations had risen to 5,800 by the late fifties. Prior to the KRLA case, less than one-tenth of one per cent, actually less than forty-five, had ever experienced license revocation or non-renewal. Of those that did lose their licenses, the majority lost them on technical grounds, usually due to engineering problems or unauthorized transfer of control.

Of the first forty-two stations that lost their licenses, nearly thirty were due to unauthorized transfer of control. Other early stations were guilty of engineering violations; usually the inability to maintain their frequencies. Still others did not respond to questions from the FCC, or just stopped operating and never notified the Commission.

With those cases deleted, there were only five other stations that ever had anything comparable to KRLA's problems during the years from 1934 to 1962, or the first twenty-eight years of the Commission's existence. Although that situation has changed radically since the 1960s, KRLA's non-renewal must be judged by the standards of the late fifties. A mitigating factor in the limited number of non-renewals was that prior to 1960 the Commission was limited in its powers to react. It could either revoke a license or renew it; there were no such things as significant fines or short-term renewals. If a broad-



caster erred, he faced either the serious threat of license revocation or no action at all.

Also, during the 1950s the Commission's attention and concern were focused primarily on the rise of television. The majority of its regulatory functions and engineering work was directed toward television matters such as space allocation, color standards, and the assignment of channels.

At that point, many people thought AM radio was doomed, a thing of the past. But contrary to many predictions, AM radio did not die; it was not supplanted by television or FM. In fact, during that period there were more and more applications being filed for more and more AM stations than ever before, and the AM spectrum became saturated. Thus, the FCC was suddenly placed in the position of evaluating and comparing the performance of broadcasters more critically than ever before to insure the best use of the limited space.

When the KRLA misdeeds occurred, the FCC was under a multitude of different pressures. For one thing, the Commission suddenly had to carefully justify the license assignments it made as applicants competed for them. There was a heavy emphasis placed upon programming in the public interest during this period of strict regulation under FCC Chairman Newton Minow. Although the FCC did not make judgments regarding specific programs, it did

want broadcasters to be more responsive to the needs of their audiences.

In addition, the FCC had been subject to very close Congressional scrutiny, as the Harris Oversight Committee challenged the Commission before Congress in 1957 regarding its ex parte relationships with some of the individuals and businesses it was regulating. A special subcommittee had uncovered enough evidence of misconduct to cause the resignations of two FCC Commissioners and a high-ranking White House official. Bernard Schwartz, chairman of the subcommittee, claimed to have found an "all-pervasive system of personal fraternization" between Commissioners and those whom they regulated.<sup>1</sup> Therefore, Congress was pressuring the Commission to regulate critically and to maintain an unbiased authority over the limited frequencies.

The rise of consumerism and the Ralph Nader attitude toward government added still another watchful eye to Commission proceedings. And while all of those pressures were being placed upon the Commission, AM radio suddenly became extremely financially viable. Stations located in large markets were making enormous profits as the 1950s came to a close.

Thus, it was in this era of strict regulation that

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<sup>1</sup>Bernard Schwartz, The Professor and the Commission (New York: Knopf, 1959), p. 174.

the Commission denied Eleven Ten's application for renewal. Yet, there were still other factors within the make-up of the Commission itself that influenced its decision.

While written laws are essentially stable, inconsistencies in their application are caused by those who interpret and enforce the laws. Historically, the FCC has attached particular significance to certain laws and regulations at different times. Interpretations of laws were often influenced by pressure from outside forces. The FCC sometimes stressed certain policies because of personal convictions within the Commission, because of pressures from Congress, or because of economic factors affecting the broadcast industry.

At any time, we have to question what the present FCC standards are, and what criteria are used to decide whether those standards have been maintained. The standards have not been consistent, nor have precedents always served as model examples. There have been shifts in the importance attached to regulatory trends and criteria, as well as notable variations in its enforcement. Where laws and regulations embody the steadfast structure of broadcast standards, interpretation of those laws is not defined with the same precision.

The regulatory activities of the FCC have changed in direction and emphasis many times. Sometimes the Commission's stands have been harsh and at other times they

have been quite flexible. Sometimes its central concern has been programming, yet, at other times the concern shifted to engineering problems, technical problems, economic problems, or other matters.

Lawrence Lichty contends that changes in the direction and emphasis of FCC regulation are a function of the members serving the Commission at any particular time. He suggests that each Commissioner's personal experience, education, occupational background, and general government philosophy directly influence the agency's policies.<sup>2</sup>

In a study of forty-four Commissioners who served from 1927 to 1961, Lichty found that the emphasis on policy could be classified into seven different periods, and the Commissioners could be categorized into specific homogeneous groups. For example, Commissioners with engineering backgrounds were prevalent during the "technical" period, while the "trustbusting" era was characterized by lawyers familiar with government regulation.<sup>3</sup>

In summary, he notes:

. . . the "commission" has frequently been criticized as if it were a static, permanent, and unchanging body. However, this clearly is not the case. "The Commission" has been composed of men with diametrically opposed ideas of the agency's proper role. There is no one "commission" as has frequently been described by its critics. Instead there have been

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<sup>2</sup>Lawrence Lichty and Malachi Topping, eds., American Broadcasting: A Source Book on the History of Radio and Television (New York: Hastings House, 1975), pp. 612-621.

<sup>3</sup>Ibid.

a number of "commissions" at different times with divergent opinions as to how broadcasters should be regulated . . .<sup>4</sup>

These comments on the state of flux within the Commission, and the many directions it has veered, again support the contention that timing played a significant role in the KRLA decision. It was judged from an evolving set of criteria that might well have been interpreted and applied differently at another time. Viewing the case in light of these factors, one must wonder just how much of the decision stemmed from unaffected neutral application of FCC policy, and just how much was a response to the aforementioned factors.

It can be successfully argued that the FCC needs the power to maintain and regulate the standards of broadcasting in the best interests of the public.<sup>5</sup> Yet, although specific laws concerning those standards have been codified, the method of enforcing them has not. In other words, the FCC has been entrusted to regulate as it sees fit, weighing each situation individually. Other cases have been both supportive of and contrary to the KRLA decision.

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<sup>4</sup>Ibid.

<sup>5</sup>However, that has not always been the case. For example, instead of encouraging open competition and a free market place, the FCC has regulated CATV to "supposedly" protect commercial TV. With its regulations concerning exclusivity and imported signals, it has sometimes operated in the best interests of the broadcasters rather than in the best interests of the public.

It is important to note that the FCC examiner's initial decision favored a short-term renewal for Eleven Ten. That recommendation best reflected the Commission's attitude at that time. And thus, conclusions made prior to this, that Cooke's actions were not as flagrant as the non-renewal would indicate, are supported by the fact that the examiner studied the case and recommended a short-term renewal. That decision indicated that the behavior of the licensee was felt to be no worse than that of many other broadcasters.

The examiner truly believed that was how the Commission would have responded had it heard all of the evidence. As an extension of the Commission, he behaved in a manner that he believed was consistent with the Commission's beliefs and expectations.

The same argument holds true in the comparative hearings. After five years of hearings, the examiner recommended Voice of Pasadena. Again, he acted the way he thought would best reflect the Commission's attitudes. At that time, the FCC was extremely concerned with the widespread control of communications media by a few large interests. Therefore, the selection of Voice, owned by fifty-six people with only one small newspaper connection, was consistent with the Commission's priorities.

Although the examiner's decision was overturned, the reversal of an examiner's initial decision is usually

the exception rather than the rule. In this case, the examiner was operating under prior Commission "guidelines," which were primarily concerned with the viability of AM, the saturation of the spectrum, and the rise of consumerism. His decisions were overturned because the priorities in the Commission's unwritten guidelines were changing even as the examiner studied the case.

Generally, a decision is overturned in only two to three per cent of the cases that the Commission hears. Of course, the decisions can be amended or challenged with the addition of new information, but usually an examiner's decision truly reflects the Commission's feelings.

Finally, the KRLA case brought about two "firsts" for the FCC. It was the first time that an interim operation was ever set up to maintain a viable channel, and it was the first time that an interim operator, or any licensee, ever attempted to respond to revocation proceedings with a statement of mitigation.

Perhaps the Commission never acted upon the statement because it saw that the resolution of the comparative hearings was near. Perhaps it did not want to set precedent by making any judgment on the statement. The FCC may have preferred to continue its method of hearings, as it did not have a procedure for handling the statement of mitigation. Should it challenge the statement? Should its attorneys answer the statement? That issue was never re-

solved. The procedure was attempted by Oak Knoll, but its success or failure was never acknowledged.

The long, complicated KRLA case may indicate the directions in which the current Commission is moving. This contemporary history of decisions that were made and overturned several times before the case was settled, and indeed, the very way in which the case was ultimately settled, lend insight as to how the standards and values of the current Commission are continually evolving. As the 1980s open, the mood of the Commission, with its emphasis on programming promises versus performance and programming in the public interest, indicates a trend of less and less formal regulation accompanied by more and more broadcaster responsibility.



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SOUTHERN CALIFORNIA

# L.A.'s KRLA Radio Plays Rock 'n' Roll Swan Song

■ **Radio:** The venerable station drops music in favor of talk format. 'It's a sad day,' one listener says.

By BOB POOL  
TIMES STAFF WRITER

They couldn't stop talking Sunday—the day the music died.

After nearly 40 years of Elvis, Fats Domino and the Four Tops, Los Angeles radio station KRLA-AM (1110) pulled the plug on rock 'n' roll music. And listeners weren't happy.

"It's a sad day. We're recording you as long as we have empty tapes," telephoned a listener named Sherry from Garden Grove.

night show beginning Thursday on KRTH. Because the two stations are now owned by the same company, CBS, Hugg even got away with playing the KRTH jingle along with KRLA's.

"We've gotten calls all week long from people actually crying," said Hugg, 70, of Pico Rivera.

"One lady said she lit candles and prayed for me during my last morning show. I said, 'Lady, I didn't die! I'm just going uptown.'"

Upscale is what Hugg really means. The clearer, cleaner FM stereo broadcast signal has been the favorite of music listeners for at least 25 years.

But it was the AM broadcast band that was hot in 1959, when KRLA went on the air playing nonstop rock music from a Pasadena hotel. The station competed first with KFVB-AM (980) and later with KHJ-AM (930) for teenage listeners. Both of those stations changed programming formats years ago.

In the early days, youngsters would hang out at the hotel, hoping for a glimpse of their favorite KRLA disc jockeys. Darryl Evans of Sherman Oaks remembers taking two buses from the San Fernando Valley to reach the station.

"I'd knock on the glass window and try to get in," he said. "I lived that station seven days a week—I'm surprised I got through high school."

Evans parlayed his interest in KRLA into his own broadcasting career; these days he syndicates his own oldies music show. So on Sunday, Hugg invited him into KRLA's current mid-Wilshire studios to say goodbye.

"KRTH plays the same 300 tunes over and over," Evans opined, bemoaning KRLA's demise. Not to worry, replied Hugg. Officials of the two stations have given him the OK to bring copies of some songs heard only on KRLA, he said.

KRLA engineer Jay Corrales assisted Hugg during the final hours of the final show. Corrales, of

Monrovia, began working for Hugg for free in 1990, pulling song cartridges from the station library and answering phone calls.

"I know all these songs by heart," Corrales said. "This is the station my family listened to. I grew up listening to it. It's a sad day."

Hugg, who worked at 10 Los Angeles-area radio stations before joining KRLA in 1984, said Sunday that his switch to the FM dial with its wider listening audience may be his biggest career move yet.

"This may be my big shot. I've been up for a star on Hollywood Boulevard. My fans sent in \$8,000 for it a few years ago," he said. "Maybe now I'll get it."

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# Commentary

**DRAWINGBOARD / DANZIGER**

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11-23-98

# KRLA's Switch to Talk Will End Rock Era on AM Dial in L.A.

**Radio** • Some are nostalgic about a station that retained family appeal to the end. Others say change is overdue.

By STEVE HOCHMAN  
SPECIAL TO THE TIMES

Listen closely just before talk-jock Don Imus takes the air the morning of Nov. 30 on KRLA-AM (1110). You'll hear the sound of an era breathing its last gasp.

With the station's shift to a full-time talk and sports lineup, it will mark the last of rock 'n' roll and rhythm & blues on the AM dial in the Los Angeles area. It closes the book on a legacy that started when the station was KXLA, playing country music with such deejays as Tennessee Ernie Ford and humorist Stan Freberg, housed at the Huntington Sheraton Hotel in Pasadena, and continued on a path consistent enough that it's considered the longest-running format on one station in L.A. radio history.

Surviving financial disaster after being taken away by Federal Communications Commission action from owner Jack Kent Cooke in 1962, KRLA was the first here to hop on the swelling wave of Beatlemania, gaining the upper hand in the youth wars with KFWB's "Color Radio" and KHJ's "Boss Radio." Kids huddled beneath their bed covers, listening on transistor radios to such inimitable personalities as Huggy Boy, Humble Harv, "Emperor" Bob Hudson, Dave "The Hullabalooer" Hull, Casey Kasem and Johnny Hayes. This was the station that brought the Beatles' historic Hollywood Bowl concerts in 1964 and '65, promoted by then-deejay Bob Eubanks, who literally mortgaged his house to stake the enterprise.

"I was fortunate enough to be in on the most glorious time, which was the discovery of the Beatles invasion," says Hayes, who was at KRLA for 27 years beginning in 1965 and now works afternoons at oldies station KRTH-FM (101.1). "I'm approaching 40 years in the business, and I have never seen a station before or since where kids were not only allowed but welcome to come to the station. Hundreds of kids were at the station from the moment they got home from school until 10 at night. They knew what minute a jock would arrive and run to his car hoping to carry his briefcase. [Deejay] Dick Biondi would sit on the steps and help kids with homework and discuss their personal problems. It was the most exhilarating experi-



File Photos

Art Laboe, left, emphasized R&B and soul at KRLA starting in the mid-'70s. Dick "Huggy Boy" Hugg was a popular deejay in KRLA's early days.

ence of my life."

Fortunes varied as rock listeners fled to superior-sounding FM in the early '70s, but after a series of tamperings with the operation, the station again emerged under the guidance of "Golden Oldies" entrepreneur Art Laboe in 1976 as the station of choice for the largely ignored Latino audience by emphasizing R&B and soul favorites. That got another boost when Greater Media—later consumed by CBS—bought the outlet in 1985, moving it from the Pasadena hotel (which was being closed at the time for renovation) to the Wilshire district and hiring back a lot of the deejays from the glory days.

## The Right Move, Commercially

But the audience soon thinned, and what was long inevitable or even overdue, is finally happening.

Surprisingly, those close to the legacy are not shedding many tears.

"From a commercial standpoint, it's the right move for KRLA," says Laboe, a veteran of the KXLA days who had a stint at the station as recently as last year. "They have hockey and baseball games already now."

Still, he can't help but be a bit sentimental and sad, thumbing through photos he has of drive-in broadcasts he did with such performers as Ricky Nelson and Chuck Berry, swarmed at the site by swooning teens and scoring now-unthinkable 33-share ratings.

"If you're anybody who grew up in L.A., you're married to the days when radio was like that," he says.

Huggy Boy—Dick Hugg, who was barely out of his teens when he became an L.A. radio fixture broadcasting R&B records from the sidewalk-window vantage of the

famed Dolphin's of Hollywood music store—says that, indeed, KRLA to the end remained a real family affair among radio listeners. Literally. To this day, when he makes public appearances—especially in East L.A., where the station's most loyal following remains—he's struck by the clusters of grandmothers, children and grandchildren who turn up.

"There's not any one kind of music they can play for all ages and groups anymore," he says. "There's no real Top 40 that crosses generations and culture. But this still does that."

But the truth is that the golden oldies the station has survived on for the second half of its existence—"Duke of Earl," "Cowboys to Girls," Motown favorites—are just a ghostly echo of a heyday long passed. The coming switch, says L.A. radio historian Don Barrett, author of "Los Angeles Radio People," is merely a belated pulling of the life-support plug, a mercy killing.

"The station died in 1971," he wrote in an open letter on his <http://www.laradio.com> Web site last spring, as speculation increased that a format switch was in the offing. "Please shoot the animal and put it out of its misery."

With it actually happening, Barrett remains sanguine. "It should not be looked at with nostalgia or sadness," he says. "The fact of the matter is, times have changed. FM, whether oldies or any other kind of music—there's no comparison from AM. It was doomed a long time ago, and it was clear management was not promoting it at all. Time had passed it by."

Actor-writer Michael McKean

came on board at KRLA just as times began to change in 1970, when he joined the comedy troupe the Credibility Gap, founded as a satire news team by Harry Shearer, Richard Beebe and Lou Irwin. The act was the product of the free-wheeling spirit of the times and a natural evolution of the irreverence that was key to rock 'n' roll radio. But real rock radio was already making the move to FM.

## Permanent and Predictable

"I remember being 21 then and thinking, 'I don't really know much about show business, but I perceive that radio's different than anything else,'" he says. "Nothing quite as strangely impermanent and scary as radio."

The irony is that, in trying to retain its heritage during the last 13 years, KRLA became as permanent and predictable as anything on the air.

"I realized the other day that I probably hadn't gone to 1110 on my car radio in five years," McKean says. "I said, 'I wonder what they're playing—probably a Four Tops song.' And there it was, the Four Tops, 'Reach Out.'"

But the story may not be over. KRLA General Manager Bob Moore, who came on board in 1985, says the Four Tops song and all the rest in the library are being packed up for storage, ready for use if someone wants to resurrect the station someday.

"KRLA is not dead," he says. "It's resting."

But Johnny Hayes isn't so sure. "It's already had more than nine lives."



COUNTERPUNCH

**Movies • Lebanese**  
American actor Tony Shalhoub says 'The Siege' is fair and balanced.

BY ED LEIBOWITZ  
SPECIAL TO THE TIMES

A character actor's job never entirely free from disorientation, but Tony Shalhoub underwent more than his fair share while filming two of this year's aspiring blockbusters. On the Los Angeles set of the December release "A Civil Action," he assumed the mantle of Kevin Costner, a Boston Irish lawyer fighting beside John Travolta on behalf of parents whose children were

insulted yet again. At a time when peace is gaining its deserved currency as the way forward in the Middle East, films like this serve only to perpetuate the simplistic notions that have fueled wars.

This is a mere fragment of my—and others'—thoughts on this deplorable situation. It is my hope that some day soon we achieve a fair and balanced view of the differences in this world and represent them so. Irresponsible representations can only aggravate and further alienate our already maligned culture and peoples. Wounds will never heal when this kind of insensitivity is peddled.

Shame on all associated with the making of this film. Shame on Mr. Shalhoub, Ms. Benning, Mr. Washington, Mr. Willis and Mr. Zwick for what will only be construed by many as a green light for the hatred and ridicule of them by others.

Mohamed Sharif is an L.A.-based architect.

Writers' Assistants Aren't Gofers, They're Part of a Creative Team

Counterpunch Letters

Steve Tatham does a disservice to all writers' assistants when he indicates that all they do is fetch the producers' coffee. ("A TV Crisis Worthy of the Newest Batch of Sitcoms," Counterpunch, Nov. 9).

Writers' assistants serve a vital function in the production of sitcoms. So vital a function that there have been attempts to unionize them as part of the Writers Guild of America. I am all for that attempt, should it be resurrected.

A writers' assistant (yes, that's a plural possessive of the word "writer") spends the entire day with the staff of writers as they rewrite each draft of what was submitted by the initial first draft writer. The assistant, in effect, is responsible for the finished product, which is duplicated and sent out to the actors, directors, crew and hundreds of other studio and network employees. For it is from that script that the half-hour episode is produced. Believe me,

if an extra space or, God forbid, a misplaced comma is left in the middle of a line of dialogue, the writers' assistant will hear about it.

The writers' assistant is a combination of an organizer, proofreader, editor and, yes, joke-pitcher . . . since he or she is at the table with the writers and able to be involved in the process of rewriting (if the show runner is open to it).

It is the writers' assistant who, in my opinion, is most ready to be promoted to a position of writer because he/she has been involved in the process (yes, it is a process) of writing the episode and readying it for the camera and audience. It is the writers' assistant who has been paid on a weekly basis for an education in sitcom production like no other available today.

Yes, I have been a writers' assistant. No, I have not been given a script assignment or been made a staff writer or story editor. Yes, I could fill that slot in a heartbeat.

And no, I've never provided a single producer with a cup of coffee.

ROBERT BRISCOE EVANS  
Studio City

Counterpunch is a weekly feature designed to let readers respond to reviews or stories about entertainment and the arts. Please send proposals to: Counterpunch, Calendar, Los Angeles Times, Times Mirror Square, Los Angeles CA 90053. Or fax: (213) 237-7630. Or e-mail: [Counterpunch@latimes.com](mailto:Counterpunch@latimes.com). Important: Include full name and phone number. Please do not exceed 600 words. We appreciate all proposals and regret that we cannot respond to each.

WEEKEND REVIEWS

Purity, Smoothness of Battle's Voice Please, Despite Mannerisms

Music Reviews

Philosophers may ponder the order of the chicken and the egg, but at soprano Kathleen Battle's Rovece Hall recital Satur-

a crack, provided murmurous and deferential accompaniment.

Turina's "Tu Pupila es Azul," with its echo of the earthy cry of a flamenco *cantaora*, suffered the most from Battle's ultra-smooth delivery, slow tempos and tendency to tug at rhythms. She restarted Strauss' "Mädchenblumen" when a member of the

Diverse Styles Don't Inhibit Singer-Pianist Collaboration

Jazz Review

Fans of jazz singing will find no better place to satisfy their musical cravings than Cá Del Sole Ristorante in North Hollywood. The restaurant's intimate performance room programs singers seven nights a week (with an occasional instru-