

U.S. **FEDERAL COMMUNICATIONS
COMMISSION REPORTS**

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

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July 1, 1938 to February 28, 1939

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DECISIONS
FEDERAL COMMUNICATIONS COMMISSION

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D. C.

In the Matter of FLOYD A. PARTON, SAN JOSE, CALIFORNIA. For Construction Permit	}	DOCKET No. 4560
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Decided July 1, 1938

Ben S. Fisher and John W. Kendall on behalf of the applicant;
Elmer W. Pratt on behalf of Station KGDM and KQW; *Arthur W. Scharfeld and Philip G. Loucks* on behalf of George H. Payne.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION (Payne, Commissioner, not participating) :

STATEMENT OF FACTS

This proceeding arose upon an application of Floyd A. Parton for construction permit for a radiobroadcast station to be established in San Jose, California, to operate on the frequency 1170 kc. (a clear channel), with power of 250 watts, daytime. On January 10, 1938, a hearing was held on this application before an examiner, who, in his report (I-599), recommended that it be granted. To this report exceptions were filed by the following respondents: Pacific Agricultural Foundation, Limited, E. F. Peffer, and George H. Payne. Oral argument was heard by the Commission on May 5, 1938. The exceptions do not raise any questions not necessarily involved in a determination of the application on its merits.

Floyd A. Parton is a resident of San Jose, California, and is a citizen of the United States. He received his high school education in San Jose and is a graduate of Stanford University. Mr. Parton has been engaged in the banking, insurance, and brokerage business in San Jose since 1910. At the present time he is President of the First Federal Savings and Loan Association and is a director of the First National Bank, both located in San Jose, California. Mr. Parton has had no experience in the operation of a radiobroadcast station.

As of December 20, 1937, Mr. Parton had assets of \$152,368.07, consisting of \$501.40 in cash, \$6,666.67 in notes and accounts re-

ceivable, \$103,200 in stocks and bonds, and \$42,000 in real and personal property. There are liabilities of \$37,250, leaving a net worth of approximately \$115,118. The funds to cover the construction cost and initial operation of the proposed station are to be derived from the sale of a portion of the applicant's stock. In addition, a tract of Mr. Parton's real estate will be sold if the funds from the sale of the stock should not be adequate. Mr. Parton's personal income has averaged between seven and nine thousand dollars per annum for the past few years.

The estimated cost of erecting the proposed station is \$18,750, and the operating cost is approximately \$2,208 per annum. The estimated revenue to be derived from the sale of time of the proposed station is expected to exceed \$900 per month.

The transmitting equipment proposed to be installed for the operation of the proposed station meets with the technical requirements of the Commission. The antenna and transmitter site have not been determined, but will be selected subject to the approval of the Commission.

The applicant will employ a qualified and experienced staff to insure the efficient operation of the proposed station and will personally supervise and direct the policies thereof. Mr. Parton will devote a minimum of 50% of his time to said station. There will be eight regular employees required for the initial operation thereof. In addition, two staff musicians will be employed for use on the sustaining programs. Tentative arrangements have already been made for the employment of a chief engineer and a station manager, both of whom are at present employed by a radiobroadcast station.

According to the 1930 United States Census, the population of San Jose was 57,651, and Santa Clara County, of which San Jose is the county seat, embraces a population of 145,118. A number of small communities located within the trade area of San Jose have population as follows: Santa Clara, 6,302; Willow Glen, 4,167; Mountain View, 3,308; Los Gatos, 3,168; and Sunnyvale, 3,094. All of the communities are within a radius of ten miles of San Jose. The United States Department of Commerce census of retail business for 1935 shows that San Jose has 1,056 retail stores, with gross sales of approximately \$31,049,000. In addition San Jose has approximately 40 fruit-canning factories and 30 packing houses. The occupations of the inhabitants of the rural area of this community are largely agricultural.

The City of San Jose receives primary broadcast service from the following station: KQW, San Jose, California, operating on the frequency 1010 kc., with power of 1 kw., unlimited time; KFRC,

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San Francisco, California, operating on the frequency 610 kc., with power of 1 kw. night, 5 kw. day, unlimited time; KPO, San Francisco, California, operating on the frequency 680 kc., with power of 50 kw., unlimited time; KGO, San Francisco, California, operating on the frequency 790 kc., 7½ kw. power, unlimited time; and KSFO, San Francisco, California, operating on the frequency 560 kc., with power of 1 kw. night, 5 kw. day, unlimited time. In addition to the above stations, service is received in the residential sections of San Jose from Station KYA, San Francisco, California, operating on the frequency 1230 kc., with power of 1 kw. night, 5 kw. day, unlimited time, from KLX, Oakland, California, operating on the frequency 880 kc., 1 kw. power, unlimited time, and from KROW, Oakland, California, operating on the frequency 980 kc., 1 kw. power, unlimited time. Service to the rural areas around San Jose is rendered by Station KJBS, San Francisco, California, operating on the frequency 1070 kc., 500 watts power, limited hours of operation.

The sample program of the proposed station, submitted in evidence, represents proposed broadcasts for one typical day. The schedule is designed to provide a large proportion of the time of the station to religious programs, as well as agricultural reports and topics which would be of local interest to San Jose. Time will be donated to civic, religious, and charitable organizations of this community. The applicant contemplates installing remote lines to the various public halls, and hotels in San Jose, and to Santa Clara University, for the broadcast of programs of public interest originating therein. Tentative arrangements have been made for the use of the United Press service and for a transcription service. The applicant does not contemplate affiliating with a chain broadcasting system. Approximately 43% of the time of the proposed station will be supported by live talent for the production of both commercial and sustaining programs, and 57% of the time will be devoted to transcription service.

Station KQW, located at San Jose, California, has furnished time to civic, religious, and charitable organizations of San Jose whenever time is desired by them. In addition, educational programs have been broadcast by KQW from the local high schools and Santa Clara University at designated intervals. Daily agricultural programs of general public interest to this community are broadcast by said station.

The City of San Jose has numerous elementary, parochial, and high schools; San Jose State College, Santa Clara University; and approximately 40 churches, as well as local music societies, dramatic organizations, and individual musicians from which live talent is

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available to support the programs of the proposed station. Much of the talent in San Jose is now being utilized by KQW.

The operation of the proposed station would not be expected to cause interference to existing radiobroadcast stations, as the actual mileage separations are equal to or greater than that considered necessary under average conditions. However, the applicant seeks daytime operation with only 250 watts power upon the frequency 1170 kc., which is a clear channel as designated by Rule 116 of the Federal Communications Commission. From an allocation standpoint, the use of a clear channel frequency for a station operating with 250 watts power, daytime, would not be considered as an economical use thereof unless a great public need exists therefor, and a higher power would cause undue interference to an existing radiobroadcast station (Marysville-Yuba Publishers, Inc., Docket No. 3784).

GROUNDS FOR DECISION

On the record in this case, the Commission finds:

1. The record does not disclose a public need in San Jose, California, for additional broadcast service of the character proposed herein.

2. The applicant has failed to show that the proposed program service will be materially distinctive in character from that already available in San Jose to render any substantial benefits to the listening public.

3. The use of a clear channel frequency for daytime operation, as proposed herein, would not be an economical use of such frequency in the absence of a strong public need therefor and is contrary to good engineering practice.

4. A grant of this application will not serve public interest, convenience and necessity.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D. C.

In the Matter of
CURTIS RADIOCASTING CORPORATION,
EVANSVILLE, INDIANA. } DOCKET No. 4607.
For Construction Permit.

Decided July 1, 1938

Henry B. Walker on behalf of the applicant; *Horace L. Lohnes* and *E. D. Johnston* on behalf of Station WBNS; *Paul D. P. Spearman* and *Alan B. David* on behalf of Station WIRE; *J. C. Trimble* on behalf of Station WKBV; *Walter Johnson* on behalf of the Commission.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION (Payne, Commissioner, not participating):

STATEMENT OF FACTS

This proceeding arose upon an application of the Curtis Radiocasting Corporation for a construction permit to authorize the establishment of a new radiobroadcast station at Richmond, Indiana, to be operated on the frequency 1420 kilocycles with power of 250 watts day and 100 watts night, unlimited time. On September 7, and 8, 1937, a hearing was held on this application before an examiner, who, in his report (I-556), recommended that it be denied. Exceptions to this report, filed by the applicant, raise no question not necessarily involved in the determination of the application on its merits. Oral argument was heard before the Commission on March 31, 1938.

The Curtis Radiocasting Corporation was organized under the laws of the State of Indiana and is authorized to engage in the business of radiobroadcasting. All of the officers, directors and stockholders are citizens of the United States. None of the officers or directors resides in Richmond.

The applicant owns all of the capital stock of two operating companies, namely, Banks of Wabash, Inc., licensee of Station WBOW, Terre Haute, Indiana; and Evansville on the Air, Inc., licensee of 6 F. C. C.

stations WGBF, WEOA, and W10XDD, Evansville, Indiana. As of July 31, 1937, the consolidated balance sheet of the applicant corporation and of its two subsidiaries show current assets of \$28,879.90, including \$15,033.93 in cash and approximately \$43,000 in fixed assets; current and accrued liabilities of \$15,043.16, and total liabilities, apart from the capital stock, of \$24,478.51. In 1936 the applicant paid a dividend on its Class A stock and transferred \$14,258.64 to its surplus account. There is listed on the balance sheet the sum of \$130,171.96 as good will, which represents the amount paid by the applicant in excess of actual asset value to the former owner of its subsidiary companies.

The total cost of construction of the proposed station is estimated at \$8,050, and the total monthly operating expense at \$2,236. The applicant has received five written commitments, totaling \$1,076, for the purchase of time over the proposed station during the first month of operation.

According to the United States Census of 1930, Richmond, Indiana, had a population of 32,493. The United States Census of Business for 1935 shows retail sales at Richmond of \$13,410,000.

Primary broadcast service is rendered to Richmond, Indiana, by Station WKBV (located therein) operating on the frequency 1500 kilocycles with power of 100 watts. At the time this hearing was held WKBV operated during specified hours. On May 13, 1938, the Commission authorized this station to operate unlimited time. Service which is satisfactory for the residential sections of Richmond is also available from Station WLW, Cincinnati, Ohio. During evening hours distant clear channel stations render secondary service to this area.

The applicant herein proposes "to provide Richmond with an adequate service * * *," and to "serve public interest, convenience, and necessity by rendering continuous service throughout the day and evening and by broadcasting many educational, religious, agricultural and civic programs which are not now and have never been broadcast by the present local station." The fact that Richmond, Indiana, is now served by a broadcast station (WKBV) operating unlimited hours disposes of the contention that continuous service is not available to this area.

The applicant would offer approximately the same type of service as is now being broadcast by stations of which its subsidiaries are licensees. The policy of these stations has been to extend the use of their broadcast facilities to all religious, charitable, and educational institutions free of charge. There was no showing, however, that the applicant would provide a definite program service which

would be adapted to meet the peculiar needs of the Richmond area, or which would be substantially different from that already available from Station WKBV.

The record discloses that Station WKBV presents a varied program including religious, charitable, educational, and entertainment features, livestock and grain market quotations, daily sports reviews and news reports. The last mentioned program consists of commentaries based on material received from various leading publications. Arrangements to amplify this service are being made with small newspaper agencies in the surrounding communities. A studio is being established in a local college for the purpose of broadcasting activities therefrom. Furthermore, it is the policy of WKBV to extend its facilities free of charge to religious, educational, charitable, and similar institutions.

In support of its proposal, the applicant contended in substance, among other things, that Station WKBV does not render an efficient broadcast service to the Richmond, Indiana, area. The applicant does not, however, apply for the facilities of this station. Had said applicant desired to supplant the existing service, this course should have been followed. As this was not done, the application must be considered as one for facilities in addition to the existing assignment. The applicant's claim that a need exists for an additional station cannot, therefore, be supported by a contention that the facilities now allotted to Richmond are not being put to their maximum usefulness (See the Commission's decision In the Matter of WSMB, Inc., New Orleans, Indiana, For Construction Permit, Docket No. 4530—Decided January 12, 1938).

The proposed transmitting equipment conforms with the requirements of the rules and regulations of the Commission. The transmitter site would be selected subject to the approval of the Commission. Experienced personnel would be employed to insure the efficient operation of the proposed station.

Station WLAP, Lexington, Kentucky (operating on the frequency 1420 kilocycles with power of 100 watts night and 250 watts L. S., unlimited time) is located at a shorter distance from Richmond than that considered necessary under average conditions to avoid objectionable interference with the operation of a broadcast station as proposed herein. Objectionable interference is predicted to approximately the 2.1 millivolt per meter contour of the service of WLAP and to the service of the station proposed.

Station WBNS, Columbus, Ohio (operating on the frequency 1430 kc., with power of 1 kilowatt night and 5 kilowatts day); and WSMK, Dayton, Ohio (operating on the frequency 1380 kc., with power of 200

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watts, simultaneous operation day, and specified hours night) are also located at shorter distances from Richmond than those considered necessary under average conditions to avoid objectionable interference with the operation of a broadcast station as proposed herein. As the frequencies involved in these assignments are above the average and the conductivity in the intervening terrain is slightly below average, objectionable interference is not predicted to the services of any of these stations. WIRE, Indianapolis, Indiana (operating on the frequency 1400 kc., with power of 1 kilowatt night and 5 kilowatts day, unlimited time) is located at a shorter distance than necessary under ordinary conditions to avoid objectionable interference with the operation of a broadcast station as proposed herein. By reason of the same factors heretofore pointed out and, in addition, the fact that WIRE operates with a directional antenna, no objectionable interference is predicted to its service or that of the proposed station.

There is pending an application from Station WSMK for increase in power for both day and night operation. For the reasons stated in the preceding paragraph, no objectionable interference is predicted to the service of WSMK (operating as proposed) or to the service of the station proposed herein.

GROUNDS FOR DECISION

1. In Richmond, Indiana, no need is shown for additional broadcast service of the character proposed herein.
2. There is not sufficient evidence in this record to indicate that there are adequate sources of commercial support available in Richmond, Indiana, to insure the successful operation of two broadcast stations.
3. The granting of the application will not serve public interest, convenience, and necessity.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D. C.

In re the Matters of
WESCOAST BROADCASTING COMPANY¹ (KPQ),
WENATCHEE, WASHINGTON. } DOCKET No. 4576.
For Construction Permit.

and

OREGON RADIO, INC. (KSLM),
SALEM, OREGON. } DOCKET No. 4621. ▶
For Construction Permit.

Decided July 1, 1938

In Docket No. 4576, *Clarence C. Dill* and *James W. Gum* on behalf of the applicant; *Ben S. Fisher* and *John W. Kendall* on behalf of Station KSLM; *Horace L. Lohnes*, *Fred W. Albertson* and *E. D. Johnston* on behalf of Station KLPM; *Hugh B. Hutchison* on behalf of the Commission.

In Docket No. 4621, *Ben S. Fisher*, *John C. Kendall*, and *John W. Kendall* on behalf of the applicant; *Clarence C. Dill* and *James W. Gum* on behalf of Station KPQ.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION (Payne, Commissioner, not participating):

STATEMENT OF FACTS

These proceedings arose upon the following matters:

1. An application of the Wescoast Broadcasting Company (licensee of radiobroadcast station KPQ, Wenatchee, Washington) for authority to operate on the frequency of 1360 kc., with power of 1 kw., unlimited time. The station now operates on 1500 kc., with power of 100 watts at night and 250 watts until local sunset, unlimited time.
2. An application by Oregon Radio, Inc. (licensee of radiobroadcast station KSLM, Salem, Oregon), requesting authority to operate on the frequency 1360 kc., with power of 500 watts, unlimited time.

¹ The Commission on August 31, 1938, denied petition of applicant for rehearing and/or reconsideration.

The station now operates on the frequency of 1370 kc., with power of 100 watts, unlimited time.

The application of the Wescoast Broadcasting Company was heard July 8, 1937, before an examiner, who, in his report (I-499), recommended that it be granted. Exceptions thereto were filed by Oregon Radio, Inc., and oral argument was heard on February 10, 1938. The exceptions to the Examiner's Report raise no questions not necessarily involved in the determination of this application on its merits.

The application of Oregon Radio, Inc., was heard September 28, 1937, before an examiner, who, in his report (I-546), recommended a grant thereof. Oral argument thereon was heard on March 30, 1938.

The distance between Wenatchee, Washington, and Salem, Oregon, is 215 miles, whereas the separations considered necessary under average conditions to avoid objectionable interference through the simultaneous operation of Stations KPQ and KSLM, as proposed, are, respectively, 1,000 miles at night and 300 miles during the day. Should both applications be granted, severe interference would occur to the service of each station during simultaneous hours of operation at night, mutually objectionable interference would also occur in the daytime, principally during the late afternoon hours. Under such conditions, it is predicted that during nighttime hours the service of Station KPQ would be limited to approximately the 4.7 mv./m. contour, and that of Station KSLM would be limited to approximately the 6.7 mv./m. contour. As stations operating on the requested assignments are normally protected to their 1 mv./m. contours at night, a grant of either application necessarily would preclude favorable action on the other.

IN RE DOCKET NO. 4576

Station KPQ, Wenatchee, Washington, is owned and operated by the Wescoast Broadcasting Company, the applicant herein. Mr. Rogan Jones, of Aberdeen, Washington, is president and owns 80% of the outstanding stock; Mr. Cole E. Wylie of Wenatchee, Washington, is station manager, and at the date of the hearing was purchasing 10% thereof; and Mr. Tom Schafer of Bellingham, Washington, owns the remaining 10%. The president of the applicant corporation also owns 80% of the stock in KVOX, Inc., licensee of Station KVOX, Bellingham, Washington. Mr. Wylie is also the owner of 10% of the stock in the latter corporation.

The aggregate net assets of the applicant total \$48,215.93; consisting of current assets, \$9,465.90; deferred assets, \$3,515.91; and fixed assets, including studio, transmitter, equipment, etc., less depreciation, \$35,234.12. Current liabilities amount to \$1,141.69; deferred

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liabilities \$5,955.31; leaving a net worth of \$41,118.93. The annual net income of the station increased from \$889.30 in 1933 to \$5,382.33 in 1936.

The composite transmitting apparatus now in operation and proposed to be used on the requested assignment complies with the requirements of the rules and regulations of the Commission. However, the selection of the antenna and site has been made subject to Commission's approval, inasmuch as it appears that the site proposed by the applicant is such that the "blanket area" of Station KPQ, operating on the requested assignment, would include an excessive number of persons.

According to the 1930 U. S. census, Wenatchee had a population of 11,627, and it is estimated that a total population of 30,000 is embraced within a 21-mile radius, the remainder of the valley being very sparsely settled. Apples constitute the principal crop, and the production thereof varies from approximately 15,000 to 25,000 cars annually. The estimated 1937 production was 16,000 carloads.

Two daily newspapers are published in Wenatchee; one in the morning, with largely a city circulation, and the other, an afternoon paper, with an estimated circulation of 10,000, is distributed both in the city and the surrounding rural area.

Radio service in Wenatchee and the surrounding area is furnished by Station KPQ, and to a certain extent by Stations KGA and KHQ, Spokane; KJR and KIRO, Seattle; and KVI, Tacoma, as well as from distant clear channel stations. Wenatchee receives very good nighttime service from KVI, and fair rural service during the daytime from Stations KVI and KJR.

The station renders services of a seasonal nature to orchardists in connection with the dissemination of pest control data and weather reports. The information concerning pest control and warnings of unexpected frost are of peculiar value to the Wenatchee apple district. It was urged by the applicant that the increased facilities sought would enable the station to extend its special horticultural services during appropriate seasons of the year to orchardists located beyond the present service area of Station KPQ.

The applicant specializes in the dissemination of news, which is obtained from the facilities of a leased-wire service. A general news service is also provided which is of interest to the people in the City of Wenatchee and its surrounding trade area. Local announcements are made regarding various social, educational, and religious matters. The Station, on the whole, renders a generally meritorious program service.

There are four stations located at shorter distances from Wenatchee, Washington, than those considered necessary under average conditions.

tions to avoid objectionable interference during nighttime hours to or from the operation of a broadcast station as proposed herein. It is not predicted that there will be any objectionable interference during daytime hours to or from the operation of Station KPQ as proposed. Station KEEN operates on 1370 kilocycles, with 100 watts power, sharing time with Station KRKO. KEEN is located at Seattle, Washington, 93 miles airline from Wenatchee. Station KRKO operates on the same frequency (1370 kilocycles), with 50 watts power, and is located at Everett, Washington, approximately 96 miles airline from Wenatchee. Due, however, to the attenuation of the frequencies involved in these assignments, and to the conductivity of the intervening terrain, no objectionable interference is predicted.

Station KGER operates on 1360 kc., with 1 kw. power, unlimited time, at Long Beach, California, about 950 miles from Wenatchee. Should the applicant operate as proposed, it is predicted that it would contribute objectionable interference slightly within the normally protected 1 mv./m. contour of Station KGER at night; however, there would be no objectionable interference during daytime hours. The proposed station would likewise be subject to slight interference from the operation of KGER.

Station KLPM, at Minot, North Dakota, 890 miles airline from Wenatchee, Washington, operates on the frequency of 1360 kilocycles, with power of 500 watts at night and 1 kilowatt until local sunset, unlimited time. It is expected that KPQ, operating as proposed, would produce objectionable interference to the service of Station KLPM within its normally protected 1 mv./m. contour at night. The latter, since it uses 500 watts power at night, would not, however, be expected to produce objectionable interference to the proposed service of Station KPQ.

IN RE DOCKET NO. 4621

Station KSLM is owned and operated by Oregon Radio, Inc., the applicant herein. H. B. Read, President and General Manager, owns 123 shares of the 125 shares which are issued and outstanding. The financial statement of the applicant lists cash in bank and accounts receivable totaling \$3,616.88; fixed assets, less depreciation, \$8,195.31; liabilities \$450, and the outstanding stock.

Mr. Read has been engaged in the broadcasting business since 1921 but at the present time is interested only in Station KSLM. His assets, consisting of real estate, personal property, and stock in Oregon Radio, Inc., amount to \$26,410. Mr. Read stated that any additional capital required to effectuate the proposed changes in station technical equipment will be supplied from his own personal

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assets. The operating expense of the station at the date of the hearing was approximately \$1,500 per month, and the average monthly income was approximately \$2,000.

Transmitting equipment acquired by the applicant for use on the requested assignment is designed to operate with a power output of 1 kw. and in order to operate on the requested assignment it will be necessary to modify the transmitter in certain respects to reduce the power output to 500 watts. The transmitter, with the proposed modifications, appears to be satisfactory. The selection of the antenna and site is contingent upon approval of the Commission.

Salem is the capital of the State of Oregon and contains the principal state departmental buildings. It is located 46 miles airline from Portland and is situated in a wide flat valley devoted to agricultural and industrial pursuits of a diversified character. A number of industries are situated in and near the city, among which are a pulp and paper mill, two woolen mills, meat packing companies, a paper converting company, a sash and door factory, iron works, a boiler and furnace factory, a mattress factory, a brass and aluminum foundry, logging camps, a brewery, distilleries, and seven canneries for the preservation of fruits and other local products. According to the 1930 U. S. census the population of the city of Salem was 26,266, and the population of Marion County, in which the city is located, was 60,541. It is estimated that a population of approximately 46,650 is included within a radius of 13.5 miles from Salem, and approximately 76,315 within a radius of 21 miles therefrom, the remainder of the valley being very thickly populated. Radio service in the Salem area is furnished by Station KSLM, and to a certain extent by four stations situated in Portland, Oregon, namely, KEX, KOIN, KWJJ, and KGW. However, none of the Portland stations render satisfactory service to the business district of the City of Salem, and the service of but one (KGW) is satisfactory during daytime hours for the residential section. The other stations render some service to the surrounding rural area. However, in the rural area south of Salem, the nighttime interference to KGW from Station KTAR, Phoenix, Arizona, is very pronounced, and KOIN also experiences some interference.

Approximately one hour per day is devoted to the broadcasting of news obtained from a leased wire service, and the facilities of the station are made available, without charge, for the broadcasting of religious, educational, civic, and charitable programs. Twenty remote lines have been installed to local points of interest, and it is planned to extend the facilities of the station to additional institutions of learning now located beyond the present service area but within the area proposed to be served. The applicant proposes to

broadcast programs from the state capital by means of a remote control line. Immediately prior to the hearing the station became affiliated with the Mutual Broadcasting System.

The operation of Station KSLM as proposed herein would involve objectionable interference with the service of only one existing station, namely, KGER, Long Beach, California, operating on the frequency of 1360 kc., with power of 1 kw., unlimited time. The simultaneous operation at night of Station KGER, together with that of Station KSLM, as proposed, would limit the service of the former to the 1.1 mv./m. contour, and that of Station KSLM to approximately the 1.6 mv./m. contour. The normally protected contour for stations of this class is 1 mv./m. It is not predicted that there will be any objectionable interference during daytime hours to or from the operation of Station KSLM as proposed.

GROUNDS FOR DECISION

On the record in these matters, the Commission finds:

1. Both of the applicants herein are qualified in all respects to operate broadcast stations as proposed in their respective applications. Because of the interference problems involved, however, a grant of either application would preclude the granting of the other.

2. Although some need is shown in the Wenatchee, Washington, area for additional broadcast service such as proposed by the Wescoast Broadcasting Company (KPQ), a greater need exists in the Salem, Oregon, area for the additional broadcast facilities proposed by Oregon Radio, Inc. (KSLM).

3. A grant of the application of the Wescoast Broadcasting Company will not serve public interest, convenience, and necessity.

4. A grant of the application of Oregon Radio, Inc., will serve public interest, convenience, and necessity.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of
MICHIGAN STATE COLLEGE (WKAR), }
EAST LANSING, MICHIGAN. } DOCKET No. 4656.
For Construction Permit.

Decided July 1, 1938

Howard S. LeRoy on behalf of the applicant; *A. L. Ashby* and *Philip J. Hennessey, Jr.*, on behalf of Station WENR; *Philip G. Loucks* and *Arthur W. Scharfeld* on behalf of Station WLS; *Paul M. Segal* and *George S. Smith* on behalf of Station WWL; and *Duke M. Patrick* and *Karl A. Smith* on behalf of Station WESG.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION (Payne, Commissioner, not participating):

STATEMENT OF FACTS

This proceeding arose upon the application (File No. B2-P-1767), filed April 21, 1937, of Michigan State College, East Lansing, Michigan (WKAR), for construction permit to install a new transmitter, make changes in antenna and increase power from 1 kilowatt to 5 kilowatts day on the frequency 850 kc.

The Commission was not satisfied from an examination of the application that the granting thereof would serve public interest, convenience, and necessity, and designated it for public hearing before an examiner. Notice was given the applicant, and other interested parties, of time and place of hearing, and the issues to be determined thereon. In accordance with the notice a hearing was held October 5, 1937, before an examiner appointed by the Commission, at which time the applicant, and the following respondents, appeared and participated fully in the hearing: Stations WENR, WLS, WWL, and WESG.

Thereafter, and on March 1, 1938, the examiner submitted his report (I-609) recommending that the application be granted. No exceptions were filed nor was oral argument requested by anyone.

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The applicant, Michigan State College, is and has been since 1922 the owner and operator of radiobroadcast Station WKAR at East Lansing, Michigan. The station is assigned the frequency 850 kilocycles, with a power of 1 kilowatt to local sunset.

The College is supported principally by State and Federal appropriations. The total income of Michigan State College for the year July 1, 1937, to June 30, 1938, is \$3,852,375.59, of which \$2,706,099 has been appropriated by the State of Michigan, \$685,398.59 by the United States Government, and the remainder, \$460,000, from other sources, including athletics, student fees, and department sales. \$799,706.35 has been appropriated for the operation of the extension service within the State of Michigan, from the funds of which service the station is operated. The applicant does not carry advertising and receives no income from this source.

The estimated cost of the new transmitter is \$28,500 and the new antenna, \$16,500. The proposed equipment meets the engineering requirements of the Commission. The site is to be determined subject to the approval of the Commission.

There is no question raised as to the legal or technical qualifications of this applicant, which is an existing licensee.

WKAR is the only state-owned station in Michigan. Since a large part of its appropriations come from taxes paid by citizens from the whole State, it has a responsibility of service to those who live at great distances from the College as well as to those who live near it. Therefore, it endeavors to serve the entire State, all branches of the State Government and all officers of the State for any educational or other programs they have to offer the people. Its application was filed in an endeavor to increase its coverage so as to reach as many people in the State as possible.

The applicant is an educational institution and education is the keynote of all of its programs. Responsibility for the operation of the station is placed in the hands of a committee appointed by the President of the College. The chairman of this committee is the extension director and the seven members thereof are the Secretary of the College, the Dean of Liberal Arts, Dean of Home Economics, a professor of agricultural engineering, a professor of journalism, a professor of zoology and the director of Station WKAR. The College maintains offices in all of the counties of the State. It is located near the capital of the State and State officials who desire to broadcast can be at the studio within 20 minutes after leaving their offices.

The applicant has set up a three-point policy which has been maintained for a long time. First, the applicant carries no advertising; second, the station has no political affiliations and, although State

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officials broadcast, they are presented only as educational programs and are not permitted to broadcast political propaganda; third, the station does not broadcast religious programs.

Besides straight educational programs, the station offers programs of music, dramatics, sports, college affairs, college news, convocations, and meetings on the campus. Of the programs broadcast by WKAR, 50 percent are purely educational programs, and 50 percent are devoted to other types of programs such as those just mentioned, to provide variety needed to sustain listener interest. A list of the programs for the month of October shows a well-balanced and generally meritorious service.

Within the past three years ten departments of the State Government have broadcast over the station and six are cooperating with the station at the present time. Remote control lines were maintained to the State Capital last year throughout the entire session of the legislature and were used for special events such as the inauguration of the Governor, the Governor's speech to the joint session, and the speech of a former governor commemorating the 100th anniversary of the statehood of Michigan.

Of outstanding importance to the large number of farmers in that area is the "Farm Service Hour" which occurs between 12:00 and 1:00 every day, giving weather and market reports and talks by various members of the agricultural faculty in the extension service. Educational material from other departments is likewise broadcast. There is a half-hour weekly program on animal feeding incorporated in what is known as "Michigan College of the Air." Also carried throughout the year are programs on home economics designed for listener groups in the whole State.

Michigan State College has an enrollment of approximately 5,200 students and a faculty of 450. The College maintains one of the finest music departments in the country. The heads of the various branches of the Department of Music are all nationally and internationally known artists. They, as well as the students attending the college, are available to the station. The applicant has a college orchestra, band, glee clubs, an A Cappella choir, and various other musical organizations as well as individual talent.

Educational material of State-wide interest from other State departments and organizations is broadcast, including the Michigan Press Association, Michigan Historical Association, Junior Farmers Bureau, Michigan Educational Association, and Michigan Tuberculosis Association. Among the outstanding programs of this station is a feature entitled "The Man on the Farm" which is a broadcast of the interviews of county agents with prominent farmers who have achieved success in their particular lines.

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The population of East Lansing was 4,389 and of Lansing, which is contiguous to East Lansing, 78,397, according to the 1930 United States Census. The site of the State College at East Lansing is about $3\frac{1}{2}$ miles from the center of the City of Lansing.

East Lansing is located in the middle of the lower populous part of the State of Michigan; a 100-mile circle would cut the edges of the lakes on both sides and would include approximately 40 counties in which the largest proportion of the people reside. The population of these counties in this area would include approximately 4,161,356 people. The population of the entire State (83 counties) is 4,842,000. The 40 counties within the 100-mile radius of East Lansing would include 141,377 farms, whereas the total farms in the entire State are 196,517.

Michigan is an important agricultural State. Three-fourths of the white bean crop in the United States is produced in the State of Michigan. Michigan ranked first in 1937 of all the States in the acreage of potatoes grown that year. Because of its location with lakes all around it, Michigan has a diversified climate which is conducive to the growth of various kinds of fruits and vegetables. Surrounding the City of Detroit are dairy interests. The southern counties comprise what is known as the "Corn-hog Belt." The northern counties of the State are in what is known as the lumber area. The College uses the station to disseminate such information to the farmers as spray information in spray season, fertilizer information, control of insects and diseases, and various sorts of emergency matters. Some employees of the extension service of the College are a part of the United States Department of Agriculture and part of their salary is paid from Federal funds.

With its present power of 1 kw., station WKAR now serves an estimated population of 474,456 within its 0.5 millivolt per meter contour. Within the same contour with 5 kw. power and the new transmitter and radiator proposed it would serve an estimated increased population of 1,404,188, not including the populations of the large towns and cities. The present coverage of the station includes approximately 5,384 square miles within the 0.5 millivolt per meter contour. The expected increase with 5 kw. power would be 19,548 square miles.

Portions of the area which the applicant estimates it could serve with its increased power now receive primary service from Stations WJR, operating at Detroit on 750 kc., with 50 kw. power, unlimited time; WWJ operating at Detroit on 920 kc., with 1 kw. night, 5 kw. day, unlimited time; WLW, operating at Cincinnati on 700 kc., with 500 kw., unlimited time, and clear channel stations in Chicago.

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Lansing and East Lansing receive daytime service from Stations **WJIM** operating unlimited time on 1210 kc. with 250 watts power L. S. and from **WKAR** on 850 kc., 1 kw., daytime only. No service is available in Lansing and East Lansing from **WENR-WLS** because the 0.5 millivolt per meter signal of that station in that area is not strong enough to override the existing high noise level.

WJR broadcasts programs of the Columbia Broadcasting System, **WLW** the programs of the National Broadcasting Company (Red and Blue Networks), **WWJ** the programs of the National Broadcasting Company (Red Network) and Station **WENR-WLS**, the programs of the National Broadcasting Company (Blue Network).

Interference now exists from Station **WKAR** within the 0.5 millivolt per meter contour of **WENR-WLS** within an area of about 141 square miles lying generally to the west of East Lansing, including about 87,300 people of which about 82,700 reside in Lansing. The operation of **WKAR** as proposed would be expected to extend that interference to **WENR-WLS** to about 960 square miles which would include an increased population of approximately 49,500. No interference would result to any other existing station from the granting of this application.

GROUNDS FOR DECISION

On the record in this case, the Commission finds:

1. A need exists for the extension of daytime service of Station **WKAR** in the area proposed to be served by the applicant.

2. The program service is particularly suitable for and of interest to the people of the State of Michigan comprising its proposed listening audience.

3. Although the granting of the application of **WKAR** will result in additional interference within the 0.5 millivolt per meter contour of Station **WENR-WLS** such interference will exist within an area extending about 30 to 35 miles generally to the west of East Lansing which area receives a primary signal from Station **WLW** which broadcasts the same general class of network programs as those broadcast by **WENR-WLS**.

4. No interference would result to any existing station (other than to **WENR-WLS** discussed above) from the granting of this application.

5. The granting of this application will make the services of **WKAR** available to a large additional population as against a relatively small population which would receive interference to the signals of **WENR-WLS**.

6. The granting of the application will serve public interest, convenience and necessity.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D. C.

In the Matter of
KVOS, INC.,
BELLINGHAM, WASHINGTON.
For Renewal of License, and
For Transfer of Control.

DOCKETS Nos. 2671 AND 3925

Decided July 12, 1938

William H. Pemberton on behalf of the applicant; *George B. Porter* and *James D. Cunningham* on behalf of the Commission.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION :

STATEMENT OF FACTS

KVOS, Inc., Bellingham, Washington, commenced this proceeding by filing its application for renewal of its station license; and later an application was filed on behalf of Wescoast Broadcasting Company and Rogan Jones for consent of the Commission to transfer of the control of the corporation holding the station license.

Both applications were designated for bearing before an examiner. The ultimate fact for determination, as stated in the notice of hearing, was: Whether or not the granting of the applications would serve the public interest, convenience, and necessity. The examiner has filed his report (I-309) recommending that both applications be denied; and KVOS, Inc., has filed exceptions.

The examiner stated his final conclusion as follows: "Upon consideration of all of the facts it is concluded that the applicant [KVOS, Inc.] has failed to show that KVOS has in the past served or will in the future serve public interest, convenience and necessity."

The applicant, KVOS, Inc., closed its statement of exceptions by assignment of error upon the final conclusion of the examiner. Specifications of error, some of which are less general, precede the last assignment of error. They, barring the single instance hereinafter noticed, raised no question not involved in the decision of the case upon its merits.

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The examiner found that on June 20, 1933, KVOS, Inc., entered into an agreement with L. H. Darwin, containing provisions as follows:

1. First party agrees to lease to second party and second party agrees to lease from first party three or more periods of time each day (excepting Sunday, which day may be later added at the option of either party) for the broadcast of news by second party.

2. Second party shall have entire jurisdiction over content of broadcasts, but this agreement may be terminated at any time by either party hereto.

3. Second party agrees to provide a complete news service for first party under title: KVOS Newspaper of the Air, such service to be in every way comparable to a newspaper as it is known today or as "radio newspapers" may develop.

The notice of hearing (the respective applications) includes among the things to be determined: Whether the application may be granted within the purview of Section 310 of the Communications Act of 1934; and, Whether the granting of the application would serve public interest, convenience and necessity.

Section 310 (a) of the Communications Act of 1934 prohibits the granting of a station license to parties therein named.

Section 310 (b) of the Act is as follows:

The station license required hereby, the frequencies authorized to be used by the licensee, and the rights therein granted shall not be transferred, assigned, or in any manner either voluntarily or involuntarily disposed of, or indirectly by transfer of control of any corporation holding such license, to any person, unless the Commission shall, after securing full information, decide that said transfer is in the public interest, and shall give its consent in writing.

The contract of June 20, 1933, though not approved by the Commission, does not appear to be in violation of the Act; nor does it absolve KVOS, Inc., of responsibility, full and complete, for the use or misuse of its radio-broadcasting facilities by L. H. Darwin.

The examiner found, *inter alia*, that "the 'Newspaper of the Air' consists of local, national, and international news items, commercial and gratuitous announcements, and daily 'editorial comments' by Mr. Darwin." That finding is sustained by the record; and it appears that in the course of the daily comments Mr. Darwin made remarks concerning certain individuals and groups in Bellingham, of which they complained by addressing letters to the Commission.

After this proceeding was designated for hearing before an examiner, hearings were held in Bellingham, at which parties making complaint by letter were furnished ample opportunity to be heard, either before the examiner or by deposition; and in the proceeding, 363 pages of testimony were taken before the examiner, and depositions comprising 1,472 pages were introduced; furthermore, the testimony in the matter of the application of the Bellingham Publishing Company, Bellingham, Washington (Docket No. 2711 of this Com-
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mission), was in part incorporated in the record by reference and made a part of the testimony in the case under consideration; nevertheless, one of the exceptions (No. VI) of KVOB, Inc., is in part as follows:

The examiner erred in entering the following finding of fact, "The records indicate that the Commission received a number of complaints concerning Mr. Darwin's talks. Approximately 120 of these are shown to have been solicited, and in some instances examined and mailed, by a discharged employee of the station."

In the same exception it is stated that the record does not contain any letters of complaint received by the Commission concerning Mr. Darwin's talks; that the applicant requested permission of the counsel for the Commission to have access to such alleged letters; and that the applicant has not seen the letters and does not know the nature nor author of the letters.

The report of the examiner shows that he made the statement recited in the exception, but the complaints mentioned in the exception are not in the record of the proceedings held before the examiner and returned to the Commission, nor is it apparent that the examiner considered such complaints in arriving at the facts upon which he relied as the basis of his report. The complaints as mentioned by the examiner, which are characterized in the exception as letters, were not introduced in evidence; and the examiner only mentioned them as being solicited and maybe furnished by a discharged employee of Station KVOB—not by any witness in the case. Further discussion of the exception under consideration would serve no purpose, as the complaints or letters are not before the Commission as evidence in the case and no resort to nor consideration of them will be had in the final disposition of this proceeding; but if such complaints or letters were in evidence, it should be noticed that in the matter of *United States Broadcasting Corporation*, 2 F. C. C. 208, 236, this Commission said: "Although the law expressly negatives a vested right in any licensee to the use of any particular frequency as against the reasonable regulatory powers of the Government, the Federal Radio Commission, early in its administration, initiated the principle that true public interest requires that existing stations should not be deprived of broadcasting privileges unless sound reasons of public policy demand such action"; and that:

In the matter of *Farmers and Bankers Life Insurance Co.*, 2 F. C. C. 455, 459, this Commission said: "In considering the question of renewal of license of an established station, the Commission must take into consideration the entire service of the station, and determine whether or not the service that the station has offered to the

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public is of such character as to outweigh the derelictions in the broadcasting of programs such as those above enumerated which cannot be held in the public interest.”

See also *Technical Radio Laboratory v. Federal Radio Commission*, 36 F. (2d) 111, 113; and *Chicago Federation of Labor v. Federal Radio Commission*, 59 App. D. C., 333, 334.

Section 309 (a) of the Communications Act is as follows:

If upon examination of any application for a station license or for the renewal or modification of a station license the Commission shall determine that public interest, convenience, or necessity would be served by the granting thereof, it shall authorize the issuance, renewal, or modification thereof in accordance with said finding. In the event the Commission upon examination of any such application does not reach such decision with respect thereto, it shall notify the applicant thereof, shall fix and give notice of a time and place for hearing thereon, and shall afford such applicant an opportunity to be heard under such rules and regulations as it may prescribe.

The Commission, upon examination of the application of KVOS, Inc., did not reach any decision with respect thereto, but it fixed a time and place for hearing the application and gave notice of the hearing thereon. No intervener, nor protestant, nor respondent appeared in the proceeding, and nothing was developed or disclosed at the hearing of sufficient merit in the light of all the facts and their different sources to justify the Commission in refusing to authorize the renewal of the station license sought and in withholding the approval of the transfer of the control of the corporation holding the station license.

KVOS, Inc., is a corporation organized under the law of the State of Washington, with an authorized capital stock of 500 shares, of which 150 shares have been issued.

There was filed with the Commission, on or about September 1, 1934, a report of KVOS, Inc., showing as of July 15, 1934, 149 shares of its capital stock held by Wescoast Broadcasting Company and one share held by another party. The report also showed that Rogan Jones, President of the Company and Manager of Station KVOS, was the owner of approximately 100 percent of the stock of Wescoast Broadcasting Company. In December 1934 the latter Company, by resolution of its Board of Directors, authorized the transfer of the stock it held in KVOS, Inc., to Rogan Jones.

Statements of change of ownership of stock made on December 20, 1935, show transfer of 147 shares of stock from Wescoast Broadcasting Company to Rogan Jones; and on the same date (December 20, 1935), Rogan Jones, for himself and as President of the Wescoast Broadcasting Company, executed the application here involved,

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requesting consent of the Commission to the transfer of 147 shares out of 150 shares of stock of KVOS, Inc., from Wescoast Broadcasting Company to Rogan Jones.

As of May 19, 1936, Rogan Jones owned all outstanding stock of KVOS, Inc., except directors' qualifying shares.

The officers and directors of KVOS appear to be citizens of the United States; and the stockholders of the company are qualified lawfully to hold the stock of the company.

In the application for renewal of station license, verified on September 27, 1934, reference is made to the company's statement of August 31, 1934, showing assets in the amount of \$48,782.01. The examiner found that as of December 31, 1935, the Company owned gross assets in the sum of \$57,236.23. He also found that in 1935 the gross income of the station was \$41,737.38, while operating expense was \$36,279.37. Such findings are supported by the record.

The operating staff of Station KVOS includes a manager, three licensed operators, two full-time copy writers, a special announcer and part-time copy writer, a clerk, an accountant, a commercial manager, two salesmen, and another announcer who also handles advertising accounts.

The facilities of the applicant have been available to civic, charitable, educational, fraternal, labor, and religious organizations, and have been used by them. The station provides its facilities free of charge to such organizations where they do not pay for the use of other advertising media. About 5 percent of the total operating time of the station has been given without charge for the accommodation of social, civic, and religious bodies.

Station KVOS broadcasts a fifteen-minute daily morning devotional program conducted by ministers of several denominations, and on Sunday, a nonsectarian service, known as the KVOS Church of the Air, is broadcast for one hour.

Bellingham is the principal business center in the northwestern section of the State of Washington. Whatcom, San Juan, and Skagit counties are in its trade area. The city had, according to the last census, a population of 30,823. In the remainder of Whatcom County there was a population of 28,305. San Juan County consists of a number of islands immediately west of Bellingham and at the last census had a population of 3,605. Skagit County, on the south of Whatcom County, had at the same time a population of 35,142. The population of the three counties in the trade area of Bellingham is approximately 98,000, and 85 percent of that population is within twenty miles of the city. The industries of the

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city and the area around it are farming, fishing, lumbering, and mining. The city has schools and colleges, and forty churches.

The City of Bellingham has no other station, and Station KVOS is needed in that place.

GROUNDNS FOR DECISION

On the record in this case the Commission finds

IN RE DOCKET NO. 2671

1. The applicant is legally, financially, and technically qualified to operate Station KVOS.

2. At the hearing the testimony produced was insufficient in the light of all the circumstances of the case and in the light of the different sources from which the testimony proceeded, to justify the Commission in refusing a renewal of the license of Station KVOS.

3. There is need for a radio broadcast station in Bellingham, Washington.

4. The granting of the application will serve the public interest, convenience, and necessity.

IN RE DOCKET NO. 3925

1. There has been no transfer of the control of the corporation holding the license for Station KVOS in conflict with or contrary to the public interest.

2. The granting of the application for consent of the Commission to the transfer of the control of the corporation licensed to operate Station KVOS will serve the public interest, convenience, and necessity.

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
 WASHINGTON, D. C.

In the Matter of PACIFIC AGRICULTURAL FOUNDATION, LTD. (KQW), SAN JOSE, CALIFORNIA. For Construction Permit.	}	DOCKET No. 4616.
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Decided July 12, 1938

Elmer W. Pratt on behalf of the applicant; *Arthur W. Scharfeld*
 and *Philip G. Loucks* on behalf of George H. Payne, Intervenor.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION :

STATEMENT OF FACTS

Pacific Agricultural Foundation, Ltd., licensee of Station KQW, San Jose, California, commenced this proceeding by filing its application for authority to increase its daytime power from 1 kilowatt to 5 kilowatts, to select a new site, to install a new transmitter and to erect a vertical radiator.

The station now operates on 1010 kilocycles with power of 1 kilowatt, unlimited time.

The application was designated for hearing before an examiner. He has filed his report (I-541) recommending the grant of the application.

The applicant is a corporation organized under the law of the State of California with capital of \$25,000. It is authorized by charter to own, maintain, and operate a radio station.

The directors and officers of the corporation are citizens of the United States and its stockholders are qualified as legal stockholders of the corporation under the law.

The applicant has been in business several years and its balance sheet shows a net worth of \$25,314.74.

San Jose is located 40 miles south of San Francisco in an area classified by the Census Bureau as the metropolitan area of San Jose. That area has a total population of 103,428. The city is in proximity to the San Francisco Bay and in an extensive valley. That valley,

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which includes Santa Clara, is one of the great fruit growing regions of California. It is devoted to the culture of apricots, plums, and other fruit. San Jose has an extensive trade in the distribution of farm machinery and equipment and in the sale of seeds and sprays.

One of the principal objects of the station has been to serve agricultural and horticultural interests of San Jose and its trade area. The station has a daily program for the benefit of farmers and fruit growers and a program devoted to the dairy industry. In the San Jose area apricots and plums are dried in the sun. The applicant renders valuable service by frequent broadcasts of weather conditions according to forecasts of the United States Weather Bureau. In the frost season, the applicant broadcasts probable weather conditions according to forecasts of said bureau. This service is valuable to growers of fruits and vegetables.

Market prices of things produced in the service area of the station are fixed in the markets in such places as San Francisco and Los Angeles. Market quotations on products grown in the San Jose area are broadcast by the applicant. The station has cooperated with the Agricultural Department of the University of California and with the State Department of Agriculture of that state. The applicant also broadcasts the Chicago and New York market quotations for lettuce produced in the Salinas Valley.

The applicant carries United Press Service and broadcasts the news five times a day. It is an outlet for the Mutual Broadcasting System, but it devotes about 80 percent of its time to local programs. The station carries special features for the Leland Stanford University and its facilities have been available to the civic organizations of Redwood City, Santa Cruz, Los Gatos, Salinas and other surrounding communities; and the facilities of the station have been available to the American Red Cross, to the Community Chest and other organizations carried on in the interest of the public welfare.

There is one station located at less than the mileage separation usually recommended for the assignment requested, to wit, Station KYOS, operating on 1040 kilocycles with power of 250 watts daytime at Merced, California. The actual separation is 75 miles whereas that recommended by engineering standards is 118 miles, but field measurements made by engineers and covered by the testimony at the hearing indicate that the conductivity of the terrain between Merced and San Jose is less than the average; and considering the difference in frequency no objectionable interference would be expected within the normal 0.5 millivolt per meter contour of either station.

When the case was heard before an examiner the application of Larry Rhine was pending. He sought a construction permit for a new station at San Francisco to operate on 980 kilocycles with power

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of 250 watts daytime; but since the hearing his application has been amended so as to eliminate any question of interference between his proposed station and the station of the applicant operating as proposed under the application herein considered.

It is estimated that the station of the applicant (KQW), operating as proposed, now serves within its 10 millivolt per meter contour a population of 97,570, within its 2 millivolt per meter contour a population of 1,022,525, and within its 0.5 millivolt per meter contour a population of 1,145,985; but that operating with the new radiator at the new site and with increased power, it will serve during the daytime within its 10 millivolt per meter contour a population of 174,126, within its 2 millivolt per meter contour a population of 1,391,309, and within its 0.5 millivolt per meter contour a population of 1,731,959; and while operating at night, with the new radiator and at the new site and with the same power as now being used, the station would serve within its 10 millivolt per meter contour a population of 109,487, within its 2 millivolt per meter contour a population of 1,346,770, and within its 0.5 millivolt per meter contour a population of 1,489,435.

In connection with the estimated coverage of the station, operated as proposed, it should be observed that while the new transmitter site was not specified and is to be selected subject to the approval of the Commission, a site in the center of San Jose was assumed for the purpose of predicting the proposed service with the understanding, however, that the site would have to be selected within five miles of the city.

The equipment proposed by the applicant is satisfactory and the antenna complies with the Rules and Regulations of the Commission.

GROUNDS FOR DECISION

On the record in this case, the Commission finds:

1. The applicant is financially qualified to make the changes in construction contemplated and to continue the operation of the station as proposed.
2. There is a need for the proposed service.
3. The operation of the station as proposed would not cause objectionable interference to the operation of any existing station.
4. The equipment proposed complies with the Rules and Regulations of the Commission.
5. The granting of the application would serve the public interest, convenience and necessity.

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of
BELLINGHAM PUBLISHING COMPANY,
BELLINGHAM, WASHINGTON. } DOCKET No. 2711.
For Construction Permit.

Decided July 12, 1938

Matthews and Trimble on behalf of the Bellingham Publishing Company; *William H. Pemberton* on behalf of B. E. Hanning, Mayor of Bellingham and Board of County Commissioners, Bellingham, Washington; *George B. Porter* and *John Wesley Weekes* on behalf of the Commission.

STATEMENT OF FACTS, GROUNDS FOR DECISION AND ORDER

BY THE COMMISSION :

STATEMENT OF FACTS

Bellingham Publishing Company, Bellingham, Washington, commenced this proceeding by filing its application for construction permit for a new broadcast station to operate on 1420 kilocycles with power of 100 watts, unlimited time.

The matter was designated for hearing before an examiner. The notice of hearing, among other reasons therefor, listed the following :

- (2) To determine the need for the service in the area to be served.
- (5) To determine whether the granting of the application would serve public interest, convenience, and necessity.

The applicant filed a statement showing the things it expected to prove, among which is the following :

The applicant is and for twenty years last past has been publisher of the Bellingham Herald of Bellingham, Washington.

The Mayor of Bellingham and the Board of County Commissioners of Whatcom County, Washington, intervened—each alleging substantially that the applicant had for many years owned and published the Bellingham Herald, a daily newspaper; that said paper had been so conducted as to serve the special interests to the disadvantage of the

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public interest; that it had libeled leading citizens and officials of Whatcom County and had, by its attacks upon individuals, terrorized the public; and that the intervenors believed that if the applicant were allowed to operate a radiobroadcast station, it would conduct it in the same manner and for the same purpose as it had published its newspaper and would arouse strife among the people and "unrest among a large number of citizens" in the community.

The examiner has filed his report (I-127); and the applicant has filed exceptions thereto.

The examiner based his recommendation, that the application for construction permit be denied, upon the conclusions as follows:

The evidence shows (1) that applicant, through the publication of numerous articles reflecting upon the honesty and integrity of public officials and upon the morals and private lives of the citizens of Bellingham and Whatcom County, has been the source of discord and dissention and has been inimical to the general welfare of the community, and (2) that applicant has failed to establish the need for additional broadcast facilities in the area proposed to be served.

The applicant excepted to each of the conclusions reached by the examiner; and many exceptions were taken by the applicant to the findings made by the examiner as a basis for his conclusions. Such exceptions are the basis of the attack of the applicant upon the conclusions of the examiner; but the Commission finds that these exceptions are without sufficient foundation in the record and that the facts found by the examiner and excepted to by the applicant should not be set aside, denied, nullified, or otherwise impaired.

The contention raised by the applicant under the exception directed at the first conclusion of the examiner appears to be that the Federal Communications Commission has no jurisdiction over the publication of newspaper articles and that the publication of newspaper articles, if libelous, are matters for settlement in the courts.

Such propositions of abstract law are inappropriate here. The examiner found that the applicant had published in its newspaper "numerous articles reflecting upon the honesty and integrity of public officials and upon the morals and private lives of the citizens of Bellingham and Whatcom County"; and the examiner further found such to have been a "source of discord and dissention inimical to the general welfare of the community." That course if extended to radiobroadcast service would have a definite relation to the public interest, which is one of the criteria for the guidance of the Commission in passing upon an application for permission to construct and operate a radiobroadcast station.

The contention raised by the applicant under its exception to the second conclusion reached by the examiner is that the applicant

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established (at the hearing) a need for additional broadcast facilities in the area to be served. On this point, the examiner correctly found as follows:

Applicant, in order to sustain the issue that there is need for additional broadcast facilities in the Bellingham area, offered the testimony of more than twenty witnesses, and each of these witnesses testified that there was need for additional broadcast facilities in Bellingham and that it would be in the public interest to grant this application, but none gave any concrete facts upon which to base a request for additional facilities. The only detailed evidence given by any witness was that with reference to the business statistics and population of the Bellingham trade area.

Without departing from the findings as made by the examiner and set out in his report submitted herein, the Commission states the following facts:

Bellingham, Washington, is located near the northwest corner of the state, close to the water front on the west and not far from the Canadian line on the north. At the last census the city had a population of only 30,823, while, outside of Bellingham, Whatcom County had an additional population of only 28,305. The county on the west, made up of islands, had at the same census a population of only 3,605, while the county to the south had at the same time a population of only 35,142.

The station proposed by the applicant is one of 100-watt power only. Eighty-five percent of the trade area of Bellingham is within twenty miles of the city. The station proposed would furnish no service beyond the area mentioned. The principal industries of that area are farming, fishing, lumbering and mining. There is nothing in the record to show the amount and extent of these industries nor the number of people employed therein, nor the income derived therefrom.

The City of Bellingham and vicinity is not only served by Station KVOS but it also receives service from Seattle at night and secondary service from distant clear-channel stations.

Radiobroadcast Station KVOS now operates in the City of Bellingham on 1200 kilocycles with power of 100 watts, unlimited time. This station was originally located in Seattle but on October 3, 1927, the Federal Radio Commission authorized the removal of the station to Bellingham. The facilities now in use were authorized as of November 11, 1928. On or about April 12, 1929, the Federal Radio Commission authorized a transfer of the station license to a receiver for the creditors of the owner of the station and on or about April 25, 1929, the said Commission authorized the said receiver to transfer the license of Station KVOS to the present owner and operator of that station.

It is not apparent upon the record that two radiobroadcast stations would find sufficient financial support for economic success in the field comprised by the City of Bellingham and its trade area.

The applicant proposes to operate with the same power as that used by the existing station and would not be capable of serving any greater area or larger population than the existing station serves.

The applicant herein is engaged in the publication of a daily newspaper in Bellingham, Washington, with a morning, evening, and Sunday edition, known as the Bellingham Herald. Two daily papers, namely, the Herald and the American Reveille, were published in Bellingham in the latter part of 1911. On November 11 of that year several businessmen in that city, representing the major commercial interests of the community, purchased the American Reveille and soon thereafter that publication and the Herald were consolidated. Thereupon the Herald Publishing Company, applicant herein, was organized under the law of the State of Washington for the purpose of publishing the consolidated papers.

To support its application, the applicant offered testimony of one witness who testified that there was a need for additional radio service in Bellingham; that he was personally opposed to the policies advocated by Station KVOS and that he felt there should be another station in Bellingham. When cross-examined on his personal objection to the existing station, his answer was:

I think when they talk (Station KVOS) about the Hoover-made depression it is an insult to men of common sense.

Another witness called by the applicant testified that there should be another radio station in Bellingham to eliminate the "bunk going on over the existing station" which that witness characterized as a disturbing factor in the community. The following question and answer appear in his testimony:

Q. You think by getting this new radio in here it might eliminate the other radio?

A. At least I hope so.

The foregoing illustrates fairly well the general trend of the testimony given in favor of the applicant.

The general manager of the applicant for the construction permit under consideration testified that the publishing company had been importuned by interviews and letters from a large number of people and by agricultural, educational, civic, and religious institutions to make application for a construction permit for a new broadcast station in Bellingham but the general manager failed to give the names of any individuals that had solicited the applicant to apply

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for broadcast facilities. There is nothing in the record to indicate who these individuals are, what their interests might be, or what reasons there are to suppose that their solicitations could be made a reasonable basis for additional radio facilities in the City of Bellingham.

The evidence shows that a few service clubs and civic organizations have endorsed the application under consideration; and the record shows that these organizations and clubs have access to the facilities of Station KVOS and use them without charge.

The existing station broadcasts a service known as *The Newspaper of the Air*.

One witness called by the applicant assigned as his reason for supporting the application that additional service was needed to meet the public demand but he gave no facts upon which he based his assertion. The following question and answer appear in his testimony:

Q. There wasn't any demand then for another station, until the Newspaper of the Air started, is that right?

A. Well, it is virtually so.

Upon the question of the advisability of the establishment of new broadcast facilities in a location where they are not needed, see the decision of the Commission rendered on May 11 and issued on May 13, 1938, in the matter of Fall River Herald News Publishing Company, Fall River, Massachusetts, for construction permit (Docket No. 4552).

GROUNDS FOR DECISION

On the record in this case, the Commission finds:

1. Bellingham, Washington, and its surrounding area are very well supplied with radiobroadcast facilities.
2. The evidence in this case fails to show a need for additional broadcast facilities in the area proposed to be served.
3. The granting of the application under consideration would not serve public interest, convenience, or necessity.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D. C.

<p>In the Matter of ZENITH RADIO CORPORATION, CHICAGO, ILLINOIS For Construction Permit for New Television Broadcast Station.</p>	}	DOCKET No. 4555.
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Decided July 12, 1938

Irving Herriott on behalf of the applicant; *James D. Cunningham*
on behalf of the Commission.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION:

STATEMENT OF FACTS

The applicant, Zenith Radio Corporation, Chicago, Illinois, commenced this proceeding by filing its application for a construction permit requesting authority to install an experimental television broadcast station to operate on the frequencies 42000 to 56000 and 60000 to 86000 kilocycles with power of one kilowatt, unlimited time.

The application was designated for hearing before an examiner. The examiner has filed his report (I-593). The examiner recommended that the application for construction permit be granted. As no appearances were made in the case except for the applicant and the Commission, no exceptions to the report of the examiner were filed.

The applicant is a corporation organized under the laws of the State of Illinois with an authorized capital stock of 50,000 shares of no par value. At the time of the hearing of this case, 492,464 shares of the authorized capital stock had been issued. At that time it also appeared as of April 30, 1937, the applicant owned total assets amounting to \$7,917,971.06; that it had current assets amounting to \$4,980,745.07, and that it had in cash securities of the value of \$2,866,273.32. The liabilities of the company exclusive of capital stock issued amounted to \$2,400,258.54. At the hearing the company had no bonded indebtedness and its stock was listed on the New York and the Chicago Stock Exchanges.

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All of the officers and directors of the company are citizens of the United States. It appears that more than 80% of the outstanding capital stock of the company is registered in the names of citizens of the United States; and it does not appear that any of the stock of the company is owned by, or registered in the name of, aliens.

In the Rules and Regulations of the Commission applicable to *Television Broadcast Stations*, the following provisions appear:

1031. The term "television broadcast station" means a station licensed for the transmission of transient visual images of moving or fixed objects for simultaneous reception and reproduction by the general public. The transmission of the synchronized sound (aural broadcast) is considered an essential phase of television broadcasting and one license will be issued for both visual and aural broadcast as hereinafter set out.

1032. A license for a television broadcast station will be issued only after a satisfactory showing has been made in regard to the following, among others:

1. That the applicant has a program of research and experimentation which indicates reasonable promise of substantial contribution to the development of the television broadcast art.

2. That the program of research and experimentation will be conducted by qualified engineers.

3. That the applicant is legally and financially qualified and possesses adequate technical facilities to carry forward the program.

4. That the public interest, convenience, and/or necessity will be served through the operation of the proposed station.

1034. (a) The following groups of frequencies are allocated by bands for assignment to television broadcast stations on an experimental basis:

Group A	Group B	Group C	Group D
* * * *	42000 to 58000 kc.	60000 to 88000 kc	* * * *

(c) A license for a television broadcast station in groups B, C, or D will specify a frequency band wherein two adjacent carrier frequencies shall be selected, one for the visual and one for the aural broadcast. The lower carrier frequency shall be for visual broadcast and the higher carrier frequency for the aural broadcast.

The application herein was made under the law and the rules above mentioned.

Item 18 (a) of the application requires a complete outline of all research experiments and tests proposed by the applicant; and thereunder in an exhibit to the application, the Zenith Radio Corporation stated:

The television development program of the Zenith Radio Corporation calls for active research and experimentation in what appear to be the five principal divisions of a television service.

1. Television Transmitters.
2. Transmitter Antennae.
3. The Transmission Medium.
4. Television Receivers.
5. Receiver Antennae.
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At this time a television service has certain requirements peculiar to it which are not met in ordinary radio transmission. These requirements are that the television signal must carry not only the intelligence, but also the synchronizing signals. These signals have critical requirements in their relation one to another and for this and other reasons the five divisions outlined are not always entirely distinct from each other, and, therefore, research must generally proceed along lines which involve several of these subjects. Frequently any research problem on the transmitter will call for corresponding research on the transmission medium and on the television receiver, and, mindful of this requirement, the following plan of research and experimentation has been projected:

TELEVISION TRANSMITTERS

In speaking of the television transmitter, it is defined to mean the entire transmitting plant from pick-up camera to the radio-frequency stage supplying power to the antenna. The television transmitter may be considered as a composition of several well-defined separate units on each of which research, experimentation, and tests will be conducted.

1. *Pick-up equipment.*—There have been developed several television pick-up systems which are entirely electronic in operation and which have reached a fair state of development. Experiments will be conducted with each of these units to determine comparative sensitivity under all conditions of studio and outdoor use, their respective resolution powers and general adaptability to television pick-up work. Because of the apparent ability of most of these instruments, it is not contemplated that original research looking toward the development of a new pick-up tube will be undertaken, however, it is known that there are promising possibilities in the field of electric television pick-up equipment and this or any other development of promise would be investigated if necessary or advisable.

For the successful pickup of live talent in the studio, and elsewhere, a number of stringent requirements have to be met and tests will be conducted to determine what equipment is best for the maintenance of good optical focus commensurate with ease of mobility of the equipment, its performance electrically under conditions of rapid movement and the electrical output under practical working conditions.

Pickup Amplifiers.—Development of amplifiers of the highest possible fidelity. The amplification problem at this point is especially critical since no avoidable distortion or external pickup can be tolerated in the interest of transmitting the best possible picture. The conventional resistance coupled amplifier now in use has been developed to the place where the necessary 2,500,000 cycles can be transmitted through it, however the gain per stage is low and there is present always the problem of reduction of amplifier noise. Research will be conducted toward the development of simple high quality amplifiers having low noise level. The necessary laboratory equipment required for the accurate measurement of frequency response from 30 to 2,500,000 cycles and for phase displacement over this range is now being secured. There is some reason to believe that electron multiplication systems may be very useful in work of this kind, and experimentation will be conducted on electron multiplication systems to determine any frequency response limitations which may exist, amplification possible, noise levels encountered, and reliability. The same laboratory equipment used on conventional amplifier systems should be useful in measuring the characteristics of electron multipliers. At this time there have been developed

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several different styles of electron multipliers and comparatively little is known as to the merits of one type over another for any particular service.

Sweep circuits.—In all electronic television pickup equipment it is necessary that there be an electronic displacement in two directions in order to scan an object. An essential requirement of this movement is that it be linear with respect to time. At this time there is relatively little agreement as to the absolute degree to which linearity must be carried. It is certain that all television transmitters and receivers for best satisfaction must at least be of the same degree of linearity. It is planned to thoroughly investigate sweep circuits in this respect. Practically all sweep circuits have outputs which are too small or are otherwise unsuited to the direct deflection of the electron beam in a cathode-ray tube. It is generally necessary to make use of amplifiers in coupling the saw-tooth wave generator to the deflecting medium and peculiar requirements are placed on such an amplifier. It is necessary to determine the characteristics of these circuits accurately. Equipment suitable for making all of these measurements is now being secured.

Synchronization.—Aside from the quality of intelligence carried in the picture signal the other most important characteristic of the television transmission are the synchronizing signals. These signals serve the dual purpose of maintaining the picture in synchronism at the receiver with the transmitter and blanking out the return trace of the cathode-ray tube beam. It is most important that these signals be of the proper shape and occur at the proper intervals. The oscillators producing the wave shape necessary to perform these functions are highly involved and will require much careful research for satisfactory development. The transmission of these signals place extra requirements on the radio transmitter beyond those imposed by the actual picture signal and tests will be conducted to ascertain the best condition under which the synchronizing signal may be transmitted.

Radio transmitter.—It is necessary that the transmitter have characteristics which do not vitiate the television and synchronizing signals which are fed into it. This requires much research into systems of modulation. It appears that grid modulation may offer the greatest promise at this time and original research and experimentation will start on this line. The other systems of modulation, namely plate and series modulation, will also receive consideration, and if preliminary experiments indicate merit, will result in further research being done on them. Investigation of coupled tuned transmitter circuits must necessarily be made for determination of those conditions, resulting in the transfer of the maximum amount of power over the wide frequency range required. While a considerable amount of work on ultra high-frequency transmitters has been done in recent years, there are still relatively few in existence capable of supplying more than a small amount of power to a transmitting antenna under the wide band modulation limitation required for high definition television. In view of the much higher signal level required for television transmission than is generally necessary for sound transmission, a great deal of experimentation remains to be done on transmitter circuit design and improvement.

TRANSMITTER ANTENNA SYSTEMS

It has been found in all types of radio communications that there are various designs of antenna systems which best suit each service. There is little doubt but what this is especially true in television transmission. It appears that since most interference with ultra short-wave reception comes from electrical
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sources such as automobile ignition, etc., which in the main is vertically polarized, that the most productive direction of research would be in antenna systems which radiate largely in the horizontal plane. It is planned to investigate antenna systems having this property as fully as possible with special emphasis on variations of the system which will give a uniform field pattern in all directions. In cities such as Chicago, which are bounded on one side by a large body of water, signals radiated over water represent actual loss. In cases of this kind directive systems should show considerable gain in placing the signals where they are most needed and reinforcing radiation in those directions. For this reason directive systems will be carefully investigated.

It is expected that experiments will be conducted with vertical radiators also in order that as complete a knowledge as possible be gained of the subject.

The investigation of antenna systems will proceed in conjunction with comprehensive field-strength measurements which will show accurately the gain and losses resulting from each type. These field-strength measurements will also show the coverage obtained. There is little information available showing what good coverage may be obtained with various amounts of transmitter power. Further, it is not known at this time what signal levels constitute good coverage. This phase of the transmission program will be carefully investigated.

TRANSMISSION MEDIUM

The Zenith Radio Corporation from its experience in manufacturing broadcast receivers having high-frequency bands has quite accurate data on interference on the high frequencies. In a great many locations entirely satisfactory reception cannot be obtained on these high-frequency bands. In these cases this difficulty is not particularly serious as the receiver has been built primarily as a broadcast receiver and interference and poor service on the higher frequency bands do not greatly destroy the receiver's utility. It is obvious that such a condition does not prevail with a television receiver which must give service in that part of the radio spectrum which is now in many cases entirely unsatisfactory. In order to determine what means are necessary to overcome this problem, it is expected to lay stress on the actual surveying of field conditions. Wherever locations are found in which the received signal is not satisfactory, careful individual investigation will be made for the purpose of determining what solutions may be developed. The field observations will be made using a special receiver which will permit measurement of carrier strength and also observations of the effects of the medium of propagation on the various frequencies of the modulated wave.

It has been found experimentally that when a transmitter radiates a wave in which there appear frequencies covering a wide range, as in the case in television, that all of these frequencies are not propagated equally well. This problem can be studied by modulating the transmitter with one frequency at a time throughout the modulation range of 30 to 2,500,000 cycles. The special receivers referred to above will be designed to make measurements of this type.

It is expected through widespread use of these measuring units to make observations wherever any irregularities appear to determine if possible the causes.

Field strength coverage observations using the different types of transmitting antenna systems with the different modulation frequencies will be made.

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TELEVISION RECEIVERS

It is the duty of the television receiver to translate the incoming signals into useful intelligence. To do this the receiver must faithfully reproduce, in the desired form, the received energy. Of further importance in the television receiver is the necessity of maintaining synchronism exactly at all times with the transmitter. This is a feature of extreme importance and it means in general that the receiver has to be designed so that a wide variation in input level will be automatically compensated so that synchronization will be maintained.

There will be conducted a careful study of received transmissions looking toward the development of sweep circuits and synchronizing systems which will be least affected by the various factors bearing on radio transmission, such as possible multipath signals, fading, and atmospheric and electrical disturbances.

Television receivers will be required to work in locations where there is noise present which could well interfere with synchronism. In order to determine what these limits are, it is intended to make careful observations of transmitted signals under all of the different reception conditions possible.

A problem peculiar to the television receiver is that it must pass a very wide band of frequencies. Where superheterodyne receivers are used, it is required that the intermediate frequency amplifier be capable of passing this wide frequency range. Such a condition might readily give rise to direct intermediate frequency pickup of radio stations whose frequencies lie within the intermediate amplifier band. Extensive field observation under actual television transmission conditions will be made to determine the extent to which this situation might exist. Investigations such as these can only be conducted under actual field conditions and the necessary research and experimentation can best be conducted on the basis of field operation findings.

RECEIVER ANTENNA

It has been found in ultra-shortwave reception that the type of receiver antenna and its location are of extreme importance. It is usually necessary that some type of transmission line be used and that the antenna used with it be carefully located. This is of special importance in television reception where every effort must be made to overcome electrical interference which is in general more prevalent in those frequencies assigned to television than any others. The development program for television receiving antenna calls for the transmission line coupled type. Experimentation and tests will be conducted on directive systems as well as antenna of the simple half-wave type. The Zenith Radio Corporation has been using with its Wincharger Farm Radio units a small steel tower which it is expected may have great value in receiving antenna installation. This tower may be erected to heights of 80 feet. Research will be conducted with this tower as an antenna support looking toward practical development of an antenna system useable on apartment and hotel buildings where one antenna will serve several different television receivers. In congested areas where there is considerable automobile traffic, it is reasonable to believe that such a development may be necessary to insure good interference-free television service. The receiving antenna development will in many cases have to run parallel to and simultaneously with transmitter antenna research, especially where full advantage is to be taken from the use of horizontal or vertical radiators.

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At the hearing a witness—a professional engineer—stated that he was familiar with the application; that it was prepared under his direction; and that the application correctly sets forth the facts with reference to the proposed station.

Item 18 (b) of the application requires a statement of the qualifications of engineers supervising research and taking observations proposed by the applicant; and under that requirement the applicant attached to its application a paper containing a statement as follows:

The Zenith Radio Corporation manufactures a complete line of radio receivers including household radio receivers of all types, automobile radio receivers, special farm receivers operated from batteries deriving their power from wind power and radio receivers for use on boats. This Company does all of its own radio engineering and to perform this work a total staff of twenty-three engineers is maintained with very complete laboratory facilities. Negotiations are now in progress with two additional engineers to be added to the personnel of the engineering department of this Company. Both of these men have excellent technical backgrounds, are now working on modern television apparatus with particular reference to television transmitters and associated equipment. The staff will be further augmented with competent television technicians as the circumstances require.

Item 18 (c) of the application calls for a statement of results expected and detailed bases therefor; and under this head the applicant made a statement as follows:

The result expected from the program outlined in 18-A is the required information necessary for the production of a transmitter, receiver and associated equipment capable of reliable, high quality, television service. The television development program of the Zenith Radio Corporation has been laid out on the basis of securing accurate comprehensive field information, together with research and experimentation on the terminal equipment so that a complete understanding of the whole problem is obtained. A thoughtful examination of the requirements which must be met in the preparation of television service indicates that research must go forward on all the components of the system. The television transmitter and television receiver are far more intimately associated as terminal equipment than are the transmitters and receivers in almost any other branch of radio communication. To work intelligently on one requires development on the other and it is the intention of this Company to proceed in this manner. The Zenith Radio Corporation has been engaged in the Manufacture of radio broadcast receivers for many years. As a Manufacturer it is the oldest and second largest producer of radio receiving sets in the United States. Through this long period of operation this Company has pioneered in many ways, such as the first use of radio in Arctic exploration work when in 1923 the Officers of the Zenith Radio Corporation persuaded Admiral Ridley McLean, then Director of Naval Communications, to commission an Amateur and send him with the Pacific fleet so that shortwave communication could be attempted between the fleet and the S. S. Peary which was equipped with Zenith and of which ship our President E. F. McDonald, Jr., was in command. In August 1925 the S. S. Peary established two-way short-

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wave communication with the *S. S. Seattle*, then off the coast of Tasmania; the *S. S. Peary* at this time was at 78°30' north latitude in North Greenland.

The Company also contributed to the success of early broadcasting. It demonstrated successful radio transmitters and receivers for freight train use in 1928.

This Company brings to the television problem its years of experience in the radio industry and experts to contribute to the progress of television communication through the program which has herein been outlined.

The Zenith Radio Corporation is essentially an organization devoted to the development and manufacture of radio equipment for the public. The products of such an organization must be practical, acceptable, and capable of a high degree of actual performance. Any designs or developments which come to its attention must meet this formula. This Company feels that at least a fairly satisfactory set of standards has been outlined for practical television reception, but before this new art is ready for the public service it must go through many refinements and much practical development. This Company has been proceeding with television receiver development along these lines which could be carried on in the Laboratory. However, this is a field in which receiver and transmitter development must proceed simultaneously in order to meet the requirements previously outlined. In view of these circumstances this application to the Federal Communications Commission for experimental facilities is made.

Item 23 (g) of the application requires the applicant to attach full description of the special features of the proposed antenna system and the development thereof; and under this requirement the Zenith Radio Corporation made a statement as follows:

It is believed that one of the principal phases of an experimental television development program is the investigation of radio transmission on the ultra-high frequencies. The transmitting and receiving antennae represent the terminal connections to the transmitting medium and much work remains to be done on both. The Zenith Radio Corporation has manufactured and sold for many years radio receivers which operate on the high and ultra-high radio frequencies. Its experience during this time definitely indicates that present conditions are not satisfactory.

It has been developed with some authority that a great deal of the electrical disturbances which cause interference with radio reception is propagated in a vertically polarized sense. Taking advantage of this fact most ultra high radio frequency transmission where real attention is being paid to the minimization of electrical interference is being done with radiators producing essentially horizontally polarized transmission. In general the same principles are being used at the receiving antenna. The development program of this Company will lay heavy stress on a complete investigation of antenna systems and to this end all possible types of antenna systems will be used for the purpose of conducting actual field strength coverage surveys. The type of antenna to be used at the start of the work will be the simple half wave horizontal doublet against which as a standard all other types of transmitting antenna can be compared. Various configurations of this antenna will be used to produce uniform fields in the horizontal field. Reflector systems will be investigated as completely as possible since it appears that in some parts of the

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Country such as those Cities located on a large body of water that advantage can well be taken of their use.

The vertical half wave doublet with its variations including reflector systems will also be investigated for comparison with the horizontal type with respect to signal radiated, effects with respect to electrical noise and directivity.

In the verified statement of facts to be proved made by the applicant and filed herein, the Zenith Radio Corporation, among other things, stated:

That the applicant is well qualified, legally, technically, financially, and in other respects, to carry on the program of experimentation set forth in this application.

That the applicant possesses ample facilities to enable it to carry out the experimentation work proposed; that it owns and operates a large factory in the City of Chicago, Illinois, and in connection therewith has owned for many years, and now operates, a fully equipped experimental laboratory, and has in its employ radio engineers and other persons well versed in the art and science of radio, and the field of television, including both the transmission and reception of visual images, and that the program of experimentation, research, and development which it has heretofore carried on, and which it proposes to continue and extend, will be conducted under the direct supervision and control of well-qualified engineers and other technicians.

That the applicant has heretofore conducted extensive research and experimentation work in the field of radio transmission and reception, and in the field of television; that said work in the field of television has reached, or will shortly reach, the point of development where it will be impossible for the applicant to carry forward such work without having available for its use an experimental television transmitting or broadcasting station.

That the development and experimentation work heretofore conducted and carried on by the applicant in the field of television indicates promise that the same will result in additional and substantial contributions to the art of broadcasting visual images.

At the hearing several witnesses were heard and the Commission finds that the material statements made in the application and in the matter attached thereto, as well as in the statement of facts to be proved, have been established.

One of the problems which must be met in the further development of television to a point where it will be of practical use and of sufficient merit to be sold to the public, is a better understanding of the matter of interference on the frequencies which have been allocated for television experimentation. The Zenith Radio Corporation has for a number of years manufactured sound receivers which cover the broadcast band and also the short-wave band. It has ascertained that in many locations satisfactory reception on the short-wave bands is impossible because of electrical interference. It is not thought that the whole problem of interference can be fully and properly investigated without a transmitter for testing purposes, nor is it

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thought that a receiver can be intelligently and successfully designed without the use of a transmitter in conjunction with the study and work devoted to the receiver; furthermore, it appears that special antenna may have to be developed for use along with the receivers; and it is not likely that the development work on a receiving antenna would be successful without an available television signal.

It appears to be a fact that field tests on a sound receiver show up defects which are not disclosed by equipment tests in the laboratory; and apparently there is no reason to suppose that a television receiver passing equipment tests in the laboratory should not be subjected to field tests before it is accepted and subjected to use.

It is said that there are many circuits in a television receiver which would be related to the results of the tests which might be made with a transmitter available while the television receiver proceeds to the completion of its design. It is believed that the television transmitter must necessarily perform a large part in overcoming problems now known to exist in the development of the television receiver. It might be admitted that at present the engineering staff of the applicant is unable to state in what particular the television receiver which they hope to perfect will be superior to some receiver which may now be in process of development by some other radio manufacturer; but there is nothing in that point, if indeed it be a fact, because one of the purposes of the application is to put the engineers of the Zenith Radio Corporation in a position where they may contribute their ability and experience to the development of a satisfactory television receiver.

One of the engineers of the applicant stated that it had been investigating the various component parts of transmitters and receivers; that the engineers of the applicant had been working on television sweep circuits, on the production of the synchronizing signals, on television amplifiers; that they hope to learn something about radiation systems and antennas usable on ultra high frequencies to overcome the difficulty experienced in television reception; that television receivers as presently known require in operation a strong signal for any satisfactory use; that difficulties arise in propagating such signals on the frequencies used in the transmission of television because of the noise level that exists in cities; and it is contended that experimentation is needed for such reasons.

The Commission finds that the television transmitter and the television receiver are the two most intimately related parts of the terminal apparatus in a radio transmission; and that the receiver must have sufficient signal at all times to maintain the operating relation.

It is not believed that it will be an easy and certain possibility to perfect the design for a radio television receiver except under actual field conditions and tests to ascertain the effect of noise and other disturbances upon the propagating medium on the wide band frequencies.

One witness testified that complete television systems had been developed at the laboratory but he added that the systems that were developed in the laboratory did not test the propagation characteristics, the effect of static, both man-made and natural disturbances, and in some instances were not far enough separated to get away from the harmonics, etc., that might be generated by the transmitter itself.

The same engineer also said: "There is a great difference between a laboratory set that works fairly satisfactorily in a laboratory and one that would give fair satisfaction under outside conditions."

The applicant maintains a staff of many engineers, several of whom are devoting, and will continue to devote, their entire attention and time to television experimentation; and the applicant at the time of the hearing was engaged in selecting an additional staff of competent television engineers to carry on the work proposed by it under the pending application.

The Zenith Radio Corporation owns a completely equipped factory with approximately 13 acres of space on one floor—and one section of the factory has two floors. It has recently spent one year and expended more than a million dollars in improving and enlarging its factory; its laboratories are fully equipped for radio television research and development. The applicant has actively engaged since January 1937 in the development of important parts of the television transmitter and receiver. The proposed transmitter is designed for and will be capable of modern high definition television, using all electronic methods.

The proper selection of a carrier frequency for the proposed operation of the television transmitter will eliminate any question of interference with existing service. The same result could be accomplished by sharing hours of operation with any other station using the same frequencies.

It does not appear from the record that there are any applications pending which involve questions of interference with the operation of the proposed station.

The proposed transmitter is to be located on the factory of the applicant; and the Commission finds the site to be satisfactory.

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GROUNDS FOR DECISION

On the record in this case the Commission finds:

1. The applicant is legally, financially, and technically qualified to construct and operate the proposed station and to carry on the research and experimentation covered by the application and the testimony thereunder;

2. The applicant has a program of research and experimentation which indicates reasonable promise of substantial contribution to the development of the television broadcast art;

3. The program of research and experimentation will be conducted by qualified engineers;

4. The applicant will comply with all the Rules and Regulations of the Commission and will mark and light the antenna towers proposed to be constructed;

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

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D. C.

<p>In the Matter of UNIVERSITY OF ILLINOIS (WILL), URBANA, ILLINOIS. For Construction Permit.</p>	}	DOCKET No. 4865.
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Decided July 12, 1938

Horace L. Lohnes on behalf of the applicant; *George O. Sutton*, *Arthur H. Schroeder*, and *James L. Proffitt* on behalf of Station WDBO, respondent; *Mrs. Mabel Walker Willebrandt* and *William M. Smith* on behalf of Station WIND, respondent; *D. M. Patrick* and *Karl A. Smith* on behalf of Station WTAG, respondent; *Ben S. Fisher* and *John W. Kendall* on behalf of Station WCHS and *Mr. William F. Huffman*, respondents.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION :

STATEMENT OF FACTS

This proceeding arose upon the application of the University of Illinois, licensee of Radio Station WILL, for a construction permit to increase power from 1 kw. daytime to 5 kw. daytime, on the frequency 580 kc., at Urbana, Illinois.

A public hearing was duly held on January 7, 1938, before an examiner, and on March 23, 1938, the report of the examiner (I-614), recommending that the application be granted, was published. No exceptions were filed, nor was oral argument requested or held.

The University of Illinois, hereinafter referred to as the applicant, was established on February 28, 1867, as a federal-land-grant college, with the name of Illinois Industrial University. In 1885 the name of the University was changed to the University of Illinois. The governing body of the University is composed of eleven trustees, nine of which are elected directly by the voters of the State of Illinois; the other two members of the Board of Trustees being the Governor and the Superintendent of Instruction. All of the trustees are citizens of the United States.

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The University has been operating Station WILL as a nonprofit undertaking since 1922, and now operates during all the daytime hours available from 7:30 a. m. to local sunset. The station has a competent staff adequate to satisfactorily conduct both the present and proposed operation.

The antenna, transmitting equipment, and transmitter site proposed by the applicant is satisfactory. The cost of the construction here proposed is estimated at \$10,000. The operating budget of the station for the year 1937 amounted to \$17,145. Electricity, water, and rent are furnished by the University without charge to the station. The operation here proposed will not require an increase in the operating expense.

The physical plant of the University as of June 30, 1937, is valued at \$30,703,991. About 64% of the income of the University is derived from appropriations by the state legislature out of funds raised from state taxation, which appropriation for the biennium 1937-1938 amounted to \$10,154,102. About 11% of the University's income (\$650,000 annually) is derived from grants-in-aid from the Federal Government for use in the University's agricultural curriculum and agricultural extension and experimentation projects. The balance of the University's income is derived from student fees, gifts, endowments, etc.

In the 15 years that the applicant has operated Station WILL, it has devoted \$81,752 to plant and equipment for the broadcast station, and about \$73,796 to operating and maintenance expense. The sum necessary to finance the proposed construction has not been segregated from other University funds, but the Board of Trustees instructed that this application be filed with knowledge that the estimated cost of the proposed construction would be \$10,000. In view of this fact, and in view of the general financial situation of the University, the Commission finds the applicant qualified to finance the construction and operation here proposed.

Station WILL is located on the University campus at Urbana, Illinois. According to the 1930 census the population of Urbana was 13,060, and the population of Champaign, Illinois, a contiguous town, was 20,348. The only other station located in this community, Station WDWS, is a local commercial station, with power of 100 watts, whereas the applicant's station is a nonprofit institution for educational purposes only.

The University of Illinois has 2,076 faculty members and a student body in its regular term of 13,647, and for the 1937 summer term there was an enrollment of 3,481 students. In addition to its educational activities on the campus at Urbana, the University has a medi-

cal school located in Chicago and has numerous experimental farms located throughout the State of Illinois. The University is the center of much of the state's educational activities, and in the year 1937, 65 conventions brought 52,000 people to the University campus. The University is the center of many state high-school activities, and as a state institution endeavors to make its educational facilities available to the people throughout the state. The University engages in extensive agricultural research and experimentation for the purpose of rendering expert advice and valuable assistance to the farmers within the state.

The applicant's station has been used as a complement to the other educational facilities of the University. The programs of the station have dealt with a wide range of educational subjects, including state, national, and international matters, interspersed with music, news, and sports. One hour per week is made available to other colleges in the state, and a devotional program is offered each week-day morning. The facilities of this station are offered without charge to various civic and charitable organizations. Health, safety, and agricultural broadcasts are regular features of the station's program.

For its educational broadcasts the University has available its entire staff, many of the members of which are considered national and international authorities in their respective fields. For its entertainment broadcasts the University has available a large amount of musical and dramatic talent from the faculty and the student body of the University, which includes a large orchestra of 105 pieces, a symphony band, choral society, men's glee club, women's glee club, trios, quartets, string quintets, and a small orchestra of sixteen pieces. For its sports broadcasts the University has available its extensive sports program, as well as the state-wide high school contests which are held annually at Urbana.

Station WILL, as now authorized to operate, serves less than one-half of the population that resides in the State of Illinois outside of Chicago, and is the only state-owned and the only educational station in that state. Should the instant application be granted, the population within the service area of the applicant's station will be increased nearly 100%. The nature and purpose of the service offered by the applicant to its listeners, and the increased number of people within the state who will be able to receive such service, establishes a public need in the State of Illinois for the increased service here proposed.

The following three stations are located at distances from the applicant's station that are less than the normally accepted mileage separations: Station WCHS is located at Charleston, West Virginia, 380 miles distant, whereas the normally accepted separation is 400 miles;

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Station WKZO is located at Kalamazoo, Michigan, 205 miles distant, whereas the normally accepted separation is 215 miles; Station WIND is located at Gary, Indiana, 110 miles distant, whereas the normally accepted separation is 182 miles.

Assuming average conductivity of the soil in the areas in question, the granting of the instant application would cause interference slightly within the normally protected service areas of Stations WCHS and WKZO, and those stations would cause interference slightly within the normally protected service area of the proposed station. There is evidence of record, however, that the conductivity of the soil in the vicinity of Charleston, West Virginia, is less than average, in which case the expected interference within the normally protected service areas of Station WCHS and the applicant's proposed station would be decreased to such an extent as to render it unobjectionable. The portion of the service area of the applicant's station that would be affected by interference from Station WKZO would not receive service from the applicant station in the absence of this interference, because of the limitation imposed on its proposed operation by Station WIND.

The present operation of the applicant station causes objectionable interference within the service area of Station WIND, affecting 60,000 people. If the instant application is granted, the affected area will be enlarged to include a population of 93,000 people. The affected area in either case is within the borders of the State of Illinois, and its listeners receive service similar to that rendered by Station WIND from several commercial stations operating in the metropolitan area of Chicago. Station WIND will cause interference within the normally protected service area of the proposed station, but most of the area thus affected lies within the metropolitan area of Chicago, where a 0.5 mv./m. signal would not usually be satisfactory. Moreover, the population residing within the affected area does not now receive satisfactory service from the applicant station.

There was pending at the time of the hearing the application of William F. Huffman for a new station on the frequency 580 kc., with 250 watts power, to be located at Wisconsin Rapids, Wisconsin, 305 miles distant from the applicant's station. The normally accepted mileage separation under such circumstances is 400 miles. Should the instant application be granted, it would limit the service area of the proposed Wisconsin Rapids station to its 1.2 mv./m. contour, and the latter application, if granted, would cause interference slightly within the normally protected service area of Station WILL as here proposed. However, the interference to Station WILL would be in an area that would not otherwise receive service from the appli-

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cant station because of the density of the population or because of interference from Station WIND.

In brief, the interference to Stations WCHS and WKZO that would be expected from the operation proposed by the applicant is only slightly within the normally protected contours of those stations, and the interference within the service area of Station WIND is entirely within the State of Illinois, where a service similar to that of Station WIND is rendered by other stations. The need of the listeners in the State of Illinois for the singular service offered by the applicant warrants the granting of this application in spite of the interference that it will occasion. This need is also found to be sufficient to warrant a limitation to the 1.2 mv./m. contour of the station proposed in the application of William F. Huffman.

GROUNDS FOR DECISION

On the record in this case the Commission finds:

1. The applicant is legally, technically, financially, and otherwise qualified to operate the proposed station;
2. There is public need for service of the nature, purpose, and class proposed by the applicant herein;
3. The slight interference that the proposed operations would cause within the normally protected service area of Stations WKZO and WCHS is warranted by the need for the service which the applicant proposes. There will be increased interference within the normally protected service area of Station WIND, but the affected area is entirely within the State of Illinois and the listeners therein have a greater need for service from the applicant station than from Station WIND. The objectionable interference that would result within the proposed service area of the applicant station from existing or proposed stations is negated in importance by the increase in the number of listeners that would receive satisfactory service from the applicant's station;
4. The operation of the proposed station would involve objectionable interference within the service area proposed by the pending application of William F. Huffman, but such interference is warranted by the need for the service of the nature and class herein proposed.
5. The granting of this application will serve the public interest, convenience, and necessity.

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of
KANAWHA VALLEY BROADCASTING COMPANY,
CHARLESTON, WEST VIRGINIA. } DOCKET No. 4811.
For Construction Permit.

Decided July 13, 1938

Paul D. P. Spearman, on behalf of the applicant; *D. M. Patrick* and *Karl A. Smith*, on behalf of Station WCKY, respondent; *Ben S. Fisher*, *John W. Kendall*, and *Charles V. Wayland*, on behalf of Station WCHS, intervener.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION :

STATEMENT OF FACTS

This proceeding arose upon the application of Kanawha Valley Broadcasting Company for a permit to construct a new station at Charleston, West Virginia, on the frequency 1500 kilocycles with 100 watts power, unlimited time.

A public hearing was duly held on October 19, 1937, before an Examiner, and on February 1, 1938, the report of the Examiner (I-576), recommending that the application be granted, was published. No exceptions to the report of the Examiner were filed, but the parties were permitted to file briefs in lieu of the scheduled oral argument.

The applicant is a corporation, organized under and pursuant to the laws of the State of West Virginia, and has the power under its charter to construct and operate a radiobroadcast station.

The applicant is authorized by its charter to issue 250 shares of stock with par value of \$100 each. Twenty-five shares have been issued for cash to the following persons: 23 shares to W. A. Carroll, and 1 share each to R. K. Talbott and S. J. Halstead. Mr. Carroll has agreed to accept and pay for whatever future issues of capital stock may be necessary. Mr. Carroll is president, Mr. Talbott is vice

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president, and Mr. Halstead is secretary-treasurer, and each is a citizen of the United States and a resident of the City of Charleston. The foregoing facts establish the legal qualifications of the applicant to construct and operate the proposed station.

The transmitter equipment which the applicant proposes is satisfactory. The antenna system and exact site for the transmitter remain to be determined and are subject to the approval of the Commission. The applicant proposes to retain a staff, consisting of a station manager and other experienced persons, which is adequate to satisfactorily conduct the operation here proposed.

The estimated cost of construction is \$12,000 and the estimated monthly cost of operation is \$1,865. The latter estimate does not include any provision for copyright fees, the usual program operating expense, nor any allowance for repair or depreciation expense.

As heretofore stated, \$2,500 has been paid in for the issuance of 25 shares of capital stock. The corporation has no other assets, but Mr. Carroll has agreed to purchase any or all of the remaining 225 authorized shares. Mr. Carroll has an excess of current assets over total liabilities amounting to about \$27,000, and in the year 1936 had a net income of over \$19,000. His current assets consist of cash in the bank, \$5,399.71; Federal Land Bank bonds, \$20,000; and West Virginia State Bonds, \$2,000. Total liabilities consist of \$500 in accounts payable. In addition to the assets named above Mr. Carroll owns considerable stock in several national and local corporations and has interests in real estate that are estimated to amount to nearly \$60,000.

On the basis of oral contracts entered into with advertisers in the Charleston area, it is estimated that the monthly receipts of the station will amount to between \$2,200 and \$2,300, which estimate is based on the applicant's proposed rate card that was shown to each prospective advertiser with whom an oral engagement was entered into.

To summarize—the applicant has available \$2,500 paid-in capital, \$22,500 through the issuance of its remaining authorized shares to a financially qualified stockholder, and estimated monthly receipts amounting to nearly \$2,300 with which to finance construction, estimated to cost \$12,000, and operation, estimated to cost about \$2,000 monthly.

According to the 1930 Census the metropolitan area of Charleston, West Virginia, then had population of 108,160, and is the capital of West Virginia and the county seat of Kanawha County. According to the 1935 Census of Business, Charleston had 306 service establishments with annual receipts amounting to \$2,833,000 and employing 543 persons with total pay rolls amounting to \$903,000. There were

161 wholesale establishments with annual sales amounting to \$49,399,000 and employing 1,827 persons with total pay rolls amounting to \$3,229,000. There were 1,020 retail stores with annual sales amounting to \$33,731,000 and employing 4,415 persons with annual pay rolls totaling \$4,402,000.

The only radiobroadcast station located and furnishing primary service within the City of Charleston is Station WCHS, a regional station operating on the frequency 580 kilocycles with 1 kilowatt power day and 500 watts night, unlimited time. There is some service available in the surrounding rural areas from Station WSAZ, located at Huntington, West Virginia. Station WCHS is affiliated with a national network and a substantial portion of its time is devoted to broadcasts of chain origin. The rates proposed by the applicant average slightly more than one-half of the rates set out in the "local rate card" of Station WCHS and about one-third of the rates set out in the "general rate card" of Station WCHS.

The estimated monthly receipts heretofore referred to were based upon oral contracts with eleven local advertisers and the record does not show that in gaining this commercial support the applicant would be depriving Station WCHS of any of its present patronage. The latter station was permitted to intervene in this proceeding upon the basis of allegations in its petition to the effect that the establishment of an additional station in Charleston would impair the economic support for the program service of Station WCHS, but the intervener offered no evidence in support of its allegations.

The evidence contained in this record on the general economic situation of the Charleston community, the fact that Station WCHS devotes a substantial portion of its time to chain broadcasts and consequently must derive a substantial portion of its income therefrom, the fact that the applicant has oral contracts with specific advertisers, and the fact that Station WCHS offered no evidence to show that the establishment of the station proposed herein would impair the economic support of the program service of Station WCHS establish the ultimate fact that there is economic support in the Charleston community for the proposed station and Station WCHS.

As heretofore stated, the listeners in the City of Charleston receive primary service only from Station WCHS and a substantial portion of that station's time is devoted to broadcasts of chain origin. The applicant proposes to devote its facilities entirely to broadcasts of local origin and proposes to allocate substantially more time to local, civic, news, educational, sports, and farm programs than is devoted by the existing station. The program schedule proposed by the applicant discloses a diversified service of a local nature and there

appears to be no duplication of the program service of Station WCHS. These facts establish a need in the area in question for service of the class proposed by the applicant herein.

Talent is available for the proposed program service from numerous musical organizations and individual artists, the State Department of Agriculture, the West Virginia State Police Department, the Morris Harvey College, the Memorial Presbyterian Church, the City Government, the Boy Scouts, the Salvation Army, the Kanawha County Public Library, and the local schools. The applicant also proposes to subscribe to a transcription service, a news service, and to retain a staff pianist.

The following three existing stations are located at distances from Charleston that are less than the normally accepted mileage separation: Station WWSW is located at Pittsburgh, Pennsylvania, 169 miles distant, whereas the normally accepted separation is 185 miles; Station WOPI is located at Bristol, Tennessee, 130 miles distant, whereas the normally accepted mileage separation is 185 miles; Station WCKY is located at Covington, Kentucky, 165 miles distant, whereas the normally accepted mileage separation is 225 miles. Based upon the minimum antenna efficiencies required by the Commission's Rule 131 and the Commission's second hour 10 percent curve, it is not expected that there would be objectionable interference between the proposed station and either Stations WCKY or WWSW. There would be a mutual limitation between the proposed station and Station WOPI to the 2.06 millivolt per meter contour of each station at night. These stations are normally protected from objectionable interference within their 2 millivolt per meter contours. However, the area in which this normal protection would not exist in the instant case would be a circle about one-tenth of a mile wide encircling each station and the undesired signal in either case would be only about 3 percent above the allowable level. This slight objectionable interference is not substantial enough to warrant denial of the instant application.

At the time of the hearing on the instant application no other application was pending that involved objectionable interference with the operation proposed by the applicant herein.

GROUNDS FOR DECISION

On the record in this case the Commission finds:

1. The applicant is legally, technically, financially, and otherwise qualified to operate the proposed station;
2. There is public need for service of the class proposed by the applicant herein;

3. There is sufficient economic support in Charleston, West Virginia, for the proposed station and Station WCHS;

4. There would be no substantial objectionable interference to any existing stations resulting from the granting of the instant application;

5. The operation of the proposed station would not involve objectionable interference within the service area proposed by any application pending at the time of the hearing;

6. The granting of this application will serve public interest, convenience, and necessity.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D. C.

<p>In the Matter of SCRANTON BROADCASTERS, INC.¹ (WGBI), SCRANTON, PENNSYLVANIA. For Modification of License.</p>	}	DOCKET No. 4869.
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Decided July 19, 1938

Horace L. Lohnes, E. D. Johnston, and F. W. Albertson on behalf of the applicant; *Littlepage and Littlepage* by *T. P. Littlepage* on behalf of Station WRBC; *George O. Sutton, Arthur W. Schroder, and James L. Proffitt* on behalf of Station WGRC.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION :

STATEMENT OF FACTS

This proceeding arose upon an application of Scranton Broadcasters, Inc., for modification of license of Station WGBI, Scranton, Pennsylvania, to increase power to 1 kilowatt at night. Station WGBI now operates on the frequency 880 kilocycles, with power of 500 watts night, 1 kilowatt day, and shares time with Station WQAN (which is also located in Scranton). The application was heard on December 10, 1937, before an examiner, who, in his report (I-596), recommended that it be granted.

Station WGBI was originally licensed in 1925 to Frank Megargee. On August 19, 1926, the license of WGBI was transferred to the present licensee, Scranton Broadcasters, Inc., and said station has continued operation through successive renewals of license. Mr. Megargee is President of the licensee corporation.

In view of the fact that the applicant is the licensee of an existing radiobroadcast station, its legal and technical qualifications have heretofore been determined by the Commission and were not in issue in this proceeding. The financial qualification of the applicant to operate WGBI as proposed herein and the available commercial

¹ The Commission on September 13, 1938, denied petition of applicant for rehearing.
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support to sustain the cost of operation of said station were likewise not in issue in this proceeding.

The transmitting equipment of Station WGBI is of composite type, and the antenna is a vertical radiator. Station WGBI shares hours of operation with Station WQAN, Scranton, Pennsylvania. The latter operates only one hour a day, Monday through Saturday, inclusive, and WGBI operates the remainder of the time on week days, and unlimited time on Sundays. In view of the fact that Station WGBI now operates with power of 1 kw. daytime, no change in equipment is necessary to provide for nighttime operation with the same power.

The applicant maintains a staff of 24 full-time employees for the operation of Station WGBI. The staff consists of 5 employees in the engineering department, 9 engaged in program production and as announcers, 4 in sales promotion work, 3 in clerical work, and 3 exercising executive functions.

Considerable statistical data were introduced in the record showing that the Scranton-Wilkes-Barre area is a populous industrial and mining center. The City of Scranton now receives primary service from Stations WGBI and WQAN (whose operating assignments have been noted heretofore). The City of Wilkes-Barre receives primary service from two stations located in that community, namely, WBAX, which operates on the frequency 1210 kc., with 100 watts power, unlimited time, and WBRE, which operates on the frequency 1310 kc., with 100 watts power, unlimited time. Both of the latter stations render service to a portion of the Scranton area. Service of an intermittent nature at night is received in the residential sections of Scranton and in the rural areas contiguous to that city, from WABC, New York, N. Y., operating on the frequency 860 kc., with 50 kw. power, unlimited time; WJZ, New York, N. Y., operating on the frequency 760 kc., with 50 kw. power, unlimited time; WOR, Newark, New Jersey, operating on the frequency 710 kc., with 50 kw. power, unlimited time; WEAJ, New York, N. Y., operating on the frequency 660 kc., with 50 kw. power, unlimited time; and WCAU, Philadelphia, Pennsylvania, operating on the frequency 1170 kc., with 50 kw. power, unlimited time.

A list of the programs of Station WGBI, broadcast for the week beginning November 7, 1937, representing an average week's program, was submitted in evidence. The schedule indicates that the station presents a well-diversified program service which is designed to meet the needs of the area served. The station devotes approximately 66% of its time to sustaining programs and 34% to commercial programs; 46% of the time is set aside for network programs

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and 54% is utilized for nonnetwork programs. Live talent is used for 21% of the programs originating in its own studios. The station is affiliated with a chain broadcasting system and the Quaker State Network System. WGBI uses a news service and a transcription service on its daily program schedule.

There are four radiobroadcast stations located at shorter distances from Scranton, Pennsylvania, than that considered necessary, under average conditions, to avoid objectionable interference at night to the operation of WGBI as proposed; namely, CBO, Ottawa, Canada, operating on the frequency 880 kilocycles, with 1 kw. power, unlimited time; WSUI, Iowa City, Iowa, operating on the frequency 880 kc., with power of 500 watts night, 1 kw. day, unlimited time, WCOC, Meridian, Mississippi, operating on the frequency 880 kc., with 1 kw. power, unlimited time; and WABC, New York, New York, operating on the frequency 860 kc., with 50 kw. power, unlimited time. The average recommended mileage separations from the first three stations named above and the applicant is 1,000 miles in each instance, whereas the actual mileage separations are as follows: CBO, Ottawa, Canada, 272 miles; WSUI, Iowa City, Iowa, 812 miles; WCOC, Meridian, Mississippi, 940 miles. In connection with Station WABC, the average recommended mileage separation is 255 miles, and the actual mileage separation between Scranton and the transmitter of WABC (Wayne, New Jersey) is approximately 80 miles. Based upon a minimum antenna efficiency and the curve for the second hour after sunset for 10% of the time, it is predicted that there would be mutual interference at night between WGBI and CBO to the approximate 6 mv./m. contour of each station. Station CBO would experience an increase in interference from WGBI operating as proposed, from an existing limitation to its 4.24 mv./m. contour to approximately its 6 mv./m. contour. Each station would be expected to provide the predominant source of interference to the other. While some objectionable interference to the service of WSUI and WCOC at night would be expected from the operation of WGBI as proposed, each of these stations mutually provide a greater interference to the service of the other than that which would be expected from the operation of WGBI as proposed. No objectionable interference would be expected to result at night through the simultaneous operation of WABC and WGBI because of the fact that the terrain between these two stations has a very low conductivity.

There were three applications for facilities for stations pending before the Commission when the instant application was designated for hearing which would involve a question of interference should a grant be made of these applications and the application of WGBI.

An application (B2-P-1823) was pending for a new station to be established in Louisville, Kentucky, to operate on the frequency 880 kc., 500 watts power, unlimited time, employing a directional antenna for nighttime operation. The normal recommended mileage separation in this instance is 1,000 miles, whereas the actual mileage separation is 572 miles. The proposed directional antenna of the Louisville station would protect WGBI at night from interference from that station. However, it is predicted that WGBI, operating as proposed, would limit the former to its approximate 3.1 mv./m. contour. Station WRNL, Richmond, Virginia, has an application pending (B2-P-1805), requesting authority to operate on the frequency 880 kc., with power of 1 kw., unlimited time, using a directional antenna for nighttime operation. The directional antenna proposed to be used by Station WRNL would give protection to WGBI, so that there would be no interference to the latter when operating as proposed. However, WGBI would be expected to increase the limitation to WRNL from 4.24 mv./m., as at present, to its approximate 6 mv./m. contour. Station WGRC, New Albany, Indiana, has an application pending to operate on the frequency 880 kc., with power of 250 watts, unlimited time, employing a directional antenna at night. No interference would be expected at night from Station WGRC to the service of Station WGBI as a result of the use of the directional antenna. There would be interference, however, from WGBI, operating as proposed, to the approximate 3.1 mv./m. contour of Station WGRC.

Prior to the date of the hearing on this application the predominant source of interference to WGBI was from Station CMQ, Havana, Cuba, operating on the frequency 880 kc., with 25 kw. power, unlimited time. Since that date CMQ has changed its frequency from 880 kc. to 600 kc., with the same power and hours of operation. Accordingly, this source of interference to WGBI no longer exists.

The proposed increase in power of WGBI to 1 kw. for nighttime operation is expected to produce a 40% increase in signal intensity. It is calculated (basing population figures on 1930 U. S. Census) that WGBI, operating at night, under its present assignment, serves 259,886 people within its 10 mv./m. contour, and 283,458 people within its 6 mv./m. contour; and operating with 1 kw. power at night, as proposed, WGBI would serve 268,112 people within its 10 mv./m. contour, and 314,323 people within the 6 mv./m. contour. In summary, the expected increase in population within the 10 mv./m. contour is 3.1 percent, and within the 6 mv./m. contour it is 10.9 percent. However, the expected increase in service of WGBI at night would be confined largely to an improved signal strength in the area now served by said station, in view of the fact that the 6 mv./m. contour of WGBI

(the limitation imposed on its service area at night by CBO, Ottawa, Canada) would only be expected to move from 9 miles from the transmitter (operating with 500 watts power as at present) to approximately 10.5 miles therefrom when operating as proposed. The anticipated increase in service area of WGBI, i. e., extension of the 6 mv./m. contour, would, therefore, be confined to an approximate 1.5 mile fringe of the service that is now being received from said station. As heretofore stated, the rural area contiguous to Scranton now receives nighttime service from Stations WBAX and WBRE, both located in Wilkes-Barre, Pennsylvania, and from several clear channel stations located in the New York metropolitan area.

GROUNDS FOR DECISION

On the record in this case the Commission finds

1. The applicant has failed to show sufficient need in the Scranton area for additional broadcast service of the character proposed herein.
2. A grant of this application would be expected to severely increase the limitation to the existing service of Station CBO, Ottawa, Canada, during nighttime hours of operation.
3. A grant of this application would not serve public interest, convenience, and necessity.

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of the Application of
INDIANA BELL TELEPHONE COMPANY.

For a Certificate that the Proposed Acquisition by the Indiana Bell Telephone Company of the telephone property of the Dugger Mutual Telephone Company Will be of Advantage to the Persons to Whom Service is to be Rendered and in the Public Interest.

DOCKET No. 4961.

Decided July 19, 1938

Frank Quigley on behalf of the applicant; *Basil P. Cooper* on behalf of the Commission.

REPORT OF THE COMMISSION

BY THE COMMISSION:

This is a proceeding held pursuant to the provisions of Section 221 (a) of the Communications Act of 1934.

The Indiana Bell Telephone Company, an Indiana corporation, hereinafter referred to as the applicant, filed its petition with the Federal Communications Commission requesting the issuance of a certificate that the proposed acquisition by it of the telephone properties of the Dugger Mutual Telephone Company will be of advantage to the persons to whom service is to be rendered and in the public interest.

The applicant proposes to purchase all of the property of the Dugger Mutual Telephone Company for the sum of \$3,000 in cash. The proposed acquisition has been submitted to the Public Service Commission of the State of Indiana, and was approved by it on October 22, 1937, in Cause No. 12827.

Pursuant to the provisions of Section 221 (a) of the Communications Act of 1934, the Commission set the case for hearing to ascertain whether the proposed acquisition will be of advantage to the persons

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to whom service is to be rendered and in the public interest, such hearing being mandatory. Notice was sent to the Governor of Indiana, the Public Service Commission of the State of Indiana, the Dugger Mutual Telephone Company, and other parties in interest.

The case was heard before an examiner who has submitted his report (III-32), recommending that the certificate be granted. No exceptions to this report have been filed.

The Indiana Bell Telephone Company, the applicant herein, owns and operates telephone exchanges and toll lines throughout the State of Indiana, including a small exchange in the town of Dugger, Indiana, which serves approximately 100 subscribers in and near Dugger. The subscriber stations of the applicant have complete toll line connection with the Bell System network.

The Dugger Mutual Telephone Company, an Indiana corporation, hereinafter referred to as the Mutual Company, operates an exchange in Dugger which connects with exchanges in the towns of Sullivan, Paxton, Pleasantville, and Shelburn. The exchange serves approximately 185 subscribers, about 18 of whom are also served by the applicant. The exchanges of the applicant and the Mutual Company are not interconnected, and at the present time the subscribers of the Mutual Company do not have interstate or foreign communication service. The Mutual Company has been unable to earn sufficient revenue to keep its property in good operating condition. The stockholders of the Company, at a meeting held September 1937, approved the sale of the properties to the applicant for \$3,000 cash. The purchase and sale have been approved by three-fourths of the stockholders of both corporations as required by the laws of the State of Indiana and the Indiana Public Service Commission, and the Commission has issued its order approving the acquisition.

Pursuant to an agreement dated September 9, 1937, the Mutual Company agrees to sell to the applicant all the property which it may own on the date of the transfer, with the exception of cash and accounts receivable. According to applicant's Exhibit No. 5, the property to be acquired consists of right-of-way, land, buildings, central office equipment, station apparatus, station installations, drop and block wires, exchange pole lines, buried cable, aerial wire, vehicles, and other work equipment, and materials and supplies. The estimated original cost thereof to the Mutual Company totals \$23,631, and the estimated current cost new, less depreciation as of September 1, 1937, of such items is \$5,468. The balance sheet of the Mutual Company as of December 31, 1937, shows Plant and Equipment, \$1,156.98.

The Indiana Company plans to connect immediately the two exchanges so that complete telephone service will be available to all of the present subscribers of both exchanges and proceed in an orderly manner to coordinate the outside plant, retire such property as is not needed, and construct any facilities necessary to serve the public. The public will then be able to obtain complete telephone service by subscribing for one telephone.

Upon approval of the acquisition the Mutual Company will withdraw from the telephone business, liquidate its assets and dissolve the corporation.

The present monthly rates charged by the Mutual Company are: Residents, \$1.00; and Business or Professional, \$2.00. The stockholders of the company have special rates ranging from Business or Professional, \$1.00 per month to Residents on a six-party or more line, \$0.50. Additional charges are made for rural subscribers. The monthly rates of the Indiana Company in Dugger are: Business-Individual line, \$2.50; Resident-Individual, \$1.50; and four-party or rural, \$1.25. No change in rates is contemplated by the Indiana Company.

The question as to the proper accounting entries will be reserved until the time when the Indiana Company requests approval of the accounting to be performed with respect to this acquisition.

The balance sheet of the Indiana Company as of December 31, 1937, and the income statement for the same year were offered in evidence. These statements show, and the Commission finds, that the Indiana Company is fully able to purchase the properties of the Mutual Company.

After careful consideration of all the evidence and in the light of the entire record the Commission is of the opinion and so finds that the proposed acquisition of the properties of the Dugger Mutual Telephone Company by the Indiana Bell Telephone Company will be of advantage to the persons to whom service is to be rendered and in the public interest.

CERTIFICATE

At a regular meeting of the Federal Communications Commission held at its office in Washington, D. C., on the 19th day of July 1938:

The Commission having under consideration the petition of the Indiana Bell Telephone Company requesting the Federal Communications Commission to issue a certificate that the proposed acquisition of the properties of the Dugger Mutual Telephone Company by the Indiana Bell Telephone Company will be of advantage to the persons to whom service is to be rendered and in the public interest, and

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A hearing and investigation of the matters and things involved in said proceeding having been had, and the Commission having, on the date aforesaid, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof;

It is hereby certified, That the proposed acquisition of the properties of the Dugger Mutual Telephone Company by the Indiana Bell Telephone Company will be of advantage to the persons to whom service is to be rendered and in the public interest.

IT IS ORDERED, That this certificate shall take effect and be in force from and after 30 days from this date.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D. C.

<p>In the Matter of WLBG, INC. (WRNL), RICHMOND, VIRGINIA. For Construction Permit.</p>	}	DOCKET No. 4681.
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Decided July 19, 1938

Ben S. Fisher, Paul D. P. Spearman, Charles V. Wayland, and John M. Kendall on behalf of the applicant; *Horace L. Lohnes and E. D. Johnston* on behalf of Stations WGBI and WMMN; *Paul M. Segal and George S. Smith* on behalf of Station WAVE; *Eliot C. Lovett* on behalf of Station WRTD, intervener; *George O. Sutton, James L. Proffit, and Ashley L. Hawken* on behalf of Station WMBG, intervener; *A. V. Dalrymple* on behalf of the Commission.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

By THE COMMISSION (Sykes, Commissioner, dissenting) :

STATEMENT OF FACTS

This proceeding arose upon an application of WLBG, Inc., for construction permit to install directional antenna and to operate Station WRNL, Richmond, Virginia, on the frequency 880 kilocycles, with power of 1 kilowatt, unlimited time. (On December 12, 1937, WLBG, Inc., was granted a license to move its station (WPHR) to Richmond, Virginia, from Petersburg, Virginia, to change call letters to WRNL, and to operate on the frequency 880 kilocycles, with power of 500 watts, daytime only.) On September 14, 16, and 17, 1937, a hearing was held on the instant application, before an examiner, who, in his report (I-534), recommended that it be granted. Written briefs in opposition to the Examiner's Report, filed by Stations WRTD and WMBG, respondents, raise no questions not involved in a determination of the application on its merits.

The applicant's legal and technical qualifications are not in issue in this proceeding.

As of August 31, 1937, the applicant corporation had total assets of \$59,656.03, including \$777.68 in cash, \$1,452.82 in accounts re-
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ceivable, and \$57,425.53 in fixed assets. Total liabilities, apart from capital stock, include \$952.27 in accounts payable, and \$46,427.51 in sums due to stockholders (for advances received therefrom). Two of the three stockholders of the applicant corporation, namely, Dr. Douglas S. Freeman and Dr. John Stewart Bryan, will devote their personal funds, if necessary, to finance the construction and operation of the station as proposed. As of September, 1937, Dr. Freeman and Dr. Bryan had a net worth respectively of \$266,900 and \$1,629,014.17. In addition, Dr. Freeman has the sum of \$25,000 on deposit in a bank, which is available to defray the costs of construction and operation of the station.

The estimated increase in monthly expenditure which will result from operation of the station as proposed is \$1,747.20. Written commitments for advertising time during evening hours were secured from Richmond merchants, totaling \$1,955 monthly.

According to the 1930 U. S. Census, the metropolitan area of Richmond had a population of 220,513. The United States Census of Business for 1935 shows 252 wholesale establishments in Richmond, with total sales of \$71,921,000 and 2,606 retail establishments, with total sales of \$79,837,000.

Primary service in addition to that of WRNL is received in Richmond from the following stations, all located therein: WRVA, operating on 1110 kilocycles, with power of 50 kilowatts, unlimited time; WMBG, operating on 1350 kilocycles, with power of 500 watts, unlimited time; WBBL, operating specified hours on 1210 kilocycles, with power of 100 watts; and WRTD, operating on 1500 kilocycles, with power of 100 watts, unlimited time. Secondary service from distant clear channel stations is available to the surrounding rural areas.

WRVA, WMBG, and WRTD are all affiliated with national broadcasting chains. An analysis of programs broadcast by Stations WMBG and WRTD for two separate periods of operation during nighttime hours indicates that these stations devote respectively 84 and 83 percent of their time during such periods to chain broadcasting. WBBL is a church station and operates on Sundays only. Station WRNL does not propose to carry chain programs, but will be operated as an independent station.

Dr. Freeman is President of the Board of Trustees of the University of Richmond and a professor of the Graduate School of Columbia University. He is also a lecturer in the Army War College and the Coast Artillery School. He holds degrees from the University of Richmond, the College of William and Mary, Washington and Lee University, Wake Forest College, Marshall College, Wesleyan University, the University of Wisconsin, and Dartmouth

College. In addition he has written a number of books. Dr. John Stewart Bryan is President of the College of William and Mary, and Chairman of the Public Library at Richmond. Furthermore, he is the publisher of a newspaper, namely, the Richmond News-Leader. Mr. Tennant Bryan, the third stockholder, is the son of Dr. Bryan and is the Secretary of the Virginia Union University.

The applicant corporation proposes to conduct a program service primarily educational in character. A governing board will be established, consisting of leaders in religious and educational thought in the Richmond area, which will determine the suitability of the educational programs. The program day will be divided with specified portions of time allotted to broadcasts specially designed to meet the needs of the respective classes of persons residing in the service area of the station. It is estimated that approximately one-third of the population of the Richmond area is colored. Four proposed courses designed specially to meet the needs of this section of the population (approximately 85,000 persons) are: Nursing and home hygiene, care of children, cooking, and special vocations for Negro use.

Additional programs covering a wide variety of vocational subjects will be broadcast. To serve the interests of the remaining groups, classified from a cultural standpoint, making up the population of the area, additional specially devised programs will be offered, including courses in gardening, preserving, fishing, hobbies, home beautification, budget making, history, English, conversational French and Spanish, music, and art appreciation.

The talent needed to carry out adequately the program schedules mentioned is available, and will be obtained by selection among persons who are outstanding authorities in each of the particular subjects. In preparing for this proposed program service, Dr. Freeman made an investigation of educational programs now being rendered by the University of Wisconsin, the Ohio State School System, the Cleveland Public School System, and the Institute of International Affairs of Princeton. The facilities of the station will be available to the two organizations last named. The above proposed programs are unique and distinctive from any programs now available from the existing stations located in Richmond.

Numerous charitable and civic organizations have planned definite programs to be broadcast by the station as proposed. Dance orchestras of hotels and night clubs in Richmond will broadcast programs by remote control. Other sources of talent available to the station as proposed include vocalists, instrumentalists, and dramatic artists.

While the stations in Richmond render in general a meritorious program service, and cooperate with the local religious, educational and civic institutions, the record indicates that the program service

proposed herein contains many features which are unique and novel in character, and that the proposed educational and cultural programs, in particular, are far more comprehensive in scope than any now broadcast in this area. The record indicates that the proposed service will be of value and benefit in the Richmond area.

Moreover, the record discloses that the largest number of persons composing the listening audience are at leisure in the Richmond area during evening hours, and consequently the potential field of reception for the service to be rendered by the station is greatest at this time. Therefore, in order to carry out its proposed service in the most effective way, it is necessary for the station to operate at night.

It is estimated that, operating on its present assignment, the station serves within its 2 millivolt per meter contour approximately 244,000 persons during daytime hours. Operating as proposed, during the day it is estimated that the station will serve 380,000 persons within its 2 millivolt per meter contour. During night hours it is estimated that 226,000 persons will be served by the station within its 5 millivolt per meter contour, which is the maximum limitation predicted to the proposed service. This prediction as to limitation was made by an engineer appearing for the applicant. The Commission's engineer estimated that the most severe nighttime limitation to the proposed service will be to its 4.25 millivolt per meter contour.

There are six stations located at shorter distances than those normally considered necessary to avoid objectionable interference with the operation of Station WRNL as proposed herein. The record discloses, however, that all of said stations are now limited to a greater extent by the present operation of existing stations than would be expected through the proposed operation of Station WRNL. The maximum limitation to the proposed service, discussed above, will be caused by the operation of the time-sharing stations WQAN and WGBI, Scranton, Pennsylvania.

While the limitation of the service area of the applicant station, operating as proposed, is greater than that ordinarily permitted under precedents which the Commission has established, the Commission finds that this consideration is outweighed by the unique and exceptionally meritorious program service which has been described.

There is an application pending for a new station at Louisville, Kentucky, to operate on the frequency 880 kilocycles, with power of 500 watts, unlimited time. By reason of the directional antenna proposed by the applicant herein, no limitation is predicted to the service of the proposed Louisville station. The limitation expected to be produced by the operation of the Louisville station to the pro-

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posed service would not equal the limitations which will result from the operation of other existing stations. There is an application pending from one of the Scranton stations (WGBI, operating on the frequency 800 kilocycles) to increase power to 1 kilowatt, unlimited time. This station operating as proposed, would limit the proposed service of the applicant's station to approximately the 6 millivolt per meter contour.

The proposed transmitting equipment, antenna, and transmitter site conform with the requirements of the Rules and Regulations of the Commission.

GROUNDS FOR DECISION

1. The applicant is qualified in all respects to operate Station WRNL in the manner proposed.

2. The proposed program service is meritorious and distinctive and will supply a signal public need in the Richmond area.

3. Although the proposed nighttime operation of Station WRNL will be restricted by existing stations, the useful service area will include a large population which is expected to receive substantial benefits from the program service proposed.

4. The proposed operation will not adversely affect any existing station by virtue of objectionable interference.

5. The granting of the application will serve the public interest, convenience, and necessity.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D. C.

In the Matters of
CAPITOL BROADCASTING Co.,
RALEIGH, NORTH CAROLINA.
For Construction Permit.

} DOCKET No. 4529.

and

RADIO STATION WFNC,
(Partnership of C. Frank Walker
and Waldo W. Primm),
FAYETTEVILLE, NORTH CAROLINA.
For Construction Permit.

} DOCKET No. 4583.

Decided July 26, 1938

Elmer W. Pratt on behalf of the applicant, Radio Station WFNC and Station WEED; *Paul D. P. Spearman* on behalf of the applicant, Capitol Broadcasting Company; *John G. Dawson* on behalf of Cumberland Broadcasting Company; *Ben S. Fisher* and *Charles V. Wayland* on behalf of Station WSOC and *John Stewart Bryan*; *George O. Sutton*, *James L. Proffitt*, and *Ashley L. Hawken* on behalf of Havens & Martin, Inc.; *Eliot C. Lovett* on behalf of Petersburg Newspaper Corporation; *Philip G. Loucks* and *Arthur W. Scharfeld* on behalf of Station WPTF; *A. V. Dalrymple* on behalf of the Commission.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION:

STATEMENT OF FACTS

This proceeding arose upon the following applications:

1. An application of Capitol Broadcasting Company, Inc. (filed March 23, 1937), for a construction permit to establish a new radio broadcast station at Raleigh, North Carolina, using the frequency 1210 kc., with power of 100 w. night and 250 w. day, unlimited hours (Docket No. 4529); and

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2. An application of C. Frank Walker and Waldo W. Primm, a copartnership styled as Radio Station WFNC (filed April 14, 1937), for a construction permit to establish a new radio broadcast station at Fayetteville, North Carolina, using the frequency 1210 kc., with power of 250 w. daytime only.

As both applications request the use of the same frequency (1210 kc.) and the respective locations of the proposed stations are 50 miles apart, a consolidated hearing was held thereon because a grant of one will necessarily preclude the granting of the other. Accordingly, the consolidated hearing was held on September 10 and 11, 1937, before an examiner who, in his report (I-522), recommended (1) that the application of Capitol Broadcasting Company be granted, and (2) that the application of Radio Station WFNC be denied.

To this report exceptions were filed by a respondent, WSOC (WSOC, Inc.) and by the applicant, Radio Station WFNC. These exceptions raise no questions not necessarily involved in a determination of these applications on their merits. Oral argument was heard before the Commission on March 4, 1938.

IN RE DOCKET NO. 4529

The Capitol Broadcasting Company is a corporation organized under the laws of the State of North Carolina and is authorized to engage in the business of radio broadcasting. There are five stockholders who, in addition, constitute the officers and directors of the corporation. Each stockholder is a citizen of the United States.

The authorized capital stock of the corporation is 1,000 shares with a par value of \$100 each. One hundred and fifty shares of stock have been subscribed, and \$10,500 has been paid in on the subscription. The corporation has cash on hand of \$10,430 (including a check for \$2,930). No liabilities were shown.

Station WPTF, located at Raleigh, using the frequency 680 kc., with power of 5 kw., limited time, and having special authority to operate until 11:00 p. m., renders the only primary service available to Raleigh. In addition, some service is available in the outlying rural areas from Station WBT, Charlotte, North Carolina.

WPTF intervened in this proceeding on the grounds that it is now rendering satisfactory service to Raleigh and that there are insufficient new sources of revenue available in Raleigh to insure the financial stability of the proposed station. WPTF submitted in the record a program schedule covering three months' operation and a list of programs broadcast over the station in connection with the North Carolina State College for the years 1936 and 1937, but pro-

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duced no other evidence in support of its contentions. It was shown that WPTF is affiliated with a national network and that approximately 67% of its broadcast time (based on an analysis of a week's operating schedule) is devoted to chain programs. It also affirmatively appears from the record, as will be shown hereinafter, that there is need for the local service proposed and that ample commercial support is available for the operation of the proposed station.

The estimated cost of constructing the station is \$8,883.58. The monthly operating expense of the proposed station is estimated at \$1,925. Written commitments for the purchase of advertising time were secured from Raleigh merchants totaling \$2,741.85 a month.

According to the United States Census for 1930, Raleigh had population of 37,379, and Wake County, in which Raleigh is situated, had population of 94,757. The Census of Business for 1935 shows that Raleigh has 578 retail establishments with total annual sales of \$18,313,000; and 81 wholesale establishments with total annual sales of \$20,409,000. According to the same census, Wake County has 1,058 retail establishments with annual sales of \$22,887,000.

We have already adverted to the fact that the people of Raleigh receive primary service from WPTF only, and the major portion of that station's time is devoted to broadcasts of chain origin. It is clear that WPTF has available only limited hours, during the course of the day, for the broadcasting of programs of local origin. The applicant herein proposes to devote its facilities entirely to broadcasts of local origin. The facilities of the station have been extended to, and have been accepted by, several religious, charitable, educational, and civic institutions of the community. A tentative program schedule, submitted in evidence, consists in part of news, agricultural, religious, educational, sports, and entertainment items. The proposed programs will provide a diversified, meritorious, and needed service to the Raleigh area.

Sources of talent available to the proposed station include bands, orchestras, choirs, instrumental ensembles and vocal groups. Speakers and lecturers are available from the religious, civic and political institutions of the city.

It is predicted that the proposed station will serve 43,182 persons within its 10 mv./m. contour, and 51,076 within its 2 mv./m. contour.

The proposed transmitting equipment meets with Commission engineering requirements. Experienced personnel will be hired to insure the efficient operation of the proposed station.

Station WSOC, operating on the frequency 1210 kc. with 100 watts power night and 250 watts local sunset, unlimited time, is located at a shorter distance than that ordinarily considered necessary to avoid

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objectionable interference. Simultaneous operation of WSOC and the proposed station will result in mutual interference limiting the services of both stations to approximately their 2.05 mv./m. contours. The Commission is not unmindful of the fact that protection is ordinarily afforded to stations of the class involved to their 2 mv./m. contours; however, the engineering testimony in the record indicates that the interference shown is so slight as not to be considered objectionable.

There are pending three applications, each requesting authority to establish a new radio station at Petersburg, Virginia, to operate on the frequency 1210 kc. The simultaneous operation of either of these proposed stations and the station proposed in the instant application will result in mutual interference to approximately their 2.1 mv./m. contour.

IN RE DOCKET NO. 4593

C. Frank Walker and Waldo W. Primm are co-partners proposing to do business as Radio Station WFNC. Each of the applicants is a citizen of the United States and a resident of the City of Rocky Mount, North Carolina, approximately 90 miles from Fayetteville, North Carolina, the location of the proposed station. They are engaged in business in Rocky Mount. Both partners testified that they expected to move to Fayetteville and devote their entire time to the operation of the proposed station.

C. Frank Walker has a net worth of \$61,608. His liabilities total \$8,960. Waldo W. Primm has total assets of \$3,472.78, with liabilities of \$554.

The estimated cost of construction and the monthly operating expense for the proposed station are \$6,125.60 and \$1,378.50, respectively. Mr. Walker would devote, if necessary, sums totaling in excess of \$25,000 for the construction and operation of the proposed station. Available commercial support is estimated "to be in the neighborhood of \$2,500," but the estimate is predicated on conversations with business men, none of whom was identified or testified in this proceeding that he would purchase time. No written commitments to purchase time were submitted in evidence.

Stations WPTF, Raleigh, North Carolina, and WBT, Charlotte, North Carolina, render service to this area. Intermittent service is also received from distant clear channel stations.

According to the United States Census for 1930, the population of Fayetteville was 13,049. Cumberland County, in which Fayetteville is located, had population of 45,219. Fort Bragg, 8 miles from Fayetteville, had an estimated population of 4,000. The Census of

Business for 1935 shows 243 retail establishments in Fayetteville, with annual sales of \$6,451,000. According to the same Census, Cumberland County had 46 wholesale establishments with 174 employees, and annual sales of \$5,240,000.

It is predicted that the 10 mv./m. contour of the proposed station will extend $3\frac{1}{2}$ to 4 miles from the transmitter; the 2 mv./m. contour about 9 to 10 miles; and the .5 mv./m. contour 17 to 20 miles.

A number of residents of Fayetteville testified that the community desires and needs local broadcast service. This testimony, when considered in connection with the fact that Fayetteville now receives no primary service, clearly establishes the fact that there is need for broadcast facilities in that community. We must now consider the qualifications of these particular applicants to render the needed service.

Mr. Walker now resides and for the past eight years has resided in Rocky Mount. He was a professional baseball player for a period of twenty years, a radio dealer for ten or twelve years, and is now engaged in a laundry and dry-cleaning business. His acquaintance with Fayetteville is limited to two visits in that community of one day duration each. Mr. Primm has been a resident of Rocky Mount for ten years and has been engaged in the radio repair business for approximately fifteen years. He has been selling radio parts for one year. He will act as manager of the proposed station. Prior to six years ago he made monthly visits to Fayetteville in connection with his radio repair service. Recently he has visited the city in connection with the preparation of the instant application, and has talked with a number of people concerning talent availability and commercial support for the proposed station. He has never lived in Fayetteville.

It is clear from the testimony that the only knowledge possessed by these applicants of the social, cultural and economic needs of Fayetteville was obtained from occasional visits and time spent in that city in connection with activities on behalf of the instant application. There is no suggestion in the record that residents of Fayetteville, who are familiar with the needs of that community, will be employed in connection with the management or operation of the proposed station.

The applicants have failed to show that they are sufficiently familiar with the local needs of the community to be qualified to render broadcast service of the kind and quality to which the community is entitled (*Ted R. Woodard*, 4 F. C. C. 313; *Radio Enterprises*, 4 F. C. C. 573).

The proposed transmitting equipment meets with Commission engineering requirements. Experienced personnel would be hired to insure the efficient operation of the proposed station. Free time would be offered to religious and educational groups. No objectionable interference is predicted to the service of any existing radio-broadcast station by reason of the operation of the proposed station.

IN RE DOCKETS 4529 AND 4583

Each of the applicants involved in these dockets requests the use of the frequency 1210 kc. operating with 250 watts power daytime. Raleigh and Fayetteville are separated by a distance of approximately 50 miles. Granting one application would preclude favorable action upon the other because simultaneous operation would result in mutually objectionable interference. Capitol Broadcasting Company is qualified in all respect to render the local service needed in Raleigh. Although there is need for service in Fayetteville, the particular applicants in Docket 4583 have not demonstrated that they have sufficient familiarity with the needs of that community to render the requisite service. It would serve the public interest, convenience and necessity, therefore, to grant the application of Capitol Broadcasting Company and to refuse the application of C. Frank Walker and Waldo W. Primm.

GROUNDS FOR DECISION

On the record in this case the Commission finds:

1. The Capitol Broadcasting Company is legally, technically, financially and otherwise qualified to construct and operate the proposed station; and there is adequate economic support for the proposed station and the existing station at Raleigh, North Carolina.

2. C. Frank Walker and Waldo W. Primm are legally, technically and financially qualified to construct the station proposed in Docket 4583.

3. The technical equipment proposed by both applicants complies with the engineering requirements of the Commission.

4. A public need exists for radio broadcast service in Raleigh, North Carolina, and in Fayetteville, North Carolina.

5. No material interference will be contributed to the operation of existing broadcast stations by the operation of the station proposed by either applicant but mutually objectionable interference would result from the operation of both stations proposed. Therefore, granting one of these applications would preclude granting the other.

6. The program service proposed by Capitol Broadcasting Company is satisfactory for the class of station requested.

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7. C. Frank Walker and Waldo W. Primm have not shown sufficient familiarity with the needs of the Fayetteville area to justify a finding that the station proposed in Docket 4583 will render satisfactory service.

8. The public interest, convenience and necessity will be better served by granting the application of Capitol Broadcasting Company than by granting the application of C. Frank Walker and Waldo W. Primm.

9. Granting the application of Capitol Broadcasting Company will serve public interest, convenience and necessity.

10. Granting the application of C. Frank Walker and Waldo W. Primm (Radio Station WFNC) will not serve public interest, convenience and necessity.

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matters of
BURL VANCE HEDRICK,
SALISBURY, NORTH CAROLINA. } DOCKET No. 4761.

and

PIEDMONT BROADCASTING CORPORATION,
SALISBURY, NORTH CAROLINA. } DOCKET No. 4913.
For Construction Permits.

Decided July 26, 1938

In Docket No. 4761, *Charles Price* on behalf of the applicant; *Clarence C. Dill* and *James W. Gum* on behalf of Station WCOA; *H. L. Lohnes* and *F. W. Albertson* on behalf of Station WSPD; *Duke M. Patrick*, *Karl A. Smith*, and *Lester Cohen* on behalf of Station WSJS; *H. L. Lohnes* and *F. W. Albertson* on behalf of Piedmont Broadcasting Corporation; *Elmer W. Pratt* on behalf of Hickory Broadcasting Company; *John G. Dawson* on behalf of W. C. Ewing and *Harry Layman*, d/b as Cumberland Broadcasting Company.

In Docket No. 4913, *Horace L. Lohnes*, *Fred W. Albertson*, and *E. D. Johnston* on behalf of the applicant; *George O. Sutton*, *Arthur H. Schroeder*, and *James L. Proffitt* on behalf of Station WDNC; *Charles Price* on behalf of Burl Vance Hedrick.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION :

STATEMENT OF FACTS

IN RE DOCKETS NO. 4761 AND 4913

Burl Vance Hedrick and the Piedmont Broadcasting Corporation, both of Salisbury, North Carolina, have filed their respective applications for construction permits to install radiobroadcast stations in Salisbury.

Salisbury with a population of 16,951 (1930 Census) is the county seat of Rowan County, North Carolina, with a population of 56,665
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(1930 Census). Rowan County with an area of 489 square miles is bounded by Davie and Davidson Counties on the north, by Cabarrus on the east, by Stanly on the south, and by Iredell on the west.

Salisbury is about 38 miles northeast of Charlotte, and about 33 miles southwest of Winston-Salem, cities in North Carolina, which respectively have populations of 82,675 and 75,274 (1930 Census).

There are 33 manufacturing concerns and 46 wholesale establishments located in the city of Salisbury. They have annual sales of \$20,868,000 and annual payrolls aggregating \$1,966,000.

In Rowan County there are 618 retail business establishments, having annual sales of \$10,616,000, with 1,374 employees, and with total pay rolls of \$1,068,000; 52 wholesale establishments, with annual sales of \$7,423,000, and with 199 employees drawing annual wages of \$240,000; and 58 manufacturing plants, with annual sales of \$16,856,674 and total pay rolls of \$4,414,822.

In Salisbury there are 14 civic clubs, 26 popular singers, also dramatic groups, pianists, organists, violinists, church choirs, college choirs, glee clubs, and literary clubs. The city has other sources available to the applicants in this proceeding for talent and program material; however there is nothing in the record to indicate the sufficiency of local talent for two stations; but it appears that the available local talent is sufficient for the needs of one station.

The trade area of Salisbury, on account of its proximity to Charlotte, Winston-Salem, Greensboro, and other places of less importance, is limited. There is nothing in the record to indicate a need in Salisbury for two broadcast stations, nor to show that the place could or would furnish financial support for more than one station. It does not appear that the needs of a broadcast station in Salisbury would require regional facilities. An allocation of local facilities would be sufficient for the needs of a broadcast station in the city of Salisbury.

IN RE DOCKET NO. 4761

Burl Vance Hedrick seeks authority to construct a new radio-broadcast station at Salisbury, North Carolina, to operate on 1340 kilocycles, a regional frequency, with power of 1 kilowatt, daytime.

This application was designated for hearing before an examiner. He has made his report (I-545), and the Piedmont Broadcasting Corporation, and W. C. Ewing and Harry Layman, doing business as Cumberland Broadcasting Company, have filed exceptions thereto. These exceptions raise no questions not involved in the decision of the case upon its merits.

Mr. Hedrick is a citizen of the United States and a resident of Salisbury, North Carolina. He is the only person interested in the

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application. If it is granted he will have sole ownership and management of the station and will supervise its operation and service. He has had no experience in the operation and management of a broadcast station. However, he intends to employ a competent technical staff and experienced personnel to construct and operate the proposed station.

The applicant offers a local service, and the program of the proposed station will be directed to the advancement of the local interests. The tentative program submitted for consideration of the Commission shows an intention to present varied local programs, consisting generally of time announcements, general news, weather reports, shopping news, local city and county news, theatricals, domestic science, home economics, child welfare, vocal and instrumental music, organ recitals, sports-news, safety programs, agricultural programs, etc. About one-third of the time of the station will be devoted to commercial programs.

The service proposed by the applicant seems to be local, and it does not appear that it requires an allocation of power of 1 kilowatt as requested by the applicant.

In this case the applicant proposes only daytime service. It appears that service both day and night would be more in the public interest, convenience, and necessity.

There is one station located at less than the normally accepted mileage separation, to wit, Station WSJS, Winston-Salem, North Carolina, which operates on 1310 kilocycles, with 100 watts power, unlimited time. The actual separation is approximately 33 miles, while that usually accepted is 71 miles. The frequencies of the existing station and the proposed station are separated by 30 kilocycles. It does not appear that the proposed station would interfere with the service of the existing station, but it does appear that the operation of Station WSJS would result in objectionable interference with the service of the station of the applicant operating as proposed.

Two pending applications involving the question of interference are: (1) Application B3-P-1641, which requests a construction permit for a new station at Hickory, North Carolina, to operate on 1370 kilocycles, with 100 watts, daytime only. The actual separation is approximately 50 miles, while that usually accepted is 71 miles, but the engineering testimony is to the effect that no interference would be expected within the normally protected service contours of either station; (2) Application B3-P-1926 requests a construction permit to erect a new station at Fayetteville, North Carolina, to operate on 1340 kilocycles, with 250 watts power, daytime only. The actual separation is approximately 98 miles, while that normally recommended by

good engineering practice is 300 miles. Mutual objectionable interference to the service of each of the proposed stations would occur if both applications are granted.

The pending application of the Piedmont Broadcasting Corporation (Docket No. 4913) will be hereinafter discussed. The granting of that application will necessitate the denial of the application of Burl Vance Hedrick (Docket No. 4761).

IN RE DOCKET NO. 4913

The Piedmont Broadcasting Corporation, Salisbury, North Carolina, commenced this case by filing its application for construction permit for a new radio broadcast station to operate on 1500 kilocycles, with power of 100 watts night and 250 watts until local sunset, unlimited time.

This application was designated for hearing before an examiner. He has submitted his report (I-616). Both the applicant and Burl Vance Hedrick have filed exceptions to the report. The exceptions raise no question not involved in the decision of the case upon its merits.

The Piedmont Broadcasting Corporation was organized under the law of North Carolina in September 1937, with an authorized capital stock of \$50,000, divided into 500 shares of common stock of the par value of \$100 per share. Three hundred shares of the stock have been issued and paid for. The corporation has now on hand, in cash, the sum of \$29,751. If that amount should prove insufficient to construct the station and to carry on initial operations, additional funds could be secured by the sale of the remainder of the stock authorized to be issued under the charter; or a loan not exceeding \$50,000 could be obtained from a local financial institution by the endorsement of the stockholders of the corporation. Their net worth has been shown to exceed the sum of \$300,000.

The corporation has many shareholders. Most of them are business men in the city of Salisbury. They are all citizens of the United States, and all of the officers and directors of the company are citizens of the United States. The corporation is authorized by the express terms of its charter to construct and operate a broadcast station.

Some of the officers of the applicant have had limited experience in broadcasting. A qualified radio engineer has been retained to construct the station. Competent personnel will be employed to operate the station if the permit is granted. The personnel of the proposed station will consist of six divisions, under an executive manager, a station manager, a program director, a sales manager, a chief engineer, and a chief clerk. The operating personnel will

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consist of 15 qualified employees. The party being considered by the applicant for station manager is experienced in radio station management.

The applicant proposes a local broadcast service for Salisbury and vicinity, which will embrace agricultural, educational, civic, commercial, religious and social programs, and entertainment features, and local, state, and national news. The station will operate from 8:00 a. m. to 11:00 p. m. The time will be used as follows: 25.45% for commercial programs, 43.92% for sustaining programs, and 30.63% for programs of public interest.

The proposed transmitting equipment is satisfactory. At the hearing, a vertical radiator, 350 feet high, was proposed. It will meet the requirements of Rule 131 of the Commission. A site will be selected subject to the approval of the Commission.

The cost of technical equipment for the proposed station is estimated at \$16,900. The estimate of the cost of land and building for transmitter and studios is \$3,750. Miscellaneous equipment will, as estimated, cost \$2,500. The total cost, as estimated, is \$23,150.

The monthly operating cost of the proposed station, exclusive of salaries, is estimated at \$846.82, while the monthly salary expense is estimated at \$1,170. The estimate of total operating expense per month is \$2,016.82.

The applicant submitted 25 signed contracts, which show that advertising time tentatively subscribed will produce \$17,500 per year, based upon proposed rate schedules made a part of each contract.

The estimated monthly receipts for the proposed station range from a minimum of \$2,500 to a maximum of \$3,000 per month.

The day coverage of the proposed station appears to be, for the 10 millivolts per meter contour, 26,900 population; for the 2 millivolts per meter contour, 37,400 population; and for the 0.5 millivolt per meter contour, 75,600 population.

The night coverage is shown by the record for the 10 millivolts per meter contour and the 2.7 millivolts per meter contour, wherein the population is respectively 25,000 and 31,100. The 2.7 millivolts per meter contour was selected by the engineer for the applicant as the limit of the useful night-time service area under interference conditions to be expected.

The daytime service area of the proposed station would extend about 17 miles from the transmitter, and would embrace Rowan County and portions of Davie, Davidson, and Cabarrus Counties, with numerous villages and towns in the rural areas of those counties. A very slight portion of Iredell County might receive some service from the proposed station.

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There are three stations located within the normally recommended mileage separations between them and the proposed station, to wit: (1) Station WDNC, Durham, North Carolina, which operates on 1500 kilocycles, with 100 watts power, unlimited time. The actual separation is 90 miles, whereas that recommended under engineering standards for simultaneous night operation is 185 miles. (2) Station WOPI, Bristol, Tennessee, which operates on 1500 kilocycles, with power of 100 watts, unlimited time. The actual separation between Bristol and Salisbury is 115 miles, while that recommended by good engineering practice is 185 miles. (3) Station WRDW, Augusta, Georgia, which operates on 1500 kilocycles, with power of 100 watts night, 250 watts local sunset, unlimited time. The actual separation is 175 miles, while that generally recommended is 185 miles. The engineering testimony in the record is that the operation of the proposed station will not interfere with the operation of either of the three stations above mentioned, and the Commission so finds.

There is one pending application for the construction of a station within the normally recommended separation, to wit, B3-P-2014, from Rock Hill, South Carolina, which requests an assignment of 1500 kilocycles, with 100 watts, daytime only. The actual distance between Salisbury and Rock Hill is approximately 60 miles. The recommended separation for the two stations, operating with the power mentioned, is 100 miles, but under the testimony of record it does not appear that there would be objectionable interference to either of the proposed stations by the other, operating as proposed in their respective applications.

The application of Burl Vance Hedrick has been discussed in Docket No. 4761.

The application of the Piedmont Broadcasting Corporation is for local facilities only, and the applicant proposes to operate day and night. There is a need for local radio broadcast service in Salisbury, North Carolina, to be rendered both day and night, and the applicant appears to be qualified to provide and render such service.

GROUND'S FOR DECISION

On the record in this case the Commission finds:

1. There is a need in Salisbury, North Carolina, for the service proposed by the Piedmont Broadcasting Corporation.
2. The Piedmont Broadcasting Corporation is legally, technically, financially, and otherwise qualified to construct and operate the station proposed.

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3. There is no need at Salisbury, North Carolina, for a regional station to be operated under power of 1 kilowatt as proposed by Burl Vance Hedrick.

4. The application of Burl Vance Hedrick, and the pending application of W. C. Ewing and Harry Layman, doing business as Cumberland Broadcasting Company, for permit to construct a station in Fayetteville, North Carolina, both apply for the use of the same frequency; and the operation of each station as proposed would create mutual interference.

5. The granting of the application of the Piedmont Broadcasting Corporation would serve the public interest, convenience, and necessity, but the granting of the application of Burl Vance Hedrick would not serve public interest, convenience, and necessity.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D. C.**

<p>In the Matters of EL PASO BROADCASTING COMPANY,¹ EL PASO, TEXAS. For Construction Permit.</p>	}	DOCKET No. 4545.
<p>WORLD PUBLISHING COMPANY, TULSA, OKLAHOMA. For Construction Permit.</p>	}	DOCKET No. 4185.
<p>KGKL, INCORPORATED, (KGKL), SAN ANGELO, TEXAS. For Construction Permit.</p>	}	DOCKET No. 4479.
<p>THE TRIBUNE COMPANY, TAMPA, FLORIDA. For Construction Permit.</p>	}	DOCKET No. 3932.

Decided July 26, 1938

Richard F. Burges, Guy Mason, James H. Hanley and Thomas J. O'Brien on behalf of El Paso Broadcasting Company; Philip G. Loucks and Arthur W. Scharfeld on behalf of Stations KTSM and WSUN; Arthur W. Scharfeld and Philip G. Loucks on behalf of KGKL, Inc., and Earle Yates; Paul D. P. Spearman and Alan B. David on behalf of Stations KTUL and WDAE; Louis G. Caldwell and Reed T. Rollo on behalf of The Tribune Company; Frank D. Scott on behalf of Station KMBC; Paul M. Segal and George S. Smith on behalf of Stations WAVE, WDAY, KOIN, WCSH, and WAAT; George O. Sutton and Ashley L. Hawken on behalf of the World Publishing Company; H. L. Lohnes on behalf of Station KVOO; and Walter Johnson on behalf of the Federal Communications Commission.

¹ Petition for rehearing filed and appeal taken. See order on petition for rehearing and footnote, page 513.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER**By THE COMMISSION :****STATEMENT OF FACTS**

This proceeding arose upon the following matters :

(1) An application of the El Paso Broadcasting Company for a construction permit to erect a new broadcast station at El Paso, Texas, using the frequency 940 kilocycles, with power of 1 kilowatt, unlimited time (Docket No. 4545) ;

(2) An application of the World Publishing Company for a construction permit to erect a new broadcast station at Tulsa, Oklahoma, operating on the frequency 940 kilocycles, using a directional antenna at night, with power of 1 kilowatt night and 5 kilowatts local sunset, unlimited time (Docket No. 4185) ;

(3) An application of KGKL, Inc., licensee of Station KGKL, San Angelo, Texas (now using the frequency 1370 kilocycles, with power of 100 watts night, 250 watts local sunset, unlimited time) for construction permit to move transmitter site, install new equipment, and to operate on the frequency 940 kilocycles with power of 1 kilowatt night, 5 kilowatts local sunset, unlimited time (Docket No. 4479) ;

(4) An application of The Tribune Company, for construction permit to erect a new broadcast station at Tampa, Florida, operating on the frequency 940 kilocycles, using a directional antenna at night, with power of 1 kilowatt night, 5 kilowatts local sunset, unlimited time (Docket No. 3932).

The Tribune Company originally filed an application dated January 2, 1936, requesting authority to establish a broadcast station at Tampa, Florida, to operate on the frequency 550 kilocycles, with power of 1 kilowatt night, 5 kilowatts local sunset, unlimited time. On June 23, 1937, a hearing was held on the original application before an Examiner who, in his report (I-301), recommended that it be denied. Before a decision was rendered on this application and on October 30, 1936, the applicant sought leave to amend the same by changing the frequency to 940 kilocycles. The petition to amend was granted by the Commission on November 17, 1936, and the application, as amended, was designated for further hearing.

As the four above applications are interrelated a consolidated hearing was held thereon before an Examiner on June 16, 17, 18, 28, 29 and 30 and July 15, 1937, who, in his report (I-538) recommended (1) that the application of the El Paso Broadcasting Company (Docket No. 4545) be granted upon the condition that Dorrance D. Roderick abandon his application (Docket No. 3858) for a new

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broadcast station at El Paso, Texas; (2) that the application of the World Publishing Company (Docket No. 4185) be granted; (3) that the application of KGKL, Inc., (Docket No. 4479) be denied; and (4) that the application of The Tribune Company (Docket No. 3932) be granted.

To this report exceptions were filed by KGKL, Inc.; Earl Yates; WAVE, Inc.; WDAY, Inc.; KOIN, Inc.; The Congress Square Hotel Company; The Bremer Broadcasting Corporation; The Tulsa Broadcasting Company (KTUL); The Southwestern Sales Corporation (KVOO); The Tampa Times Company (WDAE); The Tri-State Broadcasting Company (KTSM); and The Midland Broadcasting Company (KMBC). Oral argument was heard before the Commission on March 17, 1938. These exceptions have been fully considered by the Commission.

In the exceptions filed on behalf of the Tri-State Broadcasting Company, licensee of Station KTSM, El Paso, Texas, intervener in this proceeding, it is alleged in substance that this party was deprived of substantial legal rights in that the examiner denied its counsel the right to cross-examine a witness who testified on behalf of the El Paso Broadcasting Company, on certain matters which were set forth in the petition to intervene as the basis for the opposition by KTSM to the granting of the El Paso application; and that the denial of this right of cross-examination was in violation of provisions of the Communications Act of 1934 and of the Rules of the Commission. In view of the fact that the Commission has decided to deny the application (for reasons set forth below), of the El Paso Broadcasting Company, the question raised in these exceptions as to the legality of the examiner's ruling on this matter becomes moot, in so far as this decision is concerned and, therefore, it is unnecessary to pass upon the question in this proceeding.

IN RE APPLICATION OF EL PASO BROADCASTING CO. (DOCKET NO. 4545)

The El Paso Broadcasting Company is a corporation organized under the laws of the State of Texas and is authorized to engage in the business of radio broadcasting. All of the officers, directors and stockholders are citizens of the United States.

The capital stock of the corporation consists of 3,000 shares of the par value of \$10.00 each, all of which have been issued and paid for. At the time of the hearing the applicant had the sum of \$30,000 in cash on deposit in a local bank in El Paso, which is available for the construction and operation of the proposed station. No liabilities were shown. Arrangements have been made to extend to the applicant an additional line of credit in this bank, to the extent of \$20,000

if necessary, in the event that the available cash is insufficient for this purpose.

Dorrance D. Roderick, President of the applicant corporation, is also President of the El Paso Times Publishing Company (which publishes a local daily newspaper) and owns 65% of its capital stock. The assets of this corporation are valued at approximately \$600,000. The only outstanding corporate liability consists of an unpaid note in the amount of \$35,000. Mr. Roderick owns his home in El Paso, valued at approximately \$30,000 (with an encumbrance thereon of \$6,500) and other real estate valued at approximately \$60,000. He has made arrangements with the above bank for a personal line of credit to the extent of \$60,000 to be placed at the disposal of the applicant if additional funds are required to finance the proposed station. Mr. Roderick, who owns 2,400 shares, or the controlling interest in the applicant corporation, is also an individual applicant for a broadcast station at El Paso, Texas. The latter application is discussed below.

The total cost of construction of the proposed station is estimated at between \$25,000 and \$30,000 and the total operating expense for the first year at \$64,505.

A staff of qualified persons will be engaged to insure the operation of the proposed station in an efficient manner. Tentative arrangements have already been made for the employment of a Manager and Chief Engineer, who have had several years of experience in the operation of broadcast stations.

The proposed transmitting equipment, antenna and transmitter site comply with the requirements and the rules and regulations of the Commission.

The applicant has obtained fifty-one (51) written commitments, totaling \$53,700 from local merchants and business concerns, for the purchase of time over the proposed station. A number of persons also testified by depositions that they proposed to advertise over its facilities. Based upon these prospective sources of commercial support the applicant estimates that the station will earn an annual income of approximately \$75,000.

The applicant submitted in evidence a tentative schedule, covering the period of one week, of typical programs which it proposes to broadcast. The proposed program service includes news, weather reports, religious, civic and educational features, agricultural subjects, and entertainment and musical numbers. The services of the proposed station will be made available, free of charge, to public officials and religious, civic and educational organizations. The

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applicant proposes to begin operation on a local basis but will consider affiliating later with a network.

Sources of talent, available for use over the proposed station, include the El Paso Symphony and other orchestras, choral societies, glee clubs, quartets and other musical groups, as well as individual musicians, vocalists and entertainers.

The City of El Paso, which, according to the 1930 United States Census, had a population of 102,421, is located on the north bank of the Rio Grande River in the extreme southwestern part of the State of Texas and is the seat of government of El Paso County. The latter has a population of 131,597 (1930 United States Census). It is estimated that the trade area of El Paso includes approximately eighteen (18) counties in the southwestern part of Texas and portions of southern New Mexico and eastern Arizona. This city is an important railroad center and a well known health resort. Its principal industries consist of manufacturing, oil refining, and the smelting of large quantities of copper, lead and zinc, which are mined in Arizona and New Mexico. In addition to the mining, the occupations of the surrounding rural area consist of the raising of cattle and other live stock and general agricultural pursuits.

According to the 1935 United States Census of business (wholesale and retail distribution) the total annual retail sales of El Paso County amounted to \$33,905,000 and the wholesale sales for the same period totalled \$41,943,000.

El Paso receives primary broadcasting service from time-sharing Stations KTSM and WDAH located therein, operating on the frequency 1310 kilocycles with power of 100 watts night, 250 watts local sunset. Station KTSM has permanent authority to broadcast the programs of Station WDAH and occupies all of the time allotted except a few hours on Sunday, which are used by the latter, a church station, for the broadcasting of religious programs. Secondary service is available in this area at night from distant clear channel stations.

On December 1, 1936, after a hearing thereon, the Commission granted an application of Dorrance D. Roderick (who, as shown above, is a majority stockholder in the applicant corporation), for a construction permit to erect a new broadcast station (KROD) in El Paso, to operate on the frequency 1500 kilocycles, with power of 100 watts, unlimited time. Thereafter, the Tri-State Broadcasting Company (KTSM), respondent in that proceeding, filed its notice of appeal from this decision in the United States Court of Appeals for the District of Columbia. On March 16, 1938 that court reversed the Commission and remanded the cause for further proceedings.

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Pursuant to and in accordance with the opinion and judgment of the Court, on April 20, 1938, the Commission directed that the proceeding be reopened. After further consideration of this matter, on June 1, 1938, the Commission entered its second and final order, effective June 11, 1938, granting the application. Upon the construction of this new station, additional primary service will be provided to the City of El Paso.

It appears from the evidence that the same transmitter and studio location will be used for the broadcast station proposed herein as that of Mr. Roderick and that the technical operations of both stations will be under the same general supervision. Moreover, the evidence indicates that the local programs proposed to be broadcast by the applicant herein will not be substantially different in character from those proposed to be broadcast over Mr. Roderick's station.

The operation of a broadcast station as proposed herein would not be expected to cause objectionable interference to the service of any existing stations. Time-sharing Stations XEFO and XEYO, Mexico City, Mexico, 970 miles distant, operate on the frequency 940 kilocycles, with power of 5 kilowatts. Based upon the assumption that the efficiency of the antenna system now in use by these stations is comparable with that which is characteristic of United States stations employing comparable power on regional frequencies, it was predicted by the Commission's engineer that said stations would limit the nighttime service of the proposed El Paso station to its approximate 2.7 millivolt per meter contour. Based upon recordings taken in El Paso for a total period of 1,640 minutes, an expert, testifying for the applicant, estimated that the Mexican stations would limit the nighttime service of the proposed station to its approximate 1.4 millivolt per meter contour. He admitted, however, that this limitation might extend at times as high as the 2 millivolt per meter contour. The same witness testified that about a year previous to the hearing he had seen the antenna used by these Mexican stations, which he described as being of a "T" type. He further stated that he could furnish no estimate as to its efficiency, but was of the opinion that the overall efficiency would not compare with that of similar stations operating in the United States. He admitted that it might emit a greater or less skywave than that of antennas in ordinary use by stations of the regional class in the United States.

In view of these general statements, and in the absence of actual measurements to determine the efficiency of the antenna in question, it is apparent that the above testimony has little probative value. While it is true that the prediction of the Commission's engineer was based upon a theoretical assumption, it is safe to conclude, in

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the light of all of the evidence on the subject, that the proposed nighttime service of the El Paso station would be expected to be limited by these Mexican stations substantially within its protected 1 millivolt per meter contour.

There are three applications now pending before the Commission, namely, from Stations WAVE, Louisville, Kentucky; WDAY, Fargo, North Dakota; and KOIN, Portland, Oregon, involving problems of objectionable interference with the operation of a broadcast station as proposed by this applicant. These, as well as other applications, request authority to operate on the frequency 940 kilocycles, with power of 5 kilowatts at night. A grant of any of several applications of this character would also raise questions of interference with other applications involved in this consolidated proceeding. The above-described applications cannot properly be considered in this record and therefore will not be further discussed. (*Pittsburgh Radio Supply House (WJAS) et al. v. Federal Communications Commission*, U. S. Court of Appeals for the District of Columbia, decided May 23, 1938)

The operation of Station KGKL, San Angelo, Texas, 358 miles distant from El Paso, on the frequency 940 kilocycles, with power of 1 kilowatt night, 5 kilowatts local sunset, unlimited time, together with a broadcast station at El Paso, as proposed herein, would involve mutual prohibitive interference, as each station would be expected to limit the service of the other between the 5 and 6 millivolt per meter contour at night and probably slightly within the normally protected 0.5 millivolt per meter contour during the day.

The operation of a broadcast station as proposed by the World Publishing Company at Tulsa, Oklahoma, 670 miles distant, on the frequency 940 kilocycles, with power of 1 kilowatt night, 5 kilowatts local sunset, unlimited time, using a directional antenna at night, would be expected to limit the service of the proposed El Paso station at night to its approximate 2.8 millivolt per meter contour and the latter would limit the proposed Tulsa station to its approximate 2.4 millivolt per meter contour.

It is estimated that the 2 millivolt per meter contour of the proposed station will include all of El Paso County and portions of Hudspeth County, Texas and of Otero and Dona Ana Counties, New Mexico. The population of portions of the rural area proposed to be served is extremely sparse, it being estimated that the above counties include on an average of, respectively, 30, 0.8, 0.7 and 5.5 persons per square mile. It is predicted that during daytime hours the proposed station will serve only about 8,000 more persons within its 0.5 millivolt per meter contour than those now receiving service from

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Station KTSM within its similar contour and that during nighttime hours the 2 millivolt per meter contour of the proposed station will include about 28,000 more persons than those now served by Station KTSM. As shown above, however, the service of the proposed station may be expected to be limited at night to possibly as high as its approximate 2.7 millivolt per meter contour through the operation of the Mexican station. It was also predicted by the expert who testified for the applicant that interference due to natural static conditions will at times limit the service of the proposed station between the 2 and 3 millivolt per meter contours, but that this level would be very much lower in winter than in summer and that during the day the station would, in the absence of such static, be expected to render good service to its 0.5 millivolt per meter contour. Moreover, it was estimated that between 25 and 45% of the useful service area of the proposed station would extend across the border into the Republic of Mexico.

IN RE APPLICATION OF WORLD PUBLISHING COMPANY (DOCKET NO. 4185)

The World Publishing Company is a corporation organized under the laws of the State of Oklahoma and is authorized to engage in the business of radiobroadcasting. The applicant owns and publishes a daily newspaper in Tulsa, known as the Tulsa World, with a circulation of approximately 70,000. All of the officers, directors and stockholders are citizens of the United States. As of April 30, 1937, the applicant had total assets of \$2,024,138.55, including \$293,744.04 in cash and United States Government Bonds valued at \$75,215.64, and total current liabilities of \$86,963.73. Except for between the 2 and 3 millivolt per meter contours, but that this level shown. The total cost of construction of the proposed station is estimated at approximately \$75,000 and the total monthly operating expense at \$9,286.92.

A staff of thirty-five (35) qualified persons, including a Manager who has had a number of years of experience in various capacities with broadcast stations, will be employed to insure the efficient operation of the proposed station. The proposed transmitting equipment, antenna and transmitter site comply with the requirements of the Rules and Regulations of the Commission.

The applicant has obtained sixty-eight (68) written commitments from local merchants and commercial concerns, totalling in excess of \$100,000 for the purchase of time over the proposed station. Based upon these commitments it was estimated that the income of the station will approximate that amount for the first year of operation.

A tentative schedule of programs proposed to be broadcast was introduced into evidence which includes a wide variety of subjects such as religious, educational, civic, and agricultural features, news reports, drama and musical numbers. Approximately 36.32% of the total allotted time will be used for commercial programs. On a sustaining basis the applicant proposes to devote 6.37% of its time to religious programs; 6.31% to educational; 5.07% to agricultural; 7.73% to civic; 1.83% to home economic programs; 9.75% to news; and 62.94% to entertainment. The facilities of the proposed station will be made available free of charge to all local business, civic, charitable and similar organizations. It is planned to operate the proposed station independently of the newspaper and no combination of advertising rates will be offered. Negotiations have been commenced by representatives of the applicant with the view to affiliating with the National Broadcasting Company, Inc., but no definite arrangements have been completed. Sources of available talent for use over the proposed station include a number of choirs, bands, orchestras and individual musicians and entertainers.

The City of Tulsa, which, according to the 1930 United States Census had a population of 141,258, is located in the northeastern part of the State of Oklahoma and is the county seat of Tulsa County. This city is the center of one of the largest oil-producing areas in the world. The occupations of the surrounding rural area are largely agricultural. According to official reports of the United States Bureau of the Census for the year 1935 there were located in Tulsa 308 wholesale establishments with total sales of \$69,056,000, employing 2,245 persons who received annual salaries totalling \$3,785,000; and 1,820 retail establishments, with total sales of \$56,019,000, employing 7,851 persons who received salaries totalling \$7,830,000; 147 manufacturing establishments with total sales of \$10,955,838, employing 1,784 persons who received salaries totalling \$1,888,446; and 785 service establishments with total sales of \$3,588,000 and employing 1,270 persons who received total salaries of \$3,598,000.

It was estimated that during daytime hours 217,907 persons would be included within the 10 millivolt per meter contour of the proposed station; 440,336 within the 2 millivolt per meter contour and 912,271 within the 0.5 millivolt per meter contour. During the nighttime it was estimated that 172,087 persons would be included within the 10 millivolt per meter contour and 222,889 within the 3.6 millivolt per meter contour.

An expert for the applicant testified that, due to static conditions which prevail in the Tulsa area during certain seasons of the year, a signal of 2 millivolts per meter or better would be necessary to

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provide satisfactory service for 80% of the time in the City of Tulsa and in the surrounding rural area at night, but that a signal of 0.5 millivolt per meter would be sufficient to provide satisfactory day-time rural service.

Primary service is available in Tulsa from two broadcast stations located therein, namely KVOO, using the frequency 1140 kilocycles, with power of 25 kilowatts, operating unlimited hours during the day and sharing time at night with Station WAPI, Birmingham, Alabama, and from Station KTUL, using the frequency 1400 kilocycles, with power of 500 watts night, 1 kilowatt local sunset, unlimited time. On June 28, 1938, the Commission granted a construction permit authorizing the establishment of a third broadcast station in Tulsa, to operate with power of 250 watts during day-time hours. The latter station, when constructed, will also provide primary service to this area during the period in which it operates. Secondary service in rural areas in the vicinity of Tulsa is available from Station WKY, operating with power of 5 kilowatts at Oklahoma City. Station KBIX, operating with power of 100 watts at Muskogee, Oklahoma, and a new station authorized to operate with power of 100 watts at Okmulgee, Oklahoma, will also provide some service in rural areas south of Tulsa. In addition secondary service is available in the Tulsa area during nighttime hours from distant clear channel stations.

Station KVOO devotes, on an average, approximately 45% of its allotted time to network programs. A schedule of programs, which were broadcast by this station for a typical week, was submitted in evidence. It includes agricultural subjects, religious, civic and educational features, sports, news, market reports and other items. During the year preceding the hearing, this station donated time to a large number of local, civic, religious, educational, charitable and similar organizations. The facilities of the station are extended to the local agent of the Department of Agriculture and to the County Farm Agent. In addition, a fifteen (15) minute period weekly is devoted to a discussion of local agricultural problems. Programs of the 4-H Clubs are also broadcast. Three news services are maintained, namely, the International, Universal and Trans-Radio, in addition to a local service. News reports are broadcast for four periods of fifteen minutes daily.

The station maintains approximately fifty (50) employees, including eighteen (18) staff artists.

Station KTUL is also affiliated with a network, but devotes a portion of its time to local programs. A schedule of programs broadcast for one typical week includes a variety of subjects, such as sports,

news, market reports, musical and dramatic numbers, religious services, and educational programs. Approximately 46.3% of the total hours broadcast for this week were devoted to commercial programs. The programs of the glee clubs and the a cappella choir of the University of Tulsa are broadcast as well as the athletic events of that institution. The management has offered to build a studio on the University grounds. Market reports from the Tulsa stockyards are disseminated regularly. A number of local civic, educational, religious, charitable and similar institutions were broadcasting over Station KTUL at the time of the hearing and many others had previously used its facilities. Additional time is available to these organizations if needed.

As indicated above, both Stations KVOO and KTUL used a substantial amount of local talent.

The operation of a broadcast station as proposed herein would not be expected to cause objectionable interference to the service of any existing stations during nighttime hours. The proposed operation during the day, however, would be expected to involve objectionable interference with Station KMBC, Kansas City, Missouri, 217 miles distant, operating on the frequency 950 kilocycles, with power of 1 kilowatt night, 5 kilowatts local sunset, unlimited time, as each station would be expected to limit the other within the normally protected 0.5 millivolt per meter contour in that portion of its service area nearest the city in which the other station is located. Two experts agreed that the present operation of Station WAVE on the frequency 940 kilocycles, with power of 1 kilowatt, unlimited time, at Louisville, Kentucky, 580 miles distant, would be expected to limit the nighttime service of the proposed Tulsa station to its approximate 3.6 millivolt per meter contour. This would be the predominant source of interference to the station, although some nighttime limitation would be expected from the operation of Station WDAY, Fargo, North Dakota, and time-sharing Stations XEFO-XEYO, Mexico City, Mexico. The interference problems expected to arise through the simultaneous operation of a broadcast station as proposed by this applicant, together with that of the proposed El Paso station, have been discussed above.

The proposed operation of Station KGKL using a non-directional antenna on the frequency 940 kilocycles, with power of 1 kilowatt night, 5 kilowatts local sunset, unlimited time, at San Angelo, Texas, 410 miles distant, together with a station as herein proposed, would result in mutual objectionable interference, as each would be expected to limit the service of the other at night to its approximate 5.3 millivolt per meter contour. No objectionable interference would be expected to result from the proposed operation during daytime hours.

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The operation of a broadcast station at Tampa, Florida, 970 miles distant on the frequency 940 kilocycles, using a directional antenna with power of 1 kilowatt at night and 5 kilowatts local sunset, unlimited time, together with a broadcast station as proposed herein would be expected to result in mutual objectionable interference to the service of each during nighttime hours as it was predicted that the former would be limited to its approximate 1.7 millivolt per meter contour, and the latter to between the 1.5 and 1.7 millivolt per meter contour.

IN RE APPLICATION OF KGKL, INCORPORATED (DOCKET NO. 4479)

KGKL, Incorporated, the applicant herein, is the licensee of Station KGKL, San Angelo, Texas, which now operates on the frequency 1370 kilocycles, with power of 100 watts night, 250 watts local sunset, unlimited time. As stated above, authority is requested to change frequency to 940 kilocycles and to operate with power 1 kilowatt night and 5 kilowatts local sunset, unlimited time. This corporation is authorized to engage in the business of radiobroadcasting and all of its officers, directors, and stockholders are citizens of the United States. As of May 31, 1937, the total assets of the corporation were valued at \$47,965.59, including \$7,303.16 in cash and accounts receivable totalling \$6,733.64. At the time of the hearing the cash had been increased to approximately \$9,000. A part for reserves for insurance and unemployment tax totaling \$114.91, the only liabilities shown were current in the amount of \$1,389.91. Two of the officers of the corporation testified that they would advance any additional funds which might be necessary to cover the cost of construction and installation of the additional equipment and the proposed operation.

The total cost of construction is estimated at approximately \$8,000. The use of the present studios will be continued. The transmitter will be moved to a new site, which will be selected. The proposed transmitting equipment and antenna comply with the requirements of the Rules and Regulations of the Commission. The station now maintains a staff of ten experienced employees. It is planned to add additional qualified personnel to assist in the proposed operation. The operating expense of Station KGKL on its present assignment averages \$1,800 monthly and it is estimated that an outlay of an additional \$600 monthly will be required for the proposed operation. The present income averages \$3,000 monthly.

Based upon a personal survey made to determine potential sources of advertising in outlying communities, a representative of the corporation, testifying for the applicant, expressed the opinion that the income of the station could be increased to approximately \$4,000 a month. The President of the corporation also testified by deposi-

tion that he had received numerous applications from advertisers for additional time contingent upon the station receiving authority to operate with increased power.

At the present time from 70 to 75% of the total time allotted to Station KGKL is devoted to commercial programs. It is planned to reduce this percentage substantially and to increase both the local and national advertising rates. Although the station now operates on a paying basis it has been the policy of the management to expend a part of the profits for the purchase of new equipment and to distribute the remaining surplus funds as a bonus among the employees on a pro rata basis. The President of the corporation has never received any dividends on his stock.

According to the 1930 United States Census the population of San Angelo, Texas, was 25,308. This city is located in the geographical center of southwestern Texas at the intersection of the North, South, and Middle Concho Rivers and is the trade center of these river valleys. It is considered by many to be the largest inland wool market in the world. The trade area extends over radii variously estimated at between 50 and 250 miles. The occupations of the surrounding rural area consist of the raising of livestock, such as cattle, sheep, and goats, irrigated farming, and the production and marketing of wool and mohair. The production of oil and its byproducts is also an important industry. This general area is noted for its healthful climate and a number of hospitals and sanatoria are located therein.

Station KGKL renders the only primary broadcast service available to the San Angelo area. Fair to poor service is received from time-sharing Stations WFAA and WBAP, located respectively in Dallas and Fort Worth, Texas, operating with power of 50 kilowatts. In addition secondary service is available at night from distant clear channel stations.

Based upon the official 1930 United States Census statistics, it is estimated that there are approximately 37,500 persons residing within a radius of 20 miles of San Angelo, 85,423 within a 50-mile radius and 400,000 within a 120-mile radius. It is also estimated that Station KGKL now serves during daytime hours approximately 26,808 persons within its 10 millivolt per meter contour; 32,190 within the 2 millivolt per meter contour; and 54,067 within the 0.5 millivolt per meter contour. At night this station serves an estimated population of 25,808 within the 10 millivolt per meter contour and 30,508 within the 2 millivolt per meter contour. Operating as proposed during daytime hours, it is estimated that the station will serve 42,480 persons within the 10 millivolt per meter contour; 141,085 within the 2 millivolt per meter contour, and 469,946 within the 0.5 millivolt per meter contour. It is estimated that the proposed nighttime service

area will include a population of 32,909 within the 10 millivolt per meter contour, 73,247 within the 2 millivolt per meter contour, and 111,007 within the 1.4 millivolt per meter contour. Because of the limitations which are expected to be imposed to this proposed service during nighttime hours, due to interference from existing broadcast stations, which is discussed below, the latter two estimates are considered of no probative value.

An expert, testifying for this applicant, stated that, in his opinion, the level of natural static in the San Angelo area is considerably higher than the average. He admitted, however, that he had made no observations to determine the signal strength necessary to render satisfactory service in view of this condition.

Station KGKL now operates from 7:30 a. m. until 10:15 p. m. on week days, and from 8:15 a. m. to 2 p. m. on Sundays. This applicant proposes to begin broadcasting at 6:30 a. m. and to continue until later in the evening on the new assignment.

Station KGKL now renders a meritorious program service consisting in part of musical and entertainment numbers, associated press news dispatches, local news, health discussions; civic, religious, and educational programs; weather forecasts and stock-market quotations which include both livestock prices and stock and bond markets; athletic events, including boxing and wrestling matches; basketball and football games, are extensively featured. The station maintains approximately twenty remote control lines to the City High School and College auditoriums for this purpose. Civic organizations are afforded the use of the station facilities without charge. This policy will be continued.

Because of the sudden changes in temperature in the San Angelo area the weather reports and storm and frost warnings are of particular value to the ranchers and raisers of livestock, as they are enabled through these broadcasts to take the necessary measures to protect their herds from storms and freezing weather. It is planned, through the proposed operation, to extend this service into areas in which it is not now received.

The station also proposes to continue its broadcast of market quotations, with particular reference to livestock. Through the dissemination of these reports the producers are acquainted with the fluctuating markets, thus being afforded the opportunity to transport their stock to Fort Worth at opportune times in order to take advantage of favorable market conditions. During a serious flood in 1936, the station through its broadcasts rendered valuable service to the stricken areas.

At the present time approximately 60% of the programs broadcast by Station KGKL are supported by live talent. It is planned to in-

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crease this talent to about 75%. The station maintains regular auditions for the purpose of developing and utilizing the available local talent which consists in part of orchestras, bands, choirs, vocalists, and individual musicians.

It was predicted that the operation of Station KGKL, as proposed herein, during nighttime hours would limit the service of time-sharing Station XEFO-XEYO operating on the frequency 940 kilocycles, with power of 5 kilowatts, unlimited time, at Mexico City, Mexico, 845 miles distant, to their approximate 1.75 millivolt per meter contours. Predicated upon the assumption that the latter stations employ an antenna of an efficiency comparable with those in use by stations located in the United States, operating with the same power and on the same frequency, the Commission's engineer predicted that they would limit the proposed nighttime service of Station KGKL to its approximate 4 millivolt per meter contour. An expert for the applicant testified at one point that, based upon the description (discussed above) of the antenna used by the Mexican stations, in his opinion the efficiency of said antenna would not be sufficient to cause any limiting interference to the proposed nighttime service of Station KGKL. Upon cross-examination, however, this witness admitted that, based upon the assumption that said antenna has an efficiency at 5 kilowatts of 250 to 270 millivolts per meter at night, he would expect the Mexican stations to limit the proposed nighttime service of Station KGKL to the 2.5 millivolt per meter contour.

As shown above, although the engineer who appeared for the El Paso Broadcasting Company had made a personal observation of the antenna of the Mexican stations, he did not take any measurements to determine its efficiency and admitted that he was unable to determine what it actually is. It is apparent, therefore, that the above opinion, which was predicated upon this observation, is of little value. From a consideration of all of the testimony on this subject it is obviously impossible to determine the exact extent of the interference to be expected from the Mexican stations to this proposed nighttime service. It may be reasonably concluded, however, that it will be very substantially within the normally protected 1 millivolt per meter contour and may extend as high as 4 millivolts per meter. There is evidence that the proposed station would be expected to have a greater interference-free service area during both daytime and nighttime hours on the proposed assignment than it now has on its existing assignment. This factor has been duly considered, together with the interference problems which would be expected to be involved from the proposed nighttime operation, with the simultaneous operation of the Mexican stations.

The operation of Station KGKL as proposed would not adversely affect the services of any existing broadcasting stations located in the United States, although Station WAVE, Louisville, would provide some limitation to its proposed nighttime service. The predominant source of interference thereto would be received from the Mexican stations.

The interference problems which would arise through the simultaneous operation of Station KGKL as proposed, together with that of stations proposed for El Paso, Texas, and Tulsa, Oklahoma, have been discussed above.

IN RE APPLICATION OF THE TRIBUNE COMPANY (DOCKET NO. 3932)

The Tribune Company is a corporation organized under the laws of the State of Florida and is authorized by its Articles of Incorporation, as amended, to engage in the business of radiobroadcasting. The applicant's principal business is that of publishing a daily and Sunday newspaper at Tampa, Florida, known as the Tampa Morning Tribune. All of the officers, directors, and stockholders are citizens of the United States.

Mr. S. E. Thomason, who has been President of the applicant corporation since its organization in 1927, resides a part of the time in the City of Chicago, where he is engaged in the publication of a daily newspaper, and spends the remainder at Tampa. He is identified with a number of civic groups at Tampa, is a trustee of the University of Tampa, and was formerly Vice President of the local Chamber of Commerce. From 1919 to 1927 Mr. Thomason supervised and directed the operation of Station WGN, Chicago, and will assume the ultimate responsibility for the construction and operation of the proposed station.

Mr. John Stuart Bryan, majority stockholder of the applicant corporation, is the President of the College of William and Mary, Williamsburg, Virginia, publishes a newspaper at Richmond, Virginia, and recently became financially interested in a new broadcasting station at Richmond, Virginia.

The Tampa Morning Tribune has a daily circulation of approximately 54,000 and a Sunday circulation of 58,000. About 300 persons are employed on its staff. The newspaper subscribes to both the Associated and United Press Services.

As of May 31, 1937, the applicant had assets totalling \$1,144,213.09, including current assets of \$131,148.36, \$44,407.31 of which was in cash. In addition, the applicant had, at the time of the hearing, an unused bank credit to the extent of approximately \$75,000. Apart from the capital stock, the liabilities consisted of surplus, \$74,451.05;

contingent liabilities for mortgages and notes discounted, \$11,775.16; and current liabilities totalling \$76,361.85.

The total cost of construction of the proposed station is estimated at \$76,129.09 and the total monthly operating expense at \$6,739.50. The proposed transmitting equipment, antenna, and site comply with the requirements and Rules and Regulations of the Commission. A staff of qualified persons will be employed for the proposed operation. In this connection, a station manager has been tentatively selected, who has had several years' experience in various capacities with broadcast stations including employment with Stations WDAE and WFLA.

It is planned to operate the proposed station independently of the newspaper, particularly with respect to the commercial staff. No combination of advertising rates will be offered. Feature and special staff writers of the newspaper will be available, however, for the broadcasting of certain programs. The applicant has received written commitments from eighty-five (85) local merchants and business concerns totalling \$71,320 annually, for the purchase of time over the proposed station. Predicated upon an investigation of available sources of advertising, by representatives of the applicant, the rates proposed to be charged and the sale of approximately 27.1% of the total allotted time, it is estimated that the station will receive an income of approximately \$15,000 per month.

According to the 1930 United States Census the population of Tampa was 101,161. The manufacture of cigars is one of the principal industries of the city. Tampa is also an important seaport. According to the United States Census of Business of 1935 (wholesale and retail distribution) there were located in Tampa 1,654 retail establishments with sales amounting to \$34,764,000 and employing 4,898 persons receiving total salaries of \$4,056,000. In the same year there were 264 wholesale establishments in Tampa with total sales of \$63,575,000 and employing 2,822 persons, who received salaries totaling \$3,923,000.

Tampa is located in a rich agricultural and citrus fruit producing area. Within a radius of 60 miles are 8 counties which include approximately one-fourth of the population of the state. These counties produce approximately 52% of the total citrus crop of Florida. In addition to the cultivation of citrus fruits, other occupations in this area consist of farming and the production of vegetables and poultry. It is estimated that the proposed station during daytime hours would include 185,617 persons within the 10 millivolt per meter contour; 248,338 within the 2 millivolt per meter contour and 312,800 within the 0.5 millivolt per meter contour. It is also

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predicted that the latter contour will include the above eight counties, as well as portions of others. Operating as proposed during nighttime hours the 10 millivolt per meter contour would include an estimated population of 166,322 and the 2 millivolt per meter contour approximately 195,959.

The City of Tampa receives primary broadcast service from Station WDAE, located therein, operating on the frequency 1220 kilocycles with power of 1 kilowatt night, 5 kilowatts L. S., unlimited time, and from time-sharing Stations WFLA-WSUN, with studios located in Tampa and St. Petersburg, Florida, using the frequency 620 kilocycles with power of 1 kilowatt night (directional antenna), 5 kilowatts L. S., unlimited time. In rural areas generally east of Tampa additional service is received from Station WLAK, Lakeland, Florida, operating on the frequency 1310 kilocycles with power of 100 watts unlimited time. In addition, service is available at night from distant clear channel stations. In brief, this city now receives primary broadcast service from three regional broadcast stations, two of which operate on a time-sharing basis.

Predicated upon a comparison of the coverage of the proposed station with the existing coverage of Station WDAE, on the basis of area and population it is further estimated that the former will serve during daytime hours 24,600, 31,968, and 65,536 more persons in the respective 0.5, 2, and 10 millivolt per meter contours than now receive service from the latter within its similar contours. Operating as proposed during nighttime hours it is predicted that the proposed station will serve 52,061 and 6,526 more persons within the respective 10 and 2 millivolt per meter contours than those now included in similar contours of Station WDAE. A comparison of the expected land area coverage of the proposed station with that of Station WDAE indicates that the former will be much more extensive during both daytime and nighttime hours.

A tentative schedule of programs proposed to be broadcast by the applicant was submitted in evidence, which includes religious, educational, civic and fraternal matters, agricultural subjects, weather and market reports, sports, news, music and entertainment numbers. Approximately 65.8% of the time allotted will be used by live talent. No educational, civic or religious programs will be commercially sponsored. Advertising of a questionable nature will not be accepted. The applicant does not contemplate affiliating with a network.

Sources of local talent available for use over the proposed station include a number of orchestras, choirs, glee clubs, dramatic clubs and individual musicians and entertainers. A substantial amount of talent of this character is now being utilized by the existing stations.

In addition it is planned to broadcast certain educational programs from the University of Tampa and members of the faculty of this institution will be available for that purpose. Representatives of a number of civic, educational, religious, and similar institutions in Tampa, as well as of others located in nearby towns and communities, testified as to an alleged need for the proposed station and expressed their desire to use its facilities. A number of these witnesses admitted, however, that they have in the past broadcast over the existing stations and have never been denied time by said stations. Upon cross-examination others admitted that they have never requested the use of the facilities of the existing stations.

The applicant proposes to broadcast, several times daily, agricultural programs, some of which will be supplied by the United States Department of Agriculture. Weather reports available from the United States Weather Bureau and the United States State Frost Warning Service will also be broadcast at frequent intervals. Both Stations WFLA and WLAK, Clearwater, now broadcast weather reports and the former also disseminates frost warnings.

The applicant also proposes to broadcast daily reports received from the Florida State Marketing Bureau as to the prices and quantities of fruits and vegetables on the market in Tampa. Both of the local daily newspapers publish these reports, but it is contended that these publications are not delivered in outlying rural areas until the information is from 24 to 30 hours old and that, as a consequence, the growers are unable to obtain this information promptly, often resulting in a glutted market and low prices. It is urged that the prompt dissemination of these reports would be of great value to the growers as they would thereby be guided in the picking of fruit in order to avoid an oversupply on the market. A number of witnesses testified by depositions in support of these contentions.

Stations WDAE and WLAK have network affiliations, but both devote substantial portions of their time to local programs. The former is licensed to the Tampa Times Company, publisher of the Tampa Daily Times, a local newspaper. Station WDAE submitted in evidence a program schedule for a typical week's broadcast which includes a wide variety of features, such as religious and civic programs, educational subjects, sports, news, agricultural information, entertainment numbers and musical selections. The facilities of the station are always available to the city and other public officials and have often been utilized by the Sheriff and other law enforcement officers. Weather reports and frost warnings are broadcast at all times. Each year throughout the marketing season information and reports pertaining to citrus fruits are regularly disseminated. The facilities of the station are always available to local civic and educa-

tional institutions free of charge and in the past a large number of these organizations have broadcast over the station. The services of various religious groups and denominations are regularly broadcast by remote control. Approximately 50% of the hours allotted to Station WDAE after 6:30 p. m. are occupied by sustaining programs. These periods are always available for the use of local organizations in the event that additional time is desired. Moreover, it is the policy of the station management to cancel sustaining programs of the network at any time in order that time may be made available for the broadcasting of any programs of particular local interest. The station uses a substantial amount of local talent in support of its programs and auditions are available daily for the development and utilization of such talent.

Based upon its use of a directional antenna during nighttime hours, it is predicted that the operation of a broadcast station as proposed herein will not adversely affect the services of any existing stations. Nor will the proposed daytime operation cause any problems of objectionable interference. Based upon field intensity recordings, taken in Tampa on ten consecutive evenings, from May 4 to 13, 1937, inclusive, the composite signal recorded for 10% of the time indicated, according to an expert who testified for the applicant, that the nighttime service of the proposed station would be limited to 1.68 millivolts per meter. The same witness testified, however, that, based upon the clear channel survey curve and upon the assumption that Station WAVE, Louisville, Kentucky, uses an antenna with an effective field of 150 millivolts per meter per mile along the ground in the direction of Tampa, this station would limit the proposed nighttime service for 10% of the time to the 2.04 millivolt per meter contour and that, based upon an assumed antenna efficiency of Station WAVE of 175 millivolts per meter per mile, the proposed station would be limited at night to the 2.44 millivolt per meter contour by the former. The Commissioner's engineer agreed with the latter prediction. It is apparent from the foregoing that the proposed service would be limited at night substantially within the normally protected 1 millivolt per meter contour. Although the proposed station would receive some limitations at night from other stations the signal from Station WAVE would constitute the predominant source of interference thereto.

The applicant's engineer also testified that the Tampa area is subject to a substantially higher level of natural static than that which prevails in other sections in the United States and that interference resulting therefrom at night for 10% of the time would render unsatisfactory a signal of an intensity less than 2 millivolts

per meter. As this opinion was not predicated upon any measurements or recordings to determine the actual level of such static, it is of little probative value.

The interference problems which would be expected to result through the simultaneous operation of a broadcast station such as proposed herein, together with that of the proposed Tulsa station, have been discussed above.

GROUND FOR DECISION

On the record in this case the Commission finds:

IN RE DOCKETS NOS. 4545, 4185, 4479 AND 3932

1. Under accepted engineering standards of good allocation practice the services of broadcast stations of the regional classification are normally protected to their 1 millivolt per meter contours during nighttime hours of operation. In allocating broadcast facilities it is the policy of the Commission to follow these standards unless unusual considerations are present which would warrant a departure therefrom, such as, for example, a compelling showing of need for broadcast service in a particular area. A fair consideration of all of the evidence appearing in the above record on this particular subject leads to the conclusion that each of the services proposed herein will be limited during nighttime hours substantially within its normally protected one millivolt per meter contour and that no need is shown in any of the localities proposed to be served which is sufficiently compelling to warrant a grant of the applications considered herein.

IN RE DOCKET NO. 4545

2. As stated in this opinion, the applicant corporation is controlled, through the ownership of stock, by the same individual who has recently been granted a construction permit to erect a new broadcast station in El Paso. The Commission, therefore, reaffirms its adherence to a policy which has been enunciated in several recent decisions (See the matters of *WSMB, Inc., New Orleans, Louisiana*, Docket No. 4530, decided January 12, 1938, *R. Jackman, et al, Lawrence, Kansas*, Docket No. 4415, decided May 25, 1938, *The Louisville Times Company*, Docket No. 4222, decided June 1, 1938) and makes particular reference to the following statement thereof contained in its decision on the application of the *Genesee Radio Corporation, Flint, Michigan*, for construction permit (Docket No. 4587), which pertains with equal force to the instant case:

There is another element in this case, which, when weighed in conjunction with the facts already set forth, the Commission regards as controlling. The

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interests which control the existing broadcast station * * * and those which would control the proposed station are identical. * * * The two stations would not be engaged in actual or substantial competition with each other in the rendering of service. Further, to permit the entry into the field of this applicant might well, from an economic standpoint, prevent the future entry into the field by an applicant who would offer a new, different, improved, and competitive service. It is not in the public interest to grant the facilities for an additional broadcast station to interests already in control of the operation of a station * * * in the same community, unless there is a compelling showing upon the whole case that public convenience, interest, or necessity would be served thereby.

In order to assure a substantial equality of service to all interests in a community, to assure diversification of service and advancements in quality and effectiveness of service, the Commission will grant duplicate facilities to substantially identical interests only in cases where it overwhelmingly appears that the facility, apart from any benefit to the business interests of the applicant, is for the benefit of the community, fulfilling a need which cannot otherwise be fulfilled.

3. A grant of the application will not serve public interest, convenience, and necessity.

IN RE DOCKET NO. 4185

2. A grant of the application will not serve public interest, convenience, and necessity.

IN RE DOCKET NO. 4479

2. The operation of the station as proposed herein during night-time hours would be expected to cause objectionable interference to the service of Mexican stations.

3. A grant of the application will not serve public interest, convenience, and necessity.

IN RE DOCKET NO. 3932

2. This Commission is required by Section 307 (b) of the Communications Act of 1934 to make such distribution of the limited facilities available for broadcast uses as will provide a fair, efficient, and equitable service to the several states and communities. The City of Tampa now receives primary broadcast service from three regional stations, two sharing time and the third operating during unlimited hours. The city proposed to be served in this application, therefore, now has assigned to it an equitable share of broadcast facilities of the regional classification, as contemplated by Section 307 (b) of the Act. (See the Commission's decision in the matter of Dr. Wm. States Jacobs Broadcasting Corporation, Docket No. 4269, decided March 9, 1938.)

3. A grant of the application will not serve public interest, convenience, and necessity.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D. C.

<p>In the Matter of ASTORIA BROADCASTING COMPANY (KAST), ASTORIA, OREGON. For Construction Permit.</p>	}	DOCKET No. 4836.
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Decided July 27, 1938

Louis G. Caldwell, Donald C. Beelar, and James L. Hope on behalf of the applicant; and *Walter Johnson* on behalf of the Commission.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION (Commissioner McNinch, Chairman, not participating):

STATEMENT OF FACTS

This proceeding arose out of the application of the Astoria Broadcasting Company, licensee of Station KAST, for construction permit seeking authority to modify its transmitter, move its station, erect a new antenna, and change from its present operating assignment on 1370 kilocycles, 100 watts, daytime only, to 1200 kilocycles, 100 watts night, 250 watts, L. S., unlimited hours of operation. The hearing was held before an examiner on February 10, 1938. The examiner released his report (I-634) on April 27, 1938, and recommended that the application be granted. No exceptions were filed and oral argument was not requested.

The Astoria Broadcasting Company is a corporation organized and existing under the laws of the State of Oregon. The business of the corporation is the operation of Radio Station KAST at Astoria, Oregon, which it has operated since October 1936. The officers and directors of the applicant corporation are M. R. Chessman, President; E. B. Aldrich, Vice President; Hattie S. Brown, Secretary and Treasurer, all of whom are stockholders. Other stockholders are Mrs. Dorothy Engle and Mrs. Gertrude Delinger. The corporation is authorized to issue 100 shares of stock with a par value of \$100 per share. Ninety shares of stock have been issued and are held by the above-named stockholders, all of whom are American citizens.

Astoria is the county seat of Clatsop County, Oregon, and is located on the south shore of the Columbia River, about ten miles from the Pacific Ocean. The population of Astoria, according to the 1930 census, was 10,349. Surrounding communities are Ilwaco and Long Beach, Washington; Warrenton and Seaside, Oregon. It is estimated that there are approximately 35,000 people living in the trading area of which Astoria is the center.

Station KAST is the only station furnishing primary broadcast service in the urban communities on the lower end of the Columbia River. The rural areas now served by Station KAST receive broadcast service from Station KGW, Portland, Oregon, as well as other clear channel stations operating on the West Coast.

At the present time the studio and transmitter of Station KAST are located in the Astoria Hotel. The estimated total construction cost, in the event this application is granted, will vary from \$1,800 to \$2,900, depending upon the type of antenna selected. A balance sheet filed by the applicant corporation shows total assets of \$13,687.54, of which amount \$2,334.27 was in cash and \$1,397.30 in accounts receivable. A profit and loss statement for the first eleven months of 1937 shows a net profit during this period of \$3,255.13. In the event the cash on hand is not sufficient to meet the construction cost, the present stockholders will subscribe for an additional \$1,000 in stock.

The present personnel of Station KAST consists of six persons: the station manager, chief engineer, technician, program director, stenographer-bookkeeper, and director of women's programs. In the event full-time operation is authorized, an additional duly qualified operator will be employed. The increased operating expenses in the event full-time operation is authorized are estimated to be between \$100 and \$135 per month. The estimated additional revenue to be derived from the proposed nighttime operation is placed at \$332 per month. This estimate is based upon several signed commitments from firms located in Astoria.

Astoria has approximately 250 retail establishments, with receipts totaling in excess of \$9,000,000; 84 service establishments with a total pay roll of more than \$70,000. More than 2,000 industrial employees in the area to be served receive annual compensation in excess of \$2,500,000.

In the event the application for full-time hours of operation is granted, no change is contemplated in the existing daytime advertising rates. The rates for nighttime advertising will be slightly higher, due to the fact that it is estimated the station will be able to reach a larger listening audience.

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The programs of Station KAST are well balanced and are designed to meet the particular requirements of the community. The facilities of the station have been extended to the various civic, religious, educational, and charitable organizations. The licensee proposes to continue this type of service if this application is granted. The operation of this station during the evening hours will permit the broadcasting of night football games, basketball games, and other activities. The local talent available to Station KAST include bands, a symphony orchestra, and vocal and dramatic organizations. Much of this talent is not available for daytime broadcasts but would be available for the presentation of suitable programs during the evening hours.

The exact site of the proposed transmitter has not been selected. The antenna which the applicant proposes to use will have a minimum height of 151 feet, the exact specifications of which will depend upon the site selected for the transmitter.

Station KEX, Portland, Oregon, operating on a frequency of 1180 kilocycles with power of 5 kilowatts, shares time with Station KOB, Albuquerque, New Mexico. The actual separation between Astoria and Portland is 75 miles. Under normal conditions the recommended separation is 138 miles. However, because of the low conductivity of the terrain between the two stations, no objectionable interference is expected to occur to the normally protected service area of either station during the simultaneous operation thereof.

There are sixteen broadcast stations now operating in the State of Oregon. The granting of this application, so as to permit the night-time operation of Station KAST, will not interfere with a fair, efficient, and equitable distribution of radio service.

GROUNDS FOR DECISION

1. The applicant is legally, technically, and financially qualified to construct and operate the station as proposed.
2. There is a need for additional broadcast service in the area now served by Station KAST.
3. The application may be granted within the purview of Section 307 of the Communications Act of 1934, as amended.
4. The operation of Station KAST on the frequency 1200 kilocycles, 250 watts L. S., 100 watts night, unlimited hours of operation, would not cause objectionable interference to any existing radio station.
5. The equipment which the applicant proposes to use is capable of operating so as to conform to the engineering requirements of this Commission.
6. Public interest, convenience, and necessity will be served by granting the instant application.

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of
KARL L. ASHBACKER, Licensee of Station
WKBZ, Assignor,

and

ASHBACKER RADIO CORPORATION, Assignee,
MUSKEGON, MICHIGAN.

For authority to voluntarily assign
the license of Station WKBZ.

DOCKET No. 4850.

Decided July 27, 1938

Horace L. Lohnes, Everett D. Johnston, and Fred W. Albertson
on behalf of the applicants; *Hugh B. Hutchison* on behalf of the
Commission.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION (Commissioner McNinch, Chairman, not par-
ticipating) :

STATEMENT OF FACTS

This proceeding arose upon an application requesting the Commis-
sion's authority to voluntarily assign the license of Station WKBZ,
Muskegon, Michigan (operating on the frequency 1500 kc., with
power of 100 watts night, 250 watts day, unlimited time), from the
licensee, Karl L. Ashbacker to the Ashbacker Radio Corporation.

On December 21, 1937, a hearing was held on the above application
before an examiner, who, in his report (I-646) recommended a grant
thereof.

Karl L. Ashbacker has been the licensee of Station WKBZ since
its inception in 1926. The station was moved from Ludington to
Muskegon, Michigan, in 1934 and has continued operation in that
city through successive renewals of license. Mr. Grant Ashbacker,
the licensee's son, has acted as manager of Station WKBZ from its
initial operation and will continue in that capacity under the pro-
posed ownership.

The Ashbacker Radio Corporation, the assignee herein, was in-
corporated under the laws of the State of Michigan on December 31,
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1935, with an authorized capitalization of \$50,000, consisting of 5,000 shares of common stock of a par value of \$10.00 per share. Under its charter the corporation has full power to engage in radiobroadcasting. Karl L. Ashbacker is the president and a director of this corporation and 1,000 shares of stock have been issued in his name which are to be paid for under the terms of the contract of sale hereinafter set forth. Grant Ashbacker is the vice president, treasurer, and a director and owns 1,100 shares of common stock. Loran A. Haney is the secretary and a director. One share of common stock will also be issued to Frank Ashbacker in order to qualify him as a director and secretary of the corporation. All of the officers, directors, and shareholders of the corporation are citizens of the United States. No further stock transfer is planned in connection with the assignment of the license of Station WKBZ, nor is any money consideration involved in the sale of its assets.

The assignor and assignee herein entered into a contract dated April 27, 1937, whereby all the assets of Station WKBZ are to be sold, assigned, and conveyed to the Ashbacker Radio Corporation for the consideration of 1,000 shares of common stock of the corporation (of a par value of \$10.00 per share) which are to be issued to Karl L. Ashbacker. All of the property owned by Station WKBZ is to be transferred, free and clear of debts, liens, mortgages, etc. As of the date of the transfer, the Ashbacker Radio Corporation guarantees the payment of all accounts payable of Station WKBZ that are then due and payable. The contract further provides that all property now owned and possessed by the station shall be retained by the assignor until the assignment and transfer are approved by the Federal Communications Commission.

As of December 15, 1937, Station WKBZ had total assets of \$15,690.91 and a net worth of \$15,162.94. The gross revenue from the sale of time of Station WKBZ for the year ended December 1, 1937, was \$35,850.51 and the net profit was \$3,128.32. The total original cost of the station property included in the contract of sale was \$15,872.15. The depreciated value of said property is estimated at \$8,572.99 and the replacement value at \$15,203.25. In addition, the licensee purchased station equipment of the approximate value of \$1,900, since the inventory was made, which will be transferred to the assignee corporation under the contract discussed above.

As of December 1, 1937, the Ashbacker Radio Corporation had total assets of \$7,511.48, consisting of fixed assets in the amount of \$6,011.48 and \$1,500 of personal property. There were liabilities of \$1,682.22, leaving a net worth of \$5,829.26. The title to a portion of the land and operating equipment of Station WKBZ is now owned

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by the assignee corporation and the licensee, Karl L. Ashbacker, has used the property for the operation of Station WKBZ on a rental contract basis.

A list of the programs of Station WKBZ broadcast for the week ended December 19, 1937, representing an average week's program, was submitted in evidence. The schedule indicates that the station renders a program service to the Muskegon area which is well diversified and designed to meet the public interest. The station devotes 35% of its total time to musical reproductions and 65% of the time is supported by live talent. The schedule further shows that the station devotes 16% of the time to religious programs, 15% to news, 50% to entertainment, 10% to education, 4% to civic and 5% to sports news. The station maintains 26 remote-control points in Muskegon for the broadcasting of various programs of public interest. Time is donated to civic, educational, and charitable organizations in this community.

The commercial rate for the purchase of time over station WKBZ is \$52.00 per hour subject to discounts upon a continuing contract basis. The rate for spot announcements is \$3.00 during the daytime and \$4.00 at night. No change in rates is planned under the proposed ownership.

Station WKBZ spends approximately \$100.00 per week for live talent which is used for the production of programs originating in its own studios.

The present staff of 18 employees will be retained to insure the efficient operation of the station. No immediate increase in staff personnel is contemplated.

The same general policy with respect to the program service of Station WKBZ is to be carried out under the proposed ownership and management.

GROUNDS FOR DECISION

On the record in this case the Commission finds:

1. The proposed assignee, the Ashbacker Radio Corporation, is qualified in all respects to assume the ownership and operation of Station WKBZ as the licensee thereof.

2. The granting of the application is in the public interest.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D. C.

In the Matters of
RICHARD M. CASTO,
JOHNSON CITY, TENNESSEE.
For Construction Permit.

} DOCKET No. 4212.

W. HANES LANCASTER and J. W. BIRDWELL,
d/b as JOHNSON CITY BROADCASTING Co.,
JOHNSON CITY, TENNESSEE.
For Construction Permit.

} DOCKET No. 4078.

R. R. SPILMAN, IRA A. WATSON, R. H.
CLAGGETT, AND ROY N. LOTSPEICH, d/b as
KNOXVILLE JOURNAL BROADCASTING Co.,
KNOXVILLE, TENNESSEE.
For Construction Permit.

} DOCKET No. 4188.

Decided July 27, 1938

Paul M. Segal and George S. Smith on behalf of Richard M. Casto and Station WNOX; *Ben S. Fisher and Charles V. Wayland* on behalf of Station WLMU; *John B. Brady* on behalf of Johnson City Broadcasting Company; *Paul D. P. Spearman, Alan B. David, and Harrison Horton, Jr.*, on behalf of the Knoxville Journal Broadcasting Company; *John M. Littlepage, Thomas P. Littlepage, Jr., and W. A. Porter* on behalf of F. M. Gleason, d/b as North Georgia Broadcasting Co.; *Horace L. Lohnes and E. D. Johnston* on behalf of Columbia Radio Company, Inc., and WROL; *Ted R. Woodard* on his own behalf; *Fanny Neyman and Walter Johnson* on behalf of the Federal Communications Commission.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION:

STATEMENT OF FACTS

These proceedings arose upon the applications of Richard M. Casto and Johnson City Broadcasting Company to erect new broadcast stations at Johnson City, Tennessee, and the application of the Knox-

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ville Journal Broadcasting Company to erect a new broadcast station at Knoxville, Tennessee. All applications request authority to operate on 1200 kc. with 100 watts night, 250 watts day, unlimited time.

Hearings were held in which all applicants and other interested parties participated. Examiner's Reports (Nos. I-387 and 389) were submitted and oral argument was held thereon. The Examiner recommended that the applications of Casto and Knoxville Journal Broadcasting Company be denied and that of Johnson City Broadcasting Company be granted. The exceptions to the Examiner's Report filed by the several parties have been considered by the Commission in reaching its decision herein.

NEED FOR BROADCAST SERVICE IN JOHNSON CITY AND KNOXVILLE

There is no broadcast station in Johnson City and the nearest station is located at Bristol, Tennessee, about 20 miles distant. This station uses 100 watts power and does not provide satisfactory service to Johnson City, but would render a degree of service to the rural areas surrounding Johnson City. Service from other, more distant, stations is secondary in nature and intermittent in its reception.

The population of Johnson City is slightly in excess of 25,000 (U. S. Census) and the trade area of the city was estimated to extend 25 miles and to embrace a population of 250,000. In addition to having several manufacturing plants located there, Johnson City is also the distributing point for hardware, oils, tires and other automobile accessories, groceries, meats, and drugs. There are about 200 retail establishments located there.

At least two educational institutions located at Johnson City have music and dramatic departments from which talent for use by a broadcast station may be drawn. The city high school has an orchestra. Instrumental groups, glee clubs, and soloists are available as talent. Other potential sources of programs include the Junior and Senior Chambers of Commerce, Ministerial Association, American Legion Band, Boy Scouts of America, Safety Council, Johnson City Civic Male Chorus, a symphony orchestra, Theater Guild, Rotary Club, Kiwanis Club, Optimists Club, and the Business and Professional Women's Club. This talent does not presently have a convenient outlet for broadcasting.

There is no broadcast station over which it would be feasible for those desiring coverage of the Johnson City area, alone, to advertise. There is no broadcast station which carries programs of peculiar interest to the Johnson City area.

Broadcast service is received in Knoxville from Station WNOX, operating on 1010 kc. with 1 kw. night and 5 kw. day, and Station 6 F. C. C.

WROL, operating on 1310 kc., 100 watts at night, 250 watts day, unlimited time. In addition to these stations in Knoxville, the surrounding area receives service from Station WSM, Nashville, Tennessee, operating on 650 kc., 50 kw., unlimited time, and Station WWNC, Asheville, N. C., 80 miles distant, operating on 570 kc., 1 kw., unlimited time. There is also secondary service of an intermittent nature available from various distant clear channel stations at night.

The population of Knoxville is approximately 105,000 (1930 U. S. Census). According to the same source, the metropolitan area has a population of 135,764.

A considerable showing of available talent was made by the Knoxville Journal Broadcasting Company from which it appears that there exists sufficient talent in Knoxville to support an additional broadcast station. However, the majority of such talent had already utilized the facilities of the existing stations in Knoxville, and there was no showing that the facilities of the existing stations had been denied them upon proper request.

The Knoxville Journal Broadcasting Company has made a considerable showing as to the religious, civic, educational, charitable, etc., organizations that would furnish programs for the proposed station. However, none of the witnesses presented on behalf of this applicant had any knowledge of a refusal by either of the existing broadcast stations to carry the programs of any of these aforementioned organizations. On the contrary, an affirmative showing on behalf of one of the existing stations clearly indicates that many of such organizations had utilized the facilities of existing stations. There is no showing of unavailability of time for broadcasting local talent programs or the programs on behalf of civic, religious, educational, etc., organizations.

An analysis of the programs of Station WROL operating with a "local" assignment in Knoxville indicates that only 34.25% of that station's time is devoted to commercial programs. There was no showing made on behalf of the Knoxville Journal Broadcasting Company that the rates or practices of either of the existing stations rendered advertising over such stations either undesirable or impracticable.

An examination of the testimony presented by the existing stations with respect to their programs reveals that a well-balanced service is offered including educational, religious, sports, news, civic interest, and entertainment broadcasts. One of the stations is affiliated with the Columbia Broadcasting System, and the other devotes its pro-

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grams to local broadcasts and a limited number of "rebroadcasts" of other stations. Nothing substantially new or different in the way of program service is offered by the Knoxville Journal Broadcasting Company.

INTERFERENCE PROBLEMS WITH EXISTING STATIONS AND FACILITIES
PROPOSED IN PENDING APPLICATIONS

As stated before, all applications request the operating assignment of 1200 kc., 100 w., 250 w. L. S., unlimited. Use of such an assignment in Knoxville or Johnson City would not be expected to result in objectionable interference to the normally protected service areas of any existing stations.

Since the Johnson City Broadcasting Company and Casto applications request the same operating assignment in the same city, their applications are necessarily mutually exclusive. Interference problems in connection with applications pending at the time of the hearing and still before the Commission at the time of deciding this case, are limited solely to the applications here being decided.

The actual separation between Johnson City and Knoxville, Tennessee, is 90 miles. No measurements were presented to show the actual conditions of interference which would result. Testimony with respect thereto was predicated on calculations by expert witnesses on the basis of certain technical data at their disposal.

The prediction of interference made by the Commission's engineer at the hearing on November 6, 1936, will be disregarded by the Commission because it was based on information shown at the subsequent hearings on these applications not to be the best available. As the result of its own investigation, the Commission, on September 1, 1936, released charts reflecting the propagation characteristics of skywave transmission for the second hour after sunset and for the latest hour after sunset.

The prediction of no limitation within normally protected areas made by the Knoxville Journal Broadcasting Company's engineering witness was based on the transmission characteristics for the latest hour after sunset as reflected in the aforementioned charts.

The Commission accepts the "second hour after sunset" curve as being more suitable for allocation purposes because it reflects average conditions during early evening hours, at which time broadcast stations have the maximum number of listeners.

The Commission's engineering witness, using the "second hour after sunset" curve, predicted that a station operating at Johnson City and Knoxville, with the assignments proposed, would mutually

limit each other to their 2.2 millivolt per meter contours. There is no conflict in the record on this point. Such a limitation is within the normally protected contours of local broadcast stations and, as such, constitutes objectionable interference. It was brought out on cross examination that listeners in the area involved would not be able to detect the difference on average broadcast receiving sets. This fact in itself is not sufficient to induce a change in the allocation practice of the Commission.

If there had been made a compelling showing of public need for the service proposed by the Knoxville Journal Broadcasting Company, the slight limitation above referred to would not have necessarily made the applications herein mutually exclusive. However, since the Knoxville Journal Broadcasting Company failed to show a compelling public need for the proposed station in Knoxville, it is our opinion that this borderline question of interference should have some weight in forcing a comparison of the showings as to need. We feel that it is clear from this record that there is a greater need for a broadcast station in Johnson City than for an additional broadcast station in Knoxville.

QUALIFICATIONS OF KNOXVILLE JOURNAL BROADCASTING COMPANY

The application for authority to establish a new broadcast station at Knoxville, Tennessee, was filed in the names of R. R. Spilman, Ira A. Watson, Roy N. Lotspeich, and R. H. Claggett, d/b as the Knoxville Journal Broadcasting Company. A partnership agreement signed by the aforementioned parties, together with Mrs. Roy N. Lotspeich, d/b as the Knoxville Journal Broadcasting Company, was introduced into the record. No papers or pleadings were filed with the Commission which would have had the effect of adding Mrs. Lotspeich to the list of persons comprising the partnership as indicated in the application.

According to the terms of the partnership agreement, the partners agree that the funds necessary to equip, operate, and maintain the proposed station will be furnished by them individually, to the full extent necessary. The financial statement of Mr. Roy N. Lotspeich as of July 1, 1936, shows a net worth in the amount of \$939,548.24. Obviously Mr. Lotspeich is in a position to meet the expected construction and operation costs of the proposed station.

If the permit were granted, it was proposed by this group to form a corporation in which Mr. Lotspeich and his wife will have an 85% interest, Mr. Watson, a 10% interest, and Messrs. Spilman and Claggett, a 2½% interest.

The applicant failed to make any showing with respect to proposed personnel.

QUALIFICATIONS OF JOHNSON CITY BROADCASTING COMPANY

The applicant is a partnership composed of W. Hanes Lancaster and J. W. Birdwell, d/b as Johnson City Broadcasting Company. Both of the partners are citizens of the United States. Mr. Lancaster is a business man and resident of Chattanooga, Tennessee.

Mr. Birdwell is the holder of an amateur radio license and radiotelephone operator's license (first class) and has had experience in radiobroadcasting. He has been employed at various broadcast stations and it appears from the record that his services have been satisfactory. Mr. Birdwell will supervise the operation of the proposed station.

According to the terms of the partnership agreement, Mr. Lancaster will supply the money to construct, and begin operation of, the proposed station. He has agreed to make \$15,000 cash immediately available and to furnish any additional amounts "necessary for the erection, maintenance, and operation" of the proposed station. It was planned to spend approximately \$9,500 in the construction of the station, and monthly operating expenses were predicted at \$1,365.

Mr. Lancaster showed a deposit of \$10,000 to his individual credit in the Hamilton National Bank of Johnson City. He was also the holder in due course of a certified check for \$5,000 given to him by one Mr. Miller in return for an unsecured promissory note. The makers of two promissory notes totalling \$3,700 payable to Mr. Lancaster, were shown to be financially able to meet these obligations. The maturity date of these notes has already passed. Mr. Lancaster owned an interest in the Lancaster Battery and Electric Company, on which he placed a \$12,000 valuation for his 66-2/3% stock ownership. His home, on which he placed a \$26,000 value, is jointly owned with his wife. Mr. Lancaster also referred to his possession of other assets, consisting mostly of real estate and stocks, but failed to place any valuation thereon.

The estimated cost of constructing this station is approximately \$9,500 and applicants estimated the monthly operating expenses would be approximately \$1,365. The Commission's engineer testified that the equipment proposed to be installed complies with all the technical requirements of the Commission and is capable of being efficiently operated. The transmitter site is to be determined. Arrangements have been made with a consulting radio engineer of Atlanta, Georgia, for the purpose of making a survey of the proposed transmitter location and otherwise advising the applicant with respect to the proper installation of the station.

The program service proposed to be rendered by this applicant appears designed to meet the needs of the proposed service area. The applicant intends to make the facilities of the station available,
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without charge, to all civic, religious, fraternal, agricultural, and charitable organizations in and around Johnson City.

QUALIFICATIONS OF RICHARD M. CASTO

Richard M. Casto is a citizen of the United States and moved to Johnson City September 1, 1936, for the purpose of prosecuting this application for authority to erect a new broadcasting station there. The applicant has been identified with radio in various capacities since 1923.

At the time of the hearing the applicant had \$15,000 on deposit in a bank at Johnson City, Tennessee, and \$10,000 on deposit in a bank at Charleston, West Virginia. He also had additional funds for incidental and living expenses. His liabilities are shown to be approximately \$100, representing current expenses. Mr. Casto's replies to questions on cross-examination with respect to how and when he accumulated the funds which he testified were on hand for the construction and operation of the station were not definite or elucidating.

COMPARISON OF CASTO AND JOHNSON CITY BROADCASTING COMPANY

As stated before, it is necessary in this case to choose between the application of Richard M. Casto and that of the Johnson City Broadcasting Company. Prior to coming to Johnson City, Mr. Casto lived in Charleston, West Virginia, where he had been employed as a radio technician and associated with a radio retail establishment. Mr. Birdwell, who will be in active charge of the station proposed by the Johnson City Broadcasting Company, is shown to be a member of an established Johnson City family and has long been a resident of Johnson City. Mr. Casto has not shown himself to be in a position to know, or that he actually has familiarity with, the needs of the area proposed to be served. Certainly he has failed to show himself to be in a better position to meet these needs than has the Johnson City Broadcasting Company. The Commission is of the opinion that where it is necessary to choose between two applicants proposing to serve the same locality that, all other things being equal, preference should be given to that applicant more definitely identified with, and familiar with the needs of, the area proposed to be served. We feel that public interest, convenience, and necessity will be better served by preferring the application of Johnson City Broadcasting Company over that of Richard M. Casto.

GROUNDNS FOR DECISION

1. There is a public need for the services of a broadcast station in Johnson City.
2. There is ample commercial support and local talent in Johnson City to maintain a local broadcast station.

3. Richard M. Casto and Johnson City Broadcasting Company are legally, technically, and financially qualified to construct and operate the proposed station.

4. The equipment proposed to be used by all applicants herein is capable of operating in accordance with the Commission's requirements.

5. The program service proposed by both applicants for a new station in Johnson City appears designed to meet the needs of that area.

6. Because of the ruinous interference that would follow from simultaneous operation in Johnson City on the assignment proposed by the applications for new stations in that town, a choice is necessary between the applications of Richard M. Casto and the Johnson City Broadcasting Company.

7. Because of partner Birdwell's residence in, and greater familiarity with, the needs of the Johnson City area, preference should be given to the application of Johnson City Broadcasting Company.

8. There has not been shown such a public need for a new station in Knoxville as would warrant the Commission in authorizing the establishment of a new station in that area; particularly in view of the interference which would be caused with the proposed Johnson City station for which there has been shown a greater need.

9. Public interest, convenience, and necessity will be served by granting the application of W. Hanes Lancaster and J. W. Birdwell, d/b as the Johnson City Broadcasting Company.

10. Public interest, convenience, and necessity will not be served by granting the applications of Richard M. Casto or the Knoxville Journal Broadcasting Company.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D. C.

<p>In the Matter of W. C. EWING & HARRY LAYMAN, trading as CUMBERLAND BROADCASTING COMPANY, FAYETTEVILLE, NORTH CAROLINA, For Construction Permit.</p>	}	DOCKET No. 4861.
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Decided August 2, 1938

John G. Dawson, Horace L. Lohnes, and Fred W. Albertson, on behalf of the applicant; Charles Price, on behalf of Burl Vance Hedrick; Elmer W. Pratt, on behalf of C. Frank Walker and Waldo W. Primm (WFNC).

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION:

STATEMENT OF FACTS

This proceeding arose upon the application of a partnership (which proposes to do business as the Cumberland Broadcasting Company), composed of W. C. Ewing and Harry Layman, for a construction permit to authorize the establishment of a new radiobroadcast station at Fayetteville, North Carolina, to operate on the frequency 1340 kilocycles with power of 250 watts daytime only. On December 3, 1937, a hearing was held on this application before an examiner who, in his report (I-590) recommended that it be granted. Exceptions to this report, filed by respondent Burl Vance Hedrick, raised no questions not necessarily involved in the determination of the application on its merits. Oral argument was heard before the Commission on April 28, 1938.

Ewing is a resident of Fayetteville, North Carolina, and has been engaged in business there for approximately 27 years. Layman resides at Kinston, North Carolina, and is chief engineer for Radio Station WFTC. Each partner is a citizen of the United States.

Agreements entered into between the above parties provide, in substance, that each is to have an equal interest in the partnership; that

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Ewing is to advance all of the funds necessary to construct the radio station; that Layman "is trained in radio and will contribute to the technical construction and operation of the station"; that one-half of the sum advanced by Ewing is to be repaid to him prior to any distribution of dividends or profits which would otherwise accrue to Layman; and that Ewing is to deposit \$10,000 in a bank for the sole purpose of defraying the cost of construction of the proposed station.

In accordance with the terms of the foregoing agreement, Ewing has deposited in a local bank the sum of \$10,000 to the credit of the partnership. Moreover, Ewing will furnish additional funds, if needed, to the extent of \$15,000 to cover the expenses of the proposed construction and operation. In addition to the \$10,000 already on deposit Ewing has assets of \$31,350, which include cash on hand and in bank, \$1,950; notes and accounts receivable, \$3,400; real estate, \$24,000, and personal property, \$2,000. He was offered \$26,000 for his real estate about 60 days prior to the hearing. His liabilities total \$11,130, which include a note in the amount of \$10,250, accounts payable, \$280, and other liabilities of \$600.

It is estimated that the cost of construction of the proposed station will be \$8,434. The monthly operating expense is estimated at \$1,085. Written commitments for the purchase of advertising time have been secured from local merchants, totaling \$1,305 monthly.

According to the United States Census for 1930, Fayetteville had a population of 13,049. The United States Census of Business for 1935 shows 243 retail establishments in Fayetteville with total annual sales of \$6,451,000. Cumberland County (including the City of Fayetteville) has 41 manufacturing plants with products having a total annual valuation of \$5,799,423.

The City of Fayetteville receives no primary broadcast service. Station WPTF, Raleigh, North Carolina, renders service which is adequate for the surrounding rural area but which would not be satisfactory for Fayetteville. Some additional service of a secondary nature is available from Station WBT, Charlotte, North Carolina.

The applicant proposes to render a local broadcast service to the Fayetteville area. The facilities of the station have been offered free of charge to, and have been accepted by, a number of religious, educational, and civic institutions and local governmental agencies. A tentative program schedule shows a well diversified daily service, including morning devotional exercises, frequent news announcements, talks of particular interest to women, health lectures, safety and fire prevention programs, numerous musical and vocal items, turns and selections, and programs expressive of the cultural, economic, religious, and political interests of a community the size of Fayetteville.

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Sources of talent available to the proposed station include instrumentalists, vocalists, and the personnel of musical clubs. The churches, schools, and colleges in the community will cooperate with the proposed station in furnishing choirs, bands, glee clubs, and dramatic artists for broadcasts. Arrangements have been made with public officials for the broadcasting of information regarding the suppression of crime and the enforcement of law.

C. Frank Walker and Waldo W. Primm, who also have applied to establish a new radiobroadcast station at Fayetteville, intervened in the instant proceeding on the ground that the Fayetteville area is not sufficiently populous to warrant the establishment and operation of two radiobroadcasting stations. In addition, Burl Vance Hedrick, respondent in this proceeding, has filed an application for a new radiobroadcast station to be located in Salisbury, North Carolina, to operate on the frequency 1340 kilocycles with power of 1 kilowatt daytime only. The simultaneous operation of the broadcast station proposed herein, together with that proposed by Hedrick, would result in mutual objectionable interference. However, for reasons set forth in its Statement of Facts and Grounds for Decision, the Commission has denied the applications of *Walker and Primm* (6 F. C. C. 72 (1938)) and of *Burl Vance Hedrick* (6 F. C. C. 79 (1938)).

The operation of a station as proposed herein would not involve objectionable interference with the services of any existing broadcast stations.

It is estimated that the proposed station will serve 17,100 persons within its 10 mv./m. contour; 28,300 persons within its 2 mv./m. contour; and 59,600 persons within its 0.5 mv./m. contour.

Ewing will be the general manager of the proposed station. Layman will be the business manager and the chief engineer thereof. As stated above, he has had experience as chief engineer of an existing station. In addition, it is proposed to employ experienced and capable personnel in all departments to insure the efficient operation of the station.

The transmitting equipment complies with the requirements of the Rules and Regulations of the Commission.

GROUND FOR DECISION

From the record in the case the Commission finds:

1. The applicant is qualified in all respects to construct and operate the broadcast station proposed herein.

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2. The technical equipment proposed by the applicant complies with the requirements of the Rules and Regulations of the Commission.

3. There is a public need in Fayetteville, North Carolina, for broadcast service of the character proposed.

4. The applicant proposes to render a program service which is well diversified and designed to meet the needs and interests of listeners in the area to be served.

5. The operation of the station as proposed herein would not involve objectionable interference with the services of any existing broadcast stations.

6. The granting of this application will serve the public interest, convenience, and necessity.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D. C.**

<p>In the Matter of MARTIN R. O'BRIEN, AURORA, ILLINOIS. For Construction Permit.</p>	}	DOCKET No. 4626.
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Decided August 2, 1938

Ben S. Fisher on behalf of the applicant; *Paul D. P. Spearman* and *Alan B. David* on behalf of Station **KXOK**; *Horace L. Lohnes*, *Fred W. Albertson*, and *E. D. Johnston* on behalf of Stations **WNEW** and **WTCN**; *Philip G. Loucks*, *Arthur W. Scharfeld*, and *Joseph F. Zias* on behalf of Station **WDSU**; and *Clarence C. Dill* and *James W. Gum* on behalf of *Jules J. Rubens* (Intervener).

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION (Commissioner **McNinch**, Chairman, not participating):

STATEMENT OF FACTS

Martin R. O'Brien, Aurora, Illinois, commenced this proceeding by filing his application for a permit to construct a new radiobroadcast station to operate on 1250 kilocycles, with power of 250 watts, daytime.

The application was designated for hearing before an examiner. He has filed his report (I-585). The applicant filed a request for oral argument in support of the report; and Jules J. Rubens (Intervener) filed a request for oral argument in opposition to the report. The argument of the respective parties was had before the Commission on April 21, 1938.

No exceptions to the report of the examiner have been made.

Martin R. O'Brien is a citizen of the United States, residing in Aurora, Kane County, Illinois. He is the Public Administrator of that county and also a member of its Board of Supervisors.

Mr. O'Brien has made a financial showing from which it appears that he has in cash \$13,875, in accounts receivable \$2,900, in com-

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mercial paper \$3,150, and in real estate \$51,000, making a total of \$70,925. His net worth appears to be \$52,775; and the Commission finds that he has on deposit the sum of \$13,000 for the purpose of constructing and beginning operation of the proposed station.

The applicant does not own any interest in any broadcast station and he is without experience in the radiobroadcast business, but he intends to employ competent help to build and operate the station. The personnel of the station, if installed, will include a chief engineer, an assistant engineer, a program director, a studio manager and two announcers; and the applicant himself will be advertising manager for the station.

The estimated cost of the station as proposed is \$13,400. The estimated monthly cost of operating the station, if constructed, is \$1,625. The monthly revenues expected from the operation of the station range between \$1,530 and \$2,905.

The schedule of rates which the applicant has in mind for the service of the proposed station is based upon an hourly rate of \$40.00, a half-hour charge of \$25.00, a quarter-hour charge of \$15.00, and a 5-minute charge of \$7.50. The charge for spot announcements will be at the rate of \$2.00 per minute.

Aurora is a city of 46,589 population (1930 Census). The Chicago, Burlington, and Quincy Railroad maintains shops there employing more than 2,500 men.

Aurora is a manufacturing city.

The area surrounding Aurora is devoted largely to agricultural pursuits.

In the city there are 54 churches, 4 hospitals, 5 agricultural organizations, 10 civic groups, 16 charitable and social organizations, 7 service clubs, 6 governmental agencies, and 9 miscellaneous organizations.

There are in Aurora 11 educational institutions, including 1 college and 5 secondary schools. Authorities in charge of these schools have indicated their intention to use the facilities of the proposed station if it is constructed.

There is local talent in the city available for the use of the station, consisting of 1 orchestra, 8 bands, 2 dramatic groups, 3 glee clubs, and 18 individual artists and vocalists.

The applicant at the hearing exhibited the program he offers over the proposed station. The service reflected in the program is well diversified and it should meet the needs and enlist the approval of the area which the applicant proposes to serve. The week day service includes home economics, dramatic programs, market reports,

sports events, news and agricultural and educational programs. The Sunday service includes religious broadcasts.

It is contemplated by the applicant that the operating schedule of the proposed station will be one-third commercial and two-thirds sustaining.

Mr. O'Brien has made arrangements with the Aurora Beacon News, the only daily newspaper in the city, to furnish news to be broadcast from the station. The news broadcasts will include two quarter-hour periods each day; and a five-minute news broadcast will be made each hour. The Aurora Beacon News has 56 correspondents in the territory accessible to the city who will participate in collecting items for the news broadcasts.

The applicant will furnish the facilities of his station without charge to the various charitable, civic, educational, religious and social organizations of the city.

There is no broadcast station in Aurora, Illinois, and although it receives a useful signal from stations in other places—chiefly in Chicago, Illinois—it needs a local station.

The engineering testimony indicates that the 10 millivolt per meter contour of the proposed station will reach about 5 miles from the antenna and will include a population of 67,900; that the 2 millivolt per meter contour of the station will extend about 14.5 miles and will include a population of 206,050; and that the 0.5 millivolt per meter contour will extend about 29 miles and will include a population of 345,800. These estimates are based upon the 1930 Census.

Five stations are now located at distances from Aurora, Illinois, less than the distances usually recommended by good engineering practice for the avoidance of interference; but the engineering testimony is to the effect that no objectionable interference of any consequence is to be expected.

Station WTCN, Minneapolis, Minnesota, is 330 miles from Aurora, Illinois. The recommended separation is 400 miles. The engineering testimony indicates that no objectionable interference to the 0.5 millivolt per meter contour of Station WTCN will occur in the daytime with the station of the applicant operating as proposed, although there might be some interference from Station WTCN within the normally protected service area of the proposed station for a short period immediately preceding sunset; and a like limitation to the service of the proposed station from Station KXOK, St. Louis, Missouri, with that station operating under an outstanding authorization.

Station WHBF, Rock Island, Illinois, has made application to operate on 1240 kilocycles, with power of 500 watts night, 1 kilowatt

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until local sunset, using a directional antenna at night (the application is for a change of frequency and power). The actual separation between the existing station and the proposed station is about 118 miles and the separation usually accepted by good engineering practice is 153 miles. If the application under consideration and that of Station WHBF are both granted, there is a possibility that the latter station will interfere with the operations of the proposed station within its 0.5 millivolt per meter contour; but it does not appear that the proposed station would interfere with the operation of the station at Rock Island, Illinois.

The transmitting equipment proposed by the applicant is satisfactory and complies with the Rules and Regulations of the Commission but the transmitter site and antenna are subject to the approval of the Commission when found to comply with its Rules and Regulations.

Jules J. Rubens, the intervener, is manager of a chain of theatres, whereof three are located in Aurora; and he has filed an application for a construction permit to build a station in that city.

The application of Jules J. Rubens for permit to construct a new broadcast station in Aurora, Illinois, to operate on the frequency of 1040 kilocycles with power of 250 watts, daytime, was heard on Docket No. 4975 and that matter was decided on June 28, 1938, by an Order of the Commission denying the application.

The record in the case under consideration shows that, in the hearing before the examiner, the contention made by Mr. Rubens against the application of Mr. O'Brien was based mainly upon the claim of Mr. Rubens that Mr. O'Brien seeks a construction permit not for himself but rather for the Aurora Beacon News; and that the newspaper people have an agreement with Mr. O'Brien whereby they would pass upon the advertising and would impose certain restrictions against local advertisers. These charges were denied by Mr. O'Brien and others implicated therein by Mr. Rubens.

The Commission finds with respect to the contention made by Mr. Rubens that the evidence is against his contention.

GROUNDS FOR DECISION

On the record in this case, the Commission finds:

1. The applicant is legally, financially, technically and otherwise qualified to construct and operate the broadcast station proposed by him.
2. There is in Aurora, Illinois, and the territory about said city a need for the service proposed by the applicant.

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3. The technical equipment proposed by the applicant complies with the requirements of the Rules and Regulations of the Commission.

4. The applicant proposes to render a program service which is well diversified and designed to meet the needs and interests of listeners in the area to be served.

5. The operation of the station as proposed would not cause objectionable interference to the normally protected service area of any existing station, nor would it interfere with the operations proposed in any pending application.

6. The granting of the application will serve public interest, convenience, and necessity.

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D. C.

In the Matter of
MILTON AND MILTON JUNCTION TELEPHONE COMPANY, } DOCKET
TOMAH, WISCONSIN. } No. 3360.

Decided August 2, 1938

John S. Allen on his own behalf; *Frederick Sammond* on behalf of the Wisconsin Telephone Company; *Alvin C. Reis* and *Philip H. Porter* on behalf of the Public Service Commission of Wisconsin; *Elizabeth C. Smith* on behalf of the Commission.

REPORT OF THE COMMISSION

BY THE COMMISSION:

This is a proceeding to determine whether the Milton and Milton Junction Telephone Company is a carrier subject to all provisions of the Communications Act of 1934, hereinafter referred to as the Act, applicable to wire telephone carriers, or is a connecting carrier engaged in interstate communication solely through physical connection with the facilities of another carrier not directly or indirectly controlling or controlled by, or under direct or indirect common control with it, within the meaning of the provisions of Section 2 (b) (2) of the Act.

On November 20, 1935, the Commission, Telephone Division, ordered the Milton and Milton Junction Telephone Company to file responses to Telephone Division Orders Nos. 1, 2, 3, 5, 6, 6A, and 9¹ within thirty days from the date of the service of such Orders upon the carrier or, in lieu thereof, to file an answer setting forth the facts upon which the company relied as justification for its failure and refusal to respond to such general Orders of the Commission. There-

¹Orders Nos. 1, 2, 3, 5, 6, 6A, and 9 referred to are general Orders of the Telephone Division directed to wire telephone carriers subject to the Act, requesting certain detailed information described in the Orders. Order No. 6 was issued pursuant to Section 202 of the Communications Act and is an Order to which a connecting carrier must respond. These Orders are set out in full in 1 F. C. C. Reports, at page 50, et seq.

after, on December 21, 1935, the Milton and Milton Junction Telephone Company filed its response to Telephone Division Order No. 6.

The Milton and Milton Junction Telephone Company, hereinafter called the Milton Company, filed its verified answer in which it admits that it is engaged in interstate communication for hire, but alleges that it engages in such communication solely through physical connection with the facilities of the Wisconsin Telephone Company, hereinafter referred to as the Bell Company, an interstate carrier, which it further alleges is not directly or indirectly controlling or controlled by, or under direct or indirect common control with it, and contends that pursuant to Section 2 (b) (2) of the Act it is a connecting carrier and, therefore, not required to file responses to the other Orders in question.

A hearing was held before the Chief Examiner of the Commission, at which hearing the Milton Company admitted that it was engaged in interstate communication for hire, but alleged that it engages in such communication solely through physical connection with the facilities of the Bell Company, and adduced testimony and evidence in support of its contention that it is a connecting carrier under Section 2 (b) (2) of the Act.

The examiner submitted his report (III-16), recommending that the company be classified as a carrier subject to all provisions of the Act, but before final report and order of the Commission was entered the case was remanded for further hearing. Pursuant to the order of the Commission remanding the case for further hearing, another hearing was held before the same examiner. The examiner subsequently submitted a supplemental report, again recommending that the company be classified as a carrier subject to all provisions of the Act applicable to wire telephone carriers.

According to Section 3 (u) of the Communications Act, "‘connecting carrier’ means a carrier described in clause (2) of Section 2 (b)."

Section 2 of the Communications Act of 1934 provides:

(a) The provisions of this Act shall apply to all interstate and foreign communication by wire * * *

(b) * * * nothing in this Act shall be construed to apply or to give the Commission jurisdiction with respect to * * * (2) any carrier engaged in interstate or foreign communications solely through physical connection with the facilities of another carrier not directly or indirectly controlling or controlled by, or under direct or indirect common control with such carrier; except that Sections 201 to 205 of this Act, both inclusive, shall, except as otherwise provided therein, apply to carriers described in clause (2).

The record in this case shows that the Milton Company is a corporation organized and existing under the laws of the State of Wisconsin and operates a telephone exchange at Milton Junction, Wisconsin.

The Milton Company has a physical connection with the Wisconsin Telephone Company whereby it engages in interstate and foreign communication for hire.

The Milton Company was organized in 1900, and has outstanding 400 shares of common stock at the par value of \$100 each. It has no funded debt and no preferred stock outstanding. One John S. Allen acquired the outstanding stock of this company in 1928. He borrowed \$88,000 from the First Wisconsin Company with which to pay for the stock and pledged all of the stock of the Milton Company as security for the loan which was further guaranteed by the Bell Company. Allen admitted that he could not have obtained the money without the guarantee of the Bell Company.

Allen, the President of the Milton Company, is also President of the North-West Telephone Company. His indebtedness to the Bell Company totals \$176,500, of which \$87,000 thereof is secured by all of the common stock of the Milton Company and the \$89,500 is secured by his common stock in the North-West Company. The indebtedness in connection with the North-West Company was separately considered by the Commission in Docket No. 3364. We are here concerned only with the \$87,000 indebtedness secured by the stock of the Milton Company.

The First Wisconsin Company transferred the Allen indebtedness to an affiliate, the First Wisconsin National Bank. In September, 1934, the First Wisconsin National Bank called upon the Bell Company to pay off the note of Allen which it had guaranteed. This the Bell Company did and on September 20, 1934, received collateral security pledged to the bank. This collateral included 100 per cent of the outstanding capital stock of the Milton Company.

In connection with the acquisition of the Milton Company Allen first borrowed \$44,000, on October 30, 1928, from the First Wisconsin Company, which loan was guaranteed by the Bell Company. On November 21, 1928, Allen borrowed an additional \$44,000 from the First Wisconsin Company. This loan was likewise guaranteed by the Bell Company. A payment of \$1,000 was made on the \$88,000 indebtedness, leaving a balance of \$87,000 unpaid in September, 1934, at which time the Bell Company paid the First Wisconsin National Bank the \$87,000 plus accrued interest and received the collateral, which it stills holds. The interest from September, 1934 to May 1, 1937 amounts to \$13,920.01. On this interest Allen has paid \$7,192.21, leaving a balance due for interest of \$6,727.80 plus the principal of \$87,000.

The officers and directors of the Milton Company are: John S. Allen, President and Director; Emma G. Allen, his wife, Vice Presi-

dent and Director; Henry G. Allen, his son, Secretary-Treasurer and Director; Gibbs R. Allen, his son, Director; and Alma R. Koehler, an employee of Allen's, Director.

The Milton Company has a traffic agreement with the Bell Company covering toll messages.

Allen has agreed with the Bell Company to apply all dividends received on the common stock of the North-West Telephone Company and the Milton Company on his indebtedness to it. The promissory note evidencing the indebtedness under which all the stock of this company is pledged to the Bell Company gives it full power and authority to sell, assign and deliver the collateral at any broker's board, or private sale, without advertisement or notice, or at public sale on such notice as the holder shall determine, and with the right to be purchaser at such sale upon the non-payment of the liability or at any time after the nonperformance of the conditions of the note or whenever it shall deem the debt insecure before such time.

Allen has paid only \$1,000 on the original purchase price of this property, and it is clearly shown that the money with which he purchased the stock of the company was borrowed from the bank under the guarantee of the Bell Company, and that under such guarantee the Bell Company was compelled to pay the bank the amount of the indebtedness together with the accrued interest, and that the Bell still holds Allen's unpaid note evidencing such indebtedness. The principal plus accrued interest to May 1, 1937, aggregates \$93,727.80, which is more than the stock cost Allen in 1928.

Allen testified that although the Bell Company does not have an employee who is an officer or director of the Milton Company, in the matter of the operation of anything in connection with the telephone business of the company, the Bell Company is consulted in the same manner as it is consulted in connection with the business of the North-West Telephone Company, separately considered by this Commission in Docket No. 3364; that "I don't think there has ever been any action taken by the Board of Directors of the Milton Company but that it was discussed in advance between ourselves and someone in the Wisconsin Telephone Company. This is true in this case the same as in the North-West." Allen's financial transactions with the bank and with the Bell Company relative to the Milton Company have been and are closely interwoven with the dealings with reference to the North-West Telephone Company (Docket No. 3364); that on the matter of operation of anything in connection with the telephone business the Bell Company is consulted. H. G. Nellis, General Manager of the North-West Telephone Company, has the same responsibilities with the Milton Company. He is a former

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employee of the Bell Company and came to the Milton and North-West companies subsequent to the time Bell guaranteed the notes for the purchase price of the Milton Company. He further testified that substantially the same reports are made to the Bell Company as are made relative to the North-West Company, including copy of the balance sheet, the income statement, collection report, station report, etc.

The total operating revenue of the Milton Company for the years 1935 and 1936 were \$16,195.01 and \$17,656.76, respectively. The total operating expenses for the year 1936 amounted to \$12,357.99.

The local manager of the Milton Company was a commission salesman for the Bell Company at the time he was employed as local manager. The North-West Telephone Company audits the books of the Milton Company. It also furnishes the engineering service for which the Milton Company pays \$125 per month.

There are no toll switchboards in Milton, the circuits of the Bell Company terminating on jacks on the switchboard of the Milton Company.

The basic question here involved is whether the Milton Company is subject to such control by the Wisconsin Telephone Company as was contemplated by Congress in the enactment of Section 2 (b) (2) of the Communications Act of 1934. It is clear to us that in the use of the word "control" in Section 2 (b) (2) of the Act, Congress meant actual as well as legal control and intended the term also to include and mean the power to exercise control either negatively or affirmatively, directly or indirectly. As the Court said in construing Section 2 (b) (2) in *Rochester Telephone Corporation v. The United States of America and the Federal Communications Commission*, decided by the United States District Court for the Western District of New York on June 20, 1938, not yet reported:

It is essential to find what meaning Congress intended by the use of the word "control" in the statute. The report of the Committees of Congress may be consulted to find the Congressional intent. *Woodward v. Graffenreid*, 238 U. S. 284; *Lapina v. Williams*, 232 U. S. 78. From these reports it is clearly indicated that Congress intended "control" as used in the statute to be broadly construed. In House Report, 1850, 73 Cong., Second Session, pp. 4, 5, it is stated:

"No attempt is made to define 'control', since it is difficult to do this without limiting the meaning of the term in an unfortunate manner. Where reference is made to control the intention is to include actual control as well as what has been called legally enforceable control."

Congress has recognized the fact that there are many ways in which actual control may be exerted, such as stock ownership, leasing, contract and agency. Congress also realized that control may be exercised "through ownership of a small percentage of the voting stock of the corporation, either by the owner-

ship of such stock alone or through such ownership in combination with other factors." *Broadly used, "control" may embrace every form of control, actual or legal, direct or indirect, negative or affirmative.* [Italics supplied.]

We cannot ignore the fact that the Bell Company has furnished the entire purchase price for the Milton Company. The record affirmatively shows that Allen did not advance any of the money for the purchase of the stock in the Milton Company and now owes to the Bell Company \$87,000 plus accrued interest, which represents the purchase price for the company. The Bell Company now has in its possession, endorsed in blank, certificates evidencing all of the stock of the Milton Company, with the right to foreclose its lien thereon at any time.

The Milton Company claims that it is not controlled by the Wisconsin Telephone Company within the meaning of Section 2 (b) (2), but contends that it is controlled by John S. Allen, its President, even though all of Allen's stock by means of which it is claimed he controls the company is pledged to the Wisconsin Telephone Company as collateral for a loan on which he has made default and which now totals \$93,727.80 with interest from May 1, 1937. The present market value of the stock is not clear. Its par value is \$40,000. None of the stock has changed hands since it was purchased by Allen in 1928 for \$88,000.

As we pointed out in Docket No. 3364, in the matter of the North-West Telephone Company, decided this date, that the Wisconsin Telephone Company would, under such circumstances, fail to direct the action of Allen and, through him, the affairs of the Milton Company in order to insure protection of its investment, is contrary to common business sense and judgment.

The evidence in this case compels the conclusion that the Wisconsin Telephone Company, through its control over the President of the Milton Company because of his indebtedness to it, unquestionably has the power to and does control the management and operation of the Milton Company.

After a careful consideration of the entire record in this case, including all the evidence introduced at both hearings held therein, the examiner's reports and the exceptions filed thereto by the Milton and Milton Junction Telephone Company and the Public Service Commission of Wisconsin, and the briefs filed herein, the Commission is of the opinion and so finds that the Milton and Milton Junction Telephone Company, being under such control of the Wisconsin Telephone Company as was contemplated by Section 2 (b) (2) of the Act, has not sustained its claim for exemption and is, therefore, a

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wire telephone carrier engaged in interstate and foreign communication through physical connection with a carrier which controls it, and subject to all provisions of the Communications Act of 1934 applicable to wire telephone carriers.

ORDER

Pursuant to the report of the Commission issued herein, **IT IS HEREBY ORDERED**, that the Milton and Milton Junction Telephone Company be, and the same is hereby, classified as a carrier subject to all provisions of the Communications Act of 1934 applicable to wire telephone carriers, and therefore subject to all Orders of the Commission, Telephone Division, applicable to wire telephone carriers whose annual gross operating income does not exceed \$50,000.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D. C.

<p>In the Matter of NORTH-WEST TELEPHONE COMPANY, TOMAH, WISCONSIN.</p>		<p>DOCKET No. 3364</p>
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Decided August 2, 1938

John S. Allen, on his own behalf; *Frederic Sammond*, on behalf of Wisconsin Telephone Company; *Alvin C. Reis* and *Philip H. Porter*, on behalf of the Public Service Commission of Wisconsin; and *Elizabeth C. Smith*, on behalf of the Commission.

REPORT OF THE COMMISSION

BY THE COMMISSION:

This is a proceeding to determine whether the North-West Telephone Company is a carrier subject to all provisions of the Communications Act of 1934, hereinafter referred to as the Act, applicable to wire telephone carriers, or is a connecting carrier engaged in interstate communication solely through physical connection with the facilities of another carrier not directly or indirectly controlling or controlled by, or under direct or indirect common control with it, within the meaning of the provisions of Section 2 (b) (2) of the Act.

On November 20, 1935, the Commission, Telephone Division, ordered the North-West Telephone Company to file responses to Telephone Division Orders Nos. 1, 2, 3, 5, 6, 6A, and 9¹ within 30 days from date of the service of such Order upon the carrier, or, in lieu thereof, to file an answer setting forth the facts upon which the company relied as justification for its failure and refusal to respond to such general Orders of the Commission. Thereafter, on December 21, 1935, the North-West Telephone Company filed its response to Telephone Division Order No. 6.

The North-West Telephone Company, hereinafter called the North-West Company, filed its verified answer in which it admits that it is

¹ Orders Nos. 1, 2, 3, 5, 6, 6A, and 9 referred to are general Orders of the Telephone Division directed to wire telephone carriers subject to the Act, requesting certain detailed information described in the Orders. Order No. 6 was issued pursuant to Section 202 of the Communications Act and is an Order to which a connecting carrier must respond. These Orders are set out in full in 1 F. C. C. Reports, at page 50, et. seq.

a common carrier engaged in interstate communication for hire, but alleges that it engages in such communication solely through physical connection with the facilities of the Wisconsin Telephone Company, hereinafter referred to as the Bell Company, an interstate carrier, which it further alleges is not directly or indirectly controlling or controlled by, or under direct or indirect common control with it, and contends that pursuant to Section 2 (b) (2) of the Act it is a connecting carrier and, therefore, not required to file responses to the Orders in question.

A hearing was held before the Chief Examiner of the Federal Communication Commission, at which hearing the North-West Company admitted that it was engaged in interstate communication for hire, but alleged that it engages in such communication solely through physical connection with the facilities of the Bell Company, and adduced testimony and evidence in support of its contention that it is a connecting carrier under Section 2 (b) (2) of the Act.

The examiner submitted his report (III-13) recommending that the company be classified as a carrier subject to all provisions of the Act, but before final report and Order of the Commission was entered the case was remanded for further hearing. Pursuant to the Order of the Commission remanding the case for further hearing, another hearing was held before the same examiner. The examiner subsequently submitted a supplemental report again recommending that the company be classified as a carrier subject to all provisions of the Act applicable to wire telephone carriers.

According to Section 3 (u) of the Communications Act, " 'connecting carrier' means a carrier described in clause (2) of Section 2 (b)."

Section 2 of the Communications Act of 1934 provides:

(a) The provisions of this Act shall apply to all interstate and foreign communication by wire * * *

(b) * * * nothing in this Act shall be construed to apply or to give the Commission jurisdiction with respect to * * * (2) any carrier engaged in interstate or foreign communication solely through physical connection with the facilities of another carrier not directly or indirectly controlling or controlled by, or under direct or indirect common control with such carrier; except that Sections 201 to 205 of this Act, both inclusive, shall, except as otherwise provided therein, apply to carriers described in clause (2).

The record in this case shows that the North-West Company is a corporation organized and existing under the laws of the State of Wisconsin which operates 19 telephone exchanges at Tomah, Chetek, Wonewoc, Spooner, Cadott, Boyd, Poynette, DeForest, Trego, Ripon, Wild Rose, LaGrange, Palmyra, Eagle, Genessee Depot, Delafield, East Troy, Mukwonago, and Dousman, all in the State of Wisconsin, with toll lines connecting certain of these exchanges.

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The North-West Company has a physical connection with the Wisconsin Telephone Company whereby it engages in interstate and foreign communication for hire.

The Tomah Electric and Telephone Company, predecessor of the North-West Company, was organized in 1902. One John S. Allen acquired control of this company in 1925 and reorganized it, changing its name to the North-West Telephone Company.

The capital structure of the North-West Company was increased from time to time until on December 31, 1936, there was issued and outstanding 1,373 shares of common (voting) stock, par value \$100 each, 2,549 shares of 6 percent cumulative preferred (nonvoting) stock, par value \$100 each, and \$130,000 in 4½ percent mortgage serial bonds which mature \$10,000 on May 1, 1937, and each year thereafter until 1949. At the time of the hearing the preferred stock and bonds were in the hands of the general public and the common voting stock stood on the books of the company as follows: Allen and his nominees, 853 shares; the Bell Company and its nominee, 344 shares; Wm. T. Sullivan, 132 shares; and James D. Shaw, 44 shares. The evidence discloses that the Bell Company, in addition to the 344 shares which it owned outright, had in its possession, endorsed in blank, certificates evidencing the 840 shares standing in Allen's name on the books of the company pledged as collateral security for Allen's notes totaling \$89,500, long past due.

Allen, the President of the North-West Company, is also the President of the Milton and Milton Junction Telephone Company which has 400 shares of common stock, par value \$100, outstanding. He is indebted to the Bell Company in the total amount of \$176,500 plus accrued interest, which is evidenced by three notes in the sum of \$74,500, \$15,000, and \$87,000, respectively. We are here concerned with only \$89,500 of the indebtedness, together with accumulated interest thereon, since the \$87,000 note is secured by the common stock of the Milton and Milton Junction Telephone Company which is separately considered in Docket No. 3360. The \$15,000 note and the \$74,500 note are secured by 853 shares of stock of the North-West Company. These notes will be hereinafter discussed more fully.

The evidence shows that at the time of the hearing the North-West Company furnished to Station WIBU at Poynette, Wisconsin, a pair of wires which are used for broadcasting purposes.

Although this Commission has exclusive regulatory jurisdiction over wires and wire service furnished by a telephone carrier to a broadcasting station even though such wires are wholly within the confines of a single state, the furnishing of such service does not change the status of a carrier which might otherwise be classified as a

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connecting carrier. We so held in *Capital City Telephone Company*, 3 F. C. C. Reports 189. Therefore, the furnishing of such facilities is not material herein.

HISTORY OF TRANSACTIONS INVOLVING ACQUISITION OF VARIOUS PROPERTIES

The history of the transactions involved in the acquisition of the various exchanges which go to make up the constituent properties of the North-West Company is illuminating.

TOMAH.—When John S. Allen acquired the outstanding stock and bonds of the Tomah Electric and Telephone Company in 1925, the company operated only the Tomah exchange. It had outstanding 160 shares of common stock, par value \$100, about 640 shares of preferred stock, par value \$100, and bonds of a par value of \$18,000, or a total capitalization of \$98,000, for which Allen paid \$65,000. On October 31, 1925, Allen borrowed \$15,000 from the Wisconsin Telephone Company, pledging 248 shares of stock in the Tomah Company to secure the indebtedness.

The company was reorganized, the common stock increased to 250 shares, of a par value of \$100, and the preferred stock and bonds then outstanding retired. Under the reorganization a new bond issue of \$60,000 was authorized by the Public Service Commission of Wisconsin and sold to the public through an underwriting company, for which the North-West Company received \$57,000.

According to Allen's own testimony \$50,000 of the \$57,000 realized through the sale of bonds and the \$15,000 borrowed from the Wisconsin Telephone Company went to make up the \$65,000 paid for the Tomah stock. He further testified that he did not recall what became of the additional \$7,000 realized from the sale of the bonds.

CHETEK.—In 1926 Allen bought the exchange at Chetek with funds, a substantial portion, if not all, of which was acquired by borrowing, and two months later caused the Chetek Company to transfer its physical properties to the North-West Company, for which he received 82 shares of common stock, bonds of a par value of \$22,000 and serial notes issued by the North-West Company in the sum of \$9,000. The notes, he testified, were used to repay the loan for the original purchase price. The bonds were issued pursuant to an authorization from the Public Service Commission of Wisconsin and were sold to a securities house in Milwaukee at 90.

SPOONER.—In the same year Allen personally acquired the physical property of the exchange at Spooner for approximately \$24,000. The Public Service Commission of Wisconsin authorized the value of \$35,000 for this property and also authorized the issuance by the North-West Company of an additional \$20,000 in bonds and an addi-

tional 170 shares of preferred stock to Allen in return for the property. The bonds were pledged to a securities house in Madison to secure one-year notes of the North-West Company, and the preferred stock was sold to the public. Allen used the proceeds realized from the bonds and preferred stock, to the extent required, to pay for the Spooner property.

CADOTT AND BOYD.—In the summer of 1927 Allen personally acquired the property of the exchanges at Cadott and Boyd for an aggregate of approximately \$14,000. The Public Service Commission of Wisconsin authorized a valuation of \$26,000 and further authorized the issuance of an additional 54 shares of common stock, par value \$100, and an additional 80 shares of preferred stock, par value \$100, and additional bonds in the sum of \$14,000, by the North-West Company to Allen. Allen sold the preferred stock and bonds and used the proceeds, to the extent necessary, to pay the original owners for the property.

TREGO.—In the same year Allen personally acquired the physical property at Trego, borrowing \$4,200 from the North-West Company to do so. This property was held in Allen's name for several years and later turned in to the North-West Company with other property subsequently acquired.

EAGLE PROPERTIES.—The Eagle properties consist of the exchange at Eagle, Wisconsin, and seven other exchanges, all located just outside the metropolitan area of Milwaukee.

The Wisconsin Telephone Company had an option on 1,167 shares of the capital stock of the Eagle Telephone Company and for no consideration "other than \$1.00" transferred this option to Allen on February 20, 1928, with an understanding that the Bell Company would purchase 25 percent of the stock of the North-West Company and 25 percent of the Eagle Telephone Company.

Allen borrowed \$145,000 from the First Wisconsin Company, an affiliate of the First Wisconsin National Bank, which was guaranteed by the Bell Company. He used \$130,700 of this money to buy all the stock of the Eagle Telephone Company and used approximately \$14,000 to pay off current obligations of the Eagle Telephone Company. Allen then sold 25 percent of the Eagle Telephone Company stock to the Bell Company for \$32,700, for which Allen received the note of the Bell Company. This note, however, of the Bell Company to Allen, was retained by it. All of the stock of the Eagle Telephone Company which was owned by Allen and the Bell Company was put up as collateral for the \$145,000 indebtedness to the First Wisconsin Company. The Eagle Telephone Company continued to be operated as a separate corporation until late in 1930.

RIPON.—On March 7, 1928, Allen borrowed \$90,000 from the First Wisconsin Company which he used to purchase 75 percent of the stock of the Ripon Telephone Company. The Bell Company bought the other 25 percent directly from the stockholders of the Ripon Company for \$46,000, or a premium of \$16,000 over the rate at which Allen had been able to secure the stock. Allen pledged his 2,250 shares with the First Wisconsin Company. This note of \$90,000 was likewise guaranteed by the Bell Company. The Ripon property was operated separately until late in 1930.

POYNETTE PROPERTY.—This included properties in Poynette and DeForest which Allen purchased for \$50,000 on April 4, 1928. He borrowed this money and \$11,800 additional, or a total of \$61,800, from the First Wisconsin Company. Allen testified that it was contemplated that the Bell Company would acquire 25 percent of the stock of a proposed company to be organized to hold these exchanges but that this was not carried out until they were merged with the other properties in 1930. The Poynette property was operated on a lease to the North-West Company until the merger. The bill of sale of the Poynette property was pledged with the First Wisconsin Company as collateral for the loan.

WILD ROSE.—Allen testified that he used the additional \$11,800 borrowed from the First Wisconsin Company on April 4, 1928, to acquire about 83 percent of the stock of the Wild Rose Company; that Wisconsin Telephone Company owned the remaining 17 percent. Allen's stock in this company was pledged with the First Wisconsin Company. Wild Rose exchange was operated as a separate unit until 1930.

FINANCIAL TRANSACTIONS

On November 29, 1927, Allen borrowed from the Bell Company on his own note \$30,000 which was secured by bonds of the North-West Company of a par value of \$20,300. \$20,000 of this money was used to retire the serial notes which had been issued to the securities house in connection with the Spooner property, releasing the bonds which were pledged as collateral for those notes. These bonds were immediately repledged to the Bell Company. The Bell Company at that time still held Allen's note for \$15,000 for which there were pledged 248 shares of North-West stock as collateral. On December 5, 1927, he pledged an additional 187 shares of common stock to secure these two notes, and Bell released to Allen \$500 par value of the pledged bonds.

So on December 7, 1927, the Bell Company held as collateral security for notes aggregating \$45,000, stock of a par value of \$43,500 and bonds of a par value of \$19,800. On December 20 of that same year

Bell released to Allen all of the pledged bonds, and on December 31 Allen paid the Bell Company \$10,000 on the \$30,000 note. On February 24, 1928, Allen paid the Bell Company his \$15,000 note in full, at which time the Bell Company returned to him all of his collateral. Allen secured the \$15,000 with which he paid off his note to Bell from a sale of part of his common stock in the North-West Company, the Bell Company buying 110 shares at \$70, a total of \$7,700, which represented 25 percent of the total common stock of the North-West Company outstanding. At approximately the same time Allen sold 132 shares of common stock to Wm. T. Sullivan, a Milwaukee attorney, for \$65 per share, a total of \$8,580. All of these financial transactions left the Bell Company still the holder of Allen's note for \$20,000 unsecured. On March 13, 1928, Allen gave to the Bell Company 193 shares of common stock as collateral. On May 29, 1928, the North-West Company issued its \$20,000 note to the Bell Company in payment of Allen's note. Allen could not recall just what arrangement there was between him and the North-West Company in connection with the assumption of that obligation.

Less than a month later, on June 25, the Bell Company again loaned Allen \$15,000 which was secured by the same 193 shares of common stock of North-West Company, 44 shares of which were returned to Allen on November 29, 1928, leaving only 149 shares of stock as collateral. This indebtedness was subsequently renewed by a note dated November 3, 1933. Payments were commenced on this note early in 1936, or approximately eight years later, and at the time of the last hearing Allen had paid \$750 only and still owed the balance of \$14,250. Allen sold the 44 shares of common stock to Wm. T. Sullivan which subsequently were sold to James D. Shaw who, at the time of the hearing, still held them.

The property of the Eagle Telephone Company, the Wild Rose Telephone Company, the Ripon Telephone Company and the physical telephone properties at Trego, Poynette, and DeForest were transferred to the North-West Company on or about October 1, 1929, but the consideration therefor was not issued until some time in 1930.

Near the end of 1930, pursuant to authorization of the Public Service Commission of Wisconsin, the North-West Company issued an additional 934 shares of common stock, 234 shares of which were delivered to the Bell Company for its interest in the several properties. At the same time Allen received 700 shares of common stock, preferred stock to the extent of \$202,644 and a note for \$92,828 for his interest in the merged properties. It is of interest to note that the properties for which the North-West Company issued Allen common stock of a par value of \$70,000, preferred stock to the amount of

\$202,644 and a note for \$92,828, a total of approximately \$365,472, had been acquired for approximately \$300,700. Allen had borrowed a total of \$296,800 from the First Wisconsin Company in connection with the North-West Company properties, which loan was thereafter transferred to The First Wisconsin National Bank, all of which was guaranteed by the Bell Company.

The testimony of the Treasurer of the Wisconsin Telephone Company shows that the Bell Company guaranteed notes of Allen in connection with the acquisition of North-West Company properties for a total of \$296,800; that \$222,300 was paid to the bank by Allen, leaving a balance of \$74,500 which was evidenced by Allen's note to the bank dated July 2, 1934, in that amount, payable in 60 days with interest at 6 percent. Under its guarantee the Bell Company was compelled to pay the \$74,500 plus \$248.33 in interest to the bank on September 20, 1934, and the bank thereupon endorsed the note without recourse and delivered it to the Bell Company, together with the 700 shares of stock of the North-West Company held as collateral. According to the testimony of the Treasurer of the Wisconsin Telephone Company it was doubtful whether the collateral was sufficient to satisfy the note at the time the Bell Company acquired the note under its guarantee to the bank, and an official of The First Wisconsin National Bank testified that the bank had looked to the guarantor for the payment of this loan. No payment, of either principal or interest, has been endorsed upon this note since it became the property of the Bell Company. However, the Treasurer of the Bell Company testified that although no portion of the principal has been paid, there has been paid \$6,158.84 on the interest, leaving past-due interest to May 1, 1937, of \$5,761.15, as well as all of the principal. Allen has agreed with the Bell Company to apply all dividends received on common stock of the North-West Company and the Milton and Milton Junction Telephone Company on his indebtedness to it. The record discloses that no dividends were paid on the common stock of the North-West Company for the years 1934, 1935, and 1936, and up to the time of the hearing in 1937.

Allen's indebtedness to the Wisconsin Telephone Company is further evidenced by a note dated November 3, 1933, in the sum of \$15,000, with interest at the rate of 6 percent per annum, payable to the Wisconsin Telephone Company on or before 120 days from the date thereof, which is secured by 149 shares of North-West Company common stock. A total of \$750 has been paid on the principal of this note and the interest paid to about March 1937.

Although there was introduced in evidence stock certificates covering only 849 shares of stock which were endorsed in blank and
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held as collateral security by the Wisconsin Telephone Company, Allen testified that all of his 853 shares of stock is in the possession of the Wisconsin Telephone Company as collateral.

The promissory notes evidencing the indebtedness under which the 853 shares of stock are pledged give the Bell Company full power and authority to sell, assign, and deliver the collateral at any broker's board or private sale without advertisement or notice, or at public sale on such notice as the holder shall determine, and with the right to be purchaser at such sale, and to execute an absolute transfer vesting title in any purchaser at such sale at any time after the nonperformance of the conditions of the respective notes or whenever it shall deem the debt insecure before such time.

The first financial transaction between Allen and the Bell Company dates back to 1925 when the Bell Company advanced to him \$15,000 which he used, together with proceeds from a bond issue of the North-West Company sold to the public, to purchase the initial properties of the North-West Company. At no place in the record is it disclosed that Allen advanced any of his own money to purchase any of the constituent properties which go to make up the North-West Company. On the contrary, it is clearly shown that, to a large extent, the transactions have been carried on by money either advanced by the Bell itself or advanced by the bank under Bell's guarantee.

In addition to the financial transactions which have been carried on between Allen and the Bell Company, the Bell Company has also assisted the North-West Company itself by means of loans. The 1935 annual report of the North-West Company shows that the Wisconsin Telephone Company made a temporary loan to the North-West company on December 28, 1935, in the sum of \$43,000 to retire Series A bonds which matured on November 1, 1935. This loan was evidently repaid on February 26, 1936, from the proceeds of a new bond issue. The record also discloses that on October 3, 1934, the Wisconsin Telephone Company loaned the North-West Company \$6,000, as "advance made in connection with expansion program of North-West Telephone Company," which has been repaid.

FINANCIAL STATUS OF NORTH-WEST COMPANY

The gross operating revenues of the North-West Company for the year ending December 31, 1936, amounted to \$178,286.49, and the total operating expenses for the same period amounted to \$124,232.16. No dividends have been paid on the common stock for a number of years. Dividends on the 7 percent preferred stock were in arrears at the time it was called in 1936 and redeemed with funds obtained from the new bond issue.

Dividends on the 6 percent preferred stock have been paid regularly for the last two years, but prior to that time dividends on such stock were in arrears, and the company during the year 1936 started to make up this arrearage at the rate of one-half the quarterly dividend each quarterly dividend paying date, and on December 31, 1936, dividends of preferred stock in arrears amounted to \$5,735.25.

MANAGEMENT AND OPERATION OF NORTH-WEST COMPANY

The Board of Directors of the North-West Company is composed of five members, one of whom, F. M. McEniry, is the General Commercial Manager of the Wisconsin Telephone Company. The other four directors are: John S. Allen; his wife, Emma G. Allen; his son, Gibbs R. Allen; and H. G. Nellis. The three directors last named hold only one qualifying share of stock each. The officers of the North-West Company are: John S. Allen, President; Gibbs R. Allen, Vice President; Emma G. Allen, Secretary and Treasurer; and Henry G. Nellis, General Manager.

The North-West Company has traffic agreements with the Wisconsin Telephone Company covering all of its exchanges.

The General Manager of the North-West Company, a former employee of the Wisconsin Telephone Company, came to the North-West Company from the Wisconsin Telephone Company in April 1931, as auditor and subsequently was promoted to General Manager. He has charge of the books of the company as well as of sale collections, traffic, purchasing of supplies, and the general supervision of the 19 exchanges of the company, and, under the direction of and after consulting with the President, he engages and discharges personnel.

The Company has no regular telephone engineer and its engineering problems for the most part are decided by the President and the General Manager. However, outside engineers, including those of the Wisconsin Telephone Company, have been consulted.

The President of the North-West Company testified that he did not know whether he had ever "knowingly done anything contrary to the wishes of the Wisconsin Telephone Company in connection with the management of the North-West Telephone Company"; that the Wisconsin Telephone Company is consulted "very frequently on many different subjects"; that he has sought the advice of the Wisconsin Telephone Company on many things; that on any matter of importance he consults with a representative of the Wisconsin Telephone Company; that on only one occasion has he gone contrary to the advice of the Wisconsin Telephone Company and that was in connection with the installation of some underground cable at Spooner which involved an expense of about \$1,500.

The record discloses that the method of handling toll calls within the areas which the North-West Company serves varies. In the territory served by what was formerly the Eagle Telephone Company the calls between its exchanges are handled over its own toll lines. In other localities the Bell Company owns the connecting toll lines between the exchanges and the North-West Company. The Bell Company handles the toll calls originating at the exchanges of the North-West Company destined to points on the lines of the Bell System or on the lines of other companies.

The Bell nominee on the Board of Directors of the North-West Telephone Company testified that the Wisconsin Telephone Company has approved from time to time everything that Mr. Allen has done in connection with the organization and final reorganization of the North-West Company; that definite understandings have been had with Allen before directors' and stockholders' meetings were held and that tentative drafts of minutes of such meetings have been submitted to the Bell Company; that the details of reorganization of the company were agreed to by the Bell Company; that the declaration of dividends is regularly discussed and agreed upon before they are declared; that many matters have been discussed and the Bell has made suggestions relative to operating the property; that the North-West Company through Mr. Allen or its General Manager consults the Wisconsin Telephone Company on routine matters, such as the selection of employees; that the Wisconsin Telephone Company actively participated in outlining the program of the sale of the preferred stock of the North-West Company; that its employees actually participated in the sale of the preferred stock of the North-West Company; that the North-West Company has the same rules and regulations with regard to personnel as does the Bell System; that the Bell Company has an understanding with Allen that when he needs legal services for various matters he will talk to them about it—this came about after Allen incurred substantial expense for legal services by hiring outside counsel; that Allen and the General Manager of the North-West Company from time to time consult with the Bell Company concerning routine practices, such as collections, etc. The record also discloses that upon one occasion increases in salary were granted to some of the exchange managers against the suggestions of the Bell representative on the Board of Directors but not over any strenuous objection by him; that the North-West Company paid the Wisconsin Telephone Company for legal services in connection with the hearing before the State Commission; that balance sheets, income statement, comparative statement, statement of collections and station report, as well as exchange statistics, are mailed monthly to the Bell representative on the Board of Directors of the North-West Company.

The basic question here involved is whether the North-West Telephone Company is subject to such control by the Wisconsin Telephone Company as was contemplated by Congress in the enactment of Section 2 (b) (2) of the Communications Act of 1934. As the Court said in construing Section 2 (b) (2) in *Rochester Telephone Corporation v. The United States of America and the Federal Communications Commission*, decided by the United States District Court for the Western District of New York on June 20, 1938, not yet reported :

It is essential to find what meaning Congress intended by the use of the word "control" in the statute. The report of the Committees of Congress may be consulted to find the Congressional intent. *Woodward v. Graffenreid*, 238 U. S. 284; *Lapina v. Williams*, 232 U. S. 78. From these reports it is clearly indicated that Congress intended "control" as used in the statute to be broadly construed. In House Report, 1850, 73 Cong., Second Session, pp. 4, 5, it is stated :

"No attempt is made to define 'control,' since it is difficult to do this without limiting the meaning of the term in an unfortunate manner. Where reference is made to control the intention is to include actual control as well as what has been called legally enforceable control."

Congress has recognized the fact that there are many ways in which actual control may be exerted, such as stock ownership, leasing, contract, and agency. Congress also realized that control may be exercised "through ownership of a small percentage of the voting stock of the corporation, either by the ownership of such stock alone or through such ownership in combination with other factors." Broadly used, "control" may embrace every form of control, actual or legal, direct or indirect, negative or affirmative. [Italics supplied.]

It is clear to us that in the use of the word "control" in Section 2 (b) (2) of the Act, Congress meant actual as well as legal control and intended the term also to include and mean the power to exercise control either negatively or affirmatively, directly or indirectly.

A determination of the question whether the North-West Telephone Company is controlled by the Bell Company, within the meaning of Section 2 (b) (2) of the Communications Act of 1934, involves and necessitates careful consideration of all relevant facts and the application of the provisions of the Act thereto. As was pointed out by the Commission, Telephone Division, in its report in Docket No. 2809, issued September 18, 1935, 3 F. C. C. Reports 37:

The phrase "directly or indirectly controlling or controlled by, or under direct or indirect common control with" as used in Section 2 (b) (2) of the Act, contemplates a mixed question of fact and law to be determined in each case heard and considered by the Commission.

The fact cannot be ignored that the Bell Company advanced \$15,000 with which Allen made the initial payment on the purchase price for the predecessor of the North-West Company when it had only one exchange and enabled him to reorganize the company and

float a bond issue with which to pay the remainder of the purchase price, and in the subsequent acquisitions of the other properties of the North-West Company the Bell Company has, directly or indirectly, furnished the backing necessary to finance the respective transactions. At no place in the record does it appear that Allen advanced any of his own money to finance any of the deals which he promoted in the building up of the North-West Telephone Company.

Allen now owes to the Bell Company \$89,500, plus accrued interest, which represents a substantial part of the purchase price for the properties of this company. The Bell Company now has in its possession, endorsed in blank, certificates evidencing Allen's stock in the company (representing approximately 62 percent of the total voting stock of the North-West Company), with the right to foreclose its lien thereon at any time. In addition thereto, the Bell Company owns 344 shares, or 25 percent of the voting stock, in the North-West Company. Therefore, Bell either owns outright or has in its possession stock certificates evidencing the same, a total of 87 percent of the voting stock of the North-West Company.

The North-West Telephone Company claims that it is not controlled by the Wisconsin Telephone Company within the meaning of Section 2 (b) (2) but contends that it is controlled by John S. Allen, its President. All of Allen's stock by means of which it is claimed he controls the company is pledged to the Wisconsin Telephone Company as collateral for loans on which he has made default.

The present value of this stock is not clear. From the record it appears that none of the stock has changed hands for a number of years. It is true there is some conflicting testimony in the record relative to its value. At one place Allen testified that he refused an offer of \$200,000 for his stock in this company and his stock in the Milton and Milton Junction Telephone Company, all of which is pledged to the Wisconsin Telephone Company as collateral for indebtedness to that company totaling \$176,500, plus accrued interest. At another place in the record Allen estimated that this stock now is worth "from \$50 to \$75 a share." The record is clear, however, that at the time of the last hearing he had no active offer for the stock. It is doubtful, therefore, whether Allen has any equity in this stock.

That the Wisconsin Telephone Company would under these circumstances fail to direct the action of Allen and, through him, the affairs of the North-West Company in order to insure protection of its investments, is contrary to common business sense and judgment.

The evidence in this case compels the conclusion that the Wisconsin Telephone Company, through stock ownership coupled with

its control over the President of this company because of his indebtedness to it, unquestionably has the power to and does control the management and operation of the North-West Telephone Company.

After a careful consideration of the entire record in this case, including all the evidence introduced at both hearings held herein, the examiner's reports and the exceptions filed thereto by the North-West Telephone Company and the Public Service Commission of Wisconsin, and the briefs filed herein, the Commission is of the opinion and so finds that the North-West Telephone Company, being under such control of the Wisconsin Telephone Company as was contemplated by Section 2 (b) (2) of the Act, has not sustained its claim for exemption and is, therefore, a wire telephone carrier engaged in interstate and foreign communication through physical connection with a carrier which controls it, and subject to all provisions of the Communications Act of 1934 applicable to wire telephone carriers.

ORDER

Pursuant to the report of the Commission issued herein, It Is **HEREBY ORDERED**, that the North-West Telephone Company be, and the same is hereby, classified as a carrier subject to all provisions of the Communications Act of 1934 applicable to wire telephone carriers, and therefore subject to all Orders of the Commission, Telephone Division, applicable to wire telephone carriers whose annual gross operating income exceeds \$50,000.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D. C.

<p>In the Matter of HARRY M. AYERS, ANNISTON, ALABAMA. For Construction Permit.</p>	}	DOCKET No. 4932.
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Decided August 3, 1938

Elmer W. Pratt on behalf of the applicant; *Ben S. Fisher* and *Charles V. Wayland* on behalf of Station WAPO; *Paul D. P. Spearman* and *Alan B. David* on behalf of Station WSFA; and *A. V. Dalrymple* on behalf of the Commission.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION :

STATEMENT OF FACTS

This proceeding arose out of the application of Harry M. Ayers for a permit to construct a radio station at Anniston, Alabama, to operate on the frequency of 1420 kilocycles, with power of 100 watts, daytime hours of operation. A hearing was held before an examiner on February 9, 1938. The examiner released his report on April 21, 1938, and recommended that the application be granted. No exceptions were filed to the examiner's report and oral argument was not requested.

The applicant, Harry M. Ayers, is a citizen of the United States by birth now residing in Anniston, Alabama. He is the owner of the controlling stock of the Consolidated Publishing Company which publishes in this community The Anniston Star, a daily newspaper. The applicant is active in local community affairs and is a member of a number of local civic organizations.

The applicant has had no experience in operating a broadcast station, but he expects to employ a manager, who has been associated with several radio stations, and a competent technical staff, to construct and operate the station.

The transmitting equipment which the applicant proposes to use complies with the engineering requirements of this Commission.

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The site of the proposed station is to be determined subject to subsequent approval by this Commission. The proposed antenna will have a height of 185 feet which will comply with Commission rules with respect to height. The ground system and exact antenna specification will depend upon the site selected. The cost of constructing the station is estimated at \$15,575.00. A competent radio engineer has been employed to supervise the construction of this station.

The applicant's financial statement as of February 4, 1938, shows a net worth in excess of \$200,000.00, of which more than \$22,000 was in cash.

The applicant proposes to employ a general manager, chief engineer, two assistants, a program director and announcers, a staff pianist, salesman-announcer, bookkeeper-salesman, and a secretary and a script writer. Monthly operating expenses are estimated at \$1,251.00.

Applicant estimates operating revenue of \$1,800.00 per month. This estimate is based in part upon the result of a survey of prospective advertisers in the Anniston area. Twenty-five merchants signed a commitment signifying their intention to use the facilities of the proposed station. During the formative months of operation the applicant will defray any expenses above the station's income from his personal resources.

Anniston, Alabama, had a population, according to the 1930 census, of 22,345 people. It is the county seat of Calhoun County, which, according to the same census, had a population of 55,611. Anniston is an important industrial city, one of the principal activities being the manufacture of cast-iron pipes.

According to the Census of Business, 1935, published by the United State Department of Commerce, Bureau of the Census, the City of Anniston has 274 stores with annual sales of \$6,792,000. According to the same report Calhoun County has 486 stores with annual sales of \$8,799,000. The Fifteenth Census of the United States shows that there were 97 manufacturing establishments in Calhoun County employing more than 6,000 employees, with annual pay rolls in excess of \$4,500,000.00.

There is no primary daytime service available in Anniston. The signals of Stations WAPI and WBRC, located in Birmingham, Alabama, and Station WSB, located at Atlanta, Georgia, are received in this area but the satisfactory reception of programs emanating from these stations is dependent upon favorable atmospheric conditions.

It is estimated that the proposed station would serve 27,300 persons within its 10 millivolt per meter contour, 33,000 within its 2 millivolt

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per meter contour, and 55,800 within its 0.5 millivolt per meter contour.

The applicant proposes to operate the station from 6:00 a. m. to 6:00 p. m. An outline of a proposed program shows that it is well balanced and one which is designed to meet the radio requirements of the area to be served. The management of the proposed station has indicated a willingness and a desire to cooperate with all local, civic, charitable, educational, and social organizations.

There is talent available in Anniston for the production of suitable broadcast programs. This talent consists of theatrical groups, bands, orchestras, musicians, and soloists. There are many speakers and educators available from the civic, religious, political, and educational institutions of the community. Many of these persons have been interviewed and have indicated not only a willingness but a desire to appear over the facilities of the proposed station.

There is but one existing station located within the average recommended mileage separation. This is Station WSFA, Montgomery, Alabama, which operates on a frequency of 1410 kilocycles with daytime power of 1 kilowatt. The distance between Montgomery and Anniston is approximately 91 miles. The normally recommended separation between WSFA and the proposed station is 116 miles. Due to the fact, however, that the conductivity between Anniston and Montgomery is considerably below the average and also because of the type of antenna used by Station WSFA, no objectionable interference is expected to occur within the normally protected service area of either WSFA or the proposed station.

GROUNDS FOR DECISION

On the record in this case the Commission finds:

1. The applicant is legally, technically, and financially qualified to construct and operate the proposed station.
2. There is a need for daytime service in the area which the applicant proposes to serve.
3. The applicant proposes to render a program service which is well diversified and designed to meet the needs and interests of listeners in the area to be served.
4. The operation of the proposed station would not cause objectionable interference to the normally protected service area of any existing station.
5. The transmitting equipment, including the antenna, which the applicant proposes to use will comply with the engineering requirements of this Commission.
6. The granting of this application will serve public interest, convenience, and necessity.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D. C.

In the Matter of
ANNA ATKINSON, Executrix (KHUB), Assignor.
JOHN P. SCRIPPS, Assignee,
For authority to voluntarily assign the license
of Station KHUB.
WATSONVILLE, CALIFORNIA. } DOCKET No. 4945.

Decided August 10, 1938

Clarence C. Dill, James W. Gurn on behalf of the assignor and
assignee; Hugh B. Hutchison on behalf of the Commission.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION:

STATEMENT OF FACTS

This proceeding arose upon an application requesting the Commission's authority to voluntarily assign the license of Station KHUB, Watsonville, California (operating on the frequency 1310 kc. with power of 250 watts daytime), from the licensee, Anna Atkinson, executrix under the last will of F. W. Atkinson, to John P. Scripps.

On February 2, 1938, a hearing was held on the above application before an examiner who, in his report (I-647), recommended that it be granted.

Station KHUB was initially licensed to F. W. Atkinson to begin operation on April 2, 1937. The station was not, however, fully completed for operation until June 30, 1937. The licensee died on April 3, 1937, and the Federal Communications Commission made an involuntary assignment of the license on June 29, 1937, to Anna Atkinson, who was appointed executrix under the last will of F. W. Atkinson. The station has been operated by Anna Atkinson, as licensee, since that date. Anna Atkinson has had no previous radio-broadcast experience. Her lack of experience in the management and operation of a radio station as well as personal disabilities make it impracticable for her to continue the operation of Station KHUB.

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John P. Scripps, the assignee herein, is a resident of Santa Ana, California, and is a citizen of the United States. He is treasurer and majority stockholder of the John P. Scripps' Newspapers, a corporation, which publishes the following newspapers: The Santa Ana Journal, the Ventura Star Free Press, and the Santa Paula Chronicle. Mr. Scripps also has executed a contract with the assignor for the purchase of the Watsonville Register and the Evening Pajaronian newspapers in addition to the contract of sale of Station KHUB as discussed hereinafter. The assignee has had no previous radio-broadcast experience and has no interest in any other broadcast station. Station KHUB will be operated independently and separately from any of the assignee's newspaper interests.

The assignor and assignee herein entered into two contracts, each dated July 1, 1937. The first contract provides that all of the assets of Station KHUB are to be sold, assigned, and conveyed to John P. Scripps for consideration of \$35,000. All of the property owned by Station KHUB, consisting of the land upon which it is situated, the improvements and equipment located thereon, is to be conveyed to the assignee, free and clear of debts, liens, mortgages, etc., save for an existing right of easement on the real estate. As of the date of the transfer, the assignor shall retain all accounts receivable for advertising and radio services performed and shall pay all operating costs incurred from the operation of said station up to the date of delivery of the deed and bill of sale to the assignee. The contract further provides that all property now owned by the station shall be retained by the assignor until the assignment and transfer are approved by the Federal Communications Commission. The purchase price is to be paid in equal quarterly installments, the first of which is due and payable immediately upon the approval of the transfer by the Commission, and the final installment is to be paid on or before April 1, 1947. Interest will be assessed at the rate of 4% per annum on the unpaid balance of the purchase price. Provision is also made in the contract for additional payments of principal to be made in advance of the maturity date at the option of the assignee.

Pursuant to the terms of the contract, the assignor has executed a deed and bill of sale covering the station property and they are now in escrow with the California Pacific Title Company, located in Santa Cruz, California. Similarly, John P. Scripps joined by his wife, Elizabeth M. Scripps, have executed a deed of trust and chattel mortgage to the assignor covering the station property which also has been placed in escrow with the Title Company pending the consummation of the contract of sale.

The second contract executed by the applicants herein provides for the sale to the John P. Scripps Newspapers of the Watsonville Register and the Evening Pajoronian as going newspaper concerns for the consideration of \$140,000. This contract contains a provision, however, that the purchase price for said property shall be reduced to \$105,000, with a credit on the principal to be given in the amount of \$5,000 plus interest thereon from July 1, 1937, at the rate of 4% per annum in the event that the transfer of Station KHUB to John P. Scripps is denied by the Commission.

As of June 30, 1937, Station KHUB had total assets of \$30,773.40. The liabilities were \$9,000, leaving a net worth of approximately \$21,773.40. The total cost of operation for the period April 1, to December 31, 1937, was \$8,663.23 and the gross income received from the sale of time of the station was \$5,474.13. The loss for that period resulting from the operation of KHUB, therefore, was \$3,189.08.

In view of the fact that Station KHUB has only been in operation since April 1, 1937, the sale price of \$35,000 was predicated entirely upon the actual money expended in constructing and maintaining the station (including the operating loss) to the date of the consummation of the contract of sale. The total original cost of the station property was \$28,054.51. There was no estimate made of the depreciated value of said property. As of June 30, 1937, the estimated value of the entire station property was \$30,773.40. In addition to this valuation, the applicants capitalized the following items in order to set the contract price for the sale of Station KHUB: the loss of \$1,261.60 which arose from the operation of the station for the period April 1 to June 30, 1937; interest at 6% per annum on the assignor's cash outlay of approximately \$25,000 for construction costs until April 1, 1937; the original licensee's (F. W. Atkinson) expenditures of approximately \$1,500 for travel, taking of depositions, legal fees, in connection with obtaining the station license; and the anticipated operating loss of KHUB which would arise between the date of the contract of sale (July 1, 1937) and the actual consummation thereof.

As of May 31, 1937, John P. Scripps had total assets of \$1,678,011.80, consisting of real estate valued at \$132,033.32 and personal property valued at \$1,545,978.48 (\$1,160,355.00 of which represents investments in stocks and bonds). His liabilities consist of notes payable in the amount of \$55,000, leaving a net worth of approximately \$1,623,011.80.

A list of the programs of Station KHUB broadcast for the week beginning January 2, 1938, representing an average week's broadcasts, was submitted in evidence. The schedule indicates that the station renders a well diversified program service which is designed to meet

the needs of the Watsonville area. Time is donated to civic, educational, and charitable organizations in this area. Programs of local interest are regularly broadcast by the station including sport subjects, news, agricultural topics and reports, educational discussions, and entertainment features. The same general policies with respect to the program service of KHUB are to be carried out by the assignee under the proposed ownership and management.

There are various musical organizations, high schools, parochial schools, and local musicians in Watsonville and Santa Cruz, California, from which talent is available to support the program service of Station KHUB. The assignee contemplates using the services of more live talent than has heretofore been employed.

The commercial rate for the sale of time of Station KHUB is \$25.00 an hour for national advertising and \$20.00 an hour for local advertising. Both rates are subject to discounts upon a continued contract basis. No change in rates is planned under the proposed ownership and no joint rates for advertising will be made between the newspapers owned by the assignee and the station.

The present staff of employees will be retained to insure the efficient operation of the station. These employees are all residents of Watsonville and are well acquainted by such residence and through experience in operating KHUB with the local needs. Mr. Scripps will manage and direct its policies.

GROUNDS FOR DECISION

On the record in this case the Commission finds:

1. The proposed assignee, John P. Scripps, is qualified in all respects to assume the operation of Station KHUB as the licensee thereof.
2. The granting of this application will serve public interest, convenience, and necessity.

6 F. C. C.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of
LINER'S BROADCASTING STATION, INC.¹ (KMLB),
MONROE, LOUISIANA. } DOCKET No. 4619.
For Construction Permit.

Decided August 31, 1938

Frank Stollenwerck on behalf of the applicant; *John W. Guider* on behalf of Station WTMJ; *Paul M. Segal, George S. Smith,* and *Harry P. Warner* on behalf of Station WFLA; *Ben S. Fisher* on behalf of Station KTBS; and *Philip G. Loucks* and *Arthur W. Scharfeld* on behalf of Station WSUN.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION :

STATEMENT OF FACTS

This proceeding arose upon the application of Liner's Broadcasting Station, Inc. (KMLB), Monroe, Louisiana, for change in operating assignment from 1200 kc., 100 watts, 250 watts L. S., unlimited, to 620 kc., 500 watts, unlimited, employing a directional antenna at night. The examiner before whom the case was heard recommended (Report No. I-595) that the application be granted. The exceptions filed to this report and the briefs in support thereof have been fully considered by the Commission in reaching its decision herein.

The applicant proposes through the authority sought to change its classification from a local broadcast station to a regional broadcast station. When a broadcast station applies for such a change in classification, it is incumbent upon the applicant to show that there is a need for a regional station and that such need would be met by the service proposed.

¹ The Commission on November 28, 1938, denied petition of applicant requesting reconsideration and rehearing. Appeal taken to United States Court of Appeals for the District of Columbia. Appeal dismissed on March 27, 1939.

According to the Fifth Annual Report of the Federal Radio Commission, the purpose of a regional broadcast station is to serve a center of population and a small surrounding area or region. A local station is designed to serve local centers of population.

Monroe, Louisiana, wherein the station is located, is in the northern section of the state. Its 1930 census population was 26,028, and the parish in which it is located had a population of 54,337.

Ouachita Parish, in which Monroe is located, according to the 1930 census had 59 industrial establishments, employing 2,270 people, with an annual pay roll of \$1,831,145. The total value of manufactured products was \$17,660,736. The parish, according to the Business Census of the same year, had 593 retail outlets, with 1,817 employees, who received annually in salaries \$1,514,000, and the annual value of retail sales was \$13,597,000. There were 71 wholesale establishments, employing 655 persons, who received annually in salaries \$913,000, and the value of sales was \$15,842,000. The 159 service establishments employed 293 persons, who received salaries totaling \$210,000, with annual receipts of \$651,000.

Primary broadcast service in the Monroe area is rendered by the applicant herein, Station KMLB. Some service is also received from Stations KWKH, at Shreveport; WWL at New Orleans; and WFAA-WBAP, Fort Worth and Dallas.

The present program service is divided between transcriptions and live talent on a 60-40% basis, respectively. Programs by students of Louisiana State University in Monroe have been carried by the station. Various civic and welfare organizations in Monroe have used the station from time to time. Station KMLB is presently rendering a "local" broadcast service designed to meet the needs of Monroe and the immediate environs.

The only definite changes contemplated in program service consisted of an increased use of the Standard transcription library, the addition of a new transcription service, and a shift from one news service to another. In response to the question as to whether the same type of programs would be carried in the future as have been carried in the past, the president of the applicant corporation replied:

Well, they will be—more or less, yes. We will have more varied programs on the 500 watts than we have on the 250.

The proposed transmitting equipment, antenna, and its site are satisfactory.

Some testimony as to need for the improved facilities sought by KMLB was given by certain witnesses from towns surrounding Monroe. Without exception, these towns were already receiving daytime service from KMLB in an acceptable manner. There is no substantial

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or convincing evidence of any need for the increase of applicant's daytime coverage.

The same witnesses experienced difficulty in getting the programs of **KMLB** at night. The testimony, discussed more fully hereinafter, as to whether **KMLB** would serve these towns under its proposed operation, is not sufficiently clear to enable us to determine to what, if any, extent nighttime service would be rendered thereto. Even if the record were clear on this point, the testimony does not establish the existence of a public need for whatever improvement might be made.

Operating as proposed, the applicant expected to effectuate an increased day and night coverage. Evidence as to the present population receiving daytime service covered only those within the 2 mv./m. contour. There was no evidence that **KMLB** is restricted to this extent in the daytime, and it may reasonably be expected that the station is rendering an acceptable degree of service to the rural areas beyond the 2 mv./m. contour.

Applicant would be expected to increase its daytime coverage with the assignment requested. Within its projected 0.5 mv./m. contour there reside 284,174 persons. However, since some of these persons reside in towns where the noise level would prevent a 0.5 mv./m. signal from being serviceable, not all of them would receive acceptable service. Since the applicant did not correctly calculate its present daytime coverage, no comparison between the present and proposed coverage can be made.

As to nighttime coverage under the present assignment, the applicant's engineering witness concluded that the station is limited to its 5.36 mv./m. contour, and gave the population within that contour as the number of persons receiving nighttime service. The Commission's expert engineering witness testified that the station is limited at night to its 1.5 or 1.6 mv./m. contour, which means that it has greater coverage at night than is indicated by the testimony of the applicant's engineering witness. The Commission finds that Station **KMLB** is presently limited at night to its approximate 1.5 mv./m. contour. No figures as to the population within this area appear of record.

As to the nighttime coverage on the proposed assignment, it must first be determined what limitations on **KMLB** would be caused by stations operating under outstanding authorizations. Applicant's engineer, on the basis of certain recordings at Monroe, predicted a limitation by Station **MTMJ** to the 1.08 mv./m. contour of **KMLB**. Using the second hour after sunset curve, which has been approved by the Commission for allocation purposes, the same witness predicted a limitation to the 2.5 mv./m. contour. The Commission's engineering

witness predicted a limitation to the 2.2 mv./m. contour from Station WTMJ. On June 28, 1938, the Commission authorized the establishment of a new broadcast station at Wichita Falls, Texas, to operate on 620 kc., Docket No. 4348. A station operating as proposed by this application of the Wichita Broadcasting Company would limit Station KMLB to a greater extent than would WTMJ.

Station KMLB would not have the nighttime coverage claimed for it by its own engineering witness. While it is not possible from this record to find exactly what coverage KMLB would be expected to obtain, it has not been shown that there would be any material improvement in applicant's nighttime coverage. In other words, there is not afforded in this record any fair or accurate basis for comparing the present with the proposed nighttime coverage.

There are two broadcast stations located at less than the separation generally recommended to avoid objectionable interference. Because of the directive characteristics of the antenna proposed to be used by KMLB, no objectionable interference would be expected to the service areas of these two stations. The new broadcast station authorized by the Commission to be established at Wichita Falls, Texas, is located at less than the separation generally recommended to avoid objectionable interference. The Commission found, in its decision granting the application of Wichita Broadcasting Company, that the use of 620 kc. at Wichita Falls, Texas, and Monroe, Louisiana, as proposed, would result in objectionable interference to both stations. *West Texas Broadcasting Company, et al.* (Decided June 28, 1938) 5 F. C. C. 695. A similar finding is supported by the record in this case.

Operating as proposed, Station KMLB would receive a limitation within the contour to which it is normally expected to serve from Station WTMJ and also from the station authorized to be established at Wichita Falls, Texas.

There was an effort on the part of Station WTMJ to show what interference conditions would exist if it were allowed to operate with 5 kw. at night, as proposed in its pending application. Five-kilowatt operation at night on the frequency utilized by WTMJ is not presently authorized by the Commission, and for this reason such pending application of WTMJ is not entitled to consideration in this proceeding. Another application pending before the Commission at the time of hearing, and at the time of decision herein, was that of Station KTBS, Shreveport, Louisiana, to change operating assignment to 620 kc., 1 kw. night, 5 kw. L. S. Monroe and Shreveport are geographically located such that the use of 620 kc. in both towns would result in prohibitive interference.

GROUNDS FOR DECISION

1. Applicant has failed to show the existence of a public need for the facilities requested.

2. The proposal to change from a local to a regional classification is not accompanied by plans for rendering a regional program service.

3. Objectionable interference would be caused to a station whose construction and operation at Wichita Falls, Texas, has been authorized by this Commission.

4. Operating as proposed, the applicant would be subjected to interference within the contour to which it would normally be expected to serve.

5. Applicant has failed to provide an accurate basis upon which the Commission could compare the areas now being served with day and nighttime service with those which applicant might be expected to serve, operating as proposed.

6. Public interest, convenience, and necessity would not be served by granting the application.

6 F. C. C.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D. C.

In the Matter of
LEONARD A. VERSLIUS,¹
GRAND RAPIDS, MICHIGAN.
For Construction Permit.

} DOCKET No. 4413.

Dated August 31, 1938

Frank D. Scott on behalf of the applicant; *James H. Hanley* on behalf of the applicant; *James H. Hanley* on behalf of Station WHDH; *Howard S. LeRoy* on behalf of Station WKAR; *A. L. Ashby* and *P. J. Hennessey, Jr.*, on behalf of Stations KOA and WENR; *Garland Powell*, *Horace L. Lohnes* and *Fred W. Albertson* on behalf of Station WRUF; *George O. Sutton* and *Ashley L. Hawken* on behalf of Station WEEU; *Philip G. Loucks* and *Arthur W. Scharfeld* on behalf of Station WLS; *Paul D. P. Spearman* and *Alan B. David* on behalf of King-Trendle Broadcasting Company (Stations WOOD and WASH), Intervener; *A. V. Dalrymple* on behalf of the Commission.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION:

STATEMENT OF FACTS

Leonard A. Versluis, Grand Rapids, Michigan, commenced this proceeding by filing his application for permit to construct a new broadcast station to operate on 830 kilocycles, with power of 500 watts, daytime.

The matter was designated for hearing before an examiner. Michigan State College of Agriculture and Applied Science, licensee of Station WKAR in East Lansing, Michigan, a respondent in these proceedings, filed an answer to the applicant's appearance herein, reciting, among other things, that its interests would be adversely affected by the granting of the facilities requested and the operation

¹ The Commission on October 11, 1938, denied the petition of applicant requesting a rehearing.

of the proposed station at Grand Rapids, Michigan, on 830 kilocycles, with power of 500 watts daytime. The examiner filed his report (I-406), recommending that the application be denied, whereupon the applicant filed exceptions and requested oral argument which was allowed and has been heard. The exceptions have been considered by the Commission.

The applicant in this case is shown to be legally and financially qualified to construct and operate the station proposed. He would secure competent technical assistants. The equipment proposed is satisfactory from an engineering viewpoint.

Stations WASH and WOOD are located in Grand Rapids, Michigan. They share time on the frequency 1270 kilocycles, using power of 500 watts. Together they operate unlimited time. Each holds a construction permit for the use of 1 kilowatt power until local sunset.

Grand Rapids and East Grand Rapids, which are adjacent communities, have a combined population of 172,616, while the Grand Rapids metropolitan district has a population of 207,154 (1930 Census).

The stations above mentioned furnish primary service in Grand Rapids and its metropolitan area, while Station WMAQ, Chicago, furnishes some service to areas contiguous to that community.

The applicant contends that there is need for additional broadcast service in Grand Rapids on the ground that stations now operating there devote a large portion of their time to chain programs and on the claim that there is a need for a local outlet for local programs. It is also contended that there are potential advertisers who cannot pay the service rates charged by the existing stations.

Station WKAR, located at East Lansing, Michigan, at the time of the hearing of this matter was operating on 850 kilocycles with power of 1 kilowatt. The actual distance between Grand Rapids and East Lansing is approximately 60 miles, while the recommended separation, under average conditions, for the assignments involved, is 112 miles; and on the basis of measurements of the signal strength of Station WKAR at points between East Lansing and Grand Rapids, it was shown that the proposed station would cause objectionable interference to Station WKAR within its 500 microvolt per meter contour. That station is owned and operated by the Michigan State College of Agriculture and Applied Science. Its broadcasts are primarily educational in character, including the dissemination of extension courses on several subjects and programs of exceptional interest to the farm population in rural areas of Michigan. WKAR also broadcasts entertainment features, games, news flashes, and travel talks.

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Although there is testimony to indicate that the local service now rendered to the residents of the Grand Rapids area is not wholly satisfactory, the need shown is not sufficiently strong to warrant the establishment of the station herein proposed because of the fact that such action would result in objectionable interference to Station WKAR, thus curtailing the latter station's exceptional service in the rural areas of Michigan.

On April 30, 1937, Michigan State College filed an application for permission to increase its operating power from 1 kilowatt to 5 kilowatts (Docket No. 4656). The applicant herein was served with notice and he appeared and filed an answer to the appearance of the applicant in Docket No. 4656; and since the report of the examiner was filed in the case under consideration (Docket No. 4413) the Commission has made and issued its decision granting the aforesaid application of WKAR. In that decision the Commission, among other things said:

The applicant, Michigan State College, is and has been since 1922 the owner and operator of radio-broadcast station WKAR at East Lansing, Michigan, * * *. The College is supported principally by State and Federal appropriations. * * * WKAR is the only State-owned station in Michigan. Since a large part of its appropriations come from taxes paid by citizens from the whole State, it has a responsibility of service to those who live at great distances from the College as well as to those who live near it. Therefore, it endeavors to serve the entire State, all branches of the State Government and all officers of the State for any educational or other programs they have to offer the people. * * *

GROUND FOR DECISION

On the record in this case, the Commission finds:

1. The operation of the station proposed would result in objectionable interference within the normally protected 0.5 mv./m. contour of Station WKAR.
2. The need shown in the Grand Rapids area is not sufficiently compelling to warrant the granting of the application herein because such a grant would result in curtailing the service area of WKAR which is rendering exceptionally meritorious service to rural regions of Michigan.
3. The grant of the application of Leonard A. Versluis would not serve the public interest, convenience, and necessity.

6 F. C. C.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matters of C. BRUCE McCONNELL, INDIANAPOLIS, INDIANA. For Construction Permit.	}	DOCKET No. 4618.
KNOX RADIO CORPORATION (WKBV), RICHMOND, INDIANA. For Renewal of License.	}	DOCKET No. 4660.

Decided August 31, 1938

Henry B. Walker on behalf of C. Bruce McConnell and Curtis Radiocasting Corporation; *J. C. Trimble* on behalf of Knox Radio Corporation; *Ben S. Fisher, John W. Kendall, and Charles V. Wayland* on behalf of Station WGVA; *John W. Guider, Duke M. Patrick, Karl A. Smith, and Lester Cohen* on behalf of Station WFBM; *Horace L. Lohnes, Everett D. Johnston, and Fred W. Albertson* on behalf of Northwestern Publishing Company; *Paul D. P. Spearman and Alan B. David* on behalf of Station WIRE; *Ralph L. Walker and Walter Johnson* on behalf of the Federal Communications Commission.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION (Commissioner Walker not participating):

STATEMENT OF FACTS

This proceeding arose upon the following matters:

1. An application of C. Bruce McConnell for a construction permit to erect a new broadcast station at Indianapolis, Indiana, to use the frequency 1500 kilocycles with power of 100 watts night, 250 watts L. S., specified hours. The hours requested are those now used by Station WKBV, Richmond, Indiana, i. e., daily (except Sunday) 10 a. m. to 12 noon and 6 p. m. to 10 p. m.

2. An application of the Knox Radio Corporation, licensee of Station WKBV, Richmond, Indiana, for renewal of license.

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The above applications being interrelated, a consolidated hearing was held thereon before an examiner who, in his report (I-621), recommended that the application of C. Bruce McConnell be denied and that the application of Knox Radio Corporation be granted. To this report exceptions were filed by C. Bruce McConnell. Oral argument was had on May 19, 1938. The exceptions have been duly considered.

IN RE APPLICATION OF C. BRUCE McCONNELL, DOCKET NO. 4618

The applicant is a citizen of the United States and has resided in Indianapolis, Indiana, for 15 years. He is Sales Manager of Hamilton, Harris & Company, jobbers in tobacco products and candies, with principal offices in Indianapolis, and branches in Kokomo, Terre Haute, Anderson, Muncie, Columbus, Franklin, Bedford, and Richmond, Indiana. In addition, he is Manager of a brokerage concern known as Merchandise Brokers, Inc. The latter company is owned by himself together with two other stockholders of Hamilton, Harris & Company. Mr. McConnell is also employed by the A. W. I. Sales Corporation of New York City, which is a brokerage concern. He has had considerable advertising experience, particularly in placing radio advertising with broadcast stations throughout the middle west.

The balance sheet of the applicant as of October 12, 1937, reveals total assets of \$36,045.51, consisting of cash on hand \$3,645.51, investments in Hamilton, Harris & Company common stock \$12,000, Merchandise Brokers, Inc., \$5,000, and Sportsman's Store \$4,900, and fixed assets including land \$1,500 and improvements \$9,000. The total liabilities are \$2,904, consisting of notes payable \$500 and mortgage \$2,404, leaving a net worth of \$33,141.51. The applicant also draws an annual salary of \$7,800 from Hamilton, Harris & Company, \$300 per month from Merchandise Brokers, Inc., and \$150 per month from the A. W. I. Sales Corporation of New York City.

Mr. Edward W. Harris, President of Hamilton, Harris & Company, testified that in the event additional funds are needed to finance the proposed station he will advance as much as \$20,000 to the applicant and that he has sufficient assets from which to raise between \$300,000 to \$400,000.

The applicant expects to continue his connection with the various business enterprises in which he is interested but will devote as much time to the operation of the station as he deems necessary. The applicant and the Curtis Radiocasting Corporation (which, at the time of the hearing, had an application pending before the Commission for a construction permit seeking authority to authorize the erection and operation of a broadcast station at Indianapolis, Indiana, to operate on 1500 kilocycles for the remainder of the time requested by the present application) have entered into a contract for

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the joint and cooperative operation of the two proposed stations, in the event both applications be granted. This contract also provides that in the event the application of Curtis Radiocasting Corporation shall be denied, for a period of six months said corporation will assist the applicant in the organization of his station and erection of the same. (The application of the Curtis Radiocasting Corporation was denied by the Commission on May 11, 1938, effective May 21, 1938). Henry B. Walker, the attorney representing the applicant in the instant application, is also the attorney for Curtis Radiocasting Corporation and an officer in said corporation, and his son, Henry B. Walker, Jr., was employed by the applicant to accumulate data and evidence to present on behalf of the applicant in the hearing of this matter. He also made similar investigations in other cases of the Curtis Radiocasting Corporation.

The applicant will maintain an adequate staff of qualified employees to construct and operate the proposed station and estimates the payroll cost at \$1,515 per month.

The transmitter proposed to be installed by the applicant complies with the Rules and Regulations of the Commission. The transmitter site and antenna will be selected subject to the approval of the Commission.

It is estimated that the approximate cost of constructing the proposed station and installing the transmitter complete will be \$5,000, and studio equipment, speech input, including microphones and other equipment \$3,000. The cost of the antenna is estimated at between \$1,800 and \$2,300.

The monthly operating expenses are estimated to total \$2,500. Based on a proposed rate of \$67.50 per hour and an expected sale of 33 percent of the time of the proposed station, and assuming a 36-hour week of operation, it is estimated that the gross income from commercial advertising would approximate \$800 per week. The applicant has secured written commitments from local advertisers totaling \$420 per week. Six of these instruments, which were offered in evidence, were signed by Merchandise Brokers, Inc., Hamilton, Harris & Company and the Sportsman's Store, in all of which Mr. McConnell has a financial interest. These commitments were not signed by the applicant and contain no specific provisions concerning the rate at which the time is to be sold, the hours of the proposed broadcasts, or concerning the character of the proposed programs.

Mr. Henry B. Walker, Jr., testified that he had made a survey in Indianapolis covering a period of 3½ weeks to determine the need for the proposed service; that he interviewed representatives of a

number of civic, charitable, religious and educational organizations; and that many programs would be available from these organizations which are not now being broadcast. Upon cross-examination, however, this witness admitted that he did not have personal knowledge of the fact that many of these programs are not now being broadcast by other stations in Indianapolis and that he knew of no instance where any civic, educational, charitable or religious organizations have been denied the facilities of the existing stations.

The facilities of the proposed station would be made available to all civic, religious, charitable, and educational organizations, including the state and city governmental agencies, the community fund, medical association and similar organizations. Four programs weekly would be available from Butler University, some of which are not broadcast at the present time. Examples include programs from the radio class and certain musical and sports programs during evening hours. Other programs available for broadcast include those from the city schools such as publicity programs, athletic events during the evening hours and class programs during morning hours. Programs from the Parent-Teachers Association will also be available. The Indiana State College proposes to broadcast a regular weekly program which will include musical entertainment and dramatic features. Advance students from Jordan Conservatory would also be available for broadcasts. Arrangements could be made for additional programs from the Indiana Law School, the Indiana University Extension Service and similar educational organizations.

According to the 1930 U. S. Census, the population of Indianapolis, Indiana, was 364,161. There are 4,757 retail stores located therein doing an annual gross business of \$139,084,000. The annual wholesale sales amount to \$306,302,000. A number of manufacturing plants are located at Indianapolis, including the E. C. Adkins Corporation, Diamond Chain Company, Kingan Company, Kahn Tailoring Company, Ely Lily and Company, Holcombe and Holt, U. S. Rubber Products, Inc., Daubenier Shopping Bag Company, Indianapolis Glove Company, Realsilk Hosiery Company and Presto Light Company. It appears from the evidence that industry is well diversified in Indianapolis.

There are two broadcast stations located in Indianapolis which render primary service thereto, namely, WIRE (an outlet of the National Broadcasting Company) operating on the frequency 1400 kilocycles with power of 1 kilowatt night and 5 kilowatts L. S., unlimited time, and WFBM (affiliated with the Columbia Broadcasting System) operating on 1230 kilocycles with power of 1 kilowatt night, 5 kilowatts L. S., unlimited time. In addition, a construction permit

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has been granted for the erection of a third station (WGVA) which, when completed, will render additional primary service. The latter will operate on the frequency 1050 kilocycles with power of 1 kilowatt daytime only. The permittee of this station has entered into no chain affiliations, will render a local program service and will donate time to local civic and educational organizations. Additional primary service is available to most of the Indianapolis area from Station WLW, Cincinnati, Ohio. Secondary service is received therein from distant clear channel stations at night, such as WHAS and WJR and other clear channel stations operating in the Chicago metropolitan area with power of 50 kilowatts.

There are two broadcast stations located at shorter distances than those considered necessary under average conditions to avoid objectionable interference with the operation of a broadcast station as proposed herein. Station WCKY, Covington, Kentucky, 100 miles distant, has a construction permit to operate on the frequency 1490 kilocycles with power of 10 kilowatts, unlimited time. Due to the low conductivity in the intervening terrain and the characteristics of the frequencies involved, which are considered above the average, it was predicted that no objectionable interference would result at night from the proposed operation to the service of Station WCKY, but that during evening hours some interference might occur to the outer edges of the area expected to be served by the proposed station, from the skywave signal of the latter. No interference would be expected during daytime hours to the services of Station WCKY by the proposed operation. Station WOMI, Owensburg, Kentucky, approximately 148 miles distant, has a construction permit to operate on 1500 kilocycles with power of 100 watts, unlimited time. Based upon data obtained from the second hour curve of the allocation survey (conducted by the Commission and reported in September, 1936), interference would be expected to occur during nighttime hours to the 2.05 millivolt per meter contour of each station, through the proposed operation during nighttime hours.

On May 11, 1938, effective May 21, 1938, the Commission granted an application of the Knox Radio Corporation (WKBV) for modification of license to operate unlimited hours on the frequency 1500 kilocycles with power of 100 watts. Richmond is approximately 64 miles distant from Indianapolis, whereas 185 miles is the distance considered necessary under average conditions to avoid objectionable interference through the simultaneous operation of Station WKBV and that of the applicant herein. A grant, therefore, of the application under consideration would involve objectionable interference with the service of Station WKBV and also preclude a grant of the application of the latter for renewal of license. Likewise, a grant

of the pending application of WKBV for renewal of license (Docket No. 4660) would preclude a grant of the application under consideration.

IN RE APPLICATION OF THE KNOX RADIO CORPORATION (WKBV), DOCKET NO. 4660

Station WKBV, Richmond, Indiana, is owned and operated by the Knox Radio Corporation, the applicant herein. William O. Knox is the President of the licensee corporation and owns all of the stock therein except two qualifying shares. He also owns and operates the Knox Advertising Agency through which the station secures its business.

According to the financial statement submitted with the application for renewal of license, the applicant corporation owns studio equipment valued at \$3,510 and station equipment valued at \$13,207.01. Among the assets listed were cash on hand \$1,800.75, and real estate valued at \$6,000. The evidence reveals, however, that the cash is held by Mr. Knox personally, but would be available for the use of the broadcast station, and that the title to the real estate is vested in Mr. Knox and his wife. The former testified that the real property is worth approximately \$10,000, but there is other evidence in the record indicating that it is worth much less.

Station WKBV maintains three full-time and other part-time employees consisting of announcers, an engineer and an assistant engineer, transmitter operators, control men and sports announcers. Mr. Knox, President of the applicant corporation, is a licensed operator. The evidence indicates that all salaries and bills are promptly paid. Station WKBV is the only broadcast station located in Richmond but service is received in this area from several outside stations.

According to the 1930 U. S. Census, the City of Richmond had a population of 32,493 and Wayne County, in which Richmond is located had a population of 54,809.

In 1933 there were sixty industrial establishments in the City of Richmond having an average of 2,716 employees with annual salaries of \$2,233,676. The value of the products manufactured by these establishments was \$9,167,298. In 1934 there were thirty-one wholesale establishments in the city having net annual sales of \$8,166,000 and pay rolls of \$528,000.

The testimony concerning the program service of Station WKBV is conflicting. A former employee of the station, Percy Robbins, testified that he had received definite instructions from the President of the corporation that the logs of the station should be made out according to the proposed schedule of the day, and in the event

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the station should leave the air for any purpose whatsoever, the log was definitely not to show it. This witness also testified that these instructions were carried out by him. The President of the corporation denied the statements made by this witness and stated that if the logs were not properly made out he had no knowledge of it, and that he did not give any instructions to this witness nor to anyone else to falsify the station logs.

Mr. Robbins also testified in substance that he had made certain tests to determine the interest shown in the Richmond area in the programs broadcast by Station WKBV, the results of which indicated that very little interest was shown; that the station had been improperly operated and that the services in general were poor and inadequate. This witness contended that he had resigned from the station, whereas Mr. Knox testified that he was discharged. Upon cross-examination Mr. Robbins admitted that he had testified in a former proceeding (in support of an application of WKBV for unlimited time) concerning various programs which he referred to as having received favorable comment; that the station had acquired the complete transcribed service of the National Broadcasting Corporation, which contains a number of selections by the finest musical ensembles, quartets, choirs and soloists; that all salaries and bills have been promptly paid; that he had been forced to reject more business than it had been possible to accept because of the station's inability to serve during the hours requested; and that he considered that the recent improvements made to the equipment of Station WKBV had accomplished most satisfactory results. In short, this testimony would indicate that the station has been rendering a satisfactory service from every standpoint and is in marked contrast with the testimony given in the instant proceeding.

The facilities of Station WKBV were offered free of charge to all local, civic, religious, and charitable institutions and a number of such organizations have, in the past, broadcast over this station. Mr. Knox, President of the licensee corporation, testified that the station is now broadcasting the chapel services from Earlham College three times a week which include the addresses of a number of noted speakers and educators; meetings of the Institute of Foreign Affairs are broadcast from the college as well as many other educational programs; and that from 70 to 80 football games were broadcast during the year 1937. A studio has been constructed at this college for the purpose of broadcasting special events.

In addition, the station broadcasts market reports, agricultural subjects, health discussions, and programs from Purdue University featuring home economics and the 4-H Club activities. The Minis-

terial Association, Women's Relief Corps, American Legion, American Red Cross, Parent-Teachers' Association, Works Progress Administration, Federal Housing Administration, the Treasury Department and other governmental, civic, and charitable organizations have broadcast over this station. During the Evanston flood, the station rendered valuable service in broadcasting appeals of the Salvation Army for relief.

GROUND'S FOR DECISION

IN RE DOCKET NO. 4618

1. Due to the interference problems involved, as shown above, a grant of the application under consideration would necessarily require a denial of the pending application of the Knox Radio Corporation (Station WKBV) for renewal of license. It is not the policy of the Commission to grant an application for a new broadcast facility where it is shown that said grant would necessarily involve the deletion of an existing service, except for compelling reasons of good public policy. No such reasons are shown in this record. Although some need is shown in the Indianapolis area for additional broadcast service, such as proposed herein, such need is not sufficiently compelling to warrant a grant of the application in view of the above circumstances.

2. A grant of the application will not serve public interest, convenience, and necessity.

IN RE DOCKET NO. 4660

1. Station WKBV renders a broadcast service on the whole which is meritorious and designed to supply the needs peculiar to the Richmond, Indiana, area.

2. A need exists in Richmond, Indiana, for the broadcast service now rendered by Station WKBV.

3. The continued operation of Station WKBV will serve public interest, convenience, and necessity.

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D. C.

In the Matter of
FEDERAL MOTORSHIP CORPORATION,
BUFFALO, NEW YORK.

For Exemption of the Ship *Empire State*
under Section 352 (b) (2) of the Communi-
cations Act of 1934, as amended.

} DOCKET No. 4983.

Decided August 31, 1938

Ray M. Stanley on behalf of the applicant; *Marshall S. Orr* on
behalf of the Commission.

REPORT OF THE COMMISSION

BY THE COMMISSION:

This matter arose upon the application of Federal Motorship Corporation for exemption of the vessel *Empire State* under Section 352 (b) (2) of the Communications Act of 1934, as amended.¹ The applicant was afforded a hearing in Washington, D. C., on March 3, 1938, and on May 24, 1938, the examiner submitted his report recommending that the exemption be granted. There were no exceptions to the Examiner's Report.

The *Empire State* is a vessel of the United States, duly enrolled and licensed to navigate the Great Lakes, their connecting and tributary waters, the barge canal and Hudson River, and coastwise as far south as Norfolk, Va., and as far north as Boston, Massachusetts. The vessel is of 1,672.58 gross tons, and especially designed and constructed to carry the maximum load of package freight through the New York barge canal, which has a minimum depth of ten to eleven feet, between Oswego and Troy, New York. Although constructed on a shallow draft the vessel is sturdy enough for safe operation on the Great Lakes and on the Atlantic Seaboard. It is

¹"(b) The Commission may, if it considers that the route or the conditions of the voyage or other circumstances are such as to render a radio installation unreasonable or unnecessary for the purposes of this part, exempt from the provisions of this part any ship or any class of ships, which falls within any of the following descriptions: * * *

"(2) Cargo ships which in the course of their voyage do not go more than one hundred and fifty nautical miles from the nearest land; * * *"

insured by Lloyds, who give it an A-1 classification. The vessel does not trade between Atlantic ports, and since its cargo is destined from Atlantic ports to Great Lakes ports, or vice versa, it cannot be loaded beyond the limit which would permit it to traverse the New York barge canal. Therefore, the vessel is less heavily loaded, while at sea, by the amount of cargo discharged at New York on the voyage from the Lakes, or by the amount of cargo originating at New York on the return voyage.

The vessel carries a crew of nineteen and in addition, a licensed pilot is taken aboard when the vessel is navigating coastwise. All available quarters are now in use. The crew's quarters, as well as the captain's quarters, are below deck for the reason that the vessel is constructed so as to permit passage under certain bridges of the barge canal which afford an overhead clearance of only six to eight feet. To accomplish this, the masts are telescoped and the pilot house is lowered into the hull of the vessel. Therefore, it appears that the vessel would be handicapped in the installation of a radio because of the difficulty in providing quarters for the operator, as well as the physical difficulty of providing a satisfactory antenna system and radio room.

With regard to the coastwise voyages, which operation makes the vessel subject to the radio requirements specified in the Communications Act, such voyages are infrequent and are made under different circumstances than were shown in cases heretofore considered by the Commission, where application for exemption was made for vessels regularly operating in the coastwise trade in the area between Boston and Norfolk. In the first place, the vessel here under consideration operates only during the months from April through November. In the period stated, the vessel will make an average of eight round trips between the Great Lakes and the Atlantic Seaboard. For the most part the vessel's cargo is consigned to or originates in the Port of New York, but in an average season two trips will be made to ports on Long Island Sound and to Boston, Massachusetts, and one trip South to Philadelphia, Baltimore, and Norfolk. On the passage to Boston the vessel uses the Cape Cod Canal and is almost continuously in protected waters. South-bound to Norfolk, the vessel is in the open sea for a distance of approximately 90 miles to Philadelphia, never more than eight miles from land, and then proceeds via Delaware Bay, the Delaware-Chesapeake Canal, and Chesapeake Bay to Norfolk. Occasionally the vessel has made the open-sea trip between Norfolk and Philadelphia, but the applicant's president states that if exemption is granted, the vessel will in every instance make the Norfolk-Philadelphia passage via the Delaware-Chesapeake Canal.

We are particularly impressed by the positive testimony with regard to conditions under which these voyages are made, and will continue to be made, namely, that there is no attempt to maintain a schedule between Atlantic ports and the master is therefore free to select the most favorable weather conditions. It appears that the vessel does not proceed on a coastwise voyage in the event that storm-warning signals are flying, or when heavy fog conditions are prevalent.

The applicant's request for exemption was based in a large degree upon the propositions that the peculiar construction of the vessel rendered it physically impractical to carry a radio installation, and that the cost of compliance with radio requirements of the Communications Act would in all probability render the operation of the vessel unprofitable. In our opinion these propositions alone would not warrant exemption of the vessel, but when considered with the other material factors such as the route over which the vessel is licensed to operate, the fact that it does not navigate during winter months, nor on schedule, nor when storm warnings are flown or fog conditions are encountered, and also considering the short distance to be navigated in the open sea and the agreement on the part of the applicant not to navigate the "outside route" between Norfolk and Philadelphia, we come to the conclusion that the vessel is entitled to exemption from the radio requirements of the Communications Act.

The Commission finds that the *Empire State* is a cargo ship which does not go more than one hundred and fifty nautical miles from the nearest land, and that the route and conditions of the voyages and other circumstances are such as to render a radio installation unreasonable and unnecessary for the purposes of Part II of Title III of the Communications Act of 1934, as amended.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D. C.

<p>In the Matter of ¹ YOUNG PEOPLE'S ASSOCIATION FOR THE PROPAGATION OF THE GOSPEL, PHILADELPHIA, PENNSYLVANIA. For Construction Permit.</p>	}	DOCKET No. 4862.
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Decided August 31, 1938

Frank Stollenwerck and H. Leon Bennett on behalf of the applicant; *Paul D. P. Spearman and Alan B. David* on behalf of Stations WFIL, intervener, WOL, WNAC and WDAE; *Horace L. Lohnes, E. D. Johnston, and Fred Albertson* on behalf of Stations WIP, WSNJ, and WNEW; *Thomas P. Littlepage, Sr., and Thomas P. Littlepage, Jr.,* on behalf of Stations WINS and WCAE; *George O. Sutton, A. H. Schroeder, and James L. Proffitt* on behalf of Stations WEST and WDAS.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION (Commissioners Payne and Walker not participating) :

STATEMENT OF FACTS

This proceeding arose upon an application of the Young Peoples' Association for the Propagation of the Gospel for construction permit to establish a new radiobroadcast station in Philadelphia, Pennsylvania, to operate on the frequency 1220 kc. with 1 kw. power, unlimited time, using a directional antenna for both day and nighttime operation. At the time of the hearing, however, the applicant abandoned the request for nighttime hours of operation. Consideration of this case, therefore, will be on the basis of the daytime request.

On December 3, 6, and 7, 1937, a hearing was held on this application before an examiner who, in his report (I-587), recommended that it be denied. To this report exceptions were filed by the applicant and oral argument was heard before the Commission on April 28, 1938.

¹ The Commission on November 9, 1938, denied petition of applicant, requesting reconsideration and rehearing.

The exceptions do not raise any questions not necessarily involved in a determination of the application on its merits.

The applicant is a nonprofit corporation organized under the laws of the State of New Jersey. It has no authorized capital stock. Under its corporate charter, as amended, the corporation is duly qualified to engage in radiobroadcasting and it has received permission to construct and operate a radiobroadcast station in the State of Pennsylvania. The trustees of the applicant corporation consist of Percy B. Crawford, Ruth Crawford, Fenton Duvall, and Lewis Brown, all of Philadelphia, Pennsylvania; C. Erling Olsen, a resident of New York, N. Y.; and Dr. Ralph Wright, a resident of Collingswood, New Jersey. Each trustee is a citizen of the United States.

Crawford and Olsen are the only trustees of the applicant corporation who have had radiobroadcast experience. Percy Crawford was formerly a member of the Presbytery of Philadelphia, but resigned to become an evangelist. He is not affiliated with any particular congregation at the present time. For the past seven years Percy Crawford has conducted a program for one hour a week over a network of stations consisting of WIP, Philadelphia, Pennsylvania; WMCA, New York, N. Y.; WCBM, Baltimore, Maryland, and WMEX, Boston, Massachusetts. This program is known as the "Young People's Church of the Air." Percy Crawford also is a partner in a bookstore in Philadelphia that deals exclusively in religious literature, and he owns a summer camp in Pennsylvania where instructions in religious training for students are conducted. C. Erling Olsen is president of the Fitch Investment Company, located in New York, N. Y. He broadcasts a program twice each week over a network of stations consisting of WIP, Philadelphia, Pennsylvania, and WMCA, New York, N. Y. This program is known as the "Forum Hour."

As of December 4, 1937, the applicant corporation had total assets of \$165,000 consisting of \$35,000 in cash, real estate valued at \$22,500, buildings valued at \$97,500, and personal property of the approximate value of \$10,000. The liabilities consist of a \$60,000 mortgage upon the land and buildings owned by the corporation. The mortgage on this property is to be liquidated by a bond issue to be subscribed for by individual investment. While all of the land, buildings, and personal property are properly listed as assets of the corporation, they are, except for the cash on hand, of no potential value in so far as the proposed station is concerned because they are to be devoted exclusively to the establishment of King's College in Belmar, New Jersey, for the promotion of religious training and education. The applicant states that the proposed college would be opened for operation at the fall term of 1938.

Percy Crawford has a personal income of approximately \$15,000 a year and his net worth is estimated between \$75,000 and \$100,000. He testified that he would personally advance funds to the applicant corporation for the operation of the proposed station if a need should arise therefor. No contractual obligation exists, however, between Crawford and the applicant for making any funds available to the latter for the operation of the station.

It is estimated that the cost of constructing the proposed station would be \$22,969, on which the applicant proposes to pay \$9,821 and to liquidate the balance of the cost over an eighteen-month period upon an installment contract basis. The estimated weekly operating expense is \$1,053.81. This expense, however, does not take into consideration certain line charges arising from remote broadcasts which are to be made from the proposed King's College, located at Belmar, New Jersey.

The transmitting equipment and directional antenna which have been selected for the operation of the proposed station, as well as the transmitter site, meet with the technical requirements of the Commission.

A qualified and experienced staff would be employed by the applicant to insure the efficient operation of the proposed station. The management of the station is to be vested in an executive committee of four individuals who have been selected by the applicant corporation. The committee is composed of Percy Crawford, Paul H. Keiser, Fenton Duvall, and C. Erling Olsen. The station's personnel would consist of a program director, a qualified and licensed engineer, two licensed radio operators, three announcers, one utility employee, and one clerk-stenographer. The present program director of Station WMBI, Chicago, Illinois, is to be employed by the applicant as program director for the proposed station.

According to the 1930 United States Census the metropolitan district of Philadelphia, Pennsylvania, has a population of 2,847,148. It is estimated (basing population figures on the 1930 United States Census) that there would be 300,721 people residing within the 10 millivolt per meter contour of the proposed station; that 758,519 people would reside within the 5 millivolt per meter contour; and that 2,995,810 people would reside within the 0.5 millivolt per meter contour of the station.

The facilities of the station are to be used primarily for the dissemination of religious programs to advance the fundamentalist interpretation of the Bible. The applicant stated, however, that in connection with religious broadcasts the station's facilities would be extended only to those whose tenets and beliefs in the interpretation of the Bible coincide with those of the applicant. On the other

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hand, no restriction is placed on the use of the station's time by those not having the same beliefs as the applicant when the program to be broadcast is devoted to civic and charitable purposes.

Where the facilities of a station are devoted primarily to one purpose and the station serves as a mouthpiece for a definite group or organization it cannot be said to be serving the general public. That being the case, if one group or organization is entitled to a station facility for the dissemination of its principles, then other associations of equal magnitude would be entitled to station licenses on the same grounds. Obviously, there are not a sufficient number of broadcasting channels to give each group a station license. The Commission has accordingly considered that the interests of the listening public are paramount to the interests of the individual applicant in determining whether public interest would best be served by granting an application. This principle, enunciated by the Commission, was upheld by the United States Court of Appeals for the District of Columbia in the case of *Chicago Federation of Labor v. Federal Radio Commission*, 41 F. (2d) 422, 423 (1930). Again, where the applicant, as in the instant case, seeks to extend the use of the station's facilities for religious purposes only to those whose religious beliefs are in accord with those of the applicant, the Commission has heretofore held, as in the Wilbur Glenn Voliva decision (Station WCBD, Docket No. 2277), that:

* * * There is no room for the operation of broadcasting stations exclusively by, or in the private interests of, individuals or groups so far as the nature of the programs are concerned. There is not room in the broadcast band for every school of thought, religious, political, social, and economic, each to have its separate broadcasting station, its mouthpiece in the ether. If franchises are extended to some, it gives them an unfair advantage over others and results in a corresponding cutting down of general public service stations. It favors the interests and desires of a portion of the listening public at the expense of the rest. Propaganda stations (a term which is here used for the sake of convenience and not in a derogatory sense) are not consistent with the most beneficial sort of discussion of public questions. As a general rule, postulated on the laws of nature as well as on the standard of public interest, convenience or necessity, particular doctrines, creeds, and beliefs must find their way into the market of ideas by the existing public service stations, and if they are of sufficient importance to the listening public the microphone will undoubtedly be available. If it is not, a well-founded complaint will receive the careful consideration of the Commission in its future action with reference to the station complained of.

The contention may be made that propaganda stations are as well able as other stations to accompany their messages with entertainment and other program features of interest to the public. Even if this were true, the fact remains that the station is used for what is essentially a private purpose for a substantial portion of the time and, in addition, is constantly subject to the very human temptation not to be fair to opposing schools of thought and their representatives.

The United States Court of Appeals for the District of Columbia supported the Commission in the above contention when, in *KFKB Broadcasting Association v. Federal Radio Commission*, 47 F. (2d) 670, 672 (1931), the Court stated that:

When Congress provided that the question 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. Obviously, there is no room in the broadcast band for every business or school of thought.

The metropolitan area of Philadelphia receives primary broadcast service during the daytime from eight stations located therein, namely, KYW, operating on the frequency 1020 kc., with power of 10 kw., unlimited time, using a directional antenna; WCAU, using the frequency 1170 kc., with 50 kw. power, unlimited time; WDAS, operating on the frequency 1370 kc., with power of 100 watts night, 250 watts day, unlimited time; WFIL, using the frequency 560 kc., with 1 kw. power, unlimited time; WHAT, operating on the frequency 1310 kc., with 100 watts power, sharing time with WTEL, which operates on the same frequency, with 100 watts power; WIP, operating on the frequency 610 kc., with power of 1 kw., unlimited time; and WPEN, operating on the frequency 920 kc., with power of 1 kw., unlimited time, using a directional antenna at night. In addition, primary service is received in this area during the daytime from Station WCAM, Camden, New Jersey, operating on the frequency 1280 kc., with 500 watts power, sharing time with Stations WCAP, Asbury Park, New Jersey, and WTNJ, Trenton, New Jersey, and from Station WIBG, Glenside, Pennsylvania, operating on the frequency 970 kc., with power of 100 watts, daytime. In summary, there are several unlimited time stations rendering service throughout the metropolitan district of Philadelphia, and a total of ten stations serving the entire district or a portion thereof. These existing stations provide time for religious and educational programs as a regular part of their program service. Time is donated by them to the Federation of Churches in Philadelphia, which represents practically all denominations. Moreover, some of these stations have extended their facilities to various churches for additional religious broadcasts at a reduced rate when the time of the stations was already being utilized for programs of this nature. It was estimated that there are approximately 800 churches in the metropolitan district of Philadelphia. While as heretofore stated, the existing stations in this area devote time to churches representing practically all denominations, it would obviously not be possible to extend their facilities to each group that might desire time for religious broadcasts.

The rural areas contiguous to Philadelphia also receive some service during the daytime from clear channel stations in the New York metropolitan district; from Station WBAL, Baltimore, Maryland; and from Station WPG, Atlantic City, New Jersey.

The applicant stated that the major portion of the time of the proposed station would be sold for religious broadcasts. Various clergymen, whose religious beliefs are apparently in accord with those of the applicant, testified that they would purchase time of the proposed station for the broadcasting of programs of this nature. It was clearly shown, however, that a majority of these clergymen either have been allotted time during recent months or now use the facilities of existing stations in Philadelphia for broadcasting religious programs.

The time of the proposed station would be sold by the applicant at a basic rate of \$40 an hour. This rate, however, does not include line charges for remote broadcasts originating outside of the station's studios.

The program schedule of the proposed station is designed to provide programs which are largely religious and educational in nature. A small portion of the total time of the station will be donated for civic and charitable purposes. The program schedule further shows that approximately 25 hours a week of the station's time will be sold strictly for advertising purposes. The type of commercial programs permitted to be broadcast would be limited, more or less, to those that are religious or educational in nature. The applicant does not contemplate using a transcription or news service for the proposed station.

There is talent available in the metropolitan district of Philadelphia to support the program service of the proposed station, consisting of individuals connected with various colleges in Philadelphia, with the Academy of Natural Science, with the Franklin Museum, with the Bible Institute of Philadelphia, and with various religious institutions in this community (whose doctrine coincides with that of the applicant). In addition, the applicant contemplates broadcasting programs produced by students and faculty members of the proposed King's College.

There are 14 stations located at shorter distances from Philadelphia than those considered necessary under average conditions to avoid objectionable interference during the daytime to operation of the proposed station. Due to the fact that the conductivity in this area is lower than average, the characteristics of the frequencies involved, and the estimated efficiency of the antennas used by those stations and that proposed by the applicant herein, it was predicted

that the operation of the proposed station would not cause objectionable interference to the service of any of those stations. However, it was predicted that objectionable interference would be expected to be imposed to the service of the proposed station by Station WSNJ, Bridgeton, New Jersey, which operates on the frequency 1210 kc. with power of 100 watts daytime, and by Station WCAE, Pittsburgh, Pennsylvania, operating on the frequency 1220 kc., with power of 1 kw. night, 5 kw. day, unlimited time. In connection with WSNJ, the recommended mileage separation between that station and the proposed station for simultaneous operation during the daytime is 116 miles and the actual separation is 35 miles. Because of the directional antenna proposed, a slightly greater than normal radiation for 1 kw. power would occur in the direction of WSNJ, resulting in interference to the approximate 1.6 millivolt per meter contour of the proposed station. This interference would occur in a small area in the direction of Bridgeton, New Jersey, on a line between Philadelphia and that city. The normally recommended mileage separation between the proposed station and Station WCAE to avoid objectionable interference during the daytime is 400 miles. The actual separation in this instance is 245 miles. It was predicted that objectionable interference within the 0.5 millivolt per meter contour of the proposed station might be expected to be imposed by Station WCAE for a short period immediately preceding sunset at Philadelphia. According to good engineering practice, it is considered that a regional station as proposed by the applicant herein should normally be protected to its 0.5 millivolt per meter contour during daytime hours. It would be expected, therefore, that WSNJ will cause some objectionable interference within that normally protected contour.

There were six applications for facilities pending before the Commission at the time the instant application was designated for hearing which would involve questions of interference should a grant be made of these applications and that of the applicant. Because of the directional antenna proposed by the applicant and the attenuation of the frequencies involved, it is predicted that objectionable interference would exist only between the proposed station and WGNY, Newburgh, New York. Station WGNY has pending a construction permit (B1-P-1822) which requests a change in frequency to 1220 kc. with an increase of power to 250 watts and to change hours of operation to daytime. The normally recommended mileage separation between WGNY and the proposed station is 300 miles and the actual distance is approximately 123 miles. It was predicted that the directional antenna proposed by the applicant would radiate approximately 2 kw. power in the direction of WGNY so that daytime

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interference would be imposed to the 0.95 millivolt per meter contour of that station. Station WGNY would not, however, contribute objectionable interference to the service of the proposed station.

GROUNDNS FOR DECISION

On the record in this case the Commission finds:

1. The applicant has failed to show in the record a public need in the Philadelphia area for additional broadcast service of the type proposed herein.

2. There would be objectionable interference to the proposed station within its normally protected contour arising from the operation of an existing broadcast station.

3. The granting of this application will not serve public interest, convenience and necessity.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D. C.

<p>In the Matter of Y. W. SCARBOROUGH and J. W. ORVIN, CHARLESTON, SOUTH CAROLINA. For Construction Permit.</p>	}	DOCKET No. 4717.
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Decided August 31, 1938

Ben S. Fisher and John W. Kendall on behalf of the applicant;
and *Horace L. Lohnes, Fred W. Albertson, and E. D. Johnston* on
behalf of Station WCSC.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION (Commissioner Payne not participating):

STATEMENT OF FACTS

This proceeding arose upon an application of a partnership (proposing to do business under the name of the Atlantic Coast Broadcasting Company) composed of Y. W. Scarborough and J. W. Orvin, for a construction permit to erect a new broadcast station at Charleston, South Carolina, to use the local frequency 1210 kilocycles with power of 100 watts night, 250 watts local sunset, unlimited time.

A hearing was held on this application before an examiner, who, in his report (I-612), recommended that it be granted, subject to compliance with Commission Rules 131, 132, and 139 and to the condition that the towers be marked in accordance with engineering specifications. To this report exceptions were filed by the South Carolina Broadcasting Company, Inc., intervener. Oral argument was heard on May 12, 1938. The exceptions have been duly considered by the Commission.

On May 5, 1937, Y. W. Scarborough and J. W. Orvin entered into a written partnership agreement by the terms of which these parties proposed to construct and operate a broadcast station under the firm name of the Atlantic Coast Broadcasting Company, each to own one-half interest in the business.

Both members of the applicant partnership are citizens of the United States and residents of Charleston, South Carolina, and both

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are affiliated with a number of local civic and fraternal organizations. These individuals together own all of the stock of the Atlantic Coast Life Insurance Company, Charleston, and Mr. Scarborough is the President thereof. They each receive an annual income of \$5,500 from this company. Mr. Orvin receives an additional \$1,000 annually from other properties owned by him. The working capital of the partnership is fixed at \$20,000 (to be contributed in equal amounts), which is to be obtained, if necessary, from the surplus of the Atlantic Coast Life Insurance Company. Mr. Orvin testified that he owns sufficient stock in various corporations and other assets from which to raise his contribution to the enterprise.

The Atlantic Coast Life Insurance Company was originally capitalized at \$10,000 and now has a surplus of \$25,892.95. The original value of the stock was \$100.00 per share. As of December 31, 1937, the assets of the company totaled \$153,888.56 and on that date the stock was valued at \$358.92 per share, making a total capitalization of \$35,892. A special examiner of the Insurance Department of the State of South Carolina testified that the owners of this stock can withdraw \$20,000 of the surplus without impairing the financial structure of the company and without objection from the Life Insurance Department of the State, as the policy reserve set up by the company is more than sufficient to meet the requirements of the South Carolina statutes. This policy reserve is held by the State Insurance Commissioner.

The proposed broadcast station will be operated independently of the insurance company and advertising taken by the latter will be paid for at the regular commercial rate. The total cost of construction including the technical equipment, cost of land for the transmitter site and other items, is estimated at approximately \$19,000.00 and the total monthly operating expense at \$1,770.00, including \$1,170.00 to be paid in salaries.

The members of the applicant partnership have had no experience in the business of radiobroadcasting, but will employ a staff of qualified persons to construct the proposed station and to insure its efficient operation. Three experienced individuals have already been tentatively engaged and other applicants for various positions have been interviewed.

The proposed transmitting equipment meets the requirements of the Rules and Regulations of the Commission. It is planned to install a one-half wave vertical antenna of standard design, which will comply with the technical requirements of the Commission. The transmitter site is to be selected subject to the approval of the Commission. Three proposed sites have already been investigated for this purpose.

Tentative rate cards were submitted in evidence indicating that the proposed daytime rate before 6:00 p. m. will be \$25.00 per hour and that the nighttime rate will be \$40.00 per hour. These rates will be subject to a reasonable discount when time is purchased for consecutive periods. Based upon said rates the partners have already secured written commitments from prospective advertisers for the purchase of time over the proposed station, which total \$1,521.00 monthly. A list of 74 additional potential advertisers was also submitted in evidence.

A schedule of a proposed program for a typical week was submitted in evidence, which includes a wide variety of features such as news flashes from various sources, market and weather reports, health discussions, agricultural subjects, sports, college activities, children's programs, musical and entertainment numbers, and educational religious and civic programs. It is planned to serve all local, civic, educational, religious and similar organizations free of charge and a number of such organizations have already been contacted and invited to broadcast over the proposed station. Thirty percent of the total allotted time will be devoted to the broadcasting of commercial programs; 51% will be supported by live talent; 33.5% will be used for popular and 14.2% for classical music; 14.7% for news; 1.7% for religious; 1% for civic; 25% for educational and 9.9% for miscellaneous programs.

While the applicant proposes to render primarily a local program service, it is contemplated affiliating later with the Columbia Broadcasting System.

Sources of talent available for use over the proposed station include a number of local orchestras, glee clubs and other musical organizations, as well as individual vocalists, instrumentalists and entertainers. While a substantial number of these groups and individuals are now broadcasting over an existing local station (WCSC) the evidence indicates that there is sufficient local talent in Charleston to adequately supply the needs of two broadcast stations.

The City of Charleston is located on the Atlantic Seaboard and, according to the 1930 United States Census, had a population of 62,265. It is the largest city in the state and the seat of Charleston County, which has an area of 923 square miles and a population of 101,050 (1930 United States Census). A United States Navy Yard is located five miles distant from Charleston. According to the 1935 United States Census of business (Retail Establishments), there are located in Charleston 972 retail stores with total annual sales of \$20,142,000 and in the rural sections of Charleston County there are 340 additional stores with total sales of \$2,474,000. The retail

establishments in Charleston employ 3,576 persons with annual pay rolls of \$2,530,000. The retail stores located in the rural sections employ 392 full-time employees with annual pay rolls of \$204,000. Charleston is an important center for the manufacture of fertilizer, asbestos, cigars, and automobile accessories. This city is a port and does a considerable amount of importing and exporting. The pursuits of the inhabitants of the surrounding rural area are predominantly agricultural.

Station WCSC, which is located in Charleston, and operates on the regional frequency 1360 kilocycles, with power of 500 watts night, 1 kilowatt local sunset, unlimited time, is the only station which renders primary broadcast service to this area. No other broadcast station renders a signal in excess of 0.5 millivolt per meter throughout this entire area. However, during daytime hours, Stations WIS, Columbia, South Carolina, and WTOG, Savannah, Georgia, render signals which approximate this intensity in portions thereof.

Station WSOC, Charlotte, North Carolina, is located at a shorter distance than that considered necessary under average conditions to avoid objectionable interference from the operation of a broadcast station as proposed herein. However, the former is at present limited to a greater extent by other stations than would be expected from the proposed operation of this applicant even with the use of a one-half wave vertical antenna, such as it plans to install. A grant of this application would not, therefore, adversely affect the service of WSOC. It is predicted that the operation of WSOC would limit the service of the proposed station during nighttime hours to the approximate 2.8 millivolt per meter contour.

It is estimated that during nighttime hours the 10 millivolt per meter contour of the proposed station will include a population of 68,500 and that the 2.8 millivolt per meter contour (the predicted outer limitation of the useful service area) will embrace a population of 76,300. During the day it is estimated that the 10 millivolt per meter contour will include a population of 72,280, the 2 millivolt per meter contour 88,300, and the 0.5 millivolt per meter contour 103,300. These estimates are based upon the use of a one-half wave antenna erected on the water front at the edge of the business district of the city. It is also estimated that during the day the service area of the proposed station will attain approximately the same coverage as that of Station WCSC, but will be smaller at night.

The South Carolina Broadcasting Company, intervener in this proceeding, is the licensee of Station WCSC, Charleston, South Carolina. The stock of the intervener has been held by the Liberty

Life Insurance Company of Greenville, South Carolina, for approximately five years. The latter also owns the stock of Station WIS, Inc., licensee of Station WIS, Columbia, South Carolina.

The evidence indicates that the majority of the stockholders of the Liberty Life Insurance Company are residents of Greenville and there is no showing that, at the time of the hearing, any of this stock was owned by residents of Charleston. The intervener submitted in evidence a schedule of programs broadcast for one typical week, which includes news, weather reports, religious services, musical selections, drama, educational discussions, health talks, sports, civic programs, and other features. Station WCSC is affiliated with the National Broadcasting Company, Inc. 61.6% of the allotted time is devoted to network programs and 31.3% to commercial. An analysis of the various types of programs broadcast at the request of local organizations for the year 1937 indicates that 19½ hours were devoted to agriculture, 117½ hours to civic and charitable organizations, 40½ hours to educational features, 9 hours to fraternal subjects, and 197¼ hours to religious programs. It is the policy of this station to broadcast all programs of civic, educational, and religious and similar organizations free of charge. The facilities of this station have been made available on numerous occasions for the use of the local Police Department. During the same year this station employed approximately 80 local musical and dramatic organizations and individual entertainers to furnish talent in support of certain of its programs, which occupied approximately 209¼ hours. The station spends between approximately \$50.00 and \$60.00 monthly for live talent.

The operation of Station WCSC is under the general supervision of the Vice President of the Liberty Life Insurance Company (also the general manager of Station WIS, Columbia, South Carolina) who makes periodic visits to Charleston for this purpose. Station WCSC maintains 15 regular employees. A former local manager, who supervised the station for a period of two years prior to January 1, 1938, was the former manager of Station WNOX, Knoxville, Tennessee. The station now employs a manager who has always been a resident of Charleston. The program director was formerly employed by Station WIS, Columbia, and two salesmen were transferred from Station WNOX for the purpose of procuring local advertising. The local advertising rates charged by Station WCSC are materially higher than those proposed by the applicant herein.

It was contended, in substance, by the intervener that there is insufficient business available in Charleston to adequately support two broadcast stations. In support of this contention testimony was introduced on behalf of the intervener indicating that Station WCSC

has operated at a loss for the past five years; that for the fiscal year ending June 30, 1934, this loss was \$138.30; that for the fiscal year ending June 30, 1935, the loss totaled \$361.31; for the period ending June 30, 1936, the loss amounted to \$1,546.35; and for the period ending June 30, 1937, the loss was \$630.35. No allowance was included in these figures for the first three periods for the depreciation of equipment and other property. The salaries of the general manager and of part-time employees, bookkeeping expenses, and costs of office supplies have never been paid from the station's earnings. These expenses, as well as most of the attorney and engineering fees, are met from the earnings of Station WIS and other corporate assets of the Liberty Life Insurance Company. In addition, it is claimed that for the year 1937 Station WCSC received an income of \$9,269.04 from advertisers who have indicated their intention to patronize the proposed station and that should said advertisers discontinue their business with WCSC, its income might be reduced to such an extent as to bring about a reduction in its personnel, thereby detrimentally affecting its service to the public. There is no evidence in this record, however, that these advertisers will discontinue their present accounts with Station WCSC. The testimony also indicates that for the year 1937 Station WCSC derived an income of \$20,231.28, or 61.6% of its total revenue from 146 local advertisers and only 30.1% from national advertisers, the remainder being received from the network. Station WCSC and WIS maintain sales representatives in four cities, namely, New York, Detroit, Chicago, and Atlanta, for the purpose of securing national advertising accounts. In addition, between two and three local salesmen are always employed in Charleston to secure local business. As indicated above, two of the salesmen were formerly employed by Station WNOX and have had considerable experience in the advertising field. It was contended by a witness who testified for the intervener that the local advertising territory has been thoroughly canvassed by these salesmen in efforts to secure additional business. No specific evidence was furnished, however, as to the number and character of businesses which have been solicited in addition to those now using this station. At the time of the hearing the Liberty Life Insurance Company was not advertising over Station WCSC, but in previous years announcements of its business were made for which no charges were made and no credit allowed. Moreover, no estimate was furnished as to the value of these announcements to the business of the insurance company.

As shown above, Station WCSC operates on a regional assignment, the purpose of which is to serve not only the center of a community

but also the surrounding area. The applicant herein requests a local assignment which is designed to serve only urban population.

The Commission is not convinced from the above evidence that the intervener has established that there is insufficient business in Charleston to commercially support a new local broadcast station in addition to the existing regional station. As indicated above, statistics from unimpeachable Federal sources show that there are 972 retail stores in Charleston alone doing an annual business of over \$20,000,000 and, in addition, 340 additional stores in the surrounding rural area. As shown above, only 146 local advertisers patronized this station during 1937. It is apparent from the foregoing that there is a large amount of potential business in this community which is not now advertising by radio. It may be reasonably assumed, in view of facts elsewhere pointed out, that a number of these concerns which do not at present advertise over the existing regional station would be disposed to patronize a local broadcast service at the lower rates proposed by the applicant herein. As indicated in the above discussion, Station WCSC is owned and managed for the most part by persons who reside in other communities. Moreover, the former local manager, as well as the present program director and salesman, have apparently resided in Charleston only for comparatively brief periods of time. The Commission is of the opinion that a second broadcast station owned and controlled by persons, such as the members of the applicant partnership, who have long resided in Charleston, who have extensive local connections and who are familiar with the local needs and business conditions, could, by efficient management and enterprise, obtain sufficient commercial support to insure its successful operation in that community. The capacity of these partners to secure business for the proposed station has been demonstrated by the fact that they have already obtained written commitments from a number of local commercial concerns which would yield revenue in a sum which substantially covers the estimated monthly cost of operation.

GROUNDS FOR DECISION

On the record in this case the Commission finds:

1. That the members of the applicant partnership are qualified in all respects to construct and operate a broadcast station such as proposed herein;
2. That the proposed program service is well balanced and designed to meet the needs and interests of the listening area;

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3. A sufficient need is shown in the Charleston area for a local broadcast service, such as proposed herein, to warrant the limitation which is expected to be imposed thereto during nighttime hours through the operation of an existing station;

4. That the operation of a broadcast station as proposed herein will not, through objectionable interference, adversely affect the service of any existing broadcast station;

5. That there are sufficient potential sources of advertising available in the Charleston area to commercially support a local broadcast station in addition to the existing regional station;

6. That a grant of the application will serve public interest, convenience, and necessity.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D. C.

<p>In the Matter of TWIN STATE BROADCASTING CORPORATION (WNBX), SPRINGFIELD, VERMONT. For Construction Permit.</p>	}	DOCKET No. 2758.
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ORDER

It appearing that a hearing on the above-entitled application was held on June 3, 1935, and that subsequent thereto the Commission granted the application but, upon consideration of the petition for rehearing filed in behalf of Station WHIO, Dayton, Ohio, a respondent, the Commission reconsidered its action and, by its Order of October 19, 1935, granted a temporary authority to the above applicant to operate with a simple antenna on 1260 kilocycles, 1 kilowatt, unlimited time, for the purpose of conducting tests for a period of ninety days which authority was later extended, and the Commission, pursuant to the applicant's petition, issued an Order on March 17, 1936, authorizing the applicant, among other things, to erect a directional antenna so that the unabsorbed field intensity at one mile in the direction of Station WHIO, Dayton, Ohio, does not exceed 75 millivolts per meter, unlimited time, and directed that evidence of the performance thereof be furnished to the Commission; and

It further appearing that on June 17, 1938, the applicant filed with the Commission a petition to remove the above application from the Hearing Docket and to grant the same, and, in support thereof included therein a verified Statement of Facts showing that it has complied fully with the Commission's Order of March 17, 1936, and it further appearing that the applicant has complied fully with said Order;

IT IS ORDERED, That said application be and it is hereby dismissed from the Hearing Docket and granted pursuant to the Commission's Order of March 17, 1936, and subject to the condition that a directional antenna be employed at night so that the unabsorbed field intensity at one mile in the direction of Dayton, Ohio, does not exceed 75 millivolts per meter.

IT IS ORDERED, This 31st day of August 1938 that said application be and the same is hereby granted, effective at 3:00 a. m., E. S. T., on the 28th day of September 1938.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D. C.

<p>In the Matter of RADIO STATION WMFR, INC. (WMFR), HIGH POINT, NORTH CAROLINA. For Modification of License.</p>	}	<p>DOCKET No. 4838.</p>
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Decided September 6, 1938

John W. Guider, D. M. Patrick, Karl A. Smith, and Lester Cohen on behalf of Radio Station WMFR, Inc.; *John B. Brady* on behalf of Johnson City Broadcasting Company.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

By THE COMMISSION (Commissioner Brown not participating):

STATEMENT OF FACTS

This proceeding arose upon the application of Radio Station WMFR, Inc. (licensee of Station WMFR, operating on the frequency 1200 kc. with power of 100 watts, daytime only), requesting modification of license to authorize the operation of WMFR unlimited time. The hearing was held before an examiner on December 1, 1937, who, in his report (I-601), recommended that it be granted. Exceptions were filed and oral argument requested on behalf of Johnson City Broadcasting Company. These exceptions and the request were subsequently withdrawn.

The applicant's legal, technical, and financial qualifications are not in issue in this proceeding.

There is no primary broadcast service available to the city of High Point during nighttime hours. It is estimated that WMFR, operating during the evening hours, will render primary service to 61,000 persons residing in High Point and the contiguous area. Of this number about fifteen percent now receive primary nighttime service from other stations and the remainder are lacking in such service.

According to 1930 United States Census, High Point had population of 36,745. In 1936 the Bureau of Census estimated that the city had population of 48,517. The city is an important center for furniture and textiles manufacturing.

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Although the financial qualifications of this applicant are not in issue, the Commission considers it desirable to discuss the financing of WMFR, operating as proposed, inasmuch as the record discloses that such operation of the station will result in increased expenditures of from \$312 to \$415 a month. The present value of the station equipment and plant is \$10,000. There are no encumbrances on these assets. The president of the licensee corporation testified that the increase in expenses could be absorbed in the present income of the station. Moreover, many local merchants testified that they would take advertising time over WMFR during nighttime hours as well as continuing with their present use of the station. There will be no increase in rates for advertising time.

In addition to the testimony of the President of WMFR, Inc., a number of prominent citizens of the community testified by depositions as to the desirability and general demand for a nighttime local service for expression of public and civic affairs, as well as for local advertising purposes.

The foregoing facts support the conclusions that there is a compelling public need for primary nighttime service in the High Point area, and that the station's operation as proposed will be adequately financed.

The applicant has donated considerable time to civic, charitable, religious, social, and philanthropic organizations of the community. There has been complete cooperation between the station and these organizations. The applicant will give increased time to the foregoing institutions when operating as proposed.

WMFR maintains equipment for rebroadcasting to the High Point area programs originating at WLW. The station has remote lines extending from WMFR to a church in High Point and to a nearby city for the purpose of broadcasting programs from these points. Moreover, musical selections from a local hotel orchestra are offered to the community by means of an additional remote line. This service will be continued during evening hours when WMFR is operating as proposed. The past programs of the station have been meritoriously allocated to local governmental activities, civic agencies, religious and educational institutions, news, and entertainment. In brief, WMFR's program service has been diversified, instructive, and adapted to meet the needs of the area served, and this service will be amplified by granting the application.

WMFR will render interference-free service to its 3 mv./m. contour during evening hours. Stations of the class of WMFR, operating as proposed herein, are normally afforded protection to their 2 mv./m. contours.

Moreover, the proposed operation of WMFR will limit the service of WLVA, Lynchburg, Virginia, to its 2.5 mv./m. contour for ten percent of the time at night. The operation of Station WFTC, however, now limits the service of Lynchburg to its 2.3 mv./m. contour for ten percent of the time during night hours. The record discloses that there are about 680 persons residing between the 2.3 mv./m. contour and 2.5 mv./m. contour of Lynchburg. There will, therefore, be an increase in interference to the service of Lynchburg which will probably affect about 680 persons. But, as was already shown, over 50,000 people who do not now receive primary nighttime service will receive this service from WMFR operating as proposed. The Commission finds that the public need for the operation of WMFR as proposed outweighs the factors of interference heretofore discussed.

WAIM, Anderson, South Carolina, and WFTC, Kinston, North Carolina (both stations operate on the frequency 1200 kc.), are located at shorter distances than those normally considered necessary to avoid objectionable interference. These stations will be limited to a greater extent by the operation of other radio stations than by the operation of WMFR as proposed.

At the time this hearing was held there was an application pending for new radio broadcast facilities at Johnson City, Tennessee, to use the frequency 1200 kc. and to operate with power of 250 watts day and 100 watts night. The Commission has since granted this application. The night operation of WMFR will limit the nighttime service of this station to its 2.44 mv./m. contour. The station is, however, limited to the same extent by the operation of WBHP, Huntsville, Alabama.

GROUND'S FOR DECISION

On the record in this case, the Commission finds:

1. The fact that there is a compelling public need in High Point, North Carolina, for primary nighttime service justifies the Commission in departing from its usual allocation standards applicable to a station of the class of WMFR, operating as proposed and with the type of programs shown; and also justifies the Commission in granting this application although there will be slight interference to the service of Lynchburg.

2. The granting of this application will provide a fair, efficient, and equitable distribution of radio service.

3. There will be no increase in objectionable interference to the services of other existing stations resulting from the operation of WMFR as proposed.

4. The public interest, convenience, and necessity will be served by the granting of this application.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of
SHIRLEY D. PARKER,
YAKIMA, WASHINGTON.
For Construction Permit.

} DOCKET No. 4770.

Decided September 6, 1938

Eugene Meacham, Paul D. P. Spearman, Elmer W. Pratt, and Allen David on behalf of Shirley D. Parker; *Ben S. Fisher, John W. Kendall, and Charles V. Wayland* on behalf of Stations KXRO and KIT; and *Frank Stollenwerck* on behalf of Ellwood Warwick Lippincott, Inc.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION (Commissioner Brown not participating) :

STATEMENT OF FACTS

This proceeding arose upon the application of Shirley D. Parker for a construction permit to establish a new radio broadcast station at Yakima, Washington, using the frequency 1310 kc., with power of 100 watts night and 250 watts day, unlimited hours. A hearing was held before an examiner on October 19, 1937, who, in his report (I-566), recommended that it be denied. Exceptions filed on behalf of the applicant raised no question not necessarily involved in a determination of the case on its merits. Oral argument was heard by the Commission on April 14, 1938.

Shirley D. Parker is a resident of Yakima, Washington, and a citizen of the United States. He has lived in Yakima since 1934. For a period of twenty years prior to that time he was a frequent visitor to Yakima. Parker has a law degree and since leaving college has been engaged in both the practice of law and lecturing. His principal occupation at present is aiding his mother in the administration of a large estate.

The applicant has \$644,070.44 worth of assets, including approximately \$96,000 in cash. No liabilities were shown.

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Station KIT, located at Yakima, operating unlimited hours, renders the only primary service to this area. Some secondary service is received in the Yakima area from Station KVI, Tacoma, and KHQ, Spokane. During evening hours secondary service of an intermittent nature is available from distant clear-channel stations.

The estimated cost of constructing the station is \$14,300. The monthly operating cost of the proposed station is estimated at \$3,845. Written commitments for the purchase of advertising time were secured from Yakima merchants totaling \$3,867.70 a month.

According to the United States Census for 1930, Yakima had a population of 22,101. The city is the county seat of Yakima County which has population of 77,402. The City of Yakima has a public school system which comprises lower grade schools, a junior college, junior high schools, and a senior high school. In addition, there are three parochial schools. The total enrollment in these institutions is 7,810. Numerous religious denominations have churches in Yakima. There are three daily and two weekly newspapers published in the city.

The Census of Business for 1935 shows for the City of Yakima, 222 service establishments with annual receipts of \$818,000, 581 retail establishments with annual sales of \$19,826,000, and 124 wholesale establishments with annual sales of \$21,290,000. According to the same source, Yakima County has 363 service establishments with annual receipts of \$1,143,000, 1,196 retail establishments with annual sales of \$29,766,000, and 209 wholesale establishments with annual sales of \$31,196,000. Agriculture and lumbering are the principal occupations of the area.

The applicant proposes to install remote lines to churches, and in addition to broadcast programs of diversified interest from universities, colleges, and schools located outside of Yakima. The existing station is affiliated with a broadcast network and approximately 42% of its time is occupied by chain programs. A proposed program schedule of the applicant shows allocations of time to news, stock quotations, civic programs, and educational programs including programs originating from the University of Washington. A program schedule for a period of one week's broadcasting was submitted on behalf of Station KIT. This schedule includes news, stock reports, educational, and civic programs. A comparison of the two schedules leads to the conclusion that they are substantially similar.

Some testimony shows that another station in Yakima could be advantageously used by several religious denominations. There is further evidence to the effect that a few advertisers were unable to secure the exact time they desired by reason of prior commitments

on the part of KIT. The great preponderance of the witnesses in this case testified, however, that KIT has rendered adequate and meritorious service to the religious, charitable, educational, and civic institutions, and to the business interests of the community.

A number of witnesses testified that for the last few years there was an increase in population of the Yakima area totaling about 8,000 persons. But there was no persuasive showing that the present service failed to fulfill the needs of the locality.

Moreover, much of the testimony of the applicant's witnesses was directed to the inadequacy of the coverage of KIT as it operated in the past, namely, on the frequency 1310 kc. with power of 100 watts night and 250 watts day. The station now operates on the frequency 1250 kc. with power of 250 watts night and 500 watts day. The applicant requests the facilities vacated by KIT. There is evidence in the record tending to show that the proposed station would make more efficient use of the 1310 kc. frequency than KIT formerly did. It is clear, however, and the record so shows, that the coverage of KIT under present operating conditions is greatly in excess of the coverage of the proposed station.

The talent available in the community includes bands, orchestras, pianists, violinists, clarinetists, and vocalists.

The applicant proposes to employ experienced personnel to insure efficient operation of the proposed station. The proposed transmitting equipment meets with the Commission's engineering requirements.

Station KXRO, Aberdeen, Washington, is located at a shorter distance than that ordinarily considered necessary to avoid objectionable interference. The applicant's engineer estimated that there would be mutual interference between KXRO and the proposed station to their 2.7 mv./m. contours at night. The Commission's engineer estimated that the mutual limitation would be to the 2.5 mv./m. contours of the stations. These estimates were based on the antennas of the proposed station in KXRO. The interference-free areas of these stations would be the same as if the antenna efficiencies were the minimum allowed under the rules of the Commission.

Under the Commission's engineering standards stations of the class of KXRO and the proposed station are ordinarily protected to their 2 mv./m. contours at night. It is apparent, therefore, that the interference to Station KXRO and the proposed station will exceed this standard should the application herein be granted. The Commission is of the opinion that the applicant has failed to show a public need for the proposed service so compelling as to justify a departure from its engineering standards.

GROUND~~S~~ FOR DECISION

On the record in this case, the Commission finds:

1. The applicant is legally, technically, and financially qualified to construct and operate the station as proposed.
2. The applicant has failed to show a compelling public need for the additional service proposed to be rendered by him which would justify the Commission in departing from its engineering standards in order to grant the application.
3. There will be mutually objectionable interference to the service of the proposed station and an existing radio broadcast station.
4. The public interest, convenience, and necessity will not be served by granting this application.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D. C.

<p>In the Matter of FIFTH AVENUE BROADCASTING CORPORATION (WFAB), Assignor; DEBS MEMORIAL RADIO FUND, INC. (licensee of WEVD), Assignee; NEW YORK, N. Y.</p>		DOCKET No. 4969.
For Authority to Voluntarily Assign the License of Station WFAB.		

Decided September 6, 1938

Horace L. Lohnes and *H. L. McCormick* on behalf of the Assignor;
Louis G. Caldwell, *Reed T. Rollo*, and *Alexandar Kahn* on behalf of
 the Assignee; and *Walter Johnson* on behalf of the Federal Com-
 munications Commission.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION (McNinch, Chairman, Commissioner Brown and
 Commissioner Craven not participating):

STATEMENT OF FACTS

This proceeding arose upon an application requesting the Commission's authority to voluntarily assign the license of Station WFAB, New York, N. Y. (operating on the frequency 1300 kilocycles with 1 kilowatt power, sharing time with Stations WEVD, New York, N. Y., WHAZ, Troy, New York, and WBBR, Brooklyn, New York) from the licensee, Fifth Avenue Broadcasting Corporation to the Debs Memorial Radio Fund, Inc. The assignee herein is the licensee of Station WEVD. It is proposed by the transfer to delete Station WFAB and its hours of operation be added to the hours now assigned to Station WEVD.

On March 1 and 10, 1938 a hearing was held on this application before an examiner, who, in his report (I-650), recommended that it be granted.

On November 18, 1932 the Federal Radio Commission approved the assignment of the license of Station WFAB from the Defenders

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of Truth Society, Inc., to the present licensee. The station has operated by successive renewals of the license since that date.

The Debs Memorial Radio Fund, Inc., the assignee herein, was organized in 1928 under the laws of the State of New York. It has an authorized capitalization of 100 shares of common stock of no par value. There are 25 stockholders, each of whom owns 4 shares of stock. Each stockholder is a director of the corporation. The officers of the corporation are as follows: President, vacant at the present time; Alexander Kahn, Vice President; Adolph Held, Vice President; D. C. Vladeck, Treasurer; and Henry Greenfield, Secretary.

In view of the fact that the Debs Memorial Radio Fund, Inc., is the licensee of an existing radio broadcast station, its legal and technical qualifications have heretofore been determined by the Commission.

The assignor and assignee entered into a contract dated July 26, 1937, whereby all of the assets of Station WFAB as reflected by the inventory made on July 3, 1937, are to be sold, assigned, and conveyed to the Debs Memorial Radio Fund, Inc., for the consideration of \$85,000. All of the real and personal property owned by the station, including the furnishings, equipment, and unexpired contracts for the sale of time of the station, are to be conveyed free and clear of debts, liens, mortgages, etc. The contract further provides that the assignor shall pay all liabilities of the station that are due and payable as of the 30th day after the Federal Communications Commission has approved the transfer. As of the same date, the assignor is to retain the amounts due on the expired portions of the contracts for the sale of time of Station WFAB. It is also agreed between the parties that all profits and surplus up to the amount of \$2,500 arising from the operation of the station during this 30-day period between the time of approval of the transfer by the Federal Communications Commission and the consummation of the contract shall belong to the assignor. Should the profit and surplus during this 30-day period exceed this sum (\$2,500), the excess shall belong to the assignee, but should the profits and surplus be less than \$2,500, the assignee shall pay in addition to the purchase price the difference between the surplus and this sum. Should there be no surplus or a loss during the 30-day period, the assignee shall then pay the entire \$2,500 to the assignor, in addition to the purchase price. Supervision and control of Station WFAB shall remain with the assignor until 30 days after the transfer is approved by the Federal Communications Commission. The purchase price is to be paid as follows: \$10,000 to be deposited in escrow and paid over to the assignor with

an additional \$75,000 thirty days after the Federal Communications Commission shall approve the transfer.

Pursuant to the terms of the contract, the assignee has deposited \$10,000 in escrow with the Public National Bank and Trust Company located in New York, N. Y. This fund is to be held for the assignor pending the consummation of the contract of sale.

The total original cost of the station property included in the contract of sale (inventory made as of July 3, 1937) was \$68,616.05. The depreciated value of said property was estimated at \$31,691.08 and the replacement value at \$55,459.46.

For the period July 1, 1936 to July 3, 1937 the revenue derived from the sale of time of Station WFAB was \$112,574.92 and the cost of operation was \$108,047.76, leaving a net profit of \$4,527.16. Similarly, the sale of time of the station for the period July 4, 1937 to January 31, 1938 was \$54,814.51 and the cost of operation was \$54,592.98. The net profit resulting from the operation of WFAB for this period, therefore, was \$221.53. As of February 28, 1938 there were unexpired contracts on the assignor's books for the sale of time of Station WFAB in the amount of \$28,356. In addition, the assignor has an estimated annual revenue of \$35,065 derived from the sale of the station's time to advertisers that are not on a definite contract basis. This estimated revenue is based upon the sale of time to advertisers that have regularly used the facilities of WFAB over a period of two to five years, and the assignment of the license of WFAB would not be expected to cause any of these advertisers to discontinue using the station's facilities.

As of February 1, 1938, the Debs Memorial Radio Fund, Inc., had total assets of \$198,033.88, consisting of \$143,647.12 in cash on hand and in banks, fixed assets of \$20,645.27, and other assets valued at \$33,741.49. The liabilities were \$14,355.67, leaving a net worth of approximately \$183,678.22. From the operation of Station WEVD, the assignor derived a net profit of \$17,483.89 for the year ended December 31, 1937.

Based on the operating expenses of WFAB for the year 1937, the assignee estimates that the proposed transfer of Station WFAB to the assignee would result in economies of approximately \$38,000 annually. This sum is predicated upon the consolidation of the studios of WFAB with those of Station WEVD whereby the following duplicate items would be eliminated: line rentals, light, power, heat, administrative and executive personnel, staff entertainers, studio rents, telegraph, telephone, legal fees, and miscellaneous operating expenses.

Station WEVD has a staff of 26 full time employees for the operation of the station. The assignee contemplates that 13 additional

employees would be needed to insure the efficient operation of the station under its proposed assignment.

A proposed program schedule for Station WEVD, utilizing the 36 additional hours which it would receive should WFAB be deleted, was submitted in evidence. The program schedule is well diversified and of a high character in keeping with the policy of the assignee. The schedule indicates that the additional hours of operation would be utilized primarily for enlarging the sustaining programs broadcast by the station. Under its present assignment, the programs broadcast by Station WEVD are approximately 36% commercial and 64% sustaining. The program service of the station under its proposed assignment would be approximately 20% commercial and 80% sustaining. The assignee stated that the additional time available to the station would, therefore, be devoted largely for civic and educational purposes which would be of material value and of interest to the public. Time would also be donated to religious and charitable organizations in the New York metropolitan area.

GROUNDS FOR DECISION

On the record in this case the Commission finds:

1. The proposed assignee, the Debs Memorial Radio Fund, Inc., is qualified in all respects to assume the ownership and operation of Station WFAB as the licensee thereof.

2. The proposed consolidation of Stations WFAB and WEVD will result in a more economical and efficient use of the assigned facilities.

3. The granting of this application will serve public interest.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D. C.

In the Matters of BROADCASTERS, INC., GASTONIA, NORTH CAROLINA. For Construction Permit.	}	DOCKET No. 4603.
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F. C. TODD, ¹ GASTONIA, NORTH CAROLINA. For Construction Permit.	}	DOCKET No. 4927.
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Decided September 6, 1938

Clarence C. Dill and *James W. Gum* on behalf of F. C. Todd; *Horace L. Lohnes* and *E. D. Johnston* on behalf of E. DeVore Andrews and Mrs. Annie L. Andrews, Greater Greenwood Broadcasting Station, Intervenor; *A. V. Dalrymple* on behalf of the Federal Communications Commission.

STATEMENT OF FACTS, GROUNDS FOR DECISION AND ORDER

BY THE COMMISSION (McNinch, Chairman, and Commissioner Brown not participating) :

STATEMENT OF FACTS

This proceeding arose on the application of Broadcasters, Inc., and the application of F. C. Todd, each representing a construction permit for establishing a new radio broadcast station at Gastonia, North Carolina, to operate on the frequency 1420 kilocycles, with power of 100 watts, 250 watts L. S., unlimited time. These applications were designated for hearing before an examiner who, on April 29, 1938, submitted his report (I-645). No exceptions were filed to the examiner's report and no request has been made for oral argument before the Commission.

IN RE DOCKET NO. 4603

When this case was called for hearing the applicant failed to appear and submit evidence in support of its application. The application of Broadcasters, Inc., will be denied as in default in the Order hereinafter made.

¹ The Commission on October 25, 1938, dismissed protest of Albermarle Broadcasting Station to the above decision and denied request for hearing.

IN RE DOCKET NO. 4927

The applicant, F. C. Todd, is a citizen of the United States. He has resided in Gastonia, North Carolina, for the past twenty-five years. He is the majority stockholder of F. C. Todd, Inc., which concern is engaged in the sale and distribution of textile machinery and supplies. Mr. Todd is a member of a number of civic organizations of Gastonia and active in the work of a number of religious organizations of that city. He has had experience in directing musical organizations, such as orchestras, choirs, and bands, and has had some experience in the preparation and presentation of programs for radio broadcasts. A number of citizens of Gastonia testified that Mr. Todd's reputation for honesty and fair dealing was of the highest order.

As of October 28, 1937, the applicant's total assets amounted to \$76,701. His liabilities at that time amounted to \$15,062, leaving a net worth of \$61,636. At the time of hearing the liabilities had been reduced by \$3,437.

The applicant has had no experience in the operation of a radio broadcast station. Should this application be granted he will employ experienced operators and others such as will insure the proper and efficient operation of the station.

The transmitting equipment proposed complies with the rules and regulations of the Commission. Should the application be granted, the antenna and its site will be subject to the approval of the Commission. The estimated cost of the proposed station is \$10,000 and the estimated monthly operating expense thereof is \$1,200. The applicant testified that he is financially able and willing to maintain the station in operation for a year, even if operated at a loss.

Gastonia is the county seat of Gaston County. Based upon the United States Census (1930), Gastonia had a population of 17,093 and Gaston County a population of 78,093. This population was about 81% white and the remainder negro.

Under the United States Census (1930) it was estimated that the population at that time within a radius of 15 miles from the city was 135,000. It was further estimated that since the last Census (1930) this population within the 15-mile radius had increased at least 10%.

One hundred and four textile mills operate in the County of Gaston. These mills are situated near Gastonia and employ approximately 23,000 people, making a weekly pay roll of approximately \$300,000. Under the 1935 Business Census of the United States the City of Gastonia had 243 retail stores, with annual sales of \$6,000,063. These establishments had 964 employees with a total annual pay roll

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of \$701,000. The bank deposits of Gastonia as of December 31, 1937, were \$4,600,000.

It is estimated that a monthly revenue of \$3,000 would be derived from the proposed station. This estimate is based in part upon the applicant's general knowledge of the business conditions in Gastonia and his own investigation of possible advertisers in the area proposed to be served, and in part upon the testimony of prospective advertisers who testified they would buy time from the proposed station. A broadcast station was operated in Gastonia between 1928 and 1933. On the latter date this station was moved to Charlotte, North Carolina, and now operates as Station WSOC. There is no satisfactory evidence of record as to why this station was moved to Charlotte.

A number of residents of Gastonia testified that a need exists for the proposed station. This need is based upon the advertising requirements for the manufacturing plants and retail establishments located in the area to be served as well as the dissemination of information pertaining to the general welfare of the people residing in Gastonia and Gaston County. Gastonia has one daily newspaper. The applicant herein has no interest in this newspaper.

The program proposed by the applicant is designed to meet the needs of the area to be served. The station will broadcast religious, educational, civic, and charitable programs without charge. There are 29 churches located in Gastonia. There are a considerable number of educational and civic organizations located in Gastonia. It is intended that church services will be broadcast each Sabbath, devotional services broadcast each morning, including Sundays, and the facilities of the station offered to the various religious organizations without discrimination.

It is expected that the following percentages will be devoted to the various classes of broadcasts: entertainment, 69.47%; religious, 7.21%; civic, 7.21%; educational and public service, 14.90%; miscellaneous, 1.21%.

There is ample live talent in Gastonia for the broadcast programs proposed by the applicant. It is the intention of the applicant to present 85% of the programs by live talent and the remainder by electrical transcriptions.

Certain advertising rates for the use of the services of the station were submitted by the applicant. These rates in part are as follows: one hour, \$40.00; 45 minutes, \$30.00; 30 minutes, \$22.50; 15 minutes, \$12.00; 5 minutes, \$4.00; spot announcements, \$1.75. There are various discounts for quantity advertising. The applicant testified that in the event the proposed advertising rates are beyond the reach of the advertisers they will be reduced.

There are 13 radio broadcast stations located in the State of North Carolina. Gastonia has no broadcast station. Two stations located in Charlotte, North Carolina, namely, WBT and WSOC, render service to the Gastonia area. Station WBT renders primary service in the business and residential districts of Gastonia while Station WSOC renders primary service only to the area lying between Gastonia and Charlotte. Charlotte, North Carolina, is about 20 miles from Gastonia. There is some intermittent service from various distant clear channel stations. No objectionable interference will be expected to result in the operation of the station proposed herein to any existing radio broadcast station.

An application (B3-P-2029) is pending for an increase of power for Station WBIG at Greensboro, North Carolina. This station now operates on the frequency 1440 kilocycles, with power of 1 kilowatt, unlimited time, and the application requests an increase of power to 5 kilowatts, daytime only. Based upon the assumption of average conductivity in this area, no objectionable interference will be expected to result if the proposed Gastonia station operates simultaneously with the Greensboro station (WBIG) operating with the proposed increase of power.

GROUND'S FOR DECISION (DOCKET NO. 4927)

On the record in this case, the Commission finds:

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

(2) There is a public need in the Gastonia, North Carolina, area for the broadcast service proposed by the applicant.

(3) The program service proposed by the applicant is meritorious for the class of station requested and is designed to meet the needs of the area to be served.

(4) There is sufficient commercial support available in the Gastonia, North Carolina, area for the proposed station.

(5) The operation of the proposed station would not be expected to involve any objectionable interference with existing broadcast services or with the operation of stations proposed in pending applications.

(6) Public interest, convenience, and necessity will be served by granting this application.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D. C.

<p>In the Matters of SOUTHERN BROADCASTING CORPORATION, NEW ORLEANS, LOUISIANA. For Construction Permit.</p>	}	DOCKET No. 3999.
<p>THE COLISEUM PLACE BAPTIST CHURCH (WBNO), NEW ORLEANS, LOUISIANA. For Renewal of License.</p>	}	DOCKET No. 4008.
<p>THE COLISEUM PLACE BAPTIST CHURCH (WBNO), NEW ORLEANS, LOUISIANA. For Construction Permit.</p>	}	DOCKET No. 4580.

Decided September 6, 1938

Elmer W. Pratt on behalf of applicant, The Coliseum Place Baptist Church, WBNO; *Frank Stollenwerck* on behalf of applicant, Southern Broadcasting Corporation; *Karl A. Smith* and *Lester Cohen* on behalf of Standard Life Insurance Company of the South; *Louis G. Caldwell*, *Donald C. Beeler*, and *Percy H. Russell*, on behalf of Station WOAI; *Hugh B. Hutchison* on behalf of the Commission.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION:

STATEMENT OF FACTS

IN RE DOCKET NO. 3999

Southern Broadcasting Corporation, New Orleans, Louisiana, filed its application for permit to construct a new radio broadcast station to operate on 1200 kilocycles with power of 100 watts night, 250 watts local sunset, unlimited time.

In this application Southern Broadcasting Corporation sought the present assignment of Stations WBNO and WJBW, both of which

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operate on 1200 kilocycles in New Orleans, Louisiana, on a time-sharing basis.

The matter was designated for hearing before an Examiner and when the case was called for hearing counsel for the applicant requested permission to withdraw its application on condition that the applicant be permitted to remain as respondent to the application of Charles C. Carlson for renewal of license of Station WJBW (Docket 4330). Counsel for Station WJBW and counsel for Station WBNO moved that the application of Southern Broadcasting Corporation be dismissed with prejudice. The Examiner allowed the applicant to withdraw its application and he ruled that it might remain as a respondent in Docket No. 4330. Under date of February 23, 1938 (effective March 4, 1938), the Commission issued its decision in Docket 4330, granting a renewal of license for Station WJBW. The application of Southern Broadcasting Corporation will be denied as in default in the Order hereinafter made.

IN RE DOCKET NO. 4008 AND DOCKET NO. 4580

The Coliseum Place Baptist Church, New Orleans, Louisiana, in the applications in these cases seeks (1) a renewal of the license for Station WBNO, now operating on 1200 kilocycles, with power of 100 watts, sharing time with Station WJBW, New Orleans, Louisiana; (2) a change in frequency from 1200 kilocycles to 1420 kilocycles, a change in hours of operation from division of time with Station WJBW to unlimited time, and a change in power from 100 watts to 100 watts night, 250 watts local sunset.

Upon examination of the application for renewal of the station license the application might have been granted by the Commission, without further hearing, upon finding that the public interest, convenience, and necessity would be served thereby (Communications Act of 1934, Section 309 (a)); but to be better advised upon the propriety of making such finding the Commission fixed a time and a place for hearing the application, gave notice thereof to the applicant and afforded it opportunity to be heard as required by law (Communications Act of 1934, Section 309 (a)).

The applications were designated for hearing before an Examiner. A hearing was had, parties appearing before him as above shown, and the Examiner has filed his report (I-532). Exceptions were made and filed on behalf of The Coliseum Place Baptist Church and it was granted oral argument, but it later filed a brief instead. No other party made exceptions, asked for argument, or filed a brief, although the brief of the applicant was served on all other parties.

Nothing was discovered or established at the hearing sufficient to justify the Commission in refusing to renew the license of Station F. C. C.

tion WBNO; however, it was shown that upon one occasion (about Thanksgiving 1936) when the manager of the station attempted to broadcast a race-track program and events thereunder he was arrested for violation of the Louisiana law forbidding such things; and it was shown that on several occasions the applicant entered into a contract to sell its station property, and that the applicant agreed to assign its station license subject to the approval of the Commission. The licensee must be held responsible for the acts of its manager. However, in this case the Commission finds that the Board of Trustees of The Coliseum Place Baptist Church, immediately discharged the manager and thus preserved its responsibility. And respecting the matters of purchase and sale, none of which appear to have been consummated, it is not thought that the negotiations to sell the operating plant of the broadcast station, in the absence of an undertaking to assign the station license without the consent of the Commission, would constitute acts under the circumstances shown sufficient to justify deletion of the station.

In the matter of *Farmers and Bankers Life Insurance Co.*, 2 F. C. C. 455, 459, this Commission said:

In considering the question of renewal of license of an established station, the Commission must take into consideration the entire service of the station, and determine whether or not the service that the station has offered to the public is of such character as to outweigh the derelictions in the broadcasting of programs such as those above enumerated which cannot be held in the public interest.

The Coliseum Place Baptist Church has owned Station WBNO many years, and for the greater part of the time, covered by its ownership, the church has been the operating licensee of the station; and although opportunity was given, no one identified with the public interest, convenience, or necessity, appeared at the hearing in opposition to the application for the renewal of the station license and the application for the construction permit. But, on the other hand, many persons gave their depositions in favor of the applicant. Among them were The Captain of the Salvation Army; The Director of the Community Chest of New Orleans; The Executive Secretary of the Counsel of Social Agencies; William B. Wisdom, Inc., an advertising agency; the President of the La Fayette Fire Insurance Company; the President of Stone & Kessler, Inc., an insurance agency (who is President of the New Orleans Insurance Exchange and Secretary of a patriotic organization with a membership approximating 5,000, including the Sons of the Revolution, The Daughters of The American Revolution, The Louisiana Colonials, Posts of The American Legion, Posts of The Spanish-American War Veterans' Associa-

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tion, Posts of the Disabled Veterans of the World War, The Reserve Officers' Association, The National Defense Committee, Association of Commerce, Auxiliary Units of the American Legion, Veterans of Foreign Wars and Disabled American Veterans, The Army and Navy Club, and others); the President of the New Orleans Better Films Chapter (which has 200 members); the President of the Warrington Home for Women and Children, and fifty-four other organizations in New Orleans; and the Secretary of the New Orleans Association of Commerce (which has around 4,000 members).

A number of leaders of charitable, civic, and religious organizations testified by deposition that Station WBNO has in the past, when requested, cooperated in giving time for their respective campaigns and programs. The station has given time to the Works Progress Administration in assisting it to broadcast information to the public.

The applicant has had requests for time from the Association of Commerce for port and shipping news broadcasts during the morning hours, from women's clubs and from schools, for band-music broadcasts, which the applicant has been unable to grant because of its limited time; and there was no competent evidence offered to show that the broadcasts requested were made over any of the other stations in the city.

Station WBNO at present operates from 12:00 o'clock noon until 5:00 p. m., and again from 8:00 p. m. to 11:00 p. m.

The Commission finds that a great many local advertisers in New Orleans interested only in local matters, such as civic events and sports news, must depend upon nonchain stations for broadcast; and that since Stations WBNO and WJBW share time, only one nonchain station is on the air in New Orleans throughout the day.

The applicant has no intention of becoming affiliated with any broadcasting chain in the event the application for increased facilities is granted; and if the application is granted the applicant intends to broadcast the United States Department of Agriculture market news service in the morning, a devotional service, a physical-culture program, recipes for housewives, a commercial program, a service for the shopper, weather forecasts, port and shipping news, and more time will be devoted to educational programs. The station at present devotes one-half of its time to local talent and expects to enlarge the time accorded to such talent if the application is granted. The policy of Station WBNO in the past has been, and will continue to be, not to charge for the programs of education, civic and religious organizations.

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Since the filing of the application for the construction permit the Commission has allowed the location of the transmitter at a new site and the station has been improved. The further construction contemplated can be made without much expense; and the applicant is financially able to proceed with the new construction if permitted to do so.

The population of New Orleans, Louisiana (1930 census), is 494,877. There are in the City five radio-broadcast stations: One is a clear channel station, and two of them are regional channel stations. The three mentioned are chain outlets, and the other two stations are WBNO and WJBW, operating on a local frequency, and, as above stated, with divided time.

An increase in the daytime power of Station WBNO from 100 watts to 250 watts would enable it to render an improved service in the area which it now serves, and would enable it to extend its service area during daytime hours.

The service proposed by the applicant in its request for enlarged time is needed in New Orleans.

Application B3-P-1686 to erect a new station at Jackson, Mississippi, to operate on 1420 kilocycles, with power of 100 watts night and 250 watts day, unlimited time, involves prospectively a question of interference. The actual separation between Jackson, Mississippi, and New Orleans, Louisiana, is approximately 160 miles, while the separation recommended by accepted engineering practice for two stations operating on the same frequency with 100 watts power at night is 185 miles; but no objectionable interference would, in this case, be expected if that application, and the one under consideration, are granted by the Commission.

The equipment proposed by the applicant meets the engineering requirements of the Commission; and so does the antenna site chosen by the applicant.

GROUND'S FOR DECISION

On the record in this case the Commission finds:

IN RE DOCKETS NOS. 4008 AND 4580

1. That the Coliseum Place Baptist Church, New Orleans, Louisiana, has owned and operated Station WBNO for several years, it is at present the operating licensee of said station and is rendering a necessary and satisfactory service;
2. That the service proposed by the applicant in its request for an increase of power and for unlimited time is needed in the City of New Orleans;

3. That the request for the change of frequency, increase of power, and for the enlargement of time can be granted without interfering with the operations of any existing station or with those proposed in any pending application;

4. That the applicant is legally, financially, and technically qualified to construct the station as contemplated and to continue the operation of the station.

5. That the granting of the application for renewal of license would serve the public interest, convenience, and necessity; and the granting of the application for change of frequency, an increase of power and for unlimited time would serve the public interest, convenience, and necessity.

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D. C.

<p>In the Matter of MADISON BROADCASTING COMPANY, MADISON, WISCONSIN. For Construction Permit.</p>	}	DOCKET No. 4906.
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Decided September 6, 1938

Paul D. P. Spearman on behalf of the applicant; *George O. Sutton, Arthur H. Schroeder* and *James L. Proffitt* on behalf of Station KCMO; *H. L. Lohnes, F. W. Albertson* and *M. M. Jansky* on behalf of Station WMBD; *Ben S. Fisher* and *John W. Kendall* on behalf of Stations WIBA and WAGA; *Louis G. Caldwell* and *Reed T. Rollo* on behalf of Station WGAR; *George S. Smith* and *Harry P. Warner* on behalf of Station KFOR; *James H. Hanley* on behalf of L. L. Coryell and Son.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION (McNinch, Chairman, and Commissioner Brown not participating):

STATEMENT OF FACTS

This proceeding arose upon an application of the Madison Broadcasting Company for construction permit to establish a new radio-broadcast station in Madison, Wisconsin, to operate on the frequency 1450 kilocycles with power of 250 watts, unlimited time, using a directional antenna for day and nighttime operation.

On January 17 and 18, 1938, a hearing was held on this application before an examiner, who, in his report (I-603), recommended that it be denied. To this report exceptions were filed by the applicant and oral argument was scheduled to be heard before the Commission on May 19, 1938. The Commission, however, granted permission to the applicant and the Badger Broadcasting Company, intervenor herein, to file briefs in lieu of oral argument. These briefs were filed with the Commission on May 26, 1938, and on June 2, 1938, by the respective parties. The exceptions do not raise any questions not necessarily involved in the determination of the application upon its merits.

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The Madison Broadcasting Company is incorporated under the laws of the State of Wisconsin and is duly qualified to engage in the business of operating a radiobroadcast station. The corporation is authorized to issue 500 shares of common stock of a par value of \$100.00 a share. All of the shares of stock have been issued to four stockholders, each of whom holds 125 shares. The officers and directors of the corporation are Arthur Towell, President; W. C. Forrest, Vice President; and C. A. Sakrison, Secretary-Treasurer. Towell and Sakrison are residents of Madison, Wisconsin, and Forrest is a resident of Poynette, Wisconsin. Each stockholder, director, and officer of the corporation is a citizen of the United States.

William C. Forrest, Vice President of the applicant corporation, is also licensee of Station WIBU, Poynette, Wisconsin, which operates on the frequency 1210 kilocycles with power of 100 watts night, 250 watts day, unlimited time. This station, under a contract arrangement with the applicant corporation, broadcasts programs originating in the studios located in Madison which are owned and operated by the applicant. The applicant solicits the sale of time of this station to business concerns in Madison. The contract provides for a division of the net profits arising from the operation of the Madison studios between the applicant and the licensee of Station WIBU.

As of December 31, 1937, the Madison Broadcasting Company had assets of \$49,425.87, consisting of \$30,826.43 in cash on hand, \$11,000 in notes receivable (representing the balance due on stock subscriptions), accounts receivable in the amount of \$1,362.18 and miscellaneous assets valued at \$6,237.26. The liabilities were the capital stock outstanding (\$50,000), \$2,300.65 in accounts payable and an operating deficit of \$2,874.78. During the period April 1 to December 31, 1937, the applicant derived approximately \$11,500 from the sale of time of WIBU in Madison. However, the expenses incident to the operation of the applicant's studios exceeded this revenue by approximately \$3,000.

The estimated cost of erecting the proposed station is \$22,100 and the estimated monthly operating cost is \$1,120.

The applicant submitted in evidence a list of 42 tentative agreements with advertisers in the Madison area for the sale of time of the proposed station. This potential source of revenue would insure an income of approximately \$3,200 a month.

The equipment to be installed for the operation of the proposed station, the directional antenna, and the transmitter site meet with the technical requirements of the Commission.

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The present staff used in the operation of the applicant's studios in Madison is adequate to insure the efficient operation of the proposed station. The same studios would be used for the proposed station as are now maintained for broadcasting programs over Station WIBU. The applicant would also continue to sell time over Station WIBU and to produce programs in the studios to be broadcast by that station. In this connection, Towell, as President of the applicant corporation, stated that the facilities of WIBU would be utilized for a more rural type of broadcast service to Poynette and the rural areas contiguous to Madison, while the proposed station would be designed to provide broadcast service primarily of interest to Madison.

According to the 1930 United States Census, the population of Madison was 57,899. This figure does not take into consideration the student enrollment at the University of Wisconsin which is located in that city. The United States Census of Retail and Wholesale Distribution for 1935, published by the United States Department of Commerce, shows the following data with respect to Madison, Wisconsin: 1,033 retail stores having total sales of \$36,267,000; 126 wholesale establishments having net sales of \$22,373,000; and total pay rolls of \$1,654,000. The United States Census of Manufacturers for 1935, published by the United States Department of Commerce, shows that 100 manufacturing establishments are located in Madison having products valued at \$26,944,000 and total wages of \$3,059,016. The pay rolls of local governmental agencies and of the University of Wisconsin aggregate approximately \$12,000,000 annually. The chief occupations of the inhabitants of the rural areas contiguous to Madison are agriculture and dairying.

Primary service is received in Madison from two stations located therein, namely, Station WHA which operates on the frequency 940 kilocycles with 5 kilowatts power, daytime only, and Station WIBA which operates on the frequency 1280 kilocycles with power of 1 kilowatt night, 5 kilowatts day, unlimited time. Station WIBU, Poynette, Wisconsin, which maintains studios in Madison, renders service during the daytime to a portion of the residential sections of Madison and to the rural areas contiguous thereto. In addition, some service is received during the daytime in the residential sections of the city from WBBM, Chicago, Illinois, which operates on the frequency 770 kilocycles, with 50 kilowatts power; from WGN, Chicago, Illinois, using the frequency 720 kilocycles with 50 kilowatts power, unlimited time; from WMAQ, Chicago, Illinois, which operates on the frequency 670 kilocycles with 50 kilowatts power, unlimited time; and from WTMJ, Milwaukee, Wisconsin, which operates

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on the frequency 620 kilocycles with power of 1 kilowatt night, 5 kilowatts day, unlimited time. During nighttime hours secondary service is received in Madison from the clear channel stations located in the Chicago metropolitan district.

The proposed program schedule submitted in evidence, representing a week's broadcast, is well diversified and is designed to provide a program service of interest to the Madison area. Time would be donated to civic, educational, and religious organizations in this community. Special events from the local high schools, from the University of Wisconsin, from the state capital, and from the city government would be broadcast at designated intervals.

Stations WHA and WIBA each render program service to Madison which is diversified and meritorious. The former is licensed to the University of Wisconsin as a daytime station and is operated on a noncommercial basis. The log of Station WHA for the week beginning December 6, 1937, representing an average week's broadcast, was submitted in evidence. The schedule indicates that approximately 50% of the total time of this station is devoted to educational programs of state and local interest and that 50% of the time is used for entertainment and features of local interest. These stations have fully extended their facilities to organizations in Madison and in many instances originate programs of state-wide interest which are rebroadcast by other Wisconsin stations.

The program schedule of Station WIBA, based upon a typical month's operation, shows that this station devotes approximately 57.2% of its total time to local programs originating in Madison and that 42.8% of the time is utilized for chain programs. Notwithstanding the station's chain affiliation, there are no instances where the facilities of the station have been denied to civic, charitable, agricultural, or religious organizations in this community when time is desired by them. This station has on particular occasions cancelled the network programs in order to broadcast events of particular interest to the Madison area. Station WIBA broadcasts programs regularly from approximately 26 local educational, civic, religious, agricultural, and political organizations, and there have been approximately 47 similar agencies in Madison that have used the station's facilities at intervals during the last six months of 1937. The facilities of this station have also been utilized during recent months as an advertising medium by 27 of the 42 business establishments in Madison that were listed by the applicant as having tentative agreements for the purchase of time over the proposed station. Similarly, approximately one half of the business establishments listed by the applicant for the purchase of time over the proposed station now utilize the facilities of Station

WIBU for advertising purposes under contracts executed with the applicant corporation. Station WIBA maintains nine remote lines in Madison for broadcasting programs of particular interest to the community. A local news service is maintained by the station and the full time of one employee is required to prepare local news broadcasts.

The applicant submitted in evidence the program log of Station WIBU for the week beginning December 7, 1937, representing a typical week's broadcast. The schedule indicates that a large proportion of the programs are produced by the applicant in its Madison studios. Approximately six hours a day of the total time of WIBU is utilized for programs originating in Madison. There are programs broadcast regularly from the Madison high schools, from the state university, and from local civic, state, and city agencies. In many instances, the organizations in Madison listed by the applicant as available for broadcasting programs over the proposed station are already using the facilities of WIBU from the applicant's own studios. It is apparent that the existing stations in Madison render meritorious program service to this city and have cooperated fully with local organizations, and that Station WIBU (through its local station) renders a similar service to the residential section of Madison and to the rural areas immediately adjacent thereto.

The applicant contends that there is a combined ownership of the two local daily newspapers in Madison and of Station WIBA which creates a monopoly of the medium of advertising in this city. Station WIBA is maintained and operated as a separate entity independent of the operation of either of the two newspapers in Madison. The station has its own sales staff to solicit the sale of time of the station and there is no combined rates for newspaper and radio advertising. A separate news service is maintained by the station which is not connected with the newspapers.

There are eight stations located at shorter distances from Madison than those considered necessary under average conditions to avoid objectionable interference to the operation of the proposed station. Because of the use of a directional antenna for day and nighttime operation as proposed by the applicant, it is predicted that objectionable interference would be imposed by the applicant's station at night to one station, namely, KG CX, Wolf Point, Montana. Station KG CX operates on the frequency 1450 kilocycles, with 1 kilowatt power, unlimited time. The normally recommended mileage separation at night to avoid objectionable interference between KG CX and the proposed station is 1,000 miles and the actual separation is approximately 865 miles. The operation of the proposed station would be expected to cause a limitation to KG CX to its approximate 1.3 millivolt per meter contour for 10% of the evening hours.

The proposed station would be limited by several stations, the predominate source of limitation being from Station **WGAR**, Cleveland, Ohio, which operates on the frequency 1450 kilocycles, with power of 1 kilowatt night, 5 kilowatts day, unlimited time, using a directional antenna for nighttime service. Based upon the antenna efficiency of **WGAR**, it is predicted that the proposed station would be limited at night by this station to its approximate 7 millivolt per meter contour. According to good engineering practice it is considered that a regional station as proposed herein should normally be protected at night to its 1 millivolt per meter contour.

In addition, it is predicted that the proposed station would be limited at night by Station **KGCX** to its approximate 1.7 millivolt per meter contour; by Station **KTBS**, Shreveport, Louisiana (which operates on the frequency 1450 kilocycles, with 1 kilowatt power, unlimited time) to its approximate 2 millivolt per meter contour; and by Station **WAGA**, Atlanta, Georgia (operating on the frequency 1450 kilocycles, 500 watts night, 1 kilowatt day, unlimited time) to its approximate 2.1 millivolt per meter contour. Because of the severe limitations to the service of the proposed station imposed by **WGAR**, it would be expected that the primary service area of this station at night would only include the City of Madison and a small territory immediately adjacent thereto.

Four applications for facilities were pending before the Commission at the time the instant application was designated for hearing which involved questions of interference should a grant be made of these applications and that of the applicant. Objectionable interference would be expected to result to the operation of the proposed station and three of the pending applications, due to the directional antenna proposed by the applicant herein. Station **KCMO**, Kansas City, Missouri, has an application for construction permit (B4-P-1634) which requests authority to change frequency to 1450 kilocycles and increase power to 1 kilowatt, unlimited time, using a directional antenna at night. The interference that would be expected to be imposed by **KCMO** to the proposed station at night would be to the approximate 1.8 millivolt per meter contour and **KCMO** would be limited by the proposed station to its approximate 1.9 millivolt per meter contour. The application of Station **KFOR**, Lincoln, Nebraska, for construction permit (B4-P-1692) requests a change of frequency to 1450 kilocycles, and increase power to 1 kilowatt night, 5 kilowatts day, using a directional antenna at night. The proposed station would be expected to be limited by **KFOR** at night to the approximate 1.5 millivolt per meter contour and, in turn, **KFOR** would be limited to its approximate 2.9 millivolt per meter contour by the applicant's station. An application for construction

permit (B4-P-1638) is also pending from Lincoln, Nebraska, to establish a new station to operate on the frequency 1450 kilocycles, with power of 250 watts night, 1 kilowatt day, unlimited time. It is predicted that interference at night would result to the proposed station from the Lincoln applicant to the approximate 2.7 millivolt per meter contour and that the Lincoln applicant would be limited to its approximate 2.9 millivolt per meter contour by the proposed station.

GROUND FOR DECISION

1. The applicant has failed to show in the record a public need in the Madison area for additional broadcast service of the type proposed herein.

2. The proposed station would be limited at night to its 7 millivolt per meter contour and in the absence of a compelling public need in Madison for additional broadcast facilities a grant of this application is not considered good allocation.

3. The granting of this application will not serve public interest, convenience, and necessity.

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matters of
W. W. McALLISTER (KMAC),
SAN ANTONIO, TEXAS.
For Renewal of License.

} DOCKET No. 4982.

W. W. McALLISTER, ASSIGNOR, and W. W. McAL-
LISTER and HOWARD W. DAVIS, d/b as WALMAC
COMPANY, ASSIGNEE, (KMAC),
SAN ANTONIO, TEXAS.
For Voluntary Assignment of License.

} DOCKET No. 4981.

Decided September 6, 1938

George S. Smith on behalf of the applicants; *Walter Johnson* on
behalf of the Federal Communications Commission.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION (McNinch, Chairman, and Commissioner Brown
not participating) :

STATEMENT OF FACTS

This proceeding arose upon the applications for the renewal of
license of Station KMAC and the assignment of that license from
W. W. McAllister to McAllister and Davis, doing business as Walmac
Company. The application for renewal of license, Docket No. 4982,
was designated for hearing to determine whether the licensee had
violated Section 310 (b) of the Communications Act and whether
the continued operation of the station would serve public interest.
The application for assignment of license was designated for hearing
to determine the qualifications of the proposed assignee and whether
the granting of the application would serve public interest, con-
venience, and necessity. The examiner before whom the case was
heard recommended (Report No. I-658) that both applications be
granted.

IN RE DOCKET NO. 4982

Mr. W. W. McAllister, the applicant herein, acquired Station
KMAC from the Radio Sam Broadcast Company, a Texas corpo-
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ration, in 1930. At the time of the purchase Jack Wallace was manager of the station and obtained a power of attorney from Mr. McAllister in connection with the sale of the station. In effecting the assignment of the license, Mr. Wallace had the license transferred to Mr. McAllister as an individual. In the meantime Mr. McAllister had changed the name of the corporation to the Walmac Corporation. Mr. McAllister was not active in the operation of the station and paid no attention to the forms covering renewal of license which were made out in his own name since the matter of renewals was handled by Mr. Wallace or other managers of the station. Even after Mr. McAllister found that the license, which had been granted by the Federal Radio Commission was made out to him as an individual, he continued the use of the name of the Walmac Company and operated the station under that name. A separate bank account was maintained in the name of the Walmac Company, and all contracts for the sale of time were signed in the name of the company.

Mr. McAllister has at all times owned 148 shares of the capital stock of the Walmac Company; the two remaining shares were in the name of qualifying directors. Mr. McAllister has determined the policies affecting the operation of the station and owns the equipment and other incidentals which are necessary to the operation of the station. The stockholders of the corporation have formally met only twice—the first meeting was at the formation of the company and the last on February 25, 1938. At the latter meeting, the stockholders of the company adopted a resolution instructing Mr. McAllister, as President, to prepare the necessary forms for submission to the Department of State of Texas requesting dissolution of the corporation. The corporation was dissolved by the Secretary of State on March 1, 1938.

The station originally had practically no studios and all their equipment was obsolete when the licensee acquired the station. He immediately purchased complete R. C. A. equipment and moved the studios to the Blue Bonnet Hotel. The transmitter was installed in a room on top of the hotel and the antenna immediately above. About 18 months prior to the hearing Mr. McAllister bought a piece of property and built a transmitter house. The money necessary for the expenditure was paid by Mr. McAllister since the corporation did not have sufficient funds to pay for the improvements made.

From the record, it would appear that the licensee of Station KMAC has been guilty of a technical violation of Section 310 (b) of the Communications Act of 1934. The operation of the station

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by the Walmac Company was not in accord with the license of Station KMAC. However, Mr. McAllister, the licensee, has been the dominant figure in the operation of the station, has been responsible for all of the policies of the station and has at all times owned the entire amount of the capital stock of the Walmac Company. A critical analysis of the operation reveals that Mr. McAllister has really exercised the powers and privileges conferred by the license even though such operation was conducted in part through the medium of a corporation.

IN RE DOCKET NO. 4981

Mr. McAllister is the President of the Building and Loan Association in San Antonio and the licensee of Station KMAC. Howard W. Davis is the station manager of Station KMAC. They are both citizens of the United States. The two individuals named have entered into a partnership agreement dated April 30, 1937, in connection with the sale of the station. Pursuant to the terms of the agreement it is agreed that Mr. Davis will pay to the licensee the sum of \$13,000 for a half interest in the station. Of the purchase price \$2,325 has been paid in cash, and the balance is to be paid at the rate of \$500 or more each six months until said balance is paid. The balance due of \$10,675 is to be evidenced by a note bearing interest at the rate of 6% per annum. It is agreed between the parties that each shall be given the first opportunity to purchase the interest of the other in the event of dissolution of the partnership. In the event of the death of either partner his interest descends to his legal representative, and not to the remaining partner.

In addition to Mr. Davis as manager there is employed in the operation of the station a program director, three announcers, five salesmen, two operators, and two clerks.

There has been filed as an exhibit a balance sheet showing the financial position of the station as of December 31, 1937. Assets include, current assets, \$7,152.49; fixed assets, \$24,021.97; prepaid charges, \$266.32, making a total of \$31,440.78. Liabilities include, current liabilities, \$11,460.40; fixed liabilities, \$3,046.08; net worth is shown to be \$16,934.30. During the period January 1, 1937, to December 31, 1937, the operation of the station resulted in a profit of \$2,561.84. Mr. Davis receives a salary of \$300 a month as manager of Station KMAC.

Included in the assets to be transferred are the transmitting and other equipment used in connection with the operation of the station. The original cost of such equipment and property is \$22,245. The depreciated value is \$17,713.80, and the replacement value, new, is \$22,031.77.

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The proposed assignees expect to continue the same type of service now broadcast by the station. An examination of the program service rendered reveals that the station has a well-balanced schedule, and its programs should be of interest to the listeners in its service area. Such programs include religious, entertainment, educational, sports, civic, and governmental. The station's time is devoted to the various services as follows: Sustaining—Entertainment, 34.3%; educational, 5.0%; religious, 3.0%; agricultural, 0.5%; fraternal, 0.2%; and weather reports, 1.0%; Commercial—Entertainment, 52%; educational, 3.0%; and Spanish, 1.0%. The station has offered its facilities without charge to the various organizations in the city. Included in the number which have broadcast over the station are 28 civic, 13 charitable organizations, and 5 religious and 10 educational institutions.

The population of San Antonio is 231,542, according to the 1930 Census.

The City of San Antonio now receives broadcast service from the following stations located therein: WOAI, operating with 50 kw.; KTSA with 5 kw. L-S, 1 kw. night; KABC, 250 watts L-S, 100 watts night; and KONO, with which Station KMAC shares time operating on 250 watts L-S, 100 watts night, and Station KMAC.

GROUNDS FOR DECISION

IN RE DOCKET NO. 4982

The continued operation of Station KMAC would serve public interest, convenience, and necessity.

IN RE DOCKET NO. 4981

- (1) The proposed assignees are legally, technically, and financially qualified to continue the operation of the station.
- (2) A meritorious program service designed to meet the needs of the area served will continue to be rendered by Station KMAC.
- (3) Granting the application for assignment of license will serve public interest.

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of
IOWA BROADCASTING COMPANY (KSO),
DES MOINES, IOWA,
For Construction Permit. } DOCKET No. 4911.

Decided September 6, 1938

George S. Smith on behalf of Iowa Broadcasting Company (KSO).

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION (McNinch, Chairman, and Commissioner Brown not participating):

STATEMENT OF FACTS

This proceeding arose upon the application of Iowa Broadcasting Company for construction permit to make changes in equipment of Station KSO, to install a directional antenna for night use and to increase the power of the station from 500 watts night, 2.5 kw. L. S., to 1 kw. night, and 5 kw. L. S. The application was heard before an Examiner who, in his report (I-633) recommended that the application be granted. No exceptions were filed.

The applicant is a corporation organized under the laws of the State of Iowa. In addition to Station KSO, it holds licenses for the operation of Stations KRNT at Des Moines, and WMT at Cedar Rapids, Iowa. All of the stockholders, officers, and directors are citizens of the United States.

The financial statement offered in evidence at the hearing shows a credit balance for the corporation of \$230,737.29. Included in the current assets are: Cash, \$19,202.15; accounts receivable (less reserves), \$70,128.38; other receivables, \$451.39; and Treasury notes, \$100,942.36. The estimated cost of the proposed equipment changes is \$9,650.

The transmitting equipment proposed to be used is of composite type. Such equipment must comply with the provisions of Rules 132 and 139. The site at which the antenna is to be located is satisfactory. The antenna towers will be properly marked and painted in order not to constitute a hazard to air navigation.

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Des Moines receives primary service from Station KSO; Station WHO, operating on 1000 kc. with 50 kw.; and Station KRNT, operating on 1320 kc. with 1 kw. night, and 5 kw. L. S. The City of Des Moines and surrounding area also receive a signal of about 2 mv./m. from Station WOI at Ames, Iowa.

The population of Des Moines is 160,963, according to the 1930 Census. It is expected that the operation with the proposed increase in power will enable the applicant to materially enlarge the number of persons presently receiving its daytime and nighttime service. The purpose of the application is to enable applicant to provide service to a larger number of rural listeners in the Des Moines trade area. KSO broadcasts the Farm and Home hour and is the only station between Chicago and Omaha carrying this program to the farmers. It is claimed that the farmers in the nearby area depend largely on Station KSO for information regarding weather reports, road reports, market reports, and the State and Federal Departments of Agriculture bulletins. No increase in the station's advertising rates are contemplated.

The applicant has filed an exhibit showing a typical schedule of the programs broadcast by Station KSO for the week November 28 to December 4, 1937. An analysis of this exhibit shows that the programs broadcast are varied in character, and designed to be of interest to the listeners in its service area. The station devotes 61 percent of its time to chain programs, of which 46 percent is sustaining and 15 percent commercial. The balance of 39 percent is devoted to local programs, of which 19 percent is sustaining and 20 percent is commercial. The programs broadcast are approximately 71 percent entertainment, 20 percent educational, 4 percent religious, 3 percent community and 2 percent special events. The station is affiliated with the Blue Network of the National Broadcasting Company. The nearest station carrying this network is WMT at Cedar Rapids, 125 miles distant.

The civic, religious, charitable, and educational institutions at Des Moines and the nearby area are given time over the station without charge. From an examination of a list of organizations with which the applicant station has cooperated, it is found that the organizations receiving time have included 14 civic, 24 educational, 8 religious, and 8 charitable. Included in the list of educational programs is the Town Meeting of the Air, a 60-minute network round table discussion of governmental, political, and civic affairs. Drake University has a radio school and the facilities of the station are available to the University. The students rehearse their programs and then get actual experience on the air with the help of the program department of Station KSO.

Expert engineering testimony indicates that the proposed operation of Station KSO would not cause any objectionable interference to any existing broadcast station or to facilities requested in any application pending at the time the instant application was designated for hearing. Use of the proposed directional array at night would result in a reduction in the amount of interference presently caused by KSO to some existing stations. There would be no material change in the contour to which Station KSO is presently being limited.

GROUND FOR DECISION

1. The applicant is financially, technically, and otherwise qualified to make the proposed changes and operate the station in accordance therewith.

2. There is a need for the additional service proposed to be rendered.

3. No objectionable interference would be caused to any existing station or to any station operated in accordance with applications pending at the time this application was designated for hearing.

4. The granting of the application will serve public interest, convenience and necessity.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D. C.**

In the Matters of
CAROLINA ADVERTISING CORPORATION,
COLUMBIA, SOUTH CAROLINA.
 For Construction Permit. } **DOCKET No. 4274.**

COLUMBIA RADIO COMPANY, INC.,¹
COLUMBIA, SOUTH CAROLINA.
 For Construction Permit. } **DOCKET No. 4162.**

Decided September 6, 1938

Horace L. Lohnes and E. D. Johnston on behalf of Columbia Radio Company, Inc., Station WCSC, and *Ruth W. Adcock and S. E. Adcock*; *Ashley C. Tobias and Paul D. P. Spearman* on behalf of Carolina Advertising Corporation; *Elmer W. Pratt* on behalf of O. Lee Stone; *Harold H. Thoms* on behalf of Asheville Daily News; *Frank U. Fletcher and Andrew G. Haley* on behalf of the Federal Communications Commission.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION (Brown, Commissioner, not participating) :

STATEMENT OF FACTS

This proceeding arose upon two applications for authority to erect new local broadcast stations in Columbia, South Carolina. The Carolina Advertising Corporation requested the use of 1370 kc., 100 w., 250 w. L. S., unlimited time; and the Columbia Radio Company, Inc., requested the use of 1200 kc., 100 w., unlimited. Hearings were held before an examiner who recommended (Report No. I-448) that the former application be granted and the latter denied. Oral argument on the exceptions to this report was heard on March 3, 1938. The exceptions were considered by the Commission in reaching its decision herein.

¹ The Commission on November 8, 1938, denied petition of applicant requesting a rehearing.

IN RE DOCKET NO. 4274

This applicant, Carolina Advertising Corporation, is organized under the laws of the State of South Carolina, and duly empowered to construct, maintain, and operate a radiobroadcast station. All officers and stockholders of the applicant corporation are citizens of the United States. The majority stockholders are interested in the life insurance business.

The authorized capital stock of \$10,000 has been paid in and, in addition, the principal stockholders have contributed \$10,000 to the assets of the corporation, thus giving a total of \$20,000 in cash available for the construction and operation of the proposed station.

The estimated cost of construction is \$15,622.50, and the monthly operating expense is estimated at \$3,165. Copies of 45 contracts entered into by the applicant for advertising time with various merchants and business concerns in Columbia, contingent upon the granting of this application, were offered in evidence showing a total amount of \$25,317.25. On the basis of these contracts and other facts of record, it was estimated that the monthly income of the station would be approximately \$4,200.

An adequate staff of qualified employees will be maintained to construct and operate the proposed station consisting in part of a manager, two salesmen, a program director, two announcers, office assistant, studio musician, stenographer and bookkeeper, chief engineer, two control operators and an apprentice operator.

The equipment proposed to be installed complies with the rules and regulations of the Commission and is capable of being efficiently operated.

The program sources available to the applicant include the Columbia Ministerial Association, The Columbia College, local public schools, the Salvation Army, local dramatic organizations, college orchestras, the "Palmetto Ensemble," the Carolina Theatres (stage shows, lobby interviews, organ recitals, and community singing), the Town Theatre, two negro colleges, the Columbia Merchants Association, the Governor of the State and other State officials, the local Y. M. C. A., and the Mayor of the City of Columbia and other municipal officers.

The proposed weekly program schedule indicates that the applicant plans to devote 50% of the station's time to entertainment programs, 10% of which will be commercial and 40% sustained. The remaining 50% of the broadcast time is planned to be divided among informative (11%), religious (5%), civic (8%), fraternal (2%), agricultural (1.5%), educational (15%), and news 7.5%) programs.

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grams. Transcriptions will be used 23.7% of the time, remote control 14.8%, and the remainder will be devoted to studio programs.

There is only one existing station located at less than the separation generally recommended in order to avoid objectionable interference. However, in view of the low conductivity in the intervening territory objectionable interference with such station is not expected to follow from operation as proposed by this applicant.

An application for a new broadcast station at Asheville, North Carolina, was pending at the time of the hearing, and it involved a question of interference with operation as proposed by this applicant. The Commission's action in denying this application for a new station at Asheville has not yet become final. It is our opinion, however, that any limitations which would result from simultaneous operation would be very slight and would not, in and of itself, render the applications mutually exclusive.

IN RE DOCKET NO. 4162

This applicant, Columbia Radio Company, Inc., is a corporation organized under the laws of the State of South Carolina and duly authorized to operate a broadcast station. All of the officers, incorporators, and stockholders are citizens of the United States and residents of Columbia, South Carolina. Mr. Kohn, president of the corporation and holder of 23 shares, is an attorney at law. Mr. Hennig, treasurer and holder of 22 shares, is engaged in the fire-insurance and mortgage-loan business. Mr. Bates, vice president, holder of 20 shares, was State Senator at the time of the hearing from Richmond County, in which Columbia is located, and is affiliated with certain life-insurance companies in Columbia. Mr. Shafto, secretary, holder of 60 shares, is general manager of Station WIS in Columbia and another broadcast station controlled by the Liberty Life Insurance Company. Mr. Shafto is vice president and general manager of the licensee corporations of Stations WIS and WCSC which are operated by separate corporations, the stock of which is owned entirely by the Liberty Life Insurance Company. Mr. Shafto has no financial interest in Station WIS nor in any existing radio station. He was expected to act in an advisory capacity in connection with the construction and operation of the proposed station. He would not assume any active duties and would not receive any compensation for any advice that he might render. His stock interest in this applicant and his activities as general manager of Stations WIS and WCSC would identify him in a very influential position with the operation of one-half of the broadcast stations in South Carolina and all of the broadcast stations operating in Columbia.

The authorized capital of the corporation is \$12,500, and all of the stock has been subscribed and paid for. There is cash in bank to the amount of \$12,056.70 with no liabilities. The stockholders testified that if any additional funds were needed they would be advanced, and the record shows their ability to do so. The estimated cost of the proposed station is \$11,200, and the monthly operating expenses \$2,220. On the basis of 54 contracts for the purchase of advertising time over the proposed station and other facts of record, it is estimated that the monthly income would be approximately \$2,575.

It was proposed to maintain an adequate staff of qualified employees consisting of a manager, program director, two announcers, two salesmen, one stenographer, one operator and control man, and one part-time remote-control operator.

The equipment proposed to be installed complies with the rules and regulations of the Commission and is capable of being efficiently operated.

From an analysis of a typical week's proposed program, it appears that the applicant plans to devote 26.6% to transcriptions, 6.5% to records, 13.5% to rebroadcasts, 15.8% to remote pick-up programs, and 37.6% to studio programs presented by live talent. The division of time between sustaining and commercial programs was to be 87.2% to sustaining and 12.8% to commercial. The rebroadcasts were to have been those of Stations WLW and WHAS, in accordance with the customary practice of several southern stations. The record contains the consent of such stations to this proposed practice. Program sources available include those mentioned in connection with Docket No. 4274 as well as certain others which have agreed to make use of the facilities proposed by this applicant.

There are two stations located at less than the separation generally recommended to avoid objectionable interference for operation as proposed by this applicant. The station (WOLS) at Florence, South Carolina, operates daytime only and is located 74 miles away, as against a recommended separation of 80. Because of the low conductivity of the intervening terrain no interference within the 0.5 mv./m. contour of either station would be expected. Station WAIM operates at Anderson, South Carolina, 97 miles from Columbia, and the recommended separation is 185 miles for nighttime operation. The Commission's engineering witness predicted a limitation somewhat within the 2 mv./m. contours of both stations from nighttime operation. There are no questions of interference with applications which were pending at the time of the hearing, and still before the Commission at the time of its decision herein.

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The population of the City of Columbia, South Carolina, according to the 1930 Census, was 51,581. It is estimated that the present population within the city limits is approximately 61,000, and that approximately 20,000 additional persons reside within the area immediately adjacent to the city. In 1935 a total of 840 retail stores were located in the City of Columbia with annual sales amounting to approximately \$22,809,000 and the total payroll amounted to \$2,809,000. There are also located in the city 229 service establishments, 10 places of amusement, 14 hotels, and 104 wholesale establishments with net sales totaling \$24,013,000 and annual payrolls of \$1,101,000.

The City of Columbia is the capital of the State of South Carolina and is considered the geometrical, political, and financial center of the State. Three railway lines serve the city as well as a large number of bus lines. The immediate area is predominately industrial and is surrounded by agricultural areas. The city is the distribution point of various commodities and services and is likewise an educational center, having located there the University of South Carolina, Columbia College, Allen and Benedict Universities, and various secretarial and commercial schools. Various textile manufacturing plants produce cloth, twine, yarns, etc. It was estimated that the retail trade area covers a radius of about 50 miles including a population of approximately 500,000. The wholesale trade area includes a radius of approximately 150 miles within which approximately two million people reside. There are 30 government agencies located in the city. A number of small villages surround the City of Columbia and constitute, from a trading standpoint, a part of the city; namely, Eau Claire, Arden, Edgewood, Colonial Heights, New Brooklyn, Casey, and Kilbourne Park. Three newspapers and one radio station (WIS) serve the city. Station WIS operating with power of 1 kw. at night and 5 kw. until local sunset on 560 kc. and using a directional antenna provides primary service to Columbia and the surrounding area. In addition, fair service is available from Station WBT, operating with 50 kw. on 1080 kc., unlimited time, at Charlotte, North Carolina, about 90 miles distant. However, the service of WBT would probably be subject to fading at night. In addition, intermittent secondary service is received from various other clear channel stations at night.

Considerable local talent was shown to be available in Columbia, South Carolina, for the use of either of the proposed stations.

Station WIS did not oppose the granting of either of these applications. The general manager of that station, who is also the chief stockholder in Columbia Radio Company, Inc., stated that, in his

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opinion, a properly managed and operated station of the kind and class applied for by both applicants would not impair the interests of the existing station. The affiliation of the general manager of Station WIS with the station proposed by Columbia Radio Company, Inc., would not normally be expected to foster a competitive situation between the two stations. The stockholders of the Carolina Advertising Corporation are not interested in any other broadcast station, and their operation of a new station in Columbia would tend to foster and develop a competitive situation favored by the Commission in its decision in the cases of the *Louisville Times Company, et al.*, Docket Nos. 4222 and 4466, decided June 1, 1938; *The Journal Company*, 2 F. C. C. 180, 182; *East Texas Broadcasting Company, et al.*, 2 F. C. C. 402; *Knight, Jr., et al.*, 4 F. C. C. 182.

The coverage expected to be obtained by the station proposed by the Carolina Advertising Corporation, operating with 250 w. daytime, would be expected to be slightly greater than that obtained by the station proposed by Columbia Radio Company, Inc., operating with 100 w. daytime. In the light of existing allocations and facts appearing of record, the station proposed by the Columbia Radio Company, Inc., would be expected to be limited at night to its 3.3 mv./m. contour, whereas on the same basis the station proposed by the Carolina Advertising Corporation will be expected to serve to its 2 mv./m. contour.

GROUNDS FOR DECISION

1. Both applicants are legally, technically, and financially qualified to construct and operate a station such as is proposed.
2. Each of the applicants proposes to maintain an adequate staff of qualified employees to construct and operate the proposed station.
3. The equipment proposed to be installed by each applicant complies with the rules and regulations of the Commission and is capable of being efficiently operated.
4. There is a definite need for an additional station in Columbia to serve the local needs of the Columbia area, but there has not been shown a need for two such additional stations.
5. Adequate talent is available to supply the needs of a local broadcast station.
6. The program service proposed by each applicant appears designed to meet the local needs of the Columbia area.
7. Operation as proposed by Columbia Radio Company, Inc., Docket No. 4162, would be expected to result in mutual objectionable interference with Station WAIM.

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8. No objectionable interference would result to the service area of any existing station from the operation of the station proposed by the Carolina Advertising Corporation.

9. Because of greater daytime power and less limitation at night from existing stations, the station proposed by Carolina Advertising Corporation would be expected to have a slightly greater coverage.

10. A preferment of the application of Carolina Advertising Corporation would better tend to develop a competitive situation than if the application of Columbia Radio Company, Inc., were granted.

11. The granting of the application of Columbia Radio Company, Inc., would not serve public interest, convenience, and necessity.

12. The granting of the application of Carolina Advertising Corporation would serve public interest, convenience, and necessity.

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matters of ¹

HAVENS & MARTIN, INC.,
PETERSBURG, VIRGINIA.
For Construction Permit. } DOCKET No. 4562.

PETERSBURG NEWSPAPER CORPORATION,
PETERSBURG, VIRGINIA.
For Construction Permit. } DOCKET No. 4487.

JOHN STEWART BRYAN,
PETERSBURG, VIRGINIA.
For Construction Permit. } DOCKET No. 4506.

Decided September 6, 1938

George O. Sutton on behalf of Havens & Martin, Inc.; *Elliot C. Lovett* on behalf of Petersburg Newspaper Corporation; and *Ben S. Fisher* on behalf of John Stewart Bryan.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

By THE COMMISSION (Commissioner McNinch, Chairman, and Commissioner Brown not participating):

STATEMENT OF FACTS

This proceeding arose upon the applications of Havens & Martin, Inc., Petersburg Newspaper Corporation, and John Stewart Bryan, for construction permits to erect and operate new broadcast stations at Petersburg, Virginia, to operate on 1210 kilocycles, 100 watts night, 250 watts, L. S., unlimited time, except when WBBL (Richmond) operates at certain specified hours on Sunday. These cases were referred to an examiner for hearing. On November 17, 1937, the examiner submitted his report (I-544) in which he recommended that the application of Havens & Martin, Inc., be dismissed with prejudice; that the application of Petersburg Newspaper Corporation

¹The Commission on November 9, 1938, denied petition of John Stewart Bryan, requesting a rehearing on the above applications.

be granted; and that the application of John Stewart Bryan be denied. Exceptions were filed to this report and oral argument was held before the Commission on March 24, 1938. The exceptions have been considered by the Commission in arriving at its decision herein.

IN RE DOCKET NO. 4562

On September 18, 1937, Havens & Martin, Inc., filed a petition for leave to withdraw its application without prejudice. This petition was denied on September 22, 1937. The attorney for this applicant appeared at the hearing and made an oral request for leave to withdraw the application but offered no facts or extenuating circumstances as to why the application should be withdrawn without prejudice. The application will be denied as in default in the Order hereinafter made.

IN RE DOCKET NO. 4487

Petersburg Newspaper Corporation, applicant in this docket, is chartered under the laws of the State of Virginia. While the Articles of Incorporation do not specifically authorize the ownership and operation of a broadcast station, the powers expressed therein have been held sufficiently broad to permit the holder to engage in such ownership and operation. *Haven, Woodward, Jones and Wood, et al.*, 3 F. C. C. 666, at 673. All of the stockholders, directors, and officers of the applicant corporation are citizens of the United States.

The applicant publishes the Progress-Index, a daily paper of general circulation in Petersburg, Virginia. The Progress-Index is the result of a merger in 1922 of two newspapers which had been printed in Petersburg prior to that time. It has a general circulation in Petersburg, Hopewell, and adjoining counties in Southside, Virginia. There are three weekly papers that have general circulation within the same area, in addition to the Richmond and Washington papers which have some circulation therein.

The Petersburg Newspaper Corporation is authorized to issue 3,400 shares of stock—1,750 common, 1,650 preferred. All of the common and 500 shares of the preferred stock have been issued and outstanding. Mrs. Emma P. Harris, wife of the president and manager of the Petersburg Newspaper Corporation, owns 850 shares, and R. B. Huber, Petersburg, Virginia, owns 5 shares. Eight hundred and eighty-five shares of the common stock are owned by the Lewis-Huber Newspaper Corporation, Norfolk, Virginia. Frederick S. Lewis and P. S. Huber, both of Norfolk, each owns 5 shares of common stock. All of the outstanding preferred stock is owned by residents of Norfolk, Virginia. The officers and directors of the applicant corporation are Mr. Walter Edward Harris, President; Emma

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P. Harris, Vice President; R. B. Huber, Assistant Treasurer, all of Petersburg, Virginia; Frederick Lewis, Treasurer, and P. S. Huber, Secretary, both of Norfolk, Virginia.

Mr. P. S. Huber, Secretary of the applicant corporation, is President of the Norfolk Newspapers, Inc., a corporation which owns the Ledger Dispatch Corporation and the Virginia Pilot Corporation, which publish two newspapers in Norfolk, Virginia. The Norfolk Newspapers, Inc., owns all of the stock of WTAR Radio Corporation, the licensee of Station WTAR, Norfolk, Virginia.

The record also shows that the stockholders of the applicant corporation are interested in the Times Dispatch, a Richmond, Virginia, paper, and in that way have an interest in Station WRTD, Richmond, Virginia.

The financial statement of the applicant shows the corporation to have assets of approximately \$156,000 and liabilities of approximately \$20,000. There is cash on hand of about \$36,000, which is more than adequate to cover the expected construction cost of \$12,899. Monthly operating costs were estimated at \$2,155.

The applicant contemplates the employment of experienced personnel, 15 in number, consisting of a station manager, commercial manager, program director, continuity writer, chief engineer and assistants, announcers, salesman, technicians, and the necessary clerical help, to operate the proposed station. The applicant has retained the services of the Manager and Program Director of Station WTAR, Norfolk, as supervising consultants.

The program director of the proposed station will be a Miss Mann. She has previously been occupied as Woman's Editor of the Progress-Index, with which paper she has been connected since 1917. She is a native of Petersburg, and holds important offices in many civic and patriotic organizations. While the station will be operated separate and apart from the newspaper, it will be, however, under the immediate supervision of Mr. R. B. Huber, who will continue to serve as general manager of the Petersburg Newspaper Corporation. Mr. Huber has been a resident of Petersburg for 17 years with the exception of 6 years when he was connected with the Richmond Times Dispatch as business manager. His work in Petersburg with the newspaper has given him a thorough knowledge of the community.

The equipment of the proposed station complies in all respects with the engineering standards of the Commission. The site is to be determined and the granting of this application is contingent upon the selection of a site which meets the approval of the Commission. The applicant contemplates construction of an antenna 156 feet in height, which complies with Rule 131.

The applicant submitted a proposed typical week's program schedule, which appears designed to meet the needs of the area proposed to be served. It is planned to make extensive use of local talent, which is shown to be available in the form of individual artists, several musical organizations, choirs, bands, and orchestras.

IN RE DOCKET NO. 4506

The applicant, John Stewart Bryan, is a citizen of the United States and a resident of Richmond, Virginia. He is one of the leading educators in the country and a man of very high standing in his native state, Virginia. He is President of the College of William and Mary, Williamsburg, Virginia, and is the publisher of the Richmond News Leader, a daily newspaper. Mr. Bryan is also the principal owner of a radio station, identified at the time of the hearing as WPHR, which was licensed to move from Petersburg to Richmond to operate under the call letters of WRNL.

Mr. Bryan and associates purchased Station WPHR with the announced intention of moving that station to Richmond, Virginia, in order to reach a larger audience with an educational and recreational program which they desired to work out by the means of a self-supporting broadcast station. Mr. Bryan believed, at the time he asked for removal, that Station WPHR, operating in Richmond, 22 miles away, would be able to continue to serve Petersburg. Upon the presentation of engineering evidence to the effect that operation of WPHR in Richmond would not result in a coverage of the Petersburg area, Mr. Bryan indicated a willingness to apply for other facilities in Petersburg in order that that city might not be deprived of an outlet for radio broadcasting. It is stated in this record that this application is Mr. Bryan's method of fulfilling that "promise."

Mr. Bryan was to be the sole owner of the station. According to his financial statement, he has a net worth of \$1,600,000. He has had no personal experience in the operation of a broadcast station. However, he expects to direct the policies of the proposed station and to employ an experienced staff to operate under the general supervision of the promotional director of the Richmond News Leader, who would be located in Richmond.

The equipment of the proposed station complies with the engineering standards of the Commission. The antenna and site were to have been determined. The proposed station was expected to cost approximately \$16,634. The monthly cost of operation was estimated at \$1,685.

The applicant submitted a week's typical program. Provision is made therein for the utilization of transcriptions for approximately

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20 percent of the time and live talent for the remainder. Station WPHR, when it was operated in Petersburg, immediately prior to its removal to Richmond, carried only 12 percent local talent and the remainder of time was devoted to transcriptions and recordings.

IN RE DOCKETS NOS. 4487 AND 4508

The City of Petersburg has a population of 28,564, according to the 1930 census. According to the 1935 wholesale-distribution census, the city had 41 wholesale houses, employing 661 people, with a pay roll of \$589,000, and total annual sales of \$14,238,000; 424 retail establishments, employing 1,427 people, with an annual pay roll of \$1,162,000, and total sales of \$10,216,000; 168 service establishments, employing 195 people, with a total pay roll of \$128,000, and sales of the value of \$461,000; and 44 manufacturing plants, employing 3,300 people, with an annual pay roll of \$2,268,580, and total annual sales of \$26,000,000. Petersburg has four banks and trust companies with total deposits (1937) of \$7,136,199 and resources in excess of \$8,000,000.

Petersburg trade area has a radius of approximately twenty miles, except to the north, and is the center of a rich farming and agricultural district. The principal crops grown in the Petersburg area are tobacco, peanuts, potatoes, and corn. The principal manufacturing establishments of Petersburg consist of cigarette and tobacco, luggage and trunks, garment and wearing apparel factories, and peanut-processing mills.

The Petersburg Newspaper Corporation offered the testimony of one Mr. Ryan for the purpose of showing the availability of commercial support to its proposed station. Mr. Ryan offered a list of 43 merchants whom he testified he had contacted and who had promised their advertising support for the proposed station to the amount of \$2,450. For the purpose of showing the commercial support available to Mr. Bryan, a witness who had previously been employed by WPHR when it was operating in Petersburg, testified that he had contacted a number of merchants from some of whom he had obtained signed commitments. There was offered in evidence approximately 30 of these commitments, which reflected the amount of approximately \$2,000 as expected income from advertisers. In addition to these commitments, there was offered in evidence a list of "prospective" advertisers who had used the facilities of WPHR in the past. From these commitments and other facts appearing on record, we find that a station operating in Petersburg, as proposed by either of these applicants, would reasonably be expected to receive sufficient commercial support to meet the estimated monthly operating costs.

The coverage of a station operating in Petersburg on the assignment requested by these applicants would be approximately 4 miles from Petersburg, with a 2 mv./m. strength, and about 7½ miles with an 0.5 mv./m. strength.

Since Station WPHR was moved from Petersburg that city has been without a local broadcast outlet. The only service available is from Station WRVA, Richmond, which operates at 1110 kilocycles, with 5 kilowatts. The distance from Petersburg to Richmond is 22 miles, and the service rendered by WRVA in that area is of approximately 0.5 mv./m. strength. This signal strength would not be expected to render satisfactory service either to the residential or business sections of town.

There is only one existing station located at less than the separation generally recommended to avoid objectionable interference. That is Station WJEJ at Hagerstown, Maryland. The Commission's engineering witness predicted that no objectionable interference with that station would result from operation as proposed by the applicants herein.

The applications are mutually exclusive because they request the same operating assignment for use in the same town. An application pending at the time of the hearing, which has since been granted by the Commission, requested authority to operate at Raleigh, North Carolina, at 1210 kilocycles, 100 watts night, and 250 watts L. S. It was found in that case (*Capitol Broadcasting Company, et al.*, decided July 26, 1938, 6 F. C. C. 72) that simultaneous operation in Petersburg and Raleigh on 1210 kilocycles at night would result in mutual interference to approximately the 2.1 mv./m. contour of both stations. It is not considered that the expectancy of such a limitation in this case is sufficient to bar a grant in view of the compelling showing of need in Petersburg.

GROUNDS FOR DECISION

1. Both applicants are legally, financially, and technically qualified to construct and operate the proposed stations;
2. The equipment proposed to be used by each is capable of operating in accordance with the requirements of the Commission;
3. There is a need in Petersburg for the services of a local broadcast station;
4. There is sufficient potential advertising revenue in Petersburg to support a local broadcast station;
5. No interference will be caused to existing stations from the operation as proposed by either applicant;

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6. The problem of interference which is expected to follow with a station operating as proposed in the application of the Capitol Broadcasting Company is not sufficient to bar a grant, in view of the showing of need for a new station in Petersburg;

7. Because both applicants request the same operating assignment in Petersburg, only one of the applications may be granted. The Petersburg Newspaper Corporation has its sole place of business in Petersburg. The program service proposed by the Petersburg Newspaper Corporation is well designed to meet the local needs of the Petersburg area and will be under the direction of persons long familiar with that area. The program service of the station proposed by John Stewart Bryan would be under the direct and indirect supervision of persons not residents of Petersburg, and does not appear likely to be as responsive to the needs of the Petersburg area as the program service of the Petersburg Newspaper Corporation which has long been identified intimately with Petersburg and the surrounding communities;

8. Granting the application of Petersburg Newspaper Corporation will serve public interest, convenience, and necessity;

9. Public interest, convenience, and necessity will not be served by granting the application of John Stewart Bryan.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D. C.

<p>In the Matter of R. H. NICHOLS, W. H. WRIGHT, and STEWART HATCH, a partnership doing business as THE NORTHWESTERN BROADCASTING COMPANY, VERNON, TEXAS.</p>		<p>DOCKET No. 4763.</p>
<p>For Construction Permit.</p>		

Decided September 6, 1938

James H. Hanley on behalf of the applicant; *John M. Littlepage* and *William A. Porter* on behalf of Station KOMA; *George O. Sutton, Arthur H. Schroeder* and *James L. Proffitt* on behalf of Amarillo Broadcasting Corporation; *A. V. Dalrymple* on behalf of the Federal Communications Commission.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION (McNinch, Chairman, and Commissioner Brown not participating):

STATEMENT OF FACTS

This proceeding arose upon an application of R. H. Nichols, W. H. Wright, and Stewart Hatch, a partnership doing business as the Northwestern Broadcasting Company, for construction permit to establish a radio-broadcast station at Vernon, Texas, to operate on the frequency 1500 kc. with power of 100 watts, unlimited time. On February 14, 1938, a hearing was held on this application before an examiner who, in his report (I-629), recommended that it be granted.

For the purpose of management and control of the Northwestern Broadcasting Company, Mr. Nichols is designated as President, Mr. Wright as Secretary, and Mr. Hatch as Treasurer. Mr. Nichols and Mr. Wright are residents of Vernon, Texas, and Mr. Hatch maintains his legal residence in Clovis, New Mexico. All of the partners are citizens of the United States.

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The aggregate net worth of the partners comprising the Northwestern Broadcasting Company was \$60,369 as of July 1, 1937. Individually, Mr. Nichols has assets of \$60,800, consisting of \$1,250 in cash, \$52,800 (book value) in newspaper stocks, real estate valued at \$6,000 and notes receivable of the aggregate value of \$800. His liabilities consist of \$150 in personal debts and a bank loan of \$9,500 which is secured by newspaper stock valued at \$15,000 (book value). This stock was hypothecated to the bank as collateral security for the loan. Mr. Hatch has assets of \$2,500, consisting of \$2,000 in cash and personal property valued at \$500. There are no liabilities. Mr. Wright submitted a financial statement as of July 10, 1937, showing assets of \$6,669, consisting of \$1,307 in cash, real estate valued at \$662, and personal property valued at \$4,700. He has no liabilities.

There is \$6,000 in cash now on deposit in the Herald National Bank of Vernon, Texas, in the name of the applicant company. This fund combined with the cash on hand and personal sources of credit of each partner will be used to cover the construction costs of the proposed station. Mr. Nichols has arranged with two banks in Vernon, Texas, for personal credit to provide the additional funds which will be needed to cover the construction cost of the proposed station. In this connection he intends to pledge his unencumbered newspaper stock (\$52,800 book value) with these banks in the amounts that will be required as collateral security for a loan. This source of credit will be available to cover the construction cost and will, in addition, be available to cover any operating losses of the proposed station if a need should arise therefor. Each of the other partners testified that he had established a personal credit for sufficient funds, based on his assets, to finance his portion of the construction costs of the proposed station.

The estimated cost of erecting the proposed station is between \$15,000 and \$20,000 and the operating cost will be approximately \$1,200 a month. The applicant has potential revenue, based on contracts with advertisers in the Vernon area for the sale of time of the proposed station, to insure an income of approximately \$1,300 a month. In addition, there were other merchants in this community who signified a desire to purchase time on the proposed station when the character of the programs and the service area of this station were known through its operation.

The equipment to be installed for the operation of the proposed station is of composite type and the approval thereof is subject to Rules 132 and 139 of the Commission. The antenna and transmitter

site have not been determined but will be selected subject to the approval of the Commission.

None of the applicants herein have had previous experience in the operation of a broadcast station. A qualified and experienced staff, however, will be employed by the applicant to insure the efficient operation of the proposed station. The station manager to be employed has had six years experience in that capacity with an existing radio station. It is also contemplated that there will be employed two licensed engineers, two announcers, a commercial manager, an office assistant and a bookkeeper-stenographer. The partners will supervise and direct the policies of the station and Mr. Nichols contemplates devoting the major portion of his time thereto. Each of the other partners will divide his time between the business of the proposed station and his own private interests.

Mr. Nichols is the editor and publisher of the *Vernon Daily Record*, a newspaper published at Vernon, Texas. He owns 60% of the stock of the corporation which publishes this newspaper. He has been associated with the paper in that capacity since 1923 and has been in its employ since 1909. He has been active in civic, educational, and charitable organizations of the community. Mr. Wright is associated with the Vernon Chamber of Commerce and with the Vernon Junior Chamber of Commerce, acting as secretary for both organizations. He is also general manager of the Pease River Flood Control District and secretary-treasurer of the Texas Watershed Association. All of these agencies have their headquarters in Vernon, Texas. Mr. Hatch was employed by Mr. Nichols as a reporter with the *Vernon Daily Record* until a few years ago. Since then he has been located in Washington, D. C., where he has pursued the study of law. He now contemplates returning to Vernon, Texas, where he will be engaged in private business as well as having an active interest in the operation of the proposed station.

There is no radio-broadcast station located in Vernon, Texas. Primary service is received in the residential section of this city and in the rural areas contiguous thereto from WFAA, Dallas, Texas, which operates on the frequency 800 kc. with power of 50 kw. sharing time with WBAP, Fort Worth, Texas, which operates with the same power. This city also receives some secondary service from Station KVOO, Tulsa, Oklahoma, which operates simultaneously during the day with Station WAPI, Birmingham, Alabama, on the frequency 1140 kc. with 25 kw. power, and shares nighttime hours with said station; and from several clear channel stations. Numerous residents of Vernon, Texas, testified that the reception from stations

other than WFAA and WBAP at night was intermittent except when extremely favorable weather conditions prevailed.

The City of Vernon, Texas, had a population of 9,137 and Wilbarger County, of which Vernon is the county seat, had 24,579 people residing therein (1930 United States Census). The occupations of the inhabitants of the rural areas surrounding Vernon are primarily agricultural, with cotton and wheat as the major crops. There is also extensive livestock raising and oil fields located in the area. The manufacturing plants located in Vernon produce cotton oil products, flour, farm implements, oil well supplies, drainage tanks, and other products of minor importance.

According to the United States Census of Business for 1935, published by the United States Department of Commerce, Vernon has 199 retail stores, with total sales of \$4,258,000. According to the same report, Wilbarger County has 276 retail stores, with total sales of \$4,743,000. The 1935 United States Census of Wholesale Distribution, published by the United States Department of Commerce, shows that Wilbarger County has 19 wholesale establishments having net sales of \$2,001,000, with an average annual pay roll of \$110,000.

The program schedule submitted in evidence represents a typical broadcast for an average weekday. It is designed to provide a program service of particular interest to the Vernon area. The schedule shows that time will be devoted to local news which will be broadcast at frequent intervals during the day, to market reports, to agricultural topics, and to various civic and political activities that occur in the city. Approximately 65% of the total time of the proposed station will be devoted to sustaining programs and 35% of the time will be used for commercial programs. Time will be donated to civic, religious, educational, and charitable organizations of this community. The applicant contemplates using transcription and news services for the proposed station. There is no network affiliation contemplated by the applicant for the initial operation of the station.

There are a number of bands, two high-school orchestras, glee clubs, numerous musical societies, choirs, and individual musicians that are available to support the program service of the proposed station. The applicant contemplates broadcasting programs conducted by the County and City Superintendents of Schools, by the local Agricultural Agents, by Officers of the Soil Conservation Service whose project is located in Vernon, by officers of the local clubs, by the local W. P. A. Officials, and by various heads of the welfare organizations of this city.

The commercial rates for the sale of time of the proposed station are as follows: \$52 an hour, one-half hour \$30.50, one-quarter hour \$18,
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ten minutes \$14, and 5 minutes \$10. These rates are subject to discount upon a continued-contract basis. Under the proposed schedule of rates the applicant contemplates furnishing the talent for the programs broadcast.

There is only one existing station located within the average recommended mileage separation from the proposed station for nighttime operation. This is Station KBST, Big Springs, Texas, which operates on the frequency 1500 kc. with power of 100 watts, unlimited time. The normally recommended mileage separation between KBST and the proposed station for nighttime operation is 185 miles and the actual distance is approximately 182 miles. It was predicted that there would be no objectionable interference caused by either station to the service of the other through simultaneous operation.

There are three applications for facilities pending before the Commission which are located within the average mileage separations from the proposed station to avoid objectionable interference. Two applications for construction permits are pending from Amarillo, Texas, each of which requests authority to establish a new station, to operate on the frequency 1500 kc. Application (B3-P-1840) requests authority to operate with power of 100 watts night, 250 watts day, unlimited time, and application (B3-P-1866) requests authority to operate with power of 100 watts, unlimited time. The recommended mileage separations for nighttime operation between these stations in Amarillo and that of the applicant is 185 miles, and the actual separation is approximately 162 miles. It was predicted that no objectionable interference would be expected to result at night through the simultaneous operation of the proposed station and either of the proposed stations in Amarillo.

Station KOMA, Oklahoma City, Oklahoma, which operates on the frequency 1480 kc., has a construction permit (B3-P-1900) requesting authority to increase power from 5 kw., unlimited time, to 10 kw. power, unlimited time. The normally recommended mileage separation for daytime operation between KOMA and the proposed station is 139 miles and the actual separation is approximately 135 miles. It was predicted that no objectionable interference would result to either station when operating as proposed.

GROUNDS FOR DECISION

On the record in this case the Commission finds—

1. The applicant is legally, technically, financially, and otherwise qualified to construct and operate the station as proposed herein;
2. There is a public need for the type of broadcast service proposed by the applicant herein;

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3. The program service as proposed by the applicant is designed to meet the needs of the area to be served;

4. There is sufficient commercial support available to insure the operation of the proposed station;

5. No objectionable interference between the proposed station and any existing broadcast station is expected to result from a grant of this application, nor will interference result to stations proposed in applications for facilities pending before the Commission when the instant application was designated for hearing;

6. The granting of the application will serve public interest, convenience, and necessity.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D. C.

<p>In the Matters of¹ CITY BROADCASTING CORPORATION (WELI), NEW HAVEN, CONNECTICUT. For Modification of License.</p>	}	DOCKET No. 3761.
<p>TROY BROADCASTING COMPANY, INC., TROY, NEW YORK. For Construction Permit.</p>	}	DOCKET No. 4306.
<p>LAWRENCE K. MILLER, PITTSFIELD, MASSACHUSETTS. For Construction Permit.</p>	}	DOCKET No. 4187.

Decided, September 6, 1938

In Dockets Nos. 3761 and 4187, *Ben S. Fisher* and *Charles V. Wayland* on behalf of applicant, City Broadcasting Corporation, Station WELI; *Elmer W. Pratt* on behalf of applicant, Lawrence K. Miller; *George O. Sutton* and *James L. Proffitt* on behalf of Stations WDBJ, WORL, WBRC, and KROW; *Philip G. Loucks*, *Arthur W. Scharfeld*, and *Joseph F. Zias* on behalf of Troy Broadcasting Company, Inc., and Lou Poller; *Horace L. Lohnes* and *Fred W. Albertson* on behalf of Stations WPEN, WRAX, WJAR, and Harold Thomas; *Paul M. Segal*, *George S. Smith*, and *Harry P. Warner* on behalf of Stations WCSH and WAAT; *James H. Hanley* on behalf of Station KMA; *James D. Cunningham* and *Andrew G. Haley* on behalf of the Federal Communications Commission.

In Docket No. 4306, *Philip G. Loucks* and *Arthur W. Scharfeld* on behalf of the applicant; *Frank D. Scott* on behalf of Station KMBC; *Elmer W. Pratt* on behalf of Lawrence K. Miller; *John M. Littlepage* and *William A. Porter* on behalf of Hearst Radio, Inc.; *Paul M. Segal* on behalf of Station WCSH, Station WAAT, and Citizens

¹ Various petitions for rehearing; and motion for cancellation of order; and for consolidation of records; and for joint and comparative consolidation were filed, all of which were denied by the Commission on December 12, 1938. WOKO, Inc. and Adirondack Broadcasting Co., Inc. appealed to the United States Court of Appeals for the District of Columbia from a grant to Troy Broadcasting Co. Appeal dismissed on December 11, 1939. Appeal taken to the United States Court of Appeals for the District of Columbia by Tri-City Broadcasting Co., Inc. on January 3, 1939. Appeal dismissed on October 14, 1939.

Broadcasting Corporation; *Horace L. Lohnes* and *E. D. Johnston* on behalf of Station WOKO, Station WABY, and Utica Observer Dispatch Company; *A. L. Ashby* and *Philip J. Hennessey, Jr.*, on behalf of Station WRC; *Ben S. Fisher*, *John Kendall*, and *Charles V. Wayland* on behalf of Stations WELI and KFWB; *Andrew G. Haley* on behalf of the Federal Communications Commission.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION:

STATEMENT OF FACTS

These proceedings arose upon the following applications:

(1) An application of City Broadcasting Corporation (licensee of an existing station WELI, located at New Haven, Connecticut, operating on the frequency 900 kilocycles with power of 500 watts daytime only) for modification of license to change its frequency to 930 kilocycles and to operate with power of 250 watts, 500 watts L. S., unlimited time, using a directional antenna;

(2) An application of Lawrence K. Miller for construction permit to authorize the establishment of a new radiobroadcast station at Pittsfield, Massachusetts, to operate on the frequency 930 kilocycles with power of 250 watts, daytime only, and;

(3) An application of Troy Broadcasting Company, Inc., Troy, New York, for a construction permit to authorize the establishment of a new radiobroadcast station at Troy, New York, to operate on the frequency 950 kilocycles with power of 1 kilowatt during daytime hours.

The stations proposed by Troy Broadcasting Company, Inc., and Lawrence K. Miller would be approximately 30 miles from each other. The frequencies requested are 930 and 950 kilocycles, respectively. The records disclose that simultaneous operation of both stations as proposed will result in mutual objectionable interference. Because of these factors the Commission has considered the applications concurrently.

A hearing was held on the application of the Troy Broadcasting Company on March 16, 1937, before an examiner, who, in his report (I-422) recommended that it be granted. The City Broadcasting Corporation and Lawrence K. Miller participated in the proceedings of the Troy application. Exceptions to the Examiner's Report filed by KMBC, WCSH, WOKO, WRC, and Lawrence K. Miller raise no questions not necessarily involved in a determination of the application on its merits. Oral argument was heard on the Troy application before the Commission on October 14, 1937.

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City Broadcasting Corporation and Lawrence K. Miller in their applications request use of the same frequency, namely, 930 kilocycles. The location of the station proposed by Miller is approximately 80 miles from New Haven, the site of WELI. As granting one of these applications might preclude favorable action on the other, a consolidated hearing was held on both applications.

Said hearing was held on December 11 and 12, 1936, before an examiner, who, in his report (I-372) recommended (1) that the application of City Broadcasting Corporation be granted on a condition hereinafter set forth, and (2) that the application of Lawrence K. Miller be denied. Troy Broadcasting Company, Inc., participated in the hearing on the aforesaid applications.

In his report, submitted on March 18, 1937, the examiner pointed out, that:

Station CHNS, Halifax, Nova Scotia, 525 miles distant, recommended separation 1,000 miles, is now limited by interference from WDBJ to its one millivolt per meter contour. If this application be granted and WELI operated at night with the requested power and frequency, Station CHNS would be limited to approximately its 2.5 millivolt per meter contour, whereas it is entitled to protection to its one millivolt per meter contour at night. This interference would be considered objectionable.

and he recommended as follows:

That the application of the City Broadcasting Corporation, Station WELI, Docket No. 3761, for authority to change frequency and to operate at night be granted, conditioned that the applicant construct a directional antenna to protect Radio Station CHNS from objectionable interference, in addition to affording protection to the stations situated in the United States. The design and specifications of such antenna, together with the proposed transmitter site, if a change of such be necessary, to be subject to the approval of the Engineering Department of the Commission.

It may be noted that this recommendation suggests the construction of a directional antenna which was not fully detailed in the original application and was not shown in the evidence. Pursuant to the examiner's recommendation, the applicant, in a letter dated April 20, 1937, suggests that an "Engineering Report,"¹ submitted therewith

be attached to the said application of the City Broadcasting Corporation, Radio Station WELI, New Haven, Connecticut, Docket No. 3761, and made a part thereof and it is respectfully submitted that this proposed directive antenna conforms with the said Examiner's Report and gives full and complete protection to all radio stations now operating in the United States and further full and complete protection to Radio Station CHNS, of Halifax, Nova Scotia, as

¹ The term "Engineering Report" is used throughout this decision to describe a document entitled "Proposed Engineering Report of Paul F. Godley, February 1937," which was filed with the Commission on April 22, 1937.

directed in the said Examiner's Report. It is further requested that this directive pattern be considered in connection with the Commission's consideration of this application and in arriving at their final decision.

The "Engineering Report" was served upon all parties participating in the hearing.

Birmingham Broadcasting Company, Inc. (WBRC), Times World Corporation (WDBJ), and Educational Broadcasting Corporation (KROW) filed exceptions to the examiner's report on identical grounds. These grounds may be summarized as follows:

(1) The examiner's finding that the entire metropolitan area of New Haven does not now receive primary service is erroneous because Station WEAJ "would lay down a signal strength in the New Haven area of from 2 to 4 millivolts per meter";

(2) The examiner erred in finding that only a comparatively small percent of receiving sets are capable of receiving a station operating on 1530 kilocycles, as said finding was based upon unsubstantiated opinion testimony;

(3) Authorizing the operation of Station WELI on the frequency 930 kilocycles would place an obstacle in the path of any attempt on the part of the exceptors to operate with 5 kilowatts at night on the frequency 930 kilocycles and would result in an uneconomical use of said frequency;

(4) The recommendation of the examiner (set forth *in extenso* above) is in violation of the Rules and Regulations of the Commission.

The three contentions first set forth may be disposed of immediately. (1) is obviously without merit as a signal strength in excess of 10 millivolts per meter is necessary for good reception in business areas of communities the size of New Haven. The alleged error complained of in (2) is without merit as the finding is not persuasive of any factor in the Commission's decision, in view of the paramount consideration that New Haven lacks in primary nighttime broadcast reception. The contentions raised in (3) have been specifically disposed of by the United States Court of Appeals for the District of Columbia in *Pittsburgh Radio Supply House, et al. v. Federal Communications Commission* (decided May 23, 1938) 98 F. (2d) 303. The questions raised under (4) must be given further consideration.

Lawrence K. Miller also filed exceptions to the examiner's report, each of which has been considered by the Commission, and are disposed of in the discussion herein and in the findings set forth in this statement of facts.

On May 3, 1937, WDBJ filed a Motion to Suppress the applicant's "Engineering Report." Similar motions were filed by the Congress Square Hotel Company (WCSH) and other parties. The Motions

to Suppress raise in more detail the same questions set forth in the aforesaid exceptions and adverted to under (4), supra. The substance of the Motions to Suppress may be summarized in language contained in the WDBJ motion:

The action of the Commission, should it consider this Engineering Report in connection with the application of Station WELI, Docket No. 3761, would, in effect, be in the nature of amendment to the above-entitled application. However, the effect would be even more disastrous to other interested parties, since such parties would be denied the right of cross-examination which would have been afforded if the hearing on the said application had been reopened.

On May 11, 1937, the applicant filed an "Objection to Petition to Suppress." The applicant contends that the new engineering information with reference to the directive pattern of Station WELI "improves the situation with reference to WDBJ of Roanoke, Virginia, and in no manner changes the issues in this case." It was further contended "that this additional engineering data is not in truth and in fact an amendment to the application, but merely additional information and a revised pattern of a directive antenna in order to give full protection to CHNS." This (it was urged) is not an amendment as to location of station "as contemplated under Section 103.8 of the Commission's Rules" because "the pattern as proposed in this application changes the location of the transmitter only a few thousand feet and does not move it out of the general location in which it is now located at New Haven, Connecticut, and is for the sole purpose of serving the New Haven territory, and is not a change of location of station as contemplated under the aforesaid section."

With the entire record before it, including the "Engineering Report" and the several pleadings, exceptions, and motions, the Broadcast Division on May 27, 1937, heard oral argument. Thereafter, on July 2, 1937, the following Minute was adopted (Minute No. 540, July 2, 1937, Broadcast Division, F. C. C.):

in the following cases:

Examiner's report	Docket No.	File No.	Applicant	Call letters	Nature of application
I-372.....	3761	B1-ML-263.	City Broadcasting Corporation, New Haven, Conn.	WELI	Modification of license to change frequency from 900 kc. to 930 kc.; change hours of operation from daytime to unlimited with power of 250 watts, night; 500 watts day; and install directional antenna.
	4187	B1-P-1297...	Lawrence K. Miller, Pittsfield, Mass.	NEW	Construction permit for new broadcast station to operate on 930 kc.; 250 watts, daytime. (Site to be determined subject to Commission's approval.)

the Broadcast Division, upon consideration of the applications, records, and evidence in these cases, Examiner's Report I-372, the exceptions thereto, and the oral argument heard, directed that said applications be remanded to the Hearing Docket for further hearing. The Broadcast Division directed further that an order be entered accordingly and forwarded to all interested parties.

Upon receiving notice of the further hearing, an appearance was filed by the applicant, City Broadcasting Corporation, and served upon all parties whose names appeared in the original hearing notice (dated March 19, 1936). One of the issues contained in the original hearing notice reads as follows: "To determine whether the directional antenna which the applicant proposes to use will comply in all respects with the Rules and Regulations of the Commission, particularly Rule 131, and will render proper service." One of the allegations which the applicant proposed to prove at the further hearing reads: "That the interests of other licensed stations on the same or adjacent frequencies will not be adversely affected by reason of interference." Stations WRAX, WPEN, WORL, WDBJ, WCSH, and WAAT filed answers to said appearance. WDBJ in its answer denied the above allegation and specifically requested "that the applicant be put to the proof of each and every allegation contained" in its appearance. The question of interference was also raised in other answers. The further hearing was called before an examiner on September 23, 1937. When the applicant WELI commenced to adduce testimony with regard to the directive antenna heretofore referred to in the "Engineering Report" several of the participants in the hearing objected to the proceeding and filed motions in opposition thereto which may be summarized as follows:

- (1) Since no new bill of particulars had been issued and forwarded to the various parties in interest, they were not given notice as to the issues to be tried at the further hearing;

- (2) The filing of the new engineering data by the City Broadcasting Corporation amounted to an amendment to the original application. No application to be permitted to amend had ever been filed by the City Broadcasting Corporation with the Commission, and the "Engineering Report" was not in proper form to be used as an amendment;

- (3) Any evidence that might be offered by the City Broadcasting Corporation concerning any engineering data including a directional antenna of a different design than that which was specified in the original application and a different transmitter site than had been originally specified would be immaterial, irrelevant, and inadmissible.

During the course of the argument before the examiner it was conceded by those voicing objection to the proceeding that the "Engineering Report" in controversy was the subject of argument before

the Broadcast Division and that complaint was made during oral argument that said adverse parties had been afforded no opportunity to cross-examine witnesses on such data to ascertain whether or not the new antenna design and new transmitter location as proposed in the "Engineering Report" would, as claimed by the applicant, afford protection to stations situated in the United States. It was not denied by any of the parties that they were notified by the City Broadcasting Corporation of the filing of the "Engineering Report" or that each of them has been supplied with a copy thereof.

After hearing the various objections and motions outlined above, the examiner read into the record the Minute of the Broadcast Division remanding the said dockets for further hearing, and overrules all objections and all motions on the grounds that, after considering the entire matter, it must be presumed and it appears that the Broadcast Division had treated the new engineering data filed by the City Broadcasting Corporation as an amendment to its original application, otherwise remanding the case for further hearing would have been futile, and had thereby disposed of all pending motions affecting the matter; that in view of the fact that the Commission had issued no new Bill of Particulars, the issues to be tried out at the further hearing were the issues set out in the original Bill of Particulars; that the applicants and other parties in interest could offer evidence on any such issues; and that for the examiner to sustain the various objections and motions filed by the various parties and suppress or terminate the further hearing without receiving evidence would in effect be an attempt to overrule the Commission, Broadcast Division, which had ordered a further hearing on the matter involved.

On October 5, 1937, there was filed with the Commission a document sworn to by Harold A. Lafount, as vice president of the City Broadcasting Corporation. This document consisted of the Commission's printed application form relating to construction permits. In response to Section 20 (a) thereof, the affiant stated that a directional antenna was to be used and that the details concerning said antenna were on file with the Commission, and in response to Section 22, the same location was given for the antenna site as was set forth in the "Engineering Report."

The examiner's report on the further hearing was submitted on November 22, 1937. He again recommended that the application of the City Broadcasting Corporation be granted and that the application of Lawrence K. Miller be denied. Exceptions to this report were filed by WBRC, WDBJ, and Lawrence K. Miller, in which objections were again raised which are substantially the same as those heretofore discussed.

The Commission has carefully considered the procedural aspects of this case to determine whether any party was aggrieved or adversely affected or whether the rights of any party were prejudiced.

The Broadcast Division, in remanding the case for further hearing, showed (1) that it afforded the applicant an opportunity to adduce proof as to the effect of operation in conformity with the specifications set forth in the "Engineering Report," and that it disposed of the several pending motions, pleadings, and pertinent exceptions by reopening the entire record anew and allowing all parties the right to be heard, offer testimony, cross-examine witnesses, and otherwise fully participate in the further hearing, and, (2) that the further hearing would not circumscribe and consequently would be on all the issues contained in the original hearing notice, which were amply broad enough to cover any question as to the effect of operation with the directive antenna proposed in the "Engineering Report."

The testimony shows, without suggestion of contradiction, that the directive antenna finally suggested affords greater protection to existing stations than the directive antenna originally proposed and that interference with the station proposed by Lawrence K. Miller would be lessened. It is manifest, therefore, that the proceedings resulted in no prejudice to any party.

The Commission is not unmindful of the imperfections in form and manner of filing of the "Engineering Report" which must be considered as an amendment. But, under the circumstances of the case, the Commission is constrained to exercise its sound discretion and to waive the requirements of its rule relating to amendments. The Commission accepts the verification filed October 5, 1937.

IN RE DOCKET NO. 3761

Station WELI commenced operation in October 1935. The legal, technical, financial, and other qualifications of the applicant to continue the operation of the station under the modified operating assignment requested were not in issue in this proceeding. Included among the corporate assets are \$26,865.25 cash on hand and \$3,418.40 accounts receivable.

The original cost of WELI was approximately \$45,000, and about \$5,000 has been spent in improvements in the station since it was established. During the first four months of operation the station sustained a loss of about \$5,000. During the remaining months of the first year of operation the loss per month gradually diminished, resulting in a total loss for the year of approximately \$10,000. The record discloses that the foregoing losses are attributable to the fact that it was necessary to make heavy initial expenditures in the establishment

of the station. The applicant maintains that considerable revenue was lost because WELI was unable to take advantage of nighttime commercial possibilities. In this connection the record shows that a large number of representatives of business establishments have been interviewed by a member of the staff of WELI and have signified their intention to purchase broadcast time during evening hours.

The station has at present 14 full-time employees and 4 salesmen. Should this application be granted, it is proposed to increase the number of employees by 8, including engineers and accountants. The proposed antenna and the transmitter site conform to the requirements of the Rules and Regulations of the Commission.

According to the U. S. Census for 1930, the City of New Haven had population of 162,655. The same source shows that the metropolitan area of New Haven had population of 298,724. There are 365 industries in this area, producing commodities valued at \$63,000,000 (U. S. Census of Business for 1933). A wide range of products are manufactured in this area, including machinery, automobile tires, rubber goods, wire, clocks, matches, firearms, ammunition, sporting goods, toys, paper products, and clothing of all kinds. It is estimated that 55,000 persons are employed in these industries.

New Haven is an outstanding educational center. Among the institutions of higher learning situated in its metropolitan area are Yale University, New Haven Women's College, Albertus Magnus College, New Haven College, and other educational institutions, including numerous public, parochial, private, and business schools. Yale has an enrollment of approximately 5,500 students.

WELI, a daytime station, is the only broadcast facility located in New Haven. In addition to the daytime service rendered by WELI to this area, Station WEAJ, New York, operating on the frequency 660 kilocycles, with 50 kilowatts power, unlimited time, has a signal strength in the New Haven area of approximately 2 to 4 millivolts per meter. WJZ, WABC, and WOR (clear-channel stations located in the New York area) lay down signals of from 1 to 2 millivolts per meter in this area. Service which is satisfactory to portions of the New Haven area is received from WICC, Bridgeport, Connecticut, and Stations WATR and WBRY, both located in Waterbury, Connecticut.

At night WELI, operating as proposed, would be limited by WDBJ within its 4 millivolt per meter contour and would serve within that contour an estimated population of 208,007 (based on the 1930 Census). It is estimated that during daytime hours WELI, operating as proposed, would serve 189,513 people within its 10 millivolt per meter contour, 246,929 within its 2 millivolt per meter contour, and 536,211 within its 0.5 millivolt per meter contour (all population calculations are based on the 1930 Census).

The evidence shows that the program service heretofore rendered by Station WELI during daytime hours has been planned to meet the needs of the New Haven area. The service of the station, of course, has been circumscribed by its limited hours of operation. The diversity of the broadcast requirements in this area is revealed by the fact that New Haven is one of the outstanding cultural centers of the United States, it has a large foreign-born population, and it has a large population employed in industrial occupations. Residing in the area are approximately 60,000 Italians, 30,000 persons of the Jewish race, 15,000 Germans, 10,000 Poles, 1,500 Lithuanians, and other nationalities. Musical and dramatic programs of special interest to these large population groups are regularly broadcast. A forty-five minute Italian program is broadcast daily consisting of one-half hour of orchestra music, during which soloists are featured, the remaining fifteen minutes being devoted to dramatic skits which feature outstanding Italian players. The Sunday Italian program is more lengthy, consisting of an orchestral concert interspersed with vocal performances. Programs of a similar nature of special interest to Hungarians, Ukrainians, and other nationalities are regularly broadcast.

The cultural interests of the community have found expression over this station in the broadcasting of programs originating at Yale University and from other educational as well as religious institutions located in the city. Operation during daytime hours only has seriously handicapped the station in giving more effective utterance to the extensive sources of cultural program material. Thus the Yale Political Union sponsors open forums and debates which are usually available for broadcasting only during evening hours. On one occasion only was the station able to broadcast a debate supervised by that organization. The Yale Dramatic Club, known as "Yale Dramat," also sponsors free dramatic presentations and lectures which they desire to have broadcast but which are usually available during evening hours only. The Yale Band and the Yale Glee Club present weekly concerts which are also available for broadcasting during evening hours only.

It is an important fact that there are 55,000 persons residing in the New Haven area who are employed in industrial occupations, and the great majority of these are unable to listen to broadcast programs during daytime hours. The record reveals that the station in the past has presented a large number of programs, including musical, dramatic, news, and other features, which are of general interest to this important sector of population and which would be continued into the evening hours with unlimited-time operation, thus affording these people a more adequate program service.

Representatives of numerous civic, political, educational, religious, fraternal, patriotic, and service organizations have requested the use of evening hours. Included among these are the Yale Political Union, Yale Dramat, Yale School of Music, Yale Band, Yale Glee Clubs, Medical Association, Community Chest, and numerous high schools located at New Haven and surrounding towns. The station management has in the past, and will in the future, offered its facilities free of charge to these institutions, representing as they do the diversified interests of the community.

The station has frequently conducted auditions for the purpose of discovering and developing talent. Through this activity it has established a list of artists and entertainers. The services of several of these are available only during evening hours.

As has been pointed out, the station, operating as proposed, will be limited because of interference from an existing station within its 4 millivolt per meter contour. The Commission is not unmindful of the fact that stations of the class requested are ordinarily protected to their 1 millivolt per meter contour at night. The facts in this case, however, show that there is an urgent and compelling need for primary nighttime service in New Haven, and that the applicant proposes to supply, on an exceptionally meritorious standard, the needed service. These facts present the situation wherein one of the large and important cities of the United States, which is also an outstanding educational and cultural center, is wholly lacking not only in a station located in its environs operating during nighttime hours but is also lacking in primary broadcast service in areas of high noise level from any source during evening hours. These circumstances alone show a paramount need which justifies the Commission in departing from its usual allocation values and fully warrants the granting of the instant application.

Station WDBJ, Roanoke, Virginia, 465 miles from New Haven, and Station WBRC, Birmingham, Alabama, 928 miles from New Haven, are located at shorter distances than those normally considered necessary to avoid objectionable interference with the operation of Station WELI, as proposed herein. Normally, the operation of WELI would cause interference to Station WDBJ. However, this interference will be less severe than the interference now caused to WDBJ by the operation of WBRC and consequently will be masked; and the interference to WBRC from WDBJ on its present assignment is greater than the interference which would result to WBRC from the operation of WELI as proposed. The operation of Station WDBJ will limit the service of WELI at night, operating as proposed, to within its 4 millivolt per meter contour. Station CHNS, Halifax, Nova Scotia, oper-

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ates with power of 1,000 watts on the frequency 930 kilocycles. This station is limited to a greater extent by the operation of CFLC, Prescott, Ontario, and the operation of WDBJ than would be expected from the operation of WELI as proposed. CFLC also receives a more severe limitation from WDBJ than will be received from WELI operating as proposed. The limitation on CFCH, North Bay, Ontario, is greater by reason of the operation of WDBJ than it would be the operation of WELI as proposed. Station CKPC, Brantford, Ontario, is limited by the operation of WDBJ to its 4.5 millivolt per meter countour, which is a more severe limitation than that which the station will receive from WELI.

Lawrence K. Miller has an application pending requesting authority to establish a broadcast station at Pittsfield, Massachusetts. Simultaneous operation of WELI and the station proposed by Lawrence K. Miller will result in some mutual interference during the first two hours after sunrise and during the last two hours before sunset.

Due to the fact that the conductivity of the intervening terrain is much less than average, no objectionable interference is expected to result from the simultaneous operation of WELI as proposed and the station proposed by the Troy Broadcasting Company, Inc.

At the time of hearing there were other pending applications requesting facilities on adjacent channels, but the evidence reveals that these present no problems of interference with the instant application. There are also pending a number of applications for the use of 5 kilowatts power at night on certain regional frequencies. As these applications request the use of power not authorized by the Commission's Rules and Regulations, it is not necessary to consider them in these proceedings. *Pittsburgh Radio Supply House v. Federal Communications Commission* (decided May 23, 1938), 98 F. (2d) 303.

IN RE DOCKET NO. 4306

The applicant, Troy Broadcasting Co., Inc., is a corporation organized under the laws of the State of New York and duly empowered to construct and operate a radio broadcasting station. Each of the directors and stockholders is a citizen of the United States.

The stockholders of the corporation are Tom Rourke, President of the National City Bank, of Troy, New York; Samuel E. Aronowitz, President of the Bank of Green Island, New York; Dr. J. L. Meader, President of Russell Sage College of Troy, New York; and Harry C. Wilder, President of the Central New York Broadcasting Corporation of Syracuse, New York. The directors of the corporation are Mr. Rourke, Mr. Aronowitz, and Mr. Wilder. Mr. Wilder is also President and Treasurer of the corporation.

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The Troy Broadcasting Company, Inc., has an authorized capital of \$100,000, consisting of 7,300 shares, 7,000 of which are common stock with voting powers and 300 of which are preferred. The common shares have a par value of \$10 each, and the preferred shares have a par value of \$100 each. The Board of Directors have authorized the sale of \$45,000 of common stock to cover the construction and operation of the proposed station. Mr. Rourke, Mr. Aronowitz, and Dr. Meader have each subscribed for 600 shares of common stock, and Mr. Wilder has subscribed for 2,700 shares. Only qualifying shares have been issued up to the present time. It is not proposed that any stock other than that subscribed will be sold for the purpose of constructing and operating the station.

The financial statement of the applicant as of March 13, 1937, reveals total assets of \$45,000, which consists of cash, \$25,300; stock subscriptions, \$18,000; engineering, legal, and organization costs, \$1,700. The stock subscription agreements are subject to call for payment thirty days after notification. The applicant has no financial obligations.

The applicant corporation is not interested through stock ownership, contract or otherwise, in the ownership or control of any other broadcasting station.

Mr. Wilder will have general supervision of the proposed station. He is a college graduate, having specialized in electrical engineering, and has been President of the licensee corporation operating Station WSYR at Syracuse, New York, for the past four years. The general manager of the proposed station has been program manager of Station WSYR. He began his radio career in 1922 as a professional singer and part-time announcer. In 1927 he became chief announcer of Station WTAM, Cleveland, Ohio, and in 1930 he became assistant manager of Station WGAR at Cleveland, Ohio. Four years ago he assumed the position of program director of Station WSYR.

The applicant proposes to maintain an adequate staff of qualified employees to construct and operate the proposed station, including a manager, a chief engineer, two assistant program directors, two announcers, a bookkeeper, and two stenographers. Engineers to operate the station will be selected from those recommended to the applicant by the Rensselaer Polytechnic Institute of Troy, New York.

The proposed station is to be established in the City of Troy, New York, which is located 150 miles north of New York, New York, on the Hudson River at the head of deep-water navigation. The City of Troy is located at the junction of the Erie and Champlain Divisions of the barge canal and is served by four railroads. It is about 7 miles from Albany and 14 miles from Schenectady and is part of what is known as the capital district.

There is no radio-broadcast station now located in Troy. Primary service in this area is available from a clear-channel station, WGY. Service satisfactory in the residential portions of this area is available from four other clear-channel stations located in the New York metropolitan area. WOKO and WHAZ, regional stations, offer service to the residential sections of the locality. These stations also maintain studios in Troy. In addition, WABY (operating on a local frequency) provides some service.

The population of Troy was 72,763, according to the United States Census of 1930, of which 83.9% are white native-born inhabitants. Other towns and cities in the immediate vicinity of Troy and their populations are as follows: Watervliet 16,083, Cohoes, 23,226, Green Island 4,331, and Waterford 2,921. Including Troy, these communities, which are located within four miles of the Troy business section, comprise what is known as the Troy City Zone. Each is a separate political subdivision, but all of them have common social and economic interests, being served by single telephone and telegraph rates, and all are grouped together in the city directory.

The proposed rate card of the applicant fixes a national or general advertising rate of \$50 per hour, \$30 per half hour, \$18 per quarter hour, \$10 for five minutes, \$5 for one minute, and \$2.50 for 35 words. Local rates will be 15% less than the national or general rate.

It is shown that Troy is a distinct civic and economic area and there exists a feeling of rivalry between the Troy civic leaders and merchants and those of Albany and Schenectady. Troy has four commercial banks, one savings bank, and three building and loan associations with combined deposits as of December 31, 1936, of \$84,571,634.58.

It was shown, according to a publication of the Bureau of Domestic and Foreign Commerce, that Rensselaer County, in which Troy is located, is one of 97 major county markets out of some 3,000 in the United States. The 1935 Census of Business shows that the volume of retail trade in Troy reached \$29,818,000, or retail sales of \$409.79 per capita. The principal industries of the Troy area consist of the manufacture of shirts, collars, underwear, handkerchiefs, brushes, valves, rail joints, castings, surveying instruments, show fences, files, paints, varnishes, clothing, rye flour, bells, pig iron, automobile parts, brake lining, buns, and breach mechanism, knit goods, and paper.

The President of the Troy Chamber of Commerce testified that he would cooperate in assuring the commercial success of the proposed station. The Chamber of Commerce itself adopted a resolution favoring the application of the Troy Broadcasting Company. The Chairman of the Radio Committee of the Junior Chamber of Commerce testified that the latter organization desired the establishment of a radiobroadcast station in Troy for civic and business expression. The

Vice President of a local bank testified that its Board of Directors desired a commercial broadcast station in the community. He pointed out that although there is trade rivalry between Albany and Troy his bank had to advertise over facilities in the former community because of lack of facilities in Troy. The President of a drug house (who was also a member of the Board of Regents of the State of New York) stated that his concern could use a Troy station for advertising purposes. A witness, offered on behalf of the applicant, testified that he called on 34 business concerns in Troy and he was able to interview responsible representatives of 25 of these concerns all of whom "indicated that they would be interested in advertising over the proposed Troy station." The witness stated that the concerns represented "a very diversified list of businesses both large and small. One hardware store, one grocer, three furniture stores, two electrical appliance shops, one stationer, one children's equipment shop, two feed and seed stores, three men's clothing stores, one general clothing store, one tire and rubber store, one shoe shop, three department stores, one upholstery shop, three women's apparel shops, and one restaurant. They were chosen at random. These stores are located in the main downtown business section of Troy, New York."

No network affiliation is contemplated by the applicant, and it is proposed to operate the station in the community interest. Particular attention will be given to all matters of local civic interest.

Program service planned by the applicant embraces educational, religious, agricultural, and other features, and is designed with special regard to the needs of the Troy area. An analysis of a typical day's schedule offered in evidence by the applicant consists of approximately 60% entertainment programs, 15% educational, 25% agricultural, religious, and miscellaneous programs. Included in the programs are three periods daily for Russell Sage College. A fifteen-minute program daily is to be devoted to local and national civic affairs, and it is also planned to carry daily a half-hour program of luncheon music and a half-hour program of dinner music, which will be furnished by musicians employed in Troy. Cooperation from Troy civic, charitable, religious, and educational groups has been assured, including programs from the Troy Ministerial Association, the American Legion, the American Red Cross, the Parent-Teachers Association, and other similar groups. The Mayor of the City of Troy and a number of other civic leaders, businessmen, and educators testified as to the need for a station in Troy, talent which would be available, and the cooperation which would be received from the various institutions represented by the witnesses.

It appears that adequate talent is available in the Troy area for the type of program service proposed to be rendered by the applicant.

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A number of musical and dramatic organizations have promised to assist the management in carrying out the program service, including the Troy Vocal Society, the Musical Arts Club, the First Presbyterian Church Choir, the Troy High School Glee club, the Troy American Legion Band, the St. Joseph's Church Choir, the St. Vincent's Female Orphanage Girls' Band, the North Troy Men's Club, and the Chromatic Club.

There are 71 churches in Troy. Educational institutions located in Troy include Rensselaer Polytechnic Institute, Russell Sage College, Emma Willard School for Girls, La Salle Institute, a preparatory school for boys, two business colleges, two music conservatories, 16 public schools, 12 parochial schools and three high schools. The total enrollment in the grammar, grade, high schools, and business colleges is about 15,000 students.

The applicant has retained the services of a professor of broadcasting and director of the workshop of Syracuse University to supervise these experiments in educational broadcasting. The plan contemplates utilization of the educational resources of the colleges for program content and the technical knowledge of the station manager for presentation. The plan embraces three parts. The first part consists of the setting aside of adequate time for educational broadcasting entirely independent of commercial schedules. The second part consists of the development at Russell Sage College of a radio workshop for the purpose of studying the technique of educational broadcasting and cooperating directly with such institutions as the Parent-Teachers Association, health associations, bar associations, and public service institutions, with a view to evolving new methods for presenting matter which at present is largely confined to the lecture type of programs. The third part consists of school broadcasts, supplementing classroom work. The President of Russell Sage College, who is also a stockholder in the applicant corporation, testified to the effect that the plan would receive all necessary encouragement from his Board of Directors and members of the faculty, that the college would add to its faculty a man skilled in the technique of program construction, and at the same time establish a radio workshop where students may learn broadcasting in a course leading to proper academic credits. It appears that other schools and colleges likewise would cooperate in furnishing the scholars competent to discuss literature, science, government, history, economics, sociology, philosophy, international affairs, etc.

The equipment proposed to be installed by the applicant complies with the requirements of the Commission's Rules and Regulations. The transmitter site has not been definitely determined, but it is

shown that a tentative site, located four miles north of Troy, has been selected subject to the approval of the Commission. The estimated cost of the equipment to be installed is \$23,000. The estimated monthly cost for operating the proposed station is \$2,345.

The following stations are located at shorter distances than those considered necessary under average conditions to avoid objectionable interference with the station as proposed herein.

Stations WCSH (Portland, Maine), operating on the frequency 940 kilocycles, WAAT (Jersey City, New Jersey), operating on the frequency 940 kilocycles, and WBZ (Millers Township, Massachusetts), operating on the frequency 990 kilocycles, synchronously with WBZA, Springfield, Massachusetts, are all located at shorter distances than those considered necessary under average conditions to avoid objectionable interference with the station as proposed herein. Due to the fact that the conductivity of the intervening terrain in the area of these stations and the proposed station is much less than average, no objectionable interference will be caused to the services of any of the stations.

Station WRC, Washington, D. C., operates on the frequency 950 kilocycles with power of one kilowatt night and five kilowatts, L. S., and it is predicted that the operation of WRC will cause some interference during the late afternoon hours to the service of the proposed station at Troy. There will, however, be no objectionable interference within the normally protected contour of Station WRC by reason of the operation of the proposed station.

Due to the conductivity of the area, as stated above, the simultaneous operation of Station WELI, as proposed, and the station proposed herein, is not expected to result in objectionable interference.

The simultaneous operation of the station proposed by the Troy Broadcasting Company and the station proposed by Lawrence K. Miller will result in mutual objectionable interference. The granting of one of these applications, therefore, will preclude the grant of the other.

IN RE DOCKET NO. 4187

Lawrence K. Miller, the applicant herein, is a resident of Pittsfield, Massachusetts. He is part owner and editor of a daily newspaper published in that city, and is a citizen of the United States. The newspaper corporation would have no interest in the proposed station. They would not be operated jointly in any respect.

Miller has total net assets of \$206,174.52, of which \$19,244.52 are in cash. He has liabilities of \$20,000.

No estimate was submitted as to the probable cost of construction for the proposed station. The monthly operating expense for the

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proposed station is estimated at approximately \$1,500. This estimate is predicated upon the experience of W. C. Treat, who is to be commercial and program manager of the proposed station. Treat has never managed a radiobroadcast station, but has had experience since 1934 in different departments of Stations WEEL, WCOP, WCSH, and WBZ. Treat estimated that the monthly income of the proposed station would be approximately \$2,700. His estimate was predicated upon his personal experience in selling radio advertising, and upon his knowledge of the Pittsfield retail establishments. He lived in that community for many years as a young man, and has since spent in Pittsfield approximately one month every year during the past five years. Treat testified that he expected to secure some national accounts, and sell weather reports, time signals, bulletins on road conditions, and news flashes in addition to the regular commercial advertising from local merchants.

The population of Pittsfield, Massachusetts (1930 Census), was 49,677. The largest industry situated in the Pittsfield area is the General Electric Company, which employs approximately 6,000 persons. There are a number of other factories, including woolen mills, an electrical appliance factory, and paper factories. The manufacturing establishments total approximately 150 and have an annual output of products valued at about \$45,000,000. More than 1,000 retail establishments located in the area have annual sales of approximately \$21,000,000. There are many smaller cities and towns in close proximity to Pittsfield which the applicant hopes to be able to serve by the proposed station.

At the time this hearing was held there was no radiobroadcast station located in Pittsfield, Massachusetts. However, a construction permit for the establishment of a radiobroadcast station at Pittsfield was granted by the Commission to Harold Thomas on January 20, 1938. On March 14, 1938, that station was licensed to operate. In addition to the primary service rendered by this station, a signal of 1 millivolt per meter is received in this area from Station WGY, Schenectady, New York. The surrounding rural areas receive service from Stations WBZ and WBZA, Boston, Massachusetts, and Station WTIC, Hartford, Connecticut. Four high-power clear-channel stations in the metropolitan area of New York also render some rural service to this area.

A tentative program schedule for the proposed station shows that the applicant intends to offer a well-balanced, meritorious, and diversified service. The facilities of the station would be extended free of charge to the religious, civic, charitable, and educational institutions of the community. There are a number of educational institutions

situated in the area, including a college, preparatory schools, private and public schools.

Sources of talent available to the proposed station include choral clubs, dance orchestras, symphony organizations, glee clubs, and choirs. In addition, there are available a large number of individual artists, instrumentalists, and vocalists.

The transmitter and antenna equipment proposed to be installed meet the requirements of the Rules and Regulations of the Commission. The site for the transmitter would be selected subject to the approval of the Engineering Department of the Commission. Experienced personnel would be hired to insure the efficient operation of the proposed station.

The testimony in the instant proceeding and in the hearing on Docket 4306 shows that serious objectionable interference would result to the operation of both stations if the instant application and the application of Troy Broadcasting Company (Docket 4306) were both granted. Troy, New York, and Pittsfield, Massachusetts, are about 30 miles apart and the recommended separation for the assignments requested is 104 miles. Granting of one of these applications, therefore, would preclude favorable action on the other.

IN RE DOCKETS NOS. 3761, 4187, AND 4306

As was heretofore shown, the simultaneous operation of WELI as proposed (Docket 3761) and the station proposed by the Troy Broadcasting Company, Inc. (Docket 4306), will not result in objectionable interference to the services of either station. The simultaneous operation of WELI, as proposed, and the station proposed by Lawrence K. Miller (Docket No. 4187) will result in some mutual interference during the early forenoon and late afternoon hours. Simultaneous operation of the station proposed by Troy Broadcasting Company, Inc., and the station proposed by Lawrence K. Miller will result in mutual objectionable interference.

In view of the conflicts shown above and of the relative need for broadcasting service in the several communities involved, it is necessary to consider the merits of the applications on a comparative basis. The records show all three applicants are qualified in the premises. The controlling consideration, therefore, is the question of public need for broadcast service.

There is no broadcast station at present located in Troy, New York. This community is a distinct economic, social, and political unit, having population in excess of 72,000. There is a broadcast station located in Pittsfield, Massachusetts, a community of about

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50,000 people. Upon consideration of the entire record, the Commission is of the opinion and so finds that a fair, efficient, and equitable distribution of the facilities requested would be afforded by granting the application of Troy Broadcasting Company and in denying the application of Lawrence K. Miller and that the public interest, convenience, and necessity would be served thereby.

The paramount need for nighttime primary service in New Haven, Connecticut, has been adverted to already. In view of the Commission's denial of the Miller application, the record shows that granting the City Broadcasting Company (WELI) application will not result in increased interference to existing stations and that WELI will thereby be enabled to render exceptional nighttime service to New Haven. The Commission is of the opinion and so finds that its action in granting the latter application would afford a fair, efficient, and equitable allocation of radio facilities and that the public interest, convenience, and necessity would be served thereby.

GROUNDS FOR DECISION

On the record in these cases, the Commission finds:

1. The City Broadcasting Corporation (Docket No. 3761) is qualified in all respects to construct and operate Station WELI, in the manner proposed, and the equipment proposed meets with the engineering requirements of the Commission.

2. The program service proposed by the City Broadcasting Corporation is meritorious for the class of station requested and is designed to meet the needs of the area to be served.

3. Although the service of WELI, operating at nighttime as proposed, will be limited within its 4 mv./m. contour, a paramount need exists for primary nighttime service in New Haven, and under the circumstances, the Commission is justified in departing from its usual allocation values in supplying the needed service by granting the WELI application.

4. The proposed operation of WELI will not involve an increase in objectionable interference to the service of any existing station.

5. The granting of the application of the City Broadcasting Corporation will serve the public interest, convenience, and necessity.

6. The Troy Broadcasting Company, Inc. (Docket No. 4306) and Lawrence K. Miller (Docket No. 4187) are qualified in all respects to construct and operate a radiobroadcast station.

7. The technical equipment proposed by Troy Broadcasting Company, Inc., and Lawrence K. Miller complies with the engineering requirements of the Commission.

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8. No material interference will be contributed to the operation of existing broadcast stations by the operation of the station proposed by Troy Broadcasting Company, Inc., or that proposed by Lawrence K. Miller, but mutually objectionable interference would result from the operation of both proposed stations. Therefore, granting one of these applications would preclude granting the other.

9. The program service proposed by the Troy Broadcasting Company, Inc., is satisfactory for the class of station requested.

10. There is not a public need for the service proposed by Lawrence K. Miller.

11. There is a public need for the service proposed by the Troy Broadcasting Company, Inc.

12. Public interest, convenience, and necessity will not be served by granting the application of Lawrence K. Miller.

13. Public interest, convenience, and necessity will be served by granting the application of the Troy Broadcasting Company, Inc.

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

<p>In the Matter of FOOD TERMINAL BROADCASTING COMPANY, CLEVELAND, OHIO. For Construction Permit.</p>	}	DOCKET No. 4436.
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Decided September 13, 1938

Arthur W. Scharfeld and Philip G. Loucks on behalf of the applicant; *Horace L. Lohnes* on behalf of Station WJBK; *Louis G. Caldwell, Reed T. Rollo and Percy H. Russell* on behalf of Station WGAR; *Paul D. P. Spearman and Alan B. David* on behalf of Great Lakes Broadcasting Corporation; and *Walter Johnson* on behalf of the Federal Communications Commission.

RECONSIDERATION ON REARGUMENT

BY THE COMMISSION (Commissioners Brown and Walker dissenting):

Food Terminal Broadcasting Company, Cleveland, Ohio, commenced this proceeding by filing its application for a permit to construct a new radio-broadcast station at Cleveland, Ohio, to operate on 1500 kilocycles with power of 100 watts daytime only.

The matter was designated for hearing before an examiner, who, on June 28, 1937, submitted his Report (I-458) and recommended that the application be denied. Exceptions to the Examiner's Report and request for oral argument were filed, and on December 2, 1937, oral argument was heard by the Commission. Thereafter, on February 19, 1938, the Commission decided the matter and on February 23, 1938, issued its Statement of Facts, Grounds for Decision and Order denying the application, the Order of the Commission being made effective the 4th day of March 1938. On March 25, 1938, the applicant filed a Petition for Rehearing or Reargument, one of the alternative prayers of which was "that the Commission set aside its decision and permit reargument before the full membership of the Commission on the record as made;". On May 11, 1938, the Commission granted this prayer of the petitioner and directed that its deci-

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sion of February 19, 1938, be set aside and that reargument be had. On June 2, 1938, reargument was heard in the matter by the Commission.

The applicant in its Petition for Rehearing or Reargument first contends that the second finding in the Commission's Grounds for Decision entitles it to present newly discovered evidence to refute that finding.

The finding in question is:

The frequencies available for assignment to broadcast stations being limited, public interest would be best served by allocation of licenses to those who will, where need exists, render a broad, general public service. No need exists for the additional station in the area which would be served upon the basis of program service proposed to be rendered.

On such contention the Commission finds that neither the Petition for Rehearing or Reargument, nor the Reargument itself, brought to light any newly discovered evidence. The applicant in its Petition for Rehearing or Reargument refers to testimony of certain witnesses and alleges that consideration of this testimony by the Commission would have led to a different finding than that noticed; and the testimony of the Honorable Fred W. Ramsey is cited as an example of such testimony.

Mr. Ramsey is director of Public Health and Welfare of the City of Cleveland. He was familiar with the proposals of the Food Terminal Broadcasting Company to render a service in the Cleveland area; and he had been informed of the plans of the applicant.

The proposals and plans were aptly illustrated by the following question:

How and to what extent do programs dealing with food stuffs supplement or tie in with these activities of child guidance, public health, and welfare that you have just mentioned?

Mr. Ramsey said that existing radio stations had a very generous policy, and he indicated that he had not been able to embrace the wide field of opportunity offered by the existing stations; and he referred to the project of the applicant as a "more or less theoretic set-up." Thereupon the following appears in his testimony:

Q. Mr. Ramsey, who is going to organize the programs to be broadcast over this proposed station?

A. I cannot answer for that but I would assume, if I may assume, that the Food Terminal people would invite a group of leaders in our community to formulate programs.

Q. And someone connected with your organization, or leaders in civic and social enducational welfare work would formulate these programs?

A. That would seem to be the reasonable course.

* * * * *

Q. Have you ever, or your organization, been refused time over the present stations in Cleveland?

A. I don't think we have ever been refused time; we have been careful not to ask for more than was reasonable.

In line with the foregoing, Mr. Ramsey stated that if the new station were constructed, his organization would, in the beginning, have difficulty in usefully occupying the time offered by that station.

The above testimony of Mr. Ramsey negatives the applicant's contention that there is a need in Cleveland, Ohio, for the type of broadcasting service proposed.

The petitioner's second contention is that "the Commission in its decision overlooked and failed to consider material matters of fact, which, if considered, would have changed its final order." In support of this contention the petitioner merely states:

It is apparent from the Commission's Statement of Facts and Grounds for Decision that the testimony of 38 witnesses given by deposition as well as the testimony of Hon. Fred Ramsey (R. 87) and others given at the hearing before the examiner was not considered by the Commission in reaching its decision, since there is no reference to such testimony in the findings of fact made by the Commission, and the absence of such findings would seem to indicate the basic reason for the misconception of the applicant's proposed program service.

The Petition makes no reference to any statements of these witnesses that may be material or relevant to the Commission's finding in question. The Commission is under no obligation to recite every item of evidence or of fact, which has some bearing on the question before it (see *Mackay Radio & Telegraph Co. v. Federal Communications Commission*, 97 F. (2d) 641 (decided April 11, 1938)).

The petitioner further alleges that the fact a Commissioner participated in the Commission's decision of February 23, 1938 who had not heard oral argument was prejudicial to the applicant's statutory rights. In this connection the petitioner states:

The oral argument in the instant proceeding was heard by only five Commissioners, Commissioners Craven and Payne being absent. The decision in the case was rendered by five Commissioners, with Commissioners Payne and Brown not participating. Actually, therefore, the decision was rendered by only four Commissioners who heard the oral argument. Commissioner Craven, although not present at the oral argument, participated in the decision denying applicant's application. The participation of a Commissioner in the decision of a case where he has not had the advantage of hearing oral argument is clearly prejudicial since the statute recognizes the right to have a case decided only by those Commissioners having heard the oral argument.

The above contention of the petitioner is without merit (see *Eastland Company v. Federal Communications Commission*, 92 F. (2d) 467 (decided June 28, 1937)).

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The Commission upon reconsideration of the entire record, including the report of the examiner, exceptions thereto; and upon consideration of the Petition for Rehearing or Reargument and the reargument granted, enters the following:

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

STATEMENT OF FACTS

Food Terminal Broadcasting Company is an Ohio corporation and it has corporate power to operate a broadcast station. The authorized capital stock is \$25,000, all of which has been subscribed and fully paid for in cash by five stockholders in equal proportions. The stockholders of the applicant corporation are also stockholders of the Northern Ohio Food Terminal Company which operates a center market where food products are sold principally to the retail dealers of Cleveland and vicinity. The president of the applicant corporation is general manager of the Northern Ohio Food Terminal Company.

Food Terminal Broadcasting Company has five stockholders. One of them is the general manager of the Northern Ohio Food Terminal; one is a fruit broker; one is a commission merchant in the fruit business; one is secretary of a company operating as commission merchants in the same business; and one is an attorney. Each of these individuals owns 20% of the capital stock of Food Terminal Broadcasting Company, which is capitalized, as shown in the previous decision of this case, at \$25,000; and all of the stockholders of the said company are interested in the Northern Ohio Food Terminal. The attorney mentioned appeared as a witness at the hearing before the examiner and he was asked to give a brief outline of the Northern Ohio Food Terminal, particularly with reference to "what its set-up is," and he answered as follows:

Well, it's a public utility organized under the Ohio public utility law as the Union Depot Company. It constructed the yard into which all railroads entering Cleveland come at an equal car charge and which holds about 450 cars. It operates by contract with the Nickel Plate for the benefit of all, what is called a "hold yard" into which produce coming in too late for placing for the day's market can be held; and that, I think has probably an area of 700 or 800 cars.

The Northern Ohio Food Terminal then built on both sides a 110 foot street—a private street—with gates at each end so that they can be closed to the public and they are closed in the evening for the protection of the produce. We built on both sides the 110-foot thoroughfare something like 80 or 90 units that are available for any person in the food business and into that area has come practically all of the perishable produce, fruits, butter and eggs, and cheese, a good deal of the meats and some few wholesale grocers; the largest of the wholesale grocery distribution is however either adjacent to or at other places. Then around the Food Terminal comes the flour, coffee, chain store warehouses and practically all of the food industry.

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Now the Food Terminal itself, as I say, handles space for the use in connection with the car facilities of the produce, butter, eggs, cheese, and chickens, that type of thing, and fruit that comes into the market. Practically everything comes in there. The auction is conducted there; the citrus and deciduous auctions which are daily affairs.

Q. Is that a corporation?

A. Oh, yes.

Q. It owns the property, does it?

A. Yes; it owns the property and leases it.

Q. It leases it out to commission merchants?

A. That is right and it does the so-called recouping of broken-lot packages in the cars; it does the inspection; it has various facilities in the Terminal.

The general manager of the Northern Ohio Food Company (Terminal) is also the president of the Food Terminal Broadcasting Company. He is affiliated with the Cleveland Chamber of Commerce and is a member of the National Association of Marketing Officials, the National League of Wholesale Fresh Fruit and Vegetable Distributors of America, the International Apple Association, and the Vegetable Growers' Association of America.

The Northern Ohio Food Terminal Company, as such, is not engaged in the sale of food products although it owns the food terminal market building and facilities and rents space to the wholesale produce dealers. The establishment of the food terminal has resulted in centralization of all the perishable food markets in the city. The terminal is equipped with rail and truck facilities and the market is so constructed that growers are able to sell their produce to the retail dealers, and while some retail sales are made to consumers it is primarily a wholesale market supplying food products to retailers.

The proposed program schedule of the applicant for one week contains an allotment of considerable time for the dissemination of market information.

Information as to the quantity of produce on hand and prices would be broadcast to the growers; information with respect to the quantity, quality, and prices would be broadcast to the retailers; and information as to the quantity and quality of the produce at the market would be broadcast to the consumers. The applicant contends that the broadcasting of market information, as above stated, would cause the consumers to purchase greater quantities of particular food items at the time when those items are most abundant and of best quality, thereby expanding the market for particular foods at particular times and eliminating market gluts.

The proposed program schedule also contains an allotment of time for weather reports, news, entertainment, reports from the Department of Agriculture and the Ohio State University, and many

civic programs. There is ample talent available from Cleveland for program purposes and there are about 46 organizations of a civic, educational, charitable, and social nature, which will contribute program material. The applicant proposes to designate time without charge to all charitable, religious, and educational associations.

Specifically, with regard to the program plans of the applicant, the following appears in the record:

Q. Is it not a fact that the inception and main purpose of the applicant corporation is to further the interests of the Food Terminal and those who are connected with it?

A. Those who are interested in it as tenants there and the general public at large.

* * * * *

Q. I believe you said that you were going to broadcast market information with respect to food, and generally that is the main type of program that you are interested in broadcasting, isn't it?

A. Yes, sir.

The following appears in the testimony of the representative of the applicant while he was discussing its contemplated program:

Q. I believe you said that the only news service which you are going to provide over the station is that provided for here under the heading local news service, for which you set up in your budget the sum of \$100?

A. That is correct.

Q. I believe you said that was carried over the stations in Cleveland now?

A. General news is.

Q. And local news too, isn't it?

A. It is included with it, I suppose, yes.

Q. Don't you know it is?

A. I stated, I believe, that I have not heard the morning broadcasts on those stations.

The attorney, heretofore mentioned as one of the stockholders of the applicant, after testifying with respect to the Food Terminal and the market carried on there, said:

We determined we were going to try therefore to figure out a way that we could organize a station primarily or fundamentally, or whatever you want to say about the food business, and it was those studies that gave rise to the filing of this application.

Food Terminal Broadcasting Company, if the application is granted, will employ an experienced staff of fourteen people to operate the station and estimates the monthly operating cost to be \$2,810. Tentative contracts have been entered into with 11 commercial establishments for time on the proposed station, which contracts aggregate \$17,441 per year. In addition, other business concerns have signified a desire to advertise over the proposed station. The applicant estimates an income of approximately \$36,000 per year, which estimate is

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based upon the tentative contracts above referred to and discussions with prospective advertisers.

It is proposed to locate the studio in the food terminal market building, but the antenna site has not been determined. The technical equipment which the applicant proposes to install is in accord with good engineering practice and is capable of being operated within the requirements of the Rules of the Commission. No objectionable interference would be expected to result to the fair and efficient service of any existing broadcast station from the station proposed herein, if this application is granted.

The metropolitan district of Cleveland has a population of 1,194,989, according to the 1930 census, and four broadcast stations are now located there, namely, WGAR, using 1450 kc., 500 watts, 1 kw. to local sunset, unlimited time; WHK, using 1390 kc., 1 kw., 2½ kw. until local sunset, unlimited time; WJAY, using 610 kc., 500 watts, daytime only; and WTAM, using 1070 kc., 50 kw., unlimited time. In addition, Stations WJR and WLW may render some service in the outlying areas.

The 10 millivolt per meter contour of the proposed station is 3.75 miles. The 2 millivolt per meter contour of the proposed station is 9.3 miles. The 0.5 millivolt per meter contour of the proposed station is 17 miles.

The record does not indicate that the service contemplated by the applicant would be of any considerable benefit to producers; nor does the record show that the service proposed would be any more advantageous to consumers than is the service of radiobroadcast stations now existing in the City of Cleveland.

GROUNDS FOR DECISION

On the record in this case the Commission finds—

- (1) The applicant is legally, technically, and financially qualified to construct and operate the proposed station.
- (2) The frequencies available for assignment to broadcast stations being limited, public interest would be best served by an allocation of facilities to those who will, where need exists, render a broad, general public service. No need exists for an additional station in the area which would be served upon the basis of program service intended to be rendered by the applicant.
- (3) Public interest, convenience, and necessity will not be served by the granting of the application.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D. C.**

<p>In the Matter of N. B. EGELAND,¹ FORT DODGE, IOWA. For Construction Permit.</p>	}	DOCKET No. 4638.
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Decided September 13, 1938

Chester O. Hougen on behalf of applicant; *F. W. McReynolds* on behalf of Edward Breen and Allen R. Loomis, intervenors; *Hugh B. Hutchison* on behalf of the Federal Communications Commission.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER
BY THE COMMISSION (Commissioner Brown not participating):

STATEMENT OF FACTS

This proceeding arose upon the application of N. B. Egeland for authority to establish a new broadcast station at Fort Dodge, Iowa, to operate on 1500 kc. with 100 watts power, daytime only. The application was designated for hearing. Breen and Loomis, applicants for the same frequency in Fort Dodge, petitioned for and were granted authority to intervene in these proceedings, which they did.

A hearing was held before an examiner, following which a report (I-623) was submitted wherein the examiner recommended the application be denied. The exceptions filed to this report were considered by the Commission in reaching its decision herein.

The applicant is and has been for the past twenty years a resident of Roland, Iowa. He is a United States citizen and otherwise possesses requisite legal qualifications to hold the authorization sought. Roland, Iowa, is 56 miles from the place where it is proposed to locate the station applied for and it was the intention of the applicant to move to that city, Fort Dodge, and assume active charge of operating the station.

Applicant has had some radio experience in the operation of amateur radio station W9TMV. He has participated in the broadcasts of certain religious programs over KFGQ at Boone, Iowa. The

¹The Commission on December 12, 1938, denied petition of applicant for reconsideration and rehearing.

applicant has built public address systems and personally operates one in connection with religious services.

The financial statement dated January 1, 1938, offered in connection with the deposition of the applicant, indicates current assets of cash on hand, \$3,300, and accounts and notes receivable, \$200, with fixed assets of \$3,150, giving total assets of \$6,650. Two loans of \$3,000 each have been made by Mrs. Julia Olsen and Sarelle Munsen to the applicant. These loans are evidenced by unsecured and unendorsed notes given by the applicant, payable on demand. There was no understanding of any sort as to how they were to be repaid or what interest was to be paid thereon. It was stated that these persons were interested in helping the applicant with his "work."

It is estimated that approximately \$7,500 would be needed to construct the proposed station. Monthly operating costs were estimated to be approximately \$1,300.

In an effort to show the extent to which commercial support would be available for the proposed station, the applicant presented the testimony of one Hugh Donly who is engaged in the real estate and security business in Fort Dodge. Mr. Donly made an investigation through personal interviews from which he estimated that income of approximately \$42,500 yearly would be available to the proposed station. Some merchants who would use the proposed station deposed that they would spend approximately \$5,500 yearly for radio advertising.

Arrangements have been made for the employment of trained personnel in all of the various departments. Contracts of employment have been obtained with a radio operator and a program director. A brother of the applicant will be in charge of the advertising department.

The proposed equipment is satisfactory and the transmitter site was to have been determined at a later date subject to Commission approval. The applicant indicated a willingness, if the application were granted, to adequately mark the towers.

The population of Fort Dodge was 21,895, according to the 1930 census. Webster County, of which Fort Dodge is the county seat, has an area of 714 square miles and a population of 40,425, according to said census. The county is about 25 miles wide by 31 miles long. Fort Dodge is located slightly north of the center of the county. Assuming the minimum antenna efficiency and a conductivity of 10 to the minus 13th, E. M. U., the .5 millivolt per meter contour of the proposed station would embrace an area with a radius of approximately 22 miles from Fort Dodge; the radius of the 2 millivolt per meter line would extend approximately 10.5 miles; and the 10 millivolt per meter contour would extend approximately 3.2 miles. The

corporate limits of Fort Dodge embrace an area of 5.26 square miles. The retail trade area of Fort Dodge embraces twelve counties with a combined area of 7,080 square miles and a population of approximately 237,314.

The .5 millivolt per meter signal would serve practically all of Webster County, the northwest portion of Hamilton, the southwest portion of Wright and Humboldt, the southeast portion of Pocahontas, the about one-third of the area of Calhoun Counties, which is a very small portion of the area from which Fort Dodge draws its commercial support.

The chief industries of the Fort Dodge area are agriculture, manufacturing, and mining. In Webster County there are 1,641 farms and 2,711 persons engaged in farming. In said county there are 50 manufacturing establishments, with an annual output valued at \$11,897,200, which employ 1,784 persons, whose annual wages are \$2,312,649. In Fort Dodge proper there are 27 manufacturing plants, with an annual output valued at \$8,226,181. In Webster County there are 612 retail stores, with annual sales of \$14,050,000, employing 1,644 people, whose annual wages aggregate \$1,328,000. In Fort Dodge there are 408 retail outlets, with annual sales of \$11,783, employing 1,457 persons, whose annual wages aggregate \$1,207,000. In Webster County there are 172 service establishments, with annual receipts of \$589,000, employing 169 persons, whose annual wages aggregate \$119,000. In Fort Dodge there are 131 such establishments, with annual receipts of \$465,000, employing 153 persons, whose annual wages aggregate \$114,000.

Primary broadcast service to Fort Dodge and vicinity, according to expert testimony, is furnished in the residential areas by station WHO at Des Moines and WOI at Ames, Iowa. Lay testimony indicates that in addition to the foregoing stations WCCO (Minneapolis), WNT (Des Moines), WOW (Omaha), KRNT (Des Moines), KSO (Des Moines), KMA (Shenandoah), and WGN (Chicago) render some service to Fort Dodge.

Some programs of a local interest to the Fort Dodge area have been carried by the Des Moines stations, which have also afforded an outlet for some advertisers and talent in Fort Dodge.

When this application was originally filed, it specified Roland, Iowa, as the location of the proposed station. The record indicates that the decision to amend the application so as to request Fort Dodge was made in order that the station would have better possibility for obtaining commercial support. Applicant has never resided in Fort Dodge and there was no evidence to the effect that he had any personal familiarity with the area. None of the proposed personnel was shown to have any actual knowledge of the broadcast needs of Fort Dodge.

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None of them had ever resided there, and at the time of the hearing all were actively engaged in business pursuits in other towns. Applicant's desire to obtain adequate commercial support for the proposed station is understandable, but before the Commission can license him to construct and operate a new broadcast station the record in support of his application must clearly show his familiarity with the needs of the area proposed to be served and his ability to meet such needs.

There was an effort on the part of the applicant to show that the majority of the programs coming into Fort Dodge were not designed to meet the needs of that particular community. No showing is made as to the actual programs which are received in Fort Dodge. Aside from commercial programs, the only definite proposal of the applicant with respect to program service was to meet a need for "religious and educational purposes."

From the evidence of record it may well be found that Fort Dodge is in need of a broadcast station to serve its local interests. However, the mere establishing of a *prima facie* case of need for broadcast service does not necessarily impel a grant of a particular application unless such applicant proposes a program service which will fill that need. The proposal with respect to program service offered by the applicant was embodied in his stated intention to allot two hours daily to religious and educational programs and the balance to commercial programs. This would result in an unusually high percentage of commercial programs.

Some evidence was offered as to the existence of talent in Fort Dodge. There is no concrete proposal of the applicant to utilize this talent in any manner. On the other hand, it clearly appears that aside from the religious and educational programs and the news broadcasts the programs were to be presented by electrical transcriptions or recordings.

There are no existing stations within the mileage separation generally recommended to avoid objectionable interference and for this reason no objectionable interference would be expected to follow from the proposed operations. There are no problems of interference with applications which were pending before the Commission at the time the instant application was designated for hearing.

GROUNDS FOR DECISION

1. Applicant has failed to show sufficient familiarity with the broadcast needs of Fort Dodge and the surrounding community.
2. Applicant has failed to show satisfactory program plans.
3. Public interest, convenience, and necessity would not be served by granting the application.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D. C.**

<p>In the Matter of L. L. CORYELL, SR., and L. L. CORYELL, JR., d/b as L. L. CORYELL & SON,¹ LINCOLN, NEBRASKA. For Construction Permit.</p>	}	DOCKET No. 4509.
<p>CORNBELT BROADCASTING CORPORATION² (KFOR), LINCOLN, NEBRASKA. For Construction Permit.</p>	}	DOCKET No. 4604.
<p>KCMO BROADCASTING COMPANY (KCMO), KANSAS CITY, MISSOURI. For Construction Permit.</p>	}	DOCKET No. 4485.

Decided September 13, 1938

George M. Tunison, Louis G. Caldwell, Reed T. Rollo, and James H. Hanley on behalf of L. L. Coryell & Son; Paul M. Segal, George S. Smith, and Maxwell V. Beghtol on behalf of Cornbelt Broadcasting Corporation; George O. Sutton, Harry I. Schwimmer, and Jas. L. Proffitt on behalf of KCMO Broadcasting Company; Horace Lohnes, and E. D. Johnston on behalf of Station KXBY; John B. Brady on behalf of Station KG CX; Ben S. Fisher, and John W. Kendall on behalf of Stations KTBS and WAGA; and Paul D. P. Spearman, and Alan B. David on behalf of Station KSTP.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

By **THE COMMISSION** :

STATEMENT OF FACTS

This proceeding arose upon the following applications:

1. The application of L. L. Coryell, Sr., and L. L. Coryell, Jr., doing business as L. L. Coryell & Son, for a construction permit requesting authority to establish a new radiobroadcast station at

¹ The Commission on December 12, 1938, dismissed petition and supplemental petition of applicant for rehearing.

² The Commission on December 12, 1938, denied petition of applicant for rehearing.

Lincoln, Nebraska, to operate on 1450 kilocycles, with power of 250 watts night and 1 kilowatt until local sunset, unlimited time. This application is dated January 29, 1937, and was filed with the Commission on February 3, 1937. The application was amended on February 13, 1937.

2. The application of the Cornbelt Broadcasting Corporation, licensee of radiobroadcast station KFOR, located at Lincoln, Nebraska, for a construction permit requesting authority to change frequency from 1210 to 1450 kilocycles, install a directional antenna for night use, increase power from 100 watts night and 250 watts until local sunset to 1 kilowatt night and 5 kilowatts until local sunset, and move the transmitter site. This application is dated February 27, 1937, and was filed with the Commission on March 11, 1937.

3. The application of KCMO Broadcasting Company for a construction permit requesting authority to change frequency from 1370 to 1450 kilocycles, install a directional antenna for night use, increase power from 100 watts unlimited time to 1 kilowatt unlimited time, and move transmitter site. This application is dated January 9, 1937, and was filed with the Commission on February 2, 1937.

Each of these applicants requested the use of the same frequency, namely, 1450 kilocycles. Coryell and KFOR desire to operate on this frequency in the same community, and, of course, such simultaneous operation would result in mutually destructive interference. The record also shows that the operation on 1450 kilocycles of the stations proposed for Lincoln would involve interference with the proposed operation on 1450 kilocycles of KCMO in Kansas City, Missouri. All three applications, therefore, were designated to be heard before an examiner, and the hearings thereon were consolidated. Each applicant was allowed to fully participate in the case of the other.

First National Television, Inc., licensee of Station KXBY, Kansas City, Missouri, petitioned, and was allowed to intervene in the KCMO hearing on the allegations that "The operation of another regional station in Kansas City as proposed by the applicant would necessarily limit the scope of activities of petitioner's station through distribution of the audience of listeners, and limitation of the available program material, talent, and sponsorship. Also, the change of Station KCMO from a local to a regional status would undoubtedly invite the establishment of a new local station in Kansas City to occupy the place in the spectrum now held by KCMO, thus resulting in additional competition to petitioner's station." This intervenor offered no testimony on its behalf, nor did it file exceptions to the examiner's report.

The consolidated hearing took place on September 24, 25, 27, 28, and 29, 1937. The presiding Examiner, in his report (No. I-571, 6 F. C. C.

submitted December 31, 1937), recommended that the Coryell and Cornbelt applications be denied and that the KCMO application be granted. Coryell and Cornbelt filed exceptions to said Examiner's Report. These exceptions have been carefully considered by the Commission in reaching its determination. The three applicants requested oral argument before the Commission, which was granted and heard on April 7, 1938.

IN RE DOCKETS NOS. 4509 AND 4604

Lincoln is the capital of the State of Nebraska and is located in the southeast central part of the state, at approximately the center of the state's population. It is shown that Lincoln plays an important part in the educational and cultural life of the entire state. The University of Nebraska is located at Lincoln and had an enrollment of 6,230 during the school term of 1935 to 1936, and 2,079 during the 1935 summer term. In addition to the University, there are two denominational colleges located in Lincoln. The city also has 31 public schools and 13 private and parochial schools. There are 107 churches in the city representative of numerous religious denominations.

In 1932 there were 244 manufacturing concerns located in Lincoln engaged in the manufacture of food and kindred products, textiles, concrete, stone, metalwork, chemicals and allied products, printing and publishing, and miscellaneous products. According to the United States census of business of 1933, Lincoln had 1,044 retail establishments having total sales of \$28,054,000 and pay rolls of \$3,957,000. The average sales per establishment were \$26,872.00. In 1935 there were 1,109 retail establishments having total sales of \$36,426,000 and pay rolls of \$4,508,000. The average sales per establishment were \$32,846. This represents a gain in 1935 over 1933 of 6.2% in number of establishments, 29.8% in total sales, 22.2% in average sales per establishment, and 13.9% in pay rolls.

According to the same census, there were 346 service establishments in Lincoln in 1933 having total receipts of \$1,476,000 and a total pay roll of \$502,000. In 1935 there were 445 service establishments having total receipts of \$1,719,000 and a total pay roll of \$508,000. According to the same source, there were 134 wholesale establishments in Lincoln in 1933 having total net sales of \$19,665,000 and pay rolls of \$1,657,000. The average sales per establishment were \$146,007. In 1935 there were 141 wholesale establishments having total net sales of \$33,053,000, average sales per establishment of \$234,418 and total pay rolls of \$2,357,000.

Census statistics show that in 1935 the sixteen counties surrounding Lincoln had a total land value of \$438,744,416. This area is primarily engaged in producing corn, wheat, cattle, hogs, poultry, and horticultural products.

There are two radiobroadcast stations located at Lincoln, namely, Station KFAB, operating on 770 kilocycles with power of 10 kilowatts day and night (synchronizes with Station WBBM after sundown), and Station KFOR, operating on 1210 kilocycles with power of 100 watts night and 250 watts until local sunset. The record shows that during portions of the evening hours KFAB remains silent. The specific exhibit covering this point showed that during a week in August 1937 such silent periods lasted from 30 minutes to one hour and fifteen minutes each day, or an aggregate of 7 hours during the week. Coryell and KFOR both submitted exhibits showing their measurements of the broadcast service rendered to Lincoln and the surrounding area. The signals of the following stations were measured by a KFOR engineer during noon at a point where most of the signals measured must pass over Lincoln, on a "clear open spot immediately west of the City of Lincoln":

Station :	<i>Signal intensity in millivolts per meter</i>
WOW-----	7.12
WAAW-----	2.93
WNAX-----	1.41
WIBW-----	1.44
KFEQ-----	.513
KMMJ-----	1.62
WDAF-----	.753
KOIL-----	.427
KMA-----	1.68

Measurements made by Coryell show signals at other points of somewhat less intensity. Some explanations were made of the Coryell exhibit during the course of examination. With regard to two measurements questioned, namely, those of KMA and KMMJ, the discrepancy between the measurements was pointed out to the Commission's engineer, who estimated that the signals in Lincoln would be greater than those shown by Coryell. He testified:

I would expect the day service of KMA to approximate 1 millivolt per meter, based on the assumption of conductivity of 10 to the minus 13th. Actually it is somewhat better than that. 2×10 to the minus 13th, would be approximately 2 millivolts per meter. This is daytime conditions. I would expect KMMJ to lay down approximately 1 millivolt per meter, slightly less possibly.

In the light of the exhibits and the testimony it is clear that Lincoln receives primary service from KFAB and KFOR, and except for its high noise level areas (which would be limited in a city the size of Lincoln) from WOW. Its residential area is also served by WAAW. The surrounding rural areas receive primary service from at least six additional stations.

The population of Lincoln, according to the 1930 U. S. census, was 75,933.

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IN RE DOCKET NO. 4509

The applicant, L. L. Coryell & Son, is a partnership composed of L. L. Coryell, Sr., and L. L. Coryell, Jr. The partnership is registered under the Nebraska Partnership Laws and the Certificate of Partnership filed pursuant to said laws authorizes the partnership to engage in radiobroadcasting. The members of the partnership are citizens of the United States and are otherwise legally qualified to engage in the operation of a broadcast station. They have resided in Lincoln for the past sixteen years. Their principal business is the distribution and marketing of petroleum products, and they operate service stations in approximately 400 cities throughout the fourteen midwestern states. They are also engaged in the real-estate business, apartment-house operation, and farm-land operation and grain business. Some of these business activities are conducted by corporations which are wholly owned by the Coryell family, that, Mr. and Mrs. Coryell, Sr., and Mr. Coryell, Jr. These corporations are L. L. Coryell & Sons, Inc., L. L. Coryell Building Corporation, L. L. Coryell Buildings, Inc., and the Nebraska Building Corporation, all of which are Nebraska corporations having headquarters at Lincoln, Nebraska. Mr. Coryell, Sr., is a member of the Board of Governors of the Nebraska Wesleyan University and a member of the Lincoln Chamber of Commerce. The Coryells have contributed benefactions to the public and to their employees including a weekly religious broadcast over Station KFAB, at Lincoln. Time is purchased from Station KFAB but on these programs no advertising is permitted.

Each of the partners composing the partnership has a net worth in excess of \$500,000. A fund of \$100,000 has been set aside for construction and operation of the proposed station. It is shown that the partners maintain a reserve of liquid assets amounting to approximately \$250,000, from which additional funds will be obtained, if necessary.

The partners have never had any experience with the operation of a broadcast station. Their only broadcast experience has been that gained through the weekly broadcasts of religious services over Station KFAB and the advertising they have carried over radio stations throughout the territory in which they do business. It was shown that during the year 1936 they advertised over twenty broadcast stations expending for this purpose the sum of \$5,077.45.

A qualified staff of employees would be maintained by the partners to construct and operate the proposed station. This staff would consist of twenty-five employees, including a general manager, a chief engineer, seven operators, a program director, a continuity writer, a

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production manager, five announcers, a sales manager, three salesmen, two stenographers, and others, at a total monthly salary of \$3,700.

The equipment proposed to be installed by the applicant complies with the Commission's rules and regulations and is capable of being efficiently operated. The radiating system would consist of a vertical radiator 308 feet in height with 120 ground radials extending in all directions from the base of the radiator for a distance of a half wave length.

It is proposed to locate the transmitter approximately one mile from Lincoln on a tract of land known as the Coryell Commercial Center. It was shown that seventy acres of land are available at this site for the use of the station. The proposed site is satisfactory.

The total estimated cost of constructing the station would amount to \$40,641, consisting of \$15,796 for the transmitting equipment, \$7,650 for the antenna system, \$4,672 for the speech input equipment, \$7,600 for construction and improvements, and \$4,923 for furniture and fixtures.

The total estimated monthly expenses are fixed at \$5,700, which takes into account all normal operating expenses and includes such items as depreciation, insurance, and taxes.

The applicant secured statistical analysis from business reporting agencies, and personally conferred with business associates and representatives of radio stations for the purpose of determining the extent of commercial support available. A list of advertisers in Lincoln was prepared by the applicant. This list was originally taken principally from the telephone directory and classified by the applicant into forty-three classifications. A few concerns under each classification were then interviewed for the purpose of obtaining the reactions of a representative cross section of the complete list. A total of 97 advertisers were thus interviewed, 39 of which signed commitments for time over the proposed station, totaling \$32,922.40, for the first year of operation, or an average per month of \$2,749. An additional 32, although they did not sign contracts, were definitely favorable to the applicant's proposed station. The remainder of those interviewed were uncertain as to whether they would use the proposed station for advertising or were unfavorable. On the basis of this survey, the applicant estimates that the station would have a monthly income of \$5,849. Of this amount \$2,749 represents the signed contracts, \$1,100 the estimated additional amount that will be received from local advertisers, \$1,500 the amount that will be received from National advertisers, and \$500 the amount that will be received from program and service charges. From the evidence it is clear that the

station would be assured an income represented by the signed commitments. The applicant is prepared to meet any operating deficits from its large liquid resources.

All advertising continuity will be brief and advertising of medical products will not be accepted unless approved by the American Medical Association. It will be the policy of the applicant not to accept advertising which involves any question of conflict with rulings of the Federal Trade Commission, or the Pure Food and Drug Administration, and no exaggerated, misleading or deceptive advertising claims will be accepted.

The Commission has given careful consideration to the testimony of a number of persons submitted on behalf of the applicant to prove need for additional service at Lincoln. Included among these witnesses were the Secretary of State, State Treasurer, State Superintendent of Schools, the Radio Director of the University of Nebraska, the County Superintendent of Schools, the County Agricultural Agent, and the Extension Department of the University of Nebraska. A number of witnesses testified that they had not used the existing stations at Lincoln but would use the proposed Coryell station if it were authorized to operate as proposed. Some of the witnesses testified that they had not been offered the facilities of the existing stations and had not requested time on the stations. A few of the witnesses testified that they had been unable to obtain satisfactory time on the present stations. Several of the witnesses stated that they had not heard programs reflecting the activities and interests of their institutions broadcast over the existing stations; however, in most instances, they listened to the stations only during a part of the time they were broadcasting. It appears that in some instances the broadcast time of certain of the organizations broadcasting over the present stations has been reduced.

Evidence was also submitted by the applicant to show that the existing Lincoln stations are inadequate as an advertising outlet in that Station KFAB by reason of its high power is too expensive and covers too large a territory and that Station KFOR by reason of its low power does not cover sufficient territory for those advertisers catering to the area adjacent to Lincoln.

The applicant adduced testimony to show that all existing means of news dissemination and advertising in Lincoln are allied in ownership and control. The only two daily newspapers published there are partially owned by the same interests, it being shown that each paper owns 49% of stock in the other. One of these is the State Journal Company, publisher of the Morning Journal and Evening Journal, and the other is the Star Publishing Company, publisher of

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the Lincoln Star. Only one newspaper is published on Sunday, it being a combined issue of the Journal and Star. It appears that the two papers have a joint rate card and require advertisers purchasing advertising space in one to purchase an equivalent amount of space in the other. The corporations operating the two newspapers combined have a 49% stock interest in each of the two radio stations now located in Lincoln and the Sidles Company owns the remaining 51% of stock in each station. The officers of the two broadcast companies are identical and it was shown that six of the seven members on each Board of Directors are identical. The President of the two broadcasting corporations is also Secretary-Treasurer and a Director of the Star Publishing Company, and one of the Directors of the broadcasting corporation is Secretary-Treasurer and a Director of the State Journal Company, and another Director of the broadcasting corporations is also a Director of the State Journal Company. The same group of men by means of corporate organizations likewise control the Central States Broadcasting Company, licensee of Station KOIL, at Council Bluffs, Iowa, with studios at Omaha, Nebraska. The applicant contends that its application should be granted to afford a competitive outlet in Lincoln.

Applicant's engineer made measurements of the conductivity in the Lincoln area and found that it varied according to the direction involved between the two extremes of 1.6×10^{-13} e. m. u. and 2.1×10^{-13} e. m. u. On the basis of these values, the proposed station during daytime hours, operating with power of 1 kilowatt, would render the following values of signal to the area and population indicated:

Signal strength	Radius	Population
10 mv./m. or better.....	<i>Miles</i> 11.0-12.4	91,156
2 mv./m. or better.....	26.5-30	141,743
0.5 mv./m. or better.....	47 -64	275,885

At night, operating with power of 250 watts, it would deliver service as follows:

Signal strength	Radius	Population
10 mv./m. or better.....	<i>Miles</i> 7.2- 7.8	81,960
2 mv./m. or better.....	19.4-21.6	111,004
1.4 mv./m. or better.....	23.4-26.2	123,704

The 1.4 millivolt per meter signal strength above referred to represents the extent of interference-free service that would be obtained at night on the basis of 17 nights' recordings taken by applicant's engineer F. C. C.

neer in Lincoln on 1450 kilocycles; however, on the basis of the 10%, second hour after sunset curve of the clear channel survey, the proposed station would be expected to be limited by Station KG CX to its approximate 3.2 millivolt per meter contour at night. The proposed station would be limited, however, to its 3.7 millivolt per meter contour at night by Station KTBS, and with such a limitation the population shown in the foregoing table within the 1.4 millivolt per meter contour would be substantially reduced.

The applicant submitted in evidence a tentative weekly program representing the typical program service that would be rendered. 25.1% of the station's time would be devoted to mechanical reproductions, and the remainder of the time will be given to live talent productions. It is contemplated that 28.9% of the station's time would be sold, and the remaining time would be devoted to sustaining programs, with time allotted to agricultural, religious, educational, and civic programs. Provision has been made in the program schedule for all local civic, religious, educational, and agricultural organizations. Examples from the proposed program schedule include a fifteen-minute farm service program beginning at 6:45 each morning except Sunday, which would be produced under the auspices of the County Agricultural Agents and the U. S. Department of Agriculture. Beginning at 9:00 o'clock each morning a fifteen-minute program of an educational nature is proposed for each day of the week except Saturday and Sunday to be known as the "Rural School Room" and to be produced by the State Teachers' College, the County Public Schools, and the University of Nebraska Extension Division. A quarter-hour educational program would also be broadcast daily except Saturday and Sunday by the Extension Division of the University beginning at 9:30 a. m. A half-hour program of an agricultural nature would be broadcast at the noon hour each day except Sunday with the cooperation of the University of Nebraska College of Agriculture and the U. S. Department of Agriculture. The evening hours between 8:00 and 9:00 p. m. will be devoted each day except Sunday to a musical program to be known as the Theater of the Air, in which talent from the University School of Music and other outstanding local artists will appear. In addition the proposed schedule includes various kinds of entertainment programs, news and weather reports, programs from the sheriff's office, talks by the Governor, a number of religious programs, and various other programs of an educational and civic nature. The program schedule is so arranged as to devote a liberal portion of time to civic and educational programs during evening hours. The tentative programs appear to be well balanced and generally meritorious.

The applicant has made an exhaustive survey in order to determine the extent of talent available in the Lincoln area for the production of radio programs. This survey, which is the result of personal interviews, indicates that there is a large amount of talent available, both professional and nonprofessional. The School of Music of the University of Nebraska has available an octet, choral union, symphony orchestra, a wood-wind ensemble, string instrument soloists, male quartet, girls' trio, vocal soloists, glee club, dramatists, an opera company, a concert pianist, two bands, etc. In addition there are church choirs, dance orchestras, and professional talent available for broadcasting over the proposed station.

The operation of the proposed station will not result in additional objectionable interference to the service of any existing stations except Station KGCX, located at Wolf Point, Montana. Station KGCX operates on 1450 kilocycles with power of 1 kilowatt, 670 miles distant from Lincoln and the recommended separation is 1,000 miles. The Commission's engineer testified that assuming a minimum efficiency of 150 millivolts per meter at one mile, Station KGCX would be limited by the proposed station to the 1.2 millivolt per meter contour. Assuming 200 millivolts per meter at one mile, Station KGCX would be limited to its 1.6 millivolt per meter contour, and with the proposed station operating with an efficiency of 225 millivolts per meter at one mile, Station KGCX would be limited to its 1.8 millivolt per meter contour. The normally protected one millivolt per meter contour of Station KGCX covers a radius of approximately 22 miles and the 1.6 millivolt per meter contour covers a the laws of the State of Nebraska and is the licensee of radiobroadcast from the operation of the proposed station is about four miles wide and is located at a point 18 miles or more from the City of Wolf Point. It appears that there are no towns within this strip and that the area is sparsely populated.

The facilities requested by KCMO, if granted, would be the principal source of interference to the proposed Coryell station and would limit Coryell to its approximate 4.6 millivolt per meter contour at night. The proposed Coryell station would limit Station KCMO to its approximate 3.7 millivolt per meter contour. The granting of either the Coryell or KFOR application would preclude the granting of the other.

IN RE DOCKET NO. 4604

Cornbelt Broadcasting Company is a corporation organized under the laws of the State of Nebraska and is the licensee of radiobroadcast Station KFOR, located at Lincoln. Station KFOR operates on 1210 kilocycles with power of 100 watts night and 250 watts until 6 P. C. C.

local sunset. It is proposed in the application to increase night power to 1 kilowatt and day power to 5 kilowatts, install a directional antenna, and move the transmitter site.

The corporation is controlled by the Sidles Company, which owns 51% of the stock, the State Journal Company is owner of 25% and the Star Publishing Company is owner of 24%. These three stockholders also own the stock of KFAB Broadcasting Company and the Central States Broadcasting Company in the same proportion as the Cornbelt Broadcasting Company. KFAB Broadcasting Company is the licensee of Radio Station KFAB, located at Lincoln, Nebraska, and Central States Broadcasting Company is the licensee of Radio Station KOIL, located at Council Bluffs, Iowa, with studios at Omaha, Nebraska.

The officers of the applicant corporation are Frank Thropp, President, Joe W. Seacrest, Vice President, and Charles Stuart, Secretary-Treasurer. The directors are Frank Thropp, Joe W. Seacrest, J. C. Seacrest, Charles Stuart, C. L. Carper, Fred S. Sidles, and Hal J. Sowles. Joe W. Seacrest, Vice President of the applicant corporation, is active in civic and community affairs. Both Mr. Thropp and J. C. Seacrest are Past Presidents of the Chamber of Commerce, and Mr. Thropp has been head of Relief for the State of Nebraska for the past four years.

The State Journal Company is the owner of 51% of the stock in the State Journal Printing Company, publisher of the Journal, a daily newspaper in Lincoln. The Star Publishing Company owns 49% of the stock in the State Journal Printing Company. The Star Printing Company, publisher of the Star, a daily newspaper, is owned by two stockholders, namely, The Star Publishing Company (51%) and the State Journal Company (49%).

The assets of the applicant corporation total \$19,197.18, of which \$6,743.82 is in government bonds, \$6,898.57 in accounts receivable, and \$27.96 in cash. The unissued capital stock of the Cornbelt Broadcasting Corporation is \$90,000. Written agreements have been entered into whereby the three stockholders will purchase such unissued stock in the same proportion as it is now held. The proceeds of the issue of said additional capital stock is to be used for the new construction and operation contemplated by the instant application.

The Sidles Company has assets in excess of \$2,000,000. The Star Publishing Company has assets in excess of \$1,000,000. The State Journal Company has assets in excess of \$900,000. On the basis of the financial statements of these three companies, they each appear to be financially able to fulfill their respective agreements to pay for the additional capital stock; however, it is contended on behalf

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of the respondents that the agreements entered into between the three stockholders have not been authorized by the Board of Directors of the stockholding companies and therefore such agreements are not binding.

In addition to an experienced manager, the station maintains a staff of approximately thirty employees, which includes a program director, chief continuity writer, traffic manager, and a chief announcer. In the event the application is granted it would be necessary to make additions to the technical staff.

A consulting radio engineer testified that he participated in the preparation of the application in that he designed the antenna system, specified the transmitter, advised in the selection of the frequency, and did certain other technical work in connection with the application. The transmitter of Station KFOR is now located on the southeast edge of the City of Lincoln about three or four miles from the center of the business district. The proposed new location is approximately eleven miles east of the city. The proposed directional antenna consists of four radiators, 330 feet in height, insulated at the base. The effective average signal obtained with the type of antenna proposed is approximately 250 millivolts per meter, at one mile for one kilowatt, which is slightly above the average. The four radiators of the antenna array comply with the requirements of Rule 131. The proposed transmitter site and the new transmitter proposed to be installed comply with the technical rules of the Commission.

The estimated cost of construction is placed at \$65,940, consisting of the following items: New transmitter \$28,000, antenna system \$21,940, transmission lines and equipment \$1,500, ground system \$1,000, new transmitter building \$8,500, twenty acres of land \$4,000, and telephone and power line installations \$1,000. The revenue from the operation of Station KFOR for the first eight months of 1937 totaled \$26,534.65. The total expense of operation for the same period was \$26,156.26, leaving a net profit of \$378.39. In the event this application is granted, the applicant proposes to increase the advertising rates of Station KFOR, 20%.

As indicating a need for the proposed service, it is contended by the applicant that additional institutions in Lincoln and the surrounding area, including the University of Nebraska, Wesleyan University, and Union College, located at Lincoln, York College located at York, Nebraska, Doane College at Crete, Nebraska, Middleton College at Fremont, Luther College at Wahoo, and Creighton University at Omaha, have not made an extensive use of Station KFOR because its present power does not satisfactorily serve the communi-

ties mentioned other than Lincoln. The University of Nebraska, for example, does not use KFOR because of its limited coverage, notwithstanding the fact that the facilities of the station have been offered to the University.

There is an estimated population of 256,000 within the present 0.5 millivolt per meter contour of Station KFOR in the daytime. At night the station is limited to its approximate 3 millivolt per meter contour, principally by Station KGLO, at Mason City, Iowa, operating on the same frequency. The estimated population within the present area of service at night is 96,000 persons. In the event the application is granted, Station KFOR during daytime hours would serve an estimated population of 130,800, within the 10 millivolt per meter contour, 587,400 within the 2 millivolt per meter contour and 1,171,400 within the 0.5 millivolt per meter contour.

The approximate radius of the 500 microvolt per meter contour would be 100 miles, it being less to the north, northeast, east, and southeast, and greater in the westerly direction because of the difference in conductivity existing in the area. At night the proposed station would serve an estimated population of 90,153 within the 10 millivolt per meter contour and 123,000 within the 3.7 millivolt per meter contour. The 3.7 millivolt per meter contour of Station KFOR is estimated as the limit of good service at night due to interference that would be expected from Station KTBS, operating on 1450 kilocycles, at Shreveport, Louisiana, and it is shown that this same limitation would apply to any station located at Lincoln, operating on 1450 kilocycles. The intensity of the signal of Station KFOR, operating as proposed, would be approximately the same day and night throughout the City of Lincoln, and such signal would be between 20 and 30 millivolts per meter.

According to applicant's analysis of a typical week's program of Station KFOR, 19% of the programs are commercial and 81% are sustaining. Approximately 96% of the commercial programs are local and approximately 4% are network; and approximately 39% of the sustaining programs are local and approximately 61% are network. However, according to an analysis of Station KFOR submitted by respondent, Coryell, it is shown that KFOR devotes 53.8% of its time to network programs and 21.4% to mechanical reproductions, thereby leaving 24.8% of its time for local live-talent programs.

Station KFOR has an affiliation with the Columbia Broadcasting System whereby it broadcasts such sustaining programs that, in the opinion of the program director, would be of general interest to the people at Lincoln. Station KFAB is a basic station of the Columbia Broadcasting System and the Columbia programs are made

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available for KFOR when Station KFAB is broadcasting other programs. Station KFOR also has an affiliation with the Mutual Broadcasting System. The station has cooperated with various civic, educational, and religious organizations in and about Lincoln. A special events department is maintained; the head of this department devotes most of his time to arranging special programs of unusual happenings, as well as public-service features. The station has five regular news periods daily in addition to news flashes, which are presented as soon as received. In addition to International News Service and Universal Service, a special news-gathering organization is maintained throughout the State of Nebraska. Baseball, football, and other sports events that are of interest in the territory are broadcast. The station cooperates with the Traffic Department in broadcasting educational features, designed to acquaint the public with traffic problems. A regular weekly program is prepared and presented by the greater Lincoln School System under the supervision of the Superintendent of Schools. One of the featured programs, which is the dramatic presentation of a nondenominational religious nature, is known as the "Little Chapel of Faith." Individuals and groups from the local religious and educational institutions and churches are regularly presented. Talent is drawn from Lincoln, as well as neighboring communities. Regular routine auditions are held weekly and anyone desiring an audition is given one. Additional talent would be employed in the event the KFOR application is granted.

New programs proposed to be broadcast by Station KFOR, if its application is granted, include such features as the KFOR Recital Hall, to be composed of guest artists and organizations from the territory in the contemplated new service area, the Nebraska Council of Churches, the Crete Male Chorus, a sunrise service (which is described as an early morning nondenominational religious program), and the KFOR theater, which will be made up of dramatic groups available in the surrounding territory. Towns within a radius of approximately thirty miles of Lincoln include Crete, Ashland, Seward, Wahoo, and a number of other small communities.

The granting of the application would not result in an increase of objectionable interference to the service of any existing broadcast station within the United States. Station XEF, located at Juarez, Mexico, just across the river from El Paso, Texas, operates on 1450 kilocycles with power of 100 watts. A large portion of the service area of Station XEF would fall within the continental limits of the United States. Station XEF is now limited by Station KTBS to its approximate 2.6 millivolt per meter contour. The operation of Sta-

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tion KFOR as proposed would limit Station XEF to approximately 3.73 millivolts per meter; however, the Commission's engineer testified that if the transmitter of Station XEF is properly located it would still be able to serve the City of Juarez, which has population of approximately 40,000.

Pending applications from KSTP, St. Paul, Minnesota, and WGAR, Cleveland, Ohio, for increases in power and the pending application to construct a new station at Madison, Wisconsin, for operation on 1450 kilocycles present no questions of interference. Station KFOR would not limit Station KCMO at night to a greater extent than it would be limited by other stations on the frequency, if both stations were operated as proposed in their respective applications. Station KCMO would limit Station KFOR to its approximate 4.6 millivolt per meter contour. In the event both stations were established, there would probably be some mutual interference within the 0.5 millivolt per meter daytime contours of both stations.

IN RE DOCKET NO. 4485

The applicant, KCMO Broadcasting Company, is a corporation organized under the laws of the State of Missouri. All of the stock in the applicant corporation is owned by T. L. Evans, G. C. Payne, and Lester Cox, each of whom owns one-third thereof. The station, which formerly operated with the call letters KWKC, was foreclosed by the government to meet delinquent income-tax payments. Station KWKC was taken over by the present stockholders in February 1936, and they operated it as partners until December of that year, when the KCMO Broadcasting Company was formed with the partners as equal stockholders. When the station was taken over by the partnership it was in a run-down condition, as shown by photographs of the property submitted at the hearing.

The station was removed from its then location in June 1936, and approximately \$25,000 was invested in new equipment. From June 1936 until December 1936 the three owners invested approximately \$75,000 in the station, distributed as follows: \$25,000 for back income tax and bills outstanding, \$25,000 for equipment, and \$25,000 for operating losses. The total investment as of date of hearing amounted to \$76,500. The three stockholders have entered into a written agreement to advance the applicant corporation \$30,000 to cover construction costs necessary under the proposed application. The Board of Directors of the applicant corporation has duly authorized these expenditures.

The financial statement of G. C. Payne as of March 31, 1937, reveals total assets of \$437,537.80, of which amount \$367,603.30 is current

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assets, consisting of cash \$12,869, listed bonds and stocks \$325,234.30, notes receivable, unsecured, \$2,500, and cash surrender value of life insurance \$27,000. Other assets consist of real estate \$39,500, stock in the KCMO Broadcasting Company \$14,334.50, household goods \$12,000, and automobiles \$4,100. The liabilities are mortgages and deeds of trust payable after twelve months and amount to \$2,500, which leaves a net worth of \$435,037.80.

The financial statement of T. L. Evans as of March 31, 1937, reveals total assets of \$454,790.47, of which amount \$392,311.47 are current assets, consisting of cash \$12,223.30, listed bonds and stocks \$339,617.86, cash surrender value of life insurance \$33,902.00, notes receivable \$6,500.00. Other assets are automobiles \$2,900.00, real estate \$2,500.00, stock in KCMO Broadcasting Company \$14,333.00, and household goods \$20,245.00. The total liabilities are \$25,673, consisting of notes payable \$16,000, accounts payable \$173.00, mortgages or deeds of trust payable within twelve months \$1,000.00, mortgages or deed of trust payable after eight months \$8,500, which leaves a net worth of \$419,149.17.

The financial statement of Lester E. Cox reveals total assets of \$230,750, which includes cash on hand and first mortgage notes of \$19,750. His liabilities are listed at \$9,500, which leaves a net worth of \$221,250. He has the following interests in other stations: KWTO, Springfield, Missouri, 25%; KGBX, Springfield, Missouri, 25%; and WTMV, East St. Louis, Illinois, 70%.

It is shown that the KCMO Broadcasting Company is now operating at a loss and has never been a profitable venture for the stockholders.

T. L. Evans is President of the applicant corporation and is also interested in various civic activities in Kansas City, among which he holds the following positions: Vice President of the Chamber of Commerce and Member of the Board of Directors, Committee Member of Kansas City Philharmonic Orchestra, Member of the Board of Directors of Safety Council, Member of the Board of Directors of Kansas City Little Theater, Member of the Board of Directors of the Kansas City Art Institute. It was shown that suitable time is not available on local network stations publicizing the Kansas City Little Theater and Kansas City Philharmonic Orchestra.

Mr. Evans testified that the applicant had no present plans for a network affiliation. Station KMBC is affiliated with the Columbia Broadcasting System, Station WDAF with the National Broadcasting Company, and Station WHB with the Mutual Broadcasting System. A number of prominent businessmen of Kansas City testified at the hearing and by deposition that they were unable to secure suitable

advertising time at night on Stations WDAF and KMBC, due to network commitments. Among these witnesses were the Sales Manager of Niles & Moser Cigar Company, a company doing between \$3,000,000 and \$5,000,000 business, the President of Faultless Laundry Company and Director of the Kansas City Safety Council, Commissioner of the Boy Scouts and President of the Franklin Ice Cream Company, the President of the Seiditz Paint and Varnish Company, and others. It appears from the testimony of these witnesses and other testimony that Station KCMO under its present operation is not a satisfactory medium to broadcast the programs of the various civic organizations and for advertising purposes, inasmuch as Station KCMO fails to give adequate coverage to Kansas City, and in sections of the city cannot be heard.

It was shown that Station KXBY did not render consistent service to Kansas City, Missouri. It appears from the evidence that certain witnesses were unable to secure satisfactory nighttime periods on Stations WDAF and KMBC and that Station KXBY frequently devotes its nighttime hours to broadcasting sports events. The engineer for the applicant testified that only a portion of Kansas City, both downtown and residential areas, is covered by Station KCMO under present conditions. Under the proposed application Station KCMO will deliver adequate service to Kansas City, Missouri, including the downtown area, and a 2 millivolt per meter signal to the residential areas of Kansas City, Missouri, and Kansas City, Kansas, both day and night. Only a small portion of Kansas City, Kansas, will not be covered during the daytime. Station KCMO at present renders service during the daytime to 84,630 people within its 10 millivolt per meter contour, 231,900 within its 2 millivolt per meter contour, and 569,300 within its 0.5 millivolt per meter contour. At night it serves 34,630 people within its 10 millivolt per meter contour and 150,350 within its 2.6 millivolt per meter contour. If the application is granted, it is estimated that during daytime hours KCMO would serve 326,470 people within its 10 millivolt per meter contour, 621,100 within its 2 millivolt per meter contour, and 715,400 within its 0.5 millivolt per meter contour. During nighttime hours of operation it would serve 355,500 people within its 10 millivolt per meter contour and 546,000 within its 4.8 millivolt per meter contour. (In view of the fact that the Commission is denying the conflicting applications, the signal of KCMO, operating as proposed, will be limited to the 4.1 millivolt per meter contour, and the population served will be in excess of that shown above.)

Kansas City, Missouri, is the second largest city in the State of Missouri and had population, according to the 1930 U. S. Census, of

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399,746 and a metropolitan area population of 608,186. According to the 1935 Census of business, there were 5,985 retail establishments in Kansas City, Missouri, with total annual sales of \$209,399,000. These establishments employed 30,796 people, with a total pay roll of \$26,165,000. For the same year there were 3,144 service establishments doing a total volume of business of \$13,024,000, employing 5,093 people, with a total pay roll of \$4,710,000. In the same year there were 1,459 wholesale establishments doing a net annual business of \$649,885,000 and employing 15,983 people, with a total pay roll of \$26,488,000. It was also shown that retail sales for 1933 averaged \$409 per person, based on the 1930 population figures. There were 875 manufacturers located in Kansas City, Missouri, and Kansas City, Kansas, in 1933, with total value of products being \$646,698,810. During the same year there were 219 public and private schools and 409 churches located in Kansas City, Missouri, and Kansas City, Kansas.

The present General Manager of Station KCMO has had wide experience in radio, having served for about 8 years in the Kansas City territory with Stations KMBC and WREN. He testified to a proposed schedule of programs showing a large percentage of time devoted to civic, religious, and educational programs and events of local interest to be broadcast over the station. The station, through its special events department, broadcasts interviews with important personalities visiting the city and features many events of local interest. Among the features proposed and now being used is "News On the Hour, Every Hour."

A break-down of the existing service in Kansas City, Missouri, shows the following distribution of educational, civic, religious, commercial, and sustaining programs:

	Educa-tional	Civic	Religious	Commer-cial	Sustaining
WDAP	2.7	1.4	1.3	52.6	47.4
KCMO (proposed)	8.33	6.25	4.33	40.0	60.0
KMBC	3.00	.60	4.8	56.0	44.0
KBY	2.00	2.40	5.7	87.3	62.7
WAB	2.50	2.90	.0	55.3	44.7
KOKN (Kansas City, Kansas)	2.20	2.30	3.8	28.0	72.0

A further breakdown of nighttime service, showing percentage of commercial and sustaining programs, reveals the following:

	Commercial	Sustaining
WDAP	45.0	55.0
KCMO (proposed)	35.0	65.0
KMBC	49.0	51.0
WAB	Not on air	
KBY	44.6	55.4
KOKN (Kansas City, Kansas)	12.2 (25% of time not used)	62.8

An additional breakdown was shown of the Kansas City, Missouri, stations, other than KCMO, from 5:00 p. m. to 9:00 p. m., showing the amount of commercial and sustaining time carried by these stations during this period. The results were as follows:

	Commercial	Sustaining
WDAF.....	98.0.....	1.1
KXBY.....	44.6.....	56.4
KMBC.....	85.8.....	14.2
WHB.....	Operates to local sundown.....	
KCKN (Kansas City, Kansas).....	Does not use all of evening time.....	

The applicant reserves the right in all its advertising contracts to use the station as it sees fit and proper as evidenced by the following paragraph appearing in its advertising contracts:

KCMO reserves the right to the time allotted to the advertisers of others whenever required by law or the lawful order of any government agency, or whenever in the judgment of Radio Station KCMO such action may become necessary or proper to broadcast news events of general interest or to serve the public good.

In the event the application is granted the applicant proposes to develop and broadcast programs from the University of Kansas, Kansas City Conservatory, Park College and William Jewell College, all of which institutions appear to have dramatic departments, glee clubs, and other musical organizations. In addition the applicant proposes to take advantage of the Center Lecture series which feature outstanding personalities. Other programs involve the featuring of the Conductor of the Kansas City Philharmonic Orchestra, Kansas City School of Law, Kansas City Chamber of Commerce, Kansas City Live Stock Exchange, and Kansas City Board of Trade, and other programs devoted to city planning and beautifying.

The cost of the proposed construction involved is estimated at \$27,700. Six additional people will be employed in connection with the operation of the station. The present operating cost of the station runs in the neighborhood of \$2,600 per month. An additional operating cost of \$1,522 per month is anticipated in the event the application is granted. Included in this additional cost of operation is \$625 per month for a studio orchestra. There was considerable evidence submitted on behalf of the applicant as to additional advertising business which will be made available to the applicant in the event the proposed application is granted. For example, one advertiser testified that he had \$12,000 a year available which he would spend in advertising over KCMO if adequate coverage of Kansas City could be given. Another advertiser testified that he would spend \$3,000 or \$4,000 a year with KCMO if better coverage was

secured. Other advertisers testified to the same effect, except as to amount.

The operation of Station KCMO as proposed would not result in an increase in interference with any existing station. Station XEF located at Juarez, Mexico, operates on 1450 kilocycles with power of 100 watts and the operation of Station KCMO as proposed would limit Station XEF to its 2.3 millivolt per meter contour. However, Station XEF is located nearer Station KTBS, operating on the same frequency at Shreveport, Louisiana, and is limited by Station KTBS to its approximate 2.6 millivolt per meter contour. The dominant source of limitation to KCMO operating as proposed would be Station KTBS which would limit Station KCMO to its 4.1 millivolt per meter contour. The interference questions as between the operation of Station KCMO as proposed and the operation of the proposed Coryell station at Lincoln and the proposed operation of Station KFOR at Lincoln have already been discussed.

IN RE DOCKET'S NOS. 4509, 4604, AND 4485

The Commission has held that it is required by the Communication Act of 1934 to license radiobroadcast facilities to the end that the public will be best served, and one of the elements to be considered in attaining this objective is the furtherance of competition in program service. The Commission is reluctant to grant new or increased facilities to one who already holds a license for a station in the same community. To the extent that it was applicable, this view of the law was expressed by the Commission in *Louisville Times Company* (decided June 1, 1938), 5 F. C. C. 554, *The Colonial Network, Inc.* (decided June 22, 1938), 5 F. C. C. 654, *Genesee Radio Corporation* (decided March 2, 1938), 5 F. C. C. 183, and *WSMB, Incorporated* (decided January 12, 1938), 5 F. C. C. 55.

A painstaking study of the facts in the record concerning the program service proposed by Coryell and Cornbelt (KFOR) shows that both propose a regional service closely paralleling each other. Certainly the showing made by KFOR is not so distinctive from that proposed by Coryell as to lead inevitably to the conclusion that KFOR alone would render proper regional service. KFOR and KFAB (the two existing Lincoln stations) are owned by the same parties. Extending the facilities of KFOR would manifestly not have the effect of establishing or augmenting competitive conditions in Lincoln.

The Commission has been impelled to the conclusion that there is no need in the Lincoln area for the specific additional radiobroadcast facilities proposed by either Coryell or KFOR, and the two applications should be denied on that ground alone. But as to KFOR there

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is the additional ground for denial adverted to above, namely, that granting its application would not have the effect of establishing or augmenting competitive conditions.

Coryell desires to afford the Lincoln area an additional regional service. Station KFAB, which operates on a clear channel with 10-kilowatt power, now has a coverage in Nebraska greatly in excess of that shown for Coryell or KFOR. Aside from the added primary service in Lincoln (which now receives primary service in its residential districts from four stations), Coryell proposes regional service to areas which now receive service from at least nine existing stations.

Coryell's proposed nighttime coverage would not be very much in excess of the present coverage of KFOR at night. Coryell predicted that its nighttime signal (using 250 watts power) would be limited to the 1.4 millivolt per meter contour, and that it would serve 123,704 people. Careful scrutiny of all the engineering testimony shows, however, that the limitation (if the KCMO application were not granted) would be to the 3.7 millivolt per meter contour, and that the population served would be approximately 105,000. KFOR at the present time serves about 96,000 people at night in the same area. Moreover, the Commission has determined that the application of KCMO should be granted, and if both stations were simultaneously operated Coryell would be limited to its 4.6 millivolt per meter contour at night. As a consequence the population served would be substantially less than the figures shown above.

Regional stations are normally protected to their 1 millivolt per meter contours at night. We have repeatedly held that this value will be departed from only for impelling reasons of public moment. The showing made by Coryell would not justify the Commission in establishing the new station with the limitation to its signal shown.

Coryell proposed a meritorious program service. It is substantially the same, however, as that now being rendered by KFAB and KFOR. It was shown that the University of Nebraska and other institutions and governmental agencies have available program material and information of statewide rather than local interest, and from this premise the contention was drawn that the proposed Coryell station would fulfill a definite public need by giving more complete expression to these institutions. The record shows, however, that KFOR and KFAB have devoted substantial periods of time to several of the institutions. Moreover, the coverage aspect of the contention, at least as far as nighttime operation is concerned, is not tenable. In brief, although there may be some need for further public expression in the Lincoln area, the need is not sufficiently strong to justify the establishment of the new station applied for by Coryell.

The stockholders of KCMO Broadcasting Company have earnestly endeavored to furnish Kansas City with a commendable local radio-broadcast service. In furtherance of this objective they have spent a large sum of money and have operated the station for about two years at a considerable loss. The program service of this station has undergone a great improvement. Despite the complete reconstruction of the transmitting apparatus, a large number of the people of the Kansas City area are unable to receive the station's highly meritorious programs simply because its signal is not strong enough to reach a major portion of the residential areas.

The program service proposed by this applicant, particularly during early evening hours, is not consistently paralleled by any existing station.

The Commission is mindful of the fact that at night the signal of Station KCMO (operating as proposed) will be limited to the 4.1 millivolt per meter contour. Even with this limitation, however, the station will serve all of Kansas City, Missouri, and Kansas City, Kansas, and also some outlying districts. The fact that the highly meritorious and largely unduplicated service now rendered and proposed by this existing licensee is not available to large sections of the population of the Kansas City area is of such compelling importance as to justify the Commission in departing from its usual allocation values in granting the application.

There is no evidence in the record which shows that the increase in the coverage of the station occasioned by the grant would adversely affect the interests of the existing licensees. Witnesses testified that they would purchase advertising time from KCMO in an amount amply sufficient to defray the added cost of operation, and the amounts so expended would otherwise not be used for radio advertising.

GROUND FOR DECISION

1. Each of the applicants is legally, financially, technically, and otherwise qualified to construct and operate the facilities proposed.
2. The granting of the Cornbelt Broadcasting Corporation application would not have the effect of establishing or augmenting competitive conditions. Under such circumstances, the Commission will not authorize additional facilities unless a compelling public need is shown. This applicant failed to show a compelling need for the service proposed to be rendered on the frequency applied for.
3. The showing made by L. L. Coryell and Son as to the public need in the Lincoln area for the service proposed on the frequency 1450 kilocycles was not sufficiently strong as to justify the Commission in departing from its allocation values.

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4. Granting the application of KCMO Broadcasting Company will not result in interference to any existing station nor will it cause impairment to the service of existing Kansas City stations.

5. Although the service of KCMO, operating at nighttime as proposed, will be limited within the 4.1 millivolt per meter contour, a compelling need exists to afford the people of the Kansas City area the meritorious program service of this existing station and granting the application will tend toward a fair, efficient, and equitable distribution of radio facilities.

6. Public interest, convenience, and necessity will not be served by granting the application of L. L. Coryell and Son.

7. Public interest, convenience, and necessity will not be served by granting the application of Cornbelt Broadcasting Corporation.

8. Public interest, convenience, and necessity will be served by granting the application of KCMO Broadcasting Company.

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D. C.

In the Matter of
RALPH R. WILLIAMS (WLFF),
SAN DIEGO, CALIFORNIA. } DOCKET No. 5101.
For renewal of ship station license. }

Decided September 20, 1938

Marshall S. Orr on behalf of the Commission.

STATEMENT OF FACTS, GROUNDS FOR DECISION AND ORDER

The proceedings arose upon application of Ralph R. Williams for renewal of license for the radio station aboard the *M. V. Alert*.

The Commission examined the application and designated the matter for hearing on May 25, 1938, principally upon the ground of apparent alien ownership of the vessel.

It appears from the application and from an accompanying document that the Motor Vessel *Alert* is owned by aliens and that the station would be under control of the alien master of the vessel to whom a license could not properly be issued under the terms of the Communications Act of 1934.

The applicant was duly notified as to the time and place of hearing, but failed to appear at such time and place either in person or by attorney. Counsel for the Commission moved that in view of the fact that the applicant had made no appearance that the application for renewal be denied as in default.

The report of the examiner (II-36), recommending that the application be dismissed was released on July 12, 1938. No exceptions were filed thereto.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D. C.

<p>In the Matter of LORAIN COUNTY RADIO CORPORATION, LORAIN, OHIO. For Construction Permits. Coastal Harbor Stations (Public Coastal Service).</p>	}	<p>DOCKETS Nos. 4880 and 4881.</p>
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Decided September 20, 1938

Frank C. Dunbar on behalf of the applicant; *Ben S. Fisher* and *Charles V. Wayland* on behalf of Thorne Donnelley, respondent; *William H. Bauer* and *Basil P. Cooper* on behalf of the Federal Communications Commission.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

By the Commission:

STATEMENT OF FACTS

This proceeding arises upon the applications of Lorain County Radio Corporation for permits to construct coastal harbor stations at Duluth, Minnesota, and Port Washington, Wisconsin, to be operated in the public coastal service with a power of 500 watts for each station. Frequencies requested for the Port Washington station are 2514 kilocycles and 2550 kilocycles. The frequency requested for the Duluth station is 2550 kilocycles. Hearing was held before an examiner on January 10, 1938, and on March 22, 1938, the examiner released his report recommending that both applications be granted subject to certain conditions with respect to joint use of the frequency 2514 kilocycles with Thorne Donnelley.

Thorne Donnelley appeared at the hearing on the applications and opposed the granting of the application for the station at Port Washington, Wisconsin, and, subsequent to release of the examiner's report, filed exceptions to such report. In lieu of oral argument briefs have been filed by the applicant and Thorne Donnelley, hereinafter called respondent.

Lorain County Radio Corporation is a corporation organized under the laws of the State of Ohio, and is at present the licensee of the coastal harbor station WMI at Lorain, Ohio. At the time of

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the hearing the applicant was also the licensee of 56 radiotelephone ship stations located on vessels navigating the Great Lakes, out of a total of 63 United States vessels so equipped. Station WMI is authorized to transmit on the frequencies 2550, 6470, and 11370 kilocycles. The applicant is primarily concerned in the development of radiotelephone communication service to serve heavy commercial traffic on the Great Lakes generally. All of the United States stations presently equipped to communicate with Station WMI are heavy cargo vessels with the exception of one. It is stated that the same ship stations as are served by Station WMI will be served by the stations which it is proposed to construct at Duluth and Port Washington and that the effect of granting the applications and operating the stations as proposed will be to lower the cost of the land-line tolls involved in calls between vessels and land-line telephone stations with the most substantial reductions occurring for calls to and from points in the vicinity of Duluth and Port Washington. The equipment installed by the applicant on the ship stations above referred to is costly from the viewpoint of small pleasure craft and commercial vessels whose operations are confined within a relatively small area on one of the Great Lakes, since in the latter case it is presumed that the equipment would be used only occasionally and primarily for safety purposes.

On April 6, 1938, this Commission granted the application of the respondent for authority to construct a coastal harbor station at Lake Bluff, Illinois, which is about 30 miles north of Chicago on Lake Michigan. The respondent at that time was primarily concerned with rendering a local radiotelephone communication service to vessels operating in the lower end of Lake Michigan. It is estimated that the station at Lake Bluff will render satisfactory service to ships in the lower end of Lake Michigan within a distance of 100 miles north of the City of Chicago. The respondent in making application to the Commission stated that he was primarily interested in the station at Lake Bluff "from a safety point of view."

It is clear that the respondent and the applicant herein are interested in the development of two distinct and different types of business. The applicant hopes to develop a comprehensive service for the heavy commercial traffic on the Great Lakes generally, while the respondent seeks primarily to establish a local service for the area more or less immediately adjacent to Chicago.

FINANCIAL QUALIFICATIONS OF APPLICANT

The respondent directs our attention to the discrepancy between the answer to question No. 8 (f) in the applications here under consideration and the statement of a witness for the applicant on page 6 F. C. C.

131 on the transcript of testimony. The answer to question No. 8 (f) is to the effect that capital stock will not be issued to finance the construction of the station if the application is granted. At page 131 of the transcript, the Treasurer and Manager of the applicant stated: "We will sell additional stock eventually and we may borrow temporarily, until we know where we can get the money." The statement just quoted is immediately preceded by another statement of the same witness, as follows: "We arranged the financing before we made the application. The money has all been provided to build the station." The first statement quoted is also a direct contradiction of the answer of the applicant to question No. 8 (f) in the application, which was made by the same person who testified as above stated. The respondent contends that the record establishes that the applicant must augment its finances through the sale of additional stock since it does not have sufficient liquid assets to finance the construction proposed, and that the application must be denied since the Commission has held that when an applicant must depend upon public subscriptions to finance the construction of a radio station, such an applicant is not financially qualified. It is also contended that this Commission should not establish a precedent whereby applicants for all classes of construction permits may be declared financially qualified if they state they are going to finance the venture by the sale of stock. The respondent cites *Matthews*, 2 F. C. C. 576.

It is difficult to understand the failure of the applicant to make clear upon the record the method of financing to be followed in the event the applications should be granted. However, if we take the position least favorable to the applicant, i. e., that stock will be issued and sold to finance the construction of the proposed stations, this is not sufficient to justify denial on the ground that the applicant is not financially qualified. The case cited by the respondent involved the application of an individual for a broadcast station in a town already enjoying substantial service from other stations. He had no record of experience with the operation of this or any other station and the venture was entirely speculative. In the instant case we have a common carrier operating a service pursuant to authorization from this Commission and seeking an extension of that service to render additional and better service to customers presently served. This situation might better be compared with that discussed in *Doughty & Welch Electric Co., Inc.*, 2 F. C. C. 243, wherein the Commission said:

The applicant proposed to expend a sum of approximately \$5,000 for changes in the transmitter and antenna in the event that the application is granted. The station realized a net profit from its operation in 1934 of \$9,000. While
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there are some large outstanding obligations of the station, yet the profits realized from this station in the past and the unencumbered assets which it has would tend to establish the fact that the applicant is able financially to make the improvements contemplated in the application and to operate the station in accordance therewith.

Further, the proposal of the applicant to construct additional stations to serve heavy commercial traffic on the Great Lakes might also be compared with applications of railroads under the Interstate Commerce Act for authority to construct extensions to existing lines. The Interstate Commerce Commission has approved the issuance and sale of securities to finance, in part at least, the construction of an extension covered by a certificate of public convenience and necessity issued by the same Commission. We have no jurisdiction over the issuance and sale of securities by common carriers in the communication service, but it is not irrelevant to state that, on the record before us, we would have no difficulty in approving the issuance and sale of securities by this applicant sufficient to finance the construction of the proposed stations. To illustrate the attitude of the Interstate Commerce Commission regarding the financing of construction of extensions to railroads, attention is directed to the case of *Great Northern Ry. Co. Construction*, 166 I. C. C. 3, 33, where the Commission stated frankly in its decision that the Western Pacific Railway Company expected to partially finance its part of the authorized construction through the sale of bonds and notes. The Commission later authorized the issuance and sale of securities for this purpose.

The Commission finds that the applicant is financially and technically qualified, and has the legal capacity to construct and operate the proposed station.

THE DULUTH STATION

No person appeared in opposition to the granting of the application for authority to construct a coastal harbor station at Duluth and the record contains substantial evidence of the public need for the proposed station there. During the year there were 5,063 vessels of the bulk cargo type that entered the Duluth-Superior harbor; 615 made port at Ashland harbor; 878 docked at Two Harbors; 127 entered Marquette; and 440 docked at Presque Isle. Shipping represents Duluth's largest single industry. It is the port on the Great Lakes from which originates a majority of the iron-ore traffic, and to which is destined a majority of the coal traffic on the Great Lakes. Officials of shipping companies and captains of Lake boats testified regarding the convenience to them of a radiotelephone station at Duluth. At the present time arrangements for docking vessels ap-

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proaching Duluth harbor are telephoned from Duluth to Lorain, and from Station WMI at Lorain to the vessel on Lake Superior. If the instructions could be obtained by the vessel directly from a Duluth station, a substantial saving in time and expense would be effected. A number of the shipping companies have operating offices in Duluth and in Cleveland. It is anticipated that the station at Duluth will develop business not now available on account of what is stated to be the prohibitive cost of the land line portion of telephone service via WMI, Lorain, Ohio.

The frequency requested for the Duluth station is 2550 kilocycles, which frequency, under the working agreement between the appropriate administrative agencies of the United States and the Canadian Government, is assigned by both for radiotelephone service on Lakes Superior and Erie, with priority of use in the Canadian Government. Station VBB is licensed by the Canadian Government to operate at Sault Sainte Marie, Ontario, on the frequency 2550 kilocycles, with 1600 watts power, unlimited time, during the navigation season. The operation of the proposed Duluth station would cause interference to a certain portion of the service area of Station VBB when the latter station operates. Therefore if this application is to be granted, it will be necessary to provide that use of the frequency 2550 kilocycles be subject to prior use by the Canadian Government as provided for in the above-mentioned agreement.

The applicant will operate the proposed station at Duluth under an agreement with the City of Duluth, already executed, whereby the antenna of the station owned by the Duluth police will also be used for the proposed radiotelephone service, and the personnel employed by the Duluth police will be utilized to operate the station. The equipment proposed to be used in the station at Duluth is satisfactory and complies with the rules and regulations of the Commission. The proposed site for the transmitter, in the Duluth municipal police radio station, is satisfactory. The proposed charge for service between ships on the Great Lakes and the station at Duluth is the same as the existing charge for such service between ships and Station WMI at Lorain, Ohio.

The applicant requests authority to use 500 watts power at the proposed Duluth station. It has been the practice of this Commission to limit the power of coastal harbor stations to 400 watts, with one exception—Station WMI at Lorain—which has two transmitters with 500 watts power and one transmitter with 400 watts. The station at Duluth should, in view of the record, be limited to 400 watts, and the use of the frequency 2550 kilocycles made subject to the priority of the Canadian Government.

THE PORT WASHINGTON STATION

Port Washington is about 100 miles north of Chicago on the west shore of Lake Michigan. The cost of the station which the applicant proposes to construct at this point is approximately \$16,500. The station would be used primarily for communication with cargo vessels serving ports on Lake Michigan. There is testimony in the record that such a service would be a convenience to the operators of vessels owned by companies maintaining their principal offices in cities located on Lake Michigan. A substantial volume of commercial traffic enters and leaves Lake Michigan each year. A station at Port Washington would effect a considerable saving in land-line tolls on any messages between vessels on Lake Michigan and the ports on Lake Michigan since the land-line charges on such messages would be reduced substantially under those now effective via WMI at Lorain, Ohio. It is stated that the operation of the station at Port Washington would relieve present traffic congestion at Station WMI, and it is also anticipated that the station would develop some new business which is not now handled due to what is stated to be the excessive cost of communication to and from Lake Michigan ports via Lorain, Ohio.

The frequency 2550 kilocycles is not available for use on Lake Michigan in the coastal harbor service under the working agreement between representatives of the United States and Canadian Governments. One of the objects of this agreement is to minimize interference between radio stations of these countries. The frequency 2514 kilocycles has been licensed for use by Station WAY, owned by Thorne Donnelley, at Lake Bluff, Illinois. Satisfactory operation of the proposed station at Port Washington on the frequency 2514 kilocycles would necessitate some cooperative arrangement between Thorne Donnelley at Lake Bluff and the applicant at Port Washington whereby vessels so desiring could communicate with either station without causing interference and consequent delays. From the record, it appears that one frequency, 2514 kilocycles, should be sufficient, from the point of view of the number of anticipated telephone calls, for a considerable period of time to take care of the traffic through both the Thorne Donnelley station at Lake Bluff and the proposed station at Port Washington.

GROUNDS FOR DECISION

On the record in this case the Commission finds:

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

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2. There is a public need for coastal harbor telephone service at Duluth, Minnesota, and at Port Washington, Wisconsin, as proposed herein.

3. The granting of the application for a permit to construct a coastal harbor radiotelephone station at Duluth, Minnesota, subject to priority of the Canadian Government to the use of the frequency 2550 kilocycles, and limited to 400 watts power, will serve public interest, convenience, and necessity.

4. The granting of the application for a permit to construct a coastal harbor radiotelephone station at Port Washington, Wisconsin, for use of the frequency 2514 kilocycles limited to 400 watts power, and subject to the execution and filing of an agreement satisfactory to this Commission, between the applicant and Thorne Donnelley, covering the joint use of this frequency, will serve public interest, convenience, and necessity.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D. C.

<p>In the Matter of ROCK ISLAND BROADCASTING COMPANY (WHBF), ROCK ISLAND, ILLINOIS. For Construction Permit.</p>	}	DOCKET No. 5013.
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Decided September 27, 1938

Horace L. Lohnes and Fred W. Albertson on behalf of the applicant; Ben S. Fisher and John W. Kendall on behalf of Station KGCU and Martin R. O'Brien; J. W. Guider, Duke M. Patrick, Karl A. Smith and Lester Cohen on behalf of Station WFBM; Paul D. P. Spearman and Alan B. David on behalf of Station KXOK; and Walter Johnson on behalf of the Commission.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION (Commissioner Craven dissenting; McNinch, Chairman; Case, Commissioner; and Payne, Commissioner, not participating):

STATEMENT OF FACTS

This proceeding arose upon the application of the Rock Island Broadcasting Company (licensee of WHBF, located at Rock Island, Illinois, operating on the frequency 1210 kc. with power of 100 watts night and 250 watts day, unlimited time), for a construction permit to authorize the operation of Station WHBF on the frequency 1240 kc. with power of 1 kw. unlimited time, using a directional antenna during night hours, and to authorize the station to change the present location of its transmitter and to install a new transmitter. The hearing was held before an examiner on April 29, 1938, who, in his report (I-663), recommended that the application be granted. No exceptions were filed.

The legal and technical qualifications of the applicant are not in issue in this proceeding.

The estimated cost of construction necessary to effect the changes proposed by WHBF is \$29,400. As of March 31, 1938, the applicant had the following assets: current resources, \$46,388.06; fixed resources, \$36,451.98; other resources and deferred charges, \$21,744.25.

Its liabilities were: current liabilities, \$1,864.07; deferred liabilities, \$33,992.51; depreciation and reserve for bad debts, \$20,928.10; capital stock, \$60,000; and corporate deficit, \$16,600.14.

According to the United States Census for 1930 Rock Island had population of 37,953. The metropolitan area had population of 154,491.

The City of Rock Island and three other cities, namely, Moline, East Moline, and Davenport, are contiguous communities and for the purposes of this proceeding may be regarded as one center of population. The area in which these cities are located is known as the Tri-City area and is an educational, cultural, and trade center with a radius of approximately 60 miles, which includes about 50 towns. Rock Island County, which includes the cities named above, had 1,256 retail stores with annual sales of \$25,067,000; 105 wholesale establishments with annual sales of \$13,692,000; and 133 manufacturing establishments disbursing \$15,998,808 annually in wages. (U. S. Census of Business for 1935). The county is the largest farm machinery manufacturing center in the United States. About 26,000 persons are employed in this industry. The Rock Island Arsenal, operated by the United States Government, is located in this county and has about 3,000 employees. Agriculture is another important occupation in this section of the state.

The only station in addition to WHBF which is located in the vicinity of the Tri-City area is WOC, licensed to operate in Davenport, Iowa, on the frequency 1370 kc. At a point two miles east of the city limits of Rock Island, WOC has a field intensity 2.86 mv./m. This station is a chain outlet, whereas WHBF does not have a chain affiliation, nor is any such connection planned for it in the future.

Additional radiobroadcast services available to the residential and rural areas (with the field intensities thereof) are as follows: WMT, Waterloo, Iowa, 3.18 mv./m.; WGN, 2.06; and WHO, Des Moines, 2.08. There are also radio services available in the rural areas as follows: WMAQ, Chicago, 1.75 mv./m.; WBBM, Chicago, 1.18 mv./m.; and WSUI, Iowa City, 1.02 mv./m.

The following table shows the estimated population served during daytime hours by the station at the present time, and which would be served if operated as proposed:

Signal strength	Population operating as at present	Population operating as proposed
0.5 mv./m. contour.....	276, 267	490, 039
2.0 mv./m. contour.....	181, 589	282, 481
10.0 mv./m. contour.....	136, 586	156, 996

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The above table establishes the fact that there will be a very large increase in the number of persons who will receive daytime service from WHBF. Moreover, the record shows that the entire metropolitan district will receive during daytime hours a signal of 25 mv./m. from WHBF.

The applicant's engineer estimated that the service of WHBF as proposed during nighttime hours would be limited by the operation of Station WXYZ, Detroit, Michigan, to a contour between the 2.63 mv./m. and 4 mv./m. His opinion was that the limitation of 2.63 mv./m. represents a reasonable expectancy of interference-free service. The Commission's engineer testified that in his opinion the foregoing estimate was inaccurate, inasmuch as it was based upon recordings which were not compared with other recordings taken at the same time of stations having known antenna efficiencies.

The Commission's engineer predicted that the service of WHBF operating as proposed would be limited to its approximate 4.8 mv./m. contour by WXYZ. This engineer's calculations were based upon an assumption of minimum antenna efficiency.

The record is silent as to the number of persons residing within the 4.8 mv./m. contour. However, estimates submitted on behalf of the applicant show that during night operation WHBF now gives interference-free service to 155,826 persons within its 3.2 mv./m. contour. There is evidence in the record showing that if limited to its 6.4 mv./m. contour WHBF (as proposed) will serve 165,834 persons, and that if limited to its 2.6 mv./m. contour the station (as proposed) will serve 245,491 persons. The record discloses that because of the directional antenna proposed by the applicant the business district of Bettendorf, Iowa (population 2,768, 1930 Census) will receive little if any service. There will also be some restriction to the service received in the northwest portion of Davenport, Iowa. But it is obvious that WHBF operating as proposed will serve during night hours a substantially increased population although limited to its 4.8 mv./m. contour, which is approximately midway between the 6.4 and 2.6 mv./m. contours. Stations of the class proposed herein are normally afforded protection to their 1 mv./m. contours.

For the year 1936 WHBF had a profit of about \$1,440. During the year 1937 the station operated at a loss of \$2,167.48. An officer of the applicant corporation appeared at the hearing and stated, in substance, that the reason the station had not operated at a profit was due to the efforts which were made to adequately serve the Tri-City area. The record shows that the station has three permanent studios, one in Rock Island, one in Moline, and one in Davenport.

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During March 1938, WHBF maintained 22 remote lines and 90 established terminals available for remote-line use. The same officer testified that if desired it would have been possible to operate the station at a substantial profit.

The applicant has provided considerable time to civic, charitable, religious, social, and philanthropic organizations of the area. There has been a high degree of cooperation between WHBF and these organizations.

As was already shown the station has maintained ample facilities for the broadcasting of its programs. WHBF has initiated and promoted various sports competitions, and has also donated awards to winners in these tournaments. Special events such as in intercity Thanksgiving service have been broadcast. An examination of a typical program schedule which has been followed by WHBF discloses that its program service has been diversified, instructive, and adapted to meet the needs of the area served.

The evidence further indicates that operating as at present WHBF is unable to reach many small communities in the vicinity with its desirable broadcasts, such as religious programs. A large portion of the population to the south of the Tri-City group speak the Swedish language. WHBF broadcasts Swedish services on Sunday afternoon for the benefit of these people. Expressions of disappointment have been received by the station regarding the clarity of reception of these programs. It was also shown that WHBF does not now serve the agricultural sections of the area except for the territory immediately around the Tri-City locality. For this reason the station did not broadcast a speech by the president of the Illinois Agricultural Association. Furthermore, the station has been unable to serve efficiently the Illinois Federation of Women's Clubs because of the inadequacy of its present coverage. WHBF has been requested to install remote lines in several towns for the purpose of broadcasting civic events. Investigation by the station showed that it would not render a satisfactory signal in those communities and, therefore, it advised against the proposed installations. Augustana College, the largest college in the Lutheran Synod, was approached by WHBF for the purpose of broadcasting a regular accredited extension course. Due to lack of coverage the station was forced to relinquish this project.

The applicant proposes to further amplify and extend its service to satisfy the definite public need therefor as outlined in the foregoing discussion. Moreover, it is planned to widen the scope of the station's service to adequately care for rural educational institutions which WHBF cannot at present serve.

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As has been pointed out, Station WXYZ will contribute the predominant interference to Station WHBF operating as proposed. At the time this hearing was held there was an application pending for a new station at Aurora, Illinois, to operate on the frequency 1250 kilocycles with power of 250 watts, daytime only. This application has since been granted. The record discloses that the operation of WHBF as proposed would result in interference slightly within the 0.5 mv./m. contour of the station at Aurora. There will be no increase in objectionable interference to other existing stations. No mutual objectionable interference is predicted to the services of WHBF, operating as proposed, and stations requested in pending applications.

There is an application pending from WXYZ for authority to operate with 5 kilowatts power at night. It is not necessary to consider this application as the Rules of the Commission do not permit operation with 5 kilowatts at night on the frequency used by Station WXYZ.

The equipment, antenna, and site proposed by the applicant meet with the engineering requirements of the Commission.

GROUNDS FOR DECISION

On the record in this case the Commission finds:

1. The applicant is financially qualified to construct and operate WHBF, as proposed.

2. The record establishes that by granting this application the service of WHBF will be extended to serve a greatly increased population during daytime hours; the nighttime signal will be extended to serve a substantially increased population; the past program service of WHBF has been meritorious and in the public interest, and this service will be extended; WHBF, operating as at present, is unable to adequately serve the Rock Island, Illinois, area; operating as proposed the station will more efficiently serve this area; the station will be limited to its 4.8 mv./m. contour by the operation of Station WXYZ, Detroit, Michigan, and the service of the station located in Aurora, Illinois, will receive slight interference from the operation of WHBF, as proposed; however, an urgent public need has been shown by the applicant herein for the operation of WHBF as proposed which justifies the Commission in departing from its usual allocation standards applicable to a station of the class applied for herein, and also justifies a grant of this application although there will be slight interference to the Aurora, Illinois, station. Furthermore, the granting of this application will tend toward a fair, efficient, and equitable distribution of radio service.

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3. There will be no increase in objectionable interference to the services of other existing stations resulting from the operation of WHBF as proposed, nor will there be objectionable interference between the operation of WHBF as proposed and stations requested in pending applications.

4. The public interest, convenience, and necessity will be served by the granting of this application.

DISSENTING OPINION OF COMMISSIONER T. A. M. CRAVEN

In my opinion the evidence in this case does not indicate a paramount need for the operation of Station WHBF on the frequency of 1240 kc. in the Tri-City area. The evidence does indicate, however, that necessary improvement to the service of WHBF in the Tri-City area can be accomplished by a proper application of sound engineering utilizing the frequency of 1210 kc. now assigned that station. In view of these circumstances, and in view of the inherent technical limitations of the broadcast frequency band, and in consideration of the duties of the Communications Commission in administering the policy specified by Congress in Section 307 (b) of the Communications Act of 1934, as amended, it is my opinion that the instant application should be denied.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D. C.

In the Matter of
THE MIDNIGHT SUN BROADCASTING COMPANY,
FAIRBANKS, ALASKA. } FILE No. B-P-2129.
For Construction Permit.

ON PROTEST OF EDWIN A. KRAFT

Decided October 4, 1938

PER CURIAM :

This matter arose upon the application (B-P-2129) of the Midnight Sun Broadcasting Company, filed May 3, 1938, for a construction permit for a new broadcast station to be located at Fairbanks, Alaska, operating unlimited time, on the frequency 610 kc., with 1 kw. power.

An examination was made of the application and the further written statements of fact filed in connection therewith, all of which complied with the Commission's requirements and those of the statute, and on June 17, 1938, the Commission determined that public convenience, interest and necessity would be served by granting the application without a hearing (Sections 308 (b); 309 (a), 319 (a), Communications Act of 1934).

Subsequent to the granting of this application, and on June 27, 1938, Edwin A. Kraft filed an application (File No. B-P-2177) for a new broadcast station to be located at Fairbanks, Alaska, to operate on the assignment which had been granted to the Midnight Sun Company. The establishment of the Midnight Sun Broadcasting Company's station would, of course, preclude the granting of the Kraft application.

Relying upon the provisions of Rule 104.4, hereinafter set forth, on July 13, 1938, Kraft filed a protest to the grant without hearing of the application of the Midnight Sun Company. It is contended in the protest that Kraft is a person "aggrieved or whose interests may be adversely affected" by the grant, within the meaning of the Rule.

The question of law raised by the pleadings is whether by reason of the filing of a conflicting application by Kraft ten days after the

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grant was made to the Midnight Sun Company makes him a person "aggrieved or whose interests may be adversely affected" within the meaning of Rule 104.4, copied in the margin.¹

It is the opinion of the Commission that the plain intent and purpose of this Rule when read in the light of the Communications Act was to cover the situation here presented (*WATR Co., Inc.*, 4 F. C. C. 410) and to afford due process to any person who had an interest existing at the time the action complained of was taken by the Commission. In the instant case, protestant bases his interest on an application filed ten days after the action complained of was taken. It is our opinion, therefore, that he is not a "person aggrieved or whose interests may be adversely affected," as contemplated by Rule 104.4.

The validity of the Rule is supported by decisions of the courts. In *Symons Broadcasting Co. v. Federal Radio Commission* (64 F. (2d) 381), which was a case in which the protesting party's application was on file with the Seattle office of the Commission three days prior to the grant without hearing, the court predicated its decision on a rule of the Federal Radio Commission in all substantial respects identical with the present rule. Also, in *Telegraph Herald Co. v. Federal Radio Commission* (66 F. (2d) 220, 222), the principle applicable to the present case received recognition. In the *Symons* case the court referred to the finality of the grant as a factor in determining the rights of the protestant, and it will be observed from the provisions of the Rule that, while the effective date is postponed, a grant as in the present case remains valid even when a proper protest is filed. In the absence of a protest filed by a person having a proper interest, "the action of the Commission in granting the application in question shall become absolute and final without further action of the Commission."

¹ 104.4:

"When upon application any instrument of authorization is granted by the Commission without a hearing pursuant to Sec. 309 (a) of the Act, such grant shall remain conditional for a period of not less than 30 days from the date on which public announcement thereof is made, or from its effective date, if a later date is specified, during which 30 days any person aggrieved or whose interests may be adversely affected may obtain a hearing upon such an application by filing a protest as set forth in Rule 105.21 (b).

"Upon the filing of such a protest, the application involved will be set for hearing in the same manner in which other applications are set for hearing, and the applicant and other interested parties notified.

"Pending hearing upon any protest, the effective date of the Commission's action to which said protest is directed, shall be postponed to the date of the Commission's decision after hearing, unless the authorization involved in such grant is necessary to the maintenance or conduct of an existing service, in which event the Commission may, in its discretion, authorize the applicant to utilize the facilities or authorization in question pending the Commission's decision after hearing.

"If no protest is filed in accordance with the foregoing, and within the time limited, or if a protest is filed, but is withdrawn by the protestant before hearing thereon, the action of the Commission in granting the application in question shall become absolute and final without further action of the Commission."

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If the position of the protestant be sound, then the Commission effectively could be prevented from exercising its statutory duty of making grants where it clearly appeared that an immediate public interest would be served; and in a case such as the present, involving the establishment of an important radio service in a remote section of the country (Alaska) interminable delay could be interposed to the serious injury of the public.

The power would be lodged with individuals to file competitive applications, often for the sole purpose of hindrance, and thus subject parties to the needless expense of hearing, and the parties, the Commission, and the public to unnecessary inconvenience and delay.

Upon the consideration of the protest filed by Edwin A. Kraft, the Motion to Strike filed by the Midnight Sun Broadcasting Company and opposition thereto filed by Edwin A. Kraft, it is ordered that the protest be denied, the Motion to Strike be granted, and the opposition thereto be overruled.

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
 WASHINGTON, D. C.

In the Matter of TRIBUNE PRINTING COMPANY (KWOS), JEFFERSON CITY, MISSOURI. For Construction Permit.	}	DOCKET No. 4652.
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Decided October 4, 1938

Ben S. Fisher on behalf of Tribune Printing Company (KWOS); *George O. Sutton, Arthur H. Schroeder* and *James L. Proffitt* on behalf of the Hannibal Broadcasting Company; and *Eliot C. Lovett* on behalf of the Courier-Post Publishing Company.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION (McNinch, Chairman, Brown and Case, Commissioners, not participating):

STATEMENT OF FACTS

This proceeding arose out of the application of the Tribune Printing Company, licensee of Station KWOS, Jefferson City, Missouri, for a permit to make certain changes in the technical equipment of its station and to change its operating assignment from 100 w. daytime only to 250 w. L. S. 100 w. night, unlimited time on its presently licensed frequency of 1310 kc.

The application was heard before an examiner on December 1, 1937. The examiner released his report (I-606) on March 15, 1938, and recommended that the application be granted. No exceptions were filed to the examiner's report. Oral argument was heard by the Commission on May 5, 1938.

The Tribune Printing Company, the applicant herein, has owned and operated Station KWOS at Jefferson City, Missouri, since that station began operation on January 30, 1937. As the applicant is the licensee of an existing station its legal and technical qualifications are not at issue in this hearing.

Jefferson City, the capital of the State of Missouri, had a population of 21,596 according to the 1930 Census. Cole County, in which

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Jefferson City is located, had a population of 30,848. The various departments of the government of the State of Missouri are located in Jefferson City. The employees of these departments, as well as the employees of the various industrial establishments located in this community are usually employed during the present hours of operation of Station KWOS.

With the exception of Station KWOS, the only existing broadcast station within a 100-mile radius of Jefferson City, Missouri, is Station KFRU, a time-sharing station located at Columbia, Missouri, thirty miles distant. Station KFRU delivers a signal in Jefferson City slightly in excess of 3 mv./m. which is satisfactory in the residential areas. There is some service available in portions of the rural area from Stations KSD and KMOX, St. Louis, Missouri, Station WDAF, Kansas City, Missouri, and KWTO, Springfield, Illinois. Station KFRU is the only station which provides the residential area of Jefferson City with primary nighttime broadcast service. During the nighttime hours when this station is not operating, Jefferson City is without primary nighttime service from any existing station. Station KWOS furnishes a primary daytime service in Jefferson City and vicinity.

The educational institutions and the several civic, religious and social organizations in the city have used the facilities of the station. These institutions have been offered free use of the facilities of the station during evening hours, should such operation be authorized.

The following table shows the "percentages of types of programs" which are now being broadcast and which will be broadcast if the application is granted:

Type of program	Present percentage	Proposed percentage
Religious.....	4	5
Educational.....	4	8
Civic.....	3	7
Agricultural.....	7	4
Home economics.....	3	4
News (special features, sports, and public events).....	0	12½
Entertainment.....	66	55
Miscellaneous.....	4	4½

A log describing in detail the type and character of the programs offered by Station KWOS shows that from day to day this station broadcasts early-morning programs of special interest to farmers, including livestock, poultry, and horticulture news and advice; non-denominational religious programs; numerous news bulletins; many entertainment features, including popular and classical music; and the activities of civic, educational, and social organizations. In

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brief, the program service of this station is of a standard acceptable for a local station licensed to operate in a community the size of Jefferson City. The existing meritorious service will be maintained in the future and during the additional hours of operation applied for.

A survey of the existing talent in Jefferson City, Missouri, indicates that the station would be able to use the services of many persons during the nighttime hours of operation who are unable to appear over the facilities of the station during the present assigned hours. The list of available talent includes 9 orchestras and bands, 14 choirs and choruses, 3 trios, 14 professional orchestras, and other musical clubs, 5 theatre clubs and 85 individual artists who reside in this community.

The applicant does not propose to change either the studio, the transmitter site, or the antenna. The equipment, site, and antenna are satisfactory and comply with the engineering requirements of this Commission both for its present assignment and for operation with increased power as proposed.

As of September 1, 1937, the applicant corporation had assets of \$411,880.65, liabilities of \$364,003.35, and corporate surplus of \$47,877.10.

A balance sheet of October 31, 1937, indicates that the operation of the station since it went on the air, January 30, 1937, had resulted in a loss of \$5,573.08, which did not include charges for depreciation of the equipment. These losses were paid by the Tribune Printing Company.

The estimated cost of making the changes in the equipment and the proposed improvements to the station is between \$700 and \$1,000. The present cost of operating the station is shown to be \$2,099.97 per month. There are now 14 full-time employees engaged in the operation of the station. Operating full time, as proposed, the estimated monthly operating expenses of the station will be \$2,972.57, and the estimated operating revenues will be \$3,255.00 per month. The applicant proposes to employ two additional announcers and one additional operator for full-time operation.

It appears from the evidence in record that should Station KWOS be granted authority to operate full time it would receive the advertising support of a large number of Jefferson City merchants. Many of these merchants now use the facilities of the station and testified that they intend to use the services of the station to a greater degree in the event nighttime operation is authorized. The applicant does not propose an increase in its advertising rates. The estimated increase in revenue, due to longer hours of operation, is expected to result in an operating profit of \$282.43 per month for the station.

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Operating as proposed, Station KWOS would not cause interference to any existing station during daytime hours of operation.

Station KCKN, Kansas City, Kansas, operates on 1310 kc., 100 w, unlimited time. The actual distance between Stations KCKN and KWOS is 135 miles. The normally recommended separation for stations of this class is 185 miles. It is expected that the simultaneous operation of Stations KCKN and KWOS would result in mutual interference to each station to their approximate 2.5 mv./m. contour the second hour after sunset. Station KCKN is at present limited to its 2.1 mv./m. contour by Station KGFW, Kearney, Nebraska. During the second hour after sunset Station KWOS would be the predominant source of interference to Station KCKN. During the later hours, however, Station KGFW would become the predominant source of interference to KCKN. The area where the signal of KWOS would interfere with that of KCKN is near Kansas City. Persons residing in that area have radiobroadcast service from a large number of existing stations.

At present Station KWOS operating with power of 100 w., daytime, serves an area within its 0.5 mv./m. contour having a radius of approximately 22 miles, within which there is an estimated population of approximately 65,000 people. Should the daytime power of this station be increased to 250 w., the 0.5 mv./m. contour would be extended to where it would have a radius of approximately 28 miles, within which there is an estimated population of 96,000 persons. While operating at night the station will be limited to its approximate 2.5 mv./m. contour, within this contour, however, there is an estimated population of 32,000 persons.

GROUNDS FOR DECISION

1. The applicant is financially qualified to make the improvements and operate the station as proposed, and the station, operating as proposed, would receive sufficient financial support from the merchants of Jefferson City, Missouri, to defray the cost of the increased hours of operation.

2. The proposed program service is meritorious.

3. The operation of Station KWOS as proposed would, during the second hour after sunset, cause a slight increase in the interference now received by Station KCKN, Kansas City, Kansas. This interference would be to a relatively small area which receives primary broadcast service from several existing stations.

4. Station KWOS operating under its present assignment now serves approximately 64,000 people within its 0.5 mv./m. contour. Operating with daytime power of 250 w. the station could serve 96,000 people within the same contour.

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5. Station KWOS operating with a power of 100 w. night would render satisfactory broadcast service throughout the entire city of Jefferson City, Missouri, and would render primary nighttime service to approximately 32,000 persons.

6. Station KFRU, Columbia, Missouri, is a limited-time station. Station KWOS operating at night will be the only station able to render an uninterrupted primary broadcast service to Jefferson City and vicinity throughout the normally authorized nighttime hours of operation of broadcast stations.

7. The applicant has shown such a need for a full-time station at Jefferson City, Missouri, as warrants this Commission in granting its application even though Station KWOS operating as proposed would be limited at night beyond its normally protected 2 mv./m. contour, and would cause a slight increase in the interference suffered by Station KCKN, Kansas City, Kansas.

8. The granting of this application will serve public interest, convenience, and necessity.

6 F. C. C.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D. C.

In the Matter of ¹
PLATT & PLATT, INC.,
POUGHKEEPSIE, NEW YORK. } DOCKET No. 4581.
For Construction Permit.

Decided October 4, 1938

Ben S. Fisher and Charles V. Wayland on behalf of Platt & Platt, Inc.; *Frank D. Scott* on behalf of Station WHO; *Horace L. Lohnes, E. D. Johnston, and F. W. Albertson* on behalf of Station WHN; *George S. Law, Horace L. Lohnes, and E. D. Johnston* on behalf of Stations WBZ-WBZA; *Duke M. Patrick, John W. Guider, Karl A. Smith, and Lester Cohen* on behalf of Station WTIC; *Paul M. Segal and George S. Smith* on behalf of Station WGNV (Intervenor).

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION (McNinch, Chairman, Brown and Case, Commissioners, not participating):

STATEMENT OF FACTS

This proceeding arose upon the application of Platt & Platt, Inc., for a construction permit to establish a new radiobroadcast station at Poughkeepsie, New York, to operate on the frequency 1000 kc., with 1 kw. power, the hours of operation to be limited to local sunset at Station WHO (a clear-channel station operating on the same frequency with 50 kw. power, unlimited time, located at Des Moines, Iowa). A hearing on this application was held before an examiner on November 15, 1937, who, in his report (I-573) recommended that the application be granted. To this report exceptions were filed by Peter Goelet, licensee of Station WGNV, Newburgh, New York. The oral argument of the several parties, presenting themselves for the purpose, was heard by the Commission on April 14, 1938. Counsel for the intervenor, Station WGNV, however, filed a written memorandum setting forth its argument. On April 21, 1938, Platt & Platt, Inc.,

¹The Commission on December 19, 1938, denied petition of applicant for rehearing and/or reconsideration.

filed a brief in answer to the written argument submitted by Station WGNY. It may be noted here that on page 6 of the aforesaid brief, the applicant agrees to accept a grant for daytime operation only, instead of operation until local sunset at WHO.

The applicant is a corporation organized and existing under the laws of the State of New York, and is authorized to construct and operate a radiobroadcast station. The officers of the applicant corporation are Mrs. Arthur A. Parks, president; Richard Brown, vice president; Richard E. Coon, secretary; and Ernest L. Owen, treasurer. Mrs. Parks, Owen, and N. Otis Rockwood are the directors. Each of the officers and directors of the applicant corporation is a citizen of the United States.

The Poughkeepsie Publishing Corporation, organized under the laws of the State of New York, is the sole owner of the capital stock of the applicant corporation. Each of the officers and directors of the Poughkeepsie Publishing Corporation is a citizen of the United States and a resident of Poughkeepsie. All of the stockholders thereof are citizens of the United States. The parent corporation has issued 2,500 shares of stock, of which 2,480 are held by residents of Poughkeepsie.

The balance sheet of the applicant corporation shows assets of \$121,797.11, and liabilities slightly in excess of \$7,000. The corporation has a total surplus in excess of \$64,000. Among its assets are included items of \$9,205.28 in cash, approximately \$36,500 in United States Treasury bonds, and \$5,091.44 in Home Owners' Loan Corporation bonds. It is estimated that the proposed station will cost about \$42,900. The approximate cost of operation is fixed at \$2,496 a month. Contracts contingent upon the granting of this application were entered into by the applicant and several Poughkeepsie business establishments, on the basis of rates set forth on the back of each instrument. These contingent contracts would assure the station an income during its first year of operation in excess of \$37,500.

The applicant publishes *The Eagle News*, a morning newspaper, which has an average daily circulation of 4,637. Its parent corporation publishes *The Evening Star and Enterprise*, an afternoon paper with an average circulation of 15,072. Neither of these newspapers is published on Sunday. A newspaper known as the *Sunday Courier* is also published at Poughkeepsie, but this paper is not affiliated with the applicant. The publishers of the *Sunday Courier* also issue a Monday morning newspaper known as the "*Weekly Courier*."

The applicant intends to operate the proposed radiobroadcast station as a separate and distinct entity, entirely apart from its newspaper. There would be no joint rates or chain affiliations. The

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equipment proposed to be installed by the applicant meets with the engineering requirements of the Commission. An auditorium would be constructed for the purpose of housing the station's studios. The transmitter site and antenna would be selected by a qualified radio engineer and would be subject to the Commission's approval. Ten full-time, experienced, and qualified employees would be hired to operate the station.

Poughkeepsie is situated on the east bank of the Hudson River, approximately seventy-four miles north of New York, New York. It is the county seat of Dutchess County, and an important dairying, beef-raising, and fruit-growing area. The population of Poughkeepsie was 40,288 (1930 Census), and the population of Dutchess County is estimated at 105,000.

Poughkeepsie is an important rail, boat, and bus transportation center. The sales volume in Dutchess County, according to a 1935 census, was \$37,297,000. The wholesale, retail, and service pay rolls in 1935 exceeded \$3,900,000 (these figures do not include factory pay rolls).

Vassar College is located in this community, and the applicant proposes to maintain a remote-control line to that institution for the purpose of broadcasting programs originated there. The representative of the Catholic Boy Scouts in the Boy Scout Council stated that this organization would be available for programs. The treasurer of the local community chest desired the station to give publicity to the several civic activities. Farm programs are proposed to be conducted by the Dutchess County Farm Bureau, the Cattle Breeders' Association, dairymen, the Grange, and 4-H Clubs. Representatives of educational, charitable, religious, scientific, and civic organizations testified as to the need for radio facilities, and their willingness to cooperate in furnishing programs. The station would broadcast sports reviews, and local and general news would be carried regularly.

It was shown that Vassar College had many activities which would be available for broadcasting. The professor of Political Science of that institution stated that the college has a glee club, college choir, and numerous political clubs before whom appear distinguished speakers. The evidence shows that the community has several choral societies and choirs, dance orchestras, and individual artists.

There are five stations located within the normally recommended mileage separations. However, it was shown by measurements introduced into the record that the proposed station would not cause objectionable interference to the services of any existing broadcast sta-

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tion. The separations are as follows: Station WBZ, Boston, Massachusetts, operates on 990 kilocycles with 50 kilowatts power. The nighttime separation recommended in this case is 510 miles and the daytime, 290 miles; the actual separation is 140 miles. Station WBZA, Springfield, Massachusetts, operates on the same frequency as WBZ, using 1 kilowatt power, and is synchronized therewith. The normally recommended mileage separation in this case for nighttime operation is 200 miles and for daytime, 175 miles, whereas the actual separation between Poughkeepsie and Springfield is approximately 75 miles. Station WTIC, Hartford, Connecticut, is licensed to operate on 1040 kilocycles, with 50 kilowatts power, unlimited time, on an experimental basis. The recommended mileage separation for both day and night in this instance is 181 miles, whereas the actual separation is approximately 63 miles. Station WHN, New York, New York, operates on 1010 kilocycles, with 1 kilowatt power night and 5 kilowatts until local sunset. The normally recommended daytime separation is 215 miles and the nighttime, 200 miles, whereas the actual mileage separation is approximately 78 miles. Station KYW, Philadelphia, Pennsylvania, operates on 1020 kilocycles, with 10 kilowatts power, unlimited time, using a directional antenna. The recommended separation is 175 miles day and 205 miles night; however, the actual separation between Philadelphia and Poughkeepsie is approximately 140 miles.

Station WHO, Des Moines, Iowa, operates on 1000 kilocycles with 50 kilowatts power, unlimited time. This frequency is a clear channel and WHO is the dominant station thereon. According to the Commission engineer, there would be no objectionable interference, insofar as regular daytime operation is concerned, between WHO and the proposed station at Poughkeepsie; however, during the late afternoon hours there would probably be a small amount of interference which would rapidly become objectionable to the Poughkeepsie station toward sunset at Des Moines. We have heretofore pointed out that the applicant is willing to accept a grant of this application on the basis of daytime operation.

Station WHN, located in New York, New York, operates on the frequency 1010 kilocycles and has pending an application to increase its nighttime power to 5 kilowatts. Obviously, as the applicant herein is willing to proceed on a basis of daytime operation, there would be no conflict with the WHN application. In any event this application need not be considered in this proceeding, as WHN operates on a regional frequency and under Rule 120 may not use more than 1 kilowatt power at night. WHO has pending an application to increase its power from 50 kilowatts to 500 kilowatts. Under

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Rule 117, a station of this class may not operate with power in excess of 50 kilowatts. Under existing conditions the proposed station and WHO would not conflict during daytime hours. The result of operation by WHO with 500 kilowatts power must be determined in the proceedings on that application.

No radio station is located in Poughkeepsie.

Although the engineering testimony is clear on the point that no broadcast service is available to Poughkeepsie having a signal strength usually necessary to render consistent service day and night to residential and high noise level areas, several lay witnesses, residents of Poughkeepsie, testified that they listen to a number of stations, including WGNY, WABC, WJZ, WOR, and WEA.F.

The following table is based upon measurements of the daytime field intensity of stations heard in Poughkeepsie. These measurements were made by an engineer employed by the applicant :

Station	Signal strength in microvolts per meter at points on approximate southern city limits						Signal strength in microvolts per meter		
	F	G	C	E	A	D	Point K near business district	Point J NE of business district	Point H near eastern city limits
WEA.F	-----	542uV	-----	-----	-----	-----	452uV	565uV	520uV
WGNY	-----	179uV	-----	-----	-----	-----	-----	-----	119uV
WOR	-----	700uV	-----	-----	-----	-----	920uV	820uV	700uV
WJZ	-----	440uV	-----	-----	-----	-----	540uV	592uV	440uV
WABC	-----	550uV	-----	-----	-----	-----	170uV	612uV	689uV
WICC	-----	240uV	-----	-----	-----	-----	276uV	204uV	144uV
WTIC	360uV	364uV	248uV	306uV	400uV	320uV	210uV	462uV	322uV
WGY	-----	177uV	-----	-----	-----	-----	234uV	153uV	220uV

From the above table it is observed that several stations render adequate service to the rural areas surrounding Poughkeepsie. As the stations named generally surround the city, the services rendered would result in a uniform coverage. In the directions toward the locations of the several stations shown, the signals are, of course, progressively stronger, and accordingly render better service away from Poughkeepsie. Thus, although some of the stations shown do not lay down 0.5 millivolt per meter signals in Poughkeepsie, that intensity would be reached rapidly in directions away from the city. Although there is a need for broadcast service in the City of Poughkeepsie, the evidence shows that the outlying areas are uniformly served.

The Commission is constrained to deny this application because favorable action hereon will not result in supplying a satisfactory service to the people of Poughkeepsie. The people are as much in need of nighttime service as daytime service, and the need for the former may

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be greater. The applicant shows that there are 6,000 industrial workers in this area, and it is doubtful whether they would be able to avail themselves of the proposed daytime service. This group deserves consideration.

The proposal herein is to establish a limited-time station on a clear-channel frequency, namely 1000 kilocycles. The dominant station on this frequency, WHO, has rendered service for many years, and there is no suggestion in the record that it will relinquish any of its night-time hours of operation. Under Rules 77² and 78³ a station of the class proposed herein (or which will be acceptable to the applicant) may not operate after sunset at the dominant station. The difference between sunset at Poughkeepsie and at Des Moines (as shown by Rule 181) varies between 1¼ and 1½ hours. The operation of the proposed station at Poughkeepsie, therefore, would be approaching the second hour after sunset condition at the time of local sunset at Des Moines. In view of the fact that propagation increases to a great extent at about the sunset period, the operation of WHO at that time would limit the signal of the proposed Poughkeepsie station to its approximate 5 mv./m. contour. This fact is pointed out merely to illustrate the physical impossibility of the proposed station to render proper service at night on the frequency applied for.

Granting this application, therefore, would result in the establishment of a limited-time or daytime station which may preclude the establishment of a station which would be able to render local day and night service.

GROUNDNS FOR DECISION

1. The applicant proposes to establish a limited-time station in a community having a public need for unlimited-time service, and granting such an application would not satisfy the local public need nor would it be an efficient allocation of radio facilities.

2. Public interest, convenience, and necessity would not be served by granting the application.

² The term "limited-time station" means a station licensed to operate, on a frequency designated as a clear channel, during daytime, and until local sunset, or until sunset at the dominant clear-channel station, and in addition during night hours, if any, not used by the dominant clear-channel station.

³ The term "daytime station" means a station licensed to operate during the hours between 6 a. m. and local sunset, or until sunset at the dominant station if farther west than the daytime station.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D. C.

In the Matter of
HAROLD F. GROSS (WJIM), Assignor,
WJIM, Inc., Assignee,
LANSING, MICHIGAN.
For Authority to Voluntarily
Assign the license of Station
WJIM.

DOCKET No. 5183.

Decided October 11, 1938

Arthur W. Scharfeld and *Philip G. Loucks* on behalf of the Assignor; *Basil P. Cooper* on behalf of the Federal Communications Commission.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

By THE COMMISSION (McNinch, Chairman, and Brown and Case, Commissioners, not participating):

STATEMENT OF FACTS

This proceeding arose upon an application requesting the Commission's authority to voluntarily assign the license of Station WJIM, Lansing, Michigan (operating on the frequency 1210 kilocycles, with power of 100 watts night, 250 watts day, unlimited time) from the licensee, Harold F. Gross, to WJIM, Inc.

On June 9, 1938, a hearing was held on this application before an Examiner who, in his report (I-713), recommended that it be granted.

Station WJIM was originally licensed on March 30, 1934, to a partnership consisting of Harold F. Gross, M. D. Keelar, and L. A. Versluis. On October 7, 1936, the Commission approved the voluntary assignment of the license of this station from the partnership to the present licensee as an individual. Mr. Gross has operated the station under successive renewals of the license since that date.

WJIM, Inc., the assignee herein, was incorporated under the laws of the State of Michigan and is duly qualified to engage in the business of operating a radiobroadcast station. It has an authorized 6 F. C. C.

capitalization of \$50,000, divided into 2,500 shares of common stock of no par value, but with a fixed value of \$20.00 a share. It will be shown hereinafter, however, that the assignee has a tangible net worth of \$34,180.11. All of the stock is to be issued to Harold F. Gross under the terms of the contract of sale hereinafter set forth. The officers and directors of the corporation are Harold F. Gross, President and Treasurer, E. C. Beatty, Vice President, and Charlotte I. Gross (wife of the assignor), Secretary. Each director and the sole stockholder of the corporation are citizens of the United States.

The assignee corporation was organized by Gross for the express purpose of transferring the license of Station WJIM from himself to the corporation in order to segregate his personal business from the business of the station and to facilitate the management of the station property.

The assignor and assignee entered into a contract dated December 9, 1937, whereby all of the assets of Station WJIM are to be sold, assigned, and conveyed to WJIM, Inc., for the consideration of 2,500 shares of common stock of the corporation which are to be issued to the assignor. All of the property used in the operation of the station, including the transmitting equipment, furniture, and fixtures as well as the cash on hand, securities owned by the assignor, accounts receivable, business rights accruing to the assignor from the operation of the station and contracts for the sale of time are to be transferred to the assignee free and clear of debts, liens, etc. The contract further provides that the assignee shall assume all current liabilities pertaining to the business of the station. As of the date of the transfer the assignee shall have complete control of Station WJIM, its equipment and operation, including unlimited supervision of the programs to be broadcast.

A financial statement of Harold F. Gross as of May 21, 1938, was submitted in evidence showing the assets and liabilities which are to be transferred to the assignee under the contract of sale. The statement shows total assets of \$34,238.27, consisting of cash on hand \$7,609.42, other intangible assets \$15,856.77, fixed assets (less depreciation reserves) \$10,462.08, and miscellaneous assets \$310. The liabilities are accounts payable \$8,755.98 and accrued liabilities \$58.16, leaving a net worth of \$25,424.13. Under the terms of the contract of sale, however, the current liabilities (\$8,755.98) are to be assumed by Gross as a personal obligation and will not be transferred to the assignee corporation. The net worth, deducting this liability, would be \$34,180.11. It is evident, therefore, that the assignment of the license of Station WJIM to the assignee corporation would eliminate a liability against the station of slightly less than \$9,000.

For the period July 1, 1936, to July 3, 1937, the revenue derived from the sale of time of Station WJIM was \$99,699.76 and the net profit was \$23,486.52.

The total original cost of the station property used in the operation of Station WJIM was \$19,295.52. The depreciated value of the property is estimated at \$8,940.49 and the replacement value at \$20,255.58. Except for a new transmitter acquired by the assignor, the assets to be conveyed to the assignee corporation are substantially the same as those which were assigned to the present licensee from the partnership on October 7, 1936.

A list of the programs of Station WJIM broadcast for the period May 23 to June 4, 1938, was submitted in evidence. The schedule shows that the station renders a meritorious program service. The programs include civic, religious, education, and entertainment features. News, sports, and agricultural reports are broadcast as a regular part of the program service. The same general policy with respect to the program service will be carried out under the proposed ownership and management.

Gross, as president of the assignee corporation, will continue to supervise the policy of the station and will devote his entire time thereto.

GROUNDS FOR DECISION

1. The proposed assignee, WJIM, Inc., is qualified in all respects to assume the ownership and operation of Station WJIM as the licensee thereof.

2. The proposed transfer of the license of Station WJIM to the licensee corporation would eliminate a liability against the station of slightly less than \$9,000.

3. The granting of this application is in the public interest.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D. C.

<p>In the Matter of H. WIMPY (WPAX), THOMASVILLE, GEORGIA. For Construction Permit.</p>	}	DOCKET No. 4993.
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Decided October 11, 1938

J. N. Peacock, Jr., on behalf of the applicant; *Clarence C. Dill* and *James W. Gum* on behalf of Station WFOY; *Harrison T. Slaughter* and *James D. Cunningham* on behalf of the Commission.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION (McNinch, Chairman, and Brown and Case, Commissioners, not participating):

STATEMENT OF FACTS

This proceeding arose out of the application of H. Wimpy, licensee of Station WPAX, Thomasville, Georgia, for a construction permit seeking authority to make certain changes in his transmitter, and to change from his present authorized assignment of 100 watts daytime on 1210 kilocycles to 250 watts, local sunset, 100 watts night, unlimited hours of operation on the same frequency.

This application was heard before an examiner on March 9, 1938. The examiner released his report (I-644) on May 23, 1938, and recommended that the application be granted. No exceptions were filed to the examiner's report and oral argument was not requested.

The applicant is the sole owner and licensee of Station WPAX. His legal and technical qualifications to operate the station as proposed are not an issue in this proceeding.

Thomasville is located in the southern part of the State of Georgia. The City had population according to the 1930 Census of 11,733. With the exception of Station WPAX, which operates daytime only, no existing station furnishes a primary broadcast service to the City of Thomasville and vicinity. The City does not receive primary broadcast service at night from any existing station. Station WSB, Atlanta, Georgia, renders some secondary service to the city, and Station WJAX, Jacksonville, Florida, renders service in the rural

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areas east of Thomasville, but not throughout the entire area. The City of Thomasville, Georgia, and the territory contiguous thereto is dependent upon Station WPAX for its only primary broadcast service, and should this application be granted the station will render the only primary broadcast service at night in the area.

The transmitter, antenna, and site now used by the applicant complies with the engineering requirements of this Commission. The antenna of the station consists of a vertical radiator having a total height of 205 feet above the ground, with a total working height of 194 feet above the insulators. This antenna has an efficiency in excess of the minimum requirements and complies with the engineering standards of the Commission both for present operation and for operating as proposed.

The transmitter as now installed at the station complies with the engineering requirements of this Commission for operation with 100 watts power. A slight change in this transmitter will enable it to operate with 250 watts power, as proposed. The tubes and equipment necessary to effect this change have been purchased and can be installed. The proposed changes in the transmitter appear satisfactory, however; as the proposed transmitting equipment is composite, it will be subject to compliance with rules 132 and 139.

The applicant has operated Station WPAX for several years and has supplied program service of general interest. Thomasville is the center of a cotton, tobacco, and cattle raising area and programs dealing with agricultural and livestock problems are particularly important. Programs originated by the United States Department of Agriculture and the Georgia State Extension Service are broadcast daily over this station. The record indicates that the station receives the financial support of Thomasville merchants.

Station WPAX, operating on the present assigned power of 100 watts daytime, serves a radius of approximately 18 miles. Operating as proposed with a power of 250 watts, the daytime service area of the station will be materially increased. Operating with 250 watts power daytime, Station WPAX would neither cause objectionable interference to, nor receive objectionable interference from, any existing broadcast station.

Station WFOY, St. Augustine, Florida, operates on the frequency of 1210 kilocycles with 100 watts power at night. Station WPAX and Station WFOY are separated by approximately 175 miles. The normally recommended separation for stations of 100 watts power operating at night is 185 miles. The efficiency of the antennas of both Stations WFOY and WPAX exceed the minimum requirements of this Commission. Operating with 100 watts power at night as proposed, Station WPAX would limit Station WFOY to its 2.65 millivolt

per meter contour, and Station WPAX would in turn be limited to its own 2.65 millivolt per meter contour.

The 2.65 millivolt per meter contour of Station WPAX would have a radius of approximately five and one-half miles, which would enable the station to serve the entire residential area of the City of Thomasville, as well as the suburban territory contiguous thereto. Station WFOY, limited to its 2.65 millivolt per meter contour, would have a radius of approximately five and one-half miles, but would be able to serve the City of St. Augustine, Florida, and the adjacent suburban territory.

The vertical antenna above referred to has recently been installed at a cost of \$3,200. This antenna and the necessary equipment to effect the change in the transmitter have been paid for. The record indicates that the financial standing of the applicant is sufficient to enable him to effect the proposed changes in his station.

GROUND FOR DECISION

On the record in this case, the Commission finds:

1. The applicant is financially qualified to effect the changes necessary to enable his station to operate with power of 250 watts daytime, 100 watts night.

2. Thomasville, Georgia, and the territory contiguous thereto, do not receive, at night, any primary broadcast service from any existing radio station.

3. Operating with power of 250 watts daytime, Station WPAX would neither cause interference to, nor receive objectionable interference from, any existing broadcast station.

4. With Station WPAX operating with power of 100 watts night, both Station WPAX and Station WFOY, St. Augustine, Florida, would be limited to their 2.65 millivolt per meter contour at night. Within their 2.65 millivolt per meter contours, however, Stations WPAX and WFOY would be able to render satisfactory primary broadcast service to their respective communities.

5. A need exists in the Thomasville area for an increase in the daytime power of Station WPAX from 100 watts to 250 watts.

6. The applicant has shown such a compelling need for primary nighttime broadcast service in Thomasville, Georgia, as warrants the Commission in authorizing nighttime operation with power of 100 watts, even though Station WPAX would be limited to its 2.65 millivolt per meter contour and in turn would limit the service area of Station WFOY, St. Augustine, Florida, to its 2.65 millivolt per meter contour.

7. The granting of the application of H. Wimpy, licensee of Station WPAX, will serve public interest, convenience, and necessity.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D. C.

<p>In the Matter of COLONIAL BROADCASTING COMPANY,¹ MORRISTOWN, NEW JERSEY. For Construction Permit.</p>	}	DOCKET No. 4639.
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Decided October 11, 1938

Josephus C. Trimble on behalf of the applicant; *Ben S. Fisher* on behalf of Station KGW; *Philip G. Loucks* and *Arthur W. Scharfeld* on behalf of Station WSUN; *Horace L. Lohnes* and *E. D. Johnston* on behalf of Station WIP; *A. L. Ashby* and *Philip J. Hennessey, Jr.*, on behalf of Station WEAJ; *John W. Guider*, *Karl A. Smith*, and *Lester Cohen* on behalf of Stations WPRO and WTMJ; *George O. Sutton*, *James L. Proffitt*, and *Arthur H. Schroeder* on behalf of Station WHJB; *William E. Leahy* on behalf of Station WLBZ; *Paul D. P. Spearman* and *Alan B. David* on behalf of Station WICC and the Sentinel Broadcasting Corporation.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION (McNinch, Chairman, and Brown and Case, Commissioners, not participating):

STATEMENT OF FACTS

This proceeding arose upon an application of the Colonial Broadcasting Company for construction permit to establish a new radio-broadcast station at Morristown, New Jersey, to operate on the frequency 620 kilocycles with 1 kilowatt power, unlimited time, using a directional antenna for both day and nighttime operation. At the time of the hearing, however, the applicant abandoned the request for nighttime hours of operation. This case, therefore, will be considered on the basis of a daytime request.

On October 1, 2, 4, and 5, 1937, a hearing was held on this application before an Examiner who, in his report (I-567), recommended that it be

¹The Commission on December 19, 1938, denied petition of applicant for rehearing and further affirmed its Statement of Facts, Grounds for Decision and Order denying application.

denied. To this report exceptions were filed by the applicant and oral argument was heard by the Commission on April 14, 1938. Briefs were submitted by the applicant and by the following respondents: The Journal Company (WTMJ), Pittsburgh Radio Supply House (WHJB) and the National Broadcasting Company, Inc. (WEAF). A reply brief in answer to the briefs of the respondents was thereafter filed by the applicant. The exceptions do not raise any questions not necessarily involved in a determination of the application on its merits.

The Colonial Broadcasting Company is incorporated under the laws of the State of New Jersey and is duly qualified to engage in the business of operating a radiobroadcasting station. The total authorized capitalization of the corporation is \$10,000, divided into 100 shares of stock of a par value of \$100 per share. All of the stock has been issued as follows: 82 shares to the M. G. Chace Company, a corporation with its principal office located at Providence, Rhode Island; one share to David T. Layman, Jr., of New York, N. Y.; one share to Rouhla Anderson of New York, N. Y.; one share to Thomas R. Fowler of New York, N. Y.; $7\frac{1}{2}$ shares to Dale Hollenbaugh (professional name is Dale Kennedy) of Mountain Lakes, New Jersey; and $7\frac{1}{2}$ shares to D. D. Jones of Rockaway, New Jersey. The officers of the corporation are D. T. Layman, Jr., President; Rouhla Anderson, Vice President; H. W. Robbins, Secretary; and Thomas R. Fowler, Treasurer. Each stockholder and officer of the corporation is a citizen of the United States.

The applicant corporation was organized at the instance of the M. G. Chace Company (an investment banking concern) which is in turn controlled by the Bessemer Investment Company. The stock of the latter company is owned by John S. Phipps, Henry C. Phipps, and Howard Phipps, all of New York, N. Y., and the controlling stockholder is the Bessemer Trust Company. However, all of the stock of the trust company is owned by the individual members of the Phipps family so that, directly and indirectly, the Bessemer Investment Company is owned wholly by these individuals. Neither the applicant corporation, the M. G. Chace Company, nor the individual members of the Phipps family has an interest in any radiobroadcast station. At the time of the hearing of this application, the M. G. Chace Company had an interest in the application to transfer the license of Station WTBO, Cumberland, Maryland (Docket No. 4500), to the Delaware Channels Company by virtue of being a majority stockholder of this corporation. The request for authority to assign the license of Station WTBO, however, was dismissed by the Commission with prejudice on August 31, 1938.

It is estimated that the cost of installing the technical equipment of the proposed station would be \$54,912.05. The total estimated cost

of the proposed station, including the studio and musical equipment, would be approximately \$65,000.

The financial statement submitted by the applicant corporation as of August 31, 1937, shows assets in the amount of \$50,000 which include cash on hand \$39,113.64 and payments for services rendered and other expenses, \$10,886.36. The liabilities are 100 shares of stock, \$10,000, and paid-in surplus \$40,000. It will be observed, therefore, that the applicant has on hand a sum slightly in excess of \$39,000 to defray an expected expenditure of approximately \$65,000. D. D. Jones, an agent of the applicant corporation, testified to the effect that he assumed the applicant would acquire any additional funds needed to cover the construction cost of the proposed station from the M. G. Chace Company. His testimony, however, is entirely a conjecture as it is not based upon facts within his own knowledge, nor is he an agent or officer of the Chace Company authorized to bind the company to any agreement.

The estimated monthly operating expense of the proposed station would be \$7,748.

An agent of the applicant corporation interviewed representatives of approximately 60 business establishments in Morristown, New Jersey, with respect to purchasing time from the proposed station. Each of these merchants indicated to the agent that he might be interested in purchasing time from the station for advertising purposes, although there were no commitments made by the merchants nor were the proposed rates for the sale of time of the station discussed with them. No estimate was made by the applicant of the income which would be derived from the sale of time. It is apparent that little weight may be given this testimony. However, three witnesses for the applicant testified that they definitely would purchase time of the proposed station, the aggregate sum of which would provide a revenue of approximately \$6,400 a year.

A qualified and experienced staff would be employed by the applicant to insure the efficient operation of the proposed station. None of the officers or stockholders of the corporation, except Dale Kennedy and D. D. Jones, has had previous radiobroadcast experience. Kennedy is to be employed as manager of the proposed station. He has had ten years of experience in radio work in the capacities of announcer, script writer, commercial salesman, and program director. He was manager of Station WAAT, Jersey City, New Jersey, for approximately four years. D. D. Jones is to be employed as chief engineer. He has had approximately fourteen years experience in the technical phases of radiobroadcasting. He was employed as chief engineer of Station WAAT for seven and one-half years. The applicant contemplates employing, in addition to Kennedy and Jones,

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five announcers, a program director, a production man, a bookkeeper, two office clerks, seven staff musicians, and a janitor.

The transmitting equipment to be installed for the proposed station, the directional antenna, and transmitter site meet with the technical requirements of the Commission.

According to the 1930 U. S. census, Morristown had a population of 15,197 and Morris County, in which Morristown is located, had a population of 110,445. The U. S. Census of Retail and Wholesale Distribution for 1935, published by the United States Department of Commerce, shows the following data with respect to Morristown: 340 retail stores, having total sales of \$10,283,000 and total pay rolls of \$1,218,000; and 16 wholesale establishments having net sales of \$2,083,000 and total pay rolls of \$131,000. From the same source, Morris County, New Jersey, is shown to have 1,999 retail stores, with total sales of \$33,595,000 and total pay rolls of \$3,658,000; and 47 wholesale establishments having net sales of \$7,701,000 and total pay rolls of \$407,000. According to the reports of the New Jersey State Department of Banking and Insurance and of the Federal Reserve Bank of New York there were, as of December 31, 1936, 16 banks located in Morris County having total deposits of \$64,846,294. The principal industries located in Morris County include the manufacture of stone, clay, glass, textile, metal, leather, and rubber products. The occupations of the inhabitants of the rural areas contiguous to Morristown are predominantly agricultural.

Primary broadcast service is received in Morristown during the daytime from Stations WJZ, New York, N. Y., which operates on the frequency 760 kilocycles, with 50 kilowatts power, unlimited time, and from WABC, New York, N. Y., which operates on the frequency 860 kilocycles, with 50 kilowatts power, unlimited time. The service of Station WOR, Newark, N. J., which operates on the frequency 710 kilocycles, with power of 50 kilowatts, unlimited time, is slightly less than the 10 millivolts per meter normally required to render entirely satisfactory service in the business district of a city the size of Morristown. Stations WEAJ, New York, N. Y., which operates on the frequency 660 kilocycles, with 50 kilowatts power, unlimited time; WMCA, New York, N. Y., operating on the frequency 570 kilocycles, with power of 1 kilowatt, unlimited time; and WNEW, New York, N. Y., which operates on the frequency 1250 kilocycles, with power of 1 kilowatt night, 2½ kilowatts day, sharing time with Station WHBI, Newark, N. J. (which operates with the same power) provide signals in Morristown approximating the 2 millivolts per meter required for satisfactory service in residential sections and

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render entirely satisfactory service in the rural areas surrounding Morristown. The signals of these stations would, of course, have a greater intensity and provide an improved primary service in that portion of the New York metropolitan district which the applicant proposes to serve to the south and east of Morristown. Several additional stations, including WFIL, Philadelphia, Pennsylvania, operating on the frequency 560 kilocycles, with 1 kilowatt power, unlimited time; WNYC, New York, N. Y., operating on the frequency 810 kilocycles, with 1 kilowatt power, daytime, limited to sunset at Station WCCO, Minneapolis, Minnesota; WHN, New York, N. Y., operating on the frequency 1010 kilocycles, with power of 1 kilowatt night, 5 kilowatts day, unlimited time; WOV, New York, N. Y., operating on the frequency 1130 kilocycles, with 1 kilowatt power, specified hours of operation; and other regional stations with transmitters located in northeastern New Jersey would provide satisfactory rural and residential service in portions of the area which the applicant proposes to serve. In summary, this community lies within the metropolitan district of New York and northern New Jersey and therefore receives a wide variety of program service from the numerous stations located therein.

Time would be donated by the proposed station to civic, educational, religious, and charitable organizations of Morristown. News reports and agricultural information would be featured as a regular part of the daily broadcasts. Remote lines are to be maintained in Morristown to broadcast special events originating in the office of the County Superintendent of Schools, from the headquarters of the Morristown National Historic Park, from the New Jersey State Police Station and from Drew University, located at Madison, New Jersey. Approximately 40 percent of the station's time would be devoted to commercial programs and approximately 60 percent of the time would be used for sustaining programs. The applicant estimates that approximately 8 percent of the total time devoted to commercial programs would be purchased by national advertisers. A news service and transcription service are to be used by the applicant as a part of the daily programs broadcast.

It was calculated (basing population on the 1930 United States Census) that there would be 213,000 people residing within the 10 millivolts per meter contour of the proposed station and that 2,596,000 people would reside within the proposed 2 millivolts per meter contour. Various witnesses for the applicant testified that the proposed station was designed to provide a local broadcast service to Morris, Sussex, and Warren Counties, New Jersey. It was shown, however,

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that the proposed station would be expected to render satisfactory service to Morris and Sussex Counties, but would not render satisfactory service in Warren County (except for a small portion thereof) because of the limitations to its service imposed by existing broadcast stations.

A schedule of rates for the sale of time of the proposed station was submitted in evidence. The rates have been classified by the applicant as Class A (for time between 10:00 a. m. and 6:00 p. m.) and as Class B (for time between 6:00 a. m. and 10:00 a. m.). The basic charge under the Class A rate is \$210 for an hour, \$125 for one-half hour, and \$75 for a quarter hour. The basic charge under the Class B rate is \$175 for an hour, \$95 for one-half hour, and \$60 for one-quarter hour. These rates are subject to discount when time is purchased on a continued contract basis. The cost of talent used in the production of commercial programs would be charged in addition to these rates.

Various witnesses for the applicant testified that Morristown and the areas immediately adjacent thereto do not have an outlet for broadcasting programs of a local character, i. e., this community has no outlet for local self-expression. At the same time, these witnesses testified that agricultural information and reports of general interest to the Morristown area are regularly broadcast by Stations WOR and WJZ. Similarly, news reports are regularly received by them from Stations WOR, WABC, and WJZ. It is evident, therefore, from the testimony of these witnesses that there is no lack of this type of program service for the residents of Morristown and its immediate environs. The applicant moreover has requested, in the instant application, a regional frequency to provide a regional service to three counties. It was shown that four stations are located in New Jersey between the metropolitan area of New York and Morristown that provide a broadcast service to northern New Jersey which is of general interest to the Morristown area, namely, Stations WAAT, Jersey City, New Jersey, which operates on the frequency 940 kilocycles with 500 watts power, daytime; WOR, Newark, New Jersey (assignment stated supra); WHOM, Jersey City, New Jersey, operating on the frequency 1450 kilocycles with power of 250 watts, unlimited time; and WHBI, Newark, New Jersey, which operates on the frequency 1250 kilocycles with power of 1 kilowatt night, 2½ kilowatts day, and shares time with Station WNEW, New York, N. Y. The service of Stations WOR and WHBI, as heretofore stated, is satisfactory in Morristown, and the other stations serve a portion of the rural areas which the applicant

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proposes to serve. In summary, the program service for the proposed station (except for the programs to be originated by local, civic, charitable, and educational organizations in Morristown) would be similar to that now abundantly rendered to this community by existing stations in northern New Jersey and by stations in the New York metropolitan area.

Sources of talent in Morristown and in the surrounding area available for use over the proposed station include the local high school, Drew University, Morristown National Historical Park, the County Superintendent of Schools, the local Red Cross organization, Morristown Chamber of Commerce, New Jersey State Police, the County Agricultural Agent, the Little Theater organization, and several civic and charitable organizations.

There are five stations located at shorter distances from Morristown than those considered necessary under average conditions to avoid objectionable interference to the operation of the proposed station. These stations are:

Station	Location	Frequency	Power	Separation	
				Actual	Recommended (day-time)
		Kilo-cycles		Miles	Miles
WHJB.....	Greensburg, Pa.....	630	250 w. D.....	266	300
WIP.....	Philadelphia, Pa.....	610	1 kw.....	67	175
WEAF.....	New York, N. Y.....	660	50 kw.....	50	181
WICO.....	Bridgesport, Conn.....	600	500 w. 1 kw. L.S. (D.A.).....	71	120
WPRO.....	Providence, R. I.....	630	500 w. 1 kw. L.S. (D.A.).....	170	175

Based upon the directional antenna to be used by the proposed station and upon the low conductivity in the intervening terrain between Station WHJB and the proposed station, it was predicted that objectionable interference to WHJB would only occur within its normally protected 0.5 millivolt per meter contour for a short period immediately preceding sunset. In connection with Station WIP, it was predicted that operation of the proposed station would result in objectionable interference to this station during daytime hours within its 0.5 millivolt per meter contour, with the interference extending approximately to the 1 millivolt per meter contour in certain directions from Morristown. The exact extent and location of the areas wherein interference would result would depend upon the conductivity of the intervening terrain between Philadelphia and Morristown. Station WIP would be expected to impose

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objectionable interference to the service of the proposed station during the daytime within the normally protected 0.5 millivolt per meter contour. The operation of the proposed station would be expected to impose objectionable interference to the service of Station WEAJ during the daytime within the 0.5 millivolt per meter contour. This interference, however, would not occur beyond the normal blanket area (within one mile radius) of the transmitter of the proposed station. In connection with Station WICC, it was predicted that the directional antenna proposed by the applicant would radiate approximately 1.5 kilowatts in the direction of Bridgeport so that there would be mutual interference during the daytime to the operation of each station within the normally protected 0.5 millivolt per meter contours. There would be no objectionable interference between Station WPRO and the proposed station during simultaneous daytime operation.

Station WIP, Philadelphia, Pennsylvania, has an application pending with the Commission (B2-P-1927) for construction permit requesting an increase of power to 5 kilowatts day and to change the transmitter location. Should this application be granted, there would be a material increase in interference during the daytime to the service of the proposed station and the area wherein WIP would receive interference from the proposed station would be materially extended.

There is also an application pending for construction permit (B1-P-1934) to establish a new radiobroadcast station at Syracuse, New York, to operate on the frequency 620 kilocycles, with 1 kilowatt power, unlimited time, using a directional antenna for nighttime hours. The normally recommended mileage separation between the proposed Syracuse station and the proposed Morristown station for daytime operation is 300 miles and the actual separation is approximately 178 miles. It was predicted that no objectionable interference within the 0.5 millivolt per meter contours of either station would result during the major portion of the day. However, objectionable interference would occur to each station within the normally protected 0.5 millivolt per meter contours for a period in the early morning and immediately preceding sunset.

GROUNDS FOR DECISION

1. The applicant has failed to show a public need for additional broadcast service of the type proposed herein in that portion of the New York metropolitan district intended to be served.

2. The operation of the station proposed herein would result in objectionable interference within the normally protected 0.5 millivolt

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per meter contours of Stations WIP, Philadelphia, Pennsylvania, and WICC, Bridgeport, Connecticut.

3. The operation of the proposed station would result in objectionable interference within the normally protected 0.5 millivolt per meter contours of stations proposed in applications pending before the Commission when the instant application was designated for hearing; and the operation of the stations proposed in applications pending before the Commission would result in objectionable interference within the normally protected 0.5 millivolt per meter contour of the station proposed herein.

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

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D. C.

<p>In the Matter of FAYETTE BROADCASTING CORPORATION (WMBS), UNIONTOWN, PENNSYLVANIA, For Modification of License.</p>	}	DOCKET No. 4968.
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Decided October 11, 1938

Edward Dumbauld on behalf of the applicant; *George O. Sutton, James L. Proffitt,* and *Arthur H. Schroeder* on behalf of Station KQV; *Ben S. Fisher* and *John W. Kendall* on behalf of Station WPAR; *Horace L. Lohnes, E. D. Johnston,* and *F. W. Albertson* on behalf of Station WLEU; and *A. V. Dalrymple* on behalf of the Commission.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION (McNinch, Chairman, and Brown and Case, Commissioners, not participating):

STATEMENT OF FACTS

This proceeding arose upon an application of the Fayette Broadcasting Corporation for modification of the license of Station WMBS to change its operating assignment on the frequency 1420 kilocycles from 250 watts daytime, to 250 watts L. S., 100 watts night, unlimited time.

On February 28, 1938, a hearing was held on this application before an Examiner, who in his report (I-656) recommended that it be granted. Exceptions to the examiner's report were filed by Ohio Valley Broadcasting Company (WPAR) and oral argument was heard before the Commission on July 14, 1938. The exceptions have been duly considered by the Commission.

Station WMBS began operation on July 5, 1937, and has received successive renewals of license since that date. In view of the fact that the applicant is the licensee of an existing radiobroadcast station, its legal and technical qualifications (having been heretofore determined by the Commission) were not in issue in this proceeding. The financial qualifications of the applicant likewise were not in issue. No

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changes in the transmitting equipment would be required as a result of granting this application, and it appears that the existing staff will continue to operate the station during the additional hours proposed.

According to the 1930 United States Census, the population of Uniontown was 19,544 and that of Fayette County, in which Uniontown is located, was 198,542.

At the present time no primary broadcast service is received at night in the built-up sections of Uniontown. The signal of Station KDKA, Pittsburgh, Pennsylvania, which operates on the frequency 980 kilocycles with 50 kilowatts power, unlimited time, is satisfactory for nighttime reception in Uniontown in portions of the residential sections where no electrical interference exists or where there is a total absence of static. This station renders a satisfactory service to the rural areas adjacent to Uniontown, particularly in the direction of Pittsburgh. Station WMBS operating under its proposed assignment would provide a primary nighttime service to all sections of Uniontown. According to the testimony of the Commission's engineer, Station WMBS would be expected to render an interference-free service at night over a radius slightly less than six miles from the transmitter.

The station has cooperated with civic, religious, fraternal, charitable, and educational organizations of Uniontown and has donated its facilities to them whenever time has been desired. A remote line is maintained to the public auditorium in Uniontown from which local educational and musical entertainment has been broadcast regularly. The applicant proposes to broadcast at night several educational, musical, and dramatic programs which have not been available in the past during daytime hours. Additional talent will be used on the programs to be broadcast at night.

Sources of talent in Uniontown available for use over Station WMBS include the local high school, the community symphony orchestra, musical organizations, social clubs interested in cultural pursuits, and individual musicians.

There are three stations located at shorter distances from Uniontown than that considered necessary, under average conditions, to avoid objectionable interference at night to the operation of WMBS as proposed. Station WPAR, Parkersburg, West Virginia, which operates on the frequency 1420 kilocycles with 100 watts power, unlimited time, would provide the predominant source of interference to WMBS at night. The normally recommended mileage separation between Parkersburg and WMBS to avoid objectionable interference for simultaneous nighttime operation is 185 miles and the actual separation is approximately 102 miles. Based upon a description of the actual antenna for each station and the second hour curve for 10 per-

cent of the time, it was predicted that WMBS, operating as proposed, would limit WPAR at night to the approximate 2.5 millivolt per meter contour; and WPAR in turn would limit WMBS to the approximate 3.0 millivolt per meter contour. The extent of this interference, however, would fall on the extreme edge of the service areas of each station and would not occur in the populous sections.

Station WLEU, Erie, Pennsylvania, operating on the frequency 1420 kilocycles with power of 100 watts night, 250 watts day, unlimited time, is located approximately 155 miles from Station WMBS. The normally recommended nighttime separation in this instance is 185 miles. Based upon a minimum antenna efficiency for each station and the second hour curve for 10 percent of the time, it was predicted that there would be no objectionable interference to the simultaneous nighttime operation of the two stations.

Station WCHV, Charlottesville, Virginia, which operates on the frequency 1420 kilocycles with power of 100 watts night, 250 watts day, and shares nighttime hours of operation with Station WEED, Rocky Mount, North Carolina, is located approximately 145 miles from Station WMBS. In this instance, the normally recommended nighttime separation is 185 miles. It was predicted that the simultaneous nighttime operation of WCHV and WMBS would result in mutual interference slightly within the normally protected 2 millivolt per meter contour of each station.

On June 22, 1938, the Commission granted, in part, the application of Station KQV, Pittsburgh, Pennsylvania (Docket No. 4469), authorizing it to operate on the frequency 1380 kilocycles with power of 500 watts night, 1 kilowatt day, unlimited time, using a directional antenna for nighttime operation. This station is located approximately 40 miles from Station WMBS, whereas the normally recommended separation for simultaneous nighttime operation is 44 miles. As the frequency assignments of KQV and WMBS are separated by 40 kilocycles, it was predicted that there would be no objectionable interference to the service of either station should the instant application be granted.

Station WJSV, Washington, D. C., which operates on the frequency 1460 kilocycles, has a construction permit (B1-P-1827) requesting authority to increase its power to 50 kilowatts unlimited time and use a directional antenna for both day and nighttime operation. The recommended separation in this instance is 174 miles, and the actual separation is approximately 172 miles. As the frequency assignments of WJSV and WMBS are also separated by 40 kilocycles, it was predicted that no objectionable interference would result to the normally protected service area of either station should a grant be made of both applications.

GROUNDS FOR DECISION

On the record in this case, the Commission finds:

1. Operating as proposed, Station WMBS would provide the only primary nighttime service throughout Uniontown;
2. There is a public need for additional broadcast service in Uniontown, Pennsylvania, of the type proposed by the applicant herein;
3. Station WMBS, operating as proposed, would be limited to its 3 millivolt per meter contour by Station WPAR; and WPAR would in turn be limited to its 2.5 millivolt per meter contour by the operation of Station WMBS. This interference, however, would be expected to occur at the outer edge of the service area of each station. Very slight interference to the signal of each station would occur as a result of simultaneous nighttime operation of WMBS and WCHV. The need in Uniontown for primary nighttime service of the type proposed herein is sufficient to warrant the granting of this application, notwithstanding the interference shown above;
4. The operation of Station WMBS as proposed would not be expected to impose objectionable interference to the normally protected service areas of stations proposed in applications pending before the Commission when the instant application was designated for hearing;
5. The granting of this application will serve public interest, convenience, and necessity.

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of
JOE L. SMITH, JR.,
BECKLEY, WEST VIRGINIA.
For Construction Permit. } DOCKET No. 4905.

Decided October 11, 1938

H. H. Shinnick on behalf of Joe L. Smith, Jr.; *Ben S. Fisher* and
Charles V. Wayland on behalf of Station WSOC.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION (McNinch, Chairman, and Brown and Case Commissioners, not participating):

STATEMENT OF FACTS

This proceeding arose out of the application of Joe L. Smith, Jr., for a permit to construct a radiobroadcast station at Beckley, West Virginia, to operate on the frequency of 1210 kilocycles with power of 250 watts, L. S., 100 watts night, unlimited hours of operation.

A hearing on this application was held before an examiner on January 24, 1938. On May 19, 1938, the examiner released his report (I-641) and recommended that the application be denied. Exceptions were filed to the examiner's report and oral argument heard before the Commission.

Beckley, Raleigh County, is situated in the south central part of the State of West Virginia. It is located in the center of what may be referred to as the smokeless coal region of West Virginia. The city and the territory immediately contiguous are on the top of a high plateau surrounded by mountains of varying heights. The city had a population (1930 Census) of 9,357, and Raleigh County (1930 Census) had a population of 68,072.

Beckley is the largest city in this immediate section of the State. Throughout the smokeless coal region of West Virginia are numerous mining camps and lumber mills. These camps, the population of which varies from a few persons to as many as 1,500, are not incorpo-

rated and are composed primarily of miners and persons catering to the needs of the immediate communities.

The statistics on Raleigh County from the 1930 Census show that there were 13,593 families in this county, of which number 1,701 were rural farm families; 9,878 were rural nonfarm families. In Beckley there were 2,014 families.

According to the statistics on retail sales taken from the 1935 United States Census of Business, Beckley had 205 stores with annual sales of approximately \$7,500,000, and Raleigh County, with 647 stores, had total sales of \$16,449,000. The pay roll for the same year was placed at \$803,000 in Beckley, and in Raleigh County, \$1,490,000. Wholesale distribution in Beckley for the year 1935 showed sales of \$6,540,000 and in Raleigh County, \$8,016,000.

Mining is the principal industry in the vicinity of Beckley, although agriculture gives gainful employment to a large number of persons. During 1935 the value of the coal mined in Raleigh County amounted to \$23,512,653. Total wages paid in Raleigh County to the 13,544 wage earners during that year amounted to \$14,428,408. Agricultural statistics from the 1935 United States Census of Agriculture show that there are 2,507 farms in Raleigh County, and that 144,869 acres were devoted to farming, the farm lands having a value of \$4,959,588.

Persons living in Beckley and vicinity do not receive primary broadcast service from any station and are dependent upon distant stations for intermittent program service. The presence of numerous power lines and the fact that the various mines use a large amount of electricity result in a high "noise level" or "interference level" in this community. Because of this man-made interference, as well as the general topography of the territory, the broadcast reception in this territory is poor.

The proposed station will be able to render primary broadcast service to this area operating with power of 250 watts daytime. The station would cause no objectionable interference to any existing station, and in turn would suffer no objectionable interference from any station. The proposed station is expected to serve within its 10 mv./m. contour, a radius of approximately four miles, within its 2 mv./m. contour, a radius of 9.7 miles, and within its 0.5 mv./m. contour, a radius of 18.5 miles. Within the 10, 2, and 0.5 mv./m. contours are 21,000, 50,000, and 123,000 persons, respectively.

There are five stations within the normally recommended mileage separation for nighttime operation on the assignment requested. These stations are WCOL, Columbus, Ohio; WALR, Zanesville, Ohio; WLMU, Middlesboro, Kentucky, and Station WSOC, Charlotte,

North Carolina, all operating on the frequency of 1210 kilocycles, and Station WSAZ, Huntington, West Virginia, operating on the frequency of 1190 kilocycles. The proposed station would limit Station WALR to its 2 mv./m. contour at night, and Stations WCOL and WSOC to their respective 1.91 mv./m. contour, and Station WLMU to its 1.98 mv./m. contour. Stations WALR and WCOL each limit the other to their 2.24 mv./m. contour. Stations of this class are normally protected to their 2 mv./m. contour at night. Because of the fact that the conductivity between Beckley and Huntington is below average, it is not expected that the proposed station would cause any objectionable interference to the operation of Station WSAZ, Huntington, West Virginia.

Operating at night with power of 100 watts, the proposed station would not be limited within the normally protected 2 mv./m. contour. The 10 mv./m. contour would have a radius of approximately 3 miles within which will be found an estimated population of approximately 15,000 persons. The 2 mv./m. contour would have a radius of 7.7 miles within which will be found a population of 38,768.

The applicant proposes to install an approved type of transmitter which meets the engineering requirements of this Commission. The exact site of the station has not been selected. The proposed antenna meets the requirements of the Commission as to height. As the site is to be selected, the complete antenna and ground system will be subject to subsequent approval by the Commission.

The estimated cost of the proposed station is \$10,024. Of this amount the plant, including the transmitter, will cost \$5,754; the radiating system, including the antenna building and ground system, \$2,635; and studio and office equipment, \$1,635.

The financial statement of the applicant, as of January 20, 1938, showed total assets of \$43,998.56, which includes cash in bank of \$10,238.56. Other assets consisted of notes, real estate, stocks, and bonds. Liabilities consist of \$8,850, leaving a net worth of \$35,148.56. Several witnesses testified as to the financial qualifications and business experience of the applicant. It is apparent that the applicant has funds sufficient to construct the proposed station.

The estimated operating expense of the proposed station is \$1,495 per month. The applicant made a survey to determine the possible commercial support of the proposed station. Forty-two merchants signed agreements indicating their intention to spend certain stipulated sums for radio advertising. The sum of the advertising tentatively secured indicates that the proposed station will have operating revenues of approximately \$1,800 per month. In addition other busi-

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ness organizations have indicated an intention to use the facilities of the proposed station for advertising purposes.

Beckley and the various communities in Raleigh County and adjoining counties are served by numerous highways. Because of the mountainous territory and particularly during the winter months and rainy seasons, travel on these roads becomes hazardous because of falling stones and slides. During the winter, ice and snow frequently cover the roads and constitute traffic hazards. In Raleigh County pupils living more than two miles from school are transported to and from school in busses. One of the services which the applicant proposes to render will be the broadcasting of information relating to the operation of the school busses and the condition of the roads in and around Beckley.

The mountains surrounding Beckley are wooded, and a local broadcast station could be of great assistance in the event of a fire in any section within the service area of the proposed station.

Beckley has a junior college, a senior and junior high school, and seven graded schools. In Raleigh County there are 18 junior and senior high schools and 190 elementary schools outside the city of Beckley. In Raleigh County there are numerous bands, glee clubs, orchestras, and entertainers. Many of these organizations are affiliated with the various schools in the county. Many of the musical organizations and persons living in Beckley and vicinity have appeared over existing broadcasting stations. Much of the talent in Beckley and vicinity is suitable for broadcast purposes and can be used by the proposed station.

Among the broadcasts which the applicant proposes are news flashes, reports on forest fires, information relating to road and traffic conditions, the operation of school busses; talks relating to the school systems, safety, and health; and news of general interest to the community. The facilities of the proposed station have been offered to the various educational, civic, and religious organizations in and around Beckley. The programs which the applicant proposes to offer are designed to meet definite needs of the community and to be of general interest to the listening public in this area.

The applicant, as of the date of the hearing, was a young man twenty-two years of age. He is a citizen of the United States by birth, having been born in Beckley, where he now lives. He graduated from the University of West Virginia in 1935. After graduation he formed a corporation for the sale of automobiles and subsequently disposed of his interest. He then formed an insurance organization known as The Home Insurance Company, and the Telered

Company, Inc., a corporation organized for the purpose of marketing electrical appliances including radio sets and equipment. He owns an interest in the Beckley Hotel Company, which operates the Beckley Hotel, and at present has an interest in one of the banks in Beckley in which he is employed as a clerk.

His financial qualifications have previously been stated. Numerous representative business men in the community testified that the reputation of the applicant for business ability, honesty, habits, character, associates, and reliability is good.

The applicant has had no broadcasting experience. He has, however, operated amateur stations and at present holds an amateur operator's license. In the event the application is granted he proposes to employ a competent staff for the operation of his station.

GROUNDS FOR DECISION

1. The applicant is legally, technically, and financially qualified to construct and operate the proposed station.
2. Beckley, West Virginia, and the territory contiguous thereto does not now receive primary service from any existing station.
3. The operation of the proposed station would not cause objectionable interference to any existing station and would not in turn be limited within its normally protected service area by any existing station.
4. The transmitting equipment which the applicant proposes to use complies with the engineering requirements of this Commission. The exact site of the station is to be selected.
5. The proposed station will receive sufficient commercial support from local merchants to assure its continued operation.
6. The applicant proposes to render a service which will satisfy the needs of the community in which the station will be located.
7. The granting of this application will serve public interest, convenience, and necessity.

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of
STATE OF WISCONSIN, DEPARTMENT OF
AGRICULTURE AND MARKETS (WLBL), } DOCKET No. 4820.
STEVENS POINT, WISCONSIN. }
For Modification of License.

Decided October 11, 1938

Orland S. Loomis and *Leo E. Vaudrevuil* on behalf of the applicant;
Paul D. P. Spearman and *Alan B. David* on behalf of Station
WBEN; *George S. Smith* on behalf of Station WKY; *Karl A. Smith*
and *Lester Cohen* on behalf of Station WSJS; *Horace L. Lohnes*,
E. D. Johnston and *Fred Albertson* on behalf of Station WTAD;
and *Walter Johnson* on behalf of the Federal Communications Com-
mission.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION (McNinch, Chairman, and Brown and Case,
Commissioners, not participating):

STATEMENT OF FACTS

This proceeding arose upon the application of the State of Wisconsin, Department of Agriculture and Markets (licensee of Station WLBL, Stevens Point, Wisconsin, operating on the frequency 900 kc. with power of 5 kw. daytime only) requesting modification of license to authorize operation during specified hours, namely, 6 a. m. until 10 p. m., and the use of 1 kw. power night, 5 kw. day. A hearing was held before an examiner on January 7, 1938, who, in his report (I-624) recommended that the application be denied. Exceptions were filed to this report by the applicant. Oral argument was had before the Commission on June 30, 1938. Written briefs were subsequently filed by the applicant and WBEN and WKY.

The legal qualifications of the applicant are not an issue in this proceeding.

WLBL is operated under a budget appropriation which is provided by the state legislature. There is evidence in the record of
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this case tending to show that WLBL has in the past experienced no difficulty in obtaining funds. The Attorney General for the State of Wisconsin appeared and testified that an Emergency Board, consisting of the Governor, the Chairman of the Joint Committee on Finance, the Chairman of the Joint Committee of both the (State) Senate and Assembly, and the Governor "assured me that I might assure the Commission that the necessary appropriations to carry on night broadcasting in the WLBL station will be given." The record is devoid of evidence which would indicate the cost of night broadcasting by WLBL.

According to the 1930 Census, Stevens Point, Wisconsin, had population of 13,623. Marshfield, Wisconsin, had population of 8,778. The principal occupations of the area are farming and related industries such as dairying, fruit growing, etc.

The Stevens Point area does not now receive primary service at night from any existing station. Secondary service of an intermittent nature is available from clear-channel stations located in Minneapolis, Chicago, and other cities.

An engineer appearing for the applicant testified that the combined operation of WBEN, Buffalo, New York; WKY, Oklahoma City, Oklahoma; and WJAX, Jacksonville, Florida, would interfere with WLBL operating at night as proposed to its 4.28 mv./m. contour. This estimate was predicated on a minimum antenna efficiency for WBEN. The engineer stated that if WLBL were limited to its 4 mv./m. contour it would serve primarily an area with a 21-mile radius and that there would be some service out 35 or 40 miles. He later qualified this testimony by conceding that the only consistent service would be within the 21-mile radius.

The Commission's engineer testified that he was familiar with WBEN's antenna, that the efficiency of the antenna was considerably higher than the minimum, and that he estimated, and the Commission so finds, that WLBL operating as proposed would be limited at night to its 4.65 mv./m. contour by the operation of WBEN. The record discloses that WLBL's service radius during night hours with this limitation would be approximately 20 miles. The distance from WLBL's transmitter to Stevens Point is 21 or 22 miles. It is therefore obvious that the nearest city of any size in this area will not receive an efficient nighttime radio broadcast service.

The applicant's engineer testified further that should WLBL operate as proposed it would produce the dominant source of interference to two existing stations, namely, WBEN and WKY. He stated that WBEN would be limited by a composite interfering signal of 0.197 mv./m. (a 3.94 mv./m. limitation) and that WBEN was presently lim-

ited to its 1.68 mv./m. contour by the operation of other stations. This engineer estimated that the proposed operation of WLBL would limit the service of WKY to its 2.3 mv./m. and that WKY is now limited to its 1.16 mv./m contour by other stations. These calculations were based on an antenna efficiency of 175 mv./m. from WLBL. The Commission's engineer testified that WLBL had an actual antenna efficiency of about 220 mv./m. He estimated, and the Commission finds, that WBEN and WKY will be limited by the night operation of WLBL as proposed to their 4.5 mv./m. and 2.4 mv./m. contours, respectively.

It is contended that the limitations discussed above are not objectionable if considered on the basis of the allocation standards proposed in the Havana Agreement. We make no finding as to the technical accuracy of this contention. However, it should be pointed out that the engineering standards of allocation proposed by the Havana Agreement (which Agreement is not yet effective) are applicable only to allocation problems between the countries involved and consequently are not binding on the Commission in its consideration of domestic allocation problems.

The applicant contends, in substance, that despite the reductions in the service areas of WBEN and WKY which would be caused by the operation of WLBL as proposed, the inhabitants in the Buffalo, New York, area and Oklahoma City area "are better off so far as radio reception is concerned than are the inhabitants of Stevens Point." The Commission has carefully considered this contention and is not unmindful of the public service which WLBL has rendered in the past and proposes to render in the future. Nor has it failed to consider the State of Wisconsin's connection with the station. WLBL, WKY, and WBEN (each operates on a regional channel) are normally afforded protection to the 1 mv./m. contour, if operated at night, under the present engineering standards of the Commission. Urgent need for the service proposed must be shown by the applicant in order to justify a departure by the Commission from its usual allocation standards, and strong and compelling reasons must appear to justify the Commission in taking away existing service from the public.

The prospective service area of WLBL at night would include approximately 60,000 to 70,000 persons. The engineer for the applicant testified that the service areas of WKY and WBEN would be reduced about 50% by the operation of WLBL as proposed (calculating on a minimum antenna efficiency for WLBL). He stated that the area to the south and southwest of Buffalo was densely populated (although he had made no studies concerning the comparative populations affected by the limitations heretofore discussed). His testimony shows further that should the instant application be granted,

the number of persons who would be deprived of service from WBEN alone exceed the number of persons who would receive service from WLBL operating at night. The Commission's engineer testified, and the Commission finds, that the present interference-free service area of WBEN would be reduced approximately 70% (calculating on the actual antenna efficiency of WLBL). He likewise stated that the number of people who would be deprived of service from WBEN by the proposed night operation of WLBL would be greater than the number of people who would receive service from the applicant during evening hours.

There are three local stations in Buffalo, New York; namely, WEBR operating on a frequency of 1310 kc. with power of 100 watts night, 250 watts day, unlimited time; WBNY (100 watts night, 250 watts local sunset); and WSVS (50 watts), share time on the frequency 1370 kc. In addition to WBEN, there are two stations in Buffalo classified as regional. These are WGR, operating on the frequency 550 kc. with power of 1 kw. night and 5 kw. to local sunset, unlimited time, and WKBW, which operates on the frequency 1480 kc. with power of 5 kw., unlimited time. The record shows that over 95% of the area which would be destroyed by the proposed operation of WLBL at night is not now served by the local stations operating in Buffalo and further that a large portion of it is without primary service from any station other than WBEN.

There are two local stations in Oklahoma City; namely, KTOK, operating on the frequency 1370 kc. with power of 100 watts, unlimited time, and KOCY operating on the frequency 1310 kc. with power of 100 watts night and 250 watts daytime. In addition to WKY, there is another regional station in Oklahoma City, KOMA, which operates on the frequency 1480 kc. with power of 5 kw., unlimited time. WKY and KOMA cover approximately the same territory. WBEN and WKY are the only stations carrying the programs of the particular networks with which they are affiliated in their respective areas. Therefore, a severe curtailment of the interference-free service areas of these stations will deprive many persons of programs which they now receive.

The result of granting the present application from Station WLBL would be to deprive large and important areas and populations of broadcast service now being rendered and long established.

The applicant is interested in providing night broadcast service to the people in the area who cannot listen to the programs of Station WLBL during the daytime. The State of Wisconsin is essentially a dairy state, and the dairy farmers work longer hours than other classes of farmers. Their work starts about 4:30 a. m., and

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the only time at which they can listen to radio programs is during the evening hours. The state is very much interested in broadcasting information in connection with the dairy industry. Included in the programs are data regarding tuberculosis in cattle and the eradication of Bang's disease. Since approximately 90% of the dairy products of Wisconsin are consumed outside of the state, the station is interested in transmitting information regarding the sanitary laws of the nearby states and their effect on the various dairy products produced in the state.

The State of Wisconsin ranks third in the production of cranberries. Weather reports broadcast over the station are designed principally for the information of the growers of cranberries during the season. If the station does not receive the weather report until after it goes off the air, the growers do not get the information and their crops are in danger of loss.

The applicant has filed a copy of its typical weekly program schedule. An examination of this exhibit discloses that the program service should be of interest to the listeners in the area. It contains many educational and agricultural programs. Because a larger number of persons are at leisure during evening hours than in the daytime, a number of programs scheduled for daytime broadcasting are more adaptable for night broadcasting. Included in the programs which might be more adaptable for the evening broadcast are the College of the Air, Backgrounds in Agriculture, a health program, book reviews, educational programs, dramatic and musical programs, various lectures at the University forums, legislative hearings in the capital and special sessions of the legislature which are held at night and cannot be broadcast under the station's present assignment. The applicant also intends to broadcast a special series of programs called "Following Congress." These programs are reproductions of the actual debates in Congress. The Wisconsin College of the Air has been in operation for five years and covers a wide range of educational programs which are produced by the University of Wisconsin. The educational programs are particularly adaptable for the needs of the state.

The programs originating at Stevens Point are generally weather and market reports. These programs are broadcast four times a day and are produced from data furnished by the United States Department of Agriculture. In addition, the station broadcasts livestock market reports five times a day.

WLBL is available for addresses and for public forums of any kind. No discrimination is made for the benefit of any political party. It

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has always made an equitable distribution of time for the various candidates for political offices.

The state has made arrangements to equip a studio in the State Teacher's College at Stevens Point. It is expected that Station WLBL will disseminate additional musical and dramatic programs originating at the college. The central section of the State Basketball Tournament is played at the college every year and State Basketball Tournament is played regularly at Wisconsin Rapids near Stevens Point.

A majority of the programs broadcast by WLBL originate at Station WHA (located at Madison). Less than one-third of the programs broadcast by Station WLBL originate at its studios in Stevens Point. It was also shown that WHA broadcasts programs on Saturday afternoon such as "Social Welfare in Wisconsin," "Can America Remain Neutral?" and dramatizations of the works of well-known authors. WLBL broadcasts at present until 1:00 p. m. on Saturday. No showing was made as to why the station does not use the remaining daytime hours on Saturday. This is particularly noteworthy as programs of a meritorious nature mentioned above are available to WLBL from WHA.

An application from Station WTAD (B4-P-1984) was pending at the time this case was designated for hearing. If both applications were granted WTAD would limit WLBL to its 8.9 mv./m. contour, and WLBL would limit WTAD to its 6.3 mv./m. contour. WKY also had pending an application to operate with power of 5 kw. day and night. Rule 120 provides that regional stations such as WKY may not operate with power in excess of 1 kw. at night. The effect of nighttime operation of WKY with 5 kw., therefore, must be determined in the proceedings on that application.

GROUNDS FOR DECISION

1. The interference-free service areas of WKY, Oklahoma City, Oklahoma, and WBEN, Buffalo, New York, would be severely limited by the operation of WLBL as proposed; extensive populations and areas would be deprived of the existing program services of these stations should the application be granted; the service area of WLBL will be severely limited by the operations of WBEN, WKY, and WJAX; while a public need has been shown for the service of WLBL as proposed herein, this need is not so strong and compelling as to justify the Commission in depriving the population of other areas of existing broadcast service.

2. Public interest, convenience, and necessity will not be served by a grant of this application.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D. C.

<p>In the Matters of VOICE OF DETROIT, INC., DETROIT, MICHIGAN. For Construction Permit.</p>	}	DOCKET No. 3998.
<p>CADILLAC BROADCASTING CORPORATION. DETROIT, MICHIGAN. For Construction Permit.</p>	}	DOCKET No. 4808.
<p>WWPO, INC., PITTSBURGH, PENNSYLVANIA. For Construction Permit.</p>	}	DOCKET No. 4758.
<p>TIMES PRINTING COMPANY, CHATTANOOGA, TENNESSEE. For Construction Permit.</p>	}	DOCKET No. 4759.

Decided October 11, 1938

Herbert M. Bingham and Guilford Jameson on behalf of Voice of Detroit, Inc., Elmer W. Pratt on behalf of Cadillac Broadcasting Corporation; Jeff Busby on behalf of WWPO, Inc.; Louis G. Caldwell, Reed T. Rollo, and Percy H. Russell on behalf of Times Printing Company and Station WJR (Intervener); Frank D. Scott on behalf of Station WRVA; John W. Guider, Duke M. Patrick, Karl A. Smith, and Lester Cohen on behalf of Stations WJBO, WAPI, and WWJ (Intervener); Paul D. P. Spearman on behalf of Station WJJD; George O. Sutton, A. H. Schroeder, and James L. Proffit, on behalf of Stations WDEL, WJAS (Intervener) and KQV (Intervener); John H. Littlepage, Thomas P. Littlepage, and William A. Porter on behalf of Stations WISN and WCAE (Intervener); Ben S. Fisher, Charles V. Wayland, and John W. Kendall on behalf of Stations WCOP, WSPR, and WAPO (Intervener); Alfons B. Landa and R. W. Mapes on behalf of Station WXYZ (Intervener); Philip G. Loucks and Arthur W. Scharfeld on behalf of Station WMBC (Intervener); Horace L. Lohnes, E. D. Johnston, and Fred W. Albertson on behalf of Stations WWVA, KVOO, and WJBK (Intervener); George S. Law, Horace L. Lohnes, and E. D. Johnston on behalf of

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Station WOWO; *Paul M. Segal* and *George S. Smith* on behalf of Station WWSW (Intervener); *J. L. Levine*, *Horace L. Lohnes*, *E. D. Johnston*, and *Fred W. Albertson* on behalf of Station WDOD (Intervener).

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION (McNinch, Chairman, and Brown and Case, Commissioners, not participating):

STATEMENT OF FACTS

This proceeding arose upon the following applications:

1. Voice of Detroit, Inc., for authority to erect and operate a new broadcast station at Detroit, Michigan, on 1120 kilocycles, 500 watts, night, 1 kilowatt, L. S., unlimited time, Docket No. 3998.
2. Cadillac Broadcasting Corporation, for authority to erect and operate a new broadcast station at Detroit, Michigan, to operate on 1140 kilocycles, 500 watts, daytime, Docket No. 4808.
3. WWPO, Inc., for authority to erect and operate a new broadcast station at Pittsburgh, Pennsylvania, to operate on 1120 kilocycles, 250 watts, unlimited time.
4. Times Printing Company, for authority to erect and operate a new broadcast station at Chattanooga, Tennessee, on 1120 kilocycles, 500 watts, 1 kilowatt, L. S., unlimited time.

The applications were heard before an examiner who submitted a report (I-584) recommending that all of the applications be denied. Exceptions were filed to this report and have been considered by the Commission in arriving at its decision herein. Oral argument was heard by the Commission on April 21, 1938, and parties in Docket No. 4758 were given authority to file briefs in support of their respective interests.

IN RE DOCKET NO. 3998

The applicant, Voice of Detroit, is a Michigan corporation with its principal offices located at Detroit, and is duly authorized to engage in the business of radiobroadcasting. The authorized capital stock is 5,000 shares, of the par value of \$10 per share, and has been fully subscribed and paid for. Paul Seiler owns 65% and James S. Hunt 35% of the capital stock. The officers and stockholders of the corporation are citizens of the United States by birth. Mr. Seiler has been a resident of Detroit about 25 years, and has been engaged in the manufacturing and selling of automobile hardware. Since leaving the General Motors Company in 1935, his activities have largely consisted of looking after his own personal affairs. Mr. Hunt is in the

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automobile business in Detroit. He has been a dealer with General Motors for more than 12 years. Both men enjoy excellent reputations in the city of Detroit for character and business integrity.

Applicant proposed to operate on a budget calling for a monthly expense of \$14,368.30. The applicant's assets as of October 13, 1937, were: cash in bank, \$63,098.26, and real estate, \$4,870.32. The total liabilities were \$4,718.34, which leaves a net worth of \$63,250.24.

The officers of the applicant corporation have not had any broadcast experience, and contemplate the employment of an experienced staff. Contracts had been made with possible personnel, but no contracts of employment have been entered into.

The transmitter, transmitter site, and antenna specified by the applicant are satisfactory and are capable of operating in conformity with the rules and regulations of the Commission.

Mr. Seiler stated that he was primarily interested in this project as a business venture and also "to give the service which I think Detroit and its environs would enjoy." The business ability of the two stockholders is well established by the record.

In this case, the most important question for determination is whether a need exists in Detroit for another broadcast station. When an applicant seeks to establish a new broadcast service in any community, the Commission cannot determine that public interest, convenience, and necessity would be served thereby, unless the applicant shows, among other things, the nature and character of the service already being received there. Applicant presented no evidence of the program service of the existing stations which would indicate the portion of their time devoted to local as against national, or commercial as against sustaining, programs. Without such information in the record, the Commission cannot determine that the existing service is inadequate to supply the outlet for sustaining programs proposed by the applicant.

The witness, Hill, who testified that the Salvation Army could use more time, also stated that the existing stations had been very helpful to the Salvation Army; that he had not made any definite attempts to secure additional time over the existing stations and that no definite offer of time over the station proposed by the Voice of Detroit had been made.

The witness, Langdon, who is connected with the American Legion organization, knew of no instance of refusal of time by the Detroit stations upon the request of the Legion. He personally had made no effort in two years and no offer had been made to allow his organization to utilize the facilities of the station proposed by the Voice of Detroit.

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Witness Hall, who is connected with an amateur dramatic society, wanted time to produce radio skits. However, he had been on the air over Station WJBK in Detroit during the preceding year and had made no personal contacts with other stations to ascertain if time were available over their facilities.

Two witnesses testified that there was a need for another station to carry additional political broadcasts. The need for time for this purpose is uncertain and cannot be given any great weight in establishing a need for a new broadcast station.

Father Murphy, who was in charge of adult education in the Detroit Diocese, testified that he could "use more time." He further stated that the existing stations had been very cooperative. No offer had been made any of the organizations with which he is connected to allow then to utilize the facilities of the station proposed by this applicant.

Witness Berglund testified with respect to the Scandinavian organizations in Detroit to the effect that there are a large number of musical groups which would be available to the proposed station, and that Americanization programs directed to this particular group would be desirable. No request had been made of any of the existing stations to carry these programs. The witness had neither asked for, nor been offered time on the station proposed by the Voice of Detroit for the purposes indicated.

Witness Rice, pastor of the Metropolitan Methodist Episcopal Church, testified that he had used the radio a great deal in the past; that he had never requested time; and that he had refused offers of existing stations to broadcast the services of his church.

Rabbi Franklin of Temple Beth El, testified that he had used the existing stations quite a bit and that he had made no recent request of time for his church. He was of the opinion that the caliber of the existing Jewish programs could, and should be, materially improved. He had not received an offer to use the facilities of the station proposed by the Voice of Detroit.

The witnesses who were offered to show commercial support for the proposed station had various reasons for concluding that a new station was needed in Detroit. The majority of them stated that "desirable" time was not available over the existing stations, but they had made no comprehensive investigation which would show the programs which were actually being carried by the existing stations during the time that they, individually, considered would be desirable. Many of the witnesses had made no personal effort to get time over the existing stations, and they had not been promised any definite time over the proposed station.

Some of the witnesses gave estimates of the amounts that they might expect to spend over a station such as they had been informed was proposed by the Voice of Detroit. The rate card of the Voice of Detroit which was shown these witnesses was presented in evidence, but the information passed on to the prospective advertisers as to the expected coverage (30 to 40 miles) is not in accordance with the actual coverage as found hereinafter could be expected. It should also be pointed out that many of the prospective advertisers considered the "desirable" time to be in the early evening hours, at which time the station would have substantially less coverage than the prospective advertisers had been led to believe would be obtained. Many of the witnesses testified that if the application of the Voice of Detroit was not granted, the money which they had expected to spend for radio advertising would be spent in purchasing time over one of the existing stations. Many of the reasons given by these witnesses for concluding that a need existed for another station in Detroit were shown by cross-examination to be based purely on hearsay and on facts not within the knowledge of the witness.

There are five stations located in Detroit, all of which are authorized to operate unlimited time. Information with respect to these stations and the hours that they actually operate is indicated below :

Station	Frequency	Power	Week days	Sundays
WWJ.....	920	1 kw., 5 kw.-LS.....	19 hrs. 15 min.....	16 hrs. 45 min.
WJR.....	750	50 kw.....	20 hrs.....	17 hrs.
WXYZ.....	1240	1 kw.....	19 hrs. 15 min.....	16 hrs. 45 min.
WMBC.....	1420	100 w., 250 w.-LS.....	17 hrs. 15 min.....	14 hrs. 30 min.
WJBK.....	1500	100 w., 250 w.-LS.....	Operates 24 hrs. daily except one week each month, during which time it operates 20 hrs. daily.	

Stations WWJ, WJR, and WXYZ render service throughout the metropolitan area of Detroit, both day and night. Stations WMBC and WJBK render primary service throughout the city proper at night and the metropolitan area in the daytime.

Two Canadian stations are located at Windsor, Ontario, directly across the river from Detroit. One of these, Station CKLW, renders primary service through the Detroit area, and the other, Station CBW, renders primary service to a portion of the Detroit area.

Mr. Seiler had listened to a lot of programs in Detroit and had heard devotional broadcasts; church, Masonic, and Knights of Columbus programs; symphonic concerts; bands and orchestras; health and children's program; hillbilly and organ music; and news broadcasts.

The applicant submitted a proposed program schedule for one week's operation. It includes many of the above-listed types of pro-
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grams. This schedule does not provide for the use of talent testified in the deposition to be available to the applicant; nor does it indicate wherein the prospective advertisers would be given the time desired by them, and on the basis of which it was indicated that they would accord some commercial support to the applicant.

Operation as proposed by the Voice of Detroit, Inc., would not be expected to cause increased interference to any existing station. Station CKOC, Hamilton, Ontario, if it operates with the minimum efficiency required of American stations by this Commission, would be expected to limit the Voice of Detroit, Inc., to its 5.1 mv./m. contour. However, field intensity recordings taken in and around Detroit by the applicant's engineering witness on fourteen nights scattered over six months indicate that the dominant source of interference to the Voice of Detroit, Inc., station would be Station WISN, Milwaukee, Wisconsin. Station WISN would be expected to limit the station proposed by the Voice of Detroit, Inc., to its approximate 3.15 mv./m. contour.

With such a limitation, the applicant would not be able to serve all of the metropolitan area of Detroit at night. In view of this fact, much of the testimony offered to show a desire for the station proposed by the Voice of Detroit, Inc., is not pertinent to the issues, because it was predicated on an assumption that the station would have a coverage on a radius of from 30 to 40 miles, both day and night.

Stations of the class proposed by the Voice of Detroit, Inc., are normally expected to render service to their 1.0 mv./m. contour at night. Departures from this standard should be approved by this Commission *only* when a compelling showing of need for a new station and its proposed program service has been made. The applicant in this case has not made such a showing as would warrant the departure from the accepted standards which are involved herein.

Operation as proposed by the Voice of Detroit, Inc., would not involve objectionable interference with any stations operating as proposed in applications which had been designated for hearing when this application was filed.

IN RE DOCKET NO. 4808

The applicant, Cadillac Broadcasting Corporation, was organized under the laws of the State of Michigan and is authorized by its charter to own and operate a radio broadcast station. The capital stock consists of 750 shares of preferred, par value \$100, and 50,000 shares of common stock, no par value. Four hundred shares of preferred and 44,5000 shares of common stock have been subscribed for, but no

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stock has been issued except the qualifying shares and nothing has been paid into the treasury. There are ten stock subscribers in the corporation.

The president of the corporation is a naturalized citizen of the United States. He was born in Russia. He undertook to testify as to the citizenship of the other officers and stockholders of the corporation but admitted that his acquaintanceship with them was rather casual. The citizenship of the other stockholders was not established.

The president of the applicant corporation is now engaged in broadcasting a so-called "commercial, philanthropic, and charity Jewish hour program" over Station WMBC, Detroit. This witness had paid nothing for his stock although he owned 20 percent of the capital stock. He knew nothing about the financial conditions of the company nor the policies of the proposed broadcast station, and the only experience he has had in broadcasting has been obtained from conducting the hour program referred to.

The secretary and treasurer of the company failed to appear as a witness. During the hearing, it was stated by counsel for the applicant that he was in New York City and would be in Washington on the following day. The case was held open an entire day in order to afford this witness an opportunity to testify, inasmuch as it was stated he was familiar with the finances of the corporation, the policies of the proposed station and the available local talent in Detroit. He never appeared and no reason was given as to why he did not appear; therefore, the case was closed without his testimony. No exceptions to the examiner's report was filed by this applicant.

The discussion hereinbefore of the question of need in Detroit for an additional broadcast station is equally pertinent to the question of need for the station proposed by the Cadillac Broadcasting Corporation. This applicant's showing is less indicative of the need for a new broadcast station in Detroit than that of the Voice of Detroit, Inc.

Operation as proposed by the Cadillac Broadcasting Corporation would not be expected to cause objectionable interference to any existing stations. Stations WAPI (Birmingham, Alabama) and KVOO (Tulsa, Oklahoma) would be expected to cause a slight limitation during late afternoon hours, slightly within the normally protected contours of the proposed station. This interference, in and of itself, would not be sufficient to bar a grant of this application if the applicant had otherwise shown proper qualifications and that public interest, convenience and necessity would be served.

The only pending application including a question of interference, i. e., Voice of Detroit, Inc., is denied herein.

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IN RE DOCKET NO. 4758

The applicant, WWPO, Inc., is a Delaware corporation, authorized by its charter to own and operate a radio broadcast station, and is registered in the manner and form required by the laws of Pennsylvania to transact business in that state. All of the officers, stockholders, and directors are citizens of the United States, and with the exception of the President of the corporation, Mr. A. E. Frosch, reside in or near Pittsburgh. Mr. Frosch resides in East Liverpool, Ohio, approximately 35 miles from Pittsburgh. The stock ownership is distributed among the following individuals: A. E. Frosch (1,250, common); W. E. Horlbeck (250, preferred); B. I. Davis (1,000, preferred); R. C. Kramer (1,000, preferred); F. A. Weidman (2,250 common); N. C. Blice (250, common); C. J. Pellegrini (250, preferred); and F. E. Winters (1,250, common).

The common stock has a par value of \$1 and the preferred stock a par value of \$10. Each carries equal voting privileges. The stockholders are engaged in various business and professional activities in and around Pittsburgh.

The entire capital stock (5,000 shares of preferred and 2,500 shares of common stock) has been subscribed, and \$14,500 has been paid into the treasury. The unpaid balance of \$15,500 on stock subscriptions is callable whenever needed to meet the obligations of the corporation, and the individual stock subscribers are capable of meeting their subscriptions. The principal stockholders testified that they were willing to make advancements to the corporation over and above their subscriptions up to certain specified amounts, depending upon the projects for the station at the time the additional money would be needed.

On October 19, 1937, the corporation had a cash balance of \$9,156.04, of which amount \$9,000 was on special deposit in the Union Trust Company of Pittsburgh. It was estimated that the cost of the station and studio, fully equipped for operation, would approximate \$30,000. Weekly operating costs were predicted at approximately \$1,300.

Two of the stockholders have had some experience in radio work, one as the operator of an amateur radio station, and the other in the building of educational programs. The applicant contemplates the employment of an experienced staff to operate the proposed station. The proposed personnel included a station manager, program director, commercial manager, announcers, operators, chief engineer, and assistants.

The equipment proposed for use by the applicant is capable of operating in conformity with the rules and regulations of the Commission.

From the testimony of the applicant's officers and directors, and from the proposed program, it appears that the main purpose of this application was to meet an alleged need for foreign language broadcasts to reach those persons of foreign extraction in and around Pittsburgh who were not able to understand the English language.

Pittsburgh is located in the southwestern corner of the State of Pennsylvania and is an important industrial center, the principal industry being the manufacture of steel and steel products. According to the 1935 biennial census of manufactures, Pittsburgh has 1,946 manufacturing establishments employing 179,320 people, who receive in wages \$201,180,401. The value of products manufactured that year was \$1,049,319,294. The retail distribution for the same year was handled by 7,400 retail establishments, employing 39,617 people, who received in salaries \$38,252,000, and the volume of sales was \$266,551,000. The wholesale distribution was handled by 1,480 establishments, employing 15,989 people, who received in salaries \$28,116,000, and the net sales were \$692,155,000. The service establishments were 3,073 in number, and employed 5,417 people, who received in salaries \$5,468,000, and the net receipts were \$17,364,000.

Primary broadcast service is available to Pittsburgh from five stations located in the city, one of which operates on a clear channel (KDKA), three of which operate on regional frequencies (WJAS, WCAE, KQV), and one of which operates on a local frequency (WWSW). In addition, service from various distant clear channel stations is received in some portions of the area. All of the stations operating in Pittsburgh render service to the city proper; one covers Allegheny and the surrounding counties and three render service to Allegheny County and parts of the surrounding counties.

Applicant's testimony with respect to the percentage of the Pittsburgh foreign population which are unable to speak English refers only to the German and Polish groups. No official figures were given in support of the estimates that one-third of these groups are unable to speak English. This showing is not of sufficient probative value to enable the Commission to determine what percentage of the foreign population such group comprises.

According to the 1930 U. S. Census of Population, Volume II, containing statistics by subjects, the foreign-born white population ten years old and over in Pittsburgh was 108,127. Of this number, the report (at page 1380) shows that 6,191 or 5.7 percent were unable to speak English. Furthermore, the relationship between the 1920 and 1930 figures indicates clearly that the number of persons of foreign extraction in the United States, unable to speak English, is declining rapidly.

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An analysis of the programs carried by Station KQV during the week of October 3-9, 1937, indicates that 3.5% of its programs in that week were devoted to foreign entertainment broadcasts. KQV has carried several foreign-language broadcasts, utilizing the language of practically every substantial foreign group in and around Pittsburgh. The majority of these programs has been carried on a sustaining basis and the station has no policy against the use of foreign language on its broadcasts.

Station WJAS has carried several broadcasts of interest to the foreign element, including outstanding events broadcast through chain facilities from various European countries. News exchange broadcasts from Paris, London, South America, and Germany are carried as regular features of this station's programs.

The program service offered by the applicant emphasizes the large foreign element in Pittsburgh and the need for rendering service to the portions of those foreign groups which do not speak English. The record does not establish the existence of a large foreign population in Pittsburgh unable to speak English. Even if the record would sustain such a finding, the contention that a new radio station is necessary to serve their needs is unsound. Radio broadcasting facilities are too few, and the need for equitable distribution of these facilities throughout the country is too great to grant broadcast station licenses for the purpose of rendering service to such a limited group as is proposed in the instant application.

It is recognized that, in some instances, these foreign populations may be in need of particular efforts directed toward their Americanization and to promote their general welfare, but there are agencies of government, both national and local, designed particularly for this purpose. To utilize the limited facilities solely for such a purpose is not in the interest of the public generally.

An essential practice in the continued successful operation of the American system of broadcasting is that in which licensees of stations will make reasonably available the services of their stations to all classes and groups on a fair and equitable basis, having due regard for the necessity of rendering a balanced program service to sustain the interest of the public as a whole. The channels of radio broadcasting should be available to all groups of society and all legitimate schools of thought, so that no single group will be systematically denied the ability to reach the public on any fundamental principle. This means that any broadcast station located in the community should be available on a fair and equitable basis to all organizations regardless of race or creed, and consistent with the rendition of a balanced program service which will be interesting and in the interest of the public as a whole in that community. The emphasis placed

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by this applicant upon making available his facilities to restricted groups of the public does not indicate that the service of the proposed station would be in the public interest.

Operation as proposed by this applicant would not be expected to cause objectionable interference within the normally protected service areas of any existing stations, with the exception of Station WWVA. That station is located at Wheeling, West Virginia, approximately 49 miles from Pittsburgh, whereas the recommended separation is 108 miles. In this case, the objectionable interference to the service of WWVA would be present in a small area in the immediate vicinity of the proposed Pittsburgh station.

The station which the records show would cause the highest limitation to the proposed Pittsburgh station is WDEL, at Wilmington, Delaware. This limitation would be to the approximate 3.3 mv./m. contour. When Station WRVA, at Richmond, operates in accordance with the authorization granted by the Commission on May 11, 1938, the limitation to the proposed Pittsburgh station would be at the 4.1 mv./m. contour. With such limitations, the proposed station would not be able to render interference-free service throughout the city of Pittsburgh.

Granting this application would necessitate a departure from the Commission's usual allocation practice, in that interference would be caused to an existing station, and the proposed station would not be able to render the service which it is normally expected to render. Applicant has failed to make such a showing of need as would warrant the Commission in authorizing such a departure.

Applications pending at the time of the hearing and entitled to joint consideration with the instant application are denied herein, or do not involve any question of interference. Applications entitled to prior consideration do not involve problems of interference which are more objectionable to the proposed station than those which would be expected from the operation of Station WRVA as hereinbefore discussed.

IN RE DOCKET NO. 4750

The applicant herein, the Times Printing Company, is a Tennessee corporation, organized in 1882, and by an amendment to its original charter, is duly authorized to engage in the business of owning and operating a radiobroadcasting station. All of the stockholders, directors, and officers of the corporation are citizens of the United States.

The applicant is engaged in the publication of a newspaper, The Chattanooga Times, in Chattanooga, Tennessee. The persons having the controlling interest in the applicant corporation also control the company that publishes the New York Times. The Chattanooga
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Times and the persons interested in it have long been closely affiliated with the city of Chattanooga and its civic and community enterprises.

It was estimated that the proposed station would cost approximately \$72,380 to construct. The assets of the applicant corporation, after deducting all reserves, are valued at \$457,844.74. The liabilities are \$109,680.32. The corporation has a net worth of \$348,164.42, with cash on hand of \$90,610.85 and United States Government Bonds in the sum of \$36,667.23. The applicant possesses ample financial resources to construct the proposed station.

Monthly operating expenses were estimated at \$4,741.48, which include local taxes, social security taxes, reserves for bad debts, and depreciation. The applicant prepared a list of 688 concerns in Chattanooga which had, during the past year, engaged in radio, newspaper, and display advertising in various directories. A group of these concerns was interviewed by the applicant and solicited for advertising contracts. Out of the group solicited, 53 entered into contracts to purchase advertising over the proposed station, contingent upon the granting of this application. Income from these contracts would accord the applicant yearly receipts in the amount of \$34,804.80. Many of those signing contracts were already using the facilities of the existing stations for radio advertising.

The applicant has never owned, operated, nor controlled a broadcast station. It is contemplated that an experienced staff of 16 persons would be employed to operate the proposed station. The employment of a staff orchestra on a full-time basis is also contemplated by the applicant.

The transmitter site and antenna specified are capable of operating in conformity with the technical rules and regulations of the Commission.

The population of Chattanooga, according to the 1930 census, is 119,798. The metropolitan area of this city, according to the same source, has a population of 168,589. There was some testimony to the effect that Chattanooga has materially increased its population since the 1930 census, but such testimony is not of such probative value as would justify the Commission in making a finding thereon. Chattanooga is the county seat of Hamilton County, Tennessee, and is located in the southeastern part of the state, approximately twelve miles from the northern part of the State of Georgia. It is situated on the Tennessee River in the Tennessee Valley.

There are two stations now located in Chattanooga. Station WDOD, which operates on 1280 kilocycles, with 1 kw. power at night, and 5 kw. power during the day, unlimited time; and Station WAPO, operating on 1420 kilocycles, 100 watts power night, and 250 watts day, unlimited, time, afford primary broadcast service to

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the metropolitan area of Chattanooga at night. These stations render daytime service to a larger area surrounding Chattanooga. Secondary service is available at night from distant clear channel stations, including WSB at Atlanta and WSM at Nashville.

Station WDOD is affiliated with the Columbia Broadcasting System, and during the week of September 8 to 15, 1937, carried the programs of that network for 38.57% of its total operating time. Station WAPO is not affiliated with any national network.

An analysis of the programs to be broadcast over the proposed station and a comparison with those carried by Stations WAPO and WDOD during the week above-mentioned follow :

	WDOD	WAPO	Proposed station
	Percent	Percent	Percent
Commercial:			
Local.....	33.90	26.68	20.24
Network.....	8.83		
Sustaining:			
Local.....	27.53	73.32	79.76
Network.....	29.74		
Live talent.....	75.57	45.58	86.64
Transcriptions.....	24.43	54.42	13.36
Other classifications:			
Musical.....	50.70	57.10	45.53
News.....	7.48	11.68	8.93
Sports.....	6.98	10.14	3.17
Religious.....	9.28	10.48	4.17
Educational.....	.89		6.95
Entertainment.....	15.37	3.70	10.71
Agricultural.....		.54	1.39
Household.....	.41	.20	1.59
Civic and charitable.....	.63	.16	8.92
Advertising announcements.....	6.79	6.00	8.64
WDOD playhouse.....	1.47		

The above analysis and comparison indicate that so far as the allocation of time for the various types of programs, the proposed station will not offer anything materially different from those already being carried by the existing stations. While at any particular instance the public's choice of programs may be extended, the proposal is merely that of an additional station having the same general program service characteristics as the existing stations in the community.

Chattanooga is an industrial center with more than 100 manufacturing plants and mills. These include hosiery and cotton mills, and plumbing supply, stove, refrigerator, farm implement, and other iron and steel-manufacturing establishments. According to the 1935 business census, Chattanooga has 1,826 retail establishments, with an annual business volume of \$44,065,000, which employ 6,195 people, who receive in annual wages the sum of \$5,296,000; 204 wholesale establishments, doing an annual volume of business of \$67,287,000, with 1,688 employees, who receive in salaries annually \$2,561,000; and 600 service establishments, with annual receipts of \$2,496,000, which employ 935 employees, who receive in annual wages \$763,000.

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The applicant submitted the depositions of more than thirty witnesses on the issue of need for additional radio service in the Chattanooga area. The deponents include men and women prominent in the civic, governmental, educational, social, and religious work of the city. These witnesses testified that they could, and would, to a certain extent, use the facilities of another station that might be authorized to operate in Chattanooga. Several of them, and the organization with which they were connected, had previously been afforded time by the existing stations and they were not familiar with any instance of refusal by the existing stations to carry their programs. Many of the witnesses had never found it necessary to inquire whether or not time was available over the existing stations. The applicant has offered free use of the station to 12 educational, 12 religious, 16 fraternal, 22 cultural, 23 philanthropic, and 33 other organizations. The applicant proposed to continue the policy of The Chattanooga Times in cooperating with all worth-while civic and community enterprises in Chattanooga.

There is no evidence of the failure of the existing stations to be fully cognizant of their duty to operate in the public interest and to donate time over their station to worth-while civic and community enterprises. The existence of many organizations who have not broadcast over the stations in Chattanooga does not, in and of itself, create a need for a new broadcast station. It should first be established that the facilities of the existing stations are inadequate to meet the needs of the community. (*Tri-State Broadcasting Company, Inc. v. F. C. C.*, on petition for rehearing, decided April 7, 1938, Docket No. 6931.)

The applicant submitted a list of musicians, amateur and professional, as talent available in Chattanooga. The extent to which these musicians are qualified for radio broadcasting is not definitely shown by the record. Many of them had appeared over the existing stations. We are unable to find from the applicant's evidence with respect to available talent that it would be able to render a high-class program service during the 86 percent of its time which it plans to devote to live talent.

Operation as proposed by the applicant would not be expected to cause increased objectionable interference to the service of any existing broadcast station. Station WJBO would be expected to limit the proposed station to its approximate 4.25 mv./m. contour and Stations WDEL, WISN, and WTAW would cause interference to a lesser degree.

Operation as proposed in an application of Station WMBR, filed July 9, 1936, and designated for hearing September 22, 1936, would be expected to result in a mutual limitation to the 4.5 mv./m. con-

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tour between it and the proposed Chattanooga station. Other pending applications that are entitled to prior consideration or comparative consideration with the application of the applicant either do not involve questions of interference or are denied in the instant decision.

GROUNDS FOR DECISION

DOCKET NO. 3998

1. Applicant has failed to establish a need for the service proposed to be rendered.

2. Applicant has failed to establish that the proposed departure from recognized allocation engineering practices is justified.

DOCKET NO. 4808

1. Applicant has failed to show adequate financial ability to construct and operate the proposed station.

2. Applicant has failed to establish a need for the service proposed to be rendered.

DOCKET NO. 4758

1. The applicant has failed to establish a need for the service proposed to be rendered.

2. Applicant has failed to establish that the proposed departure from recognized allocation engineering practices is justified. Applicant would cause objectionable interference to an existing station.

DOCKET NO. 4759

1. Applicant has failed to establish a need for the service proposed to be rendered.

2. Applicant has failed to establish that the proposed departure from recognized allocation engineering practices is justified.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D. C.

<p>In the Matter of ARLINGTON RADIO SERVICE, INC., ARLINGTON, VIRGINIA. For Construction Permit.</p>	}	DOCKET No. 4451.
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Decided October 18, 1938

Clarence C. Dill and *James W. Gum* on behalf of the applicant; *Frank D. Scott* on behalf of Station WRVA; *H. L. Lohnes*, *Fred W. Albertson*, and *E. D. Johnston* on behalf of Stations WWVA and KVOO; *Ben S. Fisher* and *Charles V. Wayland* on behalf of Station WSPR; and *George B. Martin* on behalf of Monocacy Broadcasting Co.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION (Brown and Case, Commissioners, not participating):

STATEMENT OF FACTS

Arlington Radio Service, Inc., commenced this proceeding by filing its application for a permit to construct a broadcast station which it proposes to operate on 1140 kilocycles with power of 1 kilowatt, daytime only.

The matter was designated for hearing before an examiner who has filed his report (I-639), recommending that the application be denied. No exceptions to the report of the examiner have been filed but a request was made by the applicant for oral argument before the Commission. That request was granted, and the oral argument has been heard.

Arlington Radio Service, Inc., is a corporation organized under the law of the State of Delaware. The applicant is authorized under its charter to construct a radio-broadcast station and it proposes to establish a station in Arlington, Virginia, but it is not apparent from the record that the applicant has been empowered by the authorities of the State of Virginia to carry on business therein.

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Arlington Radio Service, Inc., is capitalized at \$10,000. Its capital stock is divided into 100 shares of the par value of \$100 per share.

Charles Rogers Fenwick has subscribed for 98 shares of the stock of the corporation. William D. Medley and Edward D. Campbell have subscribed for one share each. Mr. Fenwick proposes to act as president of the corporation and Mr. Medley as vice president thereof.

No stock has been issued and no money has been paid in. It is not apparent from the record that the corporation has been fully organized or that it has a secretary or treasurer.

The following testimony given by Edward T. Fenwick (father of Charles Rogers Fenwick) indicates the source of the funds with which it is proposed to finance the construction of the station :

Q. And, Mr. Fenwick, is Charles R. Fenwick, the President of the Arlington Radio Service, your son?

A. He is.

Q. Have you agreed to advance him whatever money is necessary for the construction of the proposed station?

A. I have, when called upon ; to what is needed ; yes, sir.

Charles R. Fenwick, subscriber for 98% of the stock of the corporation, among other things, testified as follows :

Q. Specifically, how do you propose to secure the \$9,500 in cash as the original offering to put this station on the air?

A. I expect to get it from father.

Q. And do you have any contract with your father?

A. None whatsoever.

* * * * *

Q. Does the corporation itself have any funds?

A. None whatever.

The estimated cost of the station proposed by the applicant is \$18,752. It is claimed for the applicant that it has entered into a contract with the Graybar Electric Company, Inc., to furnish the equipment for the station on the installment plan for an initial payment of \$6,500 and an undertaking by the corporation to pay the balance in monthly installments of \$1,021.50. Mr. Fenwick, the chief organizer of the company, estimated that \$9,500 in cash would be needed to construct the station and put it in operation if the equipment were purchased on the installment plan. A written instrument purporting to be a proposal by the Graybar Electric Company, Inc., to sell equipment in the amount of \$18,752 to Arlington Radio Service, Inc., and an acceptance of that proposal was introduced in evidence; but the record does not show that the initial payment of \$6,500 has been made nor that anything has been delivered under the proposal and acceptance. Furthermore, there is a provision desig-

nated as a rider which stipulates that nothing shall be done under the instrument introduced unless the application for the construction permit under consideration is granted by the Commission.

Charles Rogers Fenwick appears to be financially able to pay for the 98 shares of stock for which he has subscribed but it is not apparent upon the record that it is his intention to do so. His testimony shows that his plan is to build the proposed station on money which he proposes to borrow from his father and on credit which he claims to be able to procure from the Graybar Electric Company. It is clear upon the record that Edward T. Fenwick has entered into no binding obligation to furnish money to the applicant and it is equally clear that the proposal made by the Graybar Electric Company, Inc., to sell equipment to the applicant to the amount of \$18,752 or in any other amount, is not sufficient in law to be enforced.

The estimated monthly operating expenses of the proposed station range between \$2,100 and \$2,500. Four witnesses who contemplate advertising over the proposed station testified that they would spend with the station approximately \$700 per month. Other testimony, less definite and positive but tending to show the possibilities of the station, indicate that it would earn much more money but it was not satisfactorily shown that the earnings of the station would be likely to exceed its operating expenses.

It has been shown that the authorized capitalization of the applicant is only \$10,000; that although the stock has been subscribed for, nothing has been paid thereon. The amount which the applicant proposes to borrow before it will have any money in its treasury is far in excess of its total capitalization and if the proposal and acceptance entered into by and between the Graybar Electric Company, Inc., and the applicant should be voluntarily performed, the applicant's obligation thereunder will be \$1,021.50 per month. That the applicant would be able to pay that amount monthly in addition to its operating expenses is not satisfactorily established upon the record.

It is contended that the proposed station is needed for local service in Arlington County, Fairfax County, and in the City of Alexandria, all in the State of Virginia, because there are no local radio facilities now in existence whereby the people of the counties and city mentioned may be informed respecting local matters pertaining to civic, educational, economic, governmental, and religious affairs; because there is no outlet for talent of that area; and because facilities for disseminating news consist solely of local papers, none of which serves the entire area.

The 1930 Census shows that Arlington County has 25 square miles of territory, that Fairfax County has 416 square miles and that the City of Alexandria has 8 square miles. The territory so comprised is in immediate proximity to Washington, D. C.

The area which would be served by the proposed station now receives primary service from four stations located in Washington, namely, Station WJSV, operating on 1460 kilocycles with 10 kilowatts power, unlimited time; Station WMAL, operating on 680 kilocycles with 250 watts night, 500 watts until local sunset, unlimited time; Station WRC, operating on 950 kilocycles with power of 1 kilowatt night and 5 kilowatts until local sunset, unlimited time. Service is also available from Station WOL, operating at present on 1230 kilocycles with power of 1 kilowatt, unlimited time. Some service is also available in the rural sections of the service area of the proposed station from Stations WBAL, Baltimore, Maryland, and WRVA, Richmond, Virginia.

The stated purpose of the applicant, as heretofore intimated, is to provide a program service of a local character to an area in Northern Virginia, adjacent to the District of Columbia, and, more particularly, to provide a service of local character to the City of Alexandria and to the Counties of Arlington and Fairfax in the State of Virginia. The site for the antenna of the proposed station has not been determined but a location in Arlington County near Clarendon has been suggested. If the station is established as proposed, all of the City of Alexandria and all of Arlington County and a very substantial part of Fairfax County and more than half of the District of Columbia will be within the 10 millivolt per meter contour of the station. The 2 millivolt per meter contour of the station will reach Rockville, Maryland, on the north and Occoquan, Virginia, on the south, and will cover all of the City of Washington and the suburban areas thereof.

That part of the service area of the proposed station included within its 10 millivolt per meter contour and not embraced in the City of Washington is nevertheless closely connected with that city economically. About 75% of the residents of Arlington County are employed in Washington, D. C. The station proposed by the applicant would provide primary service to all of the metropolitan area of Washington. The testimony offered by the applicant is not sufficient to justify a finding of a public need for the regional facility proposed herein.

The application presents no problems of interference between the operation of the proposed station and other broadcast stations now

existing; but there was an application pending when the instant application was set for hearing which involves problems of interference: Monocacy Broadcasting Company has applied for a new station at Rockville, Maryland, to operate on 1140 kilocycles with power of 250 watts, daytime only. The separation between Rockville and Arlington is about fifteen miles. The granting of either of these applications (Arlington or Monocacy) would preclude the grant of the other.

GROUNDS FOR DECISION

Upon the record in this case, the Commission finds:

1. The applicant is not financially qualified to undertake to build and operate the station proposed;
2. The area proposed to be served by the applicant is already well supplied with broadcast service;
3. The evidence in the case fails to establish public need for the service proposed;
4. The granting of the application would not serve the public interest, convenience, or necessity.

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D. C.

In the Matter of
HERBERT LEE BLYE (Assignor) THE FORT
INDUSTRY COMPANY (Assignee),
LIMA, OHIO. } DOCKET No. 4944.
For Voluntary Assignment of the
License of Radio Station WBLY. }

Decided October 18, 1938

Herbert S. Ward on behalf of the Assignor; *Horace L. Lohnes*,
E. D. Johnston, and *F. W. Albertson* on behalf of the Assignee; and
Walter Johnson on behalf of the Federal Communications Commis-
sion.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION (Brown and Case, Commissioners, not partici-
pating):

STATEMENT OF FACTS

This proceeding arose upon the application of Herbert Lee Blye, hereinafter referred to as the assignor, and Fort Industry Company, hereinafter referred to as the assignee, for approval by the Commission of an assignment of license of Station WBLY. The matter was heard before an examiner, who, on May 3, 1938, submitted a report (I-649) recommending that the assignment be approved.

The proposed assignor, Herbert Lee Blye, has been the licensee of Station WBLY since December 1936. This station operates at Lima, Ohio, on 1210 kilocycles with power of 100 watts, daytime only. The assignor is also engaged in constructing and installing public-address systems.

The proposed assignee, The Fort Industry Company, is an Ohio corporation whose main business is radio broadcasting. Its legal
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qualifications to hold an authorization to operate a broadcast station have previously been approved by the Commission and there has been no change in the facts relating thereto.

An inventory of the property to be transferred shows original cost at \$20,541.07, depreciated value at \$19,701.58, and replacement value at \$24,937.06.

The assignee has agreed to pay assignor \$27,000 in cash upon approval by the Commission of the assignment of license and the transfer to it of all station property.

A consolidated balance sheet of the assignee and its subsidiaries as of December 31, 1937, shows total assets of approximately \$900,000, with a surplus of approximately \$300,000. Cash on hand amounts to approximately \$39,000.

Assignee proposes to increase the personnel of the station from five to eleven employees, all qualified for their respective positions.

It is the intention of the assignee to construct new studios which would be more centrally located than those now employed by Blye. Operation expenses of WBLY during the six months preceding the hearing averaged \$1,100 a month. Assignee proposes to spend \$2,200 monthly on the operation of the station, and does not contemplate increasing the advertising rates.

Station WBLY is licensed to operate daytime only, which authority carries the privilege of operating 12 hours daily on a yearly average. The station has been operating only 10 hours daily. The assignee proposes to utilize the full operating time allowed by the station's assignment.

If this application is granted, it is the intention of the assignee to continue to render all of the public service that is now rendered by the station and to make improvements in the program structure in several particulars, among which are the following: News broadcasts seven times daily at stated and regular intervals, four of which will be devoted to general news; one to a woman's program made up entirely of news coming over a news service by teletypewriter giving the news of women of the world; one of sports generally; and one to local news which would be gathered by an employee of the station. This latter "newscast" would be given at 5:45 in the evening at which time any information concerning meetings of civic, charitable, or other organizations would be announced, and the remainder of this program would be devoted to news concerning the City of Lima, which would be gathered from the Mayor's office, members of the City Council, Chief of Police and Fire Departments, Chamber of Commerce, Better Business Bureau, and other places.

The latest markets on grain and stocks, which will be received by teletypewriter, will be broadcast to keep the farmers and other citizens fully informed on the latest quotations, and fifteen minutes to one-half hour periods each weekday will be devoted to civic charitable programs. This program will be presented at 12:45 P. M., and the Lions Club, Kiwanis Club, Rotary Club, Chamber of Commerce, and other similar organizations will be afforded an opportunity to broadcast their programs. If such organizations do not voluntarily offer to use the facilities of the station, it is the intention of the assignee to solicit them to broadcast programs. Additional time will be given to broadcast educational programs from all of the institutions of higher learning in the City of Lima and in close proximity thereto, together with the high schools which will be given an opportunity to broadcast once each week at a regular hour. Remote control lines will be established at the expense of the assignee to facilitate such broadcasts if the educational institutions will furnish a room to be used as a studio for such programs.

Lima is situated in an agricultural area; consequently the station will devote a considerable time to broadcasting agricultural programs which will be secured from the United States Department of Agriculture, from the County Agricultural Agent, guest speakers, and other sources.

Time will be devoted to broadcasting programs to promote safety on the highways. This time will be offered to the Chamber of Commerce or the Automobile Club to be broadcast at a definite period of time each day. If these institutions do not furnish such programs, the station will secure the material for such broadcasts from the Automobile Association or other agencies and supply it to them for presentation over the radio. In addition to the general broadcast of sports news, arrangements will be made to broadcast sport events direct from the colleges and schools.

Local talent will be used as extensively as practicable, and arrangements will be made to allow some compensation for the service of such local talent as are qualified to broadcast. Arrangements will be made to secure a first-class transcription service to supplement the programs presented by talent. No phonograph records will be used in the presentation of programs, and the programs now rebroadcast from Station WLW will be eliminated entirely, and such time utilized for local programs.

A tentative program schedule represented to be typical of the programs to be broadcast by the assignee, if this application is granted, was received in evidence, an examination of which shows that the
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programs would be well balanced, diversified, and if adhered to with reasonable accuracy, should prove to be well received by the listeners.

Talent will be used to present 64% of the programs, and the remaining 36% will be presented by means of electrical transcriptions. A maximum of 30% of the station's time will be devoted to commercial programs, the remaining 70% to sustaining programs.

GROUNDS FOR DECISION

1. The assignee is legally, technically, and financially qualified to hold the license of Station WBLY and to continue its operation;
2. The program service of the station will be materially improved by the proposed assignee;
3. The proposed assignment is in the public interest.

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of ¹

THE ASSOCIATED BROADCASTERS, INC. (KSFO),
Assignor, and COLUMBIA BROADCASTING SYSTEM
OF CALIFORNIA, INC., Assignee,
SAN FRANCISCO, CALIFORNIA.

} DOCKET No. 4208.

For consent to voluntary assignment of license
to Columbia Broadcasting System of Cali-
fornia, Inc.

Decided October 18, 1938

D. M. Patrick and *Joseph H. Reams* on behalf of applicant; and
George B. Porter and *Frank U. Fletcher* on behalf of the Commission.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION (Brown, Commissioner, concurring in result in
separate opinion):

PRELIMINARY STATEMENT

The Associated Broadcasters, Inc., is a corporation organized and existing under the laws of the State of California. It is licensed to operate a radio station known by the call letters KSFO in the City of San Francisco on the frequency 560 kc., with a power output of 1000 watts and unlimited hours of operation.

Western Broadcasting Company (now incorporated as Columbia Broadcasting System of California, Inc.) is a corporation organized and existing under the laws of California.

This proceeding arose upon the joint application of The Associated Broadcasters, Inc., licensee of Station KSFO, and Western Broadcasting Company (now known as Columbia Broadcasting System of California, Inc.) (5 B-R-27), as amended, for consent to assignment of radio station license to Columbia Broadcasting System of California, Inc.

¹ Appeal taken to United States Court of Appeals for the District of Columbia. Commission's motion to dismiss denied on November 29, 1939 (108 F. (2d) 737). Petition for certiorari pending in Supreme Court of the United States.

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The Commission was unable to determine from an examination of this application, as amended, that the granting thereof would serve public interest, convenience, and necessity, or that the same might be granted within the purview of Section 310 of the Communications Act of 1934 (48 Stat. 1086), and accordingly designated the same for a public hearing, of which due notice was given the applicant and other interested parties. Thereafter, and on December 2, 1936, in accordance with said notice, the hearing was held before an examiner, who, on April 6, 1937, submitted his report (I-399) recommending that the application be denied.

Exceptions to the Examiner's Report were filed and a request made for oral argument by Associated Broadcasters, Inc., Columbia Broadcasting System of California, Inc., and Columbia Broadcasting System, Inc. Oral argument was had before the Broadcast Division July 1, 1937, and again, before the Commission en banc, January 14, 1938.

The exceptions raise no questions not considered in a determination of this application upon its merits.

STATEMENT OF FACTS

The original cost of all equipment, including antenna system, transmitting apparatus, and studio equipment, of Station KSFO is \$35,224.26. The transmitter and antenna are twelve or thirteen years old. The speech input equipment is six years old. The studio equipment was acquired in 1932. The present cost of equivalent equipment is \$38,865.09. Depreciation of \$8,733.13 was subtracted from the present cost of equivalent equipment, leaving a depreciated value of the property at \$30,131.96.

Station KSFO is now and has been operating as an independent station, though the licensee at one time exchanged programs in an experimental hook-up with KNX, Los Angeles, this arrangement being continued over a period of several months. Program schedules of KSFO of recent date show diversified headings, methods of production, and commercial sponsorship.

Net profit for the period of January 1 to June 30, 1936, is \$867.65. The owner of the capital stock of licensee corporation drew \$1,000 a month as salary from the station during the period of the statement submitted. Subsequent to June 30, 1936, the business showed an increase in profits of \$1,000 to \$1,500 per month.

Columbia Broadcasting System of California, Inc., is a subsidiary of Columbia Broadcasting System, Inc., of New York. None of the officers or directors of this corporation is an alien; and not more than one-fifth of the capital stock of said corporation is owned of record or voted by aliens or their representatives.

The assets of Western Broadcasting Company (now Columbia Broadcasting System of California) as of June 30, 1936, totaled \$449,861.34. The net worth of that company as of that date was \$301,808.20. The total assets of the Columbia Broadcasting System, Inc., and subsidiary companies as of July 25, 1936, was \$10,748,331.29 and its net worth was \$7,411,573.66. No new stock issue is contemplated. The transferee is qualified financially to continue the operation of Station KSFO.

In 1928 the Columbia System was a relatively small network of 16 stations on the eastern seaboard with some few outlets in the middle west but in no wise a coast-to-coast project. In order to extend the service of the network, arrangements were made with the Don Lee Broadcasting Company, which then operated three stations in California. The Don Lee organization has since acted as Columbia's West Coast representative, but this association is being terminated. As a matter of policy, the Columbia System is undertaking to do more and more of the detail work connected with the maintenance and operation of its West Coast stations. The geographical separation between the East and West Coasts, the difference in time zones, special requirements of advertisers in the centers of industry and population on the West Coast and unique opportunities to obtain talent, particularly from the moving-picture industry at Los Angeles, make it desirable to the Columbia System to have a West Coast organization.

The following stations are either owned or operated by Columbia Broadcasting System, Inc., directly, or through the agency of subsidiaries:

Call letters	Address	Frequency	Power
WABC-WBOQ.....	New York, N. Y.....	860	50 kw.
WJSV.....	Washington, D. C.....	1460	10 kw.
WBT.....	Charlotte, N. C.....	1080	50 kw.
WKBC.....	Cincinnati, Ohio.....	560	1 kw., 5 kw.-LS.
KMOX.....	St. Louis, Mo.....	1090	50 kw.
WBBM.....	Chicago, Ill.....	770	50 kw.
WCCO.....	Minneapolis, Minn.....	810	50 kw.
KNX.....	Los Angeles, Calif.....	1060	50 kw.

Station WEEI (590 kc., 1 kw.), Boston, Massachusetts, is operated by the same interests under a lease agreement.

Columbia Broadcasting System, Inc., plans to acquire the licenses of all stations operated through the instrumentality of its subsidiaries and that plan would include Station KSFO. Proposed plans include organization of and arranging for the establishment of offices in California with various departments which go to make up the service part of the broadcast network including sales, production, engi-

neering, sales promotion, artists, and publicity. Additional physical facilities and personnel necessary to organize and broadcast products of a high standard over radio Station KSFO would be provided. The transferee is technically qualified to continue the operation of Station KSFO.

The transferee proposes to increase the basic rates of Station KSFO from \$150 to \$325 an hour. Based upon this increase in basic rates, estimates of the earning ability and possibilities of the station as a network unit were given as follows:

Estimated gross revenue.....	\$280,000 per year
Expenses, including rent and depreciation on a new transmitter.....	\$250,000
Estimated net income.....	\$30,000 per year.

Further plans of the assignee, Columbia Broadcasting System of California, Inc., include putting in new equipment (the present transmitter is to be used as an emergency auxiliary transmitter), changing the site of the present transmitter, and establishing studio and office facilities for not only local headquarters but also Columbia headquarters. The present studio is to be used for a while, depending on where larger studios will be located. In other words, they plan to "revitalize the entire plant by putting in new equipment and everything that goes with it at a new location."

At the present time Station KFRC is carrying the programs of the Columbia Broadcasting System. The plan of the Columbia System is that Station KSFO will displace KFRC, and KSFO will be the only station carrying Columbia programs in San Francisco. The Columbia System proposes to broadcast approximately 1,650 hours a year of chain commercial programs and about 500 hours a year of local broadcasts.

Mr. W. I. Dumm, President of Associated Broadcasters, Inc., first interviewed officials of the Columbia Broadcasting System, Inc., in 1935, with the suggestion that Station KSFO be placed upon the Columbia Network and that the station be leased to Columbia. This original suggestion led to further negotiations between the parties which ultimately resulted in the execution of a lease-agreement. The agreement is dated June 26, 1936. The parties have made the agreement and an executed assignment of the station license a part of this record. The documents are required by the Rules and Regulations of the Commission to be filed with applications seeking authorization for the transfer of a station license. It is incumbent upon the Commission that it examine the lease-agreement and determine whether the provisions therein are fully within the Communications Act and not contrary to the public interest.

The expiration date of the agreement is fixed as January 1, 1942, subject, however, to the right of the lessee to successive renewals thereof for a period of five years each; the last renewal period not to extend beyond January 1, 1952.

The agreement contains a number of provisions pertaining to the equipment and other properties of the station. These provisions merely protect the property rights of the lessor and need not here be further considered. The agreement also contains provisions relating to the license renewals of the station and the future disposition thereof, and such provisions must be carefully scrutinized for the reasons heretofore stated. The provisions of the lease-agreement referred to are as follows:

The Lessee will make due and proper application at its expense for all operating licenses and permits required for the operation of Station KSFO during the term of this lease. In the event that it is necessary that applications for operating licenses and/or other applications, petitions, or procedural documents relating to the operation of Station KSFO be filed in the name of the Lessor, the Lessor will, at the request of the Lessee, file such applications, petitions, or documents and will render such cooperation to the Lessee as may be appropriate to the subject matter. The Lessor shall have the right to intervene in any proceeding affecting Station KSFO and to engage counsel of its selection, at its own expense, who may participate with the Lessee in any action or proceeding involving the license or properties of Station KSFO.

* * * * *

The Lessee will make and duly prosecute due and proper application for the reassignment to the Lessor of all operating licenses and permits required for the operation of Station KSFO at any termination of this lease, and the Lessee will, at the request of the Lessor, file and duly prosecute such applications, petitions, or documents and will render such cooperation to the Lessor as may be appropriate to the subject matter.

This agreement also contains a provision setting forth many contingencies upon which the lessor may reenter and take possession of the leased property without legal process and without being guilty of trespass. Thereupon, the provision mentioned continues as follows:

The Lessee and/or its assigns hereby irrevocably appoints the Lessor its attorney-in-fact with full power upon such termination in its own name or in the name of the Lessee and/or its assigns to execute all documents to effect an assignment of all licenses, permits, and other assignable contracts relating to KSFO to Lessor or its nominee.

The foregoing shows: (1) that although the lessor proposes to assign its license it claims and reserves the right to employ counsel and to enter into any action or proceeding involving the license to operate Station KSFO; (2) that the lessor binds the lessee to make "application for reassignment to the lessor of all operating licenses and permits required for the operation of Station KSFO at any ter-

mination of this lease"; and (3) that in case of default in the performance of the contract by the lessee the lessor may under power of attorney embodied in the contract, acting in the name of the lessee, assign to itself (the lessor) "all licenses, permits, and other assignable contracts relating to KSFO."

More specifically, the above lease provisions represent (1) that the lessor is to be protected in the issuance of station license renewals during the period of the agreement, and (2) that the lessor is assured the possession of station license existing at the time the lease terminates.

The Communications Act of 1934 provides that a "station license shall not vest in the licensee any right * * * in the use of the frequencies designated in the license beyond the term thereof nor in any other manner than authorized therein." (Section 309 (b) (1))

A broadcast station license is issued for a term of six months. The license is a personal privilege and not transferable without the consent of this Commission. The licensee has a continuing right to apply at proper times for successive renewals of his license. (*Technical Radio Laboratory v. Federal Radio Commission*, 36 F. (2d) 111, 113.) In the present case, should the license for Station KSFO issue to the proposed assignee the assignor could have no continuing right in applying for renewals of said station license; nor could the assignor have any right in the station license existing at the time of the expiration of the lease. To recognize such a right in the assignor would be tantamount to the recognition of an outsider to the use of a frequency at a future time.

Furthermore, the assignee of a station license operating under a lease-agreement which contains provisions reserving to the lessor assurance of station license renewals and the possession of the station license existing at the termination of the lease, constitutes an arrangement which is misleading to the public generally, and particularly misleading to the investing public. This, for the reason that upon its face the lease indicates that with the termination thereof the station license then existing will vest in the lessor, which is contrary to the Communications Act. The lease provisions referred to may also mislead the parties to the lease; and the same provisions may restrain others from applying for the use of the frequency covered by the license should the assignee fail in its duty to the public or cease to operate the station licensed.

Prior to the enactment of the Communications Act, the Federal Radio Commission authorized the M. A. Leese Radio Corporation to assign its license for radio Station WMAL to the National Broadcasting Company, Inc. At the time of assignment of the station

license the National Broadcasting Company, Inc. executed a lease-agreement with the owners of Station WMAL which contains provisions assuring the lessor of license renewals and possession of the license that exists at the time the lease terminates. These provisions are similar to the provisions contained in the lease-agreement between the parties herein.

The Federal Communications Commission on April 20, 1938, in a *per curiam* opinion relating to the transfer of stock of the M. A. Leese Radio Corporation to The Evening Star Newspaper Company, stated its position as to the above provisions of the lease arrangement between the M. A. Leese Radio Corporation and the National Broadcasting Company, as follows:

And it appearing that the transfer of control of M. A. Leese Radio Corporation does not directly involve a transfer of a station license, the frequencies authorized to be used by the licensee, or the rights therein granted, for the reason that M. A. Leese Radio Corporation does not have any such rights to transfer, having heretofore assigned the license of Station WMAL, including the frequencies and all the rights therein granted, to the National Broadcasting Company; and that since said transfer this Commission has granted renewals of said license, no reasons for failure to renew having been made to appear, to the National Broadcasting Company;

And it appearing that upon the expiration of the lease between said M. A. Leese Radio Corporation and the National Broadcasting Company, Inc., neither the license nor any rights therein will revert to the M. A. Leese Radio Corporation or its assignees, or The Evening Star Newspaper Company as a stockholder therein;

And it appearing that the assignment of license from the said M. A. Leese Radio Corporation to National Broadcasting Company pursuant to the lease agreement did not, could not, and does not operate as approval of or consent to the terms of said agreement as such, nor is it in any wise an acceptance or recognition of any rights, equities, or priorities of the M. A. Leese Radio Corporation, or its assignees, or any of the stockholders thereof so far as the license of broadcast Station WMAL is concerned;

This Commission now finds that lease provisions assuring the lessor of renewals of licenses, and/or assuring the lessor of the possession of the station license existing at the termination of the lease, are contrary to the Communications Act and are not in the public interest.

This Commission and its predecessor (Federal Radio Commission of the station license existing at the termination of the lease, opinion) authority for the assignment of licenses based on leases containing provisions that are found herein to be contrary to the Communications Act and not in the public interest. In approving these assignments the Commission accepted the lessee as one stepping into the shoes of the lessor with the same privileges and responsibilities; and it was the opinion of the Commission that its approval of

an assignment did not carry with it approval of the provisions of the lease beyond the mere transfer of the license. Experience has shown, however, that this construction may mislead the public in general, as well as the parties to the lease agreements.

In the case of *M. A. Leese Radio Corporation, supra*, this Commission without the lessee before it, gave notice that no station license privileges would be recognized in the "M. A. Leese Radio Corporation, or its assigns, or any of the stockholders thereof." This was tantamount to saying that provisions in the lease under which the National Broadcasting Company operates Station WMAL, assuring the lessor of station license renewals and the possession of the station license existing at the time the lease terminates, could not and would not be binding upon the Commission. If any action of this Commission or action of its predecessor, the Federal Radio Commission, in granting an assignment of a station license, may be construed as an approval of lease provisions, assuring the lessor of station license renewals and/or the possession of the license existing at the termination of the lease, then to that extent said actions are hereby overruled.

GROUNDS FOR DECISION

On the record in this case the Commission finds:

1. The provisions of the lease-agreement between the applicants herein, providing assurance to the lessor of license renewals for Station KSFO and assurance of possession in the lessor of the license of said station existing at the termination of the lease, are in conflict with provisions of the Communications Act and not in the public interest;
2. A grant of the joint application of The Associated Broadcasters, Inc., and Columbia Broadcasting System of California, Inc., for consent to assign the license of Station KSFO under the provisions of the lease-agreement of June 26, 1936 between said parties, is contrary to Sections 309 (b) (1) and 310 (b) of the Communications Act of 1934;
3. The proposed transferee is legally, financially and otherwise qualified as a licensee of Station KSFO but the provisions of the lease-agreement under which it would operate said station, assuring the transferor license renewals and the possession of the existing station license at the termination of the lease precludes the finding that the assignment of the license would serve public interest, convenience, and necessity.
4. A grant of the joint application of The Associated Broadcasters, Inc., and the Columbia Broadcasting System of California, Inc. for consent to assign the license of Station KSFO is not in the public interest.

Brown, Commissioner, concurring:

I concur with the result reached by the majority of the Commission in this case, but I cannot subscribe to the reasons advanced by them for denial of the application.

The majority have advanced for the first time the opinion that a contract of lease, which binds the lessee to make application for reassignment of the license to the lessor upon the expiration of the lease, is "contrary to the Communications Act and not in the public interest."

Section 301 of the Act provides:

* * * No person shall use or operate any apparatus for the transmission of * * * communications * * * by radio * * *, except under and in accordance with this Act and with a license in that behalf granted under the provisions of this Act.

In making application to this Commission for a license, an applicant has the burden of showing that he has possession of and the right, without restriction, to *use or operate* certain described apparatus for the period of the license applied for. The license period is fixed at six months by regulation and this Commission may not grant a license for a period in excess of three years (Section 307 (d)). Ownership of equipment is not required. It is sufficient if an applicant shows that he is in possession of certain equipment by virtue of a lease, sale, or other arrangement and that he will be in possession of such equipment during the term of the license. This, certainly, the applicant in this case had demonstrated.

Sections 301 and 309 (b) (1) prevent the assertion by a licensee of any right in the license beyond its terms. The holding of a license may not vest in the licensee any right to operate the station or any right to the use of the frequencies designated beyond the terms and conditions of such license. And Section 310 (b) prevents the transfer of a license without Commission consent in writing. The parties in this case have agreed to make application for reassignment of the license to the lessor upon termination of the lease. In one sense they have attempted to determine the right to use the frequency *as between themselves*. But certainly this assertion would have no effect upon the power of the Commission. As to this Commission and its powers and duties under the Communications Act, the provision must be simply a nullity.

I am unable to see how the granting of consent to the assignment of license as proposed could possibly be construed as an approval of a thing which the law (Sections 301 and 309) specifically negatives. Even if it be assumed that the parties have asserted a right as against the Commission, we cannot by our action repeal the express provisions of the statute.

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Moreover, Sections 303, 308, 309, 312, and others of the Communications Act confer upon this Commission broad regulatory powers with respect to the original issuance or subsequent modification, revocation, or renewal of licenses. These broad powers are specific, and they recognize that in the interest of the public the Commission may at any time, upon sufficient reason being shown, modify, revoke, or refuse a license. Again, we may not by our action repeal these provisions of the statute.

Section 310 (b) of the Federal Communications Act of 1934, governs the transfer of licenses:

(b) The station license required hereby, the frequencies authorized to be used by the licensee, and the rights therein granted *shall not be transferred, assigned, or in any manner either voluntarily or involuntarily disposed of, or indirectly by transfer or control of any corporation holding such license, to any person, unless the Commission shall, after securing full information, decide that said transfer is in the public interest, and shall give its consent in writing.* [Italics supplied.]

The public interest, therefore, is the standard we must apply in this case. I fail to follow the reasoning of the majority that the reversionary provision in the lease is per se contrary to the public interest. It is difficult to see how the public in this case would be harmed by the fact that the proposed assignee would operate his station with equipment leased rather than purchased. The public is interested in the continued operation of the station and the continued improvement of its technical service and programs, but unless such are jeopardized by some provision of the instrument of conveyance, the exact form, whether lease, sale, or gift, is unimportant. Where a fact appearing in the record has no reasonable or proximate effect upon the programs or service of the station, the public interest is not concerned.

There are aspects of this case other than those assigned by the majority because of which I concur in the denial of the application. The sole test is whether the granting of the instant application would serve the public interest. From the record, I am unable to find that any benefit whatever would be derived by the public if this application be granted. The public will have the benefit of the present programs carried by Station KSFO and in addition will not be denied Columbia Broadcasting System's programs, which are now being carried by Station KFRC. I am, therefore, content in this case to ground my decision upon the fact that the applicant has failed to show sufficient reasons in the public interest to warrant the granting of this application.

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matters of
 WNAX BROADCASTING COMPANY (WNAX),
 YANKTON, SOUTH DAKOTA.
 For renewal of license. } DOCKET No. 4827.

CHAS. H. GURNEY, Transferor (WNAX),
 SOUTH DAKOTA BROADCASTING CORPORATION,
 Transferee,
 YANKTON, SOUTH DAKOTA.
 For transfer of control of Corporation. } DOCKET No. 5167.

Decided October 18, 1938

Frank D. Scott, on behalf of WNAX Broadcasting Company;
Paul M. Segal on behalf of Transferor and Transferee; *James D. Cunningham*, *Hugh B. Hutchison*, and *Russell Rowell* on behalf of the Federal Communications Commission.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION (Craven, Commissioner, dissenting; Case, Commissioner, not participating)

STATEMENT OF FACTS

This proceeding arose upon the applications of (1) Chas. H. Gurney, transferor, and South Dakota Broadcasting Corporation, transferee, for consent to transfer the control of the licensee corporation of Station WNAX, Docket No. 4827; (2) WNAX Broadcasting Company for renewal of the license of Station WNAX operating at Yankton, South Dakota, on 570 kilocycles, 1 kw. night, 5 kw. L. S. for unlimited time, Docket No. 5167. The application in Docket No. 4827 was heard before an examiner on November 8, 1937, and a report (I-588) was thereafter submitted recommending that the application be granted. Subsequently the Commission designated for hearing the application for renewal of license for reasons hereinafter set forth and also ordered that a further hearing be held on the application for

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consent to transfer control of licensee corporation. The hearing on the renewal of license of Station WNAX and further hearing on the application for consent to transfer control of licensee corporation was held on June 1 and 2, 1938. The examiner before whom the case was heard submitted his report (I-705) on July 11, 1938, recommending that both applications be granted. No exceptions or requests for oral argument have been filed by any party to the proceedings.

IN RE DOCKET NO. 5167

The application for renewal of license of Station WNAX was designated for hearing:

1. Because of the pendency of the application for consent to transfer control of licensee corporation.
2. To determine the financial qualifications of the applicant to continue the operation of Station WNAX.
3. To determine the nature and character of the program service rendered.
4. To determine whether the continued operation of the station would serve public interest.

The application for consent to transfer control of the licensee corporation of Station WNAX is discussed hereinafter. With respect to the financial qualifications of the applicant to continue the operation of Station WNAX, there were introduced certain financial statements as of May 14, 1938. The balance sheet as of this date indicates a net worth of \$63,596.99. The income statement for the period from December 27, 1937, to May 14, 1938, indicates that the gross income of the station was \$59,260.39, and that the total expenses were \$39,348.44. After deductions have been made for certain discounts and allowances, the net gain of the corporation for the period indicated was \$11,206.76.

The bill of particulars on the application for renewal of license of Station WNAX directs attention to any programs involving the solicitation of funds on behalf of projects conducted by officers of the licensee corporation. The only program of this type referred to in the record was one conducted by Mr. D. B. Gurney, President of the licensee corporation. It has been the custom of the station to allot 15 to 30 minutes during the noon hour to Mr. Gurney for the purpose of allowing him to discuss primarily problems relating to agriculture.

In the early part of 1938 Mr. Gurney decided to launch a program of activity for the purpose of gathering claims for the refund of taxes which certain farmers may have as a result of legislation which was then pending before the United States Congress. This legislation concerns itself with the hog-processing taxes which were levied under the original A. A. A. which was declared unconstitutional.

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Mr. D. G. Gurney had an agreement with the Managing Director of Station WNAX that if the station would permit him to utilize his usual time during the noon hour for broadcasts with respect to this activity, he would pay the station rates for the time used out of moneys which may be remaining after other expenses for carrying out the program have been taken care of. The expenses of the project were to be met by an original service charge on each claim filed with Mr. Gurney, dependent upon the amount of the claim, and were to be supplemented by 5% of any refund obtained by any of the claimants.

Mr. Gurney utilized his usual time over the air for the purpose of soliciting these claims during the months of February, March, and April. Around the middle of April the active solicitation of the claims was lessened because it appeared to Mr. Gurney that legislation at that session of Congress was not likely.

Reduced to its very essence the program appears to have been an active solicitation of funds primarily for the purpose of employing various advertising and other media to influence legislation pending before the United States Congress, which, if passed, would result in the establishment of claims against the United States. It is the opinion of the Commission that the allowance by a licensee of broadcasts of the type above referred to, under the facts involved herein and for the purpose indicated, is not consistent with the standard of public interest which broadcast stations are expected to meet.

Aside from the aforementioned program, there was no question raised in this proceeding as to the program service of Station WNAX. The station has been in operation for approximately twelve years and has been granted successive renewals of its license during that period. The station carries programs of the Columbia Broadcasting System.

IN RE DOCKET NO. 4827

This is an application for consent to transfer control of the licensee corporation of Station WNAX (WNAX Broadcasting Company) from Charles H. Gurney to the South Dakota Broadcasting Corporation.

WNAX Broadcasting Company is a South Dakota corporation, organized in 1935 for the purpose of taking over the license of Station WNAX from The House of Gurney, Inc. Upon approval of the Commission of the assignment of license, and the transfer of all station equipment, The House of Gurney was to receive 1,500 shares of nonvoting stock with a par value of \$100 each in the WNAX Broadcasting Company. At the same time there was issued 500 shares of voting stock with a par value of \$100 which was distributed to the stockholders in The House of Gurney, Inc., in proportion to their

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stock holdings in that corporation. Chas. H. Gurney received, of this issue, 428 shares. This assignment of license was approved by the Commission on November 26, 1935.

Subsequent to the above assignment Chas. H. Gurney purchased all of the 1,500 shares of nonvoting stock from The House of Gurney, giving a note therefor in the amount of \$150,000, or \$100 per share. On June 1, 1937, payments had been made on this note in the amount of \$40,000. At the time of the June 2, 1938, hearing additional payments in the amount of \$60,000 had been made on this note. Chas. H. Gurney has purchased outright, for \$100 per share, 22 additional shares of the voting stock, and has an option to purchase the remaining 50 shares of voting stock at \$100 per share. This option will be exercised in the event the proposed transfer is approved by the Commission, and all of the outstanding stock in the WNAX Broadcasting Company will be transferred to the South Dakota Broadcasting Corporation.

Under the terms of the agreement between Chas. H. Gurney and the South Dakota Broadcasting Corporation, the transferee agrees to pay the transferor \$100 per share for the 2,000 outstanding shares of Class A and Class B stock. In accordance with the agreed method of payment, an advance of \$50,000 has been made to the transferor, who has given the transferee a note in like amount, payable if the Commission were to fail to approve the proposed transfer. In the event of approval, a further payment of \$100,000 was to be made within 10 days thereafter. The final payment of \$50,000 is agreed to be made four months after the approval.

In the contract of sale, The House of Gurney agrees to lease all of the premises now occupied by the offices and studios of WNAX to the licensee corporation for a period of three years. In return therefor, the transferee agrees to set aside broadcast time over Station WNAX for the use of The House of Gurney in the amount of 2½ hours per day for the first year; 2 hours daily for the second year; and 1½ hours per day for the third year. The content, continuity, text, the extent of advertising, etc., of all programs broadcast during such reserved time are to be subject to the approval of the licensee corporation.

Before discussing the value ascribed to the equipment or property of the corporation whose stock is being transferred in this proceeding, it is necessary to review briefly the history of Station WNAX and the method in which its accounts have been kept. Prior to the creation of the WNAX Broadcasting Company the accounts for the station were kept as a "department" in the accounts of the House of Gurney, Inc. There was naturally a considerable intermingling

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of the radio department accounts with the other accounts of the House of Gurney. Even after the creation of a separate set of books for WNAX Broadcasting Company this intermingling of accounts continued because the same person, Chas. H. Gurney, held the controlling interest in both corporations. The charges back and forth between the two corporations were made at the order of Chas. H. Gurney. Admittedly on the part of Mr. Gurney, the system of bookkeeping was inaccurate.

After the negotiations which resulted in the contract hereinabove referred to were entered into, a completely new bookkeeping system was begun in July 1937. This system was designed to more accurately reflect the financial transactions of the broadcast station and coincided with the method of bookkeeping which would be adopted by the South Dakota Broadcasting Corporation for Station WNAX if the contract of sale went into effect. One of the features of this system is the elimination of all intercompany accounts between WNAX and the House of Gurney.

The books of the station have never shown all of the revenue that might properly have been attributed to the activities of the broadcast station.

On the basis of an inventory conducted for the purpose of furnishing the Commission with the information required on applications for transfer of control of broadcast licensee corporations, exhibits were prepared and offered in evidence for the purpose of showing, among other things, the original cost of the equipment, its depreciated value, and its replacement cost.

The original cost of this equipment is shown by the exhibits at \$100,000, which figure was arrived at through the above-mentioned inventory and after allowing for an understatement of value in the amount of \$465.63 made for the purpose of arriving at an even figure. The equipment is carried on the books of the station at \$95,038.51. There is no evidence in this record that the inventory conducted by the transferor does not accurately reflect the equipment on hand and the original cost of the various items included therein. It is our opinion that the best evidence in this record of the original cost of the equipment of Station WNAX is the figure of \$100,000 arrived at after the inventory conducted for the purpose of furnishing information in connection with this application.

The depreciated value of the equipment was placed by the applicant at \$55,914.81. A life expectancy of 10 years was employed by the transferor in computing the accrued depreciation on this equipment. A life expectancy of 8 years is recommended by the Engineering Department of the Commission as the most acceptable basis for

estimating depreciation of broadcast station equipment. The application of this latter rate would result in a depreciated value of \$41,158.09.

The replacement cost of the technical equipment was estimated by the applicant to be \$84,956.21.

A balance sheet of WNAX Broadcasting Company as of June 1, 1937, prepared on F. C. C. Form No. 706, was offered and received in evidence, as Exhibit No. 16. At the time it was offered it was stated that the figures thereon were taken from "the books" and that they accurately reflect what "the books" reveal. The witness later indicated that by "the books" he meant all of the books of the radio station, the House of Gurney, the special inventory, and other records which were under his direction, and were concerned with the radio station and its operation. This balance sheet statement shows assets and liabilities as set forth in a footnote hereto.¹

¹ Balance sheet as at June 1, 1937

ASSETS	
Current Assets:	
Cash	\$3, 784. 95
Marketable securities	
Accounts receivable	\$7, 116. 76
Less reserve	
	7, 116. 76
Notes receivable	
Less reserve	

Total Current Assets	\$10, 901. 71
Fixed Assets:	
Land	1, 000. 00
Land improvements	
Less allowance for depreciation	

Buildings	9, 000. 00
Less allowance for depreciation	

	9, 000. 00
Transmitting equipment	54, 881. 29
Less allowance for depreciation	30, 268. 56
	24, 612. 73
Radiating system	17, 625. 08
Less allowance for depreciation	5, 421. 56
	12, 203. 47
Studio equipment	17, 927. 95
Less allowance for depreciation	2, 507. 29
	15, 420. 66
Other technical equipment	9, 565. 73
Less allowance for depreciation	5, 887. 78
	3, 677. 95
Total Fixed Assets	65, 914. 81
Deferred Charges:	
Prepaid expenses, Insurance	682. 84
Total Deferred Charges	682. 84
Total	77, 499. 36

A question is raised in the record as to the propriety of the figure of \$3,784.95 for "cash" inasmuch as the books of the company, which were examined by a Commission accountant, reveal a total of \$599.65 in the "cash" account. It is clear from this record that the difference between the two figures was calculated by Mr. Gurney as the amount due the broadcast station from the Columbia Broadcasting System. There is no support in this record for the contention that this amount of money due from Columbia is also reflected in the "accounts receivable" of Station WNAX as shown on Exhibit 16. Mr. Gurney stated that the Columbia Broadcasting System account had always been considered as a "cash-on-hand" proposition rather than an account receivable. The Commission's accountant testified that in his examination of the books of Station WNAX he had come across on account with the Columbia Broadcasting System but did not state where it was carried in the books.

The valuation of \$1,000 for "land" was arrived at by Mr. Gurney as a result of a specific effort to place a low value on the fixed assets of the station. The books of the station carry this land at a value of \$8,303.75. The figure of \$9,000 for buildings was similarly arrived at by Mr. Gurney. The books of the station carry such buildings at a value of \$17,945.80. With respect to these two items the balance sheet reflects an understatement of the book value of the station in the amount of \$16,249.55.

The item of \$100,000 for the equipment of Station WNAX was arrived at by means of the inventory hereinbefore referred to. The books of the company carry the amount of \$146,178.60 for this same

LIABILITIES

Current and Accrued Liabilities:

Accounts payable.....	\$3,062.91	
Total Current and Accrued Liabilities.....		<u>\$3,062.91</u>
Total Liabilities and Reserves.....		<u>3,062.91</u>

NET WORTH

Capital Stock:

Preferred stock:

Issued.....	-----
Less treasury stock.....	-----

Outstanding.....

Common stock:

Issued 2,000 shares no par value.....	74,436.45
Less treasury stock.....	-----
Outstanding.....	-----

Total Capital Stock.....

Total..... 77,499.86

equipment. This figure, however, includes a \$51,140.09 appreciation account. The variance between the book cost of \$95,038.51 (after eliminating the arbitrary appreciation account) and the estimated original cost of \$100,000 is discussed hereinbefore.

It is pointed out in the record that the accrued depreciation applicable to the equipment as indicated by the balance sheet above referred to is \$44,085.19, whereas the books of the station reflect a depreciation reserve in the amount of \$64,124.40. We are fully cognizant that depreciation accounting may require that certain property be depreciated at varying rates for different purposes, but, as stated above, this Commission has enacted no rules in connection with the rates of depreciation for broadcast station equipment. Also, the Commission had before it in the original record the figure of \$41,158.09 as the depreciated value from the estimate made by the Commission's engineer, which figure is more or less comparable to the depreciated value as shown by the books.

The net worth of the WNAX Broadcasting Company as revealed by the balance sheet set out above is \$74,436.45. It is not necessary in discussing the public interest involved in this transfer to find that the balance sheet accurately reflects the books of the corporation.

The balance sheet hereinbefore referred to and identified as Exhibit 16 is required to be filed by all applicants for the consent to transfer of control of a licensee corporation. The form of such statement, No. 706, has been approved by the Commission for its use in this connection. There being no existing requirement that broadcast stations must observe a uniform system of accounts, it is possible that the system of bookkeeping in use by a particular station will not readily lend itself to transposition onto the balance sheet form approved by the Commission. It follows, therefore, that a variance between amounts shown for accounts reflected on the F. C. C. balance sheet form and the accounts carried in the books of a broadcast licensee corporation which may or may not have been set up on a similar classification, is reasonably to be expected.

It was the purpose of the transferor in offering the exhibit in question to reflect, as nearly as practicable on the form prescribed by the Commission, the financial condition of the WNAX Broadcasting Company. We are unable to find from this record that the exhibit offered does not substantially reflect the financial condition of the WNAX Broadcasting Company which will exist when the proposed transfer of control takes place.

A profit-and-loss statement for Station WNAX for the period June 1, 1936, to May 31, 1937, was also offered and received in evidence, as Exhibit 17. This statement is set forth in a footnote

hereto.² Included in the operating revenue for this period is the sum of \$24,500 arising out of charges made by Station WNAX to the House of Gurney for broadcasting time during the first five months of 1937. An effort is made on the record to challenge the propriety of the inclusion of this sum in the operating revenue of Station WNAX.

Without attempting to rule on the question from the standpoint of proper accounting, it must be pointed out that there existed on the books of WNAX as of January 1, 1937, an obligation to the House of Gurney in the amount of \$36,000 which undeniably had been advanced

² Profit-and-loss statement, WNAX Broadcasting Company, licensee from June 1, 1936, to May 31, 1937

Operating Revenue:		
Broadcasting Revenue (Schedule 1A)-----	\$132,504.83	
Miscellaneous operating revenue (Schedule 1B)-----		\$132,504.83
Operating Revenue Deductions:		
Technical department:		
Salaries -----	\$8,125.00	
Line expense-----	12,074.01	
Maintenance and repairs-----	1,940.81	
Other expense (Schedule 2A)-----	4,861.61	
		25,000.93
Production department:		
Salaries -----	22,615.53	
Other expense (Schedule 2B)-----	16,665.81	
		39,280.84
Sales department:		
Salaries -----	2,080.00	
Commissions -----	2,209.78	
Other expense (Schedule 2C)-----	7,165.21	
		11,454.99
General and administrative:		
Salaries -----	3,432.00	
Other expense (Schedule 2D)-----	6,192.93	
		9,624.93
Depreciation of tangible property-----		5,296.38
Amortisation of intangible property-----		
Operating rents -----		8,000.00
Taxes (except Federal income taxes)-----		853.46
		<u>99,511.48</u>
Net operating revenue-----		32,993.35
Rent income from operating property-----		343.50
		<u>33,336.85</u>
Total Operating Income-----		33,336.85
Other Income:		
Interest and dividend income-----		
Gain on sale of fixed assets-----		
Miscellaneous other income (Schedule 3)-----	78.84	
		<u>78.84</u>
Gross income-----		33,415.69
Income Deductions:		
Interest on debt-----	142.53	
Bad Debts-----	2,495.28	
Miscellaneous income deductions (Schedule 4)-----	68.92	
		<u>2,706.73</u>
Net income-----		30,708.96

by that company to enable Station WNAX to purchase equipment and cover certain operating expenses. The legality of this obligation to the House of Gurney is not challenged in the record.

It is inferred in the record that these charges of time to the House of Gurney may have been made at this particular time and in these amounts for the purpose of reflecting a higher earning capacity for Station WNAX, which would in turn have a relationship to the purchase price to be paid for the stock proposed to be transferred herein. The earning capacity of a particular business is not the sole criterion by which its value may be judged.

Any implication that this item of \$24,500 was treated as income for some purposes and not as income for the purpose of avoiding income-tax liability, is expressly contradicted by the testimony of Mr. Gurney to the effect that, if the system of bookkeeping had not been changed as of July 1, 1937, and the item of \$24,500 dropped because it was an intercompany account, *such item would have continued on the books of the WNAX Broadcasting Company as operating revenue and taxes would have been paid thereon.*

Furthermore, the profit and loss statement carries an expense item of \$8,000 in the nature of a liability to the House of Gurney which did not appear on the books, and which the record indicates is compensation for certain services, rentals, and supplies furnished by the House of Gurney to Station WNAX. If it had been the intention of the transferor to "pad" or "exaggerate" the earning capacity of Station WNAX, this intercompany item need not have been shown and a higher net income would have appeared.

But aside from the above, the transferee is purchasing the stock in the WNAX Broadcasting Company at the same price, \$100 per share, at which it was valued when it came into, or will come into, the hands of Chas. H. Gurney. The circumstances under which Mr. Gurney became, or will become, the owner of all of the stock of the WNAX Broadcasting Company are discussed hereinbefore.

One of the elements which has been injected into the Commission's consideration of the transfer of control or assignment of license cases is that of the purchase price to be paid. Conceivably the purchase price paid for a broadcast station may be so high that the conclusion is inescapable that a valuation has been placed on the station's operating assignment or that a burdening of the station in a financial way will result so that its ability to operate in the public interest may not be clear from the record. We do not believe that such is the case here.

The South Dakota Broadcasting Corporation is legally authorized to engage in the business of radio broadcasting. All of the officers,

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directors, and stockholders of the transferee are citizens of the United States.

The president of the South Dakota Broadcasting Corporation is Gardner Cowles, Jr., of Des Moines, Iowa. He is also connected with the Iowa Broadcasting Company, the licensee of Stations KSO and KRNT in Des Moines, and WMT in Cedar Rapids, Iowa. The other officers and directors of the transferee are connected with the same corporation.

None of these stations renders an acceptable degree of service to the town of Yankton where Station WNAX is located. There is no overlapping of the service areas of these stations so far as night-time operation is concerned. There will, however, be a slight overlapping of the service areas of the Des Moines stations and Station WNAX, within a small portion of the rural area between Des Moines and Yankton. The newspaper interests with which the stockholders of the South Dakota Broadcasting Corporation are connected do not have any concentrated or general circulation within the primary service area of Station WNAX.

The transferee has an authorized capital stock of 5,000 shares, with a par value of \$100 each. Two thousand five hundred shares have been issued, and \$250,000 has been paid into the corporation. When the transfer is approved, it is proposed to liquidate \$150,000 in United States Treasury Bonds on hand for the purpose of meeting the payments called for by the contract.

An average of thirty persons are employed at Station WNAX, including five operators, three announcers, five office employees, and seventeen entertainers. It is proposed by the transferee to shift one of its employees, from a station in Iowa to Yankton, South Dakota, and place him in charge of the operation of Station WNAX. The proposed station manager has been in the broadcasting business for over three years, during all of which time he has been employed by the Iowa Broadcasting Company.

The programs of the station have been designed to fit the need of an agricultural area. Bulletins of the Department of Agriculture are regularly broadcast and market reports are broadcast four times daily. The station has always cooperated with various religious denominations and time is given daily to the colleges and schools in the area for the broadcasting of educational, musical, and dramatic features.

Station WNAX has exclusive contracts with the Standard Transcription Library Service and the United Press Association. United Press news bulletins are broadcast five times each day and local news events are broadcast over the station through an arrangement with the local newspaper in Yankton.

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It is to be the policy of the transferee to have the station continue the various community and educational programs now broadcast. When general improvements become possible, they are to be put into operation for better serving the area which WNAX now covers. No immediate changes in either the personnel or the program policy of the station are contemplated other than the position of general manager. The present relation of network programs to local programs is to be continued. It is to be the policy of the new management to extend the facilities of the station to civic, religious, fraternal, patriotic, and similar organizations and institutions without compensation. No changes in advertising rates are contemplated.

Approving the transfer sought herein will result in persons having control of Station WNAX who have had wide and successful experience in the operation of broadcast stations. It will also have the effect of removing from the control of Station WNAX persons who have been engaged in promoting certain of their own business enterprises through the medium of advertising over the radio station. At least one program has been carried over Station WNAX while under the control of the transferor which the Commission has found herein was not in the public interest. The proposed transferee will exercise a high degree of regard for the interest of the public in the program service which it will carry out over Station WNAX.

GROUNDS FOR DECISION

IN RE DOCKET NO. 5187

1. The licensee of Station WNAX is financially qualified to continue the operation of the station.
2. The particular program hereinbefore discussed is not in the public interest, but otherwise the program service of Station WNAX has been designed to meet the needs of its listening audience.
3. Continued operation of Station WNAX would serve public interest, convenience, and necessity.

IN RE DOCKET NO. 4827

1. The proposed transferee is legally, technically, financially, and otherwise qualified to take over and continue the operation of Station WNAX.
2. Approving the transfer sought would serve public interest, convenience, and necessity.

DISSENTING OPINION OF COMMISSIONER T. A. M. CRAVEN

I dissent from the majority decision in Docket No. 4827, involving the transfer of control of the stock of the WNAX Broadcasting
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Company, licensee of Station WNAX, to the South Dakota Broadcasting Corporation, because, in my opinion, in the absence of a positive showing to the contrary, public interest in any economic or political entity in general would be best served by a diversification of licensees controlling regional broadcasting stations, rather than by a concentration of such licensees in the same or allied interests. In the instant case, while the regional station WNAX is in South Dakota, it renders good daytime service to large portions of Iowa, where interests closely allied to the transferee control the operating policies of three regional stations rendering good daytime service to the remainder of Iowa.

Since this was not a specific issue in the notice of hearing in this case, it is my opinion that the case should be remanded for further hearing to secure additional evidence bearing on this phase of the matter so that the Commission may be in a better position to determine whether public interest would be served.

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
 WASHINGTON, D. C.

In the Matter of ALLEN B. DUMONT LABORATORIES, INC., UPPER MONTCLAIR, NEW JERSEY. For Construction Permit.	}	DOCKET No. 4849.
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Decided October 18, 1938

Edwin A. Falk and Harold Abrams on behalf of the applicant; Paul Porter, D. M. Patrick, and Karl Smith on behalf of Station W2XAX; Manton Davis, Frank W. Wozencraft, and Henry Ladner on behalf of Station W2XEP; A. L. Ashby, Henry Ladner, and Frank W. Wozencraft on behalf of Station W2XBS; Louis G. Caldwell, Reed T. Rollo, and Percy H. Russell on behalf of Station W3XE; James D. Cunningham on behalf of the Commission.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

By THE COMMISSION (Brown and Case, Commissioners, not participating):

STATEMENT OF FACTS

Allen B. DuMont Laboratories, Inc., Upper Montclair, New Jersey, commenced this proceeding by filing its application for a permit to construct a new television broadcast station.

The applicant proposes to install an experimental visual broadcast station to operate on 46000-56000 kilocycles, with power of 50 watts, from 12:00 o'clock at night to 9:00 o'clock in the morning.

The application was designated for hearing before an Examiner. His report (No. I-631) has been filed herein recommending that the application be granted.

Exceptions to the report have been filed on behalf of Station W3XE, but they raise no question for consideration of the Commission apart from the merits of the case.

Allen B. DuMont Laboratories, Inc., is a corporation organized under the law of the State of Delaware. The authorized capitalization of the corporation is \$150,000, divided into 2,000 shares of pre-

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ferred stock, par value \$25, and 100,000 shares of common stock, par value \$1. 1,200 shares of preferred and 54,000 shares of common have been issued.

The assets of the applicant, as disclosed by balance sheet introduced, amount to \$118,163.99. Fixed assets, including machinery, fixtures, and equipment, amount to \$19,276.97. Current assets amount to \$47,100.65, which include cash, \$16,667.43; accounts receivable, \$10,673.45; and inventories, \$19,759. The balance sheet shows the net worth of the corporation to be \$87,536.76. The net profits for the first seven months of the year 1937 were \$5,318.86.

Allen B. DuMont Laboratories, Inc., is not directly nor indirectly controlled by any other corporation. All of its officers, directors, and stockholders are citizens of the United States.

The applicant (organized in 1935) succeeded to the laboratory and manufacturing business formerly conducted by its president, Allen B. DuMont, as an individual. Mr. DuMont has been active in radio research and experimentation since the year 1924. In 1927 he was in the employ of the Westinghouse Manufacturing Company. Later he became chief engineer of the DeForest Radio Company in Jersey City where he was active in the operation of experimental television station W2XED which is said to be the first station in this country to transmit both sight and sound programs. Mr. DuMont has manufactured tubes and designed circuits used in television experimentation and while maintaining his interest in television his laboratory and manufacturing activities have been to some extent engaged in the design and manufacture of cathode-ray tubes and associated equipment. Such tubes were put on the market in 1932 and they are now being manufactured and sold in domestic and foreign markets by the applicant.

Allen B. DuMont Laboratories, Inc., has a staff of six graduate engineers, exclusive of Mr. DuMont; and several of these engineers, before engaging with the applicant, had experience in radio-research problems, having investigated principles employed in television broadcasting and having participated in the operation of experimental stations.

The estimated cost of the transmitter which the applicant proposes to install is \$5,000. The cost of the studio proposed is estimated in the same amount. No complete estimate of the cost of the program of research proposed has been submitted. This activity is to be conducted as a division of the general work of the applicant adjusted so as not to handicap its other research and manufacturing activities. A substantial part of the equipment necessary for the various projects of the applicant is ready for use. Such equipment

includes amplifiers, sweep circuits and tubes for supplying the visual signal to the transmitter.

The factory and laboratory of the applicant are located at 532 Valley Road, Upper Montclair, New Jersey. The applicant suggests that site for its proposed station. There are no airports in proximity thereto and the immediate surrounding area is sparsely populated. These conditions minimize the possibility of interference to broadcast reception resulting from the operation of the proposed station. The Director of Air Commerce, United States Department of Commerce, has no objection to the erection of the proposed tower at the location described by the applicant.

Allen B. DuMont Laboratories, Inc., proposes to locate its antenna on the roof of its plant located as above shown. A 4-unit system is proposed, designed to provide nearly uniform coverage with radiated energy directed almost entirely in the horizontal plane where it should be most useful. All installations—particularly antennas—are to be maintained in flexible condition, allowing for changes and modifications necessary for various experimental projects.

The applicant divides its program of research and operation into sixteen headings or projects as follows:

First, investigation of the use of double-beam cathode ray receivers for producing three-dimensional pictures. This undertaking will require the use of electrostatic deflection of the two beams in the system to avoid interaction between fields which would result from the use of electromagnetic deflection. Considerable difficulty in obtaining proper register of patterns will be experienced—and may be overcome;

Second, development of a double-beam receiver with reciprocal scanning to reduce flicker. More even illumination of the picture simultaneously from top and bottom is expected to assist in accomplishing the elimination of flicker. Applicant's engineers believe that the reciprocal method, using double-beam principles, received pictures can be effectively illuminated top and bottom simultaneously more nearly simulating present motion-picture projection where the entire picture is illumined intermittently but completely at a given time. The applicant hopes through successful working out of experiments in this line to provide a basis for reduction in necessary transmission band width by one-half and a simplification in receiving equipment;

Third, investigation toward expansion of the principles involved in multiple-beam transmission to permit television in color;

Fourth, investigation of synchronizing methods with a view of discovering a simpler substitute for the interlaced system now in use.

In this connection applicant's projected double-beam transmission affords some promise of simplification of synchronizing methods through elimination of synchronizing pulses required in existing systems;

Fifth, transmission of synchronized pulses on the audio carrier to eliminate necessity of amplitude separation in the visual receiver;

Sixth, transmission of automatic volume-control signal and automatic-background control on the audio carrier to prevent distortion on the visual channel;

Seventh, cooperation with other experimenters in investigation of television, particularly in the manufacture of cathode ray tubes and associated equipment, such as applicant has heretofore supplied for experimenters in various parts of the country;

Eighth, study of transmission characteristics and field patterns for ultra-high frequencies, particularly the effect on coverage which might be caused by a large hill adjacent to the applicant's site;

Ninth, study of reflected signals and other ghost effects;

Tenth, investigation of proper design and construction of suitable cathode-ray equipment for transmitters and receivers;

Eleventh, investigation of the use of cathode-ray tubes in the monitoring of ultra-high frequency transmitted radio signals;

Twelfth, promotion of interest in television work;

Thirteenth, study of the advantages of horizontal and vertical polarization of transmitted signals;

Fourteenth, further research in various phases of television;

Fifteenth, research to qualify applicant to contribute to formulation of suitable standards for television in the United States; and

Sixteenth, investigation of a system to transmit the horizontal sweep signals by way of the audio carrier.

It will be observed that the first three projects involving the use of two or more beams cannot be carried forward with the equipment proposed in the application as only one visual transmitter, with one carrier, is proposed which does not provide for more than one beam.

The evidence discloses that there is considerable additional work which might be done in the laboratory on the projects set up by the applicant before undertaking transmission over the air; however, it appears that operation of a transmitter would contribute toward the progress of experimental activities. The applicant's engineers are reluctant to press their investigations in certain lines without the means of culminating their activities in actual transmission. In this connection it was shown that more satisfactory studies could be made of the signal of a station operated under the control of the research engineer than by study of signals of other stations.

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The evidence with respect to the question, whether or not the operation of the proposed new station would adversely affect the interests of Stations W2XAX, W2XBS, W2XDR, W3XEP, W3XE, W3XPF, and W1XZ, discloses that the applicant station might be operated during the hours between 12:00 o'clock at night and 9:00 o'clock in the morning without interfering with the fair and efficient service of any one of the stations enumerated.

GROUND8 FOR DECISION

1. The applicant is legally, financially, technically, and otherwise qualified to construct and operate the proposed station; and it has a competent staff of engineers necessary to conduct the experimental program proposed.

2. The applicant has a program of research and experimentation indicating reasonable promise of substantial contribution to the development of the television broadcast art; and the application, with frequencies, power, and hours as herein stated, may be granted under the Rules and Regulations of the Commission governing the construction and operation of television stations.

3. The experimentation and research program proposed by the applicant is to be directed toward the use of cathode-ray television systems. A comprehensive outline of objectives includes the study of existing television technic and original research, working toward application of principles heretofore studied by applicant in connection with the manufacture of apparatus employing cathode-ray tubes.

4. Operation of the station as proposed will not cause interference to the service of any other station.

5. The transmitter site selected by the applicant and the equipment to be installed appear to be satisfactory.

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

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of
INTERSTATE BROADCASTING CORPORATION (KLO), } DOCKET No. 2976.
OGDEN, UTAH. }
For Construction Permit.

Decided October 20, 1938

Clarence C. Dill and *James W. Gum* on behalf of applicant; *Paul M. Segal* on behalf of Station KDYL; *H. H. Shinnick* on behalf of Station KDON; *Ben S. Fisher* and *John W. Kendall* on behalf of Station KSL and *Warren B. Worcester*; and *A. V. Dalrymple* on behalf of the Commission.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION (Payne, Case, Brown, Commissioners, not participating):

STATEMENT OF FACTS

This proceeding arose upon the application of the Interstate Broadcasting Corporation for construction permit to increase the operating power of Station KLO at Ogden, Utah, from 500 watts, to 1 kilowatt night, 5 kilowatts L. S., unlimited hours of operation on 1400 kilocycles. The matter was originally heard before an examiner, who submitted his report (No. I-221) recommending that the application be denied. On November 24, 1936, the Commission entered an order denying the application but before said order became final the application was remanded for hearing de novo after certain amendments had been filed. The second examiner's report (No. I-605) was submitted February 18, 1938 in which it was recommended that the application be granted. No exceptions or requests for oral argument have been filed to the second examiner's report.

The applicant, Interstate Broadcasting Corporation, is incorporated under the laws of Utah and its legal qualifications to carry on the business or radio broadcasting have previously been approved by this Commission.

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The cost of the changes proposed herein will approximate \$25,000 for equipment and about \$10,000 for improvements in buildings. The expenses incident to carrying out the authorization sought herein will be met from a special "improvement fund" created by a loan to the corporation of \$35,000 by Mr. A. L. Glasman, majority stockholder in the applicant corporation. The corporation as of October, 1937, had a tangible net worth of \$48,936.79.

The average monthly operating expenses of the station have been approximately \$2,500. It was proposed to increase this amount around \$650 monthly if the instant application is granted. The average monthly gross income for the ten months of 1937 ending October 31, was \$3,630.

As a result of a survey and experience in soliciting advertising for Station KLO it was estimated that with the increased power sought herein applicant's monthly gross income would be increased about \$2,700. In connection with the latter the applicant plans to establish a "sectional rate" which would be between the rates for local and national advertisers.

The regular staff of Station KLO consists of a general manager, advertising manager, two salesmen, a chief engineer, two operators, a program director, and three announcers. No changes in this personnel set-up were proposed.

The equipment proposed to be installed is capable of operating in conformity with the Rules and Regulations of the Commission. The antenna and site are both satisfactory from an engineering standpoint.

The 1930 census gives the population of Ogden, Utah, as 40,272. Weber County, of which Ogden is the county seat, has an area of 541 square miles, and a population, according to the same census, of 52,172. There are 90 wholesale establishments in Ogden, with annual net sales of \$30,468,000, employing 677 full-time employees with total pay rolls of \$952,000; 589 retail stores, with annual sales aggregating \$16,850,000; and 198 service establishments, with 202 active proprietors and 230 employees, whose wages total \$182,000 per year. In Weber County, outside of Ogden, there are 69 retail stores, with total annual sales aggregating \$433,000, and four wholesale establishments, with net annual sales of \$110,000.

Broadcast service in Ogden is furnished primarily by Station KLO. Station KSL, Salt Lake City, also furnishes primary broadcast service to the City of Ogden, and some service in the surrounding areas is available from Station KDYL, also located in Salt Lake City.

Station KLO is affiliated with the Blue Network of the National Broadcasting Company, and is the only station in the intermountain

area that carries programs of that chain. The policy of the station is to cooperate with all educational, religious, charitable, county, state, federal, and civic activities. Time over Station KLO is given such activities without charge. It is the purpose of the station management under the authorization sought to give a more general service to such activities and to extend such service throughout central Utah. From the evidence of record, it appears that the past program service of the station has been well planned and designed to meet the needs of its listening audience.

The future program service will not differ basically with the past. However, the applicant expected to amplify and broaden the program activities so as to make them more "sectional" than "local" in nature.

Ogden is the cultural, educational, and religious center of a large area contiguous thereto. There are located in Ogden eighteen public schools, including a state-owned Junior College, a number of private educational institutions, churches, civic, fraternal, and charitable institutions, women's social, business, and professional clubs, musical societies, individual artists, orchestras, school organizations, and various related activities, from all of which the station may draw talent for program material.

The present coverage of Station KLO, as contrasted to what might be expected under the operation as proposed, is indicated by the following table:

Assignment	10 mv./m.		2 mv./m.		0.5 mv./m.	
	Square miles	Population	Square miles	Population	Square miles	Population
Present (500 w.).....	224	44, 116	2, 783	80, 568	4, 049	176, 830
Proposed (using D. A.):						
Day (5 kw.).....	945	86, 441	8, 097	314, 097	21, 881	384, 142
					1.0 mv./m.	
Night (1 kw.).....	439	57, 792	2, 810	260, 956	6, 351	302, 653

The signal intensity of the station operating with the increased power would not meet the minimum requirements for primary broadcast service to the business area of Salt Lake City. However, with the 7.2 mv./m. signal expected during the daytime and the 2.6 mv./m. signal predicted at night, Station KLO would be expected to render some degree of service to portions of Salt Lake City.

It is apparent from the foregoing table that there will be a material increase in applicant's coverage and the number of persons within its good-service area.

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It is anticipated that with the increased power applicant will be given an opportunity to render a more general service to the cultural, educational, and religious groups within its service area and particularly to devote more time and money to the building of programs of primary interest to this area.

Expert testimony in the record indicates that operation as proposed would not result in objectionable interference being caused to any existing station. This application can be granted without interference being caused to the ordinarily protected service areas of any existing station. There are no pending applications which involve questions of interference with the instant application.

· GROUND S FOR DECISION ·

1. The applicant is technically, financially, and otherwise qualified to make the proposed changes and to continue the operation of the station.
2. The equipment proposed to be used is capable of operating in conformity with the Rules and Regulations of the Commission.
3. There is a need for additional service in the Ogden area such as is proposed by the applicant herein.
4. The program service of Station KLO has been meritorious and the plans of the applicant for improving same are in the public interest.
5. Operation with the increased power sought would enable applicant to materially increase its coverage and the number of persons within its good service area.
6. Granting the application will serve public interest, convenience, and necessity.

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of
MEMPHIS COMMERCIAL APPEAL COMPANY (Transfer
or) (WMPS)

and

MEMPHIS PRESS-SCIMITAR COMPANY (Transferee),
MEMPHIS, TENN.

For Transfer of Corporate Control.

} DOCKET No. 4870.

Decided October 25, 1938

D. M. Patrick and *Paul Frum* on behalf of the applicant;
and *Walter Johnson* on behalf of the Federal Communications
Commission.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

By THE COMMISSION (McNinch, Chairman, and Case, Commissioner,
not participating) :

STATEMENT OF FACTS

This proceeding arose upon the filing of an application by the Memphis Commercial Appeal Company (hereinafter called the Appeal Company) for authority to transfer control of the Memphis Broadcasting Company, licensee of Station WMPS, Memphis, Tennessee, to the Memphis Press-Scimitar Company (hereinafter called the Press Company). The matter was heard before an examiner, who, on April 19, 1938, submitted his report (I-638), recommending that the application be denied. Exceptions to this report have been considered by the Commission in arriving at its decision herein.

The Appeal Company became owner of all of the stock in the Memphis Broadcasting Company on March 16, 1937, upon the Commission's approval of the transfer of control of the Broadcasting Company from the Memphis Commercial Appeal, Inc., to the Memphis Commercial Appeal Company. The Appeal Company holds a license for, and operates Station WMC in Memphis. Stations WMPS and WMC have been operated jointly. It is now proposed to transfer

control of the Memphis Broadcasting Company to the Press Company which is the parent corporation of the Appeal Company. The Press Company in turn is controlled by the E. W. Scripps Company, an Ohio corporation. The E. W. Scripps Company also controls the Scripps-Howard Radio, Inc., which is the licensee of other broadcast stations.

The legal qualifications of the Broadcasting Company and the Press Company are established by this record. The qualifications of the E. W. Scripps Company are a matter of record with this Commission.

The equipment of WMPS had an original cost of \$44,398.06. The depreciated value thereof was estimated at \$7,237.91. Replacement value was estimated at \$36,578.74.

On July 2, 1936, the Commission, Broadcast Division, approved the transfer of all of the stock in the Broadcasting Company from certain individuals to the Memphis Commercial Appeal, Inc. The consideration involved in that transfer was \$50,000. As stated above, the stock in the Broadcasting Company was later transferred from the Memphis Commercial Appeal, Inc., to the Memphis Commercial Appeal Company.

Under the agreement between the Appeal Company and the Press Company, the latter agrees to purchase all of the outstanding shares of stock (200) of the Memphis Broadcasting company from the former for \$50,030. Of this sum \$10,030 is to be paid in cash and the balance of \$40,000 is to be represented by four \$10,000 notes, bearing 5% interest, payable in consecutive years. In addition, the Press Company agrees to underwrite the repayment by the Memphis Broadcasting Company to the Appeal Company of the amounts advanced by the Appeal Company to cover the operation losses of the Broadcasting Company. This sum is approximately \$47,700 and has been advanced by the Appeal Company to purchase additional equipment, effect certain technical improvements, and to improve the program service of Station WMPS.

This transaction will have no effect whatsoever on the financial position of the licensee corporation, the Memphis Broadcasting Company.

The Press Company filed a balance sheet showing its financial position as of December 31, 1937. Current assets were shown in the amount of \$215,634.75, securities at \$158,200, and fixed assets (net) \$224,692.97. Liabilities amount to \$522,954.29 of which notes payable amount to \$459,100. The net worth of the Press Company amounts to \$75,573.43.

The Appeal Company publishes a daily morning newspaper, having a circulation of 130,000 during the week and 150,000 on Sunday.

The Press Company publishes a daily evening newspaper which has a circulation of about 92,000. The record indicates that these newspapers, while ultimately under joint control, actively compete with each other in securing advertising and rendering service to the community.

Approving the transfer sought herein would result in divesting the Appeal Company of control over one of its two broadcast stations. Each newspaper would then have control of one broadcast station. Control over Station WMPS by the Press Company will place it in a better competitive position with WMC and the other existing stations in Memphis with respect to rendering public service and obtaining a listening audience.

Other primary broadcast service in Memphis is furnished by Stations WREC, 600 kilocycles, 1 kilowatt, 5 kilowatts L. S., unlimited; and WHBQ, 1370 kilocycles, 100 watts, unlimited. Secondary service is received from distant clear channel stations.

GROUND FOR DECISION

1. The proposed transferee is legally, technically, financially, and otherwise qualified to continue the operation of the station.
2. Control over Station WMPS by the proposed transferee would put the existing broadcast stations on a better competitive basis.
3. The proposed transfer is in the public interest.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D. C.

<p>In the Matter of GARDEN ISLAND PUBLISHING COMPANY, LTD., LIHUE, HAWAII. For Construction Permit.</p>	}	DOCKET No. 4942.
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Decided October 25, 1938

Horace L. Lohnes, E. D. Johnston, and Fred W. Albertson on behalf of the applicant; and *Walter Johnson* on behalf of the Commission.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION (McNinch, Chairman; Brown, Case, Commissioners, not participating) :

STATEMENT OF FACTS

Garden Island Publishing Company, Ltd., Lihue, Hawaii, commenced this proceeding by filing its application for permit to construct a new radiobroadcast station to operate on 1500 kilocycles, with power of 100 watts night, 250 watts local sunset, unlimited time.

The Commission designated the application for hearing before an examiner. He has filed his report herein (I-679) recommending that the application be granted. No exceptions have been filed.

Garden Island Publishing Company, Ltd., is a corporation organized under the law of the Territory of Hawaii as a publishing company. By amendment of its charter, the company is authorized to construct and operate a radiobroadcast station.

The Corporation has a capitalization of \$25,000, divided into 2,500 shares of stock. All of the stock has been issued and is now outstanding.

The officers, directors, and stockholders of the company are all citizens of the United States residing in Hawaii.

The applicant proposes to employ a competent staff to operate the station if the permit sought is granted. It is contemplated that the personnel of the station in the beginning will consist of a station manager, one full-time technician, two part-time technicians, the chief

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announcer, a program director, two advertising solicitors, and a stenographer, who will also act as bookkeeper. The only employee connected with the newspaper of the applicant who would be identified with the proposed station would be the chief accountant.

The equipment proposed to be installed meets the requirements of the Commission and would be capable of efficient operation.

The antenna and station site are to be determined subject to the approval of the Commission.

The applicant introduced a financial statement as of December 31, 1937. From that statement and testimony heard with regard thereto, the Commission finds the net worth of the applicant to be \$36,463.21. The total cost of the proposed station, including, among other things, equipment, studios, and buildings, is estimated at \$12,000. The monthly operating expense is estimated at \$1,310 and the monthly income at \$1,365.

Tentative rates were prepared and submitted by the applicant, and business has been solicited upon the basis of such rates. They vary according to time to be used. The day rate ranges from \$15 to \$20 an hour, and the night rate is \$25 an hour, except that the rate for preferred time between 5 a. m. and 7 a. m. and 4 p. m. and 9:30 p. m. carries a charge 25 percent higher than the respective stated day and night rates. Signed contracts for advertising time over the proposed station have been procured by the applicant. Such commitments aggregate \$1,365 a month.

The testimony of record shows that the applicant is legally, financially, and otherwise qualified to undertake the construction and operation of the proposed station.

Lihue, the seat of the proposed station, is the county seat of Kauai County, Hawaii. The Islands of Kauai and Niihau form the county of Kauai. That county has a population of 35,942, while the county seat has a population of 2,399.

Kauai Island has its own ports of entry. The principal industries of the island are the cultivation of pineapples and the production of sugar. In 1937 pineapples were produced and canned of the value of \$3,500,000 and sugar was processed of the value of \$13,000,000.

There are 107 retail stores, 67 service stations, and 28 auto repair shops on the island. The total retail sales in 1937 amounted to \$8,500,000, and the wholesale business amounted to \$2,366,000. The total pay roll in the Island of Kauai for 1937 was \$10,000,000.

There are now three radio stations in the Hawaiian Islands. Two of them are located in Honolulu which is separated by 105 miles airline from Lihue. The Honolulu stations furnish service to the Island of Kauai in the absence of atmospheric disturbances, but

their signals do not constitute primary service in Lihue. A radio-broadcast station at that place would furnish a local outlet for public expression. The applicant will furnish free of charge the facilities of the station for the use of civic organizations.

The applicant submitted a program typical of that to be used if the construction permit is granted which consists generally of music, devotional exercises, public activities, child welfare, agricultural programs, theater announcements, market quotations, news, sports events, school activities, and Americanization programs.

Four remote control points would be maintained—at the pier, a local hotel, the athletic field, and the armory.

There are local bands, orchestras, choruses, solists, and choirs giving performances available for use by the proposed station. The talent available for the station is abundant for its use.

There are no questions of interference with other stations whether existing or proposed.

GROUNDS FOR DECISION

1. The applicant is legally, financially, and otherwise qualified to construct and operate the proposed station.
2. There is a need for the meritorious service proposed.
3. The granting of the application would serve the public interest, convenience, and necessity.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D. C.

In the Matter of
THE METROPOLIS COMPANY,¹
JACKSONVILLE, FLORIDA. } DOCKET No. 3980.
For Construction Permit.

Decided October 25, 1938

Upon reconsideration pursuant to applicant's petition for reconsideration or rehearing, order, and decision in former report (5 F. C. C. 684), reversed.

Appearances as shown in prior Statement of Facts, Grounds for Decision, and Order.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER UPON RECONSIDERATION PURSUANT TO PETITION FOR RECONSIDERATION AND/OR REHEARING

BY THE COMMISSION (Case, Commissioner, not participating; Sykes and Craven, Commissioners, dissenting) :

PROCEDURAL STATEMENT

This proceeding arose upon the application of The Metropolis Company for construction permit to establish a new radio broadcast station at Jacksonville, Florida, to operate on the frequency 1290 kilocycles, with 250 watts power, unlimited time. The application was heard on February 9, 1937, before an examiner, who, in his report (I-397), recommended that the application be granted. To this report exceptions were filed by Station WMBR (Intervener) and Station WJAS (Respondent). Although Station WJAX petitioned and was allowed to intervene in this proceeding, it offered no testimony and did not participate otherwise. The exceptions have been carefully considered by the Commission in reaching its determination as shown herein. Oral argument was heard by the Broadcast Division on September 9,

¹ The Commission on January 30, 1939, denied petition filed by Florida Broadcasting Co. for rehearing on application of the applicant. Florida Broadcasting Co. appealed to the United States Court of Appeals for the District of Columbia. Commission's motion to dismiss denied on December 11, 1939. Appeal pending on motion to dismiss.

1937, and the case was reargued before the Commission on February 3, 1938.

On June 28, 1938, the Commission decided that the application should be denied (Walker and Payne, Commissioners, dissenting), and on July 1, 1938, the Commission published its Statement of Facts, Grounds for Decision, and Order (effective July 8, 1938) in conformity with its decision.

On July 28, 1938, and within the twenty-day period provided in Section 405 of the Act (48 Stat. 1095), the applicant filed a petition for reconsideration or rehearing. The petition was granted on September 20, 1938, "insofar as it requests reconsideration of the Commission's decision of July 1, 1938, in denying petitioner's application for construction permit, Docket No. 3980 (Craven and Sykes, Commissioners, voting 'No')." (Commission Minute #401-38, September 20, 1938.)

As the ultimate ground of its prior decision the Commission stated that "the applicant failed to show sufficient need for the service proposed to justify the Commission in departing from its allocation values in order to grant this application." In said petition the applicant urges several grounds for reconsideration, only one of which is persuasive, namely, that there were material facts of record which would justify the Commission in granting the application. The Commission has carefully reconsidered the evidence, the exceptions, the oral argument, and the entire record, and in the light of its reconsideration has been impelled to reverse its former decision and grant the application. The facts as found upon reconsideration are:

STATEMENT OF FACTS

The Metropolis Company is a corporation organized under the laws of the State of Florida and is empowered to own, maintain, and operate a radio broadcast station. The applicant corporation is wholly owned by Mr. John H. Perry, whose legal residence is Jacksonville. The officers of the corporation are Tom A. Perry, President; G. C. Willings, Vice President; E. A. Kettel, Secretary-Treasurer. The directors are B. L. Perry, J. H. Perry, William Treece, and E. A. Kettel. The officers, stockholders, and directors are citizens of the United States. The applicant publishes a daily newspaper in Jacksonville. The proposed station and the newspaper will be operated independently of the other. Separate staffs will be maintained and no joint advertising rates will be offered.

Mr. George C. Willings, vice president of the applicant corporation, will be operating head of the proposed station. He has had radio experience in connection with the supervision and operation of Station WCOA, located at Pensacola. Only qualified and experienced per-

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sonnel will be employed. The transmitting equipment meets with the Commission's engineering requirements.

The station will cost approximately \$18,800 to construct, and the monthly cost of operation will be slightly in excess of \$2,500. The net worth of the applicant exceeds \$1,200,000. Current assets include \$31,184.39 in cash and \$58,987.06 in receivables. During the year 1936 the applicant made a net profit of approximately \$29,000 from the publication of a daily newspaper, the Jacksonville Journal. The operating head of the applicant corporation testified that the applicant has available, definitely and immediately, without further obligating the corporation, not only the sum of \$18,800 but the additional sum of \$28,000. The Commission is satisfied that the applicant has ample assets to construct the station and, if necessary, to operate it for a considerable period of time without relying upon the commercial support which may be available in the community.

As to prospective commercial support, the applicant introduced in evidence an exhibit (without objection by any party to the hearing) showing that 39 business houses are available in Jacksonville as potential purchasers of advertising time. The list of potential advertisers was compiled by the managing editor of the applicant through telephone conversations with the representatives of the business houses in question. In each case the minimum amount of advertising revenue a month expected was set down and the total sum exceeded \$3,600 a month. The probative value of this testimony must be limited to showing that these business establishments are only potential sources of revenue as the estimate was not made upon the basis of definite rates, and contingent contracts binding these establishments to purchase time in the amounts indicated were not offered in evidence. The intervener showed that during an undetermined time in the past, 26 of these prospective advertisers purchased time from Station WMBR and that ten now use the facilities of that station. The list contains only a fraction of the potential advertisers of Jacksonville. It is clear from this testimony that there are many potential advertisers in Jacksonville in addition to those now using the facilities of the intervener.

Considerable direct testimony was adduced by deposition concerning the radio advertising facilities now available, and demand on the part of local businessmen for an additional advertising outlet. While there was some conflict in this testimony, the Commission after carefully considering and weighing all of the testimony, finds that this affirmative testimony shows that time, considered by several advertisers to be desirable for their purposes, is not now specifically available because the existing stations are bound by chain commitments. It is clear that the proposed station would be able to secure

local advertising for broadcasting during the periods that the existing stations devote to chain programs.

The commercial importance and resources of Jacksonville are not fully reflected in the testimony concerning potential advertisers as is evidenced by the fact that it is the largest city in Florida, having a population in its metropolitan area in 1930 of 148,713. The principal industries of the city are concerned with manufacturing cigars, naval stores, lumber, pine tar products, fertilizer, coffee, etc. It is the center of a large retail and wholesale district. The 1935 Census of Business shows that Jacksonville had 1,991 retail stores and retail sales in excess of \$50,700,000. The same census shows 324 wholesale establishments in Jacksonville, having net sales in excess of \$134,380,000.

There are two stations now serving Jacksonville, namely, Station WJAX (operating on the frequency 900 kilocycles with 5 kilowatts day, 1 kilowatt night, unlimited time) which is municipally owned, and is a chain outlet, and Station WMBR (operating on the frequency 1370 kilocycles with 250 watts day, 100 watts night, unlimited time) which is also a chain outlet. Although Station WJAX carries some local advertising, the record indicates that at the present time it does not actively solicit such advertising and its principal revenue is from chain broadcasting. For the nine months' period ending September 30, 1936, WJAX made a net profit of \$26,980.19. Statements made in an application for renewal of license filed by Station WJAX prior to this hearing (which the applicant requested the examiner to notice judicially and to which no objection was interposed by any party) show that of the 525 hours the station operated during one month, 400 hours were devoted to chain programs. Station WMBR during the period June 1, 1936, to November 30, 1936, made a net profit of \$9,293.43. It carries more local advertising than WJAX, but its principal source of income is from chain broadcasting. Statements made in an application for renewal of license filed by Station WMBR prior to this hearing (also noticed without objection) show that of 496¼ hours the station operated during one month, 358½ hours were devoted to chain programs.

The Commission has repeatedly held that it will not establish new radio facilities for the sole purpose of affording additional radio advertising outlets to commercial establishments. (See *e. g. Banks of Wabash, Inc.*, 5 F. C. C. 78; *Smith Kellar and Cole*, 5 F. C. C. 291; *Pacific Acceptance Corporation*, 5 F. C. C. 296.) In all cases the controlling consideration (granting that the applicant is fully qualified) is the general public need for the radio service offered. In determining whether or not a general public need exists, no hard and fast rule may be followed as circumstances differ in one center of population from another, and manifold disparate elements must be

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determined in each case. The existence of need may only be determined from the record made in each proceeding. The foregoing findings have established that the applicant herein is fully qualified to render broadcast service and that the community is possessed of ample economic resources to support the existing stations (operating as shown in the record) and the station proposed herein. The contention was advanced by the intervener that if WJAX dropped its network affiliation that station would sustain a loss, but the Commission will not turn its decision upon such sheer conjecture. The remaining factors to be determined, therefore, are whether or not the applicant proposes a meritorious program service, whether or not program material is available to maintain such service, whether or not there is a public need for the same, and whether or not such service may be efficiently given on the frequency, power, and hours of operation requested.

The applicant proposes to render a strictly local service. Its facilities will be offered free of charge for the dissemination of charitable, educational, and religious programs. Transcription and news services will be used. Not more than 50 percent of the broadcasting time will be taken up with commercial programs. The proposed program service includes educational, religious, musical, and civic features. The evidence clearly shows that the service proposed to be rendered is well diversified and meritorious for a station of the class requested for operation in Jacksonville.

Although much of the talent listed as being available was not shown by competent evidence as having actually agreed to participate, nevertheless program material was shown to exist, and several of the deponents, by direct and competent testimony, showed that adequate program material is available for operation of the facilities requested in the public interest. Numerous violinists, pianists, vocalists, and instrumentalists are available in Jacksonville. There are individual dramatists and dramatic clubs, orchestras, bands, quartets, choral guilds, glee clubs, drum and bugle corps, and other diversified sources of entertainment.

The intervener contends that it has not refused its facilities to charitable or civic organizations and although on occasions the specific time such organizations desired could not always be allotted, Station WMBR now has time which is filled with Columbia sustaining programs in the evening which would be available for charitable or civic organizations if they desire it. The intervener also showed that during a week in January 1936, 58 percent of the WMBR operating schedule was available for local public use. This testimony has been considered in the light of the affirmative evidence adduced by the applicant from Jacksonville witnesses, the listing

of the programs actually broadcast over Stations WMBR and WJAX during another week in January 1936 (which was made by the applicant) and the statements made in applications for renewals of licenses submitted by the existing stations (set forth above). And, in the light of all the evidence, the Commission finds that the intervener's testimony does not negative the existence of strong public need for additional local service. Thus, Station WJAX does not broadcast political speeches. Station WMBR allows the dissemination of political speeches but time therefor is contingent upon the chain schedule carried by the station. Local talent is discouraged from using the existing stations because a worthy program requires long rehearsals and intensive work, which should find expression during hours when the public listens to such programs—and such hours are not generally available because of the priority of network broadcasts. The County Superintendent of Public Instruction testified, for example, that "the broadcasts that we have been given for educational purposes really come at a time when we feel the general public are not tuning on their radios and listening." The Jacksonville Little Theatre for a time put on a regular half-hour program over one of the existing stations at 8 o'clock in the evening, but the commercial commitments of the station caused the program to be shifted to an earlier hour and the program was discontinued. A minister testified that the existing stations do not offer a complete religious service and that there is need for such service.

We have already adverted to the fact that the two existing stations are network outlets. In *Intermountain Broadcasting Corporation v. Federal Communications Commission*, 94 Fed. (2d) 244, (1937), the United States Court of Appeals for the District of Columbia stated, "On the hearing it developed that Salt Lake City is now served by two stations, both carrying network programs. Station KSL, which is no longer a party, operates about 50 percent of its time on a network, while appellant Intermountain operates about 85 percent of its time on a network. In view of this situation it is not difficult to see why the Commission decided that public interest would be served by the construction of a local non-network station in Salt Lake City." The obvious problems are raised, therefore, as to whether or not adequate local service is rendered by the existing stations, despite their network affiliations, and whether or not the applicant has shown a public need for the service proposed. Upon consideration of all the facts of record we are impelled to the conclusion that the present local service is inadequate and that there is need for the service proposed.

The operation of the proposed station, as requested, will not result in interference to any existing station or to the operation of stations

as proposed in applications pending when this case was designated for hearing. It is estimated that the proposed station will be limited to its 2.5 millivolts per meter contour at night by Stations WJAS and KTRH. Even with this limitation, however, the station will deliver a satisfactory signal throughout the City of Jacksonville. The aforesaid estimated restriction on the signal of the proposed station does not create an allocation problem important enough to offset the necessity and desirability of granting this application in view of the strong public need for the service proposed, and in view of the fact that despite the restriction the station will nevertheless satisfactorily serve Jacksonville.

There are additional applications pending from three stations now licensed to operate on the 1290 kilocycle frequency, namely, KTRH, WJAS, and WEBC for permission to use 5 kilowatts power at night. If these applications were granted, the proposed station would not cause interference to the existing stations, but the proposed station would be limited to its 5.6 millivolts per meter contour at night. Even with such limitation, the proposed station would render service to the bulk of the population of Jacksonville. The aforesaid applications for the use of 5 kilowatts power at night on the frequency 1290 kilocycles, however, violate Rule 120 of the Commission's Rules and Regulations, which prohibits the use of power at night in excess of 1 kilowatt on this frequency, and consequently it is unnecessary to consider them in this proceeding. *Pittsburgh Radio Supply House v. Federal Communications Commission*, 98 Fed. (2d) 303 (1938).

GROUNDS FOR DECISION

1. The applicant is legally, technically, financially, and otherwise qualified to construct and operate a radiobroadcast station of the class requested, and the program service proposed is meritorious;
2. The public need for broadcast service of the type and class proposed justifies the Commission in departing from its allocation values applicable to a station of the class applied for herein;
3. The transmitting equipment and the antenna meet with the engineering requirements of the Commission;
4. The record does not show that the operation of the proposed station will have any detrimental economic effect upon Station WJAX and WMBR in their continued operation in the public interest;
5. The operation of the proposed station will not involve objectionable interference to existing broadcast service nor to the operation of stations proposed in other pending applications for broadcast facilities;
6. The granting of the application will serve public interest, convenience, and necessity.

6 F. C. C.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
 WASHINGTON, D. C.

In the Matters of ¹
 NORFOLK AND CAROLINA TELEPHONE AND TELEGRAPH }
 COMPANY, } DOCKET No. 4830.
 ELIZABETH CITY, NORTH CAROLINA, }

and

NORFOLK AND CAROLINA TELEPHONE AND TELEGRAPH }
 COMPANY OF VIRGINIA, } DOCKET No. 4831.
 ELIZABETH CITY, NORTH CAROLINA. }

Decided October 25, 1938

L. S. Blades, Jr., C. E. Thompson, and Alfred L. Geiger, on behalf of the respondents; and *Basil P. Cooper*, on behalf of the Commission.

REPORT OF THE COMMISSION

BY THE COMMISSION (Case, Commissioner, not participating):

These proceedings are to determine whether the Norfolk and Carolina Telephone and Telegraph Company and the Norfolk and Carolina Telephone and Telegraph Company of Virginia are carriers subject to all provisions of the Communications Act of 1934, hereinafter referred to as the Act, applicable to wire telephone carriers, or are connecting carriers engaged in interstate communications solely through physical connection with facilities of another carrier not directly or indirectly controlling or controlled by, or under direct or indirect common control with, the respective carrier, within the meaning of the provisions of Section 2 (b) (2) of the Act.

On September 15, 1937, the Commission, Telephone Division, ordered the Norfolk and Carolina Telephone and Telegraph Company to file responses to Telephone Division Orders Nos. 1, 2, 3, 5, 6A, 6B, and 9² within 30 days from the date of service of such order

¹ The Commission on January 8, 1939, denied petition of applicants for rehearing.

² Orders Nos. 1, 2, 3, 5, 6A, 6B, and 9 referred to are general Orders of the Telephone Division directed to wire telephone carriers subject to the Act, requesting certain detailed information described in the Orders. Order No. 6 was issued pursuant to Section 202 of the Communications Act and is an Order to which a connecting carrier must respond. These Orders, with the exception of 6B, are set out in full in 1 F. C. C. Reports, at page 50, et seq. Order No. 6B is reported in 2 F. C. C. Reports at page 15.

upon the carrier, or in lieu thereof, to file an answer setting forth the facts upon which it relied as justification for its failure and refusal to respond to such general orders of the Commission. On the same date, and in the same manner, the Norfolk and Carolina Telephone and Telegraph Company of Virginia was ordered to file responses to Telephone Division Orders Nos. 1, 2, 3, and 6, or in lieu thereof to file an answer.

Thereafter, on October 14, 1937, the Norfolk and Carolina Telephone and Telegraph Company, hereinafter referred to as the Carolina Company, and the Norfolk and Carolina Telephone and Telegraph Company of Virginia, hereinafter referred to as the Virginia Company, filed their respective verified answers in which they admitted that they are engaged in interstate communications for hire, but alleged that they engage in such communication solely through physical connection with nonaffiliated carriers.

A joint hearing was held before an examiner, at which the companies adduced evidence in support of their contention that they are connecting carriers under Section 2 (b) (2) of the Act; the Carolina Company alleging that it owns no lines outside of the State of North Carolina and engages in interstate communication solely through physical connection with facilities of the Virginia Company and with The Chesapeake and Potomac Telephone Company of Virginia; and the Virginia Company alleging that it owns no lines outside of the State of Virginia and engages in interstate communication solely through physical connection with facilities of the Carolina Company and with The Chesapeake and Potomac Telephone Company of Virginia.

The examiner submitted his report (III-31), recommending that the companies be classified as carriers subject to all provisions of the Act, to which exceptions were filed. A request for oral argument before the Commission was granted. When the matter came on for such argument, counsel for the carriers moved that they be permitted to file a brief in lieu of oral argument. The motion was granted and the brief was thereafter filed.

According to Section 3 (u) of the Communications Act, "‘connecting carrier’ means a carrier described in clause (2) of Section 2 (b).”

Section 2 of the Communications Act of 1934 provides:

(a) The provisions of this Act shall apply to all interstate and foreign communication by wire * * *

(b) * * * nothing in this Act shall be construed to apply or to give the Commission jurisdiction with respect to * * * (2) any carrier engaged in interstate or foreign communication solely through physical connection with the facilities of another carrier not directly or indirectly controlling or controlled by, or under direct or indirect common control with such carrier; except that sections 201 to 205 of this Act, both inclusive, shall, except as otherwise provide therein, apply to carriers described in clause (2).

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The record herein shows that the Norfolk and Carolina Telephone and Telegraph Company is a corporation organized and existing under the laws of the State of North Carolina and operates telephone properties in North Carolina, including exchanges at Elizabeth City, Hertford, Edenton, and Manteo, and toll lines in the Counties of Pasquotant, Camden, Currituck, Dare, Perquimans, Gates, Chowan, and Bertie. It has physical connections with The Chesapeake and Potomac Telephone Company of Virginia at a point near Corapeake, North Carolina, and with the Virginia Company at the Virginia-North Carolina state line near Moyock, North Carolina. It was incorporated in 1902 to engage in telephone and telegraph business and has outstanding 3,000 shares of common stock of \$100 par value each.

The Norfolk and Carolina Telephone and Telegraph Company of Virginia is a corporation organized and existing under the laws of the State of Virginia and owns and operates telephone properties in the State of Virginia including a toll line extending to the North Carolina-Virginia state line and about 60 to 70 rural subscriber stations. It has physical connections with The Chesapeake and Potomac Telephone Company of Virginia in South Norfolk, Virginia, and with the Carolina Company at the Virginia-North Carolina state line. It was incorporated in 1913 to engage in telephone and telegraph business and now has outstanding 600 shares of common stock of the par value of \$100 each. An officer of both companies testified that according to the laws of the State of Virginia the North Carolina company was not allowed to do business in the State of Virginia without incorporating therein, so a separate company was incorporated under the laws of the State of Virginia, and the properties of the Carolina Company located in the State of Virginia were deeded to it and the stock of the new company issued to the Carolina Company which continued to own such stock until 1934 when it was distributed pro rata among the then stockholders of the Carolina Company.

The stock of both the Carolina Company and the Virginia Company is owned largely by the same individuals and likewise the officers and directors of the two companies are substantially the same. The table hereinafter set forth shows the positions held by various individuals in the two companies:

Name	Position held in Carolina company	Position held in Virginia company
L. S. Blades.....	President, Director.....	President, Director.
Aubrey G. McCabe.....	Vice President, Director.....	
Chas. Camden Blades.....	Executive Vice President, Director.	Vice President, Director.
James Evans Blades.....	Secretary-Treasurer.....	Secretary-Treasurer, Director.
L. S. Blades, Jr.....	Director.....	Director.
C. E. Thompson.....	do.....	Do.
J. W. Forman.....	do.....	Do.
W. J. Woodley.....	do.....	Do.
H. W. Dewey.....	General Manager.....	General Manager.
R. M. Dewey.....	Superintendent.....	Superintendent.

It will be noted that each of these companies has a Board of Directors composed of seven members and that six individuals serve on both Boards.

The Carolina Company has 71 and the Virginia Company has 62 stockholders, respectively, and the two companies have 60 stockholders in common who own approximately 97 percent of the stock of both companies. In addition thereto, the Blades family, members of which hold the key official positions in both companies, owns the principal blocks of stock in each company.

Separate books and records of both companies are kept in Elizabeth City, North Carolina, by the same employees. All of the directors of the Virginia Company reside in Elizabeth City, North Carolina, and all of the directors of the Carolina Company reside in Elizabeth City, with the exception of Aubrey G. McCabe, who lives in Wilson, North Carolina. The only differences in the officers of the Virginia Company and the officers of the Carolina Company are that Mr. McCabe, who is Vice President of the Carolina Company, is not an officer nor a director of the Virginia Company, and Charles Camden Blades, who is Executive Vice President and Director of the Carolina Company, is Vice President and Director of the Virginia Company. The Virginia Company has no executive vice president, and just what difference, if any, in the duties performed by Charles Camden Blades for the respective company this difference in title might have, is not shown in the record.

The supplies for the two companies are purchased on the open market and neither company is under contract or obligation to buy supplies of any kind from a particular concern.

The record discloses no financial interest by The Chesapeake and Potomac Telephone Company of Virginia or any of its affiliates in either of these companies, and according to the record none of the officers or directors of either the Carolina Company or the Virginia Company are employees of or have any affiliation with the Bell System.

The salaries paid to the general manager, superintendent, secretary, treasurer, and bookkeeper are allocated to each of the companies on the basis of work performed for such company.

The stockholders of the Carolina Company meet in Elizabeth City, North Carolina, and the stockholders of the Virginia Company meet in Norfolk, Virginia, and separate and distinct directors' meetings are held. The Virginia Company has a statutory agent in Norfolk. Separate bank accounts are kept and both companies bank with the First Citizens Bank of Elizabeth City, North Carolina, and the Citizens National Bank of Edenton, North Carolina; and the Caro-

lina Company also banks with the Hertford Banking Company of Hertford and with the Bank of Manteo, North Carolina.

The annual gross operating revenue for the Carolina Company is approximately \$113,000, and for the Virginia Company approximately \$12,000.

The basic question here involved is whether the Carolina Company and the Virginia Company are subject to such common control as was contemplated by Congress in the enactment of Section 2 (b) (2) of the Communications Act of 1934. It is clear to us that in the use of the word "control" in Section 2 (b) (2) of the Act, Congress meant actual as well as legal control and intended the term to include and mean the power to exercise control either negatively or affirmatively, directly or indirectly. As the Court said in construing this Section in *Rochester Telephone Corporation v. The United States of America and the Federal Communications Commission*, decided by the United States District Court for the Western District of New York on June 20, 1938, not yet officially reported:

It is essential to find what meaning Congress intended by the use of the word "control" in the statute. The report of the Committees of Congress may be consulted to find the Congressional intent. *Woodward v. Graffenreid*, 238 U. S. 284; *Lapina v. Williams*, 232 U. S. 78. *From these reports it is clearly indicated that Congress intended "control" as used in the statute to be broadly construed.* In House Report, 1850, 73 Cong., Second Session, pp. 4, 5, it is stated:

"No attempt is made to define 'control,' since it is difficult to do this without limiting the meaning of the term in an unfortunate manner. Where reference is made to control, the intention is to include actual control as well as what has been called legally enforceable control."

Congress has recognized the fact that there are many ways in which actual control may be exerted, such as stock ownership, leasing, contract, and agency. Congress also realized that control may be exercised "through ownership of a small percentage of the voting stock of the corporation, either by the ownership of such stock alone or through such ownership in combination with other factors." *Broadly used, "control" may embrace every form of control, actual or legal, direct or indirect, negative or affirmative.* [Italics supplied.]

It is a well-established principle of law that the final and ultimate determination of the management and control of the corporate affairs is vested in the stockholders. The Supreme Court of the United States has recognized that control may be exercised by even less than a majority of the common stock, as it pointed out in the recent case of *Natural Gas Co. v. Slattery*, decided December 6, 1937, reported in the advanced sheets of Volume 302, U. S. 300, 307:

We have not said, nor do we perceive any ground for saying, that the Constitution requires such an inquiry to be limited to those cases where common control of the two corporations is secured through ownership of a *majority* of their voting stock. We are not unaware that * * * there are other methods of control of a corporation than through such ownership. *Common*
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management of corporations through officers or directors, or common ownership of a substantial amount, though less than a majority of their stock, gives such indication of unified control as to call for close scrutiny of a contract between them whenever the reasonableness of its term is the subject of inquiry. [Italics supplied.]

Here the same stockholders own approximately 97 percent of the stock in both companies, and six of the seven members of the Board of Directors of each company are identical. The officers of the companies are the same with the exception of an additional vice president in one company. Although separate books and records are kept by the two companies, they are kept in the same office by the same personnel; and, in addition to the officers and directors, the same men act as general manager and superintendent of both companies.

The evidence in this case compels the conclusion, and the Commission so finds, that the Norfolk and Carolina Telephone and Telegraph Company and the Norfolk and Carolina Telephone and Telegraph Company of Virginia are under the common control of their common stockholders, officers, and directors.

After a careful consideration of the entire record in this proceeding, including all of the evidence introduced in the hearing held herein, the examiner's report, the exceptions filed thereto, and the brief filed herein by the companies, the Commission is of the opinion and so finds that the Norfolk and Carolina Telephone and Telegraph Company and the Norfolk and Carolina Telephone and Telegraph Company of Virginia, being under such common control as was contemplated by Section 2 (b) (2) of the Act, have not sustained their claim for exemption, and are, therefore, wire telephone carriers engaged in interstate communication through physical connection with each other, and subject to all provisions of the Communications Act of 1934 applicable to wire telephone carriers.

ORDER

Pursuant to the report of the Commission issued herein, **IT IS HEREBY ORDERED**, that the Norfolk and Carolina Telephone and Telegraph Company and the Norfolk and Carolina Telephone and Telegraph Company of Virginia be, and the same are hereby, classified as carriers subject to all provisions of the Communications Act of 1934 applicable to wire telephone carriers.

The Norfolk and Carolina Telephone and Telegraph Company is therefore subject to all Orders of the Commission applicable to wire telephone carriers whose annual gross operating income exceeds \$50,000, and the Norfolk and Carolina Telephone and Telegraph Company of Virginia is subject to all such Orders applicable to wire telephone carriers whose annual gross operating income does not exceed \$50,000.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

<p>In the Matter of WHBY, INC. (WTAQ), GREEN BAY, WISCONSIN. For Construction Permit,</p>	}	DOCKET No. 4226.
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Decided October 25, 1938

D. M. Patrick, John W. Guider, Karl A. Smith, and Lester Cohen on behalf of WHBY, Inc. (WTAQ); *Horace L. Lohnes, E. D. Johnston and F. W. Albertson* on behalf of Stations WHBL, KSCJ, and WDRC; *Walter Johnson* on behalf of the Commission.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION (McNinch, Chairman, Brown, Case, Commissioners, not participating) :

STATEMENT OF FACTS

WHBY, Inc., Green Bay, Wisconsin, commenced this proceeding by filing its application for a construction permit. It seeks authority to increase the daytime power of Station WTAQ from 1 kilowatt to 5 kilowatts and to use a directional antenna during daytime operation.

The Commission designated the application for hearing before an examiner who has made and filed his report herein (No. I-693) recommending that the application be granted. No exceptions have been filed.

The applicant is owner and operator of Stations WTAQ and WHBY, both of which are located at Green Bay, Wisconsin. Station WTAQ is licensed to operate on 1330 kilocycles, with power of 1 kilowatt, unlimited time, and it uses a directional antenna in the nighttime. Station WHBY is licensed to operate on 1200 kilocycles with power of 250 watts day, 100 watts night, unlimited time.

The applicant is a corporation organized under the law of the State of Wisconsin.

All the stock of the company is owned by the Premonstratensian Fathers, a religious Order founded in 1123 A. D., which now has an American branch with its main abbey at Green Bay, Wisconsin. The Order is also known as the White Fathers. It, too, is incorporated under the law of the State of Wisconsin. It is engaged in

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religious and educational work. It conducts a college and a high school and maintains a community center in Green Bay, Wisconsin.

Stations WTAQ and WHBY are operated strictly upon a general public-service basis and not as adjuncts to the religious and educational work of the White Fathers.

The transmitters of Stations WTAQ and WHBY are located at West De Pere, Wisconsin, a short distance west of Green Bay. The main studios used for both stations are in Green Bay. An auxiliary studio at Oshkosh, Wisconsin, accommodates 15 musicians, and a studio is maintained at Appleton, Wisconsin. All of the studios are well constructed and completely furnished with modern and efficient equipment. Permanent remote control lines extend from Station WTAQ to various points in Green Bay, Appleton, and Oshkosh.

The present WTAQ transmitter is an RCA 1-D unit and the antenna consists of a four element array which is operated directional at nighttime. The applicant proposes to add an RCA 5 kilowatt amplifier and a 5 kilowatt rectifier to the transmitter now in use. That would convert the transmitter into a 5-C unit. No change is involved in the physical arrangement of the antenna structure which at present is operated nondirectional in the daytime. The proposed daytime pattern is somewhat different from the nighttime pattern; and some additional antenna equipment such as remote-reading thermionic antenna meters and an RCA phase monitor will be added to the array. In order to facilitate the necessary shift in pattern at local sunset to obtain the present nighttime pattern, remote control electro-magnetic switches will be placed at each tower.

The height of the antenna does not meet the minimum requirements of Rule 131 of the Commission for operation with power of five kilowatts as proposed; but it appears from the testimony in the case that the antenna arrangement proposed will meet the minimum requirements of 175 millivolts per meter for one kilowatt at one mile as required by Rule 131; and otherwise the equipment proposed by the applicant is satisfactory.

The General Manager of both stations, who is also the secretary-treasurer of WHBY, Inc., is the only member of the Order connected with the operating staffs of the broadcast stations which include a sales manager, four assistants, eight announcers, four operators, stenographers, and other help. An auxiliary studio at Appleton has one operator, two announcers, and two salesmen.

The parent Order furnishes all funds necessary for the operation and maintenance of both of the stations at Green Bay, Wisconsin, and absorbs all operating deficits. A financial statement of the Order as of March 15, 1938, shows assets of \$748,700, with liabilities of \$196,000. A resolution of the Board of Directors of the Order dated March 28,

1938, assuming all obligations incidental to the purchase and installation of the new equipment proposed in the application under consideration has been adopted.

The estimated cost of the equipment and installation is \$25,250; and it appears that the Order is fully prepared to bear this expense. Furthermore, the financial statement of the applicant itself as of December 31, 1937, shows total assets of \$117,280.20 as against total liabilities in the sum of \$70,344.58.

The City of Green Bay is located at the mouth of Fox River and at the southern extremity of Green Bay. It is the trading center for northeastern Wisconsin and for upper Michigan. The city has a population of 37,415 (1930 census). It is one of the largest shipping points in the world for cheese; and lumber and steel are manufactured there.

Appleton, with a population of 25,267, and Oshkosh, with a population of 40,108, are, respectively, located about 25 miles and about 40 miles southwest of Green Bay.

The entire area between Green Bay and Oshkosh is known as the Fox River Valley and it contains so many towns and villages that the populations of the communities are practically contiguous.

Many paper factories are located along the Fox River. They form a considerable industry. The strictly rural areas are unusually fertile and their residents are engaged in diversified farming.

The entire Green Bay area, including Appleton and Oshkosh, is dependent upon Stations WTAQ and WHBY for daytime radio service. The service of Station WHBY is limited to Green Bay and its immediate vicinity, but it does not afford good reception in Oshkosh nor in some parts of Appleton. Neither Oshkosh nor Appleton has a local station. At present the signal of WTAQ in the Appleton business district is less than 10 millivolts per meter and in the Oshkosh residential district it is less than 2 millivolts per meter and, therefore, of insufficient strength to provide satisfactory service. The use of 5 kilowatts power, as proposed for Station WTAQ, would increase the strength of its signal in Appleton to over 10 millivolts per meter and in Oshkosh to more than 3 millivolts per meter.

The following table is a comparison between the populations now served and those which would be served by Station WTAQ during day hours in the event the proposed five kilowatts day operation is permitted:

Power	10 mv./m.	2 mv./m.	0.5 mv./m.	Area within 0.5 mv./m.
1 kw.....	57,500	154,000	168,000	3,950
5 kw.....	108,600	285,400	369,600	6,040
Increase.....	51,100	131,400	200,700	2,090
Percent increase.....	89	85.3	118.8	53

The program service of Station WTAQ appears to be adapted to the local needs of its service area. Many features of the service are broadcast by remote control lines from other communities in the area. If the application is granted the applicant intends to increase the number of features of special interest and of local pride in the area outside of Green Bay and its immediate environs and the applicant will make more use of talent found throughout the entire area.

Field intensity measurements and technical evidence concerning problems of interference were introduced and are before the Commission. On the basis of standard recommended frequency and mileage separations WTAQ might be expected to contribute interference to the service of a number of other stations, chiefly Station WEMP, Milwaukee, Wisconsin, 108 miles distant, operating on 1310 kilocycles with power of 100 watts, and Station WHBL, Sheboygan, Wisconsin, 52 miles distant, operating on 1300 kilocycles with power of 250 watts daytime; but it appears from the testimony that the characteristics of the directional array proposed to be used by Station WTAQ daytime and the conductivity of the terrain between Station WTAQ and Stations WEMP and WHBL are such that no objectionable interference will result from the use of five kilowatts by Station WTAQ; and no interference with the service of any other existing station would be expected.

There is pending at present an application requesting the allocation of one kilowatt power daytime for Station WHBL but it appears said application does not involve any problem of interference.

GROUNDS FOR DECISION

1. The applicant is legally, financially, technically, and otherwise qualified to undertake the new construction proposed and to continue with the operation of the station.
2. There is a need for the additional service proposed by the applicant.
3. No objectionable interference to any existing or proposed station would result from the operation of Station WTAQ as proposed.
4. The granting of the application will serve public interest, convenience, and necessity.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D. C.**

<p>In the Matters of PRESS PUBLISHING COMPANY (WHBL), SHEBOYGAN, WISCONSIN. For Construction Permit.</p>	}	DOCKET No. 4145.
<p>MILWAUKEE BROADCASTING COMPANY (WEMP), MILWAUKEE, WISCONSIN. For Modification of License.</p>	}	DOCKET No. 5005.

Decided October 25, 1938

Horace L. Lohnes, E. D. Johnston, and F. W. Albertson on behalf of the applicant in Docket No. 4145; *D. M. Patrick, John W. Guider, Karl A. Smith, and Lester Cohen* on behalf of Station WTAQ; *John M. Littlepage and William A. Porter* on behalf of Station KFH; *Ben S. Fisher, Charles V. Wayland, and John Kendall* on behalf of the applicant in Docket No. 5005, *Louis G. Caldwell, Reed T. Rollo, and Percy H. Russell, Jr.,* on behalf of Station WCLS; *Walter Johnson* on behalf of the Commission.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION (McNinch, Chairman, and Case, Commissioner, not participating):

STATEMENT OF FACTS

This proceeding arose upon the following applications:

1. An application of Press Publishing Company for construction permit to make changes in transmitting equipment of Station WHBL, Sheboygan, Wisconsin, and to increase daytime power from 250 watts to 1 kilowatt. Station WHBL now operates on the frequency 1300 kilocycles, with power of 250 watts, unlimited time.
2. An application of Milwaukee Broadcasting Company for modification of license of Station WEMP, Milwaukee, Wisconsin, to change its operating assignment on the frequency 1310 kilocycles from 100 watts daytime to 100 watts, unlimited time.

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The above applications being interrelated by reason of interference problems, a consolidated hearing was held on March 23 and 24, 1938 before an examiner who, in his report (I-667), recommended that both applications be granted. To this report exceptions were filed by WCLS, Inc. (WCLS) and oral argument was heard by the Commission on September 22, 1938. The exceptions have been duly considered by the Commission.

IN RE DOCKET NO. 4145

The Press Publishing Company, licensee of Station WHBL, Sheboygan, Wisconsin, is incorporated under the laws of the State of Wisconsin. The corporation, in addition to the operation of the station, is engaged in the newspaper business, publishing the daily "Sheboygan Press," and conducts a printing business. Station WHBL has been operated by the present licensee under successive renewals of license since 1928.

In view of the fact that the Press Publishing Company is the licensee of an existing radio-broadcast station, its legal and technical qualifications have been heretofore determined by the Commission and were not in issue in this proceeding.

The new transmitting equipment proposed to be installed by the applicant meets with the technical requirements of the Commission. It is estimated that the total cost of this equipment would be \$7,500 which is the only expenditure arising because of the proposed change in operating assignment of the station.

The financial statement of the applicant, as of December 31, 1937, shows total assets of \$477,966.13 consisting of cash on hand \$18,465.91, intangible assets, \$140,038.27, and tangible assets \$319,461.95. The liabilities are the capital stock (\$135,000), accounts and notes payable, \$36,180.88, miscellaneous liabilities \$29,862.69, depreciation reserves \$160,601.46, and surplus \$116,321.10. It is evident that sufficient cash is available to cover the cost of the proposed change in equipment.

For the year 1937 the total revenue derived from the sale of time of Station WHBL was \$35,769.50 and the operating expenses were \$46,378.13, leaving a net loss of \$10,608.63. The station has never made a profit from its operation.

The applicant maintains 17 full-time employees for the operation of the station. In addition, the services of 35 musicians are used on the station's programs at designated intervals. They are employed by the station on a part-time basis.

According to the 1930 United States Census, the population of Sheboygan was 39,251, and that of Sheboygan County, in which She-

boygan is located, was 71,235. The Census of Business for 1935, published by the United States Department of Commerce, shows the following data with respect to Sheboygan: 519 retail stores having sales of \$15,559,000, and total pay rolls of \$1,806,000; 161 service establishments having receipts of \$600,000, and total pay rolls of \$140,000; 55 wholesale establishments having net sales of \$10,759,000, and total pay rolls of \$607,000; and 85 manufacturing concerns paying total wages in the sum of \$4,161,455. From the same source Sheboygan County is shown to have: 882 retail stores having sales of \$21,628,000, and total pay rolls of \$2,200,000; 237 service establishments having receipts of \$781,000, and total pay rolls of \$163,000; 75 wholesale establishments having net sales of \$17,752,000, and total pay rolls of \$735,000; and 219 manufacturing concerns paying total wages of \$7,796,410. The city of Sheboygan is located in a rich agricultural area. It is a market center for livestock, poultry, and dairy products. The principal industry located in Sheboygan County is the production of cheese.

Station WHBL renders the only primary daytime service in the City of Sheboygan. The residential sections of the city receive satisfactory daytime service from stations WTMJ, Milwaukee, Wisconsin, which operates on the frequency 620 kilocycles, with power of 1 kilowatt night, 5 kilowatts day, unlimited time, and from WMAQ, Chicago, Illinois, which operates on the frequency 670 kilocycles, with 50 kilowatts power, unlimited time. The northern portion of the daytime service area of Station WHBL is served by Station WOMT, Manitowoc, Wisconsin, which operates on the frequency 1210 kilocycles, with 100 watts power, unlimited time, and by WTAQ, Green Bay, Wisconsin, which operates on the frequency 1330 kilocycles, with 1 kilowatt power, unlimited time, using a directional antenna for nighttime operation; the western portion is served by Station KFIZ, Fond du Lac, Wisconsin, which operates on the frequency 1420 kilocycles, with 100 watts power, unlimited time; and the southern portion is served by Station WISN, Milwaukee, Wisconsin, which operates on the frequency 1120 kilocycles, with power of 250 watts night, 1 kilowatt day, unlimited time; by WENR, Chicago, Illinois, which operates on the frequency 870 kilocycles, with 50 kilowatts power, and shares time with Station WLS, Chicago, Illinois, by WBBM, Chicago, Illinois, which operates on the frequency 770 kilocycles with 50 kilowatts power, operating simultaneously during the day and synchronously at night with KFAB, Lincoln, Nebraska; by WIND, Gary, Indiana, operating on the frequency 560 kilocycles, with power of 1 kilowatt night, 5 kilowatts day, unlimited time, and by WJJD, Chicago, Illinois, which operates, by special authority, on the frequency 1130 kilocycles, with 20 kilowatts power, unlimited time.

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It was calculated (basing population figures on the 1930 United States Census) that the proposed increase in daytime power for WHBL would substantially increase the population and area served by the station as follows:

Contour	10 mv./m.	2 mv./m.	0.5 mv./m.	Area within 0.5 mv./m.
Proposed, 1 kilowatt.....	56,200	120,600	186,600	<i>Square miles</i> 2,140
Present, 250 watts.....	49,200	55,400	108,600	1,360
Increase.....	7,000	74,200	83,000	780
Percent increase.....	14.2	134	80.1	57.3

Population of Milwaukee, White Fish Bay, Fond du Lac, and Manitowac are not included in this table, and Lake Michigan is not included in the area.

According to the testimony of the applicant's expert witness, the public now receiving daytime service from WHBL would receive a 100% stronger signal from this station, operating as proposed. The built-up sections of Sheboygan would receive a signal of approximately 25 to 30 millivolts per meter and a superior service would be rendered to those areas where a secondary service is now received from the station. Small towns located within the trade area of Sheboygan need a slightly greater signal strength than is necessary for rural service and the proposed increase in daytime power for this station would provide an increased signal to these communities which would be sufficient for satisfactory service. It is evident, therefore, that Sheboygan as well as the rural communities located in close proximity thereto would be benefited by an increased signal and a better grade of service from WHBL.

The program log of WHBL for the week ended March 12, 1938, representing a typical week's broadcast, was submitted in evidence. The schedule shows that the station renders a meritorious program service which is designed to serve Sheboygan and the rural areas contiguous thereto. Because of its location in the dairy and cheese market centers, the station has featured as a regular part of the daily broadcasts reports and market quotations pertaining to dairy and agricultural products which are marketed in the area. An analysis of the station programs shows that 89.1% are sustaining programs and 10.9% are commercial. Time is donated to civic, religious, and educational organizations in Sheboygan. A transcription service and news service are used as a part of the daily broadcasts. Remote lines are maintained for broadcasting programs originating in the local high school and in the public auditorium.

Station WIBA, Madison, Wisconsin, operates on the frequency 1280 kilocycles, with power of 1 kilowatt night, 5 kilowatts day, 6 F. C. C.

using a directional antenna at night. Based upon the average conductivity and an assumed antenna efficiency of 250 millivolts per meter at one mile for 1 kilowatt for determining the 0.5 millivolt per meter contour of WIBA and upon measurements for determining the 5 millivolts per meter contour of WHBL, operating as proposed, it was predicted that WHBL would cause no objectionable interference to the service of WIBA during the daytime.

Station WTAQ, Green Bay, Wisconsin, operates on the frequency 1330 kilocycles with 1 kilowatt power, unlimited time, using a directional antenna at night. Based upon actual field measurements of the signals of WTAQ and of WHBL, it was predicted that no objectionable interference would occur within the normally protected 0.5 millivolt per meter contour of either station as a result of WHBL operating as proposed.

Station WEMP, Milwaukee, Wisconsin, operates on the frequency 1310 kilocycles, with 100 watts power, daytime. A series of field measurements of the signals of WEMP and WHBL show that these stations now suffer mutual objectionable interference during the daytime within the 0.5 millivolt per meter contour of each station. There are approximately 4,500 people residing within the 0.5 millivolt per meter contour of WEMP that receive objectionable interference from the operation of WHBL; and 3,300 people residing within the 0.5 millivolt per meter contour of WHBL that receive objectionable interference from the operation of WEMP. Under the proposed operation of WHBL, it was predicted that 10,700 people residing within the above contour of WHBL would receive objectionable interference from WEMP. However, 8,200 of these people do not now receive a signal from WHBL of an intensity of 0.5 millivolt per meter so that these people would not actually be deprived of a satisfactory broadcast service. Similarly 9,100 people residing within the above contour of WEMP would receive objectionable interference from the operation of WHBL operating as proposed, but, as stated heretofore, 4,500 of these people already receive this interference from WHBL. Moreover, it was calculated that this increase in interference would only affect approximately 1% of the population residing within the primary service area of WEMP.

Station WEMP has an application pending for construction permit (B2-P-2066) to increase its daytime power from 100 watts to 250 watts. Based upon simultaneous daytime operation of WEMP and WHBL (both stations operating as proposed) it was estimated that 2,500 people residing within the 0.5 millivolt per meter contour of WEMP would receive objectionable interference from WHBL. These people do not now receive service from WEMP of 0.5 millivolt per meter or more which is free from objectionable interference. Simi-

larly, 11,600 people residing within the 0.5 millivolt per meter contour of WHBL would receive objectionable interference from WEMP, but, as in the case above, these people do not now receive a signal of 0.5 millivolt per meter or more from WHBL which is free from objectionable interference. In summary, the increase in power for each station would be expected to shift the location of the area in which WEMP will receive objectionable interference from WHBL further from the metropolitan district of Milwaukee and more in the rural areas. While the area wherein interference would occur would be larger in square miles it would, nevertheless, be removed to a less densely populated section. Specifically, the population residing within the service area of WEMP that would receive objectionable interference from WHBL would be decreased; and while this would not be the case as to the population within the service area of WHBL, the area affected is within the metropolitan district of Milwaukee where the people do not now receive satisfactory service from WHBL. It is evident, therefore, that the least objectionable interference to the service of WEMP and WHBL during the daytime would occur when both stations operate with the increased power as proposed.

Station WTAQ has an application pending for construction permit (B4-P-1414) to increase its power on the frequency 1330 kilocycles from 1 kilowatt to 5 kilowatts daytime and to use a directional antenna for daytime operation. Based upon the proposed increase in power for Stations WHBL and WTAQ and the use of a directional antenna by WTAQ, it was predicted that no mutual objectionable interference to the service of either station would occur as a result of simultaneous daytime operation.

IN RE DOCKET NO. 5005

The Milwaukee Broadcasting Company, licensee of Station WEMP, is incorporated under the laws of the State of Wisconsin and is duly qualified to engage in the business of operating a radio-broadcast station. It has an authorized capitalization of 300 shares of stock with no par value, but with a fixed value of \$100 per share. There are now issued and outstanding 170 shares which are owned as follows: 2 shares to Albert L. Mount, 1 share to Thomas M. Duncan, 92 shares to Glenn D. Roberts, and 75 shares to Gene T. Dyer. The officers and directors of the corporation are A. L. Mount, President, T. M. Duncan, Vice President, and Glenn D. Roberts, Secretary and Treasurer.

In view of the fact that the applicant is licensee of an existing broadcast station, its legal and technical qualifications have been determined heretofore by the Commission and were not in issue in
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this proceeding. The financial qualifications of the applicant likewise were not in issue.

There will be no change in the transmitting equipment required as a result of granting this application.

The applicant has a staff of 14 full-time employees for the operation of Station WEMP. Eight additional employees will be required to insure the efficient operation of the station with the increase in hours of operation. It is estimated that the additional operating expense resulting to the station would be \$1,000 a month.

Station WEMP, operating under its present assignment, is compelled to go off the air at sunset in Milwaukee, Wisconsin. The applicant submitted in evidence an exhibit which shows that approximately 52 business establishments in Milwaukee used the facilities of WEMP as an advertising medium during the summer months of 1937 between the hours of 5:30 and 7:30 p. m. Most of these contracts for the purchase of time were cancelled by these business establishments during the winter months because the station does not operate during the above hours. It was also shown that most of these merchants go off the air during the winter months rather than shift their programs to an earlier hour. Six deponents testified that they would use the facilities of WEMP for advertising purpose should nighttime hours be available to the station. Approximately 100 business establishments in Milwaukee use the facilities of the station for advertising purposes at the present time.

According to the 1930 United States Census, Milwaukee had a population of 578,249 and the metropolitan district had a population of 743,414. The Census of Business for 1935, published by the United States Department of Commerce, shows the following data with respect to Milwaukee: 9,351 retail stores having gross sales of \$236,941,000 and total pay rolls of \$29,214,000; 3,557 service establishments having gross sales of \$16,385,000 and total pay rolls of \$4,916,000; and 1,251 wholesale establishments having net sales of \$344,732,000 and total pay rolls of \$20,569,000.

There are three broadcast stations located in Milwaukee rendering primary service to this city, two of which are full-time regional stations, namely WTMJ and WISN (assignments stated, *supra*) and WEMP (the applicant herein), a local station operating during daytime hours only. This city receives some nighttime service in the residential sections from WGN, Chicago, Illinois, which operates on the frequency 720 kilocycles with 50 kilowatts power, unlimited time, and from Stations WBBM, WMAQ, and WENR, all located at Chicago, Illinois (assignments stated, *supra*).

Station WEMP has no chain affiliation, while Stations WTMJ and WISN are the local outlets for two major broadcasting systems.

A survey was made of the programs broadcast by Stations WISN and WTMJ for one week. This survey showed that approximately 68% of the programs broadcast by WISN were chain programs and 32% were local programs; and that approximately 73% of the programs broadcast by WTMJ were chain programs and 27% were local programs. It was also shown that the nighttime hours of these stations were taken up largely by chain commitments during this period.

It was predicted that WEMP, operating as proposed, would render an interference-free nighttime service to its 2.55 millivolt per meter contour. Basing population figures on the 1930 United States Census, it was calculated that there would be 503,000 people residing within this service area who would receive satisfactory nighttime service.

The log of WEMP, representing a typical week's broadcast, was submitted in evidence. The schedule indicates that the programs are designed to provide a local broadcast service to Milwaukee. The station donates time to civic, educational, labor, and religious organizations of this city. The schedule further shows that approximately 37.1% of the time is devoted to commercial programs and 62.9% to sustaining programs. Two news services are used on the daily broadcasts in addition to local news bulletins furnished by the Milwaukee Leader. Numerous local events will be broadcast at night which are not now receiving time on the air, including educational programs sponsored by the State of Wisconsin, sports events from Marquette University and from the local high schools, programs sponsored by the city officials of Milwaukee, programs initiated by the Police Department, educational subjects sponsored by the Medical Society of Milwaukee, and dramatic programs of the Little Theater organization. Time will also be devoted during nighttime hours to other civic, religious, charitable, and educational organizations of this city.

Approximately 54 professional orchestras, various musical organizations and individual musicians are available for use over Station WEMP. In addition, students from the numerous high schools and from Marquette University would be expected to provide forms of entertainment for broadcasting over the station. There are members of various civic, charitable, and religious organizations, as well as the city officials of Milwaukee, who are available for talks on educational and political subjects which are of interest to the public of this city.

Station WHBL, Sheboygan, Wisconsin, operates on the frequency 1300 kilocycles with 250 watts power, unlimited time. Based upon the actual antenna efficiency of each station, it was predicted that there would be no mutual interference within the present interfer-

ence-free service areas of either WEMP or WHBL as a result of simultaneous nighttime operations.

WCLS, Joliet, Illinois, which operates on the frequency 1310 kilocycles, with 100 watts power, day, and specified hours at night is located approximately 105 miles from WEMP. This station now receives a limitation to its 2.73 millivolts per meter contour from the operation of other broadcast stations. Based upon the antenna efficiency of WEMP, it was predicted that WEMP, operating as proposed, would increase the limitation to the service of WCLS to its 2.98 millivolts per meter contour. However, it was calculated (basing population figures on the 1930 United States Census) that the increased limitation to the service of WCLS would mean a decrease in service to approximately 1,450 people out of an original coverage of 87,750 people within the 2.73 millivolts per meter contour; and that the loss in land area would be approximately 35 square miles out of a present coverage of 278 square miles. There would be no curtailment or decrease in the service rendered by WCLS anywhere within the City of Joliet, Illinois.

Station WTRC, Elkhart, Indiana, operates on the frequency 1310 kilocycles with power of 100 watts night, 250 watts daytime, unlimited time. Based upon the antenna efficiency of WEMP, it was predicted that WEMP, operating as proposed, would slightly increase the interference to the service of WTRC from the 2.66 millivolts per meter contour to the 2.88 millivolts per meter contour, an increase of 0.22 millivolt per meter.

There is an application pending for a construction permit (B4-P-1907) to establish a new radiobroadcast station at Clinton, Iowa, to operate on the frequency 1310 kilocycles with power of 100 watts night, 250 watts day, unlimited time. Station WEMP, operating as proposed, would be expected to limit the service of the proposed Clinton station at night to its 2.85 millivolts per meter contour, and the Clinton station would in turn limit WEMP to its 2.91 millivolts per meter contour.

GROUNDNS FOR DECISION

IN RE DOCKET NO. 4145

1. The applicant is financially qualified to defray the cost of installing the new equipment and to continue the operation of Station WHBL as proposed.
2. There is a public need for additional daytime service in the Sheboygan area of the type proposed herein.
3. The program service rendered by Station WHBL is of a meritorious nature and is designed to meet the needs of the area served.
4. Station WHBL, operating as proposed, would be expected to cause objectionable interference during the daytime to the service of

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WEMP within its 0.5 millivolt per meter contour, and WEMP would in turn be expected to cause objectionable interference within the 0.5 millivolt per meter contour of WHBL. These stations now suffer mutual objectionable interference so that the population and area affected by the granting of the instant application would be negligible. The need for additional daytime service in the Sheboygan area is sufficient to warrant the grant of this application notwithstanding the interference shown above.

5. The equipment proposed to be installed meets with the technical requirements of the Commission.

6. The granting of this application will serve public interest, convenience, and necessity.

IN RE DOCKET NO. 5005

1. There is a public need in Milwaukee for a local broadcast service at night of the type proposed herein.

2. The proposed program service for Station WEMP is well diversified and is designed to meet the needs and interests of the listening area.

3. Station WEMP, operating as proposed, would not cause objectionable interference at night to the service of Station WHBL within its present interference-free service area; and WHBL would not cause objectionable interference to the service of WEMP at night.

4. The operation of Station WEMP, as proposed, will increase the interference to the service of WCLS from its 2.73 millivolts per meter contour to the 2.98 millivolts per meter contour. The increased limitation, however, would not curtail or decrease in any way the service rendered by WCLS anywhere within the City of Joliet, Illinois. The population and area affected by the increased limitation is negligible.

5. Station WTRC is limited at the present time by the operation of existing broadcast stations to its 2.66 millivolts per meter contour. The operation of WEMP, as proposed, would slightly increase the limitation to the service of WTRC to its 2.88 millivolts per meter contour.

6. The operation of Station WEMP, as proposed, would be expected to limit the service of the proposed Clinton station to its 2.85 millivolts per meter contour, and the operation of the Clinton station would limit the service of WEMP to its 2.91 millivolts per meter contour.

7. Station WEMP, operating as proposed, would be expected to provide a local nighttime service to approximately 503,000 people residing within its interference-free service area (2.55 millivolts per meter contour).

8. The granting of this application will serve public interest, convenience, and necessity.

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of
VANCOUVER RADIO CORPORATION,
VANCOUVER, WASHINGTON. } DOCKET No. 4388.
For Construction Permit.

Decided November 1, 1938

Ben S. Fisher and John W. Kendall on behalf of the applicant;
Arthur W. Scharfeld, Philip G. Loucks, and Joseph F. Zias on behalf
of the respondent (KLX); *Walter Johnson* on behalf of the Com-
mission.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION (Case, Commissioner, not participating):

STATEMENT OF FACTS

Vancouver Radio Corporation, Vancouver, Washington, commenced this proceeding by filing its application for a permit to construct a radiobroadcast station to operate on 880 kilocycles with power of 250 watts, daytime only.

The Commission designated the application for hearing before an Examiner. His report (I-682) has been filed herein. KOIN, Inc. and KALE, Inc., stations in Portland, Oregon, filed exceptions to the report and requested oral argument thereupon; but later the exceptions and the request for oral argument were withdrawn.

The applicant is a corporation organized under the law of the State of Washington. It has charter authority to own and operate a radio-broadcast station and all of its officers, directors, and stockholders are citizens of the United States.

The corporation has an authorized capital of \$20,000 divided into 200 shares of common stock with par value of \$100 per share. The entire capital stock has been subscribed and the amount of \$5,000 has been paid into the treasury of the corporation by the stockholders. Evidence has been heard and considered respecting the financial ability of the subscribers to pay for stock bought in the sum of \$15,000 and the Commission finds that they are able to pay upon demand for the

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stock subscribed and that the applicant, if the permit sought is granted, will be financially qualified to proceed with the construction and operation of the station proposed.

The cost of constructing the station is estimated at approximately \$13,700 and the monthly operating expense of the station is estimated at \$1,185.

The estimated monthly receipts of the station are approximately \$1,490. Written statements have been procured by the applicant from 59 potential advertisers in the service area of the proposed station and from these and supplementary facts and circumstances appearing in the record, the Commission finds that there will be ample commercial support for the station if constructed as proposed.

The City of Vancouver is the county seat of Clark County, Washington, and it is located on the north bank of the Columbia River at the head of deep-sea navigation on that river. According to the 1930 Census, the city had a population of 15,766 while the county had a population of 40,316. Since that Census the city and county have had a substantial growth and it is now estimated that Vancouver has a population of 20,000 while Clark County has a population of 60,000. The county has a land area of 634 square miles devoted to dairying, fruit growing, and the production of vegetables. According to the last farm Census (1935), Clark County had 4,591 farms which produced products valued at \$3,157,375 annually. In the same year the value of fruits and nuts products was \$1,138,255 while the value of eggs produced was \$1,069,817. Clark County supplies approximately one-third of all the milk used in Portland, Oregon, and it is the location of the largest cooperative cheese factory in the United States.

The port of Vancouver is served by the major steamship companies operating on the Pacific Coast. The terminal facilities of the port consist of a terminal at the east end of the upper turning basin of the Columbia River, with 1,300 feet of docks, 40% covered and served by railroad and trucking facilities. At the west end of the lower turning basin is situated a dock 850 feet long completely covered, with 80,000 square feet of floor space and with covered truck loading platforms. The dock is served by three railway lines.

Vancouver is a concentration point for grain. An elevator with a capacity exceeding 2,000,000 bushels maintains a loading dock 500 feet long on the Vancouver waterfront.

The industries of the city consist of 83 major concerns comprising, among other enterprises, canneries, packing houses, lumber companies, saw mills, grain elevators, breweries, and paper mills.

The number of wage earners in Vancouver in the year 1936 approximated 8,000 and wages paid them amounted to \$8,500,000.

The total number of retail outlets for the City of Vancouver is 335 and for the County of Clark is 591. Retail sales for the city amount to \$7,103,000 and for the county to \$10,574,000, while annual retail pay rolls are respectively \$754,000 and \$960,000.

The United States Army maintains at Vancouver Barracks about 1,000 men with an annual pay roll of \$1,500,000. Vancouver is the headquarters for C. C. C. camps, commissaries, and quartermaster corps which expended in the year 1935 more than \$10,000,000.

Vancouver, located on the north bank of the Columbia River, has a retail trade area extending about 100 miles east, 30 miles north, and 6 miles west.

The station proposed by the applicant would have a service area of about 5.8 miles, 16.5 miles, and 30 miles within its respective 10 millivolt per meter, 2 millivolt per meter, and 0.5 millivolt per meter contours. The proposed station would render good service throughout nearly all of Clark County in which, besides Vancouver, are the towns of Camas, Washougal, Ridgefield, Yacolt, Stevenson, Woodland, and White Salmon.

There is no primary radio service available in Vancouver from stations operating within the State of Washington. There are, however, radiobroadcast stations located in the Portland metropolitan area some of which do render a primary service throughout the City of Vancouver, but the existence of these stations does not obviate the need of a station in Vancouver. Portland, Oregon, the location of the stations mentioned, is on the Willamette River directly south of Vancouver, Washington.

The civic needs of Vancouver and its suburban area receive little or no expression or consideration from the broadcast stations now operating in Portland; furthermore, business activities of Vancouver, particularly merchandising, have been adversely affected because of the advantage enjoyed by Portland competitors due to radio advertising over the Portland stations.

Agricultural pursuits in Clark County, Washington, are very extensive. The production of prunes is one of the principal commercial fruit crops. The growing of this crop necessitates much care in the blooming season because of liability to destruction by the thrip, an insect which destroys the entire prune crop when precaution against the thrip is not taken by spraying at the proper time. The appearance of this pest is the signal for immediate spraying, and information respecting the time for the spraying is dispensed by the county agent. For this the bulletin and the telephone are now available, but protection of the prune crop would be more prompt and effective if information and advice by radio were available. The value of

the prune crop in Clark County annually exceeds \$1,000,000; and orchards for the growing of prunes are increasing.

Clark County, Washington, is the home of the Grange and Agricultural Group founded in 1879. This group has 17 subordinate organizations in the county with a total membership approximating 4,000. These agricultural groups meet at various times for the purpose of exchanging views and supplying information respecting crops. If a radio service were available to the Grange it would be a medium through which agricultural information could be given throughout the county. Agricultural reports and market quotations could likewise be broadcast to the advantage of farmers in the county.

The available talent in Vancouver consists of the Vancouver Symphony Orchestra (55 pieces), the high school band (70 pieces), the Vancouver A Capella Choir (80 voices), the Vancouver high school girls' glee club (50 voices), the junior high school band (60 pieces), the junior high school orchestra (50 pieces), the State School for Blind orchestra (10 pieces), the State School for Blind male chorus (16 voices), the Vancouver high school brass sextet, and the American Legion quartet.

There appears to be ample talent in the service area of the proposed station for the use of the station and the applicant has submitted a program which covers a wide range. It is educational, entertaining, and constructive.

There are no existing stations within the recommended mileage separation for the assignment requested and there is no problem of interference with existing stations. There are no pending applications which involve problems of interference.

The equipment which the applicant proposes to install appears to be satisfactory but the antenna and site must yet be determined subject to approval of the Commission.

The applicant has made tentative arrangements for the employment of a station manager well experienced in the operation of broadcast stations; and the applicant will employ an experienced staff to assist in the operation of the proposed station.

GROUNDS FOR DECISION

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

2. There is a public need for the meritorious daytime service proposed by the applicant which is not now satisfactorily available from other sources.

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

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D. C.

<p>In the Matter of THE TRAVELERS BROADCASTING SERVICE CORPORATION (STATIONS WTIC, W1XEH, W1XLU, W1XO, W1XT), HARTFORD, CONNECTICUT. For Voluntary Assignment of Licenses to The Travelers Broadcasting Company.</p>	}	DOCKET No. 4692.
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Decided November 1, 1938

D. M. Patrick, John W. Guider, Karl A. Smith, and Lester Cohen on behalf of the applicants; *Hugh B. Hutchison* on behalf of the Federal Communications Commission.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION (Craven, Commissioner, opinion dissenting; Brown, Commissioner, dissenting; Case, Commissioner, not participating):

STATEMENT OF FACTS

This proceeding arose upon a joint application of The Travelers Broadcasting Service Corporation (licensee of radiobroadcast Station WTIC and its associated short-wave Stations W1XEH, W1XLU, W1XO, and W1XT) and The Travelers Broadcasting Company, Hartford, Connecticut, requesting the Commission to approve the voluntary assignment of the licenses held by the former to the latter.

On October 25, 1937, a hearing was held in the above application before an examiner, who, in his report (I-613) recommended a denial thereof. To this report exceptions were filed by the applicants and oral argument was heard on May 12, 1938. The exceptions have been duly considered by the Commission.

The Travelers Broadcasting Service Corporation is authorized by license to operate Station WTIC, Hartford, Connecticut, on 1060 kilocycles, with power of 50 kilowatts, sharing time with Station WBAL, Baltimore, Maryland, and it is the holder of a special experimental license authorizing the operation of Station WTIC on 1040 kilocycles,

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with power of 50 kilowatts, simultaneously with Station KRLD, Dallas, Texas. It is also the licensee of Stations W1XEH, W1XLU, W1XO, and W1XT which are short-wave broadcast stations associated with the operation of WTIC.

The Travelers Insurance Company (a Connecticut corporation), Hartford, Connecticut, began the operation of WTIC on February 10, 1925, as the original licensee of the station. In the year 1925 the station was operated as an advertising medium for the Travelers Insurance Company, but in 1926 the latter began to operate WTIC as a commercial station and continued to do so until the Radio Act of 1927 became effective. In view of the fact that the Travelers Insurance Company had one alien director and was not, therefore, qualified, under the provisions of the Radio Act of 1927, to continue as licensee of Station WTIC, The Travelers Broadcasting Service Corporation was organized to take over the operation of the station on December 31, 1928. The Travelers Broadcasting Service Corporation has continued to operate Station WTIC and its affiliated short-wave stations until the present time.

The Travelers Broadcasting Service Corporation was organized under the laws of the State of Connecticut and at the time of the hearing had issued 100 shares of stock at a par value of \$100 per share. This corporation is consistently referred to in the testimony as a "wholly owned subsidiary of the Travelers Insurance Company." However, the Commission's records, as well as certain sworn statements filed by the applicants, indicate that out of a total of 100 shares of stock issued, 95 are owned by the Travelers Indemnity Company and that the latter has 30,000 shares of outstanding stock, of which 29,925 are owned by the Travelers Insurance Company. The record contains no evidence whatsoever concerning the Travelers Indemnity Company.

At the time The Travelers Broadcasting Service Corporation was created and took over the license and operation of Station WTIC, the Travelers Insurance Company had invested about \$500,000 in land, buildings, and technical equipment, which the latter agreed to lease to the present licensee together with studio space, for approximately \$100,000 a year. This sum is broken down as follows: \$20,000, studio rental; \$30,000, representing 6% interest on an investment agreed upon in the sum of \$500,000; and \$50,000 depreciation. The annual rental has been gradually decreased due to the fact that depreciation has been charged off against original investment. At the time of the hearing this annual rental was approximately \$50,000. The average yearly rental paid by the present licensee under this arrangement, since the date on which it began operating Station WTIC, has been approximately \$75,000. It is apparent, therefore, that the parent company has

been repaid the larger portion of its original investment of \$500,000, as depreciation at the rate of 10% per annum has been charged off against that amount for nine years and was included in the rental of the station.

According to the testimony of an officer of the Travelers Insurance Company, the losses sustained in the operation of Station WTIC between February 10, 1925, and December 31, 1928, were \$212,459.04, which appears to have been charged off to advertising.

At the time that the Travelers Broadcasting Service Corporation assumed operation of Station WTIC, the Travelers Insurance Company agreed to absorb all losses sustained from the operation of the station. The testimony shows that for the years 1929 to 1935, inclusive, the loss in the operation of the station totaled \$1,944,414.78. The attorney representing the Commission asked that profit and loss statements for these years be submitted in evidence as a basis for cross-examination concerning these losses. The applicants objected to furnishing such statements, relying on the rule of the Commission (103.18) which requires that a profit-and-loss statement for the six-months period immediately preceding the filing of an application be furnished. The applicants did, however, introduce into evidence a profit-and-loss statement for the period of one year (from April 1, 1936, to March 31, 1937). A witness for the applicants testified that the sum of \$1,944,414.78 represented losses incurred solely in the operation of Station WTIC and its affiliated short-wave stations, and did not include any activities in which the parent corporation is engaged. According to the testimony, these losses resulted from several factors, namely: The station operated only part time during a portion of this period; it maintained a larger personnel than was warranted during the years of the depression; and the management had maintained a 63-piece orchestra, at a cost of approximately \$100,000 per year.

A profit-and-loss statement of the assignor corporation covering the period from April 1, 1936, to March 31, 1937, shows a net income of \$70,054.38. Evidence adduced at the hearing also shows that the net profit earned for nine months ending September 30, 1937, was \$115,794.47. Based on the assumption that the months of October, November, and December 1937 would show a reasonable profit as compared with the summer months, a witness for the applicants estimated that the net profit which would be derived from the operation of the station during the entire year of 1937 would be approximately \$150,000. It was claimed that the enormous upturn in the station's business was due to the facts that the station has discontinued the use of the 63-piece orchestra and that the commercial advertising rate has been doubled.

Notwithstanding the original agreement of the Travelers Insurance Company to assume all losses incurred in the operation of the station, on December 3, 1935, it entered into a second agreement with the present licensee whereby the latter promised to reimburse the former to the extent of \$1,500,000, and on April 20, 1937, a few days before the above hearing, a note in that amount was executed and delivered by The Travelers Broadcasting Service Corporation to the parent company. The record is not clear as to why, after having assumed the losses in the operation of Station WTIC for a number of years, without security, the Travelers Insurance Company later exacted a promise from the present licensee to repay these amounts and subsequently secured as evidence of this indebtedness the above promissory note. The original contract referred to above between these corporations was not submitted in evidence.

On April 22, 1937, The Travelers Broadcasting Company was incorporated under the laws of the State of Connecticut. This corporation was authorized to issue 1,000 shares of stock at a par value of \$100 per share, of which 7 qualifying shares have been issued to the directors and 93 to the Prospect Company, a Delaware corporation. All the stock of the latter is owned by the Travelers Insurance Company.

All of the officers, directors, and more than 90% of the stockholders of all corporations involved in this proceeding are citizens of the United States, with one exception, to wit: The Travelers Insurance Company has one director who is an alien.

On April 27, 1937, a contract was entered into between the Travelers Insurance Company (parent company), The Travelers Broadcasting Service Corporation (assignor), and The Travelers Broadcasting Company (assignee), which contains substantially the following provisions:

The Assignee agrees to purchase, and the Parent agrees to sell, all of the physical properties including lands, buildings, and technical equipment now owned by the Parent Company and used in connection with the operation of the radiobroadcast stations here involved which are at the present time being operated by the Assignor, and to pay therefor the sum of \$500,000, the payment to be represented by the execution and delivery by the Assignee to the Parent of a promissory note for said sum bearing interest at the rate of 6% per annum.

The Assignee agrees to join with the Assignor in making an application to this Commission for the transfer to it of all of the radio licenses now held by the Assignor to operate the radio stations here involved; Assignee agrees to assume liability for the \$1,500,000 note, hereinbefore described, which was executed and delivered by the Assignor on April 20, 1937, to the Parent Company; Assignor agrees, with the approval of this Commission, to assign all of the radio licenses now held by it and to transfer to the Assignee all accounts receivable which may appear on its books as of the date of transfer, together with such outstanding contracts as it may have.

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It is apparent that the chief obligation to be assumed by the proposed assignee is a note for \$1,500,000 payable to the Travelers Insurance Company, as provided in the agreement of April 27, 1937.

The value of all the tangible property to be transferred, including real estate and other items, is estimated by the applicants as follows:

Original cost.....	\$559,967. 76
Depreciated value.....	444, 568. 06
Replacement cost.....	513, 473. 56

An engineer who testified on behalf of the Commission estimated that, predicated upon certain accepted standards of estimating depreciation on technical equipment, the above valuation should be discounted approximately \$93,000. According to such estimate, the total value of the properties to be transferred would be approximately \$352,000. This witness did not, however, personally examine the property.

According to a balance sheet as of April 21, 1937, The Travelers Broadcasting Service Corporation had cash assets of \$59,945.08. The testimony indicates, however, that, as of the date of the hearing, this corporation had approximately \$100,000 in cash. The only other assets consist of certain contracts and accounts receivable (the value of which is not shown in this record) which under the contract of April 27, 1937, are to be turned over to the proposed assignee. As shown above, The Travelers Broadcasting Service Corporation has capital stock of \$10,000.

According to the financial statement of The Travelers Broadcasting Company, as of April 27, 1937, this company had cash in the amount of \$10,000, which represented funds secured from the sale of 100 shares of capital stock. In the event that the application under consideration be granted, the Prospect Company will purchase 400 additional shares in the proposed assignee corporation, which will increase the cash assets of the latter to \$50,000.

It is apparent from an analysis of the above evidence that the only tangible assets to be received by the proposed assignee under the contract of April 27, 1937, are land, buildings, and equipment having a total book value of \$500,000, but which, according to the evidence, have an actual valuation of somewhere between \$352,000 and \$444,568.06 and certain intangible assets consisting of contracts and accounts receivable, the value of which is not shown. As under the above contract the proposed assignee agrees to assume the payment of one note covering the purchase price of the tangible property in the sum of \$500,000 and a second note in the sum of \$1,500,000, representing reimbursement to the Travelers Insurance Company for sums advanced in previous years for the operation of the station, it is apparent that under this

arrangement said proposed assignee will have a deficit of at least \$1,500,000 at the time it begins operation of the station.

Under a financial statement of The Travelers Broadcasting Company, which it is alleged will reflect the assets and liabilities of this corporation after the provisions of the contract of April 27, 1937, are carried out, there is listed as an asset the sum of \$1,500,000 as "developmental expenses capitalized" to balance off the liability for the income note in an equal amount. However, this so-called asset is a fiction, as the net result of this transaction will be that the proposed assignee will assume a note payable to the parent company in the amount of \$1,500,000 for which no tangible asset value will be received, and, as stated above, will leave the former with a total deficiency of assets of \$1,500,000.

Under the above proposal the evidence indicates that the proposed licensee will be required to meet its several obligations from the profits which may be derived from the operation of the stations involved herein in the following order:

1. To defray expenses of operation and to make improvements to the properties to keep the station abreast of the developments of the radio art.
2. Payment of studio rental (\$20,000).
3. Payment of interest on \$500,000 purchase note (\$30,000).
4. Payment of interest on the \$1,500,000 note at the rate of 6% per annum, or \$90,000.
5. Payment on principal of the \$500,000 note.
6. Payment on principal of the \$1,500,000 note.
7. Dividends to stockholders of the assignee corporation.

It is apparent from the foregoing that, in addition to defraying current operating expenses, the allowance of reasonable sums for improvement of the station property and the payment of a fixed studio rental of \$20,000, the proposed assignee will be required to pay \$120,000 annually if it expects to meet the interest on the above notes, although certain provisions of the contract of April 27, 1937, and the evidence indicate that payments of interest on these obligations shall be made only from the profits of the station.

There is no provision in the contract of April 27, 1937, whereby the parent company agrees to absorb losses which might result from the operation of the stations involved herein.

In the event that the application under consideration be granted, the cash assets of The Travelers Broadcasting Service Corporation, which, as stated above, have an estimated valuation of approximately \$100,000, will be paid into the treasury of the parent company as dividends and the former will be dissolved. Although the obliga-

tions to be assumed by the proposed licensee will require the payment of approximately the same fixed interest rates as those of The Travelers Broadcasting Service Corporation, it is clear that the latter is in a stronger financial position to meet its obligations for, in addition to certain accounts receivable and contracts for the sale of time (which under the contract of April 27, 1937, are to be assigned to the proposed assignee), it has available approximately \$100,000 in cash which, if returned to the parent corporation as proposed, will be diverted from the business of operating the broadcast stations involved.

It is also apparent from an analysis of the above evidence that, as between the existing licensee and the proposed assignee, the only actual benefit which will be derived by the latter from the former in the consideration of the assumption of the note for \$1,500,000, will be the assignment of certain contracts and accounts receivable, the value of which is not shown in this record. The assumption by the proposed assignee of the note for \$1,500,000 is also a part of the consideration for the assignment of the licenses involved herein.

The present personnel of the stations involved herein consists of 6 officers and executives, 7 announcers, 4 salesmen, and 18 employees of the technical department, or a total of 35 employees.

Various program schedules heretofore broadcast by the assignor were received in evidence. Station WTIC is associated with the Red Network of the National Broadcasting Company and with the Yankee Network. Commercial programs are broadcast from both of the networks and sustaining programs are received from the National Broadcasting Company. In addition, the station originates many local and sustaining programs. The evidence discloses that the program service of the existing licensee is meritorious.

No evidence was offered concerning any definite improvements in the program service or technical operation of the stations involved herein nor of any other benefits which would flow directly to the public. It is not shown, therefore, in what way, if any, public interest would be served by granting the application under consideration.

It was contended by the applicants that certain benefits would result from the granting of the application, which are set forth as follows:

1. All properties devoted to broadcasting and other activities will be consolidated through ownership in the proposed licensee.
2. The proposed licensee will have a larger capitalization than the existing licensee.
3. The proposed licensee will have broader corporate powers than the existing licensee, which may be beneficial in developments of the radio art.

4. The proposed licensee will assume no obligations greater than those of the existing licensee.

An examination of the evidence in this record discloses that all of the alleged benefits claimed are illusory. It is not seen, for example, how the public will be benefited through the nominal ownership by the proposed assignee of the properties to be used in the broadcasting business under a plan whereby it is to pay interest on the purchase price at identically the same rate as the rental paid for such property by the existing licensee. Although it is true that the proposed assignee will have a larger capitalization than the existing licensee, it will actually be in a weaker financial position to meet these obligations, as the latter has larger cash assets. The charter of the existing licensee was not submitted in evidence in this record, and it is impossible, therefore, to compare it with the charter of the proposed assignee. In view of the fact, however, that these stations have been operated for a number of years by the existing licensee, the latter apparently has sufficient corporate powers to maintain its business for all practical purposes. As stated above, although the obligations to be assumed by the proposed assignee will be practically identical insofar as interest rates and other fixed charges are concerned, with those of the existing licensee, the latter is in a stronger position to meet these obligations.

Although it is true that both The Travelers Broadcasting Service Corporation, the existing licensee, and The Travelers Broadcasting Company, the proposed assignee, are both indirectly controlled through intermediate holding companies by the Travelers Insurance Company, in contemplation of law all three corporations are separate legal entities. The effect of the assumption, therefore, by the proposed assignee, of notes totaling \$2,000,000, will be to incur valid and enforceable legal obligations in an enormous sum. These notes must be considered as actual obligations by the parent company; otherwise there would be no purpose in requiring them to be issued.

Under the requirements of Section 310 (b) of the Communications Act of 1934, in considering applications for authority to transfer control of licensee corporations such as the one discussed herein, the Commission must in each instance determine primarily whether or not a grant thereof would serve public interest, but it is not bound by strict principles of accounting such as would be applicable in rate proceedings governing common carriers. It is well settled, however, in numerous decisions in such proceedings, that past losses in operation may not be capitalized in the valuation of property for rate-making purposes. In *Galveston Electric Co. v. City of Galveston et al.*, 258 U. S. 388, the court said:

Past losses obviously do not tend to prove present values.

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The same principle was also recognized in *Knowville v. Knoxville Water Co.*, 212 U. S. 1, 14, and in a number of other decisions. (*Georgia Railway and Power Co. et al. v. Railroad Commission for the State of Georgia et al.*, 262 U. S. 625, 632; *Board of Commissioners v. New York Telephone Company*, 271 U. S. 23, 31; and *Public Utilities Commission v. East Providence Water Co.*, 136 Atl. 447, 452. Under Section 3 (h) of the Act, *supra*, a person engaged in radio broadcasting is not deemed to be a common carrier, and the above cases are not, therefore, strictly applicable. However, the principle expressed therein is one which the Commission recognizes to be in accordance with sound public policy. To permit, therefore, prior losses in the operation of Station WTIC, and its affiliated short-wave stations, to be capitalized in the manner proposed herein, especially when consideration is given to the fact that no benefits will flow to the proposed assignee in exchange for the assumption of the note for \$1,500,000, would not be in the public interest.

Moreover, as shown above, The Travelers Broadcasting Service Corporation issued the note for \$1,500,000 only a few days prior to the hearing. Although the licensee has heretofore rendered a meritorious broadcast service, it was impossible to determine at the time of the hearing what the effects of the assumption of this enormous obligation would be upon the financial position of the licensee and, consequently, upon its ability to continue to render an efficient broadcast service. Although the contract of April 27, 1937, states that the payment of interest on these notes is to be made from the profits of the station, efforts to meet these payments may result in a tendency toward a more rigid commercialization of the broadcast facilities involved, which would ultimately lead to a detriment to the service rendered the listening public. Such a condition would not be conducive to promoting the public interest or welfare.

GROUNDS FOR DECISION

On the record in this case the Commission finds:

1. There is no evidence in this record to show that any benefits would accrue to the public through a grant of the application under consideration.

2. The Travelers Broadcasting Service Corporation is in a stronger financial position to meet its outstanding obligations than would be The Travelers Broadcasting Company to meet obligations which it would assume under the proposed assignment involving the payments of approximately the same interest rates. The existing licensee is, therefore, better qualified financially to continue the operation of Station WTIC and its affiliated short-wave stations than would be The Travelers Broadcasting Company.

3. The assignment of the licenses in question would involve the assumption of obligations on the part of the proposed assignee far in excess of the actual value of the property to be received. In its efforts to meet the payments on these obligations said assignee might be encouraged to over-commercialize the activities of the stations involved, leading to an ultimate detriment in the service rendered the listening public.

4. The granting of the application under consideration would not serve the public interest.

DISSENTING OPINION OF COMMISSIONER T. A. M. CRAVEN

In my opinion, the Commission should approve the proposed assignment of license involved in this case. In order not to complicate matters, I shall discuss the case as if it involved solely the principal license involved, that of WTIC, the 50-kw. broadcast station at Hartford, Connecticut.

The proposed assignment is simply from one subsidiary corporation of Travelers Insurance Company to another subsidiary corporation. Each of these subsidiaries is, in turn, controlled by an intermediate subsidiary which, in turn, are controlled by Travelers Insurance Company, but this circumstance does not affect the issue and the case may be viewed simply as a transfer from one subsidiary to another subsidiary.

The essential facts can be very simply stated.

The Travelers Insurance Company, the parent corporation, was the original licensee of WTIC and operated the station from 1925 until the end of 1928. During this period it sustained a loss of over \$200,000. On December 31, 1928, the license was, with the approval of the Federal Radio Commission, assigned to the assignor subsidiary corporation, which had been created for that purpose. The reason for this was that the parent corporation had a Canadian director. The fact that this made it ineligible for a license under the then relatively new law was called to its attention by the Federal Radio Commission which, therefore, not only approved the assignment but instigated it. The assignor corporation has a capital stock of \$10,000.

Ownership of the equipment and other property used in connection with the station (including real estate and buildings) was not, however, transferred to the subsidiary but has remained ever since in the parent corporation. The latter leased the property to the subsidiary and agreed to finance any losses that might occur. At the start the rental was approximately \$100,000 a year, consisting of \$20,000 for studios, \$80,000 for the equipment and other property used in connection with the station, and \$50,000 for annual depreciation. This rental was gradually decreased with the charging off of

depreciation, and at the time of hearing was approximately \$30,000 a year for the equipment and other property used in connection with the station, and \$20,000 for the studios.

The value of the properties (other than studios) leased to the subsidiary is approximately \$500,000. The original cost was \$559,-967.76, and the replacement cost at the time of hearing was \$513,473.56. According to the applicant's witnesses, the depreciated value of the property was \$444,568.06, and according to the Commission's engineer it was somewhat less, but the difference in the two figures is not sufficient to be an issue.

During the period from 1929 to 1935 the subsidiary sustained losses totaling nearly \$2,000,000. The reasons for this are clear from the record. It was the result of attempting to operate a 50-kw. station on a clear channel on an uneconomic division of time with a station in another city, together with maintaining a high-class program service, including a large orchestra of sixty pieces or so, costing in excess of \$100,000 a year. The efforts made to find relief from this uneconomic situation have included experiments involving substantial expense, which have been both instructive and valuable in the information they have furnished to the Commission and to the industry. Since May 1934, when simultaneous operation with KRLD in Dallas, Texas, was first authorized, the situation has rapidly improved so that profits were made in 1936 and 1937. By the end of the first nine months in 1937, WTIC had actual net profits of \$115,794.47, and its witnesses estimated the profits for the entire year as \$150,000.

In other words, during the entire period of operation of WTIC, with 50 kw. power, the present licensee has not only contributed to scientific development of radio but also has rendered a meritorious public service to the citizens of Connecticut by maintaining a high standard of program quality through the development and employment of local talent. The licensee of Station WTIC has developed and improved its service to the public under the severe economic handicap of part-time operation, expensive technical experimentation, and expensive program development. In spite of severe losses the licensee has pioneered successfully in the public interest and developed the business to where it now is and can be conducted at a profit. The utilization of a good orchestra even at a high cost made the station famous and attracted business, which is now one of the contributory factors influencing the present profitable operation of the licensee.

A few days before the application was filed the obligations of the subsidiary arising out of these accumulated losses of nearly \$2,000,000 were reduced to definite terms by a note for \$1,500,000, which the subsidiary gave the parent corporation. The note bears interest at the rate of 6 percent. It does not, however, represent an absolute

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obligation. Both principal and interest are to be paid only out of profits, and if there are no profits neither interest nor principal will be paid. Thus the note is for a sum nearly \$500,000 less than the accumulated losses of the subsidiary.

The proposed assignment has four principal features:

(1) The new subsidiary will take title to the property which, as already explained, is worth approximately \$500,000, and will give its note in that amount to the parent corporation at 6 percent interest. In other words, the interest obligation of the new subsidiary is \$30,000 annually, the same amount as is now paid for rent by the old subsidiary;

(2) The new subsidiary will assume the contingent liability on the note for \$1,500,000, representing a compromise of the accumulated losses of the past;

(3) The old subsidiary will transfer to the new subsidiary all accounts receivable and outstanding contracts; and

(4) The licenses will be transferred from the old subsidiary to the new subsidiary.

If the transaction is approved, the old subsidiary will be liquidated and dissolved.

In other words, the parent corporation merely desires to combine ownership and operation of the station property in one corporation and thus to create a more efficient and less complicated situation, both on its books and in actual conduct of the station. There are certain incidental benefits, including a larger capitalization of the new subsidiary (with authorized capital stock of \$100,000, \$50,000 of which is to be fully paid in), and broader corporate powers in the new corporation. On its face the whole transaction appears to be a thoroughly normal affair, handled in a businesslike manner for common-sense reasons. From the viewpoint of the Commission also, the transaction has advantages since it puts an end to a state of affairs under which ownership and operation of the station property are divided and the Commission has no direct regulatory power over the owner of the property. Under the circumstances, therefore, there should be some strong and compelling reason of public interest requiring disapproval of the transaction, if we are to deny the application. I do not find any such reason in the record.

The price paid for the tangible property (\$500,000) is so close to what the property is actually worth that it cannot be the basis for any objection. The objections voiced by the Examiner in his report center entirely on the assumption of the contingent liability of \$1,500,000 by the new subsidiary. I confess I am unable to follow the Examiner's reasoning on this subject. He seems to place two dia-

metrically opposite interpretations on the legal significance of the obligation. One interpretation, which he expresses repeatedly, is that it is not a legally enforceable obligation; in other words, that the new subsidiary cannot be compelled to pay the sum of \$1,500,000 or any part of it to the parent corporation. The fact is, of course, that since payment of principal and interest are wholly contingent on profits, there is no legally enforceable obligation unless profits are made. We must assume that the obligation is just what it purports to be and what the undisputed evidence shows it to be. If the obligation is unenforceable for any reason whatsoever, I do not see that this is of any concern to the Commission. It is a matter largely of bookkeeping between a parent corporation and its subsidiaries.

However, the Examiner, having given expression to this interpretation, goes on to assume not only that the note is valid and legally enforceable, but also that it is an absolute obligation to pay a principal sum of \$1,500,000 and interest at the rate of 6 percent a year, regardless of profits. There is no basis anywhere in the evidence for such an assumption. The Examiner, having made this assumption, comes to the conclusion that the new subsidiary will start its career with a deficit of \$1,500,000 and that in fact it has paid \$1,500,000 for a wave length or a license or some other interest, running counter to the provisions of the Communications Act.

From the facts as I have stated them, I am unable to see how any question involving either Section 301 or 310 (b) is raised by the proposed transaction, no matter what view is taken as to the policy which the Commission should follow in connection with prices paid in matters of this kind. I say this, in the first place, because the obligation is contingent, and in the second place, because obviously the new subsidiary will do nothing more than step into the shoes of the old subsidiary in this respect. The old subsidiary owes \$1,500,000 to the parent corporation on a contingent basis. The new subsidiary will owe the same sum on the same basis. In both cases, the ultimate stockholders of the parent corporation are in exactly the same position, and their rights are not increased, decreased or affected in any way by the assignment.

Even if we suppose that a question is raised as to the application of Sections 301 and 310 (b), I do not see any reason for refusing approval. Let us assume for the moment that in the transaction the new subsidiary is undertaking a liability for \$1,500,000 in excess of what the tangible property is worth, as a means of protecting the parent corporation for the accumulated losses of the past. The question then arises as to what significance the Commission should attach to this fact. This question may be analyzed under two headings,

namely, (1) the right to recover losses, and (2) the price in excess of the tangible property value.

With reference to the right to recover losses, I know of no law or philosophy of regulation in which it is a good public policy to deprive a pioneer of the opportunity to regain the moneys expended for development, when such development has resulted in benefit to the public.

As to pioneering expenses, the United States has prospered as a result of the encouragement of pioneering, particularly in fields of science such as are involved in communications. For this Commission to adopt a policy for broadcasting which does not recognize that those who pioneer are entitled to the fruits of their pioneering, will so discourage honest business enterprise that there will result a deterioration of broadcasting service to the public.

I am aware that there has been developed a doctrine of public utility regulation which does not recognize the right of public utilities to recover pioneering losses. This doctrine has been sustained by the courts in cases involving public utilities having the characteristics of common carriers. However, the Communications Act of 1934 specifies in effect that broadcasting is not a common carrier service. While it is true that the courts have recognized broadcasting stations as being public utilities, I know of no instance in which the courts have inferred that broadcasting stations may be classified as public utilities in the same sense as are railroads, power and light companies, or gas companies. Therefore, court decisions involving public utilities having the characteristics of common carriers are not necessarily applicable to broadcasting stations, even though the courts have inferred that the latter may be classified as public utilities. A broadcasting station is not necessarily a natural monopoly, as are gas companies, power and light companies, or city traction companies. Broadcasting stations should be operated in competition, not only locally, but also on a regional or national basis. Furthermore, broadcasting stations do not cater directly to the general public, as do common carriers. The listening public pays no money to the broadcasting stations which transmit to them radio programs of news, culture, and entertainment, and broadcasting station licensees not only are not compelled to sell service to any purchaser, but are required to use discerning judgment in rendering a well-balanced program service to the public.

Furthermore, in my opinion, Congress, when specifying in 1934 that broadcasting was not a common carrier service, recognized that broadcasting was in the stages of early development, not only from a scientific standpoint, but also from an allocation and service standpoint. At that time Congress further prohibited a long-term license. In my

opinion, Congress, in 1934, recognized that further development and pioneering was necessary in broadcasting. While four years have elapsed since this action by Congress, it is my opinion that the time has not yet arrived where the development of broadcasting justifies the application of common carrier doctrines of rate regulation, either by inference, or by direct action. Furthermore, such a policy appears to be illogical because the situation in broadcasting differs so greatly from the situation of common carriers that the same principles of regulation could not be applied with a logical expectancy of successful operation of the broadcasting service.

A possible further reason for not imposing the doctrines of common carrier regulation upon broadcasting is that Congress clearly intended that while it desired to exercise a control of the application of broadcasting to the service of the public during the early development stages of this new art, it did not desire the administrative branches of the Government to so exercise control as to endanger freedom of speech and the use of radio as a media for public expression of various schools of thought on a fair and equitable basis. Therefore, the Commission should proceed with caution in exercising its powers under the guise of public utility doctrines of regulation.

The second phase of the question, involving price consideration in excess of the tangible property value, has repeatedly been before the Commission during the past two years, and has been the subject of extensive briefs and many oral arguments. It is regrettable, in my opinion, that the Commission has not yet found it possible to adopt a policy which it can uniformly apply, and to which parties may look for guidance for entering upon such transactions. Businesses under private ownership necessarily change hands from time to time, either directly or through transfer of stock in corporations. In this respect, broadcasting is like any other business. I do not think I am overstating the matter when I say that the basis on which a business, or an interest therein, may be disposed of is of tremendous importance to the investor, and the Commission's policy on this subject will have a lot to do with attracting or driving away capital and the pioneering spirit in the various fields of radio communication. Whatever policy is adopted with respect to broadcast licenses should likewise be applied to licenses for public correspondence by radio because if it is wrong in one case to pay more than the value of the tangible property, then it is wrong in the other.

Several very different theories have been suggested to the Commission as the proper interpretation of Sections 301 and 310 (b). At one extreme is the theory that the Commission has no power whatsoever to take price into consideration in approving or disapproving an assignment or transfer. This theory is supported by some evi-

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dence in the legislative history of the statute, tending to show that Congress expressly rejected a proposal that would have given the Commission such authority.¹ It is also supported by the fact that, whereas such authority is conferred upon the Commission in connection with valuation of communications common carrier properties, it is not mentioned in the part of the statute having to do with radio communication and broadcasting.²

At the other extreme is what is known as the "bare bones" policy. The viewpoint underlying this theory seems to be that if the Commission approves a transfer involving a price more than the value of the tangible assets, it is in effect allowing a wave length or license or some other interest in a station to be sold. Of course, there is nothing in Section 310 (b) which forbids this; the section simply states that a transfer, in order to be valid, must be in the public interest and must have the approval of the Commission. The proponents of this theory, however, go back to Section 301 and, as I understand, they say that to approve such a price is tantamount to recognition of a right of ownership in a wave length or license beyond the terms of the license itself. I have not heard anyone explain, however, just how an assignee or transferee gets any right of ownership by paying a sum larger than the value of the physical assets and by getting Commission approval of the transaction. He still must

¹ The Radio Act of 1912 had no provision giving the Secretary of Commerce, who was the licensing authority, any control over assignment or transfer of licenses. This was one of the defects most frequently urged against that statute. It was regarded as a defect, however, not because of any belief that control over price was needed, but because the Secretary of Commerce lacked any authority to determine whether the assignee was a proper person to have a license. In the series of bills introduced in Congress beginning in 1923, ultimately resulting in the Radio Act of 1927, express provision was made to give the licensing authority the necessary power.

The bill which actually became the Radio Act of 1927, when it passed the Senate, contained a proviso, reading in part, as follows:

"That the commission shall not approve any transfer or assignment or disposition of the station license required hereby, voluntarily or involuntarily, if the consideration be greater than the reasonable value of the apparatus for which said license has been issued, and said exchange value shall in no case exceed the original cost of the apparatus, and the same provision shall apply to fixtures, studio, and equipment thereof if they are transferred with the apparatus. In case the commission shall find there has been any violation or evasion of this provision it shall have power to terminate irrevocably the license of such station." The Senate committee report accompanying the bill summarized the section containing the above proviso as follows:

"No license shall be granted or transferred to an alien except by written permission of the Commission. In order to prevent the selling of wave lengths for profit, the Commission shall not approve any transfer of wave length when the apparatus is sold for more than its reasonable value."

The proviso, however, was stricken from the bill as finally passed. This is a rather persuasive indication that Congress thoroughly considered the "bare bones" theory and after careful deliberation decided not to authorize or direct the Commission to apply it.

² Section 213, authorizing the Commission to make a valuation of all or any part of the property owned or used by a communications common carrier, provides, in substance, that nothing shall be included in the original cost reported, or in any valuation made of the property of any common carrier, on account of any easement, license, or franchise beyond the reasonable, necessary expenses lawfully incurred in obtaining it.

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come before the Commission for periodical renewals of his license; must expressly waive any such claim in every application for renewal; and must accept a license which, on its face, says he has no right of ownership, just as does the statute itself. As I understand it, the pertinent provisions of the statute conferring such powers on the Commission and negating any right of ownership in a wave length or license, have been thoroughly upheld by the courts. If any such theory be adopted, however, the Commission must be consistent in applying it. It is just as illegal to pay \$25,000 more than the value of the assets as it is to pay \$1,500,000 more. Every such case would have to be decided (so far as price is concerned) purely and simply on the basis of evidence as to the value of the property. Yet in recent months we have repeatedly approved transfers where the undisputed evidence showed that the price was substantially larger than the value of the property. The only distinction between this case and others is that a larger station, and consequently, larger sums of money, are involved.

I do not believe the "bare bones" policy can be justified legally or practically. It seems obvious that it leads us into inextricable difficulties in administering the Act and places a terrific obstacle in the way of progress in advancement in the industry. For example, an immediate problem would arise in reference to sales of stock in corporations that hold radio licenses. Stock in a number of these licensees is freely traded in on the large exchanges. It is impractical to say that a man who holds ten shares of such stock may sell it at the market which is fixed by actual practical current notions of what the stock is worth; and then to turn around and say that a man who wants to sell 51 percent of the stock in the same corporation can only sell it at a price based on the value of the physical assets. There would also be the problem involved in the disposition of an estate if the Bureau of Internal Revenue says that the estate tax must be fixed on some ratio of price to earnings, and yet we do not permit the stock to pass at a price that is sufficient to meet the federal tax. A number of other difficulties will readily occur to anyone who thinks the matter through.

Even if we assume (which, as I have pointed out, is not the case) that \$1,500,000 is being paid for a license in the transaction before us, approval can be justified on practically any theory that has been suggested except the "bare bones" policy. The facts I have already recited show this, and I need not repeat them. If, however, we suddenly apply the "bare bones" policy, or some version of it, we cannot possibly reconcile our decision with a number which have been rendered during recent months. In no small number of cases have we

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approved transfers where the price was considerably in excess of the value of the assets.

In addition to these two theories are one or more intermediate theories. They assume that the Commission has power to take price into consideration and, in proper cases, to refuse approval because of excessive price. The underlying basis for these theories is that price becomes a matter of concern to the Commission when it affects public interest, that is, when the result will be to make it doubtful whether the broadcast station will be operated in the public interest by the assignee. One such theory is that the Commission may properly approve a price if it bears a proper ratio to the actual and prospective earnings of the station. A precedent for this is cited in the practice of the Bureau of Internal Revenue in fixing the value of stock in corporations for taxation purposes when there is no established market for the stock. If such a theory were to be adopted I do not venture to say what the ratio should be in the broadcasting business. Perhaps it should be 10 to 1, perhaps more or less. However, I can readily see the danger of the Commission adhering to such a theory. It runs the danger of tempting licensees to extract the highest possible profit out of a station in order to justify the highest possible purchase price. It will prove unjust to institutions which have operated their stations on a noncommercial basis, and who find it desirable to dispose of the stations.

I believe that intermediate theories which involve an attempt to fix a definite ratio between the purchase price and the prospective earnings of a station would be impracticable and unsound from both a legal and business standpoint.

In the absence of more specific information I hesitate to make any further definite pronouncement as to the proper theory to be followed by the Communications Commission in cases of this kind other than to state that it is my opinion that in all such cases involving transfer of licenses, the fundamental factor to be considered is the interest of the public rather than the price paid by the purchaser. In the consideration of a price the Commission may properly take into account accumulated losses of the past due to causes such as pioneering expenses, development of a listening audience, and operation of the station on the basis of a high-class program service under a heavy economic disadvantage. While it may be advisable for the Commission to take into consideration as a factor of public interest the ability of an assignee to operate a station successfully from a financial standpoint, the Commission should not be eager to insist on immediate profits. It should be recognized that in any

long-range development it is not unsound to operate a business at a loss in the early stages. Therefore the Commission should not be restrictive in such cases, but should consider the matter with foresighted liberalism on a sound business basis. While the Communications Act of 1934 clearly indicates that licensees have no ownership in frequencies and that no frequency can be sold, there is nothing in this Act which precludes the Commission's granting an application to transfer a station's license to another licensee when it is clearly shown that the operation of the station by the new licensee will be in the public interest and provided that in the transfer the frequency itself is not sold and provided the transactions are made by honest businessmen as a result of the application of sound business in accordance with the laws of economics.

In the instant case, no one is really purchasing a station. The parent corporation is merely setting up what appears to be a more efficient and businesslike set of books by creating a new subsidiary. I find it impossible to understand what consideration of public interest bars the Commission from granting the application.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D. C.

In the Matter of
PACIFIC RADIO CORPORATION,
GRANTS PASS, OREGON. } DOCKET No. 4611.
For Construction Permit.)

Decided November 1, 1938

Ben S. Fisher, William E. Walsh, and John W. Kendall on behalf of the applicant, and *James W. Gum* on behalf of Station KMED

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION (Case, Commissioner, not participating) :

STATEMENT OF FACTS

This proceeding arose out of the application of the Pacific Radio Corporation for a permit to construct a radiobroadcast station at Grants Pass, Oregon, to operate on 1320 kc. with power of 500 watts, daytime. A hearing was held before an Examiner on October 19, 1937. The Examiner released his report (I-579) on February 4, 1938, and recommended that the application be denied. Exceptions were filed to the Examiner's Report and oral argument was heard by the Commission.

The Pacific Radio Corporation, the applicant herein, is a corporation organized under the laws of the State of Oregon, and as of the date of the hearing was the licensee of Station KOOS at Marshfield, Oregon. At the time of the hearing there was pending before the Commission an application for authority to assign the license and transfer the physical assets of Station KOOS to another corporation. The attention of the Commission was invited to this transfer of license in the record made before the Examiner, in a request for continuance of oral argument filed by the applicant and in a brief filed on behalf of the applicant, copies of which were served upon all parties to the proceeding. The Commission will take judicial notice of the fact that on May 11, 1938, it approved the transfer of the license of Station KOOS from the Pacific Radio Corpora-

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tion to KOOS, Inc. (Pacific Radio Corporation (KOOS), Docket No. 4473).

The applicant corporation is authorized to issue 400 shares of stock having a par value of \$50 per share, 300 of which have been issued and are outstanding. Walter L. Read owns 267 shares, or 89% of the stock, V. A. Baird owns 10%, and the remaining 1% is owned jointly by John W. Kendall, Sr., and Harry B. Read as qualifying shares. The officers of the applicant corporation are Walter L. Read, President and General Manager, Harry B. Read, Vice President, and John W. Kendall, Sr., Secretary.

Walter L. Read and Harry B. Read, his brother, have been interested in radio for a number of years. At one time Walter L. Read and Harry B. Read were both interested in Station KSLM at Salem, Oregon, and Station KOOS at Marshfield. Approximately two years before the hearing in this case these brothers transferred their ownership in these stations so that Harry B. Read acquired the stock of the licensee of Station KSLM and Walter L. Read acquired the controlling interest in the stock of the licensee of Station KOOS.

A financial statement of the applicant as of October 1, 1937, showed total assets of \$21,484.65, of which amount \$2,562.50 was listed as cash in bank; liabilities showed accounts payable, \$2,770.38; notes and contracts payable and accrued taxes amounting to \$4,097.27; capital stock of \$15,000 with a surplus of \$383. As of the aforesaid date, it is apparent that the net assets of the applicant corporation were approximately \$14,600. The transfer of the license and physical property of Station KOOS to KOOS, Inc., provides for a consideration of \$14,000. The record in this case does not show whether this payment is to be made in cash. If we assume that the payment was made in cash and if the applicant still retains in its treasury the sum of \$2,562.59, the amount on hand as of October 1, 1937, the cash assets of the applicant corporation are \$16,562.59. Walter L. Read, the principal stockholder, president and general manager of the applicant corporation, testified that he would use his own individual property to assist the applicant corporation in the event additional funds were necessary for the construction and operation of the proposed station. There is no binding agreement between Mr. Read and the applicant corporation and the most that can be said of this testimony is that if the corporation needs additional funds and if at such time Mr. Read is then willing to advance the sum, his assets will be available for this purpose.

A financial statement filed by Walter L. Read as of October 1, 1937, showed net assets of approximately \$24,000, of which amount

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stocks and bonds were listed as being worth \$13,450. All of the stocks and bonds with the exception of \$100 consisted of stock in the applicant corporation. Even though we assume for the purpose of this case, that the assets of the applicant corporation and the assets of the principal stockholder thereof may be combined for the purpose of establishing the financial responsibility of the applicant, the assets of Mr. Read, excluding his interest in the applicant corporation, should not be considered as being more than \$10,000. The sum total of the assets of the applicant corporation, assuming that it now has approximately \$16,000 cash in its treasury, and the assets of Read, does not exceed \$26,000.

There was some evidence that a retired business man who had sold his mining properties for a large sum of money would be interested in the proposed station. The record, however, does not show the net worth of this person nor the extent to which he would support the station. The Commission is unable to give any weight to this testimony.

The estimated cost of the proposed station is placed at \$9,350, which does not include the costs of studio and furnishings which are expected to be supplied by the Del Rogue Hotel.

The estimated cost of the operation of the proposed station at Grants Pass is placed at \$1,265 per month, of which sum \$650 will be paid to the operating personnel. A representative of the applicant interviewed the greater number of merchants in Grants Pass, many of whom indicated an interest in the station as well as an intention to use its facilities. No merchant, however, indicated a definite amount which he expected to spend for radio advertising. The applicant had not, at the date of the hearing, determined upon the proposed rates and the record is silent as to the estimated operating revenue of the proposed station. On the evidence of record, the applicant has failed to show that the proposed station would receive sufficient commercial support to assure its continued operation.

Grants Pass is situated at the Junction of the Pacific and Redwood highways and is on the main line of the Southern Pacific Railroad. According to the 1930 census this city had a population of 4,666. It has been estimated that within a ten-mile radius of the town there is a population of 12,000. The area surrounding the city is devoted to the production of lime, to mining, dairying, and the growing of gladiola bulbs.

Grants Pass does not now receive primary daytime broadcast service from any existing station. Station KMED at Medford, Oregon, KRNR at Roseburg, and KOOS at Marshfield are heard in this area during the day, but the signals of these stations are not satisfactory.

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Walter L. Read and V. A. Baird, the principal stockholders of the applicant corporation, have been interested in the operation of broadcast stations for a number of years. In event the application is granted competent personnel will be employed for the operation of the proposed station.

Baird has resided in Grants Pass for a number of years and is acquainted with the merchants and the general business conditions in this area. Read has visited Grants Pass frequently and in the event that this application is granted, proposes to move to this city and establish a permanent residence.

There is some amateur talent in this area which may be used for broadcast programs. There is, however, little or no professional talent which could be used by the proposed station.

The programs which the applicant proposes include the broadcasting of news events, crop reports, weather reports, time signals, and general farm information, but the time to be devoted to these programs is relatively small. A proposed program schedule was offered in evidence. This schedule is not particularly informative of the character of the programs to be offered. A large percent of its time will be devoted to transcription programs. Two hours per day from Monday through Saturday are scheduled for the broadcasts of programs originating from the high school and relating to high school activities. In addition, a fifteen-minute program is to be broadcast by the County Parent-Teachers Association and a fifteen-minute musical program to be under the direction of the high-school musical instructor. The proposed program is not well balanced and reflects the lack of suitable talent in this area. The applicant has failed to show that the programs which it proposes to offer are of the type or caliber normally to be expected of a broadcast station operating on a regional assignment.

The frequency requested by the applicant, 1320 kc., under the rules of the Commission, is assigned to regional stations. In the instant case, the applicant desires to use this frequency in a community having a population of less than 5,000, with but approximately 12,000 people residing within a radius of 10 miles of the proposed station. Although the operation of the proposed station on the frequency and with the power requested would not cause objectionable interference to any existing station and would not in turn receive any objectionable interference from any existing station, the granting of this application would preclude the licensing of any other station on this frequency within a very large area. It is not in accordance with good engineering practice and it is poor allocation to assign to a community the size of Grants Pass a regional frequency, for use

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during the daytime hours of operation by a station having 500 watts power. The granting of this application would not result in supplying a satisfactory broadcast service to the people of Grants Pass. The applicant does not propose to furnish service at night, and it is likely that the need for nighttime service may be greater than that for daytime service. A city the size of Grants Pass with limited commercial support, as has been shown by the evidence of record, could not support two broadcast stations. The granting of the instant application would preclude the licensing of a radio station in Grants Pass which could furnish primary nighttime broadcast service in this area.

GROUNDNS FOR DECISION

1. The applicant is legally and technically qualified to construct and operate the proposed station.
2. The applicant has failed to show sufficient support to assure the continued operation of the proposed station in the public interest.
3. Although the record shows that this area does not receive satisfactory daytime broadcast service, the applicant has failed to propose a meritorious program service and has failed to show that there is program talent available to operate a station of the class requested in the public interest.
4. It is not in accordance with good engineering practice and it is poor allocation to assign a regional frequency to a station to serve a city with a population of but 5,000 with a sparsely settled rural district contiguous thereto.
5. The granting of this application will not serve public interest, convenience, and necessity.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D. C.

In re Application of PRESS WIRELESS, INC. (WCA), HICKSVILLE, NEW YORK. For Modification of License.	}	DOCKET No. 4972.
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Decided November 1, 1938

Louis G. Caldwell, Donald C. Beelar, and Percy H. Russell, Jr., on behalf of the applicant; *A. L. Ashby and Philip J. Hennessey, Jr.*, on behalf of the National Broadcasting Company; *Manton Davis, Frank W. Wozencraft, and C. H. Wiggim* on behalf of R. C. A. Communications, Inc.; *T. L. Bartlett and Lester W. Spillane* on behalf of the Commission.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION (Case, Commissioner, not participating):

STATEMENT OF FACTS

This proceeding arose upon the application of Press Wireless, Inc., for modification of license of radiotelegraph Station WCA, Hicksville, New York, operating on the frequency 15730 kilocycles, in the fixed public press service. The station is now authorized to employ telegraph (A-1 and A-2) emission for communication primarily with Paris, France, secondarily with fixed points of communication specified in other licenses of applicant, and with two or more fixed points for transmission of multiple-address messages, in accordance with Rule 241 (a).¹ The modification requested is

¹"241 (a): Upon application being made, the Commission may grant a license or modification of license for fixed public press service to authorize secondary use of the assigned frequency, or frequencies, for transmission of multiple-address messages simultaneously to two or more fixed points, in accordance with the provisions of Rule 232. The points to which such transmission is authorized need not be named either generally or specifically in the license, provided the applicant makes satisfactory showing that (a) the public interest, convenience, or necessity will be served thereby, and (b) such transmission will not interfere with the fixed public press service to the primary fixed point or points of communication designated in the license. After such application is made and granted, specific authorization for transmission to each new point shall be contingent upon the licensee's immediate notification to the Commission of the first transmission, to said point and the location of the station or stations from which such transmission is made, and shall continue to the expiration date of the said station license or licenses unless within thirty days the licensee is otherwise notified by the Commission."

to add telephone (A-3) emission, secondarily, for the limited immediate purpose, disclosed by a supplementary statement attached to and made a part of the application, of permitting the inauguration by Station WCA of a service of Addressed Press Program Material so as to provide for rapid transmission of important events of outstanding news value simultaneously with the happening of the event, the transmission to be made by means of a directional antenna beamed upon points in South America.

The Commission was unable to determine from an examination of the application that the granting thereof would serve public interest, convenience, or necessity and, therefore, designated the same for public hearing. Notice of the time and place of the hearing and the issues involved were given to the applicant and the public, and the following respondents were specifically notified: Western Union Telegraph Company; Postal Telegraph-Cable Company; Globe Wireless, Ltd.; R. C. A. Communications, Inc.; Radiomarine Corporation of America; Tropical Radio Telegraph Company; United States-Liberia Radio Corporation; Hearst Radio, Inc.; French Telegraph Cable Company; Commercial Cable Company; Commercial Pacific Cable Company; All-America Cables, Inc.; American Telephone and Telegraph Company; Columbia Broadcasting System; National Broadcasting Company; and the Mackay Radio and Telegraph Company.

Respondents were determined and the issues drawn on the basis of the proposal outlined in the application.

The matter came on for hearing and was heard by the Commission en banc, commencing on April 4, 1938, at which time only the applicant, R. C. A. Communications, Inc., and the National Broadcasting Company appeared and submitted evidence. By agreement of the parties briefs were filed in lieu of oral argument, and the matter is now available for decision.

The applicant, Press Wireless, Inc., is a corporation organized under the laws of the State of Delaware for the primary purpose of rendering radio communication service to newspaper owners, publishers, and the press generally. Its stockholders are the Christian Science Monitor, New York Times, The New York Herald Tribune, The Chicago Tribune, The Chicago Daily News, The Los Angeles Times, and the San Francisco Chronicle. A copy of the corporation's charter was submitted in evidence, from which it appears that applicant is legally qualified to carry out the objectives proposed in this application.

Applicant is the licensee of a number of stations in addition to Station WCA, through which it conducts a world-wide radiotelegraph communication system in the service of the press, for which purpose some thirty-nine frequencies are assigned to it. Service rendered by

it consists of the transmission of point-to-point press traffic and multiple address press traffic on a secondary basis to various points in the United States, Canada, Europe, The West Indies, Africa, Central and South America, The Pacific Islands, and the Far East. A reception service is also provided by applicant through which programs transmitted from foreign countries are received principally for rebroadcast purposes within the United States.

The proposal contained in the application has been outlined above. As developed by the evidence, the proposal emerges as the initiation of a general expansion into the radiotelephone field. Applicant would employ this medium to render point-to-point press service, through which a subscriber would be enabled to talk directly to his correspondent for the exchange of textual news; multiple address press service; the transmission of Addressed Press Program Material for rebroadcasting, publication in newspapers, or other means of public dissemination; and for control purposes in connection with the reception of incoming programs. Points of communication to which, according to the evidence, it is desired to establish the services initially are Paris, Rio de Janeiro, Montevideo, Buenos Aires, Guayaquil, Panama, Havana, San Juan, Honolulu, Manila, and Tokyo. A tentative plan for ultimate extension to other foreign points is disclosed in the record. Applicant's definition of Addressed Press Program Material would include speeches, music, sports, and patriotic events, and sponsored programs which may include advertising. Much of that which is included is classified as entertainment material and intended for the use of broadcasting stations.

Applicant has available four radiotelephone transmitters, one of which is complete and ready for service. Consequently, the cost of inaugurating radiotelephone service on Station WCA would be incidental, and applicant is amply financed to engage upon such operation.

There is available at the present time through the various facilities of the American Telephone and Telegraph Company and connecting land-line facilities point-to-point radiotelephone communication from the United States to all points proposed to be served by the applicant save Guayaquil. This company and R. C. A. Communications, Inc., both provide high-quality radiotelephone program service, a wide selective range of frequencies, and their services represent the results of considerable research and experience in the field. Several international broadcast stations render a service, without charge, which is similar in many respects to applicant's proposed program service. For example, National Broadcasting Company's Station W3XAL at the present time transmits United States programs suitable for rebroadcasting abroad from 8:00 a. m. until midnight. While it is recog-

nized that general broadcasts to foreign countries do not have the coverage of those handled locally or regionally, the international broadcasts may be retransmitted abroad in the manner proposed by applicant and in such case the services are comparable save for the degree of program selection possible in applicant's proposed service.

No newspaper interests appeared in support of any of applicant's proposals. No documentary evidence of any agreement to subscribe for service was submitted. Applicant's president has conducted an informal survey of prospective customers, from which he concludes that some fourteen newspaper and broadcasting users would be interested in a Press Wireless radiotelephone service. Five of these are present customers and the remainder would constitute new business. The Mutual Broadcasting System would employ applicant's facilities for the interchange of programs for rebroadcasting between the United States and foreign points. This company has in the past used the facilities of existing carriers which it concedes to be entirely adequate and satisfactory. Its interest in applicant's proposal is based upon the possibility of a lower rate.

Applicant expects through the offering of low-cost radiotelephone transmission to produce expansion in the marketing of news and broadcasting programs from the United States to the South American countries, in furtherance of American ideals and interests. It alleges that there are being directed to this region from abroad free transmission of news, political broadcasts and similar material and it urges that its proposal is calculated to aid the American users of its service in meeting this situation. Applicant justifies the inclusion of entertainment and other supporting services to its press traffic on the ground of a claimed need of its customers for rounded programs which will be sufficiently attractive to hold the interest of the listening public. The handling of broadcast programs would also permit utilization of its circuits during news lulls. It is also urged that the technical and administrative details involved in the communication of news to and from certain countries are less complex if radiotelephone methods are used. The foregoing factors might be entitled to some weight if it were otherwise satisfactorily established that the granting of A-3 emission as here applied for would provide a solution for the problems presented. However, the inference which may be drawn from this record is that such need as may be found to exist can only be met by a complete, high-quality, and comprehensive service and the showing made is insufficient in this regard.

The chief advantages claimed by applicant for its use of radiotelephone in supplement to and partial substitution for its radiotelegraph service are speed of transmission and low cost of operation.

Transmitting speeds by radiotelephone range from 125 to 150 words per minute as against 30 for radiotelegraph by manual methods. Transmitting speeds up to 150 words per minute by radiotelegraphy are, however, possible by employment of automatic methods in transmission and reception. Radiotelephone transmitting speeds may also be increased considerably if automatic means are employed for classes of traffic adaptable to such methods. Greater reliability and accuracy of radiotelegraph methods are conceded.

Estimated circuit capacity of Station WCA under average practical working conditions indicates that 10,000 words per day can be handled by radiotelegraph employing manual operating methods, 15,000 words per day by radio telegraph using the automatic means applicant has available, and 33,000 words per day by radiotelephone. The estimated volume for automatic radiotelegraphy must be considered in the light of the fact that automatic reception is not now available at all of applicant's receiving points. In connection with use of radiotelephony, availability of mechanical means of reception and reproduction is also a factor.

The volume of radiotelegraph traffic actually transmitted by this station during December 1937, represented as a typical month, was 76,678 words, or approximately 2,500 words per day. During the month of January 1938, 37,484 words were transmitted, and in February 1938, 34,007. Obviously no overloading of the circuit has occurred under existing methods of transmission. No estimate of the amount of traffic which is urgent has been furnished, and therefore no concrete indication was given as to the customers' need for speed.

As to availability of the station for the proposed traffic, it was contemplated by applicant that 170 hours per month would be devoted to radiotelephone on this station initially, 55% of which would be devoted to program transmission, 25% to multiple address, and 20% to textual press. Station time would be available for the handling of this radiotelephone service, supplementing the station's radiotelegraph service.

Tentative tariffs filed contain rate proposals considerably lower than those of existing carriers for program transmission service. These rates are stated to be based on costs but the relation of costs to the rates is not clear. The tentative rates are conceded to be possible only if applicant is permitted to transmit both press traffic and program material, including entertainment at the same rate. The evidence indicates that program service, because of the high quality transmission required for reliable service and the slower average speed at which it may be handled, is more expensive to conduct than regular press service. Thus, if the cost basis claimed for these tentative rates be applied logically the rates should be proportionate to

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the costs of the respective services and it is not shown that the same rate for both services would be reasonable. From this it appears either that the program transmission service offered will not be of the high quality required for reliable service or that the textual press customer will bear a part of the rate burden which should be borne by the program transmission customer.

Although comparison of applicant's radiotelegraph textual press rates and proposed radiotelephone rates is difficult, because the former is computed largely on a per-word basis and the latter on a time basis, it is urged that there would be a substantial reduction of overall costs to the user if radiotelephone is used. Through mechanical and administrative advantages claimed for the radiotelephone method, applicant expects a reduction in its own operating expense and a lower per-word cost to the user. However, there are factors which tend to increase the cost of the operation, such as the greater amount of power necessary for radiotelephone transmission and cost of reception facilities; and it is not entirely clear whether the saving to users would prove to be substantial.

In support of its proposal to transmit textual press by point-to-point radiotelephone, a graph was submitted by applicant showing a recent diminution of some ninety thousand words per month, being the major portion of the file of one customer, the *Herald-Tribune Company*, on its Paris-New York circuit. The loss occurred in traffic moving from Paris to New York and, in this connection, it was testified that if the customer prefers to use radiotelephone for Westbound traffic, radiotelephone transmitting facilities are needed at New York to complete a two-way circuit, this because of reluctance of the user to accept blind transmissions. No decline is noted in traffic transmitted over stations licensed by this Commission.

Applicant claims that it is unable to meet the rates of the radiotelephone carriers and expects diversion of its transmitting traffic to radiotelephone if not permitted to adopt this means of communication. This expectancy enters a highly conjectural field and rests upon applicant's understanding of the experience of another carrier in radiotelephone operation. As the basis for the expectancy of loss of traffic is a lower cost believed to be obtainable by the use of radiotelephone arising solely from speed of transmission, and as the applicant has not exhausted the possibilities of automatic radiotelegraph methods in this regard, it has not been demonstrated that permission to use radiotelephony is necessary to meet the situation. Nor has the probability of loss of traffic been satisfactorily established.

The experience of applicant in radiotelephony consists of about 713 hours of sporadic operation upon an experimental basis and transmission of 15 special programs directed to foreign points under

temporary authorizations. No field strength measurements, engineering studies, or research programs were carried on in connection with these transmissions. In this regard, applicant offered through its engineers only a summary of the result of its operations, in the nature of a listener survey. The supporting data consisted of observations of the transmissions largely made by unidentified persons admitted to be untrained technically, which failed to demonstrate satisfactorily the reliability of the signal transmitted by applicant. The evidence shows that several of the experimental programs could not be reliably received at observation points in South America. The record of applicant under its experimental radiotelephone operations shows a lack of technical development and a failure to thoroughly investigate the technical difficulties involved in establishment of regular radiotelephone service.

Use of A-3 emission on the frequency 15730 kilocycles by Station WCA presents no serious interference problems. The applicant has priority on the frequency and theoretical possibilities of interference with Japanese stations JIA and JNF on the adjacent channel are not significant in view of the distances involved and the type of service engaged in by the Japanese stations. Objectionable interference to or from existing services will not result from the modification of license of Station WCA requested.

Types A-1 and A-2 emission, now authorized to this applicant, require a band width of 2 and 4 kilocycles, respectively, on the frequency in issue. In employing Type A-3 emission, 6 kilocycles is necessary for commercial point-to-point radiotelephone transmission, and 10 kilocycles for high-quality program transmission.

Addition of Type A-3 emission on at least seven other frequencies would be necessary for consummation of the complete plans described, although no new additions to the 39 frequencies licensed to applicant will be required for this purpose. It is essential for maintenance of reliable service to have a range of suitable frequencies from which selection can be made to meet the varying transmission conditions. No one frequency is sufficient, regardless of its individually favorable character. At least three frequencies appropriately selected would be necessary for maintenance of reliable service on one North and South circuit, and a minimum of four for West-East communication. It is clear that no effective service can be maintained with the single frequency requested and which is here alone involved. As other frequencies necessary to render the service proposed were not included in the application, no evidence was received and no finding can be made with relation to the interference and other problems which may exist in connection therewith.

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Because of the greater band width required for radiotelephone transmission as compared to radiotelegraphy, any development or extension of its use involves utilization of increased space in the radio spectrum. The spectrum is at present extremely congested and it is difficult even to meet the demands for facilities of the important safety services. It is the applicant's contention that increased demands upon the frequency spectrum involved in the use of radiotelephone as shown would be offset by the increased speed of transmission possible, that space economy sacrificed will be time economy gained. However, the evidence is not convincing that the speed of transmission possible in radiotelephone is the way to frequency economy. Improvement in the art generally and increased efficiency in technical telegraph methods may hold greater promise in this regard. At all events, the interference and other problems on frequencies not involved in this application and shown to be necessary for effective operation prevent any consideration of the frequency economy claimed by applicant to be possible from a general radiotelephone expansion.

The application contemplates a change in the existing rules and regulations, as Rule 232 limits stations in the fixed public press service to radiotelegraph operation. Applicant submitted suggested changes in the existing rules and regulations which would authorize it to render a point-to-point, multiple address and program material service by radiotelephone methods, which, in the view we have taken that there has not been an adequate showing to warrant the granting of the application, need not be considered.

GROUNDS FOR DECISION

1. Applicant is legally and financially qualified to operate the station as proposed.

2. Existing radiotelephone facilities have not been shown to be inadequate, and applicant's proposal does not offer new or improved service.

3. Applicant has failed to show a public need for the proposed use of radiotelephony in the transmission of its press traffic, and no substantial public need has been evidenced for additional program transmission service. The lower rates tentatively proposed are without significance in the absence of a showing of applicant's ability to render an adequate service.

4. Applicant has failed to demonstrate conclusively its ability to render a high quality radiotelephone service.

5. While the operation of this station as proposed, employing a single frequency, would not be expected to involve any objectionable interference to or from existing stations, the Commission is unable to

determine on this record the interference and other problems which may be present in connection with the use of other frequencies necessary for the establishment of an effective service.

6. The service cannot be effectively rendered employing the single frequency specified in the application.

7. The application is not consistent with the Rules and Regulations of the Commission, and no justification has been shown on this record for modification of the Rules and Regulations.

8. Public interest, convenience or necessity would not be served by the granting of the application.

SUPPLEMENTAL OPINION OF COMMISSIONER WALKER, CONCURRING

While the Statement of Facts and Grounds for Decision and the Order as written in this case are probably justified by the record, it appears that where possible certain purposes of this application should have encouragement by the Commission as a matter of policy. These purposes are a broadening of competition in the field of international transmission of news and program material and a reduction in cost of such services. However, it is inevitable that these objectives must be technically and financially feasible and be justified as a matter of public need.

The Commission is justified in holding the record to be lacking in these essential particulars.

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of
CHESTER HOWARTH and CLARENCE BERGER,
WALLACE, IDAHO. } DOCKET No. 5009.
For Construction Permit.

Decided November 1, 1938

Clarence C. Dill and *James W. Gum* on behalf of the applicant;
Harrison T. Slaughter on behalf of the Federal Communications
Commission.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION (McNinch, Chairman, Brown and Case, Com-
missioners, not participating):

STATEMENT OF FACTS

Chester Howarth and Clarence Berger commenced this proceeding by filing their application for permission to construct a new broadcast station at Wallace, Idaho, to operate on 1420 kilocycles with power of 100 watts night, 250 watts local sunset, unlimited hours of operation.

The Commission designated the application for hearing before an examiner who has filed his report (No. I-700) herein, recommending that the application be granted. No one appeared in opposition to the application and no exceptions to the report of the examiner have been filed.

Mr. Howarth resides in Wallace, and Mr. Berger resides in Coeur d'Alene, in the State of Idaho. Both are businessmen, Mr. Howarth being in the brokerage business in Wallace and Mr. Berger being engaged in the operation of broadcast station KGCI at Coeur d'Alene. The applicants are citizens of the United States.

On October 14, 1937, Messrs. Howarth and Berger entered into a written contract whereby they obligated themselves to each other to undertake to construct and operate a radiobroadcast station in

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Wallace, Idaho, by and with the consent of the Federal Communications Commission. Mr. Howarth agreed to furnish the sum of \$10,000 for the joint enterprise. That amount was deposited in the First National Bank of Wallace, Idaho, to the account of C. A. Berger and Chester Howarth, copartners, to be used by them if the Commission issues a permit for the construction of the station. Mr. Berger agreed to apply for the permit and to construct the station and for a license to operate the station and to prosecute the applications before the Commission. The application for permission to construct the station now pending before the Commission was filed pursuant to the agreement mentioned.

It is estimated that the proposed station will cost approximately \$8,000; that the monthly operating expense will be about \$1,200; and that the monthly income at the beginning of operations will be around \$1,500 and can be brought up to \$2,500 within a year. Sixty-three businessmen in Wallace and Kellogg have given the applicants written commitments for commercial broadcasting if the application is granted.

The applicants have sufficient financial means to enable them to construct and operate the station and Mr. Berger has had ample experience to enable him to operate the station successfully.

Wallace, Idaho, is the county seat of Shoshone County and is near its geographical center. Wallace has a population of 3,634 and Kellogg, a population of 4,124. Other nearby places with their respective populations are: Burke 800, Mullan 1,891, and Pine Creek 500. Shoshone County has a population of 19,060 and the State of Idaho a population of 445,032 (1930 Census).

Wallace, Idaho, is served by two railroads and a transcontinental highway. It is the center of extensive silver, lead, and zinc mining operations which are carried on at Burke 6 miles northeast, at Mullan 7 miles east, at Kellogg 8 miles west, and between Wallace and Kellogg. There are several ore reduction and smelting plants in the same area. The mines and smelters employ about 5,000 persons. Lumbering is next to mining in importance in the Wallace area. Wage earners therein are paid about eight million dollars annually.

Shoshone County (Census of Business for 1935) has 17 wholesale establishments with net sales of \$2,325,000, employing 116 people who receive in wages \$192,000 annually.

Wallace (same census) has 71 retail establishments with gross sales of \$2,370,000, employing 249 people who are paid in wages \$254,000 annually.

Kellogg has 80 retail establishments with gross sales of \$2,256,000, employing 216 people who are paid in wages \$219,000 annually.

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The remainder of Shoshone County has 94 establishments with gross sales of \$1,315,000, employing 122 people who are paid in wages \$99,000 annually.

Wallace, Idaho, is without primary radio service either day or night. Its only available service is from distant stations. That service is fading, intermittent, and not dependable. Many persons interested in business, civic, and educational affairs appeared in this proceeding as witnesses and testified to the need of radio service in the City of Wallace.

In the winter, there are heavy snowfalls which block the highways and prevent the delivery of mail sometimes for several days in succession in the Wallace area. Coeur d' Alene Valley, embracing Wallace and Kellogg and several other communities, is frequently subjected to destructive floods which endanger life and property. A local radio station in the Wallace area would be extraordinarily serviceable in snowstorms and floods.

The applicants submitted a tentative program for daily service commencing at 7 a. m. and ending at 10 p. m., which appears to be about 65 percent commercial and 35 percent sustaining. The sustaining part is largely entertainment, devotional exercises, music, and news. The program submitted indicates a substantial use of local talent of good quality—entertaining and diversified. If the application is granted, Mutual Broadcasting System programs will be carried.

Talent in the Wallace area consists of bands, choirs, orchestras, organists, pianists, and vocalists. There appears to be abundant talent for the proposed station in its service area.

The estimated coverage of the proposed station to the limit of its 0.5 millivolt per meter contour would be about 11 miles from the transmitter, its 2 millivolt per meter contour about 5.7 miles.

The station operating as proposed would be limited in the evening to its approximate 2.9 millivolt per meter contour or at a limit about 3.5 miles from the transmitter.

There is only one station located at less than the normally recommended mileage separation for that assignment and the one proposed. That station is KLBM, La Grande, Oregon, operating on 1420 kilocycles with power of 100 watts night and 250 watts local sunset. The actual distance between the proposed station and La Grande is 180 miles, while that recommended is 185 miles. Assuming a minimum antenna efficiency as contemplated by Rule 131 for local stations, there would be no question of interference to Station KLBM or to the proposed station caused by simultaneous operation, but the evidence of record indicates an antenna efficiency for

both the stations materially above the minimum; and it appears that the station of the applicant, operating as proposed, would be limited to its approximate 2.9 millivolt per meter contour during evening hours and that Station KLBM during evening hours, operating as at present, would be limited to its approximate 2.6 millivolt per meter contour.

Application No. B5-P-1833 for a new station at Grand Coulee, Washington, to operate on 1420 kilocycles with power of 100 watts night and 250 watts until local sunset need not here be considered as that application was denied by the Commission on May 11, 1938.

The applicants have made tentative arrangements for the employment of an experienced staff which will work under the supervision and direction of Mr. Berger as manager.

The equipment proposed for installation by the applicants complies with the engineering requirements of the Commission and will render proper service, but the antenna specified complies with those requirements only with respect to height; and the site has not been determined.

GROUNDS FOR DECISION

On the record in this case the Commission finds:

1. The applicants are legally, financially, and technically qualified to construct and operate the proposed station;
2. There is no primary radio service in the Wallace area nor any other satisfactory radiobroadcast service therein, and the need for primary service, as shown in the record, justifies the Commission in departing from its usual allocative values;
3. The application is not in conflict with any application pending at the time the former was set for hearing;
4. The interests of Station KLBM will not be seriously affected by reason of interference;
5. The granting of the application will serve the public interest, convenience, and necessity.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D. C.

In the Matter of WHP, INC. (WHP), HARRISBURG, PENNSYLVANIA. For Construction Permit.	}	DOCKET No. 5120.
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Decided November 1, 1938

Horace L. Lohnes, E. D. Johnston, and Fred W. Albertson on behalf of the applicant; *George O. Sutton and Arthur H. Schroeder* on behalf of Stations WILM and WAZL; *Arthur W. Scharfeld, Philip G. Loucks, and Joseph F. Zias* on behalf of Stations WSAN and WCBA; *Duke M. Patrick and Karl A. Smith* on behalf of Station WMPS; *Howard LeRoy* on behalf of Publix Bamford Theatres, Inc.; and *Walter Johnson* on behalf of the Commission.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION (McNinch, Chairman, and Case, Commissioner, not participating):

STATEMENT OF FACTS

WHP, Inc. (WHP), Harrisburg, Pennsylvania, commenced this proceeding by filing its application for a construction permit seeking authority to increase its power from 500 watts night, 1 kilowatt local sunset, to 1 kilowatt night, 5 kilowatts local sunset, unlimited time, and to install a new transmitter and directional antenna for use at night. The station operates on 1430 kilocycles.

The application was designated for hearing before an examiner, and he has filed his report (I-704) recommending that the application be granted. No exceptions have been filed to the report of the examiner.

The qualifications of this licensee have been determined heretofore by the Commission, and they were not in issue in this proceeding.

The financial statement of the applicant, as of May 31, 1938, shows a net worth of \$146,661.10. The estimated cost of the proposed construction approximates \$30,000.00.

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The equipment, including the antenna, which the applicant proposes to install complies with good engineering practice; and the site chosen is satisfactory.

The coverage of Station WHP at present is from 8 to 12 miles at night, and the day coverage is approximately 26 miles. The increased power requested will enable the station to serve during the daytime an area with an average radius of 35 miles and to cover 38 additional towns and villages with a signal of 2 millivolts per meter. The result will be the extension of daytime service through a wide area which at present is not well served; and the increase of power proposed will extend the 10 millivolt per meter contour of the station during nighttime operation so as to include the entire City of Harrisburg, which is not now included in that contour.

Harrisburg is the capital of the State of Pennsylvania. The metropolitan area of that city has a population of 161,672, while the city itself has a population of 80,339. The Harrisburg district embraces an area of 130 square miles and includes 15 towns ranging in population from 700 to 6,000 or more.

Dauphin County, of which Harrisburg is the county seat, has an area of 522 square miles and a population of 165,231 (1930 Census).

In Dauphin County there are 2,271 retail stores with annual sales of \$51,148,000 and pay rolls of \$6,300,000; 688 service establishments with annual receipts of \$2,457,000 and pay rolls of \$557,000; 208 wholesale establishments with annual sales of \$84,065,000 and pay rolls of \$4,200,000; and 218 manufacturing establishments with an average of 15,435 wage earners and with pay rolls of \$13,796,809. There are a number of establishments in several towns elsewhere embraced in the metropolitan area of Harrisburg.

The only primary service available in Harrisburg is furnished by the applicant (Station WHP) and Station WKBO (also located in Harrisburg). The latter station operates on 1200 kilocycles with power of 100 watts night and 250 watts local sunset, sharing time with Station WEST, Easton, Pennsylvania, at night. The only other station having a signal in excess of 500 microvolts in the vicinity of Harrisburg is Station WJZ, New York; but Station WORK, York, Pennsylvania, operating on 1320 kilocycles, with power of 1 kilowatt, using a directional antenna at night, also renders some service to rural areas in the direction of Harrisburg. Since Station WKBO shares time with Station WEST, as above shown, WHP is the only station rendering a full-time primary service to Harrisburg.

Analysis of the program schedules of the applicant shows that 15.04% consist of live talent, 25.02% of transcriptions, and 59.9% of network programs.

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The broadcasts of the applicant are 24.79% commercial and 75.21% sustaining. No increase in the existing advertising rates is contemplated in the event this application is granted.

The applicant maintains 20 remote-control lines in the City of Harrisburg, including lines to the Governor's Office, to the House of Representatives, to the Mayor's Office, and to the City Council Chamber. The services of the station are offered without cost to the Governor, to United States Senators and Congressmen, to State Legislators, and to the Mayor of Harrisburg for the discussion of governmental affairs, and the services of the station have been offered to local charitable and welfare organizations.

The granting of the application will not result in daytime interference with the operation of any existing broadcast station.

At night Station WHP now interferes with the operation of two stations, namely, WMPS, Memphis, Tennessee, and KSO, Des Moines, Iowa; to the former at its 1.62 millivolt per meter contour and the latter at its 1.33 millivolt per meter contour. Station WHP, operating as proposed, would interfere with Station WMPS at its 2.2 millivolt per meter contour, but that station is now subject to interference by Station WBNS at its 3.56 millivolt per meter contour and by Station KSO at its 4.14 millivolt per meter contour. Station WHP, operating as proposed, would interfere with Station KSO at its 2 millivolt per meter contour, but that station is now subject to interference from Station WMPS at its 3.2 millivolt per meter contour. If the application under consideration is granted, Station WHP will not contribute the predominant interference either to Station WMPS or Station KSO.

Testimony has been considered with respect to interference, if the application under consideration is granted, with the operation of Stations WHEC, Rochester, New York; WBNS, Columbus, Ohio; and WOKO, Albany, New York, from which it appears that interference now suffered by said stations from Station WHP, as now operated, would be reduced.

Other stations considered with respect to objectionable interference if the application under consideration is granted are WCBA and WSAN, both of Allentown, Pennsylvania; WJSV, Washington, D. C.; WMBS, Uniontown, Pennsylvania; WAZL, Hazelton, Pennsylvania; and WILM, Wilmington, Delaware; but it does not appear that the applicant operating as proposed would cause objectionable interference to the operations of any of said stations.

There are seven pending applications which have been considered with regard to questions of interference.

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Application No. B4-P-1920 of Station KSO, Des Moines, Iowa, which operates on 1430 kilocycles, 500 watts night and 2½ kilowatts until local sunset, unlimited time, seeks an increase of power to 1 kilowatt night and 5 kilowatts until local sunset, employing a directional antenna at night. The application of Station KSO provides protection to WHP to approximately the same extent that it now causes interference to that station. The interference from KSO to WHP is now materially less than that which WHP receives from other stations.

Applications No. B2-ML-515 and No. B2-ML-516 of Stations WCBA and WSAN, Allentown, Pennsylvania, time-sharing stations on 1440 kilocycles, 500 watts, seek to increase their power to 1 kilowatt. There would be no interference to either WHP or WCBA-WSAN should the instant application and the applications of WCBA-WSAN be granted.

Application No. B1-P-1827 of Station WJSV, Washington, D. C., which operates on 1460 kilocycles with 10 kilowatts, using a directional antenna, seeks to increase its power to 50 kilowatts, using a directional antenna. There would be no objectionable interference to the good service area of either WJSV or WHP should both pending applications be granted.

Application No. B2-ML-553 of Station WAZL, Hazelton, Pennsylvania, which operates on 1420 kilocycles, 100 watts (sharing time with Station WILM), seeks to increase its time of operation to unlimited, with no other change in facilities; and should this application be granted, no question of interference to either Station WAZL or WHP would be involved.

Application No. B2-ML-507 of Station WMBS, Uniontown, Pennsylvania, which operates on 1420 kilocycles, 250 watts, daytime, seeks to increase its time to unlimited, using 100 watts power at night and continuing with 250 watts during the day. There would be no objectionable interference to either WMBS or WHP should both applications be granted.

Application No. B3-P-1978 is for a new station to be constructed at Asheville, North Carolina, to operate on 1430 kilocycles, with power of 500 watts night and 1 kilowatt local sunset, using a directional antenna at night. The actual separation between Asheville and Harrisburg is 445 miles. WHP would cause nighttime interference to the proposed station at Asheville to the approximate 5.6 millivolt per meter contour; however, the predominant source of interference to the proposed Asheville station would be caused by WBNS, which would be to the approximate 9.5 millivolt per meter contour. The proposed station at Asheville would cause nighttime interference to WHP to the approximate 3.5 millivolt per meter contour; however, WHP now receives interference from other stations materially above this value.

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The towers erected by the applicant should be painted and lighted as contemplated by Section 303 (q) of the Communications Act of 1934.

GROUND^S FOR DECISION

1. There is a need for the additional service in the area which the applicant proposes to serve.

2. There would be no objectionable interference to existing stations additional to that already received by them.

3. There would be no conflict between operations proposed by the applicant and operations proposed under other pending applications, except that Station WHP, operating as proposed, would interfere with the operations of the station proposed at Asheville, North Carolina; but the interference arising would not be predominant.

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

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D. C.

<p>In the Matter of R. W. HOFFMAN, Transferor (WCLS), and L. W. WOOD AND WALTER ASHE, Transferees, JOLIET, ILLINOIS. For Transfer of Control of WCLS, Inc.</p>	}	DOCKET No. 4935.
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Decided November 1, 1938

Louis G. Caldwell and Reed T. Rollo on behalf of the transferor; *George O. Sutton, Arthur H. Schroeder, and James L. Proffitt* on behalf of the transferees; and *Walter Johnson* on behalf of the Commission.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION (McNinch, Chairman, and Case, Commissioner, not participating):

STATEMENT OF FACTS

This proceeding arose upon the application of R. W. Hoffman and family for authority to transfer control of WCLS, Inc., to L. W. Wood and Walter Ashe. The matter was heard before an examiner who recommended (Report No. I-637) that the application be denied. Exceptions were filed to the Examiner's Report and oral argument was heard by the Commission. The exceptions and oral argument have been considered by the Commission in reaching its decision herein.

WCLS, Inc., is the licensee of Station WCLS at Joliet, Illinois, operating on 1310 kc. with 100 watts power during specified hours of operation. The transferor came into control of WCLS, Inc., in September 1932 through the purchase of all of its outstanding stock from A. J. Felman. Mr. R. W. Hoffman owns 98 of the 100 shares of stock outstanding in WCLS, Inc., members of his family owning the two remaining shares.

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Under the terms of the agreement Mr. Hoffman and the other members of his family that own stock in WCLS, Inc., agree to transfer all of the outstanding stock of that corporation to L. W. Wood, of Joliet, Illinois, and Walter Ashe, of University City, Missouri. Mr. Wood is to receive 51% of the stock and Mr. Ashe 49% of the stock for a consideration of \$30,000. It is also provided as part of the agreement that Mr. Hoffman will pay the sum of \$5,500 to A. J. Felman for a reduction of the broadcast time allowed Mr. Felman over Station WCLS from three hours each weekday and one and one-half hours every Sunday to three-quarters of an hour each day.

A special inventory of the equipment of Station WCLS reveals an original cost of \$11,602.74, a depreciated value of \$8,969.09, and an estimated replacement value of \$12,606.21.

The balance sheet of Station WCLS, offered in evidence, indicates a net worth of \$13,809.53. In connection with the value of the station as it would exist when control over it is to be transferred, the agreement provides that as of the date of transfer the transferor will be entitled to receive all cash on hand in the normal course of business and will be assigned all of the accounts receivable. The transferor further agrees to be responsible for all current liabilities of the station which would exist at the time the proposed transfer is to take effect.

The profit-and-loss statement of WCLS, Inc., indicates that for the period from September 1, 1936, to August 31, 1937, the station had a net income of \$1,780.15. A statement of income and expense of the station from September 1, 1937, to December 31, 1937, reveals net profits in the amount of \$1,820.52.

Mr. Wood, who will own 51% of the stock in WCLS, Inc., is the present manager of Station WCLS. Mr. Ashe, who will own the remaining 49%, is the sole owner of the Walter Ashe Radio Company of St. Louis, Missouri, a firm engaged in selling materials and supplies for broadcast stations. Neither of these individuals have interests in other broadcast stations or in other applications for broadcast facilities. Both transferees are citizens of the United States.

Each of the transferees would pay approximately \$15,000 for his proportionate share of stock in WCLS, Inc. Mr. Wood's assets include cash, \$875; cash, deposited pursuant to an escrow agreement for the purpose of meeting the purchase price of the stock, \$14,025; and his interest in Wood and Anderson Company of St. Louis, Missouri, on which he places a value of \$10,000. His only liability is \$55 in current accounts.

Mr. Ashe has assets which consist of cash, approximately \$57,000, and securities of the value of \$75,000. A portion of these assets is also

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deposited in connection with the aforementioned escrow agreement for the purpose of meeting the purchase price. Mr. Ashe has no liabilities. Each of these men proposes to contribute \$1,500 as working capital for the operation of the station.

The transferees propose to continue the operation of Station WCLS in substantially the same manner as it is now operated. The personnel includes Mr. Wood as commercial manager, an office manager, a program director, a musical director, six announcers, a chief engineer, and two operators. If the proposed transfer is approved, there would be added a relief operator and a staff pianist.

Under the operation of the transferees as proposed, it is expected to move the station to a different site, to construct a transmitter building, buy a new transmitter and vertical radiator. This will result in improved coverage for the station.

The present basic rate for the station is \$30.00 for one hour. No increase in the rates is expected under the operation as proposed by the transferees.

Joliet had a population of 42,993 according to the 1930 census. The following is a statement of certain economic statistics pertaining to Joliet, which are based on Department of Commerce census figures released during 1933: Retail sales, \$13,520,000; wholesale receipts, \$7,362,000; and service, amusement, and hotel receipts, \$1,122,000.

The transferees have filed a sample program schedule broadcast over Station WCLS for the week beginning December 12, 1937. An examination of the exhibit shows that the station has a well-balanced variety of programs designed to be of interest to the listeners in its service area. Approximately 48% of the station's time is devoted to commercial programs and 52% to sustaining. About 73% of the programs are devoted to entertainment; 12.5% to news; 7.5% to civic; 3.5% to religious; 2% to sports; and 1.5% to education. The station operates from 7 a. m. to 8:30 p. m. except on Fridays when the station is permitted to operate until 10:30.

The facilities of the station will be offered to the various religious, civic, educational, and fraternal institutions located in Joliet. A list has been filed showing that approximately 50 such organizations are regular users of the station. The transferees have filed a statement showing the talent which may be available for programs over the station. Included in the list are 30 musical or dramatic organizations and 11 individual artists.

The transferor herein has not devoted any appreciable amount of his time to the operation of Station WCLS. The controlling stockholder under the proposed arrangement will be the commercial manager of the station and will devote his full time to its operation and service.

GROUNDS FOR DECISION

1. The proposed transferees are legally, technically, financially, and otherwise qualified to take over and continue the operation of Station WCLS through WCLS, Inc.

2. The proposed transferees will install new technical equipment and the public interest will be served by the resulting improved coverage.

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

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

<p>In the Matter of STATE BROADCASTING CORPORATION, GREYNA, LOUISIANA. For Construction Permit.</p>	}	<p>DOCKET No. 4915.</p>
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Decided November 1, 1938

Thomas H. Patterson on behalf of applicant; *A. V. Dalrymple* on behalf of the Federal Communications Commission.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION (McNinch, Chairman, and Case, Commissioner,
not participating):

STATEMENT OF FACTS

This proceeding arose out of the application of the State Broadcasting Corporation for a permit to construct a radiobroadcast station at Gretna, Louisiana, to operate on the frequency of 1370 kilocycles, with power of 250 watts L. S., 100 watts night, specified hours of operation. The hearing was held before an examiner on April 29, 1938. The examiner, on July 22, 1938, released his report (I-686), and recommended that the application be denied. Exceptions to the Examiner's Report were filed but oral argument was not requested.

Gretna, Louisiana, is located on the Mississippi River approximately five miles south of New Orleans. According to the 1930 census it had a population of 9,584, and Jefferson parish in which it is located, had according to the same census, a population of 40,023. Gretna is the center of a trade area extending 65 miles to the south, eight miles to the west, and from three to four miles to the east. The Mississippi River is about one mile wide at this point and consequently shuts off trade from the north. A ferry is the only available means of crossing the river.

The applicant is a Louisiana corporation, authorized to engage in the operation of a radio station. The authorized capital stock consists of 5,800 shares, divided into 800 shares of preferred, with a par

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value of \$25.00 per share, and 5,000 shares of common stock with no par value. Voting privilege is accorded only to the common stock. No stock has been issued.

The present officers, directors, and proposed stockholders, with their subscriptions, are:

Frederic A. LeMieux, III, President and director, 2,000 shares of common	\$2,000.00
Thomas Capo, Jr., Vice President and director, 5 shares of common...	5.00
Chester D. Burrell, Secretary & Treas. and director, 5 shares of common	5.00
Mrs. T. Capo, Sr., 200 shares of preferred.....	5,000.00
Mrs. E. LeMieux, 120 shares of preferred.....	3,000.00
Frederic LeMieux, Jr., 200 shares of preferred.....	5,000.00

Frederic A. LeMieux, III, Thomas Capo, Jr., and Chester D. Burrell, the officers and directors of this corporation, are citizens of the United States by birth and residents of New Orleans. It is stated that the proposed stockholders are able to pay for the stock subscribed, but the record contains no satisfactory proof of their ability to do so.

The president of the applicant corporation is a licensed radio operator who has had experience with stations located at New Orleans, Louisiana; Columbus and Albany, Georgia; Houston, Texas; and Gulfport, Mississippi. His experience has been in connection with the construction and operation of broadcast stations as well as the announcing of programs. The applicant has contacted an experienced engineer, who has been considered for the position of technical supervisor of the proposed station. The applicant proposes to employ competent personnel for the management and operation of the station.

The transmitter which the applicant proposes to install complies with the engineering requirements of this Commission. The proposed antenna complies with the rules of this Commission as to height. As the site of the proposed station has not been definitely selected, the site, antenna, and ground system will be subject to subsequent Commission approval.

The estimated cost of the proposed station is placed at \$6,735 by the applicant. The Commission engineer estimates cost slightly in excess of this sum. Monthly operating expenses are estimated at \$1,080, of which amount salaries for the operating personnel consists of \$510, with operating expenses of \$570.

The estimated operating revenue of the proposed station is \$2,075 per month. The president of the applicant stated that the corporation had entered into contracts with seven firms in Gretna, and that

these firms had agreed to spend for radio advertising, over a period ranging from 13 weeks to one year, the sum of \$5,471. Although requested to furnish copies of these contracts the applicant has failed to do so and the testimony of this witness is not supported by the testimony of any of the seven merchants.

The applicant offered in evidence a list of 45 business houses in Gretna and vicinity which are considered as potential advertisers. No merchant whose name appeared on this list testified as to any sum which he would spend for radio advertising, and no contracts or tentative agreements signed by any of these merchants indicating their intention to use the facilities of the proposed station were offered in evidence.

The applicant proposes to operate the station from 6 a. m. until 6 p. m. and from 9 p. m. until midnight. A proposed program schedule was offered in evidence. This schedule shows that a large percentage of its time will be devoted to electrical transcriptions. The program schedule is not particularly enlightening as to the type or character of services which the applicant proposes to offer.

Several witnesses stated that there was talent in Gretna and the vicinity which was suitable for broadcasting. The Commission is not informed either as to the caliber of this talent or the willingness of the artists to appear over the facilities of the proposed station.

Gretna now receives primary broadcast service from five existing stations located in New Orleans, Louisiana. These stations are: WDSU, WSMB, WWL, WBNO, and WJBW. Station WDSU is affiliated with the Blue Network of the National Broadcasting Company, Station WSMB with the Red Network of the National Broadcasting Company, and Station WWL with the Columbia Broadcasting System. Stations WBNO and WJBW share time on the local channel, 1200 kilocycles.

There is some indication in the record that persons living in Gretna and vicinity who are artistically inclined do not have an opportunity to perform over the broadcast stations in New Orleans, that Gretna merchants are unable to advertise over the facilities of the New Orleans station because the advertising time of these stations is taken, also that the various civic, religious, charitable, and social organizations in Gretna did not have a medium of expression through the broadcast stations located in New Orleans. The testimony relating to these matters, however, consists chiefly of the expressions of opinion of various witnesses which, in the absence of factual data, is entitled to little probative weight.

In a number of cases, where a license for a local broadcast station has been granted, this Commission, in finding that such a station

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would be in the public interest, has considered, among other things, the fact that the station would provide a medium of expression for local civic organizations, and for artists who are capable of rendering satisfactory broadcast programs and would give the local merchants a radio advertising outlet. Other facts, however, influence the Commission in determining that the granting or denying of an application will serve public interest, convenience, or necessity, among which is a consideration of the quantity and character of broadcast service available to the community. Where, as here, the record does not show unsatisfactory broadcast service or programs unattractive to the listening audience, there is a presumption that adequate broadcast service is being rendered by existing stations which furnish the primary broadcast service.

The proposed station would cause interference to two existing stations, to wit, Station WFOR, Hattiesburg, Mississippi, and Station KELD, El Dorado, Arkansas. Both of these stations operate on the frequency requested by this applicant and are licensed to operate unlimited time. Assuming an antenna efficiency of approximately 175 millivolts per meter unabsorbed at one mile per kilowatt, the proposed station and Station WFOR would mutually limit the other during simultaneous nighttime operation to the approximate 3 millivolts per meter contour. Based on the same assumed antenna efficiency, Station KELD and the proposed station, during simultaneous nighttime operation, would mutually limit the other to the approximate 2.2 millivolts per meter contour. Stations of this class are normally protected to their 2 millivolts per meter contour at night.

GROUNDS FOR DECISION

1. The applicant is legally and technically qualified to construct and operate the proposed station.
2. The record fails to disclose that the applicant is financially qualified to either construct or operate the proposed station.
3. The record does not show that the proposed station would receive sufficient financial support to justify its continued operation.
4. Gretna, Louisiana, now receives primary broadcast service from five existing broadcast stations located in New Orleans. No attempt has been made to show that the character of the programs from these five stations is not satisfactory or that these programs do not appeal to the residents in the area to be served by the proposed station.
5. The transmitter which the applicant proposes to install complies with the engineering requirements of this Commission and the proposed antenna meets the requirements of this Commission as to height. The site is to be selected.

6. The proposed station would limit Station WFOR, Hattiesburg, Mississippi, and Station KELD, El Dorado, Arkansas, within the normally protected 2 millivolt per meter contour of these stations during such nighttime hours as the stations were operated simultaneously.

7. The applicant has failed to show such compelling need for a radio station at Gretna, Louisiana, as would justify this Commission in granting this application, where, as here, it would cause objectionable interference within the normally protected service area of two existing stations.

8. The granting of this application would not serve public interest, convenience, or necessity.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D. C.

In the Matters of ¹ W. C. IRVIN, ² AMARILLO, TEXAS. For Construction Permit.	}	DOCKET No. 4686.
AMARILLO BROADCASTING CORPORATION, AMARILLO, TEXAS. For Construction Permit.	}	DOCKET No. 4893.

Decided November 1, 1938

Arthur W. Scharfeld, Philip G. Loucks and Joseph F. Zias on behalf of applicant W. C. Irvin; George O. Sutton, Arthur H. Schroeder and James L. Proffitt on behalf of applicant Amarillo Broadcasting Corporation; Horace L. Lohnes, Fred W. Albertson and R. E. Underwood on behalf of Station KGNC, Intervenor; James H. Hanley on behalf of Northwestern Broadcasting Company; A. V. Dalrymple on behalf of the Federal Communications Commission.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION (McNinch, Chairman, and Case, Commissioner, not participating):

STATEMENT OF FACTS

These proceedings arose out of the applications of W. C. Irvin and the Amarillo Broadcasting Corporation for permits to construct local broadcast stations at Amarillo, Texas. Both applicants requested the use of 1500 kc. W. C. Irvin seeks authority to operate with 250 w. power L. S., 100 w. night; the Amarillo Broadcasting Corporation requests 100 watts power day and night. As the granting of either application precludes the granting of the other, the cases were consolidated and were heard before an examiner on February 14, 19, and 21, 1938. The examiner released his report (I-640) on May 19, 1938, and recommended that both applications be denied. Exceptions were filed by both applicants and oral argument heard by the Commission.

¹ In above matter a Supplemental Statement of Facts, grounds for Decision, and Order was entered March 6, 1939.

² Petition for rehearing denied on March 6, 1939.

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Amarillo, Porter County, is located in the Panhandle section of Texas. Amarillo, according to the 1930 Census, had a population of 43,132, Porter County, according to the same Census, had a population of 46,080. The testimony in this case indicates that Amarillo is a growing community, and as of the date of hearing had a population considerably in excess of that shown by the 1930 Census.

Amarillo is the center of a large trading area in the Texas Panhandle. It is the headquarters and distributing headquarters for many kinds of merchandise particularly farm machinery and oil well supplies. This city is served by three railroads all of which have shops there. In the city are to be found oil refineries, stock yards, stock markets, packing houses, and numerous other businesses. Several witnesses testified as to the growth of the business activity in this area. Statistics compiled by the United States Department of Commerce show the following: Retail sales at Amarillo in 1933 amounted to \$13,222,000, and in 1935 to \$18,811,000; wholesale sales in 1933 amounted to \$12,548,000, and in 1935 to \$24,732,000. In 1935 the pay roll of employees engaged in the wholesale business amounted to \$1,333,000, and for the retail business \$2,037,000. There has been a substantial amount of building in this community, including the construction of public buildings, an auditorium, and numerous business houses.

Amarillo is the civic and cultural center for a large area. In this city are to be found numerous educational institutions, including public school systems, music, and dramatic schools.

Amarillo has two newspapers of general circulation, exclusive of weekly and throw-away advertising sheets. The Globe News Publishing Company, Inc. publishes a morning and an afternoon paper. A short time prior to the hearing The Times, a new newspaper, was first published in Amarillo.

Station KGNC, owned and operated by the Plains Radio Broadcasting Company, intervener herein, operates on the frequency of 1410 kc., 2.5 kw. L. S., 1 kw. night, and is the only station now rendering primary broadcast service to the city. Amarillo receives broadcast service from distant high-powered stations, particularly WBAP at Fort Worth, WFAA at Dallas, WOAI at San Antonio, and KOB at Albuquerque. The reception from these stations is intermittent, depending in part upon the atmospheric conditions, and is not considered primary service.

Both applicants propose to establish a local broadcast station in Amarillo. Neither applicant has selected a definite site for his proposed station. Any site selected must of necessity be approved by the Engineering Department of this Commission. Both applicants seek

authority to use 100 w. power at night. W. C. Irvin seeks authority to operate with 250 w. daytime, whereas the Amarillo Broadcasting Corporation seeks authority to use only 100 w. daytime. The 10 mv./m. and 2 mv./m. contours of the 250-watt station would be expected to fall, during the day, at a distance of 4.1 miles and 11.5 miles, respectively, from the transmitter. The same contours of the 100-watt station would be expected to fall, during the day, at a distance of 2.9 miles and 8.7 miles from the transmitter. Operating at night with 100 watts power, each station would have approximately the same coverage. Assuming a suitable location, each of the proposed stations would be able to render a satisfactory broadcast service to the City of Amarillo.

Neither of the stations operating as proposed will cause objectionable interference to any existing station nor will they receive any objectionable interference from any existing station.

Eighty percent of the stock of the Plains Radio Broadcasting Company, the licensee of Station KGNC, is owned by the Amarillo Globe News, a corporation publishing a morning and afternoon paper of general circulation in Amarillo. The Plains Radio Broadcasting Company acquired through purchase Stations WDAG and KGRS, both of which were located in Amarillo, Texas, on June 1, 1935. These two stations were consolidated and Station KGNC came into being as a full-time station. A financial statement of the Plains Radio Broadcasting Company as of December 31, 1937, shows an investment in KGNC of \$104,986.31, of which amount \$35,029.26 represents good will. This statement also shows that the 1937 operation of the station resulted in a substantial profit for the year. Subsequent to the organization of Station KGNC the rates of this station have been increased, and the station has become affiliated with the National Broadcasting Company.

Under the contract with the National Broadcasting Company certain hours of Station KGNC are used for broadcasting programs originated by NBC. These programs may be referred to as chain or network programs, to be contrasted with programs of a local origin. During the hours when Station KGNC is broadcasting network programs, the facilities of the station cannot be used for broadcasting programs of local character.

The program log offered by Station KGNC as well as an analysis of the programs of this station, shows that approximately 45 percent of its time has been devoted to chain programs and national spot announcements. Station KGNC has broadcast many programs of a local nature which were of interest to the community at large, and the facilities of the station have been extended to the various civic,

religious, educational, social and charitable organizations in the community. The program log and testimony of the witnesses indicates that this station is rendering a service which is in the public interest. The record in this case shows, however, that there is a vast amount of local talent which is suitable for broadcast purposes which is not regularly used by Station KGNC. This talent consists of a philharmonic orchestra, numerous dance bands, string ensembles, concert bands, choral societies, soloists, and dramatists. Many of these artists have been contacted and are anxious to use the facilities of a broadcast station. While Station KGNC has broadcast numerous civic events, there have been many events of a local nature which, because of prior commitments, the station was unable to broadcast. While the facilities of the existing station have been used by various civic, religious, and charitable organizations, numerous organizations of this character have indicated their intention and desire of using the facilities of either of the proposed stations.

Each of the applicants proposes a program which will lay emphasis upon matters of local interest. In furnishing the proposed program, due consideration will be given to the type of program being broadcast by the existing station. It is the intention of each applicant to make the facilities of their respective stations available to the various civic, religious, social, charitable, and educational organizations in this community free of charge. Each applicant will have news broadcasts, will subscribe to transcription service, and will utilize the services of much of the talent in this area in the presentation of their programs.

It is the contention of both applicants that Amarillo can and will support a local broadcast station in addition to Station KGNC which operates on a regional assignment. The position taken by the intervener is that the establishment of an additional station in the city will adversely affect its economic position which in turn would adversely affect the ability of Station KGNC to continue to render programs in the public interest. Several merchants testified that at one time they had used the facilities of Station KGNC but because of the increase in rates of this station they had discontinued radio advertising. It is the contention of the applicants that the proposed local stations will receive advertising support from the smaller local merchants and as the proposed station will serve a different class of advertisers, Station KGNC would not be adversely affected. Both applicants propose to furnish radio advertising at rates substantially less than those now charged by the existing station.

Station KGNC has served as an advertising medium for approximately 250 Amarillo merchants and as of the date of the hearing

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approximately 125 Amarillo merchants were then using its facilities. W. C. Irvin offered in evidence a list of 23 merchants who had entered into written agreements indicating their intention to use the facilities of the station which he proposed. These written agreements indicate that this proposed station would receive advertising revenue of \$1,731 per month. Of these 23 merchants only one had used the facilities of Station KGNC. In addition, this applicant submitted a list showing 32 merchants who had been contacted and had indicated their intention of using the facilities of the proposed station. Of these 32 merchants 11 have used the facilities of Station KGNC.

The Amarillo Broadcasting Corporation submitted a list of 81 Amarillo merchants who had signed agreements indicating their intention to purchase time over the proposed station. The estimated revenue from these 81 merchants amounts to \$2,350 per month. Of these 81 merchants, 9 have used the facilities of Station KGNC.

As it affirmatively appears that Station KGNC is operating at a substantial profit and the merchants who have indicated their intention of using the facilities of either of the proposed stations are in the main merchants who do not now use the facilities of Station KGNC, it is apparent that the operation of a local broadcast station would not result in a loss of a substantial amount of the advertising support of Station KGNC and would not adversely affect the ability of this station to render adequate broadcast service in this area.

The Commission is of the opinion and so finds that there is a need for an additional broadcast station in Amarillo, there is sufficient local talent in Amarillo to furnish suitable programs for two broadcasting stations, and the merchants in this community will, through their advertising, support two broadcast stations.

IN RE W. C. IRVIN, DOCKET NO. 4686

W. C. Irvin, the applicant, is a citizen of the United States, having been born in Temple, Texas. He now resides and for the ten years last past has been a resident of Amarillo, Texas.

The transmitter which this applicant proposes to use complies with the engineering requirements of this Commission. The antenna meets the engineering requirements of this Commission as to height. As the site has not been selected, the antenna and ground system together with the site will be subject to subsequent Commission approval.

The estimated cost of the proposed station is placed at \$11,000. The estimated monthly operating expenses are placed at approximately \$1,900. The estimated operating revenue is placed at ap-

proximately \$2,931, of which sum approximately \$1,700 would be received from advertisers who have made tentative contracts with this applicant.

The applicant is engaged in the drug, restaurant, and cold-drink business. He has total net assets of approximately \$20,500. As of the date of the hearing these assets consisted of \$15,000 cash, the remainder being represented by his drug store, his restaurant and cold-drink business, and personal property. This applicant is of the opinion that if additional funds are necessary for the operation of the proposed station that he would be able to obtain the same.

The applicant was formerly the owner of Broadcast Station KIUG at Santa Fe, New Mexico. Although he owned this station for a period of approximately one year, he never resided in Santa Fe, and has had no actual experience in operating a broadcast station. In the event his application is granted, he will supervise and direct the operation of the proposed station at Amarillo, and will designate its policies both as to programs and advertising matter to be broadcast.

This applicant has made tentative arrangements to employ, as station manager, a person who has formerly lived in the City of Amarillo, and for a period of approximately ten years has been engaged in the management and operation of broadcast stations. The applicant proposes to employ competent personnel for the operation of his proposed station.

IN RE AMARILLO BROADCASTING CORPORATION, DOCKET NO. 4898

The Amarillo Broadcasting Corporation is organized under the laws of the State of Texas with capital stock of \$2,500. As of the date of the hearing an application had been filed to increase the capital stock of this corporation from \$2,500 to \$20,000, and the additional \$17,500 worth of stock had been subscribed.

C. S. Gooch is the president of the corporation, J. Linger Nunn, the vice president, and Gilmore N. Nunn, the secretary-treasurer of the corporation. These three men own all of the stock and constitute the board of directors of this corporation. Mr. Gooch subscribed and paid for 51 percent of the original \$2,500 capitalization of the corporation, and has made arrangement for purchase of 51 percent of the additional stock in this company. Mr. J. Linger Nunn and Gilmore N. Nunn originally purchased 25 percent and 24 percent, respectively, of the original \$2,500 capital stock of this corporation, and have subscribed for a similar percent of the additional \$17,500 stock.

C. S. Gooch is a citizen of the United States, having been born in Louisville, Kentucky. He now resides, and for 23 years last past

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has resided, in Amarillo, Texas, where he operates the C. S. Gooch Engineering Company, an organization engaged in radio and refrigeration sales and service. He has never engaged in radio broadcasting. He is not interested in any other application before this Commission.

J. Linger Nunn is a citizen of the United States by birth. His legal residence is in Amarillo, Texas, where he has lived for more than 30 years and where he owns considerable real property. Mr. Nunn has interests in both Lexington, Kentucky, and in New Mexico. Since 1936 he has been a minority stockholder in radiobroadcast Station WLAP at Lexington, Kentucky. WLAP is the only station in which Mr. Nunn owns an interest. He has no other applications pending before the Commission for radio facilities other than an application for Station WLAP for an increase in power. At one time Mr. Nunn owned Station WDAG at Amarillo, Texas, which he sold in 1922 for \$50. He formerly owned a one-third interest in a broadcast station at Clovis, New Mexico; and formerly owned Station KPND at Pampa, Texas, which he sold in 1936 together with a newspaper, which was the licensee of the station.

Mr. Gilmore N. Nunn is a citizen of the United States by birth. His residence is Lexington, Kentucky, where he is the president of the American Broadcasting Corporation, licensee of Station WLAP. He does not own an interest in any other broadcast station, and the only other application pending before the Commission in which he has an interest is the application of Station WLAP for increase in power.

The financial statement of the applicant as of February 1, 1938, showed cash on hand \$2,262.41. Other assets of the corporation consist of stock subscription amounting to \$17,500. Mr. C. S. Gooch has a personal net worth of approximately \$8,578.55. His annual income is approximately \$3,000. He is related by marriage to J. Linger Nunn. Under a contractual agreement with Mr. Nunn, Mr. Gooch is to borrow the sum of \$8,925 to be used to pay for the additional capital stock in the Amarillo Broadcasting Corporation for which he has subscribed. The financial statement of J. Linger Nunn, as of October 1, 1937, showed a net worth of \$577,407.70. A financial statement of Gilmore N. Nunn showed a net worth of \$64,101.19.

The applicant proposes to employ competent personnel for the operation of its proposed station. The pay roll of the regular personnel is estimated at \$1,160 per month and, in addition, the applicant proposes to use a number of part-time employees.

The transmitter which this applicant proposes to install complies with the engineering requirements of this Commission. The proposed

antenna meets the requirements of the Engineering Department of this Commission as to height. As the exact site of the station has not been selected, the antenna and ground system together with the site is subject to subsequent Commission approval.

The estimated cost of the proposed station is placed at \$8,110. The estimated monthly operating expense of the proposed station is placed at \$1,901. Eighty-one business concerns in Amarillo signed tentative contracts to use the facilities of the proposed station. An estimate, based upon tentative contracts, indicates expected operating revenue of approximately \$2,350 per month. J. Linger Nunn, the vice president of the applicant corporation, testified that he was willing to advance additional funds to the applicant corporation if such additional funds were necessary to insure the satisfactory operation of the proposed station.

GROUNDS FOR DECISION

1. W. C. Irvin is legally, technically, and financially qualified to construct and operate the proposed station.

2. The Amarillo Broadcasting Corporation is legally, technically, and financially qualified to construct and operate its proposed station.

3. The daytime service area of the station proposed by W. C. Irvin will be slightly greater than that of the station proposed by the Amarillo Broadcasting Corporation. The nighttime service area of both stations will be approximately the same.

4. There is a need for a local broadcasting station in Amarillo in addition to the existing station.

5. As between W. C. Irvin and the Amarillo Broadcasting Corporation, the latter is the better qualified financially to construct and operate the proposed station. Where, as here, there is an existing station serving a large number of merchants who use radio as a means of advertising, the ability of a new station to present acceptable programs during the period it is building up its listening audience is of major importance. As the Amarillo Broadcasting Corporation is financially qualified to construct and operate its proposed station, and as this corporation can obtain from its stockholders additional funds, if such funds are necessary, the Commission is of the opinion that, as between this corporation and W. C. Irvin, the Amarillo Broadcasting Corporation is better qualified to render satisfactory broadcast service in this area.

6. The granting of the application of the Amarillo Broadcasting Corporation precludes the granting of the application of W. C. Irvin.

7. The station which the Amarillo Broadcasting Corporation proposes will receive sufficient advertising support from local merchants to assure its continued operation.

8. The proposed station of the Amarillo Broadcasting Corporation will broadcast programs in the public interest and serve as an additional outlet for local talent, and offer an additional medium of expression to the various civic, religious, social, educational, and charitable organizations in this community.

9. The granting of the application of Amarillo Broadcasting Corporation will not adversely affect the ability of Station KGNC to continue to operate in the public interest.

10. The station proposed by the Amarillo Broadcasting Corporation will neither receive objectionable interference from nor cause objectionable interference to any existing broadcasting station.

11. The granting of the application of W. C. Irvin for construction permit will not serve public interest, convenience, and necessity.

12. The granting of the application of Amarillo Broadcasting Corporation will serve public interest, convenience, and necessity.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D. C.

<p>In the Matters of EL PASO BROADCASTING COMPANY,¹ EL PASO, TEXAS. For Construction Permit.</p>	}	DOCKET No. 4545.
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<p>KGKL, INCORPORATED (KGKL), SAN ANGELO, TEXAS. For Construction Permit.</p>	}	DOCKET No. 4479.
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<p>THE TRIBUNE COMPANY, TAMPA, FLORIDA. For Construction Permit.</p>	}	DOCKET No. 3932.
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ORDER

At a meeting of the Federal Communications Commission, held in its office in Washington, D. C., on the 21st day of November, 1938, The Commission, having under consideration the petitions for rehearing filed by the El Paso Broadcasting Company, El Paso, Texas; KGKL, Incorporated, San Angelo, Texas; and The Tribune Company, Tampa, Florida; and

The Commission having considered the petitions for rehearing, the decisions of the Commission involved therein, and the record upon which the decisions were made, finds that the petitions for rehearing should be overruled and denied;

The Commission finds that in the petition for rehearing filed by The Tribune Company, the applicant alleges in substance that the second ground for the Commission's decision (page 20, paragraph 4, of the "Statement of Facts, Grounds for Decision, and Order") is not supported by sufficient findings of fact "from which the ultimate facts in the terms of the statutory criterion are inferred" (citing *Saginaw Broadcasting Company v. Federal Communications Commission*, 96 F. (2d) 554, 68 App. D. C. 282); and upon further consideration of the record the Commission finds that said contention is meritorious in that the second ground for its decision is not sup-

¹ Appeal taken to the United States Court of Appeals for the District of Columbia. Appeal dismissed on December 4, 1939.

ported by sufficient basic findings of fact appearing in the "Statement of Facts, Grounds for Decision, and Order," and that there is not sufficient evidence in the record to support said Ground for Decision; the Commission further finds that the second ground for its decision must, therefore, be stricken, but that its order denying this application shall be affirmed.

Wherefore, the premises considered, and the Commission being fully advised,

IT IS ORDERED, That the "Statement of Facts, Grounds for Decision, and Order" denying the application of The Tribune Company for construction permit (Docket No. 3932), be, and it is hereby, affirmed, except that the second Ground for Decision (page 20, paragraph 4, of the "Statement of Facts, Grounds for Decision, and Order") be, and it is hereby, stricken;

IT IS FURTHER ORDERED, That the petitions for rehearing filed by the El Paso Broadcasting Company (Docket No. 4545), KGKL, Incorporated (Docket No. 4479), and The Tribune Company (Docket No. 3932) be, and they are hereby, denied.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D. C.

<p>In the Matter of E. ANTHONY & SONS, INC. (W1XEQ), NEW BEDFORD, MASSACHUSETTS. For Renewal of License.</p>	}	DOCKET No. 5064
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Decided November 21, 1938

Arthur W. Scharfeld, Philip G. Loucks, and Joseph F. Zias on behalf of the applicant; *James D. Cunningham* on behalf of the Commission.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDERS

BY THE COMMISSION (Payne, Commissioner, not participating):

STATEMENT OF FACTS

This proceeding arose upon the application of E. Anthony & Sons, Inc., for renewal of the license of Station W1XEQ.

This station was licensed to operate in accordance with the rules governing high-frequency broadcast stations, and was authorized to use the frequencies of 31600, 35600, 38600, and 41000 kilocycles. Such stations are required by Rule 1051 to make certain investigations, and carry on certain experimentation, and by Rule 1056 to file periodic reports with the Commission as to the progress of such research and investigation. This application was set for hearing to determine the adequacy of the reports and the program of research and experimentation, and to consider whether the continued operation of the station would serve public interest. The matter was heard before an Examiner who recommended (Report No. I-719) that the station license be renewed.

E. Anthony & Sons, Inc., has been the licensee of Station W1XEQ since September 22, 1936. It is also the licensee of standard broadcast station WNBH.

The applicant's balance sheet as of December 31, 1937, shows that the corporation has a surplus of \$368,237.05 and cash of \$71,607.91. The applicant has spent approximately \$7,500 in equipment during the

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licensed period, and expects that further experiments will cost between \$5,000 and \$10,000.

The primary object of the experiments is to determine the coverage of a station using the frequencies experimentally assigned to this service. In conducting experiments up to the present time the applicant has used only the 31.6 megacycle frequency with a power of approximately 20 watts. Engineers for the applicant believe that if the radiated power and coverage are known, other problems such as the amount of power required to provide service for a given area, the optimum site, and similar engineering problems may be more easily determined.

There are six licensed operators on duty at Station WNBH who are also employed in conducting the experiments over Station W1XEQ. These men are well equipped technically to engage in a program of research in the ultrahigh frequencies. In addition, the applicant has engaged a consulting radio engineer to supervise and conduct further experiments on the station. During the license period more than 1,500 hours of experimentation have been devoted to the experimental program.

The transmitter and antenna of Station W1XEQ are located at Fairhaven, Massachusetts, about a half mile inland. At the outset the engineers employed by the applicant found difficulty with certain tubes and it was necessary to test various tubes in the intermediate and driving stages before a consistent signal could be obtained. The frequencies were found to be critical, steel buildings, bridges, etc., casting shadows and practically eliminating reception of the station at short distances, while, on the other hand, programs of the station were reported to be heard consistently by a listener in Parsons, Kansas. The applicant proposes to use various types of antennas and it is proposed to experiment using horizontal and vertical polarization of the transmitted wave.

Station W1XEQ carries the programs of Station WNBH from 2 p. m. to 6 p. m. daily and at other times uses tone modulation for testing and experimenting.

The applicant's consulting engineer has recommended that the present transmission line and radiating system be abandoned in favor of a concentric transmission line and a half wave radiator excited by a quarter wave matching section. He has also recommended that the station operate on 100 watts and that a complete field survey be made. It is also expected that the experiments will reveal quantitative methods of measuring the relation between signals and noise in the various localities. By using an impedance measuring device and transmission line, whose characteristics may be experimentally determined, it

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is possible to determine with fair accuracy the amount of power actually placed in the radiator. When the power becomes a known quantity it is planned to make a survey along 8 or 10 equally spaced radials through different types of terrain. The engineer expects to determine the transmission characteristics of these frequencies.

Officials of the applicant station testified that they realized the experiments previously conducted were entirely too general in nature to make a proper report pursuant to Rule 1056. Applicant proposes to conduct experiments in a definite manner along the lines proposed by the consulting radio engineer, and to file the necessary reports with the Commission.

GROUNDS FOR DECISION

1. The applicant is legally, technically, financially, and otherwise qualified to continue the operation of the station.

2. The program of research and experimentation has been conducted by the applicant as contemplated by Rule 1051 of the Commission's rules and regulations.

3. The reports filed by the applicant with respect to its program of research and experimentation have been too general to comply with Rule 1056; however, the applicant has shown in the record that it has definite plans upon which to proceed and will conduct such experiments along lines which will admit of the filing of the necessary reports with the Commission.

4. The continued operation of the station will serve public interest, convenience, and necessity.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D. C.

<p>In the matter of E. F. SAPP and S. F. SAPP, d/b as WAYCROSS BROADCASTING COMPANY (WAYX) (Assignor), JACK WILLIAMS (Assignee), WAYCROSS, GEORGIA. For Voluntary Assignment of License.</p>	}	<p>DOCKET No. 4943.</p>
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Decided November 28, 1938

John B. Brady on behalf of E. F. Sapp, S. F. Sapp, and Jack Williams; *Walter Johnson* and *James D. Cunningham* on behalf of the Commission.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION (Payne, Commissioner, not participating) :

STATEMENT OF FACTS

This proceeding arose upon the application of E. F. Sapp and S. F. Sapp, d/b as Waycross Broadcasting Company, and Jack Williams, for consent of the Commission to a voluntary assignment of the license of Station WAYX from the partnership to Mr. Williams. The matter was heard before an examiner who recommended (Report No. I-714) that the application be granted.

Station WAYX is owned and operated by E. F. Sapp and S. F. Sapp, doing business as the Waycross Broadcasting Company, and operated at Waycross, Georgia, on 1200 kilocycles with 100 watts night and 250 watts local sunset, unlimited time. The station began operation on October 12, 1936.

Prior to the time S. F. Sapp, son of the other partner, entered the radiobroadcast field he was engaged in the practice of law at Albany, Georgia. After securing a permit to construct a station at Waycross, Georgia, Mr. Sapp gave up his practice and moved to that town to operate the station. Mr. Sapp now desires to relocate at Albany and return to the practice of law.

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The proposed assignee, Jack Williams, is a citizen of the United States and a resident of Waycross, Georgia. Mr. Williams is actively interested in the growth and development of Waycross, has held many civic and community appointments, and is very closely identified with the welfare of the city. Many residents of Waycross testified with respect to the high character and reputation of Mr. Williams and expressed confidence in his ability to operate Station WAYX in such a way as to best serve the civic, fraternal, and religious elements of the community.

The contract between the parties herein provides that the assignee shall pay the assignor the sum of \$20,500 upon the transfer of the property and the consent of the Commission given to the assignment of license. A down payment in the amount of \$5,500 was made by the assignee at the time of entering into the contract. The contract also provides that the property shall be transferred free of any and all encumbrances.

According to a balance sheet as of July 19, 1937, Mr. Williams has cash on hand of \$2,200, investments in the amount of \$94,000, and liabilities in the amount of \$7,000, leaving a net worth of \$89,200. He is financially qualified to carry out the terms of the contract and to continue the operation of Station WAYX.

An inventory of the technical equipment covered by the contract of sale reveals an original cost of \$9,944.50, depreciated value of \$8,570.09, and a replacement cost of \$9,944.50.

A profit and loss statement covering the period from October 12, 1936, to August 1, 1937, reveals a net income for this period of \$16.76. From the time the station was established no compensation whatever has been paid to E. F. Sapp, and no payment had been made for the legal services performed by S. F. Sapp, who also served the station in the capacity of a technician and radio engineer.

An adequate staff of qualified employees has been maintained by the present licensee. The assignee proposes to retain their services.

A schedule of a typical program for one day was introduced in evidence and appears to be well-balanced and designed to serve the needs of the community. A number of representative citizens of Waycross testified that the programs broadcast by Station WAYX have been generally meritorious and satisfactory. The assignee proposes to improve the programs of the station and will render a more complete service to the community than has heretofore been given. No changes will be made in the advertising rates of the station.

The 1930 United States Census shows the population of Waycross, Georgia, to be 15,510. Waycross is the county seat of Ware County and is the eighth largest city in Georgia. It has two large tobacco

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warehouses, nine railroad outlets with thirty-six passenger trains daily, six bus lines and one modern bus station, eighty miles of paved streets and fifty-one miles of cement sidewalks. Waycross is located on six paved trunk-line highways, i. e., the Dixie, Wilson, and Oglethorpe Highways, and the Beeline, Woodpecker, and Cornbelt Routes, as well as several minor routes, and thousands of automobile tourists visit the city yearly. The largest shops of the Atlantic Coast Line System are located in Waycross. The outlying area is devoted to the growing of corn, cotton, sugarcane, tobacco, peanuts, beans, peas, potatoes, cantaloupes, strawberries, watermelons, pecans, etc. Waycross is the center of the turpentine industry in the section.

Local talent is available to supply the needs of the station. It will be the policy of the assignee to continue the various community and educational programs now being broadcast and extend the station's facilities without cost to all worth-while civic endeavors and all religious, charitable, patriotic, fraternal, educational, and similar organizations.

GROUNDS FOR DECISION

1. The assignee is legally, technically, financially, and otherwise qualified to take over and continue the operation of Station WAYX.

2. The existing licensee desires to follow other pursuits and is no longer interested in continuing the operation of Station WAYX.

3. The proposed assignee is closely identified with the civic and community interests of Waycross, Georgia, and is peculiarly fitted to operate the station in the interests of the community.

4. The assignee's plans for improvement of program service of Station WAYX indicate that a better, more adequate program service will be rendered.

5. Public interest, convenience, and necessity will be served by granting the application.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D. C.**

<p>In the Matter of EMPORIA BROADCASTING COMPANY, INC., EMPORIA, KANSAS. For Construction Permit.</p>	}	DOCKET No. 5090.
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Decided November 28, 1938

Horace L. Lohnes, E. D. Johnston, and F. W. Albertson on behalf of applicant; *H. Russell Bishop* on behalf of respondent; and *Basil P. Cooper* on behalf of the Commission.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION (Payne, Commissioner, not participating) :

STATEMENT OF FACTS

This proceeding arose out of the application of the Emporia Broadcasting Company, Inc., for permit to construct a radiobroadcast station at Emporia, Kansas, to operate on the frequency of 1370 kilocycles, with power of 100 watts, daytime only. The hearing was held before an examiner on May 25, 1938. On June 30, 1938, the examiner released his report (I-694) and recommended that the application be granted. No exceptions have been filed to the examiner's report and oral argument was not requested.

Emporia Broadcasting Company, Inc., applicant herein, is an organization incorporated under the laws of the State of Kansas, with authority to issue \$25,000 worth of stock, no par value, \$10,000 of which have been subscribed to, issued and paid for by fifteen stockholders. All of the stockholders, officers, and directors of this corporation are citizens of the United States, residents of, and engaged in various professions and businesses in the City of Emporia.

The officers of the applicant corporation are S. B. Warren, President; Ike Newton, Vice President; W. A. Larkin, Treasurer; and K. W. Trimble, Secretary.

None of the officers, directors, or stockholders of the applicant corporation has had any experience in the management or actual operation

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of a radiobroadcast station. Mr. Trimble, Vice President of the applicant corporation, a resident of Emporia for approximately one-quarter of a century, will be the general manager of the station. He has had wide experience in the advertising field of the newspaper business and some experience in the advertising field in connection with radiobroadcasting. He has also had some experience in connection with broadcasting, particularly in the preparation of programs. The applicant corporation will employ other competent personnel for the operation of the proposed station.

The transmitting equipment, the antenna, the ground system, and the site proposed by the applicant meet the engineering requirements of this Commission. Applicant estimates that the material and labor necessary to prepare the station for operation will cost \$8,818.80. The estimated operating expense of the station, including pay roll and other items of cost, is \$1,391 per month.

Emporia, Kansas, according to the 1930 census, had a population of 14,067. Lyon County, in which Emporia is located, had a population, according to the same census, of 29,240.

There are 447 business firms in Emporia which comprise: 281 retail stores, 115 service establishments, 6 hotels, 29 wholesale establishments, and 16 manufacturing establishments. Statistical data for the year 1935 concerning the sales in Emporia show that the annual retail sales amounted to \$7,151,000; the annual pay roll of employees of such establishments amounted to \$761,000; the annual sales of the wholesale establishments amounted to \$4,333,000, with the annual pay roll of such establishments amounting to \$167,000.

Emporia is a division point of the Atchison, Topeka and Santa Fe Railroad, which has a monthly pay roll in this city of approximately \$140,000.

The area immediately surrounding Emporia is devoted primarily to agricultural pursuits. The principal crops grown include wheat, corn, oats, and other farm products. The dairy industry is also of considerable importance.

At present there is no radiobroadcast station located in Emporia. Radiobroadcast service is available in this area from Station WIBW, Topeka, Kansas, approximately 53 miles distant; Station KFBI, Abilene, Kansas; and Station WDAF, Kansas City, Missouri. The rural areas between Emporia and Wichita, Kansas, also receive service from KFBI, Wichita. With the exception of Station WIBW, Topeka, no broadcast station delivers a signal in Emporia which, under the existing standards, can be deemed primary service. The signal of Station WIBW is satisfactory for primary service in the residential areas of the City of Emporia, but is not of sufficient strength to constitute primary service to the built-up sections of this city.

The officers, directors, and stockholders of the applicant corporation are definitely associated with the business, civic, and community life of Emporia. As of the date of the hearing the applicant had cash assets of \$9,422.60, with no liabilities. The applicant expects to secure such additional funds as may be necessary from the sale of additional shares of stock. Each of the present stockholders is financially able to purchase stock if additional money is necessary.

An agent of the applicant corporation interviewed thirty-three of the city's 447 business concerns and discussed with them the operation of the proposed station and the question of using the facilities of said station for advertising purposes. Of the thirty-three business concerns interviewed, twenty-three signed tentative contracts to advertise over the facilities of the proposed station. These twenty-three signed commitments provided for the sale of advertising time during the first twelve months of the operation of the proposed station. The proposed station will receive the sum of \$10,075 from the sale of this time.

A contract has been entered into between the applicant and its president which provides in substance that if additional funds are needed for the construction and operation of the proposed station, the president will advance up to \$5,000 for this purpose. The president of the applicant corporation has a net worth in excess of \$200,000.

The Kansas City Teachers College and the College of Emporia, both institutions of higher learning, are located in the City of Emporia. In addition, the city has the usual elementary graded and high schools.

The applicant proposes a program designed to be of particular interest to the community which it expects to serve. Included in the program will be broadcasts pertaining to the production and harvesting of crops, market reports on all kinds of agricultural and dairy products, broadcasting of health talks, and news items.

The applicant will establish remote-control lines to the two institutions of higher learning situated in Emporia and to the high schools, from which educational programs will be broadcast each day or at such times as will meet the convenience of the colleges and high schools.

The applicant will devote one-half hour each day to the broadcasting of programs originating in the various civic clubs, religious, social, and charitable organizations.

The applicant expects to present approximately 65 percent of its program by live talent and the remainder by electrical transcriptions. Arrangements have been made to secure a suitable transcription service.

Talent capable of broadcasting the type of programs which the applicant proposes is available from the Kansas State Teachers College and the College of Emporia, each of which has a music depart-

ment, instrumental musical organizations, glee clubs, quartets, dramatic talent, and individual artists. The high schools in Emporia have bands, orchestras, and musical ensembles. In addition, there are professional dance bands and other musical talent which is available for the proposed station. Numerous organizations and men of note have indicated their desire and intention of using the facilities of the proposed station.

The applicant's station, operating as proposed, will not cause objectionable interference to, and will not receive objectionable interference from, any existing broadcast station within its normally protected contour. At the time of the hearing, Station KCMO, Kansas City, Missouri, was operating on the same frequency as that requested by the applicant. The simultaneous operation of the proposed station and KCMO, on the same frequency, 1370 kc., will result in slight interference midway between the two stations, this interference being to the 0.56 millivolt per meter contour of each station, and it will occur over an elliptical area approximately one mile wide at the widest point. The application of Station KCMO for authority to operate on the frequency 1450 kc. was granted by this Commission on September 13, 1938 (Docket No. 4485). The transfer of the operating assignment of Station KCMO from 1370 kilocycles to 1450 kilocycles would remove all interference within the 0.5 millivolt per meter contour of the proposed station.

As of the date of the hearing, W. B. Greenwald, respondent herein, had an application (B4-P-2081) on file with the Commission requesting authority to construct a radiobroadcast station at Topeka, Kansas, to operate on the frequency 1370 kilocycles. Normally that application and the instant application would have been heard at the same time under Rule 106.4. However, the application of Greenwald was contingent upon the release of the frequency 1370 kilocycles by Station KCMO, and, therefore, said application has not been heard. Should the Commission grant the application of W. B. Greenwald, interference would be expected during the simultaneous daytime operation of his proposed station and the station proposed by the applicants as follows: The proposed Topeka station would be limited to its 2.6 millivolt per meter contour and the station proposed by the Emporia Broadcasting Company, Inc., would be limited to its 3.1 millivolt per meter contour.

GROUND'S FOR DECISION

1. The applicant corporation is legally, technically, and financially qualified to construct the proposed station.
2. The officers, directors, and stockholders of this corporation are all residents of the City of Emporia, all definitely associated with
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the civic, religious, business, and educational affairs of the community, are financially capable of supporting the proposed station, and will operate the proposed station even though the station is not a commercially remunerative business venture.

3. The proposed station will present programs designed to meet the needs of the community which the station will serve.

4. Talent is available for the production of suitable broadcast programs.

5. There is a need for additional daytime service in the area which the proposed station will serve.

6. The granting of this application will not cause objectionable interference within the normally protected service area of any existing broadcast station and the proposed station will not, in turn, receive objectionable interference within its normally protected service area from any existing broadcast station.

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

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D. C.

<p>In the Matter of the Investigation of SOUTHWESTERN BELL TELEPHONE COMPANY'S Construction and operation of additional toll lines between Dallas and San Antonio, Texas, and between Dallas and Houston, Texas.</p>	}	DOCKET No. 4495.
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Decided December 5, 1938

Harvey Hoshour and *Frank Quigley* on behalf of the American Telephone and Telegraph Company; *Earl H. Painter* and *George B. Whissell* on behalf of Southwestern Bell Telephone Company; *John E. Benton* and *Clyde S. Bailey* on behalf of the National Association of Railroad and Utilities Commissioners.

REPORT OF THE COMMISSION

BY THE COMMISSION (Payne, Commissioner, not participating) :

On December 21, 1936, the American Telephone and Telegraph Company, hereinafter referred to as the A. T. & T. Company, filed its application for authority to supplement its existing facilities between Dallas, Texas, and Houston, Texas, and between Dallas, Texas, and San Antonio, Texas. It was stated in the application that the Southwestern Bell Telephone Company, hereinafter referred to as the Southwestern Bell, was constructing additional facilities for service between these points, and that the A. T. & T. Company's supplemental facilities would be constructed along with the additional facilities being constructed for the Southwestern Bell.

On February 17, 1937, the A. T. & T. Company was informed that its application would be held pending the receipt of an application from the Southwestern Bell with respect to the construction of the additional facilities by that company for its own use. The Commission thereupon called upon the Southwestern Bell to advise whether or not it proposed to file an application for authority to supplement its existing facilities between the points mentioned. On February 25, 1937, the Southwestern Bell advised the Commission that the facilities

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it was constructing for itself were wholly intrastate and that, therefore, no application under Section 214 of the Communications Act of 1934 would be filed.

On March 17, 1937, the application of the A. T. & T. Company was granted by the Commission. On the same date, the Commission instituted an investigation on its own motion, directing both the A. T. & T. Company and the Southwestern Bell to file with the Commission a statement of the facts and a brief of the law upon which they relied to support the position that the Commission had no jurisdiction over the construction undertaken by the Southwestern Bell for its own use. Such a statement and brief on behalf of the two companies was filed with the Commission on April 30, 1937.

The National Association of Railroad and Utilities Commissioners was granted leave to intervene and file a statement of its position with respect to the matter. Such statement was filed with the Commission on June 22, 1937.

The facts in the case appear in the respective statements of the two companies and of the Association.

The Southwestern Bell owns and operates facilities which are used in exchange telephone service throughout the States of Missouri, Kansas, Oklahoma, Arkansas, and Texas, except in El Paso County, Texas, and in that part of Illinois in and around East St. Louis. It owns and operates a unified system of toll lines throughout the territory served by its telephone exchanges. This company also participates in telephone toll service between points in its territory and points in other parts of the country, through connections with other telephone companies, including the A. T. & T. Company.

Both the A. T. & T. Company and the Southwestern Bell are interstate carriers subject to the jurisdiction of the Federal Communications Commission to the extent and for the purposes defined and provided in the Communications Act of 1934. The Southwestern Bell is subject to the jurisdiction of a regulatory commission in each of the States above-mentioned except Texas, with respect to exchange and intrastate toll facilities and services. In the State of Texas this company is subject to the jurisdiction of the various municipalities with respect to the rates for exchange services within the municipalities. At the end of the year 1936, the last calendar year preceding the institution of this investigation, the Southwestern Bell owned and operated 703 exchanges, distributed as follows: Missouri, 89; Kansas, 100; Illinois, 6; Oklahoma, 145; Arkansas, 85; and Texas, 278. It also owned and operated an extensive network of toll lines connecting its 703 exchanges with each other and with 2,842 exchanges of its connecting companies, located in these and other States.

The Southwestern Bell owns and operates 273,538 miles of toll wire in the State of Texas. Its connecting carriers in that State operate 39,378 miles of toll wire. The combined mileage of 312,916 connects the 278 exchanges of that company in the States of Texas with 819 exchanges of connecting companies in that State. The regional toll lines of the A. T. & T. Company throughout the several States served by the Southwestern Bell are available for service originating or terminating in Southwestern Bell exchanges in Texas.

A recent study indicates that less than 6% of the messages originating in Texas and handled over the Southwestern Bell's lines are interstate. The major part of the business of the company is local exchange service. Next in volume is its intrastate toll service. Least in volume is its interstate toll service.

The Southwestern Bell has for many years owned and operated toll lines between Dallas and Houston, Texas, and between Dallas and San Antonio, Texas. The pole line construction and the wire line construction between these cities are parts of the regional pole line and wire line system of the Southwestern Bell serving the territory including the States hereinabove mentioned.

The Southwestern Bell has added one cross-arm and six wires to its poles between Dallas and Houston, and between Dallas and San Antonio, and is engaging in transmission of messages over or by means of such additional or supplemental facilities. In connection with the new construction program, the A. T. & T. Company arranged to have the Southwestern Bell provide for it two new wires upon the new cross-arms mentioned. The new construction for both companies is on the existing pole equipment and facilities of the Southwestern Bell.

The A. T. & T. Company concedes that its new facilities constitute parts of its interstate lines and, therefore, supplement its existing facilities. The Southwestern Bell contends that its new, additional, or supplemental facilities will terminate on switchboards within the State of Texas, but admits that it will use some or all of the new or additional facilities for the transmission of interstate messages. It estimates that not more than 10% of its traffic over the new facilities will be interstate.

It has not been contended that the wires carried by the Southwestern Bell's poles between Dallas and San Antonio, and between Dallas and Houston, prior to the new construction, were not a part of the interstate system of the Southwestern Bell, and it is not apparent to the Commission that the service to be performed by use of the new or additional wires will be distinguishable in any material respect from the service performed by the use of the facilities

existing prior to the supplemental construction involved herein. It is not denied that the Southwestern Bell's existing lines between Dallas and San Antonio, and between Dallas and Houston, were used by that company to carry its interstate traffic and, therefore, were a part of its interstate lines. There is nothing in the record here to indicate that the interstate character of these lines will be changed by reason of the additional or supplemental facilities here involved.

There is nothing in the record to indicate that the new or additional facilities will be isolated or separated from or will exist apart from the interstate facilities of the Southwestern Bell. For aught appearing, these new, additional, or supplemental facilities will become a part of the unified system of the Southwestern Bell's toll lines, which serve several States. We are not impressed with the theory that they constitute a line within a single State which is not at the same time a part of an interstate line, since it is conceded that they are to be used, to an undetermined extent, for the transmission of messages interstate.

We find no authority for the theory advanced by the telephone companies to the effect that this Commission should regard its jurisdiction with respect to the construction of a new line or the extension of any line as being limited to such toll facilities as are intended to be used "primarily" for interstate service. Congress provided no such test. It could have done so if it had so desired. Quite probably, one reason for the absence from the Act itself of such a test is that it would be no test. It is doubtful whether the companies themselves, or the Commission, can arbitrarily fix a line to distinguish between that service which is "primary" and that which is "secondary" or "incidental." If such were practical, we know of nothing to prevent a carrier constructing a line for "secondary" use in handling interstate messages, from later, to meet changed conditions or for other reasons, finding it necessary or convenient to use the new line "primarily," or even exclusively, for interstate traffic. The result would be complete frustration of whatever purpose the Congress may have had in mind in framing the provision of the Act here involved. We find no authority of law to support the theory that "preponderance of use" is a proper test for the classification of a carrier's property as interstate or intrastate for the purpose of determining jurisdiction. In *Spokane & Inland Empire Railroad Co. v. United States*, 241 U. S. 344, 350, in connection with this point, the court said:

* * * the inevitable result of sustaining the contention would be to put it in the power of a railroad by operating a train for a trifling distance over tracks within the exception or thereby secure the right thereafter to operate such train over long distances without regard to compliance with the safeguards of the statute which otherwise would be controlling. * * *

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At page 15 of the brief filed herein by the A. T. & T. Company and the Southwestern Bell, reference was made to the case of *Western and A. R. v. Georgia Public Service Commission*, 267 U. S. 493, and with respect to the decision in that case the following comment was made:

The court there held that the fact that 85% of the business done on a railroad switch track is interstate does not bring the question of abandonment of the track within the jurisdiction of the Interstate Commerce Commission.

This case involved the question as to whether or not a particular track was within the exception provided by Section 1 (22) of the Interstate Commerce Act, as to "spur, industrial, train, switching, or side tracks, located or to be located wholly within one state." If, as apparently contended here, "preponderance of use" is no test as to whether or not a particular railroad track is within the exception to requirements of a section of the Interstate Commerce Act, we are unable to appreciate the logic of the contention that such a test should be applied in determining whether or not the construction of a particular communication track is subject to the positive requirements of a section of the Communications Act. If preponderance of use does not make a switch track "interstate," then it is hardly reasonable to say that preponderance of use will render "intrastate" a facility admittedly employed in the interstate transmission of messages.

We are unable to bring ourselves to adoption of the theory that physical continuity of interstate connection is the controlling test. Wires which are not welded, or otherwise continuously and permanently connected, may readily be connected either by hand or by automatic device, and when they are connected by switch or otherwise so as to form a continuous communication channel extending across State lines, over or by means of which interstate messages are transmitted, for all practical communication purposes the effect is the same as if the switch were removed and the ends of the wires permanently connected. The adoption of the test suggested by the companies would leave entirely to their discretion the matter of the classification of the carrier's facilities. They could convert all toll lines into intrastate lines by the simple device of severing the lines at convenient points and installing switch connections in lieu of permanent connections. The character of toll lines, whether interstate or intrastate, would depend upon the position of the switch, whether open or shut. We are acquainted with no course of legal reasoning that would justify such a test for determining the character of toll line facilities.

If companies themselves have the discretion to determine, for the purposes of Section 214 (a) of the Act, whether new facilities, ad-

mittedly used in some degree for interstate transmission of messages, are or are not interstate facilities, it will be difficult and embarrassing, if not impossible, for the Commission to exercise the power expressly given to it by Section 221 (c) of the Act to classify the property of telephone companies "and determine what property of said carrier shall be considered as used in interstate or foreign telephone toll service." In view of the latter section we cannot attribute to Congress an intent to leave with the carrier the discretion to determine the corresponding question involved in the administration of Section 214 (a) of the Act, and to base that determination on whether or not interstate use is made possible by operation of a switch or similar device.

The Commission has jurisdiction over all interstate toll rates, as well as over the classification of interstate toll facilities. The toll plant of a carrier is usually segregated from the exchange plant for accounting purposes. In the presentation of a rate case the law requires that interstate toll plant be segregated from the intrastate toll plant. (*Smith v. Illinois Bell Telephone Co.*, 282 U. S. 133.)

It is contended, and agreed, that no construction should be placed upon Section 214 (a) of the Act which would result in an invasion by this Commission of the jurisdiction of State Commissions. No such invasion is involved here. Section 221 (b) of the Communications Act provides that this Commission shall not have jurisdiction with respect to charges or facilities in connection with wire telephone exchange service in any case where such matters are subject to regulation by a State Commission or by local governmental authority. Nor is there any conflict between Section 214 (a) of the Act and Section 2 (b) (1) of the Act. It is not necessary to read either of these sections out of the Act. Each is given a definite field of operation. Section 2 (b) (1) exempts from the Commission's jurisdiction, charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service of any carrier. However, if the services and facilities of the carrier are interstate, then Section 214 (a) of the Act is applicable.

As to the so-called "physical line plant" theory advanced in the brief filed by the telephone companies, according to which it is contended that actual physical construction must extend across State lines before Section 214 of the Act may be invoked, reference is made to the case of *Transit Commission v. United States*, 289 U. S. 121, and to our decision of this date in the matter of Mackay Radio and Telegraph Company's acquisition and operation of a line or circuit extending from Washington, D. C., to Baltimore, Maryland (Docket No. 4124). Without repeating what we said in that case, we reaffirm the interpretation placed upon Section 214 of the Act in that decision.

After careful consideration of the entire record, including the briefs and statements of fact filed by the companies and by the National Association of Railroad and Utilities Commissioners, it is the opinion of the Commission, and we so find, that the Southwestern Bell Telephone Company is an interstate carrier subject to the jurisdiction of the Commission; that the toll facilities of the company used for the transmission of interstate messages are subject to the jurisdiction of the Commission; that the new construction involved in this case, consisting of cross-arms and wires, undertaken by that company, is within the Commission's jurisdiction under the provisions of Section 214 (a) of the Communications Act of 1934; that said construction is not such a line as is contemplated by the first exception in the first proviso of said section, but, on the contrary, "constitutes part of an interstate line"; that said construction is not such a line as is described in the second or third exception of the first proviso of said Section 214 (a); and that the construction and installation of the new facilities of the Southwestern Bell Telephone Company involved herein, was "the supplementing of existing facilities" for which authority should have been requested of this Commission pursuant to the last proviso of Section 214 (a) of the Act.

It appears that the new construction involved has been completed and the facilities have been placed in operation, and there is nothing to indicate that the result is calculated to affect adversely the public interest. There is involved here merely the supplementing of existing facilities between points already served by the carrier, for which the formality of a certificate of convenience and necessity is not required, but for which Commission approval should first have been secured. The case does not involve the extension of service into a territory not theretofore served by the carrier, such as is involved in the case of the Mackay extension between Baltimore and Washington (Docket No. 4124), referred to *supra*. Therefore no good purpose will be served by additional requirements with respect to the particular facilities here involved. However, the Southwestern Bell Telephone Company is here called upon hereafter to comply with the requirements of Section 214 (a) of the Communications Act of 1934 as herein interpreted.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D. C.

<p style="text-align: center;">In the Matter of ¹ SAM KLAVER AND NATHAN BELZER, d/b as THE GREAT WESTERN BROADCASTING Co., OMAHA, NEBRASKA. For Construction Permit.</p>	}	Docket No. 4641.
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Decided December 5, 1938

W. D. Jamieson, Ben I. Salinger, and Frank Stollenwerk on behalf of the applicant; *George S. Smith* on behalf of Station WOW; *George S. Smith and Glen F. Foe* on behalf of Station KOIL; *Horace L. Lohnes, E. D. Johnston, and Fred W. Albertson* on behalf of Station WAAW; and *A. V. Dalrymple* on behalf of the Commission.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION (Payne, Case, Commissioners, not participating) :

STATEMENT OF FACTS

This proceeding arose out of the application of Sam Klaver and Nathan Belzer, a partnership, doing business as The Great Western Broadcasting Co., for a permit to construct a radiobroadcast station at Omaha, Nebraska, to operate on the frequency 1500 kilocycles, with power of 100 watts, unlimited time. The hearing was held before an Examiner on March 22, 1938. The Examiner released his report (I-652) on June 4, 1938, recommending that the application be denied. Exceptions were filed to the Examiner's Report and oral argument heard by the Commission.

The applicant, Sam Klaver, is a licensed practicing attorney in Omaha, Nebraska. He is a graduate of the Omaha public schools, studied at Creighton University, and completed his education at the Municipal University of Omaha. He publishes a weekly newspaper which is printed in both the English and Italian languages. This paper was formerly published by the Mid-City Business Men's As-

¹ The Commission on March 27, 1939, denied the petition of applicants requesting a rehearing.

sociation and was turned over to Mr. Klaver without cost to him. Mr. Klaver is connected with several civic and religious organizations in Omaha.

Applicant Klaver was born in Russia. When he was eight years of age, he was brought to the United States by his mother, his father being dead at that time. The family moved to Omaha, Nebraska, and in 1909, when this applicant was nine years old, his mother married Jacob Slobodinsky, a naturalized citizen of the United States.

Mr. Klaver claims derivative citizenship because of the marriage of his mother to a naturalized citizen of the United States at the time he was an infant. He relies also upon the fact that citizenship is a prerequisite to being granted a license to practice law in the State of Nebraska. This applicant, however, has not presented this Commission with a certificate of derivative citizenship, and the record does not show that he has ever taken an oath to support and defend the Constitution of the United States, nor does it show that he has renounced his allegiance to the country of his birth. Mr. Klaver has not submitted to this Commission the type of evidence which the Commission deems necessary to warrant a finding that this applicant is a citizen of the United States and qualified under the provisions of Section 310 of the Communications Act to be the licensee of a radiobroadcast station.

Nathan Belzer was born in Russia. He became a naturalized citizen of the United States through naturalization proceedings in the court at Douglas County, Omaha, Nebraska, on November 9, 1927. Mr. Belzer's education consists of a few years' preparatory schooling in Russia and in the United States. As of the time he testified in this proceeding, he stated that it was a little difficult for him to read a newspaper in the English language and, except for his schoolbooks, he had never read any book written in the English language.

The financial statement of the partnership as of March 22, 1938, shows total assets of \$46,650, consisting of a lot and building valued at \$38,000, furniture \$1,000, stocks and bonds \$2,350, and notes payable to Sam Klaver \$5,300. The lot of land is subject to a mortgage of \$9,200. All of Mr. Klaver's property, except the real estate, is held in the name of Sam Klaver and has not actually been transferred to the partnership, although he testified it was being held as partnership assets.

The financial statement of Mr. Klaver, as of the date of hearing, shows total assets of \$17,650 and current liabilities of \$500. Said statement shows stocks and bonds, the same as shown on the partnership statement, of the value of \$2,350, notes same as on the partner-

ship statement \$5,300, cash surrender value of a life insurance policy \$500, law office and equipment \$3,000, furniture and household effects \$2,500, a weekly newspaper valued at \$4,000. The newspaper was formerly owned by a group of merchants who ceased to operate it and donated it to Mr. Klaver.

The applicant Nathan Belzer is engaged in the grocery and food business in Omaha and operates two stores, the Benson Food Center and the Omaha Food Center. The financial statement of the applicant Belzer, as of March 2, 1938, showed total assets of \$88,085 and liabilities of \$12,025, a net worth of \$76,060. His assets are shown by his statement to consist of merchandise of the estimated value of \$15,000, fixtures and equipment \$7,000, cash \$5,110, notes receivable \$3,210, accounts receivable \$4,165, cash surrender value of a life insurance policy \$5,000, house and lot \$5,500, furniture \$3,000, two automobiles and a truck, \$2,100, and a lot for use by the partnership valued at \$38,000. This is the same lot shown on the statement of the partnership at \$38,000.

The applicant Klaver testified that under the terms of the agreement with Mr. Belzer he became a partner with Mr. Belzer in the operation of the proposed radio station as well as in the operation of Mr. Belzer's food store, and, in turn, Mr. Belzer became a partner with him in his law practice as well as in the operation of the proposed radio station.

Neither of the applicants has had any broadcasting experience. Mr. Klaver expects to be the general manager of the proposed station. Mr. Belzer will be the secretary and treasurer of the applicant partnership. The applicants propose to employ for the operation of the station a chief engineer, chief announcer, two assistant engineers-announcers, program and production director, news and script editor, musical director and pianist, advertising and sales director, secretary and receptionist, stenographer, and clerical assistant.

The person proposed as program and production director was formerly with Stations KFAB and KOIL, having left the employ of the latter station on January 1, 1937. This program director is connected with the Artists Bureau and the Midwest Talent Association. These organizations propose to train persons to appear over the radio as amateurs, and in the event they possess suitable talent, they will become professional entertainers.

The advertising and sales manager of the proposed station was employed formerly by Station WAAW as an announcer and advertising salesman. He left the employ of this station in November 1936.

The equipment which the applicant proposes to use meets the engineering requirements of the Commission. The antenna proposed

meets the requirements of Rule 131 as to height. As the site is to be selected, the complete antenna and ground system would be subject to subsequent Commission approval.

The proposed station will not cause any objectionable interference to and will not receive any objectionable interference from any existing broadcast station, and, as of the date of the hearing, there were no pending applications involving the question of objectionable interference.

The estimated monthly operating expense is placed at \$1,933. The estimated monthly receipts are placed at \$2,874. This estimate is based upon thirty-three tentative contracts entered into with prospective advertisers of the proposed station.

The applicants propose to devote all of their time to broadcasting "local" programs, as contrasted with programs of a "national" character. The applicants propose to use live talent in the presentation of 75 percent of their programs. A tentative program for one week was offered in evidence. This program indicates that the service will consist of time signals, news flashes, bulletins, health talks, various medical presentations, announcements of activities of clubs, civic organizations, sports reviews, dinner music, safety talks, and other activities.

The metropolitan area of Omaha, Nebraska (which includes Council Bluffs, Iowa, with a population of 42,048), had a total population of 273,851, according to the Federal Census of 1930, and an area of 205 square miles. Douglas County, of which Omaha is the County Seat, has an area of 331 square miles and a population of 232,982. The metropolitan district of Omaha has a land area of 205 square miles.

In Omaha there are 3,061 retail businesses, making annual sales of \$90,675,000, employing 12,070 regular employees, whose annual wages aggregate \$11,481,000. In Douglas County there are 613 wholesale establishments with net annual sales of \$356,374,000, employing 7,119 people, whose annual wages aggregate \$10,974,000. In Omaha there are 603 such establishments with net annual sales of \$355,319,000, employing 7,101 persons, whose wages aggregate \$10,961 and 1,343 service establishments with net annual receipts of \$5,757,000, employing 1,867 persons, whose annual wages aggregate \$1,644,000. The establishments referred to embrace a great variety of activities, such as food stores, general merchandise, apparel, automotive work, building materials, hardware, drugs, and eating and drinking places.

Primary broadcast service is rendered in Omaha by Station KOIL, operating on 1260 kilocycles, with 5 kilowatts power, L. S., 1 kilowatt night; Station WAAW, operating on 660 kilocycles with power

of 500 watts, daytime only; and Station WOW, operating on 590 kilocycles, 5 kilowatts L. S., 1 kilowatt night, unlimited time.

Stations KOIL and WOW are affiliated with the national networks. Station WAAW does not have any chain affiliations. It is the contention of the applicant that because of the chain affiliations of two of the three local stations, the three Omaha stations are unable to devote a sufficient amount of time to the broadcasting of matters of local interest, or to supply the demands of the local merchants for advertising time.

The applicant took the testimony of a number of persons residing in metropolitan Omaha for the purpose of showing the need of an additional radio station in this area. Among the witnesses examined, presumably for the purpose of showing the need of an additional outlet for the public officials of the city, was the secretary of the Mayor. This witness testified, however, that he knew of no time that the city had ever requested time over the existing stations in Omaha when it had been refused. The Chief of Police of Omaha testified that his office broadcasts ten minutes a day, three days a week, over Station WOW and that his office had not requested time over the other stations. He stated that the existing stations had given the Police Department very fine cooperation. A District Judge, presiding over the Juvenile Court and Domestic Relations Court, stated that he had never applied for an opportunity to use the facilities of the existing stations to explain the type of work handled by his Court but that request had been made of him to speak, and he had used the facilities of Stations KOIL and WOW.

The applicant called a number of witnesses, presumably for the purpose of showing the need of an additional station to serve as an outlet for the various civic, religious, and social organizations in Omaha. Among the witnesses called was a Minister. This witness, however, has spoken over Stations KOIL and WOW and has never been denied time over the existing stations. The record affirmatively shows that each of the three existing stations broadcasts religious services. The Health Commissioner, a physician and surgeon in Omaha, testified that he had used the facilities of KOIL and WOW and had had no difficulty in getting time over these stations free of charge.

A number of witnesses, members of organizations seeking to advocate the causes sponsored by their organizations, testified as to the need of an additional station. It does not appear, however, that these various organizations had been denied the free use of the facilities of the existing stations except when they desired to discuss matters the subject of controversy in Omaha and vicinity. Discus-

sion of controversial issues over the facilities of the existing stations are available to these parties at the regular commercial rates.

A number of witnesses, representatives of musical, dramatic, and dancing schools, testified as to the need of an additional broadcast station. It appears, however, that the majority of these schools desire a broadcast period during which pupils from the schools would be permitted to broadcast. As a result of the presentation of these programs, the various schools expect to receive certain advertising recognition. Programs of this type were broadcast at one time by the existing stations but were discontinued because many of these programs did not meet the requirements of the station management. It appears that the existing broadcast stations have regular audition periods and that the Omaha stations present programs featuring those persons whom the station management deems capable of rendering suitable broadcast programs.

There is a great amount of talent at Omaha which consists, in part, of Elks, Police and High School Glee Clubs, Municipal University Glee Club, eight church choirs, German choirs, Bohemian Society Choir, ten orchestras and bands, and 95 individual artists and musicians, school, civic, and religious activities.

The program service now available at Omaha from established stations is shown to consist of the following:

	Local	National
	<i>Percent</i>	<i>Percent</i>
Station WOW:		
Commercial entertaining.....	15	30
Commercial educational.....	5	2
Sustaining entertaining.....	14	16
Sustaining educational.....	8	4
Sustaining religious.....	2	1
Sustaining agricultural.....	3	0
	Commercial	Sustaining
	<i>Percent</i>	<i>Percent</i>
Station WAAW:		
Entertainment.....	17½	38
Educational.....	5¼	17
Religious.....	1	6
Agricultural.....	5	10
Station KOIL:		
Entertainment.....	23.75	57.13
Educational.....	3.16	8.23
Religious.....	1.23	1.82
Agricultural.....		2.53
Featural.....		2.15

Station WOW operates 19 hours per day, Station WAAW operates 11½ hours per day and KOIL 17½ hours per day. Each of these stations offers its facilities to the civic, charitable, religious, and governmental organizations and agencies of the area, and to the various clubs, councils, and organizations operating in the area. Said stations offer the same kind and character of service proposed by the applicants.

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Stations KMA and KFNF, Shenandoah, Iowa, deliver a signal in Council Bluffs of approximately 2 millivolts per meter. This service is generally considered satisfactory for residential sections of a city. Additional service is received in Omaha from Stations KFAB, Lincoln, Nebraska, and WHO, Des Moines, Iowa.

The record discloses that approximately five years ago, there was a local broadcast station operating in Omaha (Station KICK) but this station is no longer operating in the city.

Except for the fact that certain witnesses indicated that they would prefer local programs as against national programs, there is no evidence of record upon which the Commission could find that the broadcast service now received in Omaha, Nebraska, particularly that received from the three existing stations in Nebraska, was not satisfactory as to character or quality.

GROUNDS FOR DECISION

1. The applicant partnership has failed to present satisfactory evidence that one of the partners is legally qualified to be the licensee of a radiobroadcast station, as required by Section 310 of the Communications Act.

2. The applicant has failed to show that the radiobroadcast service received in the City of Omaha, particularly the service of the three existing stations, is not adequate or does not meet the requirements of the community.

3. The record does not disclose that an additional broadcast outlet is needed in order to give expression to the various civic, religious, social, and charitable organizations in the community.

4. The applicant has failed to show a need for the service of the type and character proposed.

5. The Commission is not satisfied that the applicant partnership could adequately or satisfactorily supervise the type of program which would meet the statutory requirements, public interest, convenience, and necessity.

6. The granting of this application will not serve public interest, convenience, and necessity.

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of WDZ BROADCASTING COMPANY (WDZ), TUSCOLA, ILLINOIS For Construction Permit.	}	DOCKET No. 4866.
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Decided December 5, 1938

Horace L. Lohnes, Fred W. Albertson, and E. D. Johnston on behalf of the applicant; *Frank D. Scott* on behalf of Station WHO; and *Evert L. Bono* on behalf of Evanston Broadcasting Company.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION (Payne, Commissioner, not participating):

STATEMENT OF FACTS

This proceeding arose out of the application of the WDZ Broadcasting Company, licensee of Station WDZ, Tuscola, Illinois, operating on 1020 kc., daytime only, for a permit to make certain changes in the technical equipment of its station and to increase the power of the station from 250 watts to 1,000 watts. No change is requested in either the frequency or the hours of operation. A hearing was held before an Examiner on November 15, 1937. The Examiner, on March 21, 1938, released his Report (I-611), and recommended that the application be granted. Exceptions were filed by the Evanston Broadcasting Company, applicant for a radio station at Evanston, Illinois. Oral argument was not heard as a request therefor was withdrawn.

Station WDZ was originally licensed in 1921, and is one of the oldest broadcasting stations in the United States. From 1921 to 1935 the licensee of this station was James L. Bush, a resident of Tuscola, whose chief occupation is the conducting of a grain business in this city. The WDZ Broadcasting Company took over the station in December 1935 and has been the licensee of the station since that time.

James L. Bush, the former licensee of this station, is one of the principal stockholders of the WDZ Broadcasting Company. Other stockholders are Edgar L. Bill, F. V. Arber, and Harry D. Morgan,

all residents of Peoria, Illinois, and H. L. Lohnes, a resident of Washington, D. C.

Edgar L. Bill, President of the applicant corporation, has been actively engaged in the radio business since 1923, when he became manager of Station WLS, Chicago, Illinois, continuing with that station until 1931, when he became the manager of Station WMBD, Peoria, Illinois. Mr. Bill left Station WMBD to become President of the applicant corporation in 1935.

Tuscola, Illinois, is a small city, having, according to the 1930 census, a population of 2,569 persons. Within the 0.5 mv./m. contour of Station WDZ, operating with a power of 250 watts, is an estimated population of 601,700, of which number 246,900 may be classed as urban population. Within this contour are to be found numerous cities and towns ranging in population from a very few persons to 57,510 for the city of Decatur.

A signal of 0.5 mv./m. is considered satisfactory for rural reception, but due to a higher noise level in cities a stronger signal is required. The increase in power is desired to enable the station to extend its rural coverage and also to improve the signal which it now delivers to cities within its service area.

Station WDZ is located in the center of the corn belt of Illinois. There are a large number of small communities within the service area of this station. It has been the policy of the applicant to present a program which would identify it with the community which it endeavors to serve. From March 1921 to September 1937 Station WDZ operated with but one studio, this being located at Tuscola, Illinois. The applicant, desiring to render a program more definitely associated with the territory which it served, in the latter part of 1937 established three other studios; one in Danville, Illinois, approximately 56 miles to the northeast; one at Mattoon, Illinois, approximately 25 miles south; and one at Effingham, Illinois, approximately 58 miles south of Tuscola. Station WDZ now broadcasts programs from each of these studios daily.

In addition to the studios heretofore mentioned the applicant operates three short-wave relay stations ranging from power of 2 watts to 30 watts, and as of the date of the hearing held construction permits for two other short-wave relay stations. By means of these short-wave stations Station WDZ has been able to broadcast numerous programs originating from various places within its service area.

Station WDZ has developed many programs designed to appeal to the rural population and to serve the needs of the farmer. During the summer months the station begins operation at 5:00 a. m., with special permission from this Commission. Some of the programs and the manner in which they are conducted are as follows:

Station WDZ broadcasts at regularly scheduled intervals eight to ten market reports daily. These reports come by direct wire from the Chicago Board of Trade.

When the weather permits the station broadcasts a program entitled "The Farmer on His Farm." Three times a week the announcer interviews a farmer on his farm and discusses with him questions of interest to that particular farmer. Subjects discussed include crop control, chinch-bug control, grasshopper control, hybrid corn as against open pollenated corn, taxes, Government regulation, rural electrification, rural education, the facilities with which the farmer's wife has to work, and other problems confronting the farmer in his territory.

Station WDZ broadcasts talks from barns wherein creamery heads, farmers, and dairymen discuss the nutrient efficiency of particular feeds for different dairy herds.

Station WDZ has developed an educational program in cooperation with the rural schools in the area. One of the programs consists of taking a short-wave transmitter into the rural school and broadcasting therefrom actual recitations given by the pupils. Another program which has been instituted in cooperation with the Superintendent of the Douglas County schools has to do with music appreciation and the fundamentals of music. Fifty-four rural schools have bought and installed radios for the specific purpose of allowing the student body to study a compulsory rural school music course which is taught by means of radio. The teacher of this course is an employee of Station WDZ who has had experience in teaching music. From 9:05 until 9:25 a regular twenty-minute class is conducted three mornings a week during the school session. This is an experimental program which, however, has met with the approval of school authorities in this area.

Station WDZ offers a program entitled "The Battle of Bands." At designated times a contest is held by the bands located at each of the four studios operated by Station WDZ. These several bands play one after the other and vie for a trophy presented by the station.

The record shows that Station WDZ has extended its facilities to several civic, religious, social, political, and educational organizations throughout the area which it serves.

During the flood the facilities of this station were extended to the Red Cross and for the relief of persons living within the stricken area. Many programs have been broadcast which are of particular interest to the small communities within the service area of this station and to the rural area which it serves.

During the two years next preceding the hearing, the operating revenue of Station WDZ has increased fourfold. The greater part

of this increased revenue has been used to improve the program service as well as the equipment of the station.

Station WDZ serves as a radio broadcast outlet for the four cities in which its studios are located, and is the only station furnishing primary broadcast service to Tuscola.

The applicant corporation has a staff of 23 full-time employees. The major portion of the staff is found at Tuscola, but several employees are located at the three remote studios of the station.

During the last calendar month next preceding the date of the hearing 85.4 percent of the programs of Station WDZ originated other than in the Tuscola studio. Each of the studios located at Danville, Mattoon, and Effingham originated from 10 to 20 percent of the programs broadcast each day.

An analysis of the programs of Station WDZ for a 10 months' period, January–October 1937, shows that the greater portion of the station's time is used for live talent programs as compared to electrical transcriptions. The percentages ranging from a low of 53.73 devoted to live talent during the month of March, to a high of 73.24 during the month of September.

It is the intention of the applicant to continue the type of program which Station WDZ has broadcast in the event this application is granted.

In order to increase the power of Station WDZ, applicant proposes to install an approved type transmitter. The proposed equipment meets the engineering requirements of this Commission.

The estimated cost of making the proposed changes in the equipment of the station is \$7,000. A balance sheet of the applicant as of October 31, 1937, showed assets of the station in the amount of \$42,512.02; current liabilities in the amount of \$7,686.87. The station has an earned surplus of \$5,121.89; and reserve depreciation of \$5,153.26. The profit and loss statement for the period November 30, 1937, to October 31, 1937, showed a total income of \$46,426.36, with expenses for the same period amounting to \$41,653.95 and with a net profit of \$4,772.41.

Operating with its authorized power of 250 watts on 1020 kc., Station WDZ serves within its 0.5 mv./m. contour an estimated population of 601,700 persons. Of this number 354,800 live in the rural areas. Operating with a power of 1,000 watts, there would be within the 0.5 mv./m. contour an estimated population of 1,019,200, of which number 588,500 persons may be classified as rural population. The increase in the number of persons to be served is 417,500, fifty percent of whom live in the rural areas served by the station.

Station WDZ operating on its present assignment does not cause interference to and does not receive interference from any existing

broadcast station. Station KYW, Philadelphia, Pa., operating on the frequency of 1020 kc. with power, as of date of the hearing, of 10 kw., is the dominant station on this clear-channel frequency. Station WDZ, operating with a power of 1,000 watts, will not cause objectionable interference to the service area of Station KYW operating with its present authorized power of 10 kw., and Station KYW will not cause interference within the 0.5 mv./m. contour of Station WDZ except possibly during the last thirty minutes of the late afternoon hours.

Station WHO, Des Moines, Iowa, operates on the frequency of 1000 kc. with power of 50 kw. The operation of Station WDZ as proposed will not cause objectionable interference within the normally protected service area of Station WHO and Station WDZ will not receive objectionable interference within its normally protected service area from the operation of WHO.

As of the date of the hearing, there was an application pending by the Evanston Broadcasting Company for authority to construct a radio station at Evanston, Illinois, to operate on the frequency of 1020 kc. with power of 250 watts. This application was denied and no appeal has been taken from the decision of this Commission.

GROUNDS FOR DECISION

1. The applicant is financially qualified to effect the change necessary to enable Station WDZ to operate with a power of 1,000 watts;

2. The granting of this application would extend the service area of this station to more than 200,000 persons living in the rural sections, and will increase the signal strength with which the station serves the urban population living within its contours;

3. Station WDZ has broadcast programs particularly designed to serve the farming area within which the station and its several studios are located. The programs offered have been in the public interest and will be continued by the station when the power is increased to 1,000 watts.

4. Station WDZ, operating with power of 1,000 watts day, will not cause objectionable interference within the normally protected service area of any existing broadcast station;

5. Operating with power of 1,000 watts, Station WDZ will not receive objectionable interference within its normally protected contour except possibly during the last thirty minutes of the late afternoon hours when the station is operated;

6. A need has been shown for an increase in the daytime power of Station WDZ from 250 watts to 1,000 watts;

7. The granting of this application will serve public interest, convenience, and necessity.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D. C.

<p>In the Matter of ROBERTS-MACNAB COMPANY, LIVINGSTON, MONTANA. For Construction Permit.</p>	}	DOCKET No. 4680.
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Decided December 5, 1938

James H. Hanley on behalf of the applicant; *Josephus C. Trimble, Jr.*, on behalf of M. K. Musser, Mayor of Livingston, Montana, Intervener; *Hugh B. Hutchison* and *Walter Johnson* on behalf of the Federal Communications Commission.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION (Payne, Commissioner, not participating):

STATEMENT OF FACTS

This proceeding arose upon an application of Roberts-MacNab Company, a partnership composed of Arthur L. Roberts, R. B. MacNab, Sr., and A. J. Breitbach, for construction permit to establish a new radiobroadcast station at Livingston, Montana, to operate on the frequency 1310 kilocycles with power of 100 watts night, 250 watts day, unlimited time.

The application was designated for hearing on May 9, 1938, and continued to May 25, 1938. At the May 25, 1938, hearing a request was made for further continuance to permit residents of Livingston to intervene because of economic and other interests. This request was granted by the examiner. A petition to intervene was filed by seven residents of Livingston including the Mayor. The Commission, on June 10, 1938, granted the Mayor of Livingston authority to intervene but denied to other parties the right to participate as interveners. A further hearing was held on June 24, 1938. The examiner released his report (I-717) on August 19, 1938, and recommended that the application be denied. No exceptions have been filed and oral argument was not requested.

Livingston, Montana, according to the 1930 Census, had a population of 6,391. Park County, in which Livingston is located, had a

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population, according to the same Census, of 10,922. In Livingston are located the division offices and machine shops of the Northern Pacific Railway.

Livingston is located near the northern entrance to Yellowstone National Park. It is also the headquarters for the Absarokee National Forest. Because of its location with respect to these reservations, the city receives seasonal transient trade.

The area to the south of Livingston is a narrow canyon situated between mountain ranges which are heavily wooded. There are some mining and lumbering activities in this canyon, but in the main it is sparsely populated. The rural areas to the north of Livingston are devoted largely to farming and livestock raising. The population which the proposed station would be expected to serve is concentrated in Livingston and in the valley to the north of the city.

The Roberts-MacNab Company, the applicant herein, is the licensee of Radiobroadcast Station KRMC, Jamestown, North Dakota. This applicant has a construction permit to establish a new radiobroadcast station at Bozeman, Montana (KRBM), which was granted by the Commission on March 31, 1938. An appeal was taken to the United States Court of Appeals for the District of Columbia from the decision of the Commission granting the construction permit (Docket No. 7185). This appeal, however, was dismissed on August 25, 1938.

Bozeman is 22 miles west of Livingston. The record shows that Station KRBM, when completed, will deliver a signal which will be heard in Livingston and the territory contiguous thereto. It is obvious that the service area of the station proposed by this applicant at Livingston will overlap in the direction of Bozeman a large part of the service area of the Bozeman station (KRBM).

There is no broadcast station located in Livingston and no station renders a primary service to this community. Based upon empirical standards, it is calculated that secondary service is received in Livingston from Station KGHL, Billings, Montana, which operates on the frequency 780 kilocycles with power of 5 kilowatts L. S., 1 kilowatt night, unlimited time. The record does not show that the noise level in this community is high and, according to the testimony of several witnesses, the signals of Station KGHL and a station located at Salt Lake City, Utah, are heard in Livingston throughout the day. In addition, the record indicates that stations located at Great Falls and Butte, Montana, are also heard in Livingston and the rural areas contiguous thereto. Service is received at night from distant clear channel stations.

No member of the partnership comprising the applicant company is a resident of Livingston, Montana. A. L. Roberts resides in Minneapolis, Minn.
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apolis, Minnesota; R. B. MacNab, Sr., resides in Missoula, Montana, and A. J. Breitbach is a resident of Jamestown, North Dakota. Each partner is a citizen of the United States. The principal place of business of the partnership is located at Jamestown, North Dakota. The applicant company, in addition to the operation of a radiobroadcast station, is engaged in the operation of hotels and restaurants which are located in several communities in North Dakota and Montana.

A. J. Breitbach is the only member of the partnership who testified in these proceedings, his testimony being given by deposition. As part of his testimony, this witness filed a financial statement of the applicant referred to as Exhibit "B," which had been prepared by him. This statement shows a net worth as of November 1, 1936, of \$307,322.20. Included in the assets is "fire insurance due from Florence Hotel, \$72,000;" also the names of four hotels listed as having a total value of \$182,000.

At the time the deposition was given, March 2, 1938, the witness was asked and answered the following question:

Q. Has the financial status of The Roberts-MacNab Company changed any since you made up Exhibit "B"?

A. Not much.

This is the only statement made by any partner which can be construed to mean that the financial statement (Exhibit "B") reflects the financial condition of the applicant as of the date of the hearing. The son of one of the partners, testifying by deposition, January 25, 1938, stated that the financial standing of the applicant was "substantially the same as it is represented as of November 1, 1936." This witness, however, is not shown to be familiar with the books of the partnership and his testimony is of doubtful probative value.

At the time the depositions were offered in evidence, Commission counsel objected to these exhibits because "the financial statement is dated November 1, 1936, and states on its face it is made for the purpose of obtaining loans." * * * "and that such a financial statement is not proper evidence before the hearing because of the date at which it was made."

The record affirmatively shows that this applicant is the licensee of Radiobroadcast Station KRMC, located at Jamestown, North Dakota. It also appears that the applicant has a permit to construct the new station (KRBM) at Bozeman, Montana. The financial statement above referred to does not reflect this applicant's interest in Station KRMC at Jamestown, North Dakota, the expenditures made by this applicant in obtaining the construction permit for Station KRBM or the expense incident to the litigation heretofore mentioned.

The applicant has failed to make a satisfactory showing of its financial condition as of the date of the hearing.

It was estimated that the cost of installing the technical equipment for the proposed station would be \$12,000 to \$15,000 and the cost of equipping the studio would be approximately \$2,500.

Approximately \$10,000 has been set aside from the resources of the applicant company to cover the construction cost of the proposed station. This fund, however, will not be adequate to cover the estimated cost of construction.

The applicant made no estimate of the monthly operating expenses of the proposed station or of the income expected to be derived from the sale of time. However, three deponents testified by deposition that they would purchase some time of the proposed station but were unable to state the amounts they would expend for that purpose. One of these deponents died prior to the June 24 hearing on this application. A fourth deponent definitely stated that he would expend \$300 to \$500 a year for advertising.

The transmitting equipment to be installed for the operation of the proposed station complies with the technical requirements of the Commission. The transmitter site and antenna are to be selected subject to the approval of the Commission.

The proposed station will neither cause objectionable interference to nor receive objectionable interference from any existing broadcast station.

R. B. MacNab, Sr., and Breitbach will supervise the management and control the policy of the proposed station, dividing their time between the business of the station and the other business of the applicant company. Roberts will have no active part in the management of the station as his principal place of business is too far from Livingston to make it possible for him to devote any time thereto. R. B. MacNab, Jr., the partner's son, will supervise the proposed station and will be responsible to the partnership for its operation. He is, at present, manager of a hotel in Bozeman, Montana, which is owned by the applicant company.

The staff to be employed for the operation of the station would consist of a station manager, chief engineer, assistant engineer, announcers, a script writer, program director, and a secretary. The station manager and chief engineer, selected by the applicant, have had previous experience in the operation of broadcast stations in their respective capacities. The remainder of the staff members are to be selected by the station manager and chief engineer.

R. B. MacNab, Jr., who is expected to supervise the proposed station, prepared a proposed program schedule which he testified fol-
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lowed closely the program broadcast over the applicant Station KRMC at Jamestown, North Dakota.

A schedule of programs to be broadcast over the proposed station on a typical day was submitted in evidence. The schedule shows a diversified list of program titles, including a morning religious service, agricultural information and reports, news, dramatic sketches, music, and organ recitals. It is also shown that sport events of the local high school and the rodeo exhibition, which is held in Livingston for three days in July of each year, would be of interest to the people of this community. The evidence does not show, however, that the applicant's agent has made any definite arrangements concerning these programs, nor has an agent of the applicant company personally investigated the availability of talent to be used in support of the programs indicated in the schedule.

As heretofore pointed out, but one member of the applicant testified in this case. This applicant failed to disclose the policy which the proposed station would follow with respect to its program service and the record is silent as to what, if any, service would be rendered to religious, educational, civic, charitable, or other similar organizations in Livingston.

Sources of talent available in Livingston for use on the proposed station include the head of the dramatic department of the high school who would present dramatic sketches periodically, the high school band, dance orchestras which have occasional engagements in Livingston, a violinist, and several music instructors. It is evident, however, that most of this talent would not be available for broadcasting over the station except at infrequent intervals. Some of these individuals and groups have appeared in the past on Station KGHL. The applicant also expects that people of note who come to Livingston for the annual rodeo exhibition would be available to present subjects of interest to the people of this city. However, these individuals would only be available for broadcasting over the station during the three days each year that the exhibition is held in Livingston.

GROUNDS FOR DECISION

1. The applicant has failed to show, in the record, that there is sufficient assurance of commercial support for the proposed station in Livingston to indicate that it will be self-supporting. At the same time, no assurance was given by the applicant as to future operation of the station should it prove to be unprofitable to the applicant.

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2. The applicant has failed to show that there is available sufficient talent for the presentation of suitable programs by the proposed station.

3. There is not sufficient satisfactory evidence in the record concerning the applicant's plans with respect to program service upon which the Commission could predicate a finding that the program service would be in the public interest.

4. The applicant has failed to show wherein public interest, convenience, and necessity would be served by authorizing it to operate a radio station, the service area of which would overlap a large part of the service area of another station operated by it.

5. The granting of the application will not serve public interest, convenience, and necessity.

6 F. C. C.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D. C.**

In the Matter of E. F. PEFFER (KGDM), STOCKTON, CALIFORNIA. For Construction Permit.	}	DOCKET No. 4929.
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Decided December 5, 1938

Elmer W. Pratt on behalf of E. F. Peffer; *L. G. Caldwell* and *P. H. Russell, Jr.*, on behalf of Station WHAM; *Ben S. Fisher* on behalf of Station KSL and Floyd A. Parton; and *A. V. Dalrymple* on behalf of the Commission.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION (Payne, Commissioner, not participating) :

STATEMENT OF FACTS

This proceeding arose upon an application of E. F. Peffer, licensee of Station KGDM, Stockton, California (operating on the frequency 1100 kc., with power of 1 kw. daytime only), requesting a construction permit for authority to increase power to 5 kw. limited time; to change frequency to 1150 kc.; to make changes in equipment; and to move transmitter site. On March 2, 1938, the hearing was held before an examiner who in his report (I-642) recommended that it be denied. Exceptions and requests for oral argument were filed on behalf of the applicant and the Stromberg-Carlson Telephone Manufacturing Company (WHAM). Oral argument was heard before the Commission on July 14, 1938.

The applicant's legal qualifications are not in issue in this proceeding.

The applicant had (as of January 1, 1938) a net worth of \$620,355.41, including cash on hand \$1,696.54, and cash in banks \$52,587.99.

The cost of construction of KGDM as proposed is estimated at \$22,575. The evidence indicates that the station has been operating at a loss, but the exact extent thereof was not shown, as no statement concerning the receipts and expenditures was submitted. The appli-

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cant testified that he would continue operating the station, however, even though no income is produced.

It appears that no effort has been made on the part of the licensee to secure advertising accounts for nighttime hours. Moreover, such evidence as was submitted concerning prospective commercial support to the station during such hours was of little probative value. The station manager expressed the opinion that commercial accounts would be available for night broadcasts. The station has a chain connection and this same witness predicted that added revenue would result therefrom should KGDM operate at night. In addition, a local representative of an oil concern testified that his company "could further their advertising if nighttime hours were available on Radio Station KGDM."

According to the 1930 United States Census, Stockton had a population of 47,963. San Joaquin County, in which Stockton is located, had a population of 102,940. According to the United States Census of Business for 1935 there were located in Stockton 1,112 retail establishments with annual sales of \$33,092,000; and 145 wholesale establishments with annual sales of \$27,844,000.

Stockton is a seaport, an important trading center, and the distributing point for farm machinery. A considerable number of seagoing vessels use the port facilities of the city. The occupations of the inhabitants of the surrounding rural area are largely agricultural and include the cultivation of fruits and tobacco. Other industries consist of mining, and the production of lumber and petroleum.

It has been the policy of KGDM to fully cooperate with the civic and religious organizations of the area. Remote control lines are maintained to several adjacent communities and, when the occasion offers, programs of civic interest are broadcast therefrom. The applicant subscribes to a transcription service which includes dramatic and musical features. He maintains his own news wire and utilizes both international and local news services. Market reports in general are obtained from an international news service and those of a local nature are received from the Farm Bureau of the city. KGDM has broadcast many educational features from the College of the Pacific (located at Stockton). The evidence on the whole shows a well-balanced and meritorious program service.

In addition to KGDM, Station KWG is also located in Stockton and uses the frequency 1200 kc. with power of 100 watts, unlimited time.

Based on actual measurements the evidence shows that Stockton receives the signals from stations located in other communities in the following intensities: Station KPO, San Francisco, 11.45 mv./m.;
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Station KSFO, San Francisco, 2.57 mv./m.; Station KGO, Oakland, 1.36 mv./m.; Station KFRC, San Francisco, 1.15 mv./m.; and Station KYA, San Francisco, 1.08 mv./m. 10 mv./m. represents the minimum signal required for good service in the business and industrial areas of cities; 2 mv./m. represents good service in the residential areas of cities and 0.5 mv./m. represents good service in rural areas.

It is estimated KGDM operating as at present during daytime hours serves a population, within its 10, 2, and 0.5 mv./m. contours of 59,000, 99,963, and 255,377, respectively. Within the same contours, it is estimated that the proposed daytime operation of KGDM would include populations of 80,452, 170,243, and 510,942, respectively. At night it is predicted that the station would be limited to its 1.1 mv./m. contour by the operation of another existing station and it is estimated that this contour would include 245,817 persons.

The evidence also indicates that in the proposed daytime service area of KGDM there are only about 500 square miles which do not now receive local broadcast service, and that stronger signals are received in this area from Stations KSFO and KPO than would be received from KGDM operating as proposed. In addition, this area is shown to be in a sparsely populated district with a total estimated population of 2,000 persons (based on United States Census for 1930). In all other parts of the proposed daytime service area of KGDM radio broadcast service is available from one or more local stations and in some sections stations in San Francisco provide additional service. It is apparent from the foregoing that the more populous portions of the area proposed to be served by Station KGDM during daytime hours are at present receiving adequate broadcast service.

With respect to the proposed nighttime service, a portion of the testimony submitted on behalf of the applicant is predicated upon the assumption that WHAM, Rochester, New York (the dominant station on the frequency 1150 kc.) ceases operation at 12:00 p. m. E. S. T., whereas other evidence in the record discloses that WHAM now operates until 1:00 a. m., E. S. T. Hence KGDM could not begin operation until 10:00 p. m., Pacific Standard Time.

It was contended on behalf of the applicant that the broadcasting of frost warnings during nighttime hours would be of value to the fruit growers in the surrounding rural area. It appears that these are not available for this purpose until 8 p. m. In support of the applicant's request for nighttime hours of operation, a minister of one of the local churches testified in substance that there are no radio facilities available in Stockton for the broadcasting of religious service at night. A number of citizens also testified by depositions concerning an alleged need for the proposed nighttime service. These statements consisted, for the

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most part, of the expressions of opinions and conclusions of the witnesses and were so general in character as to be of little probative value. The evidence concerning this alleged need is not therefore convincing. Moreover, the applicant offered no specific evidence concerning its proposed programs at night, or to show that its facilities would be available for the broadcasting of religious services during this period. The applicant's plans concerning its proposed nighttime service appear, therefore, to be too vague and indefinite to afford a sufficient basis to support a finding that the proposed nighttime operation would be in the public interest.

The personnel of the station consists of three full-time licensed operators, one full-time announcer, two part-time announcers, a station manager, and a stenographer. The applicant would employ an additional operator at the transmitter and other assistants in the studio should his application be granted.

The proposed changes in equipment meet with the requirements of the Rules and Regulations of the Commission. The transmitter site would be selected subject to the approval of the Commission.

GROUNDS FOR DECISION

1. There is not sufficient satisfactory evidence in this record concerning the applicant's plans with regard to the service which KGDM proposes to offer to the public (with particular reference to nighttime hours) upon which the Commission can predicate a finding that the operation would be in the public interest.

2. A public need is not shown for the operation of KGDM as proposed.

3. A grant of the application under consideration will not serve public interest, convenience, and necessity.

6 F. C. C.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D. C.

<p>In the Matter of¹ P. W. SPENCER, ROCK HILL, SOUTH CAROLINA. For Construction Permit.</p>	}	DOCKET No. 5015.
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Decided December 5, 1938

Elmer W. Pratt on behalf of the applicant; *Horace L. Lohnes, E. D. Johnston,* and *Fred W. Albertson* on behalf of Piedmont Broadcasting Company; *A. W. Scharfeld* and *Philip G. Loucks* on behalf of Rock Hill Broadcasting Company; and *Walter Johnson* on behalf of the Commission.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION (Payne, Commissioner, not participating) :

STATEMENT OF FACTS

This proceeding arose out of the application of P. W. Spencer for a permit to construct a new radiobroadcast station at Rock Hill, South Carolina, to operate on the frequency 1500 kilocycles, with a power of 100 watts, daytime only. The hearing was held before an Examiner on March 28, 1938. The Examiner released his Report (I-703) on August 9, 1938, and recommended that the application be granted. Exceptions were filed to the Examiner's Report but oral argument was not requested.

P. W. Spencer, applicant herein, is a citizen of the United States by birth and resides in Rock Hill, South Carolina, where he has lived for the past twenty-four years. He is Secretary and Treasurer of the Mechanics Federal Savings and Loan Association, a Director in the Federal Home Loan Bank at Winston-Salem, North Carolina, and a member of various civic organizations in Rock Hill.

A financial statement of the applicant as of March 23, 1938, lists total assets of \$22,166.22. The assets include: cash in the amount of \$2,348.30, accounts receivable of \$750, cash surrender value of Life Insurance Policy of \$3,309, real estate having a value of \$13,937. Lia-

¹ The Commission on February 6, 1939, denied petition of Piedmont Broadcasting Co. for rehearing.

bilities consisted of notes payable \$2,285, and mortgages amounting to \$1,387.63. The applicant has earned during the past few years between \$4,000 and \$6,000 annually.

The applicant will be the sole owner and have complete control of the proposed station. He proposes as a station manager, one who has been in the broadcasting business for about fifteen years, part of which time was spent as manager of Station WAIM at Anderson, South Carolina.

The personnel of the proposed station is to consist of the station manager, chief engineer, assistant engineer, program director, two announcers, stenographer, and salesman. Competent personnel will be employed for the operation of the proposed station.

The transmitting equipment which the applicant proposes to install complies with engineering requirements of the Commission. The site, antenna, and ground system will be subject to subsequent approval of this Commission.

Station WBT, Charlotte, North Carolina, approximately twenty-five miles from Rock Hill, is the only station that delivers a primary signal in Rock Hill and immediate vicinity. Station WIS at Columbia, South Carolina, approximately sixty-four miles distant, delivers a signal in the Rock Hill area of approximately 1 millivolt per meter. This signal is considered satisfactory for part of the residential area, but is not considered satisfactory for the built-up sections of the City.

The City of Rock Hill, York County, had, according to the 1930 Census, a population of 11,322 persons; York County, according to the same census had a population of 53,418. The proposed station would be expected to render a primary service to Rock Hill. The service area of the station, limited to its 1.7 millivolt per meter contour, would have a radius of approximately $9\frac{1}{2}$ miles. Broadcast service would be rendered to Rock Hill and a large part of the population of York County.

Commercial statistics for Rock Hill and York County show the following: Local retail sales for the City of Rock Hill in 1933 amounted to \$3,340,000, and for York County, \$5,640,000. Wholesale sales for the same year for Rock Hill were \$2,215,000, and for York County, \$3,507,000. In Rock Hill there are 201 retail establishments which, during 1935, did a business amounting to \$4,302,000. In York County there are 464 retail establishments, which in 1935 had gross sales amounting to \$7,469,000.

The applicant made a survey to determine the expected commercial support of its proposed station. From 40 to 50 business concerns were interviewed. A number of persons, representatives of business firms in Rock Hill, testified that they would use the facilities of the proposed station. The estimated revenue of the proposed station is

placed at \$1,300 per month. This estimate is based upon four tentative agreements to purchase time over the facilities of the proposed station, the testimony of representatives of business firms in Rock Hill that they would use the facilities of the proposed station, and the survey of the expected commercial support made by the applicant.

The estimated cost of the technical equipment, including vertical radiator and studio, is \$9,856. The estimated monthly operating expense of the station is placed at \$950, of which amount \$600 is allocated to personnel and \$350 for station operation.

The service which the applicant proposes to offer consists of news broadcasts, stock quotations, religious services, educational talks, sports flashes, broadcasts from the Rock Hill schools and Winthrop College, presentation of programs originated by local glee clubs, choral societies, electrical transcriptions, talks relating to agricultural matters, and in general matters of local interest.

Winthrop College, with an enrollment of approximately 1,400, is located in Rock Hill. The Director of Music of this College is also the director of the Rock Hill Choral Society. He testified that the musical organizations with which he was associated would be glad to cooperate with the proposed station. There was introduced in evidence a pledge of cooperation signed by a large number of musical organizations, individual soloists, members of male quartets, and individual artists, indicating their intention and willingness to appear over the facilities of the proposed station.

As of the date of the hearing, the operation of the station as proposed would not cause objectionable interference to any existing station, and the proposed station would not receive objectionable interference from any existing broadcast station.

At the date of the hearing, there was pending before the Commission an application filed by the Piedmont Broadcasting Corporation for permit to construct a radiobroadcast station at Salisbury, North Carolina, to operate on the frequency of 1500 kilocycles, 250 watts day, 100 watts night, unlimited time. On June 26, 1938, the Commission granted this application.

Salisbury is sixty miles from Rock Hill. The simultaneous daytime operation of the station proposed by the applicant and the station to be operated by the Piedmont Broadcasting Corporation at Salisbury, North Carolina, will cause interference to the service area of the respective stations as follows: The proposed Rock Hill station will be limited to its 1.7 millivolt per meter contour, and the station to be erected at Salisbury will be limited to its 1.3 millivolt per meter contour, the limitation being only during the daytime hours of operation.

GROUNDS FOR DECISION

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

2. There is a need for additional daytime broadcast service in Rock Hill, South Carolina.

3. The applicant proposes to render a service which will give the local civic, social, and religious organizations a means of expression, and will make available to local artists an opportunity to broadcast, and will serve as an additional advertising medium for the local merchants.

4. The proposed station will receive sufficient commercial support from local merchants to assure its daytime operation.

5. The transmitting equipment which the applicant proposes to install complies with the engineering requirements of the Commission.

6. The operation of the station as proposed will not cause objectionable interference within the normally protected service area of any existing station and the proposed station will not receive interference within its normally protected service area from any existing station.

7. The Commission finds that the need for a radiobroadcast station at Rock Hill, South Carolina, is sufficiently compelling to justify the granting of this application, even though the service area of the proposed station and the station to be constructed at Salisbury, North Carolina, will be restricted within their normally protected contours during the simultaneous daytime operation of both stations.

8. The granting of this application will serve public interest, convenience, and necessity.

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

<p>In the Matter of MACKAY RADIO AND TELEGRAPH COMPANY'S Acquisition and operation of a line or circuit extending from Washington, D. C., to Baltimore, Maryland.</p>	}	DOCKET No. 4124.
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Decided December 5, 1938

Howard L. Kern and *John H. Wharton* on behalf of Mackay Radio and Telegraph Company; *Manton Davis* and *Frank W. Wozencraft* on behalf of R. C. A. Communications, Inc.; *Howard L. Kern* and *John H. Wharton* on behalf of Postal Telegraph-Cable Company; *Ralph H. Kimball* and *William Wendt* on behalf of The Western Union Telegraph Company; *Harvey Hoshour*, *F. R. Elsasser*, *N. C. Fleming*, *R. A. Van Orsdel*, and *T. B. Milne* on behalf of the American Telephone and Telegraph Company and the Chesapeake and Potomac Telephone Company of Baltimore City; and *James A. Kennedy* and *J. Fred Johnson, Jr.*, on behalf of the Commission.

REPORT OF THE COMMISSION

BY THE COMMISSION (Payne, Commissioner, not participating):

On September 22, 1936, the Commission, Telegraph Division, issued its Order instituting proceedings of inquiry and investigation into and concerning the extension by Mackay Radio and Telegraph Company, a Delaware Corporation (hereinafter referred to as Mackay), of its service between Washington, D. C., and Baltimore, Maryland, through facilities owned by Postal Telegraph-Cable Company (hereinafter referred to as Postal). The Order recites that it had come to the attention of the Commission that on or about June 4, 1936, Mackay acquired a wire telegraph line or circuit extending from its office or station at Washington, D. C., to an office occupied jointly by it and Postal in Baltimore, Maryland, "by means of leasing said line or circuit" from Postal, and since said date has "operated said line or circuit as a part of its interstate telegraph system;" that the acquisition and operation of said line or circuit was without the authority of the Federal Communications Commission as required by Section 214 of the Communications Act of 1934.

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The Order further recites that R. C. A. Communications, Inc. (hereinafter referred to as R. C. A. C.), which competes with Mackay at Baltimore and other places in the United States, has applied to the Commission under said provisions of Section 214 and has secured authority to acquire by lease from The Western Union Telegraph Company (hereinafter referred to as Western Union), a two-way printer telegraph circuit between New York, Washington, and Baltimore and to operate said circuit as a part of its interstate telegraph communications system; that Postal and Western Union compete with Mackay at Baltimore and other places in the United States; and that the American Telephone & Telegraph Company and the Chesapeake & Potomac Telephone Company of Baltimore City (hereinafter referred to respectively as the A. T. & T. Co. and the C. & P. Co.), are communications carriers subject to the jurisdiction of the Commission and compete with Mackay and the other carriers above mentioned for telegraph business to and from Baltimore and other places in the United States.

The proceedings were instituted to inquire into and investigate the facts and circumstances surrounding the acquisition and operation by Mackay of "said line or circuit" and the lawfulness thereof, and to determine the requirements of Section 214 in the premises and whether or not it is desirable to issue rules and regulations applicable thereto.

All of the above-mentioned companies were made parties to the proceedings. Mackay was called upon to show cause why the Commission should not find its leasing and operation of said line or circuit to be unauthorized and unlawful and each of the parties was directed to state its position with respect to said Section, as to whether or not it should be construed to apply to such leasing and operation of telegraph circuits by telegraph carriers, and as to whether or not the Commission should issue rules and regulations applicable thereto. The parties were required to file their answers setting forth a complete statement of facts and a brief of points and authorities upon which they would rely. Each filed answer and brief as directed and the matter was duly set for hearing and heard before the Commission en banc. Each of the parties was permitted to participate in oral argument on the facts and law involved.

At the opening of the hearing the attorney for Mackay moved to dismiss the entire proceedings on the ground that the Commission is not the proper tribunal to decide whether or not such leasing and operation is lawful and that, except in cases where application is made to the Commission under Section 214 of the Act, the Commission is without authority to proceed on its own initiative to make any determination as to the requirements of said section. In support of

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the motion defendant's attorney cited the case of *Powell et al. v. United States*, 300 U. S. 276.

Most of the facts in the case appear in a stipulation signed by attorneys for each of the parties and filed with the Commission on April 8, 1938. Following the introduction of the stipulation in evidence further testimony was taken.

The following facts are undisputed. Each of the parties is a communications carrier subject to the jurisdiction of the Commission and is engaged in handling communications for hire between Washington, D. C., and Baltimore, Maryland. In addition to the wire telephone service rendered by the A. T. & T. Co. and the C. & P. Co., these companies render two classes of telegraph service, Private Line Service of various types and kinds, sometimes known as "Leased Wire Service," and Teletypewriter Exchange Service, sometimes known as "TWX."

Mackay and Postal are associated companies in the International Telephone and Telegraph System, which furnishes a comprehensive wire, cable, and radiotelegraph service throughout the United States and between the United States and foreign countries. Associated with Mackay in that system is Mackay Radio and Telegraph Company of California. The two Mackay companies, sometimes referred to as the Mackay Radio System, and Postal are subsidiaries of Postal Telegraph and Cable Corporation, an intermediate holding company.

The Mackay Radio System and R. C. A. C. furnish to the public radiotelegraph service with certain countries or places outside the continental United States and also between certain cities in the United States. The domestic service of the Mackay Radio System is limited to the following cities and points telegraphically suburban thereto; to wit, New York, Boston, Philadelphia, Detroit, Baltimore, Washington, New Orleans, Chicago, San Francisco, San Diego, Los Angeles, Portland, Tacoma, and Seattle. The domestic service of R. C. A. C. is limited to the same cities, with the exception of San Diego, Portland, and Tacoma. Mackay and R. C. A. C. actively compete with each other at all points where they both render communication service.

Western Union and Postal render wire telegraph service throughout the United States, competing with each other in such service, and competing with the Mackay Radio System and R. C. A. C. at the points where the latter serve. Both of these companies, and to a lesser degree the Mackay Radio System and R. C. A. C., compete with the leased wire and TWX telegraph services rendered by the A. T. & T. Co., the C. & P. Co., and other companies of the Bell System. Postal performs pick-up and delivery service for the Mackay Radio System in the cities above listed.

The domestic rate structure of both R. C. A. C. and the Mackay Radio System in the cities which they serve is predicated upon the

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principle of transmitting 15 words for the usual price of 10; i. e., these companies will transmit 15 full-rate words for the interstate rate at which Western Union and Postal will transmit 10 full-rate words. Corresponding differentials apply to additional words in full-rate messages and to day letters, night letters, serial service, and government and press messages.

The Mackay Radio System is constantly utilizing circuits derived from Postal's existing plant, and numerous interchanges of the use of circuits are made between the A. T. & T. Co. and the associated companies of the Bell System. Interchanges are made from time to time of the use of circuits between Western Union and Postal on the one hand and the Bell System Companies on the other. These interchanges are of various types and are often required to be made upon an hour's or even a few minutes notice in order to meet the exigencies of the service, but always involve the utilization of circuits derived from existing plant. In the Bell System additional circuits are procured from existing plant in two ways, (1) from existing facilities owned by the company in question, and (2) from existing facilities owned by other companies, such other companies being either Bell or independently owned.

Prior to May 28, 1936, Mackay had not filed with the Commission any tariff establishing rates for telegraph service to or from Baltimore. On said date this company filed, to become effective June 4, 1936, a tariff establishing rates for telegraph services to and from Baltimore, the rates established being the same as those published by R. C. A. C. (except R. C. A. C. has quoted no rates from San Diego, Portland, and Tacoma).

Prior to June 4, 1936, Mackay had not constructed or acquired and did not own, lease, or operate or engage in transmission over or by means of any telegraphic facilities whatsoever in Baltimore or extending to or from Washington from or to Baltimore and had not transmitted or held itself out to the public to transmit any telegraphic traffic from or to Baltimore. Effective from this date, Postal has furnished to Mackay a simplex printer circuit extending from the office of Mackay in Washington and the office occupied jointly by it and Postal in Baltimore, utilizing one operating tape sending and receiving machine at each terminal. This circuit is derived from Postal's physical plant between Baltimore and Washington. The regular assignment is on a simplex leg of a voice frequency carrier current pair of wires. It is a physical circuit of two wires over which Postal obtains simultaneously ten one-way carrier current channels which are a part of Postal's New York-Washington carrier current system. In an emergency the regular assignment of the Mackay circuit may be changed by Postal to a single trunk over a
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single physical wire. Postal owns and retains title to the printing telegraph instruments used by Mackay at the terminals of the circuit. In order to transmit messages between Baltimore and Washington, Mackay uses this circuit derived from a wire or wires belonging to Postal extending between said two cities. The circuit is over telegraph wires established and in operation prior to the effective date of the Communications Act of 1934 and used simultaneously by Postal for the operation of a large number of other circuits in connection with its own business. Neither Mackay nor Postal has physically constructed any new pole line or placed new wires or other equipment upon existing pole lines between Washington and Baltimore since then. The arrangement required no capital outlay by either company. The amounts paid by Mackay for the use of the Postal circuits are charged to operating expenses.

Though Mackay has never secured and has never applied for a certificate of convenience and necessity from the Commission to acquire or to operate Postal's facilities or any part thereof between Washington and Baltimore, the circuit has been operated as a part of its interstate telegraph system and is the only facility operated by Mackay for the transmission of telegraph communications between Washington and Baltimore. At the Washington terminal the mechanical transmission of messages is effected entirely by employees of Mackay, while at the Baltimore terminal Postal furnishes the operating labor for operation of the circuit and bills Mackay for such service. Postal keeps all of the facilities furnished by it in working order and repair, retains certain rights for use of the facilities, and retains title to the equipment furnished by it to Mackay for or in connection with their use. The circuit used by Mackay is from time to time transferred from one wire or circuit operated by Postal to another. It is not permanently confined to a certain circuit or wire. It represents the utilization of an intangible electric facility derived from Postal's plant. During the period from June 4, 1936, to January 31, 1938, emergency assignments have been made sixty times from the regular assignment for periods of short duration.

The consideration for Mackay's lease of Postal's facilities between Washington and Baltimore is \$2,395.20 per year, payable in advance in equal monthly installments of \$199.60. An advance payment of \$30.00 was required "as the installation charge." The terms and conditions attached to the lease contract provide, among other things, that the lessor shall keep "all facilities furnished by it in good working order and repair"; that the lessor shall not be under any obligations to the lessee "in respect to any interruption or breakdown of a

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leased circuit" except as therein stated; that the lessor retains a right to use "the leased facilities" except otherwise than during the hours in which the same are set apart for the use of the lessee, and further reserves the right to "use said facilities" at any time when in the judgment of the lessor the necessities of the service to the general public so require; and that the "leased facilities" shall be used by the lessee only for transmission of "public-service messages and messages concerning the business of the lessee."

It is further provided that "all wires, instruments, batteries, and other apparatus furnished by the lessor shall at all times be and remain the property of the lessor and shall be accessible to its employees and nothing herein contained shall have or be construed as having the effect of vesting in the lessee any right, title, or interest to or in same except in the manner and during the terms and upon the conditions herein provided." There is a provision to the effect that the lessor shall "in no way be responsible for errors, delays, or other defaults or mishaps by operators employed by the lessee to operate the leased facilities."

On or about December 20, 1935, R. C. A. C. made application to the Commission under the provisions of Section 214 of the Communications Act of 1934 for authority to acquire by lease from Western Union a two-way printer telegraph circuit between New York, Washington, and Baltimore, and to operate said circuit as a part of its interstate telegraph communication system. This application was granted and a certificate of convenience and necessity was issued by the Commission on March 3, 1936. Under this certificate and modification thereof, R. C. A. C. is now operating said circuit.

Since June 4, 1936, and for some time prior thereto, R. C. A. C., Postal and Western Union have offered public telegraph service and A. T. & T. Co. and C. & P. Co. have rendered TWX and private line telegraph service from and to Baltimore, to and from Washington and other points in the United States. In so doing they compete with Mackay. They propose to continue offering such service.

As heretofore indicated the purpose of these proceedings is to determine primarily whether or not a telegraph carrier may extend its public telegraph service into a new territory or area not theretofore served by it by using a wire telegraph circuit leased from another carrier, without first securing from the Commission a certificate of convenience and necessity under Section 214 of the Communications Act of 1934. A secondary purpose is to determine whether or not additional rules and regulations are desirable in connection with the administration of said section. There appeared to be a sharp difference of opinion among the attorneys for the several carriers

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involved as to the proper interpretation of Section 214. As a result of this contrariety of opinion some of the carriers have, as hereinabove indicated, filed applications under this section and secured certificates of convenience and necessity before making any such extensions, while others have not applied for such certificates. In the interest of fairness an administrative interpretation of this section was thought necessary. The purpose of the hearing was to develop all the pertinent facts involved and to secure the benefit of the views of the carriers with respect to the law, prior to the promulgation by the Commission of its advisory opinion as to the applicability of said Section 214.

In view of the purposes of the proceedings as hereinabove stated and in view of the fact that no order having the effect of an injunction is contemplated, but on the contrary any report or order growing out of the proceedings is merely advisory, we are of the opinion that *the case of Powell et al. v. United States, supra*, is not in point and that the motion to dismiss is not well taken. That case involved an order of the Interstate Commerce Commission cancelling a tariff which had been duly filed by a railroad carrier because the carrier had not complied with the section of the act with respect to extensions. Under the Interstate Commerce Act the carrier could not operate except under its tariffs on file with the Commission. The effect of the Commission's order cancelling the tariff was to make it impossible for the carrier to operate without violating the law, even though it might be correct in its interpretation of that section of the Act with respect to extensions. The court properly held that the order of the Interstate Commerce Commission if permitted to stand would have the force and effect of an injunction because the carrier could not legally operate under a tariff which was not on file with the Commission. In the case here under consideration this Commission has not cancelled Mackay's tariff containing schedules of rates for service between Washington and Baltimore and the proceedings do not contemplate any such action on the part of the Commission.

There is ample precedent for investigations by administrative tribunals for the purpose of ascertaining and announcing their administrative interpretation of the statutes they are charged with administering. In *re Cummins Amendment*, 33 I. C. C. 682: In *re Section 3 of I. C. A. Amended, etc.*, 57 I. C. C. 591: In the *Matter of Bills of Lading*, 29 I. C. C. 417. Furthermore, Section 403 of the Communications Act of 1934 gives the Commission authority at any time to institute an inquiry on its own motion in any case "concerning which any question may arise under any of the provisions of this Act or relating to the enforcement of any of the provisions of this Act."

As to the objections interposed to certain stipulated facts, we do not think any discussion is necessary further than to say that if the Order instituting the investigation had limited the issues to the particular case of the Mackay extension it is probable that some of these objections might be well taken. In view of the issue as to the desirability of additional rules and regulations in connection with the administration of Section 214 of the Act, which section applies to both telephone and telegraph carriers, it is our opinion that the objections are without merit.

Section 214 (a) of the Act reads as follows:

No carrier shall undertake the construction of a new line or of an extension of any line, or shall acquire or operate any line, or extension thereof, or shall engage in transmission over or by means of such additional or extended line, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity require or will require the construction, or operation, or construction and operation, of such additional or extended line: *Provided*, That no such certificate shall be required under this section for the construction, acquisition, operation, or extension of (1) a line within a single State unless said line constitutes part of an interstate line, (2) local, branch, or terminal lines not exceeding ten miles in length, or (3) any lines acquired under section 221 of this Act: *Provided further*, That the Commission may, upon appropriate request being made, authorize temporary or emergency service, or the supplementing of existing facilities, without regard to the provisions of this section.

The contention of Mackay, which is supported by Postal, A. T. & T. Co., and C. & P. Co. and which is contrary to the position taken by R. C. A. C. and Western Union, is that the word "line" in paragraph (a) of Section 214 refers to physical facilities, that a telegraph "circuit" is not such a facility, that the section does not apply unless the lease provides for the exclusive use by the lessee of the lessor's physical facilities, and that Mackay's lease does not provide for such exclusive use of Postal's physical plant. We think the fallacy of the argument is obvious but on this point the case of *Transit Comm. v. United States*, 289 U. S. 121, appears to be conclusive. This case involved an interpretation of Section 1 (18) of the Interstate Commerce Act from which Section 214 of the Communications Act was taken. The Supreme Court held that the Long Island Railroad's operation under a trackage agreement over the tracks of the Pennsylvania Tunnel & Terminal Railroad Company (a lease with an annual rental) was an "extension" over which operation was not permitted unless and until a certificate of convenience and necessity under said Section 1 (18) of the Interstate Commerce Act had first been secured. Said the court:

The phrase "to operate any line of railroad" seems quite sufficient to include such use. There is nothing to suggest that the "operation" for which the Commission's approval is required may not be by other than the owner or lessee of the line or that it is to be limited to exclusive use.

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The tracks owned by the Long Island Railroad terminated at Sunnyside, and under the contract in question this railroad was using tracks which belonged to the Tunnel & Terminal Company in order to carry its traffic between the terminus of its railroad at Sunnyside and the Pennsylvania Station. The court observed:

The use is a joint one, but it is, nevertheless, "operation", and the phrase "engage in transportation * * * by means of such additional or extended line of railroad" reasonably may be deemed to include a line owned by another carrier.

Said the court further:

The Long Island's use of the Pennsylvania lines * * * serves the same purpose as would the acquisition of such lines by purchase or the construction by it of a like extension into Manhattan.

The "purpose" of the Long Island Railroad unquestionably was to extend its railroad service between Sunnyside and Manhattan. To accomplish the purpose it built no physical plant. It acquired none by lease or otherwise. But tracks were necessary. It merely contracted for the use of another company's tracks, such use being joint with that of the other company. The court held that the arrangement constituted extension of its line for which a certificate of convenience and necessity was required by the statute.

The analogy to the case here under consideration is obvious. Mackay's purpose was to extend its telegraph service between Baltimore and Washington. It had no telegraph line between these points but Postal did. Mackay entered into an arrangement for the use of Postal's line by "engaging in transmission over or by means of" a circuit derived therefrom.

There is no contention here, and in reason it can hardly be said, that a wire telegraph "circuit" can exist separate and apart from a wire telegraph "line" or that the use of the "circuit" does not necessarily involve and include the use of the "line." Assuming for the sake of argument that these words refer to different things, the record is clear to the effect, if, indeed, a record is necessary to establish the fact, that messages cannot be transmitted "over or by means of" a wire telegraph circuit except by the use and "operation" of the physical facilities making up the circuit, or over or by means of which the circuit is set up or from which it is derived. The circuit cannot be separated or disassociated from the physical line plant without which and without the operation of which there can be no transmission of messages by wire telegraph. Mr. O'Donohue, Chief Engineer of Postal, testified, and it is not disputed in the record, that the operation of a telegraph line is the transmission of messages over that line by electrical circuits, and that the only difference between Mackay's and Postal's operation

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between Washington and Baltimore is that Postal operates a "duplex circuit," whereas Mackay operates "a simplex circuit." Mr. Bickelhaupt, Assistant Vice President of the A. T. & T. Co., was asked the question "How do you operate a line." His answer was, "By making use of the circuits which are derived from the line." It is not denied that Mackay is "making use of" a circuit derived from Postal's line, and it would seem to follow necessarily from this testimony that Mackay is "operating" Postal's line.

It is true that the lease of a "circuit" does not necessarily involve the exclusive use of the "line." However, in the Transit Commission case, *supra*, the Supreme Court said in unmistakable language that it is immaterial that the use is not exclusive when the contractual arrangement "serves the same purpose as would the acquisition of such lines by purchase or the construction by it of a like extension." The purpose of the Long Island Company was to extend its transportation service into a new area or territory not theretofore served by it by using the railroad tracks belonging to another transportation company. The purpose of Mackay in the case here was to extend its communication service into a new area or territory not theretofore served by it by using the communication tracks of another company. In this connection it is interesting to note that Mr. Gifford, President of the A. T. & T. Co., in discussing the meaning of the word "circuit" in hearings before the House Committee said: "They are the railroad tracks of the telephone carrier of communication." When the Chairman of the Committee asked him what objection he had to giving the Commission power to approve the extension of lines "in a field that is already served," he replied: "I do not think I have any objection if it were worked out on a practical basis." Apparently Congress left it to the Commission to work it out on a practical basis by interpreting the word "line" to accomplish this purpose.

In his argument before the Commission the attorney for Mackay sought to distinguish the Transit Comm. case on some theory to the effect that the words "line of railroad" were comprehensively defined in the Interstate Commerce Act, whereas the word "line" in the Communications Act is not defined. However, the court's decision was not based on any definition, but seems to rest squarely upon the theory that transportation over the other company's tracks in order to reach a new field was "operation" of an extended line. In view of this case it would seem that the question here involved is settled.

The attorney for Mackay referred to the case of *New York Dock Ry. v. Pennsylvania R. R.*, 62 Fed. (2d) 1010. If the implications from certain dicta in this case were such as appear to Mackay's

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attorney, the case would be in conflict with the Supreme Court's decision in the Transit Comm. case. But the New York Dock Railway case is not in point. The holding of the court in that case was that the railroad's use of trucks in connection with "the receipt and delivery" of freight is not an "extension" of a line of railroad in contemplation of Section 1 (18) of the Interstate Commerce Act, but is merely an "accessorial terminal service" which may be provided and covered by tariff filings, such "accessorial terminal service by trucks" not being a "railroad," a "line of railroad," nor an "extension of a line of railroad," though it might be within the definition of the word "transportation." Furthermore the court expressly noted that the railroad company "did not intend to invade new territory." This case might provide authority for holding that the use of the telephone or the employment of messenger boys with bicycles in connection with the delivery of telegrams, is a terminal service or a delivery service and not an "extension" of the carrier's telegraph line. However, it is not thought that the case may be considered as authority for holding that when a carrier acquires by lease or otherwise the facilities of another carrier or the right to use or operate the facilities of another carrier in order to extend its public telegraph service to an area not theretofore served by it, it is not extending its line in contemplation of Section 214 of the Communications Act of 1934.

Reference is made to the legislative history of Section 214 of the Act. Argument was presented to attach a peculiar significance to the fact that during the course of its passage through Congress, the words "or circuit" which appeared after the word "line" in the original draft of Section 214 were deleted. But the hearings and reports indicate that the deletion was made simply because the word "circuit" seemed to have a technical meaning in the parlance of the telephone industry, whereas the word "line" did not. Apparently the word "line" was retained because it had no such confusing technical meaning and might be given an administrative interpretation which would make possible the effectuation of the purposes of the Act. As to those purposes we find nothing in the Act or in the proceedings leading to its adoption which does not indicate a legislative intent to give this Commission jurisdiction with respect to expansions by communication carriers analogous to and coextensive with that of the Interstate Commerce Commission with respect to transportation companies. The verisimilitude is so strong that it may be assumed that Section 214 of the Communications Act is nothing less than the corresponding section of the Interstate Commerce Act rephrased to apply to communication carriers.

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Senator Dill reporting the bill for the Senate Committee stated that: "Variances or departures from the text of the Interstate Commerce Act are made for the purpose of clarification in their application to communication, rather than as a modification of Congressional intent to attain a different object."

It is our opinion that the deletion referred to was merely to meet a technical objection elaborated upon by witnesses for the Bell System, so as to make it perfectly clear that there was no intention on the part of Congress to limit the right of carriers to make full use of their own physical facilities by the derivation of as many circuits thereon or therefrom as might be possible. Therefore it is not our opinion that Section 214 requires a certificate of convenience and necessity when a company of the Bell System rearranges its circuits or derives new circuits so as to make maximum use of its existing facilities, when the result is not an extension of a particular company's service into fields not theretofore served by it. Nor are the provisions of this Section necessarily invoked every time one of these companies enters into a different contractual arrangement in order to more effectively serve an area already served by it by some other arrangement. It is thought that the discussions that took place in the course of the passage of the Act indicate a Congressional purpose to give the Commission considerable latitude to interpret and administer this Section in such a manner as not to obstruct the fullest development of efficiency of operation of the various companies in the territory or areas served by them.

It is earnestly contended that Section 214 does not apply unless new "construction" is involved. This theory is not tenable in view of the language of the Section itself which by its very terms applies not only to new construction but to "acquisition," "operation," and also to transmission "over or by means of" additional or extended lines. Furthermore, the attorney for Mackay in his argument before the Commission admits and the testimony of the witnesses is to the effect that the Section does apply where the existing physical facilities of another carrier are acquired by purchase or where there is a contract for their "exclusive" use.

It is interesting to speculate upon the far-reaching effects of the interpretation here contended for, so far as the telegraph industry is concerned. It would open wide the door for nation-wide expansion by a telegraph carrier having little or no physical facilities of its own, without any possible supervision by this Commission and though disastrous competition might result. It is conceivable that a newcomer into the public telegraph field might lease idle circuits on every line of the Bell System and thereby without the necessity of any capital expenditure whatever extend its public telegraph system to every area

in the United States by the simple device of superimposing such public telegraph system upon the existing telephone plant. This might or might not mean ruin for both Western Union and Postal. It might or it might not be in the public interest, but is hardly conceivable that Congress intended to permit it unless the Commission should first find that it would be in the public interest.

To further illustrate the anomalous results of the interpretation here sought, suppose a public telegraph company desires to extend its service into a new territory not theretofore served by it by erecting poles, attaching thereto crossarms and stringing thereon new wires. It is conceded that a certificate under Section 214 is necessary. Suppose the Commission, after thorough investigation and public hearing, finds that the area or territory to which the extension is sought is already adequately served by other telegraph companies and that there is not enough telegraph business in that area to support an additional competitor, and for these and other reasons denies the application. The carrier seeking to extend its service to this new territory could frustrate the Commission's action effectively and completely by merely leasing a line or circuit into this area, extending thereto its public telegraph service after the Commission had found that public interests do not warrant the invasion of the area by another company.

The courts look with disfavor upon a construction of a particular section of a law which will defeat or invite evasion of the purposes prompting its enactment or that will lead to absurd or ridiculous results. Manifestly, it would be absurd to require the Commission's approval for a carrier to extend its service by contracting for the exclusive use of the facilities of another carrier and not to require such approval if the carrier proposes to accomplish the same purpose by contracting for the partial use of the same facilities. The effect upon the carrier already in the field resulting from the invasion of that field by a competing carrier is exactly the same. It can hardly be assumed that Congress intended such anomalous results, and it is contrary to established canons of construction to hold that the Act produces results not intended by Congress unless the language compels such construction.

It is contended that the competitive effect of the proposed invasion of a new field is not a matter for consideration in the administration of Section 214 of the Act. In connection with this point and also conclusive on the point that courts will disregard the precise meaning of words when necessary to effectuate the purposes of the Act, reference is made to the case of *Piedmont & Northern Railroad Co. v. I. C. C.*, 286 U. S. 299. The Interstate Commerce Act provides an exception in the case of Interurban Electric Railways which

were "not a part of a general steam railroad system." A railroad company had undertaken to extend its service through a new territory by operating electrically. Technically it was an "electric" railway. There was no question of its "interurban" operation, and it was "not a part of a general steam railroad system." Interpreting these words according to their precise meaning, it would appear that the exception was properly invoked. However, the court had no patience with such literal interpretation of words as would bring this operation within the exception and, looking to the general provisions of the Act to ascertain the intent of Congress, said:

Should a new electric transcontinental system be projected, without question application for certificate under these paragraphs would be required, though here again by mere verbal interpretation it would be exempt from the necessity.

The court found that the company by reason of its connections would become a link in a new through route and a line of connecting carriers which "would be strongly competitive with existing trunk lines" because "in all essential respects" the company's business was conducted "as is the business of the steam freight carriers in the territory served. The difference in construction, equipment, operation, and handling are incidental merely to the use of electric motor power in lieu of steam."

In the Piedmont case the court referred to the case of *Texas & Pacific Railroad Co. v. Gulf C. & S. F. Railway Co.*, 270 U. S. 266, in which the general purpose of the Act "to develop and maintain an adequate railway system" was said to require something more than definitions of words employed by Congress. In that case a track, seven miles long, which would reach into territory not theretofore served by the railroad and which would "take away from a competitor" much of the traffic then enjoyed, was held not to be "an industrial track" within the exemption of paragraph (22) of Section 1, "although by a strict construction it was such." In connection with the contention here made that competition is no factor for consideration in the administration of Section 214 of the Act, we notice that in the *Texas & Pacific Ry. Co.* case, *supra*, the Bill of Complaint had charged that the "operation of the line will result in irreparable injury to plaintiff because it will divert to the Santa Fe traffic which would otherwise be enjoyed by the Texas & Pacific." To meet this allegation it was urged that "it was not the purpose of the Interstate Commerce Act, as amended, to destroy competition between competing systems." On this issue the Supreme Court made a specific finding to the effect that, if enabled to tap directly the field then served by the Texas & Pacific, "the Santa Fe can secure a part of the strictly competitive business" and that "the freight revenues

which the Santa Fe would thus obtain and divert from the Texas & Pacific are estimated at more than \$500,000 a year." The court observed that "competition between carriers may result in harm to the public as well as benefit; and that when a railroad inflicts injury upon its rival it may be the public that ultimately bears the loss" and that "the act sought, among other things, to avert such losses," and that where the proposed trackage "extends into territory not theretofore served by the carrier and particularly where it extends into territory already served by another carrier, its purpose and effect are, under the new policy of Congress, of national concern." This case seems to answer effectively the contention here made that the Commission has no jurisdiction to consider the competitive effect, but is limited to the question as to whether or not the extension involves improvident expenditures. (See also *St. Louis S. W. Railroad v. Missouri Pacific Railroad Co.*, 289 U. S. 76.)

But it is earnestly contended that the language of the Communications Act indicates a definite and controlling Congressional purpose to encourage and promote competition between telegraph carriers, and that, therefore, the matter of protecting the carrier against invasion of its field of service by a competitor is not involved in Section 214, though such may be one of the purposes of the corresponding section of the Interstate Commerce Act. As heretofore indicated, we think this argument is answered by the statute itself which expressly gives the Commission authority to determine not only whether or not "construction" of an additional or extended line should be permitted, but also whether or not "operation" or "transmission" of messages "over or by means of" such line will be justified. The sum and substance of the argument is that these latter expressions should be read out of the Section. The same contention as to the preservation of competition was made in the case of *Mackay Radio & Telegraph Co. v. F. C. C.* recently decided by the United States Court of Appeals for the District of Columbia (97 Fed. (2d) 641). The court recognized that competition may be good or it may be bad, quoting with approval from the Texas & Pacific Railroad case, supra, to the effect that competition may result in harm to the public as well as benefit. Reference is also made to the case of *Texas & Pacific Railroad Co. v. Northside Ry. Co.*, 276 U. S. 475. We cannot read these cases without concluding that the twofold purpose of the corresponding provision of the Interstate Commerce Act is definitely involved in Section 214 of the Communications Act; to wit, (1) to prevent a carrier from weakening itself by constructing or acquiring or operating superfluous lines, and (2) to protect a carrier from being weakened by another carrier operating a competing line not required

in the public interest. As to the theory that two carriers are necessarily better than one, the court said in the Mackay Radio & Telegraph Company case, *supra* :

Such a belief would be as strange as a belief that two telephone systems or two railroads are necessarily better than one. It is obvious that two concerns are sometimes worse than one. Sometimes the traffic will not support two; and even when it will, there may be inadequate individual and social compensation for the waste of duplication.

The theory that the dominant purpose of the Congress was to preserve competition between telegraph carriers was rejected in the following language :

The Communications Act forbids competition by all who cannot prove that their entry will serve the public interest, convenience, and necessity.

In view of the similarity between Section 214 of the Communications Act and Section 1 (18) of the Interstate Commerce Act, under familiar rules of statutory construction the court had the right and the Commission has the right to assume that Congress adopted the language of Section 214 in the light of the interpretation which the courts had put upon the parent section in the Interstate Commerce Act.

We are of the opinion that all the arguments and theories advanced as to the precise meaning of the words "line" and "circuit" lead to one inevitable result. The statute employs the word "line." Whatever this word may mean, it is uncontroverted in the record that Postal owns a telegraph "line" between Washington and Baltimore. The record affirmatively shows that under the contract here involved Mackay is "operating" or "engaging in transmission over or by means of" Postal's telegraph "line" between these points. So far as Postal is concerned, it may be an old line and in no sense an "additional or extended line"; but so far as Mackay is concerned, it is an "additional" or "extended line," one it did not have the use of before, just as "additional" and just as "extended" as if Mackay had constructed it, acquired it by purchase, or contracted for its exclusive use.

CONCLUSIONS

After careful consideration of the entire record, including the oral argument and briefs, the Commission is of the opinion and so finds :

That the motion to dismiss the proceedings is without merit. It is, therefore, overruled.

We further find that the objections to certain portions of the stipulated facts are not well taken. They are, therefore, overruled.

We further find that the extension by the Mackay Radio and Telegraph Company of its public telegraph service between Washing-

ton, D. C., and Baltimore, Maryland, by using facilities leased from Postal Telegraph-Cable Company is an extension in contemplation of Section 214 of the Communications Act of 1934 requiring a certificate of convenience and necessity. We further find that the operation by Mackay Radio and Telegraph Company of the facilities leased from Postal Telegraph-Cable Company between these points and the transmission of messages over or by means of these facilities without first securing a certificate of convenience and necessity is, has been, and, if continued, will be in violation of Section 214 of the Communications Act.

Mackay Radio and Telegraph Company is here given thirty days from the date of this report in which to file with this Commission its application under Section 214 of the Communications Act of 1934 as herein interpreted by the Commission.

The record here indicating no immediate necessity for additional rules and regulations in connection with the administration of Section 214 of the Act, this question will be reserved for the further study of the Commission.

6 F. C. C.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of
ALBERT LEA BROADCASTING COMPANY (KATE),
ALBERT LEA, MINNESOTA. } DOCKET No. 5089.
For Modification of License.

Decided December 12, 1938

J. Bruce Kremer and Herbert M. Bingham on behalf of Albert Lea Broadcasting Company; *Paul D. P. Spearman and Alan B. David* on behalf of Station KSTP; *Louis G. Caldwell, Reed T. Rollo, and Percy H. Russell, Jr.*, on behalf of Station KFAM, and *A. V. Dalrymple* on behalf of the Commission.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION (Craven, Commissioner, not participating):

STATEMENT OF FACTS

This proceeding arose upon an application of the Albert Lea Broadcasting Company (licensee of Station KATE, Albert Lea, Minnesota, operating on the frequency 1420 kc., with power of 250 watts, daytime only), requesting a modification of license to authorize operation during unlimited hours on the same frequency with power of 100 watts night and 250 watts day. On June 1, 1938, a hearing on this application was held before an examiner, who, in his report (I-689), recommended that it be granted. Exceptions were filed and oral argument requested on behalf of The Times Publishing Company (KFAM). These exceptions and requests were subsequently withdrawn.

The applicant's legal, technical, and financial qualifications are not in issue in this proceeding.

There is no primary broadcast service available to the Albert Lea, Minnesota, area during nighttime hours. Station WCCO, Minneapolis, and high-powered stations in Chicago render some service to portions of the rural areas contiguous to Albert Lea. It is estimated that 21,900 persons will receive interference-free nighttime

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service from the proposed operation of KATE, and that in Albert Lea proper the station will render a signal of intensity in excess of 25 millivolts per meter.

According to 1930 United States Census, Albert Lea had a population of 10,169; and Freeborn County, in which this community is located, had a population of 28,741. Albert Lea is an important trade center. A number of factories representing various industries are located therein. The territory contiguous thereto is predominately agricultural.

For the period beginning October 1937 (when KATE began operation) and ending April 30, 1938, the station earned a net income of \$8,015.02. It is estimated that the proposed operation of the station will result in increased expenditures of approximately \$6,000 a year.

A number of local businessmen testified as to approximate sums which they are prepared to spend for advertising during evening hours should the application be granted. Their estimates total \$11,700 a year.

The applicant has in the past fully cooperated with the civic, charitable, and religious organizations of the community. Programs adapted to meet the needs of the agrarian population of the area are also broadcast. Eleven remote lines are maintained by the station to various points which include six churches and the local high school.

The record discloses that many local events of a religious or civic character take place at night.

A number of prominent citizens of the community testified as to the desirability and general demand for a nighttime local radio service which would be available for the broadcasting of religious, civic, educational, and similar types of programs. As Station KATE operates only during the day it is at present unable to render this service.

Moreover, the evidence indicates that a number of the inhabitants of the surrounding rural area (who are devoted largely to agricultural pursuits during the day) are at leisure principally during evening hours and would, therefore, constitute a substantial potential listening audience.

It also appears that certain local talent will be available for broadcasting during nighttime hours in addition to that which is used during the day.

The applicant proposes to utilize a reasonable portion of the additional hours of operation requested herein for the broadcasting of programs which include religious, educational, and civic matters.

It is also proposed to broadcast news and entertainment programs, and additional agricultural programs.

Station KFAM, St. Cloud, Minnesota, uses the frequency 1420 kilocycles and operates with power of 100 watts night and 250 watts day. It is predicted that the simultaneous nighttime operation of Stations KATE and KFAM will result in a limitation to the service of the former to its 2.9 mv./m. contour and a limitation to the latter to its 2.94 mv./m. contour. Station KTRI, Sioux City, Iowa, uses the frequency 1420 kilocycles and operates with power of 100 watts night and 250 watts day. It is estimated that the simultaneous nighttime operation of Stations KATE and KTRI will result in a mutual limitation to the service of each station to its 2.76 mv./m. contour. The testimony also indicates that the simultaneous nighttime operation of Stations KFAM and KTRI on their existing assignments results in a mutual limitation to each station to its 2.5 mv./m. contour.

An engineering expert testified, in substance, on behalf of the Commission that, in determining the allocation of local broadcast facilities it was his opinion that consideration should be given only to interference resulting from ground waves during daytime hours and that local stations should normally be protected during such hours to their respective 0.5 mv./m. contours. Based upon a consideration of these factors this witness predicted that the operation of Station KATE as proposed herein would not involve any material interference with the services of existing broadcast stations.

GROUNDS FOR DECISION

1. A public need is shown in the Albert Lea, Minnesota, area for local broadcast facilities during nighttime hours of the character proposed herein.

2. Station KATE has, in the past, rendered a meritorious program service and the programs proposed to be broadcast during nighttime hours are designed to meet the needs and interest of listeners in the area to be served.

3. The operation of Station KATE as proposed herein will not involve material interference with the services of existing broadcast stations.

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

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D. C.

<p>In the Matter of¹ PAWTUCKET BROADCASTING COMPANY, PAWTUCKET, RHODE ISLAND. For Construction Permit.</p>	}	DOCKET No. 4990.
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Decided December 12, 1938

George S. Smith and Harry P. Warner on behalf of the applicant; George O. Sutton, Arthur H. Schroeder, and James L. Proffitt on behalf of Station WLVA; Paul D. P. Spearman on behalf of Station WAAB; Philip G. Loucks and Arthur W. Scharfeld and Joseph F. Zias on behalf of Station WHK; Ben S. Fisher, Charles V. Wayland, and John W. Kendall on behalf of Station WNBC; Joseph Fairbanks on behalf of Station WQDM; Horace L. Lohnes, E. D. Johnston, and Fred W. Albertson on behalf of Station WJAR (intervener); Duke M. Patrick, John W. Guider, Karl A. Smith, and Lester Cohen on behalf of Station WPRO (intervener); Walter Johnson on behalf of the Federal Communications Commission.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION (Craven, Payne, and Case, Commissioners, not participating):

STATEMENT OF FACTS

This proceeding arose upon an application of the Pawtucket Broadcasting Company for a construction permit to establish a new broadcast station at Pawtucket, Rhode Island, to operate on the frequency 1390 kc., with 1 kw. power, unlimited time, and to use a directional antenna during both daytime and nighttime hours. On March 9, 10, and 11, 1938, a hearing was held on this matter before an examiner who, in his report (I-665), recommended that the application be denied. Exceptions and request for oral argument were filed by the Pawtucket Broadcasting Company. Requests for oral argument were also filed by the State Broadcasting Corporation (WNBC), the Radio Air Service Corporation (WHK), and Cherry & Webb Broadcasting Company (WPRO). Oral argument, in which

¹ Further hearing held and the Commission on May 22, 1940 issued proposed Findings recommending grant on condition as of June 7, 1940 matter still pending before the Commission.

only the applicant participated, was heard by the Commission on September 22, 1938. In lieu of participation in the oral argument, briefs were filed on behalf of Stations WHK and WPRO. A brief was also filed on behalf of The Outlet Company (WJAR). The exceptions and briefs have been duly considered by the Commission.

The applicant is a corporation organized under and pursuant to the laws of the State of Rhode Island, and has the power under its charter to construct and operate a radio broadcast station.

The applicant is authorized to issue 100 shares of stock of no par value. All of this stock has been issued to three stockholders, each of whom owns 33⅓% thereof. These stockholders, namely, Howard W. Thornley, Paul Oury, and Frank F. Crook, are all citizens of the United States. As of February 14, 1938, the corporation had \$50,000 cash on deposit in its treasury. No liabilities were shown.

Howard W. Thornley, the President of the applicant corporation, is now employed as a radio engineer for Station WPRO, Providence, Rhode Island. He has had considerable experience in radio broadcasting, including nine years of employment in an engineering capacity with Station WJAR, Providence. He plans to serve as Chief Engineer of the proposed station.

Paul Oury, the Secretary of the applicant, has also had experience in various capacities in the radio field. He served in the United States Navy a number of years as radioman, and on commercial vessels as radio operator and engineer. Mr. Oury has also been employed in the following positions: as an engineer and operator of a radiobroadcast station; as sound motion-picture engineer with the Radio Corporation of America; as Chief Engineer and General Manager of the Paramount studios in France; and as manager of Station WPRO of Providence, Rhode Island (formerly WPAW, Pawtucket, Rhode Island). He plans to be the manager of the proposed station.

Frank F. Crook, the Treasurer of the applicant, is Vice President and secretary of Frank Crook, Incorporated, an automobile sales and service agency. He has had no experience in the operation of broadcast stations.

The estimated cost of construction of the proposed station is \$34,165.45. Frank Crook, Inc., and the Pawtucket Broadcasting Company are parties to a lease whereby the former agrees to furnish the latter housing for studios, control room, offices, and transmitting equipment, etc., in exchange for advertising announcements over the proposed station. It appears from the testimony of Mr. Crook that Frank Crook, Inc., is willing to expend about \$15,000 for studio space and furnishings and that as of January 1, 1938, this

company had a valuation of \$251,217.63. The monthly operating expense of the proposed station is estimated at \$4,850. Commitments for advertising time, signed by merchants, total \$98,545 a year.

It is estimated that the Pawtucket trade area extends a distance of about 15 miles north, which includes the cities of Central Falls, Lincoln, Cranston, Cumberland, and Woonsocket. The principal industry in this area is textiles. There are also other diversified industries.

The following table of statistics (based upon the 1935 United States Census of Business) shows the cities and the number and volume of business of the manufacturing, wholesale, and retail establishments located in the area proposed to be served by the applicant herein:

Manufacturing establishments

City	Number	Value of products	City	Number	Value of products
Pawtucket.....	191	\$65,880,000	Cranston.....	34	\$16,584,000
Central Falls.....	54	11,526,000	Cumberland.....	7	2,058,000
Lincoln.....	2	(Omitted)	Woonsocket.....	98	42,846,000

Wholesale establishments

City	Number	Net sales	City	Number	Net sales
Pawtucket.....	43	\$6,696,000	Cranston.....	9	\$1,737,000
Central Falls.....	13	1,563,000	Cumberland.....	12	87,000
Lincoln.....	3	29,000	Woonsocket.....	34	9,724,000

Retail establishments

City	Number	Net sales	City	Number	Net sales
Pawtucket.....	1,020	\$23,224,000	Cranston.....	344	\$5,390,000
Central Falls.....	335	3,942,000	Cumberland.....	166	1,440,000
Lincoln.....	105	1,201,000	Woonsocket.....	651	15,753,000

According to the 1930 United States Census, Pawtucket had a population of 77,149. The city is located within the metropolitan district of Providence, which, according to the same census, had a population of 963,686.

Three stations of the regional classification, located in Providence, render primary service to the area proposed to be served, namely, WPRO, WEAN, and WJAR. Station WBZ, Boston, renders a signal strength in excess of 2 mv./m. in the Pawtucket area, which is satisfactory for residential sections thereof. Additional service is available to portions of the rural area contiguous to Pawtucket from Station WEEL, Boston, and Station WSAR, Fall River.

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According to the testimony, the applicant proposes to "render a high type of program service designed to appeal to the citizenry of Pawtucket, a *local service* that is not now available." [Italics supplied.] The applicant requests for this purpose, however, the use of a frequency which is classified as regional. As shown above, the Pawtucket area now receives primary broadcast service from three regional stations. It is estimated that the proposed station would serve (during daytime hours), within its 10, 2, and 0.5 mv./m. contours, respectively, 265,079, 536,148, and 703,234 persons. It is also predicted that the useful service area of the proposed station would be limited during night hours to its 4.8 mv./m. contour, containing an estimated population of 418,864. (The above calculations are based on the United States Census for 1930.) It is further estimated that Pawtucket proper covers 1.5% and 5.7%, respectively, of the total area which the proposed station would serve within its 0.5 and 2 mv./m. contours during daytime hours and 13.2% of the total area which would be served at night.

Pawtucket and Providence are adjoining communities and the record discloses that many residents of the former have their business offices in Providence. It is contended on behalf of the applicant that Pawtucket is a separate and distinct entity from Providence and as such is entitled to local radio broadcasting facilities. The testimony indicates, however, that Pawtucket is distinct from Providence only in that it has its own school systems, churches, public utilities, etc.

The record does show that competition exists between the merchants of Pawtucket and Providence. It is contended on behalf of the applicant that a station in Pawtucket would offset the competition of Providence merchants, a substantial amount of the business of which, it is claimed, is derived from Providence trade. A number of witnesses, prominent in business affairs in the Pawtucket area, testified as to the need for a local broadcast station in this community as a medium for commercial advertising. It appears that the commercial establishments in Pawtucket, with few exceptions, do not use the radio facilities in Providence for advertising purposes due to the fact that the Providence stations are either directly or indirectly owned and operated by large department stores in competition with similar establishments in Pawtucket. The same witnesses further testified that they would not advertise over the Providence stations because of the higher rates charged. The amounts of these rates were not disclosed. It is impossible, therefore, to determine from the evidence on a comparative basis whether the rates proposed to be charged by the applicant would in fact be lower than

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the existing ones. Moreover, the mere desire of commercial organizations for a low-rate transmitting service for radio advertising does not of itself justify the granting of additional facilities. This principle has been expressed by the Commission in previous decisions. (See *In the Matter of Pacific Acceptance Corporation*, 5 F. C. C. 296, decided April 13, 1938, and *In the Matter of Smith, Keller, and Cole*, 5 F. C. C. 291, decided April 13, 1938.)

Religious, educational, and civic leaders in the community testified as to an alleged need in Pawtucket for a local radiobroadcast station. Although it appears that these witnesses have never been offered the use of the facilities of the Providence stations, the record discloses that, with two exceptions, none have requested permission to broadcast over these stations. The two witnesses who made these requests were refused by the stations concerned as the specific time desired by them had been allotted to others. The organizations represented by these two witnesses have at times broadcast over the stations in Providence but one (a clergyman) testified that his program was discontinued for the purpose of making the time allotted to him available for the use of a church located in Providence.

Talent consisting of vocalists, instrumentalists, dramatists, and orchestras would be available for use by the proposed station. The facilities of the proposed station have been offered to and accepted by religious, educational, civic, and charitable organizations of the area.

A tentative program schedule submitted on behalf of the applicant includes religious, educational, and civic programs. In addition, sports, news, and entertainment programs would be offered. It is also proposed to broadcast programs in French and Italian for the benefit of certain populations of foreign extraction in the Pawtucket area.

Station WHK, Cleveland, Ohio, uses the frequency 1390 kc. It is predicted that simultaneous nighttime operation of WHK, together with that of the proposed station, would result in a limitation to the service of the latter to its 4.8 mv./m. contour. In this connection the record shows that the applicant proposes to install an antenna system of a greater efficiency than one having only the minimum height required by the Commission. The proposed station, if operated with an antenna of minimum efficiency and limited only to its 3 mv./m. contour, would serve the same geographical area that it would serve if limited to its 4.8 mv./m. contour through operation with an antenna of the character proposed to be installed. Under accepted standards of good allocation practice, stations of the classification proposed herein are normally protected at night to their

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1 mv./m. contours. The evidence also discloses that the service of Station WHK is now limited to a greater extent during nighttime hours by the operation of Station KLRA, Little Rock, Arkansas, than would be expected from the operation of the proposed broadcast station. The operation of a broadcast station as proposed would not involve objectionable interference with any other existing broadcast services and would not, by reason of objectionable interference, adversely affect the services proposed in any pending applications for broadcast facilities.

The applicant will employ experienced personnel to insure the efficient operation of the proposed station. The proposed transmitting equipment, antenna, and transmitter site comply with the requirements of the Rules and Regulations of the Commission.

GROUNDS FOR DECISION

1. The need shown in the Pawtucket, Rhode Island, area for broadcast facilities of the character proposed herein is not sufficient to warrant a grant of the application in view of the severe restrictions which would be expected to be imposed upon the proposed service during nighttime hours from the operation of an existing broadcast station.

2. A grant of the application will not serve public interest, convenience, and necessity.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D. C.

<p>In the Matter of FLORIDA WEST COAST BROADCASTING COMPANY, INC., CLEARWATER, FLORIDA. For Construction Permit.</p>	}	DOCKET No. 4904.
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Decided December 12, 1938

George S. Smith and Harry P. Warner on behalf of the applicant; *Paul D. P. Spearman and Alan B. David* on behalf of Stations **WLAK** and **WDAE**; *Horace L. Lohnes, E. D. Johnston, and F. W. Albertson* on behalf of Station **WFBC**; *Philip J. Loucks, Arthur W. Scharfeld, and J. F. Zias* on behalf of Station **WSUN**; *A. V. Dalrymple* on behalf of the Federal Communications Commission.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION (Case, Commissioner, not participating) :

STATEMENT OF FACTS

This proceeding arose out of the application of the Florida West Coast Broadcasting Company, Inc., for a permit to construct a new radio broadcast station at Clearwater, Florida, to operate on the frequency of 1300 kilocycles, with power of 250 watts, daytime only. The original application specified unlimited hours of operation with 100 watts power at night; however, as of the date of the hearing, the request for nighttime operation was abandoned. The case was heard before an examiner on April 6, 1938. The examiner released his report (I-668) on June 18, 1938, and recommended that the application be denied. Exceptions were filed to the examiner's report and oral argument heard before the Commission.

The applicant herein is a corporation organized under the laws of the State of Florida. It is the licensee of radio broadcast Station **WFLA**, Clearwater, Florida. As the applicant is the licensee of an existing station, it is not necessary to discuss its legal and technical qualifications with respect to the instant application.

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The applicant offered in evidence a financial statement showing total assets of \$96,949.64, with liabilities of \$6,018.39. Included in the assets are cash in the amount of \$18,098.94, and advertising accounts in excess of \$20,000. The estimated cost of constructing the proposed station is \$9,200. Based upon the financial statement, supported by the testimony of officers of two of the banks in Clearwater, the Commission finds that the applicant is financially qualified to construct and operate the proposed station.

Clearwater, according to the 1930 United States Census, had a population of 7,607. The population of Pinellas County, in which Clearwater is situated, had a population, according to the same census, of 62,149.

Clearwater, Florida, is primarily a residential community, and is not highly industrialized. It has, in addition to the regular population, a considerable floating population of tourists and visitors, both winter and summer, which contributes considerably to its income. The principal industry in the area surrounding the city is the production of citrus fruits, and the packing, canning, and shipping of such fruits. There are a number of wholesale houses situated in Clearwater, and some factories, two canning plants, five fruit-packing houses, and some industries of lesser importance. In addition to the citrus-fruit industry, the flower industry is of considerable commercial value, particularly gladioli, which are shipped in the wintertime to the northern markets. It is also a fresh-vegetable farming area.

The radio service available during daytime hours in the City of Clearwater is received from Stations WFLA, a half-time station, with main studio situated in Tampa; WSUN, a half-time station situated in St. Petersburg; and WDAE, a full-time station situated in Tampa. Each of these stations renders satisfactory service to Clearwater and the surrounding area.

Station WFLA operates on the regional frequency 620 kilocycles, with power of 5 kilowatts to local sunset, 1 kilowatt night, and divides time with Station WSUN at St. Petersburg, Florida. Station WFLA operates Mondays, Wednesdays, and Fridays, both day and night, while Station WSUN operates Tuesdays, Thursdays, and Saturdays, both day and night. These two stations (WFLA and WSUN) share time on Sunday. Station WFLA is affiliated with the National Broadcasting Company, and approximately seventy percent of its programs originate with NBC. Station WFLA operates on a regional assignment, and devotes the greater part of its time to matters of interest to a large area rather than confining its program to those which are of particular interest to one or more communities.

A program schedule, indicative of the type of programs contemplated by the applicant, emphasizes the local character of the service
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which this station proposes to offer. Listed in this program schedule are broadcasts by a number of the civic, religious, and social institutions of Clearwater, the high-school band, review of tourist activities, musical programs featuring local organizations and speakers of prominence. Among the items proposed are news, weather reports, sports reviews, particularly, broadcasting of information relative to the agricultural pursuits of the farmers in the immediate vicinity.

A list of talent to be found in the area which the applicant proposes to serve was received in evidence. This list shows, in part, a high-school senior band of fifty-two pieces; a high-school junior band of forty-six pieces; the South Ward grade school band of twenty-three pieces; a high-school symphony orchestra of twenty-eight pieces; a high-school jazz orchestra of seven pieces; numerous soloists connected with such organizations, and a number of other organizations, the majority of which are professional. In view of the fact that the applicant proposes to spend but \$150 per month for talent, it is quite evident that no considerable amount of professional talent would be used by the station for the presentation of programs. Some of the talent shown on this list is now being used by Station WFLA and has been for a considerable time.

The equipment which the applicant proposes to use conforms to the engineering requirements of the Commission. The antenna meets the requirements of Rule 131 as to height.

Stations WFLA and WSUN both use the same transmitter, which is located at Clearwater. The studio of station WSUN is located in St. Petersburg. The main studio of Station WFLA is now located in Tampa, with the auxiliary studio in Clearwater. The applicant intends to use the auxiliary studio of Station WFLA in Clearwater for the main studio of the proposed station.

The applicant proposes to locate the transmitter at a point approximately five and one-half miles from the center of the business section of the City of Clearwater. This is the approximate location of the transmitter now used by Station WFLA. Operating from the site proposed, with power of 250 watts daytime, the 10 millivolt per meter contour of the proposed station would not include all of the business district of Clearwater, although the entire City of Clearwater is within the 5 millivolt per meter contour. The 2 millivolt per meter contour of the proposed station would serve a substantial part of the City of Tampa, Florida, and all of St. Petersburg, Florida. It is estimated that there are within the 10, 5, 2, and 0.5 millivolt per meter contours of the proposed station a population of 10,400, 31,800, 111,200, and 193,800 persons, respectively. Excluding the population of the cities of Tampa and St. Petersburg, the estimated population within

the 2 millivolt per meter contour is 43,400 and within the 0.5 millivolt per meter contour is 52,200.

The frequency 1300 kilocycles is one assigned for use by regional stations. It has been the practice of this Commission, as well as its predecessor, the Federal Radio Commission, to make assignments of regional frequencies to stations located so as to serve a metropolitan area as well as the suburban area contiguous thereto. As has been pointed out herein, the proposed station would not deliver a signal of 10 millivolts per meter throughout the entire business district of Clearwater. It is the generally accepted engineering standard of this Commission that a signal of 10 millivolts per meter or better is necessary for high-quality broadcast service in the business districts of metropolitan areas. The proposed station would not deliver a signal in Clearwater which will meet this standard. Operating from the proposed site, the station could serve all of Clearwater, all of St Petersburg, and a large part of Tampa with a signal sufficiently strong for satisfactory reception in the residential area of these cities. From the specified location the proposed station would not render what could be termed a purely local service to Clearwater, and if we treat the service area as that of a regional station we find that it is not definitely associated with the metropolitan area of any one of the three cities heretofore mentioned. The site is, therefore, not satisfactory either as the site of a regional station or as a local station.

The applicant proposes, in the event the construction permit is granted, to use part of the operating personnel of Station WFLA in the management and operation of the proposed station. The estimated operating expense of the proposed station is placed at \$910 per month. Of this sum, the only amounts allocated for program service are \$150.00 for local staff musicians and \$100.00 for a transcription service.

The applicant offered in evidence a number of signed documents termed "orders for service" which had been secured by the applicant and which called for radio advertising time over the facilities of the proposed station. A total of the "orders for service" call for the prospective advertisers to buy time in the amount of \$1,434.80 per month. These orders were based upon rates which were substantially lower than those now charged by Station WFLA. The "orders for service" seemingly indicate that the Clearwater merchants would support, through their advertising, a station of the type proposed by the applicant. It appears, however, that Station WFLA, as of the date of hearing, carried but one commercial daytime program from Clearwater and does not regularly solicit accounts from merchants in this

city. The absence of a substantial amount of advertising support in Clearwater is also shown by the fact that this applicant has moved the main studio of Station WFLA from Clearwater to Tampa.

The Chamber of Commerce of Clearwater was formerly the licensee of Station WFLA. The licensee of Station WSUN is the Chamber of Commerce of St. Petersburg. The Florida West Coast Broadcasting Company, Inc., began acting as the advertising agent for Station WFLA in 1930, and subsequently the Chamber of Commerce transferred its license to the Florida West Coast Broadcasting Company, Inc. After the Clearwater Chamber of Commerce ceased to be the licensee of Station WFLA, the main studio of this station was moved from Clearwater to Tampa, Florida.

The applicant took the depositions of a number of persons residing in Clearwater. Representatives of various civic, religious, and social organizations testified and expressed their opinion as to the need of a "local station" in Clearwater. These witnesses, almost without exception, admitted they had used the facilities of Station WFLA and had seldom been denied the facilities of that station. At the time the depositions were taken, the application then pending before the Commission was for unlimited hours of operation. What these witnesses would have testified to, had they known that the application would be amended so as to apply for daytime hours of operation, is a matter of conjecture. It is apparent, however, that the reason the witnesses desired an additional station is because of the fact that these organizations were unable to get "desirable" time over the facilities of Station WFLA because of prior commitments of the station. Whether these organizations would be able to get "desirable" time over the facilities of the station now proposed by this applicant, in view of the limited hours of operation, is a matter not covered by this record.

Stations WFLA, WSUN, and WDAE all broadcast programs containing news flashes, weather reports, sports review, and information pertaining to the agricultural pursuits of the farmers in this area. In this respect the programs parallel each other and parallel the program to be offered by the proposed station. Except for the fact that a number of witnesses testified that the proposed station would devote its time to programs of a local nature, of interest to Clearwater, there is nothing in the record which would show that this station would be other than an additional regional station operating on a regional frequency not serving with a high-class signal any large city, but serving the residential area of three cities with a signal sufficiently strong for satisfactory reception in residential areas.

The operation of the proposed station would not cause objectionable interference to, and the proposed station would not receive objectionable interference from, any existing broadcasting station. As

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of the date of the hearing, however, Station WLAJ, Lakeland, Florida, had an application pending before this Commission to increase its power from 100 to 250 watts day. Station WLAJ operates on the frequency 1310 kc. The operation of the proposed station and of WLAJ with a power of 250 watts would cause interference within the .5 millivolt per meter contour of each station, the interference being over a crescent-shaped area. Approximately 1,000 people residing within the .5 millivolt per meter contour of Station WLAJ would receive objectionable interference during the simultaneous operation of the proposed station and Station WLAJ operating with a power of 250 watts. Approximately 1,400 persons within the .5 millivolt per meter contour of the proposed Clearwater station would receive objectionable interference during the simultaneous operation of the proposed Clearwater station and Station WLAJ operating with a power of 250 watts.

GROUNDS FOR DECISION

1. The site selected by the applicant for the proposed station is not suitable for rendering high quality primary service throughout the City of Clearwater.

2. The applicant requests the use of a regional frequency but proposes the conventional programs and service of a local station. Located as proposed the station would not be definitely associated with any one city and the metropolitan area contiguous thereto, but would be so located as to serve the residential area of three cities, to wit: Clearwater, St. Petersburg, and Tampa. The proposed station does not conform to the standards of good engineering practice, generally followed by this Commission in the allocation of frequencies in the broadcast band, either as a local or a regional station.

3. The applicant has failed to show the public need for type and character of program proposed.

4. The applicant herein is the licensee of Station WFLA which serves the entire area which would be served by the proposed station. In the absence of a compelling need, which has not been shown to exist in this case, the Commission is loath to grant facilities for an additional broadcast station to one who already holds a license for a station in the same community.

5. The applicant has failed to show that there is a need for an additional broadcast station to serve the City of Clearwater, either as an advertising medium for the merchants or as a means of expression for various civic, religious, political, and social organizations in Clearwater or for the talent residing in that area.

6. Public interest, convenience, and necessity will not be served by the granting of this application.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D. C.

<p>In the Matter of the Application of SOUTHWESTERN BELL TELEPHONE COMPANY. For authority to acquire and operate all the interstate toll lines of the United Telephone Company (of Kansas).</p>	}	DOCKET No. 5039.
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Decided December 12, 1938

George B. Whissell and *Harvey Hoshour* on behalf of the applicant;
Frank B. Warren on behalf of the Commission.

REPORT OF THE COMMISSION

BY THE COMMISSION (Craven, Commissioner, not participating) :

On February 12, 1938, the Southwestern Bell Telephone Company filed with this Commission its application pursuant to Section 214 (a) of the Communications Act of 1934, hereinafter referred to as the Act, requesting this Commission to issue a certificate to the effect that public interest, convenience, and necessity require the acquisition and operation by it of certain telephone properties, including toll lines which constitute parts of interstate lines, located in the State of Kansas, now owned and operated by the United Telephone Company, a subsidiary of the applicant.

The information before this Commission when the application was initially considered indicated that it was within the scope of Section 221 (a) of the Act. A hearing being mandatory under Section 221 (a), the matter was accordingly set for hearing and proper notice thereof given. A hearing was held before an examiner, who has submitted his report (III-35) recommending that the authorization be granted. No objection to this report has been filed. However, from the evidence introduced at the hearing it developed that the matter is one which properly falls within the scope of Section 214 (a) of the Act. The Commission thereafter entered an Order directing that the application be considered under Section 214 (a) and further ordering that proper notice be given thereunder, which has been done. A hearing is not

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mandatory under such Section, since no request for hearing or objection to the granting of this application has been received. The Commission now has the application, together with the evidence introduced at the hearing held before the examiner, under consideration in the light of the requirements of Section 214 (a).

The Southwestern Bell Telephone Company, hereinafter referred to as the Southwestern Bell, is a Missouri corporation with its principal office located at St. Louis, Missouri, which owns and operates a telephone system in the States of Missouri, Oklahoma, Arkansas, Texas, a small portion of Illinois, and in the State of Kansas.

The United Telephone Company (of Kansas), hereinafter referred to as the United Company, is a Kansas corporation with its principal office located at Abilene, Kansas, which owns and operates a telephone system consisting of exchange and toll plant. Since its organization it has engaged continuously in rendering telephone service in the State of Kansas. The present operating area of the company comprises approximately thirty counties which are located generally in the northwestern part of the State.

The United Company was organized in 1911, and at the time of organization, or shortly thereafter, the Southwestern Bell acquired more than 50 percent of its voting stock and has increased its stock holdings in such company from time to time until at the present time it owns all of the outstanding capital stock of the United Company except seven qualifying shares held by directors, and through such stock ownership the Southwestern Bell has controlled the Company continuously from 1911 to the present date.

Both companies engage in interstate and foreign communication by wire and are subject to all provisions of the Communications Act applicable to wire telephone carriers.

The Southwestern Bell proposes to acquire all of the properties and assets of its subsidiary, the United Company, and to transact the telephone business now conducted by such company. The State Corporation Commission of Kansas, upon the petitions of the applicant herein and the United Company, has found that such acquisition and the operation by the Southwestern Bell will promote public convenience. The Kansas Commission by its Order of January 8, 1938, authorized the transfer of the telephone plant, property, and assets, both exchange and toll, of the United Company to the Southwestern Bell, the Southwestern Bell to continue the operation of said plant and properties under the rates, rules, and practices now in force and effect, and further ordered the Southwestern Bell to assume all the legal debts, liabilities, and obligations of the United Company and to surrender for cancellation the corporate stock of the United Company upon dis-

solution or upon demand, and further ordered that upon the completion of the transfer of said plant, property, and assets the United Company cease operating as a public utility at the localities where such property is located. On the same date the Kansas Commission issued a certificate of convenience and authority to the Southwestern Bell permitting it to transact the business of a telephone public utility in certain cities and communities in the State of Kansas where the property acquired by it is located.

In its application to this Commission the Southwestern Bell states that, pursuant to certain Orders of the Kansas Commission, it proposes to acquire said properties and assets, and requests authorization with respect to the portions of said property which constitute parts of interstate lines, more specifically described in the certificate issued pursuant to this report. The applicant further states that it is essential to the transaction by it of the business of the United Company as authorized by the Orders of the Kansas Commission that this applicant acquire, with the other property of the United Company, the property constituting parts of interstate lines, and further alleges that a complete acquisition of the properties of the United Company by it will permit the dissolution of such company which is desirable in that it will eliminate inter-company accounting, avoid duplicate corporate taxation and reporting, and generally result in economies by permitting the operation of these lines by the same organization which will operate the other plant of the United Company, all of which can be accomplished without impairment of the quality or scope of the service now furnished to the public; that the granting of the authority herein sought is merely to effect book transfer of the assets herein enumerated and to give the applicant legal title to property of which it is the equitable owner through ownership of all the stock of the United Company; and that under such circumstances no inventory and appraisal of the portions of the property which constitute parts of interstate lines have been made.

The balance sheet of the United Company as of December 31, 1937, shows: total telephone plant, \$7,122,925.35; investments in and advances to affiliated companies, \$2,000.00; other investments, \$728.00; investment in miscellaneous physical property, \$4,907.74; cash and special cash deposits, \$211,886.67; material and supplies, \$46,631.03; other current assets, \$133,835.17; prepaid accounts and deferred charges, \$11,376.12; total assets of \$7,534,290.08. The balance sheet also shows: capital stock (common), \$2,460,300.00; advances from affiliated companies, \$2,609,500.00; other long-term debt, \$198,616.73; total current liabilities, \$148,182.65; total accrued liabilities, not due, \$64,591.02; total reserves, \$1,532,445.87; unappropriated surplus, \$520,653.81; total liabilities of \$7,534,290.08.

The balance sheet of the Southwestern Bell as of December 31, 1937, shows: total telephone plant, \$349,583,028.48; investments in and advances to affiliated companies, \$5,368,330.56; other investments, \$7,868,289.97; miscellaneous physical property, \$774,783.08; sinking funds, \$250,000.00; cash and special cash deposits, \$3,947,521.08; material and supplies, \$3,222,971.47; other current assets, \$8,097,502.99; prepaid accounts and deferred charges, \$1,091,268.93; total assets of \$380,203,696.56. The balance sheet also shows: total capital stock, \$194,786,415.73; funded debt, \$45,000,000.00; advances from affiliated companies, \$3,500,000.00; other long-term debt, \$8,317,265.94; total current liabilities, \$8,395,148.60; total accrued liabilities, not due, \$7,301,274.73; total deferred credits, \$34,476.63; total reserves, \$93,816,857.51; total surplus, \$19,052,257.42; total liabilities of \$380,203,696.56.

The acquisition proposed will give the applicant direct ownership of the properties instead of control through ownership of stock and when the subsidiary is finally dissolved will simplify the corporate structure of the applicant's telephone system.

A number of duplications will be eliminated or simplified through the acquisition of the United Company by the applicant. Such duplications include: corporate charter and amendments; stock certificates and books; notice and minutes of meetings of stockholders and directors; corporate officers and offices; monthly, annual, and special reports to State and Federal authorities; cash books and records; bank accounts and records; intercompany contracts of various kinds; income-tax reports, both State and Federal; corporate audits; settlements between the two companies for toll business; rentals on plant; construction, maintenance, and operation services performed by one for the other; pension trust fund and employees benefit plan arrangements; etc. The elimination of the corporate identity of the United Company will not change in any material respect the operating practices or the maintenance practices, and the elimination of such duplications should effect economies in the operation of the property by the applicant.

The gross revenue of the United Company from telephone service in 1937 amounted to approximately \$1,773,000.00, and it now makes monthly payments of \$1,300.00 to the Southwestern Bell under an agreement for general supervisory services and has made such payments for 10 or 15 years. This payment for supervisory services is approximately one percent of the gross revenues. The record shows that the Southwestern Bell now pays to the American Telephone and Telegraph Company 1½ percent of the gross revenues of the United Telephone Company. This payment would not be changed and the payment of approximately one percent now being paid by the United Company to the Southwestern Bell would be eliminated.

The Southwestern Bell proposes to take over all of the properties and assets of the United Company and in consideration therefor will surrender for cancellation the outstanding capital stock of the United Company, cancel the note of such company which it holds, and assume all their outstanding liabilities. The evidence indicates that the Southwestern Bell is financially able to acquire and operate the properties of the United Company.

The Commission makes no finding whatever relative to the value of the properties proposed to be acquired.

A certificate of authorization will be issued on the basis that the present and future public convenience and necessity require that the service be continued to the persons now served by the United Company.

Upon the facts presented, the Commission finds that the present and future convenience and necessity require the acquisition and operation by the applicant of the telephone properties, including toll lines which constitute parts of interstate lines, specifically described in the application filed herein.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

The Commission having under consideration the application of the Southwestern Bell Telephone Company for authority to acquire and operate the toll properties of the United Telephone Company (of Kansas) which constitute parts of interstate lines, and being fully advised in the premises,

Now, therefore, authority is hereby granted to the Southwestern Bell Telephone Company to acquire and operate the telephone toll facilities now owned and operated by the United Telephone Company, and situated in the State of Kansas, described as follows:

1. *Marysville, Kansas, to Kansas-Nebraska State Line (Wymore, Nebraska).*—Two pairs of .104 gauge copper wires, extending from Marysville, Kansas, a distance of about twelve miles, to the Kansas-Nebraska State Line, where they are connected to two pairs of wires of the Lincoln Telephone and Telegraph Company, extending to Wymore, Nebraska.

2. *Concordia, Kansas, to Kansas-Nebraska State Line (Lincoln, Nebraska).*—One pair of .104 gauge copper wires, extending from Marysville, Kansas, a distance of about twelve miles, to the Kansas-Nebraska State Line, where it is connected to a pair of wires of the Lincoln Telephone and Telegraph Company extending to Lincoln, Nebraska.

3. *Marysville, Kansas, to Kansas-Nebraska State Line (Beatrice, Nebraska).*—Two pairs of .104 gauge copper wires, extending from

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Marysville, Kansas, a distance of about twelve miles to the Kansas-Nebraska State Line, where they are connected to two pairs of wires of the Lincoln Telephone and Telegraph Company, extending to Beatrice, Nebraska.

4. *Marysville, Kansas, and Hollenberg, Kansas, to Kansas-Nebraska State Line (Fairbury, Nebraska).*—(a) One pair of .104 gauge copper wires, extending from Marysville, Kansas, a distance of twenty-one miles to the Kansas-Nebraska Line, where it is connected to a pair of wires of the Lincoln Telephone and Telegraph Company, extending to Fairbury, Nebraska, and

(b) One pair of .104 gauge copper wires, extending from Hollenberg, Kansas, a distance of about three miles to the Kansas-Nebraska State Line, where it is connected to a pair of wires of the Lincoln Telephone and Telegraph Company, extending to Fairbury, Nebraska, and used in connection with a circuit from Marysville, Kansas, to Fairbury, Nebraska.

5. *Belleville, Kansas, to Kansas-Nebraska State Line (Fairbury, Nebraska).*—One pair of .104 gauge copper wires, extending from Belleville, Kansas, a distance of about thirteen miles to the Kansas-Nebraska state line where it is connected to a pair of wires of the Lincoln Telephone and Telegraph Company extending to Fairbury, Nebraska.

6. *Belleville, Kansas, to Kansas-Nebraska State Line (Hebron, Nebraska).*—One pair of .104 gauge copper wires, extending from Belleville, Kansas, a distance of about thirteen miles to the Kansas-Nebraska state line, where it is connected to a pair of wires of the Lincoln Telephone and Telegraph Company, extending to Hebron, Nebraska.

7. *Belleville, Kansas, to Kansas-Nebraska State Line (Superior, Nebraska).*—One pair of .104 gauge copper wires, extending from Belleville, Kansas, a distance of about thirteen miles to the Kansas-Nebraska state line, where it is connected to a pair of wires of the Lincoln Telephone and Telegraph Company extending to Superior, Nebraska.

8. *Concordia, Kansas, to Belleville, Kansas, and Concordia, Kansas, to Kansas-Nebraska State Line (Superior, Nebraska).*—(a) One pair of .104 gauge copper wires, extending from Concordia, Kansas, a distance of about thirty-one miles to the Kansas-Nebraska state line, where it is connected to a pair of wires of the Lincoln Telephone and Telegraph Company, extending to Superior, Nebraska.

(b) One pair of .104 gauge copper wires, extending from Concordia, a distance of about eighteen miles, to Belleville, Kansas, and used in connection with a circuit between Concordia, Kansas, and Superior, Nebraska.

9. *Mankato, Kansas, to Kansas-Nebraska State Line (Superior, Nebraska).*—Two pairs of .104 gauge copper wires, extending from Mankato, Kansas, a distance of about seventeen miles, to the Kansas-Nebraska state line, where they are connected to two pairs of wires of the Lincoln Telephone and Telegraph Company, extending to Superior, Nebraska.

10. *Smith Center, Kansas, to Kansas-Nebraska State Line (Red Cloud, Nebraska).*—One pair of .104 gauge copper wires, extending from Smith Center, Kansas, a distance of about twenty-one miles, to the Kansas-Nebraska state line, where it is connected to a pair of wires of the Lincoln Telephone and Telegraph Company, extending to Red Cloud, Nebraska.

11. *Phillipsburg, Kansas, to Kansas-Nebraska State Line (Oxford, Alma, and Holdrege, Nebraska).*—(a) One pair of .104 gauge copper wires, extending from Phillipsburg, Kansas, a distance of about seventeen miles, to the Kansas-Nebraska state line, where it is connected to a pair of wires of the Northwestern Bell Telephone Company, extending to Oxford, Nebraska, and used in connection with a circuit between Phillipsburg, Kansas, and Holdrege, Nebraska.

(b) One pair of .104 gauge copper wires, extending from Phillipsburg, Kansas, a distance of seventeen miles to the Kansas-Nebraska state line, where it is connected to a pair of wires of the Northwestern Bell Telephone Company, extending to Alma, Nebraska, and is used in connection with a circuit between Phillipsburg, Kansas, and Holdrege, Nebraska.

12. *Colby, Kansas, to Oberlin, Kansas, and Oberlin, Kansas, to Kansas-Nebraska State Line (McCook, Nebraska).*—(a) Two pairs of .104 gauge copper wires, extending from Oberlin, Kansas, a distance of about twelve miles to the Kansas-Nebraska state line, where they are connected to two pairs of wires of the Northwestern Bell Telephone Company, extending to McCook, Nebraska, and

(b) One pair of .104 gauge copper wires, extending from Colby, Kansas, a distance of about 58 miles to Oberlin, Kansas, and used in connection with a circuit from Oberlin, Kansas, to McCook, Nebraska.

13. *St. Francis, Kansas, to Kansas-Nebraska State Line (Wray, Colorado).*—One pair of .104 gauge copper wires, extending from St. Francis, Kansas, a distance of about seventeen miles, to the Kansas-Nebraska state line, where it is connected to a pair of wires of the Northwestern Bell Telephone Company, extending through Nebraska and by connection with the lines of another telephone company into Wray, Colorado.

14. *Norton, Kansas, to Kansas-Nebraska State Line (Beaver City, Nebraska).*—One pair of .104 gauge copper wires, extending from

Norton, Kansas, a distance of about twelve miles, to the Kansas-Nebraska state line, where it is connected to a pair of wires of the Nebraska Continental Telephone Company, extending to Beaver City, Nebraska.

15. *Colby, Kansas, to Kansas-Colorado State Line (Denver, Colorado), Colby, Kansas, to Goodland, Kansas (Denver, Colorado), and Goodland, Kansas, to Kansas-Colorado State Line (Burlington, Colorado).*—(a) One pair of .104 gauge copper wires, extending from Colby, Kansas, a distance of about fifty-seven miles to the Kansas-Colorado state line, where it is connected to a pair of wires of the Mountain States Telephone and Telegraph Company, extending to Denver, Colorado,

(b) One pair of .104 gauge copper wires, extending from Colby, Kansas, a distance of about thirty-six miles to Goodland, Kansas, and used in connection with a circuit from Colby, Kansas, to Denver, Colorado, and

(c) One pair of .104 gauge copper wires, extending from Goodland, Kansas, a distance of about seventeen miles to the Kansas-Colorado state line, where it is connected to a pair of wires of the Mountain States Telephone and Telegraph Company, extending to Burlington, Colorado.

16. *Kanorado, Kansas, to Kansas-Colorado State Line (Burlington, Colorado).*—One pair of .134 gauge iron wires, extending from Kanorado, Kansas, about one mile to the Kansas-Colorado state line, where it is connected to a pair of wires of the Mountain States Telephone and Telegraph Company, extending to Burlington, Colorado.

17. *Sharon Springs, Kansas, to Kansas-Colorado State Line (Cheyenne Wells, Colorado).*—One pair of .104 gauge copper wires, extending from Sharon Springs, Kansas, a distance of about sixteen miles to the Kansas-Colorado state line, where it is connected to a pair of wires of the Mountain States Telephone and Telegraph Company, extending to Cheyenne Wells, Colorado.

18. *Tribune, Kansas, to Kansas-Colorado State Line (Eades, Colorado).*—One pair of .104 gauge copper wires, extending from Tribune, Kansas, a distance of about fourteen miles to the Kansas-Colorado state line, where it is connected to a pair of wires of the Mountain States Telephone and Telegraph Company, extending to Eades, Colorado.

19. *Salina, Kansas, to Concordia, Kansas (Lincoln, Nebraska).*—One pair of .104 gauge copper wires, extending from Salina, Kansas, a distance of about sixty miles, to Concordia, Kansas, and used in connection with a circuit from Salina, Kansas, to Lincoln, Nebraska.

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20. *Hays, Kansas, to Salina, Kansas (Kansas City, Missouri)*.—One pair of .104 gauge copper wires, extending from Hays, Kansas, a distance of about one hundred and nine miles to Salina, Kansas, and used in connection with a circuit between Hays, Kansas, and Kansas City, Missouri.

21. *Concordia, Kansas, to Manhattan, Kansas (Kansas City, Missouri)*.—One pair of .104 gauge copper wires, extending from Concordia, Kansas, a distance of about eighty-six miles to Manhattan, Kansas, and used in connection with a circuit from Concordia, Kansas, to Kansas City, Missouri.

Provided, however, That neither the granting of this application nor anything herein contained shall be construed as a finding by the Commission of the value of the property acquired or as approval by the Commission of the accounting to be performed in recording the purchase, sale, and related transactions.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D. C.

In the Matter of ROY L. ALBERTSON (WBNY), BUFFALO, NEW YORK. For Renewal of License.	}	DOCKET No. 4991.
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Decided December 16, 1938

H. H. Shinnick on behalf of the applicant; and *James D. Cunningham* on behalf of the Federal Communications Commission.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION (Case, Commissioner, not participating) :

STATEMENT OF FACTS

This proceeding arose upon the filing of the application of Roy L. Albertson, Buffalo, New York, for renewal of the license of Station WBNY. Upon examination thereof, the Commission designated the application for hearing to examine the qualifications of the applicant with particular reference to the question as to whether he had transferred the control of WMBO, Inc., licensee of Station WMBO, Auburn, New York, without consent of the Commission and in violation of the provisions of Section 310 (b) of the Communications Act of 1934. The hearing was conducted by an examiner, who recommended in his report (No. I-673) that the application be granted. The applicant filed exceptions to certain conclusions of the examiner but did not request an opportunity for oral argument.

The Commission has determined that the actions of this applicant in connection with WMBO, Inc., do not constitute a violation of Section 310 (b) of the Communications Act. The basic facts and considerations upon which this finding is based are set forth in the Commission's Statement of Facts and Grounds for Decision in Dockets numbered 4375 and 4971.

There were no other issues raised regarding the qualifications of the applicant and no questions with reference to the service of Station F. C. C.

tion WBNY. The applicant, however, submitted evidence which shows that this station is well equipped from an engineering standpoint, is operated by an adequate staff and renders a meritorious broadcast service.

GROUNDS FOR DECISION

1. The applicant has not transferred control of WMBO, Inc., in violation of the provisions of the Communications Act of 1934.
2. The applicant is qualified to continue the operation of Station WBNY.
3. The granting of this application for renewal of license and the continued operation of Station WBNY will serve the public interest, convenience, and necessity.

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D. C.

In the Matter of
MAGNOLIA PETROLEUM COMPANY (Owner), and
SABINE BROADCASTING COMPANY, LICENSEE OF
STATION KFDM,
BEAUMONT, TEXAS. } DOCKET No. 4767.
For Voluntary Assignment of License to
Beaumont Broadcasting Corporation.

Decided December 16, 1938

George E. Elliott on behalf of the applicants; Hugh B. Hutchison
on behalf of the Commission.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION (Case, Commissioner, not participating):

STATEMENT OF FACTS

This proceeding arose upon an application requesting the Commission's authority for a voluntary assignment of the license of Station KFDM, Beaumont, Texas (operating on the frequency 560 kilocycles, with power of 500 watts night, 1 kilowatt L. S., unlimited time), from the Sabine Broadcasting Company to the Beaumont Broadcasting Corporation. On October 12, 1937, a hearing was held on the above application before an examiner, who, in his report (I-565) recommended that it be granted. No exceptions were filed nor was oral argument requested. Later, certain affidavits and letters were received by the Commission, which raised the question as to whether the licensee had violated Section 310 (b) of the Act by transferring control of Station KFDM without Commission approval. This necessitated a delay in order that this matter might be thoroughly investigated, to which reference is hereinafter made.

Station KFDM, Beaumont, Texas, was originally constructed in 1924 by the Magnolia Petroleum Company. It was established at the solicitation of local civic and community leaders and was not operated on a commercial basis until the year 1929. At that time the station

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was removed to an improved site, new studios were leased, and modern transmitting equipment was installed. From 1929 until June 1932 a limited amount of advertising was sold in order to defray in part the expense of operation. During the period of operation by the Magnolia Petroleum Company, from 1924 to December 1931, the company sustained an operating loss of \$84,356.69, exclusive of depreciation and taxes.

On June 22, 1932, the Magnolia Petroleum Company leased the station and its equipment to the Sabine Broadcasting Company at a monthly rental of \$300. This lease contained an option in favor of the lessee to purchase the station for a consideration not to exceed \$100,000. The option was never exercised. Pursuant to this lease, the license of Station KFDM was assigned, with the approval of the Federal Radio Commission, to the Sabine Broadcasting Company which has operated the station up to the present time. The lease expired by its terms on June 1, 1937, and has never been renewed. The licensee has, however, continued to operate the station.

On April 21, 1937, the Magnolia Petroleum Company, as owner, and the Sabine Broadcasting Company, as lessee and licensee, entered into an option agreement with C. W. Snider for the sale and transfer of the station and its equipment and physical assets, including studio furniture and fixtures, for a total consideration of \$115,000. Under the terms of this agreement, \$90,000 was to be paid to the Magnolia Petroleum Company and \$25,000 to the Sabine Broadcasting Company. The latter sum was to be set aside as a special fund to be disbursed by the Magnolia Petroleum Company in payment of the debts of the licensee corporation. After the payment of these debts the remainder of the \$25,000, if any, is to be paid to the Sabine Broadcasting Company. It was also stated in this agreement that C. W. Snider was to form a private corporation and that should the option be exercised, said corporation was to be substituted as purchaser in lieu of Mr. Snider. On April 28, 1937, Mr. Snider notified the other parties to the agreement of his acceptance of the contract on behalf of himself and his associates, and on May 19, 1937, a corporation, known as the Beaumont Broadcasting Corporation, was organized under the laws of the State of Texas for the purpose of completing the purchase of the station and assuming the operation thereof. In a supplemental agreement dated May 24, 1937, the Beaumont Broadcasting Company was substituted and succeeded to all the rights of C. W. Snider in the original agreement of April 21, 1937. On the same date appropriate corporate action was taken by resolutions of the boards of directors of the Magnolia Petroleum Company, the Sabine Broadcasting Company, and the Beaumont Broadcasting Corporation ratifying the terms of the contract of sale.

Pursuant to the terms of the original option agreement, \$25,000 in cash was deposited by the Beaumont Broadcasting Corporation with the Magnolia Petroleum Company. This sum is to be applied on the purchase price upon approval of the assignment by the Commission. Under the terms of the original agreement, as amended, an additional \$40,000 is to be paid in cash upon the approval of the assignment, \$20,000 to be paid on or before the expiration of one year from the date of approval, and the remaining \$80,000 to be paid on or before two years from said date. The option agreement dated April 21, 1937, also contains the following provision :

In any event, the purchaser, whether C. W. Snider or such corporation, shall execute the notes for the deferred payments, which notes shall be secured by a chattel mortgage lien on all assets purchased as well as the right to operate said station and all other rights pertaining thereto or connected therewith.

It is clear that the legal and practical effect of the above provision is to create a mortgage upon the right to operate the station as security for payment of purchase money obligations. If the above provision be enforced, upon the mere failure of the purchaser to make payments promptly upon the dates specified, the Magnolia Petroleum Company would not only repossess itself of the physical property and equipment of the station but would, in addition, take over the operation and management thereof. This would be tantamount to a reassignment of rights granted under the station's license without the authority of this Commission. It is manifest, therefore, that this provision is on its face repugnant to Section 310 (b) of the Communications Act of 1934. When questioned concerning this clause, a witness of the Magnolia Petroleum Company testified, in substance, that it was not the intention of that corporation to attempt to exercise any rights under the station's license without making proper application therefor to the Commission. However, this witness was not an officer of the corporation and it was not shown that his statement was authorized by any official corporate action. His testimony is not, therefore, binding upon the corporation and, in any event, cannot be construed to cure the provision of its objectionable features. While it is true that this Commission and its predecessor (Federal Radio Commission) has in the past granted authority for assignments of licenses based on leases and other contracts containing provisions that were found to be contrary to the Communications Act and not in the public interest, this was done on the theory that such approval would not carry with it approval of the objectionable provisions in question or of other terms of the contract beyond the mere transfer of the license. Experience has shown, however, that this construction may mislead the public in general as well as parties to these agreements (see the Commission's decision in the matter of Associated Broadcasters, Inc. (KSFO),

Assignor, and the Columbia Broadcasting System of California, Inc., Assignee, for voluntary assignment of license, Docket No. 4206). For reasons set forth elsewhere in this decision, the Commission is of the opinion that a grant of the application discussed herein will serve the public interest, but because of the objectionable character of the provision above quoted, contained in the contract of April 21, 1937, and carried forward in a supplemental agreement dated May 24, 1937, consent cannot be given to the assignment of license under consideration unless such provision be modified in accordance with the order entered herein.

As further consideration for the sale of Station KFDM, the Magnolia Petroleum Company has agreed to lease to the Beaumont Broadcasting Corporation land and buildings used in connection therewith for a period of five years at a rental of \$1.00 per annum with the privilege of an additional five-year lease under the same terms. The Magnolia Petroleum Company has also agreed to furnish the assignee with sufficient power to operate the station at the rate of \$50.00 per month for a period of five years with the privilege of renewing the contract for an additional term of five years at the same price. It was estimated by two witnesses that a fair rental on the buildings proposed to be leased would be \$200 per month, representing a saving to the assignee, over a period of ten years, of approximately \$24,000, and that the sale of power under the terms of the above agreement would effect a saving to the assignee of approximately \$100 a month over a period of ten years, or a total of \$12,000.

According to an inventory of the property of Station KFDM (exclusive of land and buildings, not involved in the proposed sale) as of May 1, 1937, the original cost of the equipment and physical properties of the station was \$51,586.38, the depreciated value \$29,404.43, and the replacement value (new) \$57,183.37. An engineering expert of the Beaumont Broadcasting Corporation who had examined the transmitting equipment testified that, in his opinion, the depreciated value thereof is \$15,615.94 and that it would cost \$19,269.50 to install similar modern equipment. The evidence clearly indicates that the station's equipment is at present in good condition and has in the past been kept in the proper state of repair. The transmitter was installed in 1929 at an original cost of \$31,096.79 and has been rebuilt from time to time. The transmitter building, which is constructed of brick and concrete, was installed in the same year at a cost of \$12,000. A witness for the Commission, who based his opinion solely upon the description of the equipment shown in the record, estimated that the present value of the transmitter is approximately \$4,000 and that the value of the antenna and ground system is approximately \$2,000. The replace-

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ment value of the transmitter, complete with studio equipment, was estimated by the same witness to be approximately \$18,500. This witness, however, made no personal examination of this equipment.

According to a balance sheet submitted in evidence, as of August 31, 1937, the Sabine Broadcasting Company had total assets of \$30,729.82 and liabilities of \$29,447.12. At the date of the original contract of sale (April 21, 1937) it was estimated that there were outstanding contracts approximating \$20,000 for the purchase of time over Station KFDM. Since that time, however, the evidence indicates that approximately \$8,000 of that sum has been collected, but that new contracts are being made daily which would replace those collected. Under the terms of the contract of sale these advertising contracts are to be turned over to the Beaumont Broadcasting Corporation as a part of the consideration.

According to a profit and loss statement of the Sabine Broadcasting Company for the period from May 1, 1936, to April 30, 1937, Station KFDM earned a total broadcasting revenue of \$57,512.05 and incurred total operating expense of \$53,416.86. Profit and loss statements for July and August 1937 show a total income of \$41,190.19 and total operating expenses of \$39,907.49; accounts receivable, \$6,619.22; and accounts payable, \$14,141.90. It appears from the testimony of a representative of the Magnolia Petroleum Company, however, that KFDM has never operated at a profit. These losses were ascribed to several different factors. Mr. J. N. Gilliam, president of the Sabine Broadcasting Company, who has had the practical supervision of the operation of KFDM, has been in failing health for a period of several years and due to his disabilities Mr. Gilliam has been unable to properly finance the station or to supervise its operation in accordance with the standards required to render an acceptable public service. Moreover, the station was leased to the present licensee at the height of the depression and at a time when the local industries were paralyzed through overproduction. This condition prevailed for a period of two or three years, thereby reducing the spending capacities of business establishments and residents of the community, which, in turn, adversely affected the finances of the station.

The record shows that at the time of the hearing, the licensee corporation was still heavily involved in financial obligations. There is also evidence that Mr. Gilliam at one time entered into a contract with one James C. Ulmer under the terms of which the latter took over the entire management, supervision, and operation of the station for a period of several weeks and had, during this time, complete control over the station's policies. It appears that this contract (which was never submitted to the Commission for ratification or

approval) has since been abrogated. All of the stock of the Sabine Broadcasting Company is owned by J. N. Gilliam, his wife, Virginia Gilliam, and Willie Adams.

The Beaumont Broadcasting Corporation, the assignee herein, is capitalized at \$125,000 and is authorized to issue 1,250 shares of stock at a par value of \$100 each. All of this stock has been subscribed. \$75,000 has been paid in cash for part of the stock and the remainder, which has been subscribed, is subject to the call of the directors. As shown above, \$25,000 of the purchase price was deposited upon the signing of the original option agreement and, as of June 1, 1937, the corporation had cash on hand in the amount of \$50,000. Apart from the capital stock, no liabilities were shown.

Under the terms of its charter, the Beaumont Broadcasting Corporation is empowered to construct, maintain, and operate a broadcast station. All of the officers, directors, and stockholders are citizens of the United States and residents of the State of Texas. Five of the stockholders reside in Beaumont. The evidence indicates that all of the stockholders are fully qualified financially to pay for their respective stock subscriptions.

Charles W. Snider, president of the Beaumont Broadcasting Corporation, has been successfully engaged in real estate investments, oil production and refining and a number of other business enterprises and has a net worth of \$436,924.96. He testified that he is willing to assume the subscriptions of any or all of the other subscribers for the additional shares of stock. Mr. Snider is also actively associated with a number of local civic institutions and has devoted much time and money to the advancement of the social and civic welfare of the community.

D. A. Kahn, secretary and treasurer of the Beaumont Broadcasting Corporation, will be manager of Station KFDM under the proposed ownership. He has had 8 years of experience as business manager of Station KGKO, Fort Worth, Texas. A number of the other stockholders are identified with civic, religious, and charitable activities in their respective communities.

According to the 1930 United States Census, the population of Beaumont, Texas, was 57,732, and that of Jefferson County, of which Beaumont is the County seat, was 133,391. According to the 1935 United States Census of Retail Distribution, there were 886 retail stores located in Beaumont, with annual sales of \$23,025,000 and in Jefferson County there were 1,810 retail outlets with total annual sales of \$40,348,000. Three advertising experts will be employed by the assignee herein for the purpose of securing local business and the evidence indicates that the station had recently made a contract with

a representative of an advertising firm of national reputation for the purpose of securing national contracts and that some have already been obtained. Prior to that time the national advertising had been negligible.

It is estimated that monthly operation expense under the proposed ownership and management will be \$5,180 and the monthly income \$7,500. The latter estimate was predicated upon a survey made by a representative of the proposed assignee of potential sources of advertising and the increased business which is expected to result from certain contemplated improvements in the service. It is not proposed to increase the present advertising rate.

At the time of the hearing it appeared that there had been decided improvements in business conditions in Beaumont, resulting in increased wages, the organization of new industries, and investments in new enterprises. In this connection seven or eight new oil fields have been discovered in areas adjacent to Beaumont, resulting in increased business activities.

An extensive survey has been made of the civic, educational, and religious institutions of Beaumont by a representative of the Beaumont Broadcasting Corporation. As a result thereof, 25 organizations of this character indicate their intention to avail themselves of the facilities of the station. It is the purpose of the assignee to allot these organizations time free of charge and to appoint a director to supervise building their programs in order that the institutions may reap the full benefit of the facilities offered.

A tentative program schedule submitted in evidence indicates that the program service as a whole will be well balanced, instructive, entertaining, and designed to meet the needs and interests of the residents of the area proposed to be served. Special farm programs will be featured and stock, crop, grain, and weather reports will be regularly broadcast. The religious programs will be in charge of the local Ministerial Alliance and the allotted time will be divided equally among the various churches. A tentative contract has been entered into with the National Broadcasting Company for the programs of this network and approximately 47 percent of the total allotted time will be devoted thereto. The World Transcription Service and the United States News Service will also be used.

Tentative arrangements have been made by the Beaumont Broadcasting Corporation to secure an adequate staff of qualified employees to insure the efficient operation of the station. The present staff will be reorganized and sufficient additional employees will be secured for this purpose. An experienced electrical engineer will supervise the technical operation of the station. The present studio space is inadequate.

quate to meet the requirements of the Beaumont Broadcasting Corporation, and it is proposed to acquire larger quarters which will be suitably fitted and equipped for the proposed service. It appears that under the present management, the station has not made any extensive use of local talent programs. It is the intention of the proposed management to make greater use of such local talent as may be available, and auditions will be given for this purpose. The record indicates that local dramatic groups, orchestras, and other organizations constitute sources of potential talent.

GROUNDS FOR DECISION

1. The proposed assignee is qualified in all respects to assume the license of Station KFDM and to continue its operation.

2. Under the proposed ownership and management the broadcast service of Station KFDM will be materially improved.

3. A grant of the application will serve the public interest.

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of ROY L. ALBERTSON, Transferor, AUBURN PUBLISHING COMPANY, Transferee, AUBURN, NEW YORK. For Consent to the Transfer of Control of WMBO, Inc.	} DOCKET No. 4375.
WMBO, INC., AUBURN, NEW YORK. For Renewal of Station License.	} DOCKET No. 4971.

Decided December 16, 1938

H. H. Shinnick on behalf of the applicants; and *Walter Johnson* and *James D. Cunningham* on behalf of the Federal Communications Commission.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION (Case, Commissioner, not participating):

STATEMENT OF FACTS

Roy L. Albertson and the Auburn Publishing Company filed a joint application for consent to the transfer of control of WMBO, Inc., licensee of Station WMBO, Auburn, New York. Upon examination thereof, the Commission designated the application for hearing. Following the hearing and the filing of an examiner's report on the matter (Report No. I-430), the application for renewal of station license filed by WMBO, Inc., was designated for hearing. An examiner's report of that proceeding has been filed (No. I-672). Exceptions have been filed in each case by the applicants and oral arguments thereon have been heard by the Commission. Because of the interrelationship of the applications and the evidence relative to the same, the two cases will be considered together.

The Auburn Publishing Company, the proposed transferee of the capital stock of WMBO, Inc., is organized as a corporation under the laws of New York. Its principal business is the publication of
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a daily newspaper, the "Citizen-Advertiser," at Auburn, New York. The principal stockholders of the corporation, which has a total capitalization of 2,000 shares, are Charles D. Osborne, President, 1,094 shares; Lithgow Osborne, Vice President, 366 shares; and William O. Dapping, Secretary, 444 shares. The evidence shows that all of its officers and stockholders are citizens of the United States and that the proposed transferee has the legal qualifications required by the provisions of the Communications Act, particularly Section 310, as conditions to the granting of an authorization such as applied for herein.

The financial statement of the Auburn Publishing Company discloses total assets in the amount of \$371,621.73, liabilities exclusive of capital and surplus in the amount of \$37,510.84, and a net worth of \$334,110.89. It is qualified and able to provide strong financial support for WMBO, Inc.

The officers of the Auburn Publishing Company, which was established at Auburn by Thomas Mott Osborne in 1905, are thoroughly familiar with community interests, including educational, social, religious, civic, and commercial activity, and accordingly qualified to render important assistance to a local radio service. In this connection the evidence shows that while the newspaper published by the Auburn Publishing Company is the only daily paper published in the community, it has keen competition from Rochester and Syracuse papers, which maintain local offices and delivery systems, carry special features relating to Auburn, and have a combined circulation as great, if not greater, than that of the local paper.

The Auburn Publishing Company, on July 28, 1936, contracted to purchase the capital stock of WMBO, Inc., licensee of Station WMBO, from Roy L. Albertson. Albertson is a resident of Buffalo and licensee of Station WBNY in that city. He had acquired an interest in WMBO, Inc., in February 1936 through purchase of 150 shares of its total issue of 180 shares from George I. Stevens for a consideration of \$7,000. After acquiring a controlling interest in WMBO, Inc., he found the corporation in urgent need of capital for purchase of equipment, in need of operating funds, and harassed with claims and law suits not disclosed until after his purchase of its stock. It was difficult for him to give the station in Auburn, which is three hundred miles from Buffalo, the attention conditions warranted, and the station needed local support from the community, as well as new capital.

The Auburn Publishing Company agreed to pay \$15,000 for the entire capital stock of WMBO, Inc., the proposed transfer to be made subject to the approval of the Commission. However, \$5,000

was advanced immediately to Albertson for payment of pressing obligations relating to WMBO, and thereafter the balance of \$10,000 was advanced to him. The stock proposed to be transferred was deposited with the Auburn Trust Company in Albertson's name; no transfer was made on the books of WMBO, Inc. Practically the full amount of the \$15,000 received by Albertson is accounted for in his testimony showing payments for 150 shares of stock in WMBO, Inc., purchased from Stevens (in a transfer which was approved by the Commission), payment for the thirty remaining shares purchased in order that the entire issue could be transferred to the Auburn Publishing Company, purchases of equipment for Station WMBO, and payment of various claims against the station.

On November 24, 1936, the Commission granted WMBO, Inc., a construction permit to install a new transmitter, increasing the daytime operating power of Station WMBO from 100 to 250 watts. Pursuant to this permit, the station was completely rebuilt, the Auburn Publishing Company establishing a credit at the Auburn Trust Company for WMBO, Inc., for the capital necessary to purchase equipment and make installations within the time fixed by the terms of the permit. Approximately \$20,000 was loaned to WMBO, Inc., in this manner during the spring and summer of 1937.

The application filed October 13, 1937, by WMBO, Inc., for renewal of station license was designated for hearing upon a question as to whether or not control of the licensee had been transferred without the consent of the Commission as required under the provisions of Section 310 of the Communications Act of 1934.

The evidence shows that notwithstanding its payment of \$15,000 to Albertson in connection with its contract to purchase the capital stock of the licensee corporation and loans of approximately \$20,000 for reconstruction of Station WMBO, the Auburn Publishing Company has not exercised any control whatever in the corporate organization of WMBO, Inc., and that it has not interfered with or taken any part in the management of Station WMBO. The stock in the corporation has not been transferred to the Auburn Publishing Company. The President of the licensee corporation, Roy L. Albertson, has continued to direct the programs of the station and manage its business with the assistance of a manager appointed by him prior to the contract for the sale of stock to the Auburn Publishing Company.

No change has been made in connection with the advance payments to Albertson or the loans to WMBO, Inc., in the original agreement making the proposed transfer of stock to the Auburn Publishing Company dependent upon and subject to the approval of the Commission.

Station WMBO is equipped from an engineering standpoint to render efficient service. The new transmitter is of approved design and is housed in a new fireproof building especially constructed for the purpose. The station plant includes a new radiator 208' high, studios of modern construction, and complete studio equipment.

The evidence presented in connection with the application for renewal of license shows that the program service of Station WMBO has been materially improved during the past year and that it is rendering a meritorious service to residents of its community. Improvements in the business of the station have followed improvements in service and a recent report of operations shows a profit.

Station WMBO is the only broadcast station located within the City of Auburn, but some degree of service is available in the surrounding area from Stations WHAM, Rochester, and WFBL and WSYR-WSYU, Syracuse.

The population of Auburn is 36,652 and that of Cayuga County, in which it is located, is 64,751. There are approximately 60 manufacturing plants located in Auburn, 57 wholesale establishments, and 270 service establishments.

Upon approval of the proposed transfer of the stock of WMBO, Inc., control of the service of Station WMBO will pass from Roy L. Albertson, who is a resident of Buffalo, New York, and licensee of a station at that locality, to the Auburn Publishing Company and officers of that corporation, who are residents of the community served by Station WMBO, more familiar with its needs and interests, and therefore better qualified to manage the licensee corporation and through it the service of Station WMBO.

GROUNDS FOR DECISION

1. The granting of consent for the proposed transfer of the capital stock of WMBO, Inc., from Roy L. Albertson to the Auburn Publishing Company will be in the public interest.
2. The licensee, WMBO, Inc., has not violated Section 310 of the Communications Act of 1934.
3. The continued operation of Station WMBO will serve public interest, convenience, and necessity.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D. C.

<p>In the Matter of JUAN PIZA, SAN JUAN, PUERTO RICO, For Construction Permit (Experimental station).</p>	}	<p>DOCKET No. 5043.</p>
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Decided December 19, 1938

Elmer W. Pratt on behalf of the applicant; and *Walter Johnson* on behalf of the Commission.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION (Payne, Commissioner, not participating) :

STATEMENT OF FACTS

Juan Piza, San Juan, Puerto Rico, commenced this proceeding by filing an application for a permit to construct a new experimental broadcast station to operate on 4797.5 kilocycles, 6425 kilocycles, and 8655 kilocycles, with power of 1 kilowatt, A3 emission, unlimited time.

The matter was designated for hearing before an examiner who has filed his Report (No. I-720) herein, recommending that the application be denied.

On September 6, 1938, counsel for the applicant filed a statement with the Secretary of the Commission as follows:

On behalf of the applicant in the above entitled case you are advised that no exceptions will be filed to the Examiner's Report (I-720) in this case and that it is not the applicant's desire to prosecute this case further.

Upon the statement made there is little, if any, need to review the record in its entirety.

The applicant, Juan Piza, is licensee of regular broadcast station WNEL, San Juan, Puerto Rico, but he does not claim any extensive knowledge of the technicalities of radio. The frequencies requested in the application under consideration are available for general experimental stations under Rule 314, and for experimental broadcast

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stations under Rule 1073. Regular program service broadcast on the frequencies mentioned is prohibited under Rule 1072 (a) unless specifically authorized in the license.

The applicant's willingness to finance the proposed station is due to his desire to contribute something to the radio art; and he has employed a consulting engineer in New York City, U. S. A., to supervise the research to be carried on by the proposed station. The supervision, however, is to be done in the City of New York.

The research proposed by the applicant embraces in the main an investigation of sky-wave radiation on the above-mentioned frequencies by means of recording equipment in New York City and in Berlin College, Havana, Cuba. Considerable testimony was introduced at the hearing, but no definite experimental objective or any unified plan of experimentation or research was developed. It is questionable that the research proposed would result in any new contribution to the radio art.

The frequencies specified by the applicant are allocated by Commission Regulation (Rule 1073 (a)) for assignment to experimental broadcast stations. The conditions under which such assignment may be made (Rule 1071 (a)) are as follows:

1. That the applicant has a program of research and development which cannot be successfully carried on under any of the classes of broadcast stations already allocated, or is distinctive from those classes.

2. That the program of research has reasonable promise of substantial contribution to the development of broadcasting, or is along lines not already thoroughly investigated.

3. That the program of reasearch and experimentation will be conducted by qualified persons.

4. That the applicant is legally and financially qualified and possesses adequate technical facilities to carry forward the program.

5. That the public interest, convenience, and necessity will be served through the operation of the proposed station.

A further restriction upon the use of frequencies such as those specified by the applicant is contained in Rule 1072 (a), which provides that a licensee of an experimental broadcast station shall broadcast programs only when they are necessary to experiments being conducted.

If the construction permit sought is granted, the operation of the station will be placed in charge of the Chief Engineer of Radio Station WNEL. He holds a first-class radio telephone operator's license and has had experience in the construction of broadcast stations, but he has had very little, if any, experience in experimental radio work.

The testimony indicates that if the application is granted the programs of the proposed station would be obtained largely from Station WNEL. It was explained by the engineer of the applicant that it would be a needless expense to prepare an entirely different program for an experimental station. No assignments have heretofore been made by the Commission, of such frequencies as those sought, for continuous program use.

GROUNDS FOR DECISION

1. The applicant has not shown that either he or his technical staff is qualified to undertake his program of experimentation.

2. The applicant failed to show that he has a definite plan of research and development requiring the frequency assignments sought.

3. The applicant has not shown that his application might be granted under the Rules and Regulations of the Commission, particularly Rules 1070-1076, inclusive.

4. The research proposed by the applicant is not of sufficient importance to justify continued broadcast operation on experimental frequencies under Rule 1072 (a) by specific authorization of such operation in the license.

5. The granting of the application would not serve public interest, convenience, or necessity.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D. C.**

In the Matter of
CITY OF SEATTLE,
SEATTLE, WASHINGTON.

For a Construction Permit, Public Coastal
Harbor Radiotelephone Station.

} DOCKET No. 4832.

Decided December 19, 1938

Glen E. Wilson on behalf of the applicant; *Otto B. Rupp, Harvey Hoshour, Arthur T. George, and Edmund S. Hawley* on behalf of Pacific Telephone and Telegraph Company; and *Elizabeth C. Smith* and *William H. Bauer* on behalf of the Commission.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION (Walker, Commissioner, dissenting; Payne, Commissioner, not participating):

STATEMENT OF FACTS

This proceeding arose upon the application of the City of Seattle, Harbor Department, for a permit to construct a coastal harbor radiotelephone station at Seattle, Washington, with a power of 200 watts, to be operated in the public coastal service for communication with ship telephone stations operating in Puget Sound and adjacent waters. The frequency requested in the original application was 2522 kilocycles, which was then and is now licensed for use by public coastal harbor radiotelephone Station KOW at Edmonds, Washington, owned and operated by Pacific Telephone and Telegraph Company, the respondent herein, and serving the area sought to be served by the City of Seattle.

The Commission was unable to determine from an examination of the application that the granting thereof would serve public interest, convenience, or necessity, and in accordance with Section 309 (a) of the Communications Act of 1934 designated the application for hearing before an examiner. Appropriate notice of the time and place of the hearing and the issues to be determined therein was served upon

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the applicant and all interested parties. A hearing was held before an examiner at Seattle, Washington, on October 27 and 28, 1937, and all interested parties desiring to be heard were permitted to participate.

The applicant, through counsel, at the opening of the hearing moved to be permitted to amend its application by changing the frequency requested from 2522 kilocycles to 2738 kilocycles. No objection was interposed and the examiner reserved decision under Rule 103.8 of the Rules of Practice and Procedure. An amendment in writing in conformity with the oral motion of counsel was duly filed, and the Commission thereafter authorized such amendment to the application.

On December 1, 1937, the respondent, Pacific Telephone and Telegraph Company, petitioned the Commission to reopen the record and to permit it to introduce additional documentary evidence as a part thereof. Notice of such petition was given to the applicant and no objection was interposed. On February 11, 1938, after due notice, such further hearing was held, at which the respondent introduced in evidence certain revised tariffs showing reduction in rates applicable to the services of its Station KOW.

The examiner thereafter released his report (III-30), in which it was found that the granting of the application would not serve public interest, convenience, or necessity, and recommended that the application be denied. Exceptions to the examiner's report were filed by the applicant and request for oral argument made by both the applicant and the respondent. Such oral argument was held on June 30, 1938, and, in addition thereto, the parties were permitted to file briefs.

The question presented is whether, under all the evidence adduced, public interest, convenience, or necessity would be served by the granting of this application.

The applicant is a municipal corporation and is the licensee and operator of public coastal telegraph Station KPE at Seattle, which serves vessels in the Puget Sound area and adjacent waters. By this application the City of Seattle contemplates furnishing a Simplex voice communication service between ships operating in the Puget Sound area and a shore station located in Seattle, the charge therefor to be on a word basis. (A Simplex system is a system whereby a single channel is used alternately by each of the two transmitting stations.)

In the operation of the proposed station the applicant, according to the record, would use the present radio operating personnel of its coastal telegraph Station KPE, consisting of a chief operator, three regular operators, and one part-time operator, and would maintain

a continuous 24-hour service. It is proposed to use the frequency 2738 kilocycles for both sending and receiving. The receiver and transmitter are to be located on the same site, approximately 450 feet apart, and on the same premises now housing the equipment of coastal telegraph Station KPE located on Pier 1 in the City of Seattle.

The applicant proposes to act as a forwarding agency and relay the messages between the sender and receiver, i. e., manually, without direct land line telephone connections, in the same manner as it now handles radiotelegraph messages over its existing Station KPE, and to charge the sender a rate of five cents per word, using the cable count, which includes address and signature, on messages sent or received by the station. This charge would not, however, cover messenger service or toll service where needed to relay the message from the shore station to an addressee on land. No minimum charge would be made, and weather reports, storm warnings, and governmental business would be handled free of charge.

The record shows that the equipment proposed to be used would be purchased from the Collins Radio Company for the sum of \$2,486, which is to be paid by turning over to such company ten percent of the gross revenues derived from the operation of such equipment. The contract for the purchase of this equipment has been duly approved by the City Council of Seattle, as evidenced by its Ordinance No. 67402.

The respondent, Pacific Telephone and Telegraph Company, is the licensee of public coastal harbor Station KOW which is located at Edmonds, Washington. The construction permit for the station was authorized pursuant to a decision of the Federal Radio Commission dated June 26, 1931. Subsequent renewals of the station license have been granted by it and its successor, this Commission. The station is licensed to operate on a frequency of 2522 kilocycles with a maximum power of 400 watts, and the corresponding ship stations are licensed to transmit on the frequency 2126 kilocycles, thereby enabling the station to provide Duplex (simultaneous two-way) telephone service by direct connection to its public service land line wire system.

The service area of Station KOW is regarded as all the Puget Sound waters south of the 49th parallel (along the International Boundary line projected westward to the shores of Vancouver Island), and including the Straits of Juan de Fuca to the vicinity of the mouth of the Straits, and, according to the record, measurements and tests made show that satisfactory and dependable service is being furnished any vessel suitably equipped with 50-watt radio

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telephone transmitting apparatus and an adequate radio receiver wherever the vessel may be located within the described service area.

Station KOW of the respondent has 21 licensed operators in its employ and maintains a 24-hour service watch for the handling of messages to and from vessels operating in Puget Sound and adjacent waters, which service includes continuous monitoring on the ship frequency 2126 kilocycles. The operating personnel of this station has been instructed to immediately contact the United States Coast Guard and other appropriate agencies in cases of marine emergencies coming to their attention. A representative of the company testified that the average speed of service for a representative number of calls from ships to land stations is 1.5 minutes.

The equipment used by Station KOW compares favorably with the best type available and is fitted with a "Codan" device to improve the reception of signals from the ship stations which transmit on the frequency 2126 kilocycles. The radiotelephone equipment installed aboard vessels, designed to use the latter frequency, according to the record, costs approximately the same amount as that necessary for communication with the coastal harbor station proposed by the applicant.

The applicant has no radio engineer in its employ and it would be necessary to hire an outside engineer on any problem arising in connection with the proposed station which could not be solved by the radio operators.

The testimony of applicant's witness Palmer as to the feasibility of operating a coastal harbor radiotelephone station at the present site of the applicant's radiotelegraph Station KPE dealt with the interference factors between the two services and the range of the proposed 200-watt radiotelephone transmitter. He predicted that one station would not interfere with the other. This prediction appears to be on a sound basis if the installation were properly engineered. As to the range of a 200-watt transmitter operating on the frequency 2738 kilocycles, no factual data were offered in support of the statement that it would adequately serve the Puget Sound area.

Measurements and tests made at various times of the day provide the only really satisfactory manner in which to determine how free from objectionable noise a particular site may be. There is uncontradicted testimony in the record that the noise level at the receiver site should be low enough to permit the use of commercial circuits with field strengths of from 15 to 30 decibels above one microvolt per meter, depending upon the coverage desired. Electrical noise interference of high intensity is known to adversely affect the reception of

radio signals in the vicinity of industrial areas. The chief sources of noise interference are of a variable nature and, other than that caused by atmospheric disturbances, come from high-voltage electric power systems, electric streetcars, electrical machinery with varying loads, certain electrical apparatus used by the medical profession, the ignition system of automobiles, and other apparatus of a like character. The applicant presented no testimony to show that the proposed site is a sufficiently effective receiving location for the service which it proposes to render.

On the other hand, the engineer for the respondent testified that measurements made at intervals along the Seattle water front show a high noise level along the entire water front, or poor receiving conditions for radiotelephone service. It is not important, from an engineering standpoint, that no test was made of the receiving efficiency at the specific location of Station KPE on Pier 1, inasmuch as observations need be made only in the general vicinity of the station to indicate the receiver noise levels to be encountered at the station's site. It is true that the radiotelegraph receiving equipment of Station KPE is located on the municipal water front, but, as the record also indicates, higher noise levels can be tolerated in radiotelegraph service than in radiotelephone service of equal reliability, when the power usually employed by ship stations in each service is taken into consideration.

Frequency 2738 kilocycles is available for assignment for intership service by the governments of both Canada and the United States under an agreement between representatives of the two governments, and there is evidence in the record to show that the granting of this application would cause interference to ship stations licensed for operation on the West Coast by the Canadian Government, as well as those licensed by this Commission. Under its Rules and Regulations ship stations have a prior right to the use of this frequency, and unless convincing reason is shown why the Commission should change its existing Rules and Regulations or policy, the Commission is compelled to give proper weight to these factors.

An engineer who testified on behalf of the applicant stated that the majority of calls from small boats and ships operating 25-watt and 50-watt equipment in the San Francisco Bay area are entirely intelligible in the Puget Sound area, dependent upon such factors as weather conditions, atmospheric conditions, and time of day or night. It would, therefore, appear from the testimony of applicant's own witness that a 200-watt station at Seattle would cause interference, particularly at night, to ships operating on 2738 kilocycles as far away as the San Francisco harbor. Another witness for the applicant testified that from his yacht, equipped with 50-watt radiotelephone equip-

ment, he had communicated with Seattle very satisfactorily when as far away as Alaska. This witness also testified that the service rendered by Station KOW of the respondent was satisfactory and that his only objection thereto was its alleged excessively high cost.

The engineer for the Commission testified that it is self-evident from an engineering viewpoint that it is impossible to use the frequency 2738 kilocycles for both ship-to-ship and ship-to-shore communication without the delay incidental to interference from simultaneous operation on the same frequency; that the interference range of a 200-watt station is considered to be from 1,000 to 2,000 miles, although the normal service range is very much less; that serious interference would be caused by a 200-watt radiotelephone station for a distance of 300 to 400 miles and there would be times when the proposed station would prevent boats operating in Canadian waters several hundred miles from Puget Sound from communicating with each other on frequency 2738 kilocycles; that there are three ranges of a radio station, either for service or broadcasting—the primary or service area, the secondary area, and the nuisance area—so that in any allocation plan it is necessary to place stations on the same frequency a great many miles farther apart than the overlapping of the two service areas.

The coastal harbor station license to which counsel for applicant referred in his oral argument and in his brief filed thereafter is one granted to the City of New York, originally to its Department of Plant and Structures, to operate a private coastal harbor service on the frequency 2738 kilocycles with a power of 200 watts for rather limited communication with one vessel only, the *Macom*, owned and operated by that City. Counsel for the applicant also asked the Commission to take judicial notice of the respective number of small boats having radio transmitters licensed on the frequency 2738 kilocycles in the New York and Puget Sound harbors. In answer to this contention and request of the applicant, but not as a basis for its decision herein, the Commission points out that the coastal harbor station license granted to the City of New York is for a private service for communication with one vessel only, which was granted by the Federal Radio Commission several years prior to the filing of the application here under consideration and has been renewed at regular intervals; that there were at the time of the original hearing on the present application of the City of Seattle, and there now are, many more ship stations licensed to operate on this frequency on the Pacific Coast than on the Atlantic Coast; that the records of this Commission show that ship radio station licenses have now been granted to approximately 844 boats operating on the Pacific Coast, including about 88 boats whose home port is given as Seattle, indicating a great

increase in the use of frequency 2738 kilocycles by boats in the Puget Sound area as well as on the entire West Coast.

By the terms of a regional agreement between representatives of the Canadian Government and this Commission, for the purpose of minimizing interference between stations of the two countries, the frequency 2738 kilocycles is equally available for assignment and use by both nations. Since the Commission has from the inception of this agreement consistently licensed only low-power ship stations on frequency 2738 kilocycles in the Puget Sound area, the authorization at this time of a coastal harbor station with 200-watts power on this frequency would be at variance with an established policy. Furthermore, the licensing of a coastal harbor station which would cause interference with Canadian ship stations would be a violation of the spirit of this agreement.

Under the Rules and Regulations of the Commission, and pursuant to the agreement hereinbefore mentioned, there are available for assignment to coastal harbor stations in the vicinity of Seattle only two frequencies; first, 2522 kilocycles, on which the Pacific Telephone and Telegraph Company now operates Station KOW; and second, the so-called intership frequency 2738 kilocycles, herein requested, which, pursuant to Rules 229, 275 (c) and 285 (d), is available for use primarily for intership communication and secondarily for coastal harbor service. The fundamental policy underlying these rules is to reserve this frequency primarily for intership communication and to license it for coastal harbor service only when such secondary use will not cause objectionable interference to the intership service of ships licensed either by this country or by Canada.

According to the record, at the time of the hearing there were approximately 20 United States ships operating in the Puget Sound area, out of a total of about 200 such ships operating on the entire Pacific Coast, licensed to use the frequency 2738 kilocycles, and it is to be expected that unlimited operation of the proposed coastal harbor station on the same frequency either would create serious interference to the operation of the ship stations licensed to use this frequency or would cause a drastic reduction in the time which the frequency could be satisfactorily used by these ship stations since the interference range of the proposed station would frequently extend to points several hundred miles from Seattle especially during hours of darkness.

The burden of proof is upon the applicant to show that the granting of its application would serve public interest, convenience, or necessity. The testimony in this record relative to the need for the proposed service is not of a convincing character. Customers for this proposed service must be found generally among the same shipping interests

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which are now served by radiotelegraph Station KPE and by respondent's Station KOW. There has been no showing made that the public is not now being offered adequate service or that the service rendered by Station KOW is now being used to any appreciable extent by the shippers in that area.

A number of individuals connected with the shipping interests in the Puget Sound area testified they felt there is a need for the proposed service, and it also appears from the testimony of these witnesses that a large number of boats operating in this area are equipped only with ordinary broadcast receiving sets with which to obtain weather reports and other meteorological information.

The Chief of Staff of the Seattle division of the Coast Guard testified that there are about 14,000 small boats in the territory of Oregon, Washington, and Alaska; that the Coast Guard receives a great number of calls for assistance through Station KPE, their own stations, the Navy, and other main traffic stations within the area; that the Coast Guard has one station at least which is using 2738 kilocycles for the benefit of vessels equipped with the transmitter for this frequency; that people should be "induced to get some sort of equipment," and that in his opinion the granting of the application would be of assistance in the work of the Coast Guard.

The Assistant Port Warden of the City of Seattle testified that the applicant had made no survey to ascertain the need for the proposed service and that it had no contracts for service with ships, etc., in the event the application should be granted. There was, however, introduced in evidence a report of a survey made by the Port Commission of Seattle, the administrative agency which operates the Port. This report is very general in its nature, showing that of approximately 18 steamship, tugboat, and barge operators in the Puget Sound area consulted, four companies were "definitely favorable"; a representative of one company "believed wireless telephone a good thing"; another "personally approved"; two were said to "react favorably" but made no definite statement; one endorsed the plan; two could "see no reason to oppose"; one "would not oppose plan unless the adding of wireless telephone would cut down present satisfactory service now given ship operators with wireless telegraph"; one was "satisfied wireless telephone is a good thing"; one felt that if service should be compulsory, it "would just be an added and unnecessary expense"; and the others expressed no definite opinion relative to the proposed service. The report indicates no positive commitment to use the proposed service from any of the individuals or companies interviewed, in the event the application should be granted. Evidence of this kind cannot be said to show a definite need for the proposed service.

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The trend of the testimony in the first hearing was that the small craft operating in the Puget Sound area could not afford to use the service rendered by Station KOW because of its then allegedly prohibitive cost. Since that time the Pacific Telephone and Telegraph Company has made two reductions in the rates charged by Station KOW which have greatly reduced the cost of the service rendered by that station, as shown by the amended tariffs introduced in evidence at the last hearing and depicted by the chart hereinafter set forth.

Since the record in this case indicates that the minimum cost of equipping any particular boat to use the service furnished by Station KOW is no greater than the minimum cost of equipping the same boat to use the service proposed to be rendered by the City of Seattle, the only difference in the cost of the service to the customer is in the rates of the respective stations.

The primary advantages claimed by the applicant for its proposed radiotelephone service over the radiotelegraph service which it now renders through Station KPE and the service furnished by respondent through Station KOW are cheapness of operation to the user and the keeping of a continuous 24-hour watch on the small-boat frequency by operators familiar with marine problems.

When the application was filed by the City of Seattle the rates of the Pacific Telephone and Telegraph Company were such that a majority of the owners of the vessels who testified felt that they could not use this service regardless of its efficiency. Since that time, however, the rates of the telephone company have been substantially reduced, as is indicated by the tariff introduced in evidence when the record was reopened.

The applicant contemplates a charge of five cents per word without a minimum for messages originating or terminating in Seattle, the pick-up and delivery service to be at the expense of the applicant. Messages originating or terminating beyond Seattle would take an additional charge to cover the land-line haul or messenger fee, the amount of such additional charge being dependent upon whether telegraph or telephone wire service or messenger service is used and upon the particular point or origin or destination.

The proposed service will differ further from the coastal harbor service of the telephone company in that the former will be a relay service, to the shipping interests in that port, of radio communication by voice without direct land-line telephone connection. Since the proposed station will have no means of directly connecting the sender and receiver of a message, it would act as a forwarding agency in the same manner as the City has conducted the operation of its radiotelegraph Station KPE for many years.

The changes made in the rates charged by Station KOW since the filing of this application are shown in the following tabulation:

*Public or general service*¹

Tariff Reference (effective)	Initial 3-minute period	Overtime per Minute	Report Charge
F. C. C. No. 1, Nov. 1, 1935.....	\$3.00	\$1.00	\$0.60
F. C. C. No. 4, Nov. 1, 1937.....	\$3.00	\$1.00	.40
F. C. C. No. 4, Jan. 1, 1938.....	\$4.50	\$4.50	4.25
	\$3.00	\$1.00	4.40

*Subscriber or dispatching service*²

Tariff Reference (effective)	Initial 3-minute period	Overtime per Minute	Per Minute	Minimum charge per month	
				First Vessel	Each additional Vessel
F. C. C. No. 1, Nov. 1, 1935.....	\$2.00	\$0.65		\$10.00	\$10.00
F. C. C. No. 4, Nov. 1, 1937.....			\$1.00	15.00	10.00
F. C. C. No. 4, Jan. 1, 1938.....			4.50	10.00	5.00

¹ Public Service was changed to General Service, Nov. 1, 1937.
² Subscriber Service was changed to Dispatching Service, Nov. 1, 1937.
³ One-third of the radio link rate is retained by or paid to the vessel.
⁴ Vessel within 150 nautical miles of radio link rate center.
⁵ Vessel beyond 150 nautical miles of radio link rate center.
⁶ Each additional Dispatching terminal \$5 a month.

In comparing charges for the proposed service of the applicant and the services now rendered by the telephone company, it must be borne in mind that there are several essential differences in the services and the method of charging, namely:

CITY OF SEATTLE

PACIFIC TELEPHONE AND TELEGRAPH COMPANY

Simplex service	Duplex service.
Charged on a one-way per word basis using the cable count.	Charged on a circuit-time basis, regardless of number of words spoken by either party.
Same charges apply for all ships operating within range of shore station.	Charges depend on distance of ship from shore station, i. e., less than or over 150 nautical miles and the type of service (General of Dispatching) subscribed for.
No monthly guarantee required.	Monthly guarantee depending on the number of vessels and dispatching offices in operation applicable on Dispatching Service.

A comparison of the rates proposed by the City of Seattle with those in effect for Station KOW for service between Seattle and a vessel where no land line or delivery charge would be assessed, shows:

1. For service within 150 nautical miles of Seattle:

(a) For a one-way message (reply message not included) of less than ten words, the applicant's rates are always lower;

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(b) For a one-way message above ten words, or a message and its reply containing a total of over ten words, the Dispatching service of the telephone company through Station KOW is always cheaper;

(c) Service of the applicant is cheaper than the general service of the telephone company for messages containing less than twenty words (including reply message).

2. For service beyond 150 nautical miles of Seattle:

(a) The service of the applicant is cheaper than that of the telephone company for messages (including reply message) containing less than forty words.

According to the record many companies operating in this area would average two messages a day for each vessel. Only one message a day at fifty cents per message would produce more than the \$10 monthly guarantee required for one vessel including its dispatching terminal and each additional vessel would produce much more than the required \$5 monthly guarantee. However, for a subscriber who used the service only a few times in a month the applicant's proposed service would be less costly.

The financial results of the operation of neither the coastal harbor radiotelephone service nor the coastal radiotelegraph service in the Puget Sound area have been remunerative to the now existing stations serving that area. A witness for the applicant testified that Station KPE, which makes the same charge, i. e., five cents per word, using the cable count, has been operating at a loss in the past and that whether said station is now operating at a loss "is a question of bookkeeping" since the operators perform other services which are correctly charged to the general fund for the operation of the Harbor Department. It is to be expected, from the evidence herein, that the proposed radiotelephone station would be operated in the same manner. The record also shows that as of August 31, 1937, the Pacific Telephone and Telegraph Company had a total investment of some \$36,000 in Station KOW and that the expense of operating the station for the year 1936 was about \$5,880 and for the first 8 months of 1937 the expense of such operation was about \$5,000, while the operating revenues for the same periods of time amounted to \$322.80 and \$553.30, respectively. This clearly indicates that the shipping interests in this area have not taken the maximum advantage of the services now available to them.

The primary responsibility of this Commission as enunciated in Section 1 of the Communications Act of 1934 is "to make available to all the people of the United States a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges." The provisions of Sections 301, 309, and 319 of the Act indicate clearly that it was not the intention of

Congress to permit indiscriminate extension of radio service. The Commission's duty as found in these sections, and as interpreted by the courts when construing similar sections of the Radio Act of 1927, is to determine the public interest, convenience, or necessity from a viewpoint of the country as a whole. Therefore, service to the public in general, and not the incidental advantages or disadvantages to a particular applicant, must be the controlling factor in the determination of the merits of an application.

The Puget Sound area now has a coastal harbor radiotelephone station in addition to the public coastal telegraph Station KPE operated by the applicant herein. These two stations render marine radio service to the same general public which would be served by the proposed radiotelephone station. Inasmuch as 2738 kilocycles is, by reason of the scarcity of frequencies, the only frequency below 30,000 kilocycles available under the Rules and Regulations of the Commission for use by ships of the United States for intership communication and for the further reason that Canada also uses frequency 2738 kilocycles, the Commission must weigh the evidence with great care in order to determine whether the public interest, convenience, or necessity would be served by the granting of an application for a coastal harbor station on this frequency in a location which is already adequately served by existing stations.

GROUNDS FOR DECISION

(1) The operation of this station on the proposed frequency would create objectionable delay and interference in the operation of existing ship stations licensed by this Commission as well as to ship stations licensed by the Canadian Government, which stations have a prior right to the use of the frequency in question.

(2) The application is not consistent with the Commission's rules and regulations or established policy, and no justification has been shown for a modification thereof.

(3) Applicant has failed to show that effective service would be rendered to the public by the proposed station.

(4) Existing radiotelephone facilities have not been shown to be inadequate.

(5) Applicant has failed to show a substantial public need for the proposed service. The rates tentatively proposed, although slightly lower for some service, are without controlling significance when viewed from the standpoint of the rates and service to the area as a whole.

(6) Public interest, convenience, or necessity would not be served by the granting of the application.

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WALKER, Commissioner, dissenting:

I feel that the Statement of Facts, Grounds for Decision, and Order does not give proper consideration to two important points involved in this case.

The first point is that the Commission is here considering the application of a municipal corporation of the State of Washington. The City of Seattle has heretofore provided radiotelegraph service to ship interests in the vicinity of the city, and now desires to expand that service to include radiotelephone communication. It is common knowledge that Seattle is a seaport of major importance. Shipping has been the basis for the origin and development of the city and is one of its major industries. This application, by the fact of its filing, declares the belief of the people of Seattle, speaking through their duly elected representatives, that the public interests of that community would be served by the operation of a publicly owned radiotelephone station. In the face of this expression and the showing made by the applicant at the hearing, I cannot concur in the conclusion that the applicant has failed to show a substantial public need for the proposed service.

If the city obtains a license to operate a radiotelephone station, it will be in competition with the respondent company in rendering radiotelephone service to small ships in the Seattle harbor. The Communications Act of 1934 recognizes the fact that competition in such a field is to be permitted by the Commission. At the present time there is no competition in the Seattle area for the type of service proposed to be rendered by the applicant. The establishment of a radiotelephone station by the city would be entirely in keeping with the spirit and purpose of the Communications Act.

The second point which the decision of the Commission fails to consider adequately is the possibility of a different frequency from that applied for, which might be made available to the applicant.

The evidence in the record shows that the use by the city of the frequency 2738 kilocycles for a coastal harbor radiotelephone station in Seattle would cause objectionable delay and interference in the operation of ship stations which have been or which may hereafter be licensed to use that frequency. However, it does not follow from the fact that the particular frequency requested by the applicant cannot be granted, that there is not available another frequency which would permit the city to accomplish its purpose.

In the case of Warner and Tamble Radio Service, Memphis, Tennessee (Docket No. 4244), decided April 13, 1938, the Commission denied an application for a construction permit for a coastal harbor station on the frequency 2558 kilocycles, but pointed out that another

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frequency could, under the rules of the Commission, be used by coastal harbor stations advantageously in the area occupied by the applicant. Subsequently, the Commission granted the applicant the right to use the latter frequency. I am not suggesting that, when an applicant fails to make out its case for a particular frequency requested, there is any duty or obligation on the part of the Commission, on its own motion, to ascertain a different frequency which might be satisfactory for the purpose desired and assign it to the applicant. However, where, as in this case, there is a possibility that some other frequency might be available to the applicant, or where the Commission could provide limited frequency facilities for ship-shore communication in the Seattle area by duplicating facilities which are used elsewhere in the United States, there is, I believe, an obligation on the part of the Commission to point this out to the applicant in order that upon the denial of its pending application, it might, if it so desires, renew its application and ask for a different frequency.

If such action was proper in the Warner and Tamble Radio Service case, where the applicant before the Commission was a partnership engaged in the tugboat business on the Mississippi River, it is certainly appropriate here, where the applicant is a municipality representing a community, or the public, as distinguished from private interests. In view of the policy already adopted by the Commission in the Warner and Tamble Radio Service case, there is no need to suggest that special consideration should be given the applicant in the instant case because it is a municipality. Were it necessary to do so, persuasive analogies could be cited of situations where the Federal Government has given preferential treatment to public agencies.¹

I believe that in the instant case the application of the City of Seattle for a construction permit for a radiotelephone station to operate on the frequency 2788 kilocycles should be denied without prejudice to the right of the applicant, acting pursuant to state law and local ordinance, to renew its application and ask for a construction permit for a radiotelephone station on some other frequency.

¹ For example, the following statutes afford preferences of one kind or another to public bodies: Federal Water Power Act of 1920, 41 Stat. 1063 (1920), 16 U. S. C. § 791; Tennessee Valley Authority Act, 48 Stat. 58 (1933), 16 U. S. C. § 831; The Rural Electrification Act, 49 Stat. 1363 (1936), 7 U. S. C. § 901 (sup. 1937); The Bonneville Act, 50 Stat. 731; and the Fort Peck Act, 52 Stat. 403.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D. C.

In the Matter of
THEODORE V. FABIAN,
PITTSBURGH, PENNSYLVANIA.

Revocation of amateur radio station license.

} DOCKET No. 5273.

Decided December 23, 1938

Paul M. Segal and Harry P. Warner on behalf of the respondent;
James A. Kennedy and Robert M. Fenton on behalf of the Commission.

REPORT AND ORDER OF THE COMMISSION

BY THE COMMISSION (Payne, Brown, Commissioners, not participating):

On June 14, 1938, an order was entered by the Commission revoking a license theretofore issued to respondent, Theodore V. Fabian, for an amateur radio station located at Pittsburgh, Pennsylvania, with call letters W8RUE. The order recited as grounds for such revocation that the respondent had, on May 26, 1938, pleaded guilty to violation of Sections 301 and 318 of the Communications Act of 1934, as amended, in the United States District Court for the Western District of Pennsylvania.

An application for a hearing upon the order was seasonably filed by respondent and granted by the Commission, the order of revocation being suspended pending conclusion of the hearing and final decision by the Commission. Hearing was had before the Commission on October 7, 1938, and respondent was permitted to file a brief in lieu of oral argument.

The revocation order was based upon the charge that the respondent had pleaded guilty in the United States Court for the Western District of Pennsylvania to a violation of Sections 301 and 318 of the Act. However, a reexamination of the evidence discloses that the respondent had pleaded *nolo contendere* to a violation of Section 318, for which offense he was placed on probation for two years and ordered to pay a fine of \$100 and costs within six months.

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The courts have held that a plea of *nolo contendere* entered in a criminal case cannot be used against a defendant as an admission in any civil action for the same act. *Berlin v. United States*, 14 F. (2d) 497; *Tucker v. United States*, 196 F. 260. Therefore, the charges are not sustained by the evidence.

Mindful of the conviction and the Court's sentence for this violation, and the Commission's suspension of the respondent's operator license, we do not feel that the case justifies a reopening looking to further proceedings.

Accordingly, an appropriate order will be entered revoking our Order of Revocation entered on June 14, 1938.

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
 WASHINGTON, D. C.

In the Matter of
 KUJ, INCORPORATED (KUJ),
 WALLA WALLA, WASHINGTON. } DOCKET No. 4924
 For Construction Permit.

Decided December 23, 1938

H. H. Shinnick and *Frank Stollenwerck* on behalf of the applicant; *Stuart Sprague* on behalf of Station KSFO; *George S. Smith* on behalf of Station KLZ; and *Walter Johnson* on behalf of the Commission.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION (Payne, Commissioner, not participating):

STATEMENT OF FACTS

KUJ, Incorporated (KUJ), Walla Walla, Washington, commenced this proceeding by filing its application for a permit to construct a broadcast station to operate on 560 kilocycles with power of 250 watts, unlimited time, to move its transmitter, and to install a new antenna. Station KUJ now operates on 1370 kilocycles with power of 100 watts, unlimited time.

The application was designated for hearing before an examiner. He has filed his report (I-657) herein. The Associated Broadcasters, Inc. (KSFO), San Francisco, California, and KLZ Broadcasting Company (KLZ), Denver, Colorado, filed exceptions to the report of the examiner. Thereafter, oral argument was heard.

Questions apart from the merits of the case upon the proper testimony of record appear in the exceptions of The Associated Broadcasters, Inc., San Francisco, California, substantially as follows:

(a) Exception to the failure of the examiner in his report to rule on a motion to dismiss the application.

That motion was made after the hearing of the case had commenced. The motion was made by counsel for Station KLZ, Denver, Colorado. In the exceptions filed on behalf of Station KLZ no reference was made to the motion; and it, therefore, appears that the party making the motion at the hearing

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has abandoned the same. The case was referred to the examiner for hearing. He held the hearing and made his report thereon recommending that the application be granted. That very effectively disposed of the motion to dismiss; furthermore, the motion was without support in fact or law.

(b) Exception to the failure of the examiner in his report to rule on objections made to certain depositions offered in evidence by the applicant.

The examiner admitted the depositions, but indicated that he would disregard anything appearing therein that ought to be excluded. In that the examiner committed no error; and the Commission also has considered the depositions so far as the testimony therein has been found to be competent, relevant, and material. However, it might be observed that none of the objections mentioned in the exceptions filed on behalf of Station KSFO was made by anyone appearing for that station; and it might be added that the Commission has determined to deny the application under consideration and that objection of another party to the testimony of the applicant has become wholly immaterial.

Other exceptions to the report of the examiner raise no questions not involved in the final disposition of the application upon its merits.

Station K U J, Incorporated, was organized in the year 1931 under the law of the State of Washington and it has been engaged in radio broadcasting in Walla Walla, Washington, since the year 1932.

The stockholders of the corporation are H. E. Studebaker, Grace S. Studebaker, and Elaine Studebaker. They constitute the officers and directors of the corporation, and they are citizens of the United States. H. E. Studebaker owns 98% of the stock of the corporation. He has been manager of the station from the beginning. Grace S. Studebaker and Elaine Studebaker, respectively wife and daughter of H. E. Studebaker, each owns 1% of the stock of the corporation.

The applicant seeks the use of a regional frequency. Such frequencies are allocated for use by regional stations and stations of that class are permitted to operate simultaneously unless otherwise restricted.

In re application of El Paso Broadcasting Company (6 F. C. C. 86), the Commission, among other things, stated:

Under accepted engineering standards of good allocation practice the services of broadcast stations of the regional classification are normally protected to their 1 millivolt per meter contours during nighttime hours of operation. In allocating broadcast facilities it is the policy of the Commission to follow these standards unless unusual considerations are present which warrant a departure therefrom.

Station KSFO, San Francisco, California, operates on 560 kilocycles with power of 1 kilowatt night and 5 kilowatts local sunset. The Commission finds upon the testimony of record that, if the application under consideration is granted, the service of the applicant would be limited at night by Station KSFO to its approximate 3.35 millivolt per meter contour and the applicant, operating as proposed, would limit Station KSFO to its approximate 1.45 millivolt per meter contour at night.

Station KLZ, Denver, Colorado, operates on 560 kilocycles with power of 1 kilowatt night and 5 kilowatts local sunset. The Com-

mission finds upon the testimony of record that, if the application under consideration is granted, the service of Station KUJ would be limited to its approximate 2 millivolt per meter contour by the operation of Station KLZ.

Stations KSFO and KLZ, being regional stations, are entitled to protection of their service at night to their respective 1 millivolt per meter contours; and as Station KUJ, the applicant herein, proposes to operate as a regional station it would be expected under existing allocation practice and standards to render satisfactory service throughout its 1 millivolt per meter contour at night; but as above seen, if the application under consideration is granted, Stations KSFO and KLZ will be limited within their respective 1 millivolt per meter contours at night and the applicant herein would be limited to its 3.35 millivolt per meter contour at night. Such a situation should not exist without some compelling reason to justify the Commission in departing from reasonable standards of allocation (Application of Great Lakes Broadcasting Corporation, 5 F. C. C. 712); and no such reason is found in the record made in this case. Stations KSFO and KLZ, according to the testimony in the case, limit the service of each other to their respective 1.35 millivolt per meter contours, but the dominant interference to the service of Station KSFO would arise, if the application under consideration is granted, from the operation of Station KUJ as that station operating as proposed would limit the service of Station KSFO to its 1.45 millivolt per meter contour.

According to the 1930 Census the population of Walla Walla, Washington, was 15,976. The applicant introduced an exhibit showing population versus field strength for Station KUJ, operating as at present, in which cumulative populations for various contours are shown as follows:

Within the 10 millivolt per meter contour.....	15,192
Within the 2 millivolt per meter contour.....	17,609
Within the 0.5 millivolt per meter contour.....	24,772

Station KUJ now operates on a local frequency with power of 100 watts unlimited time. Rule 121 of the Commission provides, in part, that such stations "are to operate simultaneously, unless otherwise restricted, with a power of 100 watts during nighttime and not to exceed 250 watts during daytime."

There is some indication in the record that the present service of the station might be extended by improving the efficiency of its antenna. On this point see application of Seaboard Radio Broadcasting Corporation (WIBG) (5 F. C. C. 405) and application of Virgil V. Evans (5 F. C. C. 246). The management of Station

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KUJ, operating as at present, has advertised in its published rate card complete coverage of Southeastern Washington and North-eastern Oregon by the station as now operating.

The applicant introduced an exhibit showing population versus field strength for Radio Station KUJ, operating as proposed in the daytime, in which cumulative populations for various contours are shown as follows:

Within the 10 millivolt per meter contour.....	22, 655
Within the 2 millivolt per meter contour.....	34, 080
Within the 0.5 millivolt per meter contour.....	62, 640

The applicant filed an exhibit showing population versus field strength for Radio Station KUJ, operating as proposed in the night-time, from which it appears that cumulative populations for various contours are indicated as follows:

Within the 10 millivolt per meter contour.....	22, 655
Within the 3.32 millivolt per meter contour.....	29, 342

The populations given for the various contours of the applicant operating as at present and as proposed show that upon a grant of the application its daytime service would be considerably enlarged, but at the same time the population figures offered and considered show a much smaller extension of the nighttime service of the applicant if the facilities sought are granted.

The argument for the grant of the application is based mainly on the theory that since more people might be reached by the additional facilities sought, the application should be granted; but when resort is had to the record to ascertain the need, if any, for the additional facilities the record is found to be remarkably silent. It shows that the city of Walla Walla is surrounded by a mountainous region which is very sparsely populated, and a search of the record for testimony indicating financial support over and above what the station now has, if the application is granted, is unsatisfactory. Mr. Studebaker, appearing as principal witness on behalf of the station, and witnesses testifying by deposition stated in general terms that the additional facilities for the station were needed and if granted the consequence would be additional revenue. That might be true, but there is no testimony in the record showing that the revenue of the station would be materially increased if the application is granted. Mr. Studebaker mentioned a few parties that would spend more money with the station if additional facilities are granted, but he submitted no figures to support his conjecture. The testimony shows that if the application is granted the cost of operating the station will be increased by \$200 per month and it also shows that for the year 1937 the net income of the station was only \$1,445.38.

The argument of the applicant upon question of need appears to proceed upon the proposition that the increased patronage expected, if the application is granted, indicates the need for the facilities sought; but in the lack of facts and figures to sustain the premise, the argument is not convincing. The character of the testimony under consideration is fairly well illustrated by the testimony of the president of the Chamber of Commerce in Walla Walla, Washington, wherein he stated:

A great portion of the business done in Walla Walla comes from trade area as far as 50 to 75 miles radius. If Station KIJ can be heard consistently by a larger percentage of the people living in the secondary trade area of Walla Walla, it will be of benefit not only to these people, but to the businessmen of Walla Walla, to whom these people look to supply their requirements.

The applicant has failed to show by convincing testimony such need for additional facilities at Walla Walla as would justify the installation of a station that would curtail the interference-free area of Station KSFO; nor has the applicant shown by convincing testimony such need for additional facilities at Walla Walla as would justify the allocation of a regional frequency to that station.

Station KSFO, San Francisco, California, has applied for an increase in nighttime power to 5 kilowatts. If the application of that station and the application of Station KIJ both were granted, Station KSFO, operating as proposed would limit the service of Station KIJ at night to its approximate 7.5 millivolt per meter contour; and the limitation laid down by Station KIJ against Station KSFO, both operating as proposed, would be to the approximate 1.45 millivolt per meter contour of Station KSFO.

Station KLZ, Denver, Colorado, has applied for an increase of nighttime power to 5 kilowatts. If the application of that station and the application of Station KIJ both were granted, Station KLZ, operating as proposed, would limit the service of Station KIJ to its approximate 4.5 millivolt per meter contour at night.

In connection with the above applications of Stations KSFO and KLZ, requesting increase in nighttime hours to 5 kw., it is noted that such increase of power for regional stations on the frequency to which these stations are assigned is not permitted by the Commission's Rules and Regulations.

The examiner found the applicant to be financially and otherwise qualified to make the proposed equipment changes. Exceptions and argument have been directed at this finding and it has also been argued that the applicant made no proof of additional program if the additional facilities are granted. On this point it is to be observed that Station KIJ has operated on its present assignment for

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several years under the same management that will be in charge of the station if the application is granted, with performance that has been satisfactory to its listeners and supporters. The application under consideration will be determined on other grounds. However, the Commission finds from the evidence that the value of the station at present, including accessories, equipment, and fixtures, is, less reserve for depreciation, \$7,283.14; that as of December 31, 1937, the applicant had on hand in cash and accounts receivable the sum of \$7,700.60; that the gross income of the station for the year 1937 was \$39,530.25; that after paying operating expenses including a salary of \$8,103.31 paid to H. E. Studebaker, principal stockholder of the company and manager of the station, the net profit for the year was \$1,445.38.

The cost of the construction proposed is estimated to be \$5,500; and as is elsewhere shown the increased cost of operation if the application is granted would be about \$200 per month.

The program service of Station KUJ has been meritorious, and there has been cooperation between the station manager and the various agricultural, civic, educational, patriotic, and religious organizations in the city of Walla Walla.

In the matter of KUJ, Incorporated (KUJ), Walla Walla, Washington, 4 F. C. C. 141, the Commission considered the application of that station in connection with the application of Carl E. Haymond (KIT), Yakima, Washington, and among other things said:

As both applicants are legally, technically, financially, and otherwise qualified to receive grants of their respective applications and have made substantial showing as to the public need for the service which they propose to render in their respective needs, it becomes necessary for the Commission to weigh the relative needs shown in each area and thereby determine which of the applications might, in the public interest, be granted.

The Commission thereupon found that the application of Carl E. Haymond (KIT), Yakima, Washington, should prevail over that of KUJ, Incorporated (KUJ), Walla Walla, Washington, because a much larger population would benefit from the requested increase in service in the Yakima area than in the Walla Walla area.

In the record under consideration, as has been pointed out, there is little, if any, competent testimony supporting the need for the additional facilities sought.

GROUNDS FOR DECISION

On the record in this case, the Commission finds:

1. That the applicant is now operating in Walla Walla, Washington, on 1370 kilocycles with power of 100 watts, unlimited time; that
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it seeks additional facilities by proposing to operate on 560 kilocycles with power of 250 watts, unlimited time; that a grant of the application would convert Station KIJ from a local station to a regional station;

2. That the frequency sought is a regional frequency, and that the applicant has failed to show need for such additional facilities;

3. That a regional station is expected, under existing engineering standards of the Commission, to serve throughout the 1 millivolt per meter contour of the station; that existing radio service would limit the service of Station KIJ, operating as proposed, to its 3.25 millivolt per meter contour at night. There is no justification here shown for departure from said standard;

4. That the granting of the application would interfere with the service of existing stations within their 1 millivolt per meter contour, whereas the service of other stations should be protected in the absence of compelling reasons for the granting of the application that would result in such interference; that there are no such reasons in this case; and

5. That the granting of the application would not serve the public interest, convenience, or necessity.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D. C.

<p>In the Matters of NATIONAL BATTERY BROADCASTING COMPANY (KSTP), ST. PAUL, MINNESOTA. For Construction Permit.</p>	}	DOCKET No. 4756.
<p>COLUMBIA BROADCASTING SYSTEM, INC. (WJSV), WASHINGTON, D. C. For Construction Permit.</p>	}	DOCKET No. 4757.

Decided December 23, 1938

Paul D. P. Spearman and Alan B. David on behalf of applicant, Station KSTP; D. W. Patrick, Kenneth R. Raines, and Paul Porter on behalf of applicant, Station WJSV; Louis G. Caldwell, R. T. Rollo, Donald C. Beelar, and Percy H. Russell, Jr., on behalf of Station KFAM; Louis G. Caldwell and R. T. Rollo on behalf of L. L. Coryell & Sons; Paul M. Segal and George S. Smith on behalf of Stations KSO, KFOR, and KDAL; Horace L. Lohnes, Fred W. Albertson, and E. D. Johnston on behalf of Station WTCN; Louis P. Sheehan on behalf of City of St. Paul, Minn.; Ben S. Fisher and Charles V. Wayland on behalf of Station WAGA; Frank D. Scott on behalf of Station WKBW; George O. Sutton, James L. Proffitt, and A. H. Schroeder on behalf of Stations WDGY, WILM, WAZL, and WGAL; James D. Cunningham on behalf of the Commission.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION (Payne, Commissioner, not participating):

STATEMENT OF FACTS

This proceeding arose upon the following matters:

- (1) An application of the National Battery Broadcasting Company, licensee of Station KSTP, St. Paul, Minnesota (now operating on the frequency 1460 kilocycles, with power of 10 kilowatts night, 25 kilowatts local sunset, unlimited time), for a construction permit to make changes in equipment, install a directional antenna for day-
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time and nighttime operation, and increase operating power to 50 kilowatts (Docket No. 4756); and

(2) An application of the Columbia Broadcasting System, Inc., licensee of Station WJSV, Washington, D. C. (now operating on the frequency 1460 kilocycles, with power of 10 kilowatts, unlimited time), for a construction permit to move to a new location, install new equipment, including a directional antenna for daytime and nighttime use, and to increase operating power to 50 kilowatts (Docket No. 4757).

On October 4, 1937, a consolidated hearing was held on the above applications before an examiner. Pursuant to a petition which was subsequently filed by the Columbia Broadcasting System, Inc., and granted by the Commission, on January 18, 1938, the record in Docket No. 4757 was reopened for further hearing on certain engineering questions. Thereafter, on March 22, 1938, the examiner filed his report (I-620), recommending that both applications be denied. To this report, exceptions were filed by both of the applicants herein. Oral argument was heard on May 19, 1938. The exceptions have been fully considered by the Commission.

**IN RE APPLICATION OF NATIONAL BATTERY BROADCASTING COMPANY (KSTP), ST. PAUL,
MINNESOTA (DOCKET NO. 4756)**

The National Battery Broadcasting Company has been granted successive renewals of license from this Commission to operate Station KSTP, St. Paul, Minnesota. Its legal qualifications are not therefore in issue.

According to a balance sheet submitted in evidence, as of August 31, 1937, this corporation had a net worth of \$287,398.89, including cash on hand and in bank, totaling \$110,645.89.

The licensee maintains an adequate staff of 87 experienced and qualified employees to insure the efficient operation of the station.

The present transmitting equipment is capable of operating with power of 50 kilowatts. This equipment and the directional antenna proposed to be installed comply with the requirements of the rules and regulations of the Commission. An engineer, testifying on behalf of the Commission, expressed doubt as to whether the present transmitter site (which the applicant proposes to continue to use) meets the requirements of the Commission, for operation with the proposed increase in power. It is estimated that the cost of necessary improvements will total \$20,000 and that the increased cost of operation on the proposed assignment will be \$10,288 annually.

The applicant has no present intention of increasing its existing advertising rates.

As stated above, Station KSTP is located at St. Paul, Minnesota. According to the 1930 United States census, the population of the St. Paul-Minneapolis metropolitan area was 832,285. In addition to the service rendered by Station KSTP, this area receives primary broadcast service from four stations located in Minneapolis; namely, WCCO, operating on the frequency 810 kilocycles, with power of 50 kilowatts, unlimited time; WDGY, operating on the frequency 1180 kilocycles, with power of 5 kilowatts day and 1 kilowatt from sunset at St. Paul to sunset at Stations KEX or KOB, depending on which ever is operating; WLB, operating on 760 kilocycles, with power of 5 kilowatts, sharing time with Station WCAL, Northfield, Minnesota; and WTCN, operating on 1250 kilocycles, with power of 1 kilowatt night, 5 kilowatts, local sunset, unlimited time.

Schedules of the various types of programs which are broadcast by Station KSTP were received in evidence. An analysis of the programs broadcast during 1937, up to and including the month of August, is shown as follows: Total sustaining 47.3%, total commercial 52.7%, divided into local sustaining 25%, local commercial 21%, network sustaining 21%, and network commercial 33%. A further break-down shows the following: Religious sustaining 1.4%, religious commercial 0.3%, educational sustaining 13.4%, educational commercial 6.5%, agricultural sustaining 2.15%. Electrical transcriptions were used in the presentation of 17.7% of these programs.

The station broadcasts, without charge, numerous educational, civic, religious, charitable, and similar programs. The program service also includes musical selections, entertainment features, news, sports, and special events. Programs designated as "special features" include The Children's Hour, interviews with celebrities, the St. Paul Winter Carnival, broadcasts from the State Capitol, travel talks, the Minnesota State Fair, foreign broadcasts, such as addresses by Pope Pius XI, King Edward's Abdication Speech, and other features of outstanding interest.

The station maintains lines to all of the principal public institutions in Minneapolis, such as the Minneapolis City Hall, has a permanent line to the University of Minnesota and maintains studios in both Minneapolis and St. Paul.

Since 1928 Station KSTP has been the originating station for numerous programs of the National Broadcasting Company and the Mutual Broadcasting Company networks, such as, for example, the speeches of President Roosevelt, certain football games, and the Minneapolis Symphony Orchestra. The program service of KSTP is, as a whole, well balanced, cultural, and entertaining, and designed to meet the needs and interests of the listening area.

The evidence discloses that the simultaneous operation of Stations KSTP and WJSV, Washington, D. C., during nighttime hours at present results in mutual objectionable interference to the service of each. Both applicants propose to install directional antennas for the purpose of reducing the extent of the interference from each to the other. Should both applications be granted, the public within the service area of both stations would benefit in that the interference to each station from the other would be reduced and each would receive an increase in power, thus improving its signal and extending its useful service area. Two engineering witnesses agreed that if one of these applications be granted and the other denied, each station would receive approximately 50 percent of the benefit which would result if both were granted. For example, if the application of KSTP be granted and that of WJSV be denied, the former would receive the benefit of the increase in power but would still be subject to interference from Station WJSV, whereas the latter would be benefited by the reduction in interference from KSTP, and vice versa.

The operation of Station WJSV constitutes the predominant source of interference to the service of Station KSTP during nighttime hours. The exact extent of this limitation is not shown in the record but the evidence does establish that KSTP renders an interference-free service throughout the year to its 10 millivolt per meter contour, which includes an estimated population of 777,574, and an area of 531 square miles. If both applications be granted it was predicted that KSTP will render an interference-free service at night to its 1 millivolt per meter contour, including an estimated population of 1,069,851, and an area of 7,835 square miles. During daytime hours KSTP now renders an interference-free service to its 0.5 millivolt per meter contour, including an estimated population of 1,250,552, and an area of 12,900 square miles. Under the proposed operation it is estimated that the 0.5 millivolt per meter contour will include a population of 1,254,642, and an area of 13,423 square miles.

Station KSTP now limits the service of Station WJSV at night to its approximate 5.7 millivolt per meter ground wave contour. It is estimated that the operation of KSTP with its proposed directional antenna will reduce this interference to the 1.5 millivolt per meter ground wave contour. The evidence also discloses that the proposed operation of Station KSTP will not cause interference within the normally protected service area of existing stations in excess of the interference which they now receive from the operation of other broadcast stations.

The proposed daytime service of Station KSTP will be expected to receive objectionable interference slightly within its normally pro-

tected 0.5 millivolt per meter ground wave contour from the operation of Station KATE, Albert Lea, Minnesota, and KFAM, St. Cloud, Minnesota, in an area immediately surrounding the transmitters of the latter two stations. At the time of the hearing an application was pending (which has since been granted) for authority to erect a new broadcast station at Mankato, Minnesota, to operate on the frequency 1500 kilocycles, with power of 100 watts night, 250 watts, L. S., unlimited time. The simultaneous operation of this station (KYSM) together with that of Station KSTP as proposed would result in interference to service of the latter in a small area surrounding the transmitter of the former.

The proposed operation will not adversely affect, by reason of objectionable interference, the service proposed in any pending applications for broadcast facilities.

GROUNDS FOR DECISION

1. The applicant is qualified in all respects to operate Station KSTP in the manner proposed herein.

2. A need is shown in the St. Paul, Minnesota, area for the proposed extension of the service of Station KSTP.

3. The program service of Station KSTP is meritorious and designed to meet the needs and interests of the listening area.

4. A grant of the application will improve the signal of Station KSTP and will materially extend its useful service area.

5. A grant of the application will result in reducing the existing nighttime interference to the service of Station WJSV, Washington, D. C., and will not by reason of objectionable interference adversely affect the services of any other existing broadcast stations or those proposed in pending applications for broadcast facilities.

6. The transmitter site is subject to approval of the Commission.

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

IN RE APPLICATION OF COLUMBIA BROADCASTING SYSTEM, INC. (WJSV), WASHINGTON, D. C. (DOCKET NO. 4757)

Columbia Broadcasting System, Inc., the applicant herein, is the owner and licensee of Broadcast Station WJSV, Washington, D. C., as well as of other broadcast stations located in different sections of the United States. The legal qualifications of this applicant are not therefore in issue in this proceeding.

A consolidated balance sheet of the applicant corporation, including its subsidiary companies, was received in evidence and, as of July 3, 1937, shows total assets of \$13,845,559.68 consisting, in part,
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of current assets totaling \$6,787,828.42, including cash in bank and on hand totaling \$1,990,890.41. The current liabilities total \$2,964,136.43. Other liabilities consist of deferred income, mortgages payable, serial payments due, reserves for certain contingencies, capital surplus and notes. The applicant maintains a local staff of 48 experienced and qualified employees to insure the efficient operation of Station WJSV. In addition, the services of members of the general staff of the Columbia Broadcasting System in New York City, such as engineering, sales, and program experts are available when necessary.

The transmitting equipment and directional antenna proposed to be installed comply with the requirements of the rules and regulations of the Commission. The record discloses that the present transmitter site of Station WJSV (which is located on the Mt. Vernon Memorial Highway at the Potomac Yards, Alexandria, Va.), has not proved to be entirely satisfactory because of the necessity of using a directional antenna to prevent interference with the operations of the Naval Research Laboratory at Bellevue, and further because harmonics of the station cause interference with Army and Navy receiving stations and an aircraft station located in adjacent areas. To eliminate these problems, it is proposed to remove this station to a new site located approximately 3 miles north of the northern boundary line of the District of Columbia. The total cost of the proposed changes and improvements in the equipment is estimated at \$280,000, and the additional annual operating expense at \$70,000.

The station's present advertising rate at night is \$300 per hour. If the application under consideration be granted, this rate will be increased to \$350 per hour. The present daytime rate is approximately one-half of the night rate and will also be proportionately increased.

WJSV is the only station affiliated with the Columbia Broadcasting System, which renders primary service to the City of Washington, D. C. For the period between January 1 and September 30, 1937, WJSV was the second in importance on the entire network in the origination of sustaining programs and the fifth in the origination of commercial programs. Schedules were received in evidence of numerous programs which have heretofore been broadcast by the station. The program service includes a wide variety of subjects, such as religious, educational, charitable, civic, and similar matters, sports, entertainment numbers, dramatic features, and educational subjects. Speeches and addresses of the President of the United States, members of Congress, and the heads of various Governmental departments and bureaus are featured.

The Columbia Broadcasting System maintains an office in London with connections at various points throughout Europe for the purpose of broadcasting foreign programs of interest to listeners in the United States, as, for example, the messages of Pope Pius XI and speeches of Mussolini, Hitler, and other outstanding personalities. Programs of this character are broadcast by Station WJSV.

During the first nine months of 1937, the station devoted approximately 31.75% of its time to sustaining programs and 29.5% to commercial broadcasts. As stated above, many of the network programs originate in the studios of WJSV. Of the purely local programs, 13.04% were sustaining and 25.71% were commercial. During the same period, 61.25% of the station's time was devoted to network programs (both commercial and sustaining) and 38.75% to local programs. All public questions of a controversial nature are broadcast as sustaining programs and full opportunity is given to speakers of opposing views to present all sides of the questions involved. It is not the policy of the station to broadcast advertising concerning laxatives, depilatories, deodorants, or similar programs. WJSV assists the network through consultations with the proper officials of the Post Office Department, Federal Food and Drug Administration, and the Federal Trade Commission concerning all advertising, lotteries, or other programs of a questionable nature, which are offered for broadcast. The station maintains a group of 12 sustaining artists and contemplates adding a regular staff orchestra in the near future. The evidence indicates that the program service of Station WJSV is, on the whole, of high quality, entertaining and instructive, and adapted to meet the needs and interests of the listening area.

According to the 1930 United States Census, the population of Washington, D. C., metropolitan area, was 621,059. This area receives primary broadcast service from four stations located therein, namely, WJSV, the applicant herein, operating on the frequency 1460 kilocycles, with power of 10 kilowatts, unlimited time; WMAL, operating on the frequency 630 kilocycles, with power of 250 watts night, 500 watts, L. S., unlimited time; WOL, operating on the frequency 1230 kilocycles, using a directional antenna, with power of 1 kilowatt, unlimited time; and WRC, operating on the frequency 950 kilocycles, with power of 1 kilowatt night, 5 kilowatts, L. S., unlimited time. In addition, some service of a secondary character is received in this area from Stations WBAL, Baltimore, Maryland; WCAU, Philadelphia, Pennsylvania; and WRVA, Richmond, Virginia.

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The directional antenna used by WJSV to protect the Naval Research Laboratory from interference (which laboratory is located to the east of the station) results in a material reduction in the signal in the generally easterly direction.

As a result thereof, there is a large rural area in the direction of the Chesapeake Bay (in which is located a number of summer resorts) which does not at present receive satisfactory service from the station. It is estimated that about one-half of the City of Washington is not at present included within the 10 millivolt per meter contour of this station and that a signal of this intensity is necessary for satisfactory service, even in the residential sections of the city, due to the high noise level caused by streetcars and other electrical equipment. An engineering witness testifying on behalf of the applicant stated that the removal of the station to a more desirable site would relieve the station of the necessity of protecting the Naval Research Laboratory from interference and that the combination of the different site and the installation of modern transmitting equipment would eliminate the difficulties experienced from harmonics by the receiving stations in the general vicinity of the present transmitter location. He also predicted that by the use of the directional antenna and power proposed in this application, the station would be able to serve the entire District of Columbia with a signal in excess of 10 millivolts per meter and would materially increase its rural coverage; that under the proposed conditions, the station would render a signal of at least 1 millivolt per meter along the Bay Shore, which would constitute satisfactory service to that region; and that the station's signal would be suppressed in the direction of Station KSTP, thus resulting in a substantial reduction of the existing interference to the latter station.

The interference-free nighttime service area of Station WJSV has an estimated population of 522,000 and includes 253 square miles. Under the proposed conditions of operation, it is estimated that the interference-free area would include 675,000 persons and 2,380 square miles. It is further estimated that under the proposed operation during daytime hours, the station's 0.5 millivolt per meter contour will be extended to include 136,000 additional persons and that the area within this contour will be increased by 3,550 square miles.

As stated above, Station WJSV is at present limited at night to its 5.7 millivolt per meter contour by the operation of Station KSTP, St. Paul, Minnesota, and, if the application of the latter be granted, it is predicted that this limitation will be reduced to 1.5 millivolt per meter contour.

There is only one broadcast station concerning which there exists any question of possible adverse effects due to objectionable interference from the proposed operation of Station WJSV. The station is WLAC located at Nashville, Tennessee, operating on the frequency 1470 kilocycles with power of 5 kilowatts, unlimited time. At the original hearing an engineering witness testifying on behalf of the Commission stated that it was his opinion that predicated upon a ratio of 1 to 1 for the prediction of interference to a ground wave signal from a sky wave signal exceeded 10 percent of the time 10 kilocycles removed, objectionable interference would result to the service of WLAC should WJSV operate as proposed.

As stated above, the Columbia Broadcasting System filed a petition to reopen the record in order that additional engineering evidence might be offered. This petition was granted by the Commission and the case opened for further hearing on January 18, 1938. At the further hearing, evidence was offered by an engineering witness for the applicant who challenged the correctness of the ratio of 1 to 1 previously assumed by the Commission's engineer and stated that in his opinion, based upon the development of the radio art, particularly in the matter of selectivity of receivers now in use by the public, this ratio could be materially relaxed, and that a ratio of 1 to 5 would be satisfactory at the present time.

An engineering expert connected with the engineering staff of the Commission was called as a witness for this applicant and concurred in the opinion expressed above. This witness predicted that upon the basis of a ratio of 1 to 5 no objectionable interference would be caused by the proposed operation of WJSV to the existing service of WLAC nor would the proposed operation cause interference to the operation of WLAC with power of 50 kilowatts as proposed in its pending application.

GROUNDNS FOR DECISION

1. The applicant is qualified in all respects to operate Station WJSV in the manner proposed herein.
2. Station WJSV renders a program service which is meritorious and designed to serve the needs and interests of the listening area.
3. A need is shown for the proposed extension of service of WJSV in the Washington, D. C., area, with particular reference to the rural section in the Chesapeake Bay region.
4. A grant of the application will enable Station WJSV to render an improved service to the listening public of the City of Washington and to materially extend its present useful service area.

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5. A grant of the application will result in a material reduction in the existing interference to the service of Station KSTP, St. Paul, Minnesota, and will not result in objectionable interference to the services of any existing broadcast stations, or to any services proposed in pending applications for broadcast facilities.

6. A grant of the application will eliminate difficulties resulting from harmonics to the services of the Army and Navy receiving stations and to an aircraft station.

7. Due to the fact that both Stations WJSV and KSTP operate on the same frequency and propose to install directional antennas and that the application of the latter is granted subject to the selection of a transmitter site to meet the approval of the Commission, the application of the former must be granted subject to the same condition.

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

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

<p>In the Matter of¹ AMERICAN BROADCASTING CORPORATION OF KENTUCKY (WLAP), LEXINGTON, KENTUCKY. For Construction Permit.</p>	}	<p>DOCKET No. 4986.</p>
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Decided December 28, 1938

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

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION (McNinch, Chairman; Brown, Payne, Commissioners not participating) :

STATEMENT OF FACTS

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

On March 9 and 10, 1938, a hearing was held on this matter before an examiner who, in his report (I-670), recommended that the application be denied. To this report exceptions were filed by the applicant. Oral argument was heard on September 29, 1938. The exceptions have been fully considered by the Commission.

¹ On June 13, 1939 granted applicant's petition for rehearing, setting aside Statement of Facts and remanding application for further hearing. On May 6, 1940, Order entered denying application.

The American Broadcasting Corporation of Kentucky is the licensee of Station WLAP, Lexington, Kentucky. The legal qualifications of the applicant are not an issue in this proceeding.

According to the 1930 United States Census, the population of Lexington, Kentucky, was 45,736 and that of Fayette County, of which Lexington is the county seat, was 68,548. The 1935 United States Census of Wholesale Distribution reveals that there are located in Lexington 132 wholesale establishments which employed 1,789 persons and had net sales of \$52,366,000. According to the 1935 Census of Retail Distribution, there are located in Fayette County 922 retail establishments with total sales of \$24,192,000; 809 of these retail establishments are located in Lexington and employed 3,464 persons and had total sales of \$23,608,000. According to other United States census statistics in 1935 there were 59 manufacturing establishments in Fayette County, with products valued at a total of \$6,545,531.

Lexington is located in what is known as the "blue grass" region of Kentucky on a plateau extending for a radius of about 25 miles, and is the center of what is claimed to be the largest loose leaf tobacco market in the world. The principal occupations of the surrounding rural area consist of the cultivation of burley tobacco, the production of blue grass seed, and the raising of race horses, cattle, sheep, and other livestock. It was estimated that the trade area of the city extends about 35 miles in some directions from Lexington and about 125 to 150 miles to the east and southeast.

Station WLAP is the only broadcast station located in Lexington. Additional broadcast service is received in this area from Stations WHAS, Louisville, Kentucky, 68 miles distant; WKRC, Cincinnati, Ohio, 74 miles distant; and WLW, Cincinnati, Ohio (transmitter at Mason, Ohio), 90 miles distant. According to measurements which were made by an engineer employed by the applicant during daytime hours Station WHAS delivers a signal in Lexington ranging in intensity from 7 to 12.4 millivolts per meter; WKRC, a signal of 3.06 to 8.34 millivolts per meter and WLW, a signal of 9.8 to 10.8 millivolts per meter.

The applicant's engineer also testified that during both daytime and nighttime hours Station WHAS now renders service which is as satisfactory as that to be expected from the proposed operation of Station WLAP within its 2 and 0.5 millivolts per meter contours but that the present service of the former is not as good as that which would be expected from the proposed operation of the latter within its 10 and 25 millivolts per meter contours. An engineering expert, testifying on behalf of a respondent, expressed the opinion that at present Station WHAS serves the entire area proposed to be served

by this applicant during daytime hours and that such service would be satisfactory except in the downtown section of Lexington.

The applicant maintains a staff of 17 qualified employees in various departments to insure the efficient operation of Station WLAP. It is planned to engage two additional persons, namely, an announcer and operator, to assist in the operation on the assignment proposed herein. New studios, reconditioned and acoustically treated, are now under construction. Studios were formerly maintained in Frankfort, the State capital, 24 miles distant, airline, but were discontinued due to the poor reception from the station in that city. Predicated upon a grant of the application under consideration, tentative arrangements have been made whereby the Governor of the State will furnish the station with a new studio in Frankfort.

The transmitting equipment and directional antenna proposed to be installed meet the requirements of the rules and regulations of the Commission. The proposed transmitter site is also satisfactory for the proposed operation. The total cost of construction is estimated at \$19,584.

According to a balance sheet submitted in evidence, as of February 28, 1938, the applicant corporation had total assets of \$49,719.12, including \$11,867.39 in cash and \$11,072.78 in accounts receivable. The fixed assets total \$25,911.72. As of the same date, the corporation had current liabilities of \$8,838.47 and deferred liabilities of \$10,046.48.

During the year 1937 the applicant's income totaled \$69,524.09, and the operating expenses totaled \$58,956.31, leaving a net operating profit, less Federal income tax, of \$9,296.75. It was estimated by a representative of the applicant corporation that the expense of operation on the assignment proposed would be \$6,910.50 monthly, which would constitute an increase of \$841 above the current monthly operating expense. The same witness also estimated that, operating as proposed, the station would earn \$750 monthly above its current earnings. This estimate was predicated upon personal contacts made by the witness with a number of local merchants and representatives of business establishments who, it was claimed, will patronize the station because of the expected increase in coverage. No increase in existing rates is contemplated unless the station operates at a considerable loss.

Station WLAP is not affiliated with any network. The existing program service appears to be diversified, instructive, and entertaining, and adapted to meet the needs and interests of listeners in the area served. A typical week's program was introduced in evidence showing that the station broadcasts a wide variety of features, including news, sports, agricultural programs, grain and livestock

market reports, general agricultural subjects, and religious, civic, and educational matters. The facilities of the station have been extended free of charge to all religious, charitable, civic, and educational and similar organizations and institutions. The station originated a program known as the "Good Fellows Club" for the purpose of providing baskets and clothing for the poor during the Christmas season. This program proved to be a success and is now broadcast throughout the year. National agencies, such as the W. P. A., Employment Compensation and Social Securities Commission, have, in the past, broadcast over the station. In addition, special features, such as safety campaigns and election returns, are presented from time to time. It was shown that during a recent flood the station rendered valuable service in broadcasting appeals for relief. The livestock reports are broadcast directly from the stockyards of central Kentucky, and the tobacco reports are received by long distance telephone from various tobacco markets at the expense of the applicant. This information is particularly adaptable to daytime broadcasting, as it is the custom of the farmers in the rural sections to retire early. The State Director of the Kentucky Farm Bureau Federation testified that the market reports and agricultural programs which are now broadcast are of interest and value to listeners in the rural area. It is claimed on behalf of the applicant that due to the expected increase in coverage under the assignment proposed, the station will be able to serve a larger number of rural listeners with programs of this character.

Station WLAP broadcasts the programs of a number of educational institutions by remote lines, including the University of Kentucky, Transylvania College, Eastern State College, and Georgetown College. The line charges are paid by the station.

The University of Kentucky has established a number of listening posts or centers in various localities in the Kentucky mountains. This was done under the supervision of the University's director of radio activities in order to develop an integrated program of broadcasting and to encourage and stimulate the intellectual and cultural interests of the listeners in these mountain localities, which are great distances from roads and other lines of communications. As of the date of the hearing there were 27 such centers in existence. Programs are broadcast for 30 minutes daily for this purpose from Monday through Friday, inclusive, and include musical selections, educational subjects, current topics, as well as programs from the University high school and the county schools. During the year 1937 the University broadcast a total of 150½ hours over Station WLAP, and for the first two months of 1938, 25 hours and 50 minutes over this

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station. During the summer of 1937 a celebrated educator, art director, and publisher of Appalachian ballads and folklore conducted a program once a week over the station for the purpose of advancing mountain culture and developing the good will of the inhabitants of this area.

The listening centers described above are located at distances from Lexington ranging from 50 to 270 miles. Only 7 or 8 of these centers, which are located within a radius of 50 to 60 miles, are able to receive the signals from WLAP under its present assignment. One of the purposes of the assignment requested herein is to enable the applicant to extend its useful service area in order to make the station's programs available to additional listening centers and to improve the reception of the station's signal and those in which the programs are now received.

A large number of the programs originated by the University are broadcast by Station WHAS, Louisville, Kentucky. During the first six months of 1937 the University's regular program schedule consisted of 387 broadcasts for periods of 15 minutes each, of which only 21 were broadcast by the applicant herein. All of the others were broadcast either by Station WHAS or by both Stations WHAS and WLAP. It was admitted by a witness who testified on behalf of the applicant that most of the existing listening centers now receive the programs of Station WHAS. Moreover, as stated elsewhere in this opinion, the greater portion of the area proposed to be served by the applicant herein is already receiving satisfactory broadcast service from Station WHAS.

It was predicted by two engineering experts that the proposed operation of Station WLAP during nighttime hours would not adversely affect, by reason of objectionable interference, the services of any existing broadcast stations. This was shown to be due to the directive characteristics of the antenna proposed to be used during nighttime hours and to the fact that several stations on the same and adjacent frequencies are at present limited to a greater extent by other stations than would be expected from the proposed operation of the applicant herein.

An engineering witness, testifying on behalf of the applicant, estimated that the service of Station WLAP is at present limited at night to the 2.8 millivolts per meter contour through the operation of Station WPAR, Parkersburg, West Virginia. This estimate is based upon an assumed antenna efficiency of Station WPAR of 175 millivolts per meter at one mile, using power of 1 kilowatt. An engineering expert who testified on behalf of a respondent estimated that, based upon the same antenna efficiency as that assumed by the applicant's engineer

and the F. C. C.'s second-hour, ten-percent curve, the nighttime service of Station WLAP is at present limited by WPAR only to the 2.64 millivolts per meter contour.

It was predicted by the applicant's engineering witness that the proposed nighttime service would be limited to its 3.7 millivolts per meter contour by the operation of stations WASH-WOOD, Grand Rapids, Michigan, on the frequency 1270 kc. with power of 500 watts. This prediction was based upon an assumed antenna efficiency of these stations of 150 millivolts per meter at one mile. This witness also assumed an antenna efficiency of 175 millivolts per meter at one mile for the operation of Station WJDX, Jackson, Mississippi, on the frequency 1270 kc. with power of 1 kilowatt night, 5 kilowatts daytime. Based upon this assumption and upon the Commission's second hour, ten-percent curve, this witness predicted that the proposed nighttime service of Station WLAP would be limited by the operation of Station WJDX to the 4.2 millivolts per meter contour. No measurements were made, however, to determine the exact efficiency of the antenna of Station WJDX. The same witness admitted that, based upon an assumed antenna efficiency of Station WJDX of 220 millivolts per meter at one mile, the proposed nighttime service of WLAP would be limited to the 5.3 millivolts per meter contour. It was shown by the testimony of the Commission's engineer that at the time of the hearing Station WJDX operated with a vertical lead, 320 feet in height, with 132 radials one-half wavelength in length. This witness predicted a limitation to the proposed nighttime service of WLAP from the operation of Station WJDX to the approximate 5.1 millivolts per meter contour. An engineering expert testifying on behalf of the respondent predicted that this limitation would be to the 5.3 millivolts per meter contour.

It is apparent that the testimony concerning the expected limitations to the proposed nighttime service of Station WLAP is somewhat in conflict. It may be safely assumed, however, from a fair consideration of all of the evidence on the subject that the operation of Station WJDX, Jackson, Mississippi, would constitute the predominant source of interference to this proposed nighttime service and that the limitation would fall at some point between the 4.2 and the 5.3 millivolts per meter contours.

It was estimated by the applicant's engineering witness that, operating as proposed during daytime hours, the 10 millivolts per meter contour of Station WLAP would be extended from 3.1 miles to 6.2 miles and include a 21.4 percent increase in population; the 2 millivolts per meter contour would be extended from 7.6 miles to 13.7 miles and would include a 50.2 percent increase in population and that the 0.5

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millivolt per meter contour would be extended from 14.5 miles to 25.5 miles and would include a 65 percent increase in population, exclusive of communities of 5,000 inhabitants or more. It was also estimated by the same witness that, operating as proposed during nighttime hours, the station's 10 millivolts per meter contour would be extended to include a 20.7 percent increase in population.

GROUNDS FOR DECISION

1. The need shown in the Lexington, Kentucky, area for additional broadcast service of the character proposed herein is not sufficient to warrant a grant of the application in view of the severe limitations which would be expected to be imposed upon this proposed service during nighttime hours through the operation of existing broadcast stations;

2. A grant of the application will not serve public interest, convenience, and necessity.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D. C.

<p>In the Matter of ¹ MARTIN ANDERSEN, ORLANDO, FLORIDA. For Construction Permit.</p>	}	DOCKET No. 5028.
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Decided December 23, 1938

Elmer W. Pratt and *Charles O. Andrews* on behalf of the applicant; *George O. Sutton* and *Arthur H. Schroeder* on behalf of Station WDBO (intervener); and *A. V. Dalrymple* on behalf of the Federal Communications Commission.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION (Payne, Commissioner, not participating):

STATEMENT OF FACTS

Martin Andersen, Orlando, Florida, commenced this proceeding by filing his application for permission to construct a new radiobroadcast station to operate on 1500 kilocycles, with power of 100 watts night, 250 watts local sunset.

This proceeding was designated for hearing by an examiner. He has made his report (I-666) herein. The applicant filed exceptions to the report. The examiner, in the application of the rules of evidence, excluded a part of the testimony offered by the applicant, and reached the conclusion that the application should be denied. The Commission, upon consideration of the record, without excluding any of the testimony mentioned in the exceptions, has reached the same conclusion.

The applicant is a resident of Orlando, Florida, and is a citizen of the United States. He is affiliated with many local organizations and is active in civic affairs.

The financial qualification of the applicant is shown by testimony of record, and is very well reflected in a balance sheet dated March 31,

¹The Commission on March 20, 1939, denied the petition of applicant, requesting a rehearing.

1938. At the time of the hearing he had cash in bank in the amount of \$16,100 and stock in a newspaper company and an engraving company altogether valued at \$76,424.70. He listed in his balance sheet a citrus grove, a town residence, and other property, altogether valued at \$34,000.

Mr. Andersen has an employment contract under which he draws \$10,000 per year, and the testimony shows that his dividends from corporate stock range from \$8,000 to \$10,000 per year.

The estimated cost of the proposed station, including technical equipment, studios, labor, and other necessary items, is \$12,576.

The monthly operating expense of the proposed station is estimated at \$1,445, while the minimum monthly income is estimated at \$1,700.

Orlando Broadcasting Co., Inc. (WDBO), Orlando, Florida, intervened in this proceeding and requested oral argument, which was granted and heard.

In this case it has been contended by the intervener that the testimony is insufficient to show the financial support necessary for the maintenance of the station, if installed, and it has been contended that the showing of local talent necessary for an additional station in the City of Orlando is insufficient; but in this connection it should be observed that the applicant made a very satisfactory showing of financial ability and that he testified that he is prepared to lose money for three years in order to establish the proposed station.

Mr. Andersen, the applicant, is in charge of a publishing company that issues and circulates the Orlando Morning Sentinel and the Evening Reporter Star, which are published in Orlando, Florida. These papers have a circulation of about 20,000 and their income from commercial advertising is about \$300,000 per year. Mr. Andersen, if his application is granted, will be the sole owner of the proposed station and will direct its operations; and although the examiner found that sufficient commercial support for the station had not been shown, the Commission is convinced that the applicant is financially able to construct the station and to operate it for a period of a few years whether he makes money by that operation or not; and furthermore, upon the record before the Commission, it appears that the station will be self-supporting from the beginning.

The applicant has had no broadcast experience, and he has no interest in any other broadcast station; but if the application is granted he intends to employ competent personnel to operate the station. He will employ a station manager, a chief engineer and an assistant engineer, a program director, two announcers, a salesman, and a stenographer.

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The equipment proposed to be installed is satisfactory. The antenna and site are to be determined, subject to the approval of the Commission.

The population of the City of Orlando under the 1930 Federal Census was 27,330, and according to the Florida State Census of 1935 the City had a population of 30,481. Orlando is the county seat of Orange County, which has an area of 929 square miles and a population of 58,184 (State Census, 1935).

Orlando is an important commercial and civic center for an area variously estimated as extending from 15 to 40 miles from the City.

The Census of Business for 1935 shows that Orlando has 261 service establishments, employing 395 persons, with annual wages amounting to \$273,000.

In Orange County there are 1,037 retail establishments, with annual sales of \$20,964,000, employing 2,968 persons, whose wages total \$2,469,000.

In Orlando there are 713 retail establishments, with annual sales of \$17,613,000, with 2,582 employees, whose annual wages total \$2,176,000. In the City there are 94 wholesale establishments, with annual sales of \$12,319,000, having 850 employees, with annual wages amounting to \$892,000.

There are in Orlando two daily newspapers, and there are weekly papers published in that city and in Orange County.

There is one radiobroadcast station located at Orlando; namely, WDBO, which operates on 580 kilocycles, with power of 1 kilowatt night and 5 kilowatts local sunset.

Several merchants in Orlando testified by deposition that Station WDBO renders good service but that the charges are high, and that they are only interested in a limited coverage such as would be afforded by a local station. The examiner found the testimony insufficient to indicate the need for additional facilities as proposed by the applicant; and the Commission upon a review of the record finds that it is without substantial testimony upon which a finding could be made of any real need for another station in the City of Orlando. The station now there devotes a considerable portion of its time to local broadcasts, and there is no evidence in the record that it has failed or refused to meet the local demand for service or that it has failed to broadcast matters of general public interest. Some of the merchants who testified based their proposed patronage of the new station, if the permit is granted, upon the prospect of obtaining lower rates than those charged by the existing station. That station is a regional station and, necessarily, makes a greater charge than the applicant would make operating a local station, as proposed, but that circum-

stance does not indicate the need for additional facilities in Orlando, nor does it indicate that the charges made by the existing station are unfair or unreasonable for the service being rendered the public.

In *Pacific Acceptance Corporation, San Diego, California*, 5 F. C. C. 296, where two radio stations existed when the case was heard, the Commission, among other things, said:

* * * The low rates that the applicant intends to effect would quite probably afford a radio advertising outlet to commercial organizations that have found the higher rates of the two existing stations uneconomical. Where the existing facilities are adequate to meet the need for local program service, the mere desire of commercial organizations for a low-rate transmitting service for radio advertising does not by itself justify the granting of additional facilities.

In *The Metropolis Company, Jacksonville, Florida*, 5 F. C. C. 684, the Commission, among other things, said:

The Commission has repeatedly held that it will not establish new radio facilities for the sole purpose of affording additional radio advertising outlets to commercial establishments. (See e. g. *Banks of Wabash, Inc.*, 5 F. C. C. 78, *Smith, Kellar, and Cole*, 5 F. C. C. 291, *Pacific Acceptance Corporation*, 5 F. C. C. 296.) In all cases, the controlling consideration (granting that the applicant is fully qualified) is the general public need for the radio service offered. In determining whether or not a general public need exists, no hard and fast rule may be followed as circumstances differ in one center of population from another, and manifold disparate elements must be determined in each case. The existence of need may only be determined from the record made in each proceeding. * * *

The applicant proposes a program service which will begin at 7:00 a. m. and extend to 9:00 p. m., consisting of morning devotions, shopping guides, commercial announcements, vocal music, instrumental music, news flashes, and recorded music. The program covers the activities of the Junior Chamber of Commerce, the Business and Professional Women's Club, and the Auditorium Concert.

The facilities of the station, if constructed, will be available to all charitable, religious, educational, and public institutions. In connection with the program proposed, testimony was offered respecting available talent for use by the proposed station. That testimony has been examined and considered and it appears sufficient to indicate that there is in Orlando, and in the service area of the proposed station, sufficient talent for use by the station if the application sought is granted.

In this case the exact location of the transmitter has not been determined. The 10 mv./m. contour, 2 mv./m. contour, and the 0.5 mv./m. contour of the station, operating as proposed, would be at distances from the transmitter approximately respectively 3.4 miles, 8.5 miles, and 16 miles for daytime contours.

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The nighttime contours of the station, operating as proposed, would be as follows: The 10 mv./m. contour would fall approximately 2.5 miles from the transmitter; the 2 mv./m. contour would fall approximately 6.7 miles from the transmitter; and the 0.6 mv./m. contour would fall approximately 13.5 miles from the transmitter.

Assuming that the transmitter site will be somewhere near the center of the City of Orlando, the station proposed would render satisfactory primary service to the City of Orlando both day and night; but the existing station, WDBO, already renders good primary service to the City of Orlando and the region around said City; furthermore, upon the record in this case, it has not been shown that the radio service now existing in Orlando is inadequate in financial stability, equipment, or management; nor has Station WDBO been shown to be unable to supply the demands of advertisers and performers in the community.

GROUNDS FOR DECISION

1. The City of Orlando, and the region thereabout, have satisfactory primary radiobroadcast service from the existing station, WDBO.
2. The applicant made no satisfactory showing to substantiate the alleged need for the additional service which he proposes to render.
3. There is nothing in the record substantially challenging the adequacy of the existing service, nor is there anything in the record indicating inability on the part of the existing station to supply the demands of advertisers and the demands of performers in the community.
4. The granting of the application would not serve public interest convenience, and necessity.

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of
WILLIAMSON BROADCASTING CORPORATION,
WILLIAMSON, WEST VIRGINIA.
For Construction Permit. } DOCKET No. 4367.

Decided December 23, 1938

Frank Stollenwerk on behalf of the applicant; *Horace L. Lohnes* and *E. D. Johnston* on behalf of Station WHIS; *James D. Cunningham*, *Walter Johnson*, and *Russell Rowell* on behalf of the Commission.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION (Payne, Brown, Commissioners, not participating) :

STATEMENT OF FACTS

This proceeding arose upon the application of George W. Taylor Company, Inc., for a construction permit to erect a new broadcast station at Williamson, West Virginia, to be operated upon the frequency of 1370 kilocycles, with power of 100 watts, and hours of operation limited to daytime only.

Hearing was had on June 4 and June 18, 1937, before an examiner who on August 17, 1937, submitted his report (I-487) recommending denial. Exceptions to the Examiner's Report and a request for oral argument was filed by the applicant and on December 16, 1937, oral argument was had before the Commission. It appearing affirmatively in the record that the George W. Taylor Company, Inc., did not intend to operate the proposed station but expected to form another corporation for that purpose, and as such proposal was not clearly set forth in said record, the Commission upon its own motion remanded the application for further hearing upon additional issues directed to such proposal and to the qualifications of the proposed corporation. At the reopened hearing the qualifications of Williamson Broadcasting Corporation were shown, and the examiner in his supplemental

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report again recommended denial upon the basis that even though the Williamson Broadcasting Corporation was fully qualified, it had no application pending. The applicant filed exceptions to the supplemental report and a request for oral argument. Oral argument was had before the Commission on October 6, 1938.

Subsequent to the second hearing the Taylor Company and the Williamson Corporation filed a joint petition accompanied by an application of the Williamson Corporation for the same assignment as that sought by the Taylor Company. The petition prays that the application of the Williamson Corporation be accepted and considered upon the record previously made.

The Commission finds that the record of the second hearing constitutes in fact a hearing as to the qualifications of the Williamson Broadcasting Corporation as an applicant for the same facilities sought by the George W. Taylor Company, Inc. The application filed by the Williamson Corporation will therefore be accepted and said application will be considered upon the entire record.

The Williamson Broadcasting Corporation is a West Virginia corporation with corporate power to engage in broadcasting and is authorized to issue 250 shares of stock with par value of \$100 per share. One hundred shares of stock have been issued, of which 95 shares are held by George W. Taylor Company, Inc.; 3 shares by William P. Booker; 1 share by William B. Hogg; and 1 share by F. W. Wagner. The George W. Taylor Company, Inc., is also a West Virginia corporation and has 423 shares of outstanding stock, of which 353 shares are held by George W. Taylor; 66 shares by H. Van Gorder; 1 share by Lillian Taylor; 1 share by Richard Taylor; 1 share by Pearl Van Gorder; and 1 share by Allen E. Clingle. All of the above-named stockholders of both corporations are citizens of the United States and residents of Williamson.

The population of Williamson was 9,410 and of Mingo County, in which Williamson is located, 38,319, according to the United States Census of 1930. In Williamson there were 143 retail establishments with gross sales of \$3,469,000 in 1936, and in 1935 there were 14 wholesale establishments with gross sales of \$4,255,000. There is no primary broadcast service available to Williamson at this time, the best service being that from WLW at Cincinnati, Ohio, 165 miles away.

The assets of the Williamson Broadcasting Corporation consists of \$10,000 in cash, and it has no liabilities except its outstanding stock. Stockholders testified that in the event additional capital is needed they will purchase more stock, and there is evidence that they are financially able to do so. The estimated cost of constructing the proposed station is \$9,489. Monthly operating expenses are expected to

be \$1,035 and estimated monthly income predicated upon a survey is \$1,300 to \$1,600. Mr. F. W. Wagner, who has had an aggregate of twelve years of experience in radio work and broadcasting, will be General Manager and Chief Engineer. Experienced personnel will be employed in all positions in the operation of the proposed station.

The programs which the applicant will broadcast are of a general nature usual on commercial broadcast stations. A survey to determine the available talent for program purposes was made, and there are 10 bands, 1 choir, and 6 individual musicians. Programs to be prepared by various civic, religious, charitable, and fraternal organizations will be broadcast. It is estimated that program content will consist of about 35 percent transcriptions and about 65 percent live talent.

The transmitting equipment and antenna system which the applicant proposes to install complies with the principles of good engineering practice. The antenna site tentatively proposed on a building at 34 East Second Street in Williamson is not a desirable one because of the probable blanketing effect over a portion of the city.

No objectionable interference will result to any existing broadcast station from operation of the station as proposed herein, nor will it receive objectionable interference. An application which was pending at the time of the hearing from Johnson City, Tennessee, to operate on 1370 kilocycles has since been dismissed.

Depositions were taken by the applicant pursuant to an order issued by the Commission and before Louise Scheenlein, a Notary Public, who is regularly employed as a stenographer in the office of Hogg & Crawford, attorneys for the applicant. Those depositions were offered into evidence and received by the examiner subject to a later ruling as to admissibility and to consideration of a brief on the law to be filed by the applicant's attorney. The examiner in his report ruled that the depositions were not admissible. We are of the opinion that a person regularly in the employ of a party to a proceeding or of attorneys for such party has an interest "in the event of the proceeding" within the meaning of Section 409 (e) of the Communications Act of 1934 and is disqualified from presiding over the proceeding of taking depositions. These depositions have not been considered in reaching the finding and conclusions herein.

GROUNDS FOR DECISION

1. The Williamson Broadcasting Corporation is legally, technically, financially, and otherwise qualified to become a licensee of a station of the kind and class applied for.

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2. The commercial support shown to be available, together with the expressed willingness of stockholders to supply additional funds if necessary, is reasonable assurance that the proposed station can be operated in the public interest from a financial standpoint.

3. A public need exists for the proposed broadcast service.

4. There are no interference problems with respect to existing broadcast stations or with broadcast stations proposed in pending applications.

5. Public interest, convenience, and necessity will be served by a grant of the application.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D. C.

In the Matter of CITIZENS BROADCASTING CORPORATION, SCHENECTADY, NEW YORK. For Construction Permit.	}	DOCKET No. 4508.
THOMAS J. WATSON, ¹ ENDICOTT, NEW YORK. For Construction Permit.	}	DOCKET No. 4550.
THE HAMPDEN-HAMPSHIRE CORPORATION, ² HOLYOKE, MASSACHUSETTS. For Construction Permit.	}	DOCKET No. 4564.

Decided December 23, 1938

John M. Littlepage and Wm. A. Porter on behalf of Citizens Broadcasting Corporation; Donald Richberg, Raymond N. Beebe, and Alfons B. Landa on behalf of Thomas J. Watson; James T. Clark, Clarence C. Dill, and James W. Gum on behalf of The Hampden-Hampshire Corporation; Paul D. P. Spearman and Alan B. David on behalf of Stations WNAC and WOL; Horace L. Lohnes and E. D. Johnston on behalf of Station WNEW; Frank D. Scott on behalf of Station WTHT; Philip G. Loucks and Arthur W. Scharfeld on behalf of Station WNBX; Elmer W. Pratt on behalf of Stations WEED and WHBI; Horace L. Lohnes and E. D. Johnston on behalf of Stations WABY and WOKO; Louis G. Caldwell, Reed T. Rollo, and Percy H. Russell on behalf of The Constitution Publishing Company; Horace L. Lohnes and E. D. Johnston on behalf of The Elmira Star Gazette, Inc.; Ben S. Fisher and John W. Kendall on behalf of Station WSPR; and Hugh B. Hutchison on behalf of the Commission.

¹ Applicant's petition for rehearing filed January 1, 1939. As of June 15, 1940, matter still pending before the Commission.

² Applicant's petition for rehearing dismissed December 12, 1939, and petition to amend granted. As of June 15, 1940, matter still pending before the Commission.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION (Payne, Brown, Commissioners, not participating):

STATEMENT OF FACTS

IN RE DOCKETS NOS. 4508, 4550, AND 4564

Citizens Broadcasting Corporation, Schenectady, New York, filed an application for a permit to construct a radiobroadcast station to operate on 1240 kilocycles, with power of 1 kilowatt night, 5 kilowatts local sunset, unlimited time, and employ a directional antenna for nighttime operation (Docket No. 4508).

Thomas J. Watson, Endicott, New York, filed an application for a permit to construct a radiobroadcast station to operate 1240 kilocycles, with power of 1 kilowatt, using directional antenna at night, with unlimited hours of operation (Docket No. 4550).

The Hampden-Hampshire Corporation, Holyoke, Massachusetts, filed an application for a permit to construct a radiobroadcast station to operate on 1240 kilocycles, with power of 500 watts night, 1 kilowatt local sunset, unlimited time, employing a directional antenna (Docket No. 4564).

These applications were designated for hearing before an examiner. He has filed his report herein (I-594) recommending that the application of Citizens Broadcasting Corporation, Schenectady, New York, be denied and that the applications of Thomas J. Watson, Endicott, New York, and The Hampden-Hampshire Corporation, Holyoke, Massachusetts, both be granted.

Citizens Broadcasting Corporation filed exceptions to the examiner's report but the exceptions raise no question not involved in the final determination of the applications upon their respective merits. Citizens Broadcasting Corporation made a request for oral argument in support of its exceptions and Thomas J. Watson made request for oral argument in support of the report of the examiner. Oral argument was thereafter heard.

All of the applicants propose to operate in their respective locations on the regional frequency, 1240 kilocycles. Under Rule 120 of the Commission, regional frequencies are allocated for use by regional stations and such stations are permitted to operate simultaneously unless otherwise restricted; and under the rule the operating power of such a station shall not be less than 250 watts nor shall it be greater at night than 1 kilowatt nor greater during the daytime than 5 kilowatts.

The night service area of a regional station is defined as that area receiving a ground wave field intensity of 1 millivolt per meter

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or more. Such stations are not given protection and are not expected to give regular service outside of the 1 millivolt per meter contour at night. The purpose of a regional station is to serve a center of population and a small surrounding area or region (Fifth Annual Report of the Federal Radio Commission to Congress).

In re application of Earle Yates, Las Cruces, New Mexico, for construction permit (5 F. C. C. 213), the Commission denied the application because the need for broadcast service as shown in that case was not such as to justify the granting of a regional assignment for a local service.

In re application of Great Lakes Broadcasting Corporation for construction permit (5 F. C. C. 712), the Commission, in denying the application, held that the degree of need shown for the station was not so compelling as to justify the Commission in departing from reasonable standards of allocation established as a primary consideration in determining whether or not a particular station would serve the public interest, convenience or necessity.

The areas sought to be served by the respective applications all have radio service at the present time. The Commission has heretofore held that it will not establish new radio facilities for the sole purpose of affording additional radio advertising outlets to commercial establishments. See *Smith, Keller & Cole*, 5 F. C. C. 291, and *Pacific Acceptance Corporation*, 5 F. C. C. 296.

Stations now licensed would limit all the proposed stations much beyond their respective 1 millivolt per meter contours at night.

IN RE DOCKET NO. 4508

Citizens Broadcasting Corporation is organized under the law of the State of New York. Its authorized capital stock consists of 100 shares of common with par value of \$1 per share and 1,000 shares of preferred with par value of \$100 per share. All of the common stock and 80 shares of the preferred stock have been issued. 25 shares of the common and 50 shares of the preferred are held in equal parts by five stockholders residing in Schenectady, New York. The other 75 shares of the common stock and 30 shares of the preferred stock are held by Transamerican Broadcasting and Television Corporation. The common stock of the applicant has the voting power. The corporation is authorized to own and operate a radiobroadcast station.

The Transamerican Broadcasting and Television Corporation has an authorized capital stock consisting of 1,000 shares of common without par value and 3,500 shares of preferred with par value of \$100 per share. All the common stock has been issued. John L. Clark and Emanuel Rosenberg of New York City, each, own 175 shares of the common stock. The other 650 shares are owned by Warner Bros.

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Pictures, Inc. of New York and California. 2,025 shares of the preferred stock of The Transamerican Broadcasting and Television Corporation have been issued and they are all held by Warner Bros. Pictures, Inc. That concern appears to own a very decided majority of the stock of the Transamerican Broadcasting and Television Corporation which in turn owns a very large majority of the voting stock of the Citizens Broadcasting Corporation.

Transamerican Broadcasting and Television Corporation is engaged primarily in the sale of station time. It acts as selling agent for various stations throughout the country. It makes contacts with prospective national advertisers and it prepares radio programs.

DeWitt C. Mower, whose home is in Schenectady although he resides in New York City, was instrumental in promoting the Citizens Broadcasting Corporation. He is the president of the company. In the beginning it was estimated that \$100,000 would be needed for the establishment of a radio broadcast station in Schenectady. Mr. Mower and his local associates were not in financial position to undertake such expenditure and for that reason they authorized him to make arrangements elsewhere for the money needed. The result was that on August 5, 1937, Citizens Broadcasting Corporation, Schenectady, New York, entered into a written agreement with Transamerican Broadcasting and Television Corporation, 521 5th Avenue, New York, N. Y., in which the latter agreed to advance to the applicant an amount not in excess of \$5,000 as expenses to be incurred in securing a permit from the Federal Communications Commission for the construction of the broadcast station under consideration. The Transamerican Broadcasting and Television Corporation also undertook to advance a further amount not in excess of \$95,000 for construction, and for operation of the station after the grant of a permit; and the applicant agreed to amend its certificate of incorporation so as to issue preferred stock which was to be delivered to the Transamerican Broadcasting and Television Corporation as the money promised was advanced.

On or about September 9, 1937, Warner Bros. Pictures, Inc., 321 W. 44th St., New York, entered into a written agreement with Transamerican Broadcasting and Television Corporation whereby it, upon the grant of a construction permit by the Federal Communications Commission to the Citizens Broadcasting Corporation of Schenectady, New York, would make available to the Transamerican Broadcasting and Television Corporation the sum of \$100,000 to enable the latter to fulfill its commitment to the Citizens Broadcasting Corporation.

Sometime in February 1937, Mr. Mower became connected with the Transamerican Broadcasting and Television Corporation. His duties

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with that corporation consist mainly of obtaining and keeping information regarding stations affiliated with that corporation and in making contacts for the development of new business.

The applications under consideration present problems of serious interference *inter se*. This situation appears to have been understood by Mr. Mower before the three applications were designated for hearing and he proposed to the sponsors of the application under Docket No. 4564 to undertake the dismissal of the application of the Citizens Broadcasting Corporation for construction permit in Schenectady, New York, if the applicant for the permit at Holyoke, Massachusetts, would affiliate the proposed station with the Transamerican Broadcasting and Television Corporation.

The financial statement filed by Citizens Broadcasting Corporation shows that its actual assets consist solely of the sum of \$2,934.30. It has no money with which to construct the proposed station. The Transamerican Broadcasting and Television Corporation, which has undertaken to advance money to the applicant, has no money with which to make that advancement. The written agreement it has with Warner Bros. Pictures, Inc., does not purport to furnish any money directly to the applicant and it is not thought that that agreement could be enforced by the applicant. Furthermore, since the Transamerican Broadcasting and Television Corporation is under the control of Warner Bros. Pictures, Inc., the latter would be in position to ignore its agreement at will; and, as above seen, Mr. Mower, promoter of the Citizens Broadcasting Corporation, has already expressed a willingness to join the enterprise of The Hampden-Hampshire Corporation, another of the competing applicants in these cases, if agreeable arrangements could be made.

The stockholders, directors, and officers of the Citizens Broadcasting Corporation are citizens of the United States, and the applicant expects to employ an experienced staff to operate the proposed station if the application is granted.

The local talent in Schenectady consists of bands, choirs, instrumentalists, and orchestras; and there is ample talent in the service area of the proposed station for the use of the station.

The program submitted by the applicant should prove satisfactory. In types and percentages it appears as follows: Entertainment, 60%; news broadcasts, 7%; commercial, 10%; public service, 10%; religious, 4%; educational, 4%; and combined entertainment and public service, 5%.

The equipment and site proposed by the applicant comply with the rules of the Commission.

The estimated cost of the proposed station is \$78,500. The estimated monthly cost of operating the station is \$8,465.

The estimated monthly receipts of the proposed station are \$12,840.40. The commercial support for the station is predicated upon 16 signed contracts indicating a monthly yield of \$6,100.71, and upon a commercial survey which indicates monthly income amounting to \$3,577.44, and upon national business to be obtained through the Transamerican Broadcasting and Television Corporation in the amount of \$3,518.76 monthly.

The population of Schenectady (1930 Census) was 95,692, while the population of Schenectady County was 125,021.

Schenectady (1935 Business Census) had 99 industrial establishments, employing 12,015 people.

The General Electric Company and the American Locomotive Works are located in Schenectady.

The wholesale establishments in the city are 88 in number, and they employ 648 people, who receive annual wages amounting to \$947,000. Net sales amount to \$17,570,000.

The retail distribution of Schenectady consists of 1,385 establishments, with 4,757 employees, who receive annual wages in the sum of \$4,224,000. The volume of sales reaches \$37,148,000.

The applicant filed an exhibit purporting to show population versus field strength for the proposed station during the daytime, setting out cumulative totals for population claimed, as follows: Within the 10 millivolt per meter contour, 414,011; the 2 millivolt per meter contour, 530,638; the 0.5 millivolt per meter contour, 608,889.

The applicant filed an exhibit purporting to show population versus field strength for the proposed station claiming cumulative population totals for the nighttime as follows: Within the 10 millivolt per meter contour, 207,343; and for the 3 millivolt per meter contour, 396,578.

In the exhibit for the daytime populations are included for Albany, Schenectady, Rensselaer, Saratoga, Montgomery, Schoharie, Washington, Columbia, Green, and Fulton Counties in New York; Bennington County in Vermont; and Berkshire County in Massachusetts. In the nighttime exhibit Schenectady, Albany, Rensselaer, Saratoga, and Montgomery Counties, New York, are included. There is no testimony in the record indicating that all of these counties, or even any substantial part of them as a whole, would be interested in the service of the proposed station, or that they are lacking in radiobroadcast service.

The applicant filed an exhibit showing the average distance to the contours as follows: In the daytime for the 10 millivolt per meter contour, 11 miles; for the 2 millivolt per meter contour, 21.3; for the 0.5 millivolt per meter contour, 32.3; in the nighttime, for the 10 millivolt per meter contour, 9.25 miles; for the 3 millivolt per meter con-

tour, 20; for the 2 millivolt per meter contour, 20.7; and for the 1 millivolt per meter contour, 28 miles.

In the oral testimony of the applicant it is claimed that the 10 millivolt per meter contour of the proposed station would adequately cover the cities of Schenectady, Troy, and Albany.

The distance from Schenectady to Albany is about 10 miles. The distance from Albany to Troy is about 8 miles, while the distance from Schenectady to Troy is about 18 miles. There are already one radio-broadcast station in Schenectady, two in Albany, and one in Troy. Several other stations are heard in all three of these places.

Existing stations furnishing service available to the area wherein the applicant proposes to serve are Station WGY, Schenectady, operating on 790 kilocycles, with 50 kilowatts power, unlimited time, which renders primary service throughout the area; Station WOKO, Albany, operating on 1430 kilocycles, with power of 500 watts nighttime and 1 kilowatt local sunset, which renders service to the major portion of the area; Station WABY, Albany, operating on 1370 kilocycles, with 100 watts power, unlimited time, which renders primary service in a part of the area; Station WHAZ, Troy, operating on 1300 kilocycles, with power of 1 kilowatt, two hours limited to one evening each week.

Station WXYZ at Detroit, Michigan, operates on 1240 kilocycles, with power of 1 kilowatt, unlimited time. The station in Detroit operating under average conditions would be expected to limit the service of the proposed station at night to its approximate 4 millivolt per meter contour. Field intensity measurements were taken and shown in evidence whereby the limitation to the proposed station would be to its approximate 3 millivolt per meter contour.

Station CJCB at Sydney, Nova Scotia, operates on 1240 kilocycles, with power of 1 kilowatt, unlimited time. Field intensity measurements were made and submitted in evidence from which it appears that the station in Sydney, Nova Scotia, would limit the proposed station to about the same extent it would be limited by the station in Detroit, Michigan. The station applied for, operating as proposed, would limit the station in Nova Scotia at night to its approximate 1.5 millivolt per meter contour. It is seen from the foregoing that the proposed station would not be able to serve satisfactorily out to its 1 millivolt per meter contour at night.

Station WXYZ, Detroit, Michigan, operating on 1240 kilocycles has an application pending for increase of power to 5 kilowatts, unlimited time. If that application should be granted it would limit the service of the station proposed for Schenectady to its approximate 9 millivolt per meter contour at night.

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IN RE DOCKET NO. 4550

Thomas J. Watson is a citizen of the United States, residing in New Jersey. He is president of the International Business Machines Corporation, Ltd., of Canada. That company has a plant in Endicott, New York, which employs more than 4,000 people. Mr. Watson, at the time this matter was heard, was president of the International Chamber of Commerce and a member of the Business Advisory Council of the United States Department of Commerce. He is affiliated with many civic and educational organizations.

The applicant is without experience in the operation of a broadcast station, but if the application for permit to construct a station at Endicott, New York, is granted, he intends to associate with himself in the ownership of the proposed station John C. Clark of Binghamton, New York, a citizen of the United States, who will join Mr. Watson in the construction of the station. Mr. Clark is president of the Wylie B. Jones Advertising Agency. He owns nearly all of the stock of that concern which in turn owns the stock of the Howitt-Wood Radio Company, except qualifying shares for directors. That radio company owns and operates radiobroadcast station WNBF at Binghamton. Before the application herein was filed the Howitt-Wood Radio Company filed an application before the Commission for permission to operate on 1240 kilocycles with power of 1 kilowatt day and night. That application was withdrawn because Mr. Clark was agreeable to the construction of the station proposed by Thomas J. Watson.

Endicott is only eight miles from Binghamton. Johnson City is near and the combination of communities made by the three places is referred to in this proceeding as the tri-city area. The site for the antenna of the proposed station is north of Johnson City, about three miles west of Binghamton and four miles east of Endicott. The station, as planned, would render service throughout the tri-city area.

The applicant, Thomas J. Watson, appeared as a witness in the case and testified that he had an agreement with John C. Clark to let Mr. Clark have a 40 percent interest in the station if the application is granted; that Mr. Clark had taken the responsibility of organizing the station and had agreed to let his manager (Mr. Maston) operate the station because he (Mr. Watson) knew nothing about radio and for that reason wanted Mr. Clark and his organization to take the responsibility. Mr. Watson further testified that he did not expect to spend much of his time in the supervision of the station and that Mr. Clark, being an experienced man and living in the community all the time and having an experienced organization, would actually take care of the operation of the station.

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Cecil D. Maston is manager of Station WNBK and if the proposed station is constructed and licensed he will become manager of that station. This has been agreed upon by Mr. Watson, Mr. Clark, and Mr. Maston; and Mr. Maston will remain in the managership of Station WNBK. The arrangement would obviate competition between the existing station and the proposed station. In the application of *Genesee Radio Corporation*, Flint, Michigan, 5 F. C. C. 183, the Commission said :

It is not in the public interest to grant the facilities for an additional broadcast station to interests already in control of the operation of a station * * * in the same community unless there is a compelling showing upon the whole case that public convenience, interest, or necessity would be served.

Radio service available to Endicott, Binghamton, and Johnson City consists of the local station WNBK operating on 1500 kilocycles with power of 100 watts night, 250 watts, L. S., and portion of the area sought to be served would receive some service from Station WGY, Schenectady, New York, and Station WHAM, Rochester, New York.

Station WXYZ, Detroit, Michigan, operating on 1240 kilocycles with power of 1 kilowatt, unlimited time, would, if the application under consideration is granted, be expected, from the standpoint of good engineering practice and standards, to limit the service area of the proposed station to its 5 millivolt per meter contour at night. Field intensity measurements taken indicate that for the period of measurement the limitation to the proposed station would have been to its 3.2 millivolt per meter contour.

Station CJCB, Sydney, Nova Scotia, operating on 1240 kilocycles with power of 1 kilowatt, according to field intensity measurements, would limit the proposed station to its approximate 3 millivolt per meter contour.

It appears from the foregoing that the applicant would not be able to serve throughout the 1 millivolt per meter contour of the proposed station at night but would be limited within its 3.2 millivolt per meter contour. In the application of *El Paso Broadcasting Co.*, 6 F. C. C. 86, the Commission held :

Under accepted engineering standards of good allocation practice the services of broadcast stations of the regional classification are normally protected to their 1 millivolt per meter contours during nighttime hours of operation. In allocating broadcast facilities it is the policy of the Commission to follow these standards unless unusual considerations are present which warrant a departure therefrom. * * *

The nighttime 3.2 millivolt per meter contour of the proposed station would extend north about 15 miles and south about 14 miles, while the contour toward the east and west would be restricted to much shorter distances.

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The population of Endicott is 16,231. That of Binghamton is 76,662, while the population of Johnson City is 13,567. Binghamton is the county seat of Broome County, which includes the three cities mentioned and has a population of 147,022. Within the nighttime 3.2 millivolt per meter contour there would be a population of 132,885.

In the daytime the station proposed would render service free from objectionable interference out to its 0.5 millivolt per meter contour. In that range the population would be 196,737, but it is not apparent that the population mentioned is without sufficient radio service or is much interested in the service proposed by the applicant, except, perhaps, those in the city of Endicott—and maybe some in Binghamton—who desire radio advertising outlets.

Station WXYZ, Detroit, Michigan, has applied for an increase of power to 5 kilowatts. If that application should be granted, it would limit the service of the proposed station within the 11 millivolt per meter contour.

The estimated cost of the station completely equipped is \$56,480. The estimated annual operating expense, exclusive of income tax, state and federal, is \$118,643.40. The estimated annual receipts of the proposed station are \$177,500.

A part of the commercial support of the applicant is predicated on 21 tentative contracts, 13 of which are with commercial establishments in Endicott, which would probably produce an income of \$48,094.19, and 8 such contracts with Binghamton establishments which would probably produce \$37,870.78. The estimated net income from network connections is \$62,500. Spot business, local and national, is estimated, respectively, in the amounts of \$15,000 and \$25,000.

The tricity area is an important manufacturing center. In 1935 manufactured products in Broome County amounted to \$118,467,000 and the pay roll amounted to \$48,584,000. The industrial pay roll of the trade area of the three cities for 1935 was \$93,463,000.

The personnel of the station, as proposed, will consist of a general manager, program director, musical director, a continuity writer, chief announcer, and three operators, all of whom have been selected and are experienced in radio broadcasting service.

The equipment and site of the proposed station comply with the rules and regulations of the Commission.

The applicant submitted a weekly program schedule covering a period of one week with 124 operating hours. A break-down of the program with respect to type and time is as follows: Entertainment, 72 hours weekly; religious, 7 hours; educational, 23 hours; and agricultural, 3 hours. The remaining 19 hours are to be devoted to mis-

cellaneous entertainment from the remote New York City studio and to local civic clubs and fraternal organizations. The weekly hours of operation further analyzed are as follows: National commercial, 16 percent; local commercial, 12 percent; commercial sustaining, national and local, respectively, 37 percent and 42 percent.

Available talent in the Endicott area includes bands, choirs, pianists, soloists, violinists, and xylophonists. There is abundant talent for program material in the area proposed to be served.

In this proceeding both Mr. Watson and Mr. Clark filed financial statements from which the Commission finds that Thomas J. Watson owns assets of the value of \$1,029,308, that he has liabilities amounting to \$287,148.50, and that the net value of his assets is \$742,149.50; and the Commission finds that John C. Clark owns assets consisting of stocks and bonds of the value of \$590,750, that his liabilities are \$50,000, and that the net value of his assets is \$540,750.

IN RE DOCKET NO. 4564

The Hampden-Hampshire Corporation was organized under the law of the State of Massachusetts. Its authorized capital stock consists of 600 shares of the par value of \$50 per share; 595 shares are held by one stockholder and the remaining 5 shares are held as qualifying shares by the directors of the company.

The Corporation is authorized to own and operate a radio broadcast station; and all of the stockholders, directors, and officers are citizens of the United States.

The entire capital stock of the applicant has been issued and paid for and the corporation has on deposit in bank to its credit the sum of \$30,000 for the construction of the station proposed.

William Dwight, the president of the company, is managing editor of the Holyoke Transcript Telegram published in Holyoke, Massachusetts. Mrs. Minnie R. Dwight has been associated with that paper more than forty years and controls the publication of the paper through a life interest in the estate of her deceased husband, William G. Dwight, who formerly owned and published the Holyoke Transcript Telegram. In May 1931 her interest in the estate mentioned was appraised for tax purposes in the amount of \$334,863.13, and the estate is worth more at present than it was at that time. The financial statement of Mrs. Dwight, made a part of the record in this proceeding, shows that she has property, exclusive of the estate of her deceased husband, of the value of \$74,787.77. She had on deposit in bank to her personal credit, when this proceeding was heard, \$26,000 and she filed for the record a written statement obligating herself to advance to the corporation, if needed, additional money up to the amount of

\$50,000 for the construction and operation of the station. Mrs. Dwight has no liabilities except current bills.

Mrs. Minnie R. Dwight, who owns all the capital stock of the applicant except qualifying shares held by directors, and William Dwight, her son, who is one of the directors, own the Holyoke Transcript Telegram, the only newspaper published in Holyoke.

The estimated cost of the proposed station is \$34,180. The estimated monthly operating expense is \$2,380, while the estimated monthly receipts are \$6,000.

The commercial support of the station is predicated upon a survey made for the purpose of determining the commercial support of the station if installed, in which 75 business establishments pledged their support of the station.

Holyoke is the location of many colleges and private schools which would afford much talent for the station. Smith College alone gives three programs weekly in the school year which are available for radio broadcasting. The programs are of high quality. Bands, choirs, instrumentalists, orchestras, and vocalists are available for the use of the proposed station, and there is in the service area of the station abundant talent for its use.

The program contemplated by the applicant appears to be meritorious and it should prove satisfactory to the listening public.

The equipment and site proposed for the station comply with the rules and regulations of the Commission. A site has been chosen about midway between Holyoke and Northampton, Massachusetts, for the purpose of serving both of these places and the surrounding region.

The 10-millivolts-per-meter contour of the station operating as proposed would cover all of Holyoke and nearly all of Northampton. The 2-millivolts-per-meter contour would extend south to Springfield, Massachusetts, and north beyond the limits of Northampton, while the 0.5-millivolt-per-meter contour of the proposed station would extend approximately 20 miles north and 32 miles south of the transmitter site.

The population of Holyoke is 56,537 and that of Northampton 24,381 (1930 Census). Holyoke is located in Hampden County, which has a population of 335,496 and an area of 636 square miles. Springfield is in Hampden County, and that city has a population of 149,900. Northampton is in Hampshire County, which has a population of 72,801 and an area of 585 square miles. Holyoke and Springfield are about 8 miles apart, while Holyoke and Northampton are about the same distance apart.

The estimated population for daytime coverage of the proposed station is as follows: Within the 10-millivolts-per-meter contour, 87,691; within the 2-millivolts-per-meter contour, 138,084; within the 0.5-millivolt-per-meter contour, 376,631; but there is no testimony in the record indicating that the service throughout the 0.5-millivolt-per-meter contour of the proposed station would be of interest to the population of that area, nor does the record show that radio service therein is insufficient for the people there residing.

The estimated coverage at night with the proposed station operating with power of 500 watts within its 2-millivolts-per-meter contour is 136,779; but the station of the applicant operating as proposed would be limited by the operation of an existing station to its 3-millivolts-per-meter contour.

Holyoke (1935 business census) had 139 industrial establishments, employing 10,472 people with annual wages of \$9,912,352. It has textile mills which manufacture alpaca, cotton, worsted, and silk: Metal products and paper are also manufactured.

The industries of Northampton consist of hosiery mills and factories which turn out brick, cabinets, caskets, cutlery, bottle caps, furniture, paper boxes and wooden boxes, and parts for filtration plants. The total value of manufactured products for 1935 was \$6,389,322. The employment census of Northampton (1934) shows that 6,273 persons were employed in full-time places and 819 persons were employed in part-time places.

Holyoke is without a local radio station; and so is Northampton, but as elsewhere shown, Holyoke is only 8 miles from Springfield. Station WBZA, Springfield, Massachusetts, synchronizes in operation with Station WBZ, Boston, Massachusetts, and renders a primary service in the Springfield area which includes Holyoke. That station operates on 990 kilocycles with power of 1 kilowatt unlimited time. Station WMAS, Springfield, operates on 1420 kilocycles with power of 100 watts night, 250 watts L. S. and renders service in a part of the area sought to be served by the applicant. Station WSPR with transmitter located at West Springfield operates on 1140 kilocycles with power of 500 watts limited to sunset at Tulsa, Oklahoma, and Birmingham, Alabama, depending on the operation of Station KVOO and WAPI, respectively.

Some service is available to the region proposed to be served by the applicant from Station WGY, Schenectady, New York, operating on 790 kilocycles with power of 50 kilowatts unlimited time, and from Station WTIC, Hartford, Connecticut, operating on 1060 kilocycles with power of 50 kilowatts. Stations WEAJ and WJZ and other sta-

tions operating in the metropolitan area of New York are heard in the region proposed to be served by the applicant.

Station WXYZ at Detroit, Michigan, operates on 1240 kilocycles with power of 1 kilowatt unlimited time. Field intensity measurements taken indicate that Station WXYZ operating under its present license would limit the proposed station to its approximate 3 millivolts per meter contour.

Station CJCB at Sydney, Nova Scotia, operates on 1240 kilocycles with power of 1 kilowatt, unlimited time. The applicant operating as proposed would limit the station in Sydney, Nova Scotia, to its approximate 1.5 millivolt per meter contour during evening hours; and Station CJCB operating as at present would limit the nighttime service of the applicant to its approximate 3 millivolts per meter contour.

Station WXYZ, Detroit, Michigan, has applied for an increase of power to 5 kilowatts, unlimited time. If that application should be granted it would severely limit the applicant operating as proposed.

GROUNDNS FOR DECISION

IN RE DOCKET NO. 4508

On the record in this case, the Commission finds:

1. The applicant, Citizens Broadcasting Corporation, Schenectady, New York, has applied for the use of the frequency of 1240 kilocycles, which is a regional frequency allocable under the rules of the Commission to a regional service. Such need as the city of Schenectady has for a local service would not justify the Commission in departing from its standards under which the use of regional frequencies are granted.

2. Station WXYZ, Detroit, Michigan, and Station CJCB, Sydney, Nova Scotia, operating as at present would limit the service of the proposed station within its 3 millivolts per meter contour at night; and the proposed station would limit Station CJCB to its approximate 1.5 millivolt per meter contour at night.

3. Schenectady is in the metropolitan area of Albany, New York. There are two broadcasting stations in that city and one in Troy nearby and one in Schenectady. There is no real need for additional service throughout the area proposed to be served, such as to justify the allocation of the frequency applied for.

4. The granting of the application under consideration would not serve the public interest, convenience or necessity.

IN RE DOCKET NO. 4550

1. The applicant, Thomas J. Watson, Endicott, New York, has applied for the use of a regional frequency at Endicott, New York, to serve that place and Binghamton and Johnson City, and a sur-
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rounding area including said cities. There is a broadcast station in Binghamton, nearby Endicott which is in its service area.

2. While there may be some need on the part of local advertisers for the service proposed if restricted to Endicott and maybe to Binghamton and their immediate environment, there is no such need for the service proposed as would justify the allocation of a regional frequency.

3. The frequency applied for by the applicant is a regional frequency and a station applying for such a frequency is generally expected to render a nighttime service to its 1 millivolt per meter contour, but in this case existing stations would limit the service of the proposed station so far within its 1 millivolt per meter contour as to render the allocation of the frequency applied for unnecessary for the service which the applicant would be able to render at night under the limitation mentioned; and the allocation of the frequency sought would, upon the record made in this case, result in an inefficient use of the frequency.

4. The applicant has agreed with the owner of Station WNBF, Binghamton, N. Y., that the manager of that station, while remaining in charge of it should become manager of the proposed station. Such arrangement would eliminate competition between two stations in the same community and would not be in the public interest.

5. The granting of the application would not serve the public interest, convenience, or necessity.

IN RE DOCKET NO. 4564

1. The applicant, Hampden-Hampshire Corporation, Holyoke, Massachusetts, has applied for the use of a regional frequency to serve Holyoke and Northampton and a region including these places. They are very near each other. Many stations are heard in those places and throughout the region proposed to be served.

2. The service of the applicant operating as proposed would be limited much within its 1 millivolt per meter contour which it, as a regional station, would be expected to serve.

3. While there may be some need in Holyoke for a local station as an outlet for local advertisers, there is no such need in that city and in the region proposed to be served by the applicant as would justify the allocation of a regional frequency with the contour limitation that would result from existing radiobroadcast service.

4. The applicant operating as proposed would limit the interference free service area of Station CJCB, Sydney, Nova Scotia, to its approximate 1.5 millivolt per meter contour at night.

5. The granting of the application under consideration would not serve the public interest, convenience, or necessity.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D. C.

<p>In the Matter of ¹ C. G. HILL, GEORGE D. WALKER, AND SUSAN H. WALKER (WAIR), WINSTON-SALEM, NORTH CAROLINA. For Modification of License.</p>	}	<p>DOCKET No. 4910.</p>
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Decided January 3, 1939

George S. Smith and Harry P. Warner on behalf of the applicant;
Paul D. P. Spearman and Alan B. David on behalf of Station KXOK;
Elmer W. Pratt on behalf of Station WEED; *Philip G. Loucks,*
Arthur W. Scharfeld, and *Joseph F. Zias* on behalf of Station
 WDSU; *H. L. Lohnes and F. W. Albertson* on behalf of Station
 WNEW; *James D. Cunningham* on behalf of the Federal Communi-
 cations Commission.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION (Payne, Commissioner, not participating) :

STATEMENT OF FACTS

This proceeding arose upon the application of the licensees of Radio Station WAIR, Winston-Salem, North Carolina, for modification of the license of that station, to authorize the unlimited time use of the frequency 1250 kc. with power of 250 watts, in lieu of daytime hours of operation only. The application was heard March 15 and 16, 1938, before an examiner, who, in his report (No. I-678), recommended that the same be denied. Exceptions to said report, filed in behalf of the applicant, challenged the examiner's finding that there was no need for the additional service contemplated; his failure to conclude that the operation of Station WAIR, as proposed, would not cause interference to the service of other existing stations sufficient to warrant a denial in view of the need shown; his conclusion that the granting of the application would not serve public interest; and his failure to

¹The Commission on February 27, 1939, denied petition of applicants, requesting a rehearing.

recommend favorably upon the application. By consent of all parties to the proceeding, briefs were submitted in lieu of oral argument.

As the applicants herein are now the licensees of broadcast facilities, no question was raised with reference to their legal qualifications to operate Radio Station WAIR as here proposed. Likewise, their financial ability in the premises is nowhere challenged upon this record. The station's staff is composed of qualified technicians, and its equipment is in all respects satisfactory and in accordance with the Commission's requisites. We find, therefore, that the applicants are technically, legally, and financially qualified to operate the station in the manner here contemplated.

The City of Winston-Salem has a population of 75,274 (1930 U. S. Census), and is one of the principal industrial and manufacturing centers in the South. During the year 1935, there were 118 wholesale establishments in this area, which showed annual net sales of \$33,760,000, and 935 retail stores, with net revenue of \$23,317,000. At present the City of Winston-Salem is supplied with nighttime primary broadcast service by one station; namely, Station WSJS, which uses the local frequency of 1310 kc., with power of 100 watts, unlimited time.

Many business establishments, and various civic, educational, religious, and other public service groups, would use the facilities of Station WAIR if nighttime hours suitable to them were available. The station maintains remote-control lines to several churches throughout the Winston-Salem area, Salem College, Courthouse Square, Colonial Theatre, Salvation Army, and the Police Department. Matters of interest arise in these institutions primarily during nighttime hours.

At present WAIR provides a service strictly local, and it has no affiliations with any network system. Inasmuch as substantial portions of the time of Station WSJS are devoted to matters of national as distinguished from local interest, in view of its affiliation with the Columbia Broadcasting System, the nighttime operation of Station WAIR would provide the Winston-Salem area with an unlimited time broadcast service of local concern exclusively.

Radio Station WNEW, New York City, operates on the frequency of 1250 kc., with power of 2.5 kw. during the day, and 1 kw. at night, sharing time with Station WHBI, Newark, New Jersey. These stations provide a nighttime signal in the Winston-Salem area of such intensity that applicant Station WAIR, if operated during unlimited hours as proposed, would be restricted to the approximate 5.6 mv./m. contour after local sunset, and its usable signal would extend for a distance of six miles from the transmitter, which is located two and

one-half miles from the center of the city. The 1 mv./m. contour of Station WAIR (operated as proposed), to which regional stations are normally expected to serve, would extend for a distance of approximately 18 miles from the transmitter, and it does not satisfactorily appear that the entire area embraced within the corporate limits of Winston-Salem would be satisfactorily served by the station's nighttime signal.

Several other stations operating upon the same (1250 kc.) and adjacent channels will cause some limitation, but Stations WNEW and WHBI would be the predominant sources of interference and provide the greatest limitation. The latter stations are now limited to their respective 1.4 mv./m. contours, and the operation of Station WAIR as proposed would increase that limitation to the approximate 2.4 mv./m. contour. Station WDSU, New Orleans, Louisiana, also uses the frequency 1250 kc., with power of 1 kw., unlimited time. At present this station is restricted by interference to its approximate 1.2 mv./m. contour by Station WTCN, Minneapolis, Minnesota, and the operation of Station WAIR as proposed would increase that limitation to the approximate 1.3 mv./m. contour.

GROUNDS FOR DECISION

1. There is an existing public need in the Winston-Salem area for additional local nighttime broadcast service.
2. The granting of this application would result in objectionable interference to existing broadcast stations.
3. Station WAIR, operating as proposed, would be limited in its good service area to the approximate 5.6 mv./m. contour.
4. The need for nighttime broadcast service in the Winston-Salem area is not sufficient to warrant the granting of this application, when consideration is given to the limitation which would be suffered by applicant station and the additional interference that would result to existing broadcast stations.
5. The granting of the application will not serve public interest, convenience, and necessity.

February 27, 1939

SUPPLEMENTAL STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

The Commission, on January 3, 1939, effective January 9, 1939, denied the application of C. B. Hill, George D. Walker, and Susan H. Walker for modification of license of Station WAIR, which application, if granted, would have authorized the operation of Station

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WAIR, Winston-Salem, North Carolina, with power of 250 watts night on its present authorized assignment of 1250 kilocycles. Station **WAIR** now operates on the frequency of 1250 kilocycles with power of 250 watts, daytime only.

The applicants have filed a Petition for Rehearing wherein it is alleged that the Commission committed error in declining to grant the above-styled application. In order to more clearly state the grounds relied upon by the Commission in denying the application, this supplemental statement of facts is given.

The operation of Station **WAIR** as proposed would limit Station **WNEW**, New York City, and **WHBI**, Newark, New Jersey, to their respective 2.4 millivolt per meter nighttime contours. These two stations share time and are at present limited to their 1.4 millivolt per meter nighttime contours. Station **WAIR**, operating as proposed, would also cause an increase in the nighttime interference to Station **WDSU**, New Orleans, Louisiana, from 1.2 to the 1.3 millivolt per meter contour.

There are approximately 800,000 people residing between the 1.4 and the 2.4 nighttime contours of Stations **WNEW** and **WHBI**. While a high noise level is to be found over a part of the area, there are a number of residential districts included within these contours where a signal of approximately 2 millivolts per meter will render satisfactory nighttime broadcast service. Station **WAIR**, operating as proposed, would limit the listening audience of Station **WNEW** by approximately 500,000 people.

The City of Winston-Salem is from 5½ to 6 miles wide. The transmitter of Station **WAIR** is located approximately 2.3 miles north of the center of the city. The 5.6 millivolt per meter contour of **WAIR**, operating as proposed, would have a radius of from 5 to 6 miles. It is apparent, therefore, that Station **WAIR**, operating as proposed, would not render service at night throughout the corporate limits of the City of Winston-Salem.

Finding No. 3 of the Grounds for Decision originally given is amended so as to read as follows:

3. Station **WAIR**, operating as proposed, would be limited in its good service area to its approximate 5.6 millivolt per meter nighttime contour. The station, operating as proposed, would not be able to serve within its 5.6 millivolt per meter nighttime contour all of the corporate limits of the City of Winston-Salem.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D. C.

In the Matter of WILLIAM F. HUFFMAN,¹ WISCONSIN RAPIDS, WISCONSIN. For Construction Permit.	}	DOCKET No. 4864.
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Decided January 8, 1939

Ben S. Fisher and John W. Kendall on behalf of the applicant;
Charles V. Wayland on behalf of Station WCHS; *H. L. Lohnes,*
E. D. Johnston, and *F. W. Albertson* on behalf of Station WILL;
George O. Sutton, Arthur H. Schroeder, and *James L. Proffitt* on be-
 half of Station WDBO; *John W. Guider, Duke M. Patriok, Karl A.*
Smith, and *Lester Cohen* on behalf of Stations WTAG and WIBW.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION (Payne, Commissioner, not participating) :

STATEMENT OF FACTS

This proceeding arose upon the application of William F. Huffman for construction permit to establish a new radiobroadcast station at Wisconsin Rapids, Wisconsin, to use the frequency 580 kilocycles, with power of 250 watts, unlimited time, and with a directional antenna during nighttime hours. On December 8, 1937, a hearing was held on this matter, before an examiner, who, in his report (I-659), recommended a denial of the application. Exceptions and a request for oral argument were filed by the applicant. Oral argument was requested also on behalf of Station WIBW. Briefs subsequently were filed by these participants in lieu of oral argument. The record, briefs, and exceptions have been considered by the Commission.

William F. Huffman is a citizen of the United States and a resident of Wisconsin Rapids, Wisconsin. The record shows him to be a leader in the civic affairs of the community. He is the President and majority stockholder of the only daily newspaper in Wisconsin Rapids. At present, however, Huffman is not actively engaged in the operation of the newspaper. If this application is granted,

¹ Applicant's petition for reconsideration and/or rehearing granted May 16, 1939. Statement of Facts, Grounds for Decision and Order set aside and remanded for further hearing. On May 7, 1940, application reconsidered and granted on condition and hearing cancelled.

the applicant intends to operate the radio station as a separate unit from the newspaper, and with different personnel. There would be no joint rates. Huffman has had no experience in radiobroadcast work, but for about a year prior to the filing of this application had studied the subject in connection with anticipated authorization of the proposed station.

As of December 1, 1937, Huffman had total assets of \$164,656.25, with total liabilities of \$12,960. The record discloses that the applicant has sufficient funds to finance the construction of the proposed station. In addition, Huffman testified that his average income for the past few years ranged from \$14,500 to \$20,000, and that he can and will assume and pay operating losses, if any, of the proposed station.

The estimated cost of constructing the proposed station is \$22,910, and it is calculated that the monthly operating expense will be \$2,925. Written commitments for advertising time over the proposed station, secured from local merchants, total \$3,140 a month. It was further estimated that other merchants would be willing to spend on advertising approximately \$385 per month.

Wisconsin Rapids is the trading center of several contiguous communities, namely, the towns of Biron, Port Edwards, and Nekoosa. According to the United States Census for 1930, Wisconsin Rapids had a population of 8,726; Biron, 380; Port Edwards, 988; and Nekoosa, 2,005. Wood County, in which Wisconsin Rapids, the county seat, is located, had a population of 37,965. In addition to the foregoing area, the applicant proposes to serve the cities of Marshfield and Stevens Point, Wisconsin, with 8,778 and 13,623 population, respectively. The principal industries of the urban portions of the area are paper manufacturing, clothes making, metal trades, and dairy processing. Inhabitants of the rural sections are largely engaged in dairying, potato and cranberry raising, and other agricultural pursuits.

Based on actual measurements, Station WLBL, with transmitter located at Auburndale, Wisconsin, operating daytime hours only, delivers signals of 4.82, 5.86, and 8.10 mv./m. in Marshfield, Stevens Point, and Wisconsin Rapids, respectively. It is operated by the Department of Agriculture and Markets of the State of Wisconsin, and is noncommercial. Other radio broadcast services available to the area are not classified as satisfactory under the engineering standards of the Commission. However, the record shows that the applicant's newspaper, after a survey conducted by the applicant to determine the stations most often heard in the area involved, began carrying program listings of seven additional stations, and several witnesses indicated that at times some of this service was at least fair.

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It is predicted that the proposed station, if established, will serve during daytime hours, 12,600, 72,700, and 267,900 persons within its 10 millivolt per meter, 2 millivolt per meter, and 0.5 millivolt per meter contours, in the order named. It is estimated that at nighttime the station will serve 13,400 and 49,700 persons within its 10 millivolt per meter contour and 4.3 millivolts per meter contour, respectively, to which it will be limited by the operation of an existing station. The evidence indicates that during nighttime hours, only three-fourths of the town of Stevens Point will receive satisfactory service from the proposed station. Nekoosa, mentioned above, will not receive any nighttime service from the proposed station. It is disclosed that the nighttime directional pattern of the antenna proposed by the applicant consists of a major and a minor lobe. The lower or minor lobe is in the vicinity of Wisconsin Rapids, and lies to the south thereof; the upper, or major lobe, is to the north of the city. It appears from the evidence and exhibits in the record that the trade area of Wisconsin Rapids is primarily to the south, and that the nighttime radiation, by reason of the directional antenna pattern proposed, is largely to the north. Since the proposed station would be limited to the 4.3 millivolt per meter contour at night, this would result in nighttime service to a small part only of the Wisconsin Rapids geographical trade area, but would serve a larger proportion of its population.

Testimony of a number of witnesses, largely opinions and conclusions, concerns the alleged need in the community for a medium for religious, cultural, educational, and civic expression. It was shown that weather reports and storm warnings, which the applicant proposes to broadcast, would be of value to agriculturists, particularly the cranberry growers in the area. One witness stated that in emergencies, such as floods, the proposed station would be able to render valuable service.

The testimony shows that the facilities of the proposed station, if authorized, would be used by religious, cultural, educational, charitable, and civic organizations of the area free of charge. The applicant contemplates installing remote lines to various points for the purpose of broadcasting therefrom events of interest to the inhabitants of the community. Projects and programs especially adapted to the domestic and agricultural needs of the locality will be offered. The applicant has made tentative arrangements with a news service for broadcasting happenings of interest, and proposes to use a transcription service. Local scholastic, sports, and other events will be broadcast. A tentative program schedule submitted in evidence includes weather reports, news, and entertainment programs.

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The record indicates that vocalists, instrumentalists, glee clubs, choirs, and dramatic artists will be available for use by the proposed station. Speakers on various subjects, such as traffic safety, photography, sports, etc., also will be available. The applicant proposes to use live talent during about 70 percent of the program time; the remainder to be used for transcriptions. The proposed service appears to be well diversified and meritorious.

It was estimated that the nighttime interference free service area of the proposed station will be restricted to its 4.3 mv./m. contour. This interference will result from the operation of Station WIBW, Topeka, Kansas, using the frequency 580 kilocycles, with power of 1 kilowatt night. Counsel for the applicant asked an expert radio engineer the following question:

* * * You selected this frequency of 580 kilocycles for the operation of this proposed station. I believe you testified that the interference was to the 4.3 millivolt per meter line based upon certain information you got with reference to height of antenna. What have you to say that if the frequency of 1000 kilocycles was selected instead of 580, as to where that interference might be expected to come from?

Objection, based on the relevancy of the question, was interposed by counsel for Station WIBW. This objection was sustained by the examiner. Counsel for the applicant then made the following offer of proof:

* * * I propose to prove by this witness in the event he be permitted to answer this question that the use of 1000 kilocycles with the same power and under the same conditions and circumstances, the average radius to the 4.3 millivolts per meter contour would be 8.4 miles, while by the use of 580 kilocycles, with this interference, the average radius would be 12.5 miles, and if we are permitted to testify if 1500 kilocycles were used instead of 580, the average radius would be 5.5 miles to the 4.3 millivolt per meter contour.

The Commission has carefully considered this offer of proof, and is of the opinion that the subject matter contained therein is not of material importance to a determination of the issues in this case.

The applicant seeks operation with 250 watts power upon the frequency 580 kilocycles, which is a regional frequency as designated by Rule 120 of the Federal Communications Commission. As has been heretofore pointed out, the nighttime service area of the proposed station would be limited to the approximate 4.3 millivolt per meter contour. Regional stations are normally afforded protection during nighttime hours to their 1 millivolt per meter contours.

The record shows that operation of the proposed station will not result in objectionable interference to any existing broadcast station. Station WILL, using the frequency 580 kilocycles, at Urbana, Illinois, had pending at the time of the hearing an application to in-

crease its daytime power to 5 kilowatts, employing a directional antenna. This application has since been granted, and the operation of WILL with a daytime power of 5 kilowatts would cause interference to the daytime operation of the proposed station within its normally protected 0.5 millivolt per meter contour. This interference would be to the approximate 0.85 millivolt per meter contour. By reason of the interference which the proposed station would receive from Station WILL, the population which the proposed station would normally serve during daytime hours would be reduced by about 5,000 persons. There is an application pending from Station WCHS, Charleston, West Virginia, which operates on 580 kilocycles, requesting an increase in nighttime power to 1 kilowatt, using a directional antenna at night. Should the WCHS application be granted, simultaneous operation of that station and the proposed station would result in a limitation of the latter to its approximate 4.4 millivolt per meter contour.

The applicant will employ qualified personnel to insure the efficient operation of the proposed station. The transmitter, antenna, and site comply with the engineering requirements of the Commission.

GROUNDS FOR DECISION

1. The proposed station will be limited to its 4.3 millivolt per meter contour at night. The record herein fails to disclose such a public need as will justify the Commission in departing from its present allocation standards in order to grant this application.
2. The granting of this application will not serve public interest, convenience, or necessity.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D. C.

In the Matters of
SOUTHERN CALIFORNIA EDISON COMPANY, LTD.,
KATELLA SUBSTATION, TWO MILES SOUTH OF
ANAHEIM, CALIFORNIA.
For Construction Permit. } DOCKET No. 5186.

SOUTHERN CALIFORNIA EDISON COMPANY, LTD.,
LOS ANGELES, CALIFORNIA.
For Construction Permit. } DOCKET No. 5187.

Decided January 8, 1939

Gail C. Larkin on behalf of the applicant, and *L. W. Spillane* on behalf of the Federal Communications Commission.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION (Payne, Commissioner, not participating) :

STATEMENT OF FACTS

This proceeding arose upon two applications simultaneously filed by the Southern California Edison Company, Ltd., for authority to construct new special emergency radio stations to operate in the special emergency service, employing Type A3 emission for communication with all fixed and mobile stations operated by the applicant. The application in Docket No. 5186 is for a fixed station at applicant's Katella substation near Anaheim, California, specifying 50 watts power and nonexclusive assignment of the frequencies 2292 kilocycles and 4637.5 kilocycles. The latter frequency is requested for daytime operation only. The application in Docket No. 5187 is for a portable-mobile station to operate with 20 watts power, and requests nonexclusive assignment of the frequency 2292 kilocycles.

These matters were heard in a consolidated proceeding before an examiner on July 8, 1938, who, in his report (II-37) released September 21, 1938, recommended their grant. No exceptions have been filed thereto.

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The applicant is a public utility corporation organized under the laws of the State of California, where it carries on the business of generating, transmitting, and distributing electrical energy. The equipment to be installed in the event these applications are granted is of General Electric manufacture and is satisfactory from an engineering standpoint. Construction cost of the proposed stations will total approximately \$4,000, and funds are available for their installation and operation.

Applicant operates a complete power system, composing generating plants, transmission lines, substations, and other facilities necessary in the production and transport of electricity from source to consumer. It has 6,000 miles of circuits interconnected to provide coverage of the territory served in Central and Southern California. Production and transmission facilities are located with relation to the sources of electrical energy with the result that much of the system lies in remote regions characterized by extreme climatic and topographical variations. Electrical storms, sleet, ice, and high winds are common in mountainous parts of the area, while other sections are subject to earthquakes and floods. These factors occasion frequent equipment break-downs and other interruptions to service. To meet these problems applicant has found it necessary to establish an elaborate communication network. As most of the area is not covered by commercial telephone lines, applicant has developed its own wire facilities for this purpose, and has a number of central and subsidiary switching points strategically located throughout the power system and interconnected to permit rapid and efficient communication between the various units composing the whole. While the wire system is ordinarily adequate, frequently disturbances causing power break-downs similarly disrupt telephone communication, and in such circumstances reliance upon radio is necessary if communication is to be maintained.

Applicant at present operates special emergency fixed stations KAMB and KAMC and special emergency portable station KACX. The frequencies 2726 kilocycles and 3190 kilocycles, which are allocated for shared use of licensees in the special emergency service, are available to these stations.

The frequency 2726 kilocycles is subject to considerable limitation when used during the day and does not provide reliable service over applicant's entire system. The frequency 3190 kilocycles is authorized for telegraph operation only, whereas applicant's communication system is organized on a telephone basis. In addition to these factors, it has been the experience of this applicant that emergencies which disrupt power facilities and telephone lines similarly affect all emergency organizations with which the special emergency frequencies are shared.

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Thus, at times when its dependence on radio is at a maximum the frequencies are subject to the greatest congestion. With regard to these matters, it is found that applicant's existing facilities are inadequate from a technical and traffic standpoint to provide reliable emergency communication throughout its area of operation.

Applicant proposes through these applications to extend its use of radio as an aid to maintenance of electric service and its prompt restoration when interrupted. The record shows that disasters frequently occur in the territory served, and the importance of maintaining electric service at such times is obvious. Besides the effect on the public morale of interruptions to lights and various electric appliances in common use, the water supply, pumping plants, and transport systems of cities are subject to disruption when electric power fails. The relation is evident between normal operation of electric service and the maintenance of law and order. A use which assists that end serves a public need.

The frequencies requested in these applications are available for assignment to radio stations of public utilities in the special emergency service upon the condition that no interference is caused to other services and that a frequency tolerance of 0.02% is maintained. Allocation of these frequencies and the limitations and conditions upon their use are embodied in Order No. 18, as modified on December 5, 1938, and Section 229, Section 111.25, and Section 117.02 of the Commission's Rules and Regulations as amended and adopted on the same date.

It is not expected that unlimited use of the frequency 2292 kilocycles and daytime operation on the frequency 4637.5 kilocycles by the applicant in Southern California would result in objectionable interference to existing services. The frequency 2292 kilocycles and adjacent channels 2280 kilocycles, 2284 kilocycles, 2288 kilocycles, 2296 kilocycles, and 2300 kilocycles may be used in the United States only where no interference results to the Canadian services. The United States Government employs the frequency 2296 kilocycles and requests that its service be protected from interference should these applications be granted. The frequency 4637.5 kilocycles and immediately adjacent channels are not at present licensed to any United States stations. Several American companies operate foreign circuits on the frequencies 4640 kilocycles, 4645 kilocycles, and 4630 kilocycles, and governmental use is made of the frequency 4630 kilocycles. Theoretical possibilities of interference to these services exist with relation to unlimited use of the frequency 4637.5 kilocycles and would not be applicable to the proposed operation. It is apparent from the foregoing that the geographical separation of applicant's area of proposed

operation from other services makes the probability of interference slight, and the further protection to such services imposed by the limitations and conditions governing use of these frequencies would appear adequate.

GROUND FOR DECISION

1. A need for additional special emergency service of the character proposed by applicant has been satisfactorily demonstrated.

2. Applicant has established that the facilities requested are for an emergency use within the contemplation of the Commission's rules and regulations governing services of this character.

3. Applicant's existing facilities are inadequate to provide for emergency communication needs within the territory served.

4. The frequencies requested are available for assignment to public utility stations operating in the special emergency service where interference will not result to other services from their use.

5. Objectionable interference to or from existing services would not be expected to result from the proposed operation in the territory to be served. However, in order to properly safeguard other services, these applications may be granted only upon conditions protecting them against the possibility of interference from the proposed operation.

6. The granting of the applications, upon the limitations and conditions imposed under Section 111.25 (d) and Section 117.02 of the Commission's Rules and Regulations, would serve public interest, convenience, and necessity.

6 F. C. C.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D. C.

In the Matters of
AGRICULTURAL AND MECHANICAL COLLEGE OF
TEXAS (WTAW),
COLLEGE STATION, TEXAS.
For Construction Permit.

} DOCKET No. 4928.

STATE CAPITOL BROADCASTING ASSOCIATION
(KTBC),
AUSTIN, TEXAS.

} DOCKET No. 5011.

For Modification of Construction Permit.

Decided January 8, 1939

John M. Littlepage, Thomas P. Littlepage, Jr., and William A. Porter on behalf of Station WTAW; *James H. Hanley* on behalf of Station KTBC; and *Walter Johnson* on behalf of the Commission.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION (Payne, Commissioner, not participating):

STATEMENT OF FACTS

These proceedings arose out of the application of the Agricultural and Mechanical College of Texas, licensee of radio station WTAW, College Station, Texas (hereinafter referred to as the A. and M. College of Texas), for a permit to move part of its equipment and to increase its hours of operation from its present assignment of specified hours to daytime hours of operation on the presently assigned frequency of 1120 kc., and the application of The State Capitol Broadcasting Association, licensee of radio station KTBC, Austin, Texas, for modification of construction permit, requesting authority to make certain changes in part of its technical equipment and to operate with a vertical antenna in lieu of a directional antenna previously authorized by the Commission. The State Capitol Broadcasting Association has a construction permit authorizing Station KTBC to operate on the frequency 1120 kc. and to share

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time with Station WTAW. The hearing was held before an examiner of this Commission on March 25 and April 7, 1938. The examiner released his report (I-671) on June 18, 1938, recommending that the application of the A. and M. College of Texas be denied and that the application of State Capitol Broadcasting Association for modification of construction permit be granted. Exceptions were filed to the examiner's report and oral argument heard by the Commission.

On December 3, 1935, an agreement was made and entered into between the Agricultural and Mechanical College of Texas, acting through its Dean, and the State Capitol Broadcasting Association, acting through its president. The contracting parties recognized that Station WTAW was operating specified hours on the frequency 1120 kc., and that the State Capitol Broadcasting Association was applying for a license to install a radio station at Austin, Texas, to operate on the same frequency. An agreement to share time was entered into subject to the approval of the Commission. Paragraphs numbered 1 and 2 of this agreement read as follows:

1. Station WTAW shall have the prior right to the following regular periods of broadcasting:

Daily except Sunday, 11:25 a. m. to 12 noon, Central Standard Time;

Monday, 8:00 a. m. to 9:00 p. m., Central Standard Time;

Friday, 4:30 p. m. to 5:30 p. m., Central Standard Time;

Sunday, 8:30 a. m. to 9:30 a. m., Central Standard Time;

and such additional dates and times as conference football and baseball games are played at College Station.

2. The Station of the State Capitol Broadcasting Association shall have prior right to all other time without objection from Station WTAW, except that should Station WTAW find need for an increase of its time in future and make such request of the Commission, the State Capitol Broadcasting Association agrees not to oppose the request.

The application which the State Capitol Broadcasting Association was prosecuting was duly heard by the Federal Communications Commission. On July 6, 1937, Docket No. 3846 (4 F. C. C. 463), this Commission granted in part the application of R. B. Anderson, R. A. Stuart, and A. W. Walker, doing business as the State Capitol Broadcasting Association, for a permit to construct a radio station at Austin, Texas, to operate on the frequency 1120 kc. with power of 1 kw. day, specified hours of operation. The Commission denied that part of the application relating to nighttime operation with a directional antenna.

The manager of Station KNOW, Austin, Texas, as of July 1937, was a member of the Board of Regents of the Texas A. and M. College. On July 20, 1937, the Board of Directors of Texas A. and

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M. College at a meeting held at College Station, Texas, acting upon a motion made by the manager of Station KNOW, authorized the officials of the College to take appropriate action for a full-time station. Pursuant to this authorization the instant application for daytime hours of operation was filed with the Commission on October 13, 1937. This application requests all the hours authorized for use by Station KTBC, Austin, Texas.

The State Capitol Broadcasting Association was informed of the resolution of the Board of Directors of the Texas A. and M. College. For this reason, construction of the station authorized by the Commission pursuant to its decision of July 6, 1937, was not begun. The State Capitol Broadcasting Association on November 16, 1937, filed the application being considered.

Both applications for modification of license were designated for hearing and were heard together by the examiner in a consolidated proceeding.

As the Texas A. and M. College is the licensee of an existing broadcast station, and as the State Capitol Broadcasting Association was authorized by a previous decision of the Commission to construct a new radiobroadcast station at Austin (KTBC), it will not be necessary to discuss the legal, technical, and financial qualifications of either of these applicants except insofar as these qualifications are necessary to a proper determination of this case.

The transmitting equipment, as well as the antenna and site proposed by each of the applicants, meet the engineering requirements of this Commission.

IN RE DOCKET NO. 4928

The A. and M. College of Texas has operated a radio station for many years. In 1919 the station operated by the college broadcast, by means of code, the result of football games played by the College. This is probably the first broadcast of an athletic contest in the United States. In 1922, WTAW went on the air with a small composite transmitter, with power of about 50 watts. In 1924, its power was increased to 250 watts, and some time later to 500 watts. The transmitter was rebuilt in 1928, and again completely rebuilt in 1936. Station WTAW now operates specified hours, pursuant to the authority of this Commission.

Approximately one-half of the student personnel of the A. and M. College are enrolled in the engineering departments. A number of the engineering students are employed in the operation of Station WTAW, and the college points with pride to the fact that many of its graduates have achieved national prominence in the field of radio engineering.

As of the present time, Station WTAW is operating approximately eight hours per week, the hours being those which the station desired to reserve for its use in accordance with the agreement of December 3, 1935, heretofore set out. These hours are used for the broadcasting of educational programs. The applicant desires continuous hours of operation in order to be able to maintain a listening audience on its assigned frequency and contemplates a program providing for approximately four hours per day of educational programs and eight hours per day of commercial programs. The applicant contemplates an affiliation with one of the National networks although at the date of the hearing no definite arrangement for such a hookup has been entered into.

The applicant proposes in the hours not used for educational programs to present a program not materially different from that normally presented by broadcast stations. The proposed program would include news flashes, shopping information, garden hints, marketing news, home economics, safety talks, popular melodies, vocal and piano selections, string ensembles, hillbilly music, quartets, and sports reviews.

The heads of the various departments of the College will supervise the educational programs. Included in the proposed programs, which may be classified as educational, are discussions in English, presentation of classical music, problems in psychology, public education, school administration, historical decisions, discussion of agricultural problems, natural history, comments on current events, book and magazine reviews, discussion of rural electrification, public health, and sanitation. The facilities of the station will be available to the various civic, charitable, and religious organizations in this community without charge.

The talent available for the presentation of programs contemplated by this applicant consists of the various instructors at the college, the music organizations to be found in the college, including a 200-piece band, 2 dance orchestras, a glee club, a little-theater group, a symphonic orchestra, pipe organist, and other musicians. In addition, talent from Byran would also be available.

The proposed weekly program consists of 20% educational, 15% agricultural, 25% entertaining (sustaining), 35% entertaining (commercial), and 5% religious. The applicant contemplates that approximately 40% of its programs will be presented by live talent and 60% by electrical transcription.

Combining the above percentages for educational, agricultural, and religious programs, we find approximately 40 percent of the proposed programs may be referred to as educational programs. The

applicant has indicated an intention of devoting approximately four hours a day to educational programs, and gradually increasing the number of hours devoted to programs of this nature.

The A. and M. College of Texas has a student body of approximately 5,000. The population of College Station is 1,500. The City of Bryan, approximately 5 miles distant, has a population, according to the 1930 Census, of 7,814. Based upon the 1930 Census, it is estimated that the population residing within the 10, 5, 2, and 0.5 millivolt-per-meter contours of the station will be 14,500, 15,500, 23,000, and 140,000, respectively. Measurements of the existing station indicate that the present service area extends approximately 35 miles from the present transmitter.

The leading industries in Bryan are an oil refinery, ice factory, bottling works, saw mill, planing mill, utility plant, and a cannery. A number of merchants in Bryan were contacted with the view of soliciting advertising over Station WTAW in the event that the Commission grants additional hours of operation. Four merchants signed what may be referred to as an advertising contract to use time on the air. One of these contracts provides for one hour of advertising time at the rate of \$40 per hour; a second, twelve hours of advertising time at the rate of \$32 per hour; the third, twelve hours of advertising time at the rate of \$27 per hour; and the fourth, twenty-five words daily at the rate of \$35 per month. There were also introduced in the record a "List of College Station advertisers" and a "List of Bryan advertisers." The record, however, does not show the amount spent by these parties for advertising. It is apparent that the advertising revenue which Station WTAW could expect from College Station and Bryan advertisers is limited.

Radiobroadcast service in the vicinity of College Station is received from Stations KTSA, San Antonio; KPRC, Houston; WOAI, San Antonio; and WFAA-WBAP, Dallas-Fort Worth, Texas. Each of these stations should deliver a signal of approximately 0.5 millivolt per meter at College Station. The nearest regional stations to College Station are located at Houston, Texas, 80 miles distant, and Austin, Texas, 85 miles distant. The nearest local station is at Temple, approximately 70 miles distant. This area does not have radio service available for local religious and civic activities, except such time as WTAW is able to devote to such matters.

IN THE DOCKET NO. 5011

Austin, Texas, now receives primary broadcast service from Station KNOW, which operates on a frequency of 1500 kc. with power of 100 watts. This station has a construction permit for 250 watts,
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daytime. Radio service in the area of approximately 2 millivolts per meter is available at Austin from Stations WOAI and KTSA. Austin, according to the 1930 Census, had a population of 53,120.

The Commission in the decision referred to (4 F. C. C. 463), found that the applicants, R. B. Anderson, R. E. Stuart, and A. W. Walker, d/b as the State Capitol Broadcasting Association, were legally, technically, and financially qualified to construct and operate a radio station at Austin, Texas, to which the Commission has assigned the call letters KTBC. As of the date of hearing on the present application, it appears that there is no substantial change in the financial qualifications of any of the three applicants. Mr. Anderson had net assets as of April 1, 1938, of more than \$9,000, a salary of approximately \$15,000 per year, and carried life insurance to the extent of \$100,000; A. W. Walker has net assets of approximately \$20,000; and R. E. Stuart, as of March 12, 1938, had a net worth of approximately \$140,000.

The original application, granted by the Commission on July 6, 1937, provided for the erection of a directional antenna. The estimated cost of the original station was placed at \$23,500. In view of the fact that the Commission has authorized Station KTBC to operate specified hours during the day, a directional antenna, which was contemplated for night use, will not be necessary and the applicants now propose to use a conventional type of antenna, the cost of which will be less than the directional antenna specified in the original application.

The Commission, in its decision, 4 F. C. C. 463 at 465, made the following findings:

It appears from the record that there is considerable program talent in Austin and that the city is an educational center with much material available for educational programs. Also, that athletic events of wide interest often take place at the University of Texas. Likewise, many programs of state-wide interest originate in Austin as the capital of the state.

In consideration of the population of the City of Austin and its importance as the capital of the state, the present broadcast service there, and the other evidence adduced at the hearing, the Commission is of the opinion, and so finds, that a public need exists for the proposed station and that sufficient commercial support is available to give reasonable assurance that the proposed station would be expected to obtain sufficient revenue to operate in the public interest.

There is nothing in the evidence of record in the instant case which would cause the Commission to change or modify in any respect the findings of public need for an additional radio station at Austin, Texas.

Paragraph numbered 2 of the contract between Agricultural and Mechanical College of Texas and State Capitol Broadcasting Associa-

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tion entered into on December 3, 1935, provides in part that "Should Station WTAW find need for an increase in its time in future and made such request of the Commission, the State Capitol Broadcasting Association agrees not to oppose the request." It was obviously the intention of the parties at the time of making this agreement to provide for an equitable distribution of broadcast time subject to the approval of the Federal Communications Commission. The application now before this Commission is not one for division of time but one which, if granted, would in effect remove Station KTBC from the air.

It is the duty of the Federal Communications Commission under the provisions of Section 307 of the Communications Act of 1934, as amended, to "make such distribution of the licenses, frequencies, hours of operation, and power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same." The granting of applications so as to provide a "fair, efficient, and equitable distribution of radio service" to each of the communities in the United States is to be governed by the sound discretion of the Federal Communications Commission and cannot be limited by private contracts or agreements between licensees of radio broadcast stations or applicants therefor.

GROUND FOR DECISION

DOCKET NO. 4928

1. The application filed by the Agricultural and Mechanical College of Texas is not one which calls for a sharing of time with Station KTBC, Austin, Texas, but one requesting the Commission to remove another station from the air, in order to enable Station WTAW to broadcast commercial programs.

2. The applicant has failed to show that the type of commercial program to be broadcast in the event this application is granted would be materially different from the type of program now received in the area proposed to be served by Station WTAW.

3. The applicant has failed to show that Station WTAW needs additional time in order to broadcast the educational programs of the College or to serve the public need of College Station and the area contiguous thereto.

4. In the absence of a compelling need or the showing of inferior programs on the part of another station, which has not been shown to exist in the instant case, the Commission is loath to grant an application of one station which would have the effect of removing another station from the air.

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5. Public interest, convenience, and necessity will not be served by granting the application of the Agricultural and Mechanical College of Texas for authority to increase its hours of operation from specified hours to daytime hours of operation.

DOCKET NO. 5011

1. The applicant is legally, technically, and financially qualified to construct and operate Station KTBC as proposed.

2. The proposed changes in the technical equipment of the station, including the proposed antenna, meet the engineering requirements of this Commission.

3. In view of the conditions in the instant case, this applicant was justified in failing to begin construction of Station KTBC, as required by the construction permit originally issued by this Commission pursuant to its decision rendered July 6, 1937.

4. The granting of the application of the State Capitol Broadcasting Association for modification of construction permit will serve public interest, convenience, and necessity.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D. C.

<p>In the Matter of S. B. QUIGLEY, MOBILE, ALABAMA. For Construction Permit.</p>	}	DOCKET No. 4930.
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Decided January 9, 1939

Thomas P. Littlepage, Jr. and *John M. Littlepage* on behalf of applicant; *Walter Johnson* on behalf of the Federal Communications Commission.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION (Craven, Case, Commissioners, not participating) :

STATEMENT OF FACTS

S. B. Quigley, Mobile, Alabama, commenced this proceeding by filing an application for permission to construct a new broadcast station in Mobile, Alabama, to operate on 1200 kilocycles with power of 100 watts, daytime only.

The matter was designated for hearing before an examiner who has filed his report herein (I-628) recommending that the application be granted.

S. B. Quigley, the applicant, is a citizen of the United States having resided in the City of Mobile, Alabama, for many years during which he has been engaged in business in that place. His income from his various business enterprises ranges between \$20,000 and \$25,000 per year; and he is worth over and above his liabilities approximately \$130,000.

The estimated cost of the proposed station is \$9,091.25, which estimate does not include a transmitter site and transmitter house. These items will require an additional out-of-the-pocket expenditure in case a building and land now owned by Mr. Quigley are not suitable.

The estimated total monthly operating expense is \$1,310. The applicant estimated the monthly receipts as about \$2,000, which esti-

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mate is predicated upon contacts made with various business establishments and the amount of advertising business controlled by him in his various business enterprises.

Mobile is an important port. Cotton, lumber, and fruits are extensively handled there. The city has a fine system of docks built at the expense of the State of Alabama. Approximately 5,000 people are employed in ship repairing, and about the same number of people are employed in the shipping industry. Manufacturing establishments situated in the Mobile area include the Southern Craft Corporation, which is a paper mill with about 3,000 employees. Cotton mills and manufacturing plants of various kinds are located in or near the city, and it has a number of wholesale and retail establishments. New industries about to be established in the Mobile area are: a large smelter, which will be placed in operation soon by the Aluminum Ore Company; the National Gypsum Company; and a plywood plant by the Meyercourt Company. Hollingsworth and Whitney of Boston are about to build another paper mill in Mobile. All of these new industries will have a considerable number of employees.

The broadcast service now available is from Station WALA, which operates in Mobile, with power of 500 watts at night, and one kilowatt during daytime. It is estimated by an expert engineer that during nighttime, Stations WSB at Atlanta, Georgia, provides a signal in excess of 2 millivolts per meter, and WWL at New Orleans, Louisiana, provides a signal of slightly less than 2 millivolts per meter, operating with present power, (and when operating with recently authorized power of 50 kilowatts, it will provide a signal of 3.75 millivolts per meter.

The estimated coverage of the proposed station as shown by the record is as follows: The 10 millivolts per meter contour, 3.03 miles; the 2 millivolts per meter contour, 10.5 miles; and the 0.5 millivolt per meter contour, 22 miles. The proposed station would furnish primary coverage to all of the City of Mobile, Alabama.

The proposed program content is of a local nature, as distinguished from chain programs. Included therein are newscasts, both local and national, weather and market reports, health talks, and programs by various religious, civic, patriotic, and educational organizations. Time will be available without charge to those organizations. Station WALA is affiliated with a network and uses network programs to a large extent during daytime hours, whereas at night it averages only about one hour of network programs. A grant of this application will result in making available to the residents of Mobile during daytime two types of programs, i. e., remotely originated network programs and locally originated programs.

The owner of Station WALA appeared at the hearing of this case and admitted the need for the station proposed by the applicant herein, who proposes to put in for the local service he offers rates which approximate half the charges applicable under the schedule maintained by Station WALA.

If the application is granted, Mr. Quigley will operate a total of 61 hours per week, seven hours on Sunday and nine hours on each week day.

A list of talent available for broadcast purposes to the proposed station includes six orchestras, seven string bands, four other bands, one symphony orchestra, and choral clubs. The list also includes a large number of individual instrumental and vocal artists.

The granting of the application and the operation of the proposed station would not cause any objectionable interference to the operation of any existing broadcast station, and there are no applications pending for broadcast facilities which involve any question of interference.

The applicant has been an extensive advertiser by radio for a considerable time. He will give his personal attention to the operation of the station if the permit is granted, and he will employ as program director a man who has had considerable experience in broadcasting, and he will also employ qualified personnel to carry on the business and operations of the proposed station.

The antenna and transmitting equipment proposed to be used by the applicant comply with the Rules and Regulations of the Commission.

The transmitter site is to be determined subject to the approval of the Commission.

GROUNDS FOR DECISION

1. The applicant is legally, technically, financially, and otherwise qualified to become licensee of a station of the kind and class applied for.

2. A public need exists for the proposed broadcast service.

3. Availability of commercial support has been shown to an extent which reasonably assures finances sufficient to operate in the public interest.

4. There are no interference problems.

5. Public interest, convenience, and necessity will be served by a grant of the application.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D. C.

<p>In the Matter of PETER GOELET (WGNY), NEWBURGH, NEW YORK. For Construction Permit.</p>	}	<p>DOCKET No. 4682.</p>
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Decided January 9, 1939

George S. Smith on behalf of the applicant; *Paul D. P. Spearman* and *Alan B. David* on behalf of Station WNAC; *John M. Littlepage* and *William A. Porter* on behalf of Stations WCAE and WINS and the Citizens Broadcasting Corporation; *Philip J. Hennessey, Jr.* on behalf of Station WCAD; *Horace L. Lohnes* and *Fred W. Albertson* on behalf of Station WNEW; *Ben S. Fisher* and *John W. Kendall* on behalf of Platt & Platt, Inc. (Intervener); *James D. Cunningham* on behalf of the Federal Communications Commission.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION:

STATEMENT OF FACTS

Peter Goelet, Newburgh, New York, commenced this proceeding by filing his application for permit to operate on 1220 kc., with power of 250 watts, daytime. He is owner and licensee of Station WGNY, Newburgh, New York, which now operates on 1210 kc., with power of 100 watts, sharing time with Stations WBRB, WFAS, and WGBB.

Mr. Goelet is a citizen of the United States.

The matter was designated for hearing by an examiner, who has filed his report (I-677) herein. Exceptions to the report of the examiner were filed, but they raise no question not involved in the decision of the case on its merits.

The applicant, Peter Goelet, has been engaged in the operation of Station WGNY since 1932. If his application for additional facilities is granted he will continue to use his present staff, and will add thereto three employees in the Engineering Department, one announcer, and one stenographer.

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The transmitter specified in the application is of approved type and is considered satisfactory for the operation of the station as proposed. No changes are to be made in the antenna or site.

The estimated cost of the new construction proposed, including installation, is \$4,325. The estimated monthly operating cost of the station, if additional facilities sought are granted, is \$2,600, which is \$800 more than the present monthly operating expense.

The monthly receipts of the station, operating as at present, are \$1,400. Three additional advertisers will patronize the station if the application for increased facilities is granted, and their accounts will furnish additional income to the amount of \$530 per month.

Station WGNY, sharing time with three other stations, as above noted, operates six hours on Sunday, five hours daily on Monday, Tuesday, Wednesday, Thursday, and Friday, and 8½ hours on Saturday.

In his testimony, among other things, Mr. Goelet stated :

One of the greatest difficulties we have had with respect to soliciting accounts * * * is the fact that many advertisers do not feel that a station operating on an intermittent schedule is a valuable advertising medium (T. 54).

It is contended that the station, if permitted to operate on full day-time hours, will be able to increase its income.

In addition to the income from Station WGNY, the applicant has other resources. He has an income for life, amounting to \$12,000 per year, which is derived from a trust-fund estate. In the past he has spent a part of this income to meet the operating deficits of the station, and in the future he will, if necessary, supply funds to meet operating expenses if the station fails to make enough to pay its way.

The Commission finds that the applicant is financially qualified to make the new construction proposed and to operate the station if his application is granted. See *Saginaw Broadcasting Company v. Federal Communications Commission*, 96 F. (2d) 554.

Newburgh, New York, has a population of 31,275 (1930 census). It is situated on the Hudson River, in Orange County, New York, approximately 54 miles north of New York City. Newburgh has 65 manufacturing establishments, which annually produce goods of the value of \$15,327,000 and employ 4,034 people. It has 66 wholesale houses, which make annual net sales amounting to \$14,045,000 and employ 488 people. It has 730 retail stores, with annual sales of \$16,411,000, employing 1,747 people.

Orange County has 153 wholesale houses, with annual net sales of \$25,624,000, employing 935 people. It has 2,532 retail establishments, with annual sales of \$49,517,000, employing 4,960 people.

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The number of people residing within the respective 10, 2, and 0.5 millivolt per meter contours (1930 U. S. census) of Station WGNY, operating as at present and as proposed, is as follows:

Contour	Present	Proposed
10 mv./m.....	28, 500	32, 500
2 mv./m.....	55, 571	71, 100
0.5 mv./m.....	87, 400	99, 500

Station WGNY furnishes the only local service in Newburgh, New York, and it furnishes the only primary service in the business section of that City. The station as present operates only 39½ hours per week, and because of its limited hours of operation, time is not available for many of the activities of Newburgh and the area surrounding it. The granting of the application under consideration would give the station full daytime operating hours. That would add much to its service in Newburgh and other communities in proximity thereto, and it would enable the station to increase its income.

The commercial manager of Station WGNY appeared as a witness at the hearing and stated that the policy of the station established by Mr. Goelet had been to allow free time to charitable, civic, and social activities, but that time had not been available therefor because of the limited operating hours of the station; and he stated that the station would give time to the Chamber of Commerce for such activities if the additional facilities herein sought are granted.

The manager of Station WGNY also stated that Newburgh, New York, has two merchants associations, which have made inquiry respecting what the station, operating as proposed, might do for the City in promoting special sale days and sale periods.

The chairman of the radio committee of the ministerial association in Newburgh, New York, who arranges for religious programs over Station WGNY, appeared at the hearing and stated that the station, operating as at present, had a limited time schedule; that the activities of the ministerial association required more time; and that Mr. Goelet had agreed that additional time would be made available to the radio committee of the association if the application under consideration is granted.

Since the establishment of Station WGNY in Newburgh, New York, it has installed remote-control points at several locations in that City and in Poughkeepsie, New York, and it has broadcast programs from these points.

The applicant submitted at the hearing a list of program and talent sources that will be available to the station if granted full daytime

operation. The list includes Vassar College, the United States Military Academy, Cornwall Military Academy, Storm-King School for Boys, the Newburgh Junior and Senior High Schools, Farm Bureau Agents from Orange, Dutchess, Sullivan, and Ulster Counties, devotional programs from churches in Newburgh and adjacent communities, fraternal organizations, and service clubs in the Newburgh area.

There is ample talent in Newburgh and its vicinity to supply Station WGNY operating as proposed; and the program proposed is of good quality and should prove satisfactory to the listeners of the station.

There are no questions of interference involved upon the record in this case.

GROUNDS FOR DECISION

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

2. There is a need for the additional daytime service proposed by the applicant.

3. The equipment which the applicant proposes to install will comply in all respects with the Rules and Regulations of the Commission.

4. The station, operating as proposed, will not interfere with the service of any other station.

5. The granting of the application will serve public interest, convenience, and necessity.

6 F. C. C.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D. C.**

In re Application of
SOUTHERN BELL TELEPHONE AND TELEGRAPH COM-
PANY,
ATLANTA, GEORGIA.

For Permit to Construct a Coastal Harbor
Station at Port Sulphur, Louisiana, to
operate in the Public Service.

} DOCKET No. 5174.

Decided January 9, 1939

John T. Goree and *E. W. Smith* on behalf of the applicant; *Frank B. Warren* on behalf of the Federal Communications Commission.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION:

STATEMENT OF FACTS

This proceeding arose upon the application of the Southern Bell Telephone and Telegraph Company for a permit to construct a coastal harbor station at Port Sulphur, Louisiana, to be operated in the public service with power of 400 watts. The frequency requested is 2558 kilocycles. The application was set for hearing before an examiner and was duly heard on June 22, 1938. No person appeared in opposition to the granting of the application. On July 28, 1938, the examiner released his report, recommending that the application be granted. No exceptions to the examiner's report have been filed.

The applicant is a corporation organized under the laws of the State of New York and is engaged in furnishing telephone service in the Southeastern States, including Louisiana. It is one of the associated companies of the Bell System. The record shows that the applicant has the legal capacity and the technical and financial ability to construct and operate the proposed station. The frequency requested by the applicant, 2558 kilocycles, is assigned to coastal harbor service at New Orleans under the Commission's rules and under the working agreement between the appropriate administrative

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agencies of the United States and Canadian Governments. The service proposed by the applicant is two-way telephone communication between vessels within range of the station and land telephone stations of the applicant and its connections. The service rendered will, in general, be the same as that rendered by associated Bell companies at other points in the United States, and will be governed by tariffs containing regulations to become effective January 1, 1939, covering coastal and harbor service.

New Orleans is the second ranking port in the United States, based on the value of imports and exports. There is at present no public coastal harbor station in the vicinity, the nearest station being at Miami, Florida. It is anticipated that the proposed station will furnish service to the three ports of New Orleans, Pensacola, and Mobile, including inland waterways used extensively by vessels serving the industries in this area, such as oil, fishing, and dredging. The record shows a public need for the service proposed and for the use of the frequency applied for.

GROUNDS FOR DECISION

On the record in this case the Commission finds:

- (1) The applicant is legally, technically, financially and otherwise qualified to construct and operate the station as proposed.
- (2) There is a public need for coastal harbor telephone service at New Orleans, Louisiana, and in this vicinity.
- (3) The granting of the application for a permit to construct a coastal harbor radiotelephone station at Port Sulphur, Louisiana, to use the frequency 2558 kilocycles, and limited to 400 watts power, will serve public interest, convenience, and necessity.

6 F. C. C.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D. C.**

In the Matter of
**ALBERT STEINFELD AND COMPANY (Transferor),
TUCSON, ARIZONA,**

and

**KTAR BROADCASTING COMPANY (Transferee),
PHOENIX, ARIZONA.**

For Transfer of Control of Arizona Broad-
casting Company (KVOA).

} DOCKET No. 5171.

Decided January 9, 1939

Paul M. Segal and Harry P. Warner on behalf of the applicant, and
A. V. Dalrymple on behalf of the Commission.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION (Craven, Commissioner, not participating) :

STATEMENT OF FACTS

This proceeding arose out of the application of Albert Steinfeld and Company for authority to transfer the control of the Arizona Broadcasting Company, licensee of Radio Station KVOA, Tucson, Arizona, to the KTAR Broadcasting Company. A hearing was held before an examiner on June 15, 1938. The examiner released his report (I-709) on August 12, 1938, and recommended that the application be granted. No exceptions have been filed to the examiner's report and oral argument was not requested.

The Arizona Broadcasting Company is the licensee of Radio Station KVOA, Tucson, Arizona, which operates on the frequency 1260 kc. with power of 1 kw., unlimited time. The Arizona Broadcasting Company has issued and outstanding 1,503 shares of stock, all of which are owned by Albert Steinfeld and Company, transferor herein.

The transferor is engaged in several business enterprises in Tucson, including the retail department-store business, wholesale hardware business, retail grocery business, wholesale liquor business, manufacture of tile and clay products, iron products, and operates iron

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works and machine shops. The president of the transferor corporation, who is also the largest stockholder thereof, is the president of the Pioneer Hotel in Tucson and is president of several real-estate holding companies, the Tucson Pressed Brick Company, and the Tucson Iron Works.

The transferor purchased all of the stock of the Arizona Broadcasting Company, licensee of Station KVOA, in 1933 for the sum of \$1,500. The station continued to operate with the purchased equipment until 1936, at which time the station was moved to its present location. New equipment, including a new transmitter and a new antenna, were installed.

On September 22, 1937, the transferor and transferee entered into a contract which provides, in substance, for the sale of all of the stock of the Arizona Broadcasting Corporation, free and clear, to the transferee for and in consideration of the sum of \$35,000 cash at the time of delivery and a further agreement that the transferor will buy at the card rates of KVOA the sum of \$10,000 in value of radio advertising during a period not exceeding three years from the date of transfer, not less than 1/72 thereof to be purchased in any one month. The transferor is to receive, on this \$10,000 in advertising, a credit of one-half of the amount of such bills until the credit has been extended in the amount of \$5,000.

An inventory of the station's property, as of the date of the hearing, showed the grand total of all equipment and property of Station KVOA to have an original cost of \$24,704.82 with an estimated replacement value of \$29,640.54. The original cost of the technical equipment is \$13,461.54, the replacement value \$14,833.40, and the depreciated value \$11,688.19. The original cost of the furniture and fixtures is shown to be \$3,680.34 with a replacement value of \$4,150. The cost of the building to be transferred has an original cost, as well as a replacement value of \$4,307.14. The land on which the transmitter is located originally cost the transferor \$3,255.80. The value of this land for the purpose of this sale is placed at \$6,350.

A profit and loss statement of the Arizona Broadcasting Company (KVOA) from April 1, 1937, to September 30, 1937, showed total revenue of \$11,464.70 with a net operating income of \$1,818.31. A profit and loss statement from October 1, 1937, to and including May 31, 1938, showed broadcasting revenue of \$20,077.04 with a net profit during this period of \$2,984.49. A balance sheet for station KVOA, as of May 31, 1937, showed total fixed assets of \$23,864.67 and an earned surplus of \$679.11.

The KTAR Broadcasting Company, transferee, is the licensee of Radio Station KTAR, Phoenix, Arizona. The transferee has out-

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standing 64,706 shares of stock, of which amount 49,997 are owned by the Arizona Publishing Company, 12,704 by the Electrical Equipment Company, 2,000 by Richard O. Lewis, and one share each by W. W. Knorpp, Charles A. Stauffer, Robert C. Hill, M. C. Jennings, and Sam Kahan.

The Arizona Publishing Company publishes the Arizona Republic, a morning paper, and the Phoenix Gazette, an evening paper, in Phoenix, Arizona. The circulation of these two papers is about 55,000, but very few papers are received in Tucson. Neither the transferee nor the Arizona Publishing Company has an interest in any Tucson newspaper.

A balance sheet of the KTAR Broadcasting Company, as of May 31, 1938, showed assets in the amount of \$83,133.36, of which amount \$21,926.87 was in cash, \$31,167.37 in United States Treasury Bonds. The total liabilities, including reserve for new construction, amount to \$37,986.47. The profits of this company amount to \$18,230.74.

At the present time Station KVOA is not affiliated with any network, all of its revenue being derived from local sources. In the event this transfer is approved, a network affiliation with the National Broadcasting Company is contemplated.

The present manager of Station KVOA was the manager of Station KTAR, Phoenix, Arizona, for a number of years prior to October 1937, at which time he moved to Tucson, and since that time has been the manager of Station KVOA. In the event this transfer is approved, the present manager will be retained as well as the present operating personnel of Station KVOA, all of whom are residents of Tucson.

The transferee contemplates the use of the United Press news service and, as heretofore pointed out, a chain affiliation is contemplated. The transferee contemplates an extension of the programs and program service from the University of Arizona as well as a continuation of the public-service programs offered by the station to the various civic, religious, social, and charitable organizations in Tucson.

Should this application be granted, the transferee will be the licensee of Station KTAR, Phoenix, Arizona, and own all of the stock of the licensee of KVOA, Tucson, Arizona. The distance between Tucson and Phoenix is approximately 105 miles. Assuming a minimum antenna efficiency for both stations of 175 mv./m. at one mile unabsorbed for 1 kw., the .5 mv./m. contour of Station KTAR would be expected to fall approximately 52 miles from the station, and the .5 mv./m. contour of Station KVOA is expected to fall approximately 24 miles from the station. On these assumptions, it is apparent that there will be no overlapping of the service area of these two stations.

6 F. C. C.

There are two newspapers published in Tucson, The Arizona Daily Star, a morning paper, and The Tucson Daily Citizen, an evening paper, neither of which are associated with or under common control with Station KVOA or the transferee herein. Radiobroadcast Station KGAR is also located at Tucson, Arizona. This station is not associated with or controlled by either the transferor or transferee.

GROUNDS FOR DECISION

1. The transferee is legally, technically, and financially qualified to own the stock of the Arizona Broadcasting Company, Inc., licensee of Radio Station KVOA, Tucson, Arizona.
2. The transferee is financially qualified to perform the terms of the contract relating to the sale of the stock of the Arizona Broadcasting Company.
3. The transferee will authorize Station KVOA to bring additional programs to the residents of Tucson, and will not diminish the broadcast service now rendered to the various, civic, religious, educational, social, and charitable organizations of the community.
4. Station KVOA, operating as proposed, will not be under the control of, or under common control with, either of the two daily newspapers in Tucson, Arizona, or with the other existing broadcast station in Tucson.
5. The granting of this application will serve public interest, convenience, and necessity.

6 F. C. C.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D. C.**

In the Matters of
ASSOCIATED BROADCASTERS, INC. (WEST),
EASTON, PENNSYLVANIA.
For Modification of License.

} DOCKET No. 5190.

KEYSTONE BROADCASTING CORPORATION (WKBO),
HARRISBURG, PENNSYLVANIA.
For Modification of License.

} DOCKET No. 5191.

Decided January 9, 1939

George O. Sutton and Arthur H. Schroeder on behalf of the applicants Associated Broadcasters, Inc. (WEST), and Keystone Broadcasting Corporation (WKBO); A. L. Ashby and Philip J. Hennessey, Jr., on behalf of Station WJZ; Philip G. Loucks, Arthur W. Scharfeld, and Joseph F. Zias on behalf of Station WIBX; Frank D. Scott on behalf of Station WTHT; Ben S. Fisher and Charles V. Wayland on behalf of Press-Union Publishing Company; and Walter Johnson on behalf of the Commission.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION:

This proceeding arose on the applications of Associated Broadcasters, Inc., licensee of broadcast Station WEST, Easton, Pennsylvania, and of Keystone Broadcasting Corporation, licensee of broadcast Station WKBO, Harrisburg, Pennsylvania, for modification of licenses. These stations now operate each with power of 250 watts during daytime and 100 watts at night, on the frequency of 1200 kilocycles. They operate simultaneously during daytime and share time at night and seek herein authority to operate simultaneously at night or unlimited hours of operation for both stations. Hearing was had on July 14, 1938, before an examiner who on September 30, 1938, submitted his report (I-728) recommending grant of both applications. There were no exceptions to the examiner's report or request for oral argument before the Commission. The applicants filed a joint waiver of oral argument.

6 F. C. C.

DOCKET NO. 5190

Associated Broadcasters, Inc., is licensee of Station WEST and it is not necessary here to discuss its legal or technical qualifications. The application does not contemplate installation of new equipment or any expenditures other than that required for the additional hours of operation.

Easton, Pennsylvania, had a population of 34,468 according to the 1930 Census, and directly across the Delaware River is the City of Phillipsburg, New Jersey, with a population of 19,255. During the year 1935 there were 891 retail establishments in the two cities, with sales of \$18,116,000; 81 wholesale establishments, with sales of \$7,085,000; and 100 factories which produced goods valued at \$30,593,018.

The only primary broadcast service available in Easton is that provided by Station WEST, although service suitable in signal strength for urban residential areas is available from time-sharing stations WCBA-WSAN at Allentown, Pennsylvania, and from Station WJZ at New York, New York.

Under the existing time-sharing agreement on weekdays Station WEST uses the period from 6:00 p. m. (or local sunset, if that is later) to 8:00 p. m. only. On Sundays Station WEST uses the period from 7:00 p. m. (or local sunset, if such is later) to 1:00 a. m. This leaves the city of Easton without any local broadcast service after 8:00 p. m. on weekdays and has resulted in considerable inconvenience to the listening public. A specific instance of such inconvenience is that at the opening of an interstate bridge a dinner was part of the ceremonies, which dinner was attended by the Governors of Pennsylvania and of New Jersey, and Station WEST went off the air at 8:00 o'clock, just prior to delivery of address by the Governors, thereby depriving the listening public of hearing this event which had considerable local importance. During the period of April 20, 1937, to May 14, 1938, this Commission granted 180 special authorizations to Station WEST, in order that it might broadcast important events during its normally silent periods and the total time used under those authorizations was 279½ hours. A grant of this application will result in an increase in hours of operation of Station WEST of 52 hours during June to 124 hours during December.

A list of titles or names of programs broadcast by Station WEST for one week ending June 12, 1938, was introduced into the record and in a supplemental exhibit the applicant classified these programs as 32.5% commercial and 67.5% sustaining; live talent 72%, transcriptions 15%, and records 13%; educational 2.1%, religious 3.5%, civic 2.9%, agricultural 1.5%, entertainment 62.8%, news 5%, and sports 22.2%.

6 F. C. C.

Permanent remote control lines are maintained to Lafayette College, Easton High School, Hotel Easton, Northampton Memorial Shrine, and to a restaurant in Easton. The applicant submitted a tentative weekday program schedule for the additional hours of operation involved, which includes, among other things, a 45-minute period for a community forum and a like period for a high-school concert. A list was submitted showing 15 educational institutions, 78 religious institutions or organizations, 17 civic organizations, 9 fraternal organizations, and 15 governmental organizations from which talent and program material may be drawn.

DOCKET NO. 5191

The legal, technical, and financial qualifications of Keystone Broadcasting Corporation need not be discussed herein, inasmuch as it is now the licensee of Station WKBO and the application does not contemplate any expenditure for new equipment or construction.

Harrisburg, Pennsylvania, had a population of 80,339 and Dauphin County a population of 165,231 according to the 1930 Census. During the year 1935 there were in Harrisburg 1235 retail establishments with sales of \$29,629,000; 179 wholesale establishments with sales of \$37,965,000; and 123 factories with products valued at \$26,999,372. The only broadcast service available in Harrisburg other than from Station WKBO is from Station WHP, which operates there on the frequency of 1430 kilocycles with power of 1 kilowatt during daytime and 500 watts at night and which was recently authorized to increase power to 5 kilowatts during daytime and 1 kilowatt at night using a directional antenna at night.

Under the existing time-sharing agreement Station WKBO is silent on week days during the period from 6:00 p. m. to 8:00 p. m. (except when local sunset is later than 6:00 p. m.) and on Sundays it is silent after 7:00 p. m. During the period from April 4, 1938, to May 17, 1938, the Commission granted eight special authorizations to permit operation of Station WKBO during normally silent periods and the total time so used was 7½ hours.

A list of names or titles of programs broadcast during the week of June 26, 1938, is a part of the record. Another exhibit discloses that during said week the program content was 44.3% live talent and 55.7% transcriptions; that 32.2% was commercial and 67.78% was sustaining time; and 3.3% was educational, 8.42% religious, 5.16% civic, 2.02% agriculture, 67.68% entertainment, 9.43% news, and 4.26% sports. Remote lines are maintained to various hotels, music stores, theaters, churches, schools, and playgrounds and to Carlisle, Pennsylvania.

The control of Keystone Broadcasting Corporation is the same as that of WHP, Inc., licensee of Station WHP in Harrisburg, but there is no connection in ownership or control of Keystone Broadcasting Corporation and Associated Broadcasters, Inc.

DOCKETS NOS. 5190 AND 5191

The field strength measurements contained in this record and the testimony of expert radio engineers based upon said measurements discloses that no objectionable interference would be expected to result from a grant of these applications to any other existing station, nor would objectionable interference result between these stations.

There are no applications for broadcast facilities pending before this Commission, which might be granted under the rules which involve problems of interference with proposals contained in said applications. There is an application by Station WIBX at Utica, New York, which seeks authority to operate with power of 250 watts at night on 1200 kilocycles, which assignment would not be in accord with Rule 121 of the Commission's Rules and Regulations.

GROUND'S FOR DECISION

In the application of Associated Broadcasters, Inc.:

1. A public need exists for the additional broadcast service which this applicant seeks to render;
2. No objectionable interference would be expected to result from the operation as proposed;
3. Public interest, convenience, and necessity will be served by a grant of the application.

In the application of Keystone Broadcasting Corporation:

1. A public need exists for the additional broadcast service which this applicant seeks to render;
2. No objectionable interference would be expected to result from the operation as proposed;
3. Public interest, convenience, and necessity will be served by a grant of the application.

6 F. C. C.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D. C.

<p>In the Matter of GENERAL ELECTRIC COMPANY, Class of Services—Broadcast Class of Stations—Television (Experimental) ALBANY, NEW YORK. BRIDGEPORT, CONNECTICUT. SCHENECTADY, NEW YORK. For Construction Permits:</p>	}	<p>DOCKET Nos. 5001, 5002, 5003, and 5004.</p>
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Decided January 9, 1939

L. D. Coffmann on behalf of the applicant; *Paul P. Porter* on behalf of Columbia Broadcasting System, Inc., respondent; and *James D. Cunningham* on behalf of Federal Communications Commission.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION :

STATEMENT OF FACTS

This proceeding arose upon the applications of General Electric Company, Schenectady, New York, for construction permits to establish four television broadcast stations, two of which are proposed for Schenectady, New York, and one in each of the cities of Albany, New York, and Bridgeport, Connecticut. The operating assignment requested with reference to the Albany and Bridgeport stations, respectively, are the frequencies 66–72 megacycles, with power of 10 kilowatts visual and 3 kilowatts aural. With reference to the two Schenectady stations, in one instance the frequencies 156–162 megacycles, with power of 40 watts, were requested; and in the other the frequencies 44–50 megacycles, with power of 40 watts were sought. These (the Schenectady stations) are designed merely as complementary to the Albany and Bridgeport stations and will not transmit programs designed for public reception. These applications were heard in consolidation on May 26, 1938, before an examiner, who, in his Report (I-722) submitted August 31, 1938, recommended that they be granted,

6 F. C. C.

subject to the condition that such grants shall not be construed as giving the applicant privileges superior to those of any other licensee who may be assigned to the frequency bands in which this applicant has designated channels. The applicant filed no exceptions to this Report, but in lieu thereof submitted a petition which prayed that the applications be granted in accordance with the Commission's Rules and Regulations and the examiner's recommendation.

This applicant is a New York corporation and holds licenses and authorizations issued by this Commission with respect to existing radiobroadcast facilities, and its legal qualifications to construct and operate the television stations proposed are not challenged upon the record. With reference to the stations proposed for the City of Schenectady, the sum of \$10,000 will be expended. The stations proposed for the Cities of Albany and Bridgeport will involve an expenditure of \$350,000. According to the applicant's 46th Annual Report, it has a net worth of \$300,000,000 and the amounts necessary for the undertakings here involved have been specifically appropriated for that purpose.

The applicant's laboratory facilities include the following: The research laboratory which deals with pure and applied science; the works laboratory which utilizes the discoveries made in the research laboratory; the general engineering laboratory, which maintains standards for the company and undertakes special projects; and the consulting engineering laboratory. The scientist who is in charge of the consulting engineering laboratory has been associated with the General Electric Company since the year 1902 and his experience involves the development of the magnetic amplifier, electronic amplifier, and the invention of systems of reception now recognized as tuned radio frequency amplification. He has undertaken extensive tests and demonstrations of television with his associates for the past ten years. The scientist who will be employed as assistant director in the research laboratory has contributed many valuable improvements to vacuum tube developments. Particular use of the principles of dynatron is made in tubes used for television such as the iconoscope and kinescope. The research laboratory has also devoted a considerable amount of research and investigation to the laws of light emission of florescent materials under electronic bombardment, as a function of current and voltage. This is a matter of interest for appliance in the design of lamps, as well as television. Included among the 295 persons regularly employed in the research laboratory are 45 college graduates, 39 of whom hold degrees of Doctor of Philosophy.

In the applicant's general engineering laboratory there are 250 employees, including 70 engineers, 50 of whom have college degrees.

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During the year 1936, one of the laboratory engineers organized an advanced development group in television. This group is equipped with complete physical facilities for developmental work, such as developed apparatus for generating picture signals although it has not completed the television system, not having the space length between transmitter and receiver. The status of television development throughout several countries in Europe has recently been made the subject of study by one of the laboratory scientists.

In the applicant's radio transmitter department many transmitters have been designed. In it there was manufactured the original transmitter which was installed for Radio Corporation of America in the Empire State Building. The design engineer of this department is chairman of the Radio Technical Advisory Unit which serves as the interdepartmental coordinating agency for the Research Laboratory, Consulting Engineer Laboratory, General Engineering Laboratory, Vacuum Tube Department, Radio Transmitter, and Radio Receiver Department.

The instant applications contemplate the development of a complete television broadcasting system suitable for visual and sound programs from any desired source and transmitting them in a manner suitable for entertainment over a large area. The transmitter proposed for the City of Albany, which is expected to be the main station, will provide a high signal level to the entire New York State Capital District, namely, Albany, Troy, and Schenectady. The site selected for this transmitter, which is 10 kilowatts visual and 3 kilowatts aural, to operate between the band 66-72 megacycles, is in the Helderberg Hills approximately 12 miles west of the City of Albany.

The stations contemplated for the City of Schenectady are as follows:

That located on Building 36 of the applicant's Schenectady plant proposing to use the band 156 and 162 megacycles is for relay visual to transmit programs from the studio to the main transmitter site. It is to use a sharply directive beam and will constitute an essential link in a complete television system. The site of this transmitter is in one of the applicant's Schenectady works buildings and studios previously used by the applicant for broadcast purposes will be available at this location. The site is also suitable for direct transmission to the location of the main transmitter proposed to be used by the main station in Albany which will use power of 10 kilowatts visual and 3 kilowatts aural. The proposed Schenectady station to be assigned to the frequencies of 44 to 50 megacycles will be a low-powered station located on Building 5 of the applicant's Schenectady plant. It is designed for preliminary testing purposes prior to the actual testing of the proposed high-powered Albany station and for

advanced research work. The site here involved will be convenient to the Engineering and Research laboratories, where the program of advanced television development will be carried out, and is suitable for the propagation of signals over a limited area, as contemplated in this application.

The applicant proposes a complete television system which is similar in general plan to that of the Radio Corporation of America and the National Broadcasting Company, but contemplates detailed variations essentially different from any other system now in operation. It is an all-electrical system designed to produce a picture having a definition of 441 lines interlaced, 30 frames per second, 60 fields per second, aspect ratio 4 to 3. The equipment which the applicant is now using for laboratory experiments employs positive modulation, so-called "wave-shaped" separation, and synchronizing signals as contrasted to amplitude separation. Preliminary to filing the instant applications and particularly during the past year, engineers employed by the applicant have engaged in extensive studies of various types of television transmitters, the performance of carrier and side-band frequencies, and studies of the various circuit components.

The transmitters proposed for the stations in Albany and Bridgeport are grid-bias modulated type, the modulation being performed in the grid circuit of the final amplifier by means of a compensating resistance capacity coupled with high-power visual modulator. Excitation is obtained from the crystal oscillator through suitable harmonic generator and amplifier stages. The final power amplifier, that is, the modulated power amplifier of the visual transmitter, employs two G. E.-ZP-248 vacuum tubes. This transmitter is designed to operate in the 66 to 72 megacycles band, and in order to obtain efficient operation at these frequencies' transmission line tank circuits are employed wherever they are applicable. The visual amplifier proper is designed to pass visual frequencies from 60 cycles to 2.5 megacycles. The final visual modulator stage employs two G. E.-ZP-248 tubes. The power supply of the modulators and power amplifier employs six RCA-869A mercury vapor rectifier tubes and is rated at 82.5 kilowatts output. The control circuits are arranged to provide the necessary time-delay relaying for starting and stopping the transmitter and for control of the auxiliary equipment.

The aural transmitters proposed for the Albany and Bridgeport stations are of 3 kilowatts capacity and of the high level plate modulated type. The vacuum tubes used in the final amplifier stage or the modulated power amplifier stage are two RCA-846 tubes. The aural amplifier and modulator are designed to transmit faithfully all frequencies from 30 cycles to 10000 cycles per second. In the modulated state two RCA-846 tubes are used. The power rating of the

rectifier for the modulator and power amplifier stages is rated at 11 kilowatts.

The transmitter proposed to be established on Building 36 of the applicant's Schenectady plant is a 40-watt visual transmitter, designed to operate in the band 156-162 megacycles. This transmitter employs two RCA-834 tubes in a push-pull circuit. Excitation is obtained from a crystal oscillator through suitable harmonic generator and amplifier stages. The visual amplifier and modulator is of the compensated resistance capacity coupled type and is designed to transmit with the proper frequency and phase characteristics all frequencies from 60 cycles to 2.5 megacycles. This transmitter is also of the grid-bias modulated type. The tubes employed in the modulator are four RCA-807 tubes. Power rating of this rectifier is 500 watts. The transmitter to be established in Building 5 of the applicant's Schenectady plant is a 40-watt visual transmitter designed to operate in the 44-50 megacycle band, and is of the grid-bias modulated type. The modulation is performed in the final amplifier circuit. It is a crystal-controlled transmitter with suitable harmonic generator and amplifier stages. The modulated power amplifier stage employs two RCA-834 tubes. The visual amplifier and modulator is designed to have the required frequency and phase characteristic over the visual band from 60 cycles to 2.5 megacycles, and the modulator stage itself employs four RCA-807 tubes. The power rating of the rectifier for the power amplifier stage is 350 watts.

Investigations have been made by the applicant's engineers for the purpose of designing and constructing antenna systems for its television project. The antennas for the transmitters proposed for the Albany and Bridgeport stations are designed to radiate a non-directional pattern. The exhibits offered on this subject diagram the physical arrangement of the antennas, a projected horizontal pattern and a projected vertical radiation pattern. Similar data were submitted with respect to the antenna of the station proposed for Building 36 of the applicant's Schenectady plant, which is described as a unidirectional radiator consisting of four radiating elements arranged in a horizontal plane to form a rhomb. The antenna proposed for the transmitter on Building 5 of the applicant's Schenectady plant will be a half-wave-length vertical antenna with a conventional circular horizontal radiation pattern.

The main problems to which the applicant's experimental research will be directed are as follows: The development of high-powered television carrier frequencies consistent with band-width requirements; and modulation of the television carrier at the required high-

modulating frequency. Developmental work and field tests are expected to overcome some of the difficulties encountered. Construction of vacuum tubes which would exhibit more favorable characteristics would make the transmitter problem simpler and easier of solution. Development of wide-band output coupling circuits whereby the required band widths might be obtained without sacrificing plate efficiency, as at present, would be desirable. Improvement in transmission fidelity may be obtained by extending the visual frequency range up to approximately 4 megacycles and transmitting this band with the required fidelity so that complete utilization may be made of the 441-line picture. Transmission of modulation of 4 megacycles and accompanying sound modulation will be attempted in a 6-megacycle channel by means of single side-band transmission.

The objectives sought to be accomplished through the establishment of two similar television stations, one in Albany, New York, and the other in Bridgeport, Connecticut, are as follows:

(1) Investigation of probable diurnal and seasonal signal strength variations, both toward and away from the ocean; and

(2) Investigation of the respective service areas of the two stations operating on the same channel, which will include (a) the determination of the amount of interference permissible; (b) necessary geographical separation to prevent interference; and (c) use of directive antennas to restrict interference.

Adequate equipment will be provided for the testing of results of these operations, and the data obtained will be supplied to the Commission.

None of the respondents named in the notice of hearing in this proceeding appeared and offered evidence in opposition to the instant applications. Upon the record, we find that the establishment of the stations here contemplated will not result in objectionable interference to the service of any existing stations.

Rule 1032 of the Commission's Rules and Regulations provides as follows:

A license for a television broadcast station will be issued only after a satisfactory showing has been made in regard to the following, among others:

1. That the applicant has a program of research and experimentation which indicates reasonable promise of substantial contribution to the development of the television broadcast art.

2. That the program of research and experimentation will be conducted by qualified engineers.

3. That the applicant is legally and financially qualified and possesses adequate technical facilities to carry forward the program.

4. That the public interest, convenience, and/or necessity will be served through the operation of the proposed station.

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Rule 1034 (a) of the Commission's Rules and Regulations provides as follows:

(a) The following groups of frequencies are allocated by bands for assignment to television broadcast stations on an experimental basis:

Group A, 2000 to 2100 kc.; group B, 42000 to 56000 kc.; group C, 60000 to 86000 kc.; group D, any 6000 kc. frequency band above 110000 kc. excluding 400000 to 401000 kc.

The applications under consideration were filed subject to the provisions of Rule 1034, which allocates groups of frequencies by complete bands for television purposes rather than by specific frequencies as sought in these applications. All outstanding licenses for television stations specify bands as provided in Rule 1034 and not particular channels. The Commission's regulations provide for an allocation of frequencies from 30000 to 300000 kc. to specific services, including channels for television. The petition (dated September 26, 1938) filed by the applicant in lieu of exceptions to the Examiner's Report, prays that the applications be granted in accordance with the Commission's Rules and Regulations. Accordingly, said applications are considered as though they request in each instance the entire bands which embrace the frequencies specifically sought.

GROUNDNS FOR DECISION

1. The applicant is technically, legally, and financially qualified to construct and operate the television broadcast stations contemplated in these applications;
2. The applications, as modified by applicant's petition, dated September 26, 1938, may be granted within the purview of the Commission's Rules and Regulations;
3. The program of research and experimentation here proposed gives reasonable promise of substantial contribution to the development of the television art;
4. The interests of existing television broadcast stations will not be adversely affected from an interference standpoint by reason of the establishment and operation of the stations herein proposed;
5. The applications under consideration do not conflict from the standpoint of interference with any other pending applications for television broadcast facilities;
6. The applicant herein will comply with existing regulations applicable to the construction and maintenance of antenna systems;
7. The granting of the application will serve public interest, convenience, and necessity.

6 F. C. C.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D. C.

In the Matter of ¹
KMPC, THE STATION OF THE STARS, INC. (KMPC), }
BEVERLY HILLS, CALIFORNIA. } DOCKET No. 4858.
For Renewal of License.

Decided January 16, 1939

BY THE COMMISSION :

The above application was originally designated for hearing on September 28, 1937, by reason of the application for construction permit filed in behalf of W. H. Kindig, Hollywood, California, which involved a request for all the KMPC facilities. When the matter was called for hearing by the Examiner on December 8, 1937, applicant Kindig did not appear, and his application was denied as in default. The program service of the station having been in issue, testimony was taken relative to that subject. The Examiner recommended that the application be granted, but before the Commission had the opportunity to take action in the matter investigation revealed that certain other announcements of doubtful public interest were being made over the station concerning Basic Science Institute and Samaritan Institute. Upon consideration of the application in question, the findings of the Examiner, and the report of investigation regarding the aforementioned programs, the Commission was unable to determine that a grant of the application for renewal of the station's license would serve public interest. Accordingly the application was designated for further hearing upon issues relating to program service, with particular reference to the announcements advertising "Basic Science Institute" and "Samaritan Institute."

Further investigation and the evidence developed at the further hearing reveal that the station carried announcements sponsored by the Basic Science Institute to the effect that such Institute was a chiropractic organization possessed of the ability to diagnose various physical ailments and give advice as to the treatment to be administered therefor. The chief member of the staff of the organization is one who during 1935 was identified with the Alhambra Electronic Institute, a

¹ The Commission on October 3, 1939 entered an Order modifying, Nunc Pro Tunc, its order of January 16, 1939. See Vol. 7 F. C. C. —.

6 F. C. C.

similar organization which functioned much in the same manner as the present one. He was arrested, tried, and found guilty of violating the California State Medical Act. In its decision upon the application of Station KMPC for renewal of license in 1935 (Docket No. 2850) the Commission condemned the part played by the station in promulgating the schemes of the Alhambra Electronic Institute. The similarity of the present scheme with that conducted in 1935, coupled with the fact that the chief promulgator thereof is the same, should normally have placed the station on notice to inquire into the practices to be advertised. Assuming the propriety of one advertising his skill in the diagnosis and treatment of human ills, certainly stations should carefully investigate this and similar enterprises to which they are requested to lend their facilities in foisting upon the public representations and claims concerning the treatment of human disease and misery. It is enough that advertising continuity of such character be offered a station to cause it to carefully scrutinize the same, as well as to thoroughly investigate the particular scheme to be presented. In this instance the Commission feels that since subsequent to 1935 the management and ownership of the station has completely changed, and due to the fact that the program has long since been discontinued, the future service of the station will not be affected by its past conduct.

Another program which was broadcast and which is of doubtful merit in the public service was that sponsored by the Samaritan Institute, another organization limiting its representations to a 48-hour treatment for alcoholism. As to this scheme, investigation reveals that said Institute has in its service certain persons who were engaged in the practice of medicine without a license therefor, and that several individuals who have subjected themselves to the treatment offered have, as a result thereof, suffered serious physical consequences. This program, similar in its general character to the one heretofore discussed was not in the public interest. This program also has been discontinued.

Further investigation of the station and the evidence offered in behalf of the applicant after further hearing discloses that in general a satisfactory public service is now being furnished. Periods of time are devoted regularly to the broadcast of sustaining programs of a civic and cultural nature. Present indications are that hereafter greater care will be exercised in the selection of program material.

From a consideration of the foregoing, the Commission is now able to reach the statutory finding that public interest will be served by the granting of this application.

6 F. C. C.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D. C.

<p>In the Matter of THE COLUMBUS BROADCASTING COMPANY, INC. (WRBL), COLUMBUS, GEORGIA. For Modification of Construction Permit.</p>	}	DOCKET No. 4385.
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Decided January 16, 1939

John M. Littlepage, Thos. P. Littlepage, Jr., and Wm. A. Porter on behalf of the applicant; *D. M. Patrick, Karl A. Smith, and Lester Cohen* on behalf of Stations WSAI and WTAQ; *Horace L. Lohnes, E. D. Johnston, and F. W. Albertson* on behalf of Station WDRC; *A. V. Dalrymple* on behalf of the Federal Communications Commission.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION:

STATEMENT OF FACTS

This proceeding arose upon the application of The Columbus Broadcasting Company, Inc. (WRBL), Columbus, Georgia, for modification of construction permit to change assignment from 1200 kilocycles, 100 watts night, 250 watts day, unlimited time, to 1330 kilocycles, with power of 1 kilowatt, unlimited time, and to use a directional antenna at night.

Hearing was had on March 21 and 22, 1938, before an examiner, who, on June 27, 1938, submitted his report (I-697) recommending that the application be granted. Exceptions to the Examiner's Report and requests for oral argument were filed by WDRC, Incorporated, and by the Crosley Radio Corporation. On October 27, 1938, oral argument was had before the Commission *en banc*. A brief was filed by the Crosley Radio Corporation.

The stock in the applicant corporation is 50 percent owned by J. W. Woodruff, Sr., who is President and Treasurer, and 40 percent is owned by J. W. Woodruff, Jr., who is Vice President and Secretary. These two gentlemen are also the directors. Ownership of the remaining 10 percent of the stock is not disclosed in the record.

6 F. C. C.

Mr. Woodruff, Sr., is also the licensee of Station WATL, Atlanta, Georgia, and owns 90 percent of the stock in Americus Broadcasting Corporation, licensee of Station WGPC, Albany, Georgia. Mr. Woodruff, Jr., owns 10 percent of the stock in the Americus Broadcasting Corporation and participates in the management of Station WATL.

A balance sheet of the applicant corporation as of December 31, 1937, discloses cash of \$25, accounts receivable \$6,138, notes receivable \$1,242, and fixed assets, consisting of automobiles, studio, and technical equipment valued at \$18,375, less reserve, making total assets of \$25,781. The current liabilities consist of \$12,918, of which \$2,954 is accounts payable and \$9,398 is due to officers. During the calendar year 1937 the corporation sustained a net loss of \$2,199. The estimated cost of construction involved in this application, including the necessary new equipment but not including a transmitter site, is \$17,600.

The population of Columbus, Georgia, is 43,131, and in Muskogee County, in which it is situated, the population is 57,558, both according to the United States Census for 1930. Columbus is a large cotton manufacturing center, with several large cotton mills. Phoenix City, Alabama, is located just across the river from Columbus, and as the population of Phoenix City is not shown in the record, the Commission judicially notices the United States Census figures for 1930, which discloses the population to be 13,862. No primary broadcast service is available in the City of Columbus other than that supplied by Station WRBL, although primary broadcast service is available in the rural area around Columbus from Station WSB, which is located in Atlanta, Georgia, about 95 miles distant, and which operates on the frequency of 740 kilocycles, with power of 50 kilowatts, unlimited time.

At this time, Station WRBL supplies primary broadcast service to the entire city of Columbus. During daytime the .5 millivolt per meter contour is about 19.5 miles from the transmitter. During nighttime, an interference-free signal is provided to at least the 2.6 millivolt per meter contour, which is about 7.2 miles from the transmitter. Operating as proposed during daytime, the .5 millivolt per meter contour would be about 24.1 miles from the transmitter, making a mileage gain in service area during daytime of about 4.6 miles. Operating as proposed at night, the service area would be irregular in shape, due to the directional antenna, and the service would be interference-free to the 4.7 millivolt per meter contour, which would vary in distance from the transmitter from 5.1 miles to 11 miles, so that at night there would be a loss in service area of as much as 2.1

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miles to the north and the southwest, while there would be a gain of as much as 2.8 miles towards the southeast. The population gain, operating as proposed at night, would be 15,789, or a 22.4 percent increase within the interference-free service area, and during daytime the population increase within the .5 millivolt per meter contour would be 23,507, or a 24.1 percent increase. There would, therefore, be a gain in total population served both day and night, and a better signal supplied at night out to the point of limitation, but some residents, the number of which is not shown in the record, who reside in the area now served at night to the north and to the southwest, would lose that service in the event of a grant.

A study of the program distribution of Station WRBL during the four-week period of February 6 to March 5, 1938, inclusive, was made, and the result appears in this record. The program content was distributed as follows: Entertainment 74.3 percent, news 7.6 percent, religious 6.6 percent, agricultural 1.2 percent, sports 1.4 percent, fraternal 0.3 percent, and educational 8.8 percent; 47.4 percent of the total was live talent, 30 percent was recorded, and 22.6 percent was transcribed. Commercial time was 20.3 percent and sustaining time was 79.7 percent. Since February 6, 1938, the licensee has made reservation of the periods from 1:30 to 2:00 p. m., and from 7:30 to 8:00 p. m., each week-day, for civic broadcasts, for which no charge is made. The station signs off at 10:00 p. m. on week-days and 6:00 p. m. on Sundays. Numerous residents of Columbus and of towns and cities nearby testified as to the desirability of the program content and of the general service rendered to the community by the station, and particularly as to service rendered to the local civic, patriotic, religious, educational, and other organizations.

The antenna now used by Station WRBL is a vertical radiator, 210 feet high, and is located about two miles northeast from the business center of Columbus, wherein the studios are located. The transmitter is a Western Electric 250-watt transmitter, Type 310B. It is proposed to add a Western Electric 1 kilowatt amplifier to the present transmitter, which would then become a Western Electric Type 310-D, 1 kilowatt transmitter. The antenna would be moved about one mile farther out from the center of Columbus, and two vertical radiators would be erected, each 185 feet high, above insulators, and spaced apart one-quarter wave length, or 185 feet on a line bearing in the direction of 127 degrees, measuring clockwise from true north. The ground system would consist of a network of copper wires of 120 radials extending outward from the base of each radiator for a distance of one-quarter wave length, or 185 feet. Between the towers the wires would necessarily be shortened, but would extend to the point where

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they overlap, at which point the wires would be bound together mechanically and electrically. This ground system would be similar to the spokes of a wheel, with the radials spaced three degrees apart, and the entire system would be buried immediately below the surface of the earth. During nighttime current would be supplied to both radiators, so that the current in one of them would be 64 percent of the current supplied to the other radiator. The phase between these currents would be 130 degrees. In order to insure stable operation of the system, specially designed transmission lines and coupling equipment for the transfer of power to each of the vertical radiators would be used. During daytime the antenna system would be operated non-directionally by supplying current to only one radiator and detuning the other.

In order to finance the proposed construction, which would cost \$17,600 without the land necessary for the antenna site, James W. Woodruff, Jr., previously described as Vice President and Secretary, and a 40 percent stockholder in the applicant corporation, proposes to lend money to the corporation. An agreement executed on March 21, 1938, which was the date the hearing started, between James W. Woodruff, Sr., and James W. Woodruff, Jr., Vice President and Secretary of Columbus Broadcasting Company, Inc., was introduced into the record. The agreement made for and in the consideration of one dollar, receipt of which was acknowledged, states that Mr. Woodruff Jr., will advance such sum or sums as may be necessary for construction and operation as proposed, up to the limit of \$50,000. Mr. Woodruff, Jr., also showed as a partial list of personal assets, 800 shares of stock having a total value of \$91,200, which stock is in his name and at his disposal, and he also testified he has no liabilities except current bills. As previously stated, the corporation now owes its stockholders \$9,398, under circumstances which are not shown in the record.

The record does not show the present operating expenses other than that the station is being operated at a loss; nor does the record show any estimate of the expected operating expenses in the event of a grant of the application. There is no showing of any expected increase in income other than a mere list of commercial establishments which have advertised over the station. The only showing of financial ability to assume the higher cost of operation of a larger station is the testimony of Mr. Woodruff, Jr., that he will lend money to the corporation, and as to his ability to do so, he shows stock valued at \$91,200, which he acquired as a gift and which is in his name. There is no testimony by Mr. Woodruff, Sr., who, as has been shown, is the principal stockholder, holding 50 percent of said stock.

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No objectionable interference would be expected to result to any existing broadcast station from operation of Station WRBL as proposed, but it would be limited to its 4.7 millivolt per meter contour at night by Station WSAI, in Cincinnati, Ohio, which operates on the same frequency, with power of 1 kilowatt. No objectionable interference would be expected in the event of a grant of a pending application by Station WKEU to move from Griffin, Georgia, to Macon, Georgia.

GROUNDS FOR DECISION

1. The applicant has failed to show that such public need exists for the additional service as would justify a curtailment of the present good service area of Station WRBL in some directions, and to authorize operation of a regional station which will be limited to its 4.7 millivolt per meter contour at night.

2. Public interest, convenience, and necessity will not be served by a grant of the application.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D. C.

<p>In the Matter of EASTERN CAROLINA BROADCASTING COMPANY, GOLDSBORO, NORTH CAROLINA. For Construction Permit.</p>	}	DOCKET No. 5078.
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Decided January 24, 1939

Arthur W. Scharfeld, Philip G. Loucks and Joseph F. Zias on behalf of the applicant; *Elmer W. Pratt* on behalf of Station WMFD; and *A. V. Dalrymple* on behalf of the Commission.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION :

STATEMENT OF FACTS

This proceeding arose out of the application of Eastern Carolina Broadcasting Company for authority to construct a radiobroadcast station at Goldsboro, North Carolina, to operate on the frequency of 1370 kc. with power of 100 w., unlimited time. The application was heard before an examiner on May 17, 1938. The examiner released his report (I-702) on August 8, 1938, and recommended that the application be granted. Exceptions were filed to the examiner's report and oral argument was requested. When the case was called for argument the exceptions were withdrawn and the argument cancelled.

The applicant, the Eastern Carolina Broadcasting Company, is a corporation organized and existing under the laws of the State of North Carolina, and is authorized by its charter to own and operate a radiobroadcast station. The officers of the applicant corporation are A. T. Hawkins, President; Talbot Patrick, Vice President; and V. G. Herring, Secretary and Treasurer; all of Goldsboro, North Carolina. The directors of the corporation are Leslie Weil, Lionel Weil, A. T. Hawkins, Thomas O'Berry, Kenneth C. Royall, W. L. Rawlings, Talbot Patrick, and A. G. Woodward, all of Goldsboro, North Carolina. All of the officers, directors, and stockholders are citizens of the United States and, with the exception of Jonas Weiland, a stockholder, are residents of Goldsboro, North Carolina.

The majority of the officers, directors, and stockholders of the applicant corporation are representative citizens of Goldsboro, and mem-

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bers of the various social, civic, charitable, religious, and educational organizations of the city. Jonas Weiland, a stockholder, holding 30 shares of stock, is the owner and operator of Station WFTC in Kinston, North Carolina.

The corporation has an authorized capital stock of 250 shares common stock with a par value of \$100 per share. One hundred and eighty shares have been subscribed. All of the subscribed stock has been paid for with the exception of the subscription for 30 shares of Jonas Weiland. Mr. Weiland who has paid \$600 of the \$3,000 due on his stock subscription of 30 shares, in addition to being the sole owner of Station WFTC possesses other securities and is amply able to pay for his stock subscription. The corporation at the date of its hearing had the sum of \$14,369.61 in the treasury.

Goldsboro is located in the center of the agricultural section of North Carolina. It is served by the Southern Railroad, the Atlantic Coast Line, and the Atlantic and North Carolina Railroad. Two Federal highways intersect the city. The trade area of Goldsboro extends from 20 to 25 miles in each direction.

The principal industries in the city and the surrounding area are tobacco raising and marketing, cotton growing, warehousing, and marketing, tobacco redrying, and the manufacture of fertilizers, bricks, steel and iron, furniture, plywood, and building supplies. It is also an important poultry and egg-producing center and vegetables are grown extensively in this area. Goldsboro is also a distributing point for grains and mill products.

Goldsboro does not now receive primary broadcast service from any existing station, and is dependent upon distant stations for its radio-broadcast reception.

A tabulation of the daytime broadcast service measured at Goldsboro, North Carolina, on February 20, 1938, showed that there were three stations, namely, WPTF, Raleigh, North Carolina; WFTC, Kinston, North Carolina; and WGTM, Wilson, North Carolina; having a field intensity in Goldsboro of more than 0.1 mv./m., and of these three stations, WPTF is the only station having a signal in excess of 0.5 mv./m.

Goldsboro, according to the 1930 Census, had a population of 14,985; and Wayne County, of which Goldsboro is the county seat, had a population of 53,013. According to the 1920 Census the population of Goldsboro and Wayne County were 11,296 and 43,640 respectively. It appears, therefore, that this is a growing community. According to the Census of Business for the Year 1935 the retail trade in Goldsboro from 269 stores amounted to \$5,893,000, and in Wayne County the trade from 578 stores amounted to \$8,290,000.

The transmitting equipment which the applicant proposes to use meets the engineering requirements of this Commission. The antenna meets the Commission's requirements as to height. As the site is to be determined, the site, antenna, and ground system will be subject to subsequent Commission approval. The estimated cost of the technical equipment is placed at \$10,370. From facts previously stated it is apparent that the applicant has funds sufficient to construct the proposed station.

With the exception of Mr. Weiland none of the officers, directors, or stockholders has had any experience in the management and operation of a radiobroadcast station. In the event this application is granted, however, the corporation proposes to employ competent personnel in the operation of this station. The applicant will employ a station manager, chief operator, assistant operator, program director, two announcers, and a stenographer. The estimated expense incident to this personnel is \$670 per month. The salesmen are to be placed on a commission basis. The estimated operating expense of the station other than personnel is placed at \$530 per month, making a total estimated operating expense of \$1,200.

Approximately 60 business firms in Goldsboro have indicated their intention of using the facilities of the proposed station as a medium of advertising. The applicant estimates that these 60 firms will spend a total of \$8,640.42 during the first six months of the operation of the proposed station. The applicant expects to receive advertising support from a large number of business firms in Goldsboro.

The applicant proposes to offer programs similar to those broadcast by local stations. The station proposes to offer news reports, devotional services, organ music, spiritual songs, vocal selections, weather reports, market reports, music, current events, and broadcasts featuring the local civic, religious, social, and charitable organizations in Goldsboro.

There are a number of individual artists as well as musical and other organizations in Goldsboro who have indicated their intention of appearing over the facilities of the proposed station. Suitable talent for the programs proposed is to be found in Goldsboro.

An engineering survey was conducted by an engineer for the applicant. Based upon numerous measurements made in Goldsboro and vicinity it was determined that the conductivity south from WGTM, Wilson, North Carolina, through Goldsboro and toward WMFD, Wilmington, North Carolina, is approximately 3×10 to the minus 14th electromagnetic units.¹

¹ The engineering testimony in Docket 5184, Richard Austin Dunlea (WMFD), was based on the assumed conductivity of $1 \times 10 - 13$ emu. This explains difference in engineering testimony.

The Commission has this date granted the application of Richard Austin Dunlea for authority to increase the operating power and hours of operation of Station WMFD, Wilmington, North Carolina, from 100 w. daytime to 250 w. day, 100 w. night. Based upon the engineering testimony in this case¹ it is estimated that there will be no interference within the .5 mv./m. daytime contour of the proposed Goldsboro station or Station WMFD operating with power of 250 w. day.

Station WBTM, Danville, Virginia, operates on the frequency 1370 kc. with power of 250 w. day, 100 w. night. Danville is approximately 112 miles from Goldsboro. No interference within the 0.5 mv./m. contour of either station is expected during the simultaneous daytime operation of Station WBTM and the proposed station at Goldsboro.

Operating as proposed, the 10, 2, and 0.5 mv./m. contours of the Goldsboro station will have a radius of 2.8, 6.4, and 12 miles respectively. Within these contours is to be found an estimated population of 17,700, 28,200, and 47,900 persons, respectively. The station will be able to serve all of Goldsboro with a primary signal.

GROUND'S FOR DECISION

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

2. Goldsboro, North Carolina, does not now receive primary broadcast service from any existing station. There is a need for primary broadcast service in Goldsboro and vicinity.

3. The operation of the station as proposed will not cause interference within the 0.5 mv./m. contour of any existing station. The proposed station will not receive interference within its normally protected 0.5 mv./m. daytime contour from any existing station.

4. There will be no interference within the 0.5 mv./m. contour of the Goldsboro station or Station WMFD operating with power of 250 w. day.

5. The transmitting equipment which the applicant proposes to use meets the engineering requirements of this Commission.

6. The proposed station will receive sufficient advertising support from the merchants in Goldsboro to justify its continued operation.

7. The proposed station will serve as a means of expression for various civic, religious, social, and charitable organizations and the various artists in Goldsboro, and as a medium of advertising for the local merchants.

8. There is sufficient talent in Goldsboro for the production of the proposed programs.

9. The granting of this application will serve public interest, convenience, and necessity.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D. C.

<p>In the Matter of RICHARD AUSTIN DUNLEA (WMFD), WILMINGTON, NORTH CAROLINA. For Construction Permit.</p>	}	DOCKET No. 5184.
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Decided January 24, 1939

Elmer Pratt on behalf of the applicant; *Arthur W. Scharfeld*, *Philip G. Loucks*, and *Joseph F. Zias* on behalf of Eastern Carolina Broadcasting Company; *Basil P. Cooper* and *A. V. Dalrymple* on behalf of the Commission.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION :

STATEMENT OF FACTS

This proceeding arose out of the application of Richard Austin Dunlea, licensee of radiobroadcast Station WMFD, Wilmington, North Carolina, for authority to make certain changes in his station, to increase the hours of operation from 100 w., daytime only, to 250 w. day, 100 w. night, and to continue operation on the present assigned frequency of 1370 kc. A hearing was held before an examiner on June 29, 1938. The examiner released his report (I-723) on September 26, 1938, and recommended that the application be granted. Exceptions were filed to the examiner's report and oral argument requested. However, at the time of the oral argument in Docket No. 5078, to which reference will subsequently be made, the exceptions and request for oral argument were withdrawn. Oral argument was not held.

Richard Austin Dunlea, the applicant herein, is and has been the owner and manager of Radio Station WMFD, Wilmington, North Carolina, since April 1935. He is a member of the various civic, religious, and social organizations in Wilmington, and takes an active interest in the civic affairs. He is not engaged in any business other than the operation of Radio Station WMFD.

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The applicant proposes to install new transmitting equipment, and to move the transmitter to a more desirable site, which has not as yet been selected. The transmitting equipment and the antenna proposed to be used comply with the engineering requirements of this Commission. The transmitter site, together with complete antenna and ground system, will be subject to subsequent approval by this Commission. The estimated cost of the proposed improvements is placed at \$3,500.

A profit and loss statement of Station WMFD shows that as of April 30, 1938, the station had total assets of \$8,387.19, of which amount \$1,869.75 consisted of current assets. For the year ending April 30, 1938, revenue of the station amounted to \$12,606.14, with total operating expenses of \$11,182.69, leaving a net operating profit of \$1,423.45. A personal financial statement of the applicant as of the date of the hearing showed total assets of \$20,547.45, of which amount \$5,697.45 represented sums in various savings banks and trust companies in Wilmington. The assets of Station WMFD, amounting to \$8,387.19, are not included in the personal financial statement of the applicant. The applicant had no liabilities.

Wilmington is situated on the Atlantic Seaboard in the southeastern corner of North Carolina. The population of this city, according to the 1930 Census, was 32,270, and of New Hanover County, in which Wilmington is located, 43,010. Adjacent to Wilmington there are a number of bathing beaches which have a small winter population, but which attract a large number of tourists and visitors during the summer.

Station WMFD, which now operates daytime only, is the only station rendering primary broadcast service to Wilmington. The program schedule of the station during the week of June 20 through June 26, 1938, was submitted as being typical of programs broadcast throughout the year. This schedule indicates that the programs include news reports, sports broadcasts, religious services, organ recitals, orchestra selections, dance music, news commentators, programs of civic, educational, religious, and social organizations of Wilmington, as well as a number of broadcasts featuring local talent. The station has granted free time to the various civic, religious, and social organizations throughout Wilmington, including the Parent-Teachers Association, American Red Cross, the Police Department, various hospitals, the D. A. R., the Chamber of Commerce, the American Legion, the Kiwanis, Lions, and Rotary Clubs, programs relating to the W. P. A., the Federal Housing Administration, North Carolina Conservation Department farm features, the United States Employment Service, and the Public Health Department. The applicant

will continue the type of programs now being broadcast by the station. The facilities of the station will continue to be available, free of charge, to the various civic, religious, social, charitable, and educational organizations in Wilmington and vicinity.

Many residents of Wilmington have broadcast over the facilities of Station WMFD. It appears that there are a large number of persons in Wilmington who possess talent which would warrant their appearing over the radio. These persons are usually occupied during the hours when Station WMFD is operating, but would be available to the station should it be authorized to operate at night. Included in the available talent, part of which is now used from time to time by the station, are seven bands, four orchestras, five string ensembles, five glee clubs, 13 quartets, as well as a large number of individual artists.

Station WMFD operates as a local station and is not affiliated with any network. No network affiliation is contemplated if this application is granted. The applicant expects to present approximately 70 percent of its programs by live talent, the remainder by the use of electrical transcriptions.

In addition to the applicant who serves as station manager, the operating staff consists of 11 regular full-time employees, and three student employees. If this application is granted the station will employ an additional operator and an additional announcer. The estimated increase in the monthly operating expense of the station is \$225.

Station WMFD is now serving as a medium for advertising for 148 merchants; of this number 136 are located in Wilmington. Forty-six of the firms now advertising over Station WMFD have indicated their intention of taking additional time in the event nighttime operation of the station is authorized. The applicant estimates that operating full time there will be an increase in operating revenue of the station of approximately \$1,500 a month, \$500 to be derived from an increase in the present advertising rate, \$500 from patrons of the station who have indicated an intention to advertise at night, and \$500 from new accounts.

Station WMFD operating as proposed will not cause objectionable interference to nor receive objectionable interference from any existing broadcast station.

As of the date of the hearing there was an application pending for a radio station at Goldsboro, North Carolina, to operate on the frequency 1370 kc. with power of 100 w. unlimited time. This application was filed January 19, 1938, by the Eastern Carolina Broadcasting Company, Docket No. 5078. Goldsboro and Wilmington, North Carolina, are separated by 80 miles. Assuming that the an-

tenna proposed by Station WMFD will have an efficiency of 175 mv./m. at one mile for 1 kw., and the proposed station at Goldsboro will have an efficiency of 150 mv./m. at one mile for 1 kw., and that the average conductivity in the area affected is 1×10 to the -13 emu¹ it is estimated that Station WMFD will receive interference from the proposed Goldsboro station to its 1.3 mv./m. daytime contour, and the Goldsboro station will receive interference from Station WMFD to its approximate 1.4 mv./m. daytime contour. The 1.3 mv./m. contour of Station WMFD, operating as proposed, will extend approximately 19 miles in the direction of Goldsboro. There will be no interference within the 0.5 mv./m. contour of Station WMFD in directions other than toward Goldsboro. The area within which interference would fall is elliptical in shape, being approximately ten miles wide at the widest point.

The 0.5 mv./m. contour of Station WMFD as now operated extends approximately 22 miles in the direction of Goldsboro. The Commission is this day granting the application of the Eastern Carolina Broadcasting Company for authority to construct a radio station at Goldsboro, North Carolina, to operate on the frequency 1370 kc. with power of 100 w., unlimited hours of operation. This station, operating as indicated, would limit Station WMFD, operating on its present assignment, in the direction of Goldsboro to a distance of approximately 14 miles, the interference area being elliptical in shape approximately eight miles wide at the widest point. It is, therefore, apparent that the increase in power of daytime operation of Station WMFD from 100 to 250 w. will enable the station to serve approximately the same area which the station now serves in spite of the limitation placed upon this area by the station to be operated at Goldsboro.

The 0.5 mv./m. contour of Station WMFD operating with a power of 250 w. is expected to fall a distance of approximately 29 miles from the station except in the direction of Goldsboro.

GROUNDS FOR DECISION

1. The applicant is legally, technically, and financially qualified to operate Radio Station WMFD, Wilmington, North Carolina, as proposed.
2. There is a need for primary nighttime broadcast service in Wilmington and vicinity.

¹The engineering testimony in Docket 5078, Eastern Carolina Broadcasting Company, based on measurements indicated the conductivity to be 3×10^{-14} emu. On these measurements there would be no interference within the 0.5 mv./m. ground wave contours of either the proposed station or WMFD operating as proposed.

3. Station WMFD, operating as proposed, will not cause objectionable interference to and will not receive objectionable interference from any existing broadcast station.

4. Station WMFD, operating as proposed, will serve a more extensive area than before except possibly in the direction of Goldsboro, North Carolina.

5. The Commission in arriving at its decision in this case has considered the application of the Eastern Carolina Broadcasting Company for authority to construct a station at Goldsboro, North Carolina, and finds that this application may be granted within the purview of Section 307 of the Communications Act of 1934.

6. The transmitting equipment which the applicant proposed to use will comply with the engineering requirements of this Commission.

7. The granting of this application will serve public interest, convenience, and necessity.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D. C.

<p>In the Matter of WRSP, INC., WISCONSIN RAPIDS, WISCONSIN. For Construction Permit.</p>	}	DOCKET No. 5024.
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Decided January 30, 1939

Herbert M. Bingham on behalf of the applicant; *Louis G. Caldwell* and *Reed T. Rollo* on behalf of Station WKBB, respondent; *Ben S. Fisher* on behalf of William F. Huffman, intervener; *Walter Johnson* on behalf of the Commission.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION:

STATEMENT OF FACTS

This proceeding arose upon an application filed by WRSP, Inc., Wisconsin Rapids, Wisconsin, for a permit to construct a radiobroadcast station to be operated on the frequency of 1500 kc. with 250 watts daytime power, 100 watts nighttime power, hours of operation to be unlimited. Upon examination thereof the Commission designated the application for hearing. The hearing was conducted by an examiner who, in his report (I-681), recommended that the application be denied. Exceptions to the report and a request for an opportunity to present oral argument were filed by the applicant. Oral argument was also requested by William F. Huffman, intervener, and Sanders Brothers Radio Station (WKBB), respondent. The Commission heard oral argument on October 13, 1938.

WRSP, Inc., the applicant herein, is duly organized under the laws of Wisconsin, with corporate power to engage in the construction and operation of a broadcast station. Its principal place of business is Wisconsin Rapids, Wood County, Wisconsin, where it proposes to establish a local broadcast station.

The applicant has an authorized capital of \$20,000 to be divided into 200 shares with a par value of \$100 per share. One hundred fifty

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shares have been issued, principally to nonresidents who are interested through employment or stock ownership in broadcast stations in two other communities in applicant's state. Twenty-five shares are held by Wayne Cribb, President of the applicant corporation and General Manager of Station WSAU, Wassau, Wisconsin; twenty-five shares by Donald R. Burt, Wassau, Secretary-Treasurer of applicant corporation and Vice President and Program Director of the Northern Broadcasting Company (WSAU); fifty shares by W. E. Walker, Commercial Manager of Station WIBA, Madison, Wisconsin; twenty-five shares by M. F. Chapin, Chief Engineer of Station WIBA and Secretary-Treasurer of the Northern Broadcasting Company; fifteen shares by M. W. Schroeder, Wisconsin Rapids; and ten shares by E. J. Young, Vice President of the applicant corporation. The officers and stockholders are citizens of the United States.

The capital available to the applicant, as shown by its financial statement of March 31, 1938, is \$14,860.50. It proposed to expend approximately \$11,550 in the purchase and installation of a transmitter with necessary radiating system and studio equipment. The estimated cost of operating the station, as given by the applicant, is \$2,726 a month.

The applicant's officers expected to derive a sufficient income from the sale of advertising services to provide funds for operation and maintenance of the proposed station. The population of Wisconsin Rapids, as given in the United States Census reports, is 8,726. Through solicitation of the community, the applicant was able to present a group of forty-seven agreements to purchase advertising services which taken at face value would seem to provide for an income of \$852 per week or \$3,408 per month. But examination of the agreements discloses that they are extremely indefinite as to the obligations of the parties, the form employed in nearly every instance merely stating that the purchaser agrees to use "programs" or "announcements" each week for which he agrees to pay a stated sum. No agreement is indicated as to the number of programs, time length, time of presentation, method and cost of production, matters which would doubtless require consideration of the parties before performance could be required or undertaken. All of the contracts are subject to termination upon thirty days' notice by either party, a provision which would have rendered the evidentiary value of the agreements uncertain without the further fact that the testimony of a number of the signers who stated that their interest in the proposed radio service was experimental and the possibility of continuing their support dependent upon results.

The applicant proposed to install a transmitter of a design which has been approved by the Commission. A transmitter site was to be selected subject to approval of the Commission.

A tentative schedule of programs proposed to be broadcast includes such headings as Morning Devotion, Organ Music, WRSP Reports, Markets at a Glance, Dinner Classics, and Step Lively. The applicant's budget of operating expenses provided for payment of music fees and royalties in the amount of \$125 a month, \$340 for news service, \$100 for program service, and \$100 for talent.

The evidence relative to applicant's plan of operation discloses that the proposed new station was to be operated under the general supervision of Wayne Cribb, Manager of Station WSAU, Wassau, with M. F. Chapin, of Madison, Wisconsin, as Station Manager and Chief Engineer. There is no evidence that Chapin is particularly qualified for this office by knowledge as to local radio needs and interests of Wisconsin Rapids or even acquainted with the community; Wayne Cribb now has the responsibility of managing a station at Wassau, which is approximately sixty-five miles distant, and has only such familiarity with the community as he may have gained through trips there since 1936 and through the broadcasting of a limited number of programs originating in Wisconsin Rapids. Noel Van Heche, Chief Announcer for WSAU, was to be employed as Program Director. Elwood Young was to be Commercial Manager. He is a resident of Wisconsin Rapids, having moved there about two years ago from Reedsburg, Wisconsin, where he operated a mimeograph letter shop and advertising service similar to that which he now operates in Wisconsin Rapids. He has not had any experience in the radio business. On the basis of these facts concerning the applicant and its plans for operation of the proposed station it could not reasonably be expected that it would be operated as a facility of local expression serving needs and interests peculiar to the community, or that its service would be essentially different from program service now available from sources outside the community.

Wisconsin Rapids is located within the primary service area of Station WLBL, Stevens Point, Wisconsin, and within the secondary service area of Station WCCO (810 kc., 50 kw.), Minneapolis, Minnesota. Secondary service is also available from other clear channel stations. The distance from Wisconsin Rapids to the studios of WLBL, which is operated on the frequency of 900 kc. with 5 kw. power, daytime hours, is twenty-one miles. There were allegations presented in testimony of applicant's witnesses that programs of Station WLBL are not addressed to the interests and needs of Wisconsin Rapids, but

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there is no probative evidence that the service of the station is not adapted to the general needs of its service area which, as has been indicated, includes Wisconsin Rapids.

The service of applicant's station, as proposed to be operated on the frequency of 1500 kc., would be limited during nighttime hours of operation by interference from stations now licensed to employ the frequency of 1500 kc. to its approximate 3.5 mv./m. field strength contour, which would restrict its good service to areas within approximately four miles of the station. Its service area during daytime hours of operation would probably extend to its 0.5 mv./m. field strength contour which would include areas within a distance of approximately twenty miles of the station.

The operation of the proposed new station with an antenna of minimum efficiency permitted by regulation would not be likely to cause interference within present limitations on the good service area of the nearest station now licensed to operate on the frequency of 1500 kc. However, if the proposed station were constructed and operated with an antenna of such height as to provide maximum radiating efficiency, it would become the dominant source of interference to the service of Station WKBB, Dubuque, Iowa, which is 135 miles from Wisconsin Rapids, and probably restrict the service of that station to its 3.8 mv./m. field strength contour.

The other application from Wisconsin Rapids, pending when this case was heard, filed by the intervener William F. Huffman, was denied January 3, 1934, Docket No. 4864.

GROUNDS FOR DECISION

Upon consideration of the facts shown, including the fact that it is the apparent intention of the applicant to operate the proposed local station under the supervision and management of persons who are not associated with community interests and are not shown to be qualified to operate the proposed station in accordance with the best interests of the local community; the fact that the nighttime service range of the station would be subjected to a substantial restriction in area by interference from other stations; and the fact that radiobroadcast service is available to residents of the area proposed to be served; the Commission is of the opinion and finds that the applicant has failed to sustain the burden of showing that the public interest, convenience, and necessity would be served by the granting of the application.

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of
RED RIVER BROADCASTING COMPANY (KDAL), }
DULUTH, MINNESOTA. } DOCKET No. 4567.
For Renewal of License.

Decided January 30, 1939

Paul M. Segal on behalf of the applicant; Andrew G. Haley on behalf of the Commission.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION:

STATEMENT OF FACTS

This proceeding arose upon the application filed by the Red River Broadcasting Company for the renewal of license of Radio Station KDAL, Duluth, Minnesota. A hearing was held before an examiner on July 7, 1937. The examiner released his report (I-602) on March 8, 1938, and recommended that the application be granted. No exceptions were filed to the examiner's report and oral argument was not requested.

The application for renewal of license was set for hearing to develop facts relating to the management and control of Station KDAL and also to determine whether the station was being operated in accordance with good engineering practice.

On December 4, 1933, a contract was entered into between E. C. Reineke and others, then owning the stock of the Red River Broadcasting Company, licensee of Station KGFK, Moorhead, Minnesota, and Dalton A. Le Masurier and Charles Le Masurier. The contract provided, in substance, that the Red River Broadcasting Company would apply to the Federal Radio Commission for a permit to move Station KGFK from Moorhead to Duluth, Minnesota, and, upon the Commission's grant of such construction permit, E. C. Reineke and others would sell for the sum of \$12,600 the stock of the Red River Broadcasting Company to Dalton A. and Charles Le Masurier. The

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contract further provided that Dalton A. and Charles Le Masurier were to assume the management and operation of the station, should a permit to construct and operate the station in Duluth be granted.

The application for the removal of Station KGFK from Moorehead to Duluth was originally granted without a hearing by the Federal Radio Commission on January 30, 1934. The grant was protested and the Radio Commission designated the application for hearing upon the protests (Docket No. 2320). Thereafter the application was heard and this Commission, by its decision adopted February 26, 1935, 1 F. C. C. 215, granted a permit to construct the station at Duluth. An appeal was taken to the Court of Appeals for the District of Columbia, which affirmed the decision of this Commission. *Head of the Lakes Broadcasting Company v. Federal Communications Commission*, 66 App. D. C. 19, 84 Fed. (2d) 396. When the station was constructed at Duluth, Minnesota, its call letters were changed from KGFK to KDAL.

At the hearing before this Commission in Docket 2320 above referred to, a copy of the contract of December 4, 1933, was introduced in evidence. At the hearing on the instant application on July 7, 1937, it was disclosed that Dalton A. and Charles Le Masurier were operating Station KDAL as provided for in the contract of December 4, 1933. As of the date of the hearing all of the purchase price except \$4,000 had been paid. Subsequent to July 7, 1937, the remainder of the purchase price was paid and the parties filed an application with this Commission for authority to transfer control of the Red River Broadcasting Company from E. C. Reineke and others to Dalton A. and Charles Le Masurier. This application for transfer of control was granted January 9, 1939. As this Commission has at all times been informed with respect to the manner in which Station KDAL was to be, and has been, managed and operated, and as the Commission has granted the application for authority to transfer the control of the license of Station KDAL from E. C. Reineke and others to Dalton A. and Charles Le Masurier, it will not be necessary to discuss the matter further.

A discrepancy report had been filed concerning the technical operation of Station KDAL. This report relates to the ground system, the tuning of the antenna, and the painting of the antenna tower.

The antenna of Station KDAL was constructed during the winter months of 1936-1937. At this time the soil upon which the antenna was constructed was frozen, and a ground system of copper-coated wires, anchored to stakes driven into the ground, was installed. Changes in temperature had caused some of the stakes to be pulled from the ground, and some of the wires had become coiled and exposed.

As of the date of the hearing, a new ground system, which conforms to the engineering requirements of this Commission, had been installed.

Prior to the date of the inspection by the Commission engineer above referred to, the antenna of Station KDAL had been struck by lightning, and the feeder currents in the line from the transmitter to the antenna were found to be out of balance. As of the date of the hearing, efforts had been made to properly tune the antenna, and tests were being made to determine if the antenna system met the engineering requirements of this Commission.

The failure of the licensee to paint the tower of KDAL, in accordance with the requirements of this Commission, was due to its inability to obtain paint of the required International Orange color.

Subsequent to the date of the hearing on July 7, 1937, Station KDAL has been inspected by Commission engineers and the equipment found to be in proper operating condition.

GROUND FOR DECISION

1. Prior to July 7, 1937, Radio Station KDAL had been operated other than in accordance with good engineering practice, in that it had been operating with a poorly constructed ground system, the line from the transmitter to the antenna was not operating properly, and the antenna tower had not been painted in accordance with the requirements of this Commission.

2. The licensee of Station KDAL has corrected the discrepancies heretofore mentioned and the station is now operating in accordance with the standards of good engineering practice.

3. Public interest, convenience, and necessity will be served by granting the application for the renewal of license of the Red River Broadcasting Company, licensee of Radio Station KDAL, Duluth, Minnesota.

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
 WASHINGTON, D. C.

In the Matter of
S. W. WARNER & E. N. WARNER d/b
 as **WARNER BROTHERS (KLS)**,
OAKLAND, CALIFORNIA.
 For Construction Permit.

} DOCKET No. 5208.

Decided January 30, 1939

Ben S. Fisher and Charles V. Wayland on behalf of the applicant;
T. P. Littlepage, Jr., on behalf of Station KYA; *Elmer W. Pratt* on
 behalf of Stations KJBS and KQW; *John J. Hurley* on behalf of Sta-
 tions KPO and KGO; *Philip G. Loucks, A. W. Scharfeld and J. F.*
Zias on behalf of Station KFBB; *James L. McDowell* on behalf of the
 Federal Communications Commission.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION:

STATEMENT OF FACTS

This proceeding arose upon the application of S. W. Warner and E. N. Warner, d/b as Warner Brothers, licensee of Radio Station KLS, Oakland, California, filed May 2, 1938, for a construction permit to install a new transmitter and increase power to 500 watts. The applicant station is licensed to operate with power of 250 watts on the frequency 1280 kilocycles, unlimited time. No change of frequency or hours of operation is requested. A hearing on the application was held before an examiner on September 28 and 30, 1938, and under date of October 20, 1938, the examiner submitted his report (I-732) recommending that the application be denied. Exceptions were filed to the Examiner's Report and oral argument thereon was heard by the Commission on December 15, 1938.

The applicants for several years have been, and are now, duly licensed to operate Station KLS. The legal qualifications of the applicants have been previously determined by the Commission.

The total assets of the applicants are \$118,195.14 and they have no liabilities. The assets consist of broadcasting property used in con-

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nection with Radio Station KLS and Radio Village, \$45,925; cash on hand \$23,970.14; real estate, \$32,300; and radio store \$11,000.00.

The transmitting equipment specified complies with the engineering standards of the Commission.

The cost of the change in equipment and its installation is estimated at from \$8,000 to \$10,000. The applicant is financially qualified to make the proposed construction, should the application be granted.

The current monthly operating expense of the station is approximately \$2,300, and this would be increased about \$80 per month should applicant operate as proposed. The monthly receipts at present range from \$2,500 to \$3,000. The station is operating at a profit and applicant does not contemplate an increase in advertising rates.

The operating personnel of the station consists of a complete staff of technicians and others who are experienced and well qualified in their particular line of work.

The applicant's present antenna does not meet the Commission's minimum height requirements for regional stations, under the Commission's Rule 131. The station has a vertical antenna approximately 179 feet in height above the insulators. Good engineering standards require that the antenna of regional stations operating on the frequency of 1280 kilocycles have a minimum height of 205 feet. The licensee, however, may show that its antenna and ground system has an efficiency of 175 mv./m. at one mile for 1 kilowatt or 124 mv./m. at one mile for 500 watts, and thereby bring itself within the requirements of Rule 131. In the event this application were granted, it would be made contingent upon proof of such efficiency performance.

The 1930 census population of the State of California was 5,677,251. Oakland, which is within the metropolitan district of San Francisco, had a population of 284,063; San Francisco a population of 1,290,094; and Alameda County, in which Oakland is located, a population of 474,883. There are 54 stations assigned to the State of California, 10 of which are located in the San Francisco-Oakland metropolitan district, and three of these, including the applicant station, are located in Oakland.

The 10, 2, and 0.5 mv./m. contours of the station as now operated, north and south, would be respectively 3.1, 6.6, and 12 miles distant. To the east, where a different conductivity exists, the 10, 2, and 0.5 mv./m. contours would fall respectively 5.3, 13, and 24 miles from the station.

With the station operating as proposed, it would serve north and south to the 10, 2, and 0.5 mv./m. contours, respectively, 3.8, 7.6, and 14 miles. To the east, the 10, 2, and 0.5 mv./m. contours would be approximately 6.6, 15.5, and 28 miles distant.

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During the nighttime, the station is at present limited to its approximate 2.2 mv./m. contour by Station KFBB, Great Falls, Montana, which operates on the same frequency employed by the applicant station.

The applicant submitted a list of 17 cities, towns, and villages with a total population of 56,000, located from 10 to 35 miles from the site of Station KLS, but there was no showing that all of these communities would receive a satisfactory signal from the applicant station operating as proposed.

The other two stations located in Oakland, namely, KLX, which operates on the frequency of 880 kilocycles with power of 1 kilowatt, and KROW, which operates on 980 kilocycles with power of 1 kilowatt, both have unlimited hours of operation.

The seven stations in San Francisco are: KFRC, operating on the frequency of 610 kilocycles with power of 1 kilowatt, 5 kilowatts until local sunset, which renders service to all of the City of Oakland and portions of Alameda County; KGO, operating on the frequency of 790 kilocycles with power of $7\frac{1}{2}$ kilowatts, which renders service to portions of Alameda County and Oakland; KJBS, operating on the frequency of 1070 kilocycles with power of 500 watts, limited to sunset at San Francisco, which renders some service to portions of Oakland during the daytime; KPO, operating on the frequency of 680 kilocycles with power of 50 kilowatts, unlimited time, which renders service to Oakland and Alameda County; and Station KSFO, operating on 560 kilocycles, with power of 1 kilowatt, 5 kilowatts until local sunset, unlimited time, which renders service to portions of Oakland and Alameda County.

The applicant's station KLS, renders excellent service in Oakland and vicinity. However, listening tests indicate that at Hayward, approximately 15 miles southeast of Oakland, the station does not render a usable service, due to a high noise level in that vicinity. The same situation obtains at various other points equally distant from Oakland, including San Ramon, Danville, Walnut, Concord, Martinez, Pindle, San Pablo, and Richmond, the latter two cities being ten or twelve miles north of Oakland. The high noise level is believed to be due to faulty overhead electric power lines and is a condition which, in the applicant's opinion, the requested additional operating power would override. However, the record does not contain an estimate of the number of people not now receiving the service of the station who would be served by the applicant station if the increased power were granted; neither does it show that if this application were granted the applicant station would render a satisfactory service in the various designated communities which applicant alleges its sta-

tion does not now serve. If the applicant station were granted the increased power, as requested, the radius of its present interference-free contour would be extended, but the station would still be limited to its 2.2 mv./m. contour by Station KFBB, Great Falls, Montana. The record shows that the various communities to which the applicant contends it is unable to render satisfactory service are now receiving service from other stations.

The applicant introduced in evidence a schedule of one week's programs, commencing Sunday, September 25, 1938. It appears that the broadcast program service of the applicant station is meritorious, being well balanced, entertaining and educational, and covering a wide range of subjects. Talent available to, and used by, the station for broadcast program services is supplied by studios, schools, musical, and civic organizations. The area contains ample program talent.

The granting of this application would cause interference to the cochannel station KFBB at Great Falls, Montana, to its approximate 1.2 mv./m. nighttime contour. The distance between Oakland and Great Falls is approximately 866 miles. The recommended separation to avoid objectionable interference is 1,200 miles. Station KFBB operates on 1280 kilocycles with 1 kilowatt-5 kilowatts LS, unlimited time, and the additional interference that would be caused by the proposed increase of power for Station KLS would extend approximately $1\frac{1}{2}$ miles within the normally protected 1 mv./m. contour of Station KFBB. Station KFBB is not at the present time limited within its normally protected 1 mv./m. contour and the service area lost to KFBB by the granting of this application of Station KLS would not receive similar service from any other existing station.

GROUND FOR DECISION

1. The granting of this application would cause objectionable interference to Station KFBB at Great Falls, Montana. Station KFBB would sustain a limitation within its normally protected contour of 1 mv./m.

2. The applicants herein have failed to show sufficient need for the proposed increase of power for Station KLS to justify the increased interference that would result to Station KFBB.

3. The granting of this application will not serve public interest, convenience, and necessity.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D. C.

<p>In the Matter of MILWAUKEE BROADCASTING COMPANY (WEMP), MILWAUKEE, WISCONSIN. For a Construction Permit.</p>	}	DOCKET No. 5095.
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Decided February 6, 1939

Ben S. Fisher and *Charles V. Wayland* on behalf of the applicant;
Walter Johnson on behalf of the Federal Communications Commission.

STATEMENT OF FACTS, GROUNDS FOR DECISION AND ORDER

BY THE COMMISSION (Payne, Commissioner, not participating) :

STATEMENT OF FACTS

This proceeding arose on the application of Milwaukee Broadcasting Company, licensee of Broadcast Station WEMP, at Milwaukee, Wisconsin, operating on the frequency of 1310 kc. for a construction permit to increase daytime power from 100 watts to 250 watts.

Hearing was had on September 12, 1938, before an examiner, who, on October 21, 1938, submitted his report (I-733) recommending that the application be granted. No exceptions were filed to the examiner's report nor was there request for oral argument. On October 27, 1938, the applicant filed a waiver of its right to file exceptions or to request oral argument.

At the time of hearing upon this application there were two other pertinent pending applications upon which there is evidence in this record. This applicant had applied for an increase in hours of operation from daytime only to unlimited time, using power of 100 watts (Docket No. 5005), and Station WLBL at Sheboygan, Wisconsin, had applied for a daytime power increase on 1300 kc. from 250 watts to 1 kw. (Docket No. 4145). Effective October 31, 1938, both of those applications were granted.

The Milwaukee Broadcasting Company is a Wisconsin corporation and has 170 shares of stock outstanding of which Hubert L. Mount, president and treasurer, holds 2 shares; Glenn D. Roberts, vice pres-

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ident, holds 92 shares; C. J. Lanphier, secretary, holds 1 share; and Gene T. Dyer holds 75 shares. Mr. Lanphier acts as general manager of the station and Mr. Dyer acts as managing director in charge of sales. In addition, 16 persons are employed in the operation of the station and in the event of a grant of this application additional personnel will not be necessary.

The applicant corporation has total assets of \$19,828, of which \$7,179 is cash; \$2,152 is accounts receivable; and \$10,497 is the value of technical and office equipment. The liabilities are \$1,475. During the first eight months of 1938, the net operating profit was \$6,810, of which \$1,649 was earned during the month of August. The only additional operating expense necessary in order to operate with power of 250 watts during daytime will be approximately \$25 per month for additional electric power. The technical equipment necessary to permit operation with the additional power will cost about \$1,000. This equipment consists of an additional amplifier. The equipment proposed complies with the rules of the Commission.

The City of Milwaukee has a population of 578,249, the metropolitan district of Milwaukee has a population of 743,414 and the State of Wisconsin has a population of 2,939,006, which figures are from the United States Census for 1930. There are, in addition to Station WEMP, two broadcast stations located in Milwaukee. Station WTMJ operates on the frequency of 620 kc. with power of 1 kw. at night and 5 kw. during daytime, unlimited time, and Station WISN operates on the frequency of 1120 kc. with power of 250 watts at night and 1 kw. during daytime, unlimited time. Additional service is available from the clear channel stations which operate with power of 50 kw. in Chicago, about seventy-four miles from Milwaukee.

According to the 1935 Census of Business, there are in Milwaukee 9,351 retail establishments with sales of \$236,941,000; 3,557 service establishments with sales of \$16,385,000; and 1,251 wholesale establishments with sales of \$344,782,000.

Station WEMP has no chain or network affiliation and devotes its entire time to broadcast of locally originated programs. A program schedule for the week ending August 27, 1938, was introduced into the record as was also an exhibit explaining the content of each program. A breakdown of such program content for that week discloses the time was 38.8 percent commercial and 61.2 percent sustaining; 39.2 percent was recordings, 5.1 percent transcriptions, and 55.7 live talent; sustaining programs were 4.4 percent educational, 4.9 percent religious, 5.9 percent civic, 7.6 percent news, 36.5 percent entertainment, and 1.9 percent Americanization; and the commercial programs were 0.9 percent educational and 37.9 percent entertainment. The hours of time devoted to entertainment during the month of August are shown

to be 154.2 hours of recordings, 19.3 hours of transcriptions, and 212 hours of live talent.

Operating as proposed with power of 250 watts instead of the present power of 100 watts during daytime, the various signal strength contours of Station WEMP will be extended considerably. The present 10 mv./m. contour within which 200,000 persons reside will be extended to include 350,000 persons. The present 2 mv./m. contour within which 529,000 persons reside will be extended to include 678,000 persons and the present 0.5 mv./m. contour will be extended, in so far as it is interference free, to include 726,000 persons as compared with the present 700,000 persons within that contour. The signal strength over the present service area will be increased 1.58 times, thereby providing a much more desirable signal in the entire present service area, which is particularly important in those portions where a high noise level is present.

The only problem of objectionable interference is with Station WHBL at Sheboygan, Wisconsin, which operates on the adjacent channel of 1300 kc. with power of 1 kw. during daytime. At the present time 10,700 persons within the 0.5 mv./m. contour of Station WHBL are receiving objectionable interference from Station WEMP and 9,100 persons within the 0.5 mv./m. contour of Station WEMP are receiving objectionable interference from Station WHBL. A grant of this application will result in a change in the interference area by increasing the number of persons within the 0.5 mv./m. contour of Station WHBL receiving objectionable interference from Station WEMP to 11,600 and decreasing the number of persons within the 0.5 mv./m. contour of Station WEMP receiving objectionable interference from Station WHBL to 2,500. Thus even though the service of Stations WEMP and WHBL will be limited well within their respective 0.5 mv./m. contours in small areas lying on a line between the two stations, the grant of the application of WEMP will result in the taking of WHBL's service from only 900 persons and a giving of WEMP's service to 6,600 persons, thereby reducing the gross number of persons receiving objectionable interference by 5,700. The area within which the interference will result is small in size, is on a line between the two stations near Milwaukee and is now served by Milwaukee Stations WISN and WTMJ.

GROUNDS FOR DECISION

1. A substantial public need exists in Milwaukee for the improved broadcast signal which this applicant seeks to provide.
2. A grant of this application will improve the interference condition now existing between Stations WEMP and WHBL.
3. Public interest, convenience, and necessity will be served by a grant of the application.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of
WODAAM CORPORATION (WNEW),
NEW YORK, NEW YORK. } DOCKET No. 4988.
For Modification of License.

Decided February 6, 1939

H. L. Lohnes and F. W. Albertson on behalf of the applicant; Alfons B. Landa and Robert W. Mapes on behalf of Thomas J. Watson; Ben S. Fisher and Charles V. Wayland on behalf of Station WTNJ; Frank Stollenwerck on behalf of Stations WCAP and WCAM; Philip G. Loucks, Arthur W. Scharfeld and Joseph F. Zias on behalf of Stations WBNX and WDSU; and James D. Cunningham on behalf of the Federal Communications Commission.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION (Case, Payne, Craven, Commissioners, not participating):

STATEMENT OF FACTS

This proceeding arose upon an application of the Wodaam Corporation, license of radio broadcast Station WNEW, New York, New York, for modification of license to increase the daytime power, on the frequency 1250 kilocycles, from 2.5 kilowatts to 5 kilowatts. The station now operates with a power of 2.5 kilowatts day, one kilowatt night, and shares time with Station WHBI, Newark, New Jersey.

On March 15, 1938, a hearing was held on this application before an examiner, who, in his report (I-680), recommended that the application be denied. To this report exceptions were filed by the applicant and oral argument was heard by the Commission on October 13, 1938. Briefs in support of oral argument were filed by the applicant, by Radio Industries Broadcasting Company (WCAP) and by the City of Camden (WCAM). The exceptions have been considered by the Commission.

The Wodaam Corporation, the applicant herein, has 100 shares of capital stock outstanding, of which 49 shares are owned by Richard
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O'Day, 48 shares are owned by WAAM, Inc., and 8 shares are owned as qualifying shares by directors. The officers of the corporation are: Richard O'Day, President; William J. Turner, Vice President; and Milton H. Biow, Secretary-Treasurer. Arde Bulova and the officers of the corporation constitute the Board of Directors. The stock of WAAM, Inc., is owned as follows: 6 percent by Ira Nelson and 94 percent by H. Henshel.

The legal, technical, and financial qualifications of the Wodaam Corporation need not be discussed herein inasmuch as it is now the licensee of Station WNEW and the instant application does not contemplate any expenditures for new equipment or construction.

The present transmitting equipment, the antenna, and transmitter site are satisfactory for the operation of the station as proposed herein.

The personnel of the station consists of 90 employees, including 3 in the Executive Department, 36 in the Program Department, 26 engineers (consisting of 21 full-time and 5 part-time employees), 11 on the sales staff and 14 in the general office.

According to the 1930 United States Census, the population of the metropolitan area of New York City was 10,901,424.

There are about 21 stations, including Station WNEW, located in New York City and northeastern New Jersey which render service to all or portions of the New York metropolitan area. Station WNEW, operating as at present, renders a satisfactory service during the daytime to most of Manhattan Island but does not render a primary service to any substantial portions of the Bronx or to the Borough of Brooklyn. The entire downtown sections of Brooklyn and the Bronx are outside of the 10 millivolt per meter contour of Station WNEW.

The area included in the applicant's service contours has highly congested population centers where the electrical noise level is high due to electrical equipment such as elevated railways, street railways, neon signs, etc. There are many points in the metropolitan area which lie within the 10 millivolt per meter contour of WNEW that do not now receive a satisfactory signal because of the noise level and interfering signals. In Manhattan particularly, the reception of the station signal is spotty and in many instances overridden by noise. A signal of 10 to 25 millivolts per meter, therefore, is considered necessary to render an interference-free service.

It was predicted that the proposed increase in power for Station WNEW would render a 40 percent increase in signal over the entire area now served by the station and that such increase in signal would be a material aid in overriding this noise level; and would, in addi-

tion, move the 10 millivolt per meter contour further into the Bronx as well as to include the cities of Paterson, Orange, Elizabeth, and Bayonne, New Jersey. These cities are a part of the metropolitan area.

Based upon population figures of the 1930 United States Census, it was predicted that Station WNEW, operating with the increased power during the daytime, would provide an increase in service as follows:

	Present	Proposed	Increase
Within the 10-millivolt-per-meter contour.....	4, 374, 632	5, 256, 621	881, 989
Within the 2-millivolt-per-meter contour.....	9, 414, 197	9, 843, 907	429, 770
Within the 0.5-millivolt-per-meter contour.....	9, 802, 453	10, 243, 057	440, 599

A typical week's broadcast by Station WNEW, which was offered in evidence, shows a well-diversified service that is designed to be of interest to the entire New York metropolitan area. Included in the programs are news broadcasts; educational programs by members of the faculty of Brooklyn College and Columbia University; music by well-known artists and orchestras; health talks by the Director of Social Hygiene of the New Jersey Board of Health; safety campaigns sponsored by the New Jersey and New York Police Departments; and religious broadcasts by various ministers located in New York City and in Paterson, New Jersey. Programs of interest to the New Jersey area are broadcast from Rutgers College, Paterson College, and the Newark baseball games are broadcast daily during the summer months. Time is donated by the applicant to civic, religious, and charitable organizations except in those instances where a large expense is involved because of line charges. There are 24 lines maintained by the station for broadcasting programs originated from points in New York City and in the New Jersey area. The applicant does not contemplate affiliating with a network system.

There will be no increase in rates for the purchase of time of Station WNEW should the increase in power be granted.

There is only one broadcast station concerning which there exists any question of possible adverse effects due to objectionable interference in the operation of WNEW as proposed. The station is WCAP, Asbury Park, New Jersey, which operates on the frequency 1280 kilocycles, with 500 watts power, and shares time with Stations WCAM, Camden, New Jersey, and WTNJ, Trenton, New Jersey. Based upon measurements taken of the signals of Stations WNEW and WCAP and on the standards of allocation of the ratio of 1 to

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10 for desired to undesired signals of stations operating on channels 80 kilocycles removed, it was predicted that WNEW, operating as proposed, would cause objectionable interference slightly within the 0.5 millivolt per meter contour of WCAP. The service area of WCAP which would be affected embraces a population of approximately 2,800 people residing in the vicinity of Atlantic Highlands, New Jersey, and on the government reservation of Sandy Hook, New Jersey. At the hearing, the engineer for the applicant challenged the correctness of the ratio of 1 to 10 as used in determining the interference to WCAP and stated that, in his opinion, particularly in the matter of selectivity of receivers now in use by the public, this ratio could be materially relaxed; and that a ratio of 1 to 50 would be satisfactory at the present time.

An expert witness connected with the engineering staff of the Commission, who testified at the hearing, concurred with the above opinion to the extent that the ratio of desired to undesired signals could be materially relaxed at the present time. This same witness predicted that upon the basis of any ratio above 1 to 10 for desired to undesired signals, there would be no actual interference to the good service of either station, should the application of WNEW be granted.

Since the date of hearing on the instant application, Station WGNY, Newburgh, New York, has been granted an application for authority to operate on the frequency 1220 kilocycles, with power of 250 watts daytime, and Station WFBR, Baltimore, Maryland, has been granted an application to increase its power, on the frequency 1270 kilocycles, to 1 kilowatt night, 5 kilowatts day, unlimited time, using a directional antenna. Considering the nature of the conductivity of the intervening areas between WNEW and these stations, it was predicted that there would be no objectionable interference to either of these stations within their normally protected contours caused by the proposed operation of WNEW. Stations WGNY and WFBR, operating as proposed, would likewise not be expected to cause objectionable interference to the service of WNEW, should the instant application be granted.

GROUNDS FOR DECISION

1. The use of additional power for daytime operation would render an improved signal in the entire area now served by the applicant which would materially aid in overriding the high noise level existing in the New York metropolitan area; and would, in addition, extend the good service area further into the Bronx and into the industrialized cities in northeastern New Jersey which are a part of the metropolitan area.

2. There is a public need for additional daytime service in the New York metropolitan area as proposed herein.

3. The program service proposed by the applicant is designed to be of interest to the listening public in the entire New York metropolitan area.

4. Station WNEW, operating as proposed, would not cause objectionable interference to any existing broadcast stations.

5. The grant of this application will not conflict by reason of interference with facilities requested in applications pending before the Commission at the time the instant application was designated for hearing.

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

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D. C.

<p>In the Matter of MRS. W. J. VIRGIN (KMED), MEDFORD, OREGON. For Construction Permit.</p>	}	<p>DOCKET No. 4824.</p>
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Decided February 6, 1939

Clarence C. Dill and *James W. Gum* on behalf of the applicant;
A. V. Dalrymple on behalf of the Federal Communications Commission.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION:

STATEMENT OF FACTS

Mrs. W. J. Virgin, Medford, Oregon, commenced this proceeding by filing her application for construction permit to operate on 1410 kilocycles, with power of 1 kilowatt, unlimited time. She is the owner and licensee of Station KMED, Medford, Oregon, which now operates on 1410 kilocycles, with power of 250 watts, unlimited time.

Hearing was had on June 30, 1938, before an examiner, who, on August 2, 1938, submitted his report (I-718) recommending that the application be denied. Exceptions to the report of the examiner, filed in behalf of the applicant, challenged the examiner's finding that there was no need for the additional service contemplated; and also the finding that public interest, convenience, and necessity would not be served by the granting of the application. On November 10, 1938, oral argument was had before the Commission *en banc*.

Mrs. W. J. Virgin, the applicant herein, has been the licensee of Station KMED at Medford, Oregon, since 1927. As the applicant herein is now the licensee of an existing broadcast station, no question was raised with reference to her legal or technical qualifications to operate Radio Station KMED as here proposed.

A balance sheet of the applicant as of June 13, 1938, discloses cash of \$22,991.25; accounts receivable \$7,992.48; stock, California Oregon

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Power Company \$100; musical library \$3,357.23; equipment \$18,533.43; furniture and fixtures \$5,253.57; transmitter building \$3,312.00; and land \$1,200.00. Depreciation reserve amounts to \$12,698.64 and net worth of applicant's investment in station is \$50,041.32. In addition, the applicant has personal resources estimated at \$19,000. During the period 1927 to 1937, inclusive, the operation of the station resulted in a total net profit of \$73,797.96 or an annual average of \$6,708.90. For the year of 1937, the station had gross revenues of \$40,505.24; expenses \$28,156.99; and a net profit of \$12,348.25.

The estimated cost of the new construction proposed is \$3,500. The annual operating cost of the station will be increased approximately \$5,000.

The Medford trade area extends roughly from Yreka, California, to Grants Pass, Oregon, and includes a population estimated by witness for applicant to be approximately 120,000 in Jackson, Klamath, and Josephine Counties, Oregon, and Del Norte and Siskiyou Counties, California. On the outer fringes of the station's trade area the reception is somewhat irregular in spots and impossible in other portions. The western and southern portions of the Medford trade area is largely devoted to the growing of pears, and the growers do not receive the frost warnings which are a part of the regular service of Station KMED. The population of Medford is 11,007 and Jackson County in which Medford is located, has a population of 32,918, both according to the United States Census for 1930.

Station KMED is the only broadcast station rendering consistent service to Medford and the area adjacent thereto. The three largest stations in the state are located in Portland, and their signals are very weak in the southern part of Oregon and the northern part of California.

The area surrounding Medford is devoted to farming, with fruit as the major crop, and dairying and livestock in their respective order. Approximately 15,000 people in the area devote their entire time to the growing of pears and the crop is valued at approximately \$5,000,000. During 1935 there was in Jackson County 508 retail stores with sales amounting to \$10,377,000. In Josephine County there were 227 retail stores with sales aggregating \$3,793,000. In Klamath County there were 519 retail stores with sales of \$14,440,000. In Del Norte County there were 118 retail stores with sales of \$1,148,000, and in Siskiyou County there were 380 retail stores with sales of \$7,733,000.

The record discloses that the program service heretofore rendered by Station KMED has met the needs peculiar to the Medford area,

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and has been in the public interest. Said programs appear well balanced, educational, and entertaining. The station has inaugurated a service of broadcasting weather information during the period March 15 to June 1 of each year. This service is of special benefit to the pear growers and consists of predictions of the lowest temperatures to be reached before 6 o'clock the following morning and an estimate of the range at which the orchard heater should be started. The growers are very much interested in this service, and the station is desirous of increasing the signal so that the orchardists in the outlying districts may receive such broadcasts. The weather information broadcast by the station has been responsible for saving entire fruit crops. The Home Demonstration Agent has extension units in every community and county in the area. Approximately 15 minutes is devoted every Monday afternoon to a radio talk to various extension units. The agents in southern Oregon at the present time are located at Medford and Grants Pass.

During the winter months the station broadcasts a snowcast service every Friday afternoon. The latest information with regard to skiing and road conditions in the mountains from Mt. Hood to Mt. Shasta is given. The educational authorities in Medford and Grants Pass are interested in the programs broadcast by the National Broadcasting Company's network entitled "The Standard School of the Air." A radio class has been organized in the schools to give the children actual experience before the microphone and to advance interest in certain courses, such as French, home economics, music, bookkeeping, in order that children may know what to expect from training in such courses.

The station is affiliated with the Red and Blue Networks of the National Broadcasting Company. The station operates 90 hours and 15 minutes a week, of which 50 hours and 22 minutes, or approximately 55% of the time, is devoted to commercial programs, and the remainder to sustaining. The station broadcasted during an average week a total of 5 hours of religious programs; 6 hours, news, sports, and weather reports; 13 hours to educational talks; 62 hours of entertainment; and the remainder to civic programs.

There are two broadcast stations to which interference would be caused from the operation of Station KMED during nighttime hours upon its present channel with power of 1 kilowatt. These stations are CKFC and CKMO, located at Vancouver, B. C., which share time on the frequency 1410 kilocycles; CKFC operates with power of 50 watts and CKMO, 100 watts. Vancouver, B. C., is approximately 477 miles from Medford. Regional stations are normally protected to their 1 millivolt per meter nighttime contour. Station CKFC does

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not and would not cause objectionable interference to the proposed service of Station KMED; however, the operation of Station CKMO would and does now cause interference to Station KMED to the approximate 1.4 millivolt per meter nighttime contour. The proposed operation of Station KMED with power of 1 kilowatt at night would produce objectionable interference within the normally protected service areas of Stations CKFC and CKMO, and limit said stations to their approximate 4.6 millivolt per meter nighttime contour.

It is not expected that the operation of Station KMED as proposed would involve questions of interference with any other existing broadcast station or with any facility requested in pending applications.

GROUNDS FOR DECISION

1. There is an existing public need in the outlying districts of the Medford area for additional broadcast service.

2. The granting of this application would result in objectionable interference to existing broadcast stations.

3. The need for additional broadcast service in the Medford area is not sufficiently compelling to warrant the granting of this application when consideration is given to the limitation which would be suffered by existing broadcast stations.

4. The granting of the application will not serve public interest, convenience, and necessity.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D. C.

<p>In the Matter of MRS. W. J. VIRGIN (KMED) MEDFORD, OREGON. For Construction Permit.</p>	}	<p>DOCKET No. 4824.</p>
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Decided March 27, 1939

**ON PETITION FOR RECONSIDERATION AND/OR REHEARING, SUPPLEMENTAL
STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER**

The Commission, on February 6, 1939, effective February 13, 1939, denied the application of Mrs. W. J. Virgin (KMED), Medford, Oregon, for a construction permit to install new equipment and increase power from 250 watts to 1 kw, hours of operation unlimited, on the frequency 1410 kc.

The applicant filed a Petition on March 6, 1939, for "Reconsideration and/or Rehearing" requesting alternative relief as follows: That the Commission reverse its Statement of Facts, Grounds for Decision, and Order, of February 6, 1939, effective February 13, 1939, denying the application of Mrs. Virgin (KMED) for construction permit, and (1) in so far as the application requests daytime operation with 1 kw. power, grant the same; and (2) in so far as the application requests nighttime operation with 1 kw. power, that the Commission (a) hold the application of Mrs. Virgin (KMED) in abeyance until after the North American Regional Broadcasting Agreement becomes effective, or (b) deny said application without prejudice to the filing of a new application for the same facilities as soon as this Agreement becomes effective.

Concerning the first alternative requested in the applicant's Petition, the record discloses that there is a need for the proposed service both day and night, and we have so found.

The record also discloses that the only interference to any existing station or pending applicant, which would result from the operation of Station KMED as proposed, is shown to be at night, and we have so found.

Applicant now requests that we grant her application in part so as to permit the daytime operation on the frequency of 1410 kc. with 1

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kw. power. No question of economic interference is raised by any existing station or applicant. We are impelled, therefore, to grant the applicant's Petition, and we now set aside our Order of February 6, 1939, effective February 13, 1939, in so far as it denies applicant's request for *daytime operation* of Station KMED, on the frequency 1410 kc. with 1 kw. power.

Concerning the second alternative, the applicant contends that since the Commission denied her application because of nighttime interference to two Canadian stations, and since, if and when the North American Regional Broadcasting Agreement becomes effective, Petitioner's application might be granted under the terms thereof for nighttime use of 1410 kc. with 1 kw. power, without possibility of interference to any existing Canadian station, because the two Canadian stations now involved are to be shifted to other frequencies, the Commission ought either to deny her application in this behalf, without prejudice to the filing of another application for identical facilities as soon as the North American Regional Broadcasting Agreement becomes effective, or hold her application in abeyance until said Agreement becomes effective.

In this connection we must take judicial notice of the fact that the North American Regional Broadcasting Agreement has been pending adoption for practically the entire period of the pendency of this application, and its status is and was a matter of common knowledge. Applicant, at any time prior to our action on her application, might have requested that her application be held in abeyance until said Agreement becomes effective, but no such request was made prior to our decision. In the interests of orderly procedure therefore, we believe the request comes too late and that it must be denied.

In so far as the applicant requests that her application be denied "without prejudice," we shall consider this request as one for a waiver of Rule 15.18. In this connection, we think the request is premature. If and when the North American Regional Agreement becomes effective and applicant files a new application, her request for waiver of Rule 15.18 will receive due consideration.

Upon the facts originally found in our Statement of Facts and Grounds for Decision of February 6, 1939, effective February 13, 1939, and for the reasons hereinabove set forth we now find:

1. There is an existing public need in the outlying districts of the Medford, Oregon, area for additional broadcast service both day and night.

2. The granting of this application, in so far as it requests daytime operation, would not result in objectionable interference to any existing broadcast station or pending applicant.

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3. The granting of this application, insofar as it requests night operation on 1410 kc. with 1 kw. power, would result in objectionable interference to two existing Canadian broadcast stations.

4. The granting of this application, insofar as it requests night operation on 1410 kc., with 1 kw. power, would not result in objectionable interference to any existing United States station or pending applicant.

5. The granting of this application, insofar as it requests daytime operation on the frequency 1410 kc., with 1 kw. power, will not result in economic interference to any existing station or pending applicant.

6. The granting of this application, insofar as it pertains to daytime operation as requested, will serve public interest, convenience, and necessity.

7. The granting of this application, insofar as it pertains to nighttime operation as requested, will not serve public interest, convenience, and necessity.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D. C.

In the Matter of
**FIRST BAPTIST CHURCH,
PONTIAC, MICHIGAN.**

For Authority to Transmit Programs by
Wire Line to Station CKLW, Windsor,
Ontario, Canada.

} **DOCKET No. 4734.**

Decided February 6, 1939

Fred W. Albertson on behalf of the First Baptist Church, the applicant; *Herbert M. Bingham* on behalf of Station CKLW; and *James D. Cunningham* on behalf of the Commission.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION (Case, Payne, Commissioners, not participating):

STATEMENT OF FACTS

This proceeding arose upon the application of the First Baptist Church, Pontiac, Michigan, for authority to transmit programs from the applicant's studio in Pontiac over the wire lines of the Michigan Bell Telephone Company to Windsor, Ontario, Canada, there to be broadcast over Station CKLW.

A hearing on the application was held October 11, November 10, and December 20, 1937, before an examiner, who, in his report (I-654), submitted on May 14, 1938, recommended that the application be denied. Exceptions to the examiner's report and a request for oral argument were filed by the applicant and oral argument was held before the Commission on October 13, 1938. The exceptions filed by the applicant have been fully considered by the Commission in reaching its decision herein.

The First Baptist Church, Pontiac, Michigan, the applicant herein, is incorporated and exists under the laws of the State of Michigan. The funds and property of the applicant are administered by a Board of Trustees consisting of nine members elected by the congregation.

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Kenneth G. Hempstead, Clarkston, Michigan, is Chairman of the Board; Henry Prestel, Royal Oak, Michigan, is Secretary; and Walter A. Seakes, Pontiac, Michigan, is the Treasurer. These officers and the other members of the Board are citizens of the United States. The applicant is not a representative of any alien or foreign country.

On October 1, 1937 the applicant had total assets of \$178,522.35, consisting of \$4,946.10 in cash, \$376.25 as a loan, \$125,000 as the value of the church building and the remainder as the value of other real estate; the liabilities amounted to \$11,778.33; and the net worth being \$166,744.02. The radio activities of the applicant are handled by a special committee headed by the Chairman of the Board of Trustees, and the church guarantees payment of any obligations incurred by the committee in the broadcast of programs. The expenses incident to the applicant's radio activities consist of a salary to a musical director, printing and mailing costs, and the payment of \$7,000 per year for broadcast and wire transmission services. To meet these expenses, funds are obtained by solicitation of contributions from the listeners through announcements made during the months of April and September. All money so received is placed in a "Radio Fund" which is separate and distinct from the other funds of the church. From March 2, 1926, when the applicant commenced broadcasting, to October 1, 1937, the revenues of the "Radio Fund" have exceeded the expenditures by \$347.40. During the year October 1, 1935–September 30, 1936, the receipts of the fund amounted to \$8,438.36 and the expenditures to \$8,477.78; and during the year 1936–1937 the receipts were \$8,748.52 and the expenditures \$8,403.28. During the twelve months prior to the hearing 2,351 persons donated one dollar or more, one or more times, to the "Radio Fund." The Church itself has never contributed to the "Radio Fund."

The applicant is the oldest Baptist Church in the State of Michigan, having been founded in 1821, and it has a resident active membership of 1,541 persons. The average attendance during its Sunday morning services is approximately 900, and during the evening services approximately 1,200.

The programs the applicant proposes to transmit by wire line from its church in Pontiac to Station CKLW, Windsor, Ontario, Canada, to be broadcast from that point, are religious as to subject matter, local in origin and method of production. The radio activities of the applicant have never been used for the personal remuneration or gain by any individual or business firm.

Applicant has heretofore broadcast four programs each Sunday in what is known as a "Radio Ministry," consisting of the following: 8:15 to 8:30 a. m., an organ request program, presenting favorite hymns and gospel songs; 8:30 to 9:00 a. m., the Sunday School of the Air, presenting the regular Sunday School lesson of the Lesson Committee of the International Council of Religious Education; 10:30 to 11:30 a. m., the regular Sunday morning services from the applicant's church; and 9:30 to 10:00 p. m., a special musically illustrated devotional message, continuing a service that has been broadcast since June 1926. In addition to the persons connected with the Church who regularly participate in these programs, a number of prominent speakers and artists have appeared on the broadcasts. The applicant contemplates no change in its present program service in the event the authority sought is granted.

The applicant commenced broadcasting its programs on March 2, 1926, over Station WJR (then located in Pontiac and later moved to Detroit) and continued doing so until and including November 15, 1932. Some time during the week of November 15, 1932, the officials of Station WJR notified the applicant that one or more of its four programs on Sunday would have to be eliminated. At approximately the same time Station CKOK (now CKLW), located in Windsor, Ontario, Canada, just across the Detroit River opposite the City of Detroit, offered its facilities to the applicant. This offer was accepted and the applicant began broadcasting its programs over this Canadian station on November 22, 1932. All negotiations and arrangements between the applicant and Station CKLW have been through the station's Detroit representative, Essex Broadcasters, Inc.

Each Sunday from November 22, 1932, to and including September 20, 1936, the applicant's programs were carried by wire-line from its church in Pontiac to Windsor, Ontario, Canada, and there broadcast over Station CKLW; from September 27, 1936, to and including December 13, 1936, the applicant's programs were broadcast directly from the studios of Station CKLW; from December 20, 1936, to and including September 12, 1937, the broadcasts over CKLW were by means of electrical transcriptions; and from September 19, 1937, to the time of the hearing, the broadcasts were made directly from the station's studios.

The practice of using wire lines was discontinued after the broadcast on Sunday, September 20, 1936, when Essex Broadcasters notified the applicant of a possible violation of Section 325 of the Communications Act of 1934. The applicant contends that until this

time it had no knowledge of any such violation. The applicant has never heretofore applied for or received authority from the Commission to broadcast its programs over Station CKLW in the manner proposed.

After discontinuing the use of wire lines, the applicant's programs were broadcast directly from the studios of CKLW, and the persons participating therein had to travel from Pontiac to Windsor, a distance of twenty-six miles. Due to this inconvenience, the applicant and CKLW began the practice of using electrical transcriptions as a means of broadcasting the Church's programs. This practice was discontinued after the broadcast on Sunday, September 20, 1937, upon advice of the applicant's Washington, D. C., counsel. Station CKLW can be heard consistently within the Detroit-Pontiac area.

The Canadian Broadcasting Corporation has advised this Commission that it has no objection to the broadcasts of the applicant's programs over Station CKLW, as proposed in the application.

GROUND FOR DECISION

1. The applicant has adequate financial resources to defray the costs of the program service proposed.

2. The programs proposed by the applicant are religious as to subject matter, are meritorious, and would be listened to and enjoyed by a substantial audience in Southeastern Michigan, Northwestern Ohio and Southern Ontario, Canada, around Windsor.

3. The Federal Communications Commission was organized on July 11, 1934, and Section 325 of the Communications Act became effective on that date. Section 325 provides, among other things, that no person shall maintain any apparatus from which sound waves are converted into electrical energy and caused to be transmitted to a radio station in any foreign country for broadcasting, when such foreign station has a signal which can be heard consistently in the United States, without first obtaining a permit from the Commission upon proper application therefor. During the period from Sunday, July 15, 1934, to and including Sunday, September 20, 1936, after Section 325 of the Communications Act became effective, the applicant caused its programs to be transmitted from its church in Pontiac, Michigan, by wire-line to Windsor, Ontario, Canada, which were then broadcast over Station CKLW, without first obtaining authority therefor from the Commission. The signals of Station CKLW can be heard consistently in the United States. The applicant, during the period named, violated Section 325 of the Communi-

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cations Act of 1934. This violation, however, was not willful and, upon being advised thereof, the applicant immediately discontinued transmitting its programs from the United States to the foreign station.

4. The issue of whether the application may be granted within the purview of Sections 325 and 309 of the Communications Act of 1934, requires a determination as to whether the granting thereof would serve the public interest, convenience, or necessity. The programs proposed to be broadcast by the applicant are meritorious, and have been rendered to a large listening audience in the Detroit-Pontiac area continuously since March 2, 1926. It is desirable that the broadcasts of these programs be continued in that area, and the public interest, convenience, or necessity will be served by the granting of the application.

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
 WASHINGTON, D. C.

In the Matter of KENTUCKY BROADCASTING CORPORATION,¹ LOUISVILLE, KENTUCKY. For Construction Permit.	}	DOCKET No. 4649.
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Decided February 6, 1939

William A. Porter on behalf of the applicant; *Paul M. Segal* and *George S. Smith* on behalf of Station WCPO; *Swagar Sherley* and *H. B. Weaver* on behalf of Louisville Times Company; *Horace L. Lohnes*, *Everett D. Johnston*, and *Fred W. Albertson* on behalf of Louisville Broadcasting Company; *Paul M. Segal* and *George S. Smith* on behalf of Station WAVE; *George O. Sutton*, *James L. Proffitt*, and *Arthur H. Schroeder* on behalf of station WGRC.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION :

STATEMENT OF FACTS

This proceeding arose upon the application of Kentucky Broadcasting Corporation for a construction permit to erect a new broadcast station at Louisville, Kentucky, to operate on the frequency of 1210 kc., with power of 100 watts at night and 250 watts during daytime, unlimited hours of operation.

Hearing was had on November 5, 6, and 15, 1937, before an examiner, who, on April 14, 1938, submitted his report (I-635) recommending that the application be granted. Exceptions to the Examiner's Report and requests for oral argument were filed by the applicant, by WAVE, Inc., by the Louisville Times Company, by S. O. Ward and P. C. Ward, doing business as Louisville Broadcasting Company, and by Northside Broadcasting Corporation. On September 8, 1938, oral argument was had before the Commission.

¹The Commission on May 1, 1939, denied petition for reconsideration or rehearing filed by Northside Broadcasting Corp., WAVE, Inc., and Gateway Broadcasting Co. Northside Broadcasting Corp. appealed to the United States Court of Appeals for the District of Columbia. Appeal dismissed on March 4, 1940.

When the hearing started, WAVE, Inc., moved for default on the ground that the appearance filed by the applicant was insufficient under Rules 105.25 and 105.24 (b), which motion was denied by the examiner. The record discloses that WAVE, Inc., entered this proceeding through a Petition to Intervene, which was granted by the Commission on October 5, 1937. The applicant's appearance was filed on October 9, 1937, with a verification of service, under oath, appended, stating "that a true and correct copy of said appearance has been sent by registered mail, postage prepaid, to each and every party listed in the Commission's Notice of Hearing on the above application and also to WAVE, Inc., intervener." Therefore, WAVE, Inc., was served with a copy of said appearance nearly a month before the hearing, within which time it might have challenged the sufficiency of the applicant's appearance had it so desired. Failure of WAVE, Inc., to object within a reasonable time must be construed as being a waiver of the right to do so. It would not be in accord with justice to permit WAVE, Inc., to sleep on its right for nearly a month and then raise its objection by motion after the hearing had started and all parties were present and ready to proceed, many of whom had traveled great distances, at considerable expense. The examiner did not err in denying the motion of WAVE, Inc., for default.

Kentucky Broadcasting Corporation is a corporation duly organized and existing under the laws of the Commonwealth of Kentucky. It has corporate power to engage in the business of broadcasting. The authorized capital stock is 500 shares, without nominal par value, but the directors of the corporation, under authority contained in the charter, have directed that the stock be issued at a price of \$50 per share. The officers, directors, and stockholders are: D. E. Kendrick, 260 shares, President and Director; A. C. Van Winkle, 120 shares, Vice President and Director; Oldham Clarke, 70 shares, Vice President and Director; and Mary K. McCarten, 50 shares, Secretary-Treasurer and Director.

Concerning the citizenship of the officers, directors, and stockholders, Mr. Van Winkle, Mr. Clarke, and Mr. Kendrick each testified that they were born within the United States. As to Miss McCarten, Mr. Kendrick was asked: "Do you know whether or not she is an American citizen?" And he answered: "I have been told so by her mother. I know her family quite well. She was born in Hopkinsville, Kentucky." There was no objection by any of the parties to either the question or the answer. WAVE, Inc., has excepted to the failure of the examiner to exclude that testimony, but we think that because of the failure of WAVE, Inc., to object to the testimony

when offered, its later exceptions must fail. Section 310 (a) of the Communications Act of 1934 directs this Commission not to grant broadcast facilities to aliens or to corporations having alien officers, directors, or stockholders who own more than a very minor proportion of the stock. That in turn requires an affirmative showing of citizenship to at least a reasonable degree by all applicants for broadcast facilities. Ample opportunity is available to such applicants to make citizenship showing both by deposition and by direct testimony at hearings. Here we have a witness testifying as to the citizenship of another person in a more or less hearsay manner, but strengthened by other testimony disclosing association in employment for many years and an acquaintanceship with that person's family. As to the sufficiency of this showing, we consider such to be marginal, but under the circumstances of the case we do accept it, and therefore find that all of the officers, directors, and stockholders of the applicant corporation are citizens of the United States.

Mr. VanWinkle has been a resident of Louisville for about 25 years, is a lawyer, and during the past years has been frequently acting as Chancellor in the Jefferson Circuit Court. Mr. Clarke is a lawyer, who has resided in Louisville for about 11 years, and from March 1935 until March 1937 he was First Assistant District Attorney for the Western District of Kentucky. Mr. Kendrick is a native of Nashville, Tennessee, and in April 1928 he moved to Hopkinsville, Kentucky, where he remained until August 1933, at which time he moved to Indianapolis, Indiana, where he remained until March 1937. His broadcast experience dates back to 1925. During the five-year residence in Hopkinsville he was employed by Station WFIW, most of which time he was manager of the station. During the period August 1, 1933 to January 4, 1937, he served as manager of Station WIRE, at Indianapolis. Miss McCarten has served with Mr. Kendrick for 7 years as program director of Stations WFIW and WIRE. Mr. Kendrick will actively manage the proposed station, and Miss McCarten will act as program director, and both will reside in Louisville, devoting full time to the station. Experienced personnel will also be employed.

The assets of the applicant corporation are those acquired from the sale of its stock, and consist of \$12,000 in cash on deposit in a bank and two demand notes of \$6,500 each, on which D. E. Kendrick is payor. An agreement has been entered into between the corporation and Mr. Kendrick whereby Mr. Kendrick will loan to said corporation up to \$25,000 in cash in the event additional money is needed for the construction and operation of the proposed station. As to the ability of Mr. Kendrick to meet the demand notes and to make the

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proposed loan, his financial statement shows assets of \$65,748, of which \$37,279 is cash, and in addition there is available a paid-up annuity policy of \$25,000 in favor of Mr. Kendrick's wife, with respect to which Mr. Kendrick holds a power of attorney to turn such into cash if necessary or desirable.

The transmitter location and antenna site is to be determined later, subject to Commission approval. The estimated cost of constructing the proposed station varies, depending on whether the studios and transmitting plant will be in the same building in downtown Louisville, with the antenna on top of the building, or whether there will be a separation between the studios and transmitting plant. If the units are to be housed together, it is estimated the cost will be \$17,907, whereas if there is separation, it is estimated the cost will be \$22,882. The applicant proposes to install a transmitter which is satisfactory and is capable of being operated in accordance with the Commission's rules.

Louisville has a population of 307,745, and the metropolitan district of Louisville has a population of 404,396, both figures being from the United States Census of 1930. The City is now served by a clear channel station, WHAS, which operates on the frequency of 820 kc., with power of 50 kw., unlimited time, and by a regional station, WAVE, operating on the frequency of 940 kc., with power of 1 kw., unlimited time. Service is also available from Station WGRC, which is located within the Louisville metropolitan district, in New Albany, Indiana, and which operates on the frequency of 1870 kc., with power of 250 watts, daytime only. Station WLW, at Cincinnati, Ohio, which operates on the frequency of 700 kc., with power of 500 kw., under a special authorization, but with regular authority to use power of 50 kw., provides good service in the metropolitan residential areas of Louisville operating with the higher power.

Operating as proposed at night, the 10 mv./m. contour will fall about 2.5 miles, and the 2 mv./m. contour about 8.5 miles from the antenna. During daytime the 10 mv./m. contour will be about 3.5 miles, and the 2 mv./m. contour about 12 miles from the antenna. The distance to the 0.5 mv./m. contour during daytime is not shown, although there is testimony in the record that the station will serve to that contour. Assuming an antenna location at the corner of Market and Fourth Streets, in the business section of Louisville, the station will serve at night about 209,415 persons within the 10 mv./m. contour, and about 374,000 within the 2 mv./m. contour, while during daytime it will serve about 299,000 persons within the 10 mv./m. contour and about 398,000 within the 2 mv./m. contour. At night the station will be limited to the 2.06 mv./m. contour. The geograph-

ical area composing the metropolitan district of Louisville is irregular in shape, and extends to distances from a minimum of about 6 miles to a maximum of about 25 miles from the assumed antenna site. Therefore, the station will not, from that location, provide a primary service to the entire metropolitan district as such, but it will provide a primary service to all of the City of Louisville as well as to a major portion of the metropolitan district, and to the west it will provide primary service well beyond the metropolitan district boundary.

Louisville, Kentucky, is primarily an industrial city, and the chief industries include iron and steel works, railway repair shops, food products, textiles, chemicals, tobacco, distilled spirits, lumber, stone, clay, and brass products, transportation equipment, machinery, barber and printing supplies, rubber and leather products, musical instruments, furniture, canning, clothing, packing houses, soaps, and perfumes. There are 571 manufacturing establishments (1935 Business Census), employing 32,718 wage earners receiving annual wages of \$31,975,066. The value of the manufactured products was \$277,983,724, of which \$94,582,681 was added by manufacturing processes. Jefferson County, of which Louisville is the County Seat, had 4,915 retail stores, with total sales of \$104,852,000, employing 15,436 people, receiving annual wages of \$13,424,000. In the City of Louisville there are 4,488 retail stores, with total annual sales of \$100,702,000, employing 14,907 people, receiving annual wages of \$13,067,000. Jefferson County, Kentucky, has 529 wholesale establishments, with net sales of \$165,896,000, employing 6,535 people, who receive annual wages of \$9,140,000. The City of Louisville alone has 517 wholesale establishments, with net sales of \$155,140,000, employing 6,350 people, who receive annual wages of \$8,834,000. Louisville, Kentucky (1935 Business Census), had 1,687 service establishments, with net annual receipts of \$6,781,000, employing 2,396 people, receiving wages of \$2,117,000.

It is the purpose of the applicant to operate the station on a commercial basis. The estimated monthly operating cost is \$6,200. Mr. Kendrick estimated an expected income of about \$7,500 per month, which estimate is predicated upon a survey or investigation which he made, and during which he discussed advertising over the proposed station with about 100 businessmen of Louisville. Some businessmen testified by deposition as to their desires to advertise over a local station, and although they were not definite as to the amounts they expected to spend, their advertising budgets vary from \$1,000 to \$10,000 per year. These witnesses compared the evening rates of Station WHAS and of Station WAVE, which were stated to be \$400

or more and \$200 or more per hour respectively, as compared with a rate of \$60 per hour for the proposed station. The witness Herman testified in part: "We have believed the rates of the larger broadcasting stations, which cover such a vast area, are high. I do not say their rates are out of line for what they give us, but they are high for the merchandise we have here." Principal advertising media in Louisville in addition to the broadcast stations are two daily newspapers published and controlled by the Louisville Times Company, which is the licensee of Station WHAS. Considering the size and commercial importance of Louisville, the advertising media available there, the absence of a full time local broadcast station, Mr. Kendrick's background of successful management of broadcast stations, and all of the other evidence of record, we are of the opinion that it is reasonable to conclude that the proposed station will have sufficient financial income to operate in the public interest.

Tentative program schedules were introduced into evidence for a typical week day and for a Sunday. These disclose reservation of time for educational programs, discussions of civic issues, religious programs and news programs, as well as general entertainment. Among the sources of material for live talent programs are the School of Music of the University of Louisville, which has 300 students, and the Wells Studio of Music. There is an item of \$1,000 per month in the operating budget, to be expended for live talent. The program content is to be locally originated entirely as distinguished from chain or network programs.

There are no interference problems with existing stations as to daytime operation. As to nighttime, there will be mutual limitation between the proposed station and Station WHBU, at Anderson, Indiana, to the approximate 2.06 mv./m. contour, but Station WHBU is now limited at night to a greater extent by other stations. Applications by Louisville Times Company and by Louisville Broadcasting Company for use of these same facilities in Louisville, which were pending at the time of the hearing, have been denied by the Commission and are no longer pertinent.

The parties to this proceeding include WAVE, Inc., licensee of Station WAVE at Louisville, and Northside Broadcasting Corporation, licensee of Station WGRC at New Albany, Indiana, both of whom became parties through having petitioned to intervene. The Louisville Times Company was named a party by reason of being an applicant for the same facilities but not by reason of being licensee of an existing station in Louisville. These parties did not offer any evidence at the hearing, although the examiner did direct that they present factual matter concerning the operation of their

stations, which the parties did under protest and after the record was closed. As this information is merely sworn statements presented or attached to the record after the close of the hearing, and outside of the open hearing room, without opportunity for cross examination, the Commission does not consider such information a part of the record and therefore must ignore it. The Commission was not influenced by the statement of the examiner that he would take judicial notice of all records and matters in the files of the Commission; in the consideration of this case, the Commission confined itself to the evidence incorporated into the record at the hearing and to the discussion of that evidence at the oral argument before the Commission.

Viewing the metropolitan district of Louisville and the broadcast service now provided, we observe it is served by an unlimited time clear channel station; an unlimited time regional station; and a local, daytime only, station, which, while located within the metropolitan district of Louisville, is across the Ohio River, in New Albany, Indiana. A grant of this application will add a full time local station to the City of Louisville, thereby providing a more adequate broadcast service, as well as a better balance of such service, by making available to the listening public of the City an additional medium or source for intelligence and entertainment; also, an additional medium will be available for discussion of public affairs, particularly as to matters of a nature having an interest local to Louisville.

GROUNDS FOR DECISION

1. The applicant is legally, technically, financially, and otherwise qualified to become the licensee of a broadcast station of the kind and class herein applied for.

2. A public need exists for the broadcast service which this applicant seeks to render.

3. There is reasonable assurance that sufficient commercial support is available to provide the finances necessary to operate in the public interest.

4. A grant of this application will provide a better balance in the broadcast facilities authorized in the City of Louisville and its metropolitan district.

5. The record does not show that the operation of the proposed station will have any detrimental effect upon the continued operation in the public interest of Stations WHAS, WAVE, and WGRC.

6. Public interest, convenience, and necessity will be served by a grant of the application.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matters of ¹
THE SOUTH BEND TRIBUNE (WSBT),
SOUTH BEND, INDIANA.
For Construction Permit } DOCKET No. 8763.

KING-TRENDEL BROADCASTING CORPORATION,
GRAND RAPIDS, MICHIGAN.
For Construction Permit. } DOCKET No. 4974.

Decided February 6, 1939

D. M. Patrick, Karl A. Smith, and John W. Guider on behalf of The South Bend Tribune (WSBT); *Alfons B. Landa and Robert W. Mapes* on behalf of King-Trendle Broadcasting Corporation; *Frank D. Scott* on behalf of Station WHO; *Horace L. Lohnes, E. D. Johnston, F. W. Albertson, and George S. Law* on behalf of Stations WHN, WDZ, and KDKA; *Paul M. Segal, George S. Smith, and Harry P. Warner* on behalf of Station WNOX; *Clarence C. Dill and James W. Gum* on behalf of Station WCFL; *A. V. Dalrymple, and Walter Johnson* on behalf of the Federal Communications Commission.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

BY THE COMMISSION (Case, Payne, Craven, Commissioners, not participating):

STATEMENT OF FACTS

These proceedings arose out of the application of the King-Trendle Broadcasting Corporation for authority to construct a radiobroadcast station at Grand Rapids, Michigan, to operate on the frequency 1010 kilocycles with power of 250 watts unlimited time, and the application of The South Bend Tribune, licensee of radiobroadcast station WSBT, South Bend, Indiana, requesting authority to move the transmitter of Station WSBT and to shift from its present authorized assignment of 1360 kilocycles with power of 500 watts, sharing time with Station WGES, to an operating assignment on

¹ Applicants' petitions for rehearing denied on May 16, 1939, and Commission's Order of February 6, 1939 set aside and application set down for further argument. As of June 1, 1940 matter still pending.

the frequency 1010 kilocycles with power of 1 kilowatt unlimited time, using a directional antenna at night. A consolidated hearing was held before an examiner of the Commission on March 16, 17, and 18, 1938. The examiner released his report (I-664) on June 18, 1938, and recommended that the application of the King-Trendle Broadcasting Corporation be denied and that the application of The South Bend Tribune be granted. Exceptions were filed to the examiner's report and oral argument heard by the Commission.

IN RE DOCKET NO. 3763

The application of The South Bend Tribune was originally filed on December 6, 1935. A consolidated hearing on said application and an application filed by the Milwaukee Broadcasting Company, licensee of Station WEMP, Docket No. 3892, was had, and thereafter, on February 23, 1937, the Commission denied both applications, effective April 20, 1937. The effective date of the order was extended several times to dates certain and finally an indefinite extension was made. On May 6, 1937, the Milwaukee Broadcasting Company filed a petition to withdraw its application and on July 14, 1937, the Commission ordered the application dismissed with prejudice. On May 21, 1937, The South Bend Tribune filed a petition requesting the Commission to reconsider its order and grant the petitioner's application on the basis of the showing made at the original hearing. The Commission denied the petition but, upon reconsideration, ordered the application remanded to the docket for further hearing. On August 17, 1937, the application was amended to propose certain changes in the technical equipment and the Commission, on January 5, 1938, redesignated the application as amended for hearing.

The applicant is a corporation duly organized under the laws of the State of Indiana. The corporation owns and operates two stations, WSBT and WFAM, both of which are located at South Bend, Indiana. Station WSBT is licensed to operate on the frequency 1360 kilocycles with power of 500 watts and shares time with Station WGES in Chicago, Illinois. Station WFAM operates on the frequency 1200 kilocycles with power of 100 watts and shares time with Station WWAE at Hammond, Indiana. The hours of Stations WSBT and WFAM are so arranged that when one is in operation the other is silent and the operation of both stations is such as to provide a continuous program service on the two frequencies. It is necessary, however, for a party desiring to listen to this combined program service to shift between 1360 kilocycles and 1200 kilocycles in order to follow the program. One reason stated by this applicant for its request for unlimited hours of operation on 1010 kilocycles is the desire to be able to provide continuous service on a single frequency.

6 F. C. C.

The financial statement of the applicant corporation, as of December 31, 1937, showed total assets of approximately \$800,000. Included in the assets was cash on hand in the amount of \$83,398.07. This applicant had surplus and undivided profits amounting to \$271,318.70. As of the date of the hearing, the applicant corporation had a cash balance of approximately \$100,000.

The applicant proposes to make certain changes in its transmitting equipment, and erect an antenna which can be used nondirectional during the day and as a directional at night. A new transmitter site is proposed. The transmitting equipment, the antenna and site proposed meet the engineering requirements of the Commission. The estimated cost of the installation of the equipment, including a new transmitter building and antenna, is \$33,750.

As the applicant is the licensee of two existing broadcasting stations and possesses cash assets of approximately \$100,000, it is not necessary to discuss further the legal, technical, and financial qualifications of this applicant to construct and operate Station WSBT as proposed.

The applicant corporation publishes *The South Bend Tribune*, one of the two daily evening papers published in South Bend, Indiana. The operation of the newspaper is separate and distinct from the operation of the two broadcasting stations except that there is cooperation between the paper and the broadcast stations with respect to news items and matters of local interest. There are no joint advertising rates and a person is not required to advertise in the paper in order to obtain advertising time over the facilities of either of the existing stations in South Bend.

The applicant has owned and operated Station WSBT since 1922. Station WFAM was purchased in 1931 and moved from La Porte, Indiana, to South Bend. The acquisition of WFAM permitted this applicant to provide a continuous program service on the two assigned frequencies. The two stations have operated at a profit, the net profit for 1937 amounting to approximately \$13,000 with a profit of approximately \$10,000 for each of the two preceding years.

Under the present operating assignments, Station WSBT uses 7½ hours a day and Station WFAM operates 9½ hours daily (9 hours on Sunday), the two stations jointly rendering a 17-hour daily service. Station WSBT is on the air from 12 noon until 3:30 p. m., and from 8:00 p. m. until signed off. Station WFAM operates from 7:00 a. m. until 12 noon and from 3:30 p. m. until 8:00 p. m. On Sundays, WSBT operates from 5:00 p. m. until signed off, Station WFAM broadcasting from 8:00 a. m. until 5:00 p. m. Jointly, the stations operate 117 hours per week, WSBT operating 51 hours with Station WFAM using 66 hours.

The transmitters of Stations WSBT and WFAM are located in the same building, which is situated about four-tenths of a mile west of the western boundary of South Bend. The studios used for the operation of both stations are located in the Tribune Building in South Bend. Because of the difference in operating assignments, Station WSBT and Station WFAM do not have the same coverage either day or night. Measurements taken on the operation of these two stations show that each renders satisfactory service to their respective 0.5 millivolt per meter contours during the day, but that Station WSBT is limited at night to its 4.2 millivolt per meter contour and that Station WFAM is limited at night to its 3.1 millivolt per meter contour. Each of the stations operating on their present assignment serve all of the South Bend and a large portion of the suburban and rural area contiguous thereto.

There are to be found within the 10, 2, and 0.5 millivolt per meter daytime contours of Station WFAM, operating on its present assignment, a population of 48,300, 133,350, and 185,998 persons, respectively. Within the 10 and 3.1 millivolt per meter nighttime contours of Station WFAM are to be found a population of 48,300 and 107,200 persons, respectively.

Station WSBT, operating on its present assigned frequency of 1360 kilocycles with a power of 500 watts has, within its 10, 2, and 0.5 millivolt per meter daytime contours, an estimated population of 87,400, 153,719, and 256,304 persons, respectively. Operating as proposed on the frequency of 1010 kilocycles with a power of 1 kilowatt, the station would have, within the same contours, a population of 150,739, 264,537, and 558,389 persons, respectively. This shows a substantial increase in the daytime coverage of the station.

Station WSBT, operating on its present assignment, has within its 10 and 4.2 millivolt per meter nighttime contours a population of 87,400 and 115,293 persons, respectively. The station operating as proposed, on the frequency 1010 kilocycles with a power of 1 kilowatt, using a directional antenna, would be expected to have, within its 10, 5.1 and 1.6 millivolt per meter nighttime contours, a population of 133,917, 167,286, and 234,456 persons, respectively. It will be seen that operating as proposed there would be a substantial increase in the nighttime coverage of Station WSBT.

Stations WSBT and WFAM are affiliated with, and carry the programs of, the Columbia Broadcasting System. Approximately 40 percent of the time of the stations is devoted to chain programs and 60 percent to programs of local origin. Local sustaining features occupy 36 percent of the operating time and local commercial programs 24 percent of the time of the station. Among the programs of local origin featured by the stations are athletic events of

Notre Dame University, local high-school tournaments, local athletic events, broadcasts on behalf of the local civic, religious, social, and charitable organizations.

Many of the programs of the station are originated at Notre Dame University. Included in these programs are musical and dramatical broadcasts and educational talks. The station also broadcasts programs originated by St. Mary's College, a girls' institution.

It has been the policy of the station to permit its facilities to be used, without charge, by the local representatives of the civic, religious, social, charitable, and governmental agencies in and around South Bend.

In the event this application were to be granted, it would be the policy of Station WSBT to continue the type of programs which Stations WSBT and WFAM have presented in the past and which appear to meet with the approval of the listening public within the service area of the station.

It is the contention of the applicant that the listening public of Stations WSBT and WFAM is adversely affected by the fact that if a person desires a continuous program originated by the applicant, it is necessary to shift from one frequency assignment to another. The applicant further contends that its operating revenue is adversely affected because advertisers do not desire time immediately preceding or following the necessary shift in operating assignments.

As heretofore pointed out, Station WFAM operates week days from 7:00 a. m. until 12:00 noon and from 3:30 p. m. until 8:00 p. m. This necessitates on the part of the listening public a shift in the dial reading at 12:00 noon, at 3:30 p. m., and at 8:00 p. m., or three shifts throughout the day in order to follow a continuous program presented by the combined operation of Stations WSBT and WFAM. On Sunday but one shift, at 5:00 p. m., is required.

It was stated by the vice president of the applicant corporation, who is also the general manager of Stations WSBT and WFAM, that should the application of WSBT be granted, the applicant would either sell WFAM or give up the license and sell the equipment. There is no such resolution on behalf of the corporation presented to this Commission and the application does not request the granting of the instant application contingent upon a release by the applicant of the operating assignments of Station WFAM.

Should this application be granted, The South Bend Tribune would be the licensee of a full-time station (WSBT) operating on the frequency of 1010 kilocycles with a power of 1 kilowatt unlimited time and also the licensee of Station WFAM, as well as the owner of one of the two newspapers of general circulation published in South Bend, Indiana.

Station WNOX, Knoxville, Tennessee, now operates on the frequency 1010 kilocycles with power of 10 kilowatts at night. The station is approximately 415 miles from South Bend. The proposed directional antenna for Station WSBT would restrict signals in the direction of Knoxville and would limit the service of Station WNOX to the 0.84 millivolt per meter contour. This station, however, is at present limited to its 3.2 millivolt per meter contour by Station WHN, New York City.

Station WNOX will be the predominant source of interference to Station WSBT operating as proposed. Measurements taken on Station WNOX during the month of February 1938 and the calculations made therefrom show that Station WNOX would limit Station WSBT, operating as proposed, to its 1.6 millivolt per meter contour. It appears, however, that the time during which the readings were taken was a period of unusual sun spot activity which would materially affect the characteristics of radio signals emanating from the various stations. An estimate of the probable interference to Station WSBT, operating as proposed, based on published data used by the Engineering Department of this Commission in computing probable interference to radio stations, indicates that Station WSBT, operating as proposed, would be limited to its 5.1 millivolt per meter contour during evening hours of operation. The Commission finds that the limitation to Station WSBT would approximate the 5.1 millivolt per meter contour. Stations operating on a regional assignment are normally protected to their 1.0 millivolt per meter contour at night.

The question of interference to other stations is as follows: Operating as proposed, Station WSBT would limit Station KGGF at Coffeyville, Kansas, at night to the 0.98 millivolt per meter contour. Station KGGF, however, is limited to its 4.0 millivolt per meter contour by Station WNOX, Knoxville, Tennessee.

Station WNAD, Norman, Oklahoma, would be limited by Station WSBT, operating as proposed, to its 0.62 millivolt per meter contour. Station WNAD is, however, limited to its 3.1 millivolt per meter contour by Station WNOX, Knoxville, Tennessee. Station WHN, New York City, would be limited by Station WSBT, operating as proposed, to its 0.14 millivolt per meter contour. WHN is at present limited to its 4.3 millivolt per meter contour by Station WNOX, Knoxville, Tennessee.

Station CHML, Barten Township, Canada, would be limited by Station WSBT, operating as proposed, to the 2.52 millivolt per meter contour. Station CHML is at present limited to its 6.1 millivolt per meter contour by Station WHN, New York City.

Station CKCO, Ottawa, Ontario, would be limited by Station WSBT, operating as proposed, to its 2.04 millivolt per meter contour. Station CKCO is at present limited to its 6.34 millivolt per meter contour by Station WHN, New York City. Station CKCK, Regina, Saskatchewan, would be limited by Station WSBT, operating as proposed, to its 1.04 millivolt per meter contour. Station CKCK is at present limited to the 1.06 millivolt per meter contour by Station KGGF, Coffeyville, Kansas.

Station WSBT, operating as proposed, would not be expected to be the predominant source of interference to any existing radio-broadcast station during the evening hours of operation. The separations between Station WSBT and other stations operating on the frequency 1010 kilocycles is such that the simultaneous daytime operation of the several stations involved would not result in interference within the 0.5 millivolt per meter daytime contour of any existing station or of Station WSBT operating as proposed.

GROUNDS FOR DECISION

1. Station WSBT, operating as proposed, would be subject to severe interference during the greater part of its nighttime hours of operation. During the greater part of the time this interference would be approximate the 5.1 millivolt per meter contour.

2. The major contention advanced by this applicant is that the granting of this application would enable it to render a more satisfactory service, particularly in that the listening public would not be required to change the dial setting at 12:00 noon, 3:30 p. m., and 8:00 p. m. on week days and at 5:00 p. m. on Sundays in order to get the continuous broadcast service offered by this applicant.

While it may be desirable for the listening public to be able to follow a continuous program without turning the dial of the receiving set, the Commission is of the opinion that the slight inconvenience to which the listening public may be placed in the instant case is not sufficient to warrant the granting of this application in view of the limitation which Station WSBT, operating as proposed, would receive.

3. The applicant has failed to show a public need for the granting of the application.

4. Station WSBT, operating as proposed, would serve a substantially larger service area than it now serves on its present operating assignment. It, however, is not in accordance with good engineering practice to license a station to operate on a regional frequency where the service area will be limited to the 5.1 millivolt per meter contour during the greater part of the nighttime hours of operation.

5. Should the Commission grant this application, the South Bend Tribune would be the publisher of one of two daily papers of general circulation to South Bend, the owner of a full-time radio-broadcast station, WSBT, and the licensee of a time-sharing broadcast station, WFAM. The Commission, in numerous decisions, has held that in the absence of a compelling need, which has not been shown to exist in the instant case, the Commission would not grant new or additional facilities to one now operating a radiobroadcast station in the area proposed to be served. (See Louisville Times Company, 5 F. C. C. 554; Cornbelt Broadcasting Corporation (KFOR), 6 F. C. C. 282.)

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

IN RE DOCKET NO. 4974

The King-Trendle Broadcasting Corporation is a corporation organized and existing under the laws of the State of Michigan. The corporation has issued and outstanding 100,000 shares of stock, 40,000 of which are owned by George W. Trendle, 40,000 by John H. King, and 20,000 by Howard O. Pierce.

The applicant seeks authority to construct a new radio station at Grand Rapids, Mich., to operate on the frequency 1010 kilocycles, with power of 250 watts, unlimited time.

The balance sheet of the applicant as of February 28, 1938, shows total assets aggregating \$366,377.54, with a net worth of \$283,548.68. The applicant's current assets consist of cash on hand, \$6,279.29, and accounts receivable of \$83,098.90.

The applicant is the licensee of three existing broadcast stations, to wit: Station WXYZ, Detroit, Michigan, and Stations WOOD and WASH, Grand Rapids, Michigan.

Stations WOOD and WASH are located in Grand Rapids, Michigan, and share time with each other. Each station operates on the frequency 1270 kilocycles, with power of 500 watts. The stations are operated as a single unit, the call letters WASH being used until 12 noon, and the call letters WOOD being used in the afternoon and evening. Both stations use the same studio, personnel, and equipment. By means of the combination of these two stations, the King-Trendle Broadcasting Corporation is able to furnish an uninterrupted program service to Grand Rapids and vicinity on the frequency 1270 kilocycles. Because of the unity of operation, the stations are frequently referred to as WOOD-WASH, and will be so referred to in the remainder of this decision.

6 F. C. C.

The applicant is also the owner of the Michigan Radio Network. The stations affiliated with this network are Station WXYZ, Detroit; Stations WOOD-WASH, Grand Rapids; Station WELL, Battle Creek; Station WIBM, Jackson; Station WKZO, Kalamazoo; Station WJIM, Lansing; and Station WBCM, Bay City, all in the State of Michigan.

As the applicant is the licensee of three existing broadcast stations, it will not be necessary to discuss the legal, technical, and financial qualifications of this applicant except insofar as these qualifications are pertinent to the issues herein involved.

The equipment which the applicant proposes to use complies with the engineering requirements of this Commission. The proposed antenna complies with Rule 131 as to height. As the site has not yet been determined, the site, complete antenna, and ground system would be subject to subsequent Commission approval. The estimated cost of the proposed station is \$24,649.34. From facts previously stated, it is apparent that the applicant corporation has funds sufficient for the construction of the proposed station.

Stations WOOD-WASH are affiliated with the National Broadcasting Company and carry the programs of both the red and blue networks. These stations are also affiliated with the Michigan Radio Network.

The applicant contends that there is a present existing need for an additional station in Grand Rapids, Michigan, in order to adequately serve the listening public of this city and the area contiguous thereto. A log of one week's program of Stations WOOD-WASH indicates that a large percentage of the time of these stations is devoted to network programs. The stations devote approximately 35 hours a week to local programs, or approximately 5 hours per day.

A profit and loss statement for the year ended January 1, 1938, shows that the total revenue of Stations WOOD-WASH amounted to \$169,382.41, with total operating expenses amounting to \$116,924.50, or a profit from the operations of the station during the year of \$52,457.91. Deducting from this profit, depreciation of \$1,188.47, and the federal income and excess profits tax of \$7,110.42, the stations had a net profit for the year of \$44,159.02.

Grand Rapids is the second largest city in Michigan. According to the 1930 census it had a population of 168,592, and the population of the metropolitan area, according to the same census, was 207,154. According to the United States census of distribution for 1935, there are 2,375 retail establishments in Grand Rapids, and during the same year the census reported sales from these establishments of \$59,-

734,000. There are 266 wholesale establishments, which during the year 1935 had total sales of \$61,446,000. The principal industries in Grand Rapids are metal trades, including metal furniture, furniture manufacturing, and wood types, woodworking, as well as miscellaneous manufacturing, including food products, service plants, and railroad shops.

The applicant estimates that the proposed new station would receive advertising support of approximately \$375 per week at the time the station began operation, and that this sum would increase until it reached approximately \$1,410 per week at the end of the first year. The figure of \$375 per week is computed by estimating the net loss of income to Stations WOOD-WASH due to their inability to carry 22 programs of the National Broadcasting Company and 10 fifteen-minute, noncommercial network programs because of the conflict between said programs and the commercial programs of the Michigan Radio Network which the stations broadcast. There is also included an estimated \$100 per week which the proposed station would receive for broadcasting commercial programs of the Michigan Radio Network.

The present manager of Stations WOOD-WASH would be the manager of the proposed station. This man has had considerable experience in radio broadcasting, having been engaged therein for approximately 16 years. As of the date of the hearing he had been the manager of Stations WOOD-WASH for the past 2½ years. The applicant proposes to employ a sales manager, 3 transmitter operators, 3 control-room operators, 3 announcers, an assistant production supervisor, a continuity writer, stenographers, salesmen, an orchestra leader, 4 musicians, and miscellaneous vocal and dramatic artists. The estimated operating expense of the proposed station is placed at \$928.08 per week.

The studios of the proposed station would be located in the same building which now houses the studios of Stations WOOD-WASH.

Should the Commission grant this application, the station would be able to take many programs of the National Broadcasting Company and the Michigan Radio Network which Stations WOOD-WASH are unable to carry. The applicant states there are several hundred additional programs which would be made available to Grand Rapids which cannot now be broadcast because of the lack of radio facilities.

In the event this application was granted, the applicant would devote approximately 30 percent of the time of each station to programs of local origin. The total hours available for local programs from the two stations would then be 71 hours per week.

Considerable testimony was given by various residents of Grand Rapids relative to the need for an additional station in Grand Rapids. This testimony in the main consists of expressions of opinion without relating basic facts. It is contended that an additional station is needed in order to serve the various civic, religious, social, charitable, and educational organizations in the city. The program logs of Stations WOOD-WASH indicate that the stations have broadcast each day programs of this character, such as programs for the Board of Education, State Medical Society, Grand Rapids P. T. A., Grand Rapids Health Department, and broadcasts from the various city departments, including the police department and the Community Chest. Many of these programs appear regularly over the facilities of the station. On Sundays it appears that the stations broadcast six religious programs, a safety program, and a dramatization of the work of the Community Chest. Although it appears that the stations received compensation for the broadcasting of all of the religious programs, the stations do devote a substantial part of their time to programs of this nature.

An examination of the record does not disclose that Stations WOOD-WASH have been derelict in presenting programs which may be referred to as public service programs. If there is a need for additional public service programs, the Commission is of the opinion that the applicant, being the licensee of Stations WOOD-WASH, would require the stations to carry such programs even though it might possibly result in a slight diminution of the net operating profits of these stations.

Talent available in Grand Rapids consists of a number of bands, including 8 high school and junior college bands, 11 choruses, 5 popular orchestras, 3 concert orchestras, organs, various dramatic and speech groups, professional pianists, and a number of singers. It is apparent that the city of Grand Rapids has a number of persons capable of presenting suitable broadcast programs.

It is estimated that within the 0.5 millivolt per meter daytime contour of the proposed station there is an estimated population of 283,819, and that within the 4.3 millivolt per meter contour of the proposed station there is a population of 206,000 people.

The proposed station would be limited at night by Station WNOX, Knoxville, Tennessee, to its 4.3 millivolt per meter contour; by Station WHN, Astoria, Long Island, to its 3.15 millivolt per meter contour; and by Station CHML, Hamilton, Ontario, to its 1.56 millivolt per meter contour.

The proposed station, operating as requested, would limit Station WHN, Astoria, Long Island, to its approximate 1.3 millivolt per meter contour. Station WHN is now limited to its 4.6 millivolt per meter contour by Station WNOX, Knoxville, Tennessee.

The proposed station would limit Station CHML, Hamilton, Ontario, to its 2.98 millivolt per meter contour. Station CHML, however, is limited to its 6.58 millivolt per meter contour by Station WHN.

The proposed station would limit Station WNOX, Knoxville, Tennessee, to its 1.83 millivolt per meter contour. Station WNOX, however, is limited to its 3.31 millivolt per meter contour by Station WHN.

The proposed station would limit Station KGGF, Coffeyville, Kansas, to its 1.26 millivolt per meter contour. Station KGGF, however, is limited to its 4.54 millivolt per meter contour by Station WNOX.

The proposed station would limit Station WNAD, Norman, Oklahoma, to its 0.81 millivolt per meter contour. Station WNAD, however, is limited to its 3.43 millivolt per meter contour by Station WNOX.

GROUNDS FOR DECISION

1. The station proposed would have network affiliations and would devote but a small part of its time to programs of a local character.

2. The proposed station would be under the same management and control as the two existing stations in Grand Rapids. The applicant has failed to show a public need for a new station to broadcast programs of the type and character proposed.

3. The granting of this application would undoubtedly result in the financial advantage of the applicant and would make available an additional advertising medium for merchants in Grand Rapids. While the question of financial support is one feature considered in the granting or denial of an application for a broadcasting station, it is important only insofar as it affects the ability of the applicant to render satisfactory broadcast service.

4. The proposed station would be limited to its 4.3 millivolt per meter nighttime contour. It is not in accordance with good engineering practice to license a station to operate on a regional frequency where the limitation will be to the extent shown to exist in the instant case. In the absence of a compelling need, which has not been shown to exist in the instant case, the Commission will not grant an application for a regional station where its nighttime service area will be limited to its 4.3 millivolt per meter contour.

5. The King-Trendle Broadcasting Corporation, owning the Michigan Radio Network, also provides broadcast service to many stations in the State of Michigan. Should this application be granted, the applicant would be the licensee of all of the radio facilities in Grand Rapids. This Commission, on numerous occasions, has declined to grant new or additional facilities to one holding a license to render broadcast service in the same city or community to be served by the proposed station. The instant case is governed by the principles enunciated by this Commission in Louisville Times Company (5 F. C. C. 554), the Colonial Network, Inc. (5 F. C. C. 654), Genesee Radio Corporation (5 F. C. C. 183), WSMB, Inc. (5 F. C. C. 55), Cornbelt Broadcasting Corporation (KFOR) (6 F. C. C. 282), Thomas J. Watson (6 F. C. C. 669), and others.

6. The granting of this application will not serve public interest, convenience, and necessity.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D. C.

<p>In the Matter of the Application of THE CROSLY CORPORATION,¹ formerly THE CROSLY RADIO CORPORATION (WLW), CINCINNATI, OHIO.</p> <p>For Extension of Special Experi- mental Authorization.</p>	}	DOCKET No. 5012.
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Decided February 6, 1939

D. M. Patrick on behalf of The Crosley Corporation, formerly the Crosley Radio Corporation (WLW), the applicant; *A. L. Ashby* and *Phillip J. Hennessey, Jr.*, on behalf of Stations WEAJ and WMAQ; and *George B. Porter* and *Ralph L. Walker* on behalf of the Commission.

DECISION AND ORDER

BY THE COMMISSION (Payne, Commissioner, not participating):

This proceeding arose upon the application of the Crosley Corporation, formerly the Crosley Radio Corporation, for an extension of a special experimental authorization to operate Station WLW, Cincinnati, Ohio, on the frequency of 700 kc. with power of 500 kw. unlimited time.

The applicant is the holder of a standard broadcast station license to operate Station WLW on the frequency 700 kc. with power of 50 kw. unlimited time, and also holds an experimental license to operate during the hours 12 midnight to 6 a. m. daily on the frequency 700 kc. with power of 100 kw. to 500 kw. with call letters W8XO. Neither the standard broadcast license which expires on August 1, 1939, nor the experimental license which expires on May 1, 1939, is involved in this proceeding.

Since February 1, 1932, the Commission's rules governing licenses for standard broadcast stations have limited the amount of power on which such a station may operate to 50 kilowatts, this limitation at

¹The Commission on December 12, 1938, denied petition of applicant for submission of Proposed Findings of Fact and Conclusions and for other relief. Appeal taken to the United States Court of Appeals for the District of Columbia. Appeal dismissed on June 26, 1939 (see 106 F. (2d) 833). Certiorari denied on November 6, 1939 (— U. S. —).

present being imposed by the Commission's Rule 117. The special experimental authorization for WLW to use its frequency of 700 kilocycles with power of 500 kilowatts, unlimited time, was originally issued on April 17, 1934, for a period expiring August 1, 1934, and was extended from time to time thereafter. The original authorization and each successive extension thereof has contained the following clause:

This special temporary experimental authorization is granted upon the express condition that it may be terminated by the Commission at any time without advance notice or hearing if in its discretion the need for such action arises.

On December 1, 1937, the applicant requested an extension of its special experimental authorization for a six months period from February 1, 1938. On January 20, 1938, the Commission, on its own motion, designated the application for hearing for the purpose of developing information to aid the Commission in determining whether the requested extension should be granted. On April 27, 1938, the Commission ordered the hearing on the application to be held before a Committee composed of three Commissioners, the hearing to take place subsequent to a hearing ordered on the same date upon proposed rules governing standard broadcast stations, one of the questions in the latter hearing being whether or not Rule 117 should be amended. The applicant also has pending before the Commission an application for an amendment to its standard broadcast license for Station WLW, requesting permission to use frequency 700 kc., with power of 500 kw., unlimited time. This application, however, is not involved in the present proceeding.

The hearing on the applicant's request for extension of the experimental authorization commenced on July 18, 1938, and was concluded on July 29, 1938. The Commission has permitted temporary extensions of the experimental authorization from time to time, the last temporary extension having been permitted for a period in no event beyond August 1, 1939, on the express condition that such temporary extension would be subject to whatever action the Commission might take in this proceeding. The Committee submitted its report to the Commission, recommending that the application of the Crosley Radio Corporation for extension of special experimental authorization be denied. The Committee's report was mailed to the applicant on October 15, 1938; exceptions thereto and request for oral argument were filed on November 21, 1938, together with a brief, and oral argument by applicant's counsel was heard by the full Commission (Commissioner Payne not present) on December 22, 1938.

From a consideration of the entire record in this proceeding, including the application filed on December 1, 1937, and papers and documents attached thereto, the testimony and exhibits presented at

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the hearing held on July 18 to July 29, 1938, the portion of the record of the hearing on the proposed rules governing standard broadcast stations which began June 6 and ended June 30, 1938, and was introduced into the record of this proceeding, the Committee's report, applicant's exceptions thereto and brief, and the oral argument of applicant's counsel, and other matters of record in this proceeding, the following appears:

The Crosley Radio Corporation was granted a construction permit on June 7, 1932, for an experimental broadcast station to operate with power of 100 to 500 kw. on the frequency 700 kc. with call letters W8XO between the hours of 1 a. m. and 6 a. m. The purpose of this experimental station as set forth in the application for construction permit was to "permit development of more powerful transmitters for study of service area, fading, interference, and increased service to the public at increased powers." The program of experimentation contemplated a study of the numerous problems involved in the development of equipment capable of generating and modulating radio frequency power in excess of 50 kw. with sufficient fidelity of transmission and reliability to render a broadcast service to the public, as well as studies of the service rendered by both the ground wave signal and the sky wave signal of a station operating on such power.

The construction of this experimental station was completed in December 1933; regular tests were commenced in January 1934, and the license for the operation of W8XO as an experimental station was issued on February 9, 1934. This license has been outstanding since that date, having been last renewed on December 13, 1938, for a period ending May 1, 1939.

On April 3, 1934, the Crosley Radio Corporation applied for a special experimental authorization to operate Station WLW with a power output of 500 kw. on the frequency 700 kc., unlimited time, using the transmitting equipment of Station W8XO, in order to carry out certain aspects of its program of experimentation which could not otherwise successfully be accomplished.

The Commission issued the special experimental authorization on April 17, 1934, subject to the condition that such authorization might be terminated by the Commission at any time if, in its discretion, the need for such action should arise.

At the time the construction permit was issued for W8XO in 1932, no manufacturer was able to supply broadcast equipment capable of operating commercially with a power of 500 kw. Special arrangements were made with several manufacturers of radio equipment to construct the necessary apparatus. After such apparatus was in-

stalled at Station WLW, numerous problems arose during the testing period which were satisfactorily solved and difficulties inherent in the operation of the apparatus were eliminated. Improvements in the transmitting equipment of Station WLW developed by the applicant, other than those which were made the subject of patent application proceedings, were made freely available to the public, some of which were readily adaptable to and have been used by stations with power of 50 kw. and less. Field studies made during the period that the applicant has operated Station WLW under the special experimental authorization show that in 1935 the area lying between the 0.5 mv./m. daytime contours for 50 kw. and 500 kw. represents about 90% increase in area; that the number of radio homes added to the service area of the station is approximately 2,377,000, the population in these homes is approximately 9,500,000, and the total population in the added area is approximately 11,500,000. Field studies further showed that in 1935 the area receiving service from the sky wave signal of an intensity greater than 0.5 mv./m., for 90% of the time, the use of 500 kw. transmitting equipment, as compared with the use of 50 kw. equipment, resulted in an increase in the number of radio homes of approximately 18,721,000 with a population of approximately 74,000,000, and that the total population of the entire area added was approximately 90,500,000. The signal in the secondary service area of a broadcast station is variable in character, being subject to slow fading, and a daily variation following the elevation of the sun, as well as a seasonal variation and a variation because of solar activity. It is generally considered that the greater the sun spot activity, the poorer are conditions of transmission in the broadcast band. From the information available, it appears that sun spot activity covers a cycle of about 11 years, with conditions existing in the spring of 1935 considerably more favorable to sky wave propagation than conditions existing in the spring of 1938. The service rendered by Station WLW with power of 500 kw. in the spring of 1938, particularly in its secondary area, was approximately the same as that which could have been rendered by that station with a 50 kw. output in 1935. The area above pointed out as within the 0.5 mv./m. signal of Station WLW operating under its special experimental authorization 90% of the time in 1935 would be, as of the spring of 1938, within approximately the 0.5 mv./m. signal of that station 50% of the time.

During the period in which the applicant has been operating under the special experimental authorization, the applicant has demonstrated not only that a 500 kw. transmitter is feasible from a technical standpoint, but also that such a transmitter can be used to

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render a regular broadcast service. It has been demonstrated that by the use of this amount of power, listeners in some rural areas and small towns have been rendered an improved or additional broadcast service by Station WLW, regardless of the quality or amount of service already being received.

Objectives of an experimental nature not originally contemplated by the application for special experimental authorization have been pursued by the applicant from time to time in connection with the operation of Station WLW. These experiments have resulted in extensive alterations in the original transmitting equipment for the purpose of increasing its reliability, fidelity, and efficiency, conversion to A. C. operation of filaments of the 20 or more high-powered vacuum tubes utilized by the transmitter, the development of new tubes to be utilized in the stage driving the modulator, the development of modulation limiting equipment, the development of duplicate audio channels ahead of the modulator stage to increase reliability, and the detailed investigation and development of other devices of lesser importance. These further experimental objectives established since the operation of the station with 500 kw. was commenced, have been substantially completed with the exception of further refinements in the design and construction of duplicate audio frequency channels to feed the modulator of the transmitter and observations of static noise levels and the signals necessary to render acceptable service in the presence of various interference levels.

In the instant application the Crosley Corporation requests the extension of the special experimental authorization upon the ground that the public interest, convenience, and necessity will be served "by continuing the improved service rendered by a high grade broadcasting station which is delivering acceptable or increased signal to listeners in areas remote to local or low-powered stations."

The question before the Commission on the instant application is not whether Station WLW should be permitted to operate on the frequency 700 kc. with power output of 500 kw., unlimited time, as a standard commercial broadcast station rendering a regular service to the public. The latter question is before the Commission in connection with its consideration of the application of the Crosley Corporation for amendment of its standard broadcast license to permit an increase in power to 500 kw. The sole question before the Commission on the instant application is whether an extension of the special experimental authorization to operate Station WLW on 700 kc. with power output of 500 kw., unlimited time, should be granted to permit the applicant to carry out its proposed program of experimentation.

Under Section 303 (g) of the Communications Act of 1934, the Commission is authorized to provide for experimental use of frequencies in the public interest. In passing upon applications for experimental authorizations a standard which has been consistently followed by the Commission has been to require that the proposed program of experimentation must offer promise of substantial contribution to the radio art. Before the Commission will grant any special experimental authorization, however, it is incumbent upon the applicant to show that the special authorization requested is necessary in order to accomplish the proposed program of experimentation. Assuming, therefore, that the experimental objectives which the applicant intends to accomplish under the special authorization sought to be extended would contribute substantially to the development of broadcasting, the crucial question in the present proceeding is whether applicant has shown that the use of 700 kc. with power of 500 kw., unlimited time, is necessary for the accomplishment of these objectives.

The specific proposals for further experimentation advanced by the Crosley Corporation are, first, further transmitter development; second, to make a complete and intensive field survey to determine what constitutes service and the limiting effect of the factors which govern such service; and, third, to construct and design an antenna which will have the effect of controlling sky wave as a factor of service rather than as an interference factor.

The first of these objectives clearly would not require an output of 500 kw. power, unlimited time. To the extent that a power output of 500 kw. would be required at all to carry on further investigations of the technical aspects of the transmitting equipment necessary to generate a wave of 500 kw. power, the operation of Station W8XO under applicant's experimental license during the hours 12 midnight and 6 a. m. will suffice. There has been no showing made that the extension of the special experimental authorization is necessary in order to enable the applicant to carry out its first proposed line of experimentation.

It is primarily for the purpose of carrying out the second and third lines of experimentation that applicant requests permission to operate Station WLW unlimited hours on the frequency of 700 kc. with a power output of 500 kw. Applicant's contention is that the extension of the special experimental authorization is necessary for this purpose. This contention, however, cannot be sustained.

The problem of what constitutes daytime service and the limiting effects of the factors which govern such daytime service can be adequately studied without 500 kw. power. To make observations of the

signal intensity necessary for satisfactory daytime service under various practical conditions, the applicant does not require a 500 kw. transmitter; in fact, it could make such observations just as well if Station WLW were off the air entirely, by measuring the performance of other stations.

The further experimental work along the second and third proposals, above mentioned, which requires a power output for Station WLW of 500 kw., can be carried on only during nighttime hours. The applicant's plan of future experimentation contemplates studies of service rendered in the secondary service area of the station, and such experimentation could not be carried on except in the presence of useful sky wave signals which exist only after sundown. Problems involving fading and sky wave phenomena are nighttime problems.

Applicant is now authorized to operate its experimental Station W8XO with a power output of 100 to 500 kw., on the frequency 700 kc., during the hours from 12 midnight to 6 a. m. The record shows that at the second hour after sunset, under sky wave propagation conditions existing in the spring of 1935, approximately 18,721,000 radio homes, having a population of approximately 74,000,000, in an area which includes a population of approximately 90,500,000, are in the secondary service area of Station WLW and may receive service from this station in addition to radio service received from other stations. Acceptable secondary service is available to a larger area under transmission conditions which prevail at 12 o'clock at night than under conditions which prevail during the second hour after sunset. At 12 midnight, when the applicant is authorized to commence operation under its experimental license on a power output of 500 kw., the time is 11 p. m. or 10 p. m. in a considerable portion of the station's secondary service area. The record does not show that the applicant could not adequately carry on a substantial portion of its proposed experimentation under its experimental license for Station W8XO.

The program of experimentation thus far carried on by the applicant shows that the experimentation proposed does not require the applicant to operate WLW during all hours at 500 kw. Applicant's request for an extension of the special authorization to operate Station WLW on 700 kc. with power output of 500 kw., unlimited hours, therefore, amounts in effect to an application for a regular license to operate on this frequency and power on condition that certain experiments be made during nighttime hours in the secondary service area of the station.

In so far as the request for additional power to carry on the proposed experimentation is concerned, the only question raised is

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whether the applicant has sustained the burden of showing that the facilities requested are necessary for the accomplishment of the experimental objectives. There is nothing in the record which indicates that the experiments proposed to be made by the applicant require an extension of the special experimental authorization now held by the applicant. In so far as applicant's proposal to determine quality of service and public reaction to programs rendered in the secondary area of Station WLW is concerned, since this experimentation can be carried on only during nighttime hours, the extension of the special experimental authorization to operate on 500 kw., unlimited time is not necessary for its accomplishment.

In the final disposition of this case, therefore, even if it were assumed by the Commission that the proposed program of experimentation would constitute a substantial contribution to the radio art, and even if it were further assumed that an output of 500 kw. is essential to the accomplishment of certain aspects of this program of experimentation, nevertheless, in view of the fact that the applicant has failed utterly to show, and the Commission is unable to find, that the use of the frequency 700 kc. with power of 500 kw., unlimited time, is necessary to accomplish the proposed program of experimentation, the request for an extension of special experimental authorization to operate on the frequency of 700 kc. with power output of 500 kw., unlimited time, must be denied.

CONCLUSIONS

1. To the extent that a power output of 500 kw. may be necessary to carry out the applicant's proposed program of experimentation, insofar as it contemplates further investigation into the technical aspects of transmitter equipment, the applicant has sufficient authority to experiment in this field under its experimental license for Station W8XO, and the extension of the special experimental authorization of Station WLW for this purpose is not justified.

2. Insofar as the proposed program of experimentation contemplates studies in the secondary service area of Station WLW requiring a power output of 500 kw., the experimentation can be carried on only during the nighttime, and the extension of the special experimental authorization of Station WKW permitting unlimited hours of operation on 500 kw. for this purpose is not justified.

3. Insofar as the proposed program of experimentation includes studies of daytime service, a power of 500 kw. for Station WLW is not necessary, and therefore the extension of the special experimental authorization of Station WLW for this purpose is not justified.

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DECISION AND ORDER ON PETITION FOR REHEARING

Decided February 20, 1939

BY THE COMMISSION:

On February 6, 1939, the Commission (Commissioner Payne not participating) denied the application of The Crosley Corporation for an extension of a special experimental authorization to operate Station WLW, Cincinnati, Ohio, on the frequency 700 kc. with power output of 500 kw., unlimited time. The Commission's Decision and Order were published on February 8, 1939, the effective date of the Order being 3 a. m., E. S. T., March 1, 1939. During the pendency of the application, which was filed on December 1, 1937, the Commission granted the applicant temporary authorizations for the facilities requested. The last such temporary authorization was granted on January 24, 1939, and in accordance with its terms will terminate on March 1, 1939, the effective date of the Commission's decision on the pending application. After March 1, 1939, by reason of the provisions of the Communications Act of 1934, as amended, the operation of Station WLW on the frequency of 700 kc. with power output of 500 kw., unlimited hours, will be unlawful. After said date, The Crosley Corporation will be authorized to operate Station WLW under its regular broadcast license on a frequency of 700 kc. with a power output of 50 kw., unlimited hours, and will be authorized to operate Station W8XO under its experimental license on the frequency 700 kc. with a power output of 100 kw. to 500 kw. during the hours 12 midnight to 6 a. m.

On February 17, 1939, The Crosley Corporation filed this Petition for Rehearing. The Petition requests that the Commission reconsider its action in denying the petitioner's application for renewal of special experimental authorization and that it enter its order granting said application, and further requests the Commission to enter an order staying the effective date of its said Decision and Order during the pendency of the Petition and, in the event of adverse action by the Commission on the Petition, for such time after the ruling thereon "as will permit applicant effectively to avail itself of any remedies which may be open to it."

In support of its Petition, the petitioner sets forth ten matters which will be disposed of herein in the order in which they appear in said petition:

The first allegation of error is that the Commission erred in its action of December 12, 1938, in overruling applicant's "Petition for Submission of Proposed Findings of Fact and Conclusions of Law and for Other Relief." The Commission is of the opinion that the

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petition was properly denied and that no rights of petitioner were in any way prejudiced by such denial. The Petition for Rehearing does not suggest what rights of petitioner were prejudiced by the Commission's action of December 12, 1938, nor in what respects such rights were prejudiced by the Commission's action.

Petitioner's second basis for rehearing states in effect that the Commission erred in not finding and reporting on all of the issues set forth in the Notice of Hearing pursuant to which a hearing was held for the purpose of developing information to aid the Commission in determining whether the request extension should be granted. The Commission was unable to see any merit in the suggestion that it is necessary for the Commission to find or report as to facts which are neither necessary nor relevant to the conclusion reached by the Commission in its decision, even if it be assumed it is necessary for the Commission to make findings and report as to any facts in passing on applications for authorizations of the character here involved. In this case, the Commission is of the opinion that petitioner had no right either to notice or to an opportunity to be heard in connection with Commission's action upon its application, and that it was entirely unnecessary as a matter of law for the Commission to make any findings in support of its decision to deny said application. However, without regard to this question, the findings incorporated in the Commission's decision denying the application are adequately supported by the record and in turn adequately support the conclusions and order of the Commission.

What has already been said disposes of the next contention made in the Petition for Rehearing to the effect that the Commission erred in not making specific findings upon each of the several issues specified in the Notice of Hearing.

The fourth, fifth, and sixth alleged errors in the Commission's decision are to the effect that the Commission erred in reaching the three conclusions set forth in its decision. Petitioner does not allege or suggest in what way and to what extent these conclusions are not supported by the evidence. The petitioner does not refer to any evidence in the record which contravenes these conclusions nor to any evidence in the record on which any different conclusions could have been reached; nor does petitioner suggest in what way, if any, the conclusions are not supported by the facts set forth in the Commission's decision. In this respect, the petition is wholly defective and in effect is no more than an expression of the petitioner's disagreement with the Commission's action, without suggesting to the Commission any grounds upon which it could reach any other conclusions. The Commission is unable, on the basis of an examination of the

record, to find any evidence which would support the petitioner's allegations. In fact, for the most part, the conclusions referred to in these allegations of the Petition for Rehearing are based on uncontradicted testimony of petitioner's own witnesses and statements of petitioner's counsel which are summarized in the recitation of facts in the Commission's decision.

The seventh allegation of error in the Petition which is in effect that the Commission erred in basing its decision and order on the use of standard broadcast station WLW and experimental station W8XO as a substitute or alternative for the use of the special experimental authorization requested, reveals a lack of understanding of the basis of the Commission's decision. The Commission properly took into consideration the outstanding licenses under which petitioner is authorized to operate in considering the question of whether, and to what extent, the additional authorization requested was needed by petitioner to carry out its proposed program of experimentation. It made no finding, however, that such program of experimentation could be undertaken and completely carried out under such existing licenses. The Commission pointed out, however, that the record does not show that the applicant could not adequately carry on a substantial portion of its proposed experimentation under its experimental license for Station W8XO.

The eighth allegation of error is in effect that the findings and conclusions of the Commission are insufficient to support its decision, do not fairly report and represent the evidence in the record and do not set forth the basic facts upon which the ultimate facts are to be deduced. The Commission is unable to determine from this allegation in what respect the findings and conclusions of the Commission are insufficient to support the decision rendered, in what respect the findings and conclusions of the Commission do not fairly report and represent the evidence in the record or in what respect the findings and conclusions of the Commission do not set forth the basic facts upon which the ultimate facts are to be deduced. This allegation of error, like other allegations in the Petition, is no more than an expression of the petitioner's opinion without being supported by any specific reference to the record or the Commission's decision. The Commission is wholly unable to reappraise and reconsider its decision on the basis of such general, sweeping, and all-inclusive allegations. The petitioner's eighth allegation is in effect no more than a conclusion of the petitioner and is not a basis upon which any reconsideration can be had.

The ninth allegation of error is in effect that the Decision and Order complained of were made without affording the petitioner the

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type and character of hearing required by Section 309 (a) of the Communications Act of 1934 as amended. This allegation is wholly without merit for the reason that petitioner was not an applicant for "a station license, or for the renewal or modification of a station license," within the meaning of Section 309 (a) and was not entitled either to notice or an opportunity to be heard in accordance with the provisions of that section. However, without regard to the question of whether petitioner was entitled to a hearing under the provisions of Section 309 (a) of the Communications Act, the hearing which was held and the decision of the Commission based upon the record made thereon provided petitioner every right which a hearing under 309 (a) contemplates. This allegation, too, is defective in that petitioner does not suggest in what respect, if any, the type and character of the hearing which was held in any way was different from the hearing to which he inferentially claims he is entitled under Section 309 (a). The Commission is therefore wholly unable to determine what rights petitioner is claiming or in what respect he claims they have been aggrieved. In the opinion of the Commission no element of a full and fair hearing was absent in its consideration of, and action on, petitioner's application.

The last alleged error is in effect that the Decision and Order complained of are contrary to the evidence, are not supported by substantial evidence, and are arbitrary and capricious. This allegation is a mere conclusion of the pleader and is obviously defective in that it does not suggest or call to the Commission's attention any specific error in the Commission's procedure or decision on petitioner's application.

No single allegation in the Petition for Rehearing constitutes a basis upon which the Commission can reconsider its decision complained of, for the reason that none of such allegations is more than a general statement of a conclusion containing no specific allegation of error in the Commission's decision. The Petition for Rehearing therefore wholly fails to serve the purpose for which such petitions are permitted or required to be filed, namely, to call to the attention of the Commission any specific error or omission in its action so that in the light of such specific allegations the Commission might reconsider its previous action and grant such administrative relief as would be appropriate in the circumstances. The Commission, therefore, has no course open other than to deny the Petition for Rehearing and affirm its decision denying petitioner's application.

As previously pointed out, on March 1, 1939, the effective date of the decision, the special temporary experimental authorization under which petitioner is now operating on 700 kc. with 500 kw., unlimited

time, terminates, and it will thereafter be unlawful for petitioner to continue to operate Station WLW on this basis. The petitioner requests an order staying the effective date of the Commission's decision until such time after the Commission's ruling thereon as "will permit applicant effectively to avail itself of any remedies which may be open to it."

The granting of special experimental authorization is a function which the Congress has committed solely to the Commission. It would be idle for the Commission to postpone the effective date of its decision in this case for the purpose stated in the Petition for Rehearing since there are no remedies open to the petitioner, other than upon application to this Commission, which could result in the extension of its existing temporary authorization or the grant of a new experimental authorization to operate WLW on its present basis. For the Commission to grant petitioner's request, it being the only agency authorized to issue such an authorization, would be in effect to grant the very authorization which the Commission has found should be denied. Therefore, since no good reason has been urged on the Commission to justify extending the effective date of its decision, the request for a stay of such effective date must be denied.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D. C.

In the Matter of
OKLAHOMA-ARKANSAS TELEPHONE COMPANY,
POTEAU, OKLAHOMA, PETITIONER,

v.

SOUTHWESTERN BELL TELEPHONE COMPANY,
ST. LOUIS, MISSOURI, RESPONDENT.

DOCKET No. 3796.

Decided February 6, 1939

James B. McDonough and *William L. Curtis* for petitioner; *E. W. Clausen* and *John Mohler* for respondent; *William H. Bauer* and *W. D. Humphrey* for the Commission.

REPORT AND ORDER OF THE COMMISSION

BY THE COMMISSION (Walker, Commissioner, dissenting):

This proceeding arose on January 30, 1936, with the filing of a petition by the Oklahoma-Arkansas Telephone Company (hereinafter designated as petitioner) for relief under the Communications Act of 1934, as will hereinafter more particularly appear. The petitioner complains of alleged acts of the Southwestern Bell Telephone Company (hereinafter designated as respondent) in severing an interstate connection between petitioner and respondent at Fort Smith, Arkansas, in 1928, and prays that relief be granted by requiring the respondent to restore the physical connection at Fort Smith, to pass interstate telephone calls originating at the exchange of the petitioner, via the petitioner's circuits, to Fort Smith, and by requiring the respondent to make proper routings and division of tolls. The original petition further prayed relief in the form of restitution by the respondent to the petitioner of losses resulting from the allegedly wrongful acts of the respondent.

The respondent filed an answer and cross petition to the original petition, which answer, among other things, contained a motion to strike from the petition certain allegations concerning acts of the respondent at the time the controversy between the companies arose.

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on the grounds that these allegations were irrelevant and the issues arising therefrom were moot as a result of prior litigation before several commissions and courts. The cross petition of the respondent reserved its contention that this Commission had no statutory authority to enter any award of money damages in this case, but in the event of an adverse decision on that issue requested an award for an amount alleged to be due the respondent from the petitioner under the contract in effect at the time this controversy arose. The petitioner then moved that the answer of the respondent be stricken as not stating a defense to the petition. On June 3, 1936, the Commission (Telephone Division) denied without prejudice the motions of both parties to strike.

The case then proceeded to hearing before an examiner, at Fort Smith, Arkansas, on October 5 and 6, 1936. At that hearing the examiner limited the scope of the testimony to acts occurring subsequent to the enactment of the Communications Act of 1934 on the theory that the proceeding arose under Section 201 (a) of that Act and was concerned solely with the public interest in the physical connection desired as of the date when the petition was filed with this Commission. The examiner also excluded all testimony relative to damages claimed by both parties, on the ground that the Commission lacked jurisdiction to make an award of damages in a case of this nature and that the parties had access to courts for such relief. The examiner did permit the parties to file written tenders of testimony supporting the points excluded from the record.

Both parties filed briefs with the examiner; and on February 19, 1937, the examiner issued his report (No. III-19) recommending that the "petition be denied in so far as it requests physical connection under Section 201 (a) of the Act," and "dismissed with respect to all other relief prayed for." The recommendation was based upon the finding that physical connection between the petitioner and the respondent at Fort Smith is not necessary or desirable in the public interest, and the determination that the Commission lacked jurisdiction in respect to claims for damages which arose prior to its creation. The petitioner filed exceptions to the Examiner's Report and a brief in support of its exceptions. The respondent filed a brief in support of the Examiner's Report, which was followed by a supplemental or reply brief of the petitioner.

On August 10, 1937, the Commission (Telephone Division) issued a Report and Order in the matter, sustaining in the main the exceptions of the petitioner, setting aside the report of the examiner, and reassigning the case for hearing de novo. The Commission found that the examiner correctly ruled that "the money damages prayed for

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herein are not maintainable before this Commission and that therefore evidence to sustain such damages is not admissible in a proceeding before this Commission;" but determined that "before the Commission can consider the question of where physical connection should be or whether the earning power of property devoted to public service has been impaired by a party to this proceeding, it must have before it all pertinent facts in connection therewith;" and concluded that the testimony offered by the petitioner, and excluded by the examiner, should be in the record in proper form for its consideration.

The respondent then filed a petition for rehearing and modification of that order and the petitioner filed its response thereto. The Commission (Telephone Division) expressed the opinion that the deficiency of the testimony should be relieved, and accordingly denied the petition for rehearing and modification. Likewise, a petition of the respondent for rehearing before the Commission en banc was denied on the ground that the order of August 10, 1937, was not such an order as would furnish a basis for such a rehearing.

The petitioner, on October 14, 1937, filed an amended complaint, which contained a prayer for relief similar to that of its original petition, although not requesting an award of money damages. The respondent filed its answer to the amended complaint, renewing its motion to strike and praying that the complaint be dismissed and the relief be denied. The petitioner then moved to strike the respondent's answer to the amended complaint. Both of these motions to strike were denied by the Commission, and the case proceeded to hearing de novo before an examiner at the offices of the Commission on February 28 and March 1 and 2, 1938. At this hearing it was agreed by counsel that such portions of the transcript of the original hearing, together with the exhibits that were admitted in evidence at that hearing without objection, might be considered a part of the record in the hearing de novo. The respondent interposed an objection to any further hearing or the introduction of any additional evidence, and an objection to the admissibility of any and all evidence concerning facts or occurrences prior to July 1, 1934, and reasserted its motion to strike previously filed with the Commission. These objections were overruled and the motion to strike denied by the examiner. Following the hearing briefs on behalf of the parties concerning the objections and motions of the respondent were filed with the examiner at his request.

The examiner issued his report (III-34) on August 12, 1938, recommending that the relief prayed for be denied. To this recommendation the petitioner filed exceptions and requested oral argument before the Commission. Briefs were filed by both parties, and

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the matter was orally argued before the Commission on November 3, 1938.

The petitioner is a corporation which owns and operates a telephone system in Le Flore County, Oklahoma. It is engaged in rendering local and long-distance telephone service in and between Poteau, Heavener, Howe, and Wister, all communities in Le Flore County, Oklahoma. It also has a toll connection with Monroe, Oklahoma, and a line extending from Heavener to Hodgens, Oklahoma. It engages in interstate traffic through connections with the respondent. It owns toll lines, extending from Poteau, Oklahoma, to Fort Smith, Arkansas, a distance of approximately thirty-two miles, one of which lines extends through Poteau to Heavener directly; and prior to January 22, 1928, traffic originating at the exchanges of the petitioner was routed to Fort Smith via those circuits. Since that date such traffic has been transferred to the respondent at Poteau.

The respondent is a corporation engaged in rendering local and long-distance telephone service in intrastate and interstate traffic in and between Oklahoma, Arkansas, Missouri, Texas, and Kansas, and through connections with other companies of the Bell System, offers a national and international telephone service.

The proceeding before this Commission arises under the provisions of Section 201 (a) of the Communications Act of 1934, which reads as follows:

It shall be the duty of every common carrier engaged in interstate or foreign communication by wire or radio to furnish such communication service upon reasonable request therefor; and, in accordance with the orders of the Commission, in cases where the Commission, after opportunity for hearing, finds such action necessary or desirable in the public interest, to establish physical connections with other carriers, to establish through routes and charges applicable thereto and the divisions of such charges, and to establish and provide facilities and regulations for operating such through routes.

The issue before this Commission, therefore, is whether it is necessary or desirable in the public interest to require the respondent to establish physical connection with the lines of petitioner at respondent's exchange in Fort Smith, Arkansas, which connection existed prior to January 22, 1928, and to accept interstate business originating at the exchanges of the petitioner transmitted via the petitioner's circuits to the respondent's switchboard at Fort Smith.

It will be observed at the outset that the petitioner withdrew its contention for the establishment of a proper division of tolls and charges, and introduced no evidence which would enable the Commission to make any finding in that respect.

It has been noted above that at various times throughout the proceedings in this case the respondent interposed objections to certain

testimony and moved to strike certain allegations and testimony which it considered immaterial to the issues or which it considered as *res adjudicata*. Prior to the enactment of the Communications Act of 1934, there was no Act of Congress requiring connection between telephone carriers for purposes of handling interstate traffic. Authority to compel such physical connections was vested in this Commission by the Communications Act of 1934. In determining whether a physical connection between telephone carriers engaged in interstate communication is necessary or desirable in the public interest, the respondent contends that the Commission is limited to facts or occurrences arising since the enactment of that Act. We do not share that view. It may be agreed that it is the present necessity or desirability which is at issue, but it is also true that present necessity and desirability may be substantially affected by events which occurred prior to the creation of this Commission. Loss of revenue to a carrier, for example, may be reflected in the cost of service furnished by that carrier to the public, and in determining whether or not a loss of revenue has occurred, and if so, whether it is justified, the Commission must consider the circumstances occasioning such loss.

In respect to the contention that as a result of prior adjudication the legality of certain acts has become moot, it will be observed that the issues with which this Commission is concerned arise under the Communications Act of 1934, upon which no decision has been made; nor have these issues been determined on the basis of similar prior legislation. Such acts of either party, the legality of which has been litigated and finally decided in courts of competent jurisdiction, are of course in themselves beyond the jurisdiction of this Commission; but having been adjudicated they may nevertheless still affect the public interest. The rights of the parties may have been conclusively determined through litigation, but it is the public interest rather than the rights of the parties as carriers with which we are now concerned.

The controversy between the parties to this proceeding is not a new one but has existed for a period of over ten years and has been litigated in its various phases before several commissions and courts.

The petitioner is the successor to the Poteau Telephone Company by virtue of having purchased the properties of that company in 1923. The respondent, insofar as the operations in question are concerned, is the successor of the Pioneer Telephone Company. For a number of years prior to 1923, the respondent and the predecessor of the petitioner exchanged traffic at Fort Smith and at Poteau under terms of traffic contracts.

After the formation of the Oklahoma-Arkansas Telephone Company, a new contract was entered into between the parties to this

proceeding, effective December 21, 1923, providing for exchange of traffic and the method of division of tolls between the companies. This contract further provided for its termination by either party upon thirty days' written notice to the other. At the time of entering into the contract of 1923, a disagreement existed between the predecessor of the petitioner and the respondent as to an adjustment of the division of tolls, and the petitioner made settlement of that indebtedness.

The practice under the traffic agreement of 1923, as it had been under previous contracts, was to route traffic originating at the exchanges of the petitioner, destined to or beyond Fort Smith, via the toll lines of the petitioner between Poteau and Fort Smith, and Heavener and Fort Smith. Traffic from Fort Smith to the exchanges of the petitioner was routed via the lines of the respondent between Fort Smith and Poteau.

The record shows that during the years following the 1923 agreement, controversy arose between the parties concerning the inter-company settlements and the method of determining the amount to which the petitioner believed it was entitled. Apparently, settlements were sometimes made on a composite basis pursuant to traffic studies by the respondent, rather than in exact accordance with the terms of the contract. Witnesses for petitioner testified that at various times they had proposed changes in the division of tolls which would result in the petitioner receiving what it conceived to be a more just and equitable division, and in March 1927, a letter was directed to the respondent, by the petitioner, setting forth a new basis of settlement, and proposing to make it effective in April of that year. On March 29, 1927, the respondent advised the petitioner that it could not agree to the modification proposed, and that it would continue to make settlements under the contract of 1923 so long as the connection between the systems was maintained under that contract. For the ensuing months, through October 20, 1927, the petitioner made payments to the respondent on the basis of its proposal instead of under the terms of the contract. After that time the respondent refused to accept payment on that basis, but demanded a revision of the previous payments, and that future settlements be made in accordance with the 1923 contract.

In the latter part of November or the early part of December 1927, a conference was held by the parties with the Oklahoma Corporation Commission to discuss the relationship of the two companies. About December 10, 1927, the respondent notified the petitioner that in accordance with its cancellation provisions, the contract would be cancelled. The respondent also requested authority from the Okla-

homa Corporation Commission to cancel the contract, and after a hearing on January 3, 1928, the Corporation Commission granted that authority. Thereafter the respondent established a switchboard at Poteau, in a building across an alley from the office of the petitioner, and intercepted its own cable, which theretofore led directly into the switchboard of the petitioner, and conducted the intercepted cable through the switchboard in the office of the respondent. Simultaneously with the interception of its cable in Poteau, the respondent severed the physical connection at Fort Smith. Severing this connection was described as merely pulling the plugs of the respondent's own lines, on its own switchboard, in view of the fact that the lines of the petitioner connected with the lines of the respondent and ran into a cable of the respondent at a point about two miles from the Fort Smith switchboard.

On the morning of January 22, 1928, the petitioner received its first notice of this action of the respondent when it was advised that its toll lines to Fort Smith were no longer connected and that the respondent would handle the Poteau long-distance business over its own circuits from its exchange in Poteau. The petitioner attempted to continue to place calls over its own lines but they were not received in Fort Smith. For several days following this action persons in Poteau desiring to call Fort Smith were required to go to the office of the respondent at Poteau, but, thereafter, calls originating on or destined to the petitioner's system were exchanged between the switchboards of the parties in Poteau. Since that time the toll lines of the petitioner to Fort Smith have been of value to it for rural use only for a distance of about 6½ miles.

Reference has been made to the method by which the toll lines of the petitioner reach the switchboard of the respondent at Fort Smith. For some distance before entering Fort Smith, the lines of the petitioner were strung on poles of the respondent, and at a distance of six or eight blocks from the exchange of the respondent, the wires of the petitioner were connected with wires of the respondent, and entered a cable, through which they were connected to the toll board. This situation is governed by a so-called "pin rental contract," which provides that for the use of the poles of the respondent an annual payment is to be made. This contract was entered into between the parties on August 9, 1915, and evidence was introduced to show that payments are still being made under that contract although the petitioner's circuits are not in use due to the severance of the connection. This contract also provides for termination by either party upon thirty days' written notice to the other, but remained in effect at the time of the hearings before this Commission. The record does not

show clearly whether the lines of the petitioner have been physically severed at their point of connection with lines of the respondent.

Prior to the cancellation of the 1923 contract, the respondent constructed two new toll lines from Fort Smith through Poteau, which, although they have never been connected with the switchboards of either the respondent or the petitioner at Poteau, are capable of being so connected. The petitioner contends that these lines were constructed at a time when the traffic did not justify the installation of additional circuits and in anticipation of severing the connection at Fort Smith and rendering useless the circuits of the petitioner between Poteau and Fort Smith. There is no evidence in the record, however, to justify this conclusion, and the respondent takes the position that those lines were constructed through Poteau for other service at a time when the traffic level was much higher than it is at the present time, and that in fact these lines were constructed some length of time prior to the severance of the petitioner's connection at Fort Smith and have never been used for Poteau traffic. The two circuits of the respondent which are now connected with the Poteau switchboard were in operation prior to 1906.

On January 3, 1928, the petitioner filed an application with the Oklahoma Corporation Commission requesting an investigation of the division of tolls between the companies. Upon the severance of the connection at Fort Smith and the construction of the switchboard at Poteau by the respondent, a supplemental complaint was filed by the petitioner setting forth these facts and requesting the Corporation Commission, pending final hearing, to require the respondent to restore the service as it had existed, and to restrain the respondent from maintaining and operating its switchboard at Poteau. That Commission heard the complaint, and on March 19, 1928, entered its temporary order (*Re Oklahoma-Arkansas Telephone Company*, P. U. R. 1928 C 830) requiring restoration of service on petitioner's switchboard at Poteau, conditioned upon payment by the petitioner of sums found due the respondent for business handled under the 1923 contract prior to January 22, 1928. It also set forth the basis of settlement for traffic handled after the date of complaint, which basis previously had been approved by an order (No. 912) of the Corporation Commission, and which was similar to that of the 1923 contract. The Corporation Commission denied the portion of the petitioner's application requesting reestablishment of the connection at Fort Smith, for the reason that it had no jurisdiction over connections in the State of Arkansas.

From this decision the petitioner appealed to the Supreme Court of the State of Oklahoma. During the pendency of that appeal, the final

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hearing was held before the Corporation Commission, and its decision thereon (*Re Oklahoma-Arkansas Telephone Company*, P. U. R. 1928 E. 737) reached the same conclusions in the main as those of its original decision.

While the appeal before the Oklahoma Supreme Court was pending, the petitioner also filed a suit in the District Court of the United States for the Western District of Arkansas against the respondent herein, seeking an injunction requiring a reconnection of its long distance lines with the respondent's exchange at Fort Smith and the restoration of the service between the two companies as it had existed. That Court determined that in a controversy between two telephone companies, where the facilities were equal or the facilities of the defendant superior, no public interest was involved in a suit to compel restoration of physical connection; that the law of contracts applied to such suit; that such contracts are governed by the usual rules unless public interest is unfavorably affected; and that in the absence of public interest, one telephone company cannot compel connection with a competitor solely on the ground that a loss results from the failure to connect. That Court further held that the contract between the parties determined their relationship; that that contract had been terminated in accordance with its own provisions by the respondent, due to the failure of the petitioner to comply with its terms; and accordingly denied the relief prayed for. (*Oklahoma-Arkansas Telephone Company v. Southwestern Bell Telephone Company*, 33 F. (2d) 770.)

On April 29, 1930, the Supreme Court of Oklahoma rendered its decision on the appeal of the petitioner from the decision of the Oklahoma Corporation Commission. (*Oklahoma-Arkansas Telephone Company, et al. v. Southwestern Bell Telephone Company, et al.*, 143 Okla. 76, 291 Pac. 3.) The Supreme Court of Oklahoma determined that the Constitution of Oklahoma required a continuance of service between the lines of the petitioner and those of the respondent regardless of any dispute which might be existing between them. The Court further held that the order of the Oklahoma Corporation Commission (Order No. 912) upon which the basis for the division of tolls had been determined, was not such an order as could be construed as fixing a rate in accordance with its duty, in view of the fact that it permitted connecting companies to contract as to the rates as an alternative to the order; that the Commission, therefore, could not exercise jurisdiction to determine that an amount had been collected in excess of the contractual provisions; and that issues growing out of such a contract could be determined only by a court of competent jurisdiction. The Commission having exceeded its authority its order

was held to be void, and it was directed by the Court to fix rates in accordance with its duty and to order the respondent to remove its switchboard and restore the service at Poteau without condition. The Court agreed that the Corporation Commission of Oklahoma had no jurisdiction over the connection at Fort Smith, Arkansas.

The petitioner expresses the view that the decision of the Supreme Court of Oklahoma also declared the contract between these parties void as without authority of law under the Oklahoma constitution and statutes. Although the validity of the contract between these parties is not now a matter for this Commission to determine, it is not believed that the decision of that Court can be interpreted as construed by the petitioner. The Court said that the existence of the contract between the parties did not relieve the Corporation Commission of its duty to establish rates; that the Corporation Commission order (No. 912) left the determination of the compensation to a contract either existing or to be thereafter agreed upon; and that the purpose of the constitutional provision was to prevent that very thing, in view of the fact that rates agreed upon by the companies might not be for the best interests of the people. Although the Court, therefore, apparently considered the Corporation Commission derelict in its duty to fix rates, it did not specifically declare the contract of 1923, be between the parties to this proceeding, void. In fact, the Court said: "Those issues growing out of the contract under which the Poteau Company and the Bell Company were operating may be determined in a court of competent jurisdiction" (*Supra*, 291 Pac. 3, 9).

In accordance with the decision of the Supreme Court, the Corporation Commission, on April 22, 1931, issued its decision upon remand of the matter to it, and ordered the respondent to remove its toll board in Poteau insofar as it affected intrastate service and to restore the intrastate service of the petitioner as it existed prior to January 22, 1928. It again reasserted its lack of any jurisdiction over interstate traffic or connections. The order set forth rates and divisions of rates upon the same basis of compensation provided by the contract of 1923.

Pursuant to this order of the Corporation Commission, the respondent removed its toll board at Poteau and connected its lines with the toll board of the petitioner at Poteau, but did not restore the connection at Fort Smith. On May 1, 1931, the parties agreed that the order of the Corporation Commission should apply to interstate as well as intrastate business, each party reserving the right to discontinue connection with the other on interstate toll business on thirty days notice in writing to the other party, and in the event of such

termination the respondent was not to be considered as having waived the right to reinstall facilities at Poteau for the handling of interstate business. This agreement likewise was not intended to constitute consent on the part of the respondent to the connection of the toll lines of the petitioner with the Fort Smith toll board, nor to waive the claim of the petitioner to such connection.

In the meantime, the decision of the District Court, denying the relief prayed for by the Oklahoma-Arkansas Company, was reviewed by the Circuit Court of Appeals for the 8th circuit, which, on December 20, 1930, handed down its decision affirming the District Court. (*Oklahoma-Arkansas Telephone Company v. Southwestern Bell Telephone Company*, 45 F. (2d) 995.) The Circuit Court held that at common law a telephone company owes no duty to make physical connections with other telephone companies; that any right of the petitioner arose through contract; and that the contract of 1923, having superseded all then existing agreements between the parties, and having in turn been legally terminated by the respondent in the manner provided therein, the petitioner had no contractual right to the connection. This Court also reviewed the Arkansas statutes, and concluded that they did not require the connection demanded. In discussing the merits of the case, the Court commented that under the facts presented to them the public interest in the controversy was not apparent, and that prompt and continuous service was in fact afforded within the meaning of the pertinent statutes. It further decided, that Congress having conferred upon the Interstate Commerce Commission full regulatory powers over interstate carriers engaged in the transmission of intelligence by wire or wireless, the state's power in that respect had been suspended, this being an interstate matter. Application for writ of certiorari from this decision, filed by the petitioner, was denied by the United States Supreme Court. (*Oklahoma-Arkansas Telephone Company v. Southwestern Bell Telephone*, 283 U. S. 822.)

The petitioner then filed a complaint with the Interstate Commerce Commission, which Commission on May 17, 1932, determined that the only pertinent provision of the Interstate Commerce Act concerning which a violation was alleged was Section 3 (1), forbidding prejudice or preference as between localities or communities. (*Oklahoma-Arkansas Telephone Company v. Southwestern Bell Telephone Company*, 183 I. C. C. 771.) That Commission pointed out that there was no evidence to show that any prejudice or preference as between localities or communities existed. It further determined that a situation of prejudice or preference between common carriers was not contemplated by that section of the Interstate Commerce Act. Hav-

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ing thus decided, the Commission, after conceding its jurisdiction for the purpose of considering the merits of the case, determined that undue prejudice or preference could not exist under Section 3 (1) in the absence of competition; that the provisions of that section are not violated unless the prejudice or preference constitutes a source of undue disadvantage to one party and undue advantage to the other; and that it must be shown that the resulting injury will cease upon removal of the prejudice or preference. The record shows that some attempt was made to have the decision of the Interstate Commerce Commission reviewed in the courts, but does not fully disclose the nature of that attempt.

At the present time, therefore, these parties are operating under the order of the Oklahoma Corporation Commission and the agreement concerning interstate traffic entered into subsequent to that order, referred to hereinabove, and it is under these circumstances that this matter must be determined by this Commission.

It has been held by a court of competent jurisdiction that at common law, a telephone company owes no duty to make physical connections with other telephone companies. The connection in question, being for purposes of interstate communication, is obviously beyond the jurisdiction of the states. (*Oklahoma-Arkansas Telephone Company v. Southwestern Bell Telephone Company*, 45 F. (2d) 995.) Likewise, the Interstate Commerce Act did not give the Interstate Commerce Commission authority to compel such physical connection between telephone companies. (*Oklahoma-Arkansas Telephone Company v. Southwestern Bell Telephone Company*, 183 I. C. C. 771.)

Since the date of the decisions referred to hereinabove, Congress, by Section 201 (a) of the Communications Act of 1934 (quoted *supra*), has delegated to this Commission the right and authority to compel physical connection between telephone companies engaged in interstate communication "in cases where the Commission, after opportunity for hearing, finds such action necessary or desirable in the public interest."

Section 1 of the Communications Act states as a purpose in the creation of this Commission, the making "available, so far as possible, to all the people of the United States a rapid, efficient, Nationwide, and world-wide wire and radio communication service with adequate facilities at reasonable charges." It is apparent that the purpose set forth indicates to a large extent what constitutes the public interest in a case of this nature. It will be noted that the aims specifically mentioned are rapid and efficient service, adequate facilities, and reasonable charges. These elements of public interest

are primary, and in the main must control the decision of the Commission in this case.

The petitioner operates exchanges at Poteau, Wister, Howe, and Heavener, Oklahoma, and toll lines connecting these exchanges. Prior to January 22, 1928, the petitioner also operated toll lines between Poteau and Fort Smith, and Heavener and Fort Smith, connecting through facilities of the respondent with its switchboard at Fort Smith. The petitioner has circuits from Wister to Poteau, and a short line between Howe and Poteau, to which is connected toll lines from an exchange at Monroe, Oklahoma. It also has circuits between Poteau and Heavener through Howe and a line extending from Heavener to Hodgens. As to the lines here in controversy, the first circuits of the petitioner between Poteau and Fort Smith were in existence in 1903. In 1923, circuits were constructed from Heavener, through Howe and Poteau, to Fort Smith, through which Heavener and Howe can ring Fort Smith directly, although these circuits also pass through Poteau and may be cut in there. At the time the additional line was constructed in 1923, the pole line and the then existing circuit between Poteau and Fort Smith were reconditioned. The circuits of the petitioner are #10 gage galvanized iron wire.

The respondent, or its predecessor, as early as 1906, had circuits from Fort Smith to Poteau. In addition to these circuits it has others from Fort Smith to Spiro, Oklahoma, and from Spiro to Poteau, and at some time prior to the severance of the petitioner's connection at Fort Smith, had constructed two additional circuits from Fort Smith which passed through Poteau but did not connect with the switchboard of the petitioner at Poteau. All of these lines of the respondent are copper.

The population of the four communities in which the petitioner has exchanges is approximately 7,600 persons. The stations and extensions of the petitioner dropped from a high of 1,110 in 1928, to a low of 757 in 1935, and at the end of 1937 had increased to 858 in number. Its Fort Smith lines go through the towns of Cameron, Rock Island, Jenson, Bonanza and Cedars, but rendered no service to these communities, and traffic between these places and points on the petitioner's system is routed via facilities of the respondent, and other carriers connecting with the respondent's system, through Spiro, Oklahoma, or Hackett, Arkansas. This traffic would not be affected by the decision in this case.

Prior to January 22, 1928, all calls for Fort Smith and beyond, originating at the exchanges of the petitioner were routed to Fort Smith via its circuits, whereas traffic destined to the exchanges of

the petitioner, from Fort Smith and other points in Arkansas, was routed via the circuits of the respondent, from Fort Smith to the switchboard of the petitioner at Poteau. At the present time all traffic between the exchanges of the petitioner and Fort Smith is transferred to or from the circuits of the respondent at the petitioner's Poteau switchboard, and since the date of the severance of the petitioner's connection at Fort Smith, the lines in controversy have been of value to the petitioner for rural service only within a distance of about 6½ miles of Poteau.

There was much testimony introduced into the record concerning the physical condition of the respondent's lines here in controversy. It appears that these lines consist of approximately 900 poles, with the accompanying equipment, and that the pole line carries four #10 gage galvanized iron wire telephone lines. For the first 6½ miles out of Poteau the lines have been maintained for rural service. Evidence was introduced indicating that some creosoted poles were in use in this portion of the line, and that many of the poles in that section had apparently been replaced about 1923. The portion of the petitioner's line at the Fort Smith end is carried for about two miles on poles of the respondent, and connects to lines of the respondent, which, through cable, reach the respondent's switchboard at Fort Smith. This pole line has been maintained by the respondent.

A witness for the respondent inspected the lines of the petitioner during February, 1938, and expressed the opinion that the lines were not in condition to render telephone service in their present state, and that in order to offer a reliable service which could withstand adverse weather conditions the petitioner would have to replace at least 60% of the poles and 80% of the crossarms, as well as replace and add to much of the present anchorage. He estimated the cost of such repairs at \$6,500, which would not include any replacement or repair on the wires themselves. The witness estimated the average life of a telephone pole of the type in question in that territory as 15 years, considering the necessity of replacements for all causes, whereas a witness for the petitioner estimated the average life as 20 years. In any event it appears that many of the poles of the line in controversy have far exceeded the average life on either one of these bases.

The petitioner offered little evidence in respect to the physical condition of the lines, although a witness did testify that they could be put in serviceable condition within ten or fifteen days. It appears that between the first and second hearings in this matter the petitioner made repairs to the extent of about \$250 on these lines, and that this is the only expenditure for maintenance since 1928

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except for inspections and some minor repairs made in an effort to keep the wires off the ground and out of contact with other wires. The first 6½ miles of the lines out of Poteau have, of course, been maintained. The petitioner points out that it has been deprived of the use of a major portion of these lines since 1928 and could, therefore, not be expected to maintain them. A witness for the respondent agreed that under similar conditions he would merely keep the wires off the ground.

Accepting this contention as logical, the Commission should nevertheless take into account the present state of the facilities in controversy and the extent to which repairs and replacements would be necessary in order to enable the petitioner to render a reliable service over these circuits. It is apparent from the evidence introduced at both hearings in this matter that the lines in question at the present time are not capable of rendering a dependable service and that extensive repair work would be necessary before reliable service could be offered over these circuits.

The respondent introduced evidence tending to show that copper circuits are superior to iron circuits for long distance telephone service, and that to connect an iron circuit to a copper circuit degrades the overall efficiency of the service. It appears that the amount of iron the respondent now uses for long distance service has been reduced to six-tenths of 1%, and that its longest iron circuit in Oklahoma is 18 miles. A technical witness for the respondent testified that the average transmission loss of a #10 gage copper circuit is 0.046 decibels per circuit mile, as opposed to a 0.246 decibel transmission loss per circuit mile on a #10 gage iron circuit, based on new wire, and that the transmission loss on one of the respondent's existing circuits between Fort Smith and Poteau is 4.7 decibels for the entire distance, and on the other circuit is 4.8 decibels, while the transmission loss on new iron circuits of the gage of the petitioner's circuits would be 9.75 decibels.

This witness further testified that the transmission loss is increased when iron wire becomes old and rusty, and that repeaters or amplifiers are not suitable to counteract this loss due to the fact that these instruments are designed for circuits having constant electrical characteristics, whereas the electrical characteristics of iron circuits usually vary widely, resulting in an unbalance which causes the amplifier or repeater to howl. It also appears that the transmission loss on iron circuits cannot be compensated for upon reaching copper circuits, by the use of repeaters. The respondent attempts to restrict transmission loss on its tributary circuits to 5 decibels, and when transmission loss exceeds that standard, a repeater is added to reduce the loss. A

loss in excess of 5 decibels on tributary circuits is not considered by the respondent as up to present day standards.

It appears, however, that for the haul from Poteau to Fort Smith, iron circuits would be satisfactory if the lines were adequately and uniformly maintained; although a witness for the respondent testified that the effect of furnishing the iron circuits here requested would degrade the service from a transmission standpoint. It should be noted, however, that at the time of the severance of the connection at Fort Smith these circuits were in fact rendering a service which the record does not indicate was unsatisfactory, and the testimony shows that a number of the other independent companies which connect with the circuits of the respondent also use iron wires and are at present rendering a public service.

The evidence presented to this Commission necessitates the conclusion that the circuits of the respondent between Poteau and Fort Smith are technically superior to those of the petitioner, and from a standpoint of facilities leaves only the question as to whether or not additional facilities are needed to handle the existing traffic.

In the event the circuits in controversy were connected to the switchboard of the respondent at Fort Smith and all traffic originating on the petitioner's system was transmitted via those circuits, the traffic from Heavener and Howe to Fort Smith could go direct without the necessity of a switch at Poteau, whereas that traffic must now be transferred at Poteau to the circuits of the respondent. The toll line from Howe is bridged into the direct line from Heavener to Fort Smith and there was testimony indicating that bridging detracts from the service and adds to the possibility of occasional congestion. The traffic from Poteau does not require switching now nor would it under the proposed plan. Traffic from Wister to Fort Smith is now and would be transferred at Poteau. It has been mentioned above that traffic from the small towns along the petitioner's line between Poteau and Fort Smith would not be affected by the proposed change.

The record shows, therefore, that there would be but one advantage from a physical standpoint to the proposed connection; namely, that the exchanges at Heavener and Howe could ring Fort Smith directly, over the lines of the petitioner, without the necessity of switching the call to the lines of the respondent at Poteau. A witness for the petitioner testified that the transfer of the message at Poteau involves merely the mechanical matter of plugging in on the line, and that although there is some loss of time involved it amounts to only a few seconds, probably not exceeding 8 or 10 seconds. No study of the loss of time involved had been made, and it appears that the petitioner has no difficulty in transferring the calls at Poteau.

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The town of Heavener has a population of approximately 2,800 persons and as of December 31, 1937, the petitioner had a total of 388 stations and extensions of all types at that exchange. The town of Howe has a population of about 500 and at the close of the year 1937 the petitioner had 12 stations and extensions there. The amount of traffic between Heavener and Howe and Fort Smith does not accurately appear in the record. An exhibit introduced by the petitioner shows "in" and "out" traffic for 1937 but it must be explained that "out" traffic is from Heavener or Howe to Fort Smith *sent paid* or coming into Heavener or Howe from Fort Smith *collected*. That exhibit shows 1,830 "out" calls from Heavener to Fort Smith or an average of about 5 calls a day for the year 1937. It shows a total of 133 "out" calls from Howe to Fort Smith or approximately one call every two and one-half days. It does not appear that the amount of traffic is such as to require a direct circuit or that a delay of 8 to 10 seconds due to switching is a serious loss.

The record shows that the petitioner has made no study to determine the adequacy of existing facilities between Poteau and Fort Smith. A witness for the petitioner, however, testified that at times there were sufficient circuits, but that there are certain periods of the day when there is a little congestion. He further testified that the only delay of any moment in the handling of calls between the two companies occurs when there are an unusual number of calls made at approximately the same time. Another witness for the petitioner testified that there are times during the busy part of the day when calls are delayed due to congestion of the circuits, although he could not specify the times, as he had never kept a record of it.

The respondent introduced detailed evidence tending to show the actual use of its circuits between Fort Smith and the exchanges of petitioner. During two periods, from March 9, 1936, through September 22, 1936, and from August 19, 1937, through January 31, 1938, a recording device was attached to the circuits which measured their actual use. Sections of these records were introduced at the hearings, and the complete records were offered. Witnesses for the respondent testified that the theoretical capacity of two circuits was 120 minutes per hour, but that the operating maximum for efficient service was considered by the respondent to be 82 minutes during the busy hour; in other words, 41 minutes out of a possible 60 minutes, per hour, per circuit. The average use on a two-circuit line was revealed as 56 minutes.

A summary of those records was also introduced, from which it appears that the respondent had found the average busy hour on these circuits to come between 9 and 10 a. m. The study was based

on that hour throughout the periods mentioned above, excluding Sundays, concerning which it appears that the traffic is so light as not to present a correct picture, and excluding also certain days during which some mechanical difficulty with the recording device resulted in an imperfect record.

During the period covered by the first study the highest average use during the busy hour in any month was 42.5 minutes per hour for the two circuits. The lowest average for any one month was 31.9 minutes for both circuits. For the entire period covered by the first report the average minutes per hour used on these two circuits during the busy hour was 37.6 minutes, or 45.9 percent of the operating maximum of 82 minutes. The highest average percentage load for any month during that period was 51.8 percent of the operating maximum of 82 minutes. A similar summary covering the second period described above shows the highest average minute use during the busy hour in any one month to be 41.7 minutes for the two circuits, the lowest 33.8 minutes, and the average for the total period 37.3 minutes out of the operating maximum of 82 minutes. Expressed in percentages this would show that according to the Bell standard of an 82-minute maximum operating time for two circuits, the highest percentage used during any month was 50.9 percent, the lowest percentage 41.2 percent, and the average 45.5 percent, or less than half of the maximum at which the circuits can be operated efficiently.

A witness for the respondent testified that in October 1928 the circuit load on the Fort Smith-Poteau circuits was 121 messages per day, and that in October 1937 the circuit load on those circuits was 72 messages per day.

Further studies were made by the respondent for the period from March 23, 1936, through September 14, 1936, and for the period August 16, 1937, to January 29, 1938, to determine the speed of service between Fort Smith and Poteau; the percentage of the total calls originating at Fort Smith and terminating at Poteau which were completed while the customer was held on the line; and the percentage of delayed calls due to the fact that no circuits were available at the time the call was made. Testimony shows that the respondent will hold a customer on the line for one minute in order to complete a call even though a "no circuit" situation exists, and that in completing a connection it is the practice to ring the party receiving the call for two minutes unless answered within that time. The study for the first period mentioned above shows that during that period 86 percent of all calls from Fort Smith to Poteau were completed while the customer remained on the line, and that 79 percent of all calls from Fort Smith to points on the

system of the petitioner, other than Poteau, were completed while the customer remained on the line. Those figures remained substantially the same for the period of the second study.

In this connection the petitioner also introduced certain charts which it had received from the respondent, containing similar information for certain months, which witness for the petitioner testified it considered a sort of contest without prizes, and which covered a period of one, two, or three days on each exchange for those months. Those reports would indicate a slightly lower average of completions with the customer held on the wire than the study introduced by the respondent shows. A witness for the respondent testified that the over-all average for the Bell System was 90 percent, and attributed the somewhat lower average of the petitioner's system to the failure of the operators of the petitioner to stay on the line until the call was completed.

The studies introduced show that on calls to Poteau during the first period, 5.8 percent were delayed due to the lack of an available circuit, and for the second period 5.2 percent were thus delayed; and that for calls from Fort Smith to points on the petitioner's system, other than Poteau, 12.3 percent during the first period were delayed due to the lack of an available circuit, and for the second period 10.3 percent were so delayed. The delay expressed in these percentages on calls between Fort Smith and Poteau indicate that those circuits were busy at the time the call was placed and did not become available within one minute. In respect to calls from Fort Smith to points on the petitioner's system other than Poteau, which calls go through the petitioner's switchboard at Poteau, a busy condition either on the Fort Smith-Poteau circuits, or on the petitioner's circuits between Poteau and other points on its system, is indicated.

These studies also show that during the first period the average time consumed from the moment the call was first placed until the phone at the receiving end was actually answered, on calls to Poteau, was 1.4 minutes, and during the period covered by the second study 1.3 minutes; and on calls to points on the petitioner's system other than Poteau, through its switchboard at Poteau, the average time consumed during the first period was two minutes, and during the second period 1.9 minutes. These figures included delay due to all causes. A witness for the respondent testified that these averages were very good according to its standards, and that the average time for similar completion throughout the Bell System, during 1937, was 1.6 minutes.

Technical witnesses for the respondent testified that it would not be sound engineering practice to attempt to establish sufficient circuits between all points in order to achieve a condition under which a

busy signal would never be encountered; that in the business, generally, circuits are provided in sufficient number to maintain a satisfactory service during the busy hour; and that for this purpose the 120 minutes possible use per hour of two circuits has been reduced to an operating maximum of 82 minutes use. It was further testified that when the actual load approaches the 82-minute standard during the busy hour, it is essential to relieve the situation by supplying an additional circuit in order to assure good commercial service. A witness for the petitioner agreed that the correct engineering design for toll plant is such as to take care of an average load tendered during the busy hour, and testified that there are times when all of the circuits of the petitioner between any two points are busy, and that in any such case there must of necessity be some delay until a circuit becomes available.

Under the traffic conditions revealed in this record it is apparent that existing facilities are more than adequate to handle the present traffic, and there is no indication that additional facilities are needed to furnish a satisfactory public service. When increased traffic justifies additional facilities the circuits now operating between Poteau and Fort Smith might be supplemented by the lines of the petitioner between Poteau and Fort Smith, as well as by various circuits and combinations of circuits of the respondent which now pass through Poteau, but are not used for the Fort Smith-Poteau traffic.

There remains for consideration the question of the rates charged the public; the effect the existing situation has upon those rates as reflected in the loss of revenue to the petitioner, due to the necessity of transferring all calls to the circuits of the respondent at Poteau, rather than at Fort Smith, and as reflected in the earning power of the petitioner as it now exists; and the effect action of the Commission upon the petition before it will have upon those rates.

It may be noted at the outset that there is no contention that the existing rates are unduly high either as a result of the inability to transfer interstate traffic from the exchanges of the petitioner at Fort Smith, or due to other causes. It is further observed that there is no proposal to lower the existing rates charged the public. The rates charged at the exchanges of the petitioner have been set forth in the record, and testimony has been offered concerning the long distance rates between certain points on the petitioner's system and Fort Smith, but the record is barren of any evidence which would enable the Commission to determine the reasonableness of the existing rates.

The matter in issue on this point arises as a result of the division of the tolls between the companies rather than the amount of the tolls themselves. There can be no question that the necessity of transfer-

ring all traffic originating on the petitioner's system to the circuits of the respondent at Poteau, rather than at Fort Smith, has resulted in a substantial loss of revenue to the petitioner. Since 1915 the division of tolls has been on the so-called 3, 4, and 15 basis. This basis was continued in the 1923 contract and is the present basis for the division of tolls between these two companies. This means generally, that the originating carrier receives 3¢ on each message, plus 15% of the toll, and that the other carrier receives 4¢ for terminating the message. The balance of the toll is prorated according to the air-line distance of the haul of each company.

Prior to January 22, 1928, from messages originating at any point on the petitioner's system, the petitioner received 3¢ and 15% of the toll, and in addition received the entire line haul prorated to Fort Smith, a distance of approximately 32 miles from Poteau. At the present time, the petitioner receives the 3¢ and the 15% of the toll, but from Poteau to Fort Smith receives no line haul, and from the other points on its system receives only the prorated from the point of origin to Poteau rather than to Fort Smith. The loss to the petitioner, therefore, occurs as a direct result of the loss of the line haul from Poteau to Fort Smith. The record shows that all traffic originating at Fort Smith, and destined to any point on petitioner's system, has always been routed via the circuits of the respondent to the switchboard of the petitioner at Poteau and therefore occasions no loss.

The long distance rate between Poteau and Fort Smith is 35¢. Under the contract of 1923 the petitioner would receive 31¢ of the toll on a message to Fort Smith and the respondent 4¢, it being divided 3¢ and 5¼¢ to the petitioner originating the traffic, and 22¾¢ line haul accruing to the petitioner as a result of transmitting the message over its own circuits to Fort Smith. Under the present arrangement the petitioner receives only 8¼¢ on that message, and the respondent 26¾¢ due to its transmission over the lines of the respondent the entire distance between Poteau and Fort Smith. As a result of this situation, for the months ending June 20, July 20, and August 20, 1936, the petitioner received a total of \$93.76 on traffic between Poteau and Fort Smith, whereas under the contract of 1923 it would have received \$336.82.

Similarly, on a person-to-person call from Heavener to Fort Smith, the toll of 50¢ is now divided 25½¢ or 26½¢ to the petitioner, and 24½¢ or 23½¢ to the respondent, whereas under the contract of 1923 the petitioner would have received 46¢ from such a call.

Various exhibits were introduced by the petitioner to show the difference in revenue which it now receives from the exchange of traffic with the respondent and which it would have received under the pro-

visions of the 1923 contract with its lines to Fort Smith in service. It appears that during the year 1937, on business between Poteau and Fort Smith, the petitioner received a total of \$1,092.85, which represents 40% of the total receipts on that toll business, whereas under the 1923 contract, from the same amount of traffic, it would have received \$2,534.66, which represents 92.8% of the total receipts. This tends to show a loss to the petitioner during the year in question on that traffic, of \$1,441.81.

A further exhibit of the petitioner shows the revenue received by the petitioner and respondent on all traffic transferred between the companies during the years 1931 through 1937. This shows that the total business, from a low of \$7,568.05 in 1931, rose to \$12,020.35 in 1937, of which the petitioner, in 1931, received \$3,192.01, and in 1937, \$4,911.45.

The fact of a loss to the petitioner does not of itself indicate that the public interest is adversely affected as a result. The public interest in question is that of the public generally rather than the interest of any individual carrier. It must further be ascertained whether, as the petitioner contends, this loss of revenue impairs its ability to serve the public or will necessitate a raise in the existing rates in order to enable it to continue to offer a public service.

The petitioner offered a statement of its investments as shown on the books of the company at the end of 1937, representing the value of all its physical properties, including materials and supplies, land and buildings, central office equipment, station equipment, exchange lines, general equipment, toll lines, and intangibles. The value of its toll lines is considered to be \$14,348.16 of which from eight to nine thousand dollars is estimated as attributable to the toll lines in controversy. The total investment account is set forth as \$144,367.03, of which \$26,500 is carried as the value of intangibles.

On cross-examination, the accounting witness for the petitioner, through whom these accounting exhibits had been introduced, was unable to explain certain features of the exhibits and unable to answer certain questions concerning the method of bookkeeping and accounting employed by the petitioner, which tended to cast doubt on the weight of its financial statements introduced.

The record shows that the petitioner has capital stock outstanding of \$100,000, and has an estimated \$138,000 in bonds and notes outstanding which bear interest at 6% per year, although it appears that during the year 1936 it paid interest of approximately \$12,000 on its bonded indebtedness and notes, or at the rate of approximately 9%. The witness testified, however, that no dividends have ever been paid to the stockholders.

A statement introduced by petitioner of the rate of return for 1936 and 1937 shows a total revenue for 1936 of \$27,754.05, and for 1937, \$28,331.75. Operating expenses, exclusive of depreciation, for 1936, are shown as \$18,183.21 and for 1937, \$18,713.05. It was testified that this item did not include interest on funded indebtedness. The operating profit for 1936 is shown as \$9,570.84, and for 1937, \$9,618.70. Based upon the book value of its physical properties, exclusive of intangibles, namely, \$117,866, and deducting a 5% depreciation allowance upon that value from the operating profit, the rate of return statement shows a net profit of \$3,677.84 for the year 1936, and a net profit of \$3,725.70 for the year 1937. The petitioner's position, however, is that it is entitled to an 8% return on the book value of its physical property, which would necessitate a net profit of \$9,429, and that for this reason operations for the year 1936 resulted in a let loss of \$5,751.16, and for the year 1937, a net loss of \$5,693.30.

In respect to the value of the petitioner's physical properties, it seems that no appraisal has been made since 1926, and that during that same year the figures herein set forth, in the main, were suggested and authorized by the Oklahoma Corporation Commission, the books being set up and kept since that time according to the recommendations of that Commission. It appears, however, that the petitioner has established a depreciation reserve of some sixty-six thousand odd dollars, and although the record is not clear it indicates that the petitioner's valuation of \$117,000 is based upon cost of the physical properties with no allowance for their depreciated condition. According to the petitioner's books, therefore, depreciation reserve of approximately 56 percent, has been accumulated. No evidence was introduced as to actual depreciation or cost of maintenance, although the testimony indicates that some of the petitioner's plant has outlived its normal service life and that the physical properties have, in fact, depreciated. In the absence of definite evidence as to the amount of actual depreciation and other essential facts, we are unable to determine from the record what rate of return the petitioner earned during the years 1936 and 1937. The fact that petitioner's valuation is based upon cost without allowance for depreciation, whereas a depreciation reserve of over 56 percent has been accumulated on its books, shows that the rate of return earned by the petitioner during these years was very much greater than that set out in its exhibit.

Serious question would arise as to whether or not the petitioner under any circumstances is entitled to earn 8% or any other stated percentage on the undepreciated book value of its physical

properties; and we do not believe this Commission would be justified in ordering a connection for the purpose of enabling the petitioner to earn 8% on such a valuation. However, it is sufficient to say that the record before the Commission does not show that the petitioner's financial condition or earning power has been impaired to such an extent as to interfere with its service to the public or to require a raise in the rates to the public. Furthermore, as has been pointed out hereinabove, the business and revenue of the petitioner from the exchange of traffic between it and the respondent has been steadily increasing since the year 1931, and in the past two years approximately 100 stations have been added at its exchanges.

The effect of requiring the respondent to accept at Fort Smith, over the lines of the petitioner, traffic originating at the exchanges of the petitioner, would be to take a portion of that traffic from the respondent and give it to the petitioner. Witness for the respondent testified that to do so would probably transfer about 50% of the intercompany business from its lines to those of the petitioner, but that the reduction would not be sufficient to enable it to drop one of the existing circuits. It further appears that substantial additional expense would be involved on the part of the petitioner in reconditioning its lines to Fort Smith in order that they could render a dependable public service. It is doubtful whether it would be in the public interest for this Commission to take traffic from one carrier and give it to another carrier when the need of the second carrier has not been demonstrated and when the interest of the public is not otherwise affected.

The remaining contention of the petitioner is similar to that presented to the Interstate Commerce Commission and referred to hereinabove. The petitioner alleges that the respondent has discriminated against it by denying to it equal rights and privileges with other independent telephone systems in territory adjacent to that served by the petitioner. In support of this allegation, a witness for the petitioner testified that he had investigated the types of service and practices as between the respondent and other independent exchanges in western Arkansas, including the towns of Hackett, Bonanza, Ozark, Lavaca, and Greenwood, in which the exchanges are operated by the Interstate Telephone Company. This witness testified that both the Interstate Telephone Company and the respondent had toll lines between Fort Smith and Hackett, and that both of these lines were in use at that time; that the Interstate Company has the only line between Ozark and Fort Smith, and between Lavaca and Fort Smith; that the Interstate Telephone Company connects Hackett, Greenwood, Barling and Bonanza; that Bonanza reaches Fort Smith

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by way of Hackett; and that the only line between Greenwood and Fort Smith is owned by the respondent. This witness further testified that in handling traffic between Fort Smith and Hackett either line was used for either "in" calls or "out" calls. The witness did not know whether the connections at Hackett and at Fort Smith were governed by contract between the companies or whether this was true at any of the other exchanges mentioned.

The question of discrimination arising from the facts in this case has been one litigated before the Interstate Commerce Commission, and it is the contention of the respondent that in the absence of a showing that the facts have changed since that hearing, the question of discrimination is *res adjudicata*. It is sufficient to say that the record before this Commission contains no evidence which would warrant a finding that discrimination, as contemplated by Section 202 (a) of the Act, exists.

The connection between the companies at Fort Smith existed for many years prior to 1928, and from 1915 through 1927 was operated under the terms of contracts between petitioner and its predecessors and the respondent and its predecessors. The contract of 1923 superseded all existing agreements between the companies. The petitioner maintains that that contract was void. The respondent insists that the contract was valid, but was abrogated in accordance with its terms at the time of the severance of the connection. In any event it is apparent that no contract right to the connection now exists or has existed since 1928. The petitioner contends in brief that it had operated with the exchange of the respondent at Fort Smith for many years; that as a result the circuits of both companies had been dedicated to serve the public in that way; and that the action of the respondent in severing the connection at Fort Smith and instituting service at Poteau was done without authority from any administrative body, and was wrongful and unlawful. It has been pointed out hereinabove that prior to the Communications Act of 1934 the law did not require the interstate physical connection in question, nor does it appear that the severance of that connection required the approval of any administrative body.

At the original hearing in this matter the petitioner made a tender of evidence with the view of establishing an equity in the continuance of the service as it had existed under the contract, through the allegedly wrongful and illegal acts of the respondent in severing the connection and refusing to receive petitioner's interstate traffic at Fort Smith. This the examiner excluded. The Commission determined that that evidence should be in the record, but was not in proper form for consideration, and for that reason, among others,

remanded the case for a hearing de novo. At the new hearing the petitioner failed to introduce any part of that evidence tending to show the allegedly wrongful acts of the respondent, and the record before this Commission does not show that the respondent's severance of the connection at Fort Smith, and refusal to accept traffic originating on the exchanges of the petitioner at the Fort Smith exchange rather than at Poteau, was either illegal or wrongful.

Upon the record as it exists, the Commission is unable to determine that the petitioner has acquired any equitable right to a restitution of the service as it existed prior to January 22, 1928, and, further, is of the opinion that the existence of such an equity would not in and of itself justify this Commission in ordering a physical connection in the absence of a showing that such connection would more adequately serve the needs or desires of the public.

The Commission, being unable to ascertain that the reestablishment of the connection between the petitioner and the respondent at Fort Smith and the required routing of traffic originating at points on the petitioner's system via its circuits to Fort Smith is necessary or desirable in the public interest, the relief prayed for will be denied, and the petition be dismissed.

WALKER, Commissioner, dissenting:

The matter herein at issue involves the interpretation of Section 201 (a) of the Communications Act of 1934 and its application to the present situation. This section reads:

It shall be the duty of every common carrier engaged in interstate or foreign communication by wire or radio to furnish such communication service upon reasonable request therefor; and, in accordance with the orders of the Commission, in cases where the Commission, after opportunity for hearing, finds such action necessary or desirable in the public interest, to establish physical connections with other carriers, to establish through routes and charges applicable thereto and the divisions of such charges, and to establish and provide facilities and regulations for operating such through routes. [Italics supplied.]

As the report of the Commission herein points out, for more than five years antedating the rupture in relations between the parties to this proceeding, and until January 1928 there had been physical connection, restoration of which is sought herein, of the lines of the parties at or near Fort Smith, Arkansas. For several years prior to the establishment of such physical connection and the furnishing of service thereunder, the only direct telephone service between Poteau, Oklahoma, and Fort Smith, Arkansas, was that furnished by the petitioner. The calls handled by the petitioner over the Poteau-Fort Smith line included also those from exchanges operated by it in Poteau, Heavener, Howe, and Wister, all in Oklahoma, and a part of its telephone system. It will be noted, as shown by the report, that

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the only service involved in this controversy is toll service from Poteau and other points on petitioner's lines in Oklahoma to Fort Smith, Arkansas, and points beyond.

For a time prior to January 1928, the Bell Company owned a long-distance circuit between Fort Smith, Arkansas, and Poteau, Oklahoma, and transmitted to Poteau over this circuit all business for Poteau, and other points served by petitioner, originating at or passing through Fort Smith. Petitioner had been first in the field, and, after the Bell Company became a competitor, continued to furnish competitive service until the destruction of the physical connection at Fort Smith by respondent in 1928. The petitioner's circuits between Poteau and Fort Smith were practically parallel with the respondent's circuit, and, ever since construction of the latter, had been recognized as lawful competition with the Bell circuit, until the Bell Company eliminated the connection at Fort Smith and rendered future competition impossible.

The severing of physical connection at Fort Smith by respondent in January 1928 was coincident with the severing of connection by respondent between its toll lines and the exchange of petitioner at Poteau. This service was later restored through a decision and direction of the Supreme Court of Oklahoma, in *Oklahoma-Arkansas Telephone Company v. Southwestern Bell Telephone Company*, 143 Okla. 76, 291 Pac. 3. The recitation therein by the court at page 10 of the last citation, of "the arbitrary action of the Bell Company," characterizes the manner of the action of the respondent herein and is indicative of the modus operandi of the respondent in the matter under consideration.

The facts are that the Oklahoma-Arkansas Telephone Company was first in the field with its long-distance telephone line between Poteau and Fort Smith, and that, in the year 1928, the Southwestern Bell Telephone Company, because of dissatisfaction on its part with the then existing traffic arrangements, took matters into its own hands and arbitrarily severed the Fort Smith physical connection with the then existing line of the petitioner. Since that time, the petitioner has been engaged in a constant but futile effort to find a tribunal with jurisdiction to handle its grievance. Until now this has been impossible, for the reason that until the adoption of the Communications Act of 1934 there was no statute giving any court or commission jurisdiction over the matter of physical connection of interstate telephone lines. For the first time, therefore, petitioner now comes before a commission with authority to act.

The interpretation of the words "necessary or desirable in the public interest," in the foregoing physical connection statute, appears to me to be controlling of the decision in the instant case, and the

interpretation placed upon the words "public interest" decisive of the action to be taken by the Commission herein. The interpretation of "public interest" urged by the respondent would go no further than mere ascertainment of whether or not satisfactory long-distance interstate telephone service between Poteau, Oklahoma, and Fort Smith, Arkansas, is now being supplied to the patrons of the Oklahoma-Arkansas Telephone Company. That is not enough. This interpretation is, in my opinion, much too narrow and neglects entirely the consideration of questions more vital to the issues than that solely of whether or not satisfactory interstate telephone service is being rendered.

It is not sufficient to be able to say that an interstate long-distance telephone call may be promptly and satisfactorily handled today. "Public interest" concerns itself with this, but also with the more vital question of how that service is established, and what may be the consequences thereof. The term includes both the physical, or practical, and the moral, or intangible, effects of the act done. Where, as here, a former competing service has been eliminated, "public interest" asks why. Here, exclusive long-distance telephone service has been accomplished, as shown in the record and by the report herein, through destruction or impairment of properties of the Oklahoma-Arkansas Telephone Company by, what seems to me, the ruthless, high-handed, and unwarranted action of the Southwestern Bell Telephone Company.

That arbitrary extinction of the competition of small companies by the largest telephone company in the country would be contrary to the public interest, probably would not be questioned; but eventual extinction of competing companies by the Bell System and the gradual absorption of their business desired by the Bell companies generally involve only the resorting, in sufficiently numerous other situations, to the method used by respondent herein. It would be difficult to conceive of a more definite and vital public interest than is involved in affording protection to the independent telephone industry of this country against extinction by spoliation of its property and demolition of its earning power, by its larger and more powerful competitor. Denying the petition herein and thus permitting the respondent to make final the destruction of the interstate toll facilities of the petitioner between Poteau and Fort Smith will be, in my opinion, adverse to the interests of the public. The Commission should find the reestablishment of the physical connection *desirable in the public interest* (Section 201 (a) of the Act).

As heretofore recited, no physical connection has existed at Fort Smith, between the lines of petitioner and respondent, since the arbi-

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trary destruction thereof by respondent in January 1928. In the meantime, petitioner's interstate toll line between Poteau and Fort Smith has not, as a matter of course, been kept in condition to give satisfactory telephone service. Neither the poles nor the lines have been adequately maintained in the interim since the severing of the physical connection at Fort Smith by the Southwestern Bell Telephone Company. To say now that if physical connection were ordered, the line is not in condition to give service, is wholly beside the point, for Section 201 (a), quoted above, makes it the duty of the carrier, under order of this Commission, "to establish and provide facilities" for the carrying on of long-distance services. Should this Commission, therefore, hold that the reestablishment of the physical connection between the lines of the petitioner and of the respondent at Fort Smith is "desirable in the public interest," it would at the same time condition the order for such physical connection upon the providing of facilities necessary for the satisfactory handling of the interstate telephone service involved; and there is nothing in the record to indicate that petitioner would not forthwith rebuild its toll line with modern, up-to-date equipment, including substantial and serviceable poles and copper wires. The Commission has authority under the Act to require adequate facilities.

The report of the Commission calls attention to the failure of the record to include certain evidence bearing upon the "equity" of the situation herein. In my opinion this matter cannot be treated as an ordinary law suit. The "action necessary or desirable in the public interest" goes far beyond the mere technical legal rights of the parties litigant, though these are important and may determine the very life of the petitioner. Section 403 of the Act makes it the duty of this Commission, when the facts warrant, to institute investigations on its own motion. In the light of the issues involved and the record made herein by the parties litigant, it appears that the invoking of this section of the statute and of the thus broadening of the record would be in the "public interest." However, on the record as it stands, I am firmly convinced that "public interest" will not be served by denying the petition of the Oklahoma-Arkansas Telephone Company for physical connection between its line and the Southwestern Bell Telephone Company at Fort Smith, Arkansas.

For the reasons hereinbefore set out, I, therefore, dissent to the report and order herein.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D. C.

In the Matter of
OKLAHOMA-ARKANSAS TELEPHONE COMPANY,¹
POTEAU, OKLAHOMA, PETITIONER

v.

SOUTHWESTERN BELL TELEPHONE COMPANY,
ST. LOUIS, MISSOURI, RESPONDENT.

DOCKET No. 3796.

ORDER

At a regular session of the Federal Communications Commission, held at its offices in Washington, D. C., on the 16th day of May 1939, the Commission, having under consideration the Petition for Rehearing filed herein on March 27, 1939, by the Oklahoma-Arkansas Telephone Company, and

The Commission, having duly considered such Petition for Rehearing, together with the Respondent's Suggestions in Opposition to Petition for Rehearing and the Petitioner's Response to the Suggestions of the Respondent, as well as the Report and Order of the Commission and the entire record in this matter, and it appearing that no justification for a rehearing is shown, it is

ORDERED, That the Petition of the Oklahoma-Arkansas Telephone Company for Rehearing be, and the same is, hereby denied.

¹ Second petition for rehearing filed on July 17, 1939, by Oklahoma-Arkansas Telephone Company, denied on October 10, 1939, Commissioner Walker dissenting.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D. C.

In re:

OKLAHOMA-ARKANSAS TELEPHONE COMPANY,
POTEAU, OKLAHOMA, PETITIONER

v.

SOUTHWESTERN BELL TELEPHONE COMPANY,
ST. LOUIS, MISSOURI, RESPONDENT.

DOCKET No. 3796.

May 16, 1939

**DISSENTING OPINION OF COMMISSIONER WALKER ON
PETITION FOR REHEARING**

I have heretofore stated in a separate opinion the views which prompted my dissent to the Commission's decision in this case. In accordance with my views therein stated, and for the additional reasons recited herein, I must register disapproval of the order denying the petition for rehearing.

It seems unnecessary to detail herein facts recited in previous opinions in this case.

The Oklahoma-Arkansas Telephone Company's petition for rehearing reads in part as follows (pages 3-4, 6) :

We sincerely believe that this Commission has misunderstood, as shown in the majority opinion, the state of the law prior to the passage of the Federal Communications Act, and has clearly misunderstood the controlling facts, which facts prove that the respondent illegally and unlawfully, and in violation of the laws of the State of Oklahoma, and in violation of the Federal Communications Act, and in violation of all principles of justice and right, and in the nighttime, and on a Sunday, by unlawful means seized the interstate business of the petitioner, and that that wrong began on the 22nd day of January 1928, and has continued down to the present time. We realize, in presenting this petition for a rehearing, that there may be a feeling among the members of the majority that the subject has been examined and weighed by the majority opinion, and, therefore, there may be a disinclination on the part of the majority to restudy the questions involved. We realize that the majority may feel that the Commission is burdened with grave questions, and that it is asking a great labor to request the Commission to reinvestigate the problems under consideration. We realize, also, that the petitioner—a small independent telephone company—is at a disadvantage in

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a long battle with a giant monopoly like the Bell, with millions of capital and resources. At the same time, we are thoroughly convinced that the consequences of the failure of the Commission to grant a rehearing will be tragic, disastrous, and deadly to every right of every independent telephone company in the United States. * * * [pp. 3-4]

In these circumstances and because the decision of this Commission means life or death to the little independent telephone company, we appeal to this Commission in every sense of justness and fairness, to hear this petition for a rehearing, and to study the brief thereon with patience and consideration. If we are right, as we believe we are, the Commission should, beyond doubt, make the order prayed for, which is to restore the petitioner's rights which have been violated every day since January 22, 1928, coming down to the very hour of the filing of this petition for rehearing, and said rights of the petitioner, which are deadly to its continued existence, will be violated to the utter destruction of the petitioner unless the wrongs committed by the respondent are corrected. * * * [p. 6]

The petitioner urges (pages 15-16) that if it should be in error about all the necessary evidence being already before the Commission, then under Rule 106.8 it is the duty of the Commission to reopen the case to the extent that such evidence may be considered in the record. The evidence referred to is that which pertains to the early history of the matter at issue, detailing the facts relative thereto. Such evidence, not now in the record, is necessary, in my opinion, to any proper determination of this case.

In its decision herein the Commission specifically stated that the testimony excluded by the Examiner was pertinent and should be in the record, but that it was not in proper form for consideration and that it was not offered at the second hearing and, therefore, was not before the Commission for consideration in the preparation of its report and order.

The public questions involved in this case are so important that this Commission cannot, in my opinion, discharge its full duty until it has incorporated into the record all the evidence relating to a complete history of the matters involved herein upon which there could be Federal jurisdiction through a record made on a reopening of the case, or on an investigation made on the Commission's own motion, as provided by Sec. 403 of the Act. In its decision the Commission called attention to the fact that evidence establishing an equity in the continuance of the service as it had existed prior to the alleged wrongful and illegal acts of the respondent in severing the connection and refusing to receive petitioner's interstate traffic at Fort Smith, is not in the record. Such evidence is necessary to a proper determination of this case.

The matter at issue is of vital public importance. It involves the broad public interest in physical connection for interstate long dis-

tance, or toll, telephone service. It involves also the right of the nationally dominant and monopolistic telephone system not only to refuse physical connection but to sever physical connection long in existence and consequential to the public service. It involves further a physical connection vital to the very existence of the small local telephone system, whose property is destroyed by the arbitrary and unwarranted action of the Southwestern Bell Telephone Company, and likewise the public interest in physical connection of the Bell System with this company and all other small and independent telephone companies.

I reiterate my statement in my dissent to the report and order herein, that arbitrary extinction of competition of small companies by the largest telephone company in the country would undoubtedly be held to be against "public interest," and that, eventually, extinction of competing companies by the Bell System, with a gradual absorption of their business desired by the Bell companies generally, involves only the resorting in sufficiently numerous other situations to the method used by the respondent herein.

The report of the Commission calls attention to the failure of the record to include certain evidence, already referred to, bearing upon the "equity" of the situation herein. As stated in my dissent to the report and order:

* * * In my opinion this matter cannot be treated as an ordinary law suit. The "action necessary or desirable in the public interest" goes far beyond the mere technical legal rights of the parties litigant, though these are important and may determine the very life of the petitioner. Section 403 of the Act makes it the duty of this Commission, when the facts warrant, to institute investigations on its own motion. In the light of the issues involved and the record made herein by the parties litigant, it appears that the invoking of this section of the statute and of the thus broadening of the record would be in the "public interest." * * *

The facts, if adequately developed, will show that the petitioner, the Oklahoma-Arkansas Telephone Company, or one of its predecessors, was first in the field in providing long distance telephone service in the area herein, and that the respondent, the Southwestern Bell Telephone Company, taking matters into its own hands, deliberately severed physical connection at Fort Smith, Arkansas, with the toll lines of the petitioner. This deprived the petitioner of the right to do an interstate toll business over its interstate lines, not only from the Poteau exchange, but also from the other exchanges of the petitioner within the State of Oklahoma, thereby destroying in large measure the value of petitioner's properties, particularly toll lines both interstate and within the State of Oklahoma. This further deprived the patrons of cities and towns of the Oklahoma-

Arkansas Telephone Company system of the right to have direct physical connection through Poteau to Fort Smith over the lines of the Oklahoma-Arkansas Telephone Company.

Public interest is involved here both in the ultimate right of the telephone patron to elect his own service, where there is a choice of facilities, and also in the right of an independent telephone company to exist. The right to void physical connection is the right to destroy competition. Physical connection is the keystone to the Bell System monopoly. Arbitrary withdrawal of physical connection, as herein, can absolutely destroy the toll business of every independent telephone company in America.

The violation complained of herein is a continuing one. The act of the Southwestern Bell Telephone Company in severing physical connection between its line and the toll line of the Oklahoma-Arkansas Company, at Fort Smith, Arkansas, in 1928, was not then within the jurisdiction of any utility-regulating body. But the injury both to the public and the Oklahoma-Arkansas Telephone Company, by thus severing physical connection, has remained unremedied, and the lines of the petitioner have thus been kept idle and out of use by the acts of the respondent, notwithstanding that the petitioner has asserted a willingness to maintain these lines in proper condition for operation should the physical connection be restored.

It was the possibility of such situations, if not actually the facts growing out of the incidents complained of, which persuaded the Congress to include within the Communications Act of 1934, Sec. 201 (a), clothing this Commission with jurisdiction over the subject matter of physical connection. This section of the Act, in my opinion, authorizes an inquiry into the history of the matters involved in this complaint and a remedial order which will both protect the public and do justice and equity between the parties. Nor would such order, in my opinion, come within the prohibition in the Constitution of the United States against retrospective laws as such. Sec. 201 (a) of the Act merely creates a remedy for an existing right for which there has been no valid remedy at law. (See *Luria v. U. S.*, 231 U. S. 9, 34 S. Ct. 10, 58 L. Ed. 101, aff. 184 Fed. 643; *Atkins v. Atkins*, 18 Neb. 475, 25 N. W. 724; *Wynne v. Wynne* (Tenn.), 2 Swan 405, 410, 58 Am. D. 66.)

I am, therefore, persuaded that the Commission, with proper presentation of the facts before it, would grant petitioner's request for restoration of physical connection at Fort Smith, Arkansas.

Hence, my dissent to the denial of the petition of the Oklahoma-Arkansas Telephone Company for such physical connection, and likewise to denial of the petition for rehearing.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of
MASSACHUSETTS BROADCASTING CORPORATION (WCOP), } DOCKET
BOSTON, MASSACHUSETTS. } No. 3332.
For Modification of License.

Decided February 20, 1939

Ben S. Fisher on behalf of the applicant; *Paul D. P. Spearman* and *Alan B. David* on behalf of Station WJJD; *Horace L. Lohnes* and *E. D. Johnston* on behalf of Station WOV; *Arthur W. Scharfeld* and *Philip G. Loucks* on behalf of Station WMEX; *George O. Sutton*, *James L. Proffit*, and *Edward Gallagher* on behalf of Station WLWL; *Tyler Berry* and *James D. Cunningham* on behalf of the Federal Communications Commission.

STATEMENT OF FACTS, GROUNDS FOR DECISION AND ORDER

BY THE COMMISSION:

STATEMENT OF FACTS

This proceeding arose upon the application, as amended, of Massachusetts Broadcasting Corporation, licensee of Broadcast Station WCOP, at Boston, Massachusetts, for modification of license to change frequency from 1120 kc. to 1130 kc., which is a clear channel frequency with Station KSL at Salt Lake City, Utah, the dominant station thereon, and to increase hours of operation from daytime only to sunset at Salt Lake City, without changing authorized power of 500 watts.

Hearing was had before an examiner, who submitted his report (I-380), recommending that the application be granted. The Matheson Radio Co., Inc. (WHDH), filed a Motion to Recommit, which motion was denied by the Commission. Exceptions to the Examiner's Report and request for oral argument were filed by WJJD, Inc. (WJJD), and by the Northern Corporation (WMEX). Thereafter, with permission of the Commission, briefs were filed in lieu of oral argument before the Commission. Subsequent to the filing

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of exceptions, and prior to the scheduled oral argument, the applicant filed a motion to dismiss the application upon the ground that after hearing upon this application, control of Station WOV, in New York City, passed into the same hands which control WCOP, and it was desired to keep the service area of WOV as free from interference as possible. The motion was denied by the Commission.

The frequency of 1120 kc. now used by the applicant is assigned for use by regional stations, and the frequency of 1130 kc. is assigned for clear channel use with Station KSL at Salt Lake City, Utah, operating with power of 50 kw. unlimited time as the dominant station on that frequency.

Depositions offered in evidence by the applicant were objected to by counsel for WJJD, Inc., on the ground that the notary public before whom said depositions were taken is an assistant manager of the Copley Plaza Hotel, in which the studio of Station WCOP is located. Section 409 (e) of the Communications Act of 1934 permits the taking of depositions before "any notary public, not being of counsel or attorney to either of the parties, nor interested in the event of the proceeding or investigation." The examiner overruled the objection. We observe that the attorney for WJJD, Inc., who raised the objection, appeared at and participated in the taking of the depositions but did not at that time challenge the qualifications of the notary public to preside. The notary public certified that he has no interest in the event of the proceeding, and there is no probative evidence that such certificate is in error. The examiner did not err in his ruling on this point.

Massachusetts Broadcasting Corporation has 5,000 shares of no par value common stock outstanding, of which 3,000 shares are owned by Arde Bulova, 1,450 shares are owned by Harold A. Lafount, 500 shares are owned by the estate of Joseph Kirby, and 50 shares are owned by George Cohen. There are 500 shares of preferred stock, with par value of \$100 per share, of which 416 shares are owned by Arde Bulova, and 84 shares are owned by Harold A. Lafount. Mr. Bulova resides in New York City. The applicant corporation had, as of January 31, 1937, total assets of \$59,787, and liabilities, exclusive of outstanding stock, of \$4,537.

Boston, Massachusetts, had a population of 781,188, and the metropolitan district of Boston had a population of 2,307,897, according to the United States census of 1930. There are now eight broadcast stations located in the metropolitan area, of which five operate unlimited time; 2, including the applicant station, operate daytime only; and one, WHDH, operates until sunset at Denver, Colorado. A grant of this application will permit an extension in the operating

day of Station WCOP of about $2\frac{3}{4}$ hours to 3 hours, as the time of signing off will be sunset at Salt Lake City, Utah, instead of sunset at Boston, as at present.

Interference problems are presented between the operation as proposed herein and the operation of two existing stations, namely, WOV, in New York City, and WJJD, Chicago. Station WOV operates on the frequency of 1130 kc., with power of 1 kw., until 6 p. m., and station WJJD also operates on that frequency, with power of 20 kw., until sunset at Salt Lake City. No measurements of the signal strength of these stations appear in the record. All of the evidence relating to interference consists of the testimony of expert engineers. During the months when sunset in New York is earlier than 6 p. m., there would be no interference between the WCOP proposal and Station WOV, but in the winter months, when sunset occurs prior to 6 p. m., there would be interference between the WCOP proposal and Station WOV, resulting in an expected limitation approaching the 5 mv./m. or the 6mv./m. contour of Station WCOP, and approaching the 2 mv./m. contour or the 4 mv./m. contour of Station WOV. WCOP, operating as proposed, would not limit Station WJJD, but Station WJJD would limit WCOP from the late afternoon hours, to a progressively increasing degree, to as much as the approximate 8.6 mv./m. contour. The distance from the WCOP transmitter to the 8.6 mv./m. contour is not shown in the record, but an expert engineer testified that the 5 mv./m. contour would be expected to fall a little over 5 miles from the transmitter. Therefore, as the City of Boston extends to as much as nine miles to the south from the transmitter location, the expected broadcast service from Station WCOP, operating as proposed, would be so limited as to make it impossible to serve more than a minor portion of the City of Boston.

It is shown that under its present assignment the signing off time fluctuates from 8:15 p. m. in July to 4:15 p. m. in December. The station presents varied programs which are unique and of special interest to Boston listeners and many protests have been received by the station because popular programs are assigned to hours that were no longer available during the winter months due to the early sunset and had to be suspended. Numerous requests between the hours of 4 p. m. and 8 p. m. have been received. These requests are principally from organizations who do not or cannot go on the air in the daytime and from many artists who are not available until after 6 p. m. It is shown that a number of these organizations and persons are unable to obtain time on the other Boston stations. Twenty-four different fraternal, civic, and religious organizations have been given

time on a gratis basis during the past year and many of these programs have been originated and broadcast by the station in whole or in part. Many organizations could not obtain desirable time on the station due to its present hours of operation and many of the organizations who have used the station during the day hours desire additional time in the evening. The station will utilize some of the evening hours for commercial purposes if this application is granted but has reserved a specific time for educational, charitable, and civic organizations.

During July and August when Station WCOP was operating between the hours of 4:15 and 8 p. m. many civic, educational, religious, and charitable organizations made use of the facilities of the station and these programs had to be discontinued when the station signed off at an earlier period. During the summer months the financial condition of the station was considerably better due to the fact the station could operate during certain evening hours and the station will be able to obtain a number of advertising accounts for the evening hours should the present application be granted. Station WCOP subscribes to transradio news and has a special employee to present this program. The station maintains correspondents in different localities in the state who are paid for their stories. The station also subscribes to a transcription service.

GROUNDS FOR DECISION

1. There is shown to be some public need for the additional hours of operation requested but the expected limitation will make it impossible for Station WCOP to serve that need. Operating as proposed, Station WCOP will limit the service of Station WOV to a substantial degree during the fall and early winter months.

2. Public interest, convenience, and necessity will not be served by a grant of the application.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D. C.

In re Application of FOOD TERMINAL BROADCASTING COMPANY, CLEVELAND, OHIO. For Construction Permit.	}	DOCKET No. 4436.
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Decided February 20, 1939

Arthur W. Scharfeld and Philip G. Loucks on behalf of the applicant; Horace L. Lohnes on behalf of Station WJBK; Louis G. Caldwell, Reed T. Rollo, and Percy H. Russell on behalf of Station WGAR; Paul D. P. Spearman and Alan B. David on behalf of Great Lakes Broadcasting Corporation; Walter Johnson on behalf of the Federal Communications Commission.

PETITION FOR REHEARING

BY THE COMMISSION (Brown and Walker, Commissioners, dissenting; McNinch, Chairman, and Payne, Commissioner, not participating):

Food Terminal Broadcasting Company, Cleveland, Ohio, hereinafter referred to as "applicant," filed an application on November 17, 1936, for a construction permit for a new radiobroadcast station at Cleveland, Ohio, to operate on the frequency 1500 kc., with a power output of 100 watts, daytime only.

The application was designated for hearing before an examiner who, on June 28, 1937, submitted his Report (I-458) and recommended that the application be granted. Exceptions to the Examiner's Report and request for oral argument were filed and on December 2, 1937, oral argument was heard by the Commission. Thereafter, on February 19, 1938, the Commission decided the matter and on February 23, 1938, it issued its Statement of Facts, Grounds for Decision and Order, denying the application, the Order of the Commission being effective March 4, 1938. On March 24, 1938, the applicant filed a Petition for Rehearing or Reargument in which it requested in the alternative "(1) that the Commission reconsider its action denying applicant's application and in the light of the facts set forth in the petition and borne out by the record, review the evi-

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dence and make new findings of fact thereon so as to authorize the granting of applicant's application; or (2) that the Commission set aside its decision and permit reargument before the full membership of the Commission on the record as made; or (3) that the Commission reopen the proceedings and remand the matter to an examiner for the taking of further testimony in support of applicant's proposal to 'render a broad general public service' as set forth herein."

On May 11, 1938, the Commission, upon consideration of the Petition for Rehearing or Reargument, granted the petition insofar as it requested the Commission to set aside its decision and permit reargument, and directed that such reargument be held before the Commission on June 2, 1938. On June 2, 1938, reargument was heard by the Commission, Commissioners Craven, Sykes, Brown, Walker, and Case participating.

On September 13, 1938, the Commission (Chairman McNinch and Commissioners Payne, Sykes, Craven, Brown, and Walker participating) again denied the application, Commissioners Brown and Walker dissenting, and on September 15, 1938, released its decision upon reconsideration and reargument.

On October 10, 1938, applicant filed this petition for rehearing requesting (1) rehearing of the matter with opportunity to present additional testimony and (2) a revision of the Commission's Statement of Facts and Grounds for Decision to correct certain errors and inaccuracies pointed out in the petition. The petition also alleges that the statement in the Commission's decision concerning the benefit and advantage to producers and consumers respectively which would result from the applicant's proposed service is directly contrary to the evidence. The petition further alleges that an error of law was committed in that two of the members of the Commission who participated in the decision after the reargument of the case on June 2, 1938, had not heard such reargument.

On February 6, 1939, the Commission, upon consideration of this Petition for Rehearing remanded the case to the five members of the Commission who heard the reargument on June 2, 1938, namely, Commissioners Craven, Sykes, Brown, Walker, and Case.

Upon consideration of the entire record in this matter, including the report of the examiner, exceptions thereto, the applicant's petition for rehearing and reargument, the reargument held on June 2, 1938, and the instant Petition for Rehearing, the Commission (Chairman McNinch and Commissioner Payne not participating) has concluded for the reasons hereinafter stated that the application must be denied.

The applicant's request for a rehearing of the matter with the opportunity to present additional testimony is denied because, as pointed out in the Commission's decision of September 13, 1938, the applicant has not brought to light any newly discovered evidence of a character which has not already been placed into the record or which the applicant has not already been given a full opportunity to present. The applicant's request for an opportunity to adduce further evidence unquestionably is predicated upon an erroneous interpretation of the statement in the Commission's decision of September 13, 1938, that "the Commission finds that neither the petition for rehearing or reargument nor the reargument itself brought to light any newly discovered evidence." The applicant, in the instant petition, claims that "in all fairness, if applicant was expected to present new evidence in 'reargument' rather than in a 'rehearing,' the order of the Commission should have so stated; but the order of the Commission confined applicant to 'reargument on the record as made,' thereby excluding new or additional testimony." The language used by the Commission in its decision of September 13, 1938, on reconsideration and reargument referred to the allegations in the applicant's previous Petition for Rehearing and Reargument and was not intended to mean that the Commission expected the applicant to present any further or new evidence in the reargument.

In order that there may be no further misunderstanding on this point, the Commission now reiterates that applicant's request to adduce further evidence in support of its application is denied for the reason that petitioner has not offered to prove facts which it could not with due diligence have known or discovered at the time of the hearing, as required by the Commission's Rules of Practice and Procedure. As to the inaccuracies pointed out by the applicant in the Commission's decision of September 13, 1938, it is sufficient to state that said inaccuracies in the publication of the decision were caused solely by inadvertence. In reaching its decision, the Commission was then, as it is now, aware of the fact that the Examiner's Report (I-458) recommended that the application be granted and that the applicant's petition for rehearing or reargument was filed on March 24, 1938, twenty days after the effective date of the Commission's decision of March 4, 1938. As to the petitioner's claim that the Commission's determination with respect to the benefit and advantage to producers and consumers which will result from the service contemplated by the applicant, it is sufficient to state that the evidence in the record on this point has been reviewed and the Commission finds that such evidence cannot support a finding that the service contemplated by the applicant would be of any considerable

benefit to producers or that the service proposed would be any more advantageous to consumers than that which could be rendered by radiobroadcast stations now existing in the City of Cleveland.

The Commission now enters the following:

STATEMENT OF THE FACTS, GROUNDS FOR DECISION, AND ORDER

STATEMENT OF FACTS

Food Terminal Broadcasting Company is an Ohio corporation and it has corporate power to operate a broadcast station. The authorized capital stock is \$25,000, all of which has been subscribed and fully paid for in cash by five stockholders in equal proportions. The stockholders of the applicant corporation are also stockholders of the Northern Ohio Food Terminal Company which operates a center market where food products are sold principally to the retail dealers of Cleveland and vicinity. The president of the applicant corporation is general manager of the Northern Ohio Food Terminal Company.

Food Terminal Broadcasting Company has five stockholders. One of them is the general manager of the Northern Ohio Food Terminal; one is a fruit broker; one is a commission merchant in the fruit business; one is secretary of a company operating as commission merchants in the same business; and one is an attorney. Each of these individuals owns 20% of the capital stock of Food Terminal Broadcasting Company, which is capitalized, as shown in the previous decision of this case, at \$25,000; and all of the stockholders of the said company are interested in the Northern Ohio Food Terminal. The attorney mentioned appeared as witness at the hearing before the examiner and he was asked to give a brief outline of the Northern Ohio Food Terminal, particularly with reference to "what its set up is," and he answered as follows:

Well, it's a public utility organized under the Ohio public-utility law as the Union Depot Company. It constructed the yard into which all railroads entering Cleveland come at an equal car charge and which holds about 450 cars. It operates by contract with the Nickel Plate for the benefit of all, what is called a "hold yard" into which produce coming in too late for placing for the day's market can be held; and that, I think has probably an area of 700 or 800 cars.

The Northern Ohio Food Terminal then built on both sides a 110-foot street—a private street—with gates at each end so that they can be closed to the public and they are closed in the evening for the protection of the produce. We built on both sides the 110-foot thoroughfare something like 80 or 90 units that are available for any person in the food business and into that area has come practically all of the perishable produce, fruits, butter and eggs and cheese, a good deal of the meats, and some few wholesale grocers; the largest

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of the wholesale grocery distribution is, however, either adjacent to or at other places. Then around the Food Terminal comes the flour, coffee, chain-store warehouses, and practically all of the food industry.

Now the Food Terminal itself, as I say, handles space for the use in connection with the car facilities of the produce, butter, eggs, cheese, and chickens, that type of thing, and fruit that comes into the market. Practically everything comes in there. The auction is conducted there; the citrus and deciduous auctions which are daily affairs.

Q. Is that a corporation?

A. Oh, yes.

Q. It owns the property, does it?

A. Yes; it owns the property and leases it.

Q. It leases it out to commission merchants?

A. That is right and it does the so-called recouping of broken-lot packages in the cars; it does the inspection; it has various facilities in the Terminal.

The general manager of the Northern Ohio Food Company (Terminal) is also the president of the Food Terminal Broadcasting Company. He is affiliated with the Cleveland Chamber of Commerce and is a member of the National Association of Marketing Officials, the National League of Wholesale Fresh Fruit and Vegetable Distributors of America, the International Apple Association, and the Vegetable Growers' Association of America.

The Northern Ohio Food Terminal Company, as such, is not engaged in the sale of food products although it owns the food terminal market building and facilities and rents space to the wholesale produce dealers. The establishment of the food terminal has resulted in centralization of all the perishable food markets in the city. The terminal is equipped with rail and truck facilities and the market is so constructed that growers are able to sell their produce to the retail dealers, and while some retail sales are made to consumers it is primarily a wholesale market supplying food products to retailers.

The proposed program schedule of the applicant for one week contains an allotment of considerable time for the dissemination of market information.

Information as to the quantity of produce on hand and prices would be broadcast to the growers; information with respect to the quantity, quality, and prices would be broadcast to the retailers; and information as to the quantity and quality of the produce at the market would be broadcast to the consumer. The applicant contends that the broadcasting of market information, as above stated, would cause the consumers to purchase greater quantities of particular food items at the time when those items are most abundant and of best quality, thereby expanding the market for particular foods at particular times and eliminating market gluts.

The proposed program schedule also contains an allotment of time for weather reports, news, entertainment, reports from the Department F. C. C.

ment of Agriculture and the Ohio State University and many civic programs. There is ample talent available from Cleveland for program purposes and there are about 46 organizations of a civic, educational, charitable, and social nature, which will contribute program material. The applicant proposes to designate time without charge to all charitable, religious, and educational associations.

Specifically, with regard to the program plans of the applicant, the following appears in the record :

Q. Is it not a fact that the inception and main purpose of the applicant corporation is to further the interests of the Food Terminal and those who are connected with it?

A. Those who are interested in it as tenants there and the general public at large.

* * * * *

Q. I believe you said that you were going to broadcast market information with respect to food, and generally that is the main type of program that you are interested in broadcasting, isn't it?

A. Yes, sir.

The following appears in the testimony of the representative of the applicant while he was discussing its contemplated programs :

Q. I believe you said that the only news service which you are going to provide over the station is that provided for here under the heading local news service, for which you set up in your budget the sum of \$100?

A. That is correct.

Q. I believe you said that was carried over the stations in Cleveland now?

A. General news is.

Q. And local news too, isn't it?

A. It is included with it, I suppose; yes.

Q. Don't you know it is?

A. I stated, I believe, that I have not heard the morning broadcasts on these stations.

The attorney, heretofore mentioned as one of the stockholders of the applicant, after testifying with respect to the Food Terminal and the market carried on there, said :

We determined we were going to try therefore to figure out a way that we could organize a station primarily or fundamentally, or whatever you want to say about the food business, and it was those studies that gave rise to the filing of this application.

Food Terminal Broadcasting Company, if the application is granted, will employ an experienced staff of fourteen people to operate the station and estimates the monthly operating cost to be \$2,810. Tentative contracts have been entered into with 11 commercial establishments for time on the proposed station, which contracts aggregate \$17,441 per year. In addition, other business concerns have signified a desire to advertise over the proposed station. The applicant estimates an income of approximately \$36,000 per year, which

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estimate is based upon the tentative contracts above referred to and discussions with prospective advertisers.

It is proposed to locate the studio in the food terminal market building but the antenna site has not been determined. The technical equipment which the applicant proposes to install, is in accord with good engineering practice and is capable of being operated within the requirements of the Rules of the Commission. No objectionable interference would be expected to result to the fair and efficient service of any existing broadcast station from the station proposed herein, if this application is granted.

The metropolitan district of Cleveland has a population of 1,194,989 according to the 1930 census, and four broadcast stations are now located there, namely, WGAR, using 1450 kc., 500 watts, 1 kw. to local sunset, unlimited time; WHK, using 1390 kc., 1 kw., 2½ kw., until local sunset, unlimited time; WJAY, using 610 kc., 500 watts day-time only; and WTAM, using 1070 kc., 50 kw., unlimited time. In addition, Stations WJR and WLW may render some service in the outlying areas.

The 10 millivolt per meter contour of the proposed station is 3.75 miles. The 2 millivolt per meter contour of the proposed station is 9.3 miles. The 0.5 millivolt per meter contour of the proposed station is 17 miles.

The Commission, upon the record, cannot find that the service contemplated by the applicant would be of any considerable benefit to producers, or that the service proposed would be any more advantageous to consumers than is the service of radiobroadcast stations now existing in the City of Cleveland.

GROUNDS FOR DECISION

On the record in this case, the Commission finds:

1. The applicant is legally, technically, and financially qualified to construct and operate the proposed station.
2. The frequencies available for assignment to broadcast stations being limited, public interest would be best served by an allocation of facilities to those who will, where need exists, render a broad, general public service. No need exists for an additional station in the area which would be served upon the basis of program service intended to be rendered by the applicant.
3. Public interest, convenience, and necessity will not be served by the granting of the application.

WALKER, Commissioner, dissenting:

I dissent for the reason that I believe a need has been shown for the broadcasting service proposed.

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To justify its existence, a broadcast station must render a worth-while service to the public, either through the dissemination of needed information or the rendering of a high-class, worth-while entertainment program, or both.

In the instant application, there appears to be a place in Cleveland for another high-class local program service. In addition, the applicant offers a needed and vital service to producers of farm products, to householders, and to consumers of these products. This service is unavailable through any other practical source.

While the Commission would be on sound ground in refusing to grant a broadcasting license to serve any special interest, group, or individual, it would not predicate its denial of a broadcasting license upon an applicant's electing to use a portion of its time, otherwise devoted to general advertising, in giving information to farm producers, without which information they could have no market, and to consumers, without which information they could have no opportunity to obtain the food products thus advertised. Why elect here to question the advertising motive of the applicant's backers, particularly when it appears in the public interest that such advertising of food products should be done, and when the applicant otherwise proposes a worth-while and needed local broadcast service?

The application should be granted, because, in addition to offering a worth-while program service along the lines of current conventional requirements, the applicant will furnish a necessary information service, not otherwise practicably obtainable, to the farmers about where and how to market produce, and to the consumers on where and how to secure needed farm food products.

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D. C.

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|---|---|------------------|
| <p>In the Matter of
WEST TEXAS BROADCASTING COMPANY,
WICHITA FALLS, TEXAS.
For Construction Permit (new).</p> | } | DOCKET No. 4218. |
| <p>WICHITA BROADCASTING COMPANY,
WICHITA FALLS, TEXAS.
For Construction Permit (new).</p> | } | DOCKET No. 4348. |
| <p>FAITH BROADCASTING COMPANY, INC.,
WICHITA FALLS, TEXAS.
For Construction Permit (new).</p> | } | DOCKET No. 4354. |
| <p>C. C. BAXTER (KFPL),
DUBLIN, TEXAS.
For Voluntary Assignment of License
to WFTX, Inc.</p> | } | DOCKET No. 4356. |
| <p>WFTX, INCORPORATED (KFPL),
WICHITA FALLS, TEXAS.
For Construction Permit to Change
Frequency, etc.</p> | } | DOCKET No. 4355 |

Decided February 20, 1939

Paul D. P. Spearman and George S. Smith on behalf of West Texas Broadcasting Company, *Joe B. Carrigan and Byron G. Carson* on behalf of Wichita Broadcasting Company; *John W. Guider and Lester Cohen* on behalf of Station WTMJ.

REPORT AND ORDER DENYING APPLICATIONS FOR REHEARING

BY THE COMMISSION (McNinch, Chairman, Brown, Sykes, Commissioners, dissenting):

The cases mentioned in the caption were heard in a consolidated proceeding, and the Commission rendered its decision thereon June 28, 1938, which was issued on July 1, 1938.

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West Texas Broadcasting Company, Wichita Broadcasting Company, and Faith Broadcasting Company, Inc., all of Wichita Falls, Texas, applied separately to the Commission for permission to construct new radiobroadcast stations at Wichita Falls, Texas.

Upon the record made, the Commission granted the application of the Wichita Broadcasting Company and denied the respective applications of the West Texas Broadcasting Company and Faith Broadcasting Company, Inc.; and thereafter, West Texas Broadcasting Company, of Wichita Falls, Texas, and The Journal Company (WTMJ), of Milwaukee, Wisconsin, filed respectively their Petitions for Rehearing, and Tri-State Broadcasting System, Inc. (KTBS), Shreveport, Louisiana, filed a Motion for Rehearing. On January 4, 1939, Faith Broadcasting Company, Inc., filed a motion withdrawing its application and praying the Commission to reaffirm its decision granting the application of Wichita Broadcasting Company.

The petition of the West Texas Broadcasting Company has been considered and the Commission observes that the West Texas Broadcasting Company contends:

(a) That the Commission erred in failing to give consideration to the testimony of an expert witness for the Wichita Broadcasting Company, and that the Commission erred in failing to conclude from that testimony that the station proposed by the West Texas Broadcasting Company "would serve as great an area and as large a population, day or night, as would be served by the station proposed by the Wichita Broadcasting Company."

The record has been reviewed, including the testimony set out in the Petition for Rehearing, and the Commission finds that the evidence in the record would not support a finding that the station proposed by the West Texas Broadcasting Company would have as great a daytime coverage as that proposed by the Wichita Broadcasting Company; and upon a review of the record the Commission finds the facts in question to be as stated in its original decision, that:

The daytime coverage of the station proposed by Wichita Broadcasting Company to the limit of its 10 millivolt per meter contour would be about 16 miles, to the limit of its 2 millivolt per meter contour about 57 miles and to the limit of its 0.5 millivolt per meter contour about 130 miles. * * *

The daytime coverage of the station proposed by West Texas Broadcasting Company to the limit of its 10 millivolt per meter contour would be approximately 15 miles, to its 2 millivolt per meter contour approximately 41 miles and to its 0.5 millivolt per meter contour approximately 80 miles. * * *

The record of the coverage of the station proposed by the Faith Broadcasting Company, Inc., is less definite and certain; however, it shows that the daytime coverage of the station operating as proposed would be around 100 miles out to its 0.5 millivolt per meter contour. * * *

The station of the Wichita Broadcasting Company, operating as proposed, would very definitely serve a greater area and a larger population than either of the other stations, operating as proposed, during a large majority of the hours out of each 24-hour period.

Upon review of the record the Commission finds that it does not disclose the number of people that would receive full nighttime service from the station proposed by the West Texas Broadcasting Company. The population that would be served by it within its 2 millivolt per meter nighttime contour appears to be 136,700; but the engineer for the West Texas Broadcasting Company stated in his testimony that the proposed station would receive nighttime interference to its 2.8 or 3 millivolt per meter contour, and the population residing in such contours was not given. The record discloses that the station proposed by the Wichita Broadcasting Company would serve 165,800 people for the period of time between sunset at Wichita Falls, Texas, and sunset at Phoenix, Arizona, that period being an average of approximately one hour the year around, and that it would serve 118,150 people after sunset at Phoenix, Arizona.

In its original decision the Commission called attention to the fact that the engineer for the West Texas Broadcasting Company, in comparing the nighttime population coverage of that company with the nighttime population coverage of the Wichita Broadcasting Company, said that a 15-percent increase in favor of West Texas Broadcasting Company was only a guess.

(b) That the Commission erred in failing to find that the area that would be served by the West Texas Broadcasting Company, operating as proposed, would more nearly conform to the Wichita Falls trade area than would the area which the Wichita Broadcasting Company proposes to serve.

This suggestion is apparently secondary to the preceding contention, and should follow therewith. It has been pointed out that the respective 10 millivolt, 2 millivolt, and the 0.5 millivolt per meter contours of the Wichita Broadcasting Company extend to greater mileages than do the respective contours of the West Texas Broadcasting Company, both stations operating as proposed in the daytime, and as pointed out, the record does not show that under nighttime interference limitations the station proposed by the West Texas Broadcasting Company would unquestionably serve any greater population at night than would the Wichita Broadcasting Company, both operating as proposed.

Wichita Falls, Texas, is near the Oklahoma line. The West Texas Broadcasting Company claims for it a primary trade area embracing several counties and cities in Oklahoma, and embracing several coun-

ties and cities in Texas, while it claims a secondary trade area embracing a large part of Oklahoma and a large part of Texas. A secondary trade area is claimed which reaches nearly to Oklahoma City on the northeast, and nearly to Fort Worth and Dallas on the southeast, and much farther to the northwest, the west, and the southwest. In the original decision, the varied industries and interests of Wichita Falls, Texas, are shown. The trade area of the place would no doubt fluctuate to some extent with respect to the various commodities distributed therefrom, but it does not appear that the primary and secondary trade areas claimed by the West Texas Broadcasting Company for Wichita Falls are justified by the record.

A review of the record, including Exhibits 12 and 29 of the West Texas Broadcasting Company, upon giving full faith and credit to the claim of that company respecting the extent of the primary and secondary trade areas of Wichita Falls, Texas, shows that neither the station proposed by that company, nor that proposed by Wichita Broadcasting Company, would render night service to all of the primary trade area claimed for Wichita Falls by the West Texas Broadcasting Company. The record shows that during the daytime the station proposed by the Wichita Broadcasting Company would render service to practically all of the primary trade area of Wichita Falls, and would render service to a much larger portion of the secondary trade area than would the proposed station of the West Texas Broadcasting Company.

(c) That the Commission erred in finding the Wichita Broadcasting Company legally qualified to receive a permit from the Federal Communications Commission to construct a radiobroadcast station in the State of Texas.

On this point the testimony taken at the hearing shows that the Wichita Broadcasting Company is a Delaware Corporation, and that at the time of the hearing it had not been admitted as a foreign corporation to the State of Texas. If this was a lack of legal qualification, it has been obviated. The supplemental answer of the Wichita Broadcasting Company to the Petition for Rehearing filed on behalf of the West Texas Broadcasting Company, and the reply of that company thereto, show that the Wichita Broadcasting Company has been licensed by the State of Texas to transact business in that State, including the construction, maintenance, and operation of a radiobroadcast station therein. (See exhibits attached to said papers.)

In its original decision the Commission found both the Wichita Broadcasting Company and the West Texas Broadcasting Company legally and financially qualified to construct and operate broadcast

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stations in Wichita Falls, Texas. It found that the Wichita Broadcasting Company was organized under the law of the State of Delaware, with an authorized capital to the amount of \$75,000, divided into 750 shares of the par value of \$100 each; and the Commission now finds that at the time of the hearing, 400 shares of the capital stock of the corporation had been issued and that the company had received therefor the sum of \$40,000, which was in the bank at the time; and the Commission finds that each of the stockholders buying and paying for the shares above mentioned subscribed for additional stock, agreeing to pay par value therefor in the total amount of \$27,000; and the evidence shows that the parties subscribing for said stock are able to pay cash for the same when it is issued. A deposit slip showing the amount of money in the bank was introduced in evidence by the officer of the company who made the deposit of \$40,000 and received the deposit slip for the company.

The Commission finds that the Wichita Broadcasting Company has enough resources to construct the station proposed and to operate it for a period of time thereafter, and that there is a reasonable likelihood of financial profit to be expected from the operation of the station to enable successful operation. See the original decision herein, and see the application of *Saginaw Broadcasting Company*, 96 F. (2d) 554.

(d) That the Commission erred in finding the site selected for the antenna by the West Texas Broadcasting Company to be hazardous to air transportation and unsatisfactory to the Department of Commerce.

The Commission discussed this feature of the case thoroughly in its decision; and it now finds, in addition to what was found there, that a witness for the Bureau of Air Commerce appeared at the hearing and testified with respect to a restricted area, in which an antenna having a height of more than 215 feet not be allowed; and the testimony of record shows that the West Texas Broadcasting Company proposes to construct an antenna system on a site within that restricted area with a height of 375 feet.

(e) That the Commission erred in failing to consider the respective proposed program services offered by the West Texas Broadcasting Company and by the Wichita Broadcasting Company.

The decision of the Commission did not turn upon that point. The fact is that both of said companies submitted tentative programs at the hearing, which cover a considerable range, and which the Commission now finds to be meritorious; and the Commission further finds that both of said tentative programs should prove satisfactory to the public proposed to be served.

The Wichita Broadcasting Company will serve the listeners of the proposed station with time announcements; highway reports; weather

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reports; complete market reports, including cotton, grain, livestock, poultry, and stocks bought and sold on the markets of the financial centers of the country; that the station will broadcast the news of governmental departments, along with the current news, and that the proposed station will cooperate with the civic, educational, fraternal, and religious organizations of Wichita Falls, Texas; and the Commission finds that the Wichita Broadcasting Company proposes a Sunday service, including devotional services, music and news of the churches, and church services. The week-day program of the station includes, among other things, morning devotions; highway and weather reports; civic, club, and fraternal activities; home economics; current news; sports events; popular music; vocalists; and organ and concert performances.

The Commission finds that the list of talent available in Wichita Falls, Texas, for radiobroadcast operations there, includes orchestras, vocalists, pianists, violinists, dramatists, dialecticians, commentators, accordionists, saxophonists, and cellists.

Station KGKO, which is about to be moved from Wichita Falls to Fort Worth, Texas, has operated in Wichita Falls, and has demonstrated that there is sufficient talent at that place for a station operating therein; and the Commission finds that there is abundant talent in the area proposed to be served by the Wichita Broadcasting Company to meet the needs of that company.

The Petition for Rehearing filed by The Journal Company (WTMJ), Milwaukee, Wisconsin, sets forth contentions, in which it is stated:

(a) That the Commission failed to give consideration to the fact that at the time of the hearing upon the application of the Wichita Broadcasting Company, Station WTMJ had made an application for an increase of power, and that favorable action upon the application of the Wichita Broadcasting Company would result in possible embarrassment and prejudice to the petitioner when its application is heard.

The Journal Company operates on 620 kilocycles. After the cases consolidated in the proceeding under consideration were set for trial before the examiner (which was to begin on February 10, 1937), the petitioner filed, in the case of Wichita Broadcasting Company (Docket No. 4348), a Motion for Continuance. At the hearing before the examiner, counsel for Station WTMJ advised the examiner of the pendency of the Motion for Continuance, and that the Commission had not acted upon it; but counsel did not ask the examiner for continuance nor object to going to trial. The application of The Journal Company is still pending, and no error has been committed by the Commission in proceeding to judgment on the application of

the Wichita Broadcasting Company. See *Pulitzer Publishing Company v. Federal Communications Commission*, 94 F. (2d) 249, 251; and see *Pittsburgh Radio Supply House v. Federal Communications Commission*, 98 F. (2d) 308.

(b) That the finding of the Commission to the effect that the operation of Stations KTAR, Phoenix, Arizona, and WTMJ, Milwaukee, Wisconsin, would place a limitation upon the proposed operation of the station sought by the Wichita Broadcasting Company, in the nighttime, to its approximate 1.8 millivolt per meter contour—and maybe to its 3.5 millivolt per meter contour—is too indefinite to meet the requirements of the law.

The record indicates that the predominant nighttime interference to the station proposed by the Wichita Broadcasting Company would be caused by Station KTAR, and not by Station WTMJ. This interference, the Commission now finds, would be to the approximate 1.8 or 2.0 millivolt per meter contour of the proposed station. The nighttime recordings made on 620 kilocycles at Wichita Falls, Texas, show that the composite interference on the 620-kilocycle channel from all stations was to the approximate 3.5 millivolt per meter contour of the station proposed by the Wichita Broadcasting Company for 10 percent of the time for the particular period during which the recordings were made; but there is no testimony in the record to show what the increase in the limitation to the proposed station would be if Station WTMJ should in the future be allowed to operate on a power of 5 kilowatts at nighttime, as sought by it in its pending application. It is not considered that the contention made is sufficient to justify the denial of the application of the Wichita Broadcasting Company. See again *Pulitzer Publishing Company v. Federal Communications Commission*, *supra*; and see *Great Western Broadcasting Association, Inc., v. Federal Communications Commission*, 94 F. (2d) 244, 246, 248; *Pittsburgh Radio Supply House v. Federal Communications Commission*, *supra*.

(c) That the Commission erred in finding that the Wichita Broadcasting Company, operating as proposed, would have a much greater daytime coverage with respect to both area and population than either of the other applicants.

On this point it should be noted that Station WTMJ is not applying for a permit to construct a station in Wichita Falls, Texas, and that it has no legitimate concern with the comparative service areas of the companies that are proposing to establish a radiobroadcast station at that place; however, the point raised has been considered and the Commission believes that its original findings, as supplemented herein, fully cover the point.

(d) That the Commission erred in making a finding respecting the 2 millivolt per meter contour of the West Texas Broadcasting Company, while making no finding respecting the 2 millivolt per meter coverage of the Faith Broadcasting Company, Inc., which the petitioner for rehearing suggests should be analogous to the 2 millivolt per meter coverage of the West Texas Broadcasting Company.

On this point the Commission finds that the engineering testimony of the Faith Broadcasting Company, Inc., is silent upon the 2 millivolt per meter coverage of the station proposed by that company; furthermore, it does not appear that Station WTMJ has any legitimate concern with such findings. Moreover, the withdrawal of its application by Faith Broadcasting Company, Inc., renders this point moot insofar as that applicant is concerned. See *Pittsburgh Radio Supply House v. Federal Communications Commission, supra*.

(e) That the Commission erroneously found that the West Texas Broadcasting Company, operating as proposed, would have a larger nighttime area coverage than the Faith Broadcasting Company, Inc., operating as proposed.

It is argued by Station WTMJ that with "some slight variation" in the efficiencies for the antennas proposed by the West Texas Broadcasting Company and the Faith Broadcasting Company, Inc., both stations would cover approximately the same territory. Whether there is anything in the point or not, the Commission has given it consideration, and finds that the record indicates that the antenna efficiency assumed by engineering witnesses for the station proposed by the Faith Broadcasting Company, Inc., was 190 millivolts per meter at one mile for one kilowatt, while the antenna efficiency assumed by engineering witnesses for the station proposed by the West Texas Broadcasting Company was 235 millivolts per meter at one mile for one kilowatt. The antenna efficiency of the proposed station of the West Texas Broadcasting Company was predicted upon a 375-foot antenna. The record discloses that at the site proposed by the applicant, the Bureau of Air Commerce would not approve an antenna having a height in excess of 215 feet. A 215-foot antenna would have an efficiency materially less than 235 millivolts per meter at one mile for one kilowatt, as assumed for the 375-foot antenna. If the West Texas Broadcasting Company should install the proposed 375-foot antenna at an approved site, comparison could be made in terms of input power. On that point the engineering witness for the West Texas Broadcasting Company testified: "It would take 1500 watts in the Faith antenna to produce the same coverage that we would obtain with one kilowatt in the proposed antenna of the West Texas Broadcasting Company."

It is therefore seen that there would be more than "some slight variation" in the coverage of the two stations operating with one kilowatt at night. It appears to be the contention of Station WTMJ that inasmuch as the Commission found that the station proposed by the West Texas Broadcasting Company would have a slightly greater nighttime coverage than that proposed by the Wichita Broadcasting Company, and inasmuch as the antenna systems proposed by the West Texas Broadcasting Company and the Faith Broadcasting Company, Inc., are similar, that the Commission should have also found that the nighttime coverage of the station proposed by the Faith Broadcasting Company, Inc., was likewise greater than that of the station proposed by the Wichita Broadcasting Company. This contention was without proper consideration of the importance of the antenna efficiency; furthermore, it appears that Station WTMJ is not at all concerned with that point; but, otherwise, there could be little in the point, since the record shows beyond all question that the Wichita Broadcasting Company, operating as proposed, would have a much greater daytime coverage with respect to area and population than either of the other applicants, and would serve a greater area and a larger population than either of the other stations, operating as proposed, during a large majority of the hours out of each 24-hour period. Moreover, the withdrawal of its application by Faith Broadcasting Company, Inc., renders moot this point raised by Station WTMJ.

In its Motion for Rehearing, the Tri-State Broadcasting System, Inc. (KTBS), Shreveport, Louisiana, charges that the Commission erred in proceeding to determine the applications involved in the proceeding under consideration, because at the time of the rendition of judgment granting the application of the Wichita Broadcasting Company, Station KTBS had pending an application for increase of facilities at Shreveport, Louisiana.

The Commission, on July 27, 1938, denied that Motion, and the Tri-State Broadcasting System, Inc., took an appeal to the United States Court of Appeals for the District of Columbia, which was dismissed on November 30, 1938, because it was prematurely taken.

The Wichita Broadcasting Company filed an application on October 19, 1936, for construction permit to establish a new radiobroadcast station at Wichita Falls, Texas, to operate on 620 kilocycles, with power of 250 watts night, one kilowatt local sunset, unlimited time. This application was designated for hearing on December 8, 1936, and was heard (together with several other applications for facilities at Wichita Falls) on February 10 to 13, and March 29 and 30, 1937. On May 26, 1937, the examiner submitted his report (I-435).

On March 15, 1937, Station KTBS filed an application for the use of the same frequency at Shreveport, Louisiana. That application was designated for hearing on April 2, 1937, and was dismissed on May 25, 1937, at the request of the applicant. The second application for the use of the same frequency at Shreveport, Louisiana, was filed by Station KTBS on June 2, 1937. This application was designated for hearing on August 18, 1937.

In the Commission's "Statement of Facts, Grounds for Decision, and Order" granting the Wichita Broadcasting Company's application, it was noted that the application of Station KTBS had been withdrawn. At that time, and now, the records of the Commission show such to be a fact. In its Motion for Rehearing, Station KTBS charges that there could be no testimony in the record concerning the withdrawal of its first application, which was dismissed May 25, 1937, after the hearing was closed, and contends that the Commission would not have granted the Wichita application had it taken notice of the pendency of a later application filed by it.

The contentions of Station KTBS are not persuasive. The facts disclose that when the hearing on the Wichita case commenced (February 10, 1937) there was no application pending on behalf of Station KTBS. Its first application was filed on March 15, 1937, and as that application was not on file when the Wichita Broadcasting Company's application was set for hearing, the application of Station KTBS was not entitled to be heard simultaneously with the Wichita Broadcasting Company's application. See Rule 106.4 of the Commission, relating to applications for conflicting facilities; and see *Pulitzer Publishing Company v. Federal Communications Commission*, *supra*.

The last application of Station KTBS was filed after the hearing and the proceeding under consideration was closed.

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CASES DISMISSED OR DENIED AS IN DEFAULT

- MISSISSIPPI VALLEY BROADCASTING CO., INC. (WTMV), EAST ST. LOUIS, ILLINOIS, DOCKET NO. 4948;** applicant requested dismissal of application; application dismissed without prejudice, pursuant to Rule 103.8, on July 2, 1938.
- JUAN PIZA (WNEL), SAN JUAN, PUERTO RICO, DOCKET NO. 4683;** applicant failed to submit evidence in support of application; application denied as in default on July 12, 1938.
- J. T. GRIFFIN, OKLAHOMA CITY, OKLAHOMA, DOCKET NO. 4635;** applicant requested dismissal of application; application dismissed without prejudice, pursuant to Rule 103.8, on July 18, 1938.
- KATHRYN B. GOSSELIN, AURORA, ILLINOIS, DOCKET NO. 4933;** applicant failed to submit evidence in support of application; application denied as in default on July 19, 1938.
- WALTER G. TAYLOR, MARY G. JACOBSEN, AND D. SPENCER GROW, D/B AS TIMPANOGOS BROADCASTING COMPANY, PROVO, UTAH, DOCKET NO. 5206;** applicant failed to file written appearance in accordance with provisions of Rule 104.6; application denied as in default, on July 26, 1938.
- FOUR LAKES BROADCASTING CO., MADISON, WISCONSIN, DOCKET NO. 4690;** applicant failed to appear and submit evidence in support of application; application denied as in default, on July 27, 1938.
- BUFFALO BROADCASTING CORPORATION (WKBW), BUFFALO, NEW YORK, DOCKET NO. 4898;** applicant requested dismissal of application; application dismissed without prejudice, pursuant to Rule 103.8, on July 28, 1938.
- VIRGIL V. EVANS, D/B AS THE VOICE OF SOUTH CAROLINA, SPARTANBURG, S. C., DOCKET NO. 5284;** applicant requested dismissal of application; application dismissed without prejudice, pursuant to Rule 103.8, on August 9, 1938.
- LARRY RHINE, SAN FRANCISCO, CALIFORNIA, DOCKET NO. 4687;** applicant requested dismissal of application; application dismissed without prejudice, pursuant to Rule 103.8, on August 9, 1938.
- H. W. WILSON AND BEN FARMER (WGTM), WILSON, N. C., DOCKET NO. 5076;** applicant requested dismissal of application; application dismissed without prejudice, pursuant to Rule 103.8, on August 9, 1938.
- SUPERIOR BROADCASTING SERVICE, INC. (WCAZ), CARTHAGE, ILL., DOCKET NO. 5117;** applicant requested dismissal of application; application dismissed without prejudice, pursuant to Rule 103.8, on August 9, 1938.
- OZARKS BROADCASTING CO. (KWTO), SPRINGFIELD, MO., DOCKET NO. 5119;** applicant requested dismissal of application; application dismissed without prejudice, pursuant to Rule 103.8, on August 9, 1938.
- EUGENE DEBOGORY, DALLAS, TEXAS, DOCKET NO. 5093;** applicant failed to file written appearance; application denied as in default, pursuant to Rule 104.6, on August 9, 1938.

- THE PULITZER PUBLISHING CO. (KSD), ST. LOUIS, MISSOURI, DOCKET NO. 5123; applicant requested dismissal of application; application dismissed without prejudice, pursuant to Rule 103.8, on August 24, 1938.
- INTERNATIONAL BROADCASTING CORPORATION (WOV), NEW YORK, N. Y., DOCKET NO. 5238; applicant requested dismissal of application; application dismissed without prejudice, pursuant to Rule 103.8, on August 24, 1938.
- CITY OF ATLANTIC CITY, ATLANTIC CITY, N. J. (WPG), DOCKET NO. 5239; applicant requested dismissal of application; application dismissed without prejudice, pursuant to Rule 103.8, on August 24, 1938.
- W. B. GREENWALD, TRANSFEROR, (KWBC), JOHN P. HARRIS, TRANSFEREE (NATION'S CENTER BROADCASTING CO., INC.) (LICENSEE), HUTCHINSON, KANSAS, DOCKET NO. 5267; application dismissed without prejudice at request of applicant, pursuant to Rule 103.8, on August 31, 1938.
- OMAHA GRAIN EXCHANGE (WAAW), OMAHA, NEBRASKA, DOCKET NO. 5302; application dismissed without prejudice at request of applicant, pursuant to Rule 103.8, on August 31, 1938.
- SPRINGFIELD BROADCASTING CORP., SPRINGFIELD, OHIO, DOCKET NO. 5296; application dismissed without prejudice at request of applicant, pursuant to Rule 103.8, on August 31, 1938.
- SPRINGFIELD BROADCASTING CO., (KGBX), SPRINGFIELD, MO., DOCKET NO. 5092; applicant requested withdrawal of application; request was received less than 30 days prior to hearing; application dismissed with prejudice, pursuant to Rule 103.8, on September 2, 1938. Upon reconsideration dismissed without prejudice November 14, 1938.
- MIDWEST BROADCASTING CORP., PROVO, UTAH, DOCKET NO. 5225; application dismissed at request of applicant without prejudice, pursuant to Rule 103.8, on September 2, 1938.
- MONTGOMERY BROADCASTING CO., (WSFA), MONTGOMERY, ALABAMA, DOCKET NO. 5066; applicant petitioned for dismissal of application; application dismissed without prejudice, pursuant to Rule 103.8, on September 3, 1938.
- E. J. REGAN AND F. ARTHUR BOSTWICK, D/B AS REGAN & BOSTWICK (WQDM), ST. ALBANS, VERMONT, DOCKET NO. 5113; application dismissed without prejudice at request of applicant, pursuant to Rule 103.8, on September 8, 1938.
- THOMAS R. WATERS, JR., SIDNEY R. LYONS, AND GOMER THOMAS, D/B AS SKAGIT BROADCASTING COMPANY, BELLINGHAM, WASH., DOCKET NO. 4070; application dismissed without prejudice at request of applicant, pursuant to Rule 103.8, on September 8, 1938.
- HEARST RADIO, INC. (KOMA), OKLAHOMA CITY, OKLA., DOCKET NO. 4897; application dismissed without prejudice at request of applicant, pursuant to Rule 103.8, on September 8, 1938.
- PHILIP N. PARTRIDGE T/A PHIL-CO RADIO SERVICE, WASHINGTON, D. C., DOCKET NO. 5278; applicant failed to file written appearance; application denied as in default, pursuant to Rule 104.6, on September 8, 1938.
- WDRC, INCORPORATED (WDRC), HARTFORD, CONN., DOCKET NO. 4004; application dismissed without prejudice at request of applicant, pursuant to Rule 103.8, on September 12, 1938.
- KAMMERAAD-SMITH BROADCASTING COMPANY, HOLLAND, MICHIGAN, DOCKET NO. 5075; applicant appeared but failed to submit evidence in support of application; application denied as in default, on September 13, 1938.

- ANNE JAY LEVINE, PALM SPRINGS, CALIFORNIA, DOCKET NO. 4403;** applicant filed petition to withdraw application without prejudice; petition denied on February 16, 1938; counsel for applicant requested application be dismissed; application dismissed with prejudice on September 13, 1938.
- THE WBAL BROADCASTING COMPANY (WBAL), BALTIMORE, MARYLAND, DOCKET NO. 4229;** application dismissed without prejudice at request of applicant, pursuant to Rule 103.8, on September 15, 1938.
- MICHIGAN BROADCASTING COMPANY (WMBC), DETROIT, MICHIGAN, DOCKET NO. 5316;** application dismissed without prejudice at request of applicant, pursuant to Rule 103.8, on September 15, 1938.
- OREGONIAN PUBLISHING COMPANY (KEX), PORTLAND, OREGON, DOCKET NO. 5305;** application dismissed without prejudice at request of applicant, pursuant to Rule 103.8, on September 20, 1938.
- UNITED STATES BROADCASTING COMPANY, WASHINGTON, D. C., DOCKET NO. 4324;** applicant appeared by counsel and moved for dismissal without prejudice; application dismissed with prejudice on September 20, 1938.
- EASTERN NEVADA BROADCASTING CO. (JOHN S. KIMES, PRES.) ELY, NEVADA, DOCKET NO. 5318;** applicant failed to file written appearance; application denied as in default, pursuant to Rule 104.6, on September 26, 1938.
- VIRGIL V. EVANS, D/B AS THE VOICE OF SOUTH CAROLINA (W4XH), SPARTANBURG, S. C., DOCKET NO. 5198;** applicant failed to appear and submit evidence in support of application; application denied as in default, on October 4, 1938.
- ROBERTS-MACNAB CO. (ARTHUR L. ROBERTS, R. B. MACNAB, A. J. BREITBACH, GEN. MGR.) (KRMC), JAMESTOWN, NORTH DAKOTA, DOCKET NO. 5333;** application dismissed without prejudice at request of applicant, pursuant to Rule 103.8, on October 5, 1938.
- BERNARD GOLDSMITH, METUCHEN, N. J., DOCKET NO. 5299;** application dismissed without prejudice at request of applicant, pursuant to Rule 103.8, on October 11, 1938.
- TRI-CITY BROADCASTING CO. (WOC), DAVENPORT, IOWA, DOCKET NO. 5339;** application dismissed without prejudice at request of applicant, pursuant to Rule 103.8, on October 11, 1938.
- THE SPARKS-WITHINGTON CO. (W8XAN), JACKSON, MICHIGAN, DOCKET NO. 5126;** application dismissed at request of applicant without prejudice, pursuant to Rule 103.8, on October 15, 1938.
- GEORGE R. CALL, RAY A. KENNEDY, D/B AS TIMES FACSIMILE COMPANY, SIOUX CITY, IOWA, DOCKET NO. 5295;** applicant requested withdrawal of application; application dismissed without prejudice, pursuant to rule 103.8, on October 20, 1938.
- ATTALA BROADCASTING CORP. (WHEF), KOSCIUSKO, MISS., DOCKET NO. 5050;** applicant appeared by counsel at hearing and no evidence was submitted in support of application; application denied as in default on October 25, 1938.
- WINFIELD A. SCHUSTER, WORCESTER, MASS., DOCKET NO. 5347;** application dismissed without prejudice at request of applicant, pursuant to Rule 103.8, on October 26, 1938.
- GEORGE W. YOUNG (WDGY), MINNEAPOLIS, MINN., DOCKET NO. 5098;** application dismissed without prejudice at request of applicant, pursuant to Rule 103.8, on October 26, 1938.

- FOULKROD RADIO ENGINEERING COMPANY (WTEL), PHILADELPHIA, PA., DOCKET NO. 5301; application dismissed without prejudice at request of applicant, pursuant to Rule 103.8, on November 7, 1938.
- CLAIR L. FARRAND, NEW YORK, N. Y., DOCKET NO. 5288; application dismissed without prejudice at request of applicant, pursuant to Rule 103.8, on November 12, 1938.
- COASTAL BROADCASTING CO., BRUNSWICK, GA., DOCKET NO. 5275; application dismissed without prejudice at request of applicant, pursuant to Rule 103.8, on November 12, 1938.
- THE BIRMINGHAM NEWS COMPANY, BIRMINGHAM, ALA., DOCKET NO. 3975; applicant requested withdrawal of application; application dismissed with prejudice on November 14, 1938.
- SPRINGFIELD BROADCASTING COMPANY (KGBX), SPRINGFIELD, MO., DOCKET NO. 5092; applicant's petition for reconsideration and dismissal of application without prejudice granted, pursuant to Rule 103.8, on November 14, 1938.
- LAREDO BROADCASTING COMPANY, LAREDO, TEXAS, DOCKET NO. 5230; application dismissed without prejudice at request of applicant, pursuant to Rule 103.8, on November 26, 1938.
- WSAN, INCORPORATED (WSAN), ALLENTOWN, PENNSYLVANIA, DOCKET NO. 5041; applicant's request for leave to withdraw application without prejudice granted on November 28, 1938.
- B. BRYAN MUSSELMAN (WCBA), ALLENTOWN, PENNSYLVANIA, DOCKET NO. 5026; applicant's request for leave to withdraw application without prejudice granted on November 28, 1938.
- FRANK L. HILL & C. G. PHILLIPS (KIDO), D/B AS BOISE BROADCAST STATION, BOISE, IDAHO, DOCKET NO. 5022; applicant failed to appear and offer evidence in support of application; application denied as in default, on November 28, 1938.
- CHARLES PORTER AND EDWARD T. EVERSOLE, FESTUS, MISSOURI, DOCKET NO. 4239; applicant at hearing requested leave to withdraw without prejudice; request granted on November 28, 1938.
- THE BIRMINGHAM NEWS CO. (WSGN), BIRMINGHAM, ALA., DOCKET NO. 5335; application dismissed without prejudice at request of applicant, pursuant to Rule 103.8, on December 5, 1938.
- HAGERSTOWN BROADCASTING CO., (WJEJ), HAGERSTOWN, MD., DOCKET NO. 5362; application dismissed without prejudice at request of applicant, pursuant to Rule 103.8, on December 10, 1938.
- JAMES F. HOPKINS, INC., ANN ARBOR, MICH., DOCKET NO. 5368; application dismissed without prejudice at request of applicant, pursuant to Rule 103.8, on December 10, 1938.
- JOHN F. NOLAN, STEUBENVILLE, OHIO, DOCKET NO. 5344; application dismissed without prejudice at request of applicant, pursuant to Rule 103.8, on December 10, 1938.
- GEORGE H. PAYNE, SAN JOSE, CALIFORNIA, DOCKET NO. 4276; applicant appeared by counsel but failed to submit evidence in support of application; application denied as in default, on December 12, 1938.
- W. A. STEFFES, MINNEAPOLIS, MINN., DOCKET NO. 5231; applicant failed to offer evidence in support of application; application denied as in default, on December 12, 1938.
- J. LAURANCE MARTIN, TRANSFEROR (KRQA), I. E. LAMBERT, TRANSFEREE, SANTA FE, N. M., DOCKET NO. 4941; applicant's petition to dismiss application without prejudice granted on December 19, 1938.

- LARRY RHINE, SAN FRANCISCO, CALIF., DOCKET NO. 5382; applicant failed to submit evidence in support of application but moved for leave to withdraw; application denied as in default, on December 19, 1938.
- B. H. HOPSON, BIRMINGHAM, ALA., DOCKET NO. 4511; application dismissed without prejudice at request of applicant, pursuant to Rule 103.8, on December 20, 1938.
- JULIUS H. DIXON, TUPELO, MISS., DOCKET NO. 5384; applicant failed to file written appearance in accordance with Rule 104.6; application denied as in default on December 20, 1938.
- HOT SPRINGS CHAMBER OF COMMERCE (KTHS), HOT SPRINGS NATIONAL PARK, ARKANSAS, DOCKET NO. 4100; application dismissed without prejudice at request of applicant, pursuant to Rule 103.8, on December 22, 1938.
- PHILADELPHIA RADIOBROADCASTING CO., PHILADELPHIA, PENNSYLVANIA, DOCKET NO. 4439; application dismissed without prejudice at request of applicant, pursuant to Rule 103.8, on December 29, 1938.
- ELMER G. BEEHLER (KGK), STERLING, COLORADO, DOCKET NO. 5387; applicant failed to file written appearance; application denied as in default, pursuant to Rule 104.6, on December 30, 1938.
- HAROLD F. GROSS (WJIM), LANSING, MICH., DOCKET NO. 4504; application dismissed without prejudice at request of applicant, pursuant to Rule 103.8, on December 30, 1938.
- ABRAHAM PLOTKIN, CHICAGO, ILLINOIS, DOCKET NO. 4421; applicant failed to appear and submit evidence in support of application; application denied as in default on January 3, 1939.
- A. CORENSEN, TR/AS ELGIN BROADCASTING ASSOCIATION, ELGIN, ILLINOIS, DOCKET NO. 5416; applicant failed to file written appearance; application denied as in default, pursuant to Rule 15.31 (c), on January 5, 1939.
- A. CORENSEN, TR/AS NORTHWESTERN BROADCASTING ASSN., EVANSTON, ILL., DOCKET NO. 5395; applicant failed to file written appearance; application denied as in default, pursuant to Rule 15.31 (c), on January 5, 1939.
- ED BISHOP & JOHN L. McCARTY, D/B AS THE DALHART BROADCASTING CO., DALHART, TEXAS, DOCKET NO. 5424; applicant failed to file written appearance; application denied as in default, pursuant to Rule 15.31 (c), on January 5, 1939.
- CHARLES GREENBLATT, BRIDGEPORT, CONN., DOCKET NO. 4313; applicant failed to file written appearance; application denied as in default, pursuant to Rule 15.31 (c), on January 10, 1939.
- RADIO ENTERPRISES, INC., HOT SPRINGS, ARKANSAS, DOCKET NO. 4004; application dismissed without prejudice at request of applicant on January 13, 1939.
- ASSOCIATED ARKANSAS NEWSPAPERS, INC., HOT SPRINGS, ARKANSAS, DOCKET NO. 4131; application dismissed without prejudice at request of applicant on January 13, 1939.
- CLARENCE A. BERGER AND SAUL S. FREEMAN (KGCI), COEUR D'ALENE, IDAHO, DOCKET NO. 5370; applicant failed to appear and submit evidence in support of application; application denied as in default on January 16, 1939.
- THOMAS R. McTAMMANY, MODESTO, CALIFORNIA, DOCKET NO. 5342; application dismissed without prejudice at request of applicant on January 20, 1939.

- WILLIAM H. BATES, JR., MODESTO, CALIFORNIA, DOCKET NO. 5343; application dismissed without prejudice at request of applicant, on January 20, 1939.
- HOT SPRINGS CHAMBER OF COMMERCE (KTHS), HOT SPRINGS, ARKANSAS, DOCKET NO. 4228; application dismissed without prejudice at request of applicant, on January 20, 1939.
- WFIL BROADCASTING COMPANY (WFIL), PHILADELPHIA, PA., DOCKET NO. 4840; application dismissed without prejudice at request of applicant, on January 20, 1939.
- DAVID F. THOMAS, PROCTORVILLE, OHIO, DOCKET NO. 5449; applicant failed to file written appearance; application denied as in default, pursuant to Rule 15.31 (c), on January 24, 1939.
- ROYAL OAK BROADCASTING COMPANY (WEXL), ROYAL OAK, MICHIGAN, DOCKET NO. 5432; application dismissed without prejudice at request of applicant, on January 27, 1939.
- KCMC, INCORPORATED (KCMC), TEXARKANA, TEXAS, DOCKET NO. 5404; application dismissed without prejudice at request of applicant, on January 27, 1939.
- WAYNE MILLER, D/B AS INLAND WIRELESS, ROCK ISLAND, ILL., DOCKET NO. 5421; applicant failed to file written appearance; application denied as in default, on February 1, 1939.
- SOUTHWESTERN HOTEL COMPANY (KFPW), FORT SMITH, ARKANSAS, DOCKET NO. 5445; application dismissed without prejudice at request of applicant, on February 3, 1939.
- AMERICA OVERSEAS CORP., HALLOWELL, MAINE, DOCKET NO. 4116; applicant failed to signify desire to proceed with hearing; application denied as in default, on February 8, 1939.
- CHARLESTON BROADCASTING CO. (WCHS), CHARLESTON, W. VA., DOCKET NO. 4420; application dismissed without prejudice at request of applicant on February 11, 1939.
- ESTELLE P. CHAPMAN AND EVERETT L. CHAPMAN (WMSD), SHEFFIELD, ALABAMA, DOCKET NO. 5414; application dismissed without prejudice at request of applicant, on February 20, 1939.
- BIRNEY IMES, COLUMBUS, MISSISSIPPI, DOCKET NO. 5455; application dismissed without prejudice at request of applicant, on February 24, 1939.

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Application for a new broadcast station denied when area proposed to be served was shown to be well supplied with radiobroadcast facilities. *Bellingham Publishing Co.*, 31.

In granting application for new radiobroadcast station the Commission considered service available to the area proposed to be served. *Kentucky Broadcasting Corp.*, 776.

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ALLOCATION OF FREQUENCIES.

Question of economy of frequency space through use of radiotelephony for press transmissions considered. *Press Wireless, Inc.*, 480.

Frequencies available for assignment to broadcast stations are limited in number; the facts showed no need for an additional station in the area proposed to be served, if operated on the basis of the program service offered by the applicant; found that the public would be best served, where need exists, by those who will render a broad, general, public service: *Held*, that the granting of the application would not serve the public interest, convenience, or necessity. *Food Terminal Broadcasting Co.*, 271.

ALLOCATION PRACTICE. See also **NEED FOR BROADCAST SERVICE; HAVANA AGREEMENT.**

Failure of applicant to make a showing of need for broadcast service in a particular area sufficiently compelling to warrant a departure from the policy of the Commission to follow accepted engineering standards of good allocation practice considered by the Commission in denying an application for new or increased broadcast facilities. *El Paso Broadcasting Co.*, 86.

Increased facilities granted broadcast station in view of the compelling public need, in the area proposed to be served by the applicant, for primary nighttime service proposed to be rendered by the applicant, which justifies the Commission in departing from its usual allocation standards applicable to a local station such as the applicant's, and also justifies the Commission in granting the increased facilities although there will be slight interference to the service of an existing station. *Radio Station WMFR, Inc.*, 195.

Increased facilities granted broadcast station when it was shown that although the proposed service of applicant would be limited to its 4 mv./m. contour, a paramount need existed for the service proposed by the applicant in which case Commission is justified in departing from its usual allocation values by granting the application. *City Broadcasting Corp.*, 250.

A departure from the usual allocation practice approved by the Commission when there was found to exist an urgent public need for the broadcast service proposed. *Rock Island Broadcasting Co.*, 313.

Applicant applied for a regional frequency; under the facts of record no such need was shown as would have justified the Commission in departing from applicable standards distinguishing, respectively, between the proper

ALLOCATION PRACTICE—Continued.

use of local and regional frequencies; the only need proved, if any, was for a local station; *Held*, that the granting of the application would not serve the public interest, convenience, or necessity. *Citizens Broadcasting Corp.*, 669.

Applicant applied for a regional frequency; operating as proposed it would have limited the operation of an existing station to its 1.5 mv./m. contour at night; and the proposed station would have been limited to its 3 mv./m. contour at night; a regional station is generally expected to render a nighttime service to its 1 mv./m. contour; no facts were proved sufficient to justify the Commission in departing from the basis of allocation; *Held*, that the granting of the application would not serve the public interest, convenience or necessity. *Citizens Broadcasting Corp.*, 669.

Applicant applied for a regional frequency; its station operating as proposed would be limited well within its 1 mv./m. contour to which it would be expected to serve at night and it would limit an existing station operating on a regional frequency approximately to its 1.5 mv./m. contour at night; no such facts respecting need were proved as would justify the allocation of a regional frequency where such limitation by reason of interference would result; *Held*, that the granting of the application would not serve the public interest, convenience, or necessity. *Hampton-Hampshire Corp.*, 669.

Applicant applied for a regional frequency; such a frequency should afford a nighttime service out to the 1 mv./m. contour; on facts of record existing stations on regional frequencies would limit the nighttime service of the proposed station so far within its 1 mv./m. contour as to render the allocation of the frequency sought unwarranted for the service the applicant would be able to render at night under the limitation mentioned; such allocation would, upon the record, result in inefficient use of the frequency sought; *Held*, that the granting of the application would not serve the public interest, convenience or necessity. *Thomas J. Watson*, 669.

Application for a new daytime regional broadcast station denied when decided that it would be poor allocation to assign a regional frequency to a station to serve a city with a population of but 5,000 with sparsely settled rural districts contiguous thereto. *Pacific Radio Corporation*, 475.

In determining the allocation of local broadcast facilities consideration should be given only to interference resulting from ground waves during daytime hours. *Albert Lea Broadcasting Co.* 579.

Application for new regional daytime broadcast station denied when it was found that the applicant proposes a service usually rendered by local stations and when it was found that the station would be so located that it would not be definitely associated with any one city and the area contiguous thereto, but would attempt to serve the residential areas of three cities, and it was held that a grant of the application would not be in conformity with good allocation practice. *Florida West Coast Broadcasting Co., Inc.*, 588.

AMENDMENT TO APPLICATION FOR BROADCAST FACILITIES.

Engineering report embodying revised pattern of directive antenna and verification of facts contained in such report considered by the Commission as an amendment. The imperfections in form and manner of filing contrary to its rules relating to amendments, were waived by the Commission since all parties were given the right to be heard, offer testimony and cross examine witnesses at a further hearing held upon the application as amended by such engineering report. *City Broadcasting Corp.*, 250.

ASSIGNMENT OF BROADCAST LICENSE. See also TRANSFER OF CONTROL.

Application for consent to voluntary assignment of broadcast license granted when shown that the proposed assignee was qualified in all respects to assume the ownership and operation of the station. *Karl L. Ashbacher*, 111.

Approval of voluntary assignment of broadcast license granted when evidence indicated that the licensee, because of inexperience in the management and operation of a radio station, was practically unable to continue the operation of the station. *Anna Atkinson, Bæocutria*, 155.

Application for consent to voluntary assignment of broadcast license granted to a present licensee using the same frequency when shown that the proposed consolidation of the stations would result in a more economical and efficient use of the assigned facilities, and in utilization of additional sustaining programs. *Fifth Avenue Broadcasting Corp.*, 202.

Voluntary assignment of license granted when it appeared that the proposed assignees were legally, technically, and financially qualified to continue the operation of the station; that a meritorious program service designed to meet the needs of the area served would be rendered by the station and that granting the application would serve the public interest. *W. W. McAllister et al.*, 223.

Approval for voluntary assignment of broadcast license given when shown that the transfer of the license would improve the financial standing of the station, and when it appeared that the same policy of the station will be followed. *Harold F. Gross*, 333.

Application for consent to assignment of broadcast license granted when shown that the proposed assignee would materially improve the program service of the station. *Herbert Lee Blye*, 383.

Application for consent to assignment of broadcast license denied when record showed that previous entry into a lease agreement by assuring a reversion of the license to the lessor at the termination of the lease is in contravention of Sections 309 (b) (1) and 410 (b) of the Act; and when it appeared that the lease provisions referred to may not only mislead the parties to it, but also restrain others from applying for the use of the frequency covered by the license should the assignee fail in its duty to the public or cease to operate the station licensed. These facts precluded a finding that the assignment of license would serve public interest. *The Associated Broadcasters, Inc.*, 718.

Commission's consent to voluntary assignment of broadcast license denied when no evidence in the record to show that any benefit would accrue to the public through a grant of the application under consideration; that the existing licensee is better qualified financially to continue the operation of the station; and that the assumption of obligations on the part of the proposed assignee far in excess of the actual value of the property to be received might encourage overcommercialization of the station's activities. *The Travelers Broadcasting Service Corp.*, 456.

Application for consent to voluntary assignment of broadcast license granted when shown that proposed assignee not only was peculiarly fitted to operate the station in the interests of the community, but that he also contemplated an improvement of the program service of the station. *E. F. Sapp et al.*, 521.

Application for authority to voluntarily assign license of broadcast station granted when it was shown that under the proposed ownership and management, the broadcast service of the station would be materially improved. *Magnolia Petroleum Company*, 605.

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ASSIGNMENT OF BROADCAST LICENSE—Continued.

Application for consent to voluntary assignment of broadcast station license denied when found that assumption of obligations by proposed assignee which are far in excess of the actual value of the property to be received, might encourage the overcommercialization of the station's activities, leading to an ultimate detriment in the service rendered to the listening public. *The Travelers Broadcasting Service Corp.*, 456.

Application for consent to the transfer of control of licensee of broadcast station granted when it was found such transfer would be in the public interest. *Roy L. Albertson*, 613.

Application for consent to transfer control of broadcast licensee corporation granted where the same would serve public interest. *Albert Steinfeld and Co.*, 714.

Application for authority to voluntarily assign license of an existing station granted where it was shown that said grant would serve the public interest. *Magnolia Petroleum Co.*, 605.

AUTHORITY OF THE COMMISSION TO DECIDE JURISDICTIONAL QUESTIONS. See EXTENSION OF LINES.

BROADCAST STATION EQUIPMENT.

Equipment proposed to be used by applicant for new or increased broadcast facilities found to be in compliance with the Commission's requisites. *Oregon Radio, Inc.*, 11; *Michigan State College*, 17; *Pacific Agricultural Foundation, Ltd.*, 28; *Iowa Broadcasting Company*, 227; *Troy Broadcasting Co., Inc.*, 250; *Rock Island Broadcasting Company*, 313; *Tribune Printing Co.*, 322; *H. Wimpy*, 336; *WHBY, Inc.*, 438; *Press Publishing Co.*, 442; *WHP, Inc.*, 493; *W. C. Ewing*, 122; *Martin R. O'Brien*, 126; *Harry M. Ayers*, 152; *Carolina Advertising Corp.*, 230; *Joe L. Smith, Jr.*, 352; *Havens & Martin, Inc.*, 237.

Equipment proposed to be used by applicant for increased broadcast facilities found to be in compliance with the Commission's engineering requirements. *Astoria Broadcasting Company*, 108; *Interstate Broadcasting Corp.*, 415.

Equipment proposed to be used by applicant for new broadcast station found to be in compliance with the Commission's engineering requirements. *The Metropolis Company*, 425; *P. W. Spencer*, 558.

Equipment proposed to be used by the applicant for a new local broadcast station found to be in compliance with the Commission's engineering requirements. *State Broadcasting Corp.*, 502.

Application for a new broadcast station granted where proposed technical equipment was found to comply with the engineering requirements of the Commission. *Capitol Broadcasting Co.*, 72.

Equipment proposed to be used by applicant for new broadcast facility found to be in compliance with technical requirements of the Commission. *Eastern Carolina Broadcasting Co.*, 736; *State Capitol Broadcasting Association*, 697; *The South Bend Tribune*, 783.

Equipment proposed to be used by applicant for increased broadcast facilities found to be in compliance with the technical requirements of the Commission. *Agricultural & Mechanical College of Texas*, 697; *Richard Austin Dunlea*, 740; *C. G. Hill et al.*, 684.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY.

Acquisition of the properties of the Dugger Mutual Telephone Company by the Indiana Bell Telephone Company is of advantage to the persons to whom service is rendered and in the public interest where duplication of exchanges

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CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY—Continued.
will be eliminated and complete telephone service made available to all of the subscribers of both exchanges. *Indiana Bell Telephone Co.*, 63.

Public convenience and necessity is served by the granting of an application to acquire and operate the telephone properties of a subsidiary company where the acquisition will give the applicant direct ownership of the properties instead of control through stock ownership and thus simplify the corporate structure of the telephone system. *Southwestern Bell Telephone Co.*, 594.

CIRCUIT, TRANSMISSION OF MESSAGES OVER OR BY MEANS OF.
See EXTENSION OF LINES. CLASSIFICATION OF TELEPHONE COMPANIES.

In General: The phrase "directly or indirectly controlling or controlled by or under direct or indirect common control with," as used in Section 2 (b) (2) of the Communications Act, contemplates a mixed question of law and fact to be determined in each case. *Milton and Milton Junction Telephone Co.*, 131; *North-West Telephone Co.*, 138; *Norfolk and Carolina Telephone and Telegraph Co.*, 432.

Held subject to all provisions of the Communications Act: *Milton and Milton Junction Telephone Co.*, 131; *North-West Telephone Co.*, 138; *Norfolk and Carolina Telephone and Telegraph Co.*, 432.

Burden of Proof: Burden is upon the carrier claiming exemption under Section 2 (b) (2) of the Act to show that it comes within the exception provided in the Statute. *Milton and Milton Junction Telephone Co.*, 131; *North-West Telephone Co.*, 138; *Norfolk and Carolina Telephone and Telegraph Co.*, 432.

Control: Congress has recognized that there are many ways in which actual control may be exerted, such as stock ownership, leasing, contract, and agency. Congress also recognized that control may be exercised through ownership of a small percentage of the voting stock of a corporation, either by the ownership of such stock alone or through such ownership in combination with other factors. (*Rochester Telephone Corporation v. United States*, 24 Fed. Sup. —) *Milton and Milton Junction Telephone Co.*, 131; *North-West Telephone Co.*, 138; *Norfolk and Carolina Telephone and Telegraph Co.*, 432.

In the use of the word "control" in Section 2 (b) (2) of the Act, Congress meant actual as well as legal control and intended the term to include the power to exercise control either negatively or affirmatively, directly or indirectly. *Milton and Milton Junction Telephone Co.*, 131; *North-West Telephone Co.*, 138; *Norfolk and Carolina Telephone and Telegraph Co.*, 432.

It is a well known principle of law that control of a corporation rests with its stockholders. *Norfolk and Carolina Telephone and Telegraph Co.*, 432.

Wire Facilities Furnished to Broadcasting Stations: Although this Commission has exclusive regulatory jurisdiction over wires and wire service furnished by a telephone carrier to a broadcasting station, even though such wires are wholly within the confines of a single state, the furnishing of such service does not change the status of the carrier which might otherwise be classified as a connecting carrier. *North-West Telephone Co.*, 138.

CLEAR CHANNEL FREQUENCY.

Application for modification of license to permit a change to a clear channel frequency and to increase hours of operation denied. *Massachusetts Broadcasting Corp.*, 843.

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COASTAL HARBOR STATIONS.

Public interest, convenience and necessity would be served by granting application to establish coastal harbor radiotelephone station at Port Sulphur, Louisiana, to serve New Orleans and vicinity. *Southern Bell Telephone & Telegraph Co.*, 712.

Application for coastal harbor radiotelephone station denied where applicant has failed to show that effective service would be rendered to the public by the proposed station. *City of Seattle*, 620.

COMMERCIAL SUPPORT FOR BROADCAST STATION.

Application for new broadcast station denied when there was not sufficient evidence in the record to indicate that there were adequate sources of commercial support available in the area to be served to insure the successful operation of two broadcast stations. *Curtis Radiocasting Corp.*, 7.

Application for a new broadcast station granted when sufficient economic support was shown in area to be served for proposed station and an existing station located therein. *Kanawha Valley Broadcasting Co.*, 53; *Capitol Broadcasting Co.*, 72.

Application for new broadcast station granted when the evidence shows that there will be sufficient commercial support to insure the continued operation of the station. *Richard M. Casto, et al.*, 114; *R. H. Nichols, et al.*, 244; *Broadcasters, Inc., et al.*, 206.

Application for new broadcast station granted when the evidence indicated that there are sufficient potential sources of advertising available in the area to support the proposed local broadcast station in addition to the existing regional station located in the city. *Y. W. Scarborough and J. W. Orvin*, 186.

Application for new broadcast station granted when the evidence indicated that there are sufficient potential sources of advertising available in the city to support a local broadcast station. *Havens & Martin, et al.*, 287.

Application for new local daytime broadcast station granted when it was shown that there would be sufficient commercial support from local merchants to assure the continued operation thereof. *P. W. Spencer*, 558; *Joe L. Smith, Jr.*, 352.

Application for new broadcast station granted where the station would receive commercial support of the merchants in the area proposed to be served. *Eastern Carolina Broadcasting Co.*, 736; *Kentucky Broadcasting Co.*, 776.

Application for a new daytime regional broadcast station denied when applicant failed to show sufficient commercial support to assure the continued operation thereof. *Pacific Radio Corp.*, 475.

One of two applications for a new local broadcast station in the same city was granted when it was shown that one applicant would receive sufficient advertising support from local merchants to assure the continued operation of the station proposed by it. *W. C. Irvin, et al.*, 507.

Application for a new local broadcast station denied when the applicant failed to show sufficient commercial support to insure the continued operation thereof. *State Broadcasting Corp.*, 502; *Roberts-MacNab Co.*, 548.

Application for increased facilities of broadcast station granted where it appears proposed station will receive commercial support from the merchants in the area to be served. *Richard Austin Dunlea*, 740.

COMMON CARRIERS.

Upon complaint filed on behalf of one telephone carrier asking that another telephone carrier be required to establish a physical connection, *Held*, that the

COMMON CARRIERS—Continued.

establishment of the physical connection requested was not necessary or desirable in the public interest, under the facts presented. *Oklahoma-Arkansas Telephone Co. v. Southwestern Bell Telephone Co.*, 809.

COMPETING APPLICATION FOR BROADCAST FACILITIES.

One application for increased broadcast facilities preferred over another when it was found that a greater need existed in the area to be served by one applicant than in the area proposed to be served by the other. *Oregon Radio, Inc.*, 11.

Application for new broadcast station denied when applicant was not shown to have sufficient familiarity with the needs of the area to be served and where a grant of said application would preclude the granting of a competing application where a need existed for the service proposed by the latter and where the latter applicant was shown to be qualified to fulfill said need. *C. Frank Walker*, 72.

Application for a new broadcast station of the regional classification denied when no need was shown for service of this character and the local station proposed by a competing applicant for broadcast facilities in the same city would supply an existing need for the latter type of service. *Burl Vance Hedrick*, 79.

One of two applications for broadcast station in the same city granted when it was found that the station proposed by one would have a greater daytime power and coverage and less limitation at night than the other, and the granting thereof would thereby develop a better competitive situation. *Carolina Advertising Corp., et al.*, 230.

Application for a new broadcast station preferred over another when it was found that the city in which the preferred applicant proposed to operate was in greater need for the new broadcast service. *Lawrence K. Miller*, 250; *Troy Broadcasting Co., Inc.*, 250.

Application for modification of license denied where public interest, convenience, and necessity would be served by continuing in effect a construction permit previously granted to another applicant. *Agricultural & Mechanical College of Texas*, 697.

Application for modification of construction permit granted where proposed station would render satisfactory service even though the granting of the application resulted in the denying of a competing application. *State Capitol Broadcasting Association*, 697.

Application for construction permit and modification of license which if granted would remove another station from the air denied where there is no showing of inadequacy on the part of the station proposed to be removed from the air. *Agricultural & Mechanical College of Texas*, 697.

COMPETITION BETWEEN BROADCAST STATIONS.

Application for permit to construct a new broadcast station denied where applicant is now the owner of two part-time broadcast stations in the area proposed to be served, such stations operating on the same frequency, with hours of operation so arranged as to provide continuous broadcast service on the same channel. *King-Trendle Broadcasting Corp.*, 783.

Application for new broadcast station denied where the applicant is now the owner of one of two newspapers of general circulation in the area proposed to be served, and the licensee of two part-time broadcast stations in the same city. *The South Bend Tribune*, 783.

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COMPETITION BETWEEN BROADCAST STATIONS—Continued.

Application to change from a local to a regional frequency denied when it appeared that a grant thereof would not have the effect of establishing or of augmenting competitive conditions, based upon the fact that the applicant company is controlled by a corporation which also owns controlling interest of the corporation that is licensee of the only other broadcast station in the city, and when a compelling need for the proposed service was not shown to exist. *L. L. Coryell, Sr., et al.*, 282.

COMPETITION, EFFECT OF, AS FACTOR FOR CONSIDERATION IN ADMINISTRATION OF SEC. 214.

See EXTENSION OF LINES.

CONSTRUCTION PERMIT.

Broadcast Station, New: *Held*, that the granting of an application for construction permit to establish a new local radiobroadcast station would serve public interest, convenience, and necessity, when the applicant was qualified in all respects to undertake and complete the construction involved, interference with existing radiobroadcast stations or stations contemplated in pending applications would not result, and the radiobroadcast service already supplied the area sought to be covered was inadequate. *Williamson Broadcasting Corp.*, 665.

Application for construction permit to erect a new broadcast station granted. *Kanawha Valley Broadcasting Co.*, 53; *Kentucky Broadcasting Corp.*, 776; *Troy Broadcasting Co., Inc.*, 250; *Piedmont Broadcasting Corp.*, 79; *Eastern Carolina Broadcasting Co.*, 736; *Capitol Broadcasting Co.*, 72; *S. B. Quigley*, 705.

Application for a construction permit to erect a new broadcast station denied. *Floyd A. Parton*, 3; *Curtis Radiocasting Corp.*, 7; *Bellingham Publishing Co.*, 31; *C. Frank Walker*, 72; *Burl Vance Hedrick*, 79; *El Paso Broadcasting Co.*, 86; *World Publishing Co.*, 86; *The Tribune Co.*, 86; *Lawrence K. Miller*, 250; *The South Bend Tribune*, 783.

Application for modification of a construction permit for a new broadcasting station granted. *State Capitol Broadcasting Association*, 697.

Application for construction permit to erect a new broadcast station denied when it was shown that the proposed station would be limited to its 4.3 mv./m. contour at night. *William F. Huffman*, 688.

Increased Facilities for Broadcast Stations: Application by broadcast station for increased facilities granted. *Oregon Radio, Inc.*, 11; *Michigan State College*, 17; *Pacific Agricultural Foundation, Ltd.*, 28; *University of Illinois*, 48; *Iowa Broadcasting Co.*, 227; *WLBG, Inc.*, 67; *Rock Island Broadcasting Company*, 313; *Tribune Printing Co.*, 322; *H. Wimpy*, 336; *WHBY, Inc.*, 438; *Press Publishing Co.*, 442; *WHP, Inc.*, 493; *WDZ Broadcasting Co.*, 543; *Milwaukee Broadcasting Co.*, 442; *Richard Austin Dunlea*, 740.

Application by broadcast station for increased facilities denied. *Westcoast Broadcasting Co.*, 11; *KGKL, Inc.*, 86; *Liner's Broadcasting Station, Inc.*, 159; *E. F. Pepper*, 554; *C. G. Hill et al.*, 684; *Agricultural & Mechanical College of Texas*, 697; *Massachusetts Broadcasting Corp.*, 843.

Held, that a grant of application for permit to install new transmitter and increase power would not serve public interest, convenience, and necessity. *Warner Brothers*, 752.

COVERAGE OF BROADCAST STATION.

Application for increased facilities of broadcast station denied where station operating as proposed would not be able to serve, at night, the city in which the station is located. *C. G. Hill et al.*, 684.

DEFAULT.

Application by broadcast station for increased facilities denied when applicant failed to submit evidence in support of his application. *Juan Pisa*, 617.

Application by broadcast station denied as in default when applicant failed to appear and offer evidence in support of its application. *Frank L. Hill*, 868.

Application for Broadcast Station, New: Application for new broadcast station denied as in default when applicant failed to appear at the hearing and offer evidence in support of its application. *Broadcasters, Inc., et al*, 206; *Kathryn B. Gosselin*, 865; *Four Lakes Broadcasting Co.*, 865; *W. A. Steffes*, 868; *George H. Payne*, 868; *Havens & Martin, Inc., et al.*, 237.

DISCRIMINATION.

Held, that the record before the Commission contained no evidence which would warrant a finding that a discrimination, as contemplated by Sec. 202 (a) of the Act, existed. *Oklahoma-Arkansas Telephone Co. v. Southwestern Bell Telephone Co.*, 809.

DISMISSAL. See CASES DISMISSED OR DENIED AS IN DEFAULT, page 835.

DISMISSED WITH PREJUDICE.

Application for Broadcast Station, New: Application for a new broadcast station dismissed with prejudice; motion for dismissal without prejudice overruled. *United States Broadcasting Co.*, 867.

EFFICIENT USE OF BROADCAST FACILITIES.

Expert testimony to the effect that the use of 250 watts for daytime operation only on a clear channel frequency such as proposed by applicant would not be an economical use of such frequency considered by the Commission in denying an application for a new broadcast station. *Floyd A. Parton*, 3.

Application for new broadcast station denied when station operating as proposed will be subjected to severe limitation during nighttime hours of operation. *The South Bend Tribune*, 783.

EMERGENCY SERVICE.

Proposed use of radio facilities by a public utility electric power system during breakdowns in wire communication facilities, to aid in restoration and maintenance of electric service, deemed an emergency use within contemplation of Commission's rules and regulations. *Southern California Edison Co. Ltd.*, 693.

EQUITABLE DISTRIBUTION OF RADIO FACILITIES.

Application for new broadcast station denied when it appeared that the community proposed to be served already had assigned to it an equitable share of broadcast facilities of the regional classification, as contemplated by Section 307 (b) of the Communications Act. *The Tribune Co.*, 86.

Under the provision of Section 307 of the Communications Act of 1934, as amended, the granting of applications so as to provide "fair, efficient and equitable distribution of radio service" to each of the communities in the United States is to be governed by the sound discretion of the Federal Communications Commission and cannot be limited by private contracts or agreements between licensees of radiobroadcast stations or applicants therefor. *State Capitol Broadcasting Association*, 697.

Application for modification of construction permit granted when found to result in an equitable distribution of radio facilities. *State Capitol Broadcasting Association*, 697.

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EQUITABLE DISTRIBUTION OF RADIO FACILITIES—Continued.

Application for increased facilities of broadcast station granted when it appears that the grant will provide an equitable distribution of radio service as contemplated in the Communications Act. *Richard Austin Dunlea*, 740.

Application for new broadcast facilities granted when it appeared that said station will provide a better balance in the broadcast facilities authorized in the City of Louisville and its metropolitan district. *Kentucky Broadcasting Corp.*, 776.

EVIDENCE.

Held, that although the legality of certain acts of common carriers has been litigated and finally decided by courts of competent jurisdiction and is *res adjudicata* in so far as the rights of the carriers are concerned, such acts may nevertheless affect the public interest and, if so, are of evidentiary value and will be considered by the Commission where it is the public interest rather than the rights of the carriers which is at issue. *Oklahoma-Arkansas Telephone Co. v. Southwestern Bell Telephone Co.*, 809.

In determining whether a physical connection between telephone carriers engaged in interstate communication is necessary or desirable in the public interest, within the contemplation of Section 201 (a) of the Act, *Held*, that the Commission is not limited to a consideration of the facts and occurrences arising since the enactment of the Communications Act, but may consider evidence concerning events prior thereto in so far as they affect the present necessity or desirability of the proposed connection. *Oklahoma-Arkansas Telephone Co. v. Southwestern Bell Telephone Co.*, 809.

EVIDENCE, ADMISSIBILITY OF. *See* EXTENSION OF LINES.

EXISTING FACILITIES.

Application for new broadcast station denied where applicant is the licensee of two existing part-time broadcast stations operating in the area proposed to be served, the hours of which are so arranged that the licensee, through both stations, can furnish continuous service. *The South Bend Tribune*, 788.

EXPERIMENTAL AUTHORIZATION.

Applicant sought permission to construct a new experimental broadcast station; failed to show that he had a definite plan of research and development requiring the frequency assignments sought; and failed to show that he or his technical staff was qualified to undertake a program of experimentation: *Held*, that the granting of the application would not serve the public interest, convenience, or necessity. *Juan Piza*, 617.

EXPERIMENTAL HIGH FREQUENCY BROADCAST STATIONS. *See* RENEWAL OF BROADCAST LICENSE.

EXPERIMENTAL VISUAL BROADCAST STATIONS. *See also* TELEVISION.

Application for new experimental visual broadcast station granted when it was found that applicant was possessed of requisite legal, financial, and technical qualifications; that applicant has a program of research and experimentation which should contribute to the television art; that the research will be directed toward use of Cathode Ray Television Systems; that the application could be granted under the Commission's rules governing such stations; and that the station proposed will not be expected to cause interference to any existing station. *Allen B. DuMont Laboratories, Inc.*, 410.

EXTENSION OF EFFECTIVE DATE.

Request for stay of effective date of order denying application for extension of special temporary experimental authorization to permit applicant "effectively to avail itself of any remedies which may be open to it" *denied*. Grant of such authorization is a function that Congress has committed solely to the Commission. *The Orosley Corp.*, 796.

EXTENSION OF LINES.

Certificate of convenience and necessity required for telegraph carrier to acquire by lease or otherwise the facilities or the right to use the facilities of another carrier and to operate same so as to extend its public telegraph service to an area not theretofore served by it.

Exclusive use of physical line plant is not a proper test of applicability of Section 214 of the Act.

Construction or interpretation of a statute which defeats or invites evasion of purposes prompting its enactment, not favored.

Competitive effect upon carriers already serving an area is a factor for consideration when another carrier undertakes to extend its service to such area. Commission not limited to question as to whether or not extension involves improvident expenditures. Act does not require competition which does not serve public interest, convenience, and necessity.

The Mackay Radio and Telegraph Company's extension of public telegraph service between Washington and Baltimore by leasing and operating a wire telegraph circuit from Postal Telegraph-Cable Company, without first securing certificate of convenience and necessity, held to be in violation of Section 214 of the Act.

Commission has authority to conduct hearings and investigations and to promulgate advisory decisions and opinions as to its jurisdiction under the statutes it is charged with administering.

Certain evidence objected to held admissible on issues as to advisability of additional Commission rules affecting all parties to the proceedings. *Mackay Radio and Telegraph Co.*, 562.

FINANCIAL QUALIFICATIONS. See also QUALIFICATIONS OF APPLICANT.

Common carrier making application for permit to construct additional public radiotelephone station is financially qualified on basis of past operations and financial condition even though stock may be sold to finance construction. Application distinguished from original application for broadcast station. *Lorain County Radio Corp.*, 306.

FREQUENCY CHANGE WITH INCREASE OF POWER.

Applicant operated a broadcast station several years; shared time with other stations; allowed free time for charitable, civic, and social activities which was insufficient because of limited operating hours; furnished the only local service in the city and the only primary service in the business section of the city; had an operating deficit; requested a change of facilities; could operate on frequency and with power applied for without interference with the service of any other station; and showed public need for additional service proposed; application for higher frequency with more power was granted. *Peter Goelet*, 708.

HARMONICS.

Increased Facilities for Broadcast Station: Increased power granted broadcast station where proposed operation would eliminate difficulties resulting from harmonics to the services of Army and Navy receiving stations and to an aircraft station. *Columbia Broadcasting System, Inc.*, 643.

HAVANA AGREEMENT.

The allocation standards proposed by the Havana agreement are applicable when the said agreement becomes effective between the countries involved and not to domestic allocation problems. *State of Wisconsin, Dept. of Agriculture and Markets, 357.*

HEARINGS. See **EXTENSION OF LINES.**

HOURS OF OPERATION FOR BROADCAST STATIONS.

Increased hours of operation granted broadcast station when public need existed for the additional service proposed. *Associated Broadcasters, Inc., 718.*

INTERFERENCE. See **ALLOCATION PRACTICE.**

In General: Where it appears that other frequencies than the one specified in the application would be required for the establishment of an effective service, Commission cannot determine interference problems which may arise in connection with use of frequencies not specified. *Press Wireless, Inc., 480.*

Showing as to need not sufficient to outweigh expected objectionable interference. *William F. Huffman, 688.*

Application for new broadcast station granted where it is found that the station operating as proposed will neither cause objectionable interference to nor receive objectionable interference from any existing broadcast station. *Eastern Carolina Broadcasting Co., 736.*

Application for increased facilities for broadcast station granted where station operating as proposed will serve a much larger area even though the station operating as proposed will receive interference within its normally protected contours. *Richard Austin Dunlea, 740.*

Application for increased power by broadcast station granted when it appeared that the proposed operation would improve interference conditions. *Milwaukee Broadcasting Co., 756.*

Between Applications Mutually Exclusive: A choice was made by the Commission between two applications for the same facilities in the same city where a grant of both applications would result in ruinous interference. *Richard M. Casto, et al., 114; Havens & Martin, Inc., et al., 237.*

Canadian: Application by broadcast station for increase in power denied when it was shown that there would be mutual interference at night between applicant's station and a Canadian station to the approximate 6 mv./m. contour of each station. *Scranton Broadcasters, Inc., 58.*

Existing Conditions: Applicant required to arrange for joint use of frequency requested with existing coastal harbor station already licensed to use that frequency so as to avoid interference. *Lorain County Radio Corp., 306.*

Application by limited time broadcast station to operate unlimited hours granted when no objectionable interference would be expected to result from the operation as proposed. *Associated Broadcasters, Inc., 718.*

From Existing Licensees: Although applicant station operating as proposed will be limited to its 1.6 mv./m. contour, public interest, convenience, and necessity would be served by the granting of the application in view of the public need shown by the applicant. *Oregon Radio, Inc., 11.*

Application for new broadcast station denied where station operating as proposed would receive severe interference during nighttime hours of operation. *The South Bend Tribune, 783.*

Increased facilities denied broadcast station when, during nighttime hours, severe limitations would be expected to be imposed upon the proposed service area. *American Broadcasting Corporation of Kentucky, 653.*

INTERFERENCE—Continued.

Increased power and change in frequency granted broadcast station in view of the enlarged useful service area which is expected to receive substantial benefits from the program service proposed although the proposed nighttime operation of applicant's station will be somewhat restricted by the signal from existing stations. *WLBG, Inc.*, 67.

New or increased broadcast facilities denied applicant when during nighttime hours applicant station would be limited within its normally protected service area. *World Publishing Co.*, 86; *El Paso Broadcasting Co.*, 86; *The Tribune Co.*, 86; *KGKL, Inc.*, 86.

Application for new broadcast station denied when the normally protected good service area of the proposed station would suffer from interference from an existing broadcast station. *Young People's Association for the Propagation of the Gospel*, 178.

Application for new broadcast station granted even though the proposed station would be limited by objectionable interference at night to its 2.8 mv./m. contour by an existing station. *Y. W. Scarborough and J. W. Orvin*, 186.

Application for a new broadcast station denied when found that operation of station would be limited at night by an existing station to its approximate 7 mv./m. contour. *Madison Broadcasting Co.*, 216.

One of two applications for broadcast station in the same city denied when it was found that it would be limited at night to its approximate 3.3 mv./m. contour, whereas the other proposed station would be expected to render interference-free service to its 2 mv./m. contour and thereby insure a greater coverage. *Carolina Advertising Corp., et al.*, 230.

Application for new regional broadcast station denied when it was found that the operation thereof would be limited at night within the 3 mv./m. contour by interference from other stations. *L. L. Coryell, Sr., et al.*, 232.

Application to change from a local to a regional frequency granted even though station would be limited at night within its 4 mv./m. contour when it was shown by the applicant that a compelling need therefor existed in the area. *L. L. Coryell, Sr., et al.*, 232.

Increased facilities granted broadcast station when an urgent public need was shown for the operation of applicant's station as proposed which outweighs the fact that the station signal will be limited to its 4.8 mv./m. contour by the operation of another station. *Rock Island Broadcasting Co.*, 313.

Application for increased facilities granted broadcast station when it was shown that although the station operating as proposed would be limited at night within its normally protected 2 mv./m. contour, sufficient need was shown to warrant the Commission in granting the application. *Tribune Printing Co.*, 322.

Application for new local broadcast station granted when it was found that the operation of the station would not be limited by interference from any existing station. *Joe L. Smith, Jr.*, 352.

Application for new regional broadcast station denied when it was found that the operation thereof would be limited by interference from existing stations within its 4 mv./m. contour and when applicant failed to show that the need therefor was sufficiently compelling to justify a departure from existing allocation standards. *Voice of Detroit, Inc., et al.*, 363.

Increased facilities granted broadcast station when it was shown that the station's signals will not receive objectionable interference within the normally protected contour except possibly during the last 30 minutes of the late afternoon hours. *WDZ Broadcasting Co.*, 543.

INTERFERENCE—Continued.

Application for new regional broadcast station denied when it was shown that the station would be limited at night within its 4 mv./m. contour by interference from an existing station. *Pasotucket Broadcasting Co.*, 582.

Application for increased facilities for broadcast station denied where station operating as proposed would be severely limited by existing stations. *C. G. Hill et al.*, 684.

Application of licensee of a broadcast station for increase in power granted when it was shown that the proposed operation would result in a reduction in the existing nighttime interference to the service of said station. *National Battery Broadcasting Co.*, 643.

Increased power granted broadcast station when the proposed operation would result in a material reduction in the existing interference to the service of said station. *Columbia Broadcasting System, Inc.*, 643.

Mexican: Application by broadcast station for increased facilities denied when operation with such increased facilities would be expected to cause interference to the service of Mexican stations. *KGKL, Inc.*, 86.

Mutual: An application for a broadcast station in one city was granted and the application for a station in another city was denied when it was found that the granting of both would result in mutual interference to the 2.2 mv./m. contour of each station, and that the public need for the service in one city is greater than in the other. *Richard M. Casto et al.*, 114.

An application for a new local broadcast station was granted when compelling need for the service in the city was shown, even though mutual interference to the 2.1 mv./m. contours would be expected. *Havens & Martin, Inc., et al.*, 237.

Increased facilities granted broadcast station even though applicant and another broadcast station would be limited to their 2.6 mv./m. contours at night when it appeared that both stations would be able to render satisfactory primary broadcast service to their respective communities. *H. Wimpy*, 336.

Increased facilities granted broadcast station even though applicant station would be limited to its 3 mv./m. contour by another broadcast station and the latter, in turn, be limited to its 2.5 mv./m contour when it was shown that such interference would be expected to occur at the outer edge of the service area of each station and the need shown for the proposed service was sufficient to warrant the granting of the application. *Fayette Broadcasting Corp.*, 348.

Increased facilities granted broadcast station when operation as proposed would not cause objectionable interference at night within the present interference-free service areas of applicant or that of any existing station. *Milwaukee Broadcasting Co.*, 442.

Increased facilities granted broadcast station when it was shown that applicant and an existing station now suffer mutual objectionable interference so that the population and area affected by the granting of the instant application would be negligible and sufficient need was shown to warrant the Commission in granting the application. *Press Publishing Co.*, 442.

To Existing Licensees: Application was granted and dismissed from the Hearing Docket when, pursuant to a Commission Order, the applicant furnished proof that the use of the directional antenna to be employed at night would not cause objectionable interference to any existing radio station. *Twin State Broadcasting Corp.*, 194.

Application of existing broadcast station to change frequency, increase power and hours of operation granted when operation as proposed would not be expected to cause objectionable interference to the fair and efficient service of any existing broadcast station. *Southern Broadcasting Corp., et al.*, 210.

INTERFERENCE—Continued.

Application by broadcast station for increased facilities denied when operation as proposed would be expected to cause objectionable interference to existing services. *Wescoast Broadcasting Co.*, 11; *Scranton Broadcasters, Inc.*, 58.

Application for authority to increase power denied when station, operating as proposed, would cause objectionable interference to existing stations. *Warner Brothers*, 752.

Application for increased facilities denied when it appeared that the proposed operation of the station would limit the service of an existing station to a substantial degree. *Massachusetts Broadcasting Corp.*, 843.

Increased power granted broadcast station when it was shown that the slight interference that proposed operation would cause within the normally protected service areas of two existing stations is warranted by the need for the service which the applicant proposes to render. *University of Illinois*, 48.

Increased facilities granted broadcast station in view of the compelling public need in the area proposed to be served by the applicant, for primary nighttime service proposed to be rendered, which justified the Commission in departing from its usual allocation standards applicable to a local station, and also justified the Commission in granting the increased facilities although there will be a slight interference to the service of an existing station. *Radio Station WMFK, Inc.*, 195.

Increased facilities granted broadcast station when proposed operation would not involve an increase in objectionable interference to the service of any existing station. *City Broadcasting Corp.*, 250.

Increased facilities granted broadcast station when operation as proposed would not be expected to increase the objectionable interference already received by existing broadcast stations. *WHP, Inc.*, 493.

Increased facilities granted broadcast station when operation as proposed will not involve material interference with the services of existing stations. *Albert Lea Broadcasting Co.*, 579.

Increased facilities granted broadcast station when operation proposed would not by reason of objectionable interference adversely affect the services of any other existing broadcast stations. *National Battery Broadcasting Co.*, 643.

Application to increase power for daytime operation granted where shown operation as proposed would not cause objectionable interference to any existing broadcast station, or to stations proposed in pending applications at date of hearing. *Wodaam Corp.*, 759.

Application for increased facilities granted broadcast station although operation as proposed will result in additional interference within the 0.5 mv./m. contour of an existing station, where such interference expected to exist within an area which receives a primary signal from another station broadcasting the same class of network programs as those broadcast by the station whose signals will receive interference. *Michigan State College*, 17.

Application for new daytime broadcast station denied when it was shown that the operation thereof as proposed would be expected to cause objectionable interference to another existing station within the 0.5 mv./m. contour. *Leonard A. Vershus*, 164.

One application for a new broadcast station in city granted and the other application denied when the operation of one of the proposed stations would be expected to cause objectionable interference to an existing broadcast station within its 2 mv./m. contour at night. *Carolina Advertising Corp., et al.*, 230.

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INTERFERENCE—Continued.

Application for new regional broadcast station denied when the operation thereof would be expected to cause objectionable interference to two existing stations during the daytime within their 0.5 mv./m. contours. *Colonial Broadcasting Co.*, 389.

Application for new station denied when operation as proposed would cause objectionable interference at night to an existing station within its 2 mv./m. contour. *Shirley D. Parker*, 198.

Application for new regional broadcast station denied when the operation as proposed would be expected to cause objectionable interference to another existing regional station within its 1 mv./m. contour. *L. L. Coryell, Sr., et al.*, 282.

Application for a new regional broadcast station denied when it was found that the operation thereof would be expected to cause objectionable interference to an existing station. *Voice of Detroit, Inc., et al.*, 368.

Application for broadcast station or for increased facilities denied when operation as proposed would be expected to cause objectionable interference to existing stations. *State of Wisconsin, Department of Agriculture and Markets*, 357.

Application for increased facilities of broadcast station denied when station operating as proposed would cause appreciable additional interference to existing broadcast station. *C. G. Hill, et al.*, 684.

Application for new local broadcast station denied when the operation thereof as proposed would be expected to cause objectionable interference to existing stations at night. *State Broadcasting Corp.*, 502.

Increased facilities granted broadcast station when operation as proposed would not be expected to cause objectionable interference to the fair and efficient service of any existing service. *Pacific Agricultural Foundation, Ltd.*, 28; *Astoria Broadcasting Co.*, 106; *Iowa Broadcasting Co.*, 227; *WHBY, Inc.*, 438.

Application for a new broadcast station granted when operation as proposed would not cause substantial interference to any existing stations. *Kanaioha Valley Broadcasting Co.*, 53.

Application for new broadcast station granted when the proposed operation would not cause material interference to existing broadcast stations. *Capitol Broadcasting Co.*, 72.

Application to change from a local to a regional frequency granted when the operation of station as proposed would not be expected to cause objectionable interference to the fair and efficient operation of any existing station. *L. L. Coryell, Sr., et al.*, 282.

Application for new local daytime broadcast station granted when the operation thereof would not be expected to cause objectionable interference to the fair and efficient operation of any existing station. *Emporia Broadcasting Co., Inc.*, 524; *P. W. Spencer*, 558.

Application for new broadcast station granted when operation as proposed would not be expected to cause objectionable interference to the fair and efficient service of any existing station. *W. C. Ewing*, 122; *Martin R. O'Brien*, 126; *Harry M. Ayers*, 152; *Y. W. Scarborough and J. W. Orvin*, 186; *Broadcasters, Inc., et al.*, 206; *R. H. Nichols, et al.*, 244; *Joe L. Smith, Jr.*, 352; *The Metropolis Co.*, 425; *Chester Howarth and Clarence Berger*, 489; *W. C. Irwin, et al.*, 507.

Application for modification of construction permit denied when it was shown that the proposed operation would result in the curtailment of the service area of a regional station to its 4.7mv./m. contour at night. *Columbus Broadcasting Co., Inc.*, 731.

INTERFERENCE—Continued.

Where frequencies sought by public utility operating special emergency station network have been primarily reserved to other services, authority granted to applicant to use such frequencies only upon condition that no interference be caused to existing services in order to adequately safeguard against the possibility of interference from the proposed operation. *Southern California Edison Co., Ltd.*, 693.

To Ship Stations: Application for coastal harbor radiotelephone station denied when it was shown that the proposed operation would create objectionable delay and interference in the operation of existing ship stations licensed by this Commission, as well as to ship stations licensed by the Canadian Government, such stations having a prior right to the use of the frequency in question. *City of Seattle*, 620.

To Stations Proposed by Pending Applications: Application of existing broadcast station to change frequency, increase power and hours of operation granted when operation as proposed would not be expected to cause objectionable interference to any station operating as proposed by any pending application. *Southern Broadcasting Corp., et al.*, 210.

Increased facilities granted broadcast station regardless of interference to proposed operation of a broadcast station when it appeared that such operation by the latter station would be in violation of the Commission's Rules and Regulations. *City Broadcasting Corp.*, 250.

Increased power granted to broadcast station where proposed operation would not result in objectionable interference to the services proposed in pending applications for broadcast facilities. *Columbia Broadcasting System, Inc.*, 643.

Application for a new regional broadcast station denied when operation would be expected to cause objectionable interference during the daytime to a station operating as proposed by a then pending application. *Colonial Broadcasting Co.*, 339.

Application for new broadcast station granted when operation as proposed would not be expected to cause objectionable interference to any station operating as proposed by any pending application. *Martin R. O'Brien*, 126; *Broadcasters, Inc., et al.*, 206; *R. H. Nichols, et al.*, 244; *The Metropolis Co.*, 425; *Chester Howarth and Clarence Berger*, 489.

Application for increased facilities granted where proposed operation would not adversely affect by reason of objectionable interference the services proposed in pending applications for broadcast facilities. *National Battery Broadcasting Co.*, 643.

INTERSTATE LINES, Physical Continuity no Test. See SUPPLEMENTING EXISTING FACILITIES.

INVESTIGATIONS. See EXTENSION OF LINES.

JURISDICTION OF COMMISSION OVER CONSTRUCTION OF INTRASTATE FACILITIES WHICH CONSTITUTE PARTS OF INTERSTATE LINES. See SUPPLEMENTING EXISTING FACILITIES.

JURISDICTION OF THE COMMISSION TO RENDER ADVISORY DECISIONS AND OPINIONS. See EXTENSION OF LINES.

LACHES.

Petition for Rehearing requesting Commission to set aside order denying application and hold same in abeyance pending adoption of proposed treaty denied as coming too late, where said proposed treaty was pending adoption 6 F. C. C.

LACHES—Continued.

practically the entire period of the pendency of said application and the status of said proposed treaty was a matter of common knowledge, so that the applicant could have, but did not, request that the application be held in abeyance, prior to the Commission's order denying the same. *Mrs. W. J. Virgin*, 764.

LEASE AGREEMENT.

Application for consent to voluntary assignment of broadcast license denied when record in the case showed that a grant for consent to assign the license under the provisions of the lease agreement was contrary to Sections 309 (b) (1), and 310 (b) of the Communications Act. *The Associated Broadcasters, Inc.*, 887.

LINES, EXTENSION OR OPERATION OF. See EXTENSION OF LINES.

LOCAL BROADCAST STATIONS.

Local stations should normally be protected during daytime hours to their 0.5 mv./m. contours. *Albert Lea Broadcasting Co.*, 579.

MANAGEMENT. See OWNERSHIP OF BROADCAST STATION.

MODIFICATION OF BROADCAST LICENSE.

Application for modification of broadcast license granted. *Scranton Broadcasters, Inc.*, 58; *Radio Station WMFR, Inc.*, 195; *City Broadcasting Corp.*, 250; *Fayette Broadcasting Corp.*, 348; *Milwaukee Broadcasting Co.*, 442; *Albert Lea Broadcasting Co.*, 579; *State of Wisconsin, Department of Agriculture and Markets*, 357.

Modification of broadcast license denied where the need for nighttime broadcast service is not sufficient to grant the application when due consideration is given to the limitation which would be suffered by the applicant station and the additional interference which would result to existing stations. *C. G. Hull, et al.*, 684.

Modification of license to increase hours of operation of limited time local broadcast station to unlimited hours, granted. *Associated Broadcasters, Inc.*, 718.

Application for change in frequency increasing power and use of directional antenna during nighttime hours denied. *Columbus Broadcasting Co., Inc.*, —.

Held, that applicants failed to show sufficient need for proposed increase in station power to justify the increased interference that would result to existing stations. *Warner Brothers*, 752.

MODIFICATION OF CONSTRUCTION PERMIT.

Application for modification of construction permit granted. *State Capitol Broadcasting Association*, 502.

Application by broadcast station for increased power granted when it appeared that a substantial public need existed for the proposed service and that a grant of the application would improve interference conditions. *Milwaukee Broadcasting Co.*, 756.

Application for modification of construction permit requesting change in frequency and increase in hours of operation denied. *Massachusetts Broadcasting Corp.*, 843.

MODIFICATION OF FIXED PUBLIC PRESS LICENSE.

Modification of fixed public press service license to add A-S emission denied where need for service not established, applicant's ability to render high quality

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MODIFICATION OF FIXED PUBLIC PRESS LICENSE—Continued.

radiotelephone service not conclusively demonstrated, and where service cannot be rendered effectively employing single frequency specified in application. *Press Wireless, Inc.*, 480.

NEED FOR BROADCAST SERVICE. See ALLOCATION PRACTICE.

In General: Application for a new broadcast station granted when need for same was shown to exist. *Kanawha Valley Broadcasting Co.*, 53; *Broadcasters, Inc., et al.*, 206; *Havens & Martin, Inc., et al.*, 237; *R. H. Nichols, et al.*, 244; *Kentucky Broadcasting Corp.*, 776.

Application for increased facilities granted when a need for same was shown to exist. *Richard Austin Dunlea*, 740; *Interstate Broadcasting Corp.*, 415.

Application for increased broadcast facilities granted when it was shown a need exists for the extension of daytime service of applicant station in the area proposed to be served. *Michigan State College*, 17.

Application for new broadcast station was granted when a need for the service was found to exist, based on the complete lack of primary service in the proposed area which has an approximate population of 28,300 within the predicted 2 mv./m. contour. *W. C. Ewing and Harry Layman*, 122.

Application for a new broadcast station granted when a need was shown for the proposed service. *Capitol Broadcasting Co.*, 72.

Application for new broadcast station granted when need for service of the character proposed was shown to exist. *Piedmont Broadcasting Corp.*, 79.

Application for new broadcast station granted when a need for the service was found to exist, based upon the lack of a broadcast station in a city which has a population of 46,589. *Martin R. O'Brien*, 126.

Application for new broadcast station granted when a need for the service was found to exist, based on the complete lack of primary daytime service in the city which has a population of 22,345. *Harry M. Ayers*, 152.

Application for new broadcast station granted when area to be served does not receive primary broadcast service from any existing station. *Eastern Carolina Broadcasting Co.*, 786.

Increased facilities granted broadcast station in view of the compelling public need in the area proposed to be served by the applicant, for primary nighttime service proposed to be rendered by the applicant, which justifies the Commission in departing from its usual allocation standards applicable to a local station, such as the applicant's, and also justifies the Commission in granting the increased facilities although there will be a slight interference to the service of an existing station. *Radio Station WMFR, Inc.*, 195.

Application for new local broadcast station granted when the need for same was found to exist, based principally upon the complete lack of primary broadcast service in the city and the territory contiguous thereto. *Joe L. Smith, Jr.*, 352.

Application for new local broadcast station granted when a need for the service proposed was found to exist in the area to be served. *Garden Island Publishing Co., Ltd.*, 422; *W. C. Irvin et al.*, 507.

Application for new or increased broadcast facilities granted when a need for same was shown to exist. *Pacific Agricultural Foundation, Ltd.*, 28; *Astoria Broadcasting Co.*, 108; *Iowa Broadcasting Co.*, 227; *WHBY, Inc.*, 438; *WHP, Inc.*, 493.

Held, There is a public need in the station area for additional daytime service which would result from daytime operation with increased power as proposed. *Wodaam Corp.*, 759.

NEED FOR BROADCAST SERVICE—Continued.

Application for new daytime local broadcast station granted when a need was shown to exist for the service proposed by the applicant. *Vancouver Radio Corp.*, 452; *Emporia Broadcasting Co., Inc.*, 524; *P. W. Spencer*, 558.

Application for new regional broadcast station denied when applicant failed to show that a public need existed for the service proposed in the area to be served. *Colonial Broadcasting Co.*, 339; *Voice of Detroit, Inc., et al.*, 363.

Application by licensee of two broadcast stations for a new station in the same city denied where record fails to show the need of an additional station operated by this license. *King-Trendle Broadcasting Corp.*, 283.

Inconvenience to which listening public is placed occasioned by the necessity of shifting the dial of the receiving set in order to follow programs furnished by a licensee from two part-time stations, held not to be sufficient to justify the granting of an application of licensee to construct a new broadcast station, which would be severely limited during its nighttime hours of operation. *The South Bend Tribune*, 783.

Application for new regional daytime broadcast station denied when the applicant failed to show that a need therefor exists in the area for the service proposed. *Voice of Detroit, Inc., et al.*, 363; *Florida West Broadcasting Co., Inc.*, 588.

Application for new regional daytime broadcast station denied when applicant failed to show that a need therefor exists in the area to be served, based primarily on the fact that four existing stations serve the proposed area with primary service. *Arlington Radio Service, Inc.*, 378.

Application for new broadcast station of the regional classification denied when no need for same was shown. *Burl Vance Hedrick*, 79.

Application for new broadcast station denied when no need was shown for additional broadcast service of the character proposed. *Curtis Radiocasting Corp.*, 7; *Floyd A. Parton*, 3.

Application for new broadcast station denied when it did not appear from the evidence that a public need existed in the area for the type of additional broadcast service proposed. *Young People's Association for the Propagation of the Gospel*, 178.

Application for a new broadcast station denied when evidence failed to show a need for additional broadcast facilities in the area proposed to be served. *Bellingham Publishing Co.*, 31.

Application for new broadcast station denied when the applicant failed to show a public need for the service proposed which would justify the Commission in departing from its engineering standards and granting the application where the station would be limited within its normally protected 2 mv./m. contour at night. *Shirley D. Parker*, 198.

Application for new broadcast station denied when a public need therefor in the area was found not to exist, based principally on amount of primary service available. *Madison Broadcasting Co.*, 216.

Application for a new broadcast station denied when it was found that there was no public need in the area for the program service proposed. *Food Terminal Broadcasting Co.*, 271.

Application for new regional broadcast station denied when the need therefor was found not to be sufficiently strong to justify a departure from existing allocation standards, the proposed station would be limited within its 3 mv./m. contour by existing stations and would limit another existing regional station to its 1 mv./m. contour. *L. L. Coryell, Sr., et al.*, 282.

NEED FOR BROADCAST SERVICE—Continued.

Application for new limited time broadcast station denied when evidence disclosed a public need in the community for unlimited service. *Platt & Platt, Inc.*, 327.

Application for new local broadcast station denied when it was found that the area already is being served with primary service from five existing stations and when the applicant failed to show that the character of the programs being broadcast by these stations is not satisfactory or is not designed to meet the particular needs of the residents in the area. *State Broadcasting Corp.*, 502.

Application for new local broadcast station denied when a need therefor was not shown to exist, based principally upon the fact that the city already has primary service from three existing stations located therein and that there was no showing that the service rendered by these stations is not adequate or does not meet the requirements of the community. *Sam Klaver and Nathan Belser*, 586.

The fact that the applicant is also licensee of another broadcast station serving the entire proposed area and that a compelling need for the service proposed was not shown to exist was considered by the Commission in denying an application for a new regional daytime broadcast station. *Florida West Coast Broadcasting Co., Inc.*, 588.

Held, the granting of an application for modification of construction permit would not serve public interest, convenience, or necessity when the applicant failed to show that such public need existed for the additional service as would justify a curtailment of the present good service area of the station in some directions and that the proposed operation would result in a limitation of the service area of a regional station to its 4.7 mv./m. contour at night. *Columbus Broadcasting Co., Inc.*, 731.

Application denied for permission to construct a new broadcast station on a local channel in a community where a station on a regional channel existed, which devoted a considerable portion of its time to local broadcasting and had not failed to meet the local demand for service nor failed to broadcast matters of general public interest; the existing station was not lacking in ability to supply the demands of advertisers and the demand of performers in the community; applicant proposed a service cheaper than that rendered by the existing station but did not show the charges of that station to be unfair or unreasonable, nor that there was any public need for the proposed service. *Martin Andersen*, 690.

Comparative Showing: Application for new broadcast station granted when the public need therefor in one city outweighed the need for the service in another city. *Richard M. Casto et al.*, 114.

Application for broadcast station denied when it was found that the granting thereof would result in the curtailment of the service area of an existing station which is already rendering a highly meritorious service in an area where the public need is greater therefor than was shown to exist in the area to be served by the applicant. *Leonard A. Versluis*, 164.

Application for new broadcast station denied when it was found that, due to interference problems involved, a grant would preclude the granting of a pending application of an existing station for renewal of license, and when applicant failed to show that the public need for the proposed station in the city was sufficiently compelling to warrant the granting thereof and the deletion of an existing station in another city. *C. Bruce McConnell, et al.*, 167.

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NEED FOR BROADCAST SERVICE—Continued.

One application for new broadcast station granted and another denied when a need for one additional station only in the community was found to exist. *Carolina Advertising Corp., et al.*, 230.

Elements of Showing as to Need:

Approval for voluntary assignment of broadcast license granted when evidence indicated that need for local service outweighed the fact that the proposed assignee was a nonresident. *Anna Atkinson, Hæcuetrix*, 155.

Existing Broadcast Service.—Broadcast facilities available in the area involved, considered by the Commission in finding a need to exist for the proposed broadcast facilities. *Kentucky Broadcasting Corp.*, 776.

Broadcast service available in the area involved, considered by the Commission in finding no compelling need to exist for the proposed new or increased broadcast facilities. *El Paso Broadcasting Co.*, 86.

Existing broadcast service in the area to be served considered by the Commission in finding no need to exist for the proposed new broadcast station. *Bellingham Publishing Co.*, 31.

Increased Facilities for Broadcast Station: (See Power Increases for Broadcast Stations.) Increased power granted broadcast station in view of the nature and purpose of the service offered by the applicant to its listeners and the increased number of people within the state who would be able to receive such service. *University of Illinois*, 48.

Application to change operating assignment of broadcast station granted when public need for same was shown to exist. *Southern Broadcasting Corp., et al.*, 210.

Increased facilities granted broadcast station when it was shown that although the proposed service of applicant would be limited to its 4 mv/m contour, a paramount need existed for the service proposed by the applicant in which case Commission is justified in departing from its usual allocation values. *City Broadcasting Corp.*, 250.

Increased facilities granted broadcast station when operation as proposed will extend service of applicant station to a greatly increased population which, when considered in the light of the urgent public need shown for the service as proposed, outweighs the objection that the station's signal will be limited to its 4.8mv./m contour. *Rock Island Broadcasting Co.*, 313.

Application for increased facilities granted broadcast station when it was shown that although the station operating as proposed would be limited at night within its normally protected 2 mv./m. contour, sufficient need was shown to warrant the Commission in granting the application. *Tribune Printing Co.*, 322.

Increased power granted broadcast station when it was shown that with the proposed increase in daytime power the station would extend its service area to more than 200,000 persons living in rural sections and will increase the signal strength with which the station serves the urban population within its service contours. *WDZ Broadcasting Co.*, 543.

Application for increase in power denied where the need shown for additional broadcast service of the character proposed was not sufficient to warrant a grant of the application, in view of the severe limitations which would be expected to be imposed upon the proposed service during nighttime hours through the operation of existing broadcast stations. *American Broadcasting Corporation of Kentucky*, 653.

Increased facilities granted broadcast station even though by operation therewith applicant station would be limited to its 8 mv./m. contour by another broadcast station and the latter, in turn, be limited to its 2.5 mv./m. contour

NEED FOR BROADCAST SERVICE—Continued.

when it was shown that such interference would be expected to occur at the outer edge of the service area of each station and the need shown for the proposed service was sufficient to warrant the granting of the application. *Fayette Broadcasting Corp.*, 348.

Increased facilities granted broadcast station when it appeared that the need for the additional daytime service was sufficient to warrant the granting of the application notwithstanding the interference which would be expected to result from the operation as proposed to service of existing stations. *Press Publishing Co.*, 442.

Increased facilities granted broadcast station when interference expected to be caused by the operation as proposed was not considered sufficiently objectionable to preclude the granting of the application in view of the existing public need for the facilities requested. *Milwaukee Broadcasting Co.*, 442.

Increased facilities granted broadcast station when a public need was shown for local broadcast facilities during nighttime hours of the character proposed by the applicant. *Albert Lea Broadcasting Co.*, 579.

Application of the licensee of an existing broadcast station to operate with increased power granted where a need was shown for the proposed extension of its service. *National Battery Broadcasting Co.*, 643.

Application by broadcast station to change operating assignment denied when a sufficient public need for the increased facilities requested was not shown. *Wescoat Broadcasting Co.*, 11.

Application to change operating assignment of broadcast station denied when applicant failed to show the existence of a public need for the facilities requested. *Liner's Broadcasting Station, Inc.*, 159.

Modification of license to increase hours of limited time local broadcast station, granted when public need exists for the additional service. *Associated Broadcasters, Inc.*, 718.

Application for increased power by existing broadcast station granted when it appeared that a substantial public need existed therefor. *Milwaukee Broadcasting Co.*, 756.

Application for change of frequency and increase in hours of operation denied when it was shown that although some public need for the proposed operation existed the expected limitation would make it impossible for the station to serve that need. *Massachusetts Broadcasting Corp.*, 843.

Renewal of License: Renewal of license granted when a need was shown for the continued operation of the station in the area. *C. Bruce McConnell, et al*, 167.

Showing as to Need Sufficient to Outweigh Expected Objectionable Interference: Application for new broadcast station granted when the public need therefor was found to be of such a compelling nature as to warrant a grant even though the station would be limited at night to its 2.8 mv./m. contour. *Y. W. Scarborough and J. W. Orvin*, 186.

Application for new regional broadcast station granted even though operation thereof as proposed would be limited by interference from existing station within its expected 2 mv./m. contour when the public need therefor was found to be sufficient to justify a departure from existing allocation standards. *The Metropolis Co.*, 425.

Application for new local broadcast station granted when the need shown therefor was found to be sufficient to outweigh the objectionable interference to be expected and to justify a departure from existing allocation standards. *Chester Howarth and Clarence Berger*, 469.

NEED FOR BROADCAST SERVICE—Continued.

Application for new local daytime broadcast station granted even though the operation thereof would result in mutual interference with a station proposed by a then pending application within the 1 mv./m. contour of each station when the public need therefor was found to be sufficiently compelling to justify a departure from existing allocation standards. *P. W. Spencer*, 558.

Showing insufficient to warrant departure from allocation values: Urgent need for service must appear in order to justify a departure from fixed allocation standards and compelling reason must appear to justify deletion of existing service. *State of Wisconsin, Department of Agriculture and Markets*, 357.

Application for new broadcast station denied when it was found that the public need therefor was not sufficient to justify the Commission in departing from its present allocation standards. *William F. Huffman*, 688.

NEED FOR RADIOTELEPHONE FACILITIES.

Where existing radiotelephone facilities for handling of press traffic and program transmissions not shown to be inadequate, and applicant's proposal does not offer new or improved service, modification of license to add radiotelephone emission denied. *Press Wireless, Inc.*, 480.

Testimony considered insufficient to show a public need for proposed use of radiotelephone. *Press Wireless, Inc.*, 480.

Application for coastal harbor radiotelephone station denied where existing radiotelephone facilities have not been shown to be inadequate. *City of Seattle*, 620.

NEED FOR SERVICE PROPOSED.

The applicant operated on 1370 kc. (a local channel) with power of 100 w. and sought permission to operate on 560 kc. (a regional channel) with power of 250 w.; need for additional facilities was predicated upon prospect of increased patronage, which was not proved by substantial evidence; interference with an existing station within its interference-free service area was shown; severe interference to the proposed station was indicated; the station of the applicant was located in a city surrounded by a very thinly populated region. Held, that no need for the additional facilities sought was shown sufficient to justify the allocation of regional facilities to applicant in lieu of local facilities previously assigned. *KUJ, Incorporated*, 636.

NEED FOR SPECIAL EMERGENCY SERVICE.

Where applicant's existing facilities found inadequate to provide for emergency communication needs within territory served in connection with the maintenance of electric light and power service to the public, a need for additional facilities held established. *Southern California Edison Company, Ltd.*, 693.

OPERATION OF NEW LINES. See EXTENSION OF LINES.**OWNERSHIP OF BROADCAST STATION.**

In General: Application for Commission's consent to transfer control of broadcast licensee corporation granted to the parent corporation of the present licensee. *Memphis Commercial Appeal Co.*, 419.

Evidence in application for consent to voluntary assignment of broadcast license that title to a portion of the land and operating equipment of the station was owned by the proposed assignee weighed in granting the application. *Karl L. Ashbacher*, 111.

Application for authority to voluntarily assign license of an existing station granted where it was shown that under the proposed ownership and management the station's broadcast service would be materially improved. *Magnolia Petroleum Co.*, 605.

OWNERSHIP OF BROADCAST STATION—Continued.

Multiple: Control of the corporation submitting an application for a new broadcast station by an individual who already held a construction permit to erect a new broadcast station in the same community considered by the Commission in denying the application of such corporation. *El Paso Broadcasting Co.*, 86.

Application of licensee of two part-time broadcast stations for permit to construct a new station operating full time, which would supplant one of part-time stations, denied where, if the application were granted, licensee would remain licensee of other part-time station. *The South Bend Tribune*, 783.

Application for new broadcast station denied where the applicant therefor is the licensee of the two existing part-time stations in the city proposed to be served, both of which operate on the same frequency, the hours are so arranged as to permit continuous service. *King-Trendle Broadcasting Corp.*, 783.

Application for consent to voluntary assignment of broadcast license granted to a present licensee on the same frequency when shown that the proposed consolidation of stations would result in a more economical and efficient use of the assigned facilities. *Fifth Avenue Broadcasting Corp.*, 202.

Application for Commission's consent to transfer control of broadcast licensee corporation granted when shown that such action would place several stations of licensee on a better competitive basis. *Memphis Commercial Appeal Co.*, 419.

Application for consent to transfer of control of existing broadcast licensee corporation granted although it appeared that proposed transferee was already engaged in similar dissemination of news to the public. *Roy L. Albertson*, 603.

PHYSICAL CONNECTION.

Held, that, in the absence of other convincing evidence that a physical connection is necessary or desirable in the public interest, the Commission will not require such a physical connection between telephone carriers when it appears that the existing facilities are adequate to handle the present traffic, the service is rapid and efficient, the charges are not shown to be unreasonable, and the effect of such action would be to require the use of unneeded and inferior telephone circuits. *Oklahoma-Arkansas Telephone Co. v. Southwestern Bell Telephone Co.*, 809.

Held, that a loss of revenue to a telephone carrier, arising as a result of a past severance of a physical connection and a consequent change in the division of the telephone tolls, does not in and of itself require the restoration of the physical connection where it does not appear that the carrier's financial condition or earning power has been impaired to such an extent as to interfere with its service to the public or to require a raise in the rates to the public, and it does not appear that the public would benefit from the connection under the facts shown. *Oklahoma-Arkansas Telephone Co. v. Southwestern Bell Telephone Co.*, 809.

Held, that the record before the Commission did not show that the telephone company complaining had acquired any equitable right to a restitution of a past physical connection, and that the existence of such an equity, if established, would not in and of itself justify requiring a physical connection where it does not appear that the needs or desires of the public would be more adequately served thereby. *Oklahoma-Arkansas Telephone Co. v. Southwestern Bell Telephone Co.*, 809.

PHYSICAL LINE PLANT THEORY. See SUPPLEMENTING EXISTING FACILITIES. POWER INCREASES FOR BROADCAST STATIONS.

Coverage: (See NEED FOR BROADCAST SERVICE) Increased power granted broadcast station when it was shown that service of applicant station would be made available to a large additional population as against a relatively small population which would receive interference. *Michigan State College*, 17.

POWER INCREASES FOR BROADCAST STATIONS—Continued.

Increased power granted broadcast station when operation therewith would enable applicant to extend its service area. *Pacific Agricultural Foundation, Ltd.*, 28.

Increased power granted broadcast station where operation as proposed will render broadcast service to a more extensive area. *Richard Austin Dunlea*, 740.

Increased power granted broadcast station when it was shown that the objectionable interference that would result within the proposed service area of applicant's station from existing or proposed station is negated in importance by the increase in the number of listeners that would receive satisfactory service from the applicant's station. *University of Illinois*, 48.

Increased power and change in frequency granted broadcast station in view of the enlarged useful service area which is expected to receive substantial benefits from the program service proposed although the proposed nighttime operation of applicant's station will be somewhat restricted by the signal from existing stations. *WLBG, Inc.*, 87.

Increased power granted broadcast station when operation therewith will enable applicant to materially enlarge the number of persons presently receiving its daytime and nighttime service. *Iowa Broadcasting Co.*, 227.

Increased power and change in frequency granted broadcast station when the service of the station would be materially extended to serve a greatly increased population who did not satisfactorily receive service from the applicant. *Rock Island Broadcasting Co.*, 313.

Increased power and time of operation granted broadcast station when operation therewith would be expected to materially extend the station's useful service area to a number of listeners who did not satisfactorily receive service from applicant. *Tribune Printing Co.*, 322.

Increased power granted broadcast station when operation therewith would enable applicant to extend its service area. *H. Wimpy*, 336.

Application of an existing broadcast station for increased power granted when it was found that the station operating as proposed would serve an increased population over an extended service area. *Interstate Broadcasting Corp.*, 415.

Application of licensee of broadcast station for increase in power denied where the need shown in the area to be served for additional broadcast service of the character proposed was not sufficient to warrant a grant of the application, in view of the severe limitations which would be expected to be imposed upon the proposed service during nighttime hours through the operation of existing broadcast stations. *American Broadcasting Corporation of Kentucky*, 653.

Increased power granted broadcast station when it appeared that through the use of the same it would be able to provide all of its metropolitan area and a number of nearby communities with a serviceable signal. *WHBY, Inc.*, 438.

Increased power granted broadcast station when it appeared that urban and rural communities located in close proximity to the station would be benefited by the increased signal and better grade of service from applicant station. *Press Publishing Co.*, 442.

Increased power granted broadcast station when operation therewith would enable applicant to secure greater coverage through a wide area which at present is not well served and supply all of its metropolitan area with a serviceable signal. *WHP, Inc.*, 496.

Increased power granted broadcast station when operation with proposed increase in daytime power would enable applicant to materially extend its service area. *WDZ Broadcasting Co.*, 543.

POWER INCREASES FOR BROADCAST STATIONS—Continued.

Increased power granted broadcast station when operation with proposed increase in daytime power would enable applicant to extend its service area. *Wodaam Corp.*, 759.

Application for increase in power granted to an existing broadcast station when it was shown that the useful service area of the station would be materially extended by the proposed operation. *National Battery Broadcasting Co.*, 643.

Application by broadcast station for increased facilities denied when it was shown that the service area of applicant's station would be severely limited by the operation of other stations. *State of Wisconsin, Department of Agriculture and Markets*, 357.

Increased power and change of frequency requested by broadcast station denied when it appeared that the service area of the station would be curtailed in some directions and that its operation at night would be limited to less than that normally contemplated for a station of a regional class. *Columbus Broadcasting Co., Inc.*, 781.

Improvement of Service: Application of the licensee of existing station for increase in power granted where it was shown that the station would be enabled to render an improved service. *Columbia Broadcasting System, Inc.*, 643.

Improvement of Signal Intensity: Increased power granted broadcast station when operation therewith would improve the station's signal. *National Battery Broadcasting Co.*, 643.

Application to increase power for daytime operation granted where shown that the station would be able to override the high noise level existing in the metropolitan area and render an improved signal to the entire area now served. *Wodaam Corporation*, 759.

Application by broadcast station for increased power denied when it was shown that operation as proposed would produce objectionable interference to existing broadcast services. *Wescoast Broadcasting Co.*, 11.

Application by broadcast station for increase in power denied when it was shown that objectionable interference would be caused to a station whose construction and operation had been authorized by the Commission. *Liner's Broadcasting Station, Inc.*, 159.

Overcoming Interference: Increased power granted broadcast station where it was shown that through the use thereof the station would be able to effect a reduction in the existing interference to its service. *National Battery Broadcasting Co.*, 643.

PRACTICE AND PROCEDURE.

A party to the record opposing the application excepted to the failure of the examiner to rule on a general objection to depositions offered in evidence by the applicant; that objection was made by another party who filed no exception; the examiner admitted the depositions but stated that he would disregard anything appearing herein that ought to be excluded—things not competent, relevant or material; the applicant took no exception to any part of the ruling of the examiner respecting the admission of the depositions; the Commission has determined to deny the application: *Held*, that the examiner committed no error: *Held, further*, that the objection of any other party to the testimony of the applicant has become wholly immaterial in view of the decision of the case adverse to the applicant. *KUJ, Incorporated*, 636.

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PRACTICE AND PROCEDURE—Continued.

A party to the record moved to dismiss the application after the hearing thereon had begun before an examiner; the examiner did not rule on the motion and made no reference to it in his report; the party making the motion filed no exception to any action or lack of action on the part of the examiner respecting the motion to dismiss. Another party (that made no such motion) filed an exception to the failure of the examiner in his report to rule on the motion to dismiss the application: *Held*, that the party making the motion abandoned it by failure to except; *Held, further*, that the recommendation of the examiner that the application be granted was sufficient disposition of the motion to dismiss the application. *KUJ, Incorporated, 636.*

Filing of motion to dismiss before examiner and objections made before examiner to admission of depositions in evidence considered. *KUJ, Incorporated, 636.*

Effect of failure to note exceptions; action by Commission on objections presented before examiner. *KUJ, Incorporated, 636.*

Request that Commission deny "without prejudice" application for nighttime use of frequency with increased power, considered as one for waiver of Rule 15.18 (which prohibits filing of another application within one year from date of denial of like application after hearing or default) and *denied*, because premature. *Mrs. W. J. Virgin, 764.*

PREPONDERANCE OF USE. See SUPPLEMENTING EXISTING FACILITIES.

PRESS SERVICE. See MODIFICATION OF FIXED PUBLIC PRESS LICENSE.

PROGRAM MATERIAL.

Talent: Evidence that there was sufficient talent available in the community to supply the needs of a local broadcast station considered by the Commission in granting application for same. *Richard M. Casto, et al., 114.*

Evidence that there is sufficient talent available in the city to supply the needs of a local broadcast station considered by the Commission in granting an application for same. *Carolina Advertising Corp., et al., 230.*

Application for a new daytime regional broadcast station denied when applicant failed to show that there is adequate talent available to operate a station of this class. *Pacific Radio Corp., 475.*

Application for new local daytime broadcast station granted when it was shown that there is sufficient talent available for program material. *Emporia Broadcasting Co., Inc., 524.*

Application for new local broadcast station denied when applicant failed to show that there is sufficient talent available in the proposed area for the presentation of suitable programs. *Roberts-MacNab Co., 548.*

Talent available in the community proposed to be served considered by the Commission in granting an application for new broadcast facilities. *Eastern Carolina Broadcasting Co., 736.*

PROGRAM PLANS.

Increased facilities for broadcast station denied when the record did not satisfactorily disclose applicant's proposed program plans. *E. F. Peffer, 554.*

Applicant for New Broadcast Station: Application for a new broadcast station denied when applicant failed to show the proposed program service would be distinctive in character from that already available in the area proposed to be served or would render any substantial benefits to the listening public. *Floyd A. Parton, 3.*

PROGRAM PLANS—Continued.

The program service proposed found to be designed to meet the needs of the area to be served. *W. C. Ewing and Harry Layman*, 122; *Richard M. Casto, et al.*, 114; *Martin R. O'Brien*, 126; *Harry M. Ayers*, 152; *R. H. Nichols, et al.*, 244.

Application for a new broadcast station granted when the program service proposed was shown to be satisfactory for the class of station requested. *Capitol Broadcasting Co.*, 72.

Program service proposed found to be designed to meet the local needs of the city to be served. *Y. W. Scarborough and J. W. Orvin*, 186.

Application for new broadcast station granted when the program service proposed was found to be meritorious and designed to meet the local needs of the area. *Broadcasters, Inc., et al.*, 206.

Program service proposed by both applicants found to be designed to meet the local needs of the community to be served. *Carolina Advertising Corp., et al.*, 230.

Failure on the part of the applicant to show satisfactory program plans considered by the Commission in denying an application for a new broadcast station. *N. B. Egeland*, 278.

Application for new local broadcast station granted when it was found that the program service would satisfy the local needs of the community to be served. *Joe L. Smith, Jr.*, 352.

Program service proposed by applicant found to be meritorious. *The Metropolis Co.*, 425.

Application for new broadcast station granted where the same will serve as a means of expression of various civic, social, religious, and charitable organizations in the community to be served. *Eastern Carolina Broadcasting Co.*, 736.

Application for new daytime regional broadcast station denied when applicant failed to show that it had a meritorious program service to offer. *Pacific Radio Corp.*, 475.

Application for new local daytime broadcast station granted when it was found that applicant proposes a program service designed to meet the needs of the community. *Emporia Broadcasting Co., Inc.*, 524.

Application for new local broadcast station denied when applicant failed to show that it had sufficient plans with respect to program service. *Roberts-MacNab Co.*, 548.

PROGRAM SERVICE.

Application for Authority to Transmit Programs for Broadcast in Foreign Countries: Application for authority to transmit programs by wire line from point in the United States to Canada, to be there broadcast, granted when the proposed program service was found to be of a meritorious nature. *First Baptist Church*, 771.

Existing Broadcast Station: Program service of existing broadcast station found to have been meritorious. *Pacific Agricultural Foundation, Ltd.*, 28; *University of Illinois*, 48; *WLBG, Inc.*, 67; *Radio Station WMFR, Inc.*, 195; *Iowa Broadcasting Co.*, 227; *City Broadcasting Corp.*, 250; *Rock Island Broadcasting Co.*, 313; *Tribune Printing Co.*, 322; *H. Wimpy*, 336; *Fayette Broadcasting Corp.*, 348; *WHBY, Inc.*, 438; *Milwaukee Broadcasting Co.*, 442; *Press Publishing Co.*, 442; *WHP, Inc.*, 493.

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PROGRAM SERVICE—Continued.

Application of the licensee of an existing broadcast station for increase in power granted where the program service of said station was shown to be meritorious and designed to meet the needs and interests of the listening area. *National Battery Broadcasting Co.*, 643.

Application by broadcast station for increased facilities granted when it was shown that the program service to be rendered by applicant is particularly suitable for and of interest to the people comprising its proposed listening audience. *Michigan State College*, 17.

Application by broadcast station for increased power and change from a local to a regional classification denied when applicant failed to submit plans for rendering a regional program service. *Liner's Broadcasting Station, Inc.*, 159.

Renewal of license granted when program service of station was found to be meritorious and designed to supply the local needs of the area. *C. Bruce McConnell, et al.*, 167.

Application for renewal of license granted when program service being rendered by station found to be necessary in the area and satisfactory. *Southern Broadcasting Corp., et al.*, 210.

Program service being offered by the applicant found to be meritorious and the plans of the applicant for improving the same to be in the public interest. *Interstate Broadcasting Corp.*, 415.

Increased power granted broadcast station when it was shown that the station has and will continue to broadcast programs particularly designed to serve the farming area within which the station is expected to serve when the power is increased. *W.D.Z. Broadcasting Co.*, 543.

Increased broadcast facilities denied when applicant offered no specific evidence concerning its proposed programs at night and applicant's plans concerning its proposed nighttime service appeared therefore, to be too vague and indefinite to support a finding that the proposed nighttime operation would be in the public interest. *E. F. Pepper*, 554.

Modification of license granted broadcast station when it was shown that in the past it had rendered meritorious program service and the programs proposed to be broadcast during nighttime hours were designed to meet the needs and interests of listeners in the area to be served. *Albert Lea Broadcasting Co.*, 579.

Transferee of Control of Broadcast Licensee: Application for consent to voluntary assignment of broadcast license granted when evidence indicated that the same general policy with respect to program service would be followed. *Karl L. Ashbacher*, 111.

Application for consent to voluntary assignment of broadcast license to a corporation controlled by the present licensee granted when evidence indicated that same general policy with respect to program service would be followed. *Harold F. Gross*, 333.

Application for consent to voluntary assignment of broadcast license granted when shown that proposed assignee would materially improve the program service, and it appeared that more time would be devoted to the presentation of local programs. *Herbert Lee Blye*, 383.

Application for consent to voluntary assignment of broadcast license granted when shown that proposed assignee contemplated improvement of program service of the station. *E. F. Sapp and S. F. Sapp, d/b as Waycross Broadcasting Company*, 521.

Application for transfer of control of broadcast station granted when licensee under the control of the transferee would render an improved program service. *Albert Steinfeld and Company*, 714.

PROTESTS.

Protest filed pursuant to Rule 104.4 denied where based upon an application filed ten days after the grant of the application to which it relates.

In the absence of a protest filed by a person having a proper interest, the action of the Commission under Rule 104.4, in granting an application becomes absolute and final without further action of the Commission.

A person is not one who is "aggrieved or whose interests may be adversely affected" within the meaning of Rule 104.4, when the filing of the conflicting application upon which the protest is based, occurs ten days *after* the grant without a hearing of the application concerning which protest is made. *Midnight Sun Broadcasting Co., et al.*, 319.

PUBLIC INTEREST, CONVENIENCE, AND NECESSITY. See Other Titles.

Application for increase in power of an existing station denied when it was shown that a grant thereof would not serve public interest, convenience, and necessity. *American Broadcasting Corporation of Kentucky*, 663.

Public interest, convenience, and necessity will not be served by granting an application for a permit to construct a new broadcast station where the applicant therefor is the owner of one of two daily newspapers of general circulation in the area to be served and also owns a part-time station in the same city, particularly where the new station would be subjected to severe interference during the nighttime hours of operation. *The South Bend Tribune*, 783.

Public interest, convenience, and necessity will not be served by granting an application for a new broadcast station by a person now the licensee of two part-time broadcast stations in the area proposed to be served, both of which operate on the same frequency, the hours of which are so arranged as to permit continuous service. *King-Trendle Broadcasting Corp.*, 783.

Increased facilities for broadcast station granted where it appears the grant will serve public interest, convenience and necessity. *Richard Austin Dunlea*, 740.

Application for increase in power awarded an existing broadcast station where it was shown that a grant thereof would serve public interest, convenience and necessity. *National Battery Broadcasting Co.*, 643.

Held, granting of application to use additional power for daytime operation would serve public interest, convenience, and necessity. *Wodaam Corp.*, 759.

Application for New Broadcast Station: Application for new limited time broadcast station denied when the Commission found that a grant thereof would not serve the public interest, convenience, and necessity when it was shown that a need exists for a broadcast station operating full time in the city. *Platt & Platt, Inc.*, 327.

Held, public interest, convenience, and necessity will be served by granting application to construct new broadcast station when it appears that a public need exists for the proposed service, there are no interference problems, and a sufficient commercial support is available to reasonably assure efficient operation. *S. B. Quigley*, 705.

QUALIFICATIONS OF APPLICANT FOR BROADCAST FACILITIES.

In General: Applicant for a new broadcast station found to be legally, technically, financially, and otherwise qualified to construct and operate the proposed station. *Piedmont Broadcasting Corp.*, 79; *Capitol Broadcasting Co.*, 72; *Kanawha Valley Broadcasting Co.*, 53; *Kentucky Broadcasting Corp.*, 776; *S. B. Quigley*, 705; *Eastern Carolina Broadcasting Co.*, 736.

Application of the licensee of an existing station to operate with increased power granted when the applicant was shown to be qualified in all respects to 6 F. C. C.

QUALIFICATIONS OF APPLICANT FOR BROADCAST FACILITIES—Con. operate the station in the manner proposed. *National Battery Broadcasting Co.*, 643.

Application for consent to transfer control of licensee corporation granted where transferee is found to be legally, technically, and financially qualified to control the license. *Albert Steinfeld and Company*, 714.

Application for voluntary assignment of license of an existing station granted where the proposed assignee was shown to be qualified in all respects to assume the license of the station and to continue its operation. *Magnolia Petroleum Company*, 605.

Application for permit to construct new broadcast station denied when applicant failed to show qualification to operate station in accordance with best interests of local community. *WRSP, Inc.*, 745.

Comparative Financial Showing: One of two applications for a new local broadcast station in the same city was granted when one applicant was found to be possessed of better financial qualifications than the other applicant. *W. C. Irvin, et al.*, 507.

Familiarity with Local Conditions: Application for new broadcast station denied where applicant was not shown to have sufficient familiarity with the needs of the area to be served to justify a finding that the proposed station would render satisfactory service. *C. Frank Walker*, 72.

One of two applications for the same facilities in the same city granted when it was shown that a partner in one of the applications had long been a resident of the city and is more familiar with the local needs thereof than the other applicant. *Richard M. Oasto, et al.*, 114.

Approval for voluntary assignment of broadcast license given when it appeared that need for continued program service outweighed the circumstance that the proposed assignee was a nonresident. *Anna Atkinson, Eæcutrix*, 155.

One of two applications for the same facilities in the same city granted when it was found that one applicant had its sole place of business in the community and its proposed program service would be under the direction of persons long familiar with the needs of the area, while the program service of the other applicant would be under the direct supervision of nonresidents. *Havens & Martin, Inc.*, 237.

Failure on the part of the applicant to show sufficient familiarity with the broadcast needs of the proposed area considered by the Commission in denying an application for a new broadcast station. *N. B. Egeland*, 278.

Application for consent to voluntary assignment of broadcast license granted when evidence indicated that the proposed licensee corporation would retain in its employ former experienced personnel. *Harold F. Gross*, 333.

Application for Commission's consent to transfer control of broadcast licensee corporation granted when it appeared that proposed transferee was familiar with the local needs of the listening public. *Memphis Commercial Appeal Company*, 419.

Approval given for voluntary assignment of broadcast license when shown that proposed assignee was closely identified with the civic and community interests of the listening public. *E. F. Sapp, et al.*, 521.

Application for consent to transfer control of existing broadcast licensee corporation granted to a local resident of the area to be served. *Roy L. Aldertson*, 613.

QUALIFICATIONS OF APPLICANT FOR BROADCAST FACILITIES—Con.

Financial Qualifications: Licensee of existing broadcast station found to be financially qualified to continue operation of station and to effect proposed changes. *Pacific Agricultural Foundation, Ltd.*, 28; *University of Illinois*, 48; *WLBG, Inc.*, 67; *Astoria Broadcasting Co.*, 108; *Iowa Broadcasting Co.*, 227; *Rock Island Broadcasting Co.*, 313; *Tribune Printing Co.*, 322; *H. Wimpy*, 336; *Interstate Broadcasting Corp.*, 415; *WHBY, Inc.*, 438; *WDZ Broadcasting Co.*, 543.

Application for new broadcast station granted when the applicant was found to be possessed of requisite financial qualifications to construct and operate the proposed station. *Richard M. Casto, et al.*, 114; *W. C. Ewing and Harry Layman*, 122; *Martin R. O'Brien*, 126; *Harry M. Ayers*, 152; *Joe L. Smith, Jr.*, 352; *Garden Island Publishing Co., Ltd.*, 422; *Y. W. Scarborough and J. W. Orvin*, 186; *Shirley D. Parker*, 198; *Broadcasters, Inc., et al.*, 206; *Carolina Advertising Corp., et al.*, 230; *Havens & Martin, Inc., et al.*, 237; *R. H. Nichols, et al.*, 244; *Food Terminal Broadcasting Co.*, 271; *L. L. Coryell, Sr., et al.*, 282; *The Metropolis Co.*, 425; *Vancouver Radio Corp.*, 452; *W. C. Irvin, et al.*, 507; *Emporia Broadcasting Co., Inc.*, 524; *P. W. Spencer*, 558.

Applicant for new local broadcast station found to be possessed of requisite financial qualifications to construct and operate the same. *Chester Howarth and Clarence Berger*, 489.

Applicant for new local broadcast station found not to be possessed of requisite financial qualifications to construct and operate the same. *State Broadcasting Corp.*, 502.

Applicant found to be legally, technically, and financially qualified to construct and operate the proposed station. *Food Terminal Broadcasting Co.*, 271.

Application for new local broadcast station denied when applicant failed to make a satisfactory showing of its financial condition and that sufficient funds would be made available to assure the continued operation of the station should it prove to be an unprofitable venture. *Roberts-MacNab Co.*, 548.

Application for new regional daytime broadcast station denied when applicant failed to show that it possessed the requisite financial qualifications to construct and operate the station proposed. *Voice of Detroit, Inc., et al.*, 363; *Arlington Radio Service, Inc.*, 378.

Application for consent to voluntary assignment of broadcast license granted when shown that proposed assignee was financially qualified to assume the ownership and operation of the station. *Karl L. Ashbacher*, 111; *Harold F. Gross*, 333.

Application for authority to transmit programs by wire-line from point in the United States to Canada, to be there broadcast, was granted when applicant was found to be possessed of adequate finances to defray the cost of the service proposed. *First Baptist Church*, 771.

Approval of voluntary assignment of broadcast license given when shown proposed assignee was financially qualified. *Anna Atkinson, Ewecutria*, 155.

Application for consent to voluntary assignment of broadcast license granted to present licensee, found financially qualified. *Fifth Avenue Broadcasting Corp.*, 202.

Application for renewal of license granted when applicant was found to be possessed of requisite financial qualifications to continue the operation of the station. *Southern Broadcasting Corp., et al.*, 210.

Applicant found to be possessed of requisite financial qualifications to complete construction contemplated. *Southern Broadcasting Corp., et al.*, 210.

QUALIFICATIONS OF APPLICANT FOR BROADCAST FACILITIES—Con.

Application for Commission's consent to transfer control of existing broadcast licensee corporation granted when shown that transferees were financially qualified to continue the operation of the station. *R. W. Hoffman*, 498; *Memphis Commercial Appeal Company*, 419.

Application for consent to voluntary assignment of broadcast station license denied when found that existing licensee is better qualified financially to continue the operation of the station than the proposed assignee. *The Travelers Broadcasting Service Corp.*, 456.

Approval given for voluntary assignment of broadcast license when shown that the proposed assignee was financially qualified to take over and continue the operation of the station. *E. F. Sapp and S. F. Sapp, d/b as Waycross Broadcasting Company*, 521.

Application for consent to voluntary assignment of broadcast license granted when shown that the assignee was financially qualified. *Herbert Lee Blye*, 383.

Application to transfer control of licensee corporation granted where transferee is found to be financially qualified to control license. *Albert Steinfeld and Company*, 714.

Legal Qualifications: Applicant for new broadcast station found to be possessed of the requisite legal qualifications to construct and operate the proposed station. *Richard M. Oasto, et al.*, 114; *Martin R. O'Brien*, 126; *Harry M. Ayers*, 152; *Y. W. Scarborough and J. W. Orvin*, 186; *Shirley D. Parker*, 198; *Broadcasters, Inc., et al.*, 206; *Carolina Advertising Corp., et al.*, 230; *Havens & Martin, Inc., et al.*, 237; *R. H. Nichols, et al.*, 244; *L. L. Coryell, Sr., et al.*, 282; *The Metropolitan Co.*, 425; *Vancouver Radio Corp.*, 452; *W. C. Irvin, et al.*, 507; *Emporia Broadcasting Co., Inc.*, 524; *P. W. Spencer*, 558; *W. O. Ewing and Harry Layman*, 122.

Application for new local broadcast station granted when applicant was found to be possessed of requisite legal qualifications to construct and operate the proposed station. *Garden Island Publishing Co., Ltd.*, 422; *Joe L. Smith, Jr.*, 352; *Chester Howarth and Clarence Berger*, 489; *State Broadcasting Corp.*, 502.

Applicant for new daytime regional broadcast station found to be possessed of requisite legal qualifications to construct and operate the same. *Pacific Radio Corp.*, 475.

Application for renewal of license granted when applicant was found to be possessed of requisite legal qualifications to continue the operation of the station. *Southern Broadcasting Corp., et al.*, 210.

Licensee of an existing broadcast station found to be legally qualified to continue operation of station, and to effect proposed changes. *Astoria Broadcasting Co.*, 108.

Application for new local broadcast station denied when one of the partners filing the application failed to establish his United States citizenship. *Sam Klaver and Nathan Belser*, 536.

Application for consent to voluntary assignment of broadcast license granted when shown that proposed assignee was legally qualified. *Karl L. Ashbacher*, 111.

Application for consent to voluntary assignment of broadcast license granted when shown that the proposed assignee was legally qualified. *Harold F. Gross*, 333; *Herbert Lee Blye*, 383; *E. F. Sapp and S. F. Sapp, d/b as Waycross Broadcasting Co.*, 521; *Anna Atkinson, Eæcoutriz*, 155.

Application for Commission's consent to transfer control of broadcast licensee corporation granted when shown that proposed transferee was legally qualified. *Memphis Commercial Appeal Co.*, 419; *R. W. Hoffman*, 498; *Albert Steinfeld and Company*, 714.

QUALIFICATIONS OF APPLICANT FOR BROADCAST FACILITIES—Con.

Technical Qualifications: Applicant for new broadcast station found to be possessed of the requisite technical qualifications to construct and operate the proposed station. *Richard M. Casto, et al.*, 114; *W. O. Ewing and Harry Layman*, 122; *Martin R. O'Brien*, 126; *Harry M. Ayers*, 152; *Y. W. Scarborough and J. W. Orvin*, 186; *Havens & Martin, Inc., et al.*, 237; *Vancouver Radio Corp.*, 452.

Applicant for new local broadcast station found to be possessed of requisite technical qualifications to construct and operate the same. *Chester Howarth and Clarence Berger*, 489; *Garden Island Publishing Co., Ltd.*, 422; *State Broadcasting Corp.*, 502.

Applicant found to be possessed of the requisite technical qualifications to construct and operate the proposed station. *Shirley D. Parker*, 196; *Broadcasters, Inc., et al.*, 206; *Carolina Advertising Corp., et al.*, 230; *R. H. Nichols, et al.*, 244; *L. L. Coryell, Sr., et al.*, 282; *The Metropolis Co.*, 425; *W. C. Irvin, et al.*, 507; *Emporia Broadcasting Co., Inc.*, 524; *P. W. Spencer*, 558.

Licensee of an existing broadcast station found to be technically qualified to continue operation of station, and to effect proposed changes. *Astoria Broadcasting Co.*, 108; *Interstate Broadcasting Corp.*, 415.

Applicant for new daytime regional broadcast station found to be possessed of requisite technical qualifications to construct and operate the same. *Pacific Radio Corp.*, 475.

A showing that proposed program of research and experimentation would be conducted by qualified engineers considered by the Commission in granting application for new television broadcast station. *Zenith Radio Corp.*, 36.

Application for renewal of license granted when applicant was found to be possessed of requisite technical qualifications to continue the operation of the station. *Southern Broadcasting Corp., et al.*, 210.

Application for consent to voluntary assignment of broadcast license granted when shown that proposed assignee was technically qualified. *Karl L. Ashbacher*, 111; *Anna Atkinson, Bæcutrix*, 155; *Fifth Avenue Broadcasting Corp.*, 202; *Harold F. Gross*, 383; *Herbert Lee Blye*, 383; *E. F. Sapp and S. F. Sapp, d/b as Waycross Broadcasting Company*, 521.

Application for Commission's consent to transfer of broadcast licensee corporation granted when shown that proposed transferee was technically qualified. *Memphis Commercial Appeal Co.*, 419; *R. W. Hoffman*, 498; *Albert Steinfeld and Company*, 714.

RADIOTELEPHONE SERVICE. See MODIFICATION OF FIXED PUBLIC PRESS LICENSE.

Public need found for coastal harbor radiotelephone service at Duluth, Minnesota, and Port Washington, Wisconsin. *Lorain County Radio Corporation*, 306.

Public interest, convenience, and necessity would be served by granting application to establish coastal harbor radiotelephone station at Port Sulphur, Louisiana, to serve New Orleans and vicinity. *Southern Bell Telephone & Telegraph Co.*, 712.

Application for a coastal harbor radiotelephone station not consistent with the Commission's Rules and Regulations or established policy will be denied where no justification has been shown for a modification thereof. *City of Seattle*, 620.

RATES.

Lower rates tentatively proposed are without significance on application for modification of fixed public press license in the absence of a showing of applicant's ability to render an adequate service. *Press Wireless, Inc.*, 480.

RATES—Continued.

Tentative rates, although slightly lower for some service, are without controlling significance when viewed from the standpoint of the rates and the service to the area as a whole; and where the applicant failed to show a substantial public need for the proposed service application for coastal harbor radio-telephone station denied. *City of Seattle*, 490.

REBROADCASTING.

Application for consent to voluntary assignment of broadcast license granted when the evidence indicated that the proposed assignee contemplated a curtailment with respect to the rebroadcasting of programs from other stations. *Herbert Lee Blye*, 883.

REGIONAL FREQUENCY.

Held: When a broadcast station applies for a change in classification from a local to regional, it is incumbent upon the applicant to show that there is a need for a regional station and that such need would be met by the service proposed. *Liner's Broadcasting Station, Inc.*, 159.

Application for change to a regional frequency and increase in power denied when it appeared that the proposed operation would result in the limitation of the station to its 4.7 mv./m contour. *Columbia Broadcasting Co., Inc.*, 731.

REHEARING.

Where a petition for rehearing alleges that a ground of the Commission's Statement of Facts and Grounds for Decision is not supported by sufficient findings of fact from which the ultimate facts in terms of the statutory criterion are inferred, and the Commission, upon further consideration of the record found that this contention was meritorious, *Held*: Ground in question must be stricken from the decision; Order denying decision affirmed. *El Paso Broadcasting Co., et al.*, 516.

In consolidated proceedings upon applications for broadcast facilities at the same place where one application was granted and two were denied; petition for rehearing denied where no sufficient reason for rehearing was made to appear. *West Texas Broadcasting Co.*, 855.

On Petition for Rehearing Commission set aside its order denying application for unlimited operation with increased power and granted said application in part so as to permit daytime operation with increased power where it appeared that no existing station would be adversely affected by reason of interference and the Commission found such operation would be in the public interest, convenience and necessity. *Mrs. W. J. Virgin*, 768.

Petition for rehearing *denied* where such petition wholly failed to serve the purposes for which such petitions are permitted to be filed, namely, to call to the attention of the Commission any specific error or omission in its action so that in the light of such specific allegations the Commission might reconsider its previous action and grant such administrative relief as would be appropriate in the circumstances. *The Crosley Corp.*, 796.

RENEWAL OF BROADCAST LICENSE.

In General: Application for renewal of broadcast license denied as in default when the applicant failed to appear either in person or by counsel, and failed to offer evidence although duly notified of the time and place of hearing and issues to be determined. *Attala Broadcasting Corp.*, 867.

Application for renewal of broadcast license granted when it appeared that the applicant was qualified to continue operation of the station. *Roy L. Albertson*, 603.

RENEWAL OF BROADCAST LICENSE—Continued.

Application for renewal of license for broadcast station granted where the improper technical operation of the station had been corrected. *Red River Broadcasting Co.*, 749.

Experimental High Frequency Broadcast Station: Renewal of application for broadcast license held warranted where the applicant was legally, technically, financially and otherwise qualified to continue the operation of the station; the program of research and experimentation had been conducted by the applicant as contemplated by Rule 105.1 of the Commission's Rules and Regulations; that although the reports filed by the applicant with respect to its program of research and experimentation had been too general to comply with Rule 105.6, the applicant had shown that it has definite plans upon which to proceed and will conduct such experiments along lines which will admit of the filing of the necessary reports with the Commission; and the continued operation of the station will serve public interest, convenience, and necessity. *E. Anthony & Sons, Inc.*, 518.

Application for renewal of broadcast license denied as in default when the applicant failed to appear either in person or by counsel, and failed to offer evidence although duly notified of the time and place of hearing and the issues to be determined. *Virgil V. Evans*, 865.

Application for renewal of broadcast license granted when it appeared that the applicant had not violated Section 310 (b) of the Communications Act of 1934. *KVOS, Inc.*, 22.

Application for renewal of broadcast license granted when it appeared that applicant was guilty of only a technical violation of Section 310 (b) of the Communications Act of 1934, and that the continued operation of the station would serve public interest, convenience and necessity. *W. W. McAllister*, 223.

Application for renewal of broadcast license was granted when it appeared that applicant had not violated Section 310 (b) of the Communications Act of 1934, and that the continued operation of the station would serve the public interest, convenience, and necessity. *Roy L. Albertson*, 603.

Application for renewal of broadcast license granted when it appeared that the testimony produced was insufficient in the light of all the circumstances of the case to justify the Commission in refusing a renewal of the license of the station; and the granting of the application would serve the public interest, convenience and necessity. *KVOS, Inc.*, 22.

Application for renewal granted when it appeared that a particular program was not in the public interest, but otherwise the service of the station was designed to meet the needs of its listening audience, and that the continued operation of the station would serve public interest, convenience, and necessity. *WNAX Broadcasting Co.*, 397.

Renewal of broadcast license granted when found that advancement of money by a bank or proposed transferee prior to Commission's consent to transfer control of licensee corporation not of itself in violation of Section 310 (b) of the Communications Act. *Roy L. Albertson*, 603.

RESEARCH AND EXPERIMENTATION.

Television Station: Application for new television broadcast station granted when a showing was made that the applicant had a program of research and experimentation which indicated reasonable promise of resulting in a substantial contribution to the development of the television art. *Zenith Radio Corp.*, 36.

6 F. C. C.

REVOCAATION.

Held, That plea of nolo contendere entered in criminal case is not sufficient as an admission of defendant, to sustain revocation of amateur radio station license. *Theodore V. Fabian*, 634.

RULES AND REGULATIONS.

No justification shown for modification of Rules and Regulations relating to fixed public press service stations so as to permit use of radiotelephony. *Press Wireless, Inc.*, 480.

SAFETY OF LIFE AND PROPERTY, APPLICATION FOR EXEMPTION OF VESSEL UNDER SECTION 352(b) (2).

A vessel making three short voyages in the open sea during the months between April and November, not operating on schedule and thus free to select favorable weather, was found to be entitled to exemption. *Federal Motorship Corp.*, 175.

SHIP LICENSES.

Denial of application for renewal of ship station license set for hearing because of apparent alien ownership of vessel, as in default. *Ralph R. Williams*, 305.

SPECIAL EMERGENCY SERVICE, OF PUBLIC UTILITIES.

Where frequencies at present used by an electric power system for emergency communication during breakdowns are shared with other agencies whose need for them ordinarily arises simultaneously, with resulting congestion of the channels, assignment of additional frequencies for special emergency use only of public utilities found justified. *Southern California Edison Co., Ltd.*, 693.

SPECIAL EXPERIMENTAL AUTHORIZATION.

Grant of application for extension of special experimental authorization to operate standard broadcast station unlimited time with a power output in excess of that regularly permitted by Commission's rules not justified where program of experimentation contemplated studies in the secondary service area which could be carried on only during the nighttime and the application requested unlimited hours of operation.

Grant of application for extension of special experimental authorization to operate standard broadcast station unlimited time with a power output in excess of that regularly permitted by Commission's rules not justified where program of experimentation contemplated studies of daytime service for which the power output requested was not necessary.

Grant of application for extension of special experimental authorization to operate standard broadcast station unlimited time using a power output in excess of that regularly permitted by Commission's rules not justified where proposed program of experimentation contemplated further investigation into technical aspects of transmitter equipment and applicant had sufficient authority to experiment in this field with its regularly licensed experimental station. *The Crosley Corp.*, 796.

SUPPLEMENTING EXISTING FACILITIES.

Held, that construction by Southwestern Bell Telephone Company of additional facilities wholly within the State of Texas is supplementing of existing interstate facilities, in contemplation of the last proviso of Section 214 (a) of the Act, when the additional facilities become part of the defendant's regional

SUPPLEMENTING EXISTING FACILITIES—Continued.

telephone plant serving several states and are to be used for interstate transmission of messages. The fact that the new construction does not actually cross state lines, and that the newly constructed facilities are to be used primarily in the transmission of intrastate messages, does not remove the transaction from the influence of Section 214 (a) of the Act if the new facilities become part of interstate lines and are to be used in interstate communication service.

Preponderance of use theory is no test of applicability of Section 214 if facilities are to be employed in interstate transmission of messages. *Southwestern Bell Telephone Co.*, 529.

TELEVISION.

Television Stations: *Held*, that the granting of applications for the establishment of television broadcast stations would serve public interest, convenience, and necessity, when (a) the applicant was fully qualified to undertake and complete the construction involved, (b) programs of research and experimentation which gave reasonable promise of substantial contribution to the development of the television art were contemplated, and (c) interference with existing television broadcast stations, or stations contemplated in pending applications for television facilities, would not result. *General Electric Co.*, 722.

Application for construction permit to erect a new television broadcast station granted. *Zenith Radio Corp.*, 36.

Qualifications of Applicant for Facilities: Applicant for new television broadcast station found to be legally, financially, and technically qualified to construction granted. *Zenith Radio Corp.*, 36.

TERMINAL SERVICE, DISTINGUISHED FROM EXTENSION OF LINES.

See EXTENSION OF LINES.

TESTIMONY, ADMISSIBILITY OF. See EXTENSION OF LINES; *Other Titles*.

TRANSFER OF CONTROL OF BROADCAST LICENSEE CORPORATION.

Application for authority to transfer control granted when it appeared that the proposed transferee was legally, technically, financially, and otherwise qualified; and that approving the transfer sought would serve public interest, convenience, and necessity. *Chas. H. Gurney, et al.*, 397.

Application for consent to transfer control granted when it appeared that the transferee would exercise a high degree of regard for the interest of the public in the program service which would be rendered.

Application for consent to transfer control granted when it appeared that approval of the transfer sought would have the effect of removing from the control of the station persons who were engaged in promoting certain of their own business enterprises through the medium of advertising over the station.

Held: It is unnecessary in discussing the public interest involved in the transfer to find that the balance sheet accurately reflects the books of the licensee corporation.

Application for consent to transfer control granted when it appeared that approval of transfer sought would result in persons having control of the station who had had wide and successful experience in the operation of broadcast stations. *Chas. H. Gurney, et al.*, 397.

Application for approval of transfer of control of broadcast licensee corporation granted when it was shown that the proposed transferee would establish the station on a better competitive basis. *Memphis Commercial Appeal Co.*, 419.

6 F. C. C.

TRANSFER OF CONTROL OF BROADCAST LICENSEE CORPORATION— Continued.

Application for consent to transfer control granted when it appeared that they had been no transfer without consent of the control of the licensee corporation which was in conflict with or contrary to the public interest, convenience, and necessity. *KVOS, Inc.*, 22.

Application for Commission's consent to transfer control of existing broadcast licensee corporation granted when shown that transferee would install new technical equipment and the public interest would be served by the resulting improved coverage. *R. W. Hoffman*, 498.

Extension of credit for purpose of improving station equipment held not sufficient to make out a case of transfer of control without Commission's consent required by Section 310 (b) of the Act, and application granted when it appeared that the operation of the station by a person living at the location of the station would be more beneficial than nonresident supervision. *Roy L. Albertson*, 613.

Application for transfer of control of broadcast station granted where the station operating as proposed would not be under the control of, or under common control with, either of the two existing newspapers in the area to be served or with the other existing broadcast station in the same area. *Albert Steinfeld and Company*, 714.

Application for consent to transfer of control of existing broadcast licensee corporation granted when it appeared that proposed transferee was more familiar with needs and interests of the community than the transferor, the present nonresident principal stockholder and manager of the existing licensee. *Roy L. Albertson*, 613.

Consideration Paid Prior to Approval to Transfer of Control of Licensee Corporation: Advancement of consideration by a bank or transferee prior to approval of transfer of control of licensee corporation found not of itself to have been in violation of Section 310 (b) of the Communications Act. *Roy L. Albertson*, 613.

TRANSMITTER SITE.

Application for regional daytime broadcast station denied when the proposed transmitter site was found to be unsatisfactory. *Florida West Coast Broadcasting Co., Inc.*, 588.

Application for new broadcast station granted contingent upon the selection, within two months after effective date of the Order, of a site which meets the engineering requirements of the Commission. *Eastern Carolina Broadcasting Co.*, 736.

Application for increased facilities of broadcast station granted contingent upon the selection by the applicant of a transmitter site which meets the technical requirements of the Commission. *Richard Austin Dunlea*, 740.

Application of the licensee of an existing broadcast station for increase in power granted subject to the selection of a transmitter site to meet the approval of the Commission. *National Battery Broadcasting Co.*, 643.

VIOLATIONS OF COMMUNICATIONS ACT.

Application for authority to transmit programs by wire-line from point in the United States to Canada, to be there broadcast, was granted when past violations of Section 325 of the Act by the applicant were found not to have been willful. *First Baptist Church*, 771.

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