

ORIGINAL

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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FEB - 5 1991

Federal Communications Commission  
Office of the Secretary

In the Matter of )  
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Amendment to Section 73.606 )  
Table of Allotments )  
Television Broadcast Stations )  
 )  
Los Angeles and Norwalk, )  
California )

To: Chief, Allocations Branch  
Policy and Rules Division

PETITION FOR RULEMAKING

Fidelity Television, Inc. ("Fidelity"), licensee of KCAL-TV, Channel 9, Norwalk, California, by its attorneys and pursuant to Section 1.420(i) of the Commission's Rules, hereby requests that Section 73.606 (the "TV Table") be amended to reallocate Channel 9 from Norwalk to Los Angeles, California and that the KCAL-TV license be modified to specify Los Angeles as the station's community of license. Fidelity seeks these actions pursuant to the Commission's Memorandum Opinion and Order in Mass Media Docket Docket 88-526, 5 FCC 7094 (1990) (the "MO&O"), which modified the Commission's Report and Order, 4 FCC Rcd 4870 (1989).

In the MO&O, the Commission recognized the unique circumstances of television licensees operating in communities pursuant to the "15-mile rule." Under that rule a television applicant could specify as its city of license a community not listed in the TV Table, so long as the

community was within 15 miles of the listed community. When such applications were granted, however, the TV Table was not modified to show the actual community of license.

The previous licensee of Channel 9 (then operating under the call sign KHJ-TV) was RKO General, Inc. ("RKO"), whose city of license was Los Angeles. In 1965, Fidelity filed an application mutually exclusive with RKO's application for renewal of the KHJ-TV license. Pursuant to the 15-mile rule, Fidelity specified Norwalk, California as its city of license. The Commission's Review Board subsequently determined, however, that no preference could be awarded to Fidelity for its choice of Norwalk, inasmuch as, under Section 307(b) of the Communications Act, no meaningful choice could be made between Los Angeles and its suburb, Norwalk. RKO General, Inc. (KHJ-TV), 5 FCC 2d 517, 519 (Rev. Bd. 1966).

After a proceeding lasting 23 years, during which time Channel 9 remained licensed at Los Angeles, Fidelity's application ultimately was granted on August 19, 1988. Also granted that day was an application seeking transfer of control of Fidelity from its shareholders to The Walt Disney Company ("Disney"). The transfer was consummated on December 2, 1988, and the Channel 9 city of license became Norwalk.<sup>1</sup>

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<sup>1</sup>Following the Commission's practice, the TV Table was not amended to show the new community of license. In the

As the following demonstrates, Channel 9 was allotted to Norwalk as the result of most unusual procedural circumstances. Fidelity submits that the allotment of Channel 9 to Los Angeles, rather than Norwalk, would far more effectively serve the Commission's policies and the public interest. The weighing of allocations priorities and policies that a petition to change city of license normally requires has already been performed in the case of Norwalk and Los Angeles. In its 1965 decision, the Review Board concluded that Norwalk did not warrant allotment of a local television service:

While Fidelity has shown that Norwalk is a large community ... with certain civic indicia, it has failed to establish that it is significantly independent of Los Angeles from the economic and cultural standpoint; that it is any more significant than any of the other suburbs in the Los Angeles complex; or that it has any distinctive programming needs that are not now being met by area stations.

5 FCC 2d at 519.

The Board's decision is fully consistent with other Commission precedent and its concept of VHF frequency usage.

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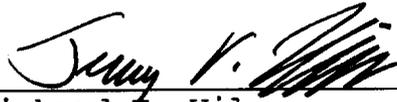
MO&O, the Commission recognized that licensees such as Fidelity could not avail themselves of new procedures that allowed licensees to change city of license via rulemaking. See Report and Order, 4 FCC Rcd 4870 (1989). Ironically, the TV Table could not be amended in such instances because the desired city already was listed. To correct this situation, the Commission ordered the TV Table to be revised to show the actual communities of license. Accordingly, the Chief of the Commission's Policy and Rules Division reallocated Channel 9 from Los Angeles to Norwalk. Order, DA 90-1871, released January 4, 1991

The 1952 Sixth Report and Order on television allocations established the Commission's plan of using the VHF channels to provide area-wide, rather than localized service. 41 FCC 148, 168 (1952). VHF was used wherever possible in large cities, since such cities have broad areas of common interest. Id. See, also, St. Louis Telecast, Inc., 22 FCC 625, 712-14 (1957) (in part due to nature of VHF TV service, no Section 307(b) preference for East St. Louis over St. Louis). Indeed, the Court of Appeals has, with approval, summarized the Commission's position as follows: "[I]n television cases, there is no doubt that the FCC consistently has refused to grant a suburban community a Section 307(b) preference over a central city when all applicants propose area-wide service." Winter Park Communications, Inc. v. FCC, 873 F.2d 347, 351 (DC Cir. 1989), aff'd, sub nom. Metro Broadcasting, Inc. v. FCC, 110 S.Ct. 2997 (1990).

In view of this precedent -- in particular, the Review Board's specific determination that Norwalk should not be viewed as independent of Los Angeles -- Fidelity submits that the Commission should reallocate Channel 9 from Norwalk to Los Angeles to better serve the goals of the Sixth Report and Order and, thus, the public interest. Accordingly, Fidelity requests that the TV Table be amended to move Channel 9 from Norwalk to Los Angeles and that the license for KCAL-TV be

modified to specify Los Angeles as its community of license.<sup>2</sup>

Respectfully submitted,  
FIDELITY TELEVISION, INC.

By   
Richard E. Wiley  
John C. Quale  
Jerry V. Haines

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WILEY, REIN & FIELDING  
1776 K Street, N.W.  
Washington, DC 20006  
(202)429-7000

Its Attorneys

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<sup>2</sup> To the extent a waiver is deemed necessary to reallocate a channel from Norwalk to Los Angeles, Fidelity submits that such a waiver is also justified for the reasons discussed above.