

prizes. In fact, not on the air, but rather at the parties, off-the-air, WKSJ awarded and delivered dozens of prizes to listeners in attendance. These prizes were awarded by random drawings, not by contests.

c) The complaints falsely state that "all expense paid vacations" were advertised as prizes. While this is not true, it should be noted that "Oaks" says that such statements were made on-the-air on WKSJ ("used the station's facilities"). Actually, the complaints do not allege that such statements were made on-the-air on WKSJ. Instead the complaints vaguely state "through its radio station" which refers to the radio station co-sponsored parties at the restaurants or the WKSJ participation in the car show at the mall.

4) The following is a detailed explanation of what actually happened regarding the three listeners who filed complaints:

The WKSJ licensee, U.S. Three Broadcasting Corporation, authorized a management employee, WKSJ General Sales Manager Robert L. Cox, to handle station promotions. The allegations concern promotions organized by Mr. Cox during the fall of 1986.

In December 1986 I became aware that Mr. Cox was not administering his promotions as carefully as he should have. This came to my attention during a period of a week to ten days just before Christmas when I received a few telephone calls in my office at the radio station from persons inquiring about prizes. I immediately conducted a personal investigation which I completed the weekend of December 27-28, 1986. As a result of the information

I uncovered, I decided that the employees responsible should be relieved of their duties. On Monday morning, December 29, 1986, as each arrived for work at the radio station, I dismissed from employment, effective immediately, the following station employees:

- a) Robert L. Cox, General Sales Manager
- b) Sherri L. McKin, Sales Secretary and Assistant to Mr. Cox
- c) Deborah S. Kessler, Account Executive
- d) Lorraine Mustapick, Account Executive

While I placed responsibility for the poor administration of the promotions directly on Mr. Cox, I felt his assistant, Mrs. McKin, and two of his sales associates who worked with him on the promotions should have been aware of what he was doing. Since these three had failed to alert me to the facts of these events, either at the time or afterward, I felt that all four employees had to be fired.

My investigation produced the following information:

- a) Mr. Cox had organized a series of weekly promotions called "Mid-week Attitude Adjustment Parties." These were happy hour promotions with local restaurants and night spots. Mr. Cox scheduled a total of six of these events during late October, November and early December 1986. Each was held for an hour and 37 minutes, from 5:00 PM to 6:37 PM on Wednesday evenings at the sponsoring establishment. The on-air announcements on WKSJ and advertising flyers distributed in advance stated that WKSJ would be "giving away prizes." Other than saying that lunches and dinners would be given away and

that there would be free refreshments at the parties, no other specific prizes were announced. The word "contest" was not used. The ads invited listeners to attend a party. The ads did not invite listeners to enter any contest. Prizes were awarded at the night clubs, not at WKSJ radio or on the air. In some cases as part of the promotion, Mr. Cox would find a pay phone at the club, call the station, and talk on the air live with the evening announcer on duty. The nature of the call was to invite listeners to come join the party at the club.

b) Mr. Cox had also organized a promotion during Thanksgiving weekend 1986 which involved a car show co-sponsored and held at a local shopping center, the Jupiter Mall. Prizes included individually inscribed trophies which were custom made by WKSJ and awarded to winners of the antique car judging. I personally saw the trophies when they were delivered to the radio station by the manufacturer and I observed the winners as they stopped in at WKSJ to pick up their trophies.

c) My investigation showed that Mr. Cox had obtained a variety of prizes which were subsequently awarded and delivered to listeners. However, I discovered that one of Mr. Cox's suppliers was delivering travel trips that were not exactly the way Mr. Cox described them. This supplier was a local travel agent named Randy Rovins, also known as Randy Stevens. Mr. Rovins operated a travel business known as Passkey-Hollywood Tours at 2525 Old Okeechobee Road, Suite 1, West Palm Beach, Florida 33409 (see Exhibit 2, copy of letter from Rovins to Taylor). Mr. Rovins provided the trips in a

barter arrangement for air time. Mr. Cox provided Mr. Rovins (using the alias of Randy Stevens) with one hour of air time weekly on the station for a program called "Travel Talk."

d) Over a period of three months, January, February and March 1987, I spoke by phone with several persons who claimed they had won prizes. I discovered that Mr. Cox had failed to give anything in writing to winners. The meager written material left by Mr. Cox and Mrs. McKin after their dismissals also failed to list some of the persons who claimed orally to be winners. Nevertheless, I accepted each person's oral claim as valid and proceeded to furnish prizes. Some of the prizes were record albums which were already at our office waiting to be picked up. Others had won dinners for which I personally prepared certificates redeemable at Parker's Lighthouse Restaurant in North Palm Beach. I confirmed these dinners when I personally met with the restaurant manager, then I mailed the certificates to the winners.

For those persons who claimed they had won a particular trip, I tried to get these trips honored by Randy Rovins. In that effort, I spoke with Mr. Rovins multiple times during January and February 1987. In most cases, Mr. Rovins was cooperative. For example, in January a Connie Rodriguez of Lake Park called and claimed to have won a trip to Disney World. On January 22, 1987, I spoke to Mr. Rovins who acknowledged the trip and agreed to provide the necessary paperwork to the winner.

WKSY had a second trip supplier who was working with me. In early January I arranged with Joe Valle of Crown Cruise Lines in Fort Lauderdale to

provide WKSJ with ten cruises for two to Grand Bahama Island, sailing from the Port of Palm Beach on the cruise ship "Viking Princess." During January and February all of these trips were given by me to those persons who had called claiming to have won a trip or other prize.

e) Three persons who were apparently acquainted with each other and with a North Palm Beach based attorney named Terry McManus agreed to have him file civil complaints on their behalf. All three complaints were subsequently dismissed for lack of prosecution. Here are the details on each of the three as I know them:

1) James Tucker. This man I got to know very well during January and February 1987. I phoned him repeatedly at work trying to satisfy his claims. Mr. Tucker was a resident of Stuart, Florida, who worked at Pratt & Whitney Aircraft, a subsidiary of United Technologies Corp. Part of the problem with Mr. Tucker was that his claims were all oral; he had nothing in writing. Unfortunately, the paperwork left by Mr. Cox and Mrs. McKin had nothing about Mr. Tucker either. To the best of my knowledge, during Mr. Cox's promotions there was never a monetary value mentioned in connection with any trip. However, for a trip only described to him orally, with nothing in writing, Mr. Tucker thought he could tell me all about it including its estimated market value. I phoned Randy Rovins

and told him about James Tucker and the trips he described. Mr. Rovins claimed that he never agreed to provide a trip to Hawaii, and that perhaps Mr. Tucker was thinking of the Acapulco trips that Rovins had agreed to provide. There is nothing in writing anywhere about the two trips Tucker claims to have won. Neither trip was described on the air on WKSJ either in prepared announcements or during Mr. Cox's phone calls from the clubs.

It was publicly announced in advance that the WKSJ promotion ended at 6:37 PM. It was Mr. Cox's practice to have his own private party at the club each Wednesday night starting when he went off duty as the promotion ended at 6:37 PM. At that time Mr. Cox would gather a table of friends and his wife to share cocktails and conversation. I was told later by persons who had attended these events that Cox would sometimes feel the effects of the liquor and become quite noisy. While I have no knowledge of this happening, I think it is entirely possible that on the occasions Tucker cites he may have shared a drink with Mr. Cox during which Cox's alcohol fueled ego prompted him to award imaginary prizes to a gullible Mr. Tucker. I don't know. I wasn't there. I think it's either that or Randy Rovins deceived Mr. Cox and/or me about what trips he had

agreed to provide.

In any case, I proceeded to provide prizes to Mr. Tucker. On January 22, 1987, I mailed a certificate to Mr. Tucker's address which was redeemable for dinner for him and his wife at Parker's Lighthouse Restaurant. Tucker had agreed to accept this prize in a phone conversation I had with him that day. At the same time I offered him and his wife the trip for two to the Bahamas on the Viking Princess that I already had arranged. Tucker was non-committal on the Bahamas trip. Subsequently, I talked to Tucker again on January 30, 1987. I again described the Bahamas cruise to him and told him he could schedule it at his convenience through Joe Valle at Crown Cruise Lines. I told him I would call Mr. Valle myself to make reservations for Tucker and his wife. However, instead of accepting the Bahamas trip I offered, Tucker agreed with Mr. McManus to file his complaint.

2) Candy Mattingly. I talked with Miss Mattingly twice on the phone in early February 1987. She claimed to have won an Acapulco trip as a prize at the car show, but had nothing in writing. Again I questioned Randy Rovins. He said yes, he had agreed to provide Mr. Cox with certificates redeemable for hotel accommodations at a certain hotel in Acapulco. Rovins stressed to me that these certificates

were for lodging only and did not include meals or transportation. When I explained this to Miss Mattingly she refused to accept it. So, as an alternative, I offered her the cruise for two to Grand Bahama on the "Viking Princess". She declined this also and chose to allow Mr. McManus to file her complaint instead.

3) Keith Koemm. I don't remember talking to Mr. Koemm, but I did speak by phone with his wife, Marlana. They claimed to have won an Acapulco trip but had nothing in writing. I explained the Acapulco trip was lodging only. She said if transportation wasn't included they wouldn't accept it. I also offered the Koemm's a Bahamas cruise for two from Crown Cruise Lines but they weren't interested. Instead they decided to let Mr. McManus file their complaint.

f) In summary, the president of the licensee personally took charge of this situation and spent much time, effort and money working to resolve it satisfactorily. All parties involved were treated fairly. In a decisive yet fair manner, four careless employees were swiftly discharged. Persons claiming without proof that WKSJ owed them something were all given comparable prizes. If they didn't receive the prize it was because they refused it. Every person was spoken to with courtesy and politeness.

Respectfully submitted,

Robert B. Taylor, Licensee, WKSJ (FM)
500 N. Delaware Blvd., P.O. Box 848
Jupiter, Florida 33458

Date: January 27, 1989

KENNETH DAWSON
6479 Las Flores Drive
Boca Raton, Florida 33433
(407) 487-5252

April 22, 1988

Mr. Robert Taylor
P.O. Box 848
Jupiter, Fl. 33468

Dear Bob;

I hope all is well.

Since our last meeting, I have been very active in the Palm Beach radio market. I was instrumental in finalizing a most successful sale for the Aspinwalls of WFBR Radio. My duties included pumping up the sales for a more attractive bottom line, format modification and stabilization, and engineering cleanup.

I am currently General Manager/Sales Manager for Radio Station WPOM. In my capacity, I have increased sales over 50%, to a monthly base of 70K. The station is now profitable for the first time in many years. I also produced a turnaround in programming by using my expertise in audience development, and by locating and hiring an experienced and enthusiastic staff dedicated to success and team goals. WPOM with it's Urban Adult Contemporary format, is the Hot station in Palm Beach County.

However, because the WPOM ownership has not honored business commitments they made both to me and my staff, I am resigning my position.

I cannot emphasize too strongly my view that your stations could become, under my direction, one of South Florida's most successful broadcast properties. Along with the key sales and on air personnel I will bring to your station from WPOM, the good will I have personally developed with community, business and elected officials will further insure a profitable operation. The ability to split program both of your stations will enable you to achieve the demographic mix necessary for maximum ratings. Furthermore, you will also neutralize and capture the sales of the Urban station in Boynton Beach.

Robert Taylor
April 22, 1988
Page 2

The capital necessary to achieve the profitability that will be yours is minimal. Funding for Urban stations is available, and I have contacts who along with myself would be willing to discuss financing if you desire.

I trust you will contact me at your earliest convenience so that we may further discuss this most exciting venture. On behalf of myself and the staff of WPOM, I look forward to your reply.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ken Dawson', written over a horizontal line.

Ken Dawson


PASSKEY HOLLYWOOD TOURS

January 9, 1987

Mr. Bob Taylor
c/o WKSJ Radio
500 N. Delaware Blvd.
Jupiter, Florida 33458

Dear Bob,

Pursuant to our conversation regarding proposed Reggae Show, please accept the following negotiated terms with Mr. Cox:

1. Air Time - 12-1 a.m. Sunday evenings, sixty minutes, once a week.
2. Format - Caribbean music, primarily Reggae, hosted by Randy Stevens - tape or live open for discussion. Show called, Reggae Vision.
3. Trade Off Agreement - Three double occupancy accommodations in a beachfront property in Runaway Bay, Jamaica. One hundred percent trade for hour with sponsorship rights to Randy Stevens. Travel Certificate to be delivered at monthly intervals with a 24 week commitment.
4. Advertising Support - WKSJ will furnish negotiated amount of fliers for distribution and 15 Radio spots weekly to be run to promote Reggae Vision.

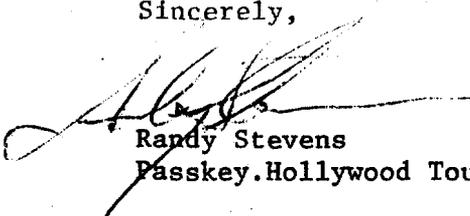
Passkey.Hollywood Tours will run promotion in newspaper ad in conjunction with corporate advertising campaign.

Bob, the above terms were agreed to by Bob Cox and are presented for your consideration. We were in the midst of moving up the time slot to 10-11 p.m.

The travel give-aways are at your discretion for promotional purposes.

Please advise on terms outlined herein. Looking forward to meeting you,

Sincerely,



Randy Stevens
Passkey.Hollywood Tours

RS/ar

PIPER & MARBURY

1200 NINETEENTH STREET, N.W.
WASHINGTON, D. C. 20036

202-861-3900

TELECOPIER 202-223-2085

CABLE PIPERMAR WSH

TELEX 904246

WRITER'S DIRECT NUMBER

(202) 861-3914

1100 CHARLES CENTER SOUTH
36 SOUTH CHARLES STREET
BALTIMORE, MARYLAND 21201
301-539-2530

January 3, 1989

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: File No. BRH-880926UJ

Dear Ms. Searcy:

On behalf of Jose Oaks, please find enclosed for filing the original and four copies of a "Petition To Deny" the above-referenced application for renewal of license of FM Station WKSJ, Jupiter, Florida. Please note that the statement of Jose Oaks in support of the Petition is being filed unsigned. The signed original will be submitted shortly.

Do not hesitate to call the undersigned counsel should there be any question about this matter.

Very truly yours,


Nora E. Garrote

Enclosures

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In re Application of)

U.S. Three Broadcasting Corp.)
(Robert B. Taylor))

For Renewal of License of)
FM Station WKSJ,)
Jupiter, Florida)

File No. BRH-880926UJ

To: Chief, Mass Media Bureau)

PETITION TO DENY

Jose Oaks ("Petitioner"), by his attorney and pursuant to Section 309(d)(1) of the Communications Act of 1934, as amended, 47 U.S.C. § 309(d)(1), and Sections 73.3584(a) and 73.3516(e) of the Commission's rules, hereby petitions that the Commission deny the above-captioned application of U.S. Three Broadcasting Corp. (the "Applicant") for renewal of the license of FM broadcast station WKSJ. Petitioner resides seasonally and has a place of business within the listening area of WKSJ and, thus, qualifies as a party in interest under Section 73.3584(a) of the Commission's rules. See Office of Communication of United Church of Christ v. FCC, 359 F.2d 994 (D.C. Cir. 1966); Metromedia, Inc., 43 R.R.2d 583, 587 (1978). As there are substantial and material questions of fact tending to establish that the grant of Applicant's application would be inconsistent with the public interest, a hearing on the above-captioned application is warranted.

On September 18, 1984, Robert B. Taylor, (through a holding company) acquired ownership of the Applicant and station WKSJ (see Attachment A). Broadcast station WTRU (AM), Jupiter, Florida, is commonly owned by Mr. Taylor through another corporation. Recently, the Commission has granted consent to assign the licenses for these stations to Mr. Taylor personally (see BALH-881208GK, BAL-881208EC). Station WKSJ is the only FM station licensed to Jupiter. Station WTRU is one of two AM services licensed to Jupiter. Both of Mr. Taylor's stations, pursuant to Commission authority, have been silent since April 1987, pending Commission determination of a channel allocation matter.^{1/}

There is, then, very little recent performance criteria under which to evaluate the public interest benefits of renewing Applicant's license under Mr. Taylor's ownership. There is, however, some objective indicia tending to establish that the Applicant's handling of the public trust immediately prior to receiving silence authority was far less than adequate.

Attached hereto (Attachment B) are copies of three complaints filed in March and April 1987 against the Applicant in Circuit Court for Palm Beach County, Florida, (Cases No. CL87-2174-AO, CL87-3260-AJ, and CL87-3130-AH) by three

^{1/} While only station WKSJ would be subject to the channel change, Mr. Taylor chose to also maintain station WTRU off-the-air.

listeners of station WKSJ.^{2/} Each complaint contains similar allegations that, during October and November 1986, Applicant fraudulently used the station's facilities to promote Applicant-sponsored contests for which prizes were openly promised but never awarded. These complaints indicate that Applicant engaged in said fraudulent behavior in connection with a car show and two separate "Mid-Week Attitude Adjustment Parties" advertised over and sponsored by WKSJ. The complaints allege that Applicant repeatedly refused, on demand, to provide the prizes to the winning station listeners.

Section 73.1216 of the Commission's rules requires that:

A licensee that broadcasts or advertises information about a contest it conducts shall fully and accurately disclose the material terms of the contest and shall conduct the contest as announced or advertised. No contest description shall be false, misleading or deceptive with respect to any material term.

47 C.F.R. § 73.1216. Applicant, however, advertised that prizes could be won, announced the winners, but refused to relinquish the prizes. If the prizes were only illusory, Applicant should have disclosed it when broadcasting the terms of the contest. If originally Applicant meant to award prizes, then it conducted the contest not in accordance with the announced terms. Either way,

^{2/} One listener sent a note to the FCC to advise of the contests and complain about the station being off the air. See Attachment C.

in connection with at least three separate contests, the listening public was deceived and injured. See Catoctin Broadcasting Corp. of New York, 62 R.R. 2d 1132, 1150 (Rev. Bd. 1987)(app. for rev. pending).^{3/}

In connection with Applicant's recent counterproposal to the Commission to prevent the allocation of a new FM Channel to Jupiter (MM Docket No. 88-366), Applicant submitted a statement (included herein as Attachment D) indicating that the attached complaints had been dismissed and that Applicant "handled this matter in a very fair and forthright manner with the parties concerned and was never charged with any wrongdoing." This explanation begs the point.

The cases were initially stagnant because the summonses could not be served on the Applicant. As reflected in the sheriff's statements attached to the Tucker and Mattingly complaints, station WKSX was already silent, the physical facilities abandoned and no working phone numbers were available when the sheriff intended to serve the summonses. That, as suggested, Applicant later (at an unspecified time) may have settled this matter with the claimants, does not mean that the Commission should ignore the alleged misconduct. Otherwise, errand licensees could avoid adjudicated misconduct which

^{3/} See Colonial Broadcasting Co., Inc., 44 R.R. 2d 1191 (1978), WNST Radio, 44 R.R. 2d 492 (Rev. Bd. 1978), WMJX, Inc., 48 R.R. 2d 1339 (1981).

reflects mishandling of the facilities licensed by the Commission to serve the public trust by merely advancing monetary or in-kind compensation if they are caught engaging in the misconduct. Needless to say, this approach would emasculate the notion of a licensee as a public trustee and would provide very little incentive for licensees to abide by high operational standards and the Commission's rules.^{4/}

As Applicant's statement (Attachment D) avers, all the facts surrounding the alleged deceptive sponsorship and advertising of contests in derogation of the rights of Applicant's own listening public have yet to be established. Those facts, however, are within the control of the Applicant, the claimants and other members of the listening public who witnessed the alleged contests. Applicant should have the burden to establish that what its listeners have termed "fraud" was not an abuse of its license and the public trust. Unless Applicant is able to do so, the allegations contained in the attached complaints reflect a pattern of repeated inability to conduct contests in accordance with the Commission's rules and raise a serious question of whether the Applicant can be relied upon to

^{4/} It is also questionable whether Applicant's statement in answer to Question 5 of its renewal application (Form 303-S, Attachment E hereto) that it has complied with the public inspection file rules is accurate since the station building where the file should be kept is closed-off to the public as indicated in the sheriffs' statements attached to the complaints.

be truthful to the public in its handling of the station's day-to-day operations.

The Commission carefully considers issues involving character qualifications as they provide the only criteria by which a licensee's job as a public trustee can be measured, particularly in connection with conduct reflecting violations of the Commission's rules. Character Qualifications in Broadcast Licensing, 59 R.R.2d 801 (1986). See KOED, Inc., 64 R.R.2d 1344 (Rev. Bd. 1988). Truthfulness and reliability are required traits for a broadcaster. 59 R.R. 2d at 809. In apparent violation of Section 73.1216 of the Commission's rules, Applicant broadcast and advertised information about a contest it conducted which has been alleged to be untrue and deceptive. Petitioner submits that these allegations provide a substantial and material question of fact warranting a hearing on this issue under Section 309(e) of the Communications Act. See Beaumont Branch of the NAACP v. FCC, 65 R.R.2d 367, 370 (D.C. Cir. 1988); Citizens for Jazz on WRVR, Inc. v. FCC, 775 F.2d 392, 394-395 (D.C. Cir. 1985).

Respectfully submitted,

JOSE OAKS

By: 

Nora E. Garrote
PIPER & MARBURY
1200 Nineteenth, N.W.
Suite 700
Washington, D.C. 20036
(202) 861-3900

His Attorneys

Date: January 3, 1989

DECLARATION OF
TANIA M. SANCHEZ

My name is Tania M. Sanchez. On July 25, 1990 I typed the attached letter and sent it, via Federal Express, to Mr. Robert B. Taylor, Stations WEXI(AM) and WTRU(FM), 500 North Delaware Boulevard, Jupiter, Florida 33458.

I declare under penalty of perjury that the matters stated above are true.


Tania M. Sanchez

LEIBOWITZ & SPENCER

A PARTNERSHIP OF PROFESSIONAL CORPORATIONS

MATTHEW L. LEIBOWITZ, P.A.
JOHN M. SPENCER, P.C.*
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OF COUNSEL
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100 E. 42ND STREET
NEW YORK, N.Y. 10017

* NOT ADMITTED TO
FLORIDA BAR

SUITE 1450
AMERIFIRST BUILDING
ONE SOUTHEAST THIRD AVENUE
MIAMI, FLORIDA 33131-1710
TELEPHONE (305) 530-1322
TELECOPIER (305) 530-9417

SUITE 500
1000 CONNECTICUT AVENUE, N.W.
WASHINGTON, D.C. 20036
TELEPHONE (202) 293-4093
TELECOPIER (202) 872-0604

July 25, 1990

VIA FEDERAL EXPRESS

Mr. Robert B. Taylor
Stations WTRU/WEXI
500 North Delaware Boulevard
Jupiter, Florida 33458

Dear Mr. Taylor:

It is two weeks since Chuck Reid and I visited the studio of Stations WTRU/WEXI seeking to examine the stations' public file. When no public file materials were available for Mr. Reid's and my examination, you agreed to copy the public file and send it to me within a week. I agreed to pay your photocopying and postage costs.

To date, you have sent me the following materials:

- 1) Letter dated April 6, 1989 from Robert B. Taylor to Donna R. Searcy transmitting Petition to Deny Jupiter Broadcasting Corp.'s application (FCC File No. BP-890103AB).
- 2) Petition to Deny Jupiter Broadcasting Corp.'s application (FCC File No. BP-890103AB).
- 3) Letter dated July 20, 1989 from Robert B. Taylor to Donna R. Searcy transmitting Petition to Deny Jupiter Broadcasting Corp.'s application (FCC File No. BPH-890103MD).
- 4) Petition to Deny Jupiter Broadcasting Corp.'s application (FCC File No. BPH-890103MD).

Please send me copies of the remaining public file materials for Stations WTRU and WEXI immediately. A return pre-paid Federal Express envelope is enclosed for your convenience.

It is unreasonable to withhold copies of the stations' public file for two weeks, after agreeing to provide copies within one week. I need an accurate account of the documents that Stations

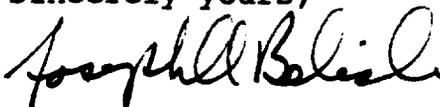
Mr. Robert B. Taylor
July 25, 1990
Page 2

WTRU and WEXI maintain for public inspection. These documents are important to my representation of Jupiter Broadcasting Corp. in the pending comparative renewal proceeding for Stations WTRU/WEXI.

Once again, I am enclosing a copy of the FCC's public file rule, Rule 73.3526, to assist you in making records available.

Thank you for your prompt attention to this request.

Sincerely yours,



Joseph A. Belisle
Counsel for
Jupiter Broadcast Corporation

JAB:tms

FEDERAL COMMUNICATIONS COMMISSION RULES - PART 73

(f) Affidavits filed pursuant to this section shall be executed by the applicant, permittee or licensee, if an individual; a partner having personal knowledge of the facts, if a corporation or association. (Revised 83-152, 4/7/83)

(g) Requests and affidavits which relate to an application which has not been designated for hearing shall bear the file number of such application. If the affiant is also an applicant, the affidavit shall also bear the file number of affiant's pending application(s). Requests and affidavits which relate to an application which is designated for hearing shall bear the file number of that application and the hearing docket number and will be acted on by the presiding officer. (Revised 83-152, 4/7/83)

(h) For the purposes of this section an application shall be deemed to be "pending" before the FCC and a party shall be considered to have the status of an "applicant" from the time an application is filed with the FCC until an order of the FCC granting or denying it is no longer subject to reconsideration by the FCC or to review by any court. (Revised 83-152, 4/7/83)

73.3526 LOCAL PUBLIC INSPECTION FILE OF COMMERCIAL STATIONS.

(a) RECORDS TO BE MAINTAINED.

Every applicant for a construction permit for a new station in the commercial broadcast services shall maintain for public inspection a file containing the material described in paragraph (a)(1) of this section. (Every permittee or licensee of an AM, FM or TV station in the commercial broadcast services shall maintain for public inspection a file containing the material described in paragraphs (a)(1), (2), (3), (4), (5), (6), (7) and ~~(11)~~ (10) of this section. In addition, every permittee or licensee of a TV station shall maintain for public inspection a file containing the material described in paragraphs (a)(8) and ~~(9)~~ of this section; every permittee or licensee of an AM or FM station shall maintain for public inspection a file containing material described in paragraph (a)~~(10)~~ (9) of this section. The material to be contained in the file is as follows:

FEDERAL COMMUNICATIONS COMMISSION RULES - PART 73

- (1) A copy of every application tendered for filing, with respect to which local public notice is required to be given under the provisions of §73.3580 or §73.3594; and all exhibits, letters and other documents tendered for filing as part thereof; all amendments thereto, copies of all documents incorporated therein by reference, all correspondence between the FCC and the applicant pertaining to the application after it has been tendered for filing, and copies of Initial Decisions and Final Decisions in hearing cases pertaining thereto, which according to the provisions of §§0.451 through 0.461 of the rules are open for public inspection at the offices of the FCC. Information incorporated by reference which is already in the local file need not be duplicated if the entry making the reference sufficiently identifies the information so that it may be found in the file, and if there has been no change in the document since the date of filing and the applicant, after making the reference, so states. If petitions to deny are filed against the application, and have been duly served on the applicant, a statement that such a petition has been filed shall appear in the local file together with the name and address of the party filing the petition. The file shall also contain a copy of every written citizen agreement. For purposes of this section, a citizen agreement is a written agreement between a broadcast applicant, permittee, or licensee, and one or more citizens or citizen groups, entered for primarily noncommercial purposes. This definition includes those agreements that deal with goals or proposed practices directly or indirectly affecting station operation in the public interest, in areas such as - but not limited to - community ascertainment, programming, and employment. It excludes common commercial agreements such as advertising contracts; union, employment, and personal services contracts; network affiliation, syndication, program supply contracts and so on. However, the mere inclusion of commercial terms in a primarily noncommercial agreement - such as a provision for payment of fees for future services of the citizen-parties (see "Report and Order," Docket 19518, 57 FCC 2d 494 (1976)) - would not cause the agreement to be considered commercial for purposes of this section.

NOTE.— Applications tendered for filing on or before May 13, 1965, which are subsequently designated for hearing after May 13, 1965, with local notice being given pursuant to the provisions of §73.3594, and material related to such applications, need not be placed in the file required to be kept by this section. Applications tendered for filing after May 13, 1965, which contain major amendments to applications tendered for filing on or before May 13, 1965, with local notice of the amending application being given pursuant to the provisions of §73.3580, need not be placed in the file required to be kept by this section. (Added 79-371, 7/9/79)

FEDERAL COMMUNICATIONS COMMISSION RULES - PART 73

- (2) A copy of every application tendered for filing by the licensee or permittee for such station which is not included in paragraph (a)(1) of this section and which involves changes in program service, which requests an extension of time in which to complete construction of a new station, or which requests consent to involuntary assignment or transfer, or to voluntary assignment or transfer not resulting in a substantial change in ownership or control and which may be applied for on FCC Form 316; and copies of all exhibits, letters, and other documents filed as part thereof, all amendments thereto, all correspondence between the FCC and the applicant pertaining to the application after it has been tendered for filing, and copies of all documents incorporated therein by reference, which according to the provisions of §§0.451 through 0.461 of the rules are open for public inspection at the offices of the FCC. Information incorporated by reference which is already in the local file need not be duplicated if the entry making the reference sufficiently identifies the information so that it may be found in the file, and there has been no change in the document since the date of filing and the licensee, after making the reference, so states. If petitions to deny are filed against the application, and have been duly served on the applicant, a statement that such a petition has been filed shall appear in the local file together with the name and address of the party filing the petition.

NOTE.—The engineering section of the applications mentioned in paragraphs (a)(1) and (2) of this section, and material related to the engineering section, need not be kept in the file required to be maintained by this paragraph. If such engineering section contains service contour maps submitted with that section, copies of such maps and information (State, county, city, street address, or other identifying information showing main studio and transmitter location shall be kept in the file.