

that conduct.<sup>20</sup>

Finally, there is the fact of the pending felony indictment of Mr. Larry Hudson, RuralVision's sole shareholder. That fact has been raised in a separate supplement to BCW's Petition.<sup>21</sup> The indictment, by itself, is damning enough. RuralVision's efforts to diminish it throw fuel on an already blazing fire. Thus, RuralVision has filed an updated FCC Form 430 stating that all of RuralVision's capital stock has been transferred to a "blind trust" pending a final determination of Mr. Hudson's guilt or innocence. Quite aside from the unlawful transfer of control of licensed facilities caused by that transfer, the characterization of the trust as "blind" and therefor outside of Mr. Hudson's control is an insult to the intelligence of the Commission's staff. A "blind trust" is a trust in which the trust res is controlled entirely by the trustee. The trustee can sell the trust assets, exchange the trust assets and otherwise dispose of those assets without the knowledge or consent of the trust beneficiary. The duty of the trustee is preserving and enhancing the value of the trust res. By stating that Mr. Hudson's RuralVision stock will be in a "blind trust," RuralVision is stating that the trustee is free to sell that stock without the knowledge or consent of Mr. Hudson

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<sup>20</sup> Instructional Television Fixed Service, 58 R.R.2d 559,590 (1985).

<sup>21</sup> That supplement was filed along with a motion for its acceptance on May 13, 1992.

and that the trustee will manage that stock and the business of RuralVision without any involvement of Mr. Hudson. That is ludicrous. Mr. Hudson obviously picked the trustee and cannot be expected to choose as his trustee a person of independence and, since the trust will end when the trial of Mr. Hudson is concluded, there is even less reason to believe that the trustee will act other than as the proxy of Mr. Hudson.

All of the foregoing facts raise one ultimate substantial and material question: Is RuralVision the type of entity the Commission wants as a licensee? In considering that issue, the Commission should bear in mind that, unless it can trust the representations of its licensees, it cannot regulate.<sup>22</sup> RuralVision has demonstrated that it has no respect for the Commission and is more than willing to do and say whatever it desires to achieve its aims. Licensing RuralVision is a mistake.

#### IV. CONCLUSION

RuralVision, contrary to its Opposition, has not shown that it has a frequency offset plan which is worthy of Commission consideration to determine whether frequency offset will make up the difference between the predicted desired to undesired signal

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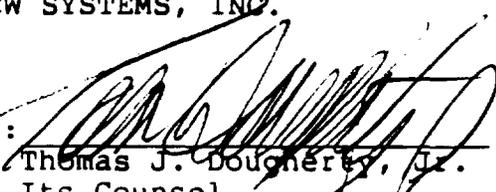
<sup>22</sup> BCW has not responded to RuralVision's "strike" pleading allegation for the obvious reason that such an accusation does not, in this case, come any where close to satisfying the test for that issue of Radio Carrollton, 69 F.C.C.2d 1139 (1978). As explained in this pleading, there are merits to BCW's Petition. That ends the analysis.

ratio within BCW's protected service area and the required 45 Db ratio. RuralVision admits that its proposed station cannot provide 45 Db protection to the reception of BCW's authorized cochannel station. Accordingly, interference from RuralVision's proposed station to the reception of BCW's cochannel station is considered present and RuralVision's proposed station cannot be licensed.

RuralVision has compounded its problems with its Opposition. Therein, RuralVision has made additional misrepresentations and other statements that evince a lack of candor. RuralVision has thus demonstrated that it cannot be trusted to act honestly and forthrightly with the Commission and, accordingly, it should be disqualified from being a Commission licensee.

Respectfully submitted,

BCW SYSTEMS, INC.

By: 

Thomas J. Dougherty, Jr.  
Its Counsel

FLETCHER, HEALD & HILDRETH  
1225 Connecticut Avenue, N.W.  
Suite 400  
Washington, D.C. 20036  
(202) 828-5700

June 3, 1992

**ATTACHMENT I**

## DECLARATION OF LARRY E. EWING

1. I, Larry E. Ewing, Ed. D., am the Superintendent of Kennett Public Schools in Kennett, MO. I have held that position continuously since July 1, 1991.

2. I have read the "Opposition to Petition to Dismiss or Deny, et al.", dated May 14, 1992, and authored by RuralVision Central, Inc. in the matter of its application for authority to construct and operate stations in the Multipoint Distribution Service at Sikeston, MO (FCC File No. 52030-CM-P-92). That document is referred to hereinafter as the "RuralVision Opposition". The RuralVision Opposition includes a "Declaration of William Johnson" and a letter on the stationary of RuralVision Central, Inc. from Cherri Gregg to me, dated October 25, 1991. That letter is referred to hereinafter as the Gregg Letter.

3. Mr. Johnson's Declaration states in its paragraph 5 that "RuralVision routinely contacts all of these receive sites before listing them in an application or in an amendment." The RuralVision Opposition states on its page 6 that "certain schools that had previously expressed an interest in receiving service from a RuralVision managed ITFS system, see, e.g., letter to Kennett Public Schools (October 25, 1991, attached hereto as Exhibit One, evidently changed their minds without informing RuralVision."

4. Contrary to the RuralVision Opposition, and to Mr. Johnson's declaration, Kennett Public Schools had not "previously expressed an interest in receiving service from a RuralVision managed ITFS system...." The Gregg Letter suggests that I agreed with Mr. Johnson in an October 16, 1991 telephone conversation that Kennett Public Schools would serve as a RuralVision ITFS receive site. That is plainly a false suggestion. In fact, I told Mr. Johnson during that conversation that Kennett Public Schools was considering Whittle Communications' "Channel One" educational programming and BCW Systems' proposal, and that we would need to see more information before committing to any one proposal. Rather than send us additional information, RuralVision sent the Gregg letter which suggests that we had somehow agreed to serve as a receive site for RuralVision. That telephone call followed by one day a letter sent by me to Mr. Johnson which is attached to this Declaration. In that letter, I told Mr. Johnson that "at this juncture we are simply trying to ascertain what, exactly, is being offered to our school system in return." Again, quite simply, there was no agreement expressed or implied to RuralVision that any school within the Kennett Public Schools District would be interested in RuralVision's programming. We had not "previously expressed an interest" and we, thus, had not "changed [our] minds...."

5. Mr. Johnson's Declaration, in its paragraph 8, states that "RuralVision never knew that BCW intended to build a competing ITFS system." That statement does not foot with the

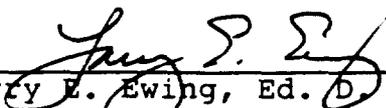
facts. I told Mr. Johnson by the October 15, 1991 letter, a copy of which is attached to this Declaration, that we had been approached by a company interested in arranging for school districts to file for ITFS station authorization. To quote myself,

"[w]e have been approached by another company who is attempting to obtain the appropriate FCC licensing. We are one of five school districts in Southeast Missouri and Northwest Arkansas that have been contacted by this company to assist them in obtaining the FCC licensing. Our attorneys have reviewed their tendered agreement...."

The Gregg Letter refers to a telephone conversation I had with Mr. Johnson the day after I sent that letter to him. During the telephone conversation, I told him that we were pursuing plans for our own ITFS system and he responded by asking whether we were working with "that outfit out of Malden" to which I responded "yes." While I cannot recall whether Mr. Johnson also referred to BCW Systems by its name, Mr. Johnson told me that RuralVision had BCW Systems surrounded on the West, the Northeast and the Southeast and that it would be better for our school system to go along with RuralVision. Thus, RuralVision had knowledge that we were in negotiations with BCW Systems for the establishment of an ITFS station.

6. Mr. Johnson's Declaration further states that "[w]e had contracted the same school districts with whom BCW subsequently entered into a lease arrangement months before BCW ever filed its ITFS applications." Yes, RuralVision did contact us through a form letter dated October 1, a copy of which is attached to this Declaration. At that time, however, we had been negotiating with BCW Systems since August 30, 1991. Further, our ITFS Application was not filed until February due to delays that were not caused by us. Thus, the filing date of our application is not relevant to the discussion.

7. I declare under penalty of perjury that the foregoing is true and correct. Executed on May 29, 1992.

  
\_\_\_\_\_  
Larry E. Ewing, Ed. D.

# KENNETT PUBLIC SCHOOLS

MEMBER OF NORTH CENTRAL ASSOCIATION SINCE 1913  
KENNETT, MISSOURI 63897

Dr. LARRY E. EWING  
SUPERINTENDENT

October 15, 1991

Mr. Bill Johnson, Manager Licensing  
RuralVision Central, Inc.  
124 W. Nacsho Ave.  
P. O. Box 68  
Thayer, KS 66776

Dear Mr. Johnson,

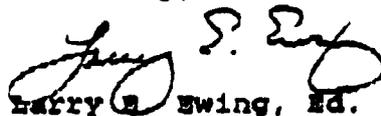
Mr. Terry Turlington, our High school Principal, forwarded your letter to me. Both Mr. Turlington and myself have some questions as to exactly what you and your company are offering our school system. Are we to understand that your company has contracted with Clay County Central to gain appropriate FCC licensing through the ITFS channels? If this is the case, are we then being approached as a satellite school district to the five or more districts your company probably contracted with originally?

We have been approached by another company who is attempting to obtain the appropriate FCC licensing. We are one of five school districts in southeast Missouri and northwest Arkansas that have been contacted by this company to assist them in obtaining the FCC licensing. Our attorneys have reviewed their tendered agreement and have raised several questions or points of concern. In contrast, our attorneys have apparently reviewed some or all of the RuralVision contract and feel much better about it.

My Board of Education and our school system are, indeed, interested in developing and receiving educational television whether it be through the wireless format that your company or someone else is offering or through the existing cable company. However, at this juncture we are simply trying to ascertain what, exactly, is being offered to our school system in return.

If you could shed some light on your offer or provide further information we would be most appreciative.

Sincerely,

  
Larry E. Ewing, Ed. D.

cc: Mr. Terry Turlington, HS Principal  
Mr. Randy Winston, Asst. Superintendent



Central, Inc.

October 1, 1991

Mr. Terry L. Turlington  
Kennett High School  
1400 W. Washinton St.  
Kennett, MO 63857

Dear Mr. Turlington:

The purpose of this letter is to introduce our company and to inform you that you will be receiving educational wireless television, at no charge, compliments of your neighboring school district Clay County Central School District, Rector, Arkansas. You may contact Mr. Ervin Kulbeth, Supt. at (501) 595-3151 with any questions you might have about the broadcasting or contact RuralVision Central, Inc.

Many rural areas of our country are desirous of a cablevision system, yet the financial constraints of a conventional wired cable system without a high concentration of subscribers render it economically infeasible. By contrast, a wireless cablevision company can service broad rural areas and we are in the process of building such a system in your area.

Wireless cable is not a new concept but rather a late bloomer designed to serve this rural nitch in the telecommunication market. In application, the head-end system receives the signal from various satellites and rebroadcasts them on the Super High Frequency (SHF) Spectrum. This is a microwave band and assures a

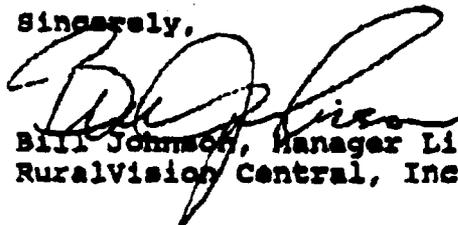
high quality signal to a limited broadcast area, normally 0-30 miles from the transmitting tower.

Many of the frequencies we need to use are reserved by the Federal Communications Commission (FCC) for broadcasting of Educational programming. The following are a few of the educationally oriented channels RuralVision will be carrying in our lineup: The Discovery Channel, Arts & Entertainment, The Learning Channel, Cable News Network, C-Span I, II, The Weather Channel, Childrens Television Workshop, Local PBS, and The TT-TN Network. In addition you will be receiving local educational programming and local sports events sponsored by the above mentioned school district. Programming should be available within the next twelve months.

There is no obligation to your facility to be a part of this service. RuralVision will provide and install all equipment needed to receive the signal, and provide our basic programming package to your facility at no cost. Wireless cablevision will not interfere with any existing cable or satellite service you may have.

We are looking forward to providing you a very successful educational and entertainment broadcast service.

Sincerely,



Bill Johnson, Manager Licensing  
RuralVision Central, Inc.

BJ/tw

**ATTACHMENT I I**

## DECLARATION OF DON PICKNEY

1. I, Don Pickney, am the President of BCW Systems, Inc. of Malden, Missouri. I have held that position since September 19, 1990, the inception of said incorporation.

2. I have read the "Opposition to Petition to Dismiss or Deny, et al.", dated May 14, 1992, and authored by RuralVision to construct and operate stations in the Multipoint Distribution Service at Sikeston, MO (FCC File No. 52030-CM-P-92). That document is referred to hereinafter as the "RuralVision Opposition". The RuralVision Opposition includes a "Declaration of William Johnson."

3. RuralVision's Opposition, Section IV, Paragraph 4, makes a claim that I, representing BCW Systems, Inc., "Initially...expressed an interest in working with RuralVision", and that when I "did not return subsequent calls, however, RuralVision proceeded with its own plans." There is absolutely no truth to this statement. First of all, my personal contact with RuralVision up until this present time consisted of a returned call by me in response to a recorded message which was left on my tape answering machine. That message, was left on my answering machine on, or about, August 12, 1991 and went something like, "My name is Bill Johnson and I am interested in discussing your 'H' channels with you. My number is..." Only when I returned the call on, or about, August 14, 1991 did I find out from Mr. Johnson that his interest was in "acquiring" those channels for RuralVision's use. My immediate and unequivocal response to Mr. Johnson was, "We have been working for over a year to build our own wireless cable system and have no desire to give up any of our frequency space!" I remarked to him that we had already invested thousands of dollars in consulting fees, wireless workshops and conventions and that we had every intention of building out our system to completion. At that point, Mr. Johnson became somewhat aggressive in his manner and stated, "Our licenses take priority over all others and you will wind up having to deal with us." I was shocked at his response and concluded, "Well, sir, we'll just have to wait and see where it all lands when the licensing is completed." Within minutes of the above described telephone conversation, I called Wireless Cable Connection, our consultants in Houston, Texas and expressed my alarm over the conversation with Bill Johnson. They subsequently performed a new frequency search analysis and informed us of the facts regarding RuralVision's ITFS license status in Sikeston, Missouri. After further engineering studies, on August 29-30, 1991, BCW Systems, Inc. entered into negotiations with 5 area school districts for long-term ITFS lease agreements and eventually we were successful in assisting them in filing ITFS license applications.

4. RuralVision's Opposition states, "...RuralVision did not 'harass' the President of BCW..." Following the phone call to Bill Johnson on August 14th, at which time I specifically and unequivocally told Mr. Johnson that BCW was definitely uninterested

in dealing with RuralVision, Mr. Johnson and other executives of RuralVision frequently (I would estimate at least 30 times) and as recently as April, 1992 placed phone calls to my residence, sometimes as many as three messages in one week, requesting me to return their calls regarding RuralVision's desire to acquire our "H" and MDS-1 licenses. In addition to the multiplied attempts to get me to respond to their phone messages, a local businessman in our area reported recently that he was randomly approached on, or about, March 23, 1992 by RuralVision personnel asking where I lived, stating that they were in town to "buy our wireless licenses." No personal contact was ever made but statements such as these to local citizenry undermined to some degree our ability to attract local investors in our system. While RuralVision may consider this "bombardment" of contacts to not be harassing, quite the contrary is perceived by those of us who were on the other end of the messages. It was mentally provoking to have to wonder if RuralVision would be pleading its case on the answering machine each time we checked messages. In addition to the above mentioned contacts by RuralVision, Mr. Johnson attempted, through our attorney, to get in contact with us for the purpose of discussing the acquisition of our licenses.

5. RuralVision's statement that when I did not return subsequent calls, "...RuralVision proceeded with its own plans..." conceals the fact that those plans included, among other things, (1) the [plan] to continue with the above mentioned calls and to keep the pressure on me through uninvited and unreturned telephone messages after I did not "return subsequent calls"; (2) the [plan] of RuralVision to be prepared to add additional receive-site schools without the approval of those schools located in a strategic path which could impede our ability to get FCC approval of our ITFS schools due to interference with those particular receive-site schools listed by the RuralVision amendment which was filed within a few days of our publicly advertised ITFS lease school bid proposal in the local papers; and (3) the [plan] to personally come to Malden and discuss with persons uninvolved with our company the [plan] to acquire our licenses. In short, it is my perception that RuralVision's [plan], in itself, included plans to continue to harass and attempt to pressure BCW into yielding to RuralVision's desire to acquire BCW's licenses.

6. In addition to the aforementioned RuralVision Opposition statements which I have addressed, I wish to also point out that Bill Johnson's declaration (paragraph 8), under penalty of perjury, contains the same substance as RuralVision's Opposition statement (Section IV, Paragraph 4) and therefore my response to his personal declaration is identical to the response given in paragraphs 4 and 5 of this declaration.

7. I declare under penalty of perjury that the foregoing is true and correct. Executed on May 30, 1992

  
\_\_\_\_\_  
Don Pickney

CERTIFICATE OF SERVICE

I, Delphine I. Davis, a secretary in the law firm of Fletcher, Heald & Hildreth do hereby certify that true copies of the foregoing "Reply to Opposition to Petition to Dismiss or Deny et al." were sent this 3rd day of June, 1992, by first-class United States mail, postage prepaid, to the following:

Leo I. George, Esq.  
1146 19th Street, N.W.  
Suite 200  
Washington, D.C. 20036

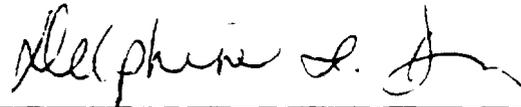
Frederick M. Joyce, Esq.  
Joyce & Jacobs  
2300 M Street, N.W.  
Eighth Floor  
Washington, D.C. 20037

Mr. Robert James\*  
Chief, Domestic Radio Branch  
Domestic Facilities Division  
Common Carrier Bureau  
Federal Communications Commission  
Room 6310  
2025 M Street, N.W.  
Washington, D.C. 20554

Gregory A. Weiss, Esq.\*  
Deputy Chief, Enforcement Division  
Common Carrier Bureau  
Federal Communications Commission  
Room 6206  
2025 M Street, N.W.  
Washington, D.C. 20554

Charles W. Kelley, Esq.\*  
Chief, Enforcement Division  
Mass Media Bureau  
Federal Communications Commission  
Room 8202  
2025 M Street, N.W.  
Washington, D.C. 20554

Mark Solberg, Esq.\*  
Distribution Services Branch  
Video Services Division  
Mass Media Bureau  
Federal Communications Commission  
Room 702  
1919 M Street, N.W.  
Washington, D.C. 20554



Delphine I. Davis

**\*Denotes By Hand**

108/ruralvision

BEFORE THE

# Federal Communications Commission

WASHINGTON, D.C. 20554

RECEIVED  
JUN 25 1992

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re Application of )  
RURALVISION CENTRAL, INC. )  
For a Conditional License )  
for a New MDS Channel 1 )  
Station at Sikeston, MO )

File No. 52030-CM-P-92

Directed To: The Chief, Domestic Radio Branch,  
Domestic Facilities Division,  
Common Carrier Bureau

**ERRATA TO  
REPLY TO OPPOSITION TO  
PETITION TO DISMISS OR DENY, ET AL.**

BCW SYSTEMS, INC. ("BCW"), by its counsel, hereby submits this errata to its "Reply to Opposition to Petition to Dismiss or Deny" (the "Reply") filed on June 3, 1992 in the above-captioned matter. This pleading should be accepted because it corrects typographic mistakes which could confuse the reader and because it corrects a mistake of fact which could mislead the Commission.

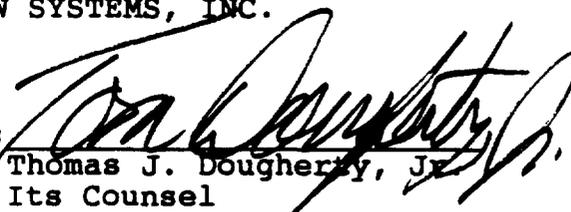
1. The word "licensee" ending the first sentence of the fourth paragraph of the summary is changed to its plural form.
2. The word "with" in the third line of the fifth paragraph of the summary is changed to "without."
3. The words "has placed" on the third line of the last paragraph of the summary are changed to "will place".
4. On page 13 of the Reply, BCW states that Mr. Hudson

has transferred all of his RuralVision stock to a blind trust and that such transfer, apparently, was made without prior Commission authorization. BCW was incorrect in that understanding. A FCC Form 430 update filed by RuralVision states that Mr. Hudson will form that trust upon his receipt of Commission consent issued upon pro forma application. While BCW was wrong as to those facts, that error in no way affects BCW's showing that the so-called "blind trust" will not insulate Mr. Hudson from the RuralVision decision-making process. In fact, the claim by RuralVision that it can obtain Commission consent to that assignment by pro forma application fortifies BCW's showing. Thus, if the assignment is pro forma, then there will be no substantial change in control.

Respectfully submitted,

BCW SYSTEMS, INC.

By:

  
Thomas J. Dougherty, Jr.  
Its Counsel

FLETCHER, HEALD & HILDRETH  
1225 Connecticut Avenue, N.W.  
Suite 400  
Washington, D.C. 20036  
(202) 828-5700

June 5, 1992

CERTIFICATE OF SERVICE

I, Delphine I. Davis, a secretary in the law firm of Fletcher, Heald & Hildreth do hereby certify that true copies of the foregoing "Errata to Reply to Opposition to Petition to Dismiss or Deny et al." were sent this 5th day of June, 1992, by first-class United States mail, postage prepaid, to the following:

Leo I. George, Esq.  
1146 19th Street, N.W.  
Suite 200  
Washington, D.C. 20036

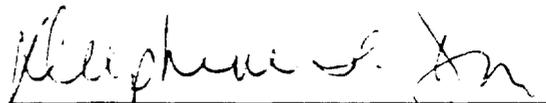
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Domestic Facilities Division  
Common Carrier Bureau  
Federal Communications Commission  
Room 6310  
2025 M Street, N.W.  
Washington, D.C. 20554

Gregory A. Weiss, Esq.\*  
Deputy Chief, Enforcement Division  
Common Carrier Bureau  
Federal Communications Commission  
Room 6206  
2025 M Street, N.W.  
Washington, D.C. 20554

Charles W. Kelley, Esq.\*  
Chief, Enforcement Division  
Mass Media Bureau  
Federal Communications Commission  
Room 8202  
2025 M Street, N.W.  
Washington, D.C. 20554

Mark Solberg, Esq.\*  
Distribution Services Branch  
Video Services Division  
Mass Media Bureau  
Federal Communications Commission  
Room 702  
1919 M Street, N.W.  
Washington, D.C. 20554

  
Delphine I. Davis

\*Denotes Hand Delivery