

ORIGINAL

BEFORE THE

**FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D.C.

In re Application of	)	MM DOCKET NO. 92-116
UHURU COMMUNICATIONS, INC.	)	File No. BRED-910230WF
For Renewal of License of Station WUCI-FM Binghamton, New York	)	
and	)	
WSKG PUBLIC TELECOMMUNICATIONS COUNCIL	)	File No. BPED-910501MB
For a Construction Permit for a New FM Station Binghamton, New York	)	
ARROWHEAD CHRISTIAN CENTER	)	File No. BPED-910501MC
For a Construction Permit for a New FM Station Binghamton, New York	)	

TO: Administrative Law Judge  
Arthur I. Steinberg

**ORIGINAL  
FILE  
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**JUL 13 1992**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**MOTION TO ENLARGE ISSUES**

**WSKG PUBLIC TELECOMMUNICATIONS  
COUNCIL**

Richard D. Marks  
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Its Attorneys

July 13, 1992

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**TABLE OF CONTENTS**

	<b><u>Page</u></b>
Summary .....	ii
Allegations of Material Fact .....	2
A Financial Issue Should Be Specified Against Uhuru .....	8
A Technical Issue Should Be Designated Against Uhuru .....	10
A Legal Qualifications Issue Should Be Specified Against Uhuru .....	12
Conclusions .....	17

## SUMMARY

By Uhuru's own admission, Station WUCI has been off the air since June 1, 1990. Uhuru's communications to the Commission about its station's status have only reflected Uhuru's "temporary" discontinuance of operations for "circumstances beyond our control." However, affidavits and official documents contained in this motion demonstrate that the National Telecommunications and Information Administration ("NTIA"), which provided substantial construction funding for Uhuru, seized the station's federally-funded transmission and production equipment in 1990 due to Uhuru's default under the terms of its grant from that Agency. A report by the Counsel to the Inspector General of the U.S. Department of Commerce shows that Uhuru was in financial distress, that grant funds were misspent or unaccounted for, and that certain federally-funded equipment was missing. The report also shows a variety of other serious irregularities.

The Broome County Sheriff in 1990 seized and sold other Uhuru equipment to satisfy judgments against Uhuru. At the present time, Uhuru has no operable technical facilities at its authorized transmitter site, having been evicted from that site in 1989 due to its failure to make site rental payments. WSKG's efforts to evaluate Uhuru's current status by locating and reviewing Uhuru's public inspection file have been rebuffed.

In these circumstances, Uhuru lacks financial qualifications to remain the licensee of Station WUCI. Uhuru's demonstrated failure of stewardship and its lack of capacity to re-construct and operate its

broadcast facility in the future justify an issue to determine whether it is financially qualified to remain a Commission licensee.

Uhuru is also technically unqualified to remain the licensee of Station WUCI. It retains little or no transmission or studio equipment and has no available transmitter or studio site. It maintains no office and has been unable or unwilling to produce its public inspection file. It seeks, in essence, to renew a "bare license" in contravention of FCC rules and policies. Thus, an issue should be designated to determine whether Uhuru has the technical ability to serve its community of license.

Additionally, Uhuru has failed in its duty of candor to the Commission. It made only a tardy, unedifying statement reflecting a "temporary" cessation of operations without disclosing the drastic change in circumstances affecting its past and future capacity to operate Station WUCI in the public interest. Its renewal application provided no additional disclosure, and even suggested the station was operating at a time long after it had ceased operating. Such conduct involves concealment, evasion and failure to be fully informative. It is the basis for questioning whether Uhuru lacks the character qualifications to be a Commission licensee.

Uhuru has also committed a litany of FCC rule violations, including modification of its transmitting facility without authorization, failing to seek required Commission approval for its silent status, failing to make its public file available, and failing to file annual employment reports for 5

years. These matters justify an additional character issue against Uhuru as an inept Commission licensee.

For these reasons, additional hearing issues should be designated against Uhuru.

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TO: Administrative Law Judge		
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**MOTION TO ENLARGE ISSUES**

WSKG Public Telecommunications Council ("WSKG") by its attorneys and pursuant to Section 1.229 of the Commission's rules, moves to enlarge the issues designated against Uhuru Communications, Inc. ("Uhuru"), the renewal applicant in this proceeding. WSKG makes material allegations of fact showing that Uhuru is financially, technically

and legally unqualified to remain a Commission licensee. Therefore, WSKG submits that the following issues should be designated against Uhuru:

- (1) Whether Uhuru is financially qualified to return its licensed station to the air and operate it for three months?
- (2) Whether Uhuru is technically qualified to remain a Commission licensee?
- (3) Whether Uhuru is legally qualified to remain a Commission licensee in light of its lack of candor in failing timely to apprise the Commission of its true reasons for going silent, its subsequent wholesale failure to explain these circumstances in its renewal application, and its history of inept compliance with the Commission's rules?

#### ALLEGATIONS OF MATERIAL FACT

Attachment 1 is a series of four letters obtained from the FCC's files:

1. Letter, Dr. Martin Schulman to Secretary, FCC dated June 8, 1990; informing the FCC that Uhuru-FM has "temporarily discontinued operations as of June 1, 1990." The reason for the discontinuance is given merely as "circumstances beyond our control."<sup>1/</sup>

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<sup>1/</sup> Despite a diligent search of the FCC's files on several occasions, counsel for WSKG was unable to locate the June 8, 1990 or June 22, 1990 letters or confirm that they were, in fact, filed as alleged by UCI. The letters as reflected in Attachment 1 were attached to the McCombs letter of March 26, 1991 and filed with the Commission at that time.

2. Letter, Dr. Martin Schulman to Secretary, FCC, dated June 22, 1990, referring to the letter of June 8, 1990; informing the FCC that, "we expect to be off the air for over 30 days"; and requesting Special Temporary Authority to remain silent.
3. Letter, Harold K. McCombs, Jr, to Secretary, FCC, dated March 26, 1991, referring to the June 8 and 22, 1990 letters; notifying the Commission that no authorization was ever received; and requesting "an STA to remain off the air."
4. Letter, Chief, FM Branch, Audio Services Division, FCC, to Uhuru Communications, Inc. c/o Harold K. McCombs, Jr., dated April 2, 1991, granting special temporary authorization for Uhuru to remain silent until July 1, 1991.<sup>2/</sup>

None of the licensee's three notifications to the FCC alludes in any way to the licensee's financial difficulties. No mention is made of Uhuru's lack of a studio and offices or dispossession of essential radio broadcasting equipment. The Commission may take official notice of these letters.

Attachment 2 is a copy of the January 30, 1991 Uhuru license renewal application, as retrieved from the FCC's files. The application also does not mention that Uhuru has no facilities with which to operate station Uhuru, or even acknowledge that the station is off the air. The application does not report the county sheriff's seizure and sale to WUCI equipment to satisfy judgments by Uhuru creditors. Indeed, the application provides no hint that the Uhuru renewal request is irregular in any respect. If anything, it suggests that the station is still operating "with an all volunteer staff."

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<sup>2/</sup> A check of the Commission's records on July 8, 1992 confirmed no further extensions of silent authority have been granted.

Attachment 3 is a Declaration of Charles F. Mulvey, formerly WSKG's Vice President for Engineering and now WSKG's Vice President for Broadcast Operations. Mr. Mulvey's Declaration reaffirms his previous Declaration of April 26, 1991 (provided in WSKG's May 1, 1991 Petition to Deny the WUCI license renewal) in all respects and confirms that Station WUCI is not now transmitting on Channel 218 in Binghamton, New York. In the April 26, 1991 Declaration, paragraphs 2 through 4, Mr. Mulvey states that WSKG and the National Telecommunications and Informational Administration ("NTIA"), U.S. Department of Commerce, are parties to a written agreement under which WSKG stores certain federally-funded radio equipment repossessed by NTIA from station Uhuru. A copy of the agreement is attached to Mr. Mulvey's Declaration.<sup>3/</sup> The agreement with NTIA includes, in "Exhibit A," an inventory of the items seized from Uhuru by NTIA. This inventory includes, among other things, studio equipment, an FM transmitter, Emergency Broadcast System equipment and two studio-transmitter links transmitters.

In paragraph 5, Mr. Mulvey describes a visit he made on April 18, 1991 to Uhuru's last known transmitting site, the Motorola tower on Ingraham Hill in Binghamton. He observed that the electrical power was

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<sup>3/</sup> During late 1990, at NTIA's suggestion, WSKG entered negotiations with Uhuru over the possible acquisition, subject to appropriate FCC approval, of the WUCI license. These efforts by WSKG to resurrect service over the station were unsuccessful. WSKG therefore filed its own application for a new construction permit for the WUCI frequency.

disconnected to Uhuru's equipment shed. Paragraph 6 describes a letter Mr. Mulvey received from Gino Ricciardelli, Vice President, Engineering, of Stainless Broadcasting Company, which also has a tower on Ingraham Hill. (The Stainless tower is Uhuru's authorized transmitter site.) Mr. Ricciardelli notes that Uhuru, unable to pay back rent or make rent payments in the future, vacated the Stainless tower and removed the Uhuru transmitter and shack from Stainless' property in the spring of 1989.

In paragraphs 7 through 9, Mr. Mulvey describes his efforts to review Uhuru's public inspection file. Mr. Mulvey telephoned and visited Ms. Billie Anderson, who rebuffed his request to see the file. Among other things, Ms. Anderson told Mr. Mulvey that she did not have to show him the file, and told him that she had seven days in which to produce the file (paragraph 8). (The Commission can take official notice from its records that Ms. Anderson was listed as a director of the licensee corporation on FCC Form 340, filed with the FCC in December, 1982; indeed, she is listed as one of the corporation's initial directors on page 2 of Uhuru's Certificate of Incorporation, dated August 7, 1982 and filed with FCC Form 340.)

Attachment 4 is the Declaration of Mark Polovick, Chief Engineer at WSKG-TV/FM, dated April 26, 1992.<sup>4/</sup> Mr. Polovick describes his efforts, and those of fellow employee Roger Sporre, to locate and inspect

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<sup>4/</sup> The original of Mr. Polovick's declaration under penalty of perjury was submitted to the Commission as an attachment to WSKG's Petition to Deny.

Uhuru's public file. Mr. Polovick describes how he was referred to Ms. Billie Anderson, who was described to him as the only person who would know where the file was kept. The remainder of the Declaration describes Mr. Polovick's unsuccessful efforts to inspect Uhuru's public file. Mr. Polovick's Declaration corroborates Mr. Mulvey's in certain important particulars.

Attachment 5 is the Declaration of Kay Zaharis, Administrative Secretary at WSKG-TV/FM. Ms. Zaharis describes her efforts on July 9, 1992 to inspect Uhuru's public file. Ms. Zaharis explains how she also was referred to Ms. Billie Anderson as the person with whom she would have to speak about the public file. The remainder of the affidavit describes Ms. Zaharis' efforts to meet with Ms. Billie Anderson in order to obtain access to the public file.

Attachment 6 is the Declaration of Scott Anglehart, an attorney with the law firm of Twining, Nemia, Hill & Steflik in Binghamton.<sup>5/</sup> Mr. Anglehart describes how, under the Freedom of Information Act, he requested access to a final investigative report involving a principal of Uhuru, Mr. Ashimba A. Tariq.<sup>6/</sup> Attached to Mr. Anglehart's declaration is a letter from the Counsel to the Inspector General of the U.S.

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<sup>5/</sup> The original of Mr. Anglehart's declaration was attached to WSKG's Petition to Deny.

<sup>6/</sup> Because Mr. Anglehart's declaration, and the one that follows in Attachment 6, reveal only facts that third parties already know or could learn, neither declaration waives the attorney-client privilege as to private communications with WSKG. See, e.g., U.S. v. Buljubasic, 808 F.2d 1260 (7th Cir.), cert. denied, 484 U.S. 815 (1987).

Department of Commerce, enclosing a redacted copy of the report, together with information about the reasons for the deletion of certain items from the report.

The subject of the report is "Program Fraud" in connection with NTIA's grant to Uhuru of \$55,138 for purchase of specified broadcast equipment to be used for construction of Uhuru. In summary, the report explains that Uhuru was in financial distress, that not all of the grant funds could be accounted for and that certain equipment was missing at the time of the investigation in 1988.

The memorandum and the attached abstract of investigation also reveal, among other things:

1. The station was evicted from its previous tower site. Abstract at 25.
2. Stainless Leasing Company, which previously leased the tower site for Uhuru, was owed \$19,000. Abstract at 25.

Attachment 7 is a further Declaration of Scott Anglehart, attesting to the receipt from the Records Access Officer of Broome County, N.Y., of records of the Broome County Sheriff's 1990 seizure and sale of particular Uhuru equipment, including technical equipment, to satisfy judgments entered against Uhuru.<sup>2/</sup>

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<sup>2/</sup> The original declaration of Mr. Anglehart was attached to WSKG's Petition to Deny.

**A FINANCIAL ISSUE SHOULD  
BE SPECIFIED AGAINST UHURU**

A licensee must remain financially qualified to maintain its facilities and operate its station. If a licensee convincingly demonstrates an inability to raise sufficient money to maintain and operate its station, a substantial question of fact exists whether the licensee has the necessary financial qualifications to be granted renewal.

Applicants for new aural broadcast facilities must "demonstrate the ability to construct the station and operate the facility for three months, without relying upon advertising or other revenue to meet these costs." Financial Qualifications Standards for Aural Broadcast Applicants, 69 F.C.C.2d 407 (1978); *see, e.g., Anchor Broadcasting Ltd. Partnership*, 5 FCC Rcd 2432 (1990). A similar standard governs renewal applications. In Federal Broadcasting System, 62 F.C.C.2d 861 (Rev. Bd. 1977), dismissed, 75 F.C.C.2d 615 (1980) (proceeding terminated after death of principal), the Review Board, on its own motion, designated a financial issue because repeated requests for authority to remain silent raised serious questions about whether the renewal applicant would regain the financial capacity to operate the station. Id. at 874-75.

In Revision of Form 303, Application for Renewal of Broadcasting Station License, 59 F.C.C.2d 750 (1976), the Commission eliminated requirements for commercial and noncommercial renewal applicants to demonstrate their continued financial qualifications. Id. at 756 & n.4.

However, the Commission did not eliminate the requirement that renewal applicants be financially qualified. The Commission said:

The licensee's proven ability to maintain the broadcast operation of that station over a period of time affords the Commission reasonable assurance of the renewal applicant's financial qualifications. . . . Serious financial problems arising during the preceding license period term and persisting at renewal time have generally been resolved with the licensee, prompted by economic realities, refinancing its broadcast operation or, with Commission approval, assigning the station license to another who was fully able to sustain the station's continued operation. . . . The Commission will, of course, fully explore the financial posture of any broadcast licensee in the unlikely event that its past stewardship is insufficient to support the likelihood of continued station operation. Accordingly, we reaffirm our belief that prolonged suspension of station operation deserves the public interest and we stand committed to the expeditious restoration of broadcast service to the public.

Id. at 756-57 (footnotes omitted, emphasis supplied). See also Marr Broadcasting Company, 1 FCC Rcd 691 (ALJ 1986), joint petitions dismissed, 2 FCC Rcd 3466 (Rev. Bd. 1987), 2 FCC Rcd 6596 (1987), joint petition approved upon renewal applicant's dismissal of application, 3 FCC Rcd 652 (Rev. Bd. 1988).

A financial issue is appropriate here. Uhuru had financial problems during its license term. The licensee made two requests for silent authority and is now silent without any authority. Further, much of the licensee's transmitting and studio equipment has been seized by a judgment creditor and by the federal agency that paid for a substantial amount of the equipment in the first place. The licensee has vacated both its original (authorized) and a subsequent (unauthorized) transmitter site, and seems at present not to have a transmitter site. The Department of

Commerce investigation revealed that Uhuru was deeply in debt, with no obvious means to alleviate its financial distress.

These facts raise a material question of whether Uhuru is, under Commission precedent, financially qualified to remain a Commission licensee. WSKG submits that this hearing must explore, at a minimum, whether Uhuru has financial resources sufficient to return its station to the air immediately and to operate the station for three months. This is the standard for new broadcast applicants; in Uhuru's circumstances, it is the appropriate standard to adjudge its financial fitness to remain a licensed broadcaster. The burden of proof and of persuasion should be on Uhuru.

**A TECHNICAL ISSUE SHOULD BE  
DESIGNATED AGAINST UHURU**

"[A]n applicant is required to show that the essential items of equipment are either possessed or reasonably available at a cost which would not impair its financial qualifications." United Broadcasting Company, 93 F.C.C.2d 482, 508, (1983). Uhuru's technical equipment was seized in 1990. It has no studio and very little, if any, remaining studio equipment. It has no antenna on its authorized tower, no transmitter and/or shack at its licensed transmitter site, and no contract with its licensed tower site owner. Its transmitter and studio-transmitter links, among other items, were taken. The electrical power to the transmitter shack at its unauthorized location is disconnected.

In United Broadcasting Company, 93 F.C.C.2d 482 (1983), the Commission found an applicant technically unqualified. The used equipment proposed in its application was no longer available and no substitute equipment was specified. The Commission concluded, as did the ALJ, that the applicant lacked the requisite technical qualifications to be a licensee. Id. at 508-09.

In Sierra Broadcasting, Inc., 64 F.C.C.2d 726 (1977), the Commission denied reconsideration of its earlier dismissal of the license renewal application for television station in Visalia, California. The station was silent and appeared unable "to return to the air at any time in the near future." Id.<sup>8/</sup> The station's former studio was then occupied by a machine shop, with no broadcast equipment remaining there, and the transmitter site had no remaining transmitter facilities and no structure available for the installation, although a tower remained.

The Commission held:

We are offered no substantial basis on which to conclude that termination of authorized broadcast operations. . . -- and the abandonment of main studios shortly thereafter -- was ever intended to be anything but permanent. The public interest is disserved by allowing broadcast channels to remain unused for such lengthy periods.

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<sup>8/</sup> Although the station submitted several requests to remain silent, the Commission noted that mere submission is insufficient; authorization from the Commission is required for compliance with minimum operating standards.

Id. at 727 (citation omitted). See also California Stereo, Inc., 26 R.R.2d 1713, 1715 (Rev. Bd. 1973)(issue specified whether applicant had necessary technical equipment to operate station); Kittyhawk Broadcasting Corp., 8 F.C.C.2d 839 (1967)(same).

In Uhuru's case, the seizure of its technical equipment, relinquishment of its transmitter site and the attendant economic distress are basis for a designated technical issue. Uhuru has no technical facilities to carry out its licensee obligations to provide broadcast service responsive to community problems, needs and interests. Its record offers no hope that Uhuru can re-construct the necessary facilities. From June 1, 1990 to the present, Uhuru has not served the public interest because Uhuru cannot broadcast. An issue is therefore appropriate, with Uhuru having the burdens of proof and persuasion.

**A LEGAL QUALIFICATIONS ISSUE  
SHOULD BE SPECIFIED AGAINST UHURU**

Uhuru's letters in Attachment 1 and its renewal application in Attachment 2 fail to mention Uhuru's dire economic circumstances, the seizures of its equipment and its lack of studio and transmitting facilities. The letters refer only to "circumstances beyond our control." The renewal application, in Exhibit 1, actually asserts that Uhuru "currently operates" with an all volunteer staff. (See Attachment 2.) Further, investigation of the appropriate FCC public files reveals no other communication from Uhuru to apprise the Commission of the licensee's drastic change in

circumstances. Yet recently, under penalty of perjury, Gladys Cordeaux, Chairman of Uhuru's governing board, stated that "the board delegated to Mr. Butler the responsibility ....to arrange financing to get the station back on the air." Attachment 8 is a copy of Ms. Cordeaux's declaration. This admission confirms that the reason for Uhuru's silence is financial; it is the first time Uhuru has apprised the Commission of the real reason for its silence.

A licensee's obligation of candor in renewal proceedings was recently summarized in Henry R. Malloy, Jr., FCC 91D-17, MM Docket No. 88-306 (ALJ Apr. 24, 1991):

The Commission's "scheme of regulation rests on the assumption that applicants will supply the Commission with accurate information" and that "[d]ishonest practices threaten the integrity of the licensing process. . . ." Absolute truth and candor is a basic duty of applicants. The Commission views "misrepresentation and lack of candor in an applicant's dealings with the Commission as serious breaches of trust." Such misconduct has consistently disqualified applicants.

Slip Op. at 5 (citations omitted). The licensee represented in its renewal application that it had complied with the rules, when it had not. Id.

In Policy Regarding Character Qualifications in Broadcast Licensing, 102 F.C.C.2d 1179, 1196 (1986), the Commission explained: "We have recently observed that misrepresentation 'involves false statements of fact,' while lack of candor 'involves concealment, evasion, and other failures to be fully informative.'" In Fox River Broadcasting, Inc., 88 F.C.C.2d 1132 (Rev. Bd. 1982), modified, 93 F.C.C.2d 127, 129

(1983) (lack of candor requires deceptive intent), lack of candor was described in these terms:

Lack of candor, unlike misrepresentation, does not arise directly out of the more universal requirement that intentionally false statements not be made in connection with an application or adjudicatory proceeding before any federal agency. It arises, rather, out of the "special status of licensees as trustees of a scarce public resource," . . . and the courts have suggested that "the FCC would be derelict if it did not hold broadcasters to 'high standards of punctilio.' . . ." [This] translated into the creed that: "[i]t does not seem too much to ask that federal licensees be scrupulous in providing complete and meaningful information provided for in forms and regulations.' . . . (emphasis added). Thus, in proceedings before the Commission involving a licensee. . . , misleading conduct which does not necessarily amount to a misrepresentation. . . may nonetheless warrant a penalty for breach of the standard of complete candor expected by the Commission, which must rely heavily on such candor to provide validity to processes on which the reliance is based. Lack of candor can be characterized in a number of ways: evasiveness, failure to provide "complete and meaningful information," "skirting" a question by providing information "technically' correct" but unedifying, or the playing of "procedural games." The cord of candor, then, is omission, viz., failure to be completely forthcoming in the provision of information which could illuminate a decisional matter.

Id. at 1136-37 (citations and footnotes omitted, emphasis in original.)

Uhuru's loss of its financial and technical facilities -- certainly of decisional significance in any broadcast license renewal -- was never communicated, even indirectly, to the Commission in its requests for STA or its renewal application. Uhuru failed to provide complete and meaningful information. Instead, it supplied an "unedifying" reason for going and remaining silent.

Uhuru's failure to disclose its plight to the Commission calls to mind George E. Cameron Jr. Communications, 93 F.C.C.2d 789 (Rev. Bd. 1983):

The ALJ considered the evidence and concluded that GECC's financial showing to the Commission "was essentially a sham"; that during the relevant period "BBC and its subsidiary GECC were on the verge of financial collapse"; and, that it violated 47 CFR §1.65 for failure to advise before the grant of the FM application that its financial picture had changed in a decisionally significant manner. The Board considered GECC's exceptions and found that even if the original balance sheet submitted by BBC was "technically accurate," GECC misled the Commission by failing to notify it of a sharply declining economic position and of a deep financial rupture in the GECC organization.

Id. at 804. The Board concluded:

We find that there was acute awareness on the part of the GECC principals of the gravity of the financial situation and that its breach of its duty to so inform the commission during the pendency of the FM application was egregious. . . .GECC's lack of candor here is independently sufficient for disqualification.

Id. at 812 (citations and footnote omitted). This analysis, albeit in the renewal context, is directly applicable to Uhuru's conduct. In essence, Uhuru concealed its loss of financial and technical qualifications. See also Fred Kaysbier, 17 R.R.2d 389, 391 (Rev. Bd. 1967)(lack of candor issue warranted; it goes to applicant's basic character qualifications).

The Declaration of Mr. Mulvey, Mr. Polovick and Ms. Zaharis demonstrate that Uhuru also failed to maintain an accessible public inspection file in Binghamton, its city of license. Given the serious questions surrounding Uhuru's license renewal and its basic qualifications, its failure to make its public inspection file available to inquiring persons is tantamount to concealment. Any persons in Binghamton wishing to apprise themselves of Uhuru's status were unable to do so. See Gross Telecasting, Inc., 31 R.R.2d 798 (Rev. Bd. 1974)(issue designated where license renewal application not made available for public inspection).

The declarations and official documents attached to this Motion also demonstrate that Uhuru's public file violation is just one of a list of FCC rule violations committed by Uhuru. For example, Uhuru at one point transmitted from the Motorola tower on Ingraham Hill. See Declaration of Charles Mulvey, dated April 26, 1992, at ¶ 5. WSKG found no record in the Commission's files that Uhuru ever received permission to change transmitter sites from the Stainless tower to the Motorola tower at Ingraham Hill. An application seeking approval for the WUCI relocation (File No. BPED-890615IA) was filed but later dismissed by the Commission on September 14, 1990. Additionally, Uhuru has been silent without Commission authority since July 1, 1991 and it has filed no annual employment reports for 1987, 1988, 1989, 1990 and 1991--nearly its entire previous license term.<sup>9/</sup>

When the list of rule violations by Uhuru is tallied, a serious question emerges whether Uhuru has demonstrated ineptness to a degree that negates its legal qualifications to serve as a Commission licensee. The continuing violations of the Commission's public file, equal opportunity employment reporting, and minimum operating rules demonstrate a pattern of carelessness or willful disobedience that calls into question the applicant's overall conduct as a Commission licensee. See e.g., Beamon Advertising, Inc., 1 R.R.2d 285 (Rev. Bd. 1963); Tri-State Communications Co., 2 R.R.2d 297 (Rev. Bd. 1964). Thus, there are substantial and

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<sup>9/</sup> Review of the FCC's public reference material revealed Uhuru's failure to file its annual ownership reports for 1987-1991.

material questions of fact as to whether Uhuru has the character to remain a licensee. Uhuru should therefore have the burden of proof and persuasion on this issue as well.

### CONCLUSIONS

The specific allegations of fact supplied by WSKG satisfy the standard for petitions to enlarge issues. WSKG raises substantial and material questions of fact, supported by declarations under penalty of perjury and official documents from Commission, NTIA and the Broome County Sheriff files, whether Uhuru is financially and technically qualified to remain a licensee. WSKG also raises substantial and material questions whether Uhuru must be disqualified as a licensee because of its lack of candor before the Commission and its ineptness as a Commission licensee.

Uhuru should be required to proffer facts to demonstrate its financial and technical qualifications and dispel the allegations concerning its apparent lack of candor.

Respectfully submitted,

**WSKG PUBLIC TELECOMMUNICATIONS  
COUNCIL**

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July 13, 1992

ATTACHMENT 1

1. Letter, Dr. Martin Schulman to Secretary, FCC, dated June 8, 1990.
2. Letter, Dr. Martin Schulman to Secretary, FCC, dated June 22, 1990.
3. Letter, Harold K. McCombs, Jr. to Secretary, FCC, dated March 26, 1991.
4. Letter, Chief, FM Branch, Audio Services Division, FCC, to Uhuru Communications, Inc. c/o Harold K. McCombs, Jr., dated April 2, 1991.

# Binghamton

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# COPY

June 8, 1990

Secretary  
Federal Communications Commission  
Washington, DC 20554

Dear Sir or Madam:

I am writing in my capacity as the volunteer Interim President of the Board of Directors of Uhuru Communications, operators of **WUCI-FM**, a not-for-profit radio station [501(c)3] in Binghamton, New York. We wish to inform you, in conformance with Section 73.1740 A4, that due to circumstances beyond our control we have temporarily discontinued operations as of June 1, 1990.

Very truly yours,



Dr. Martin Schulman, Associate Professor  
Director, MBA in Arts Administration Program