

RECEIVED

JAN 12 1993

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re Applications of	)	MM Docket No. 92-302
	)	
JOHN M. GIANNETTINO	)	File No. BPH-910719MA
	)	
JOHN T. PRITCHARD	)	File No. BPH-910722MI
	)	
For Construction Permits For a	)	
New FM Station on Channel 276C3	)	
at Burlington, Iowa	)	

TO: Administrative Law Judge  
Richard L. Sippel

CONTINGENT PETITION FOR LEAVE TO AMEND, AND FOR OTHER RELIEF

John T. Pritchard, by his attorney, pursuant to the Section 73.3522(b)(1) of the Commission's Rules, and the Commission's policies enunciated in Docket No. 90-264, hereby seeks leave to amend his application to withdraw his divestment and integration commitments, contingent upon the Judge's grant of the **Joint Request for Approval of Settlement Agreement and for Grant of Application** being filed concurrently herewith. In support thereof, he states as follows:

The Settlement Agreement being filed today contemplates the dismissal of the only competing application to that of Mr. Pritchard. Under the policy enunciated in Ruarch Associates, 103 FCC2d 1178 (1986), as reaffirmed in Docket No. 90-264, the Presiding Judge is authorized in these circumstances to grant the request of the surviving applicant to be relieved of his

No. of Copies rec'd  
List A B C D E

*076*

divestment and integration<sup>1</sup> commitments: See Report and Order in Docket No. 90-264 (68 RR 2d 944, 6 FCC Rcd 157, released December 21, 1990), as modified on reconsideration (69 RR 2d 167, at 169; 6 FCC Rcd 3403; released May 15, 1991).<sup>2</sup>

As filed in July 1991, Pritchard's application noted the then-pending application of Mr. Pritchard to acquire control of the corporate licensee of Station KKMI-FM, Burlington, subject to Commission consent, but proposed to divest that interest in the event of a grant of the instant application. Consistent with that commitment, Paragraph 10 of the Hearing Designation Order provides:

"in the event of a grant of Pritchard's application, John P. Pritchard will be ordered to divest Station KKMI(FM) prior to the grant of program test authority."

Moreover, as noted in the instant amendment, since the filing of these applications in 1991, the Commission has amended

---

<sup>1</sup> As noted in the attached amendment, Mr. Pritchard currently devotes full time to the management of Station KKMI-FM, and following grant of the instant application would anticipate devoting full time to the management of both stations. However, he would like particularly to be relieved of any implicit commitment to devote a minimum of 40 hours per week exclusively to the new facility: Cf. Lizardo-Franich Partnership, 7 FCC Rcd 6256 (Rev.Bd. 1992).

<sup>2</sup> The Report and Order ruled that the Ruarch policy would apply only to settlements filed by the Notice of Appearance deadline: "[W]here a settlement of the case is entered into and filed with the presiding judge on or before the NOA date, the judge may entertain and grant a request to relieve the successful applicant of divestiture and integration proposals." (§21). On reconsideration, however, the cut-off date for requesting relief from divestiture and integration proposals was extended to the exhibit exchange date: 6 FCC Rcd 3403 (§6).

The instant amendment is timely-filed under either iteration.

its duopoly rules (Section 73.3555) to permit the common ownership of more than one station in a particular broadcast service located in the same market. As pertinent to Burlington, Iowa, the amended rule provides as follows:

(a) (1) Radio Contour Overlap Rule. . . .

(i) In radio markets with 14 or fewer commercial radio stations, a party may own up to 3 commercial radio stations, no more than 2 of which are in the same service (AM or FM), provided that the owned stations, if other than a single AM and FM station combination, represent less than 50 percent of the stations in the market.

Subparagraph (3) of the rule defines a "radio market" in terms of principal city contour overlap. I.e., stations licensed to other communities will be included if their principal city contours overlap those of either of the stations proposed to be under common ownership.

There are currently four broadcast stations licensed to Burlington, Iowa:

Station KBUR(AM) - 1490 KHz, 1 kw Unlimited  
Station KGRS-FM - 107.3 MHz, 100 kw  
Station KCPS(AM) - 1150 KHz, 500 w Day  
Station KKMI-FM - 93.5 MHz, 3 kw

Preliminary study indicates that, under the "radio market" definition noted above, the following stations would also be included within the Burlington "radio market":<sup>3</sup>

Station KBKB-FM, Fort Madison, Iowa - 101.7 MHz, 50 kw  
Station KBKB(AM), Fort Madison, Iowa - 1360 KHz, 1 kw D  
Station KILJ-FM, Mount Pleasant, Iowa - 105.5 MHz, 25 kw  
Station KOKX-FM, Keokuk, Iowa - 95.3 MHz, 3 kw

---

<sup>3</sup> An exhibit detailing and demonstrating such contour overlap is in preparation, and will be filed shortly as a supplement hereto.

Station WCAZ-FM, Carthage, Ill. - 92.1 MHz, 25 kw

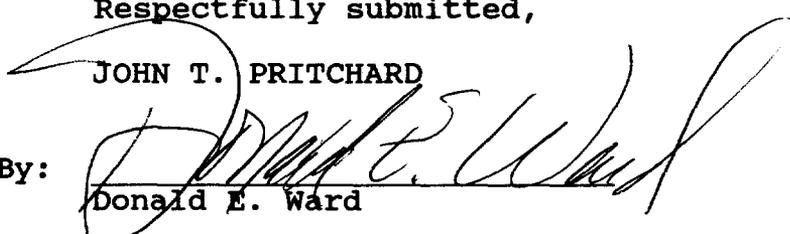
Thus, upon grant of the instant application to Mr. Pritchard, he would own two of five (40%) of the broadcast stations authorized to Burlington, and two of the ten (20%) broadcast stations in the relevant "radio market" (assuming the accuracy of our preliminary study), significantly below the "less than 50 percent" limit stated in the rule. Thus, the divestment condition set forth at ¶10 of the HDO is not compelled by any Commission Rule, but derives solely from the divestment commitment contained in Pritchard's application. Upon relief of Pritchard from that commitment pursuant to Ruarch, the condition specified at ¶10 may also be deleted.

Consistent with the foregoing, Mr. Pritchard requests that his application be amended to delete its divestment and integration commitments, that he be relieved from fulfilling the divestment and integration commitments contained in his application, and that the divestment condition contained at paragraph 10 of the Hearing Designation Order be deleted.

Respectfully submitted,

JOHN T. PRITCHARD

By:

  
Donald E. Ward

Donald E. Ward, P.C.  
1201 Pennsylvania Avenue, N.W.  
Fourth Floor  
Washington, D. C. 20004  
(202) 626-6290

January 12, 1993

His Attorney



RECEIVED

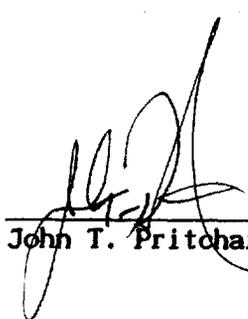
JAN 12 1993

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

2850 Mt. Pleasant Street • P.O. Box 832 • Burlington, Iowa 52601 • 319 752-5402 • (Fax) 319-752-4715

AMENDMENT

Please amend my application for a construction permit for a new FM broadcast station at Burlington, Iowa (File No. BPH-910722MI) to include the attached "AMENDMENT AND DEMONSTRATION OF COMPLIANCE WITH SECTION 73.3555."



John T. Pritchard

January 8, 1993

John T. Pritchard  
File No. BPH-910722MI  
Burlington, Iowa FM

AMENDMENT AND DEMONSTRATION OF COMPLIANCE WITH SECTION 73.3555

As filed in July 1991, Pritchard's application noted the then-pending application of Mr. Pritchard to acquire control of the corporate licensee of Station KKMI-FM, Burlington, subject to Commission consent, but proposed to divest that interest in the event of a grant of the instant application. Consistent therewith, Paragraph 10 of the Hearing Designation Order provides:

"in the event of a grant of Pritchard's application, John T. Pritchard will be ordered to divest Station KKMI (FM) prior to the grant of program test authority."

Subsequent to the filing of the instant application, the Commission amended Section 73.3555 of its rules (the multiple ownership rules) to permit the common ownership of more than one station in a particular broadcast service located in the same market. As pertinent to Burlington, Iowa, the amended rule provides as follows:

(a) (1) Radio Contour Overlap Rule. . . .

(i) In radio markets with 14 or fewer commercial radio stations, a party may own up to 3 commercial radio stations, no more than 2 of which are in the same service (AM or FM), provided that the owned stations, if other than a single AM and FM station combination, represent less than 50 percent of the stations in the market.

Subparagraph (3) of the rule defines a "radio market" in terms of principal city contour overlap. I.e., stations licensed to other communities will be included if their principal city contours overlap those of either of the stations proposed to be under common ownership.

There are currently four broadcast stations licensed to Burlington, Iowa:

Station KBUR (AM) - 1490 KHz, 1 kw Unlimited  
Station KGRS-FM - 107.3 MHz, 100kw  
Station KCPS (AM) - 1150 KHz, 500 w Day  
Station KKMI-FM - 93.5 MHz, 3 kw

Preliminary study indicates that, under the "radio market" definition noted above, the following stations would also be included within the Burlington "radio market":

Station KBKB-FM, Fort Madison, Iowa - 101.7 MHz, 50 kw  
Station KBKB (AM), Fort Madison, Iowa - 1360 KHz, 1 kw D  
Station KILJ-FM, Mount Pleasant, Iowa - 105.5 MHz, 25 kw  
Station KOKX-FM, Keokuk, Iowa - 95.3 MHz, 3 kw  
Station WCAZ-FM, Carthage, Ill. - 92.1 MHz, 25 kw

An exhibit detailing and demonstrating such contour overlap is in preparation, and will be filed shortly as a supplement hereto.

Upon grant of the instant application to Mr. Pritchard, he will own two of five (40%) of the broadcast stations authorized to Burlington, and two of the ten (20%) broadcast stations in the relevant "radio market" (assuming the accuracy of our preliminary study), significantly below the "less than 50 percent" limit stated in the rule.

The Commission's Report and Order in Docket No. 90-264 (68 RR 2d 944, 6 FCC Rcd 157, released December 21, 1990), as modified on reconsideration (69 RR 2d 167, at 169; 6 FCC rcd 3403; released May 15, 1991), reaffirmed the policy of Ruarch Associates, 103 FCC2d 1178 (1986), which permits the withdrawal of integration and divestment commitments in the case of global set-

tlements of comparative broadcast cases.<sup>1</sup>

Consistent therewith, Mr. Pritchard requests that his application be amended to delete its divestment and integration commitments, that he be excused from fulfilling the divestment and integration commitments contained in his application, and that the divestment condition contained at paragraph 10 of the Hearing Designation Order be deleted.<sup>2</sup>

---

1. The Report and Order ruled that the Ruarch policy would apply only to settlements filed by the Notice of Appearance deadline: "[W]here a settlement of the case is entered into and filed with the presiding judge on or before the NOA date, the judge may entertain and grant a request to relieve the successful applicant of divestiture and integration proposals." (paragraph 21). On reconsideration, however, the cut-off date for requesting relief from divestiture and integration proposals was extended to the exhibit exchange date: 6 FCC Rcd 3403 (paragraph 6).

2. Mr. Pritchard currently devotes full time to the management of Station KKMI-FM, and following grant of the instant application would anticipate devoting full time to the management of both stations. However, he would like particularly to be relieved of any implicit commitment to devote a minimum of 40 hours per week exclusively to the new facility: Cf. Lizardo-Franich Partnership, 7 FCC Rcd 6256 (Rev.Bd. 1992).

**CERTIFICATE OF SERVICE**

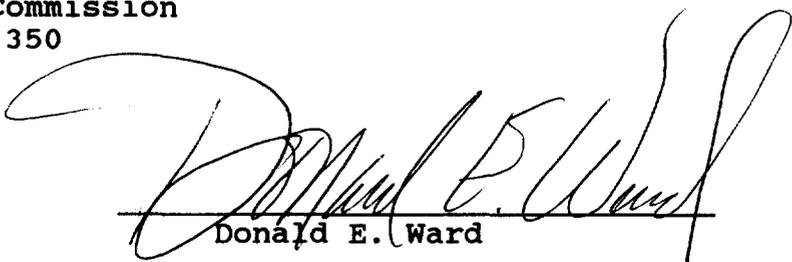
I, Donald E. Ward, do hereby certify that I have this 12th day of January, 1993, caused to be served, by first class United States mail, postage prepaid, a copy of the foregoing "CONTINGENT PETITION FOR LEAVE TO AMEND AND FOR OTHER RELIEF" to the following:

Hon. Richard L. Sippel\*  
Administrative Law Judge  
Federal Communications Commission  
2000 L Street, N.W., Room 214  
Washington, D.C. 20554

Charles Dzedzic, Esq.\*  
Hearing Branch, Mass Media Bureau  
Federal Communications Commission  
2025 M Street, N.W., Room 7212  
Washington, D.C. 20554  
Counsel for Mass Media  
Bureau

David D. Oxenford, Esq.  
Fisher, Wayland, Cooper and Leader  
1255 23rd Street N.W., Suite 800  
Washington, D.C. 20037

Chief, Data Management Staff\*  
Audio Services Division, Mass Media Bureau  
Federal Communications Commission  
1919 M Street N.W., Rm. 350  
Washington, D.C. 20054

  
Donald E. Ward

\* By Hand