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Federal Communications Commission  
Washington, D.C. 20554

DISPATCHED BY

MM Docket No. 93-4 ✓

In re Applications of

ATKINS File No. BRH-900327UP  
BROADCASTING ("Atkins")

For Renewal of License of  
Station KRGN(FM)  
Amarillo, Texas

CAPROCK File No. BRED-900327UQ  
EDUCATIONAL  
BROADCASTING  
FOUNDATION ("Caprock")

For Renewal of License of  
Noncommercial Educational  
Station KLMN(FM)  
Amarillo, Texas

CAPROCK File Nos. BMPED-890726IF  
EDUCATIONAL BLED-901210KD  
BROADCASTING  
FOUNDATION ("Caprock")

For Modification of Construction  
Permit and For License to Cover  
Construction of Noncommercial  
Educational Station KAMY(FM)  
Lubbock, Texas

SOUTHWEST File No. BRED-900327UO  
EDUCATIONAL  
MEDIA  
FOUNDATION OF TEXAS, INC.  
("SEMFOT")

For Renewal of License of  
Noncommercial Educational  
Station KENT  
Odessa, Texas

FCC MAIL SECTION File No. BLED-910705KA

EDUCATIONAL  
MEDIA  
FOUNDATION OF TEXAS, INC.  
("SEMFOT")

DISPATCHED BY  
For License to Cover  
Construction of Noncommercial  
Educational Station KENT-FM  
Odessa, Texas

SOUTHWEST File No. BPED-890313MD  
EDUCATIONAL  
MEDIA  
FOUNDATION OF TEXAS, INC.  
("SEMFOT")

For Construction Permit for a  
New Noncommercial Educational FM  
Station on Channel 290A at  
Stanton, Texas

FAMILY STATIONS, INC.  
Assignor

and File No. BAPED-891130HR

SOUTHWEST EDUCATIONAL MEDIA  
FOUNDATION OF TEXAS, INC.  
("SEMFOT")  
Assignee

For Assignment of Construction  
Permit for Noncommercial  
Educational Station KBTT(FM)  
Bridgeport, Texas

SOUTHWEST File No. BLED-900226KA  
EDUCATIONAL  
MEDIA  
FOUNDATION ("SEMF")

For License to Cover  
Construction of Noncommercial  
Educational Station KOJO(FM),  
Lake Charles, Louisiana

HEARING DESIGNATION ORDER AND  
NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: January 11, 1993; Released: January 29, 1993

By the Commission:

1. The Commission has before it for consideration the

above-captioned applications and materials related thereto<sup>1</sup> Because of substantial and material questions of fact concerning the qualifications of Atkins, Caprock, SEMFOT and SEMF, we will designate for hearing the applications for KRGN(FM), KLMN(FM), KAMY(FM), KENT/KENT-FM, and KOJO(FM). Also, in light of the serious questions raised about Atkins' qualifications, we will designate for hearing and consolidate in the aforementioned hearing, the applications for construction permit for a new FM station in Stanton and for assignment of the construction permit of Station KBTT(FM). *Transferability of Licenses*, 53 RR 2d 126 (1983); *Policy Regarding Character Qualifications in Broadcast Licensing*, 102 FCC 2d 1179, 1224 (1986), *recon. granted in part, denied in part*, 1 FCC Rcd 421 (1986), *modified*, 5 FCC Rcd 3252 (1990), *recon. granted in part*, 6 FCC Rcd 3448 (1991) ("*Character Policy Statement*"). Finally, until this proceeding is resolved, we will defer action on any future transfer of control or assignment application which proposes that Atkins or any entity controlled by him acquire a broadcast station.

#### ATKINS, CAPROCK, SEMFOT and SEMF

2. According to ownership reports filed with the Commission, Thomas Kent Atkins (also known as T. Kent Atkins, hereinafter referred to as Atkins) is the licensee of commercial Station KRGN(FM), Amarillo. Also, Atkins is president and a trustee, together with his wife, Mary Helen Atkins, of Caprock, a non-stock, non-profit educational trust. Likewise, Atkins is the president and a director with his wife of SEMFOT,<sup>2</sup> and he and his wife are directors of SEMF. Atkins and wife constitute the majority of the trustees of Caprock as well as the majority of the boards of directors of SEMFOT and SEMF. Atkins has signed all Caprock applications since becoming affiliated with it. Likewise, Atkins has signed all SEMFOT and SEMF applications.

3. In 1984, Atkins filed a construction permit application for a new commercial FM station on Channel 276A at Amarillo, Texas. In September 1987, he was granted a license for the station. Roughly contemporaneously, Caprock was seeking to obtain authorizations for two new stations. Specifically, in 1984, Caprock filed applications

for a 620 watt noncommercial educational station in Amarillo, Texas and for a 640 watt noncommercial educational station in Lubbock, Texas. The Commission granted Caprock's applications in November 1986, and October 1987, respectively. During the pendency of Caprock's applications, Atkins was not affiliated with Caprock in an official capacity.

4. In December 1987, Atkins became president of Caprock. Atkins, his wife Mary, and an Atkins' acquaintance, Charles DeLap, became the sole trustees.<sup>3</sup> On March 21, 1988, Caprock filed an application to modify its construction permit for Station KLMN(FM) at Amarillo, citing the unavailability of the tower site specified in its construction permit. In support, Caprock submitted a letter from Panhandle Telcom, the tower's owner, which withdrew an outstanding offer for tower space. Similarly, on March 28, 1988, Caprock sought to modify the power and tower site of its construction permit for Station KAMY(FM) at Lubbock. As with the KLMN(FM) application, Caprock submitted a letter purportedly from Panhandle Telcom, withdrawing an outstanding offer for tower space. Both letters cited the same reasons -- the tower could not support additional weight and Caprock would cause interference to existing tenants -- for declining to make available tower space.

5. On May 11, 1988, before the Commission had acted on either modification application, Caprock notified the Commission that it would begin program tests on KLMN(FM), Amarillo. On June 20, 1988, Caprock filed its application for license to cover construction for KLMN(FM). Caprock certified in that application that the station was operating with facilities that were the same as those reflected in its construction permit. The Commission granted the application and issued the license for KLMN(FM) on January 3, 1989. The license specified the facilities for Station KLMN(FM) based on the facilities set out in Caprock's unmodified construction permit.

6. By telegram sent April 10, 1989, Caprock notified the Commission that it would begin broadcasting on Station KAMY(FM), Lubbock, in accordance with its construction permit. On April 13, 1989, Williams filed the first of several complaints and petitions that alleged that Caprock had constructed and operated the Amarillo and Lubbock

<sup>1</sup> The related pleadings include: (a) a petition to deny the renewal applications for KRGN(FM) and KLMN(FM) filed July 2, 1990, by Steven A. White; (b) a withdrawal of the petition to deny filed August 22, 1990; (c) a petition filed September 24, 1990, by Williams Broadcast Group ("Williams") seeking reconsideration of the grant of Caprock's above-captioned application for modification of the construction permit for Station KAMY(FM), Lubbock, Texas; (d) a petition to deny the license application for KAMY(FM) filed September 5, 1991, by Williams and pleadings related thereto; (e) the results of a Commission investigation concerning the operations of stations KAMY(FM), KLMN(FM), KRGN(FM), and KENT/KENT-FM; (f) a January 27, 1992, letter from the Chief, Enforcement Division, Mass Media Bureau to T. Kent Atkins; (g) Atkins' February 15, 1992, response; (h) a January 8, 1992, letter from Chief, Enforcement Division, Mass Media Bureau to T. Kent Atkins; (i) Atkins' January 27, 1992, response; (j) a January 29, 1992, letter from the Chief, Enforcement Division, Mass Media Bureau to T. Kent Atkins; (k) Atkins' February 15, 1992, response; and (l) the withdrawal of Williams' pleadings against Caprock's and SEMFOT's applications.

Also pending are applications to transfer control of Caprock from T. Kent Atkins and Mary Helen Atkins to James E. Still and Vera Jo Still (File Nos. BTCED-891003GF and BTCED-891003GG). We will defer action on these applications pending the outcome of the hearing on Caprock's qualifications. See *Western Cities Broadcasting Co.*, 5 FCC Rcd 6177, 6181 n.2 (MMB 1990).

<sup>2</sup> In addition to the applications noted already, SEMFOT has the following pending applications: File No. BPED-900629MJ, for construction permit for a new noncommercial FM station in Brownfield, Texas, and File No. BPED-900629MK, for construction permit for a new noncommercial FM station in Lubbock, Texas. The referenced construction permit applications are mutually exclusive with renewal of license applications; they will be processed accordingly, and, to the extent necessary, appropriate issues will be specified.

<sup>3</sup> Atkins formally reported these events to the Commission in August 1988. See File Nos. BTCED-880801HV (KLMN(FM)), BTCED-880801HW (KAMY(FM)), and BTCED-880801HX (KTDT(FM)). The Commission granted the three transfer applications on September 6, 1988.

stations in accordance with applications for modification of permits, not in accordance with the underlying permits. Caprock responded by requesting special temporary authority ("STA") to allow KLMN(FM) to operate at the transmitter site specified in its modification application purportedly because it had received a notice to vacate the tower site specified in its construction permit from the owner of the tower. The Commission granted this request on August 11, 1989. With respect to KAMY(FM), Caprock acknowledged that it commenced operations on KAMY(FM) from an unauthorized site.

7. In defending its unauthorized construction and operation of KAMY(FM), Caprock claimed that it mistakenly believed that it would lose its permit if it did not go on the air before it expired and that it could build the facility in accordance with the pending modification application. Caprock stated that it took the station off the air as soon as it became aware that its operation was unauthorized, that it notified the Commission of the commencement of program tests, and that it acted without consulting counsel. In addition, Caprock suggested that its unauthorized construction occurred because it had lost its original site.

8. In response, Williams charged that Caprock lied when it informed the Commission by telegram on April 10, 1989, that KAMY(FM)'s program test was in accordance with the construction permit. Williams further alleged that, despite Caprock's acknowledgement of unauthorized operation on KAMY(FM), Caprock continued to broadcast in accordance with its pending modification application for KLMN(FM), rather than its license, until one day after Williams' May 25, 1989, complaint to the Commission about KLMN(FM). Williams added that Caprock's operation of KLMN(FM), Amarillo, was also from an unauthorized site, namely, the one for Atkins' Amarillo station, KRGN(FM).

9. On July 26, 1989, Caprock filed an STA request for KAMY(FM). Caprock repeated that its originally specified tower site for KAMY(FM) was not available. Caprock also requested dismissal of its 1988 modification application, which Williams had challenged. In its place, Caprock filed another application to modify the KAMY(FM) construction permit. This latter application, which was not objected to, was granted August 13, 1990. Williams filed a petition for reconsideration of the grant of the KAMY(FM) construction permit on September 24, 1990, which Caprock opposed on October 9, 1990. On December 10, 1990, Caprock filed an application for license to cover construction of KAMY(FM), which Williams petitioned to deny on September 5, 1991.

10. On August 3 and 4, 1989, Commission personnel inspected stations KAMY(FM), KLMN(FM) and KRGN(FM). The inspection confirmed that Caprock had operated KAMY(FM) and KLMN(FM) in an unauthorized manner as alleged by Williams and as acknowledged by Caprock. The inspection also raised questions about Caprock's claims about the loss of the original antenna sites of KAMY(FM) and KLMN(FM). Specifically, Com-

mission personnel could not locate the company which had supposedly informed Caprock of its need to relocate the two stations. The address given for the company appeared to be fictitious, while the telephone number appearing on the company's letterhead belonged to a car repair shop in Pampa, Texas.

11. When asked about these matters, Atkins admitted that Caprock constructed KAMY(FM) and KLMN(FM) in accordance with its modification applications prior to Commission authorization and that the letters submitted to justify the transmitter moves were fictitious. He claimed he constructed prematurely and began operation before receiving authority to do so because he mistakenly believed that the permits would be lost if Caprock did not put the stations on the air prior to the expiration of the permits. Atkins stated he prepared the fictitious letters because he could not locate the owners of the sites listed in the construction permits, and he was frustrated that Caprock could not reach its intended audience with the facilities authorized. Atkins did not address why he represented that KAMY(FM) and KLMN(FM) were operating pursuant to program test authority in accordance with their permits when, in fact, they were operating in accordance with then pending modification applications.

12. A March 9, 1990, inspection of stations KENT/KENT-FM, Odessa,<sup>4</sup> revealed that KENT-FM's antenna was located approximately 138 meters above the ground.<sup>5</sup> By comparison, KENT-FM's then valid construction permit called for an antenna height above ground of 87 meters at a location several miles distant from the location of the antenna found by the inspector. On May 1, 1991, in a pleading filed with respect to SEMFOT's application for a construction permit for a new FM station in Midland, Texas (File No. BPEP-900629MM), a petitioner to deny alleged that KENT-FM was broadcasting without authority.<sup>6</sup>

13. Atkins claims the Commission was notified of the commencement of program tests on KENT-FM by telegram dated September 15, 1989, and that KENT-FM has broadcast pursuant to program test authority since that date. Atkins further claims that SEMFOT mailed to the Commission in November 1989 a license application for KENT-FM. However, the Commission's files contain no record of any such application. In addition, SEMFOT's June 1990 application for an extension of the KENT-FM construction permit makes no reference to a pending license application, and the Commission was not made aware that such an "application" existed until SEMFOT's attorney mailed a copy of it to the Commission in June 1991. Moreover, despite the questions raised about unauthorized broadcasts and the absence of a grant of its modification application, SEMFOT never ceased broadcasting over KENT-FM. It appears that SEMFOT has broadcast since September 1989 from the site and with the effective radiated power ("ERP") sought in its modification application despite the fact that that application was not granted until June 1991. Finally, despite the fact that its new permit and license application

<sup>4</sup> SEMFOT became the licensee of KENT on December 18, 1987, and the permittee of KENT-FM on August 1, 1989.

<sup>5</sup> This height was some 7 meters higher than what was sought in KENT-FM's then pending application to modify its construction permit, which application (File No. BMPED-880308MI) was granted June 21, 1991. By letter dated October 13, 1992, the

Bureau directed SEMFOT to lower its effective radiated power so as to reduce the 1 mV/m contour to that authorized by its construction permit.

<sup>6</sup> SEMFOT's application for the new Midland FM station was dismissed on January 3, 1992.

show an antenna height above ground of 131 meters, SEMFOT acknowledges that the KENT-FM antenna is 138 meters above ground.

14. It is axiomatic that no one may operate a broadcast station without appropriate authorization from the Commission. See Section 301 of the Communications Act of 1934, as amended and Sections 73.277(b), 73.1620 and 73.1635 of the Commission's Rules; cf. *Data Investments, Inc.*, 6 FCC Rcd 4496 (1991). Also, it is clear that a broadcast station must operate substantially as set forth in its license. See Sections 73.1560 and 73.1745 of the Commission's Rules. Otherwise, the station is subject to revocation of license and/or imposition of a forfeiture. See Sections 312(a)(3) and 503(b)(1)(A) of the Communications Act of 1934, as amended. Further, construction of a station is prohibited until authorized by the Commission. See Section 319(a) of the Communications Act of 1934, as amended; *MCI Telecommunications Corporation*, 64 RR 2d 673 (1988).

15. Here, Caprock admits violating one or more of the Commission's Rules with respect to stations KAMY(FM) and KLMN(FM). Specifically, Caprock constructed and operated Station KAMY(FM), Lubbock at a location and with an ERP and height above average terrain ("HAAT") substantially different from what was authorized in its construction permit. Likewise, Caprock constructed and operated Station KLMN(FM), Amarillo at a location and with an ERP and HAAT substantially different from those authorized in the KLMN(FM) permit and license. In addition, Caprock admitted knowingly submitting fabricated letters to the Commission in order to justify the site relocations of stations KAMY(FM) and KLMN(FM).

16. SEMFOT has committed similar violations with respect to Station KENT-FM. SEMFOT broadcast on KENT-FM with facilities sought in its application to modify its construction permit, rather than those authorized by the permit, and it continued to broadcast, purportedly pursuant to program test authority, well after the time it should have filed a license application pursuant to Section 73.1620(a)(1). Having failed to file a license application within 10 days of beginning program tests, SEMFOT lost any authority it might have had to broadcast on KENT-FM.

17. In addition, we have concerns about the application SEMFOT submitted in June 1990 to extend the life of the construction permit for KENT-FM. Therein, SEMFOT sought an extension of time to complete construction of KENT-FM on the ground that it was still assembling equipment. It appears, however, that SEMFOT had begun broadcasting on KENT-FM some nine months earlier in September 1989 from facilities sought in an application to modify the very permit it was seeking to extend.

18. Misrepresentation involves false statements of fact while lack of candor involves concealment, evasion or other failures to be fully informative. Both represent deceit. The seriousness of either offense depends on the facts and circumstances of the particular case. Crucial to both is the existence of an intent to deceive. *Fox River Broadcasting, Inc.*, 93 FCC 2d 127, 129 (1983). Section 73.1015 proscribes misrepresentations or willful material omissions from licensees, permittees or applicants with respect to any application, pleading or other written statement submitted to the Commission.

19. Atkins has admitted in his February 15, 1992, response to the Commission's inquiry that Caprock's submissions concerning both KAMY(FM) and KLMN(FM)

contain false statements of fact. Further, these filings appear calculated to mislead the Commission as to the real reasons for Caprock's unauthorized construction and operations. Similarly, SEMFOT's application to extend the KENT-FM permit appears to bear no relation to SEMFOT's actual intentions. It appears that SEMFOT was not endeavoring to construct the authorized facilities for KENT-FM but was in fact broadcasting over unauthorized facilities. Moreover, SEMFOT's later claim that it sent to the Commission in November 1989 an application for license to cover construction of KENT-FM is suspect since that application seeks to cover the facilities sought in the then pending modification application. SEMFOT's modification application was not granted until June 1991 and the Commission has no record of the 1989 license application. Inasmuch as the apparent misrepresentations of both Caprock and SEMFOT were made by Atkins, the licensee of KRGN(FM), we believe the qualifications of KRGN(FM) are also called into question as well as the qualifications of SEMFOT for the Stanton construction permit and the assignment of the KBTT(FM) permit and those of SEMFOT for the license for Station KOJO. See *Williamsburg County Broadcasting Corp.*, 5 FCC Rcd 3034, 3036 (1990); *Character Policy Statement, supra*.

#### White's Petition to Deny

20. On July 2, 1990, Steven A. White, filed a petition to deny the license renewal applications of Stations KLMN(FM) and KRGN(FM). White had previously submitted an affidavit in connection with Williams' petition to deny Caprock's application to modify the construction permit for Station KAMY(FM). The bulk of White's petition consists of matters which Atkins/Caprock have corrected. However, White also argued that Atkins violated Commission rules with respect to the operation of Station KRGN(FM) by extending the station's operating hours; broadcasting a carrier with no program material; not complying with the guidelines set forth for proper tower lighting; and failing to display the station's license. In addition, White alleged that Atkins paid his employees as independent contractors so as to avoid payment of social security taxes; that Atkins misrepresented KRGN(FM)'s ERP in contracts with agencies; and that Atkins paid bills for KENT out of the KRGN(FM) checkbook and then told KRGN(FM) listeners to send money for KRGN(FM)'s support.

21. Atkins did not respond to White's allegations. Instead, on August 22, 1990, Atkins submitted an affidavit from White in which White withdrew his petition and certified that he had neither been paid nor promised any consideration for the withdrawal of his petition. In view of the foregoing, Atkins filed on August 22, 1990, a "Statement for the Record" in which he submitted that White's petition is now moot and no response is required.

22. A petitioner to deny must demonstrate party in interest status and submit specific allegations of fact sufficient to show that a grant of the application would be prima facie inconsistent with the public interest. 47 U.S.C. Section 309(d)(1); *Astroline Communications Co. Ltd. v. FCC*, 857 F.2d 1556 (D.C. Cir. 1989); *Dubuque T.V. Limited Partnership*, 4 FCC Rcd 1999 (1989). Even when a petition is withdrawn, the Commission will examine all materials before it to determine whether there is any substantial and material question of fact requiring resolution

in a hearing. Cf. *Michael D. Levine*, 6 FCC Rcd 855 (1991). We have done so and we find that White's allegations do not warrant addition of any hearing issues.

23. When the Commission inspected stations KRGN(FM) and KLMN(FM) in August 1989, and station KENT in March 1990, a number of apparent rule violations were noted. However, Atkins has submitted information indicating that the stations are now in compliance with those rules. Thus, with respect to White's claims that are covered by the field investigation, no additional action is necessary.

24. Moreover, with respect to White's other claims, we find that no additional hearing issues are raised since White has failed to allege sufficient facts to establish violations of the Commission's rules or policies or has otherwise failed to raise a substantial and material question of fact. Thus, White's allegation that Atkins extended the hours of Station KRGN(FM) and used remote control does not raise any questions about Atkins' operation of the station since all noncommercial educational FM stations are licensed for unlimited time operation except in cases of time sharing and a station may be operated by remote control so long as certain specified procedures are followed. Sections 73.561, 73.1400 and 73.1410 of the Commission's Rules. Similarly, White's allegations that the station broadcast a carrier with no program material, did not comply with guidelines for proper tower lighting, and fraudulently raised money over KRGN(FM) are too vague and conclusory to warrant further action. Finally, White's other claims pertain to non-FCC related misconduct which has not resulted in a conviction or finding by a competent forum that Atkins has violated any state or federal law. Accordingly, no hearing issue is raised. *Character Policy Statement*, 102 FCC 2d at 1204-05 (1986). Moreover, in light of White's withdrawal of his petition, we will not make him a party to the proceeding.

25. Accordingly, IT IS ORDERED, that, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the captioned application of Atkins Broadcasting for renewal of license of Station KRGN(FM); the captioned applications of Caprock Educational Broadcasting Foundation for renewal of license of Station KLMN(FM), for modification of the construction permit of Station KAMY(FM), and for license to cover construction of Station KAMY(FM); the captioned applications of Southwest Educational Media Foundation of Texas, Inc. for renewal of license of Station KENT, for license to cover construction of Station KENT-FM, for construction permit for a new FM station in Stanton, Texas, and for assignment of the construction permit of Station KBTT(FM) from Family Stations, Inc.; and of Southwest Educational Media Foundation for license to cover construction of Station KOJO(FM) ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether Caprock made misrepresentations of fact or was lacking in candor and/or violated Section 73.1015 of the Commission's Rules with regard to its application to modify the construction permit for Station KLMN(FM) (File No. BPED-880321IA).

2. To determine whether Caprock made misrepresentations of fact or was lacking in candor with regard to its May 1988 notification of program testing for Station KLMN(FM).

3. To determine whether Caprock made misrepresentations of fact or was lacking in candor with regard to its application for license to cover construction of Station KLMN(FM) (File No. BLED-880620KB).

4. To determine whether Caprock made misrepresentations of fact or was lacking in candor with regard to its May 1989 request for special temporary authority to move the transmitter site for Station KLMN(FM).

5. To determine whether Caprock made misrepresentations of fact or was lacking in candor and/or violated Section 73.1015 of the Commission's Rules with regard to its applications to modify the construction permit for Station KAMY(FM) (File No. BMPED-880328MM and BMPED-890726IF).

6. To determine whether Caprock made misrepresentations of fact or was lacking in candor with regard to its April 1989 notification of program testing for Station KAMY(FM).

7. To determine whether Caprock made misrepresentations of fact or was lacking in candor with regard to its July 1989 request for special temporary authority to move the transmitter site for Station KAMY(FM).

8. To determine whether SEMFOT made misrepresentations of fact or was lacking in candor with regard to its September 1989 notification of program testing for Station KENT-FM.

9. To determine whether SEMFOT made misrepresentations of fact or was lacking in candor and/or violated Section 73.1015 of the Commission's Rules with regard to its application to extend the construction permit of KENT-FM (File No. BPED-900608JD).

10. To determine whether Caprock violated Sections 301 and 319(a) of the Communications Act of 1934, as amended, and Sections 73.277(b), 73.1560(b), 73.1620, 73.1635, and 73.1745 of the Commission's Rules with respect to the construction and operation of Station KLMN(FM).

11. To determine whether Caprock violated Sections 301 and 319(a) of the Communications Act of 1934, as amended, and Sections 73.277(b), 73.1560(b), 73.1620, 73.1635, and 73.1745 of the Commission's Rules with respect to the construction and operation of Station KAMY(FM).

12. To determine whether SEMFOT violated Sections 301 and 319(e) of the Communications Act of 1934, as amended, and Sections 73.277(b), 73.1560(b), 73.1620, 73.1635, and 73.1745 of the Commission's Rules with respect to the construction and operation of Station KENT-FM.

13. To determine, in light of the evidence adduced pursuant to the specified issues, which, if any, of the captioned applications for stations KRGN(FM), KLMN(FM), KAMY(FM), KENT, KENT-FM, and KOJO(FM) should be granted.

14. To determine, in light of the evidence adduced pursuant to the specified issues, whether the captioned applications for the construction permit for a

new FM station in Stanton, Texas, and for assignment of the permit for Station KBTT(FM) should be granted.

26. IT IS FURTHER ORDERED, that, irrespective of whether the hearing record warrants an Order denying the renewal applications for Stations KRGN(FM), KLMN(FM) and/or KENT and/or the license application for Station KENT-FM, it shall be determined, pursuant to Section 503(b) of the Communications Act of 1934, as amended, whether an ORDER FOR FORFEITURE in an amount not to exceed \$250,000, shall be issued against Caprock and/or SEMFOT for willful and/or repeated violations of Sections 301 and 319(a) of the Communications Act of 1934, as amended, and/or Sections 73.277(b), 73.1015, 73.1620, 73.1635, and/or 73.1745 of the Commission's Rules, which occurred or continued within the applicable statute of limitations.

27. IT IS FURTHER ORDERED, that, in connection with the possible forfeiture liability noted above, this document constitutes notice pursuant to Section 503(b)(3) of the Communications Act of 1934, as amended.

28. IT IS FURTHER ORDERED, that, in accordance with Section 309(e) of the Communications Act of 1934, as amended, the burden of proceeding with respect to issues 1 through 12 shall be upon the applicant (Atkins, Caprock, SEMFOT, or SEMF as appropriate), and the burden of proof with respect to all issues shall be upon the applicant.

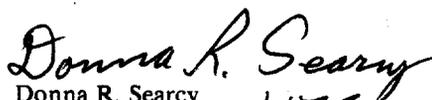
29. IT IS FURTHER ORDERED, that the petition to deny filed by Steven A. White IS DENIED TO THE EXTENT INDICATED AND IS OTHERWISE DISMISSED.

30. IT IS FURTHER ORDERED, that, to avail themselves of the opportunity to be heard, the applicants shall, pursuant to Sections 1.221(c) and 1.221(e) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

31. IT IS FURTHER ORDERED, that the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Commission's Rules.

32. IT IS FURTHER ORDERED, that the Secretary of the Commission send a copy of this Hearing Designation Order by *Certified Mail - Return Receipt Requested* to Atkins, Caprock, SEMFOT, and SEMF.

FEDERAL COMMUNICATIONS COMMISSION

  
Donna R. Searcy  
Secretary