

ROSENMAN & COLIN

575 MADISON AVENUE, NEW YORK, NY 10022-2565

ORIGINAL

TELEPHONE (212) 940-8800
CABLE ROCOKAY NEWYORK
TELECOPIER (212) 940-8776
(212) 935-0670
TELEX 427071 ROSCOL (ITT)
971820 RCFLC NYK (W. U.)

February 5, 1993

DANIEL I. ROSENMAN (1980-1973)
RALPH F. COLIN (1900-1988)

WASHINGTON OFFICE
1300 19TH STREET, N. W.
WASHINGTON, D. C. 20036
TELEPHONE (202) 463-7177

JEROME S. BOROS
(212) 940 3000

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

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FEB - 5 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Deas Communications, Inc.
MM Docket No. 92-111

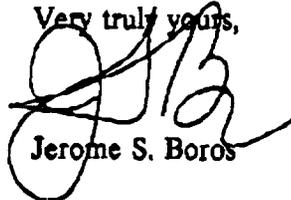
Dear Ms. Searcy:

Enclosed for filing, on behalf of Healdsburg Empire Corporation, are an original and ~~two~~ ^{six} copies of a FINDINGS OF FACT AND CONCLUSIONS OF LAW in this proceeding.

Please address responsive communications to the undersigned at:

Rosenman & Colin
575 Madison Avenue
New York, New York 10022

Very truly yours,



Jerome S. Boros

JSB:m
Enclosures (3)

cc: All Persons On Attached List I

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

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of)	MM Docket 92-111
DEAS COMMUNICATIONS, INC.)	File No. BPH-910208MB
HEALDSBURG EMPIRE CORPORATION)	
For Construction Permit for a)	
New FM Station on Channel 240A)	
in Healdsburg, California)	

TO: Hon. Walter Miller
Administrative Law Judge

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW
OF HEALDSBURG EMPIRE CORPORATION

HEALDSBURG EMPIRE CORPORATION by its attorneys, submits its
Proposed Findings Of Fact And Conclusions Of Law ("Findings") in this proceeding.

I.

Preliminary Statement

1. This matter involves the applications of Deas Communications, Inc. ("Deas") and Healdsburg Empire Corporation ("Empire") for a FM station on Channel 240A, Healdsburg, California. The only issue in the proceeding is the standard comparative issue. The parties stipulated that there are no cognizable coverage differences. Written exhibits were received into evidence; an Empire request to cross-examine Mario Edgar, the principal of Deas, was denied.

Memorandum Opinion And Order, FCC 92M-983, released October 1, 1992. (By its submission of these Findings, Empire does not waive its objections to the receipt of exhibits without cross-examination.)

II.

Findings Of Fact

A.

Deas

2. Deas is a California corporation, whose voting stock is owned by its President, Mario Edgar Deas ("Mr. Deas"). He has been a resident of Healdsburg since 1955, and is of Hispanic background. He has been a member or an officer of the Healdsburg Chamber of Commerce, Kiwanis Club of Healdsburg, Healdsburg High School Booster Club, Healdsburg Planning Commission, Healdsburg Museum, Federated Church of Healdsburg and Healdsburg City Council. Neither he nor Deas have any attributable media interests. (Deas Exhs. 1, 2.)

3. Deas is President of E & M Electric and Machinery, Inc., in Healdsburg. He proposes to "cease all other employment and . . . resign as President of E & M prior to the commencement of station operations" in order to become General Manager of the Deas station. As General Manager, he proposes to be "the person ultimately responsible for all station policies, including those relating to programming, finances, sales and personnel", and he proposes to take "charge of hiring and firing of employees, for the station's equal employment

opportunity program and for station promotion and community outreach". (Deas Exh. 2.)

B.

Empire

4. Empire is a Delaware corporation with one class of stock (voting). Empire is owned by Empire Broadcasting Corporation ("EBC") (51%), Robert S. Kieve (28%), and Joanne S. Kilmartin (21%). Ms. Kilmartin is Empire's Vice President (Empire Exh 1).

5. Ms. Kilmartin was born in Healdsburg in 1949. From 1949 to 1971, and from 1972 to 1973, Ms. Kilmartin lived in Cloverdale, California, which is within Empire's proposed service area. From 1971 to 1972, she lived in Santa Rosa, California, which is also within Empire's service area. From approximately 1958 to approximately 1962, Ms. Kilmartin was a member of the Cloverdale Camp Fire Girl Troop. She also was a member of St. Peter's Catholic Church in Cloverdale during her years of residence there. For about 15 years, Ms. Kilmartin has been employed by EBC, licensee of Station KLIV, San Jose, California and KARA(FM), Santa Clara, California (and, since February 1, 1993, the general partner of KRTY, Ltd., licensee of Station of KRTY(FM), Los Gatos, California). From 1975 to 1982, she was a salesperson at KARA(FM); since 1983, she has been Local Sales Manager of Station KARA(FM). If Empire's application is granted, Ms. Kilmartin will relocate to Healdsburg. (Empire Exh. 2.)

6. Ms. Kilmartin proposes to become the full-time (at least 40 hours per week) General Manager of Empire's proposed Station. To that end, Ms. Kilmartin will resign her position at Stations KARA and curtail or abandon any other incursions on her time upon grant of Empire's application. Ms. Kilmartin will spread her time at the Station over at least a Monday-Friday workweek. As General Manager, Ms. Kilmartin will exercise general supervision and hold ultimate authority over all aspects of Station management and operation. She will oversee construction and regulatory compliance, hire and supervise the staff (including department heads), and deal with advertisers and their representatives. Ms. Kilmartin will develop and implement the Station's programming format. Ms. Kilmartin also will hire the Station's counsel, accountants and consulting engineers. She will fix operating budgets, coordinate banking arrangements, and administer the day-to-day Station operation, including its technical operation. Ms. Kilmartin will coordinate the proposed Station's involvement in community organizations and charitable causes. She will direct the broadcast of public service announcements and coordinate Station access to members of the public. (Empire Exh. 2.)

7. EBC is the licensee of Station KLIV, San Jose, California, and Station KARA(FM) Santa Clara, California and the general partner of KRTY, Ltd., licensee of Station KRTY(FM), Los Gatos, California. EBC's officers, directors and 10% or greater stockholders include:

John A. Palvino
Director

Joseph Zukin, Jr.
Director

John A. Palvino is a 28% shareholder, officer and director of the licensee of Stations WVOR-FM and WHAM-AM, Rochester, New York, and of WBUF-FM in Buffalo; Joseph Zukin, Jr., through a variety of vehicles, owns more than 50% of the parent of the licensee of Stations KGEO(AM) and KGFM(FM) in Bakersfield, California.

III.

Conclusions Of Law

A.

8. The comparative issue requires a determination based on "best practicable service" and diversification. By reason of stipulation, coverage questions are not operative in this case.

B.

Best Practicable Service

9. Deas' integration proposal is illusory. Mr. Deas testified (Exh. 2):

"I will cease all other employment and will resign as President of E & M prior to the commencement of Station's operations." (Emphasis added.)

Mr. Deas, however, is not proposing to dislocate himself, business-wise, upon grant of the application, and there is no apparent incentive for him to curb his presidency of his present business; indeed, economic considerations run the other way.

Moreover, Mr. Deas does not disavow any other interest in E & M, e.g., a directorship, and he does not propose to terminate any other affiliation with E & M.

10. Put otherwise, Mr. Deas' testimony is not an unconditional commitment to full-time integration and it would be left to Mr. Deas to determine when the Station commences operations. Certainly, the fact that he does not propose to resign from E & M upon grant of the application inescapably leads to the conclusion that his deferral of integration can be ongoing.

11. The Review Board has noted:

" - - - integration credit has been denied to applicants with significant interests because, quite obviously, 'the very existence of [any] other interests renders questionable [the integration] commitments in the absence of any additional showing by the applicant of the reliability of its integration proposal' Blancett Broadcasting Co., 17 F.C.C. 2d 227, 230 (Rev. Bd. 1969) (emphasis added). [Subsequent citations omitted.]

12. In the final analysis, the Commission has held that '[a]pplicants have the burden of proof to establish how they will effectuate their integration proposals.' Cuban-American Limited, 5 F.C.C. Rcd 3781, 3785 (1990); Julia S. Zozaya, 5 F.C.C. Rcd 6607 (1990) (applicant retaining business interest denied integration credit). See also Berryville Broadcasting Co., 70 F.C.C. 2d 1, 11-12 (Review Bd 1978). In this case, Mr. Deas has offered no 'demonstrative evidence' or 'convincing plan' and has not made a 'weighty showing' to overcome the presumption that the retention of a lucrative business will interfere with his integration proposals. See Blancett Broadcasting, *supra* and Pleasure Island Broadcasting, 6 FCC Rcd 4261

(Rev. Bd. 1991). See also Naguabo Broadcasting Corporation, 6 FCC Rcd 912 (Rev. Bd. 1991) (need for detailed accounting noted where other business interests readily lend to freely dividing time between a local business and the station business). The Commission requires that applicants make a specific record showing of how outside interests will be accommodated. Kennebec Valley Television, Inc., 2 F.C.C. Rcd 1240, 1241-42 (Review Bd 1987), modified on other grounds, 3 F.C.C. Rcd 4522 (Comm'n 1988). Deas has fallen short on this score and, consequently, is disentitled to any integration credit.

13. On the other hand, Empire's proposal will be effectuated without delay. Ms. Kilmartin has no preclusive or hampering ties which will disincentivize her from stepping up to the position of hands-on General Manager.

IV.

Diversification

14. Empire is chargeable with various radio broadcast interests, but none of them are closer than San Jose, California. And none of these interests will undermine the purpose of the diversification doctrine. Therefore, there is no reason to discredit Empire, because of any attributable media interests. Moreover, Empire's interest in a Healdsburg station is likely to promote robust discussion of community needs and problems, given that Empire, unlike Deas, is independent of local influences.

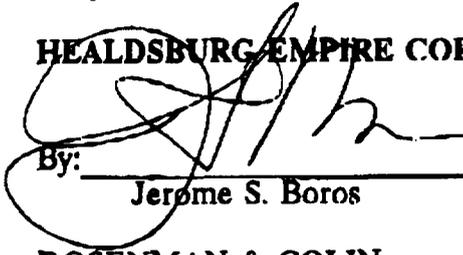
V.

CONCLUSION

15. Empire is entitled to an integration preference, and Deas is entitled to no preferences hereunder. Empire's application should be granted.

Respectfully submitted,

~~HEALDSBURG~~ EMPIRE CORPORATION

By: 

Jerome S. Boros

ROSENMAN & COLIN
575 Madison Avenue
New York, New York 10022
(212) 940-3800

Its Attorneys

Dated: February 5, 1993

Certificate of Service

I, Francine Mahler, a secretary with Rosenman & Colin, certify that this 5th day of February, 1993, I have sent by pre-paid, first-class mail, or have caused to be hand-delivered, as indicated, a copy of the foregoing **FINDINGS OF FACT AND CONCLUSIONS OF LAW** to each person on Attached List I.

Francine Mahler

LIST I

Brinig & Bernstein
1818 N Street, N.W.
Washington, D.C. 20036
(Counsel for Deas Communications, Inc.)

Peter A. Casciato, Esq.
1500 Sansome Street
Suite 201
San Francisco, California 94111
(Counsel for Healdsburg Broadcasting, Inc.)

Larry Miller, Esq.
Mass Media Bureau
Federal Communications Commission
2025 M Street, N.W.
Room 7212
Washington, D.C. 20554

Hon. Walter Miller*
Administrative Law Judge
Federal Communications Commission
2000 L Street, N.W.
Room 220
Washington, D.C. 20036

* By hand on or immediately following the date hereof.