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

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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In re Applications of	)	MM DOCKET NO. 92-111
	)	
DEAS COMMUNICATIONS, INC.	)	File No. BPH-910208MB
	)	
HEALDSBURG EMPIRE CORPORATION	)	File No. BPH-910212MM
	)	
For Construction Permit for a	)	
New FM Station on Channel 240A	)	
in Healdsburg, California	)	
To: Administrative Law Judge		
Walter C. Miller		

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW  
OF DEAS COMMUNICATIONS, INC.

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### CONCISE SUMMARY

With the Presiding Judge's recent approval of a partial settlement agreement, only two applicants remain in this proceeding: Deas Communications, Inc. ("Deas") and Healdsburg Empire Corporation ("Empire"). The sole issue for determination is the standard comparative issue.

Under the diversification criterion, Deas, with no cognizable mass media interests, is overwhelmingly superior to Empire, whose parent is licensee of two nearby stations and whose principals own significant interests in five other stations, two of them in California.

Under the integration criterion, Deas, with 100% fulltime integration and strong enhancements for minority ownership, local residence and civic participation, is again decisively to be preferred over Empire, which claims only 21% fulltime integration and substantially lesser enhancement credit.

It should therefore be ultimately concluded that Deas is the clear winner and its Healdsburg FM application should be granted.

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW  
OF DEAS COMMUNICATIONS, INC.

Deas Communications, Inc. ("Deas"), by its attorneys and pursuant to the established procedural schedule, now submits its Proposed Findings of Fact and Conclusions of Law.<sup>1</sup>

Preliminary Statement

This proceeding was designated by Hearing Designation Order ("HDO"), 7 FCC Rcd 3135 (MM Bur. 1992). Six acceptable applicants appeared in the caption. The designated issues for those still in the case (see n. 1, supra) were as follows:

- . . . . .
2. If a final environmental impact statement is issued with respect to . . . Empire in which it is concluded that the proposed facilities are likely to have an adverse effect on the quality of the environment, to determine whether the proposal[ is] consistent with the National Environmental Policy Act, as implemented by 47 C.F.R. [Sections] 1.1301-1319.
  3. To determine which of the proposals would, on a comparative basis, best serve the public interest.
  4. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

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<sup>1</sup> By Memorandum Opinion and Order, FCC 93M-29, also released January 21, 1993, the Presiding Judge granted a "Joint Request for Approval of Agreement, Dismissal of Application and Merger of Applicants," filed December 28, 1992, and dismissed with prejudice the application of Healdsburg Broadcasting, Inc. ("HBI"). This makes HBI a 50% nonvoting stockholder in Deas and, as a result of the Judge's action, only Deas and Healdsburg Empire Corporation ("Empire") are still in the case.

Since there appeared to be a significant difference in the size of the applicants' respective areas and populations, the HDO at para. 14 directed that the areas and populations to receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, be considered under the standard comparative issue.

The HDO at paras. 8-9 and 20 required HBI to submit an amendment within 30 days curing various technical defects.<sup>2</sup> Of the captioned applicants, Deas, HBI and Empire filed notices of appearance.

By Order, FCC 92M-598, released May 26, 1992, Judge Edward J. Kuhlmann was designated to preside and July 21 and October 5, 1992, respectively, specified for the prehearing conference and hearing.

On June 19, 1992, Empire sought to amend its application with respect to designated issue 2. By Memorandum Opinion and Order, FCC 92M-782, released July 16, 1992, the amendment was accepted and issue 2 as applicable to Empire was eliminated.

The prehearing conference took place on July 21, 1992. At the conference, various procedural deadlines were set

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<sup>2</sup> By Memorandum Opinion and Order, FCC 92M-874, released August 13, 1992, the Presiding Judge dismissed HBI's application with prejudice. However, the Review Board subsequently reversed that ruling and reinstated HBI's application. Deas Communications, Inc., 7 FCC Rcd 6757 (Rev. Bd. 1992).

in advance of the October 5 hearing. Memorandum Opinion and Order, FCC 92M-809, released July 23, 1992. No discovery was conducted in the case aside from the parties' mandatory exchange of documents.

By Memorandum Opinion and Order, FCC 92M-983, released October 1, 1992, the Presiding Judge ruled that no justification had been presented for oral testimony and that no witnesses would be required to appear for cross-examination.<sup>3</sup> By Memorandum Opinion and Order, FCC 92M-985, released October 5, 1992, the Presiding Judge received all Deas and Empire exhibits into evidence, accepted their Stipulation on Areas and Populations, established dates for the filing of proposed and reply findings and closed the record.

However, following the Review Board's reinstatement of HBI, Judge Kuhlmann, by Memorandum Opinion and Order, FCC 92M-1040, released November 6, 1992, reopened the record, accorded the parties new discovery rights and gave them another opportunity to justify an oral hearing. Again, no discovery was conducted.

By Memorandum Opinion and Order, FCC 92M-1087, released December 15, 1992, the Judge noted that since there had been no discovery, new requests for examination of witnesses would not be entertained. He specified January 7,

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<sup>3</sup> At the time, HBI's application had been dismissed but not yet reinstated; n. 2, supra. Only Deas and Empire were then participants in the proceeding.

1993 as the date for the filing of proposed findings and January 15 for reply findings. See also Order, FCC 92M-1103, released December 28, 1992.

Deas and HBI in the meantime reached agreement on a merger of interests (n. 1, supra). A Motion to Defer the deadline for filing findings was filed December 28, 1992. Shortly thereafter, Judge Kuhlmann left the Commission. The Motion to Defer was granted by Acting Chief Administrative Law Judge Walter C. Miller pending a ruling on the merits of the proposed Deas-HBI settlement. Memorandum Opinion and Order, FCC 93M-04, released January 6, 1993. Judge Miller was subsequently chosen to preside over this case. Order, FCC 93M-11, released January 11, 1993.

Following his rulings approving the merger and related matters, Memorandum Opinion and Order, FCC 93M-21, released January 14, 1993; FCC 93M-22, released January 14, 1993; FCC 93M-29, released January 21, 1993; the Presiding Judge ordered that proposed findings be filed February 5 and reply findings be filed February 12. Order, FCC 93M-30, released January 21, 1993.

The record was reopened on January 14, 1993 for the purpose of receiving a new post-merger Deas Ex. 1, and reclosed on the same date. Memorandum Opinion and Order, FCC 93M-21, released January 14, 1993.

Proposed Findings of Fact

COMPARATIVE COVERAGE

1. Counsel for Empire and Deas reached the following stipulations on the areas and populations issue (Joint Stip.):

that there would not be a significant difference in the size of the areas and populations proposed by Deas and Empire which would receive FM service of 1 mV/m or greater intensity; and

that all the areas which the parties propose to serve already receive five or more fulltime primary aural services.

DEAS COMMUNICATIONS, INC.

2. The Applicant. Deas is a California for-profit corporation with both common (voting) and preferred (non-voting) stock. All the voting stock of Deas is owned by its President, Mario Edgar Deas. Mr. Deas owns 4000 shares of common (voting) stock, representing 20% of Deas' total equity. Deas Ex. 1, p. 1.

3. The officers and directors of Deas are: Mario Edgar Deas, President and Director; Sherryll A. Peterson, Secretary and Director; and Fred Haley, Treasurer and Director. Deas Ex. 1, p. 2.

4. All the nonvoting stock of Deas is owned as follows (Deas Ex. 1, p. 1):

<u>Stockholder</u>	<u>Stockholding and Equity Percentage</u>
Steven E. Deas and Jane Rosenberg Deas (community property)	1500 preferred (nonvoting) shares (7.5%)
Bruce D. Deas and Suzel Bozada-Deas (community property)	1500 preferred (nonvoting) shares (7.5%)
Paul A. Deas and Pamela Sue Deas (community property)	1500 preferred (nonvoting) shares (7.5%)
Michael L. Deas	1500 preferred (nonvoting) shares (7.5%)
Healdsburg Broadcasting, Inc.	10,000 preferred (nonvoting) shares (50%)

5. Steven E. Deas and Jane Rosenberg Deas are husband and wife. Bruce D. Deas and Suzel Bozada-Deas are husband and wife. Paul A. Deas and Pamela Sue Deas are husband and wife. Steven E. Deas, Bruce D. Deas, Paul A. Deas and Michael L. Deas are brothers and are the sons of Mario Edgar Deas. Deas Ex. 1, pp. 2-3.

6. Healdsburg Broadcasting, Inc. ("HBI") is a California corporation with two classes of common stock, Class A voting stock and Class B nonvoting stock. 100% of the voting stock, 3750 shares (25% of HBI's net equity), is jointly held by Michael Akana and Julia Akana, husband and wife, as community property. 66.66% of the nonvoting stock (50% of HBI's net equity) is held by Batista Vieira, and the remaining 33.33% of the nonvoting stock (25% of HBI's net equity) is held by David Hernandez. Deas Ex. 1, p. 2.

7. All of Deas' officers and directors reside in Healdsburg, California. Likewise, Deas shareholders Steven E. Deas and Jane Rosenberg Deas, Paul A. Deas and Pamela Sue Deas, and Michael L. Deas, reside in Healdsburg. Bruce D. and Suzel Bozada-Deas live in Windsor, California, seven miles south of Healdsburg. HBI principals Michael Akana and Julia Akana and nonvoting stockholder David Hernandez live in Castro Valley, California. HBI nonvoting stockholder Batista Vieira lives in San Jose, California. Deas Ex. 1, p. 2.

8. Diversification of Ownership of the Mass Media. Neither Deas Communications, Inc., Mario Edgar Deas, nor any of the other officers or directors of Deas Communications, Inc. has now or has ever had any ownership or other interest in any of the media of mass communication. Deas Ex. 1, p. 3.

9. HBI nonvoting stockholder Batista Vieira holds the following broadcast interests (Deas Ex. 1, p. 3):

Ethnic Radio of Los Banos, Inc. ("Ethnic Radio"), licensee of standard radio station KLBS, Los Banos, California, is 100% owned by Batista Vieira and his wife, Dolores M. Vieira. Mr. Vieira is also President and a director of Ethnic Radio. Batista Vieira and Dolores Vieira also jointly own 63.32% of the stock of Coyote Communications, Inc., licensee of FM radio station KSQQ, Morgan Hill, California. Batista Vieira is also President and a director of Coyote. Batista Vieira is Vice President/Director/Secretary/Treasurer and 100% shareholder of VLB Broadcasting, Inc., licensee of FM radio station KQLB, Los Banos, California.

Batista Vieira also holds 4000 Class B Common Nonvoting shares, constituting all outstanding nonvoting shares (40% of the total equity) of J.B.

Broadcasting, Inc. ("J.B."), applicant for a new FM radio station in Patterson, California (File No. BPH-920514MN). J.B. has entered into a settlement agreement with the remaining applicants in the Patterson proceeding which, if approved, will result in the construction permit being awarded to J.B.

10. Auxiliary Power. In the event its application is granted, Deas will install auxiliary power generators to maintain station operation should power supplied by the local utility fail or be interrupted. Deas Ex. 1, p. 4.

11. Integration of Ownership into Station Management. Mario Edgar Deas, President, a Director and sole voting shareholder of Deas Communications, Inc., lives at 456 Hidden Acres Road, Healdsburg, California 95448. He has resided consistently in Healdsburg since 1955. Deas Ex. 2, p. 1.<sup>4</sup>

12. Mario Edgar Deas does not have and never has had any ownership or other interest in any mass media. He is now President of E & M Electric and Machinery, Inc. ("E & M") in Healdsburg. E & M specializes in designing programmable controls (specialized computers that control a machine's actions), as well as in motor repair and electric supply. Deas Ex. 2, p. 1.

13. If Deas' application is granted, Mario Edgar Deas will participate full-time (at least 40 hours per week) as

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<sup>4</sup> Deas Ex. 2 was recertified by Mario Edgar Deas on December 28, 1992, following the merger agreement between Deas and HBI.

General Manager of the station. He will cease all other employment and will resign as President of E & M prior to the commencement of station operations. As General Manager, he will be the person ultimately responsible for all station policies, including those relating to programming, finances, sales and personnel, will be in charge of the hiring and firing of employees, for the station's equal employment opportunity program and for station promotions and community outreach.

Deas Ex. 2, pp. 1-2.

14. Mario Edgar Deas is an Hispanic American, born in Cuba and of 100% Cuban ancestry. He was naturalized as a United States citizen in 1957. Deas Ex. 2, p. 2.

15. While a resident of Healdsburg, Mario Edgar Deas has participated in the following activities, all of which are within Deas' principal community service contour and all of which predate the filing of Deas' application (Deas Ex. 2, pp. 2-3):

Healdsburg Chamber of Commerce: Member (1970) to the present); President (1976); Russian River Wine Festival Chairman (1978); Board Member (1975 to 1978); Member, Business Development Council (1989 to the present).

Kiwanis Club of Healdsburg: Member (1979 to the present); President when Sonoma County Wine Auction was started (1981); Chairperson of Sonoma County Wine Auction, which raised funds for Sonoma County Wine Library (1983); Board Member (1980 to 1982, 1988 - 1989).

Healdsburg High School Boosters Club: Member (1977 to the present); President (1979 - 1980); Board Member (1978 to 1981).

Healdsburg Planning Commission: Member (1980).

Healdsburg Museum - Historical Society: Charter Member (1977 to the present).

Federated Church of Healdsburg: Member (1960 to the present; Member, advisory committee for building sanctuary (1989 - 1990).

Healdsburg City Council: Councilperson (1988 to the present); Vice Mayor (1990 - 1991); Member, Sonoma County Transportation Committee and Finance Committee (1989 - 1990); Member, Migrant Worker Task Force Committee (1990 - 1991); established camp for migrant workers (1991).

Founding member of Board of Directors of Windsor Oaks National Bank; Director (1989 to the present); Chairperson, Marketing Committee (1989 to 1992).

Geyserville Chamber of Commerce: Member (1991 to the present).

#### HEALDSBURG EMPIRE CORPORATION

16. The Applicant. 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%. Empire's officers and directors are (Empire Ex. 1, p. 1):

Rodney J. Diridion - Director  
Robert S. Kieve - President/Director  
Joanne S. Kilmartin - Vice President/Director  
Myron S. Lewis - Director  
Vincent A. Lopopolo - Exec. Vice President/Director  
John McLeod - Vice President  
John A. Palvino - Director  
Joseph Zukin, Jr. - Director

17. The officers, directors and 10% or greater stockholders of EBC, which owns 51% of Empire, are (Empire Ex. 3, p. 1):

Rodney J. Diridion - Director  
Robert S. Kieve - President/Director  
51.21% stockholder  
Myron S. Lewis - Director  
Vincent A. Lopopolo - Exec. Vice President/Director  
10.53% stockholder  
John McLeod - Vice President/Programming  
John A. Palvino - Director  
Joseph Zukin, Jr. - Director

18. Diversification of Ownership of the Mass Media.  
EBC is the licensee of radio Stations KLIV(AM), San Jose, California, and KARA(FM), Santa Clara, California. Empire Ex. 3, p. 1. Both KLIV and KARA are within 100 air miles of Healdsburg. Official Notice requested.

19. Additionally, Empire/EBC directors John A. Palvino and Joseph Zukin, Jr. have broadcast ownership interests. Mr. Palvino is a 28% shareholder, officer and director of the Lincoln Group, Ltd., licensee of Stations WVOR(FM) and WHAM(AM), Rochester, New York and of Station WBUF(FM), Buffalo, New York. Mr. Zukin, "through a variety of vehicles, owns more than 50% of Meadow Pacific Corporation." This corporation owns all the stock of Kern Broadcasting, Inc., licensee of Stations KGEO(AM) and KGFM(FM), Bakersfield, California. Empire Ex. 3, p. 1.

20. Integration of Ownership into Station Management. Empire claims it will be controlled by its 21%

owner, Joanne S. Kilmartin, as full-time (at least 40 hours per week) General Manager. Ms. Kilmartin, presently employed by Empire's parent EBC as Local Sales Manager of Santa Clara Station KARA(FM), purports that as General Manager she will "exercise general supervision and hold ultimate authority over all aspects of Station management and operation." She would also "oversee construction and regulatory compliance, hire and supervise the staff (including department heads), and deal with advertisers and their representatives." Empire Ex. 2, p. 1.

21. Empire also claims that Ms. Kilmartin alone "will develop the Station's format and implement it through programming," and "also will hire the Station's local and communications counsel, accountants and consulting engineers. Further, she "will fix operating budgets, coordinate banking arrangements, and administer the day-to-day Station operation, including its technical operation." Moreover, Ms. Kilmartin will coordinate station involvement in community organizations and charitable causes, direct the broadcast of public service announcements and coordinate access to members of the public. Empire Ex. 2, p. 1.

22. Empire claims the following enhancements to Ms. Kilmartin's 21% integration: local residence from 1949 to 1973 within the proposed service area; local church membership during her years of residence; and membership in the Camp Fire

Girls from 1958 to 1962. She promises to relocate to Healdsburg upon grant. Empire Ex. 2, p. 2.

23. Ms. Kilmartin claims about 15 years' broadcast experience, all as EBC's employee. Since 1983, she has been Local Sales Manager of Station KARA(FM). Empire Ex. 2, p. 2.

24. Auxiliary Power. Empire proposes to install auxiliary generators at studio and transmitter sites to provide emergency power in case of a malfunction. Empire Ex. 4, p. 1.

#### Proposed Conclusions of Law

1. The sole issue for determination is the standard comparative issue. This proceeding is governed by the Commission's Policy Statement on Comparative Broadcast Hearings, 1 FCC 2d 393 (1965) ("Policy Statement"), reexamination pending, 7 FCC Rcd 2664 (NPRM) (1992).

2. The Policy Statement identifies two principal comparative criteria: (1) diversification of control of the media of mass communication ("diversification"); and (2) integration of ownership into management ("integration"). Diversification is a major objective of the FCC's licensing scheme and a factor of "primary significance." Policy Statement, 1 FCC 2d at 394; Isis Broadcast Group, 7 FCC Rcd 5125, 5137 para. 37 (Rev. Bd. 1992). Integration, while of lesser consequence than diversification, is a factor of "substantial importance" since "[i]t is inherently desirable

that legal responsibility and [full-time involvement in] day-to-day performance be closely associated." Policy Statement, at 395; Great Lakes Broadcasting, Inc., 7 FCC Rcd 1829, 1831 para. 13 (Rev. Bd. 1992) (subsequent history omitted).

3. Other comparative factors enhance an applicant's quantitative integration credit. These are: local residence and past participation in local civic affairs; minority ownership; daytimer status and broadcast experience. In an addendum to the Policy Statement, the Commission added the promise to install auxiliary power as a comparative factor. Comparative Broadcast Hearings, 2 FCC 2d 667 (1966).

#### COMPARATIVE COVERAGE

4. The HDO at para. 14 required that the respective areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, be considered under the standard comparative issue.

5. Deas and Empire have stipulated: that there would not be a significant difference in the size of their proposed areas and populations receiving FM service of 1 mV/m or greater intensity; and that all the areas which each proposes to serve already receive five or more fulltime primary aural services.

6. Accordingly, it should be concluded that neither Deas nor Empire merits a comparative coverage advantage.

DEAS COMMUNICATIONS, INC.

7. Deas is a California for-profit corporation with both common (voting) and preferred (non-voting) stock. All Deas' voting stock -- 4000 shares and 20% of Deas' equity -- is owned by its President, Mario Edgar Deas. All the non-voting stock is owned in equal 7.5% amounts by Mr. Deas' four sons and, where applicable, their wives as community property, and 50% by former applicant Healdsburg Broadcasting, Inc.

8. Diversification. Neither Mario Edgar Deas nor any of the other principals of Deas Communications, Inc. has now or has ever had any ownership or other interest in any of the media of mass communication. While Batista Vieira, a nonvoting HBI stockholder, has significant ownerships in three California station licensees and another possible permittee, these interests are not cognizable to Deas. See generally, WHW Enterprises, Inc., 89 FCC 2d 799, 816 (Rev. Bd. 1982) (subsequent history omitted); Anax Broadcasting, Inc., 87 FCC 2d 483, 488 (1981); cf. Susan S. Mulkey, 4 FCC Rcd 5520 paras. 6-8 (1989). As a passive shareholder of a nonvoting Deas stockholder, Mr. Vieira is doubly insulated from involvement in Deas' operational affairs.<sup>5</sup> Since diversification "validly

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<sup>5</sup> Alluding in Coast TV, 5 FCC Rcd 2751, 2752 para. 13 (1990), to its decision in Victory Media, Inc., 3 FCC Rcd 2073 at 2074 para. 14 (1988), the Commission noted pointedly that "non-voting stockholders . . . are by definition prohibited from influencing or controlling corporate activities." See also (Continued on following page...)

reflects the Commission's traditional goal of seeking to promote diversity of viewpoints and preventing undue concentration of economic power," F.E.M. Ray, Inc., 7 FCC Rcd 4606 para. 9, citing FCC v. National Citizens Committee for Broadcasting, 436 U.S. 775, 780 (1980); it should be concluded that Deas, with no attributable mass media interests, merits a maximum preference under this criterion.

9. Integration. If Deas' application is granted, its President and sole voting shareholder, Mario Edgar Deas, will be integrated full-time (at least 40 hours per week) as General Manager of the station. To effectuate this unchallenged commitment, Mr. Deas will cease all other employment, resigning as President of E & M Electric and Machinery, Inc., a Healdsburg company specializing in the design of programmable controls as well as motor repair and electric supply.

10. As General Manager, Mario Edgar Deas will be the person ultimately responsible for effectuating all station policies, will be in charge of programming finances, sales and personnel, will hire and fire employees and will implement the

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(... continued from preceding page.)  
Attribution of Ownership Interests, 97 FCC 2d 997, 1020-21 (1984), recon. granted in part, 58 RR 2d 604, 615 (1985), further recon. granted in part, 1 FCC Rcd 802, 803-04 (1986). No evidence was adduced in this proceeding that Batista Vieira ever controlled HBI; a fortiori, no evidence exists to suggest that, as a nonvoting stockholder of a nonvoting stockholder of Deas, Mr. Vieira has the ability (or the desire) to influence or control Deas' activities.

station's EEO program, its promotions and community outreach. Accordingly, regarding this factor of substantial importance, Policy Statement, at 1 FCC 2d 395, Deas deserves 100% full-time quantitative integration credit.

11. Qualitative Enhancements. Two important Deas enhancements are minority ownership and the unified factor of local residence and civic activities. Mario Edgar Deas is an Hispanic American, born in Cuba and of 100% Cuban ancestry.<sup>6</sup> Deas therefore merits 100% minority enhancement credit. See generally, Storer Broadcasting Company, 87 FCC 2d 190, 192-93 (1981); Lone Cypress Radio Associates, Inc., 7 FCC Rcd 4403, 4407 n. 19 (Rev. Bd. 1992) (Commission defines a member of the Hispanic minority as "a person of Mexican, Puerto Rican, Cuban, Central or South America or other Spanish Culture or origin, regardless of race.)

12. Deas also merits maximum enhancement credit for Mario Edgar Deas' long-term local residence in the community of license (he has lived consistently in Healdsburg for 37 years, since 1955), and his extensive involvement in local civic activities, all within Deas' principal community service contour and all predating the filing of Deas' application (see Findings, para. 15). Ronald Sorenson, 6 FCC Rcd 1952 (1991), recon. dismissed, 6 FCC Rcd 6901 (1991); AB Partners, Ltd., 7 FCC Rcd 5160, 5162 para. 7 (Rev. Bd. 1992). It should be

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<sup>6</sup> He was naturalized as a U.S. citizen in 1957.

concluded that the combination of Mr. Deas' Healdsburg residence and impressive civic involvement (including recent service as the community's Vice Mayor) demonstrate a strong knowledge of and interest in Healdsburg. Sorenson, at 6 FCC Rcd 1953 para. 5.

13. Auxiliary Power. In the event its application is granted, Deas will install auxiliary power generators to maintain station operation should the normal power supply be interrupted.

#### HEALDSBURG EMPIRE CORPORATION

14. Empire is a Delaware corporation with one class of stock (voting). Empire is dominated by its parent, EBC (51% owner) and its President, Robert S. Kieve (28% owner and 51.21% owner of EBC). The lists of officers and directors of Empire and EBC (findings, paras. 16-17) include only one name not in common: that of 21% Empire owner Joanne S. Kilmartin; she is an employee of EBC.

15. Diversification. A number of broadcast holdings, four in California and two within 100 air miles of Healdsburg, are attributable to Empire. EBC is the licensee of radio Stations KLIV(AM), San Jose and KARA(FM), Santa Clara, California. The diversification impact of these two holdings alone is dispositive. Policy Statement, 1 FCC 2d at 395.

16. In addition, Empire's President, Mr. Kieve, is the majority owner of EBC. EBC's directors are all Empire's directors. Ms. Kilmartin is Local Sales Manager of EBC Station KARA. All these are cognizable interests. Respecting the common directors, in Attribution of Ownership Interests, 97 FCC 2d at 1008 para. 19, 1009 para. 21 (1984), the Commission determined that such interests are attributable, whether or not accompanied by an ownership interest. As regards Ms. Kilmartin's present employment with EBC, the Policy Statement, 1 FCC 2d at 394 n. 5, states that it considers cognizable "significant managerial positions in stations and other media within and without such areas . . . when held by persons with any ownership or significant managerial interest in an applicant." Thus, it should be concluded that Empire warrants a decisive diversification demerit for its parent's and its principals' ownership interests in KARA and KLIV, which are within 100 miles of Healdsburg.

17. Further, Empire/EBS directors John A. Palvino and Joseph Zukin, Jr. have significant ownership interests in five other radio stations, two in California (see Findings, para. 19). Mr. Zukin controls an AM/FM combination in Bakersfield; Mr. Palvino is an officer, director and 28% owner of the licensee of three New York State stations. As the Policy Statement holds, 1 FCC 2d at 394: "Diversification of control is a public good in a free society and is additionally

desirable where a government licensing system limits access by the public to the use of radio and television facilities." Because of its numerous broadcast holdings, Empire must be decisively disfavored under diversification.

18. Integration. Empire proposes to integrate Ms. Kilmartin, its 21% owner, as full-time General Manager of its station. It purports to accord her "ultimate authority over all aspects of Station management and operation." However, Ms. Kilmartin is now an employee of EBC, which owns 51% of Empire, and of Robert Kieve, who owns 51% of EBC (and 28% of Empire). She is the Local Sales Manager of KARA(FM); she reports to a General Manager; who reports to Mr. Kieve. The claim that she will exercise "ultimate authority" over station affairs in Healdsburg is dubious even absent cross-examination. Atlantic City Community Broadcasting, Inc., 6 FCC Rcd 925, 932-33 (Rev. Bd. 1991) (integration credit denied 49% general partner where majority partner could fire her, could set her compensation, could change format without her consent; and establish "every facet" of station policy); see also, Shawn Phalen, 7 FCC Rcd 623 (Rev. Bd. 1992) (financial control a "bludgeon" as to integrated principal). Accordingly, it should be concluded

that an award of 21% integration credit to Empire is an act of considerable generosity.<sup>7</sup>

19. Qualitative Enhancements. Empire claims enhancement credit for the past local residence and civic participation of its putative 21% principal, Ms. Kilmartin, and for her approximately 15 years' broadcast experience as an EBC employee. Assuming, arguendo, that Empire is entitled to quantitative integration credit for Ms. Kilmartin's proposed participation, these qualitative claims are minimal. To begin with, Ms. Kilmartin's service area residence and meager civic participations ended nearly 20 years ago; she scarcely evidences a "likelihood of knowledge of and interest in the community." Sorenson, 6 FCC Rcd at 1953.

20. More importantly, it is well settled that an applicant with a quantitative integration disparity of 79% (21% for Empire versus Deas' 100%) is not entitled to consideration of claimed qualitative enhancements. New Continental Broadcasting Co., 88 FCC 2d 830, 850 para. 35 (Rev. Bd. 1983) (subsequent history omitted) (a clear quantitative differential

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<sup>7</sup> Given the relatively small amount of ownership bestowed on Ms. Kilmartin, it is doubtful that Empire merits any quantitative integration consideration. The impact of an integrated owner's influence on station operation varies depending upon the extent to which he or she is able to exercise legal responsibility for the applicant. See Miracle Strip Communications, Inc., 4 FCC Rcd 5064, 5066 paras. 18-23 (1989). Here, Ms. Kilmartin can be outvoted -- hence, controlled -- by Mr. Kieve and EBC at anytime and thus is able to exercise legal responsibility only if and as they allow her to do so.