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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

February 12, 1993

VIA HAND DELIVERY

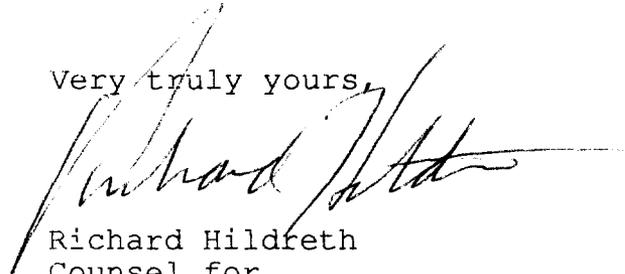
Ms. Donna Searcy  
Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554  
Stop Code 1170

Dear Ms. Searcy:

Transmitted herewith, on behalf of Pappas Telecasting Incorporated, are an original and four (4) copies of its Request for Commission Action on Its Joint Petition for Rulemaking to Amend Section 76.51 of the Rules and Statement in support of the Application of Capital Cities/ABC for Amendment of Section 76.51 or Waiver of Sections 76.92 and 76.151 of the Rules in Merced, California.

If you have any questions concerning this matter, please communicate with this office.

Very truly yours,



Richard Hildreth  
Counsel for  
Pappas Telecasting Incorporated

Enclosures

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BEFORE THE

Federal Communications Commission

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FEB 12 1993

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re Application of )  
 )  
 CAPITAL CITIES/ABC, INC. ) File No. \_\_\_\_\_  
 )  
 For Amendment of Section 76.51 )  
 or Waiver of Sections )  
 76.92 and 76.151 )  
 In Merced, California )

Directed to: The Commission

**REQUEST FOR COMMISSION ACTION  
 ON A JOINT PETITION FOR RULEMAKING  
 TO AMEND SECTION 76.51 OF THE RULES  
 AND  
 STATEMENT IN SUPPORT OF  
 CAPITAL CITIES/ABC APPLICATION FOR AMENDMENT  
 OF SECTION 76.51 OR WAIVER OF SECTIONS 76.92 AND 76.151  
 IN MERCED, CALIFORNIA**

Pappas Telecasting Incorporated ("Pappas"), by its counsel, hereby requests that the Commission take action in the Joint Petition for Rulemaking filed by Pappas Telecasting Incorporated ("Pappas"), licensee of independent Station KMPH(TV), Visalia, California, Retlaw Enterprises, Inc. ("Retlaw"), licensee of Station KJEO, Fresno, California, and San Joaquin Communications Corp. ("San Joaquin"), licensee of Station KSEE(TV), Fresno, California, filed on March 16, 1988. That petition requested amendment of the List of Major Television Markets to include Merced and Porterville, California, in the Fresno-Visalia-Hanford-Clovis market. Pappas also supports the Application of Capital Cities/ABC for Amendment of Section 76.51 or waiver of Sections 76.92 and 76.151 in Merced, California, (CC/ABC Request)

filed on November 17, 1992. Merced is in fact part of the Fresno-Visalia-Hanford-Clovis market, and has natural ties with Fresno.

The petition of Pappas, Retlaw and San Joaquin was filed almost five years ago. They should not have to wait any longer for relief, as advocated by UA Cable Systems of California ("UA"). UA offers no good reason why a decision in this matter should be delayed, except to say that not doing so would be a waste of the Commission's scarce resources<sup>1</sup>. Yet the Commission in Press Television<sup>2</sup> invited parties in the same situation as Pappas, Retlaw, and San Joaquin to file applications for waivers of the rules. Delaying action on this matter will only compound the harm done to the applicants by the current anomalous situation.

Fresno and Merced are only some 50 miles apart, and the two cities are part of the same de facto market, geographically and in the eyes of advertisers, viewers and the media alike. Merced and Fresno are both located in the northern part of the California Central Valley. This area is separated from other regions of California to the West, such as San Francisco, by a mountain ridge. Roughly speaking, the Central Valley region corresponds to the Fresno ADI (Area of Dominant Influence). The Arbitron company as well as Nielsen, consider them part of the

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<sup>1</sup> UA Opposition to Application for Amendment or Waiver of Rules at 5.

<sup>2</sup> Press Television Order on Reconsideration, 6 FCC Rcd 6563 (1991).

same market. The predicted grade B contour of six out of seven Fresno television stations covers Merced.

As noted in the March 1988 filing, a predicted signal in this area is not a true indicator of a signal's actual coverage. The transmitter sites are located in the Sierra mountains and the Central Valley floor is quite flat. Thus, the signal actually extends far beyond what it would be predicted to reach. For example, the predicted city grade signal of KMPH-TV would go out 39 miles, but in fact, it has been measured to extend 91 miles. (Joint Petition for Rulemaking, ¶ 5). In any event, although KMPH does not now provide such a "predicted" signal, it is authorized to construct at a new site which will allow such "predicted" coverage.

Advertisers that target local TV viewers do not make the distinction between Fresno and Merced in their advertising. Because Fresno stations account for 82% of non-cable viewing in Merced County,<sup>3</sup> Fresno retailers necessarily market their goods in Merced, and vice-versa. In addition, Fresno television stations, cover Merced local events and news on a regular basis.

Adding Merced to the Fresno-Visalia-Hanford-Clovis market would correct an "anomalous" situation. Currently, UA Cablesystems imports the signal of two San Francisco stations, KGO and KPIX, which are over 125 miles away from Merced. No San Francisco station places a predicted Grade B contour over Merced,

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<sup>3</sup> Merced County is quite large and parts of the county extend some 20 miles north of Merced toward Sacramento which accounts for much of the non market viewing.

and none is received over the air. The programming of KGO and KPIX is largely duplicative of the programming offered by two Fresno stations, KFSN and KJEO, which, in contrast to KGA and KPIX, are viewed over the air by Merced residents. That the program duplication has adverse economic consequences for the Fresno stations is axiomatic. Recognizing Merced as part of the Fresno-Visalia-Hanford-Clovis market for cable purposes would entitle KFSN and KJEO to the realities of the Merced marketplace and give them the nonduplication and syndicated exclusivity protection to which they are entitled, all to the benefit of both the local stations and the viewing public.

Pappas believes that these factors amply justify a waiver by the Commission of Sections 76.92 and 76.151 of the Rules or an Amendment of Section 76.51 to include Merced in the Fresno-Visalia-Hanford-Clovis television market. Pappas et al. have also proposed that Porterville be made part of the Fresno market. Given the ties that unite the two communities, the current arrangement creates the exact type of anomalous market situation that the Commission has sought to redress. The 35-mile limitation on enforcement of the territorial exclusivity rules of Sections 76.92 and 76.151 is clearly not justified in this case, and should be waived consistently with the Commission's own rules, policies and precedents<sup>4</sup>.

Consequently, Pappas respectfully requests that the Commission grant the joint 1988 petition to amend Section 76.51

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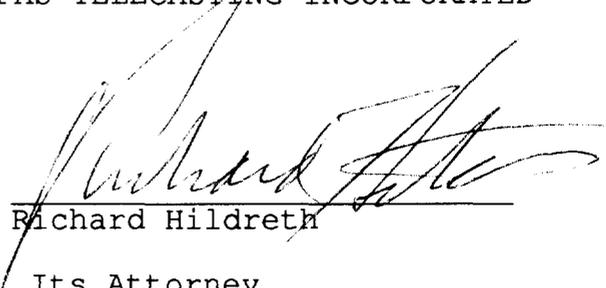
<sup>4</sup> See, e.g., Press Television.

of the Rules to include Merced and Porterville, California, in the Fresno-Visalia-Hanford-Clovis market. Additionally, Pappas supports the Application of Capital Cities/ABC, Inc. for Amendment of Section 76.51 or Waiver of Sections 76.92 and 76.151 in Merced, California. Amendment or waiver of these rules is fully justified given the particular situation in the Merced-Fresno market.

Respectfully submitted,

PAPPAS TELECASTING INCORPORATED

By:

  
Richard Hildreth

Its Attorney

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1300 North Seventeenth Street  
Rosslyn, VA 22209  
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February 12, 1993

**CERTIFICATE OF SERVICE**

I, Marnette Clemons, a secretary in the law firm of Fletcher, Heald & Hildreth, do hereby certify that true copies of the foregoing "Statement in Support of Capital Cities/ABC Application for Amendment of Section 76.51 or Waiver of Sections 76.92 and 76.151 in Merced, California" were sent this 12th day of February, 1993, by first-class United States mail, postage prepaid, to the following:

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Mass Media Bureau Policy and Rules Division  
Federal Communications Commission  
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