

[FEB 12 1993]

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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 NO. <u>92-111</u>
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		

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

Deas Communications, Inc. ("Deas"), by its attorneys, hereby replies to the Proposed Findings of Fact and Conclusions of Law filed February 5, 1993 by Healdsburg Empire Corporation ("Empire").

Empire's extraordinarily (and mercifully) brief findings deserve an even briefer response. Its position can be summed up in two sentences:

1. that even though Deas has no media interests and Empire and its principals control or substantially own seven radio stations, four of them in California and two within 100 air miles of Healdsburg, the parties are equal on diversification because none of Empire's interests "are closer [to Healdsburg] than San Jose, California," and because "Empire, unlike Deas, is independent of local influences"; and
2. that Deas' 100% to 21% quantitative integration advantage -- and its solid qualitative advantage -- should be disregarded because Empire does not believe Mario Edgar Deas' unequivocal pledge to cease all employment prior to the commencement of station operations.

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1. Diversification. Empire's findings and conclusions on this "factor of primary significance," Policy Statement on Comparative Broadcast Hearings, 1 FCC 2d 393, 5 RR 2d 1901 (1965) are frivolous. The Policy Statement makes clear, at 5 RR 2d 1908-09, that "control of large [broadcast] interests elsewhere in the same state or region" is a matter of significance. Empire admits to having cognizable interests in four California stations, two in the region, one as close as "San Jose, California." It concedes that Deas has no attributable interests. Deas' diversification preference is therefore overwhelming and insuperable.

2. Integration. Mario Edgar Deas pledges unequivocally that upon grant he will cease his only present employment, as President of E & M Electronic and Machinery, Inc., in Healdsburg. Deas Ex. 2, p. 1. The Commission has ruled, in Proposals to Reform the Commission's Comparative Hearing Process to Expedite the Resolution of Cases, 6 FCC Rcd 3403, at 3404 para. 14 (1991),<sup>1</sup> that

[t]he discovery process provides ample opportunity to test an applicant's bona fides, and in most cases, it will be material uncovered during discovery that raises a legitimate expectation that some parts of a witness's direct testimony, as reflected in exhibits, is subject to a question of substantial decisional significance.

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<sup>1</sup> Clarifying its Memorandum Opinion and Order, 6 FCC Rcd 157 (1990).

Despite being given two opportunities to conduct discovery against Deas, Empire has declined to do so.<sup>2</sup> Nonetheless, Empire now speculates that Mr. Deas does not really mean what he said under oath, "there is no apparent incentive" for him to do so. Thus, Deas' integration proposal should be rejected.<sup>3</sup>

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<sup>2</sup> See Memorandum Opinion and Order, FCC 92M-983, released October 1, 1992 (rejecting Empire's attempt to call Mr. Deas for oral testimony absent earlier discovery); Memorandum Opinion and Order, FCC 92M-1040, released November 6, 1992 (reopening the record and reinstating discovery); Memorandum Opinion and Order, FCC 92M-1087, released December 15, 1992 (requests to cross-examine would be inappropriate since, once again, no discovery was conducted).

<sup>3</sup> Empire cites a host of cases involving applicants with multiple retained business interests to argue that Deas has failed to meet its burden of proof under the comparative issue. All these citations are inapposite: Blancett Broadcasting Co., 17 FCC 2d 227, 15 RR 2d 1349, 1354-55 (Rev. Bd. 1969) (app. making 30-hr. integration pledge simultaneously engaged in auto dealership, loan company, farming and real estate business); Cuban-American Limited, 5 FCC Rcd 3781, 3785 (1990) (no explicit commitment to terminate existing employment); Julia S. Zozaya, 5 FCC Rcd 6607 (1990) (app. would spend 40 hours at one station, 30 at another, and 25 on civic activities); Berryville Broadcasting Co., 70 FCC 2d 1, 44 RR 2d 1325, 1337-38 (Rev. Bd. 1978) (60% partner owned two other stations; total commitment of over 70 hrs. weekly); Pleasure Island Broadcasting, Inc., 6 FCC Rcd 4163, 4165 (Rev. Bd. 1991) (app. would retain auto dealership 105 miles away and work there part-time); Nagaubo Broadcasting Corporation, 6 FCC Rcd 912, 924 n. 63 (Rev. Bd. 1991) (app. would retain two interests: an auto service facility and sound equipment business).

In Pleasure Island Broadcasting, 6 FCC Rcd at 4165 para. 16, the Board adverted to

a long line of cases where (even part-time integration credit has been denied to applicants with other significant interests because, quite obviously, "the very existence of [any] other commitments in the

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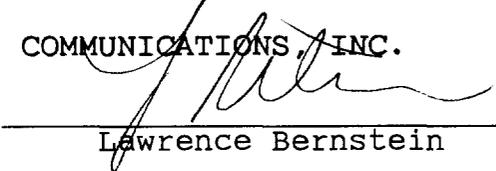
This claim is meritless. Empire was entitled to test Mr. Deas' unequivocal divestiture pledge, received two chances to do so, and disdained both opportunities. The Commission condemns such "unwarranted gamesmanship and ambush tactics," Charisma Broadcasting Corporation, FCC 92-563, released February 9, 1993 at para. 8, see generally, paras. 6-8. Empire's integration findings should likewise be rejected.<sup>4</sup>

In conclusion, the Presiding Judge should grant Deas' application and deny Empire's.

Respectfully submitted,

DEAS COMMUNICATIONS, INC.

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absence of an additional showing by the applicant of the reliability of its integration proposal. . . ." Blancett Broadcasting Co. (emphasis added)

Here, Mario Edgar Deas has sworn to cease all employment in the only business he has and Empire has not made an attempt to disprove this testimony. Its findings arguments are an example of trial by ambush.

<sup>4</sup> Deas agrees with Empire's black-letter assertion that applicants have the burden of proving the bona fides of their comparative proposals. Deas met the test and Empire (possibly the first applicant to ever claim an integration preference based on its "independ[ence from] local influences") offers nothing to the contrary besides speculation and surmise.

CERTIFICATE OF SERVICE

I hereby certify that I have, this 12th day of February, 1993, served copies of the foregoing "Reply Findings of Fact and Conclusions of Law of Deas Communications, Inc." upon the following persons by first class United States Mail, postage prepaid:

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