

FCC MAIL SECTION

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Before the  
Federal Communications Commission  
Washington, D.C. 20554

DISPATCHED BY MM Docket No. 92-111

In re Applications of

DEAS File No. BPH-910208MB  
COMMUNICATIONS, INC.HEALDSBURG EMPIRE File No. BPH-910212MM  
CORPORATIONFor Construction Permit for a  
New FM Station on Channel 240A  
in Healdsburg, California**APPEARANCES**

*F. Joseph Brinig and Lawrence Bernstein* on behalf of Deas Communications, Inc.; *Jerome S. Silber and Jerome S. Boros* on behalf of Healdsburg Empire Corporation; and *Larry Miller* on behalf of the Chief, Mass Media Bureau, Federal Communications Commission.

**INITIAL DECISION OF ADMINISTRATIVE  
LAW JUDGE WALTER C. MILLER**

Issued: February 17, 1993; Released: February 25, 1993

**FINDINGS OF FACT**

1. Only two applicants remain in this mutually exclusive FM proceeding. Deas Communications, Inc. (Deas) and Healdsburg Empire Corporation (Empire) each seek a construction permit to operate a new FM station on Channel 240A in Healdsburg, California.

2. The Chief, Audio Services designated this case for hearing on May 20, 1992 (7 FCC Rcd 3135). At that time a third applicant, Healdsburg Broadcasting Inc. (HBI) was still actively prosecuting their application.

3. After the interlocutory cycle had run its course only one factual issue, the standard comparative issue, along with the ultimate issue, remained to be tried:

- (1) To determine which of the proposals would, on a comparative basis, best serve the public interest; and
- (2) To determine, in light of the evidence adduced pursuant to the specified issue, which application should be granted, if any.

4. There also appeared to be a significant difference in the size of the areas and populations which would receive service from the proposals. So, in his Hearing Designation Order (7 FCC Rcd 3135 *supra.* at para 14), the Chief also called for comparative coverage evidence.

5. On July 21, 1992, the then Trial Judge held the prehearing Conference. There he laid out the procedural deadlines, including the discovery deadlines. However, other than the HDO's standard document exchange (7 FCC Rcd 3135 *supra.* at para. 25), the parties conducted no discovery.

6. On August 13, 1992, the Presiding Judge dismissed HBI's application (see para. 2 *supra.*) for failing to comply with the Commission's engineering rules. He did so at the urging of the Mass Media Bureau (See FCC 92M-874).

7. On October 1, 1992, the Trial Judge ruled that neither Deas nor Empire had shown any need for oral testimony, and so no witnesses needed to be produced for cross examination (FCC 92M-983). Four days later he received all of Deas' and Empire's comparative exhibits into evidence, accepted an engineering stipulation on the comparative coverage question, established dates for proposed and reply findings, and closed the record (see FCC 92M-985, released October 5, 1992).

8. However, all the work described in paragraph 7 was cancelled out. For on October 24, 1992, the Review Board reversed the Trial Judge's dismissal order (See Para. 6 *supra.*), and reinstated HBI's application.

9. So the Trial Judge was forced to reopen the record, accord the parties new discovery rights, and give them another opportunity to justify an oral hearing. Again the parties conducted no discovery (see para. 5 *supra.*).

10. On December 15, 1992 (FCC 92M-1097) the Judge pointed out that there had been no discovery, and thus there was no need to entertain any requests to cross examine any witnesses. He specified January 7, 1993 as the date for filing proposed findings and January 15, 1993 for filing reply findings (Also see FCC 92M-1103), released December 28, 1992).

11. Meanwhile Deas and HBI settled their differences and reached an agreement. They agreed to merge their interests. On January 21, 1993 (FCC 93M-29), the present Trial Judge granted an unopposed "Joint Request for Approval of Agreement, Dismissal of Application and Merger of Applicants." He approved the merger between Deas and HBI, and dismissed (again) HBI's mutually exclusive application with prejudice. Under the merger HBI is now a 50% non-voting stockholder in Deas. So once more only Deas and Empire remain.

12. Both Deas and Empire filed their Proposed Findings of Fact and Conclusions of Law on February 5, 1993, and their Reply Findings on February 12, 1993.

**Issue 1: The Standard Comparative Issue  
Description of the Applicants**

13. *Deas*, Deas, a California corporation, has both common (voting) and preferred (non-voting stock). Deas' President, Mario Edgar Deas owns all of the voting stock; i.e., 4000 shares of common voting stock. This holding represents 20% of Deas' total equity.

14. Deas' officers and directors are: Mario Edgar Deas, President and Director; Sherryl A. Peterson, Secretary and Director; and Fred Haley, Treasurer and Director.

15. The following Chart shows the ownership in Deas' non-voting stock. The non-voting stock represents 80% of Deas' total equity.

## CHART

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

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

17. Healdsburg Broadcasting, Inc. (HBI), a California Corporation, has two classes of common stock: Class A voting stock, and Class B non-voting stock. 100% of the voting stock, 3750 shares (25% of HBI's equity) is jointly held by Michael and Julia Akana, husband and wife, as community property.

18. 66.66% of the Class B non-voting stock (50% of HBI's net equity) is held by Batista Vierra. The remaining 33.33% of the Class B non-voting stock (25% of HBI's equity) is held by David Hernandez.

19. All of Deas' officers and directors live in Healdsburg, California. Deas' shareholders Steven E. and Jane Rosenberg Deas, Paul A. and Pamela Sue Deas, and Michael L. Deas also live in Healdsburg. Bruce D. and Suzel Bozada Deas live 7 miles south of Healdsburg in Windsor, California.

20. HBI principals Michael Ankana and Julia Akana and non-voting stockholder David Hernandez live in Castro Valley, California. Batista Vieira lives in San Jose.

21. *Empire*. Empire, a Delaware Corporation, has one class of stock, voting stock. It is owned by Empire Broadcast Corporation (51%), Robert S. Kieve (28%), and Joanne S. Kilmartin (21%).

22. Empire Broadcasting Corporation's (EBC's) officers and directors are: Rodney J. Diridon - Director; Robert S. Kieve - President/Director; Joanne S. Martin - Vice President/Director; Myron S. Lewis - Director; Vincent A. Lopopola - Exec. Vice President/Director; John McLeod - Vice President; John A. Palvino - Director; and Joseph Zukin - Director. Robert S. Kieve owns 51.21% of EBC's stock and Vincent A. Lopopola 10.23%.

## Diversification of Mass Media

23. *Deas*. Neither Deas nor its sole voting stockholder, Mario Edgar Deas, nor any of its officers or directors holds or has ever held any ownership or other interest in any media of mass communications.

24. However, one of Deas' non-voting stockholders, Batista Vieira, holds the following broadcast interests:

(a) Vieira and his wife Dolores, operating as Ethnic Radio, own standard radio station KLBS, Los Banos, California. Batista Vieira is President and Director of Ethnic Radio;

(b) Batista and Delores Vieira jointly own 63.32% of Coyote Communications, Inc., licensee of KSQQ (FM), Morgan Hill, California. Batista Vieira is President and Director of Coyote;

(c) Batista Vieira is Vice-President/Director/Secretary-Treasurer and 100% shareholder of VLB Broadcasting Inc., licensee of KQLB(FM), Los Banos, California; and

(d) Batista Vieira holds 4000 shares of Class B common non-voting stock (all of the non-voting stock and 40% of the equity) in J.B. Broadcasting, Inc., an FM applicant for Patterson, California (BPH-920514MN). A pending settlement agreement, if approved, will result in J.B. securing the Patterson CP.

25. *Empire Corporation*. EBC (Empire's 51% owner) is the licensee of KLIV(AM), San Jose, California, and KARA(FM), Santa Clara, California. Both KLIV and KARA are within 100 air miles of Healdsburg.

26. EBC director of John A. Palvino is a 28% stockholder, officer, and director of Lincoln Group Ltd., the licensee of WHAM(AM) and WVOR(FM), Rochester, New York and WBUF(FM), Buffalo, New York.

27. EBC director Joseph Zukin owns more than 50% of Meadow Pacific Corporation; Meadow Pacific owns 100% of the stock of Kern Broadcasting, Inc., licensee of KGEO(AM), and KGFM(FM), Bakersfield, California.

Best Practicable Service  
Comparative Coverage

28. Deas and Empire have stipulated "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."

29. Deas and Empire have further stipulated "that all the areas which the parties propose to serve already receive five or more fulltime primary aural services."<sup>1</sup>

## Integration

30. *Deas*. Deas claims 100% quantitative integration. They intend to integrate their sole voting stockholder, Mario Edgar Deas, into the day-to-day operation of the proposed station. Mario Deas will be the full-time General Manager.

<sup>1</sup> Even though the Mass Media Bureau is apparently not a party to the stipulation the Trial Judge assumes that the public

or segments of the public will not be disadvantaged by the Deas-Empire stipulation.

31. As General Manager Deas will be ultimately responsible for all station policies. That includes programming, financial, sales, and personnel policies. He will hire and fire employees, and oversee the station's equal employment opportunity program, station promotions, and community outreach.

32. Mario Edgar Deas was born in Cuba and is of 100% Cuban ancestry. He became a naturalized United States citizen in 1957. He lives at 456 Hidden Acres Road, Healdsburg, California, and has resided in Healdsburg since 1955.

33. Deas is presently President of E and M Electric and Machinery, Inc. (E & M) in Healdsburg. E and M repairs motors, supplies electrical parts and designs specialized computers that control a machine's actions. If Deas' application is granted Mario Deas will resign as E and M's President and cease all other employment before the station begins operating.

34. Mario Deas has participated in the following *civic activities* within the proposed station's 1 mV/m contour.

(a) *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);

(b) *Healdsburg Kiwanis Club*: Member (1979 to present); President (1981); Chairman of Sonoma County Wine Auction (1983); Board Member (1980 to 1982, 1988-89);

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

(d) *Healdsburg Planning Commission*: Member (1980);

(e) *Healdsburg Museum - Historical Society*: Charter member (1977 to present);

(f) *Federated Church of Healdsburg*: Member (1960 to the present); Member, Advisory Committee for Building Sanctuary (1988-1989).

(g) *Healdsburg City Council*: Councilperson (1988 to the present); Vice Mayor (1990-1991); Member of Sonoma County Transportation Committee and Finance Committee (1989-1990); Member, Migrant Worker Task Force Committee (1990-1991);

(h) *Geysersville Chamber of Commerce*: Member (1991 to the present).

35. Since he is an Hispanic American, Mario Edgar Deas claims and will be credited with minority enhancement.

36. *Empire*. Empire claims it will fully integrate 21% stockholder, Joanne S. Kilmartin into its proposed day-to-day operation. Ms. Kilmartin would serve (at least 40 hours a week) as General Manager of Empire's station.

37. As General Manager, she will generally supervise and hold ultimate authority over all aspects of Station Management and operation. She will oversee construction and regulatory compliance; she will hire and supervise the staff; and she will deal with advertisers and their representatives.

38. Ms. Kilmartin will develop and implement the station's programming format; she'll hire the station's counsel, accountants and consulting engineers. She will fix the operating budget, coordinate banking arrangements and administer the day-to-day operation. Ms. Kilmartin will co-

ordinate the proposed station's involvement with community organizations and charitable causes. She will direct the broadcast of public service announcements and coordinate station access to members of the public.

39. Joanne S. Kilmartin was born in Healdsburg in 1949. From 1949 until 1971 and from 1972 to 1973, she lived in Cloverdale, California (within Empire's proposed service area). From 1971 to 1972 she lived in Santa Rosa, California. That is also within Empire's proposed service area.

40. Ms. Kilmartin has some *broadcast experience*. From 1975 to 1982 she was a sales person at KARA(FM). See Finding 24 *supra*. Since 1983 she has been local sales manager of that station. She says that if Empire's application is granted, she will relocate to Healdsburg.

41. During the time Ms. Kilmartin lived within the proposed station's service area (See Finding 38 *supra*.) she was a member of St. Peter's Catholic Church in Cloverdale. And from 1958 to about 1962, she was a member of the Cloverdale Camp Fire Girl Troop.

#### Auxiliary Power

42. Both applicants propose to use auxiliary power.

#### CONCLUSIONS OF LAW

1. Deas Communications Inc. and Healdsburg Empire Corporation have filed mutually-exclusive applications to operate a new FM station on Channel 240A in Healdsburg, California. They have presented their evidence and filed their proposed findings of fact and conclusions of law. We must now compare them under the Commission's 1965 *Policy Statement on Comparative Broadcast Hearings*, 1 FCC 2d 393, as modified by subsequent Review Board and Commission decisions.

2. Pursuant to the *Policy Statement* we will address the Commission's two primary objectives: (1) selecting the applicant that will offer the greatest diffusion of control of mass communications media; and (2) selecting the applicant that will offer the best practicable service to the public.

3. *Diversification of Mass Media*. Neither Deas Communications, Edgar Mario Deas or any of its principals have any *cognizable* ownership interest in any media of mass communication. Batista Viera's broadcast ownership interests (Finding 24 *supra*.) are not attributable to Deas since he is a passive shareholder of a non-voting Deas stockholder. He is thus doubly insulated from Deas' operational affairs. Thus Deas' is entitled to maximum credit under the diversification criterion.

4. On the other hand, Empire has seven broadcast interests that are attributable to its principals. See Findings 25-27 *supra*. Four of these holdings are within California, the state of license, and two of those four are within 100 air miles of Healdsburg, the community of license. So Empire must be assigned a decisionally significant demerit under the diversification criterion.

5. It is concluded that a grant of Deas' Communication Inc.'s application will offer the greatest diffusion of control of mass communications media and their application will be granted.

6. *The Best Practicable Service*. If we were to assume that Deas' was not eminently superior under diversification, we would then turn to the Commission's secondary primary objective, the best practicable service objective.

7. In analyzing best practicable service there are four potential criterion that might need to be analyzed: First we would have to decide whether any applicant should be preferred because of a superior area and population proposal (comparative coverage); second, we might have to determine the extent each will integrate their principals' ownership into the day-to-day management of the proposed station (quantitative integration); third, and if neither comparative coverage nor quantitative integration proved decisive, we would look at the attributes that each integrated owner would bring to that day-to-day management (qualitative integration); and fourth whether the degree of quantitative and qualitative integration is enhanced by minority ownership.

8. If it became necessary to analyze the third criterion, qualitative integration, we would examine such factors as local residence, participation in civic affairs, past education and business affairs, past education, and business experience, past broadcast experience and auxiliary power.

9. *Criterion 1 - Comparative Coverage:* Comparative coverage is not a factor in deciding this case. There is no significant difference in the size of the areas and populations that Deas and Empire propose which would receive FM service 1 mV/m or greater. Moreover, all the areas which they propose to serve already receive five or more fulltime primary aural services. Those facts are not in dispute, and have been stipulated.

10. *Criterion 2 - Quantitative Integration.* Deas claims and will be credited with 100% quantitative integration. Empire claims and will be credited with 21% quantitative integration. That quantitative disparity is decisionally significant. So even *assuming* that Deas' application wouldn't offer the greatest diffusion of control of mass communications media (see Conclusions 3-5 *supra.*), Deas would prevail. This being so, there is no need to analyze the third and fourth best practicable service criterion; i.e. qualitative integration and minority ownership.<sup>2</sup> See Conclusions 7-8 *supra.*; *New Continental Broadcasting Co.*, 88 FCC 2d 830, 50 RR 2d 1117 (1981); *Van Buren Community Service*, 87 FCC 2d 1018; 40 RR 2d 115 (1981); and *Cannon Point Broadcasting Co.*, 93 FCC 2d 643 (R. Bd. 1983) at 649. So even putting diversification to one side, it is Deas that will offer the best practicable service to the Healdsburg, California area.

11. In sum, this case is a laugher. It's no contest. From the outset Deas Communication Inc. has been and remains vastly comparatively superior to Healdsburg Empire Corporation.

12. All too often the Commission's scarce adjudicatory resources are put upon by comparative applicants like Empire, applicants whose *only* adjudicatory weapon is its right of appeal. Yes, Empire can *delay* a grant of Deas' application and service to Healdsburg by exercising that futile right. While this tactic can save the egos of Empire's stockholders, it surely works to the detriment of the Healdsburg public. One can only hope that Empire will be given *speedy* appellate consideration. If ever a case screams out for the fast track, this one does.

SO, unless an appeal is taken from this Initial Decision or the Commission reviews it on their own motion, Deas Communications Inc.'s application (BPH-910208 MB) IS GRANTED; and Healdsburg Empire Corporation's application (BPH-910212 MM) IS DENIED.<sup>3</sup>

FEDERAL COMMUNICATIONS COMMISSION

Walter C. Miller  
Administrative Law Judge

<sup>2</sup> Note however that Deas' integrated voting stockholder, Mario Edgar Deas, claims and is entitled to minority enhancement. See Finding 35 *supra.*

<sup>3</sup> If exceptions aren't filed within 30 days, or the Commission

doesn't review the case on its own motion, this Initial Decision will become effective 50 days after its public release. See 47 CFR 1.276(d).