

FCC MAIL SECTION

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ORIGINAL

Before The  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

RECEIVED BY

**1. Unauthorized facilities proposed by Clark, Hughes and Wireless**

a. During the week prior to the November 15, 1991 filing deadline for applications in this proceeding, I had several conversations with Mr. Ken Kushnir of Empire Communications. In making a final selection of my own antenna site, I had given consideration to using the Kushnir/Empire site chosen by both Clark and Hughes (and Wireless on March 2, 1992). When I asked for certain "specifics" about the site, Mr. Kushnir informed me that the site was 1,635 feet (498 meters) AMSL. Upon receipt of copies of the Clark and Hughes applications after close of the filing window, the obvious differences in claimed site elevation AMSL by Clark (494 meters) and Hughes (488 meters) compared to the Kushnir figures were cause for concern, since they purport to use the *SAME* site. Wireless failed to provide a copy of its March 2, 1992 defective amendment, and its April 7, 1992 filing is also defective. <sup>2/</sup>

b. Although claiming to use the same Kushnir/Empire Communications site at N/Lat: 38-32-24 \* W/L: 122-57-39, and both stating to have used the NGDC Linearly interpolated 30-Second database, alarming deviations were seen to exist in the Clark and Hughes application engineering and stated ERP (both of which exceed maximum 24 kilometer reference limits for a 3KW facility).

c. The new Windsor FM allotment is for a 3KW (old rules) facility. Accordingly, the Commission's rules specifically stated that the "reference" distance in computing ERP can *NOT* exceed 24 kilometers. The proposed ERP

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<sup>2/</sup> A copy of the Wireless amendment for March 2, 1992 has been obtained for scrutiny. Having voluntarily chosen the same Clark/Hughes site, Wireless has the same incorrect HAAT and ERP problem, and has proposed unauthorized facilities. Wireless' April 7, 1992 illegal amendment was filed after the "amendment as of right" window closed. The Petition For Leave To Amend can NOT be accepted by the Commission because it states incorrect site elevation, HAAT and an ERP which exceeds the 24 kilometer reference contour. Wireless states good cause for its April 7, 1992 amendment

of Clark and Hughes exceeds 24 kilometers, and therefore both applications must be dismissed for unauthorized proposals. Clark and Hughes (and now Wireless' March 2, 1992 amended site) pushed *over the edge* of the ERP envelope by using erroneous site elevation, giving the appearance of ability to run more power due to an alleged lower HAAT which is absolutely false.

d. In order to further substantiate the "actual" site elevation at the Clark/Hughes/Wireless site, I have obtained a copy of an detailed survey map for the Kushnir/Empire Communications site on Mt. Jackson, which reveals the actual site elevation on the "X" bolt of [the] North leg of antenna tower base to really be 1,637.99 feet (499 meters) AMSL (see EXHIBIT 1).

e. Based upon their purported average terrain calculations (which vary by 1 meter), the actual ERP from this site with antenna 20 meters AGL should not exceed .240KW in order to comply with the Commission's policies and rules. With a now verified mutual site elevation of 499 meters AMSL, and 20 meter "AGL" antenna height positions, the actual HAAT for Clark is 349 meters and Hughes 348 meters, since they claim separate NGDC 30-second terrain. At a proposed ERP of .260K and .250KW respectively, both Clark and Hughes EXCEED the 24 kilometer reference distance. <sup>3/</sup> A-N-Y level of emission over the 24 kilometer reference distance is unauthorized, thus requiring dismissal of their applications. Any futile attempt of Clark or Hughes (or Wireless) to amend their defective applications can not be permitted, since the 30 day post Notice of Tender "amendment as of right" ("B" cut-off) period for substantial changes expired on March 3, 1992. Specific ANSI analysis levels must include identification of all RF producing entities and ERP's on the

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<sup>3/</sup> Wireless' March 2, 1992 amended application ERP of .265KW also EXCEEDS authorized limits as actual site elevation is 499 meters and HAAT 349 meters.



**3. Illegal business activities by Windsor Wireless**

a. As Attachment "B" to its opposition, Wireless submitted a copy of its Partnership Agreement alleged to have been signed November 14, 1991. The Agreement is defective, and does not meet several critical requirements. For any such agreement to be valid, there must be "consideration". Simply stating the alleged 51% and 49% interest shares is insufficient, thus rendering the Wireless document defunct. No "consideration" is stated in the agreement. 6/

b. Accordingly, the illegal and defective Wireless Partnership Agreement means the application of Wireless as tendered and as exists today is procedurally defective and must be dismissed. Further, the principals are residents of the

d. Wireless' attachment "A" to its opposition confirms that an error had occurred in Item 1(D) of my Petition To Deny. Said allegation was to have applied only to Clark, and including Wireless was an informational as well as word processing error for which an apology is herein rendered.

#### 4. Wireless' Financial Representations

a. In Item #6 of its opposition, Wireless rebuffs my allegation that a required "contact name" is required for Fidelity Investments simply "...because the Dewey's are relying on their personal financing...[and that] they are the contact persons." The Deweys are not the "contact persons" for Fidelity Investments which Wireless stated to be the "source" of funds. The Commission requests specific information as set forth in the instructions in order to provide for verification of data supplied by an applicant.

b. The Commission is formally requested to verify, pursuant to Wireless' Section III statement, that the alleged Fidelity Investment funds are in fact available. If any "overlap" of funds resources proves evident during A-N-Y period of time in which Dewey's Windsor and Gridley applications have been on file at the Commission, both applications must be dismissed since this would be a violation of the Commission's rules. 8/

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8/ Further, that said funds are only in the name of Barney L. Dewey and NOT really "Community Property" funds of both Barney and Nancy Dewey. Commission rules do not allow for the "same" funds to be used as financial resources for more than one application on file at the Commission. Mr. Dewey has also claimed the same Fidelity Investments as the alleged "personal financing" source for construction and 3 months operation of his pending application (BPH-911029MA) at Gridley, California, as set forth in Exhibit 1 to the initial Wireless at Windsor. The Commission has a responsibility to verify this information. In order to save the Commission time, provided herein is the correct procedure. The Commission must obtain a written authorization from Mr. Dewey authorizing release of the information. Next, a letter requesting verification must be sent to: "Account Verification", Fidelity Investments, P.O. Box 759, Boston, MA 02102-0759. All product type data (i.e., Mutual Fund, USA Account, etc.) and account number(s) are to be included, and must be supplied to the Commission by Mr. Dewey for verification. The Commission should request this from Mr. Dewey.

### **5. Wireless' initial transmitter site defects**

a. My allegations regarding the original Wireless site are being further substantiated, in an abundance of caution, as correctly set forth in Item# 1(A) in my Petition To Deny. The appropriate supplemental information is attached (see EXHIBIT 5).

b. Accordingly, my allegations in Item# 1(B) relating to Wireless' proposed future operating facilities were correct. By chance, I noticed that the Wireless map showed it's 3.16 mV/m contour falling short of Shiloh Road on the North side of U.S. Route 101. The Windsor "city limits" as defined will actually extend S-O-U-T-H of Shiloh Road (see EXHIBIT 3).

### **6. Hughes and Clark financial qualifications omissions**

a. In footnote 2 of its opposition, Hughes asserts that I in some way misrepresented myself to Wells Fargo Bank and its Manager which is completely false, and a fabricated character assassination attempt by Hughes. 9/

b. As with Wireless, the Commission has a responsibility to verify the information, which is why all information has been requested on the Section III form in the first place. 10/

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9/ My conversation with Mr. Yeomans, WFB Manager, was prefaced specifically with the fact that it was public record that Hughes had stated on an FCC application that Wells Fargo Bank was a source of funds. Remaining allegations stated by Hughes are 180 degrees from the factual truth. I have contacted a higher authority at Wells Fargo Bank for an investigation to help get the record set straight in this matter.

10/ As per footnote 5 herein, the Commission is requested to verify the accuracy of funds as claimed by Hughes. The address for Wells Fargo Bank is 445 Center Street, Healdsburg, CA 95448. As with Wireless, since the joint funds of Gary and Judy Hughes were used in payment of the FCC filing fee, California "community property" laws require a 50/50 ownership to be disclosed. Therefore, it appears Hughes has failed to disclose all "parties in interest" to her application which must be investigated. "Community Property" law provisions would also apply to any loan or other funding guarantees for which "community property" may be used as collateral.

c. Clark claims to have "inadvertently neglected to include [the required information]". It would also "appear" that Clark also "neglected", for whatever reasons, to include information relative to all "real parties in interest" involving her financial qualifications and ownership. 11/

#### **7. Possible site unavailability for Clark and Hughes**

a. Pursuant to the Wireless opposition, Item# 2, reference was made to Wireless changing its transmitter site. The March 2, 1992 Wireless amendment utilized the same tower site claimed by Clark and Hughes. In it's illegal and defective amendment dated April 7, 1992, Wireless claims that the site owner essentially "kicked Wireless off the tower" for an immediate revenue producing client, and that said "...petition and amendment are being submitted within 30 days of Wireless learning of the changed circumstances [loss of the site]."

b. Since the "preempted" site is also that of Clark and Hughes, it seems quite strange that neither Clark or Hughes have reported the change. The Commission is requested to verify the availability of the Clark/Hughes site as certified on Page 24 of their FCC 301 applications. In Clark's case, and own words (pursuant to omitted financial contact information), perhaps this has just been another case of "inadvertent neglect" not only by Clark, but possibly Hughes as well. This could prove to be quite interesting.

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11/ Perhaps Clark "neglected" to provide the requisite address for her "sister" Kathleen R. Montgomery as a part of avoiding a potential tie-in to her brother-in-law, Mr. Terry Montgomery, who apparently owns and is in the process of selling radio station WQPM-FM. It is my understanding that Mr. Montoomerv is also purchasing

**8. Clark's additional untruthfulness**

a. Clark's opposition suggests, on page 2, that a "substantially complete" commercial FM application would allow for an applicant to propose a "greater than" *maximum* authorized ERP, which of course is erroneous.

b. Deceptively, Clark refuses to admit her failure to complete publishing of her public notice by the deadline of December 14, 1992, which is in fact false certification of her application subject to prosecution (see **EXHIBIT 6**).

**9. Declaration**

I, Eric R. Hilding, under penalty of perjury, declare the foregoing to be true, accurate and complete of, and/or to the best of, my personal knowledge.

**PURSUANT ITS OWN POLICIES AND RULES** regarding the stringent application processing standards, the Commission has a responsibility to now **DISMISS** the applications of Wireless, Clark and Hughes as defective in light of the facts evidenced herein.

Respectfully submitted,







**James J. Gallagher**  
Sonoma County  
Assessor

**EXHIBIT 2**

585 Fiscal Drive  
Room 104F  
Santa Rosa, CA 95403-2872  
(707) 527-1888  
Toll Free from Sonoma County

# Keep our tax dollars in Windsor

Windsor loses over \$1.2 million in tax revenue every year by not incorporating. The county uses those tax dollars for improvements OUTSIDE the Windsor area.

Financial feasibility studies have been ongoing since 1986. Over five different studies have been completed, and all conclude that Windsor cityhood is financially feasible WITHOUT NEW TAXES!

**Sources of revenue for the new city are:**

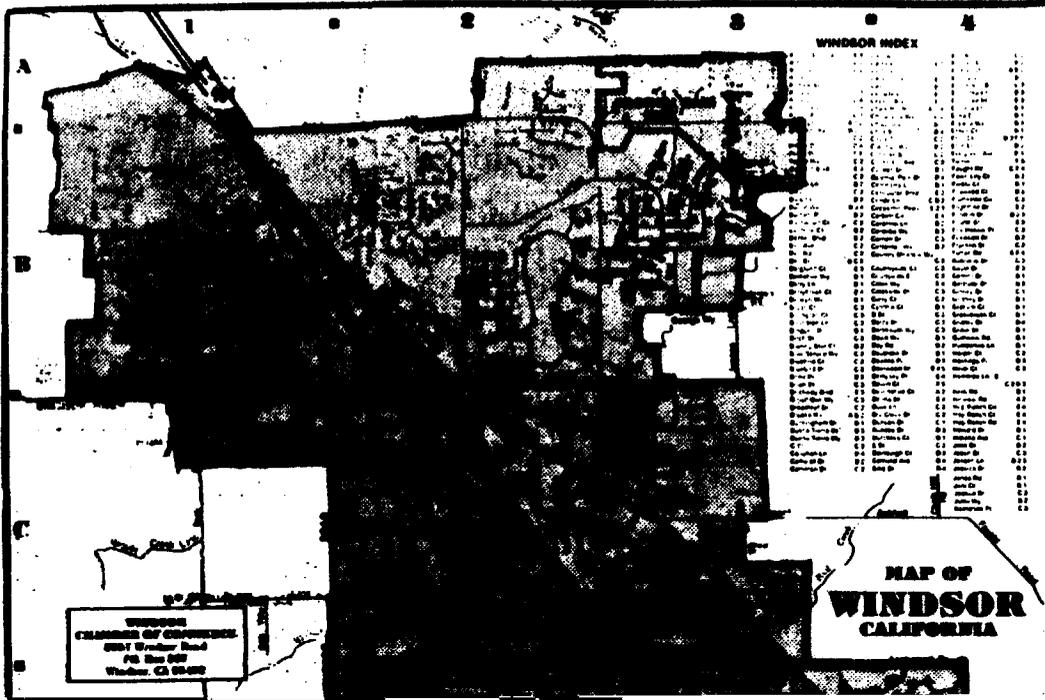
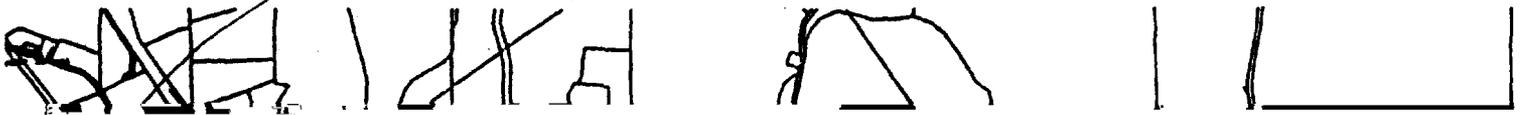


EXHIBIT A  
TOWN OF WINDSOR BOUNDARY

EXHIBIT 4  
according  
to County of  
San Diego  
Sample Ballot  
11/05/91

MARSHY CLARK  
8401 OAK WAY  
APN# 066-210-45

OUTSIDE OF WINDSOR "CITY LIMITS"



## EXHIBIT 5

BZA Resolution No. 90-013  
January 25, 1989

UP 89-785/Fuller Jeffery Broadcasting  
Planner: Sigrid Swedenborg

**RESOLUTION OF THE BOARD OF ZONING ADJUSTMENTS, COUNTY OF SONOMA, STATE OF CALIFORNIA, EXEMPTING THE PROJECT FROM CEQA FOR THE PURPOSE OF DENIAL AND DENYING THE USE PERMIT REQUEST BY FULLER JEFFREY BROADCASTING FOR A 407 FOOT HIGH RADIO TRANSMITTER TOWER**

WHEREAS, the Sonoma County Board of Zoning Adjustments has considered the Use Permit application by Fuller Jeffrey Broadcasting requesting a 407 foot high radio transmitter tower located at 2300 Big Ridge Road, Healdsburg, APN 090-090-25 and 111-130-14, zoned A1 (Primary Agriculture), BS, Table 40, Supervisorial District No. 4, and

WHEREAS, in accordance with the provisions of law, the Sonoma County Board of Zoning Adjustments did conduct a public hearing on January 25, 1990, on said application at which time all interested persons were given an opportunity to be heard thereon, and

WHEREAS, said Board does make the following specific findings relative to this particular application:

1. There is no mitigation for the visual impact that the project will have;
2. There are other sites available in the County, including the applicant's existing location, that could have less impact.
3. Until the County adopts siting and design guidelines for transmission towers in accordance with General Plan Policy PF-2U, it is premature to approve towers which exceed existing tower heights and continue the trend toward tower dispersal.
4. The applicant failed to adequately respond to the criteria established in the General Plan for new tower sites, i.e. prove that the new tower would serve a demonstrated public need, explain why use of the existing tower facility is infeasible, minimize impacts on scenic resources and analyze alternative sites.
5. Testimony at the public hearing was taken that the establishment, maintenance or operation of the tower would be detrimental to the health, safety, peace, comfort and general welfare of persons residing or working in the neighborhood and be detrimental or injurious to property and improvements in the neighborhood and the general welfare of the area.

NOW, THEREFORE BE IT RESOLVED that the Sonoma County Board of Zoning Adjustments in regular session assembled this 25th day of January, 1990, hereby exempts the project from CEQA for the purpose of denial and denies the Use Permit request by Fuller Jeffrey Broadcasting for a 407 foot high radio transmitter tower.

Page 2  
BZA Resolution No. 90-013  
UP 89-785/Fuller Jeffrey Broadcasting  
Planner: Sigrid Swedenborg

AND BE IT FURTHER RESOLVED that the Sonoma County Board of Zoning Adjustments action shall be final on the 13th day after the date of the resolution unless an appeal is taken.

THE FOREGOING RESOLUTION was introduced by Commissioner Dawson, who moved its adoption, seconded by Commissioner Marquardt, and adopted on roll call by the following vote:

Commissioner Mills	Aye
Commissioner Dawson	Aye
Commissioner Marquardt	Aye
Commissioner Perry	Aye
Commissioner Nelson	Aye

AYES: 5      NOES: 0      ABSENT: 0      ABSTAIN: 0

WHEREUPON, the Chairman declared the above and foregoing resolution duly adopted; and

SO ORDERED.

# EXHIBIT 6

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## PUBLIC NOTICE

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No. 234

On November 15, 1991, Margery E. Clark filed an application with the Federal Communications Commission requesting a construction permit for a new FM radio station on Channel 261, 104.1 MHz, at Windsor, California. The transmitter and tower will be located at Mount Jackson, 2.7 km NNE of Rio Nido, Sonoma County, California. The station will broadcast with an effective radiated power of .200 kW using an antenna situated 344 meters above average terrain. The studios will be within the proposed city-grade contour at a location to be determined.

A complete copy of the application, any amendments and related materials, is available for public inspection Monday through Friday, during regular business hours, at Windsor Oaks National Bank, 9101 Los Amigos, Windsor, California.

PUBLISH: The Times, Dec. 4, 11, 18, 1991.

LATE  
PUBLISHED

(NON-COMPLIANT)

FALSE CERTIFICATION  
OF HRA APPLICATION

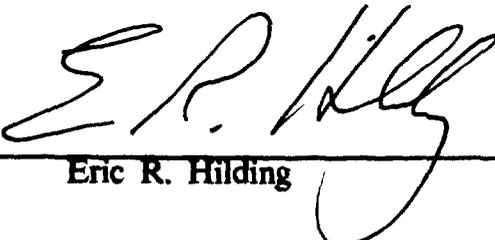
## CERTIFICATE OF SERVICE

I, Eric R. Hilding, under penalty of perjury, hereby declare that a copy of this "REPLY TO OPPOSITION(S) TO PETITION TO DENY" has been sent via First Class Mail, U.S. postage prepaid, today, May 4, 1992, to each of the following:

Lee W. Shubert  
Haley Bader & Potts  
2000 M Street, N.W. #1100  
Washington, D.C. 20036  
- Counsel for Windsor Wireless

John S. Neely  
Miller & Miller, P.C.  
P.O. Box 33003  
Washington, D.C. 20033  
- Counsel for Margery E. Clark

Peter A. Casciato, Esquire  
A Professional Corporation  
1500 Sansomoe St. #201  
San Francisco, CA 94111  
- Counsel for Judy Yep Hughes

  
Eric R. Hilding