

Glendale has no such excuse for having allowed Tak's offer to go unaccepted and thus lapse in January 1992. That matter was completely within Glendale's knowledge and control. Hence, Glendale would have no good cause to try now to cure the lapse either by re-proposing the same site (with an updated site availability showing) or by specifying a different site.

32. Accordingly, the following site availability issue should be designated for hearing:

**"To determine whether there is reasonable assurance that the transmitter site specified by Glendale is available for its proposed use."**

#### **E. False Financial Certification**

33. There is also a substantial and material question on the face of Glendale's application as to whether Glendale's financial certification was false when initially filed or became false soon thereafter.

34. As reflected in Section III and Exhibit 4 of Glendale's application (Attachment 13 hereto), Glendale certified "yes" to the question of whether it had sufficient funds available to meet the estimated \$2,169,816 needed for construction and initial operation. George Gardner pledged personally to lend Glendale either all of that amount or \$1,219,839 of it, depending on whether or not Glendale leased its equipment from a leasing company. However, Gardner's loan

commitment letter filed with the application (as Ex. 4) admitted that Gardner did not have sufficient net liquid assets to cover his proposed loan. In pertinent part, the letter said:

"I have more than sufficient assets to meet this commitment. While I do not have net liquid assets totalling this amount, I have more than sufficient assets which I can sell to meet this loan commitment. I have identified specific assets which are unencumbered and that can be readily converted to cash or other liquid assets. The sale of those assets would provide me with sufficient liquid assets to meet this loan commitment." (Attachment 13; emphasis added.)

35. It is well settled that non-liquid assets will not support an applicant's financial qualifications unless (a) such assets have been independently professionally appraised, (b) the appraised value is discounted by one-third to account for potential future market fluctuations, (c) current liabilities are subtracted, and (d) the resulting amount is enough to meet the estimated costs. Rose Broadcasting Company, 68 FCC 2d 1242, 1246 (1978); Opal Chadwell, 4 FCC Rcd 1215 (1989); Christian Children's Network, Inc., 101 FCC 2d 612, 614 (1985); Texas Communications Limited Partnership, 5 FCC Rcd 5876, 5878 (Rev. Bd. 1990); Port Huron Family Radio, Inc., 5 FCC Rcd 4562, 4563, n. 5 (1990); Dodge-Point Broadcasting Co., 11 FCC 2d 751. 754

Gardner, before certifying, had obtained the requisite professional appraisals, computed the one-third discount, and subtracted his current liabilities to determine the available funds. Gardner could not certify in good faith without taking such steps, because only by doing so could he gain the requisite level of assurance that his assets would generate sufficient funds to meet his commitment.

37. A fair reading of Gardner's loan commitment letter (Attachment 13) clearly suggests that Gardner did not obtain the necessary appraisals. While asserting in conclusory terms that "I have more than sufficient assets" and that "I have identified specific assets . . . that can be readily converted to cash or other liquid assets," the letter does not state that the assets have been appraised. This omission is telling, since reference to appraisals would have bolstered the obvious purpose of the letter, which was to demonstrate financial qualification. The plain inference to be drawn is that Gardner had no appraisals when he certified, although his certification legally implied otherwise. At the very least, the evidence raises a substantial and material question of fact that must be explored at hearing. Weyburn Broadcasting Limited Partnership v. FCC, 994 F.2d 1220, 1231 (D.C. Cir. 1993) (court directs FCC to hold hearing on applicant's financial qualifications where "[m]any unanswered questions remain").

38. Glendale's disingenuous financial certification is not cured by the fact that Glendale amended three months later to substitute a bank in lieu of George Gardner as the source of funds.<sup>20/</sup> The issue is whether Glendale certified in bad faith -- a separate issue from the adequacy of Glendale's current financial proposal.<sup>21/</sup>

39. Accordingly, the following issue should be designated for hearing:

"To determine whether Glendale falsely certified its financial qualifications in violation of Section 73.1015 of the Commission's Rules and, if so, whether Glendale is qualified to be a licensee."

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<sup>20/</sup> See Glendale amendment filed March 26, 1992.

<sup>21/</sup> Glendale's financial certification was false if Gardner's net liquid assets (properly appraised and discounted) totaled less than (a) \$2,169,816 during the period December 27, 1991, to February 28, 1992, or (b) \$5,040,882 during the period February 28 to March 26, 1992. That is because on February 28, 1992, Glendale filed another television application for Monroe, Georgia (BPCT-920228KE), in which it proposed to meet costs of \$2,871,066 with a loan from Gardner, who again relied on his personal non-liquid assets. See Attachment 14 hereto (excerpts from BPCT-920228KE). An applicant proposing to finance multiple pending applications must have adequate funds to cover all of them. Texas Communications Limited Partnership, supra, 5 FCC Rcd at 5878. Thus, from February 28 to March 26, 1992 (when Glendale substituted a bank letter in lieu of Gardner as the funding source for its Miami application), Gardner had to meet a total of \$5,040,882. If he did not have sufficient funds to do so, then Glendale's financial certifications in both the Miami application and the Monroe

#### **F. Repeated Violation of Reporting Requirements**

40. A basic qualifications issue is also warranted in light of Glendale's multiple violations of FCC reporting requirements in connection with its application. Under well-settled Commission policy, a reporting issue will be designated where (a) there is a pattern of repeated violations or (b) there are other circumstances reflecting significant carelessness or inattentiveness. Merrimack Valley Broadcasting, Inc., 99 FCC 2d 681, 683-84, n. 9 (1984). These traits are directly relevant to the Commission's core concern with truthfulness and reliability in complying with regulatory requirements. Policy Regarding Character Qualifications in Broadcast Licensing, 102 FCC 2d 1179, 1209 (1985). In the present case, not only does Glendale exhibit a pattern of repeated violations, but even a single reporting violation would be a significant dereliction given George Gardner's record of adjudicated misconduct, the "heightened scrutiny" to which he is subject, and the compliance promises he has made to the Commission.

41. A review of Glendale's reporting violations begins with Question 7(a) of Section II on Glendale's application:

"Does the applicant [or] any party to the application . . . have . . . any interest in . . . a . . . pending broadcast station application before the Commission?"

Although Exhibit 2 of Glendale's application (**Attachment 8**) lists five low power television (LPTV) stations controlled by

Gardner, at least nine FCC applications involving those stations have never been reported by Glendale. The unreported applications include the following, all of which TBF has found only by searching Commission records:

(a) Application for first extension of construction permit of LPTV Station W31AX, Lancaster, Pennsylvania, filed December 20, 1991 (BMPTTL-911220JB);

(b) Application for first extension of construction permit of LPTV Station W23AW, Lancaster, Pennsylvania, filed December 20, 1991 (BMPTTL-911220IX);

(c) Application for first extension of construction permit of LPTV Station W55BP, Lebanon, Pennsylvania, filed December 20, 1991 (BMPTTL-911220JI);

(d) Application for first extension of construction permit of LPTV Station W38BE, Lebanon, Pennsylvania, filed December 20, 1991 (BMPTTL-911220JF);

(e) Application for second extension of construction permit of LPTV Station W31AX, Lancaster, Pennsylvania, filed July 9, 1992 (BMPTTL-920709IN);

(f) Application for second extension of construction permit of LPTV Station W23AW, Lancaster, Pennsylvania, filed July 9, 1992 (BMPTTL-920709IM);

(g) Application for second extension of construction permit of LPTV Station W55BP, Lebanon, Pennsylvania, filed July 9, 1992 (BMPTTL-920709IJ);

(h) Application for second extension of time of construction permit of LPTV Station W38BE, Lebanon, Pennsylvania, filed July 9, 1992 (BMPTTL-920709IK);

(i) License renewal application of LPTV Station W40AF, Dillsburg, Pennsylvania, filed January 27, 1993 (BRTTL-930127AK).

42. The first four listed of these LPTV applications were pending before the Commission when Glendale filed its application on December 27, 1991. Thus, their omission from Glendale's application violated Section 73.3514(a) of the Rules.<sup>22/</sup> The other five LPTV applications listed above were

was obligated to report by amendment the disposition of the various applications. Commission records reflect that the four LPTV extension applications filed on December 20, 1991 were granted on January 29, 1992, and the four LPTV extension applications filed on July 9, 1992, were granted on September 23, 1992. Glendale reported none of these eight Commission actions. Here, too, this omission is significant, because it served to obscure the fact that Gardner was doing nothing to build the LPTV stations for which he held permits -- a fact that is relevant to Gardner's qualifications here. See ¶¶78-81 below.

44. Also unreported by Glendale is the disposition of an application by Raystay to assign the construction permit of LPTV Station W23AY, York, Pennsylvania (formerly W56CJ, Red Lion, Pennsylvania) to GroSat Broadcasting, Inc. (BAPTTL-920114IB). On February 13, 1992, Glendale filed a timely amendment reporting the filing of that application. However, although Commission records reflect that the application was granted on March 2, 1992, Glendale never reported the grant. Nor did Glendale report any consummation of the assignment. Hence, it is impossible to tell from Glendale's application whether Raystay assigned or kept the permit for W23AY in York, Pennsylvania.

45. Glendale's application is likewise silent on the status of Raystay's permits for the two Lancaster, Pennsylvania,

and two Lebanon, Pennsylvania, LPTV stations listed in Exhibit 2 of Glendale's application (W38BE, W55BP, W31AX, and W23AW). (Attachment 8.) Commission records reflect that the most recent extensions of those permits (granted September 23, 1992) all expired on March 23, 1993. Glendale failed to amend its application to report that development.

46. In Glendale's "Integration and Diversification Statement," George Gardner states -- inaccurately -- that "Raystay held construction permits" for the Lebanon and Lancaster LPTV stations "as of the date the hearing designation order in this proceeding was released." That is not so, since the HDO was released April 7, 1993, two weeks after the permits had expired. The Integration Statement, without mentioning that the LPTV permits expired on March 23, 1993, states that the LPTV permits were canceled by the Commission on April 8, 1993. Glendale has not amended its application to report this development either. Furthermore, belying Gardner's rehabilitation pledge to "carefully" review any statements for accuracy, the Integration Statement (which Gardner personally signed) incorrectly identifies one of the canceled LPTV permits as W56CJ, Red Lion, Pennsylvania. Evidently, Gardner's "careful review" in this case missed both Glendale's February 27, 1992 amendment, which reported that the Red Lion permit had been modified to become W23AY, York, Pennsylvania, and Glendale's February 13, 1992 amendment, which reported that Raystay was

assigning that permit to GroSat Broadcasting, Inc. Gardner's "careful review" also completely overlooked W23AW, Lancaster, Pennsylvania, which Raystay held until it expired but which the Integration Statement does not even mention.

47. Glendale's reporting derelictions go well beyond the array of violations involving Raystay's LPTV stations. Also unreported -- incredibly enough -- is the application filed by Glendale itself on February 28, 1992, challenging the license renewal of Television Station WHSG(TV), Monroe, Georgia (BPCT-920228KE) (see fn. 21 supra). That application was not reported here when it was filed, has never been reported by amendment, and was first mentioned by Glendale 14 months after the fact in its Integration Statement filed May 3, 1993. (Inclusion of the Monroe application in the Integration Statement is a telling, if belated, concession on Glendale's part that the Monroe application may be decisionally significant here -- which is exactly why it should have been timely reported by amendment under §1.65.)

48. Finally, as discussed above, there is Glendale's failure to amend its transmitter site certification when the site owner's offer lapsed on January 31, 1992, and Glendale lost any reasonable assurance of site availability it may arguably have had.

49. Altogether, then, since filing its application in December 1991, Glendale has committed at least 25 identifiable violations of Section 73.3514(a) or Section 1.65. It failed to report ten application filings, nine Commission grants, the status of one proposed permit assignment, the expiration of four LPTV authorizations, and the loss of its proposed transmitter site in this proceeding. All of these matters were reportable.

50. These violations plainly warrant the designation of a basic qualifications issue against Glendale under either or both of the Merrimack standards. Under the first standard, the evidence clearly shows a "pattern of repeated violations." This alone justifies an issue (see ¶40 above). Under the second standard, Glendale's violations plainly rise to the level of "significant carelessness and inattentiveness" in light of the circumstances involving George Gardner. Three years ago Gardner represented to this Commission that he would personally "carefully" review any applications he might file to ensure that they "fully and accurately disclose any pertinent facts." He further pledged that he would implement a system to monitor ongoing compliance with the FCC's rules and that he would operate "strictly in compliance with all Commission Rules and Regulations." (See ¶11 above.) Those representations, and the "heightened scrutiny" to which Gardner is subject under RKO, demand the most scrupulous adherence on Glendale's part to all Commission reporting requirements. Even a single dereliction

would be significant, since it would be enough under the circumstances to demonstrate Gardner's innate unreliability. A multiplicity of derelictions, which the record shows here, is all the more significant.

51. For these reasons, the following issue should be designated against Glendale:

**"To determine whether Glendale has violated Section 73.3514 and/or Section 1.65 of the Commission's Rules and, if so, the effect thereof on Glendale's basic qualifications to be a licensee."**

**G. Misrepresentations of Raystay Company**

52. Also highly relevant to Glendale's qualifications is a series of evident misrepresentations that have been made to the Commission by Raystay Company, the family-owned company controlled by George Gardner that is the permittee of the LPTV stations referred to above.<sup>24/</sup> These misrepresentations are especially significant, not only because they are recent and have continued during the pendency of Glendale's application, but because they thoroughly discredit Gardner's 1990 rehabilitation assurance that "I now realize the importance of being absolutely candid in applications and statements made by me to the Commission" (emphasis added) -- an assurance he

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<sup>24/</sup> George Gardner owns 100% of the voting stock of Raystay. See Glendale's Integration and Diversification Statement, filed May 3, 1993, p. 2.

solemnly gave when he asked the Commission to grant Raystay's initial LPTV construction permit applications (see ¶11 above).

53. Raystay filed those applications in March 1989. Two of the applications proposed Channels 23 and 31, respectively, in Lancaster, Pennsylvania (BPTTL-890309PA and BPTTL-890309NY). Two others proposed Channels 38 and 55, respectively, in Lebanon, Pennsylvania (BPTTL-890309TD and BPTTL-890309NZ). Pertinent portions of these four applications are appended in **Attachment 15** hereto.

54. Each of the two Lancaster applications proposed to locate its transmitter on the roof of a building owned by the Ready Mixed Concrete Co. of Lancaster, PA, and identified the contact person as Edward Rick, III.

55. Each of the two Lebanon applications proposed to locate its transmitter on the roof of the Quality Inn in Lebanon and identified the contact person as Barry L. March, General Manager of the Quality Inn.

56. The Commission granted all four applications and issued 18-month construction permits to Raystay on July 24, 1990. (Copies of the four construction permits are appended in **Attachment 16** hereto.) Approximately 17 months later, on December 20, 1991, Raystay filed Form 307 applications to extend each of the four permits. All of the applications answered "yes" to Question 8, "Are the representations contained in the

application for construction permit still true and correct?" To each application Raystay attached the identical Exhibit 1, wherein it made (among others) the following representations:

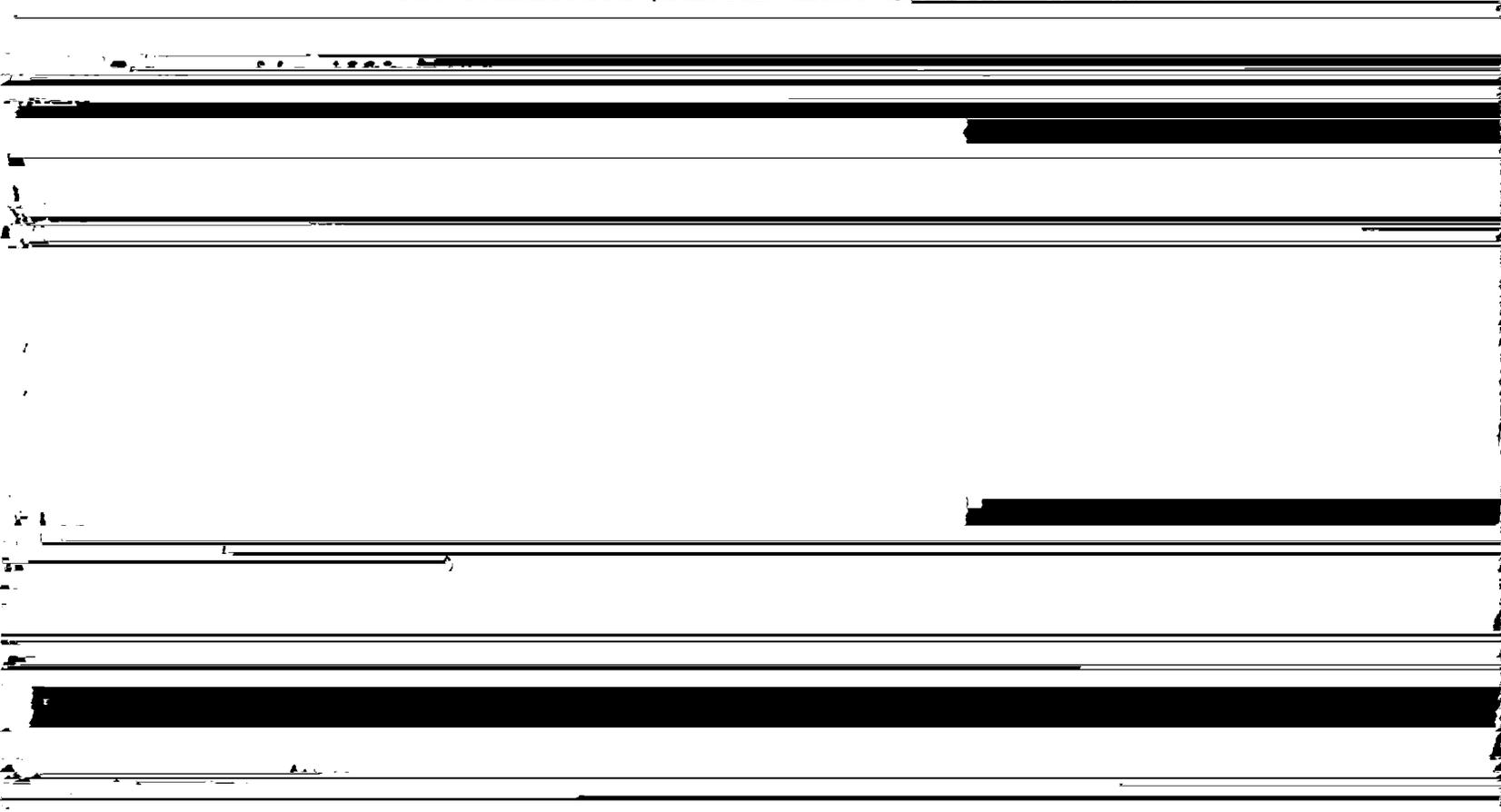
"[Raystay] has entered into lease negotiations with representatives of the owners of the antenna site specified in the applications, although those negotiations have not been consummated."

and

"A representative of Raystay and an engineer have visited the antenna site and ascertained what site preparation work and modifications need to be done at the site."

George Gardner personally signed all four of these extension applications. (Copies of the four December 1991 extension applications are appended in Attachment 17 hereto.)

57. The Commission granted these applications and extended



(Copies of the four July 1992 extension applications are appended in Attachment 18 hereto.)<sup>25/</sup>

58. It now turns out that Raystay filed its original construction permit applications without having obtained reasonable assurance that either the Lancaster or the Lebanon transmitter site was available for the purpose Raystay intended. Furthermore, in seeking to justify extension of the permits despite its failure to construct, Raystay made serious misrepresentations in all eight of its extension applications about the status of the proposed sites and the steps allegedly taken toward construction.

(1) The Lancaster Misrepresentations

59. Appended hereto as Attachment 19 is the sworn affidavit of Edward Rick, III, who is Vice-President and an owner of the Ready Mixed Concrete Co. in Lancaster, Pennsylvania, and the person whom Raystay's agent approached about a transmitter site. According to Mr. Rick, he was visited in February 1989 by one Gregory Daly, who said he was interested in placing a TV antenna on the roof of the Ready Mixed plant. He led Mr. Rick to believe that the antenna would be no more

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<sup>25/</sup> The fact that Raystay used the identical words to describe the details of its alleged construction efforts for four different LPTV stations in two different places, and made this verbatim submission not only in December 1991 but then again for all four stations in July 1992, is itself highly suspicious.

than ten or fifteen feet high. However, he could not answer Mr. Rick's questions about the exact size or weight of the structure or give any assurance that it would not cause interference to the other communications facilities on the roof. There was no discussion of the possible terms of a lease or of the specifics of Daly's plans for the antenna. Because Mr. Rick felt he had very little information about the proposal, he refused to sign a bilateral letter of intent that Daly had presented to him. Instead, at Daly's request, and based on Mr. Rick's clear impression that Daly was talking about only a ten or fifteen foot antenna, Mr. Rick prepared and signed a brief statement that he was willing to negotiate a lease with a rent of \$350 a month. Rick Affidavit, ¶¶2-3 (Attachment 19).

60. Mr. Rick has now seen the antenna sketch that Raystay submitted with its March 1989 Lancaster construction permit applications, and he states to a certainty that he never told Daly that Ready Mixed would consider leasing roof space for a structure like that. He had no idea that the project would involve a structure reaching 97 feet above roof level and supporting two broadcast antennas. If Daly had told him that that was the plan, Mr. Rick would have known that it was structurally impossible and never would have given Daly the statement of willingness to negotiate. *Id.*, ¶5.

61. The point is not that Raystay cannot build at that site. (That point is now moot anyway.) The point is that

Raystay was not dealing in good faith when it certified to the Commission that it had reasonable assurance of the site. Raystay's agent either did not know or deliberately did not tell Mr. Rick that the structure would be so large. Such information would plainly be critical to the willingness of any building owner to make its roof available for tower construction. Indeed, in this case Mr. Rick expressly asked for such information, and because he could get no answer he refused to sign a letter of intent. By the time Raystay filed its applications, it knew the exact details of its technical proposal. If it was unable to give Mr. Rick that information at the time of Daly's visit, it certainly could have recontacted Mr. Rick to clear it with him before the applications were filed. No such contact was made. Rather than undertake in good faith to be sure that the site owner knew and agreed to what was being proposed, Raystay cavalierly certified to the Commission that it had the site.

62. Implicit in a site certification is that the certifying applicant furnished the site owner enough information for an informed consent. Where the applicant has instead procured an uninformed statement by withholding material facts from the site owner, the certification is plainly disingenuous. Rem Malloy Broadcasting, 6 FCC Rcd 5843, 5845-46 (Rev. Bd. 1991) (false certification issue designated where applicant had not

disclosed to site owner that proposed rooftop structure would be 258 feet tall and not just a small antenna).

63. Even more blatant are the misrepresentations made in Raystay's subsequent extension applications. First, by affirming that all representations in the original applications were still true, Raystay implied that it still intended to build at the site proposed in those applications (and later specified in the construction permits). Cf. William F. Wallace 49 FCC 2d 1424, 1427 (Rev. Bd. 1974) ("the specification of a site is an implied representation that an applicant has obtained reasonable assurance that the site will be available"). However, as Mr. Rick's affidavit now discloses, Raystay determined in October 1991 (two months before it filed the first extension applications) that it could not use the Ready Mixed site. Mr. Rick explains that he was visited on October 16, 1991, by two persons, one of whom said he was the new owner of the "rights" to place an antenna on the Ready Mixed roof. The visitors said that they would require a dust-free area for their equipment. Mr. Rick said (not surprisingly) that a dust-free environment could not be assured because this was a concrete company. The visitors responded that because of the dust, the site would not be suitable. With that, the conversation ended and the visitors departed, giving the clear impression that they had no plans to pursue the matter further. The visit lasted only about fifteen minutes. The visitors did not inspect Ready Mixed's facilities

and had no discussions with Mr. Rick about site preparation work or modifications to the site. After they left, Mr. Rick never heard from anyone again. Rick Affidavit, ¶¶4, 6-7 (Attachment 19).

64. These disclosures establish that in December 1991, and again in July 1992, Raystay asked the Commission to keep alive construction permits for two LPTV stations that Raystay then well knew would not be built at the location authorized in the permits. By obtaining extensions through that ploy, Raystay could continue to tie up the frequencies while looking for a usable site to which it could later amend. In short, Raystay used false pretenses to induce the Commission to extend the Lancaster construction permits.

66. Raystay's second false representation in Exhibit 1 was the claim that "[a] representative of Raystay and an engineer have visited the antenna site and ascertained what site

recall which) in early 1989 from someone expressing an interest in placing a small broadcast antenna on the hotel roof. The caller (or visitor) led Mr. March to believe that he was talking about a thin, whip-like antenna or small dish that would not be readily noticeable to hotel patrons. March Affidavit, ¶2 (Attachment 20).

69. Based on that impression, Mr. March told the caller (or visitor) that the hotel might be interested in negotiating a lease, but that he should contact Mr. March again when he was ready to discuss terms. There was no discussion of the specifics of the antenna proposal or of prospective lease terms, and Mr. March expressed no more than general interest in the proposal -- a proposal he considered vague. Mr. March gave the caller (or visitor) permission to inspect the roof, and he believes that shortly after the conversation someone did visit the hotel to examine the roof. Id., ¶¶2-4 (Attachment 20).

70. Mr. March has now seen the antenna sketch that Raystay submitted with its March 1989 Lebanon construction permit applications, and he states with certainty that he never told the caller (or visitor) that the hotel would consider leasing roof space for a structure like that. He had no idea that the project would involve a structure reaching 86 feet above roof level and supporting two broadcast antennas. If the caller (or visitor) had told him that that was the plan, he would have

rejected the proposal without consideration. Id., ¶5 (Attachment 20).

71. Here again, as in Lancaster, Raystay was clearly proceeding in bad faith when it certified to the Commission that it had reasonable assurance of the site. Raystay never told the site owner the true magnitude of the proposed facility and thus made no effort to obtain an informed consent. Instead, it withheld material facts from the site owner and gave the Commission a disingenuous certification.

72. As in Lancaster, moreover, Raystay continued this deception after receiving its construction permits. In its Lebanon extension applications filed in December 1991 and July 1992, Raystay made the identical representations that it made in Lancaster, to wit (Attachments 17, 18):

"[Raystay] has entered into lease negotiations with representatives of the antenna site specified in the applications"

and

"A representative of Raystay and an engineer have visited the antenna site and ascertained what site preparation work and modifications need to be done at the site."

Contrary to these representations, Mr. March attests that there have never been any lease negotiations with Raystay or any representative of Raystay. He further attests that nobody from Raystay has ever visited the hotel except for the initial

inspection made shortly after Mr. March was initially approached in early 1989. Apart from that, no representative of Raystay has contacted the hotel at any time about the matter. March Affidavit, ¶¶6-7 (Attachment 20).

73. The affidavits of Edward Rick and Barry March, who have no connection with each other and no vested interest in this case, establish beyond any doubt that Raystay repeatedly lied to the Commission in its applications first to obtain, and then to extend, construction permits for four LPTV stations in Pennsylvania. This egregious misconduct has extended over the last four years, including while Glendale's Miami application has been pending. Moreover, it comes right on the heels of the adjudication in RKO that George Gardner made misrepresentations and lacked candor in the RKO Fort Lauderdale proceeding. And it exposes the utter unreliability, indeed hypocrisy, of Gardner's claim that he now realizes the need for being "absolutely candid" and will henceforth behave "strictly in compliance with all Commission Rules and Regulations" (see ¶11 above). The Raystay LPTV applications prove that these assurances are meaningless, because they prove that Gardner still has a propensity to deal deceitfully with the Commission.

74. Accordingly, the following issue should be designated for hearing:

**"To determine whether Raystay Company has made misrepresentations or lacked candor with the Commission in low power television**

(LPTV) applications in violation of Section 73.1015 of the Commission's Rules and, if so, the effect thereof on Glendale's qualifications to be a licensee."

**H. Misrepresentation/Lack of Candor  
In "Rehabilitation" Submissions**

75. The repeated misrepresentations, lack of candor, and reporting violations by Raystay Company in its LPTV applications and Glendale in this proceeding demonstrate that George Gardner's "rehabilitation" pledges could hardly have been made in good faith. In 1990, claiming that he now realized the importance of being "absolutely candid" with the Commission in all matters, Gardner promised that he would henceforth "carefully review" all applications and statements made to the Commission to ensure complete accuracy. He further represented that he was establishing a formal "compliance program," to be overseen by his counsel, to ensure that he complied with all Commission rules. (See ¶11 above.)

76. We now know that even as Gardner made those pledges, Raystay was prosecuting four LPTV applications with false transmitter site certifications. Moreover, the reporting omissions and misrepresentations on the part of Glendale and Raystay since then -- all of them over Gardner's own signature -- have been so extensive that Gardner could not have seriously intended to honor his pledges.

77. Accordingly, issues are warranted to determine Gardner's good faith in pledging that he would take specific steps to ensure accuracy and compliance in all dealings with the Commission, and to determine Glendale's good faith in expressly reaffirming that pledge in its application. The issues should be framed as follows:

**"To determine whether George F. Gardner made misrepresentations and/or lacked candor in violation of Section 73.1015 of the Commission's Rules in 'rehabilitation' statements he made to the Commission in March 1990 and May 1990 and, if so, the effect thereof on Glendale's qualifications to be a licensee;"**

and

**"To determine whether Glendale made misrepresentations and/or lacked candor in violation of Section 73.1015 of the Commission's Rules in reaffirming the 'rehabilitation' statements made by George F. Gardner to the Commission in March 1990**