

FM proceeding.⁵³ In neither of these cases was the group represented by Cohen & Berfield found to be the comparatively superior applicant. In settling the WFYR(FM) proceeding, the group represented by Cohen & Berfield was selected as the comparatively superior applicant but still decided to dismiss its application for a \$4.5 million dollar payment.⁵⁴ In settling the WAXY-FM proceeding, the applicant represented by Cohen & Berfield received a payment of \$2 million in exchange for dismissing its application, despite the fact that the Administrative Law Judge had found the applicant's 100-percent shareholder lacked candor in his testimony.⁵⁵ Finally, the challenger in the WRKO(AM)/WROR-FM proceeding represented by Cohen & Berfield received \$1,030,500 in exchange for dismissing its application.⁵⁶

In the early 1980s, ACGI's counsel were also active in challenging renewal of the licenses of various stations owned by United Broadcasting Company or its subsidiaries. In these cases, payments totalling more than \$2.2 million were made for the

⁵³ RKO General, Inc. (WOR), 4 FCC Rcd 5747 (1989); RKO General, Inc. (WRKS-FM), 66 RR 2d 851 (1989).

⁵⁴ RKO General, Inc. (WFYR-FM), 4 FCC Rcd 4083 (1989).

⁵⁵ RKO General, Inc. (WAXY-FM), 5 FCC Rcd 12642 (1990).

⁵⁶ RKO General, Inc. (WRKO), 3 FCC Rcd 6603 (1988).

dismissal of the five applicants represented by ACGI's counsel.⁵⁷

The tactics of ACGI's counsel in the representation of applicants for new broadcast facilities have recently come under intense criticism. In case after case, applicants have been found to be "shams," in many instances concocted or controlled by counsel. These cases, which together comprise a sizable number, are as follows:

-- Atlantic City, New Jersey (FM Channel 297B1)

Proceeding -- "application is not a well-reviewed, well-considered, or even thoroughly understood proposal. It is, instead, the boilerplate paper proposal of her attorney, to which she passively acquiesced in almost every aspect, without study, without investigation, and seemingly without care."

. . . Hillside is the epitome of the 'paper

⁵⁷ United Broadcasting Co. of Eastern Maryland, Inc., FCC 85R-83 (Rev. Bd., released Oct. 10, 1985) (\$400,000 settlement paid to opposing applicant of WYST(FM) renewal); United Broadcasting Company of New York, Inc., FCC 85R-81 (Rev. Bd., released Oct. 7, 1985) (\$240,000 paid to competing applicant in settlement of WBNX(AM) renewal); Intercontinental Radio, Inc., 62 RR 2d 1565 (1985) (\$125,000 settlement paid to opposing applicant in KSOL(FM) renewal); Tele-Broadcasters of California, Inc., FCC 85I-134 (Assoc. Gen. Counsel, released Oct. 1, 1985) (affirming settlement agreement that paid \$175,000 to competing applicant in settlement of KALI(AM) renewal); Montgomery County Broadcasting Co., Inc., FCC 82M-3095 (A.L.J., released Oct. 6, 1982) (\$12,247.89 settlement paid to competing applicant of WINX(AM) renewal); United Broadcasting Co., Inc., FCC 86I-59 (Assoc. Gen. Counsel, released May 7, 1986) (\$1,275,000 settlement paid to competing applicant of WOOK(FM) renewal). (Unpublished decisions attached at Tab 8.)

proposal' . . . , with a substance no deeper than the medium on which it is submitted." Atlantic City Community Broadcasting, Inc., 6 FCC Rcd 925, 932 (Rev. Bd. 1991);

-- Poughkeepsie, New York (FM Channel 241A) Proceeding --
affirming Review Board ruling that Cohen & Berfield application was not a bona fide applicant and noting "that where the applicant's attorney plays a leading role in promoting the formation of an applicant, as is the case here, this circumstance provides reason to closely examine the record to make certain that the nominal active owners truly control the applicant."
Poughkeepsie Broadcasting Limited, 6 FCC Rcd 2497, 2498 n.3 (1991);

-- Montecito, California (FM Channel 225A) Proceeding --
making "clear that we have a limited partnership created and nurtured by the 80% limited partners, a limited partnership whose destiny, by the very terms of the partnership agreement itself . . . , lies in their hands" and finding counsel had established limited partnership before general partners were identified.
Shawn Phelan, 6 FCC Rcd 2789 (A.L.J. 1991);

-- Orlando, Florida (UHF Channel 27) Proceeding --
finding of sham application for which attorney Cohen and supposed "limited partner" formed limited partnership and recruited general partner just five

days before application was filed. Marlin Broadcasting of Central Florida, Inc., 67 RR 2d 159, 171-72 (Rev. Bd. 1989), aff'd, 5 FCC Rcd 5751 (1990);

-- Carmel, California (FM Channel 238A) Proceeding --
 dismissing Cohen & Berfield applicant for failure to produce witness after A.L.J. added basic qualifying issues to determine whether applicant "ha[d] abused the Commission's processes in other comparative proceedings" in which its principals had filed sham applications. Carmel Broadcasting Limited Partnership, 6 FCC Rcd 4633 (Rev. Bd., 1991);

-- Center Moriches, New York (FM Channel 241A) Proceeding -- "The conclusion reached here is that [the Cohen and Berfield applicant] is not a good faith limited partnership. It is not credible that a bona fide limited partnership would entrust their substantial investment exclusively into the hands of an individual hardly known to them." Edwin A. Bernstein, 5 FCC Rcd 6629, 6634 (A.L.J. 1990);

-- Fresno, California (FM Channel 257A) Proceeding --
 Cohen and Berfield applicant is "'a garden variety sham' (of the more unsavory breed . . .)." Fresno FM Limited Partnership, 6 FCC Rcd 1570, 1573 (Rev. Bd. 1991);

-- Salinas, California (FM Channel) Proceeding -- finding
 "a limited partnership arrangement that is not bona

fide" because a limited partner "by himself or through Cohen, has made every significant decision." Salinas Broadcasting Limited Partnership, 4 FCC Rcd 2762, 2769 (A.L.J. 1989); and

-- Richmond, Virginia (FM Channel 266A) Proceeding --

Conclusion

ACGI's engineering defects warrant prompt dismissal of its application. In addition, the Commission should send a clear, bold message to abusers of its processes that it will not countenance further abusive filings. It is hard to imagine a better or more defensible place to start than with ACGI.

ACGI's application should be dismissed or denied because its filing represents a prima facie and blatant abuse of Commission processes. It has obviously been filed to extract a settlement and not to advance any legitimate public interest claim.

been found by the Commission in the past to have lacked candor
and filed abusive applications.

Respectfully submitted,

EZ COMMUNICATIONS, INC.

By 

Rainer K. Kraus
M. Anne Swanson

of

Koteen & Naftalin
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December 6, 1991

Its Attorneys

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CARL T. JONES
CORPORATION

**STATEMENT OF HERMAN E. HURST, JR.
IN SUPPORT OF A
PETITION TO DISMISS OR DENY
AN APPLICATION FOR A NEW FM BROADCAST STATION
AT PITTSBURGH, PENNSYLVANIA
FCC FILE NO. BPH-910628MC**

Prepared For: EZ Communications, Inc.

I am a Radio Engineer, an employee of the firm of Carl T. Jones Corporation, with offices located in Springfield, Virginia.

My education and experience are a matter of record with the Federal Communications Commission.

This office has been authorized by EZ Communications, Inc., licensee of WBZZ(FM), Pittsburgh, Pennsylvania, to prepare this statement and associated exhibits in support of a Petition to Dismiss or Deny an application (FCC File No. BPH-910628MC) for a new FM broadcast station at Pittsburgh, Pennsylvania, filed by Allegheny Communications Group, Inc. (Allegheny), mutually exclusive with the WBZZ Renewal of License Application. Allegheny proposed to operate on 93.7 MHz (Channel 229) as a Class B allotment with a maximum effective radiated power of 43.5 kW using a directional transmitting antenna with an antenna height of 157.5 meters above average terrain.

**STATEMENT OF HERMAN E. HURST, JR.
PETITION TO DISMISS OR DENY
PAGE 2**

VIOLATION OF SECTION 73.207 OF THE FCC RULES

Allegheny proposes to locate its transmitting antenna at an AT&T radio/microwave communications site which does not meet the spacing requirements of Section 73.207 of the Rules and Regulations with regard to WQIO(FM), Mt. Vernon, Ohio, on Channel 229B and WQYX(FM), Clearfield, Pennsylvania, on Channel 230B1. Allegheny has not requested a waiver of Section 73.207; rather it appears to claim entitlement to the provisions of 73.213 since WBZZ(FM) and WQIO(FM) maintain a "grandfathered short-spaced" relationship, while meeting the provisions of Section 73.215 with respect to the short-spacing to WQYX.

Under the Commission's "Cameron Policy," an applicant which had filed mutually-exclusive with the license renewal application of another station ("MX applicant") was not required to make an independent showing of its technical qualifications. Routine waivers of Section 73.207 were granted in order to provide the privileges of 73.213 to applicants which requested the waiver and were mutually exclusive with the license renewal application of a grandfathered short-spaced station. However, the Commission has eliminated the "Cameron Policy" and has required MX applicants to file "... independent engineering proposals with their applications." [See "Formulation of Policies and Rules Relating to Broadcast Renewal Applicants, Competing Applicants, and

**STATEMENT OF HERMAN E. HURST, JR.
PETITION TO DISMISS OR DENY
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Other Participants to the Comparative Renewal Process and the Prevention of Abuses of the Renewal Process", 4 FCC Rcd 4780 (1989)]. In light of the aforementioned decision, Allegheny is not now entitled to the technical advantages associated with the WBZZ(FM) licensed facility, and as a result must comply with the spacing requirements of Section 73.207.

In addition, it is clearly contrary to the public interest to allow the new FM service proposed by Allegheny to be processed under the provisions of Section 73.213 which is reserved for grandfathered short-spaced stations. Today, such waivers are not normally necessary since an application can be fully compliant with the Rules under the provisions of Section 73.215 [see "Amendment of Part 73 of the Commission's Rules to Permit Short-Spaced FM Station Assignments by Using Directional Antennas", 4 FCC Rcd 1681 (1989)].

Under the limited circumstances that the incumbent's licensed transmitter site is short-spaced to another FM facility, the MX applicant must request processing under Section 73.215 of the FCC Rules or request and compellingly justify a waiver of the Commission's spacing requirements of Section 73.207. Allegheny has neither requested processing under Section 73.215 with regard to its short-spacing with WQIO, nor requested a waiver of Section 73.207.

**STATEMENT OF HERMAN E. HURST, JR.
PETITION TO DISMISS OR DENY
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Accordingly, Allegheny's application fails to meet the basic allocation requirements set forth in the FCC Rules.

VIOLATIONS OF SECTION 73.316 OF THE FCC RULES

Allegheny proposes to utilize an ERI DA-1005-3-bay directional antenna in order to protect short-spaced stations WQIO(FM), Mt. Vernon, Ohio, (under Section 73.213) and WQYX(FM), Clearfield, Pennsylvania, (under Section 73.215). As a result, the Allegheny proposal is subject to the provisions of Section 73.316 of the FCC Rules regarding directional antennas.

Section 73.316(a)(2) states that, "directional antennas used to protect short-spaced stations pursuant to Section 73.213 or Section 73.215 of the FCC rules, that have a radiation pattern which varies more than 2 dB per 10 degrees of azimuth will not be authorized". The radiation pattern proposed by Allegheny exceeds this maximum rate of attenuation over the arcs from 50° true to 60° true and 90° to 100° true.

Table II of the engineering exhibit included in the Allegheny application is a tabulation of the proposed directional antenna data. The following relative fields (based on a maximum ERP of 43.5 kW) were taken directly from Table II of the Allegheny application:

STATEMENT OF HERMAN E. HURST, JR.
PETITION TO DISMISS OR DENY
PAGE 5

<u>Azimuth</u>	<u>Relative Field</u>	<u>ERP(kW)</u>	<u>ERP(dBk)</u>
50 deg.	0.718	22.4253	13.5074
60 deg.	0.569	14.0836	11.4871
		Rate of Attenuation	2.0203

<u>Azimuth</u>	<u>Relative Field</u>	<u>ERP(kW)</u>	<u>ERP(dBk)</u>
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**STATEMENT OF HERMAN E. HURST, JR.
PETITION TO DISMISS OR DENY
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is physically unable to satisfy this criterion on the proposed support structure due to existing antennas mounted along the entire height of the proposed supporting structure.

POTENTIAL HAZARD TO AIR NAVIGATION

As indicated in the Allegheny application, FCC Form 301, Section V-B, item 5, the Federal Aviation Administration (FAA) was not notified of the proposed construction. However, Allegheny proposes an increase in power over that of the existing WBZZ facility and is within 20 nautical miles of Greater Pittsburgh International Airport. This office conducted a study of the potential impact of the Allegheny proposal on nearby navigational aids (navaids).

The FAA's Airspace Analysis Model, Version 4.01, was employed to evaluate the electromagnetic compatibility between the proposed Allegheny FM facility and select FAA navaids within 30 nautical miles. This office has determined that the Allegheny proposal would adversely impact instrument flight rule terminal procedures.

The proposed construction's broadcast frequency (93.7 MHz) combining with the broadcast frequency of existing stations WORD (104.7 MHz) and WMXP (100.7 MHz) would produce an intermodulation frequency of 111.70 MHz. This is the frequency assigned to Greater Pittsburgh, Pennsylvania, localizer HFE on Runway 28R. The

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Allegheny proposal is predicted to create new interference within the service volume of localizer HFE. The licensed WBZZ(FM) facility does not contribute to any interference to the affected localizer.

Exhibit 2 is the output of the FAA AAM considering the WBZZ licensed facility. Exhibit 3 is the output of the AAM associated with the Allegheny proposal.

MISREPRESENTATION OF SUPPORT STRUCTURE

As shown in photographs contained in Exhibit 1, Allegheny's proposed support structure is an existing pole atop a building. The pole currently supports a number of 2-way communications antennas. Figure 3 of the Allegheny Engineering Exhibit depicts the new antenna on a self-supporting tower. No other antennas are depicted on Allegheny's Figure 1. Further, contrary to the applicant's claim (see Engineering Statement, page 5), the tower is neither FAA painted nor lighted.

The antenna proposed by Allegheny will occupy a vertical aperture of 31 feet up to a maximum of 45 feet including all hardware. Careful examination of the photographs in Exhibit 1 reveals that with the presence of the two-way communications antennas, it does not appear physically feasible to locate the proposed antenna on the

**STATEMENT OF HERMAN E. HURST, JR.
PETITION TO DISMISS OR DENY
PAGE 8**

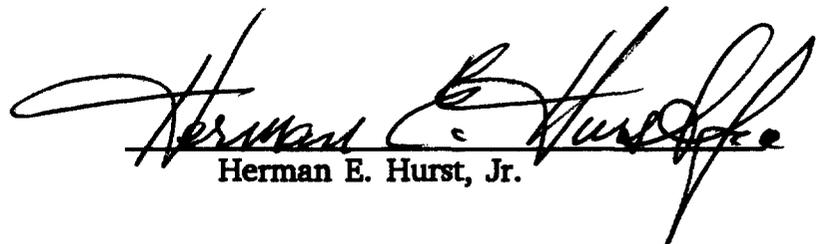
structure. In addition, considering the weight of the antenna, radomes, ice, and windloading effects, it is questionable if the structure is able to support the proposed antenna.

ENVIRONMENTAL STATEMENT/RADIOFREQUENCY RADIATION ANALYSIS

Allegheny has claimed compliance with the American National Standards Institute (ANSI) guidelines for human exposure to RF radiation at ground level for the proposed facility; yet the proposed facility would significantly exceed the ANSI guideline value on roof level. Allegheny did not address the potential occupational hazard on the roof or the potential radiation hazard within the building on which the antenna would be mounted. Further, since Allegheny fails to consider the other radio transmission facilities co-located at the proposed site, its claim of compliance for public exposure at ground level is not verifiable. Clearly, the environmental statement is not compliant with the Commission's Rules and Regulations.

This statement was prepared by me or under my direct supervision, and is believed to be true and correct.

DATED: December 6, 1991


Herman E. Hurst, Jr.

[The body of the document is almost entirely obscured by dense horizontal black lines, likely representing a corrupted scan or a redacted page. No legible text is present.]

Airspace case #: WBZZ LICENSE
 Date: 12/03/91
 Navaid Identifier: HFE
 Navaid Frequency (MHz): 111.70

Site: PITTSBURGH, PA

Navaid Latitude: 40. 30 9
 Navaid Longitude: 80. 16 32

Runway Heading (True): 272.0
 Runway Elevation (Ft. MSL): 1172.
 Runway Length (Ft): 15000.

Prop ID Call	Freq (MHz)	Latitude	Longitude	ERP (Kw)	Height (MSL)	Range (NM)	Radial (True)	Lic Stat
1 WVBC	88.10	40. 12 58	80. 33 31	1.100	1499.	21.51	36.98	L
2 WRSK	88.10	41. 3 43	80. 2 35	.100	1355.	35.19	197.47	C
3 WRCT	88.30	40. 26 39	79. 56 37	1.500	1063.	15.55	283.01	A
4 WGEV	88.30	40. 46 21	80. 18 33	.010	1329.	16.27	174.60	L
5 WQED	89.30	40. 26 46	79. 57 51	43.000	1332.	14.61	283.39	L
6 WVNP	89.90	40. 12 58	80. 33 31	25.000	1588.	21.51	36.98	L
7 WSRU	90.10	41. 3 51	80. 2 49	.110	1621.	35.26	197.13	L
8 WDUQ	90.50	40. 25 52	80. 0 26	25.000	1696.	12.98	289.27	L
9 WITX	90.90	40. 47 5	80. 20 36	.100	1224.	17.21	169.67	L
10 WYEP	91.30	40. 24 42	79. 55 33	18.000	1430.	16.87	288.85	L
11 WGLZ	91.50	40. 9 49	80. 36 6	.150	1273.	25.22	36.26	C
12 WVCS	91.90	40. 2 57	79. 54 1	3.000	1224.	32.17	327.72	L
13 WPHP	91.90	40. 4 7	80. 39 4	.100	1299.	31.20	33.44	L
14 WXJX	92.10	40. 10 15	80. 14 25	.010	1161.	19.97	355.36	L
15 WKST	92.10	40. 52 13	80. 17 15	3.000	1407.	22.07	178.59	L
16 WLTJ	92.90	40. 29 38	80. 1 9	47.000	1893.	11.71	272.53	L
* 17 WBZZ	93.70	40. 26 28	80. 1 32	41.000	1585.	11.99	287.89	P
18 WWSW	94.50	40. 27 48	80. 0 18	50.000	1831.	12.57	280.78	L
19 WYTK	95.30	40. 11 23	80. 14 2	4.200	1578.	18.86	354.20	A
20 WVTY	96.10	40. 23 49	79. 57 43	50.000	1503.	15.66	293.86	L
21 WRRK	96.90	40. 24 42	79. 55 53	45.000	1572.	16.63	289.13	L
22 WKWK	97.30	40. 5 49	80. 42 6	50.000	1496.	31.18	38.71	L
23 WLER	97.70	40. 53 51	79. 53 22	2.300	1627.	29.50	216.54	L
24 WESA	98.30	40. 7 24	79. 53 45	6.000	1289.	28.62	322.63	A
25 WPTS	98.50	40. 26 39	79. 57 12	.020	1444.	15.12	283.39	L
26 WSHH	99.70	40. 27 47	80. 0 17	10.500	1946.	12.58	280.84	L
27 WMXP	100.70	40. 29 43	80. 0 18	17.000	1847.	12.35	272.01	L
28 WPIT	101.50	40. 29 2	79. 59 34	48.000	1526.	12.95	274.95	L
29 WDVE	102.50	40. 29 38	80. 1 9	55.000	1814.	11.71	272.53	A
30 WRKY	103.50	40. 20 32	80. 37 14	16.000	1939.	18.46	58.61	L
31 WELA	104.30	40. 37 48	80. 36 10	50.000	1532.	16.76	117.16	A
32 WORD	104.70	40. 34 24	79. 46 58	50.000	1545.	22.87	259.29	L
33 WAMO	105.90	40. 29 27	79. 58 55	72.000	1417.	13.42	272.99	L
34 WWYS	106.30	40. 15 14	80. 50 35	2.700	1604.	29.92	60.10	C
35 WLCY	106.30	40. 31 10	79. 13 26	2.400	1631.	47.98	268.79	L
36 WWKS	106.70	40. 44 16	80. 17 47	47.000	1578.	14.15	176.16	L
37 WSSZ	107.10	40. 18 57	79. 39 22	1.600	1545.	30.44	291.59	C
38 WDSY	107.90	40. 28 20	79. 59 41	50.000	1532.	12.94	278.07	L
39 VAGC	110.00	40. 16 43	80. 2 28	.050	1306.	17.18	321.43	V
40 VMMJ	112.00	40. 29 17	80. 11 39	.050	1213.	3.81	283.13	V
41 VHLG	112.20	40. 15 35	80. 34 8	.050	1286.	19.80	42.63	V
42 VEWC	115.80	40. 49 30	80. 12 42	.050	1236.	19.57	188.55	V

due to frequency separation of NAVAID > 500 KHz

No Receiver Overload (B2) points found.

Listing of 3-frequency intermodulation (B1) combinations

Freq 1	ID	Freq 2	ID	Freq 3	ID	B1 Freq	Offset	# Points
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No 3-frequency intermodulation interference found.

Note: Some 3-frequency B1 points masked by A2 or B2 interference.

Airspace case #: ALLEGHENY COMM.
 Date: 12/03/91
 Navaid Identifier: HFE
 Navaid Frequency (MHz): 111.70

Site: WBZZ MX APPLICATION

Navaid Latitude: 40. 30 9
 Navaid Longitude: 80. 16 32

Runway Heading (True): 272.0
 Runway Elevation (Ft. MSL): 1172.
 Runway Length (Ft): 15000.

Prop ID Call Stat	Freq (MHz)	Latitude	Longitude	ERP (Kw)	Height (MSL)	Range (NM)	Radial (True)	Lic Stat
1 WVBC	88.10	40. 12 58	80. 33 31	1.100	1499.	21.51	36.98	L
2 NEWx	88.10	40. 28 51	79. 43 26	.200	1299.	25.21	272.96	A
3 WRSK	88.10	41. 3 43	80. 2 35	.100	1355.	35.19	197.47	C
4 WRCT	88.30	40. 26 39	79. 56 37	1.500	1063.	15.55	283.01	A
5 WGEV	88.30	40. 46 21	80. 18 33	.010	1329.	16.27	174.60	L
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15 WXJX	92.10	40. 10 15	80. 14 25	.010	1161.	19.97	355.36	L
16 WKST	92.10	40. 52 13	80. 17 15	3.000	1407.	22.07	178.59	L
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29 WPIT	101.50	40. 29 2	79. 59 34	48.000	1526.	12.95	274.95	L
30 WDVE	102.50	40. 29 38	80. 1 9	55.000	1814.	11.71	272.53	A
31 WRKY	103.50	40. 20 32	80. 37 14	16.000	1939.	18.46	58.61	L
32 WELA	104.30	40. 37 48	80. 36 10	50.000	1375.	16.76	117.16	L
33 WORD	104.70	40. 34 24	79. 46 58	50.000	1545.	22.87	259.29	L
34 WAMO	105.90	40. 29 27	79. 58 55	72.000	1417.	13.42	272.99	L
35 WWYS	106.30	40. 15 14	80. 50 35	2.700	1604.	29.92	60.10	C
36 WLCY	106.30	40. 31 10	79. 13 26	2.400	1631.	47.98	268.79	L
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41 VMMJ	112.00	40. 29 17	80. 11 39	.050	1213.	3.81	283.13	V
42 VHLG	112.20	40. 15 35	80. 34 8	.050	1286.	19.80	42.63	V
43 VEWC	115.80	40. 49 30	80. 12 42	.050	1236.	19.57	188.55	V

Adjacent Channel (A2) analysis not required for station NEWx
due to frequency separation of NAVAID > 500 KHz

No Receiver Overload (B2) points found.

Plot file name is : NEWx211C.plt

Total of 6 Intermodulation (B1) points at 111.70 for stations
WORD(33), WMXP(28), and NEWx(18).

The 3-frequency equisignal intermodulation (B1) interference threshold

1

2

DOCKET BRANCH — FEDERAL COMMUNICATIONS COMMISSION

DOCKET NUMBER MM 84-1148		RKO GENERAL, INC. Bethesda, Maryland For Renewal of Licensee Cons. with MM 84-1149 thru MM 84-1183		FACILITIES	
APPL. NUMBER BR-1403				OPERATING	REQUESTED
CALL LETTER WGMS					
REPORT NUMBER					
APPEAL DOCKET					
DATE OF DESIGNATION 11-8-84					
ORAL ARGU. DATE	APPL. APPR. DATE	HEARINGS DATE	TRANS. COMPL.	REP. DATE	DATE OF ORAL ARGU.
12-17-84				2-7-86 rep. 3-17-86	

RKO General: (1) Timothy B. Dyk, William R. Richardson, John Payton, Daniel Marcus, William J. Kolasky, Robert Trager, John J. Duffy, James J. Freeman, Roy T. Englert, Jr., Jane C. Sherburne, Judith Wish,

DOCKET No. MM 84-1148

CARD No. 66
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